

Mass Incarceration: A Method of Social Control in the Twenty-First Century

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On September 5, 1989, President George H.W. Bush unveiled his new drug policy to the nation holding a plastic bag of crack cocaine. He claimed the drug that “[was] turning our cities into battle zones and murdering our children” had been bought in a park across the street from the White House. The *Washington Post* later revealed Bush’s Communications Director had instructed DEA agents to buy the crack nearby to illustrate the drug’s pervasiveness. Unable to find anyone selling any type of drug, DEA officers coerced Keith Jackson, an African-American high school senior, into the park to sell them crack in exchange for \$2400.¹

On July 1, 2010, Arizona Governor Jan Brewer stated in a Fox News interview, “We cannot afford all this illegal immigration and everything that comes with it...from the crime to the drugs and the kidnappings and the extortion and the beheadings.”² The *Arizona Guardian* proceeded to interview six different Arizona county medical examiners, including four from border counties. None of the coroners had ever encountered an immigration-related beheading.³

Moral panic occurs when part of the population determines that a condition, person, or group of people threaten societal values or progress. Politicians and media present a distorted and hyperbolic version of the condition to invoke a disproportionate reaction from the public for political or financial gain. Moral panic requires identifiable scapegoats to distract the public from the root causes of a complex social or economic problem. Sudden shifts in public opinion polls and aggressive legislative proposals against marginalized segments of the population demonstrate public concern. Politicians capitalize on the public anxiety and advocate for the “3

¹ Craig Reinerman and Harry G. Levine, “The Crack Attack: Politics and Media in America's Latest Drug Scare” in *Images of Issues: Typifying Contemporary Social Problems*, ed. Joel Best (New York: Aldine de Gruyter, 1989), 154-155.

² Carissa B. Hessick and Gabriel J. Chin, *Strange Neighbors: The Role of States in Immigration Policy* (New York: New York University Press, 2014), 233.

³ Dana Milbank, “Headless Bodies and Other Immigration Tall Tales in Arizona,” *Washington Post*, July 11, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/07/09/AR2010070902342.html.

P's: police, penalties, and prisons” to create the perception that they are “tough” on any threats to public safety.⁴

Moral panic stylistically reframed the rise of unauthorized immigration and the emergence of crack cocaine into the “Illegal Immigration Crisis” and “Crack Epidemic.” Carefully orchestrated political maneuvers and media assaults enabled two social concerns to mutate into mass hysteria directed against Latinos and blacks. The resulting bipartisan “Tough on [Drug] Crime” and “Tough on Immigration” legislative arms race enabled politicians to use U.S. prisons for race-based social control. Racism, political gain, fear, and ignorance drove the U.S. to respond to highly complex social issues with the mass incarceration of minorities for non-violent offenses and the creation of the private prison industrial complex.

Today, the U.S. incarcerates 25% of the world’s prisoners.⁵ Between 1970 and 2005, the U.S. prison population grew by 700%.⁶ Legislation changes in drug and immigration offenses, not population growth or increased violent crime, drove mass incarceration. After 1970, the U.S. significantly altered laws to disproportionately penalize non-violent crimes associated with minorities to ensure their incarceration. In 2010, blacks or Latinos to represent 75% of those incarcerated for drug offenses, despite that white people use and sell drugs at a higher rate.⁷ Black people represent 13% of the U.S. population but 40% of all drug convictions.⁸ While drug

⁴ Michael Welch, *Detained: Immigration Laws and the Expanding I.N.S. Jail Complex* (Philadelphia: Temple University Press, 2002), 9-18.

⁵ Suzanne M. Kirchhoff, *Economic Impacts of Prison Growth*, Congressional Research Service, 2010, 9, <http://www.fas.org/sgp/crs/misc/R41177.pdf>.

⁶ “Public Safety, Public Spending: Forecasting America’s Prison Population 2007-2001,” *The Pew Charitable Trusts*, June 2007, ii, http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/state-based_policy/pspprisonprojections0207pdf.pdf

⁷ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010), 98.

⁸ E. Ann Carson, *Prisoners in 2013* (NCJ 247282) (Washington, D.C.: Bureau of Justice Statistics, 2014), <http://www.bjs.gov/content/pub/pdf/p13.pdf>; Sonya Rastogi et al., “The Black Population: 2010,” United States Census Bureau, September 11, 3, <http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf>.

offenses drove the first wave of mass immigration, immigration crimes are now the fastest growing federal conviction. From 1992 to 2012, immigration crimes skyrocketed from 5% to 32% of all federal convictions. In 2012, Hispanics represented 92% of federal immigration crimes.⁹ Following the launch of the “Drug War” states struggled to keep up with the explosive growth of prisoners, leading to the creation of the first private prison in 1983. Between 1990 and 2009, inmates held in private prisons grew by 1600%.¹⁰ In 2015, private prisons held 62% of people detained by Immigration and Customs Enforcement (ICE).¹¹

