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THE LOST CHILDREN

What do tougher detention policies mean for illegal immigrant families?

by Margaret Talbot

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Half the detainees at the T. Don Hutto Residential Center, a privately run prison in Texas, are children.

In the summer of 1995, an Iranian man named Majid Yourdkhani allowed a friend to photocopy pages from “The Satanic Verses,” the Salman Rushdie novel, at the small print shop that he owned in Tehran. Government agents arrested the friend and came looking for Majid, who secretly crossed the border to Turkey and then flew to Canada. In his haste, Majid was forced to leave behind his wife, Masomeh; for months afterward, Iranian government agents phoned her and said things like “If you aren’t divorcing him, then you are supporting him, and we will therefore arrest you and torture you.” That October, Masomeh also escaped from Iran and joined Majid in Toronto, where they lived for ten years. Majid worked in a pizza place, Masomeh in a coffee shop. She dressed and acted the way she liked—she is blond and pretty and partial to bright clothes and makeup, which she could never wear in public in Iran—and for a long time the Yourdkhanis felt they were safe from politics and the past. Their son, Kevin, was born in Toronto, in 1997, a Canadian citizen. He grew into a happy, affectionate kid, tall and sturdy with a shock of dark hair. He liked math and social studies, developed asthma but dealt with it, and shared with his mom a taste for goofy comedies, such as the “Mr. Bean” movies. In December, 2005, however, the Yourdkhanis learned that the Canadian government had denied their application for political asylum, and Majid, Masomeh, and Kevin were deported to Iran.

Upon their return, the Yourdkhanis say, Masomeh was imprisoned for a month, and Majid for six, and during that time he was beaten and tortured. After Majid was released, the family paid a smuggler twenty thousand dollars to procure false documents and arrange a series of flights that would return them to Canada.

Then, on the last leg of the journey, the family ran into someone else's bad luck. On February 4, 2007, during a flight from Georgetown, Guyana, to Toronto, a passenger had a heart attack and died, and the plane was forced to make an unscheduled stop in Puerto Rico. American immigration officials there ascertained that the Yourdkhanis' travel documents were fake. The Yourdkhanis begged to be allowed to continue on to Canada, but they were told that if they wanted asylum they would have to apply for it in the United States. They did so, and, five days later, became part of one of the more peculiar, and contested, recent experiments in American immigration policy. They were locked inside a former medium-security prison in a desolate patch of rural Texas: the T. Don Hutto Residential Center.

Hutto is one of two immigrant-detention facilities in America that house families—the other is in Berks County, Pennsylvania—and is the only one owned and run by a private prison company. The detention of immigrants is the fastest-growing form of incarceration in this country, and, with the support of the Bush Administration, it is becoming a lucrative business. At the end of 2006, some fourteen thousand people were in government custody for immigration-law violations, in a patchwork of detention arrangements, including space rented out by hundreds of local and state jails, and seven freestanding facilities run by private contractors. This number was up by seventy-nine per cent from the previous year, an increase that can be attributed, in large part, to the actions of Michael Chertoff, the Secretary of the Department of Homeland Security, which runs the Immigration and Customs Enforcement division. In 2005, Chertoff announced the end of "catch-and-release"—the long-standing practice of allowing immigrants caught without legal documents to remain free inside the country while they waited for an appearance in court. Since these illegal immigrants weren't monitored in any way, the rate of no-shows was predictably high, and the practice inflamed anti-immigrant sentiment.

Private companies began making inroads into the detention business in the nineteen-eighties, when the idea was in vogue that almost any private operation was inherently more efficient than a government one. The largest firm, Corrections Corporation of America, or C.C.A., was founded in 1983. But poor management and a series of well-publicized troubles—including riots at and escapes from prisons run by C.C.A.—dampened the initial excitement. In the nineties, C.C.A.'s bid to take over the entire prison system of Tennessee, where the company is based, failed; state legislators had grown skeptical. By the end of 2000, C.C.A.'s stock had hit an all-time low. When immigration detention started its precipitate climb following 9/11, private prison companies eagerly offered their empty beds, and the industry was revitalized.

One complication was that hundreds of children were among the immigrant detainees. Typically, kids had been sent to shelters, which allowed them to attend school, while parents were held at closed facilities. Nobody thought that it was good policy to separate parents from children—not immigration officials, not immigrant advocates, not Congress. In 2005, a report by the House Appropriations Committee expressed concern about "reports that children apprehended by D.H.S."—the Department of Homeland Security—"even as young as nursing infants, are being separated from their parents and placed in shelters." The committee also declared that children should not be placed in government custody unless their welfare was in question, and added that the Department of Homeland Security should "release families or use alternatives to detention" whenever possible. The report recommended a new alternative to detention known as the Intensive Supervision Appearance Program—which allows people awaiting disposition of their immigration cases to be released into the community, provided that they are closely tracked by means such as electronic monitoring bracelets, curfews, and regular contact with a caseworker. The government has since established pilot programs in twelve cities, and reports that more than ninety per cent of the people enrolled in them show up for their court dates. The immigration agency could have made a priority of putting families, especially asylum seekers, into such programs. Instead, it chose to house families in Hutto, which is owned and run by C.C.A. Families would be kept together, but it would mean they were incarcerated together.

