



The Corporate Lobbying Alignment Project

Discussion note no.6



Investor responses to
corporate lobbying &
public policy capture by
Border Industrial Complex
companies



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Background on the Border Industrial Complex

The privatisation and militarisation of international borders are well known. So are the associated human rights, reputational, and market risks to investors.¹ Global asset owners such as CalPERS and Norges Bank Investment Management have recently made decisions to either engage with or exit their holdings in private prison companies on ethical and financial grounds, indicating the changing risk profile of companies operating in the Border Industrial Complex (BIC). BIC companies include private and public entities involved in border policing, detention, surveillance, and transportation of migrants. Growth in the BIC has been supported by heavy lobbying to enable a system of militarised borders and, increasingly, the criminalisation of migration and the erosion of basic human rights of migrants,² including the UN Refugee Conventions in the case of refugees.³ Government support for BIC companies as part of global export-led growth strategies for the defence, security software and hardware industries⁴ and other influence channels show the extent to which these companies benefit from close government relations. The ability to influence government policy on migrant detention and the use of mass surveillance technology at borders speaks to the lobbying power of companies and trade associations across BIC industries. This discussion note describes some of the investment risks linked to the BIC and explores how investors can respond to lobbying by these companies as part of their stewardship and engagement strategies.

Human rights risks & lobbying by BIC companies

As the global border security and migrant detention business expands, the possibility for human rights violations and abuses perpetrated by these companies against migrants, including detained children,⁵ is now a reality for investors.⁶ Yet institutional investors have not yet addressed the links between BIC company lobbying and the increased militarisation and hardening of borders in Europe and North America, and related issues of dragnet surveillance of citizens including ethnic minorities in China⁷ and other jurisdictions. In spite of routine risks of migrant rights abuses, the world's largest fund managers, including BlackRock, Vanguard and State Street, have not yet chosen to engage with these companies to address the most egregious conduct, and business models built on the mass surveillance and detention of migrants.⁸

1 AFT (2019) 'Private prisons, immigrant detention and investment risks:' <https://www.aft.org/private-prisons-immigrant-detention-and-investment-risks>; Mijente (2020) 'Who's Behind ICE? The Tech Companies Fueling Deportation:' https://mijente.net/wp-content/uploads/2018/10/WHO'S-BEHIND-ICE_The-Tech-and-Data-Companies-Fueling-Deportations_v3-.pdf; American Friends Service Committee: <https://investigate.afsc.org/borders>; 'Norway Wealth Fund Drops G4S on Gulf Migrant-Worker Abuses' (14.11.2019): <https://www.bloomberg.com/news/articles/2019-11-14/norway-s-giant-wealth-fund-excludes-g4s-on-qatar-worker-abuses>; 'Report on the Role of Private Security Companies in Migrant Detention in the U.S. and their Impact on the Protection of the Rights of Migrants' (26.04.2020): Submitted to the United Nations Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self Determination: <https://www.law.northwestern.edu/legalclinic/humanrights/documents/report-on-role-of-pscs-in-migrant-detention-27-may-2020-final.pdf>

2 In particular, the adoption of unlimited detention of irregular migrants in the United States, the United Kingdom, Canada, Israel, and other jurisdictions should be of concern for investors. See UNHCR 'Detention:' <https://www.unhcr.org/detention.html>; and "No Justice, No Truth" for Canada's Immigration Detainees' (10.12.2020): <https://www.hrw.org/news/2020/12/10/no-justice-no-truth-canadas-immigration-detainees>.

3 Saudi Arabia: Migrants Held in Inhuman, Degrading Conditions' (15.12.2020): <https://www.hrw.org/news/2020/12/15/saudi-arabia-migrants-held-inhuman-degrading-conditions>; 'Refugee vs. migrant: Which is right and why it matters' (28.08.2015): <https://www.unrefugees.org/news/refugee-or-migrant-which-is-right/>

4 'Security export strategy: growing UK exports for global security' (11.09.2019): <https://www.gov.uk/government/publications/security-export-strategy-growing-uk-exports-for-global-security/security-export-strategy-growing-uk-exports-for-global-security>

5 'Children Behind Bars The Global Overuse of Detention of Children:' <https://www.hrw.org/world-report/2016/country-chapters/africa-americas-asia-europe/central-asia-middle-east/north>; De Guadio & Phillips (2018) 'Detention of Child Asylum Seekers in the Pursuit of State Interests: A Comparison of the Australian and EU Approaches:' <https://www.tandfonline.com/doi/abs/10.1080/18918131.2018.1451088?journalCode=rnh20&>

6 'How companies profit from immigrant detention' (08.06.2019): <https://www.axios.com/private-prisons-immigrant-detention-8e5b3317-8ecf-476c-b915-25330852e66f.html>

7 'World's Largest Pension Fund Must Divest from Hikvision and Dahua, Chinese Companies Supporting Mass Internment and Surveillance' (13.03.2020): <https://uhrp.org/press-release/world-largest-pension-fund-must-divest-hikvision-and-dahua-chinese-companies>

8 'Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention' (02.05.2018): <https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention>

The lack of action to date to address rights violations in the border security and migrant detention context is in contrast to more proactive fund manager responses to exclude gun stocks, including American companies Outdoor Brands (AOBC) and Sturm Ruger (RGR) in response to regular mass shootings in America.⁹

There is an opportunity for investors to take a more consistent approach to human rights risks and associated corporate lobbying by BIC companies in 2021. Investors can indicate their public support for the Global Compact for Safe, Orderly and Regular Migration¹⁰ to bring shareholder resolutions requesting companies disclose their approach to migrant rights and divest from the worst private prison operators. There are a range of options for investor action across asset classes.

