

The Border and Surveillance Industries: Investor stewardship opportunities



■ About this discussion note

This note is designed to engage institutional investors on the material risks in the Border and Surveillance Industries and to propose an adequate response to these risks. The discussion note is intended as a work-in-progress, to be complemented by examples, and by feedback we will receive from the investment community and other stakeholders.

■ 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 Border and Surveillance Industries Stewardship Project

The Border and Surveillance Industries Stewardship Project seeks to inform and enable more systematic institutional investor engagement and forceful stewardship with companies in the Border & Surveillance Industries (BSI). The purpose of the project is to increase investor attention and collaboration on stewardship to ensure protection of the human rights of migrants and refugees, and to reframe public narratives around global migration. The project will bring together institutional investors across continents to examine opportunities for action to increase respect for migrant rights across the tech, security and private prisons industries. Key opportunities for stewardship across equities, bonds and infrastructure will be highlighted as part of this collaboration, including in a week-long global investor dialogue in March 2022.



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Preface

This discussion notes launches the Border and Surveillance Industries Investor Stewardship Project at Preventable Surprises. The project will bring together a global community of institutional investors to determine how to respond to the privatisation of border security, surveillance and refugee policy, and to identify stewardship and public policy engagement opportunities to support more systematic respect for human rights and migrant rights. With the pandemic and climate change poised to accelerate migration amidst stark inequalities and global environmental degradation, investors and other stakeholders in the institutional investment chain need to better understand and respond to the growing and global devolution of border security, surveillance and detention and transport of migrants to the private sector.

The discussion note and the Project build on years of work by Mijente¹, the Transnational Institute², Stop Wapenhandel, Investigate (AFSC)³, No Business in Abuse, the American Federation of Teachers⁴, British Columbia Government Employees Union⁵, ESG-Transparency⁶, Privacy International⁷, and others who have been tracking developments in the Border and Surveillance Industries at a company, industry and investor level, and engaging with a range of stakeholders. We hope to build on their work and convene more institutional investors around suitable and actionable responses commensurate with the challenges this discussion note identifies.

We welcome feedback on this note. Preventable Surprises will be running a global online investor dialogue in March 2022 to establish more structured action plans for investors to engage with the Border and Surveillance Industries this decade. Do get in touch to register your interest in the investor dialogue.

Introduction



As the climate emergency deepens and intersects with other economic and political crises, more people around the world will be forced to leave their homes in search of safety and dignity. Public spending on BSI company products and services is set to increase significantly this decade: market research agencies predict annual growth in the border security market at between 7.2% and 8.6%, reaching a projected total of US \$65–68 billion by 2025⁸.

Without investor action to reaffirm international human rights norms for public and private actors, as well as the positive contributions of migrants to the economy and society⁹, this expansion in global migration may increase the incidence of grave human rights abuses and loss of life in the vicinity of borders. In particular, investors in companies in the Border and Surveillance Industries (BSI) – which provide the hardware, software and services to enable the containment, exclusion, surveillance, transportation and detention of migrant populations - should carefully consider the legal, reputational, and investment risks associated with companies implicated in potential human rights violations.

Investors can begin assessing these risks in a more systematic manner. For example, private equity investors, their Limited Partners¹⁰, and other direct owners of BSI companies risk being implicated in human rights violations and could face civil liability in jurisdictions like Australia, the UK and Canada where jurisprudence continues to evolve¹¹. Institutional investors who market themselves and their investment funds as ethical and aligned with the UN-Principles for Responsible Investment, the Sustainable Development Goals or other relevant standards should be particularly concerned about association with migrants rights violations and abuse of women and children in the private migrant detention system¹². Frequent public stories of abuse in the BSI will not reflect well on the providers of capital to the worst actors. Similar to coal¹³, tobacco, hand guns¹⁴, cluster munitions¹⁵, and nuclear weapons¹⁶, continued investment in BSI companies who may enable human rights abuses against vulnerable populations, including migrant children¹⁷, carries significant reputational risks.

Investor stewardship and the BSI



Investors responses include engagement, divestment, efforts to the political and cultural influence of BSI lobbying. They should be supported by sector wide benchmarking.