When the Yourdkhanis were sent to Hutto last winter, the facility had been open for nine months, but few Americans knew of its existence. Hutto is in Taylor, Texas, a town of seventeen thousand, forty miles northeast of Austin, with a lot of boarded-up businesses on its main streets. A National Guard recruiting station is on the eastern side of town; a place that offers concealed-weapons training is at the opposite end. Hutto has more than five hundred beds, though the population fluctuates, and the facility appears never to have been at full capacity; about half the detainees are children. At the time the Yourdkhanis got there, many of the four hundred or so detainees were from Latin-American countries (these did not include Mexico, because Mexicans caught without documents are automatically sent home), and some of those were people who had come to the United States for economic reasons; that is, they were the kind of undocumented immigrants that most people probably think of when they hear of immigrants being rounded up somewhere in Texas. But a substantial number of the families were asylum seekers—people from Iraq, Somalia, Iran, Romania. Like the Yourdkhanis, they were people who said

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hat they had been persecuted in their home countries, and many of them had passed the first test for achieving asylum in the United States—a so-called “credible fear” interview. None had criminal records.

The Yourdkhanis, upon arriving at Hutto, saw a white concrete complex with slit-shaped windows, surrounded by double fencing topped by rolls of razor wire. A shadeless exercise yard was ringed by floodlights. Across the street was a railroad track where freight trains frequently idled, cutting off the facility from the rest of Taylor. Families were placed in former inmate cells. Each cell had a twin bed or a bunk bed with a thin mattress, a small metal or porcelain sink, and an exposed toilet. Generally, mothers and very young children stayed together in one cell, fathers in a separate cell, and older children in another. Husbands and wives were not allowed to visit each other’s cells. Masomeh told me, “For three days, Majid had a fever, and I wasn’t allowed to go to in and ask, ‘How are you?’ ” The cell doors were metal, and each had a window two inches wide; the floor and walls were bare, except for a shatterproof acrylic mirror. Doors were to remain open during the day, but they were wired with laser-detection alarms that were triggered when anyone came or went at night. A 2007 report by two advocacy groups—the Lutheran Immigration and Refugee Service and the Women’s Commission for Refugee Women and Children—noted that if a child sleeping in a separate cell woke up at night and went looking for his parents the alarm would sound, and only C.C.A. staff members were allowed to respond.

The guards at Hutto conducted as many as seven head counts a day, during which all detainees, even toddlers, were supposed to remain in place, usually by their beds, for as long as it took to complete the count. In practice, this meant that detainees might be in their cells twelve hours a day. (When head counts were not taking place, detainees could assemble in the common area within their “pod” of cells, where there were couches and two televisions.) Last March, an immigration lawyer named Griselda Ponce testified before the U.S. District Court in Austin about conditions at Hutto, and told of an occasion when the five- or six-year-old daughter of a woman she was interviewing had to go to the rest room. The captain on duty told the girl that she could not do so during a head count. Ponce said that the girl made “six or seven requests,” and was rebuffed each time; after about fifteen minutes, the girl “smelled of urine.”

No contact visits were allowed at Hutto—relatives had to sit behind Plexiglas partitions and talk through phones in the old prison visiting room. In any case, few relatives visited, since Hutto was so far from where most of them lived. Dekka Warsame, a Somali woman, was detained at Hutto for four months, along with her three children. Her mother and a sister lived in Columbus, Ohio, but she told her lawyer that, even if her family could have come to Texas, she would have been ashamed to have them see her looking like a criminal, “trapped behind Plexiglas.” If detainees had an attorney, as Warsame did, the attorney could talk to them without a partition. During such conferences, children were required to stay by their parents’ side. The governing idea of Hutto was that detainees would constantly supervise their children—as a result, it wasn’t deemed a child-care facility, and required no relevant licensing. But this also meant that children had to be in the same room even when, say, their parents recounted stories of torture, rape, or domestic abuse. Barbara Hines, a law professor who runs an immigration clinic at the University of Texas, in Austin, and who was one of the first legal representatives to see detainees at Hutto, began bringing crayons and markers with her, hoping to distract the kids.

Children were regularly woken up at night by guards shining lights into their cells. They were roused each morning at five-thirty. Kids were not allowed to have stuffed animals, crayons, pencils, or pens in their cells. And they were not allowed to take the pictures they had made back to their cells and hang them up. When Hutto opened as an immigration-detention center, children attended school there only one hour a day. Detainees, including children, wore green or blue prison-issue scrubs. In November, 2006, Krista Gregory, who lives in Austin and works with church groups there, got a call from a couple of Hutto employees who, she says, were unhappy about the lack of supplies for child detainees. Gregory arranged for local churches to donate toys, baby blankets, and Bibles.

Staff members, who wore police-type uniforms, were mostly people who had backgrounds in corrections rather than in child welfare. Detainees said that when parents or children broke rules guards threatened them with separation from their children. Kevin Yourdkhani, at the prompting of one of Hines’s law students, wrote a brief description of one such occasion. “I was in my bed and my dad came to fix my bed,” he wrote. “When the police came and saw my dad in the room, he said, ‘If He comes and see my dad again in my room His going to put my mom in a siprate jail and my dad in a sipate jail and me a foster kid.’ I cried and cried so much that I lost my energy. I went to sleep. I felt If I will be siprated I can never see my parents again, and I will get stepparents and they will hurt me or maybe they will kill me.”

