

Questions On Public-Private Prisons For Immigrants

December 10, 2009

<http://www.npr.org/templates/transcript/transcript.php?storyId=121248709>

This is FRESH AIR. I'm Terry Gross.

My guest, journalist Tom Barry, has been writing about what he describes as the new face of imprisonment in America: immigration prisons along the border in Texas, New Mexico and Arizona.

In the late '90s, and then again after 9/11, new laws were enacted to crack down on illegal immigration. According to Barry, the number of immigrants in the criminal justice system has grown 400 percent in the past four years. This crackdown has led to the growth of immigrant prisons that are owned by local governments but operated by private corporations, financed publicly by tax-exempt bonds and located in remote, depressed communities. Their remote locations makes these prisons and the prisoners invisible to most Americans.

Barry visited 11 prison towns along the border over the course of nine months. His report on how profits, poverty and immigration converge in these prisons is published in the current edition of the Boston Review. Barry has researched immigration for the past 30 years. He's a senior analyst at the Center for International Policy, where he directs the TransBorder Project. He writes the blog Border Lines.

Tom Barry, welcome to FRESH AIR. Many of the people who are in the prisons that you've been investigating are called criminal aliens. What does that mean?

Mr. TOM BARRY (Center for International Policy): Well, there isn't a real precise definition of criminal aliens. The general definition is that these are non-citizens who have committed crimes, either immigrants who are illegal or legal immigrants that have committed crimes. However, the definition - the working definition - has expanded dramatically since 1996, when they added a whole new level of criminal violations that mean that a criminal violation is not only faced criminal consequences for that but then is deported, but more particularly, since 2005, that simple border-crossers, illegal border-crossers, are now criminal aliens and are not just deported - put over the border - but spend time in prison first, before they're deported.

GROSS: What's the logic behind the decision, stemming from 2005, to imprison people who have crossed the border illegally and then deport them, as opposed to just deporting them?

Mr. BARRY: Well, the standard line from the Department of Justice and the Department of Homeland Security is that we're upholding the rule of law, that these people are breaking the law, they need to suffer the consequences. But if you look beyond that, the strategy behind it, they'll say, just as clearly, that this is a strategy of deterrence.

We want to punish these people to send a message, both to them, to their families, to people in Mexico and farther south, that they shouldn't come to the United States because they're going to be imprisoned and imprisoned as long as 20 years. It's generally much less, but if you cross illegally a number of times, you could be in prison for 20 years, simply because you're crossing the border illegally.

GROSS: So is that filling a lot of our prisons now?

Mr. BARRY: Yes. Both Bureau of Prisons and U.S. Marshals Service are complaining that there's a crisis, that they can't find places for all these criminal aliens, that it's growing, that the number of immigrants in the U.S. Marshals Service Prisons and Bureau of Prisons is growing dramatically, 400 percent in the last four years. And to deal with that, what they do is create special prisons for criminal aliens.

They separate them from the general population, and part of the logic of that is that they're separated, and they don't cause any trouble because they're not integrated with the general population. Immigrants have very few connections with lawyers. Generally, they're far away from their families in the United States.

They're taken from states and brought to the far reaches of West Texas. And so they're alone, it doesn't cause problems for the private companies that operate them or for the Bureau of Prisons. It's a very convenient system.

GROSS: So there's basically, like, a new and growing, separate justice system for criminal aliens?

Mr. BARRY: Yes, that's right. There's a separate penal system, certainly. Previously, most immigrants who were picked up for crossing illegally were just put across, back across the border. They were not charged criminally. Now, in the last few years, since they're being charged criminally, they're transferred from the Department of Homeland Security, which is administrative, it doesn't address crime and punishment, to our Department of Justice, which deals with crime and punishment so that increasing numbers of immigrants are - go from ICE, the Department of Homeland Security, to our criminal justice and penal system.

GROSS: So do they have their own lawyers?

Mr. BARRY: They have lawyers. Unlike the immigration system, if you're part of the criminal justice system, that you have a right to a lawyer, you have a right to a court-appointed lawyer. However, they only get one lawyer, and this one lawyer is responsible for as many as 80 immigrants. Actually never talks to these immigrants, has a paralegal come in and write up a little thing, and then he meets them the first time on the day of the conviction and the sentencing.