BIC market segments, including private prison operators have come under increasing investor scrutiny for abuse of migrants in the UK¹¹, US,¹² and other jurisdictions. In the US in particular, treatment of migrants at the US-Mexico border has raised the political profile of migrant rights,¹³ but investors have not yet responded in a coordinated way to the policies that enable migrant detention and mistreatment. Technology companies including Palantir, Microsoft, Thomson Reuters,¹⁴ and Amazon¹⁵ have been playing an increasingly large role in this sector, creating new risks for investors, and raising the stakes for engagement on corporate lobbying as technology companies now play a central role in facilitating the expansion and acceleration of migrant arrest, detention, and deportation.¹⁶ Investors across the listed and private equity and debt market hold investments in all these companies. The rise in international migration expected through the 2020s combined with the expansion of surveillance and detention of migrants beyond borders amplifies these risks.¹⁷ Large asset managers and their asset owner clients have an opportunity to build engagement and stewardship programmes that address growing ESG risks related to border security and migrant detention - which is supported by intense lobbying.

9 'BlackRock puts gunmakers on notice after Florida school shooting' (22.02.2018): <https://www.reuters.com/article/us-usa-guns-blackrock-idUSKCN1G62PC>

10 'From promise to action: the Global Compact for Safe, Orderly and Regular Migration:' (02.12.2020): <https://in.one.un.org/un-press-release/from-promise-to-action-the-global-compact-for-safe-orderly-and-regular-migration/>

11 'G4S suspends nine staff at UK migrant centre, says to investigate conduct' (01.09.2017): <https://uk.finance.yahoo.com/news/g4s-suspends-nine-staff-uk-migrant-centre-investigate-073915035--sector.html>; 'Britain's immigration detention: how many people are locked up?' (11.10.2018): <https://www.theguardian.com/uk-news/2018/oct/11/britains-immigration-detention-how-many-people-are-locked-up>

12 'One of the World's Largest Private Prison Corporations Lied About Separating Families and Tried to Silence Us with a Lawsuit. They Failed.' (14.12.2020): <https://medium.com/candide-group/one-of-the-worlds-largest-private-prison-corporations-lied-about-separating-families-and-tried-to-31f21ae649ea>

13 'Lobbying for Lock-Up: How Private Prisons Profit From the Criminalization of Immigrants' (13.12.2012): <https://truthout.org/articles/lobbying-for-lock-up-how-private-prisons-profit-from-the-criminalization-of-immigrants/>; 'Private prison firm quietly ramps up GOP lobbying efforts as Trump expands immigrant detention centers' (04.10.2019): <https://www.cnn.com/2019/10/04/private-prison-firm-ramps-up-lobbying-amid-trump-immigration-crackdown.html>

14 Two subsidiaries of Thomson Reuters, Thomson Reuters Special Services and West Publishing Corporation are involved in ICE's data gathering apparatus. In February 2018, TRSS, the US subsidiary of Thomson Reuters, signed a contract with ICE's Detention Compliance and Removal office for a "continuous monitoring and alert service that provides real-time jail booking data to support the identification and location of aliens." See <https://investigate.afsc.org/tags/high-tech-surveillance-immigrants>. ICE has over USD 46 million in current potential contracts with Thomson Reuters subsidiary West Publishing Corporation. See Mijente (2020) id, at 52.

15 https://mijente.net/wp-content/uploads/2018/10/WHO%E2%80%99S-BEHIND-ICE_-The-Tech-and-Data-Companies-Fueling-Deportations_v3-.pdf

16 'With Immigration Reform Looming, Private Prisons Lobby to Keep Migrants Behind Bars' (05.05.2013): https://www.huffpost.com/entry/immigration-reform-privatization-prisons-lobby_b_2665199

17 'Detention, torture and killing ... how the EU outsourced migration policy' (08.04.2020): <https://www.theguardian.com/commentisfree/2020/mar/08/detention-torture-and-killing-how-the-eu-outsourced-migration-policy>

Influence & lobbying by BIC companies: opportunities for investor engagement

As a result of their links with national defence and security officials,¹⁸ BIC lobbyists have privileged access to and ability to influence government policy. Security and military contractors and private prison operators channel their messages on the need to privatise security, defence, and migration policy and enforcement through well-established think tanks, policy dialogues, and personal relationships. The list of influence tactics described below provide an example of the ways in which BIC companies and their trade associations seek to influence all levels of government in support of more coercive migration policy, mass surveillance, and a hardening of borders.¹⁹ Investors should be aware of these practices as they build engagement and stewardship strategies in response.

