

From Exclusion to State Violence:  
The Transformation of Noncitizen Detention in the United States  
and Its Implications in Arizona, 1891-present

by

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## ABSTRACT

This dissertation analyzes the transformation of noncitizen detention policy in the United States over the twentieth century. For much of that time, official policy remained disconnected from the reality of experiences for those subjected to the detention regime. However, once detention policy changed into its current form, disparities between policy and reality virtually disappeared. This work argues that since its inception in the late nineteenth century to its present manifestations, noncitizen detention policy transformed from a form of exclusion to a method of state-sponsored violence. A new periodization based on detention policy refocuses immigration enforcement into three eras: exclusion, humane, and violent. When official policy became state violence, the regime synchronized with noncitizen experiences in detention marked by pain, suffering, isolation, hopelessness, and death. This violent policy followed the era of humane detentions. From 1954 to 1981, during a time of supposedly benevolent national policies premised on a narrative against de facto detentions, Arizona, and the broader Southwest, continued to detain noncitizens while collecting revenue for housing such federal prisoners. Over time increasing detentions contributed to overcrowding. Those incarcerated naturally reacted against such conditions, where federal, state, and local prisoners coalesced to demand their humanity. Yet, when taxpayers ignored these pleas, an eclectic group of sheriffs, state and local politicians, and prison officials negotiated with federal prisoners, commodifying them for federal revenue. Officials then used federal money to revamp existing facilities and build new ones. Receiving money for federal prisoners was so deeply embedded within the Southwest carceral landscape that it allowed for private prison companies to casually take over these relationships previously

held by state actors. When official policy changed in 1981, general detentions were used as deterrence to break the will of asylum seekers. With this change, policy and reality melded. No longer needing the pretext of exclusionary rationales nor the fiction of humane policies, the unencumbered state consolidated its official detention policy with a rationale of deterrence. In other words, violence. Analyzing the devolution of noncitizen detention policy provides key insights to understanding its historical antecedents, how this violent detention regime came to be within the modern carceral state, and its implications for the mass incarceration crisis.

For those who survived,

lived,

thrived.

And for those who hoped to.

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## CHAPTER 1

### INTRODUCTION

It is not prison. It is not punishment.

Policy said so.

Reality disagreed.

Thirteen-year-old Benjamin Choy was detained for two weeks in 1930. Decades later, Choy reflected on that experience: “I don’t know how to describe it. Just a place of confinement, that’s all. Because I was away over there, only two weeks. You just sleep, and eat, and play. That’s all, there’s nothing else.”<sup>1</sup> Stefan Weissing, 21 years old at the time, was detained in 1953. He later echoed a similar sentiment, “When we looked out of the window, we couldn’t go outside. You know, they were at the machine, the gun towers there still. They had the electric fence there still... there were searchlights all night going around. That I remember. Like in prison, you were in prison.”<sup>2</sup> About his prolonged confinement in the late 1990s, Marlon Rajigah recalled, “Like you want to get out of there. You have anxiety attacks. You just try to lay down and sleep and pretend that you’re somewhere else most of the time... The world seems so small. And you want to walk. You can’t even walk around.”<sup>3</sup> In 2015, when Juan Miguel Cornejo spoke out against inadequate medical care where he was detained, officials placed him in solitary

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<sup>1</sup> Benjamin Choy, interview with Caitlin Fischer (December 2, 2004), Oral History Project, Angel Island, Pacific Regional Humanities Institute, available at <https://escholarship.org/uc/item/323175bz>.

<sup>2</sup> Stefan Weissing, interview with Janet Levine (July 30, 1994), Ellis Island Oral History Project, available at <https://www.libertyellisfoundation.org/oral-history-library>.

<sup>3</sup> Quoted in Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* (Berkeley: University of California Press, 2004), 194.

confinement.<sup>4</sup> Cornejo later stated, “Three days they [locked us up]... they didn’t give us food, they would give us raw eggs, rotten eggs... In the hole, I had times where I did not sleep because I was thinking that they would enter and hit me because they practice torture....”<sup>5</sup>

As noncitizens, each of the above individuals experienced a form of administrative caging across the United States over the course of the twentieth century. Choy was recounting Angel Island in San Francisco. Weissing was describing Ellis Island in New York. Rajigah was held at Pine Prairie Detention Center in Louisiana. Cornejo was detained at Eloy Detention Center in Arizona. While their experiences with noncitizen detention may bear parallels, their detentions operated under different immigration enforcement policy regimes that evolved – or, more accurately devolved – over the course of the twentieth century.<sup>6</sup> For Choy and Weissing, their detentions took place within various regimes of race-based, class-based, profession-based, or public health-based exclusionary policies. Such exclusionary detentions lasted until a change of

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<sup>4</sup> Daniel González, “ICE accused of punishing Eloy immigration detainee,” *The Arizona Republic*, August 28, 2015, available at <https://www.azcentral.com/story/news/politics/immigration/2015/09/04/ice-accused-punishing-detainee-spoke-media/71367100/>.

<sup>5</sup> Juan Miguel Cornejo, interview with Leah Sarat, September 26, 2016, transcript, *Stories of Immigrant Detention*, transcriptions by Stacey Gama and Berenice Pelayo, translated by Berenice Pelayo. The “hole” refers to solitary confinement.

<sup>6</sup> I am using “noncitizen detention” here rather than “immigrant detention” based on current law where any person without formal United States citizenship could face the possibility of detention and/or deportation. As scholar Daniel Kanstroom argues, “Any noncitizen... may be deported for a wide variety of reasons, some quite clear, others mind-numbingly technical.” Kanstroom, *Deportation Nation: Outsiders in American History* (Boston: Harvard University Press, 2007), 3. Moreover, in immigration law, there are distinctions made between such terms as “immigrant,” “nonimmigrant,” and “arriving alien” so “noncitizen” seems more encompassing and less confusing. However, “immigrant detention” or “immigration detention” remain when the phrase is part of a direct quote.

detention policy in 1954. That year, Ellis Island, the nation's first federal detention center, closed after public pressure against arbitrary and indefinite confinement of those not convicted of a crime. A purported new era, operating within a Cold War rhetorical framework, began with a detention policy favoring parole. After decades of detaining noncitizens at Ellis Island, Angel Island (from 1910 to 1940), and other facilities across the country, most noncitizens were to be paroled instead of detained during the course of their administrative proceedings. Only those deemed "likely to abscond" or "inimical to national security" would be held in detention. The Immigration and Naturalization Service (INS) claimed it had "put into effect, and found workable, a humane detention program while maintaining positive safeguards and security measures."<sup>7</sup>

However, the reality of detention experiences on the ground directly contradicted this policy as detentions expanded, in particular across the U.S. Southwest, within overcrowded facilities. From 1954 to 1981, during an era of national "humane" detention policies premised on a narrative against de facto detentions of the past, Arizona, along with the broader U.S. Southwest, continued to detain noncitizens in dismal conditions within antiquated county jails. For federal immigration officials, "humane" meant most noncitizens would be paroled instead of detained turning away from arbitrarily subjecting noncitizens awaiting the resolution of their civil cases to confinement. In this way, officials maintained that only a few people, namely those who were deemed flight risks or security threats, would be held in physical detention. Yet, a few detainees turned into thousands and eventually hundreds of thousands throughout the 1960s and 1970s.<sup>8</sup> While

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<sup>7</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1955* (Washington, DC: GPO, 1955), 6.

directly contradicting the official narrative, these detentions were further compounded by severely inhumane conditions of confinement. In Arizona, increasing detentions stressed the aging infrastructure of county jails and led to massive overcrowding. Those experiencing such overcrowding naturally reacted against it, where federal, state, and local prisoners coalesced to demand their humanity. As Heather Ann Thompson argues, “America’s incarcerated people have never stopped struggling against this country’s worst and most punitive practices.”<sup>9</sup> In doing so amidst their shared plight, they collectively challenged the very core of the “humane” detention narrative.

As groups of prisoners protested the conditions of their confinement, the ‘right hand’ came back with a vengeance as armed police and tear gas quieted riots, but echoing nineteenth-century prison building predecessors, also disguised as benevolent reform.<sup>10</sup> When taxpayers continually ignored these dismal jail conditions, local municipalities turned to the federal government for funding to alleviate overcrowding and avoid powder keg scenarios.<sup>11</sup> An eclectic group of zealous sheriffs, state and local politicians, and prison officials negotiated with the lives of federal prisoners in their care, commodifying

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<sup>8</sup> “INS Detentions in Service and Non-Service Facilities, 1962-79,” entries compiled from U.S. Immigration and Naturalization Service, *Annual Reports of the Immigration and Naturalization Service* (Washington, DC: Government Printing Office), table 1.

<sup>9</sup> Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York, NY: Pantheon Books, 2016), 571.

<sup>10</sup> For the ‘right hand’ metaphor see Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York, NY: Basic Books, 2016). For nineteenth century prison reform see Caleb Smith, *The Prison and the American Imagination* (New Haven, CT: Yale University Press, 2014).

<sup>11</sup> This extends Gerald Nash’s argument that the “federal government created a federal landscape in the West” to federally-funded prison building. Nash, *The Federal Landscape: An Economic History of the Twentieth-Century West* (Tucson, AZ: The University of Arizona Press, 1999), x.

their very existence.<sup>12</sup> In this commodification, federal prisoners were both vilified as harmful drug offenders deserving their fate and pitied as harmless immigration violators undeservingly trapped behind bars. On one level, such distinctions seemed to differentiate criminality and immigration. Yet, on another level, the general commodification by officials of all federal prisoners through collective per diem rates remained indiscriminate. Officials then used the money received per prisoner, regardless of their alleged offense, to revamp existing facilities and build new ones throughout the latter part of the twentieth century. While official policy maintained that detentions were no longer a de facto part of immigration enforcement, the era of “humane” detention nevertheless saw not only continued and expanded detentions of noncitizens in Arizona, and all along the Southwest, but also the growth of multi-jurisdictional economic agreements between local, state, and federal entities within an expanding carceral landscape. Ultimately, the era of “humane” detention was a contestation of the very definition of what humanity meant for those held on immigration charges and commodified behind aging cages, a struggle that would have devastating consequences.

Those consequences took shape with the official end of the era of “humane” detentions in 1981. Months after President Carter signed the Refugee Act of 1980 to account for mass asylum movements, President Reagan’s attorney general implemented a policy of detaining asylum seekers as “necessary to discourage people like the Haitians from setting sail in the first place.”<sup>13</sup> With this change, detention policy became premised

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<sup>12</sup> In a striking example of this commodification, federal prisoners in Florence, Arizona are listed by name under “Articles or Services.” “Public Voucher for Purchases and Services Other Than Personal,” U.S. Department of Justice, prepared at Tucson, Arizona to Pinal County Board of Supervisors, Arizona State Library, Archives and Public Records, Phoenix, Arizona.

on deterrence. The state's nearly unchecked power against noncitizen detainees came to actively involve violence as general detentions were used as deterrence to break the will of asylum seekers in the 1980s and 1990s. Expanding detentions filled centers and contract facilities beyond capacity as this trend continued into the twenty-first century. Today, in an enforcement regime particularly rooted in post-9/11 'security' policy and combined with the ever-present influence of a conglomeration of publicly and privately-operated jails and prisons within the carceral landscape, noncitizen detention remains a growing industry in the mass incarceration crisis. For Rajigah and Cornejo, then, their detentions tested their will to withstand administrative caging, within what Mark Dow calls the archipelago of the *American Gulag*. Detention policy became linked to a process that sought to break the will of noncitizens to keep fighting their removal cases outside of theoretical due process protections afforded to criminal defendants. The capacity of the United States to engage in this process of deterrence through breaking within the demarcations of the law constitutes a significant measure of the expansion of unfettered state power. Noncitizen detention policy that was once premised on exclusion had become state-sponsored violence.

When official policy turned into state violence, the detention regime synchronized to the way in which noncitizens had always experienced it. Immigration enforcement strategies including detentions and deportations, an often-too-common outcome of detentions, have always been and are violent processes for those being subjected to them. For instance, pointing to the deportations of Imperial Valley residents in the 1940s,

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<sup>13</sup> Stuart Taylor Jr., "Smith Sees Immigration Plan as a Means to Avert Boatlifts," *New York Times*, October 23, 1981.

historian Natalia Molina writes, “To then deport them ten, even twenty years after they have established their lives in the United States might be best described as a kind of violence.”<sup>14</sup> Immigration enforcement also leads to death. Enforcement strategies that built fences and pushed migrants into more desolate, harsher conditions starting in the 1940s “muddied the authorship of state violence” because “no one could be named in the death of the migrants.” As historian Kelly Lyle Hernández argues, such enforcement methods purportedly strengthening border security “structured a system of violence without perpetrators.”<sup>15</sup> This system of violence marked and continues to mark the personal experiences of those who encounter it. However, for much of the twentieth century, there was a disparity between official policy and the reality of experiences for those who were subjected to the detention regime. Once the official policy changed, such disparities disappeared. No longer needing the pretext of exclusionary rationales nor the fiction of “humane” detention policies, the unencumbered state could consolidate its official policy with a simple rationale of deterrence. Or, even more simply, violence.