And they're convicted and sentenced en masse, that I have gone to a number of courts where you have 50, 60, 70 immigrants all being trooped into a courtroom, all in shackles, and all asked if they understand their rights and if they're guilty. And they all reply, in unison, yes, and then they're escorted out of the prison and back to the private prison that they came from. That - we wouldn't treat citizens this way.

GROSS: The people in the prisons that you've been writing about are not just illegal immigrants who have illegally crossed over the border into the United States and are being imprisoned to be later deported; there's also a lot of legal immigrants who are in these prisons. On what grounds are they there?

Mr. BARRY: They're there because since the mid-1990s, there's been written into immigration statutes, something called aggravated felonies. If you are an immigrant, a legal immigrant, and you have been convicted of an aggravated felony, then you are subject to mandatory detention and removal from this country.

The term aggravated felony has nothing to do whether it's aggravated, or little to do with whether it's aggravated or a felony, that these are generally minor charges. And what I have found in the U.S. Marshals Service and Bureau of Prisons - generally, these are small crimes, which - generally drug-possession crimes.

It's up to the discretion of Immigration Customs Enforcement to consider it, or not, an aggravated felony. Most times, they consider any kind of crime that an immigrant does an aggravated felony. Then they're subject to mandatory detention and removal, and this is happening frequently. It's now routine.

GROSS: So are saying basically, like, if you're caught, say, holding a small amount of marijuana, that could be an aggravated felony? If you're a legal immigrant, you could be sent to one of these prisons and deported?

Mr. BARRY: That's right, but it's even worse than that. If, as a young person, you were convicted of drug possession - only convicted. Generally, these people were not sentenced, they didn't serve any time in prison. But if they were convicted, it's on their record, so now as the data systems are now being integrated between the immigration service and the FBI, these records are picked up so that any kind of identification check - whether it be a traffic stop or an airport security or even welfare - that it's discovered that you've had a past conviction. You've been here most of your life - that you can be picked up by immigration and detained and deported. This is happening routinely.

GROSS: So in other words, you'd be deported for a crime that you were already convicted of in the past?

Mr. BARRY: That's right. It's - because of these new laws, starting generally in the mid-1990s, yes, they're retroactive.

GROSS: Is that considered double jeopardy?

Mr. BARRY: It is double jeopardy, yes, but that term is used quite often, and what has happened in the legal community is that they're seeing that this merger of the immigration system and the criminal justice system, it has created new responsibilities for lawyers because lawyers will often say, well, you can plead this case and then, you know, get off, you're not going to serve any time. But if you plead, and it's on your record as a 16-year-old, 17-, 18-year-old boy or girl - that it's on your record - you never served time, and then 10 years later, they'll pick you up and take you away from your family, and you land up in a country you've never been to.

GROSS: If you're just joining us, my guest is Tom Barry, and we're talking about the new prisons along the southwest border of the United States that he's been investigating. And these are prisons that house mostly illegal aliens who have been accused of crossing the border illegally. They also house other immigrants who've been accused of crimes.

He's been writing about how profits, poverty and immigration converge in these prisons. He wrote an article about that for Boston Review. He's a senior analyst at the Center for International Policy, where he directs the TransBorder Project. He also writes the blog Border Lines.

You call the prisons that you've been writing about part of a public-private prison complex, and it's a really unusual and kind of confusing mix of public and private, but one that I think is really important to understand. And you describe this as the new face of imprisonment in America. So I'm going to ask you to explain this public-private relationship in the prisons.

Mr. BARRY: The government, whether it be ICE, the Department of Homeland Security, or U.S. Marshals Service or the Bureau of Prisons, they're not building any new prisons or detention centers. So what they have to do is when they have prisoners - and in this case, an explosion of prisoners that they're getting because of the immigrant crackdown, where to put them - they contract regularly with local governments, particularly in the Southwest, poor, local governments that are interested in prisons as an economic development project.

These local governments have no capacity to run a prison, but they have capacity to raise municipal bonds to construct a prison. And then, in that - when they arrange the financing, and they do this with - in consultation with the private prison industry, then they sub-contract their responsibility to a private prison corporation to operate and manage the prison that they own.

I've talked to wardens, in two different occasions in these prisons, and they didn't know who owned the prison. It's remarkable. And they assume that their company owns the prison, but it's really owned by the county. And in this bizarre labyrinth of contracts and subcontracts, what's lost is accountability, transparency, responsibility. It's very difficult to know who is responsible, and oversight gets lost.