Michelle Brané, an advocate with the Women’s Commission for Refugee Women and Children, managed to get a tour of Hutto in December, 2006. Describing the facility as “an incredibly punitive-feeling place,” she said, “People there told us that children were being punished for normal kid stuff—running around, making noise, tantrums. I have a two- and four-year-old at home, and I kept thinking, How would I manage in here keeping them under control? The shocking thing is

that the people running it didn't realize any of that. I think they thought it was a great place.”

Majid Yourdkhani told me that he and his wife felt as though they had “disappeared into a black hole. We'd ask the officers, ‘What's our future here? What's going to happen to us? What do we need to do?’ We'd ask, and nobody could tell us.” That feeling of having disappeared wasn't entirely irrational. Getting information about Hutto—especially from the people who run it—is hard. Private prison companies are not subject to the same legal requirements as public prisons to provide incident reports on assaults, escapes, deaths, or rapes. It's true that a company's contract stipulates that it must report such incidents to the government agency for which it is a vendor, and people seeking information about what goes on inside a private prison can submit a Freedom of Information Act request to the government agency. But this can be an exercise in frustration, as Judith Greene, a researcher who is a critic of private prisons, found out. Several years ago, she and a colleague, Joshua Miller, were doing research on a new prison in California City, California, that was to be operated by C.C.A. for the federal Bureau of Prisons. According to Greene, before awarding the contract the bureau had signalled that the government would not delegate to a private company the legal authority to use force against inmates. Greene and Miller wondered how this would work in practice. In a Freedom of Information Act request, Greene asked for documents that might shed light on this question. Eventually, she recalls, she heard from the Bureau of Prisons that it was prepared to give her the information but had to get permission from C.C.A.; a second letter informed her that C.C.A. had said no, claiming that the information she sought about the use of force was a business secret. Greene told me, “Prisons in general are to a great extent secretive, isolated places, but if you're dealing with private prisons you've got an additional layer to penetrate in order to find out essential facts and figures. And government agencies seem to give a lot of the decision-making to the private companies when it comes to what to reveal.” A bill now pending in Congress would, for the first time, make private prisons as accountable about their daily operations as public ones.

It's easier to gain access to the death-row section of most publicly run prisons than it is to get into Hutto, unless you are a detainee or an employee of C.C.A. Even Jorge Bustamante, a sociologist and a former Nobel Peace Prize nominee, who is the U.N. Special Rapporteur on Human Rights of Migrants, was denied access to Hutto. From Geneva, he had applied to visit, as part of a tour that he was making of immigration-detention facilities in the U.S, and permission was granted. But when he arrived in America, last May, Bustamante was told that permission had been revoked. Bustamante remains angry about the incident, and says he will mention it in a report that he plans to submit to the General Assembly this month. For my part, I got no response to repeated requests to tour the facility, which were sent by phone and fax to Evelyn Hernandez, the administrator of Hutto. (She also refused multiple requests to speak on the phone, as did top officials at C.C.A.) Two weeks after I submitted questions in writing to C.C.A. officials, I did receive some answers. Steven Owen, a spokesman for the corporation, wrote that “C.C.A. always strives to provide humane, safe and secure housing to the populations entrusted to our care in accordance with applicable laws and the expectations of our customers. We are proud of the company's 25-year track record.” No reporters have been admitted on any occasion since a single-day group media tour, in February, 2007. Currently, the only way to see the inside of Hutto is to watch an intermittently blurry video available on YouTube, evidently filmed by immigration officials and later posted by a blogger. It shows kids and adults in blue and green scrubs walking down fluorescent-lit halls and eating food from plastic trays. There are brief shots of a prison cell outfitted with a crib and of a man lying on a couch, his wrist encircled by a bright-blue I.D. bracelet. Another sequence shows kids outside their cells, learning the alphabet song. The footage has no sound.

Last March, the A.C.L.U., along with the immigration-law clinic at the University of Texas and the law firm LeBoeuf, Lamb, Greene & MacRae, brought suit against Homeland Security Secretary Michael Chertoff and the immigration officials who oversee Hutto. The suit said that conditions at Hutto violated a 1997 legal settlement that grew out of a Supreme Court case known as *Flores v. Reno*, which centered on the detention of minors who had arrived in the U.S. unaccompanied by an adult. The settlement called for minors in immigration custody to be released to family members or appointed custodians whenever possible, and ordered that children in detention be placed in the “least restrictive” setting available. Kevin Yourdkhani was among the twenty-six children named as plaintiffs in the A.C.L.U. case. In a statement for the U.S. District Court in Austin, his mother said of conditions at Hutto, “Majid and I cannot be good parents. We cannot provide Kevin with the basic things that he needs. . . . We cannot give him a pen to write with or any books to read. We cannot teach him about the outside world or let him run around, the way young boys should. We are totally helpless as parents and depend on the guards for everything.” Her family, she said, “is falling apart in here.”