Understanding the historical devolution of immigration policy and detention practices is the central objective of this story. This work argues that since its beginnings in the late nineteenth century to its current manifestations today, noncitizen detention policy in the United States transformed from a form of exclusion to a method of state-sponsored violence. The heart of this transformation took place in the middle of the twentieth century, in the era of “humane” detentions, when official policy directly

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<sup>14</sup> Natalia Molina, *How Race Is Made in America: Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley: University of California Press, 2014), 110.

<sup>15</sup> Kelly Lyle Hernández, *Migra! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010), 132.



contradicted reality and set the stage for the violence that followed. The violence of detention policy can best be understood as a form of death. As noncitizen detention evolved over the twentieth century, exclusionary strategies fused with criminalization to become a brutal regime of literal and figurative death. While confined within subpar conditions of detention centers and subjected to lesser rights, noncitizens experience arbitrary forms of state violence that can literally end their lives either while detained or post-deportation. Since 2003, there have been more than 170 recorded deaths of noncitizens in the custody of Immigration and Customs Enforcement.<sup>16</sup> The literal destruction of human life bears witness to the unadulterated state violence of detention policy. Simply put, detention policy kills. But no one is held accountable for the killing. After all, as Charles Bowden once noted, “We can still believe that destroying another human life is an extreme act. Unless of course, the slaughter is done by governments.”<sup>17</sup> Noncitizens languish inside detention centers that are essentially prisons, fighting their cases in adversarial procedures similar to criminal cases, yet not covered under criminal law. Since immigration cases fall under administrative law, criminal law protections such as a right to legal counsel at the state’s expense do not apply. The result seems

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<sup>16</sup> For recent articles people facing death after deportation, see Sibylla Brodzinsky and Ed Pilkington, “US government deporting Central American migrants to their deaths,” *The Guardian*, October 12, 2015, available at <https://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>. See also Choe Sang-Hun, “Deportation a ‘Death Sentence’ to Adoptees After a Lifetime in the U.S.,” *The New York Times*, July 2, 2017, available at <https://www.nytimes.com/2017/07/02/world/asia/south-korea-adoptions-phillip-clay-adam-crapser.html>.

<sup>17</sup> Charles Bowden, *Murder City: Ciudad Juárez and the Global Economy’s New Killing Fields* (New York: Nation Books, 2010), xi. Marc Lamont Hill’s framework of being “nobody” was also influential here. As Hill writes, “To be Nobody is to be vulnerable... To be Nobody is to be subject to State violence.” Marc Lamont Hill, *Nobody: Casualties of America’s War on the Vulnerable, from Ferguson to Flint and Beyond* (New York: Simon and Schuster, 2016), xvii, xviii.

predictable. As scholar Lisa Marie Cacho argues, “For all legally uncertain populations, the law punishes but does not protect, disciplines but does not defend.”<sup>18</sup> For noncitizen detainees, therefore, the punitive effect of law is the primary reality of their incarceration. Those who manage to stay alive while detained, face a different form of death. The thousands who are compelled to ‘choose’ voluntary departure do so under the threat of prolonged detention and a lack of legal options, including access to counsel.<sup>19</sup> Still others decide to remain in detention, desperately exhausting the few legal avenues – and very time-consuming appeals<sup>20</sup> – left available to noncitizens, hoping for compassion within a rhetoric of due process discourse.<sup>21</sup> This hope is, for most, ultimately an illusion. When the state denies all relief, noncitizens face deportation. Deprived of hope and all of the time lost inside administrative cages, noncitizens who manage to live still experience a

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<sup>18</sup> Lisa Marie Cacho, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected* (New York: New York University Press, 2012), 8.

<sup>19</sup> Because deportation proceedings are considered civil, rather than criminal, courts have held that the right to counsel is derived from the Constitution’s Fifth Amendment due process clause rather than the Sixth Amendment. *Magallanes-Damian v. INS*, 783 F.2d 931, 933 (9th Cir. 1986). In *Padilla v. Kentucky*, the Supreme Court held that in criminal proceedings, the Sixth Amendment’s right to effective assistance of counsel requires an attorney representing a noncitizen to warn their client about possible immigration consequences that may result from a guilty plea. *Padilla v. Kentucky*, 559 U.S. 356 (2010). While possibly helpful for some noncitizen criminal defendants, there is still no right to counsel at the state’s expense in deportation proceedings.

<sup>20</sup> As one recent work points out, “For people who decide not to sign the removal order and who fight their cases, immigration detention can last for excessive periods, even years, because of a backlog in the system.” Jeremy Slack, et. al, “In Harm’s Way: Family Separation, Immigration Enforcement Programs, and Security on the U.S.-Mexico Border,” in *The Shadow of the Wall: Violence and Migration on the U.S.-Mexico Border*, edited by Jeremy Slack, Daniel E. Martínez, and Scott Whiteford (Tucson: The University of Arizona Press, 2018), 81.

<sup>21</sup> This hope for compassion is similar to what scholar Lisa Marie Cacho explains as a “demand for humanity” which she argues is “ultimately disempowering because they can be interpreted only as asking to be given something sacred in return for nothing at all.” Cacho, *Social Death*, 7.

form of figurative death characterized by pain, suffering, isolation, unfairness, and ultimately, injustice.<sup>22</sup> Violence is not just a part of noncitizen detention policy. Now it is the policy.<sup>23</sup>

In order to understand the devolution in immigration policy and detention practices that ultimately became state-sponsored violence, noncitizen detention will be analyzed as a unique aspect of the immigration enforcement mechanism. Detention is distinctive among other immigration enforcement mechanisms for three main reasons. First, noncitizen detention involves state action which bears unique and significant jurisprudential implications. For instance, rights within the Bill of Rights or the Fourteenth Amendment are generally implicated when a state actor, and in turn, state action, is involved.<sup>24</sup> Second, despite being placed in federal custody, noncitizen

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<sup>22</sup> This concept parallels the idea of “legal violence” proposed by sociologists Cecilia Menjívar and Leisy Abrego. According to the authors, legal violence refers to the harmful effects produced in light of the “complex manner in which the law exerts its influence and control” which can “potentially obstruct and derail immigrants’ paths of incorporation.” Menjívar and Abrego, “Legal Violence: Immigration Law and the Lives of Central American Immigrants,” *American Journal of Sociology* 117, no. 5 (2012), 1383.

<sup>23</sup> Here I echo Charles Bowden who wrote, “Violence is now woven into the very fabric of the community and has no single cause and no single motive and no on-off button. Violence is not a part of life, now it is life.” Bowden, *Murder City*, 105. This work also recognizes the contributions of scholars who have discussed violence generally in the formation of the nation and American life. For instance, Richard Maxwell Brown argues, “Apart from its role in the formation and preservation of the nation, violence has been a determinant of both the form and the substance of American life. The threat to the structure of society mounted by the criminal and the disorderly has been met energetically by the official and unofficial violence of the forces of law and order... Whether employed legally or extralegally, it has been used to support the cohesive, three-tiered structure of the American community with its upper, middle, and lower classes and its underlying social values of law and order and the sanctity of property.” Richard Maxwell Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (New York: Oxford University Press, 1975), 4.

<sup>24</sup> As pertaining to the Fourteenth Amendment, the Supreme Court held in the *Civil Rights Cases* that “until some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the Fourteenth Amendment, no legislation of the United States under said amendment, nor any proceeding under such

detention involves the jurisdictional overlap between federal, state, local, and private entities which creates tensions and complications within the immigration enforcement regime.<sup>25</sup> Third, unlike other aspects of immigration enforcement, noncitizen detention involves revenue generation for both state and local entities as well as private prison companies (since the 1980s that built upon previous carceral relationships between federal and local officials). These relationships involved negotiations for housing noncitizens, who were federal prisoners, within their jurisdictions in exchange for federal money.<sup>26</sup> Such features emphasize the singularity of noncitizen detention. While scholars have tended to treat detention and deportations concomitantly, this work argues

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legislation, can be called into activity, for the prohibitions of the amendment are against State laws and acts done under State authority. *Civil Rights Cases*, 109 U.S. 3, 13 (1883). For a recent discussion on the state action doctrine see, “Developments in the Law: State Action and the Public/Private Distinction,” *Harvard Law Review* 123 (2010): 1248-1314.

<sup>25</sup> One recent work has noted another consequence: “Citizens and noncitizens confined in these prison belts are held on criminal and administrative grounds by multiple state authorities (federal, state, county), and their agents (public and private). The resulting interjurisdictional patchwork underscores the tight connections between migration and criminal-justice practices.” Jenna M. Loyd and Alison Mountz, *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States* (Berkeley: University of California Press, 2018), 27. Also, private prisons have come to involve one of the “most widespread privatization of immigration enforcement.” Hiroshi Motomura argues, “Private detention comes into play only after unauthorized migrants are apprehended, so it may not seem to delegate federal authority in the same way as letting state and local police decide who comes into contact with federal immigration agencies, or letting employers fire unauthorized workers. But decisions by private prison companies raise concerns similar to those associated with employers and state and local governments. Something as basic as keeping detainees in solitary confinement for violation of prison rules can hamper the ability of unauthorized migrants to assert their rights when the government tries to deport them.” Motomura, *Immigration Outside the Law* (New York: Oxford University Press, 2014), 142-43.

<sup>26</sup> Increasingly, alternatives to detention like paying bonds and/or having ankle monitors have also become a booming business. See, Steve Fisher, “Getting Immigrants Out of Detention Is Very Profitable,” *Mother Jones* (September/October 2016), available at <https://www.motherjones.com/politics/2016/09/immigration-detainees-bond-ankle-monitors-libre/>.

noncitizen detention requires a specialized lens of analysis in order to better understand the devolution of immigration enforcement.

When the history of U.S. immigration enforcement is viewed through the lens of noncitizen detention policy, a new periodization emerges. This new periodization refocuses immigration enforcement into three regimes over the course of the twentieth century: exclusion, “humane,” and violent. What begins with sovereignty-based exclusionary justifications in the late nineteenth century exacerbates into a form of state-sponsored violence by the late twentieth century. Each regime sets the stage for the next. In this way, detentions provide a defining marker for understanding the nature of immigration enforcement at each of the three formative time periods. For instance, during exclusionary detentions, policy dictated that those who were deemed undesirable be kept out and thus people were detained to access their admissibility. However, during violent detentions, policy dictates that detention is meant as deterrence to break the will of people to keep fighting against their removal. In the meantime, while policy changes, the experiences of those subjected to detention bear parallels through commonality of sentiments such as pain, suffering, isolation, and death. Rather than simply being a feature, then detention can be a denotation of immigration law enforcement priorities, where the nature and extent of noncitizen detentions characterizes the intersection of immigration policy and the reality of enforcement. Ultimately, a lens of noncitizen detention policy reveals both immigration enforcement priorities as well as the discrepancies between the implementation of policy and the experiences of those subjected to it.

This new periodization of immigration enforcement complements recent scholarship pertaining to the mass incarceration crisis, where immigration control has become the “leading cause of incarceration in the United States” today. Torrie Hester continues,

Since the 1880s, in the name of immigration control, the federal government has deported more than 50 million people.... In the 1980s policy makers added mass incarceration to their strategy of mass deportation of low-status, low-wage workers.... Deportability’s role in the carceral state also reaches beyond federal prisons. Since the 1980s hundreds of thousands of noncitizens have been deported after serving state and local criminal sentences.<sup>27</sup>

As noncitizen detentions were filling jails and prisons in the late twentieth century, however, punitive drug laws were spearheading the overcrowding. As Robert T. Chase argues,

During the 1970s and early 1980s prisons experienced unprecedented levels of overcrowding due to drug laws and the punitive turn in sentencing. Overcrowding worsened prison conditions.... To ameliorate these worsening conditions, the prisoners’ rights movement developed a two-prong strategy, using mass protest tactics alongside civil rights cases and class-action lawsuits to demand public visibility.... Prisoners of the 1970s and 1980s understood the dangers of mass incarceration before many on the outside did.<sup>28</sup>

Chase responds to Heather Ann Thompson’s call for historians to “critically inquire into how mass incarceration contributed to the declension narratives of the mid-to-late twentieth century.”<sup>29</sup> Thompson has argued in her own work analyzing the Attica uprising that “even the most marginalized citizens will never stop fighting to be treated as

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<sup>27</sup> Torrie Hester, “Deportability and the Carceral State,” *The Journal of American History*, Vol. 102, Issue 1 (June 2015), 141, 146, 147.