Engagement

Investors who are committed to stewardship and responsible investing should engage with BSI company to:

- 1 Request that BSI company directors publicly affirm their commitment to upholding basic human rights principles as outlined in the UN Guiding Principles on Business and Human Rights¹⁸ and the UN Global Compact.¹⁹ In the case of fully or partly state-owned BSI companies - such as Airbus, Leonardo, and Thales - governments should reaffirm their commitment to the UN Refugee Convention.
- 2 Publicly commit to respect the human rights of children as established in the UN Convention on the Rights of the Child, and ask BSI companies with histories of and allegations of migrant abuse and/or problematic human rights records to appoint two directors with human rights expertise.²⁰
- 3 Undertake a human rights audit and integrate messaging on migrant and refugee rights into their operations and existing commitments to action, as well as in marketing of fund products aligned with the 2030 sustainable development goals (SDGs) agenda.²¹
- 4 Ask accounting firms and their management consulting peers who service BSI companies and advise governments to bring migrant and refugee rights into their assessment and auditing frameworks for these companies.
- 5 Play their part in addressing the revolving door between BSI companies who violate human rights and government leadership positions²². This could include expressing public support for the OECD Principles for Managing Ethics in the Public Service²³ and supporting transparent appointment processes for public officials in jurisdictions where they invest.

Divestment

Divestment is a suitable option for investors who do not see companies responding adequately to engagement and stewardship. Investors should make a firm policy of benchmarking migrant rights violations by BSI companies and divesting from those entities who do not demonstrate improvement.²⁴ The process should include a short but reasonable timeline for the transition from engagement to divestment. Divestment decisions should be argued and made public.²⁵ Investor organisations could engage their members more substantively on documented human rights violations and the divestment process, taking a page from the climate change benchmarking playbook.²⁶

This is not an extraordinary expectation, but one that could benefit from more consistency: several international investors have divested from Lockheed Martin, Airbus, Leonardo and Thales, because of these companies' involvement in the development, production and/or maintenance of nuclear weapons.²⁷ Some have divested from cluster munitions and landmines over a combination of human rights and reputational risk concerns. Investors and banks who provide underwriting and debt financing services are beginning to exit parts of the BSI. Six large banks - JPMorgan Chase, Wells Fargo, Bank of America, SunTrust, BNP Paribas and Fifth Third Bancorp - recently announced that they would not provide any new financing to the private prison industry²⁸, and 'prison free' investment funds are now available for concerned retail investors in the US.²⁹ Pension funds CalSTRS and CalPERS divested their equity holdings in CoreCivic and GEO Group.³⁰ Several pension funds have also divested their shares in G4S.³¹ But divestment decisions to date have not been made based on well defined investor human rights policies, nor applied consistently across the BSI. As reputational and legal risks linked to the sector increase, investors should introduce and communicate clear engagement and divestment policies for companies who are systematic human rights violators.

Dampening political influence of the BSI

Investors should ask BSI companies to explain their human rights policy and the alignment of this policy with the lobbying position of trade associations to which they belong. Investors should also ask BSI companies to disclose their political donations and to explain how these align with principled positions on respect for human rights.³² These two straightforward requests would clearly communicate investor expectations on respect for human rights as standard in the jurisdictions where the company is politically active and engaged in the financing of lobbying by industry and trade associations.

Using the investor voice to reaffirm the human rights of migrants

Investors could also use their individual and collective voices in organisations such as the UN-backed PRI, to express a position on the outsourcing of State legal obligations on human rights and humanitarian law to BSI companies, including bilateral agreements that deter migration and refugee flows - such as payments to hold refugee and asylum seekers in a third country.³³ Or international agreements that encourage the use of irregular migration routes and unlawful detention by receiving countries.³⁴

More broadly, investors in BSI companies should articulate a public response to counter the national security narrative that often facilitates abuse of refugees and migrants: a more coordinated, public investor voice is necessary to counter an increasingly xenophobic populist political narrative on migration. The rejection of basic principles of international human rights law, and encouragement of unlawful detention and return of refugee and asylum seekers in the US,³⁵ UK, Australia, Poland³⁶ and other countries. It is one of the defining human rights issues of this decade.³⁷ Similar to existing investor letters on climate change,³⁸ Institutional investors who believe in the importance of migration to support labour markets and in international human rights law as an organising principle in modern society should articulate a response that rebuts simplistic populist political narratives. Until there is a meaningful investor voice on migrant and refugee rights which positions these groups as a solution to G20 labour shortages as opposed to the source of all of society's problems,³⁹ large BSI corporations with short-term profit agendas will continue to either wilfully ignore the human rights of migrants and refugees or fail to uphold the principles to which they claim to adhere in their statements of corporate governance.⁴⁰ Investors can take actions individually and together via platforms such as the PRI to begin to address this challenge and to protect their own reputations.