TABLE 1: Corporate influence & lobbying tactics

Influence tactic ¹	Description
Public relations ²	Heavy spending by BIC companies via third party public relations firms and lobbyists to influence politicians. ³
Smoke screens	Diverting policy discussions away from the issue of freedom of movement, migration policy and human rights to focus on defence and security and the criminalisation of migration. ⁴
Political donations	Giving money to political campaigns to influence decisions by officials and political parties who have taken funds once they are in elected office. ⁵
Revolving door	Hiring public officials into the industry to create an implicit understanding that public officials who implement industry friendly regulations will be able to move into well paid private sector jobs with BIC companies who benefit from their regulatory interventions. ⁶
Model legislation	Provides legislators with 'off the shelf' regulatory framework to enable expansion of migrant detention and surveillance. Examples include ALEC's model legislation and resolutions. ⁷

1 https://knowledgehub.transparency.org/assets/uploads/helpdesk/Businesses-Lobbying-Practices_2018.pdf

2 Public relations strategies deployed by the companies operating in the BIC industries borrow heavily of well-established practices in the fossil fuel sector outlined here: <https://cleancreatives.org/news/clean-creatives-issues-polluted-pr-report-outlining-agency-collaborations-with-fossil-fuel-corporations>

3 According to Open Secrets, In the 2016 election cycle, private prisons gave a record \$1.6 million to candidates, parties and outside spending groups. That was nearly triple what they gave in 2014 and more than double their contributions in the 2012 presidential cycle. See: <https://www.opensecrets.org/industries/summary.php?ind=G7000&recipdetail=A&sortorder=U&mem=Y&cycle=2018>

4 <https://www.ndia.org/>

5 <https://www.opensecrets.org/industries/summary.php?ind=G7000&recipdetail=Sortorder=U&me=Y&cycle=2018>

6 Private Prison Firms Use Revolving Door Lobbying, Generous Campaign Donations' (06.08.2018): <https://www.prisonlegalnews.org/news/2018/aug/6/private-prison-firms-use-revolving-door-lobbying-generous-campaign-donations/>

7 ALEC's 'No Sanctuary Cities for Illegal Immigrants Act' resembles Arizona's controversial SB 1070 and seeks to mandate local enforcement powers for federal immigrant law, makes it a crime to have illegal immigrants in one's vehicle, make illegal immigration a criminal offense, and requires employers to use an electronic verification system. The model act prohibits local governments from deciding how best to allocate law enforcement resources and would interfere with the law enforcement-community relationship. See: https://www.alecexposed.org/w/images/2/2d/7K5-No_Sanctuary_Cities_for_Illegal_Immigrants_Act_Exposed.pdf

The 'Immigration Law Enforcement Act' model legislation would require local governments to enforce federal immigration law and create a new class of crime for being present on state soil without proof of federal immigration status. See: https://www.alecexposed.org/w/images/6/69/7K3-Immigration_Law_Enforcement_Act_Exposed.pdf. A third ALEC product, the 'Resolution to Enforce Our Immigration Laws and Secure Our Border' outlines an anti-immigrant legal framework and provides constitutional justifications for its policy resolutions, including localised enforcement of immigration laws. The resolution advocates that the state-governed National Guard govern the border rather than Federal Border Patrol, Immigration, and Customs Enforcement agents. See: https://www.alecexposed.org/w/images/e/ec/7K10-Resolution_to_Enforce_Our_Immigration_Laws_and_Secure_Our_Border_Exposed.pdf

18 'The West's Obsession With Border Security Is Breeding Instability' (16.11.2019): <https://foreignpolicy.com/2019/11/16/border-security-european-union-instability-illegal-immigration/>; 'Border Security and Immigration Policy:' <https://www.dhs.gov/border-immigration-and-trade-policy>

19 Cato Institute (2012) 'Immigration and Border Control:' <https://www.cato.org/sites/cato.org/files/serials/files/cato-journal/2012/1/cj32n1-8.pdf>; 'U.S. Chamber Letter on FY21 Homeland Security Appropriations' (14.07.2020): <https://www.uschamber.com/letters-congress/us-chamber-letter-fy21-homeland-security-appropriations>

Smoke screens

'Smoke screens' - diverting policy discussions away from the initial issue of migration policy to focus on defence and security - are a common communication tactic by BIC companies. These narratives have focused on the criminalisation and detention of migrants as a policy response to global migration, often driven by climate change and interstate conflict.²⁰ In the case of migrant rights and the right to privacy, BIC companies, affiliated Astroturf groups²¹ and their trade associations focus on a security narrative and suppress discussion of a rights-based approach to human migration. These practices easily circumvent public and regulatory scrutiny around the application of human rights norms to BIC companies in their operations.²² Investors could support a public re-framing of these narratives that aligns with international human rights law and refugee law.²³