<sup>28</sup> Robert T. Chase, “We Are Not Slaves: Rethinking the Rise of Carceral States through the Lens of the Prisoners’ Rights Movement,” *The Journal of American History*, Vol. 102, Issue 1 (June 2015), 75.

<sup>29</sup> Chase, “We Are Not Slaves,” 75.

human beings. It testifies to this irrepressible demand for justice.”<sup>30</sup> Noncitizens, too, joined in this struggle as mass incarceration and overcrowded jail cells engulfed citizens and noncitizens indiscriminately. Noncitizen detainees, who were incarcerated alongside other federal prisoners, would play an important role in such protest tactics throughout the 1970s into the 1990s. As such, this work contributes to this scholarship by relaying stories of noncitizen detainees who witnessed and experienced incarceration amidst the punitive War on Drugs.

Recent scholarship has also increasingly analyzed the intersection of immigration and criminal justice systems in the late twentieth century during what this work calls the era of violent detentions. In order to relieve prison overcrowding during the 1980s, for instance, there was a push toward removing noncitizens from jails and prisons and deporting them through the Criminal Alien Program. As Patrisia Macías-Rojas argues, “new enforcement priorities under the Criminal Alien Program fundamentally transformed detention and deportation in ways that merged the immigration and criminal justice systems.”<sup>31</sup> Macías-Rojas argues that in order to fully implement CAP, Congress passed the punitive 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) which “expanded criminal enforcement priorities, enacted retroactive deportation for immigrants with criminal records, instituted mandatory detention, and appropriated the critical funding for information and technology and detention beds

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<sup>30</sup> Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York: Pantheon Books, 2016), 571.

<sup>31</sup> Patrisia Macías-Rojas, *From Deportation to Prison: The Politics of Immigration Enforcement in Post-Civil Rights America* (New York: New York University Press, 2016), 9.

necessary to make the entire program workable.”<sup>32</sup> With mandatory detention, the number of noncitizens detained increased “dramatically in local jails, federal penitentiaries, and privately run detention facilities.”<sup>33</sup> Ultimately, CAP was a turning point in the criminalization of immigration enforcement and remains influential in driving enforcement priorities today. As Macias-Rojas explains, “What began as a program to purge criminals from jails and prisons, which was CAP’s original mission, has become one of the chief mechanisms driving federal criminal prosecution and imprisonment for immigration offenses.”<sup>34</sup> The passage of the 1986 Immigration Reform and Control Act (IRCA) was a further “pivotal point in the criminalization of migrants, setting the stage for increases in deportation and detention, as well as the abuses that immigrants endure once detained.”<sup>35</sup> Moreover, the collision of immigration and criminal justice serves to make vulnerable those caught within both systems. As Tanya Maria Golash-Boza argues, “Criminal aliens, similar to felons, have become expendable and serve as an example to others who may consider transgressing the law.”<sup>36</sup> This

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<sup>32</sup> Macías-Rojas, *From Deportation to Prison*, 9.

<sup>33</sup> Kevin R. Johnson, *Opening the Floodgates: Why America Needs to Rethink its Borders and Immigration Laws* (New York: New York University Press, 2009), 49. A recent Harvard Law Review note seemed hopeful that mandatory detention would pave the way for “expanding the right to the appointment of counsel.” ““A Prison is a Prison is a Prison”: Mandatory Immigration Detention and the Sixth Amendment Right to Counsel,” *Harvard Law Review* 129 (2015), 524.

<sup>34</sup> Macías-Rojas, *From Deportation to Prison*, 4.

<sup>35</sup> Jodie Michelle Lawston and Martha Escobar, “Policing, Detention, Deportation, and Resistance: Situating Immigrant Justice and Carcerality in the 21st Century,” *Social Justice* 36, no. 2 (2009-2010), 1.

<sup>36</sup> Tanya Maria Golash-Boza, *Deported: Immigrant Policing, Disposable Labor and Global Capitalism* (New York: New York University Press, 2015), 19. According to the author, punishment serves two purposes: “(1) Law makers and enforcers have statistics to show how effectively they are using public funds, and (2) the draconian consequences keep potential



constructed law and its purported transgressors ultimately highlight the global hierarchy of labor mobility. According to Golash-Boza, “mass deportation reinforces the limited mobility and enhanced vulnerability of black and brown labor.”<sup>37</sup> When those who live in places where opportunities are severely curtailed are forced to migrate to find work to support themselves and their families, the increased criminalization of crossing borders particularly impacts the most vulnerable because their lack of financial resources leaves them no other alternative. Deemed violators of the law, they are held in cages in a futile attempt to dissuade others who are similarly situated from following suit.

Scholars of the modern carceral state have also pointed to the importance of analyzing the U.S.-Mexico borderlands as a “hot spot for policing and confinement.” As several scholars note, “No U.S. police practice is as racially concentrated as immigration law enforcement in the U.S.-Mexico borderlands, nor is any other sector of policing and confinement growing as rapidly. Immigrant detention – that is, the process of forcibly confining immigrants during deportation proceedings – is now the largest system of human caging operated by the U.S. government.”<sup>38</sup> In her most recent work, Deborah Kang traces how immigration officials in the Southwest “made the nation’s immigration laws” by devising “a wide array of policies pertaining to admissions, deportation, enforcement, and even immigrant rights.” Kang argues that in the Southwest, the “INS

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transgressors in check and willing to work in dead-end, low-wage jobs that barely ensure their subsistence.” Id.

<sup>37</sup> Golash-Boza, *Deported*, 16.

<sup>38</sup> Kelly Lytle Hernández, Khalil Gibran Muhammad, and Heather Ann Thompson, “Introduction: Constructing the Carceral State,” in *The Journal of American History*, Vol. 102, Issue 1 (June 2015), 19.

relied heavily on its administrative discretion, interpreting the nation’s immigration laws in the broadest terms possible so as to maximize their restrictive impact.”<sup>39</sup> While highlighting the “role of the INS in state-building on the border,” Kang also “exposes the fractures in the federal immigration power. While in theory the federal government possesses the exclusive authority to regulate immigration, in practice local and global forces continually impinged upon that power.”<sup>40</sup> This work builds on Kang’s emphasis on understanding immigration enforcement through the development of noncitizen detention policy in practice at the local and state level in the Southwest.

In the era of violent detentions, immigration enforcement and policing has not remained confined to the borderlands. As part of IIRIRA, Congress granted power to state and local law enforcement agencies to enforce civil and criminal immigration laws directly. Codified as section 287(g) of the Immigration and Nationality Act (INA), what came to be known as the 287(g) program approved three types of federal-local policing partnerships: the task force model, the jail model, and the hybrid model. Yet, the program was largely unused until after September 11, 2001. The newly formed Department of Homeland Security (DHS) poured money into immigration enforcement while encouraging the enlistment of police and sheriffs as part of the immigration enforcement apparatus.<sup>41</sup> At its height, about 70 agencies participated in the program.<sup>42</sup> While ICE

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<sup>39</sup> S. Deborah Kang, *The INS on the Line: Making Immigration Law on the U.S.-Mexico Border, 1917-1954* (New York: Oxford University Press, 2017), 4.

<sup>40</sup> Kang, *The INS on the Line*, 6.

<sup>41</sup> Amada Armenta, *Protect, Serve, and Deport: The Rise of Policing as Immigration Enforcement* (Berkeley: University of California Press, 2017), 29-30.

<sup>42</sup> Armenta, *Protect, Serve, and Deport*, 31.

announced it was phasing out the 287(g) program in 2012, another program would soon take its place. The Secure Communities program mandates local law enforcement participation in immigration enforcement. Under the program, law enforcement officials must run a person's fingerprints in Federal Bureau of Investigation databases to check for outstanding warrants and other details after an arrest. Information uncovered in this manner then allows them to hold the person for up to seventy-two hours for transportation to a detention facility where the individual could be deported. Begun in fourteen communities in 2008, the Secure Communities program was then adopted across the country.<sup>43</sup> The program has had dire consequences. As Kevin Johnson points out “many noncitizens charged with but not necessarily convicted of relatively minor criminal offenses – and thus who cannot reasonably be said to pose a serious risk to public safety – were removed from the country under the auspices of Secure Communities.”<sup>44</sup>

Arizona, in particular, has a unique role. Stealing the national spotlight in its punitive measures, the state has modeled itself a leader of purported immigration enforcement strategies for others to follow.<sup>45</sup> This has come with the rise of state laws,

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<sup>43</sup> “The Evolution of Devolution,” in *Policing Immigrants: Local Law Enforcement on the Front Lines*, edited by Doris Marie Provine, Monica W. Varsanyi, Paul G. Lewis, and Scott H. Decker (Chicago: University of Chicago Press, 2016), 31.

<sup>44</sup> Kevin R. Johnson, “The Beginning of the End: The Immigration Act of 1965 and the Emergence of the Modern U.S.-Mexico Border State,” in *The Immigration and Nationality Act of 1965: Legislating a New America*, edited by Gabriel J. Chin and Rose Cuison Villazor (New York: Cambridge University Press, 2015), 160.

<sup>45</sup> One author writes that “Arizona in general and Phoenix in particular are at the epicenter of the nation’s immigration debate.” Terry Greene Sterling, *Illegal: Life and Death in Arizona’s Immigration War Zone* (Guilford: Lyons Press, 2010), 4. See also, Terry Greene Sterling, “After 4 Years As America’s Craziest State, Arizona Tries Out Moderation,” *The Atlantic*, October 12,

like SB1070, which introduced provisions that allowed local law enforcement to ask for evidence of legal status, and enforcement of federal programs. One significant example in the era of violent detentions is the state's role in implementing the 287(g) program. As the authors of *Policing Immigrants* argue, the "most egregious example of over-aggressive enforcement practice" of the program was in Maricopa County, Arizona where then sheriff Joe Arpaio

embraced the 287(g) program with gusto, engaging the maximum 160 deputies in the effort—far more than in any jurisdiction nationwide. Deputies conducted traffic stops focused on Latino-looking drivers, raids of places that employ large numbers of immigrants, and crime-suppression sweeps in neighborhoods, many of which have large Latino populations.<sup>46</sup>

Yet, such twenty-first century punitive developments bear a long history in the state. In her study of Arizona's role in the Jim Crow Southwest, Kristina Campbell argues that "Arizona's modern anti-immigrant laws and policies are merely the newest incarnation of the State's long history of discriminatory laws against racial and ethnic minorities, particularly Latinos and American Indians."<sup>47</sup> Campbell further notes, "The argument that Arizona's immigration laws are really race-based exclusion laws in disguise finds support in the fact that the enforcement of laws attempting to regulate noncitizens in Arizona has led to well-documented instances of racial profiling against people of color."<sup>48</sup> State laws and implementation of federal immigration policies in Arizona have

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2012, available at <https://www.theatlantic.com/politics/archive/2012/10/after-4-years-as-americas-craziest-state-arizona-tries-out-moderation/263466/>.

<sup>46</sup> "The Evolution of Devolution," in *Policing Immigrants*, 30.

<sup>47</sup> Kristina M. Campbell, "Rising Arizona: The Legacy of the Jim Crow Southwest on Immigration Law and Policy after 100 Years of Statehood," *Berkeley La Raza Law Journal* 10 (2014), 102.

created a unique blend of criminal justice and immigration systems in the Southwest that proves a defining feature of the modern carceral state. Thus, this work will focus on the historical devolution of the carceral state as well as the concurrent developments in immigration enforcement in Arizona.

The story begins with exclusion. Excluding those deemed unfit, undesirable, or unworthy has been the cornerstone of United States immigration policy since at least the nineteenth century. Exclusion based on race, class, health, or profession barred specific groups from entry and targeted the same or other groups for incarceration and deportation. Starting in the late nineteenth century, immigration authority was deemed to lie exclusively with the federal government and not the states. This was justified under plenary power, the cornerstone of sovereignty, the supposedly inherent and essentially unlimited power of nations to protect their borders, control the in-migration of newcomers, and enforce the removal of noncitizens deemed to be undesirable.<sup>49</sup> This power also justifies distinctions between ‘citizen’ and ‘noncitizen’ rights, where ‘noncitizens’ are subject to separate laws purportedly because they lack official membership in the nation-state, i.e. citizenship. As legal scholar Linda Bosniak argues,

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<sup>48</sup> Campbell, “Rising Arizona,” 131.