Context for investor stewardship of BSI companies

In its recent global survey, the UNHCR notes that the number of refugees under its mandate has doubled between 2012 and 2019 to reach 26 million,⁴¹ out of a total global migrant population of over 270 million people.⁴² Within this larger group, around 82 million people were identified as forcibly displaced at the end of 2020 as a result of persecution, conflict, violence, human rights violations or events seriously disturbing public order.⁴³ Climate change and geopolitical instability will continue to make migration a central theme this decade and will accelerate the privatisation of border security, prisons, and refugee policy.⁴⁴ Investors in these growing companies will need to take a position on respect for migrant and refugee rights.

The rise of authoritarian nationalism has also boosted investment in border security and the militarization of policing and migration detention around the world. With pressure to continually grow their businesses, the world's largest defence, military and technology companies continue to expand into international migration control, migrant transport and detention services, and border control and monitoring.⁴⁵

The increasing use of outsourced private contractors at all stages in the migration system has led to a mutually reinforcing growth cycle in detained migrant and refugee populations⁴⁶ and defence related spending by governments on BSI companies. The push to outsource migration policy, transport, detention and border security and control, does not relieve governments of their human rights obligations. This includes a government obligation to take appropriate steps to provide redress and remedy options for migrants deprived of their right to liberty and security of the person.⁴⁷ Investors can help to ensure that these principles are upheld through this unprecedented period of geopolitical volatility and climate risk.

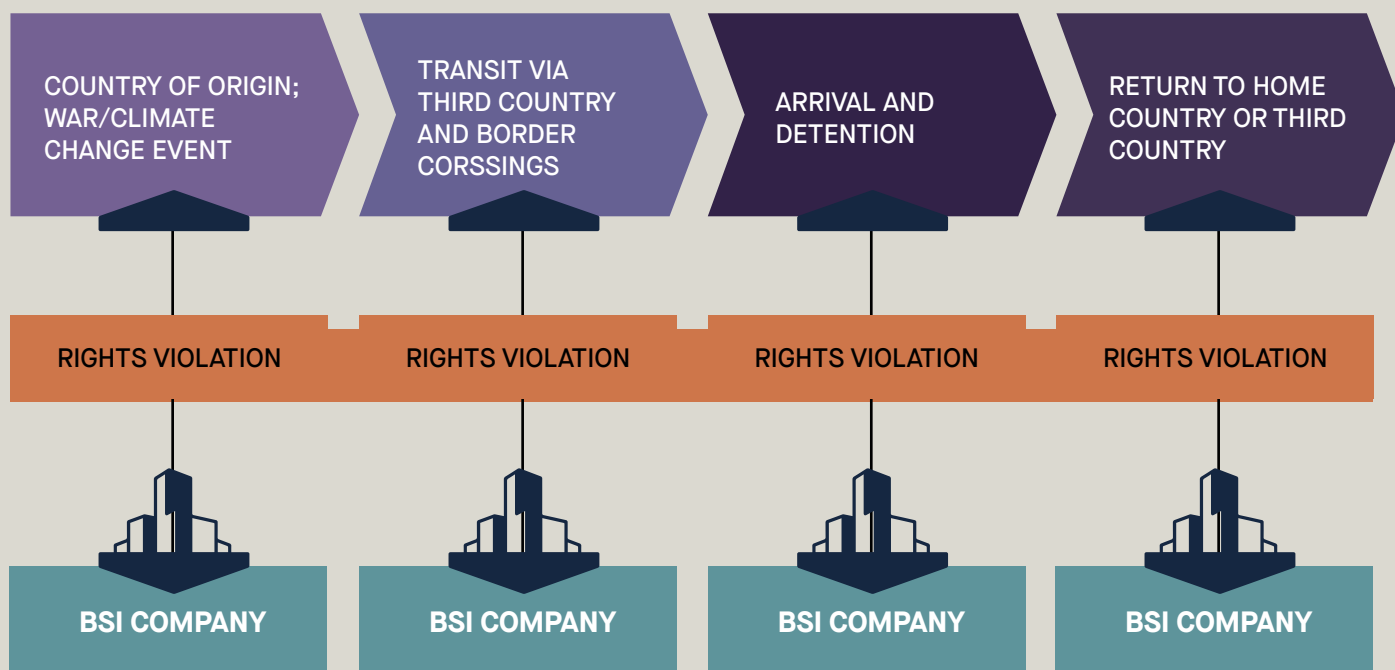
Technology company participation in the migrant surveillance industry