Policy influence

BIC companies involved in hardening border security and expanding private sector migrant surveillance, detention and deportation have had significant success in expanding these lines of business across the G20, including in Europe²⁴ and Canada.²⁵ In the US, there has been an expansion of immigration detention, including family and child detention centres since the 1980s.²⁶ More recently, federal legislation established a minimum number of detention beds required to be available for migrant detention at all times (34,000).²⁷ As a result of these policies, since 2009, DHS detentions of non-citizens have gone up by nearly 25 percent, with a heavy reliance on private detention centre operators. Lobbying continues under the Trump administration and trade associations play an important role in this process:²⁸ the Day 1 Alliance, for example, a trade association founded by CoreCivic, GEO, and MTC is "dedicated to educating and informing Americans on the small but valued role the private sector plays in addressing corrections and detention challenges in the United States."²⁹

20 'The threat from organised immigration crime:' <https://nationalcrimeagency.gov.uk/what-we-do/crime-threats/organised-immigration-crime>; 'Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention' (02.05.2018): <https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention>; 'Strengthening the EU's external borders:' <https://www.consilium.europa.eu/en/policies/strengthening-external-borders/>

21 NumbersUSA and the Federation for American Immigration Reform work closely with Republican political candidates in the US to maintain a criminal enforcement-led approach to migration: <https://www.fairus.org/about-fair>

22 <http://www.oecd.org/corruption/ethics/lobbying/>

23 An example of investor-led narrative reframing is the Refugee Investment Network: <https://refugeeinvestments.org/resources/refugee-lens/>

24 'Prison Privatization: Canada Mulls Contracting Services To Companies Lobbying For Correctional Work' (13.07.2012): https://www.huffingtonpost.ca/2012/07/13/prison-privatization-canada_n_1670755.html?; '7 facts about immigration detention in Canada' (2019): https://ploughshares.ca/pl_publications/7-facts-about-immigration-detention-in-canada/; <https://www.globaldetentionproject.org/countries/americas/canada>

25 'Private prison companies look to Canada as industry faces lawsuits in US' (19.06.2012): <https://www.theguardian.com/world/2012/jun/19/private-prison-companies-canada-lawsuits>

26 'How Trump Inherited His Expanding Detention System' (12.02.2019): <https://www.themarshallproject.org/2019/02/12/how-trump-inherited-his-expanding-detention-system>; Prosecutions for illegal entry and reentry were relatively rare (under 25,000 per year) until the advent of a mass-trial program known as Operation Streamline during the George W. Bush administration in 2005. Operation Streamline has been roundly criticized from its inception for violating due process rights. During the last year of Bush's presidency in 2008, and throughout Obama's presidency, prosecutions jumped extensively, increasing from under 40,000 per year to almost 100,000 at the highest point in 2013. See: <https://slate.com/news-and-politics/2019/06/trump-child-immigrant-detention-no-toothpaste-obama.html>

27 'Congress Mandates Private Jail Beds for 34,000 Immigrants' (24.09.2013); <https://www.bloomberg.com/news/articles/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants>. The provision was first introduced when President Obama took office in 2009 with DHS funding tied to maintaining a minimum number of detention beds per day.

28 'Trump Administration Sues California Over Private Prison Ban' (25.01.2020): https://www.desertsun.com/story/news/crime_courts/2020/01/25/trump-administration-sues-california-over-private-prison-ban/4579277002/; and 'ICE Signs Long-term Contracts Worth Billions for Private Detention Centers, Dodging New State Law' (22.12.2019): <https://www.desertsun.com/story/news/2019/12/20/ice-signs-longterm-contracts-private-detention-centers-two-weeks-ahead-state-law/2713910001/>. In general, the use of arrest/detention quotas in law enforcement contravenes government agency or individual officers' discretion in a manner that is not in the best interest of society.

29 <https://day1alliance.org/>

Revolving door

The revolving door refers to the professional movement from the public sector to private companies, which creates conflicts of interest for policymakers and regulators who may come to expect lucrative private sector roles from companies they are responsible for regulating. In the US, Geo Group and other private prison operators have former ICE directors in management and board roles.³⁰ Also in the US, former White House Chief of Staff John Kelly's revolving door roles in investment and private security should be of concern. In 2017, Kelly departed from the board of DC Capital Partners to become Secretary of Department of Homeland Security (DHS) and then White House Chief of Staff. In the Trump administration, Kelly was credited as the architect of the administration's "zero tolerance" policy, which separated nearly 3,000 immigrant children from their parents³¹ during the summer of 2018. This policy created significant new business for his firm. Following his time in the White House, Kelly returned to Caliburn International, the firm that acquired DC Capital partners, an operator of the country's largest detention centre for child migrants.³² In Australia, former ASIO chief Duncan Lewis, only five months after leaving this position, joined the board of Thales Australia.

