

Public Policy and Private Prisons:

A probe into legislation that populates private prisons with
immigrants

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with immigrants

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ABSTRACT

States have become increasingly active in proposing, enacting, and enforcing immigration policies, challenging division of power with the federal government. Certain southern border states have taken the lead in implementing anti-immigration legislation and policies while for-profit, private prisons have increased their presence. The main hypothesis of this thesis is that states that have the most severe anti-immigration policies will have more private prisons than states that do not. Using information from a sample of 27 states, a severity index scale is created to gauge immigration policy activity in relationship to private prison data. The results indicate that there is a positive correlation between the severity of immigration legislation and a private prison presence (i.e. states that have more severe immigration policies have more private prison beds per capita than those states with less severe immigration policies). Future work building from this thesis could examine how all fifty states rank on the severity index and correlate them to private prison influx, and could include how various private prisons' interest get translated into more severe laws in the states.

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Chapter 1—Introduction

The Journey to Prison Begins

Guillermo, 18, was born in a poor town in northern Mexico. His sick mother requires continuous medication. They cannot afford the medication, so Guillermo considers seeking a labor job in the U.S. so that he can send money to his sister, who would care for their mother in his absence. At this same time, there was a peak in presence and activity of Mexican drug cartels in town and they were reportedly “recruiting” men his age by force to join them to strengthen themselves against rivals. Guillermo could not bear the thought of having to join a cartel, nor could he bear the thought of having to say “no” to the cartel because of what might be done to him for refusing. He decided that he had few options but to emigrate to the U.S. in search of work for the sake of his mother’s health. He had no legal means to come to the country, so he risked his life, crossed the desert, and entered the U.S. unlawfully, settling down in Arizona. Soon after, he met Jennifer, a U.S. citizen (USC) by birth. She was born and raised in Arizona. Both are persons of good moral character without criminal records. The two were soon married and had two USC children together. They led a happy life together, until SB 1070 was enacted.

On April 23, 2010, Arizona Governor, Jan Brewer, signed SB 1070 into law, which has been dubbed “anti-immigrant legislation.” This law creates sanctions for provisions that include trespassing, harboring and transporting illegal immigrants, alien registration documents, employer sanctions, and human smuggling. Those found to be without proof of lawful status could be fined and imprisoned. The possible punishment for transporting an undocumented immigrant is having the vehicle impounded, being

convicted of a class 1 (one) misdemeanor and being subjected to at least a \$1,000 fine (Morse, 2012). SB 1070 put both Guillermo and Jennifer at risk of sanctions that would tremendously affect their family, including the separation of Guillermo from his family to be incarcerated. Jennifer could have her car impounded simply for driving to the supermarket with her husband, as this would be considered “transporting an undocumented immigrant,” as specified in SB 1070. Jennifer and Guillermo are not criminals and they do not want to put themselves at risk of criminal sanctions, so they decide to leave the state.

To understand better the perspective of this author, and in order to declare any conflicts of interest, let me briefly explain my previous work experience and credentials in this area of research. For the past six and a half years, I have worked for Catholic Charities Legal Immigration Services for the Diocese of Youngstown, alongside a supervising immigration attorney. I have attended numerous legal immigration training sessions and webinars in order to gain a level of expertise on the issue. In 2011, I became a Partially Accredited Representative of the Board of Immigration Appeals (BIA), authorizing me to represent clients to the U.S. Department of Homeland Security, which includes: Citizenship and Immigration Services (USCIS), Immigration Customs Enforcement (ICE), and Customs and Border Patrol (CBP). This partial accreditation was used mostly to represent clients in affirmative cases filed with USCIS¹.

It is a misconception that once an immigrant marries a USC (like in the hypothetical case of Jennifer and Guillermo) they automatically become a USC. In reality, U.S. citizenship through marriage does not work like that at all. The USC spouse

¹ Only attorneys and fully accredited representatives of the BIA can represent individuals before an Immigration Judge in court, of the Department of Justice’s Executive Office for Immigration Review.

would first need to petition an I-130 Petition for Alien Relative, along with evidence of a bona fide marriage (“Instruction for Form I-130,” 2012). The petition is for the [intending] immigrant spouse to get Lawful Permanent Resident (LPR) status (a “green card” holder). Once the I-130 is approved, the immigrant spouse has two ways to become an LPR. If currently in the U.S., the immigrant spouse can apply for an Adjustment of Status in the U.S. This can only be done, however, if that immigrant entered the U.S. with a valid visa and was inspected by U.S. Customs and Border Patrol at the time of entry². If the intending immigrant spouse is abroad, they would then apply to consular process at a U.S. embassy/consulate in their country for their LPR immigrant visa. Once an immigrant spouse becomes an LPR, they can apply for Naturalization to obtain U.S. citizenship after three years of being an LPR³.

In the case of Jennifer and Guillermo, he would not be able to adjust his status in the U.S. because he *entered without inspection* (EWI). He would need to consular process in Mexico at a U.S. Embassy/Consulate—the process of being interviewed to become an LPR. Guillermo has been in the U.S. for nearly ten years now. According to U.S. immigration laws, if an individual is unlawfully present in the U.S. for a period of more than 180 days, but for less than one year, if they leave the U.S. they are barred from lawfully entering the U.S. for a period of three years, even if legal means exist. On the other hand, if someone remains in the U.S. for more than one year, they will be barred

² An exception to this is having an approvable I-130 filed before April 30, 2001, and being physically present in the U.S. on December 21, 2000, assuming other eligibility requirements are met, as indicated on “Instructions for Supplement A (2013)”. Under this exception, one may still adjust status while in the US.

³ If LPR status is obtained through any other way besides marriage to a USC, it takes 5 years of being a permanent resident to apply for naturalization, if other requirements are met.

from returning for ten years (INA§212), upon leaving the U.S. There are waivers to these unlawful presence bars for reasons of extreme hardship caused to immediate USC family members, but the waivers are decided discretionarily, and can be extremely difficult to obtain. So in the case of Guillermo, it is best for his family that he remain living in the shadows of the US, despite his desire to contribute fully to society and be American like his family.

States Take Action

The story of Guillermo illustrates a typical story of an undocumented immigrant who entered the U.S. without inspection, who has since married and raised a family. Because he cannot obtain legal status, he is forced to live in fear and hiding. Many immigrants like Guillermo have entered EWI and since formed families. They desire to obtain legal status in the U.S. and “register” to be authorized to remain here with their families and fully contribute to society, which in turn, could add a substantial boost to the economy (Jimenez, 2014). Currently there is an estimated 11.7 million undocumented immigrants in the U.S. (Preston, 2013). The Federal Government acknowledges that the U.S. needs Comprehensive Immigration Reform for national security and economic reasons (“Immigration,” n.d.). As the U.S. Government has not yet taken on the challenge of creating Comprehensive Immigration Reform, state governments have begun implementing their own laws that define criminal behavior, leading to incarceration, such as Arizona’s SB 1070. Since SB 1070 was enacted, five other states enacted copycat laws: Alabama, Georgia, Indiana, South Carolina, and Utah (“State Anti-Immigrant

Laws,” n.d.). Many other states have enacted or proposed other laws that criminalize immigrant violations, but may be less severe (Gordon & Raja, 2012).

Arizona not only has severely punitive immigration laws; it also has severely punitive law enforcement and prosecution. Arizona SB 1070 states that when a law enforcement officer has reasonable suspicion to believe that an individual is undocumented that they are to make a reasonable attempt to determine that individual’s legal status (AZ Senate Bill 1070 of 2010, Section 2, B. p. 3). With this freedom to seek out the undocumented, Sheriff Joe Arpaio of Maricopa County, Arizona, conducted “crime suppression operations,” during which he entered communities known to have a high immigrant population and demanded proof of lawful status of those suspected to be in violation. Parents and children alike were frightened, and many did not leave their houses while Sheriff Arpaio and his officers conducted their “crime suppression operations.” Teachers and principals tried to tell Sheriff Joe that he was hurting their community. Inevitably, LPRs and USCs were profiled and requested to provide documentation. Sheriff Arpaio has been sued for racial profiling (Sterling, 2010, p.p. 87-102).