Technology companies are among the most prominent actors in the growing business of a privatised global migration system. In Palantir's IPO prospectus, for example, CEO Alex Karp highlights the company's close ties to the US national security establishment and its involvement in the administration's policies on border security, including the separation of migrant children from their families. According to Karp, Palantir has "chosen sides, and we know that our partners value our commitment. We stand by them when it is convenient, and when it is not."⁴⁸ Palantir and many tech industry peers continue to propose machine learning and Artificial Intelligence solutions to governments seeking to control migration.⁴⁹ Microsoft,⁵⁰ Thomson Reuters, Google,⁵¹ and other companies continue to come under public pressure in relation to their work on migrant tracking and control systems. Investors must be clear on their position on human rights violations in the business lines of tech giants and their defence and security company peers. The UN Guiding Principles on Business and Human Rights (UNGPs) indicate three ways that a company can be involved in human rights harms:

- a. causing an adverse human rights impact through its own actions or failure to act;
- b. contributing to an adverse human rights impact through its own activities, either alongside other entities or through external entities, such as clients or customers; and
- c. being directly linked to an adverse human rights impact through the company's products, services, or operations via a business relationship, including with government entities.⁵²

BSI companies may be involved in human rights harms in the three ways described in the UNGPs in different parts of the migration process as shown in Figure 1.

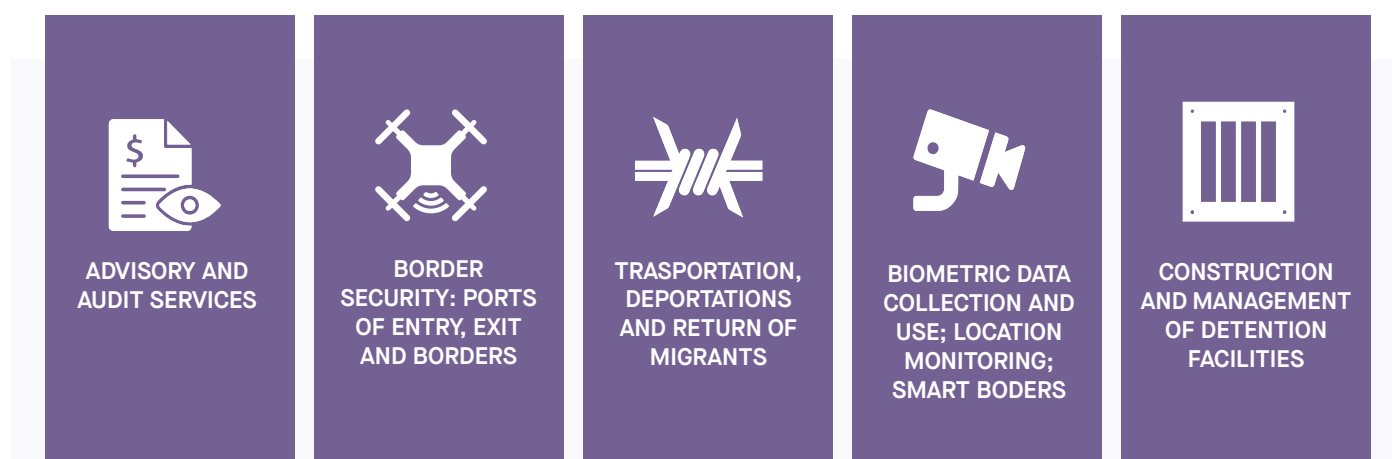
Figure 1: Migrants, BSI companies and potential human rights risk



Investment and reputational risks: from global arms sales to border control & migrant detention

BSI companies involved in the privatisation of border security include the largest arms manufacturers in the world.⁵³ By building vertically integrated businesses that manufacture weapons, these companies may create the conditions for mass migration and increased spending on border control, which they eventually also stand to benefit from. Companies supplying arms to major theatres of conflict in the Middle East and central Asia, for example, profit from the militarisation and privatisation of border control systems, detention and transport of migrants in receiving countries via related business units.⁵⁴ The privatisation of international border control and migration policy covers a number of key areas - migration, political volatility, and international trade - which investors may already be considering in their economic models. Investors can enhance their models by incorporating analysis on key segments in the BSI market indicated in Figure 2.