GROSS: Now, the county gets into the prison business because it expects to make a profit by doing that, and maybe to increase employment for its residents, but have the counties been actually making profits? Has this been a profitable enterprise?

Mr. BARRY: Well, I wouldn't call them profits. They're sold as economic development projects. And they're sold by private prison consultants who go around the country. They scour the country for small towns, looking for someone in the town - in many cases in the Southwest, a Texas ranger, a prominent Texas ranger or a sheriff or an economic development guy, and sell that project to him.

He sells it to the county as an economic development project that's going to bring some revenues into the county, generally from one to two dollars per inmate, and jobs that would be created in their town. And they also make all sorts of other promises about indirect benefits, it's going to bring other businesses and so on.

So these counties are desperate. They don't want to raise taxes. They don't have much of a tax base and join this with very little knowledge, and with this very little knowledge, they don't track it. They can't even find the contracts. They don't know how long the financing goes on. They don't know what interest rate it is. And I've gone into the basement of these county courthouses, looking for the contracts with the U.S. Marshals Service or ICE or the Bureau of Contracts. They can't even find the contract.

They kind of wipe their - they feel like it's all going to be taken care of by the private prison companies that have arranged the financing and operate the prisons and then are content to get their dollar to two dollars a day.

GROSS: So is it paying off for the small counties that are taking on these prisons?

Mr. BARRY: Yes and no. They are finding that the cost of these prisons are much higher than they were told, that they have to maintain them, so when the roof goes bad that they're responsible for replacing the roof. When the prisoners are using more water than expected, they have to create new water projects. And nobody is looking at long-term out.

These bonds that finance the prisons are 20 to 25 years at very high interest rates because they're tax exempt and because of something that we hadn't mentioned. These are speculative prisons, meaning there's no contract with the federal government to provide a certain number of prisoners.

So it's a very high cost of financing, and if, as has been the case in a number of counties, the federal government drops out for any number of reasons, then the counties are stuck with a high debt and with lots of costs that they've incurred.

GROSS: One of the problems that you've written about facing the immigrants and illegal aliens in these prisons is that many of them have been transferred thousands of miles from where they were arrested, and that creates a lot of problems both for the prisoner and for the family of the prisoner. Can you describe what those transfers are like and why they're happening?

Mr. BARRY: Well, I asked a warden of one of the prisoners about that, saying that just basic common courtesy to have these people have some contact with their family, with religious workers, with people from the community. And what he said is that, particularly about the issue of being far from home - this was at a prison in New Mexico - these people have left their home. We're in the business of sending them back. And I had pointed out that some of these prisoners were from Maine, from Boston, from New York, and here they were in a very isolated part of New Mexico with no human contact.

So the attitude is that these people have no human rights, in a sense, and have no need for them, and we're happy - they should be happy because we're sending them back to their home.

It is a problem in terms of these transfers because - and it's very common that they transfer - they pick them up everywhere in the country. They have these massive detention centers in prisons along the border, where they're isolated in small communities. They don't have to pay the kind of per diems that they would have to - in major cities, but they have no access to lawyers, no access to family members. It's tragic.

GROSS: And some of these people are people who've been living in the United States for many years. So, like, this has kind of become their home, even if it's not their legal home.

Mr. BARRY: Oh yes, it's - you go to an immigration court, and you'll find - and a common language is Spanish, but maybe a third of immigrants don't speak Spanish - that are being sent back to Mexico or Honduras or El Salvador - have been since they were children, teenagers, and are being sent back to a country that they're familiar with, and so they - all their family members are here.

What I've found is that they're asking to be deported quickly. They're angry. They're frustrated that it's taking so long to get deported. And the reason is not to get back to their home in Mexico or El Salvador but so that they can be deported, as soon as they're deported to come back to the United States, where their wives are, their children, their husbands.

And so with all the security measures, all the penalties, all the imprisonment - they feel that they have no choice because their lives are here. Their families are here. Their livelihood is here in the United States.

GROSS: Are families told when one of their family members is being transferred from a local prison to a prison hundreds or thousands of miles away?

Mr. BARRY: No. The inmates themselves are not told. They're rounded up in - generally, oftentimes at night. They're put into buses. They don't know where they're going. They don't know why they're going, and their lawyers are not told. Their family members are not told.