Political donations & influence

BIC companies seek to influence government actors and policies through donations to political campaigns either directly or via lobbyists and trade associations. For example, members of the House of Representatives' Homeland Security the top recipients of campaign donations from BIC companies.³³ In Europe, just three companies, Airbus, Leonardo, and Thales, together with lobby group the European Organisation for Security (EOS), held 226 registered lobbying meetings with the European Commission between 2014 and 2019, spending £2.2m on lobbying in 2017.³⁴

TABLE 2: Largest coal companies by market cap

Private prison company top contributors to 2018 US federal candidates, parties, and outside groups ¹					
Rank	Organisation	Total Amount	Total to Candidates and Parties	Indivs	PACs
1	GEO Group	\$1,471,342	\$759,842	\$330,342	\$429,500
2	CoreCivic Inc	\$321,609	\$318,379	\$127,179	\$191,200
3	Management & Training Corp	\$135,280	\$130,280	\$13,330	\$121,950
4	Tindall Corp	\$19,950	\$19,950	\$19,950	\$0

1 42 Via Open Secrets:<https://www.opensecrets.org/industries/contrib.php?ind=G7000&Bkdn=Source&cycle=2018>; in the US, lobbyists who advocated on general immigration issues in 2017 reached 1,438 — the highest the number has been since 2013. See 'Lobbying on immigration, border ticks up despite "shadow lobbying"' (08.02.2018).

30 https://www.geogroup.com/board_of_directors

31 'John Kelly joins board of company operating largest shelter for unaccompanied migrant children' (03.05.2019): <https://www.cbsnews.com/news/john-kelly-joins-board-of-caliburninternational-company-operating-largest-unaccompanied-migrant-children-shelter/>; 'John Kelly proposed separating children from their parents to deter illegal immigration last year' (18.06.2018): <https://www.businessinsider.com/kelly-proposed-family-separation-to-deter-illegal-immigration-in-2017-2018-6?r=US&IR=T>

32 <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2019/07/29171942/CREW-v.-HHS-Complaint-as-filed.pdf>

33 'Private Prison Companies Poured Record Cash into the 2018 Elections' (12.11.2018): <https://www.motherjones.com/politics/2018/11/private-prison-companies-poured-record-cash-into-the-2018-elections/>

34 'Border wars: the arms dealers profiting from Europe's refugee tragedy' (2016): <https://stopwapenhandel.org/borderwars>

Think tanks, academic research partnerships, and drafting legislation

Think tanks, academic research partnerships, and trade association model legislation are actively used to influence public policy and the approach to migrant rights. This influence helps generate short-term business growth in the US in late 2016, 73 per cent of the approximately 40,000 migrants detained by the authorities were held in facilities operated by private companies.³⁵ In 2017, lobbyists for GEO Group, which operates one of two large family detention centres in Texas, wrote a bill that would grant child care licenses to private family detention centres, enabling increased detention of child migrants in privately run detention centres, in contravention of international law on the rights of the child.³⁶ Growth in the number of detained migrants is supported by legislative changes at the state and federal levels.³⁷ A recent example of state-level legislation being created to increase the number of incarcerated migrants in private company facilities is Arizona's SB 1070 law, which enabled law enforcement to detain anyone suspected of being an undocumented migrant. The legislation was developed by the American Legislative Exchange Council (ALEC).³⁸ The majority of the 36 co-sponsors of the SB 1070 legislation in the Arizona State Legislative received contributions from prison lobbyists or from CoreCivic, the GEO Group, and Management & Training Corporation.³⁹ The effectiveness of lobbying by BIC companies and their respective trade associations in Arizona and other jurisdictions creates a mutually reinforcing cycle as the sector and their think tanks are able to grow and lobby for expanded funding for private border monitoring, migrant surveillance and detention.⁴⁰

Political lobbying

Private prison companies are well established in political engagement in the US, the United Kingdom,⁴¹ and other jurisdictions. Federal filings show that a subsidiary of GEO Group donated \$250,000 to President Trump's inauguration and another \$225,000 to a super PAC that supported his election, alongside ongoing support in the most recent presidential election.⁴² In Europe, the 1990 Schengen Agreement established an area of free movement between the signatory European countries⁴³ with "compensatory measures"⁴⁴ put in place in order to secure the external borders of the EU and to prevent third-country nationals from crossing them. By 2007, in a sign of the effectiveness of the private border security and prisons lobby, the European Commissioner for Justice and Home Affairs declared that "security

35 Takei, C. (2017) 'Written Statement of the American Civil Liberties Union Before the United Nations Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self Determination:' <https://www.prisonlegalnews.org/media/publications/ACLU%20-%20re%20Private%20Military%20and%20Security%20Companies%2C%20UN%20Working%20Group%2C%202017.pdf>; Peláez, V. (2016) 'The prison industry in the United States: big business or a new form of slavery?' in *Global Research*: www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289.