Public perception of “moral backwash” created by the counterculture and Civil Rights movement during the 1960s enabled Republicans to seize control in 1969 to undo a period of liberalism. As crime increased and urban riots raged throughout the U.S. during the late 1960s, Nixon capitalized on the public’s dissatisfaction with crime control and fear of black progress. To garner votes from Southern Democrats, Nixon exploited impoverished whites’ fear of racial adjustment and campaigned under a “law and order” platform to challenge the burgeoning “crime problem.” Changing political climate prevented Nixon from outwardly blaming black, poor, or “anti-authority” youth for the crime wave.¹² Instead, Nixon used coded language to convey his political messages; he did not have to specify the “individuals” responsible for the “crime problem” because his audience already blamed black, poor, or young people. Nixon and

⁹ Michael T. Light et al., “The Rise of Federal Immigration Crimes” (Washington, D.C.: Pew Research Center’s Hispanic Trends Project, 2014), 7-8. http://www.pewhispanic.org/files/2014/03/2014-03-18_federal-courts-immigration-final.pdf.

¹⁰ American Civil Liberties Union, “Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System, New York, 2014, 17, <https://www.aclu.org/warehoused-and-forgotten-immigrants-trapped-our-shadow-private-prison-system>.

¹¹ Bethany Carson and Eleana Diaz, *PAYOFF: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota* (Austin, TX: Grassroots Leadership, 2015), 6, http://grassrootsleadership.org/sites/default/files/reports/quota_report_final_digital.pdf

¹² Dan Baum, *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (Boston: Little, Brown, 1996), 21.

his conservative predecessors believed individual moral failings, not poverty or racial inequality, caused the “crime problem.” Thus, the individual, not society, deserved harsh punishment.

Nixon’s “law and order” platform only required the perception of a threat. Eager to distract from Vietnam, Nixon fabricated a drug crisis to wage a domestic war. Nixon deliberately chose to “fight” drugs because majority of users were black, poor, or “counterculture” youth — people he viewed threatened societal progress. While more people died from choking than illegal drugs in 1967, Nixon asserted in a pre-election speech that drugs were a modern plague “decimating” society. He continued, “I believe in civil rights. But the first civil right of every American is to be free from violence.”¹³ After Nixon declared drug abuse the nation’s foremost enemy in 1971, he reduced the civil rights of the marginalized in the name of “public safety.” While Nixon first introduced criminal forfeiture laws, implemented large police expenditures, and employed coded messages to condemn black people, Reagan truly waged the Drug War.

While Ford and Carter retreated from the drug war efforts, Reagan reestablished the national crusade with renewed fervor. Like Nixon, Reagan recognized he could create a drug crisis for political advantage as the economy reeled from a recession. While Nixon led the public to believe “individual depravity” caused crime, Reagan expanded his claim to secure the evangelical Christian vote. According to Reagan, crime was “ultimately a moral dilemma” that called for a “spiritual solution.”¹⁴ Reagan’s “spiritual solution” entailed the complete diversion of social spending to policing expenditures. As public interest in the “Heroin Crisis” receded by the late 1970s, Reagan directed his war effort to marijuana. On July 24, 1982, three months before the midterm election, Reagan declared his “War on Drugs.” One month prior, the National

¹³ Baum, *Smoke and Mirrors*, 11-12, 21.

¹⁴ Baum, *Smoke and Mirrors*, 145-149.

Academy of Sciences published their White House-commissioned report on marijuana. They recommended decriminalization.¹⁵ Luckily for Reagan, cocaine soon emerged as a more credible “enemy” to fight.

Prior to 1984, the media viewed cocaine as the drug of “upper class” whites. In 1981, *Time* declared cocaine the drug of the “smart set” with health risks comparable to alcohol or marijuana.¹⁶ Cocaine’s “prestige” did not decline until its users underwent a demographic shift. Crack cocaine first hit New York, Los Angeles, and Miami in 1984.¹⁷ As a cheaper alternative to powder cocaine, crack quickly became popular among black and Latino urban poor. After cocaine “trickled down” to poor and non-white users, the media reframed the drug of the “smart set” into the drug that threatened national security. As the U.S. economy stumbled from deindustrialization, politicians pointed to drug use. In 1984, government-funded researchers falsely proclaimed drug use cost the United States \$33 billion in loss of productivity.¹⁸ Sensing crack cocaine could become a source of entertainment, the media greatly exaggerated its risks. In 1986, *Newsweek* erroneously declared: “Crack is the most addictive drug known to man.”¹⁹ The word crack soon became coupled with “crisis,” “epidemic,” and “plague.”²⁰ In 1986, CBS news aired a two hour special on crack-induced urban “war zones” featuring DEA raid footage — the program received the highest audience of any news show in over 5 years.²¹ The director of the NYC DEA later remarked: “crack was the hottest combat-reporting story to come along since the

¹⁵ Baum, *Smoke and Mirrors*, 142-162.