Within the U.S. Marshals Service system, that's very difficult because there is no way to find a prisoner. ICE is trying to do something to have a locator system so that you can find out where your loved one is, but what the U.S. Marshals Service, that's not the case.

So they can be sent from East Coast, West Coast, and land up in what is commonly by the cities who - the cities and counties who own these prisons call the middle of nowhere. And they don't even know who is holding them, which is really fascinating because their experience - the people who are holding them are private security companies who transport them.

They go to a private prison with the flag of the major prison corporation flying above that. The guards wear uniforms with the insignia of these private prison corporations, and it's possible that they can be transferred not only within the same system - say the system of Department of Homeland Security will transfer them, and they have a - the Department of Homeland Security even has a term that I guess they thought humorous, Operation Reservation Guaranteed. So that if they pick up someone, and they feel like they don't have a place for them in a facility, detention center in Virginia, they will transfer them, at our expense, to a detention center in West Texas or New Mexico or California -and not considering any expense, just to make sure that that person has what they call a bed - this Operation Reservation Guaranteed.

GROSS: This is FRESH AIR. I'm Terry Gross back with Tom Barry. We're talking about what he describes as the new face of imprisonment in America: Immigrations prisons along the border in Texas, New Mexico and Arizona. These prisons are owned by local governments but operated by private corporations. Barry's article on how profits, poverty and immigration converge in these prisons is in the current edition of Boston Review. He's a Senior Analyst at the Center for International Policy where he directs the TransBorder Project.

What have you learned about conditions inside these prisons?

Mr. BARRY: I started out looking just at the infrastructure of these prisons just to figure out how this outsourcing system worked. So I was in this town of Pecos looking - trying to find the contracts that set up the prisons with, in this case, the Bureau of Prisons with the county. And the county clerk didn't have it. She's saying she doesn't know where the contract is. So I'm just going through all the filing cabinets there.

She says, well, if you ever find it, let me know. But just at that time, there was another riot and she was saying that the prison is burning again. And it was that case, that riot in Pecos, a town in West Texas that got me more interested in the conditions inside the prison, particularly, the case of one man, Jesus Manuel Galindo, who died. And the riot there was basically a solidarity demonstration by other prisoners who were saying that we can not take these kind of medical conditions any longer.

And what those conditions are is that they didn't - they have no infirmary and this is a prison for 3,700 criminal aliens. None of them are violent. Most of them are there in immigration violations. There's no infirmary. If people like Jesus had a medical problem, he's put under observation. But since there's no infirmary, he's put in solitary where there's supposedly observation. It's called the Secure Housing Unit, and in that Secure Housing Unit, a guard is supposed to pass by every 30 minutes. And according to his mom and his dad and his brother who I've talked to, that did not happen. He was not getting his proper medication and he was concerned that he was going to die. He was afraid. And the letters he wrote in the last four days...

GROSS: Well, he had an underlying medical condition.

Mr. BARRY: Yes. Yes. He had severe epilepsy, as the prison knew. His mother repeatedly called the prison and insisted that he get this medication. The prison in this case - the GEO Group, which ran the prison, was not giving him that medication and he was, as he described in the letter, you know, I'm all beat up and this is from thrashing around in epileptic seizures. But they put him in there because of observation.

When he was - and this was, you know, actually it was about a year ago and he thought that he was going to be out. He told his mom he would be out on December 12th, because that's what he was told and that's what he sort of believed. And December 12th was the anniversary of the Lady of Guadalupe, who many of the Mexican prisoners is a national saint, a patron. And he thought that he'd get out that day. It turned out that he died on the morning of December 12th.

The prison didn't find him until five hours after he had died and they took him out in a body bag and that's when the other prisoners revolted. And it wasn't because they were demanding something for themselves or they just were so outraged that these conditions exist, that someone who has a severe medical condition was put into solitary, which is commonly called the hole by the inmates.

GROSS: So if I understand what you're saying correctly, he was put into solitary because he had a medical condition that needed to be monitored but it wasn't monitored in solitary so he died there.

Mr. BARRY: That's right. That's exactly right. And there was no alternative in terms of medical observation because the prison did not have one. Now that there was a riot, that the Bureau of Prisons and the county, which owns the prison, and GEO Group, which operates the prison, is going to put an infirmary in. And actually, they all talked about could they get away with not putting in an infirmary and the county judge just said well, this is why we had all the problems in the first place. These guys were sick. They did nothing wrong. They rioted because they were put into solitary. We have to do something about this.