36 'Private prison corporation wrote Texas bill extending how long immigrant children can be detained' (02.05.2017): <https://theintercept.com/2017/05/02/private-prison-corporation-wrote-texas-bill-extending-how-long-immigrant-children-can-be-detained/>; 'Bill to License 'Baby Jails' as Child Care Facilities Clears First Legislative Hurdle' (26.08.2017): <https://www.texasobserver.org/family-detention-baby-jails-texas/>; According to the UN Special Rapporteur on the human rights of migrants, "under international human rights law, every child, at all times, has a fundamental right to liberty, family life, health, development, non-discrimination and freedom from all forms of physical or mental violence, injury or abuse, and to have their best interests as the primary consideration in all actions concerning them." For detailed analysis on how detention of migrant children contravenes international law, see 'Report on ending immigration detention of children and seeking adequate reception and care for them' (20.07.2020): <https://ohchr.org/EN/Issues/Migration/SRMigrants/Pages/CallEndingImmigrationDetentionChildren.aspx>

37 'How Private Prisons Game the Immigration System' (27.02.2013): <https://www.thenation.com/article/archive/how-private-prisons-game-immigration-system/>

38 'ALEC's Influence over Lawmaking in State Legislatures' (06.12.2013): <https://www.brookings.edu/articles/alecs-influence-over-lawmaking-in-state-legislatures/>

39 <https://www.npr.org/2010/11/09/131191523/how-corporate-interests-got-sb-1070-passed?t=1600032603532>

40 'How DC think tanks cash in on the ever increasing Pentagon budget' (03.07.2020): <https://responsiblestatecraft.org/2020/07/30/how-dc-think-tanks-cash-in-on-the-ever-increasing-pentagon-budget/>. The US National Defense Authorization Act for fiscal year 2021 would authorize the Pentagon to spend nearly \$700 billion, nearly 100 times the budget of the Center for Disease Control and Prevention...during the global coronavirus pandemic.

41 **Missing footnote**

42 'Industry Profile: Correctional facilities constr & mgmt/for-profit:' <https://www.opensecrets.org/federal-lobbying/industries/background?cycle=2020&id=G7000>

43 'Migrant detention in the European Union: a thriving business:' <https://www.borderline-europe.de/sites/default/files/background/migrant-detention-eu-en.pdf>; 'Border Wars the arms dealers profiting from Europe's refugee tragedy' (04.07.2016): <https://www.tni.org/en/publication/border-wars>

44 Compensatory measures mean ad hoc national border control measures that countries request as part of their commitment to the Schengen zone. The European Council decided in May 2016 to allow internal border controls as a compensatory measure, significantly expanding police checks in areas close to the border or "dragnet controls", as practiced in Germany and Switzerland. See: 'The Future of Schengen: Internal Border Controls as a Growing Challenge to the EU and the Nordics' (2018): <https://www.swp-berlin.org/en/publication/the-future-of-schengen/>

is no longer a monopoly of the public sector, it is part of the common good, and responsibility for its implementation must be shared between the public and private sectors.”⁴⁵ Funding for the hardening of borders comes from agencies ranging from the European Space Agency⁴⁶ to individual member states. The European Organisation for Security (EOS), a trade association which includes G4S, Thales, Leonardo, Airbus among its membership,⁴⁷ has been most active in lobbying for increased border security. Many of its proposals,⁴⁸ such as accelerating the setup of a cross European border security agency have ended up as policy, including the transformation of Frontex into the European Border and Coastguard Agency (EBCG).⁴⁹

Human rights risks in the Border Industrial Complex require systems-wide investor engagement

The human rights, economic and public policy issues linked to migration and the treatment of migrants will require investors in BIC companies to take a systemic perspective and plan a sufficiently ambitious engagement strategy across key companies. As with other sectors profiled as part of the CLAP, engagement can be focused on a small number of large companies and trade associations who wield significant influence across markets.

Bondholders

Can engage with companies on their human rights records and request companies to end membership in trade associations that actively undermine migrant rights. Large investors with ethical investment mandates could work to limit access to bond markets and lending for BIC companies in the same manner as bank lending and bond market access for coal mining companies.⁵⁰

Equity investors

Given the close relationship between Border Industrial Complex companies and government policymakers, investors who want to address the most egregious corporate conduct can engage with policymakers on these themes. In stewardship roles, leaders can move beyond requests for enhanced human rights risk disclosure to demand transformative practices across the industry to make respect for human rights part of business practices for all companies. Investors could communicate support for shareholder resolutions at targeted BIC companies to report on human rights compliance and lobbying disclosure in the 2021 proxy season. Large asset owners who do not want to divest can ask ESG ratings providers - Morningstar, Refinitiv, S&P, MSCI etc. - to better explain how they incorporate corporate lobbying and respect for migrant rights into their respective scoring methodologies.