¹⁶ Baum, *Smoke and Mirrors*, 142.

¹⁷ Reinerman and Levine, “The Crack Attack,” 148.

¹⁸ American Civil Liberties Union, “Drug Testing: A Bad Investment,” Washington, D.C., 1999, 5-6, <https://www.aclu.org/files/FilesPDFs/drugtesting.pdf>.

¹⁹ Baum, *Smoke and Mirrors*, 219.

²⁰ Craig Reinerman and Harry G. Levine, *Crack in America: Demon Drugs and Social Justice* (Los Angeles: University of California Press, 1997), 20.

²¹ Reinerman and Levine, *Crack in America*, 20.

end of the Vietnam War.”²² The most damning result of the “Crack Crisis” came when politicians linked crack users to more crime than powder cocaine users, effectively linking minorities to crime. This assertion implies that crack cocaine users are more “individually depraved” than powder cocaine users without acknowledging crack cocaine users are far more likely to be impoverished, thus more prone to economic and systemic crime.²³ Yet, the “Crack Crisis” was largely unfounded. While crack cocaine users rose from 65,000 in 1980 to 271,000 in 1986, that only represented a growth from 0.02% to 0.1% of the population.²⁴ Though the media contested crack was instantaneously addictive, research suggests crack cocaine is no more addictive than powder cocaine.²⁵ Even at the height of the “epidemic” high schoolers were still three times more likely to try powder cocaine than crack.²⁶ However, facts were not part of the media offensive to demonize crack. According to a *New York Times/CBS News* poll in January 1985, less than 1% of the U.S. population identified drugs as “the most important problem facing this country today.” Shortly after Bush’s “Bag of Crack” speech in 1989, 64% of Americans believed drugs were the nation’s biggest concern.²⁷

Moral panic enabled Reagan put the “war” in the “War on Drugs” in 1986 following the highly publicized cocaine overdose of college basketball player Len Bias. Three months after Bias’ death, Congress passed the Anti-Drug Abuse Act of 1986. Hysteria surrounding the “Crack Epidemic” allowed the government to issue exponentially harsher sentences for drug offenses

²² Alexander, *The New Jim Crow*, 52.

²³ Richard P. Conaboy, *Cocaine & Federal Sentencing Policy* (Washington, D.C.: United States Sentencing Commission 1997), 94-95.

²⁴ Matthew B. Robinson and Renee G. Scherlen, *Lies, Damned Lies, and Drug War Statistics, Second Edition: A Critical Analysis of Claims Made by the Office of National Drug Control Policy* (Albany: State University of New York Press, 2014), 13.

²⁵ Reinerman and Levine, “The Crack Attack,” 147.

²⁶ Baum, *Smoke and Mirrors*, 220- 222.

²⁷ Reinerman and Levine, “The Crack Attack,” 156.

involving crack. Ethnicity of the drug user, not chemical composition, defined the major difference between the drugs — 93% of crack cocaine users were black and 66% of powder cocaine users were white or Hispanic. Drug crimes could now result in mandatory minimum prison terms, legislated to specifically target those possessing or selling crack cocaine to ensure black drug offenders were incarcerated longer than white drug offenders. Finally, the law instituted a 100:1 sentencing ratio, legally equating 1g of crack cocaine with 100g of powder cocaine.²⁸ After 1986, possession of more than 280g (0.61 lb) of crack cocaine resulted in a minimum 10 year prison sentence. A 10 year minimum sentence for possession of powder cocaine required more than 5kg (11 lbs).²⁹ In 2010, after 24 years' worth of drug convictions under the 100:1 sentencing ratio, Obama rescaled the ratio to 18:1.³⁰

To justify his war, Reagan created increased arrest rates by recruiting the legal system and police in the crusade. To achieve the first part of goal, Reagan and his forebearers undermined civil liberties protected by the constitution to allow police to search anyone and anywhere for drugs. In *Terry v. Ohio* (1968) the Supreme Court held that police can search and detain anyone if the officer has “reasonable suspicion” that the individual is involved in criminal activity, with or without probable cause.³¹ However, the stop-and-frisk rule did not degrade the fourth amendment enough for the federal government. In 1981, during a congressional meeting, a Florida Congressman ironically observed: “in the war on narcotics, we have met the enemy, and he is the U.S. Code.”³² As arrest rates quickly reflected indisputable biases against black

²⁸ Alexander, *The New Jim Crow*, 112.

²⁹ Families Against Mandatory Minimums, *Federal Mandatory Minimums*, Washington, DC., 2013, <http://fammm.org/wp-content/uploads/2013/08/Chart-All-Fed-MMs-NW.pdf>.

³⁰ Alexander, *The New Jim Crow*, 139.

³¹ Alexander, *The New Jim Crow*, 63.