The A.C.L.U. commissioned a psychiatrist to investigate conditions at Hutto, and, not surprisingly, the resulting report documented depression and fearfulness among children housed there, and predicted that, until the facility overhauled its “policies and procedures beyond recognition” and replaced its “current (correctional) staff,” it would not be appropriate for

children. More surprising, a psychiatric report commissioned by the government defendants also questioned the “authoritarian milieu fostered by this excessive number of security personnel,” and criticized an atmosphere “capable of contributing to the development of unnecessary anxiety and stress for these children.” The report’s author, Richard Pesikoff, a professor of psychiatry at Baylor College of Medicine, concluded that it was “essential” to make changes at Hutto, in order to protect the mental health of the children.

Kevin, it must be said, was lucky. The plaintiffs’ lawyers soon figured out that the crayons and markers they had brought in to occupy the kids while they talked to their parents could also be politically useful. They were particularly so in the hands of articulate, indignant Kevin. One day, Kevin drew an American flag and wrote “Pleace help us” inside one of the stripes. He drew a picture of his common area, with sofas, tables, “police,” and “camra.” And he wrote a letter to Stephen Harper, the Canadian Prime Minister, in a rainbow of colors: “Dear Mr. Priminster Harper, I don’t like to stay in this jail. I’m only nine years old. I want to go to my school in Canada. I’m sleeping beside the wall. Please Mr. Priminster haper give visa for my family. This Place is not good for me. I want to get out of the cell.” One of the University of Texas law students, Matthew Pizzo, placed Kevin’s handiwork in his satchel, and Barbara Hines later mailed it to journalists in Canada. Newspapers and bloggers there started covering Kevin’s story. Sometime around then, Hines recalls, she and her students were told by Hutto officials that they could no longer bring in crayons and markers.

After six weeks at Hutto, the Yourdkhanis were released, and the Canadian government offered them temporary resident permits. Students at Hines’s immigration clinic found the family a new lawyer in Toronto. The Yourdkhanis are now awaiting the outcome of a “humanitarian and compassionate” application for permanent residence, and their lawyer expects the process to be resolved by the end of the year. Majid is working at a restaurant; Masomeh is at home for the time being. In November, when I visited the Yourdkhanis in their high-rise apartment in Toronto, Kevin was excited about a new aquarium that his parents had bought for him. He had taken the bus home after school, grabbed an ice-cream bar out of the freezer, and was sprawled on the couch in shorts and a Darth Vader T-shirt, answering his parents’ questions about a field trip that his class had taken that day. He told me that he tried not to think about Hutto, but said, “It was horrible in there. People should be free, especially kids.” He said that he had given some thought to what he would do if anybody tried to take him away from Canada now. “I’d glue my foot to the ground,” he said. “And they’d have to cut me out of the ground. They’d have to take the cement with me!”

Immigration officials have said that, before the A.C.L.U. lawsuit, the average length of detention at Hutto was about fifty days. For some families, however, the stays were much longer. Liliam Restrepo, a thirty-six-year-old Colombian woman, was detained at Hutto, along with her ten- and twelve-year-old daughters, Paola and Andrea, for nearly a year. In Colombia, she was an activist with the Partido Liberal Colombiano, and says that she had to leave because of threats from paramilitaries. She now lives in a cramped one-bedroom walkup in South Boston, where she cleans houses for a living, and is awaiting an appeal on her asylum claim. She told me that children come out of Hutto with “a mind-set, a feeling they can’t forget. It’s bad for adults, but it’s worse for children. My kids play these games—they still do—where they are arresting people. My one daughter, she is afraid now of the police. She doesn’t want to walk by the police station at the end of our street. They have been trying to adapt to the life of freedom here, but it is difficult, because they unconsciously still feel they are detained. They can’t stop thinking and talking about prison.” Restrepo, a slim woman with long dark hair, was wearing a neatly pressed Corona Extra T-shirt and tiny gold hoop earrings. At her small, rickety kitchen table, she sat with her hands folded in her lap. The linoleum was cracked and worn, but somebody had tacked on the wall a calendar from a Chinese restaurant and an incongruous print of a couple of plummy-looking golfers on a lush green set of links. Life was clearly tough for Restrepo, but she was still glad to be out of Hutto. So were her daughters. Andrea recalled having to take a group shower with other kids, and being embarrassed; guards, she said, shouted at kids for running or making noise. What she missed most, she said, was “just being able to breathe real air.” The facility has an indoor gym, but when the Restrepos were at Hutto there were days at a stretch when kids were not allowed outside.

Salwan Komo, an Iraqi refugee who belongs to the Chaldean Christian minority, was confined in Hutto for more than five months, along with his wife, Neven, and their baby daughter, Miryam. Komo had a sister living legally in Detroit, and his wife had an aunt and a brother who were living in San Diego. In Iraq, Chaldean Christians have been subject to persecution and killings by Muslim extremists. The Komos had stopped going to church there and feared for their lives; most of the family had fled to Syria, where it had become increasingly expensive for Iraqi refugees to live and employment was nearly impossible to find. The Komos had tried, they said, to come to America the right way. They had presented themselves to the guards at the Mexican border in Southern California, and said that they were seeking asylum. Neven put it this way: “We came to the door, we—how do you say?—asked to come into your house.” If they had paid a smuggler and snuck into

America, she noted, they probably would have avoided detention in Hutto.