On the other hand, the type of charge leveled against an individual can also provide means to maximize sanctions and incarceration. As mentioned earlier, SB 1070 categorizes the smuggling of an undocumented immigrant as a felony (AZ Senate Bill 1070 of 2010, Section 4, p. 4). Prosecutor Andrew Thomas, also of Maricopa County, Arizona, used textual analysis of the law to determine that he could charge undocumented immigrants with *conspiring to smuggle themselves* into Arizona, in order to maximize charges against them. After a few months, Thomas announced that his office had

convicted 1,000 undocumented persons under the new smuggling laws. Of the 1,000 convictions, however, 868 were self-smuggling convictions (Sterling, 2010, p. 49). These enforcement and prosecution discrepancies of Arizona's state immigration legislation are mentioned because as more states follow Arizona's lead, more communities are likely to experience these punitive conditions. Even for the USC's of a community it can be devastating and frustrating to witness friends that may be undocumented being taken and imprisoned.

Entering the Private Prisons

The drastic increase in criminalization of immigration offenses leads to the next problem: the increase of those found guilty of immigration offenses that carry an incarceration sentence creates a need for more facilities in which they can be housed. For the government, it is cost-effective to contract with private prison companies that house inmates at a lower cost. In the 1980s, private prisons grew rapidly due to harsher criminalization on drug and immigration offenses (Wood, 2007, p. 224). Today, there are approximately 2 million persons incarcerated in private prisons within the U.S. (Paleaz, 2014). In order for the private prison companies to make a profit, they must occupy their beds with inmates. Legislation with harsher sentences for convictions of drugs and immigration status may in fact create an increased need for more [private] prisons. Corrections Corporation of America (CCA), GEO Group (GEO), and Management Training Corporation (MTC) are three of the major private prison companies in the U.S. In 2012 they reported nearly \$4 billion in combined revenue. They also have spent over \$32 million on federal lobbying and campaign contributions since 2000 ("Warehoused

and Forgotten,” 2014). Basically, these private prison companies invest money into the creation of legislation that will lead to more of their private prison beds being filled. Top management officials of CCA and GEO served on the committee that adopted the model legislation that went into the text of Arizona’s SB 1070, of which more can be read in Beau Hodai’s article entitled *Private Prison Companies Behind the Scenes of Arizona’s Immigration Law* (2012).

Focus of Research Study

Noting the harsh sanctions on EWIs in Arizona and other states’ copycat legislation, combined with the booming private prison industry, it is theorized that the states with the most severe punitive immigration laws would also have higher amounts of private prison beds within those states. This research analyzed state laws defining crimes of immigration status and compared and contrasted their correlating sanctions that an EWI can receive. Arizona, along with all of the border states, were researched in this project. Research was also conducted on a sample of non-border states that have enacted “anti-immigrant” legislation, specifically the non-border states that enacted copycat immigration laws of Arizona SB 1070: South Carolina, Indiana, Utah, Georgia, and Oregon (“State Anti-Immigrant Laws,” n.d.). The other border states whose immigration information researched are: Washington, Idaho, Montana, North Dakota, Minnesota, Wisconsin, Michigan, Ohio, Pennsylvania, New York, Vermont, New Hampshire, Maine, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Arizona, California, and Alaska. For the purposes of this research, those states that share the Gulf of Mexico with Mexico are considered border states (Louisiana, Mississippi, Alabama, Florida). After

analyzing any legislation that each state has that could sentence an individual for an immigration violation, these states these states were ranked on a severity index from 1-3. The states that rank a 1 on the severity index are those states that have low severity, and do not supersede federal law. A ranking of 2 indicate that immigration laws are moderate, with some intrusive additions to federal law. Finally, those states that rank 3 are the states with the most severe sanctions to their immigration laws, exceeding federal statutes. The ranking of the severity index is determined by sanctions that the offenses [can] carry for being in violation. It is hypothesized that one will find a high correlation between severe anti-immigration strategies and private prison presence.

In review, outdated federal immigration legislation has led to approximately 12 million undocumented immigrants being in this country, many of whom are stuck between the cracks—unable to obtain status, and unable to leave due to fear of being barred from future return. Due to current federal inaction, states such as Arizona, have begun to enact their own legislation that criminalizes and penalizes immigration violations. The immigration laws of 27 states were ranked on a severity index. Data was collected data on the amounts of private prison beds within the 27 states, to see how the states' high severity index ranking and the amount of private prison beds correlate to one another. Many scholars, such as Cody Mason (2012, p. 15), note that private for-profit prison corporations utilize their gains in order to lobby effectively on state level legislation that may benefit them. It is time for our federal government to take action and enact CIR so that states such as Arizona will not have to create their own legislation, superseding federal law.

Chapter 2—Literature Review and Conceptual Framework

The boundaries and parameters of the federal government can be debated on a variety of issues. Issues involving national security though, need to remain a federal priority. Historically immigration is an issue of the U.S. federal government, accounting for those within our borders and who is permitted to enter. This chapter will discuss the federal government's historic responsibility to regulate immigration to the U.S. and how outdated policies and updated country conditions have influenced immigration, causing states to feel compelled to respond with local law enforcement and judiciary systems. Examples of the negative effect that can occur when local authorities take on the federal issue of immigration will be provided. The influx of incarcerated persons for immigration offenses has created a financial opportunity for the private incarceration of persons for state violations with for-profit companies providing privatized correctional facilities and staff.

Federalism v. States

A sovereign nation has the right to defend its borders and protect those within. That right is also a responsibility that includes admitting/denying entry to persons at ports of entry⁴. National security is a federal issue and the federal government should be the entity to decide who can and cannot remain within their borders. The U.S. Federal immigration laws, and corresponding sanctions for violations, are found in the Immigration and Nationality Act (INA), which is found in Title 8 of the U.S. Code Chapter 12 (8 U.S. Code Chapter 12). Specifically, the U.S. Immigration and Customs

⁴ Ports of entry to the U.S. are where Customs and Border Patrol allow entry to the U.S. and stamp passports. This includes ports of entry along the borders, as well as international airports.

Enforcement (ICE) is charged with enforcing the federal immigration laws or decisions that have been made on immigration cases⁵; U.S. Citizenship and Immigration Services (USCIS) oversees lawful immigration to the U.S.; and, Customs and Border Protection (CBP) protects our borders from the illegal movement of weapons, drugs, contraband, and people⁶. At the judiciary level, federal Immigration Judges (IJs) of the branch of the Executive Office for Immigration Review of the Department of Justice, conduct hearings for those in removal proceedings.

Chicago—based writer, Dennis Byrne (2010), contributed an article to the Chicago Tribune, entitled *Immigration: A state or federal power?*, in which he cites the Tenth Amendment of the U.S. Constitution, and adds the following:

“... The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” If the federal government chooses not to exercise its powers, does it forfeit that power to states and the people? If the political party controlling Washington fails to enforce immigration laws, are states that are unduly burdened required to sit mute?

The powers of immigration, including its enforcement and sanctions, are found in the U.S. Code Chapter 8, Title 12. These are powers delegated to the U.S. within federal law.

Arizona’s SB 1070 and its constitutional ability to implement certain provisions were challenged by the federal government before the law could take effect. The federal District Court, and later the Ninth Circuit U.S. Court of Appeals found that four provisions violated the Constitution. These four provisions were: 1) creating a state-law crime for being unlawfully present in the U.S.; 2) creating a state-law crime for working or seeking work while not authorized to do so; 3) requiring state and local officers to

⁵ “Decisions” can be from USCIS on an affirmative application or that of an Immigration Judge.

⁶ Description of each agency’s role was taken from the U.S. Department of Homeland Security website.

verify the citizenship or alien status of anyone who was lawfully arrested or detained, and; 4) authorized warrantless arrests of aliens believed to be removable from the United States. Arizona appealed the decision and it went to the U.S. Supreme Court. On June 25, 2012, the Supreme Court upheld (5 to 3) the district and circuit appeals courts' rulings that the provisions were unconstitutional, with the exception of the third provision that requires state and local officers to verify the citizenship or alien status of anyone who was lawfully arrested or detained. This decision was legally based on the Supremacy Clause provision ("Arizona v. United States," 2012). The Supreme Court found that the three blocked provisions would supersede and conflict with federal law. The third provision that was upheld as constitutional was found to not conflict with federal law and only allow law enforcement to communicate with Immigration Customs Enforcement to determine lawful status once already arrested for a lawful arrest. This ruling of the U.S. Supreme Court further demonstrates the federal presumption of power relating to immigration.

High Numbers of Undocumented

There are currently 11.7 million undocumented immigrants in the U.S. (Preston, 2013). In 1986, the Immigration Reform and Control Act (IRCA) passed, which granted amnesty to qualifying undocumented immigrants that have resided within the U.S. since 1982, and provided legal paths to residency to over 3 million persons. On the other hand, it criminalized the hiring of undocumented immigrants. Congress saw this as a "compromise" for those that called for amnesty and those that called for deportation. There were many that did not qualify for amnesty, yet had employment in the U.S., and

were forced to live in the shadows. Bacon (2008) comments that the law basically said “go home” if you did not qualify for amnesty. He goes on to note that people did not go home, though, and that they preferred the opportunity to earn livable wages. Unauthorized immigration to the U.S. spiked shortly thereafter, Bacon notes.