<sup>49</sup> According to one scholar, “The plenary power doctrine is a collection of several separate but related principles: first, that the immigration authority is reposed in the federal government and not the states; second, that the authority is allocated in some fashion between the executive and legislative departments of the federal government; and, third, that the judicial branch has an extremely limited role in reviewing the executive’s immigration decisions if, indeed, the judiciary may review those decisions at all. The executive/legislative and the judicial deference prongs of the doctrine were not developed until late in the nineteenth century. Until that time there was great uncertainty whether the immigration power resided with the federal government at all.” Charles D. Weisselberg, “The Exclusion and Detention of Aliens: Lessons from the Lives of Ellen Knauff and Ignatz Mezei,” *University of Pennsylvania Law Review* 143, no. 4 (April 1995), 939.

“That outsider status, which the law calls alienage, shapes their experience and identity within the community in profound ways. Among other disabilities, aliens are denied the vote and most significant welfare benefits, and, notwithstanding the ties they may have developed in and with the community, they are always potentially subject to deportation by the state.”<sup>50</sup> Cloaking immigration policy within such discriminatory rights-based models perpetuates a discourse of due process and equal protection for ‘citizens’ while simultaneously justifying wide-ranging levels of immigration restriction regimes for ‘noncitizens’ subject to arbitrary state enforcement.<sup>51</sup>

These experiences are part of the broader history of the origins of the carceral state in the United States. As legal scholar Kunal Parker has pointed out, from British North America to the Early Republic and beyond, people have continually been made foreign in significant ways that challenge our understanding of exclusionary impulses predominantly impacting those coming from outside borders. Part of this involved the sheer multitude of legal statuses from the very early days of British North America, which included: “British subject, naturalized subject, denizen, alien, servant,

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<sup>50</sup> Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton: Princeton University Press, 2006), 9. This is further compounded by people considered undocumented who face “permanent alienage” because there is no realistic path for them to legalize their status and become citizens. *Id.* at 112.

<sup>51</sup> As Nicholas De Genova argues, “Indeed it is citizenship that remains for us the imaginary and purely deceptive flower dissimulating our subjection and adorning our abjection... The allure of “membership” within (state) power serves precisely as the device for entrapment that is otherwise named citizenship and consecrated as a virtually natural (birth-)“right.”... All of life is thus assigned to a “proper” location within one or another of the vast labor camps that are nation-states, ostensibly endowed with the rights of citizens, while the vital mobility and autonomy of labor simultaneously ensure a more or less reliable and precisely fluid reserve of “dislocated” life which may be relegated to the relative disenfranchisement sanctimoniously allotted to noncitizens.” De Genova, “The Deportation Regime: Sovereignty, Space, and the Freedom of Movement,” in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, ed. Nicholas De Genova and Nathalie Peutz (Durham: Duke University Press, 2010), 45, 50.

redemptioner, convict, married woman, pauper, slave, free white, free black, Indian.”<sup>52</sup> At the same time, many already within the nation’s borders were rendered foreign with strategies “deployed along axes of race, gender, class, and political opinion... to suppress, exploit, reject, exclude, expel, and refuse responsibility for portions of the domestic population.”<sup>53</sup> Such exclusions and expulsions also operated under a regime of captivity and confinement for populations increasingly on the move. From the Early Republic onwards into the nineteenth century, certain groups were targeted for captivity and confinement, evidenced by the simultaneous developments of prisons, asylums, reservations, while plantation slavery increased in brutality. Long before any federal immigration bureaucracy developed in the early 1890s to enforce the country’s immigration laws, African Americans, Native Americans, and the poor had been targeted for exclusionary measures – they had been required to carry papers, live in designated areas, or had been warned to leave towns.<sup>54</sup> The development of exclusionary suspicions directed at people of a wide variety of legal statuses in the nineteenth century was an important stepping stone in building the modern carceral state in the United States.

Such measures targeting various communities laid the groundwork for immigration enforcement. When the Geary Act, which extended the Chinese Exclusion Act of 1882, introduced the mandate for all persons of Chinese descent to carry papers to

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<sup>52</sup> Kunal Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600-2000* (Cambridge: Cambridge University Press, 2015), 23.

<sup>53</sup> Parker, *Making Foreigners*, 5.

<sup>54</sup> For one study of poverty and homelessness in colonial America, see Ruth Wallis Herndon, *Unwelcome Americans: Living on the Margin in Early New England* (Philadelphia: University of Pennsylvania Press, 2001).

prove their legal status in 1892, it built on a legacy of suspicion directed at African Americans to prove their free status both in northern and southern states before the end of slavery.<sup>55</sup> As Anna Pegler-Gordon has argued, “The unstated conclusion of Geary’s logic was that, as a result of their shared behavior, all Chinese were tainted by the presence of illegal immigrants among them and all were potential frauds... The very presence of the Chinese in America was assumed to be not only economically, morally, and racially dangerous but also criminal.”<sup>56</sup> Moreover, the Geary Act coincided with the simultaneous “repeal of Reconstruction-era laws protecting the African American franchise, which was part of a larger national project aimed at excluding African Americans from politics.”<sup>57</sup> Arguably, the exclusionary legacy continues today, as those suspected of being an “illegal immigrant” bearing striking resemblances to the singularity of those who were suspected of being a “fugitive slave” in the early Republic and antebellum eras.<sup>58</sup> When “likely to become a public charge”<sup>59</sup> was codified and implemented as an immigration

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<sup>55</sup> The Chinese Exclusion Act “barred all Chinese laborers from entering the country for ten years and prohibited Chinese immigrants from becoming naturalized citizens. It expressly allowed only Chinese students, teachers, diplomats, merchants, and travelers to continue to immigrate to the United States. In other words, Chinese could come to visit and conduct business, but they were not welcome to stay and settle in the United States... The act was renewed in 1892 and 1902, extended to the U.S. territories of Hawaii and the Philippines, and made permanent in 1904.” Erika Lee and Judy Yung, *Angel Island: Immigrant Gateway to America* (New York: Oxford University Press, 2010), 75.

<sup>56</sup> Anna Pegler-Gordon, *In Sight of America: Photography and the Development of U.S. Immigration Policy* (Berkeley: University of California Press, 2009), 35-36.

<sup>57</sup> Gabriel J. Chin and Daniel K. Tu, “Comprehensive Immigration Reform in the Jim Crow Era: Chinese Exclusion and the McCreary Act of 1893,” *Asian American Law Journal* 23 (2016), 40-41.

<sup>58</sup> See Karla Mari McKanders, “Immigration Enforcement and the Fugitive Slave Acts: Exploring Their Similarities,” *Catholic University Law Review*, Vol. 61, Issue 4 (2012).



restriction (functioning as what law professor Daniel Kanstroom calls extended border control and post-entry social control<sup>60</sup>), it built upon long established legacies of poor laws and warning out indigents from colonial towns that had British origins. As Hidetaka Hirota argues,

the British poor law became the foundation of American immigration law. The story of early American immigration control, therefore, is about how British laws for regulating the movement of the poor were transformed into laws to restrict the admission of particular foreigners and deport them, and economic considerations for immigrants' poverty were paramount in this transformation.<sup>61</sup>

Such historical antecedents laid the groundwork for immigration enforcement through the targeting of various communities, in particular, communities of color. Particularly useful then is the intersection of critical race theory and immigration. However, only recently since the 1990s, has immigration scholarship applied critical race theory approaches, which has emphasized the “voices of outsiders by employing the narrative form and by focusing on interrelationships of race, gender, and other identity characteristics.”<sup>62</sup> By recognizing that personal narratives and unconventional approaches must inform contemporary scholarship to “confront issues of racism and other forms of discrimination in modern American society,”<sup>63</sup> critical race theory offers a crucial avenue

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<sup>59</sup> The “public charge” language first appears in the 1882 Immigration Act (also known as the Chinese Exclusion Act). Molina, *How Race Is Made in America*, 92.

<sup>60</sup> Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Boston: Harvard University Press, 2007).

<sup>61</sup> Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard and the Nineteenth-century Origins of American Immigration Policy* (New York: Oxford University Press, 2017), 43.

<sup>62</sup> Stephen Shie-Wei Fan, “Immigration Law and the Promise of Critical Race Theory: Opening the Academy to the Voices of Aliens and Immigrants,” *Columbia Law Review*, 97:4 (1997): 1204.

<sup>63</sup> *Id.* at 1205.

of analysis for immigration scholarship. Immigration critical race theory “examines the way that the immigrant persona is racialized, which allows us to observe the dynamics and fluidity in socially constructing racial meanings.”<sup>64</sup> Such an approach demonstrates how noncitizen experiences are fundamentally informed by racialization and uncovers ways to understand the violence perpetrated against communities of color in particular. As critical race theory pioneer Derrick Bell notes, “the harsh treatment of noncitizens of color reveals terrifying lessons about how society views citizens of color.”<sup>65</sup> Following Ian Haney-Lopez’s example in *White by Law*, scholars from many fields have thus increasingly expanded the analytical framework of immigration studies to include critical race theory approaches.<sup>66</sup>

Much of the recent noncitizen detention scholarship focuses on transnational or global trends. One work looking at detention in a global context notes, “Before the turn of the century, immigration detention was used by few states. Today, nearly every state

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<sup>64</sup> Gabriella Sanchez and Mary Romero, “Critical Race Theory in US Sociology of Immigration,” *Sociology Compass* 4/9 (2010), 780.

<sup>65</sup> Derrick Bell, *Race, Racism, and American Law* (New York: Aspen Law & Business, 2000), 129.

<sup>66</sup> See e.g. Ali Behdad, “Ins and Outs: Producing Delinquency at the Border,” *Aztlán: A Journal of Chicano Studies* 23, no. 1 (Spring 1998); Kevin Johnson, “Race, the Immigration Laws, and Domestic Relations,” *Indiana Law Journal* 73, no. 4 (Fall 1998); Robert S. Chang, *Disoriented: Asian Americans, Law, and the Nation-State* (New York: New York University Press, 2000); Alejandro Lugo, “Theorizing Border Inspections,” *Cultural Dynamics* 12, no. 3 (November 2000); Nicholas De Genova, “Migrant Illegality and Deportability in Everyday Life” (2002); Bill Hing, *Defining America through Immigration Policy* (Philadelphia: Temple University Press, 2003); Kevin Johnson, *The Huddled Masses Myth: Immigration and Civil Rights* (Philadelphia: Temple University Press, 2003); Bill Hing, *Deporting Our Souls: Values, Morality, and Immigration Policy* (Cambridge University Press, 2006); Mary Romero, “Racial profiling and immigration law enforcement: rounding up of usual suspects in the latino community,” *Critical Sociology* 32 (March 2006); Guillermina Gina Nunez and Josiah McC Heyman, “Entrapment Processes and Immigrant Communities in a Time of Heightened Border Vigilance,” *Human Organization* 66, no. 4 (Winter 2007).

around the world has adopted immigration detention policy and practice in some form.” The editors further point out, “Immigration detention is simultaneously a practice and a policy, an enforcement priority and a legislative by-product, and a site of tension between extreme sovereign power and people claiming universal rights in the face of that display.”<sup>67</sup> In their global approach, the editors hope to provide an overview of the spread of noncitizen detention. In his recent study, Tom Wong looks at the nature and conditions of detention in the United States and Europe.<sup>68</sup> To illustrate what he calls “the labyrinthine processes of immigration detention,” Wong differentiates between “front-end detention, which is detention upon entering a country, and back-end detention, which is detention pending deportation. Though seemingly benign, these distinctions can have serious implications for the length of detention, as well as for the legal recourse available to immigrant detainees.”<sup>69</sup> Yet, there is little discussion of the way in which the nature of detention itself evolved and changed over time. While important to study the global regime of detention, there has yet to be a systematic study of the history of noncitizen detention in the United States. This work attempts to fill that gap.

Part of the efforts in challenging the system of noncitizen detention may have to be directed towards a more holistic approach as some recent scholarship has pointed out. In one interdisciplinary study, the editors attempt to provide “a forum for the

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<sup>67</sup> Stephanie J. Silverman and Amy Nethery, “Understanding immigration detention and its human impact,” in *Immigration Detention: The Migration of a Policy and Its Human Impact* (New York: Routledge: 2015), 1.

<sup>68</sup> Tom K. Wong, *Rights, Deportation, and Detention in the Age of Immigration Control* (Redwood City: Stanford University Press, 2015).