In December, I met with the Komos in the immaculate little apartment where they now live, in El Cajon, near San Diego. It was a neighborhood of modest ranch houses and Spanish-style courtyard apartments, bejewelled with Christmas lights. Outside, the wind played punching bag with the giant inflatable polar bears and the manger scenes on the neatly tended front lawns. Inside, eighteen-month-old Miryam, in pink sweatpants and pigtails, was dancing to the Arabic-language music videos on a flat-screen TV, brandishing a cookie in one hand and a toy cell phone in the other. Komo explained that the family had recently been granted asylum, and that he now had a good job installing air-conditioning and heating units. Unlike the Yourdkhanis, he didn't think Hutto should be shut down—the government might need to put people there for short stays. “But if you have family and they can sign for you, they should let you leave,” he said. “You know, the baby was only a few months old. She was too small for a place like this. At five-thirty in the morning, they push open the door—*boom, boom, boom*.”

We told them, ‘Don't knock like this, please.’ During the day, she need to nap. It was noisy. My wife close the door, but then they come—they call the captain and they make problems for us. We say, ‘Can we get some different food for her? She won't eat this.’ They say, ‘If you don't like the food here, go back to your country.’ But we didn't come here for the food—we had food. We come here for the safety. I say, ‘I'll bring you the money. But when I'm in the jail I can't do anything for my family.’ For two weeks, maybe one month, it's O.K., but not for five months, nine days.”

Matthew Pizzo, the University of Texas law student, made a ritual of taking families to Wal-Mart when they were released. He says that Neven cried when she saw all the goods you could buy there. Pizzo remembers minding a three-year-old Iraqi girl as she played in the toy aisle while her parents bought clothes and baby food. A father with his own little girl asked Pizzo, “How old is your daughter?” Before thinking how the answer would sound to a stranger, Pizzo explained, “Oh, I'm not her father—I'm her attorney.”

Last August, the A.C.L.U. settled its suit against the government. The agreement entails a number of changes at Hutto, including eliminating the head-count system, providing pajamas for children, letting kids keep a limited number of toys in their room during the day, making a priority of hiring people with experience in child welfare, and installing curtains around the toilets. In the months before the lawsuit was settled, Hutto had already started making changes: it got rid of the razor wire; expanded the length of educational instruction, first to four, then to seven hours a day; and began allowing detainees to wear their own clothes. Yet it seems unlikely that these changes would have been made without pressure from the A.C.L.U. lawsuit and from advocates like Barbara Hines and her students. The settlement also aimed to get people out of detention faster and stipulated that families at Hutto have their cases reviewed every thirty days, to determine if they could be released on parole or on bond.

Vanita Gupta, a staff attorney for the A.C.L.U. and the lead counsel on the Hutto case, says that she didn't think the government would agree to close Hutto down, so the settlement was the next best option. “We are very proud of it,” she says of the settlement. “We fought for every word, tooth and nail. But at the end of the day do I feel detention is appropriate for children? No. The settlement forced the government to make tremendous changes, but these are still prison walls.”

The A.C.L.U. and the plaintiffs in the case—all of whom Hutto released after the suit was filed—could, perhaps, also count as a victory a written statement made by Julie Myers, the new assistant secretary for Immigration and Customs Enforcement with the D.H.S., during her confirmation process last fall. Detaining families would continue to be an important part of the agency's operations, she wrote—indeed, the effort would likely be expanded—but “the physical structure of Hutto—a former prison—will not be used as the model for future facilities.”

It's clear that Hutto is now a very different, and more humane, place than it was before the lawsuit. But, Gupta says, “it shouldn't have taken the A.C.L.U. to make the government realize that holding innocent children in a converted medium-security adult prison is a bad idea.”

Why did the government turn to a former prison in the first place? It wasn't the most cost-effective option. C.C.A. charges the government nearly thirty-four million dollars a year to run the facility. And whereas close supervision of a released immigrant costs only about twelve dollars a day, incarcerating one costs about sixty-one, according to a 2000 study by the Vera Institute of Justice, a nonprofit organization based in New York. It is clear that the government knew almost from Hutto's inception that there were problems there. Last March, federal immigration officials found many “deficiencies” at Hutto, including inadequate sanitation and the lack of an immunization program for children—chicken pox had broken out. (Parents, the report noted, were afraid to tell Hutto officials when they found rashes on their children, because they thought it would prevent them from being released.) The inspectors said that C.C.A.'s “overall attitude is of disinterest and

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omplacency,” and concluded that the “overall review of the facility can accurately be rated as deficient.” This evaluation was issued months after demonstrators from local immigrant-advocate groups had started holding vigils outside Hutto, in December, 2006, attracting coverage by local news outlets.

A separate internal memo, which was obtained by the A.C.L.U., expressed particular concern about the high turnover among employees at Hutto. The memo’s author, whose name is redacted, complains about how hard it was to get straight answers from C.C.A. about staffing. (“Approximately five requests were made.”) The memo goes on to report that, of the three hundred and thirty-eight employees who had been hired since Hutto opened, in May, 2006, two hundred and three had quit or been fired by March, 2007. That meant that “the average length of employment for the 170 critical positions of detention officer, program facilitator, correctional officer, and case manager is 3.01 months. C.C.A. is losing staff as quick as they can hire them.” The memo blames low pay—C.C.A. pays new employees \$10.22 an hour, versus the county standard of \$14.36. (In general, private prison companies pay considerably less than public prisons.) The memo continues, “Unfortunately, the caliber of some employees at the T. Don Hutto facility is not as high as it should be considering the nature of business that is required in managing a family residential detention facility.”