In 1994, the North American Free Trade Agreement (NAFTA) took effect between Canada, U.S., and Mexico, which was intended to ease the trading of goods among the countries, as well as boost economies and create employment opportunities. In Mexico, post-NAFTA, 75% of the country’s population lived in poverty, compared to 49% in 1981. NAFTA especially affected corn farmers in Mexico. Corn is Mexico’s primary crop, but NAFTA caused U.S. corn imports into Mexico to quadruple, causing Mexican farmers to receive 70% less revenue on their crops. More than 2 million farmers have been forced from their land since enactment of NAFTA (“NAFTA’s Impact...”). These political and economic conflicts caused for the displacement of thousands of Mexican families. Juan Manuel Sandoval, professor at Mexico’s National Institute of Anthropology, commented that it became cheaper for farmers to buy U.S. crops and resell them, than it was to harvest their own. Sandoval continued to say that when crops did not sell, survival often meant migrating (Bacon, 2008, p. 25). Sandoval goes on to further say of NAFTA’s effects:

According to Garrett Brown of the Maquiladora Health and Safety Support Network, the average Mexican wage was 23% of the U.S. manufacturing wage in 1975. By 2002 it was less than an eighth, according to Mexican economist and former senator Rosa Albina Garabito. Former United Auto Workers Representative Steve Beckman says that... in the twelve years after NAFTA went into effect, real Mexican wages dropped by 22 percent, while worker productivity increased 45 percent (Bacon, 2008, p. 59).

Consequently, NAFTA caused a Mexican migration wave to the U.S. that was greater than it was at almost any period of history. Parents and heads of households, husbands/fathers and mothers of all cultures will do anything necessary to support their families. Thousands of persons, if not millions, faced either starvation or emigration: those who left created huge strains in family life. Many remain homesick even today. Because of IRCA, migration to the U.S. is not possible for most families to do in a lawful manner, thus creating a drastic peak in unauthorized immigration. Bacon comments that “NAFTA freed the movement of goods and capital but not the movement of people,” and that NAFTA should have included free movement provisions, and notes that it would have been in the form of contract-labor programs (2008, p. 51-52).

There is also a great deal of cartel/gang murders and violence in Mexico, and throughout Central and South America. According to data provided in an April 2014 Special Report entitled *Drug Violence in Mexico: Data and Analysis Through 2013*, from the Justice in Mexico Project of the Political Science & International Relations Department of the University of San Diego, in 2011 Mexico had a murder rate of 23.7 per 100,000. Honduras currently has a murder rate over four times higher than that of Mexico, and El Salvador’s rate is more than double Mexico’s (Heinle, et al., 2014)⁷, demonstrating why a displaced Mexican would not choose to head south of the Mexican border when migrating for reason of fear. Furthermore, in 2012, Mexico was reported to have an estimated 105,682 kidnappings in the country (*Mexico Crime and Safety Report, 2014*)⁸. Not only do these risks exist in Mexico and other Central American countries, but

⁷ Data was taken from United Nations Office on Drugs and Crime’s report *Global Study on Homicide*, released March 2014.

⁸ Data was reported by the Mexican National Institute of Statistics and Geography

there are also risks of being recruited into a gang/cartel, threatening lives of family members while attempting to recruit. Small businesses are also forced to pay a “tax” to organized criminal gangs, and could have their lives threatened (at gunpoint) if they do not pay it (Locks, 2014). It seems that people fled their respective countries for these reasons and came to the U.S. to seek safety. The need to protect and care for family and life provides a plausible reason why people of other nationalities come here in search for a better or safer life, or for reasons of family reunification.

In *Illegal: Life and Death in Arizona’s Immigration War Zone*, author Terry Greene Sterling (2010), states that in 2009, the Department of Homeland Security estimated that 460,000 undocumented immigrants lived in the shadows within Arizona, without lawful presence in the U.S. In 2008, then-governor of Arizona, Janet Napolitano called for a Comprehensive Immigration Reform, so that the phenomenon could be appropriately dealt with in a holistic manner. When no such reform came, Arizona Governor, Jan Brewer later signed into law SB 1070, which criminalized not having documents, unauthorized work, transporting an undocumented immigrant (even if it is a spouse), while allowing for warrantless arrests of individuals suspected of being removable from the U.S., as the National Conference of State Legislatures describes the law (“Arizona’s Immigration...”). Sterling (2010) goes on to reiterate that Mexicans choose to migrate north to the U.S. for reasons of violence due to the corruption plaguing Mexico, the lack of jobs in Mexico, the extremely low wages of those jobs that do exist, and to be [re]united with family.

Working without Authorization

In order to work without authorization, undocumented immigrants have often submitted social security numbers that belong to another person because they do not have proper documents of their own. Sometimes the numbers belong to friends or relatives, and other times forgeries are purchased either knowingly or unknowingly. In 2000, President George W. Bush introduced plans for the H2-A temporary/seasonal work visa for immigrant farm workers (Bacon, 2008). Under the plan, Mexicans in the U.S. with H2-A status competed with other similarly situated persons in a race for the lowest wages. This created a situation wherein employers knew they only had to provide employees with minimum wage. The employer recognized that migrant farm workers remained powerless regarding wages, accommodations (employers were required to provide housing for H2-A workers), or anything else and that the worker could easily be replaced (Bacon, 2008).

The *New York Times* reported in February 2010 that there were approximately 8 million undocumented immigrants *working* within the U.S. (Preston, 2013). In *Illegal People: How Globalization Creates Migration and Criminalizes Immigrants*, author David Bacon (2008) examines what it is like for an undocumented immigrant working in the U.S. to support oneself or their family. Employers did not verify their employee's social security numbers nor concern themselves with legal statuses. Eventually the Social Security Administration (SSA) discovered many social security numbers that did not match their supposed corresponding names. In this case, SSA would send a letter to the employer, so that in turn, they would notify the employee. This is claimed to be for awareness purposes so that the employee can tend to the matter. These SSA "no-match

letters” caused certain employers to gain a new sense of power and control because now they suspected them to be undocumented, and could notify authorities. Other employers requested proof of social security number after receiving such letters, which caused many workers to lose their jobs. In the book, Bacon (2008) interviews various [undocumented] immigrants, and learns their story and insight. One immigrant, frustrated with laws that force a life in the shadows, told Bacon (2008) that: “A SSN cannot wash toilets or vacuum floors or make beds... only human beings can do that. Legal documents are very important, but real, physical work is what counts.” Mexican farm workers on H2-A visas are vulnerable to the lowest standard wages, or as Bacon comments, “the maximum standard wages [possible for the H2-A worker] (2008, p. 87).” Undocumented migrant workers are vulnerable to wages below minimum, sexual harassment, or violations of health and safety laws. They also run the risk of encountering Immigration Customs Enforcement agents, or having them called by someone else, such as an employer.

J.D. Hayworth (2006), a conservative former member of the U.S. House of Representatives serving the state of Arizona in the 6th District from 1995-2003, and in the 5th District from 2003-2007, presented himself as a seemingly credible critic of immigration from a conservative’s point of view. He authored the book *Whatever It Takes: Illegal Immigration, Border Security, and the War on Terror* (2006), in which he expressed frustration towards illegal border crossing and concern for national security due to insufficient border security. In April of 2005, a group called Minutemen decided to patrol a twenty-three mile stretch of the Arizona border themselves in order to deter illegal crossings. Hayworth (2006) supported the Minutemen’s contention that federal immigration inaction and weak border security caused a need for such a civilian group

doing the duties of federal actors. Hayworth made a trip to see the Minutemen, and praised what they were doing. One of the Minutemen caught an immigrant who had illegally entered the U.S., and the Minutemen member, named Bryan Barton, handed the immigrant a T-shirt that read “Bryan Barton Caught Me Crossing the Border and All I Got Was This Lousy T-Shirt.” Harsh criticism followed the stunt, and Barton’s membership to the Minutemen was revoked. Hayworth alluded that it was a minor prank, and that only one of the two had broken the law—“the illegal alien.” Hayworth (2006) goes on to say that:

The ACLU wanted us to feel sorry for the illegal because he might have been embarrassed holding the t-shirt. He should have been. He foolishly broke the law, got caught, and almost died from hunger and dehydration in the process. I would think that’s enough even to embarrass an ACLU member (p. 72).