<sup>69</sup> Wong, *Rights, Deportation and Detention*, 110-11.

interdisciplinary exploration of strategies and analyses that are aimed at contesting the logic and growth of immigration detention.” The editors note that “to challenge damaging detention policies and practices would require a sophisticated, multi-faceted approach, one that is capable of critically assessing the many dimensions of this phenomenon.” Moreover, the editors write, “The very nature of immigration-related detention necessitates such an approach. Detention occurs at borders, across borders and sometimes between border...”<sup>70</sup> This work attempts to add to this current growing trend by historicizing detention itself within the broader framework of immigration enforcement in the United States.<sup>71</sup>

A holistic approach could especially be helpful in light of the tendency of scholars to blindly apply equal protection and due process discourses in their work. Such frameworks should be seen as increasingly problematic particularly within contexts of immigration enforcement and the carceral state more broadly. For instance, consider the Equal Protection Clause, which states that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”<sup>72</sup> Under equal protection discourses, “equal laws” are “qualified as requiring not that all persons be classified, judged, or treated alike, but merely that relevantly similar persons, or persons in relevantly similar

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<sup>70</sup> Michael J. Flynn and Matthew B. Flynn, “Introduction: the immigration detention puzzle in interdisciplinary perspective,” in *Challenging Immigration Detention: Academics, Activists and Policy Makers*, edited by Michael J. Flynn and Matthew B. Flynn (Cheltenham, United Kingdom: Edward Elgar Publishing, 2017), 4.

<sup>71</sup> While there has not yet been a study of the history of detention in the United States, works pertaining to other countries have recently been published. For a systematic study of detention in Britain, for instance, see Mary Bosworth, *Inside Immigration Detention* (New York: Oxford University Press, 2014).

<sup>72</sup> U.S. Const. art. XIV, sec. 1, cl. 2.

circumstances, be treated alike.”<sup>73</sup> Yet, that is hardly an acceptable framework because of the ambiguities at play. As one scholar notes, “It simply requires the production of some reason for treating any group less favorably than any other group, with no further guidance as to what should count as a sufficient reason for any form or degree of inequality.”<sup>74</sup> The historical devolution of noncitizen detention and the rise of the carceral state highlight the consequences of what happens when such ambiguities are left to be exploited with laws that can be justified as fulfilling purported equal protection requirements.

Moreover, consider the Due Process Clause, which is referenced in both the Fifth Amendment (as applied to the federal government) and the Fourteenth Amendment (as applied to the states), that no one shall be “deprived of life, liberty, or property without due process of law.”<sup>75</sup> The detention system has adversarial proceedings that could last years, on matters of incredible legal complexity with respondents who may or may not speak English, which eventually lead to their deportation, without a statutory right to counsel. When such proceedings are held within detention centers housed in remote areas, those detained are even less likely to find access to any sort of legal assistance or support networks. In addition, the proceedings themselves are akin to a kangaroo court.

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<sup>73</sup> R. George Wright, “Equal Protection and the Idea of Equality,” *Law & Inequality: A Journal of Theory and Practice* 34, no. 1 (2016), 8.

<sup>74</sup> Wright, “Equal Protection and the Idea of Equality,” 8. Legal scholars have differentiated between the anticlassification and antistatutory subordination principles of equal protection discourses. Antistatutory subordination theorists argue that the “guarantees of equal citizenship cannot be realized under conditions of pervasive social stratification and argue that law should reform institutions and practices that enforce the secondary social status of historically oppressed groups.” Jack M. Balkin and Reva B. Siegel, “The American Civil Rights Tradition: Anticlassification or Antistatutory Subordination?” *University of Miami Law Review* 58 (2003), 9.

<sup>75</sup> U.S. Const. amend. V and XIV.

Despite being part of federal law, the federal rules of evidence do not apply in immigration court because it is considered administrative law. This means generally objectionable evidence like hearsay as well as all of the respondent's previous criminal history can be admissible. Despite a translator being physically present (although not always), they are not mandated to translate everything that is said during the proceedings. To no one's surprise, the vast majority of those detained today face such proceedings without an attorney. Sometimes, the detained facing this system alone are children who are subjected to questioning by immigration judges and ICE attorneys in a language they may or may not speak. It is difficult to argue that such a system even has a remote possibility of upholding any constitutional definition of due process by any stretch of the imagination.

Yet, immigration scholarship continues to produce a fragmented view of the carceral state precisely because contemporary works on noncitizen detention still operate within such frameworks of equal protection and due process discourses. For instance, one scholar writes, "The immigrant detention system in the United States is plagued with problems due to the large number of immigrants and the lack of facility space to house immigrants in detention."<sup>76</sup> Instead of questioning the fairness of incarcerating noncitizens who are awaiting administrative—not criminal—proceedings, the author links the problems of the system to overcrowded, inhumane conditions, missing the point entirely. Another scholar insists that to frame noncitizen detention as a civil matter rather than criminal, we should "recreate immigration detention in such a way that it can be

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<sup>76</sup> Kimberly R. Hamilton, "Immigrant Detention Centers in the United States and International Human Rights Law," *Berkeley La Raza Law Journal* 21: 4 (2011), 93.

described only as civil confinement” because in a “truly civil detention system, detention is the exception.”<sup>77</sup> This still assumes that detention would be needed even for a few individuals, where the need for reform still operates within a framework of confinement. In a law review article meant to “explain how practitioners and advocates can ensure that private prisons provide cost-effective services of sufficient quality” since preserving “human rights in prison is valuable,” the author argues, “Reform may be particularly pressing for immigration detainees; some of the most egregious abuses and violations within the realm of private prisons have affected incarcerated immigrants.”<sup>78</sup> The author further notes, “If nothing else, available evidence indicates that existing forms of private prison oversight have been ineffective in many instances to ensure fair treatment and contract compliance.”<sup>79</sup> Despite the “egregious abuses and violations” coupled with ineffective oversight, it is recommended that reform is the best option. Moreover, a recent work argues, “Even if the detention is for civil deportation, the holding itself becomes

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<sup>77</sup> César Cuauhtémoc García Hernández, “Immigration Detention as Punishment,” 61 *UCLA Law Review* 1346 (2014), 1405, 1411. Another work seems to agree about what a system of civil detention might look like also within a framework of confinement: “There would be a presumption against detention. Release into the community would be the rule rather than the exception. The governance of a civil, civil system would be embedded with evidence-based practices and not based upon deterrence-based detention policies. The standards of care ascribed to by all government actors would expressly prohibit the application of a penal model. Detention would be used only when required by law, for the fewest number of individuals – particularly not for families, children and asylum seekers – for the shortest time possible. There would be meaningful access to legal information and representation as well as family visitation and communication.” Dora Schriro, “Afterword: Intimate economies, anomie and moral ambiguity,” in *Intimate Economies of Immigration Detention: Critical Perspectives*, edited by Deirdre Conlon and Nancy Hiemstra (New York: Routledge, 2016), 239.

<sup>78</sup> Mike Tartaglia, “Private Prisons, Private Records,” *Boston University Law Review* 94 (2014), 1690, 1721.

<sup>79</sup> Tartaglia, “Private Prisons, Private Records,” 1722.

inhumane if certain conditions exist.”<sup>80</sup> Again, the qualifier that the “holding” can become “inhumane” only under certain conditions rather than as an absolute requires further reflection. Considering that many, if not most, noncitizen detainees are asylum seekers in some capacity and that the modern noncitizen detention system is fundamentally unfair and racist should lead scholars to *begin* their analysis with the idea that “the most fitting course of action for bona fide asylum seekers would be not to detain them at all.”<sup>81</sup> As such my research aims to question still prevailing assumptions in contemporary scholarship about noncitizen detention.

There still remains much work to be done by immigration scholars to incorporate the stories of those who have first-hand experience of noncitizen detention and immigration proceedings.<sup>82</sup> These voices are often silenced through legal formalities where immigration proceedings are often excluded from the public record.<sup>83</sup> As author

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<sup>80</sup> Lupe S. Salinas, “Always Running: La Migra, Detentions, Deportations, and Human Rights,” in *Immigration and the Law: Race, Citizenship, and Social Control*, edited by Sofía Espinosa Álvarez and Martín Guevara Urbina (Tucson: The University of Arizona Press, 2018), 139.

<sup>81</sup> Donald Kerwin, “Detention: Our Sad National Symbol,” *In Defense of the Alien* 20 (1997), 130.

<sup>82</sup> Even in other fields, there is little scholarship that highlights the voices of those experiencing detention. For instance, in an article directed at sociologists titled “Pains of immigrant imprisonment,” the authors purportedly seek to “focus on the painful experiences of detainees” but do not actually cite anyone imprisoned or who has been imprisoned inside noncitizen detention centers. Jamie Longazel, Jake Berman, and Benjamin Fleury-Steiner, “The pains of immigrant detention,” *Sociology Compass* 10:989-998 (2016).

<sup>83</sup> Despite immigration proceedings being “generally open” to the public, immigration judges exercise enormous discretion in their courtrooms. See, Department of Justice, Executive Office for Immigration Review, *Observing Immigration Court Hearings* at <https://www.justice.gov/eoir/observing-immigration-court-hearings>. Moreover, when immigration courtrooms are housed inside of detention centers that are often located in remote areas and operated by for-profit private companies with their own rules of entry, the openness to the public becomes more symbolic than actual.



Arundhati Roy so eloquently notes, “There’s really no such thing as the “voiceless.” There are only the deliberately silenced, or the preferably unheard.”<sup>84</sup> This research pursues the question of how noncitizens experience such a fundamentally unfair and racist regime by attempting to give those voices, both legally silenced and “preferably unheard,” a medium of expression. This approach intends to further research done by other scholars by analyzing the “intimate economies of immigration detention – that is, the complex systems of micro and macro relationships that enmesh in the realisation of detention and lived experiences of being detained.”<sup>85</sup> Adopting critical race theory’s primary narrative modes of agony tales and counterstories, the oral history project, *Stories of Immigrant Detention*, seeks to tell the stories of noncitizens recalling their detention experiences. The objective is to detail the inherent racism that penetrates nearly every aspect of the modern immigration law enforcement mechanism and bring to light hidden aspects of this noncitizen reality.<sup>86</sup> Noncitizen oral histories can describe chronically subpar detention conditions, extreme variations and arbitrariness of overtly race-based bond determinations, and fundamentally problematic legal procedures that distribute unpredictable outcomes in asylum cases.<sup>87</sup>

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<sup>84</sup> Cited in Chi Mgbako, *To Live Freely in This World: Sex Worker Activism in Africa* (New York: New York University Press, 2016), 1.

<sup>85</sup> Deirdre Conlon and Nancy Hiemstra, “Introduction: Intimate economies of immigration detention,” in *Intimate Economies of Immigration Detention: Critical perspectives*, edited by Deirdre Conlon and Nancy Hiemstra (New York: Routledge, 2016), 1.

<sup>86</sup> As of this writing, the oral history project is ongoing and approved by the Institutional Review Board (Study #4476). The study conducts semi-structured interviews among adult men and women who have been released from Arizona’s noncitizen detention centers. Audio recordings of these interviews will be placed in the ASU Library’s Digital Repository so that they will be accessible to students and researchers at ASU as well as to the general public.

Agony tales revealed through oral histories also guide this project. While the agony tale can be thought of as a “first-person account, usually of some outrage the author suffered,”<sup>88</sup> it can also “encompass experiences related by legal writers on behalf of third parties.”<sup>89</sup> Such avenues of legal storytelling have the potential to allow those whose voices may have been silenced to “hurl rocks over walls of social complacency that obscure the view out from the citadel.”<sup>90</sup> Such stories can describe instances that stray from what is considered acceptable and may even “elicit disapproval, if not outright anger.”<sup>91</sup> Oral histories highlight agony tales of those who have been ripped away from their loved ones, denied actual due process, and made to endure the consequences of their lesser or non-existent legal status for time periods lasting anywhere from days, weeks, months, or years. Thus, stories of those who have spent time in noncitizen detention serve as public testimonies to chronic abuses, document the physical, emotional, and psychological toll, and provide a record of lived experience about the inherent racism embedded within the system. Additionally, counterstories of those who have experienced noncitizen detention can “directly confront the status quo”<sup>92</sup> by showing how injustice is

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<sup>87</sup> Donald A. Ritchie explains, “Memory is the core of oral history, from which meaning can be extracted and preserved. Simply put, oral history collects memories and personal commentaries of historical significance through recorded interviews.” Ritchie, *Doing Oral History: A Practical Guide* (Oxford University Press, 2003), 19.