GROSS: Many of the prisons you've been investigating along the southwest border of the United States are run by two of the biggest private prison companies in America: CCA, which the Corrections Corporation of America, and the GEO Group. Tell us something about these two companies.

Mr. BARRY: Well, private prisons didn't always exist in the United States. In the 1980s, both of these companies got their start through what was then the Immigration and Naturalization Service taking care of immigrants, that they got contracts from the Reagan administration to hold immigrants and from there their private prison business grew.

And then in the late 1990s, when they had built many speculative prisons and were finding that they were not enough - that the crime rates were not as high as they had hoped and the federal government came in and with the Bureau of Prisons and the U.S. Marshal Service, previously it was just the Immigration Service contracted them sometimes with county government, sometimes directly, to build new prisons for immigrants. And that really solved the big financial crisis that they were facing. Their stock was plummeting then. In the last eight years, they've experienced record profits because of this continued flow - rising flow of immigrants from these three agencies that we've talked about. It is - 40 to 45 percent of their business is outsourcing - holding outsourced immigrants.

GROSS: And the GEO Group, one of the companies that you're talking about, they used to be Wackenhut. Wackenhut used to do a lot of private security.

Mr. BARRY: That's right. They were doing private security in the '80s and then they got into the private prison business. Wackenhut still exists but it's apart from GEO and Wackenhut is another corporation that figures into this mix. So a prisoner will generally have been - be transported by Wackenhut.

Wackenhut is a major contractor for the Department of Homeland Security and the Department of Justice.

You see - all over the Southwest you see their buses everywhere transporting prisoners. And these are the people, as we talked earlier about the transfers, who handle all these transfers that are done for no rhyme or reason. Generally, because they want them in a place that is more remote, is logistically better, near the border that they can eventually deport them and are in a prison with all other criminal aliens.

GROSS: Some people will know the name Wackenhut because they do a lot of private security. Some people will recognize the name Wackenhut because it was Wackenhut employees who were hired to guard the embassy in Afghanistan and were later - there were photos discovered of them drunk and, as I recall, in sexual poses. So did that have repercussions for the part of Wackenhut that deals with transporting prisoners? Did that call into question the reliability or professionalism of a company?

Mr. BARRY: No. The follow-up question is why not? I don't know. There is very little oversight that they keep on renewing these contracts despite major abuses. And yes, Wackenhut is part of ArmorGroup - does guard that embassy and there were those problems. But these problems are not particular to the Afghanistan - that there are problems throughout this prison system of having low-paid, generally, correctional security officers responsible for this with very little training, very little professionalism, and that you see abuses. In fact, we're talking about the prison in Pecos that in the last six months, more than a dozen of the correctional staff have been indicted for various crimes of bringing in drugs or other illegal items into the prison.

GROSS: What questions do you think we should be asking ourselves as a society about the new laws for legal and illegal aliens and the prisons that hold people who are convicted of breaking those laws?

Mr. BARRY: Back in the late 1990s, we created the Office of Federal Detention Trustee that was supposed to coordinate all this detention and look out for abuses, provide oversight. That has not happened since after - soon after this was created. The Department of Homeland Security was created and that whole system fell apart.

So the questions that I'm asking, the questions that many are asking were being asked in the 1990s and we came up with a solution and it never took effect. I think a major question too is the cost. We're spending as a country \$4 billion just in the detention and imprisonment of non-violent immigrants who are convicted mainly of immigration violations. Is this the way - a good way to spend our money? And then what happens to the families of these immigrants who are taken away from communities and their family life? That - it's very destructive.

So there's an economic impact there. I think economic questions need to be asked and they're not being asked. Because when it comes to immigrants, every year the budget for Department of Justice and Homeland Security rises for immigrant crackdown issues. Can we afford this? Is it good for our nation?

GROSS: Well, Tom Barry, I want to thank you very much for joining us. I know you had to drive through a lot of snow and wind to get from your home to the studio of KTEP in El Paso where you spoke to us from. I want to thank you for the effort. Thank you for sharing your reporting with us.

Mr. BARRY: Thanks, Terry. And thanks for being interested in this issue. I appreciate it.

GROSS: Tom Barry is a Senior Analyst at the Center for Immigration Policy where he directs the TransBorder Project. He writes the blog "Border Lines." His article on immigration prisons is in the current edition of Boston Review.