45 *Missing footnote*

46 European Data Protection Supervisor “Frontières intelligentes”: La proposition clé est coûteuse, insuffisamment justifiée et intrusive, (19.07.2013): https://edps.europa.eu/sites/edp/files/edpsweb_press_releases/edps-2013-08_smart_borders_fr.pdf

47 <http://www.eos-eu.com/members>

48 ‘Integrated Border Security Working Group’: www.eos-eu.com/border-security

49 EOS contribution to the Public Consultation on the future of Home Affairs policies: “An open and safe Europe – what next?”: www.eos-eu.com/Files/Publications/EOS%20contribution%20to%20the%20Public%20Consultation%20on%20the%20future%20of%20Home%20Affairs%20policies.pdf

50 ‘HSBC faces call to end all new coal power financing’ (06.03.2019): <https://www.ft.com/content/35ca50c2-3f54-11e9-b896-fe36ec32aece>; ‘Coal phase out: The investment case’ (14.06.2019): https://realassets.axa-im.com/content/-/asset_publisher/x7LvZDsY05WX/content/coal-phase-out-the-investment-case/23818

Divestment

Like CalPERS⁵¹ and CalSTRS' decision to divest their equity holdings in private prisons, investors in debt and equity securities can decide to quit providing capital to BIC companies who are routinely implicated in migrant rights violations. Debt investors can choose to not participate in bond issuance by targeted companies and communicate the reasons for these decisions publicly.

Credit ratings agencies

Credit ratings agencies could more fully incorporate human rights risk into their ratings methodologies. This would impact on BIC company access to credit.

Public policy engagement

Investment trade associations could engage in policy discussions on migration and detention policy.

Appendix 1 - BIC market segments

Migrant detention

Private prison companies which operate migrant detention facilities (and transport and surveillance migrants) are a significant segment of the BIC. This work includes the detention of children, and the indefinite detention of migrants in jurisdictions where there are no time limits on detention.⁵² In addition to the around 12 million people in the United States who do not have authorization from the federal government to be there and have been pursued by immigration authorities,⁵³ around 800,000 migrants are apprehended and detained each year trying to enter the US.⁵⁴ The US trends of increasing migration extend to the rest of the world.⁵⁵

Defence hardware

The tightening of borders requires heavy investment in physical infrastructure and support systems. This process has a long history in the US, with America's Shield Initiative (ASI) and associated initiatives to create a 'virtual fence' and, more recently, a real wall around America.⁵⁶ Similar discussions in the UK focused on hardening land and maritime borders⁵⁷ create new opportunities for BIC companies. The most common hardware in the US border context are integrated watchtowers including radar, cameras, and command and control software to associate detected movement with picture and identification built by companies including Boeing and Elbit Systems. Elbit Systems has proposed the expansion of drone and air defence radar systems along the southern US border based on its experience with deploying these technologies in the Israeli-occupied West Bank.⁵⁸

51 'CalPERS Quietly Divests From For-Profit Prison Companies' (19.10.2020): <https://www.esg-transparency.org/press-releases/calpers/10-19-19>

52 <https://edition.cnn.com/2018/06/21/us/undocumented-migrant-children-detention-facilities-abuse-invs/index.html>

53 https://dornsife.usc.edu/assets/sites/902/docs/GolashBoza_2009_SocCompass.pdf

54 '2019: A deadly year for migrants crossing the Americas:' (28.01.2020): <https://news.un.org/en/story/2020/01/1056202>

55 <https://www.globaldetentionproject.org/detention-centres/list-view>

56 <https://investigate.afsc.org/tags/border-surveillance-and-monitoring>

57 'UK plan to use navy to stop migrant crossings is unlawful, lawyers warn' (07.08.2020): <https://www.theguardian.com/world/2020/aug/07/uk-plan-to-use-navy-to-stop-migrant-crossings-is-unlawful-lawyers-warn>

58 'Elbit Systems of America, CBP in talks for expanded surveillance along US-Mexico border' (11.10.2017): <https://www.defensenews.com/digital-show-dailies/ausa/2017/10/11/elbit-systems-of-america-cbp-in-talks-for-expanded-surveillance-along-us-mexico-border/>; 'Elbit Systems of America to Provide In-Fill Radar and Tower System to U.S Customs and Border Protection' (12.09.2017): <https://www.prnewswire.com/news-releases/elbit-systems-of-america-to-provide-in-fill-radar-and-tower-system-to-us-customs-and-border-protection-643894743.html>

Surveillance & data services

Software company Palantir is the most high profile company providing ICE with case management software to enable immigration agents to combine regional, local, state, and federal databases across the country, build profiles of immigrants' social and family networks based on both private and public information, and use those profiles to surveil, track, and ultimately deport immigrants.⁵⁹ Since the launch of the US Department of Homeland Security (DHS) Cloud First policy in 2010 and its renewal in 2019,⁶⁰ DHS has been a growth centre for Silicon Valley cloud providers. The Cloud First policy encouraged the private contracting of \$20 billion in cloud services across the federal government and, according to NGO Mijente, the two ICE systems receiving the most IT funding are hosted on Amazon cloud services.⁶¹

Transport

Transportation of migrants by private companies poses additional risks, as illustrated by the 'unlawful killing' of Jimmy Mubenga by G4S guards in the UK who were responsible for his removal.⁶² From 2010 to 2014, the U.S. deported over two million people,⁶³ and ICE spent approximately \$464 million on chartered flights for these deportations, according to a report by the Office of the Inspector General (OIG).⁶⁴ TransCor America LLC and GEO Transport, Inc., which are wholly-owned subsidiaries of CoreCivic and GEO Group, respectively. In 2018, during the surge in immigrant deportations due to the US administration's "zero-tolerance" immigration policy, ICE agents were seen accompanying immigrant children on flights by major commercial airlines, including American Airlines⁶⁵ in the US and Virgin Atlantic⁶⁶ in the UK. ICE is also contracted with G4S, the world's largest private security firm, to transport immigrant detainees found at the US-Mexico border to processing centres.⁶⁷