Hayworth (2006) does not know what factors led to the immigrant crossing the border. It could have been because the person refused to work with a drug cartel, and had his life threatened before deciding to flee north, fearing wide-ranged cartel intelligence. Then-President George W. Bush called the Minutemen “vigilantes,” and said that Border Patrol exists to enforce border security. Hayworth then wrote to the President and requested that he issue an apology to the Minutemen, a request the White House refused (2006).

Communities Begin to Undermine Law Enforcement

Sheriff Joe Arpaio of Maricopa (Phoenix), Arizona, conducted a two-day raid in a town called Guadalupe that shook up the community. The principal of the local school told author Sterling (2010) that she was devastated by the raid because she said that the following day over half of the student body would be absent because parents will not

want their children to be around all of the sheriff's deputy vehicles, even if the parents/children were U.S. citizens. With frightening chaotic events unfolding outside their homes they preferred to simply keep their doors shut for the time being. The raids occurred just before it was time for academic testing, and the principal was especially saddened by the raids because the children would not be in class, and afterwards would not be in the right mindset for testing. After day one of the two-day raid, Sheriff Arpaio held a news conference, during which Guadalupe Mayor, Rebecca Jimenez asked Arpaio on live television to stop the raid and that he and his officers not return the following day. He returned the next day in full force, which the community expected.

Racial profiling lawsuits filed against him for harassing a U.S. citizen and a Permanent Resident followed this shake-up. The lawsuits seemed to be inevitable. Eventually (if it has not already happened) a U.S. Army Veteran of Mexican descent will be stopped and questioned under Arizona's tough immigration laws. A letter was sent from DOJ's Civil Rights Division to Maricopa County Attorney, informing them that their policies have been found to be highly discriminatory (Perez, 2011). This book noted that Sheriff Arpaio made his jail inmates wear pink underwear. His reason was so that no one would steal them [from each other]. He also once said to Lou Dobbs that *they* call him KKK, just like Arpaio... which he said "... was an honor (Sterling, 2010, p.p 97-98)". Arpaio once had a television show called "Smile... You're Under Arrest," where he would have people lured from their homes with empty promises of a vacation (or other luxuries), that they had supposedly won and then arrested them. Arpaio manages seven jails with about 10,000 incarcerated persons, 8,000 of which are awaiting trial, yet have been succumbed to Arpaio's jails, which have also been found to provide poor medical

care preventing accreditation (Sterling, 2010). These accounts raise serious questions about this elected official in regards to his appropriateness and conflicts of interest.

The faith and relationships between communities and local law enforcement may begin to be undermined when local law enforcement begins to take on roles of ICE officers, enforcing immigration laws. This becomes a problem when it decreases the effectiveness of local law enforcement's ability to serve and protect the community, which inevitably occurs when distrust formulates towards local law enforcement. Inevitably, immigrants alike will have a [legitimate] fear of reporting crime to law enforcement for reasons of not wanting to be harassed, questioned, or detained for suspicion of an immigration violation. Clearly this breakdown in societal and law enforcement trust would be expected in Maricopa County, Arizona. This sort of breakdown in trust of local law enforcement will leave crimes unreported, criminals on the streets, and a likelihood that the offender may victimize again.

Another complaint regarding local law enforcement being used to enforce immigration laws pertains to local authorities using resources to perform the duties that are a federal responsibility, and in turn, diverting them from their primary responsibilities (Ester et al., 2009, p. 22). While law enforcement handles the federal issue of immigration, time investigating local crimes is diminished, leaving a community and its inhabitants more vulnerable to being a victim of crime.

Immigrant Incarceration

In a recent report entitled *Warehoused and Forgotten* (2014), the American Civil Liberties Union (ACLU) demonstrates the tremendous increase of incarceration due to

immigration convictions and the strain that it has on the correctional system itself.⁹ It states that today the U.S. has just 5% of the world population, yet 25% of the world's prisoners, and that this incarceration number has been growing with the criminalization of immigration offenses. Traditionally deportation would be more likely for immigration violations, but in the past decade incarceration has seemed to have grown in practice. In 2009 more persons entered federal prison for immigration offenses than for violent, weapons, and property offenses *combined*. This increase in immigrant incarceration has driven a need for more prison beds, which in turn increases the demand for private, for-profit prisons. The main private prison companies (Corrections Corporation of America-CCA, Geo Group-GEO, Management Training Corporation-MTC) reported revenue of over 4 billion dollars in 2012 (*Warehoused and Forgotten*, 2014).

The idea and implementation of private, for-profit prisons came to light in 1984 and became utilized by many jurisdictions at local, state, and federal levels during the next fifteen years (Culp, 2005). In 2000 CCA began winning federal contracts to house immigration offenders, which has since caused an increase in their stock from \$1 to \$23.33—incarceration is a profitable business. ICE currently contracts with CCA and pays about ninety dollars per day to house an undocumented immigrant while they are being held (Wood, 2011). ICE generally detains immigrants while they are awaiting deportation, being processed for deportation, or awaiting a hearing before an Immigration Judge. In the past decade, the number of detainees housed by ICE has risen substantially. The *National Immigration Forum's* publication "The Math of Immigration Detention..., (2013)" reports that the number of ICE detainees per year has increased from 204,459

⁹ The ACLU report was created in conjunction with ACLU of Texas.

individuals in 2001 to 429,247 in 2011. In 2009, ICE reported that of their detainees, only 11% had committed a violent crime, and that the majority of those in their detention facilities posed no risk to the general public (*National Immigration Forum*, 2014). Ideally, we should let those that are deemed to pose no risk to society return home to their families while awaiting an opportunity to defend oneself in front of an Immigration Judge, and put the money that would be used to detain them to a better use.

On the other hand, those that have been convicted of a federal [immigration] offense that carries federal prison time are handed to the Federal Bureau of Prisons (BOP). Non-USC offenders of immigration laws are generally transferred to one of fourteen prison systems, whose sole purpose is to house these immigration offenders: Criminal Alien Requirement¹⁰ (CAR) prisons¹¹. The ACLU report (2014) states that these CAR prisons are unique in three ways: 1) they are some of the only federal prisons operated by private, for-profit, prison companies; 2) they house exclusively non-USCs¹²; and, 3) they are low-custody institutions with less security requirements than the medium and maximum-security institutions that are run directly by BOP. Five of these CAR prisons are located in the state of Texas, while the others are located in Georgia, Mississippi, New Mexico, North Carolina, Ohio, Pennsylvania, and California¹³.

¹⁰ Also referred to as “Criminal Alien Program.”

¹¹ ACLU report only lists thirteen CAR prisons; however the BOP lists fourteen Contract Prison Locations on their website, which can be found at: http://www.bop.gov/about/facilities/contract_facilities.jsp.

¹² CAR prisons Moshannon Valley, contracted to GEO, in Pennsylvania and Rivers Correctional Institution, contracted to GEO, in North Carolina also house prisoners from Washington, D.C. (“Warehoused and Forgotten,” 2014, p. 18).

¹³ ACLU report does not list California as a location of a CAR prison; however it is found on BOP’s list of Contract Prison Locations, found at: http://www.bop.gov/about/facilities/contract_facilities.jsp.

Private Prisons

Advocates of private prisons would defend their utilization by stressing job creation that goes along with prison privatization, along with the lower operating costs. Those opposed (e.g., Herivel & Wright, 2009) to the use of private prisons argue that private companies should not be detaining anyone, and that it is a responsibility of the government to provide the correctional services to convicted offenders and assure their safety while in custody—whether they be a USC or not. The ACLU report (2014) investigated the CAR prisons and tales of abuse and mistreatment by the correctional staff at these facilities. As the report states, the BOP policies are discriminatory to begin with by sending immigration offenders to one of the CAR prisons, which usually takes the immigrant thousands of miles away from their homes and families.