³² Baum, *Smoke and Mirrors*, 142.

people, the legal system prevented any attempt to prove that the legal system was racist. In *McCleskey v. Kemp* (1987) the Supreme Court ruled that unless evidence of explicit racial bias could be proven within the specific case, racial bias could not be challenged under the Fourteenth Amendment. In *Whren v. United States* (1996) the court ruled that “any traffic offense committed by a driver was a legitimate legal basis for a stop,” legalizing pretextual traffic stops to conduct drug searches without evidence of any drug crime.³³ New legislation enabled police to go on legalized “fishing expeditions” for drugs to specifically target minorities. While black drivers constitute 17% of drivers on Baltimore’s I-95 highway, black drivers represented 70% of those stopped and searched. In 2008, blacks made up 85% of the NYPD’s frisks.³⁴ To incentivise local police to implement pretextual stops, the government offered them egregious financial incentives and surplus military hardware. In 1984, Congress revamped Nixon’s criminal forfeiture laws to allow local and state agencies to retain up to 80% of any property or income police alleged was used in criminal activity, while federal law agencies retained 100% of proceeds. Between 1988 and 1992, local and state police alone seized over \$1 billion in assets from drug crimes.³⁵ In 1997, the Department of Defense created the 1033 Program to provide civilian law enforcement with military equipment for “use in counter-drug activities.”³⁶ Since the initiative, police have received over \$4.3 billion in traditional weapons, aircraft, grenade launchers, armored personnel carriers, night vision equipment, and camouflage uniforms.³⁷ In

³³ Alexander, *The New Jim Crow*, 109-113, 68.

³⁴ Alexander, *The New Jim Crow*, 133-135.

³⁵ Alexander, *The New Jim Crow*, 78-79.

³⁶ *Drug Interdiction and Counter-Drug Activities*, U.S.C. 32 §112 (a), <http://policy.defense.gov/portals/11/Documents/hdasa/references/32%20USC%20112.pdf>.

³⁷ Christopher Ingraham, “The Pentagon Gave Nearly Half a Billion Dollars of Military Gear to Local Law Enforcement Last Year,” *Washington Post*, August 14, 2014, <https://www.washingtonpost.com/news/wonk/wp/2014/08/14/the-pentagon-gave-nearly-half-a-billion-dollars-of-military-gear-to-local-law-enforcement-last-year/>. ; Matt Apuzzo, “War Gear Flows to Police Departments,” *New York Times*, June 8, 2014, <http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html>.

1998, Congress established the Edward Byrne Assistance Program to “support all components of the criminal justice system.”³⁸ In 2012, the program allocated 64% of its \$190 million funding to law enforcement and 11% to drug treatment, education, and crime prevention. In 2013, Byrne grants paid for more than 680,000 policemen’s overtime hours.³⁹ Thus, the police and legal system worked in tandem to perpetuate the racially-based system of control, as financial incentives encouraged police to arrest black people at unprecedented rates and the legal system deflected any challenges of unconstitutionality.

Aggressive state legislation facilitated “civic death” in black felons even upon their release from prison. Social control of black people extended through the disenfranchisement, obstruction of welfare, and jury exclusion of felons. In 48 states, a felony conviction results in disenfranchisement or voting restrictions.⁴⁰ 30 states prohibit felons from jury service.⁴¹ Today, 1 in 13 black adults cannot vote due to felony disenfranchisement. In Kentucky, Florida, and Virginia, 1 in 5 black adults cannot vote.⁴² The U.S. legally allows private employers to discriminate against felons, increasing ex-felon unemployment and resultingly, their need for welfare benefits.⁴³ But in 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) which denied cash assistance and food stamps to anyone convicted of a drug felony. No other type of felony offense was included.⁴⁴ Clinton later

³⁸ “Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet,” Bureau of Justice Assistance, 1, https://www.bja.gov/Publications/JAG_Fact_Sheet.pdf.

³⁹ Laura Wyatt, “Grant Activity Report: Justice Assistance Grant (JAG) Program April 2012-March 2013,” Bureau of Justice Assistance, 2013, 2-5, https://www.bja.gov/Publications/JAG_LE_Grant_Activity_03-13.pdf.

⁴⁰ Jean Chung, “Felony Disenfranchisement: A Primer” (Washington D.C. : The Sentencing Project, 2013), 1, http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf.

⁴¹ Neil Vidmar and Valerie P. Hans, *American Juries: The Verdict* (Amherst, NY: Prometheus Book, 2007), 80.

⁴² Chung, “Felony Disenfranchisement,” 2.

⁴³ Alexander, *The New Jim Crow*, 140-143, 149.