Figure 2: BSI market segments



Box 1: Addressing systematic abuse of migrants in detention

CoreCivic, GEO Group, and G4S are prominent players in migrant detention in the US and other jurisdictions. All three companies have been accused of abuse of detained migrants. In this context, investors should be aware of and respond to migrants rights abuses by the companies operating detention centres, including on behalf of the US and UK governments. In the US, the Department of Homeland Security (DHS) reports indicate a pattern of sexual assault and/or physical abuse against detained migrants with a total of 33,126 complaints against DHS component agencies and their subcontractors between January 2010 and July 2016.⁵⁵ The DHS data demonstrate the scale and endemic nature of violence against migrants in detention, often in privately run facilities.⁵⁶

Physical and sexual abuse of children in detention in the United States. According to a 2017 complaint by non-governmental organization Freedom for Immigrants, sexual assaults were documented at 76 migrant detention facilities, and the five facilities with the highest number of complaints were privately run.⁵⁷ The US Department of Justice received over 4,500 complaints of sexual abuse of migrant children in detention facilities between October 2014 and July 2018. Of these complaints, 178 were about detention staff members sexually assaulting migrant children.⁵⁸ This is a longstanding issue with a National Prison Rape Elimination Commission 2009 report finding that “a large and growing number of detained immigrants are at risk of sexual abuse.”⁵⁹ Investors have an opportunity to stand up against the sexual abuse and rape of detained migrants, and children in particular.

Outsourcing responsibility for migration & refugee policy

Advisory & audit services

Advisory, consultancy and audit services are a more discrete segment of the BSI which investors should pay closer attention to. Professional services and public relations firms are influential in shaping new policies that are designed to accelerate the privatisation of migration and are capable of giving rise to unaccountable human rights violations.⁶⁰ For example, the Washington Post reports that McKinsey assisted the German government to streamline asylum proceedings in 2015 which has led to fewer rights for asylum seekers and a shift to more limited legal protections.⁶¹

Box 2: Accountants, consultants & the reputational risks of servicing the migrant detention system

At least 2,500 children have been separated from their parents at the US border, an official US Customs and Border Protection agency policy since 2018.⁶² In response, a number of CEOs and company representatives have publicly condemned the practice of separating children from their parents.⁶³ But the world's largest accounting and management consulting firms continue to profit from these practices with contracts across the US federal agencies responsible for separating families and detaining children.⁶⁴ The New York Times reports that McKinsey's \$20 million ICE contract that ended in 2018⁶⁵ was for "management consulting services" for the agency's Enforcement and Removal Operations division. Family separation has ceased to be official US government policy, but it still occurs as part of the irregular migration process for young people entering the US as unaccompanied minors.⁶⁶

PWC, Deloitte, KPMG, Thomson Reuters, Microsoft,⁶⁷ and Accenture all work with information, data integration and analytics systems that support government and private sector BSI activities in North America, Europe, and Asia.⁶⁸ While the public has limited access to details of these contracts, whistleblowers or the media could expose their support for child detention and the criminalisation of migration, with significant reputational consequences.⁶⁹ For these companies and others⁷⁰ interested in attracting top talent, association with migrant detention and family separation in particular, could prove permanently damaging.⁷¹ Given it is a small portion of their global business, the largest management consultants and data providers could choose to forgo these activities. cease

Border security, monitoring services & hardware

BSI companies build border infrastructure and also support the tracking,⁷² interrogation, detention and return of migrants and refugees using a range of technologies and data sources. Systems used to monitor international borders are now being deployed domestically. The Intercept reports that arms company Elbit Systems has been contracted by the US Border Patrol to put Native American reservations along the Arizona border under constant surveillance, including surveillance cameras and drones.⁷³

Biometric data collection & use

A range of biometric technology is provided by companies for migrant identity registration, verification and authentication. The European Union and the United States both have fingerprinting and biometric border programmes run by BSI companies. In the United States, the Biometric Identification Transnational Migration Alert Program (BITMAP) enables Immigration and Customs Enforcement (ICE) agents to provide biometric training and equipment to foreign agencies. The collected data is then shared with US biometric databases. Concerns over migrant privacy and biometric data retention by private contractors have not yet been addressed.

Transportation, deportation and return of migrants

Transport logistics associated with migrant detention covers all modes of transport - road, rail, air and marine companies. Linked to the transport business, the shift to using outsourced Global Positioning System (GPS) tracking and supervision services should raise investor concerns over privacy rights, data sharing, and health implications of wearing the device. In the United States, detained migrants generally must post cash bonds to secure release, as well as paying for the GPS tracking services. Security companies detaining migrants may provide financing to those who cannot afford the cash bond but, in return, the detainees must pay for activating the ankle bracelet, leasing it and being tracked.⁷⁴

Box 3: Machine learning, migrant monitoring & the Palantir IPO⁷⁵

US company Palantir's software is used by ICE agents to collect data on individuals to facilitate arrest, detention and family separation, and deportation. As documented by Amnesty International, Palantir's software is implicated in these potential rights violations with deployment in targeted border operations that lead to family separation and detention, as well as the lengthy detention of children in ICE custody.⁷⁶ As part of an IPO via direct listing on 30 September 2020, the company's work briefly came under increased investor scrutiny.