For their report, the ACLU interviewed a number of CAR inmates and were told that prison staff use isolation, or the threat of isolation, for reasons as simple as complaining about conditions, helping others to file grievances, and just about anything else.¹⁴ Isolation confinement detains individuals in a small cell for 22 to 24 hours per day, and may cause severe effects on mental health—causing panic attacks, hallucinations, paranoia, obsessive and suicidal thoughts, and difficulty concentrating and remembering (*ACLU*, 2014). The ACLU reviewed BOP contracts with private prison companies and found that the BOP actually encourages an excessive isolation quota—usually at 10%, which is double the rate of BOP-run facilities. It is important to note that despite being detained in correctional facilities, and eventually being deported, a large number of deportees have intentions of returning to the U.S. and making their home here. Most

¹⁴ As stated by a CAR prison inmate

would agree that they would want to call home where their immediate family resides. The ACLU report (2014) references two reports that address this and states:

A recent report by the University of Arizona surveyed more than 1,000 immigrants who had been deported to Mexico. The study found that more than half had U.S. citizen family members and 42% intended to make the U.S. their permanent home.¹⁵ Similarly, a recent report by Human Rights Watch concluded that many of the immigrants prosecuted for illegal entry or reentry have immediate family members who are U.S. citizens or permanent residents. Defense attorneys interviewed for that report estimated that 80% to 90% of their clients charged with illegal reentry had U.S. citizen family members. These immigrants all have personal incentives to attempt reentry into the United States. “I’m gonna come right back,” one prisoner told us. “My life is here. I know I’m going to come back. (p. 39)

42 U.S. Code § 1983 protects the constitutional rights of the incarcerated from being deprived. In an analysis of 42 U.S.C. §1983 lawsuits filed against both the public and private sectors, Curtis R. Blakely and Vic W. Bumphries, found that from 1992 – 2002 there were a total of 140 of these lawsuits ruled upon in federal court.

Private Prison Influencing Legislation

Although it can be debated whether the use of private prisons should be used or not, private prison companies should not be able to have a strong influence on legislation that, in turn, fills their beds with inmates—granting them their checks and profit. Private prison companies have spent a tremendous amount of money lobbying at both the state and federal levels for legislation that increases incarceration and the need for their beds. The ACLU (2014) reports that since 2000, CCA, GEO, MTC, their political action committees, and their employees have spent more than \$32 million on federal lobbying

¹⁵ Data came from Center for Latin American Studies, University of Arizona, In the Shadow of the Wall: Family Separation, Immigration, Enforcement and Security; Preliminary Data from the Migrant Border Crossing Study 12 (2013), found at

and campaign contributions.¹⁶ Between the years of 2003 and 2007, CCA alone spent an average of \$3 million per year on federal lobbying (“The Influence of the Private Prison Industry...,” n.d.)

Private prison companies also lobby and support self-interest legislation at the state level. The drafting of Arizona’s S.B. 1070 was done in a conference room at a hotel in Washington, D.C. with the American Legislative Exchange Council (ALEC), which is comprised of legislators, as well as powerful corporations such as Corrections Corporation of America (CCA). There were reportedly two CCA officials present at the Washington D.C. meeting that adopted the model legislation for the S.B. 1070. CCA officials have stated that they expect to receive significant revenues from contracts with Immigration Customs Enforcement. When S.B. 1070 was introduced at the statehouse floor, thirty-six co-sponsors joined, and reportedly two-thirds were at the model legislation meeting in Washington D.C., or members of ALEC. Afterwards thirty of the thirty-six co-sponsors received donations from lobbyists or private prison companies (Sullivan, 2010).

This literature forms the basis of this research project, which will investigate how states have implemented, to varying degrees of severity, punishment, leading to incarceration of undocumented immigrants.

In Summary

Federal inaction towards immigration has caused states to take on the issue themselves. Some states have taken on the issue in a more punitive way than other states,

¹⁶ This data is from a 2012 review of Federal Election Commission data, and its findings can be found at <http://cbsnews.com/news/ap-private-prisons-profit-from-illegal-immigrants> .

which has led to an increase in incarceration rates for immigration offenses. Due to a higher rate of incarceration for state-enacted immigration offenses, private prison companies have been contracted to detain those in violation. This research will examine state legislation and policy regarding immigration and see how it relates to higher concentrations of private prisons within states found to be most punitive in immigration policies.

Chapter 3—Methodology

Overview

This research entailed an analysis of state policies and legislation regarding immigration and measurement of their severity. Severity measurement was based on a study of four factors regarding state action on immigration. A score of 1-3 was given to each state for the four factors with higher numbers indicating the state's severity of policies regarding that particular factor. These four numbers were then averaged, giving each state a final averaged score that fit into a severity index with the following numerical significance to the index: 1 to 1.5=low severity; 1.75 to 2.25=medium severity, and; 2.5 to 3=high severity. The severity index identified states with the most severe laws against immigrants (of the four factors examined). A severity index demonstrating state's severity of immigration policies could not be located elsewhere when searched.

After completing the severity index, the amount of private prison beds from three major private prison companies were added together from each state and was compared to the state's population, so that a private prison bed rate (per million population) was identified for each state. The goal of this research was to see what relationship might exist between states with high private prison bed rates and those with more severe state immigration laws.

This index is intended to provide quantitative insight on the private prison industries' interest to influence public [correctional] policy, leading to an increase in demand and prisoners within their institution. This ultimately leads to increased funding, which is made possible by housing detainees, whether they are legal immigrants, undocumented immigrants, or U.S. citizens. Emphasis is on those states that border

Mexico, although states bordering Canada will also be examined (Davis, 1998; Wood, 2007).

Design and Sampling

For purposes of this research, only border states and a selected others known to have taken action on immigration were sampled, for a total sample amount of 27 states. Arizona, as the popular example of severe state immigration legislation, was one of the states examined, along with those that have emulated their comprehensive state-legislation with Arizona: Alabama, South Carolina, Indiana, Utah, and Georgia (“State Anti-Immigrant Laws,” n.d.). Other states may have enacted immigration legislation that is not quite as severe in regards to defining criminality for persons without legal status in the U.S., and its subsequent [potential] punishments and sanctions. Border states have also been chosen to be examined, as it may be expected that states along the borders would be the ones that would [consider to] enact laws regarding immigration, due to their perspective locations. Therefore, the 27 states being examined in this research are: a) Northeast (Maine, New Hampshire, New York, Vermont; b) Southeast (Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina); c) Great Lakes (Indiana, Michigan, Minnesota, Ohio, Pennsylvania, Wisconsin); d) Southwest (Arizona, California, New Mexico, Texas, Utah); e) Northwest (Alaska, Idaho, Montana, North Dakota, Oregon, Washington). Thus, the sampling used in this thesis is a nonrandom purposive method.

These 27 states received a numerical score for each of the four factors of the severity index, and were averaged to receive a final number on a scale of 1-3, depending

on severity of laws and policies regarding immigration and subsequent potential sanctions. The states that rank a 1 to 1.5 on the severity are those states found to have a low average of the combination of the four factors. States ranking 1.75 to 2.25 have a moderate average in the severity count. Finally, those states that rank 2.5 to 3 are the states that average the highest average of numerical values in each category evaluated to create the severity index.

The research design that guides the collection of data from these 27 states is content analysis. Content analysis was chosen because the focus is on existing legislation and policies concerning legislation (i.e. the content). Moreover, this thesis is an exploratory study that carries with it a limited budget regarding time, expertise, and access to the originators of the legislation.

The websites selected to gather data for this research was based on a presumed authenticity of the information, as the data comes directly from the sources of examined statistics in most cases. The websites also have been chosen because the content which is tallied in this research has been deemed to be important factors that cause a state to have favorable (or unfavorable) policies and legislations concerning immigrants and immigration. Specifically, websites were selected due to the content that each contained that were of interest in calculating state legislation and policy. Data were taken directly from the sources, whether regarding government or private prison companies. The data used to compile the ranking for the severity index are taken from the government sources, which has high face validity. An explanation will be given as to why each source was chosen for each subcategory below.

The four elements of this severity index that were examined include: memorandums of agreement (MOA) for local implementation of federal law, the implementation of mandatory E-Verify protocols, the presence of Criminal Alien Requirement (CAR) prisons, and various other legislative actions, all of which will be individually detailed later in this chapter.

Measurement / Factors for Analysis

Four independent variable factors were utilized in order to construct the severity index. These include: 1) The amount of Memorandums of Agreement between the federal government and another public authority (state, county, municipality) regarding authority to implement immigration law; 2) the usage of E-Verify; 3) the presence of Criminal Alien Requirement (CAR) related prisons; and 4) state level “comprehensive immigration laws” and/or various selected legislative activities. Each of these factors will be described in greater detail below.

Factor One: Memorandum of Agreement

Although it is the responsibility of the federal government to oversee immigration in the U.S., Immigration Customs Enforcement (ICE) of the Department of Homeland Security has partnered with various local law enforcement agencies by adopting a joint Memorandum of Agreement (MOA) with these agencies to receive delegated authority for immigration within their jurisdictions. These ICE partnerships are included in Section 287(g) of the Immigration and Nationality Act¹⁷ and delegates immigration authority

¹⁷ This section of the Immigration and Nationality Act was added with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

after ICE has reportedly trained the local law enforcement (“Fact Sheet: Delegation of...,” n.d.).