<sup>88</sup> Richard Delgado, “Rodrigo’s Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence,” 68 *Southern California Law Review* 545, 551-52 (1995).

<sup>89</sup> Fan, *supra* note 4, at 1213.

<sup>90</sup> Richard Delgado, “Storytelling for Oppositionists and Others: A Plea for Narrative,” 87 *Michigan Law Review* 2411, 2441 (1989).

<sup>91</sup> Fan, *supra* note 4, at 1213.

<sup>92</sup> *Id.* at 1215.

systematically performed on noncitizens under the veil of due process formality. Moreover, counterstories “challenge the received wisdom” and “can open new windows into reality, showing us that there are possibilities for life other than the ones we live.”<sup>93</sup> Specifically, this work uses counterstories to serve what Richard Delgado calls a “destructive function,” where stories and counterstories “can show that what we believe is ridiculous, self-serving, or cruel. They can show us the way out of the trap of unjustified exclusion.”<sup>94</sup>

Understanding the nature and extent of the devolution of noncitizen detention raises important questions about the modern carceral state as it pertains to the very core of the state’s ability to exercise near-absolute power over populations made vulnerable through the law. Kelly Lytle Hernández notes, “As the number of deportations escalated during the twentieth century and then surged into the twenty-first century, immigrant detention, that is, ‘not imprisonment in a legal sense,’ emerged as one of the most dynamic sectors of human caging in the United States.”<sup>95</sup> As “one of the most dynamic sectors of human caging,” noncitizen detention should compel us to reevaluate the entire prison project altogether and question the notion of putting people in cages at all. This, of course, is no easy task. As Angela Davis points out, “Prison abolitionists are dismissed as

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<sup>93</sup> Richard Delgado, “Chapter 37: Storytelling for Oppositionists and Others,” *The Latino/a Condition: A Critical Reader, Second Edition*, edited by Richard Delgado and Jean Stefancic, 230.

<sup>94</sup> Delgado, *supra* note 18, at 2415.

<sup>95</sup> Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965* (Chapel Hill: The University of North Carolina Press, 2017), 90.

utopians and idealists whose ideas are at best unrealistic and impracticable, and, at worst, mystifying and foolish.”<sup>96</sup> However, as Davis argues,

if we are willing to take seriously the consequences of a racist and class-biased justice system, we will reach the conclusion that enormous numbers of people are in prison simply because they are, for example, black, Chicano, Vietnamese, Native American or poor, regardless of their ethnic background. They are sent to prison, not so much because of the crimes they may have indeed committed, but largely because their communities have been criminalized.<sup>97</sup>

Here, the stories of those who have experienced detention, and incarceration more broadly, bears the most promise in this reevaluation. In his work, scholar Caleb Smith notes that “works of the American carceral imagination compose a gothic alternative to the sentimental language of reform.” Smith further states that

their gothic imagination confronts humanity with the monstrousness it creates, not through exclusion but through the most profound, and most mortifying, burial within itself. They represent the ghosted inhumanity whose ruins the sovereign subject of humanity has not quite transcended – the presence of the other that the self continuously bears. Their secret is that it is not enough to expand humanity, if the promise of humanity claims the power of mortification; we must also unmake and recompose our concept of the human to divest it of its dehumanizing power. In the end, it is not the inmate but the prison, with its harrowing forms of resurrection, that must be sacrificed in order to be redeemed.<sup>98</sup>

The devolution of the noncitizen detention regime in the United States should compel us to reevaluate the entire prison project in the hope that by divesting the state of its ability to indiscriminately exercise the power of life over both citizens and noncitizens, there can be a better way forward in a post-carceral world. Thus, understanding the history is critical. The history of noncitizen detention demonstrates that the eventual melding of

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<sup>96</sup> Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2011), 9-10.

<sup>97</sup> Davis, *Are Prisons Obsolete?*, 113.

<sup>98</sup> Caleb Smith, *The Prison and the American Imagination* (New Haven: Yale University Press, 2009), 209.

immigration and criminalization at the precise moment when policy and reality also melded had its roots from the beginning of the U.S. imperial project, in particular in the nineteenth century, a century defined by captivity and confinement on a national scale.

### **A Century of Captivity and Confinement**

The origins of noncitizen detention operated by the federal government in the United States can be traced to the early 1890s, culminating a century defined by captivity and confinement. Over the course of the nineteenth century, the modern prison, asylums, plantation slavery, Indian reservations, and noncitizen detention all played pivotal roles in transforming the United States. Much of this captive legacy is seen today. David Rothman contends that the rise of the prison in the 1820s and 1830s, an era when “democratic principles were receiving their most enthusiastic endorsement,” confronts what “appears to be an extraordinary paradox.” According to Rothman, when “common people” were “participating fully in politics and electing Andrew Jackson their president, incarceration became the central feature of criminal justice.”<sup>99</sup> Criminal justice in colonial society had involved the regulation of a wide range of conduct from so-called sinful actions such as idolatry, blasphemy, and witchcraft to social transgressions such as theft, arson, and murder. Seen through the lens of being part of the human condition and its failings, such conduct carried a wide range of punishments such as fines, whippings, the stock and public cage, punishment, and the gallows. Local jails were used for those awaiting trial, debtors, as well as by enslavers and masters of servants as punishment. As

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<sup>99</sup> David J. Rothman, “Perfecting the Prison: United States, 1789-1865,” *The Oxford History of the Prison: The Practice of Punishment in Western Society*, ed. Norval Morris and David J. Rothman (New York: Oxford University Press, 1998), 100.

Rothman argues, “criminal justice in the colonial period had a tenuous and haphazard character. To an exceptional degree, the efficacy of the punishment depended on the active compliance of the offender; the agencies of law enforcement were so weak and underdeveloped that the punitive and coercive aspects of the law bore an unusually heavy burden.” When punishment did not deter offences, colonial society had only one recourse: execute the offender. As Rothman notes, “In effect, capital punishment had to compensate for all the weaknesses in the criminal justice system, which is why capital crimes were defined so very broadly.”<sup>100</sup>

Scholars have argued that the American Revolution played a decisive role in notions surrounding crime and punishment.<sup>101</sup> For one, the Revolution brought capital punishment to the forefront of debate. As Benjamin Rush argued in 1792, “Capital punishments are the natural offspring of monarchical governments... Kings consider their subjects as their property; no wonder, therefore, they shed their blood with as little emotion as men shed the blood of their sheep or cattle. But the principles of republican governments speak a very different language... An execution in a republic is like a human sacrifice in religion.”<sup>102</sup> Religious reformers would offer a solution. Reformatory incarceration, where an offender served a long prison term, appeared as the post-Revolution, anti-monarchical solution. Protestant reformers argued that the prison’s

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<sup>100</sup> Rothman, “Perfecting the Prison,” 101-02.

<sup>101</sup> In his influential work, Michel Foucault notes that after the American Revolution a “law was being drawn up to modify the system of penalties. Imprisonment, with the purpose of transforming the soul and conduct, made its entry into the system of civil laws.” Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977), 123.

<sup>102</sup> Quoted in Rothman, “Perfecting the Prison,” 102.

primary purpose was the reformation and redemption of inmates.<sup>103</sup> Jennifer Graber notes, “In order to secure a place in the prison experiment, Protestants articulated a united front about religion’s contribution to reformative incarceration.”<sup>104</sup> However, as Graber argues, inside the prison, negotiations took place when state officials and prisoners resisted ideas of Protestant piety. While Protestant reformers made concessions to both stay in the prisons and be politically relevant, they considered their prison efforts a failure. Regardless, these negotiations and concessions show “the contested place of religion in American public life” through the primary site of the antebellum prison.<sup>105</sup>

As states increasingly reduced their lists of capital crimes, the death penalty was essentially replaced by the modern prison system. Here, Rothman’s contention of the prison as an “extraordinary paradox” should be evaluated through a wider lens of captivity and confinement broadly encompassing early colonial society. The prison was established on the heels of a revolution that would force those in power to reclassify hierarchical order in the new republic against the backdrop of Revolutionary rhetoric and promises. Such promises eluded fulfillment. Scholar Jen Manion argues, “But the Revolutionary promises – life, liberty, happiness – were quickly foreclosed by a revised penal system that disguised its violence under the rubric of humanitarianism, replaced slavery as the disciplinary authority in African American lives, and prized the property rights of the few over the human rights of the many.”<sup>106</sup> The penitentiary had wide

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<sup>103</sup> Jennifer Graber, *The Furnace of Affliction: Prisons and Religion in Antebellum America* (Chapel Hill: The University of North Carolina Press, 2011), 4.

<sup>104</sup> Graber, *The Furnace of Affliction*, 5.

<sup>105</sup> Graber, *The Furnace of Affliction*, 5-6.

support not only from religious reformers. Manion notes, “A diverse class of white men, from ruling elites to middling artisans, cast their lot with the penitentiary system, hoping it would make them better men, bring back the gender roles of old, cultivate industrious habits, contain the threat of free blacks and immigrants, and regulate illicit sex.”<sup>107</sup> The common jail began by confining everyone together regardless of offense. One Philadelphia politician described, “young and old, black and white, men and women, boys and girls were congregated indiscriminately in custody, for misconduct, misdemeanor, and felony, either before trial, after conviction, or for want of bail for surety of the peace. It was a moral pest house.”<sup>108</sup> Experiments in convicting prisoners to hard labor eventually gave way to punishment as a means of reformation with construction of jails with separate cells.

By the early nineteenth century, people were advocating against the solitary confinement-based Pennsylvania system<sup>109</sup> in a time when plantation slavery was about to hit its stride within the double-headed hydra of efficiency and brutality. Reformers contended the purportedly benign post-Revolution prison system had become problematic. Costs ran high for the building of one cell per prisoner. Moreover, following the first wave of prison building in the Early Republic, the early nineteenth century saw a system designed to civilly kill a convict and resurrect him as a law-abiding citizen

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<sup>106</sup> Jen Manion, *Liberty's Prisoners: Carceral Culture in Early America* (Philadelphia: University of Pennsylvania Press, 2015), 1.

<sup>107</sup> Manion, *Liberty's Prisoners*, 1.

<sup>108</sup> Richard Vaux, “The Pennsylvania Prison System,” *Proceedings of the American Philosophical Society* 21, no. 116 (June 1884), 651.

<sup>109</sup> Manion, *Liberty's Prisoners*, 174.



undermined by riots and escapes from newly-built or refashioned human cages.<sup>110</sup> As Rebecca M. McLennan notes, “Everywhere, in the early republican period, the prisoners made a habit of “mutiny” (as the early republican press put it), and local authorities found themselves having to repeatedly call out the militia to restore order.” Moreover, one rebellion would sometimes trigger uprisings in other institutions.<sup>111</sup> These prison riots took place amidst an urban landscape that was also increasingly violent and turbulent. As Joel Olson argues, “Riots, lynch mobs, insurrections, and other disturbances swept the urban landscape like a panic. In 1835 alone, seventy-one people died in 147 riots across the country. Between 1830 and 1865 over seventy percent of all cities with a population of 20,000 or more experienced some kind of major civil disorder.”<sup>112</sup>

In response to the rising costs and chaos, reformers advocated the adoption of the more cost-effective and labor-based Auburn system. The prevalence of the Auburn system did not mean the idea of prisoner isolation had disappeared. Rather, as one scholar notes, “running a penitentiary on the Auburn system was a difficult task requiring constant watchfulness and attention to small details... Even though all inmates were now

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<sup>110</sup> Graber, *The Furnace of Affliction*, 42.

<sup>111</sup> Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008), 44. There were four large-scale prison riots between 1817 and 1821 at Walnut Street prison in Philadelphia. A rebellion in 1820 “was quelled only when the authorities brought in the militia, armed citizens, and, in the days after the rebellion, the U.S. Army.” *Id.* As McLennan states, “Far from being matters purely of local or statewide concern, these rebellions were typically reported well afield of the states in which they occurred; and, just as, in the antebellum South, a slave uprising on one plantation had the potential to ignite slave rebellions elsewhere, one penitentiary riot sometimes triggered demonstrations at other institutions.” *Id.*

<sup>112</sup> Joel Olson, *The Abolition of White Democracy* (Minneapolis: University of Minnesota Press, 2004), 31. Olson argues such riots “served to protect the color line” in the construction of democratic citizenship for the white citizen. *Id.* at 32.

allowed to work together in a state of close physical proximity, their separation was to be as complete as if each were surrounded by an invisible wall.”<sup>113</sup> Yet, as states adopted the Auburn system it became the “new standard in American prison discipline.” This set the stage for the century of confinement and captivity. As Caleb Smith argues, “By the 1820s and 1830s, the cruelties and pain of captivity had been built into the foundations of the American social order.”<sup>114</sup> At the same time, as scholar Ira Berlin has persuasively demonstrated, plantation slavery was transforming into previously unparalleled brutality.<sup>115</sup> This brutal regime was becoming increasingly efficient through the pushing system, which according to scholar Edward Baptist, was the right-handed power’s comeback against left-handed slave resistance.<sup>116</sup> Moreover, after the Indian Removal Act of 1830, reservations would begin dotting the expanding carceral landscape in the West.<sup>117</sup> As Smith persuasively argues, “Alongside the penitentiary and the plantation,

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<sup>113</sup> W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848* (Ithaca: Cornell University Press, 2009), 90.