Palantir has received over \$200 million in contracts to design and run two software systems for ICE: Investigative Case Management (ICM) and FALCON Search and Analysis.⁷⁷ Both contracts are with HSI, the division of ICE responsible for workplace raids. In August 2019, Palantir's Integrated Case Management contract was renewed for \$49.9 million over five years.⁷⁸ According to the UN High Commissioner for Human Rights, ICE's practice of separating children from their families, which often relies on technology of Palantir and its competitors, constitutes "arbitrary and unlawful interference in family life, and is a serious violation of the rights of the child."⁷⁹ Palantir has played a mission critical role in enabling ICE to carry out its activities, including surveillance, mass raids, detentions, as well as de facto family separations and deportations. Coupled with inadequate corporate policies and processes to prevent or mitigate these harms, the company risks being implicated in human rights violations.

In addition to Palantir, ICE has contracted with Microsoft, Thomson Reuters and RELX (formerly known as Reed Elsevier), among other well known firms, to supply data which may be used to track and arrest migrants.⁸⁰ Thomson Reuters and RELX,⁸¹ both early Palantir investors, act as data brokers for ICE, sharing information including credit scores, cellphone registries, social media posts, property records, utility accounts, internet chat rooms, and bankruptcy filing records that enables ICE to put together a full picture of migrants lives as they surveil them. Another company with links to Palantir founders, Anduril Industries, provides portable watch towers with cameras and radars, combining VR and surveillance tools through an AI-based system called Lattice,⁸² to detect unauthorized border crossers.⁸³

Construction & management of detention facilities

The Global Detention Project lists over 1350 migrant detention centers worldwide, with over 400 in Europe, almost 200 in the USA and nine in Australia.⁸⁴ A portion of all of these centres are privately run, indicating scope for investor influence. In the United States, DHS contracts with private prisons and jail operators to hold migrants. In the UK, migrant and refugee detention remains a BSI company focus, in spite of egregious rights violations and abuse of detainees inside detention facilities.⁸⁵ In the Netherlands, migrant detention centers at Schiphol Airport and at Den Hague Airport are run as public-private partnerships, with a consortium of companies responsible for the construction and maintenance of the building under 25 year Design-Build-Finance-Maintain-Operate contracts.⁸⁶ Sweden is one of the very few countries that has reversed privatisation of migrant detention, as part of policy reforms in 1997 after widespread public criticism of private companies involved in detention. The Swedish example should be useful for investors who are advocating for reforms to the migration detention system.⁸⁷

Opportunities to address political influence & lobbying by BSI companies



As a result of their relationships with national defence and security policy makers, BSI lobbyists have privileged access to and ability to influence government policy. Security and military contractors channel their messages on the need to privatise security, defence, and migration policy and enforcement through well-established think tanks to provide legitimacy, finance academic research and use various channels to provide industry presentations to all levels of government.⁸⁸

Policy influence

BSI companies involved in migrant detention have had significant success in lobbying to expand these programmes. In the United States there has been an expansion of immigration detention, including family and children centres since the 1980s. More recently, federal legislation set a minimum number of detention beds required for migrants (34,000).⁸⁹ As a result of these policies, since 2009, DHS detentions of non-citizens have gone up by nearly 25 percent. Lobbying continues under the Biden administration.⁹⁰ The Day 1 Alliance is a trade association founded by CoreCivic, GEO, and MTC that 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.”⁹¹ In all G20 jurisdictions, BSI companies and their lobby groups have been effective in shifting the narrative around migration to focus on security, rather than on the need for peace-building, enhanced respect for human rights and a more just global migration system. This is well documented in the US and Europe.⁹² As noted in the Kennedy School Review, in the US, a federally regulated ‘bed mandate’, first implemented in 2009 and renewed every year since has been interpreted as:

*requiring that immigration enforcement officials supply a specific number of beds for immigrant imprisonment and that they ensure that those beds are filled.*⁹³ *The bed mandate has generated significant revenues for private detention firms which are contracted by the federal government and remains in place.*⁹⁴

Investors who are committed to supporting human rights can begin to push back against the BSI security-based migration policy narrative on targeted issues such as the bed mandate as well as on the need for structural reform of the migration system.⁹⁵