There is evidence that some immigration officials were skeptical about Hutto even before inspectors observed it in action. In August, several of the attorneys for the plaintiffs received a copy of a memo from someone who wanted to remain anonymous but who claimed to work in the Immigration and Customs Enforcement field office in San Antonio. The memo, which the letter writer said had been composed by senior staff in the office before Hutto was reopened, concluded that it would be a poor choice for a family-detention center. For one thing, Hutto was a “hard” detention facility, with cells and bars and barbed wire. For another, the town of Taylor had “a minimal Hispanic population. This would make it difficult to obtain Spanish-speaking community members to provide religious, social, medical, educational services.” The memo also observed, with striking cynicism, that Taylor was too close to Austin, which had nonprofit and community organizations that “have typically been very strong advocates for immigrants.” (This observation proved prophetic—it was Austin immigrant advocates, such as the students in Barbara Hines’s clinic, who exposed the problems at Hutto.)

U.S. District Court Judge Sam Sparks, a sixty-eight-year-old lifelong Texan, presided over the A.C.L.U. case. He is not a typical Austin liberal. He is the grandson and great-grandson of county sheriffs, and was appointed to the federal bench by George H. W. Bush. At the first hearing about Hutto, on March 20, 2007, he sounded irascible. More than once, he made the point that the immigrants housed at Hutto had intentionally broken U.S. laws by coming here without a visa. He admonished Gupta, the lead A.C.L.U. attorney, “Take the cotton out of your ears.” Yet, as Judge Sparks listened to testimony, he grew increasingly critical of the government. When he learned that children were required to be in the room even when their parents were sharing brutal stories with lawyers, he snapped at the government’s attorney, Victor Lawrence, saying that the rule “best not apply tomorrow.” Lawrence assured him that improvements had been made at Hutto, and would continue to be made. Sparks responded, “Why did there have to be changes in the first place? I mean, this is detention. This isn’t the penitentiary. Even in the penitentiary, the lawyers can see their clients one-on-one, and do not have to speak in front of children!” Lawrence said, “Your Honor, you know, part of this is the novelty of the facility itself. It’s a family detention center.” Sparks replied, “That’s right. And the government didn’t see fit to issue any regulations. The government hadn’t seen fit to go back into the Flores settlement for modification.”

The government argued that the 1997 Flores settlement applied only to unaccompanied minors coming illegally to the United States, and not to minors who entered the country with their parents. Even so, Judge Sparks implied, the government would have to establish clear rules for how to detain families safely and humanely. And although officials at Hutto might be making changes now, he noted, didn’t Lawrence have a feeling it was merely because the defendants knew, on account of the lawsuit, that “the hammer was coming down?” He said that he was beginning to wonder who was in charge “out there, either C.C.A. or the government. It’s very troubling to me.”

Lawrence returned to the government’s fundamental argument that the most important goal was to keep immigrant families together, and that Hutto had succeeded in that goal. As he put it, “It makes common sense to everybody in this courtroom that that’s a good thing—as opposed to separating them.”

Judge Sparks replied, “But it would not be a good idea for them to hog-tie them and hang them up in lockers while they did it.” Admitting that he was talking more like a lawyer than a judge, he added, “The truth of the matter is there are ways to do it that are right and there are ways to do it that are wrong.”

If you visit Taylor, Texas, it’s not hard to see why people there might not want to give up on Hutto, and its two hundred or so jobs. On a drive into town, you pass a trailer park set amid spindly trees, and a fast-food chicken place that advertises

“Livers and Gizzards Tuesday and Wednesday.” Farther on, you see the Lone Star Pawn Shop, where a sign promises cautiously, “We can cash most payroll checks.” Taylor has a couple of consignment shops, a few hair cutteries, several cotton gins, and two barbecue restaurants, Rudy Mikeska’s and Louie Mueller’s, that look as though they’ve been around a good long time. The sidewalks were mostly empty when I passed through on a sunny Monday morning, and on the side streets a number of the houses were ramshackle or derelict. A street leading to Hutto was cratered with potholes; the Landmark Inn and the liquor store were both abandoned.

The Hutto Correctional Facility opened in 1997, housing prisoners of the U.S. Marshals Service and overflow inmates from the county jail, as well as detainees displaced by hurricanes. Since the numbers were always fluctuating, C.C.A. was always struggling to find new customers, and in July, 2005, the company announced that it would have to close Hutto down. A last-minute reprieve came in December, in the form of an agreement with the federal government to detain non-criminal immigrants. The initial press release said nothing about children. At the time, Rick Zinsmeyer, a local resident, told the Taylor *Daily Press*,

“The good part about it, and what Taylor gets out of it, is a lot more employees and more people coming into the town.”

José Orta, who is retired from the Air Force and works maintaining the town’s computer network, is one of a handful of people from Taylor who started protesting outside Hutto “once the word got around that they were holding children in there.” It’s been a lonely business. Orta told me, “I know people at my church who work at Hutto. When I try to talk to them about it, they just say, ‘It’s my job.’ My sister had a friend who worked there. She was a single mom and her job before that had been cleaning hotel rooms for minimum wage, \$5.85 an hour. C.C.A. is paying, like, twice that. I said to her, ‘What if it were you and your son in there?’ That was literally something she’d never thought about. When she realized I was one of the vigil organizers, she stopped speaking to me or my sister.”