⁴⁴ Marc Mauer and Virginia McCalmont, “A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits” (Washington D.C. : The Sentencing Project, 2013), 1, http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf.

redirected public housing funds to prison creation after increasing the ability of federally assisted housing authorities to exclude anyone with a criminal record.⁴⁵

While Reagan's falsified "epidemic" initially justified the surge of imprisonment, author Michelle Alexander identifies "colorblindness" as the mechanism that ensured the survival of the mass incarceration of black men. Despite the white American public's quickness to cite Barack Obama as evidence that racism is over, Michelle proves racism has only transformed into a less detectable form. Civil Rights movements in the 1960s prevented politicians from directly blaming racial groups for societal ills, forcing racism to undergo a rhetorical transformation. Instead, politicians adapted to their new environment by adopting "neutral" words. While politicians could not talk about black people causing crime, they could talk about "drug crime." According to a study conducted by the *American Journal of Alcohol and Drug Abuse* in 1995, 95% of respondents pictured a black man when they heard the phrase "drug user."⁴⁶ It is therefore unsurprising that majority of police, prosecutors, and judges are more likely to search, arrest, and convict black people for drugs because they possess an undeniable racial bias.

One year after the Civil Rights Act of 1965, Congress passed the Immigration and Nationality Act (INA). The law replaced ethnically-based immigration quotas with equal allotments per country. INA also abolished unrestricted immigration from Latin America, which the government had previously permitted to supply the U.S. agricultural industry with an unlimited source of exploitable laborers.⁴⁷ Unsurprisingly, Mexican migrants continued to immigrate to the United States without visas — from 50,000 unauthorized immigrants in 1965 to

⁴⁵ Alexander, *The New Jim Crow*, 57.

⁴⁶ Alexander, *The New Jim Crow*, 106.

⁴⁷ Jessica T. Simes and Mary C. Waters, "The Politics of Immigration and Crime," *The Oxford Handbook on Ethnicity, Crime, and Immigration* (New York: Oxford University Press, 2014), 469.

400,000 by 1975.⁴⁸ Further alarmed by the Chicano Civil Rights Movement in border areas during the 1960s led white Americans to interpret Hispanics' desire for equal rights as Hispanics' desire to create an "American Quebec" in the Southwest U.S. American elites began clamoring for border control, claiming immigration would "balkanize" or transform America into a "third world country."⁴⁹

As more Latin American immigrants entered the country, politicians increasingly linked Mexican immigrants to crime, unemployment, and poverty. In 1974, Immigration and Naturalization Service (INS) Commissioner wrote: "if we deport three or four million illegals... we could reduce our own unemployment dramatically — as much as 50 percent." Presidents throughout the 1970s could not issue harsh reforms to tackle "the rapidly increasing problem of illegal aliens" because immigration bills with employer sanctions could not pass.⁵⁰ However, Reagan's Drug War sparked increased public demand for border enforcement and the highly sensationalized mass emigration of Cubans in the late 1970s.

In order to expand the power of INS and border enforcement, Reagan helped connect "illegal aliens" to "illegal drugs." In 1986, U.S. Attorney General Edwin Meese stated: "The uncontrolled flow of illegal aliens gives the drug traffickers the ideal opportunity to get lost in the crowd" though a DEA spokesman claimed illegal aliens only carried 5% of drugs that entered the U.S. southern border.⁵¹ The economic recession of the early 1980s coupled with the

⁴⁸ Douglas S. Massey and Karen A. Pren, "Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America." *Population and Development Review* 38.1 (2012): 18, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3407978/#R37>.

⁴⁹ Nevins, *Operation Gatekeeper*, 111-114.

⁵⁰ Nevins, *Operation Gatekeeper*, 64-65.

⁵¹ Joel Brink, "Meese Links Drugs and Illegal Aliens," *New York Times*, September 18, 1986, <http://www.nytimes.com/1986/09/18/us/meese-links-drugs-and-illegal-aliens.html>.; Ronald J. Ostrow, "Action Urged on Stalled Immigration Reform: Meese Links Illegal Aliens, Drug Traffic," *Los Angeles Times*, September 18, 1986, http://articles.latimes.com/1986-09-18/news/mn-11293_1_immigration-reform.

highly sensationalized Mariel boatlift enabled the Immigration Reform and Control Act of 1986 (IRCA), which allowed expedited deportation of criminal aliens.⁵² The Anti-Drug Abuse Act of 1988 enabled police to detain and not release non citizens convicted of aggravated felony. In 1990, George H.W. Bush passed the Immigration Act of 1990. Both these laws provisioned the expansion of immigrant detention.

In the early 1990s, a recession hit the U.S. as a result of higher interest rates and Iraq's invasion of Kuwait. As unemployment increased, politicians redirected the public's economic fears towards a marginalized segment of the population. Politicians refurbished Nixon's "Southern Strategy" into the "Texan, Floridian, and Californian Strategy" to gain votes from powerful border states by exploiting impoverished whites' fear of immigration adjustment. Similar to rhetorical strategies surrounding drug crime, politicians could not claim Mexicans that were "stealing" American jobs but they could say "illegal aliens" were. In a 1992 poll, 59% of the population said immigration had been a good thing for the U.S. in the past, but 60% thought immigration was now a bad thing for the country.⁵³ However, direct foreign policies of the U.S. created the influx of Latin Americans and the resulting "Illegal Immigrant Crisis." The ratification of North American Free Trade Agreement (NAFTA) in 1994 decimated Mexican and Central American rural economies, ensuring accelerated unauthorized immigration into the U.S.⁵⁴ In 1994, under the Violent Crime Control and Law Enforcement Act, the government

⁵² Nevins, *Operation Gatekeeper*, 66.