Political donations

BSI companies seek to influence government actors and policies through donations to political campaigns. For example, in the US, members of the House of Representatives’ Homeland Security Appropriations committee, which oversees ICE’s budget for immigration detention, were some of the top recipients of campaign donations from BSI companies.⁹⁶

Smoke screens

The OECD identifies “smoke screens” as one of the most common methods of corporate influence. Smoke screens are coordinated attempts to divert discussion away from the core issue at hand as well as funding research and organisations to advance private agendas, such as a focus on the criminalisation and detention of migrants as a policy solution.⁹⁷ These practices easily circumvent public and regulatory scrutiny around the application of human rights norms to BSI companies in their operations.⁹⁸

Think tanks, academic research partnerships, and drafting legislation

The use of think tanks, lobbyists, and trade associations is an important part of BSI sector engagement to influence public policy and the approach to migrant rights. Lobbyists working for GEO Group, which operates one of two large family detention centers in Texas, drafted legislation in 2017 that would grant child care licenses to family detention centers.⁹⁹ The increase in child detainees is part of an expansion in immigration detention by private BSI companies. In the United States in 2016, 73 per cent of the approximately 40,000 migrants detained by the authorities were held in facilities operated by private companies.¹⁰⁰

Growth in the number of detained migrants is supported by legislative changes. A recent example of 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).¹⁰¹ 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.¹⁰² The effectiveness of lobbying by BSI companies and their respective trade associations creates a mutually reinforcing cycle as company profits increase and they are able to lobby for expanded funding.¹⁰³

Additional investor stewardship opportunities by asset class

Equity investors

Shareholders should bring human rights concerns into their regular engagement and stewardship activities. This could start with support for migrant rights shareholder resolutions at targeted BSI companies in the 2022 proxy season. In addition, equity investors can ask companies who provide ESG ratings - Morningstar, Refinitiv, S&P, MSCI etc. - to better incorporate human rights risk in their respective scoring methodologies alongside corporate lobbying metrics for BSI companies. If stewardship and engagement do not deliver corporate change in a reasonable time frame, divestment, done publicly, is a final option to signal to the market which companies refuse to change.¹⁰⁴

Bondholders

Bondholders have a dual opportunity to both engage with corporate issuers and with credit rating agencies by commenting on their methodologies. They can also divest their bond holdings and block access to credit markets for BSI companies with the most problematic human rights records. Access to bond markets and lending for BSI companies could be curtailed in the same manner as bank lending and bond market access for coal mining companies.¹⁰⁵ A concerted investor push for more rigorous credit rating methodologies could lead credit rating committees to downgrade the worst human rights abusers. In a cohort of otherwise similar issuers, those with significant exposures to human rights risks should have lower ratings than the remainder that either don't face the exposures or are mitigating them.

Private equity investors

Private equity investors wield a significant degree of influence in the BSI companies they own or are invested in. The world's largest private equity firms and their investment partners are present across the BSI.¹⁰⁶ Engaged private equity firms and their pension fund partners could send a clear message to BSI companies on the need for respect of migrant rights by raising this issue with company boards, and publicly if boards fail to respond adequately.

Conclusion - Investors face reputational & legal risks from BSI

Global investors manage a range of risks across their portfolios. Within the BSI, reputational risks and the potential for litigation linked to gross human rights violations should be of most immediate concern. Private equity investors and other direct owners of BSI companies implicated in human rights violations could face civil liability in jurisdictions in the UK and Canada where jurisprudence continues to evolve.¹⁰⁷ Public stories of systematic abuse of migrants and refugees including women, children and families,¹⁰⁸ other human rights violations, and corruption will not reflect well on the providers of capital to the worst actors.

Attempts by BSI companies to influence public policy outcomes, particularly the criminalisation of migration and the militarisation of border zones creates reputational risks for investors. This extends to employees leaving companies¹⁰⁹ and whistleblowing activity which could damage reputations and bottom lines. Investors should engage forcefully with BSI companies to change behaviour and publicly divest from the worst actors. Additionally, investors should communicate support for border policies that genuinely prioritize the protection of human life, regardless of a person's citizenship or immigration status, with a focus on allowing people to seek safety or reunite with family.

Box 4 - Thomson Reuters, human rights risk and ICE contracts

On June 9 2021, over 70% of Thomson Reuters (NYSE, TSX: TRI) independent shareholders (shareholders other than Thomson Reuters controlling shareholder) voted in favour of a proposal asking the company to investigate and report on potential human rights abuses enabled by contracts with U.S. Immigration and Customs Enforcement (ICE) and the U.S. Department of Homeland Security for the purposes of tracking migrants and asylum seekers for detention and deportation on an unprecedented scale.