The MOA factor was based on the rate of MOAs per 1 million. States that receive a 1 (low) in this category are those that have zero MOAs. States that receive a 2 (medium) in this category are those states with an MOA rate per million of .1 to .29, and states ranking a 3 (high) are those with an MOA rate per million of .3 or higher. The number of MOAs per state is found on ICE’s website, “Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” and lists the number of MOAs, and with which agency they are. The number of MOAs per state was taken from this source. Being that this data comes from ICE themselves, the statistics obtained from the site can be presumed to be true.

Factor Two: Mandatory Use of E-Verify

E-Verify is an internet system that compares information from an employee’s I-9 Employment Eligibility Verification to data from U.S. Department of Homeland Security and Social Security Administration to confirm employment eligibility (“What is E-Verify?,” 2014). There are approximately 250,000 employers that voluntarily make use of the E-Verify system. Some legislators are suggesting, though, that it become mandatory for all 6 million U.S. employers.

This information will be based on information that is provided in “E-Verify State Map,” by *Justifacts* (2013). This site contains a color-coded map of the U.S. with each color representing the state’s mandatory use of E-Verify and lists below a further explanation of states’ use of E-Verify. Each state was given a numerical ranking from -1 (negative one) to +4 (plus four) based on the state’s status in regards to [mandatory] use

of the E-Verify system. The states that rank -1 are those that set limitations and restrict use of E-Verify. States that rank a 0 (zero) are those that have no mandatory E-Verify laws; those that rank +1 are those that require E-Verify for state agency employees only; +2 are states that require E-Verify for state contractor employees; +3 are those states that require E-Verify for state agencies *and* state contractor employees; and, +4 are states in which it is mandatory for most or all employers to E-Verify their employees.

The final numerical count for this factor that was averaged for the severity index was done by ranking states based on their use of E-Verify converting the numerical ranking into scale by giving states that rank -1 or 0=1; 1 (low) or 2 = 2 (medium), and; 3 or 4 = 3 (high). This final ranking (of 1 to 3) became the value used to average the severity for each state.

Factor Three: Presence of CAR Prisons

This factor relates to the presence of the Criminal Alien Requirement (CAR) contract prisons that are operated by private corporations. The Bureau of Prisons (BOP) website, which is used to gather the data of this factor, states that the majority of BOP-inmates in private prisons are sentenced criminal aliens who may be deported upon completion of their sentence (*Federal Bureau of Prisons*). The website provides a list of the CAR contracted prisons in the U.S. of the BOP. The data used was taken directly from the BOP source, and seems to be the most reliable source to obtain the number of CAR prison contracts. This factor of the severity index was calculated by finding the rate of CAR prisons per 1 million in each state. States that have a CAR prison rate of 0 scored a 1 (low) in this sub-category to be averaged with the other factors for severity index. A

CAR prison rate of .01 to .86 received a 2 (medium) value and .87 and higher scored a 3 (high).

Factor Four: State Immigration Legislation

The fourth factor of the severity index combined factors that received a score of a -1 to a +1 scale based on various identified anti-immigration state laws, or their repeal, that either cause more restrictions or are more flexible for non-U.S. citizens, under the subcategories of: budgets, education, employment, health, human trafficking, ID/driver's licenses and other licenses, law enforcement, miscellaneous, omnibus/multi-issue measures, public benefits, and voting. Those states that have more than one immigration-related legislative act combined the tallied scores for a total number for each state. The states that have a state "comprehensive" immigration law (Arizona, Alabama, Georgia, Indiana, South Carolina, Utah), as stated on "State Anti-Immigration Laws," was counted 1, plus included the aforementioned subcategories based on an analysis of 2013 data. These subcategories for this factor was based on the 2013 Immigration Report of the *National Conference of State Legislatures*, as it is a useful database that is comprised of immigration-related legislation state-by-state. This database displays legislation state-by-state with the option to select search categories, enabling easy access to current legislation per state in each subcategory. Once the number was identified for this category, it was then fitted into scale for the average of the factors for the severity index ranking. States with a value of zero or less received a 1 (low) for this category; states with a value of 1 or 2 ranked a 2 (medium), and; states ranking a 3 or more ranked a 3 (high) for this category.

Severity Index

Using all the calculations from the above four (4) factors, a severity index was compiled that also listed a private prison bed rate per population in each state. All the factors of the severity index was averaged for a severity score of anti-immigrant policies, legislation, enforcement and imprisonment and included the independent variables of severity index ranking, population, and demographics. Another column was then added to the index comparing the dependent variable number of private prison beds in order to get the other dependent variable of private prison bed rate per 1 million population. These numbers of severity index score and private prison bed rate were compared to test whether there is a higher private prison rate in states that score higher on the severity index.

Private prison bed rate served as the primary dependent variable in this study, as it best demonstrates how states' private prison capacity numbers compare to the state population. Beds per population were examined because private prison rate alone would be more likely to produce skewed data due to the difference in maximum capacity numbers from each institution. The penetration of private prisons – facilities and number of beds -- was compiled through the analysis of three national major corporations previously discussed in the Literature Review: 1) Community Corrections of America (CCA); 2) GEO Group (GEO), and; 3) Management & Training Corporation (MTC). Each website of these private prison companies contains easy access to a facilities locator, which was used to calculate the number of these private prisons in this research. It is hypothesized that a strong correlation between those states that rank 2.5-3 (high) on the severity index with an increased rate of private prison beds will be found.

Analytic Plan

The information gathered for this research did not involve any human contact; therefore, it was not necessary to seek approval from the Institutional Review Board to proceed with this study. All data that was collected is based on public information that was obtained from the acknowledged websites. There is no issue of confidentiality or anonymity because the data can be found online by any interested party.

The data obtained for the categories came from websites that were easily accessible and contained the information that was being examined for the respective factor. The data appeared to align with information that was read for the literature review of this research. Information regarding each category was taken from sources that appeared to contain credible information and are regularly maintained, giving reason to expect accurate findings in this study. With this assumption of validity, there was not a need to triangulate the data for confirmation; the data came from valid sources that reflected findings from the literature review.

The analysis in this research was compiled from all the data that was taken from the various websites sorted by state. A dataset chart was created based on the sorted statistics from each state in order to create a severity index based on the information obtained from websites and other official sources such as the Bureau of Prisons, Immigration Customs Enforcement, and private prison company websites. This was all done in order to demonstrate the link between punitive state policies and the private prison rate within those states ranked severe on the severity index created from the obtained data.

There are two stages to the analysis that address the hypothesis posed in this thesis. First, descriptive statistics are used to provide a profile of the 27 states with

respect to the immigration information, demographics, and private prison information. The second step is to perform a Pearson's r correlational analysis (bivariate relationship testing) of the immigration information with the private prison information. Given the limited sample size (27), statistical significance was not pursued. The focus of the correlation analysis is the possible presence, amount, and direction of the relationships among the variables in this study.

Chapter 4—Results

Hypotheses

The main hypothesis of this thesis is that states with punitive and strict immigration policies will have a higher amount of private prison beds proportionately than states that do not. A positive correlation is expected to be found that will indicate that states with severe state immigration legislation also have higher private prison bed rates per one million population. The second hypothesis is that there will be regional variation that will show the two southern regions (SE and SW) to have higher severity index scores, and subsequent higher amounts of private prison beds per one million population (Wood, 2007).

Results

Twenty-seven states and their immigration policies were examined in this research, and a severity index was constructed based on a calculation of four factors and their presence within each state: 1) Number of Memorandums of Agreement (MOA) with ICE; 2) Mandatory use of E-Verify; 3) Amount of Criminal Alien Requirement (CAR) prisons; and, 4) Miscellaneous state laws enacted in 2013¹⁸. The four factors were given a numerical value for each state and then were added together, giving a total number to each state. The total number then was adjusted for each state into a range from 1-3, with the states that have the more severe and punitive immigration laws receiving a higher score, closer to the '3' side of the index scale, and those states ranking low, closer to '1' indicating states that have fewest anti-immigrant policies.

¹⁸ States with "comprehensive" immigration laws that existed before 2013 also had the preexisting legislation added to this category for tallying severity.