⁵³ *Newsweek*, "Survey # 1993-NW0793: Immigration," PSRA/Newsweek Poll, July 1993, Princeton Survey Research Associates (Storrs, CT: Roper Center for Public Opinion Research).

⁵⁴ Simes and Waters, "The Politics of Immigration," 472.

provided \$1.2 billion for border enforcement and reimbursed states and localities with over \$1.8 billion for immigrant incarceration.⁵⁵

Anti-immigration fervor enabled Congress to pass the most devastating immigration legislation in 1996: the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The law enabled the INS to detain or deport any unauthorized charged with a drug offense.⁵⁶ Under Section 287(g), the Department of Homeland Security (DHS) can authorize police to act as federal immigration agents who can “interrogate any person believed to be an alien... and to make a warrantless arrest for unlawful entry at the border or within the U.S.” provided the agent has “reasonable suspicion” that the person violated an immigration law.⁵⁷ In 2009, 287(g)-deputized law enforcement officers in North Carolina police specifically pulled over Hispanic motorists for minor traffic violations to ascertain their citizenship status and set up “license check” roadblocks in areas frequented by Latinos.⁵⁸

As a direct result of U.S. foreign policies, the U.S. created the “Illegal Immigrant Crisis” of the early 1990s. While unauthorized immigration did increase, the media focused on “illegal immigrants” disproportionately, in compliance with the tenets of moral panic. From 1980 to 2007, 79% of *Associated Press* and 86% of the *New York Times* stories on immigration concerned “illegality.”⁵⁹ As unauthorized immigration surged in the early 2000s, the DHS and the DOJ criminalized immigration with the creation of border enforcement program Operation

⁵⁵ Julia Sudbury, ed., *Global Lockdown: Race, Gender, and the Prison-Industrial Complex* (New York: Routledge, 2005), 117.

⁵⁶ Welch, *Detained*, 2.

⁵⁷ Kevin R. Johnson et al., *Understanding Immigration Law* (New Providence, NJ: LexisNexis, 2015), 165-166.

⁵⁸ Evelyn Griggs and Brian Schaeffer, “The Cost of ICE's Policies and Practices,” Immigration and Human Rights Policy Clinic, University of North Carolina at Chapel Hill, 2009, 65, www.law.unc.edu/documents/clinicalprograms/thecostoficespoliciesandpractices.pdf.

⁵⁹ Banu Akdenizli et al., “A Report on the Media and the Immigration Debate” (Washington, D.C.: Governance Studies at Brookings, 2008), 24, http://www.brookings.edu/~media/events/2008/9/25%20media%20immigration/0925_immigration_dionne.pdf.

Streamline in 2005. Before the initiative, the government sought criminal prosecution in illegal reentry cases only if the immigrant had a criminal record. After 2005, illegal reentry became a federal crime.⁶⁰ From 2006 to 2011, unauthorized reentry prosecutions increased by 125% but the population of unauthorized immigrants peaked in 2007 and has declined by over 1 million since.⁶¹

Politicians and private prisons are enacting new legislation to create another mechanism of mass incarceration to take hold in the U.S. Just as drug laws, new immigration laws harshly criminalize a nonviolent offense to target a specific segment of the population. From 1992 to 2012, immigration offenses accounted for 48% of federal prosecution growth, while drug offenses only accounted for 22%.⁶² Since 2009, more people have entered federal prison for immigration offenses than for violence, weapons, and property offenses combined. According to the ACLU, “in 2013, illegal entry and reentry prosecutions accounted for 80% of all federal prosecutions in Arizona and New Mexico.”⁶³ While Reagan profited politically from his “War on Drugs,” Thomas Beasley, former Chairman of the Tennessee Republican Party, profited financially. As a devout neoconservatist, Reagan sought to privatize government agencies. The increased criminalization of drugs and the relaxation of fourth amendment directly created an influx of prisoners that soon overwhelmed the financial and physical capacity of state prisons. In 1983, Beasley founded the Corrections Corporation of America (CCA). In 1985, Beasley

⁶⁰ Joanna Lydgate, “Assembly-Line Justice: A Review of Operation Streamline” (Earl Warren Institute, University of California, Berkley Law School), January 2010, 1, https://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf.

⁶¹ “Lead Charges for Criminal Immigration Prosecutions 1986 - 2011,” Transactional Records Access Clearinghouse, Syracuse University http://trac.syr.edu/immigration/reports/251/include/imm_charges.html; “Testimony of Jeffrey S. Passel – Unauthorized Immigrant Population: National and State Trends, Industries and Occupations” (Washington, D.C.: Pew Research Center’s Hispanic Trends Project, 2015), <http://www.pewhispanic.org/2015/03/26/testimony-of-jeffrey-s-passel-unauthorized-immigrant-population/>

⁶² Light et al., “The Rise of Federal Immigration Crimes,” 4.