Appendix 2 - Trade Associations

Security Identity Alliance

European Association for Biometrics European Organisation for Security (EOS)

Aerospace and Defence Industries Association of Europe (ASD)

National Defence Industrial Association (NDIA)

European Biometrics Association (EBA)

Defence Industry Security Association (DISA)

British Security Industry Association

Association of Private Correctional & Treatment Organisations (APCTO)

59 'UK awards border contract to firm criticised over role in US deportations' (17.09.2020): <https://www.theguardian.com/politics/2020/sep/17/uk-awards-border-contract-to-firm-criticised-over-role-in-us-deportations>

60 <https://about.bgov.com/news/dhs-unveils-enterprise-multi-vendor-multi-cloud-strategy/>

61 https://mijente.net/wp-content/uploads/2018/10/WHO%E2%80%99S-BEHIND-ICE_-The-Tech-and-Data-Companies-Fueling-Deportations_v3-.pdf

62 'Jury rules Jimmy Mubenga was unlawfully killed' (09.07.2013): <https://www.inquest.org.uk/jimmy-mubenga-jury-conclusions>

63 'U.S. immigrant deportations declined in 2014, but remain near record high' (31.08.2016): <https://www.pewresearch.org/fact-tank/2016/08/31/u-s-immigrant-deportations-declined-in-2014-but-remain-near-record-high/>

64 https://worthises.org/immigration#block-yui_3_17_2_1_1529983273570_25026

65 'Angry American Airlines Employees Say the Airline is Transporting Migrant Children Separated From Parents:' <https://www.inc.com/chris-matyszczyk/angry-american-airlines-employees-say-airline-is-transporting-immigrant-children-separated-from-parents.html>

66 'Investors Warn Corporations of Human Rights Risks Related to "Zero Tolerance" Immigration Policies' (26.07.2018): <https://investorsforhumanrights.org/news/investors-warn-corporations-human-rights-risks-related-zero-tolerance-immigration-policies>

67 <https://investigate.afsc.org/company/g4s>

About this discussion note

This note is designed to introduce and update investors on the scope, role and negative impact of corporate lobbying and influence by Border Industrial Complex (BIC) companies on migration policy and human rights. Addressing corporate lobbying on migration policy and surveillance will be of interest for investors who have committed to support respect for human rights in line with the UNGPs,⁶⁸ and associated SDGs.⁶⁹ The systemic nature of human rights and global migration, and the extent of defence and migration policy capture by BIC companies and their trade associations in several jurisdictions means that the issue is relevant for all investors.

The discussion note is intended as a work-in-progress, to be complemented by examples, and feedback we will receive from the investment community and other stakeholders. It is the third in a year-long series on different themes, sectors and geographies that will form part of a final report at the end of the project period.

About Preventable Surprises

Preventable Surprises is a 'think-do' tank focused on systemic ESG risks in the financial system. We work with positive mavericks within the investment industry to persuade the financial sector to better address systemic risks. Legislators, regulators, the media, NGOs, and consumers each have a role to play in building a more transparent and sustainable market system, yet much of the power lies with corporations and their investors. Preventable Surprises focuses on institutional investors because, through the trillions of dollars in assets under their management, they have enabled corporate and market dysfunction.

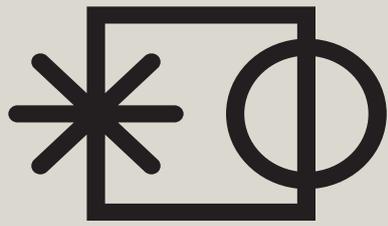
About the Corporate Lobbying Alignment Project

The Corporate Lobbying Alignment Project (CLAP) is an applied research and engagement project launched in June 2020 working to make corporate political capture a central component of investors' approach to ESG stewardship and integration. It seeks to leverage information on the state of play for key sectors and share lessons learned from past investor engagements. Through research interviews and a series of events, the programme will engage the global investment community to help prioritise and inform areas for action.

If you are an investor or other stakeholder in the institutional investment or policy system with insights into how corporate lobbying affects public policy related to human rights, migration policy, climate change and other key public policy areas, we would like to hear from you. We will not share your name or any identifying information without your express permission. Get in touch today: research@preventablesurprises.com

⁶⁸ 'UN Guiding Principles on Business and Human Rights at 10:' <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx>

⁶⁹ <https://sdg.humanrights.dk/en>; and 'Migrants' rights finally front and centre of the international agenda? Exploring the perils and possibilities of the SDGs and the GCM (18.12.2020): <https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/migrants-rights-finally-front-and-centre-of-the-international-agenda-exploring-the-perils-and-possibilities-of-the-sdgs-and-the-gcm/BF1B7565E9C3ACB7A07C3CED2408BC25>



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