A few Taylor residents spoke out against Orta’s efforts. In a letter to the *Daily Press*, Michelle Hernandez wrote of Hutto detainees, “These individuals are eating three meals a day, even if it isn’t food that suits their palate. They have a dry, comfortable place to sleep, television and PlayStations, Xbox or whatever type of video games they have. The kids are getting an education, books to read, toys to play with. So many of our U.S. war veterans are homeless and don’t even get that. Who the hell is marching and complaining on their behalf?”

On the day I drove past Hutto, there was no one outside on the brown patchy grass, and no children on the play structure in the bare exercise yard. A stiff wind whipped the four flags at the entrance: one for Texas, one for the Department of Homeland Security, one for the United States, and one for the Corrections Corporation of America.

C.C.A. was founded in 1983 by a small group of politically well-connected entrepreneurs. One of them, Thomas Beasley, was the former chairman of the Tennessee Republican Party. Another, Terrell Don Hutto—the prison’s namesake—was once the director of the state prison system in Arkansas. He was also the defendant in a famous case that went before the Supreme Court, in 1978. In *Hutto v. Finney*, one of the first successful lawsuits by prisoners against a correctional system, the Court held that conditions in the Arkansas state prisons, which placed prisoners in solitary confinement for indefinite periods of time, constituted cruel and unusual punishment.

Early investors in C.C.A. included Honey Alexander, the wife of Lamar Alexander, then the governor of Tennessee. Over the years, C.C.A. has continued to strengthen its political ties. The company’s PAC gave more than three hundred thousand dollars during the 2006 election cycle, overwhelmingly to Republican congressional candidates, and has given more than a hundred thousand so far for the 2008 elections. The company’s chairman, William Andrews, and its C.E.O., John Ferguson, have been generous donors to Republican senatorial and Presidential candidates. Philip Perry, who is the son-in-law of Dick Cheney, and who served as general counsel for the Department of Homeland Security between 2005 and 2007, lobbied for C.C.A. while he was at the law firm Latham & Watkins, to which he has returned. And C.C.A. spends a lot on lobbying. According to the Center for Responsive Politics, in 2005, the year that Homeland Security awarded C.C.A. the Hutto contract, the company paid close to \$3.4 million dollars to five different firms to lobby the federal government.

The company’s first contract, in 1984, was with the now defunct Immigration and Naturalization Service, for the building and oversight of an immigration holding center in Houston. C.C.A. soon began taking on contracts with counties, states, and the federal Bureau of Prisons. To win these entities over, private prison companies like C.C.A. argued that they could operate more cheaply and efficiently than the government could. It is certainly true that they can build prisons faster and cheaper, largely because they don’t need to seek voter or legislator approval. The relatively low salaries make running prisons cheaper, too. In 1999, two criminologists, James Austin and Garry Coventry, of the National Council on Crime and Delinquency, concluded that “privately operated facilities have a significantly lower staffing level and offer significantly lower salaries than public state correctional agencies.” But Austin and Coventry also reported that private prisons had “a

significantly higher rate of assaults on staff and inmates.” Austin, who is now a criminal-justice consultant, told me that “he just didn’t know” if that was still the case today—nobody had done a comparable follow-up study. (That could be because it’s so hard to extract information from private prisons.) Austin noted, “In general, where there’s higher staff turnover you’re going to have rates of violence that are higher.”

Occasionally, stories about the operations of private prisons reach the public, and many are discouraging. In Youngstown, Ohio, C.C.A. built and oversaw a facility that housed prisoners from the District of Columbia. In the late nineties, it gained notoriety for endemic violence. In its first year of operation, there were six inmate escapes, twenty stabbings (two of them were fatal), and numerous other assaults—figures that came to light only after a class-action lawsuit was filed on behalf of the inmates. Among other problems at Youngstown, prisoners prone to violent behavior were housed with the general population—a situation that U.S. District Court Judge Sam Bell, who presided over the case, referred to as the “mixing of predators and their prey.” Bell ordered all maximum-security inmates to be removed from Youngstown. C.C.A. admitted no wrongdoing, but in order to settle the suit it agreed to pay \$1.6 million to prisoners and seven hundred and fifty thousand dollars in legal fees.

In 2004, inmates rioted and set fires at a private prison in Colorado run by C.C.A. A state investigation blamed mismanagement, and noted that C.C.A. had only thirty-three uniformed officers overseeing eleven hundred inmates when the riot erupted, and that the company paid its employees a third less than state prisons did.

Meanwhile, C.C.A. got into financial trouble by building prisons on spec—putting up facilities for which it did not yet have contracts—and by angering its stockholders with an ill-advised corporate restructuring. Over the course of 2000, C.C.A.’s stock price plummeted by ninety-three per cent. The company has since got back on much sounder financial footing. The hiring of John Ferguson, a former finance commissioner for the state of Tennessee, as C.E.O. helped. But the most important factor was the rise in immigrant detention. Since early 2002, the company’s stock price has more than quadrupled, even though several of C.C.A.’s immigrant-detention centers have been plagued by their own problems—in 2005, a correctional officer at a San Diego facility was accused of raping a detainee.