⁶³ American Civil Liberties Union, “Warehoused,” 2, 23.

approached the state of Tennessee and argued his private corporation could incarcerate prisoners cheaper.⁶⁴ Beasley later remarked, “We could sell privatization...just like you were selling cars, or real estate, or hamburgers.”⁶⁵ Today, private companies hold roughly 130,000 prisoners and over 25,000 immigrant prisoners.⁶⁶ In 2010, the two largest prison corporations, CCA and GEO, made over \$3 billion in combined revenue.⁶⁷

Car dealerships, McDonalds, real estate agencies, and Thomas Beasley’s private prisons are businesses with shareholders and are subject to the most fundamental rule of capitalism: minimize cost to maximize profits. States enter multi-million dollar contracts with private prisons and pay corporations per head. Many private prison contracts contain occupancy clauses to ensure profit, some as high as 100%.⁶⁸ If the state cannot provide the corporation with the agreed number of prisoners, the corporation fines them. This provides financial incentive for the state to increase arrests and convictions. States wholly entrust corporations to oversee prisoners. However, private prisons are not in the business of rehabilitation, they are actively seeking to make money off mass incarceration. To turn a profit, private prisons provide inmates with substandard or nonexistent medical care, no educational or drug rehabilitation programs, and deplorable living conditions, so they can keep the money left over the state allotment. Private prisons also want the cheapest type of prisoner to minimize their expenditures. Drug offenders and violent criminals require more expensive treatment and supervision than

⁶⁴ Michael A. Hallet, *Private Prisons in America: A Critical Race Perspective* (Chicago: University of Illinois Press, 2006), 57.

⁶⁵ Donna Selman and Paul Leighton, *Punishment for Sale: Private Prisons, Big Business, and the Incarceration Binge* (Lanham, Md: Rowman & Littlefield Publishers, 2010), 58.

⁶⁶ Federal Bureau of Prisons, “Population Statistics,” http://www.bop.gov/about/statistics/population_statistics.jsp.

⁶⁷ David Shapiro, “Banking on Bondage: Private Prisons and Mass Incarceration,” (New York: American Civil Liberties Union, 2011), 5, https://www.aclu.org/files/assets/bankingonbondage_20111102.pdf.

⁶⁸ “Criminal: How Lockup Quotas and ‘Low-Crime Taxes’ Guarantee Profits for Private Prison Corporations,” *In the Public Interest*, September 2013, 2, <http://www.njjn.org/uploads/digital-library/Criminal-Lockup-Quota,-In-the-Public-Interest,-9.13.pdf>.

nonviolent offenders. Unauthorized immigrants are primarily convicted of immigration violations. Conveniently for private prisons, unauthorized immigrants also have fewer legal rights than criminals born in the U.S.

Unlike prisons under the Federal Bureau of Prisons (BOP), the government exempts private prisons from open record laws. Exemption 4 of the Freedom of Information Act (FOIA) protects corporations from releasing trade secrets to government agencies. Private prisons can classify their “contracts, operating procedures, operating records, monitoring documents, or other similar documents” as “trade secrets.” According to data from the Federal Election Commission data, the three largest prison corporations spent more than \$32 million on lobbying and campaign contributions from 2000 to 2012.⁶⁹ According to *NPR*, in 2010, CCA lobbyists met Arizona legislators in a hotel in Washington D.C. to draft Arizona’s controversial SB 1070, which requires police to determine the immigration states of an arrested or detained person if the police has “reasonable suspicion” the person is in the country without authorization.⁷⁰ Private prison lobbyists promote legislation that creates recidivism and harsher sentencing laws to imprison more people for longer sentences to ensure profit. In 2012, CCA’s annual report stated: “any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them.”⁷¹

The BOP does not currently have enough facilities to house the soaring number of incarcerated immigrants, nor does the BOP expect funding from Congress to build more prisons,

⁶⁹ American Civil Liberties Union, “Warehoused,” 10, 18.; American Civil Liberties Union, “Arizona’s SB 1070,” <https://www.aclu.org/feature/arizonas-sb-1070>.

⁷⁰ Laura Sullivan, “Prison Economics Help Drive Arizona Immigration Law,” *National Public Radio*, April 4, 2012, <http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law>.