Of the 27 states examined, 18 scored a low severity average of 1 to 1.5 on the index, which includes all 10 sample states from the Northeast (NE) and Northwest (NW) regions¹⁹. Five states scored an index average number that fell between 1.75 and 2.25, indicating moderate severity. There were four states that averaged a high severity of 2.5 to 3 on the index, indicating that the states have more severe policies regarding immigration. These four high-averaging states are: Georgia (3), South Carolina (2.5), Arizona (2.5), and Utah (2.5). All four of these states highest severity averages are of the Southeast (SE) and Southwest (SW) regions.

After the 27 states had the four factors calculated and were placed in the severity index, the numbers of private prisons and private prison beds were calculated for each state (See Table 4.1 in Appendix for overall results). The hypothesis was that states ranking highest on the severity index (2.5 to 3) would have higher rates of private prison beds per state population. For purposes of this research, as it relates to immigration, the private prison companies examined in each state were the three largest corporations with stakes in immigration detention, as listed by *Detention Watch Network* (2012): Corrections Corporation of America (CCA), GEO Group, Inc. (GEO), and Management and Training Corporation (MTC). The total number of facilities and beds were found and calculated for each state from each private prison company's website. As the data were being collected it became more apparent that the total number of private prison beds would carry more weight due to dramatic differences in the maximum capacity for each facility.

¹⁹ The five regions were previously defined in Chapter 3: Northeast (NE); Southeast (SE); Great Lakes (GL); Southwest (SW); Northwest (NW).

The number of private prison beds was then used to create a private prison bed rate with the state's population (per one million). Appendix Table 4.1 demonstrates the overall private prison bed rates. Once calculated, five states were noteworthy for having private prison bed rates of over 1,000 per one million population²⁰: New Mexico (3,643); Mississippi (3,436); Arizona (2,863); Georgia (1,636), and; Texas (1,540). These five states are also within the SE or SW regions.

Of the four states that were found to average the highest severity, Georgia and Arizona both are also two of the four states with highest rate of private prison beds, indicating a relationship between the two factors, as can be furthered demonstrated by examining the results regionally.

As previously mentioned, both the NE and the NW regions ranked low on the severity index (1.06 and 1.04). These regions also have low rates of private prison bed rates. The NE region has a bed rate of 3, while the NW region has 83. The overall mean of the private prison bed rate was 638, of the 27 states examined. The northern regions yield results that indicate that they are not involved with immigration legislation and have a smaller amount of private prisons of the three companies examined.

The Great Lakes (GL) region averaged a slightly higher severity index result than the northern regions with a 1.38. This region has a private prison bed rate of 298, which is also below the overall average, which is heavily influenced by the southern regions.

The SE and SW regions have the highest numbers in both the severity index and the private prison bed rates. The SE region averages a severity score of 2.29, and has a bed rate of 1,098, while the SW region averages a severity score of 1.95 and has a private

²⁰ Appendix Table 4.4

prison bed rate of 1,669. These southern regions therefore demonstrate a tendency towards more severe immigration legislation and use of private prisons. Appendix Tables 4.5 and 4.6 demonstrate the regional breakdown of results.

Relationship between Severity Index and Private Prison Beds

This analysis was done with anticipation of finding a correlation between severity of immigration policies and legislation with the amount of private prison beds in each state. The results support the hypothesis. Appendix Table 4.7 shows a Pearson's *r* correlation coefficient matrix, which demonstrates the moderate positive correlation rate of .45 between a severity index score (determined by calculating state policies with immigration sanctions) and the amount of private prison beds per population. Typically, a Pearson's *r* correlation coefficient of .30 to .59 is considered to reflect a medium or moderate amount of connection between two variables. In this study, as the rate of private prison beds per one million population increases, so does the state's severity index score. The other high correlation rate is a .56 high-moderate correlation between MOAs and use of E-Verify. When MOA rates go up in a state, so does the probability that the state will make strict use of E-Verify.

The hypothesis of this thesis was supported by the data; a positive moderate correlation exists between higher severity of state immigration policies and higher private prison bed rates. Although a moderate correlation between the two was identified in this research, there are limitations to this study and much more research could be done on this topic. These limitations and recommendations for future research will be outlined in Chapter 5.

Chapter 5—Conclusion

Limitations

Although this research identified a moderate relationship between severe state policy/legislation and private prison bed rates, there are at least three limitations that warrant elaboration. The first limitation relates to the time specificity of the data. The data in this analysis are taken from 2013 statistics, narrowing in on one specific year which set limitations when compiling data of “anti-immigrant” legislation for a particular state. Specifically, when compiling the data for Factor 4, “Miscellaneous state-enacted legislation,” the states and their policies were measured by enactments that took place in 2013, with the exception of including “comprehensive” [anti-] immigrant legislation that has been known to have been previously enacted (e.g. Arizona’s S.B. 1070, enacted in 2010). The probe into 2013 legislation in Factor 4 is limited to a one year time-frame. Any enactment of immigration-related legislation that occurred previously is not taken into account²¹.

To demonstrate this limitation of time specificity, California actually exhibited a tendency to enact policies and legislation that benefit immigrants, after analyzing its 2013 immigration-related legislation in the sub-factors of Factor 4, although this pro-immigrant legislative 2013 tendencies are not evident with the score of 1 that California received in Factor 4, because a score of 1 was limited to 0 or less anti-immigrant legislation. The limitation in this area is that it is unknown what score California would receive for years prior to 2013. California may have exhibited harsher policies regarding

²¹ With the exception of the “comprehensive” immigration laws in the six states previously identified.

immigration for a previous year. The entire chart of Factor 4 would look different for any given previous year for any state. Hopefully 2013 legislation presents an accurate depiction of trends at a point in time, and that findings for previous years would resemble the same trends. This simply cannot be known for certain at this time, due to this limitation. An extensive amount of additional research would be required in order to determine any difference. This is an area for future study.

A second limitation relates to the theoretical perspective of this analysis. Some scholars of the literature, such as Hayworth (2006), focus on state rights on immigration, as opposed to the federal perspective argument of this thesis. The literature regarding states' rights requires more focused analysis to give a broader view of the debates about federal/state relationships. Perspective and literature on states' rights, which was unable to be included for this particular project, is another limitation of this research.

A third limitation relates to the analysis of a select few for-profit prison companies. Only three for-profit private prison corporations and their presence among the states were selected for this study. Although the three largest private prisons corporations (CCA, GEO, MTC) were selected to study, there may be other private prison companies that are prevalent in certain regions or states that were not examined. For example, South Carolina and Utah are states that rank highest on the severity index (2.5), as a state with most severe immigrant legislation, yet both were found to have zero (0) private prisons within that state, of the three corporations examined. Perhaps there is another private prison company that has prisons throughout South Carolina, Utah, and other states. The findings of this study are based on the limited information regarding three private prison companies.

Future Research and Recommendations

There are six suggestions for future research drawn from this thesis. In order to better understand states' legislation trends, as it relates to immigration severity, a first suggestion would be to consider doing a correlation analysis between legislation and the states' political party dominance. It would be an important factor to note if legislation severity and/or private prison prevalence were dominant in either a Republican or a Democratic party-ruled state noting differences between the of the Governor's political party versus the majority parties in the legislature. The political tendencies of the general population could also be used as a factor, as political representatives are supposed to represent the interests of the people of their respective contingencies.

Second, a legislative analysis covering an extended time frame should be conducted, in order to demonstrate changes over time. A five-year analysis would inevitably capture a larger overview of the situation per state, and essentially, each state and its severity would be more accurate by studying data over the collective five-year period of time. A five-year period of time may also demonstrate drastic changes to legislation severity, which could even be the result of political changes within a state during that time, which combines the previously mentioned political party affiliation with the five-year analysis. Due to a lack of resources and time in this research, political parties were not taken into account, and legislation was only analyzed for the 2013 year.

A third recommendation for future research would include involving all fifty states in the study. The other twenty-three (23) states that were not examined in this research could be assessed, and added to findings of the twenty-seven (27) states

researched in this study in regards to policy severity and the private prison bed rate within each of those other states. This would give a clear national assessment on the issue. This research, however, was limited to border-states and states known to have immigration policies. Also, certain aspects of this study's findings of a couple states could be further examined. Specifically, future research may want to more thoroughly examine what is happening in South Carolina, which scored as one of the highest on the severity index, yet has zero (0) private prison beds. Future research may find that there are other private prison companies that are unique to that particular area, or that private prisons are currently being built. A study into the history of the private prisons and all states' legislation could show a potential correlation between ruling political parties and trends during that time (i.e. agreements with private prisons, ICE, or BOP). Would an enhanced examination of political trends and private prisons by region yield more specific results?