<sup>114</sup> Smith, *The Prison and the American Imagination*, 178.

<sup>115</sup> Ira Berlin, *Generations of Captivity: A History of African-American Slaves* (Boston: Harvard University Press, 2004).

<sup>116</sup> Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2016).

<sup>117</sup> Removal itself was not at that point a novel idea. As one scholar has argued, “federal removal policy codified in the 1830 Indian Removal Act should be viewed as a continuation of, rather than a transition from, the civilization policy begun in the late eighteenth century that attacked indigenous religions, subsistence patterns, and land-holding practices. And this wholesale dispossession continued within the histories written throughout the nineteenth centuries.” John P. Bowes, *Land Too Good for Indians: Northern Indian Removal* (Norman: University of Oklahoma Press, 2016), 4.

the reservation was emerging as a third major zone of enclosure, divestment of rights, and identity transformation on the American scene.”<sup>118</sup>

The institution of the asylum too could be added here. While before 1810, only a few states had private institutions for the mentally ill, “in the course of the next few decades, in a dramatic transformation, state after state constructed asylums... by 1860, twenty-eight of the thirty-three states had public institutions for the insane. Although not all of the mentally ill found a place within a hospital, and a good number among the aged and chronic poor remained in almshouses and jails, the institutionalization of the insane became the standard procedure of the society during these years. A cult of asylum swept the country.”<sup>119</sup> As Philip R. Pople argues, “Just as the criminal justice system began to revolve around the prison, the institution became the center of the mental health system.”<sup>120</sup>

Moreover, as westward expansion engulfed the nation in the post-Civil War years, the penitentiary too moved West. As Anne Butler argues, “prisons flowered within the context of the social, economic, and political forces that so rapidly changed the American landscape of the nineteenth century. Huge demographic shifts, escalated by the end of slavery and the flood of immigration, coupled with the rise of America’s industrial

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<sup>118</sup> Smith, *The Prison and the American Imagination*, 178. As Smith notes, “In the West, the military structures of the Indian Wars were adapted to the purposes of long-term confinement. Relocation was followed by the reservation, and by the late twentieth century the old “frontier” was becoming the site of the largest and most advanced prison complexes in the world.” *Id.* at 19.

<sup>119</sup> David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York: Routledge, 2017), 130.

<sup>120</sup> Philip R. Pople, *Social Work Practice and Social Welfare Policy in the United States: A History* (New York: Oxford University Press, 2018), 50.

power, placed new demands on a prison system run more by expedience than policy. Left largely to administer itself, the American prison, despite professional efforts by some of its employees and the interest of reformers, followed a predictable route and emerged as a fearsome institution.”<sup>121</sup> Amongst these national carceral developments, noncitizen detention then would be another major zone of confinement that evolved over the course of the nineteenth century galvanized and propelled by decades of post-Civil War exclusionary impulses.

Immigration enforcement saw remarkable expansion and change over the course of the twentieth century. The late nineteenth century set the stage. In *Chae Chan Ping v. United States*, the United States Supreme Court held,

The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one.<sup>122</sup>

Along with the federalization of immigration with the Immigration Act of 1891, the Supreme Court held that deportation was based on sovereignty and part of federal power. In *Fong Yue Ting*, the court reasoned,

The order of deportation is not a punishment for crime... It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority, and through the proper departments, has determined that his continuing to reside here shall depend.<sup>123</sup>

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<sup>121</sup> Anne M. Butler, *Gendered Justice in the American West: Women Prisoners in Men’s Penitentiaries* (Champaign: University of Illinois Press, 2000), 7.

<sup>122</sup> *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

<sup>123</sup> *Fong Yue Ting v. United States et al.*, 149 U.S. 698, 730 (1893).

Torrie Hester notes that the majority “upheld deportation, defining it as something as protective of national sovereignty, rooted in the government’s power of immigrant exclusion.”<sup>124</sup> By the 1950s, the Court was holding that the “power to expel or exclude aliens” had been “long recognized” and was a “fundamental sovereign attribute by the Government’s departments largely immune from judicial control.”<sup>125</sup>

The Court expanded the implications of *Fong Yue Ting* to noncitizen detention in *Wong Wing*. The Court held,

We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation. Detention is a usual feature in every case of arrest on a criminal charge, even when an innocent person is wrongfully accused, but it is not imprisonment in a legal sense.<sup>126</sup>

The practice of noncitizen detention expanded and increasingly became the site of unchecked state power against ‘the other.’ Kelly Lytle Hernández notes the consequences,

these few sentences dropped in the belly of *Wong Wing* invented immigrant detention as a veiled but valid practice of human caging in the United States. U.S. immigration authorities immediately applied the decision to all deportees, regardless of national origins. Ever since, immigrants subject to forced removal from the United States have been caged in county jails, federal prisons, and immigration stations – also in warehouses, boats, parks, sheds, and even private homes ‘fitted with barred windows’ – but, according to *Wong Wing*, their passage

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<sup>124</sup> Torrie Hester, *Deportation: The Origins of U.S. Policy* (Philadelphia: University of Pennsylvania Press, 2017), 16. Hester further notes, “The minority thought deportation should be classified as punishment; they worried about the expansions in plenary power and the seeming violations of constitutional protections.” *Id.*

<sup>125</sup> *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953).

<sup>126</sup> *Wong Wing v. United States*, 163 U.S. 228, 235 (1896).

through the nation's carceral landscape was 'not imprisonment in a legal sense.'<sup>127</sup>

### **Sovereignty, Plenary Power, and Noncitizen Detention**

Noncitizen detention is often justified through notions of sovereignty and plenary power. Scholar Galina Cornelisse argues, "Immigration detention is the ultimate example of how national states can freely resort to their hitherto unrestrained territorial powers in order to validate sovereignty's claim to distinguish the inside from the outside."<sup>128</sup> Such claims have been articulated within various frameworks about how the state treats 'the other.' Giorgio Agamben's state of exception formulation, for instance, contends that certain subjects are left "outside the boundaries of the polis and hence beyond the protection of, or recourse to, the law" by the sovereign. Scholars have applied this framework to detention camps as "manifestations of nation-states' sovereign power to suspend the normal or national Rule of Law through the state of exception and to abandon those detained in a juridical void."<sup>129</sup> Moreover, A. Naomi Paik's recent work applies a rightlessness framework to U.S. prison camps in the latter half of the twentieth century. Paik argues, "the United States has created a peculiar place with an ambiguous relationship to the law – the camp – and has created a peculiar kind of person to be

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<sup>127</sup> Lytle Hernández, *City of Inmates*, 89.

<sup>128</sup> Galina Cornelisse, "Immigration Detention and the Territoriality of Universal Rights," in *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, ed. Nicholas De Genova and Nathalie Peutz (Durham: Duke University Press, 2010), 108.

<sup>129</sup> Rutvica Andrijasevic, "From Exception to Excess: Detention and Deportation across the Mediterranean Space," in *The Deportation Regime*, 148. See also Marcelo Svirsky, *Agamben and Colonialism* (Edinburgh: Edinburgh University Press, 2012).

imprisoned there – the rightless.”<sup>130</sup> Rightlessness, Paik argues, is a “condition that emerges when efforts to protect the rights of some depend on disregarding the rights of others.” As Paik notes, “The rightful – as worthy, deserving subjects – enjoy the protection of rights only because other, rightless subjects are so devalued that they are excluded from those protections.”<sup>131</sup> In her analysis, Paik points out that the U.S. state “depends on the rightless to establish its authority,” as such camps mark the “congruent rise of rights discourses and of the United States as global hegemon.”<sup>132</sup> Such scholarship plays an important role in understanding the ways mobility is constricted in increasingly restrictive and punitive ways amidst globalization.

However, detention and prison camps are not the primary focus of this work. It is the contention here that analyses pertaining to such camps cannot be generally applied to detention centers. In the U.S., those detained in administrative cages are not outside the bounds of the law nor in a juridical void. What the historical devolution of the modern noncitizen detention regime demonstrates is that unchecked state power to distinguish the inside from the outside is grounded *both* in principles of sovereignty and law. For instance, when noncitizen detainees are compelled to fight their cases in courtrooms inside detention centers, they are subjected to adversarial proceedings that resemble criminal trials and yet by deeming these cases as administrative they are left outside theoretical criminal law protections. Rather than “a peculiar place with an ambiguous

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<sup>130</sup> A. Naomi Paik, *Rightlessness: Testimony and Redress in U.S. Prison Camps since World War II* (Chapel Hill: The University of North Carolina Press, 2016), 2.

<sup>131</sup> Paik, *Rightlessness*, 4.

<sup>132</sup> Paik, *Rightlessness*, 7, 9.

relationship to the law,” to use Paik’s description of prison camps, detention centers lie firmly within legal jurisprudence. While these detention centers may sometimes function as “a space set apart, as marked by its barbed-wire perimeter, its armed guards, and its physical segregation,” these centers are not in fact “removed, in law, from the political communities that could provide the precondition for rights recognition.”<sup>133</sup> Because fundamentally, rights recognition have shown to be irrelevant when facing the magnitude of state power that is directed at noncitizen detention and immigration enforcement more broadly. Rather than being rightless, those subject to detention are afforded thinly veiled theoretical protections in what can perhaps be seen as a cavalier nod to international human rights rhetoric and customary law.

By justifying deportation proceedings as civil rather than criminal, the state *through* the law is able to impose unfettered punishments. These punishments, never recognized by the law as such, nevertheless culminate in state violence against “disposable populations” highlighted by the power of the state to kill. As Ronald Judy articulates, “The occurrence of violence associated with disposable populations is symptomatic of the irrelevance of the entire discourse of sovereignty to the current arrangements of power, except when it operates as a means of ‘effecting control over mortality’ and as ‘a way of exercising the right to kill.’”<sup>134</sup> After all, as Achille Mbembe has noted, “the ultimate expression of sovereignty resides, to a large degree, in the power and capacity to dictate who may live and who must die. Hence, to kill or to allow to live

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<sup>133</sup> Paik, *Rightlessness*, 6.

<sup>134</sup> Quoted in Alexander G. Weheliye, *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Durham: Duke University Press, 2014), 88.



constitute the limits of sovereignty, its fundamental attributes.”<sup>135</sup> In his formulation of necropower, Mbembe argues that “sovereignty means the capacity to define who matters and who does not, who is *disposable* and who is not.”<sup>136</sup> In fact, according to Mbembe, in this new moment of global mobility the exercise of the right to kill is “no longer the sole monopoly of states... Instead, a patchwork of overlapping and incomplete rights to rule emerges, inextricably superimposed and tangled, in which different de facto juridical instances are geographically interwoven and plural allegiances, asymmetrical suzerainties, and enclaves abound.”<sup>137</sup> Here, then we can see how the jurisdictional overlap that abounds in the modern noncitizen detention regime plays out among those deemed disposable. Rather than a state of exception framework, Alexander Weheliye argues that these disposable populations “often racialized—are suspended in a perpetual state of emergency in which legal rituals stain dysselected individuals and groups with the hieroglyphics of the flesh.”<sup>138</sup> This killing and staining is seen clearly in the modern noncitizen detention regime.

While scholars have focused on regimes of exclusionary immigration laws and deportations, few have focused narrowly on the history of noncitizen detention itself. Even fewer have explored transformative developments within noncitizen detention in the U.S. Southwest that laid the foundation for the modern regime. Cornelisse notes that

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<sup>135</sup> Achille Mbembe, “Necropolitics,” translated by Libby Meintjes, *Public Culture* 15, no. 1 (Winter 2003), 11-12.

<sup>136</sup> Mbembe, “Necropolitics,” 27.

<sup>137</sup> Mbembe, “Necropolitics,” 31.

<sup>138</sup> Weheliye, *Habeas Viscus*, 88.