The proposal was presented by the B.C. General Employees' Union (BCGEU), a Thomson Reuters investor. The proposal earned a strong vote despite being voted against by Thomson Reuters's controlling shareholder, The Woodbridge Company. Last year's similar proposal received 30% of the independent shareholders. This is an outstanding result and clearly demonstrates that shareholders are worried about the risks associated with helping ICE to enforce their agenda of deporting millions of people from the United States.¹¹⁰

BCGEU is one of the largest unions in British Columbia, with over 82,000 members in almost every community and economic sector in the province. Under BCGEU's capital stewardship strategy, the union has submitted shareholder proposals at Canada's top companies on topics like human rights, sexual misconduct, and executive compensation. While BCGEU ran the investor engagement strategy, their work built on years of grassroots activism by Mijente - a US based digital and grassroots hub for Latinx and Chicax movement building and organizing who are running the #NoTechforce campaign.¹¹¹

Thomson Reuters is one of Canada's and the world's best known media companies and its rapid pivot to become a tech and data broker is part of a wider media industry shift happening at other companies such as Facebook and Google.

Thomson Reuters has received over US\$70 million in ICE contracts to provide data brokerage services that help the U.S. agency target undocumented immigrants for detention and deportation. The company, via its Consolidated Lead Evaluation and Reporting (CLEAR) software, amasses data from private and public databases on individuals, like social media information, names, emails, phone data, license plate scans, utility bills, financial information, arrest records, insurance information, employment records, and much more. This technology has been linked to the deportations of undocumented immigrants in the United States, potentially involving family separation and the detention of people in conditions that violate their human rights. According to news reports, the software has also been used by Minnesota law enforcement agencies for the surveillance of the local community.

Box 4 - Thomson Reuters, human rights risk and ICE contracts continued...

According to Mijente, a US-based migrant advocacy organisation, Thomson Reuters Special Services provides customized data collection systems and in-house specialists trained to filter and improve the data tailored to ICE's enforcement and monitoring needs.¹¹²

By using private data providers such as Thomson Reuters to build software systems that support a widening migration control dragnet, governments in the US and other jurisdictions are able to avoid the need to comply with basic civil and human rights obligations that would otherwise prevent them from collecting this personal information directly.

The company's launch of a Change Program¹¹³ this year signaled a ratcheting up of its ambition for this business shift. As the company focuses increasingly on data analytics, machine learning and other services to grow revenues, contracts similar to the ICE and US Department of Homeland Security deals will likely continue to expand.¹¹⁴

The proposal was backed by leading global proxy advisory firms Institutional Shareholder Services (ISS), Glass Lewis and UK based Pension and Investment Research Consultants. The following investors also voted in favour: Fiera Capital (1.7 million shares), Norges Bank (2.3 million shares) and British Columbia Investment Management Corporation (64 000 shares). In addition to shifting their votes, some of the investors agreed to raise the issue directly with Thomson Reuters and make it an ongoing focus for their ESG Controversies teams.

Endnotes

- 1 <https://notechforice.com/>
- 2 TNI 'Financing border wars' (2021): https://www.tni.org/files/publication-downloads/financingborderwars-report-tni_2.pdf
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- 106 'How Private Equity Is Turning Public Prisons Into Big Profits' (30.04.2019): <https://www.thenation.com/article/archive/prison-privatization-private-equity-hig/>; 'G4S faces hostile £3bn takeover bid from private equity-backed group' (14.09.2020): <https://www.ft.com/content/7fe2679d-176f-4384-a969-1122ab9f0c28>
- 107 'Canadian Supreme Court: Suing Corporations Under International Human Rights Law' (18.03.2020): <https://www.law.com/newyorklawjournal/2020/03/18/canadian-supreme-court-suing-corporations-under-international-human-rights-law/>? In the Nevsun case, the Canadian Supreme Court opens the door to civil damages suits against corporations for violating international human rights law. At the UK Supreme Court, the case against Vedanta Resources, another mining company, establishes that a duty of care can exist between a parent company and those affected by the operations of its overseas subsidiaries. See: 'Supreme Court rules Vedanta case on parent company liability for actions of overseas subsidiary can proceed to trial' (11.05.2019): <https://www.dlapiper.com/en/uk/insights/publications/2019/04/supreme-court-rules-vedanta-case-on-parent-company-liability/>. For BSI companies and their private equity investor owners, these cases raise the potential for civil liability for human rights abuses committed against migrant populations.
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