A fourth recommendation regarding future research is lobbying. The role of the American Legislative Exchange Council (ALEC) should be examined in future research. Specifically, future scholars may want to examine "model legislation" proposed by ALEC, and where ALEC has the most influence in successfully getting states to sign-on to their proposals, and how many persons have been incarcerated under these legislations and their corresponding sanctions. In the brief research into ALEC for this thesis, it was found that personnel with interests of private prison companies were heavily involved in the writing of Arizona's S.B. 1070. Are ALEC members working to adopt legislation that serves their self-interests?

A fifth area for future study regards an analysis of the profit made by these private prisons in the interment of immigrants. Scholars may consider analyzing the profit made by private prison companies, by state, specifically for their immigration detention population.

A sixth study area relates to recent surges in arrivals of displaced youth. Recently there has been a lot of news about Unaccompanied Minors (UMs), especially from El Salvador, Honduras, and Guatemala, crossing into the U.S. along the Mexico-U.S. border. U.S. Customs and Border Protection reports that Fiscal Year 2014 (October 1, 2013 through June 30, 2014) resulted in 57,525 UM apprehensions along the border, while 27,884 UM apprehensions occurred during that same period in Fiscal Year 2013 (*U.S. Customs and Border Protection*). Future research may want to examine any correlation between this recent explosion of UM arrivals to the U.S. and if there is any subsequent increase in severity of state policies due to this current phenomenon. Will states' rankings on the severity index be influenced by the current staggering numbers of UM arrivals to the U.S.?

Summary

Due to the estimated 12 million undocumented immigrants in the U.S., coupled with the amount of UMs that are presenting themselves along our border, the federal government needs to take action and appropriately address these issues. The trans-border issues of UMs, terrorism, trafficking (of persons, arms, and drugs) has led to changes in immigration trends, and our immigration laws should reflect these changes and be

updated, so that eligible²² persons may gain lawful status in the U.S., in a needed attempt to know who is within our country's borders. It should be agreed upon that reform is needed in this area, regardless of a person's stance on immigrants and immigration, for reasons of national security to know who is in this country. Because the federal government has not acted on the issue, states, such as Arizona, have taken it upon themselves to create and enforce legislation that targets immigrants. It may be perceived that the federal government has abandoned its obligation to handle immigration matters, causing this influx in state legislation with varying degrees of severity, thus creating a patchwork of responses regarding this federal issue.

Comprehensive Immigration Reform is needed in order to rebalance the relationship between the federal and state governments so that the roles of each may be clearly established so that states do not need to perform duties of a federal immigration agent, causing a decrease in service to the community and a lack of trust in the officers performing double duties. The states that received the most severe ranking scores on the index were those having severe anti-immigrant policies, whether contracting with the federal government to handle immigration matters, or enacting state legislation that targets the undocumented. Legislation that targets undocumented immigrants lead to racial profiling, and a societal breakdown for a fear of law enforcement, as demonstrated with Sheriff Joe Arpaio in Maricopa County, Arizona, once his limitations were broadened with the state's enactment of S.B. 1070.

As the story unfolded about Guillermo and his wife Jennifer in the beginning of this thesis, we saw that circumstances, prevented by law, are likely to lead Guillermo to

²² "Eligible" as would be defined in a new Comprehensive Immigration Reform law.

living in the shadows due to his lack of immigration status (although married to a U.S. citizen). Before completion of this thesis, an Executive Order was announced by President Obama on November 20, 2014, that may provide temporary relief to persons like Guillermo of being allowed to remain in the US without fear of deportation, and with authorization to work. Other eligibility factors would need to be known if such persons would be eligible for this administrative relief. This Executive Order has not yet been implemented and therefore it is not known how this action would affect the analysis of this thesis.

Currently, based on this diverse patchwork of state responses, depending on what state a person like Guillermo resides in determines the risk they may have for prosecution and possible subsequent imprisonment. If Comprehensive Immigration Reform occurs, this couple, like millions of others, can find some uniformity in the U.S. and come out from under the shadows to become active members of our society.

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Appendix A – Personal Interest and Experience

From 2010 until November 2014, I also served as the Coordinator of the Criminal Justice and Detention Ministries program for the Diocese of Youngstown. In this capacity I administratively oversaw the Catholic ministry programs within the prisons and jails located within the Diocese of Youngstown. There are six counties within the Diocese of Youngstown: Mahoning, Trumbull, Columbiana, Ashtabula, Portage, and Stark. We have five prisons in our diocese, which include state, federal, and private: Ohio State Penitentiary (State-Youngstown/Mahoning); Trumbull Correctional Institution (State-Leavittsburg/Trumbull); Federal Correctional Institution (Federal-Elkton/Columbiana); Lake Erie Correctional Institution (Private-Conneaut/Ashtabula); and, Northeast Ohio Correctional Center (Private-Youngstown/Mahoning). With my position as coordinator of the prison ministry program, I supported our teams of ministry volunteers that go into the correctional facilities. With both roles that I held (immigration and prisons) with the Diocese of Youngstown, I have become familiar with the realm of immigration and that of private prisons, being that we have two here in NE Ohio. This combination has led to my interest in this research topic.

Table 4.1—Demographic Profile of the Sample (N=27)

Overall	Population	Private Prisons per 1 million pop	Private Prison Beds per 1 million pop	Number of private prisons	Number of Private prison beds
Arithmetic Average	7,890,919	0.47	638	3.74	5,140
Median	4,833,722	0.08	142	1.00	442
Minimum	626,630	0.00	0	0.00	0
Maximum	38,332,521	3.84	3,643	34	40,740
Standard Deviation	8,906,260	0.86	1,070	7.06	8,993

Table 4.2—Descriptive Data on Severity Index Values and Its Four Factors for the Entire Sample (N=27)

	MOA	E-verify	CAR Prisons Per 1M Pop	Misc. State Immig. Laws	Severity Index
Arithmetic					
Average	1.48	1.74	1.41	1.63	1.56
Median	1.00	1.00	1.00	1.00	1.50
Minimum	1.00	1.00	1.00	1.00	1.00
Maximum	3.00	3.00	3.00	3.00	3.00
Standard Deviation	0.75	0.94	0.75	0.88	0.61

Table 4.3—Four states with the highest severity index scores and their corresponding Private Prison Beds per One Million Population Values

State (Region)	Severity Index (Overall mean is 1.56, N=27)	Private prison beds per 1M (Overall mean is 638, N=27)
Georgia (SE)	3.0	1,636
South Carolina (SE)	2.5	0
Arizona (SW)	2.5	2,863
Utah (SW)	2.5	0

Table 4.4—Five states with private prison beds above 1,000 and Severity Index Scores

State (Region)	Private prison beds per 1M (Overall mean is 638, N=27)	Severity Index Score (Overall mean is 1.56, N=27)
New Mexico (SW)	3,643	1.5
Mississippi (SE)	3,436	2.3
Arizona (SW)	2,863	2.5
Georgia (SE)	1,636	3.0
Texas (SW)	1,540	1.8

Table 4.5—Regional Breakdown of Severity Index Scores, N=27

Region (number of states)	Mean (Low=1, Medium=2, High=3)	Min/Max
NE (4)	1.06	1.00/1.25
NW (6)	1.04	1.00/1.25
GL (6)	1.38	1.00/2.00
SE (6)	2.29	1.50/3.00
SW (5)	1.95	1.50/2.50
Overall (27)	1.56	1.00/3.00

Table 4.6—Regional breakdown of private prison beds per one million population,

N=27

Region (number of states)	Average number of private prison beds per 1M pop	Min/Max
NE (4)	3	0/11
NW (6)	83	0/274
GL (6)	298	0/790
SE (6)	1,098	0/3,436
SW (5)	1,669	0/3,643
Overall (27)	1,070	0/3,643

Table 4.7—Correlation Matrix of Private Prison Items with Severity Index Items,

N=27

	<i>Private Prison Beds per 1M pop</i>	<i>Severity Scale</i>	<i>Population</i>	<i>MOA</i>	<i>E-verify</i>	<i>CAR Prisons Per 1M Pop</i>
Severity Index	0.45					
Population	0.01	0.16				
MOA	0.18	0.82	0.27			
E-Verify	0.31	0.86	-0.06	0.56		
CAR Prisons Per 1M pop	0.70	0.36	0.34	0.18	0.05	
Misc. State Immigration Laws	0.18	0.86	0.00	0.68	0.80	-0.05

Notes:

MOA = Memorandum of Agreement

1M pop = one million population

E-Verify = Employers Verification system

Misc. State Immigration Laws = Summary of state legislation regarding immigration