⁷¹ American Civil Liberties Union, “Warehoused,” 18-19.

thus, leaving the BOP to conclude they must rely on private prisons. In 2007, BOP officials told the U.S. Government Accountability Office (GAO) that they “do not believe there is value in developing data collection methods to compare costs of confining these inmates in private facilities versus other alternatives for confining inmates.” BOP elaborated that collecting cost comparison data from contractors could potentially increase cost during a time of budgetary restrictions.⁷²

Under contract, the state requires private private to pay for the medical care of their inmates. Since for-profit corporation are not subjected to federal or state oversight, private prisons provide prisoners with the most “cost effective” form of healthcare: complete absence of care. Some prisons only accept medical requests written in English, despite that many of their inmates only speak Spanish. At a private prison in Big Spring, Texas, prisoners reported in 2014 that one doctor oversaw 3,500 inmates. Private prison in Pecos, Texas and in Raymondville, Texas implement an “extraction only” policy to any inmate dental problems, in violation of the eighth amendment against cruel and unusual punishment.⁷³ In 2011, the Texas Commission on Environmental Quality found that the drinking water of Eden, Texas, exceeded the EPA’s maximum level of radioactive contamination.⁷⁴ Eden is the home to CCA’s Eden Detention Center, a Criminal Alien Requirement (CAR) prison that incarcerates over 1,500 inmates. For over two years, prisoners’ only access to uncontaminated water came from bottled water purchased at the prison commissary for 80 cents. Inmates with jobs in CAR prisons typically

⁷² U.S. Government Accountability Office, *Cost of Prisons: Bureau of Prisons Needs Better Data to Assess Alternatives for Acquiring Low and Minimum Security Facilities*, GAO-08-6 (Washington, DC, 2007), 19, <http://www.gao.gov/assets/270/267839.pdf>.

⁷³ American Civil Liberties Union, “Warehoused,” 42-93.

⁷⁴ City of Eden, “Notice of Drinking Water Combined Radium 226 & Radium 228 Violation,” Eden, TX, 2012, http://www.edentexas.com/storage/afm_uploads/1209-B.pdf.

make less than seventeen cents an hour.⁷⁵ While CCA paid CEO Damon T. Hininger over \$3.6 million in 2011, it was a state agency that finally footed the removal of carcinogenic radionuclides from the water in 2013.⁷⁶

In BOP-run prisons, the government requires educational and rehabilitative programs for prisoners to reduce violence and recidivism. Prisoners involved in educational programs have a 13% higher chance of employment upon release and a 43% lower chance of recidivating.⁷⁷ However, the BOP does not require private facilities to offer equivalent rehabilitative or educational programs to unauthorized immigrants because “criminal aliens... are not expected to return to U.S. communities.”⁷⁸ In 2009, immigration crime represented 68% of federal convictions of criminal aliens.⁷⁹ Illegal reentry, the most prevalent federal among unauthorized immigrants, is the attempt to enter the U.S. illegally more than once. The federal government also works to withhold basic benefits from unauthorized immigrants. In 1996, Clinton’s PRWORA that denied welfare benefits to anyone convicted of a drug offense also denied food stamps, supplemental security income, and other benefits to any undocumented or legal immigrant.⁸⁰ Benefits are discriminately withheld from unauthorized immigrants on the basis of their citizenship.

The U.S. is currently facing an epidemic of minority incarceration. Since the 1970s, politicians and the media have used unsubstantiated, fear-mongering tactics to expand the of

⁷⁵ American Civil Liberties Union, “Warehoused,” 18, 86.

⁷⁶ Hadar Aviram, *Cheap on Crime: Recession-Era Politics and the Transformation of American Punishment* (Oakland, CA: University of California Press, 2015), 204. ; American Civil Liberties Union, “Warehoused,” 80.

⁷⁷ Lois M. Davis et al., *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults* (Santa Monica, CA: RAND Corporation, 2013), xvi, http://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR266/RAND_RR266.pdf.

⁷⁸ U.S. Government Accountability Office, *Cost of Prisons*, 11.

⁷⁹ U.S. Government Accountability Office, *Criminal Alien Statistics: Information on Incarceration, Arrests, and Costs*, GAO-11-187 (Washington, DC, 2011), 23, <http://www.gao.gov/assets/320/316959.pdf>.

⁸⁰ Welch, *Detained*, 64.

power of the DEA, INS, and police to create systems of social control. While African Americans are most disproportionately represented in the U.S. prison population, Hispanics are the most rapidly increasing population within prisons.⁸¹ Racism has evolved distinct adaptations to enable mass black and Hispanic subjugation in an era that legally prevented overt racial discrimination under the guise of “neutral” language. Today, politicians and CEOs are actively benefitting from the incarceration of marginalized populations for nonviolent offenses, at the expense of the entire nation. To alleviate overwhelmed state prisons, private prisons emerged, not legislation changes. While private prisons were meant to be a coping mechanism, these corporations actively lobby for legislation that encourages incarceration. Mass incarceration has induced the death of civic and human rights and has created the following statistics: in 2008, 44 years after the Civil Rights Act, 1 in 106 white males, 1 in 36 Hispanic males, and 1 in 15 black males over the age of eighteen were incarcerated.⁸²

⁸¹ Simes and Waters, “The Politics of Immigration,” 470.

⁸² Warren, *One in 100*, 6.

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