During a conference call with investment analysts, in February, 2007, Ferguson was especially optimistic about the immigrant-detention trade. Noting that the elimination of the government’s catch-and-release initiative was “helping” the bottom line, he said that the number of beds that Immigration and Customs Enforcement was asking for had risen from twenty-one thousand to twenty-seven thousand in the previous two years. He also noted that President Bush’s proposed 2008 budget called for doubling the size of the border patrol, to more than eighteen thousand agents, before he left office. “So we feel very strong about the demand that is developing,” Ferguson said. (At one point, he noted that, in all its facilities, C.C.A. had “worked hard in a number of areas to reduce medical costs, including modifying a number of our contracts to reduce or eliminate our responsibility for medical expenses.”)

In the same conference call, Tracy Rabold, an analyst for Banc of America Securities, offered “congratulations on yet another good quarter.” But Rabold wanted to know if lawsuits were causing any “throttling back,” noting that lawsuits were “kind of part of the business, but there seems to be at least a little more publicity around some of the housing conditions that are being reported on the immigration side. Without getting into the philosophical discussion with that, I’m just curious if that is having any impact on Immigration and Customs Enforcement’s arrest policies or the volume that you guys have seen from them.” Ferguson said that more time was needed to assess the impact on the prison business. But William Andrews, C.C.A.’s chairman, told the analysts, “I just don’t want to leave anybody the impression that these facilities . . . are in any way substandard. In fact, they’re above standard.” The negative reports, he said, had come “from special-interest groups that are attempting to do away with privatization and the whole immigration situation. We welcome anybody to visit our facilities, and the family facility, particularly at T. Don Hutto, is almost like a home.”

Last May, a guard at Hutto was caught engaging in sexual activity with a female detainee in the cell that she shared with her young child. The guard was videotaped crawling out of the detainee’s cell—trying, unsuccessfully, to avoid the camera—on two occasions, once at 11:36 P.M., seven minutes after entering, and once at 11:47 P.M., following a ten-minute visit. Employees watching the security camera alerted their supervisors. The man on the videotape was seen “adjusting his pants around the belt area” as he left, according to a report on the incident by federal investigators. (The report—or eighty of its four hundred pages, at least—was obtained by the Taylor *Daily Press*.) It is unclear if the activity was consensual, but any sexual contact between correctional officers and inmates in a federal prison is a crime. At the time of the incident, however, the law applied only to prisons under the authority of the Department of Justice, and not to immigrant-detention centers, which are under the authority of the Department of Homeland Security. The guard was not prosecuted. (This past July, Senator Dianne Feinstein, of California, introduced legislation that closed the loophole.)

The guard case caused a stir, and the commissioners of Williamson County, where Hutto is situated, became briefly concerned about Hutto. Williamson County acts as the middleman in the agreement between the federal government and C.C.A., and it receives a dollar a day for each detainee at Hutto—as much as a hundred and eighty thousand dollars a year. At a meeting in October, 2007, commissioners expressed worry that they might be named in any future lawsuits directed at Hutto or, as one commissioner put it, drawn into “the liability loop.” The county was considering withdrawing from the contract.

At the meeting, a large contingent of Hutto employees showed up, dressed in their new, friendlier uniforms—maroon polos and khakis. They sat together in the audience, clapping and murmuring “Amen” as Evelyn Hernandez, the facility’s administrator, gave an emotional speech about Hutto. She declared that she and her employees “provide a safe, secure, loving environment” for the families detained there. Hernandez spoke feelingly of the importance of keeping families together. She herself had a four-year-old, and “could not imagine ever having that child taken away from me, under any circumstances.” She had moved to Texas from Idaho to take her job, she said, and she could have left her daughter with family in Idaho until she got settled. “But that child has to be with me,” she said.

A lawyer for C.C.A., when it was his turn at the microphone, assured the commissioners that “it is extremely difficult for someone to successfully sue a county in Texas in this arena.” The county really had no liability—after all, it didn’t own the property or employ the people working there. Just in case, C.C.A. would indemnify the county, up to a quarter of a million dollars, for any future legal fees. The commissioners kept the contract.

Although the meeting had centered on matters of liability, it also exposed a deeper confusion. When we place families in a facility like Hutto, are we punishing them for coming to America? Or are we just keeping them somewhere safe, so that they don’t get separated or disappear while we figure out what to do with them? Or, rather, is our policy to try somehow to combine the practical and the punitive? After all, if the goal was simply to keep track of immigrants, in most cases an electronic monitoring bracelet would suffice. And if the goal was simply to keep families together, we could surely house them in something other than a former prison, in a place where employees are trained in child welfare and kids can get fresh air. The decision to house families in a former prison was, perhaps, not so arbitrary after all. At the meeting that day, Cynthia Long, one of the county commissioners, a woman in a businesslike red blazer and glasses, spoke about keeping families together. But she also said something that probably represented the gut feeling of a lot of people who are angry about illegal immigration. Long said, “The thing we forget is the adults who are being detained have broken the law.” Unfortunately, she went on, children sometimes “have to suffer with the sins of our parents”—“to suffer, if you can call it that, because of their parents’ choices.” ♦

ILLUSTRATION: JOHN RITTER