“detention in particular is unique among other tools of a restrictive immigration policy.”<sup>139</sup> The uniqueness of noncitizen detention must be further explored and understood through a historical lens in order to grapple with the current crisis. This seems significant particularly as recent scholarship has explored the origins and rise of mass incarceration and where noncitizen detention remains an ever-growing component within the carceral state.

Cornelisse argues that “immigration detention is a form of state violence that has become so deeply embedded within the dominant understanding of the sovereign state and the global territorial structure of states that it has remained insulated against the usual forms of legal correction and political control.”<sup>140</sup> Yet questions remain: Had detention always been a form of state violence? If so, is the modern regime simply a continuation of its historical antecedents? If not, when did it become a form of violence? The argument here is that noncitizen detention in the United States transformed from a method of exclusion to a form of state-sponsored violence over the course of the twentieth century. Since its inception with the Immigration Act of 1891 until 1954, noncitizen detention was primarily driven by exclusionary motivations. For instance, in her analysis of immigration restrictions aimed at Mexicans, historian Natalia Molina notes that even after 1924, such restrictions “marked a shift to new mechanisms of exclusion.”<sup>141</sup> Her use of the word exclusion is a significant indicator of the impulses driving immigration enforcement. From 1954 to 1980, federal detention policy

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<sup>139</sup> Cornelisse, “Immigration Detention,” 103.

<sup>140</sup> Cornelisse, “Immigration Detention,” 105.

<sup>141</sup> Molina, *How Race Is Made in America*, 29.

introduced a “humane” detention era until 1981 when the policy changed to detain asylum seekers overwhelming immigration authorities. Essentially, the era of “humane” detentions melded notions of immigration law violations with criminality and saw the expansion of carceral infrastructure across the country, which was followed by mass asylum movements that saw detention become the de facto course of action in the next era of violent detentions. By this point, detention was no longer premised on the notion of exclusion but rather on the idea of exerting the power of the state to break. Insulated from constitutional protections theoretically afforded to criminal defendants, noncitizens languished inside camps and detention centers from the 1980s onward. Their detentions were premised on breaking their will to contest and appeal their cases. In shifting from exclusionary motives to a violent form of deterrence, the state’s previously unchecked power against noncitizens now involve destruction and death.

### **Detentions in the U.S. Southwest**

In order to tell this story of transformation, this work will look at the U.S. Southwest, which played a particularly unique role in immigration enforcement over the course of the twentieth century. The wartime move of the Immigration and Naturalization Service (INS) from the Department of Labor to the Department of Justice in 1940 was followed by a reallocation of resources from the northern to the southern border. Immigration enforcement operations followed a parallel development as Border Patrol hired more officers and placed a majority of the new hires at the southern border by 1943 in response to wartime fears. After 1943, the U.S-Mexico border became the “center of

operations” for the U.S. Border Patrol.<sup>142</sup> A decade later, Mexican migration officials established a full-time Mexican Border Patrol to man the South Texas area. As Lytle Hernández notes, this allowed enforcement entities “new opportunities for cross-border cooperation” in the Southwest.<sup>143</sup> When then INS Commissioner Joseph Swing divided the Service into four regions in 1956, the decades-long allocation of more resources to the Southwest meant that the regions created were unequal in terms of significant resources. Lytle Hernández argues, “Regionalization... gave the institution sticky feet in the U.S.-Mexico border region, where more officers, more resources, and more facilities were located.”<sup>144</sup> Ultimately, this regionalization generated problems for immigration authorities that were “particular” to the Southwest. As Lytle Hernández argues,

the racialization of U.S. migration control was carried into the post-wetback era by the combination of the officers’ mind-set that illegal immigrants were persons of Mexican origin with instructions to find the false claimants of Mexican origin and demands to supply the ongoing systems of deportation into the interior of Mexico. At the same time, however, enforcement officials warned Border Patrol officers against apprehending too many unsanctioned Mexican women and children, who could easily swell the ranks of deportees and end the impression of victory along the U.S.-Mexico border.<sup>145</sup>

This impression of victory carefully shielded the reality of immigration enforcement in the borderlands of the Southwest, particularly when it came to noncitizen detention. Under the guise of national “humane” and purportedly liberal detention policies, the Southwest continued to expand detention facilities after the 1950s but often

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<sup>142</sup> Kelly Lytle Hernández, *Migra! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010), 116.

<sup>143</sup> Lytle Hernández, *Migra!*, 140.

<sup>144</sup> Lytle Hernández, *Migra!*, 198.

<sup>145</sup> Lytle Hernández, *Migra!*, 205.

without affecting federal detention numbers because “wetbacks” and those held temporarily in “staging areas” were sometimes excluded from being counted. There is a more systematic accounting of noncitizen detainees in the 1960s and 1970s, which directly contradicted policy guidelines established by the Attorney General. Such noncitizen detentions often overwhelmed state and local carceral resources, which led to those jurisdictions recruiting federal money for expanded facilities. This work uses the example of Arizona counties to show how this took place. Under “humane” detention policy, the Southwest built the infrastructure necessary to not only house increasing numbers of noncitizens but also revamped and updated their aging carceral institutions. In Arizona, federal, state, and local officials coalesced in their attempts to achieve various agendas that may have once appeared to be in contestation with each other. However, the various levels and players involved ultimately led to a similar end result: the use of detained noncitizen bodies to expand the carceral landscape. Moreover, for much of the twentieth century, counties had relied on federal money coming in for housing noncitizens. With the advent of the private prison system in the 1980s, the receiving of federal money for housing noncitizen bodies was deeply embedded within the Southwest carceral landscape and allow for private companies to build on relationships previously held exclusively by state actors.

When 1980 came, facilities were again overwhelmed by mass asylum movements but this time, officials were better prepared. Their preparation laid the groundwork for the punitive transformation of detention policy. Official institutions (such as Ellis and Angel) had closed by this time, but the carceral landscape expanded dramatically, as detentions increased through unofficial channels and overcrowded jails. Sometimes immigration

officials claimed that detentions had decreased by reporting numbers that excluded Mexican laborers who were awaiting deportation in “staging areas” of the southwest. In actuality, thousands of noncitizens, primarily Mexican laborers, languished in southwestern jails, away from public gaze and scrutiny. In the era of “humane” detentions, the state laid the groundwork for the violent detentions that would follow.

This work traces the history of noncitizen detention policy and reality in three parts. Chapter Two focuses on the establishment of the federal immigration bureaucracy in the early 1890s, traces the devolution of various places and conditions of detention both nationally and locally in Arizona, and culminates in the change of detention policy in 1954. In this era, it is argued that detention was motivated primarily by exclusionary impulses directed toward various groups. Chapter Three focuses on the period between the official change of policy in 1954 until the reversal of that policy in 1981 highlighting the ways in which the detention apparatus expanded throughout the U.S. Southwest. This part will focus particularly on Arizona where actors from federal, state, and local entities engaged in fierce negotiations for noncitizen bodies to fill their jails, sought revenue to increase beds when jails became overcrowded, and then sought more bodies to fill the increased carceral spaces. In this era, while detention was portrayed in official records as “humane,” in whatever connotations that appears, those experiencing incarceration in Arizona had a much different story to tell. Chapter Four focuses on the period after 1981 until the present day. In this era, detention was formally premised on breaking the will of noncitizens and thus, detention was motivated primarily by state violence. Analyzing the devolution of noncitizen detention in this manner provides key insights to not only understanding its historical antecedents but also the ways in which the modern detention

regime came to be. Chapter Five concludes by summarizing the main arguments of the work and offers a few considerations about the way forward.

## CHAPTER 2

### EXCLUSIONARY DETENTIONS, 1891-1954

#### **Introduction**

The era of exclusionary detentions begins and ends with Ellis Island. After the federal government officially took over immigration processing and enforcement in 1891, Ellis Island along with other institutions, were established as processing centers. With increasing waves of immigration and the rise of exclusionary immigration laws in the late nineteenth century, federal institutions became the primary means of enforcing those laws. These laws took shape within the context of westward expansion and accompanying social, political, economic, and penal changes. After the end of the Civil War, immigrants from Europe and Asia as well as easterners both black and white turned to the promise of the West. As historian Anne Butler writes, “Their descent upon the West and the people who lived therein – Native Americans and Hispanics – unleashed a cyclone of societal forces... During this time period, the penitentiary mirrored much of the social, economic, and political struggle that accompanied western change.”<sup>146</sup> As the nation headed into the twentieth century, immigration enforcement operated both along the coasts as well as along the southern border. This chapter follows the opening and later developments of Ellis and Angel Islands, the two primary coastal institutions, while simultaneously weaving in carceral developments in the Southwest, particularly in Arizona. As federal officials sought to enforce exclusionary laws, such strategies bore out

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<sup>146</sup> Anne M. Butler, *Gendered Justice in the American West: Women Prisoners in Men's Penitentiaries* (Champaign: University of Illinois Press, 2000), 5.



in violent experiences for those subjected, demonstrated through dismal detention conditions, deportations, and suicides. Understanding the way in which both immigration enforcement and criminal justice developed in parallel in the late nineteenth and early twentieth centuries helps lay the groundwork for considering the consequences of these systems colliding in the late twentieth century.

Early on, immigration laws and enforcement were primarily motivated by exclusionary impulses. Whether excluding groups like “prostitutes” after the Page Act of 1875 or other groups like Chinese laborers after the Chinese Exclusion Act of 1882, immigration enforcement, and with it, detentions and deportations, were driven by a desire to keep out those deemed undesirable.<sup>147</sup> Federal detention centers processing immigrants were established to enforce these exclusionary laws with the most well-known being Ellis Island and Angel Island. In their recent work, historians Erika Lee and Judy Yung argue however, that the two were “very different.” While Ellis was mainly a processing center for European immigrants and “enforced American immigration laws that restricted, but did not exclude, European immigrants,” Angel Island was “characterized by American immigration policies that excluded Asians and barred them from becoming naturalized citizens.” According to Lee and Yung, while most European

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<sup>147</sup> Immigration laws continually expanded the list of excludable groups. The Page Act of 1875 also excluded criminals. The 1882 law also excluded lunatics, idiots, and those who could not support themselves without becoming a public charge. The 1885 law banned contract laborers. The 1891 law banned polygamists, paupers, those convicted of crimes of moral turpitude, suffering from loathsome or contagious diseases; those liable to become a public charge, or had received help paying for passage. The Geary Act of 1892 made illegal residence a federal crime for the first time. The 1903 law banned idiots, insane persons, epileptics, professional beggars, anarchists, or persons who believe in or advocate the overthrow by force of violence of the government. The 1917 law created the Asiatic Barred Zone and banned imbeciles, alcoholics, poor, criminals, beggars, those suffering from attacks of insanity while introducing a literacy test and increasing the head tax. The 1921 law established the national origins quota system (3% of 1910 census) while the 1924 law revised the quota (2% of 1890 census).

immigrants spent “only a few hours or at most a few days” at Ellis, processing times at Angel Island were tracked in “days and weeks.”<sup>148</sup> More than a decade before Lee and Yung’s work, historian Roger Daniels seems to have expressed a similar sentiment. Daniels wrote that Ellis Island was an icon “of welcome, of acceptance” while Angel Island was an icon “of suspicion, of rejection.”<sup>149</sup>

Despite this, when noncitizen detention is looked at from the point of view of the detained themselves, these distinctions might seem less clear. In her study of photography and the development of U.S. immigration law, historian Anna Pegler-Gordon notes, “both Ellis Island and the photographic medium wield enormous power to present themselves as the opposite of what they are: the institution is operating not as a medium for Americanization but as a means of exclusion....”<sup>150</sup> People were detained at both places because of exclusionary impulses dictating that they were not desirable immigrants for one reason or another. Some of these reasons were explicitly racist and nativist, while others bore purported law and order, economic, or religious motivations. For those detained, however, the reasons for their detention perhaps remained less significant than other factors such as anxieties and fears. Their anxieties and fears ran deep and bear parallels across time and place: fear of prolonged detention, sense of isolation, homesickness, and sometimes hopelessness. As historian Hidetaka Hirota

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<sup>148</sup> Erika Lee and Judy Yung, *Angel Island: Immigrant Gateway to America* (New York: Oxford University Press, 2010), 8.

<sup>149</sup> Roger Daniels, “No Lamps Were Lit for Them: Angel Island the Historiography of Asian American Immigration,” *Journal of American Ethnic History* 17, no. 1 (Fall 1997), 3.

<sup>150</sup> Anna Pegler-Gordon, *In Sight of America: Photography and the Development of U.S. Immigration Policy* (Berkeley: University of California Press, 2009), 148.

notes, “Many newcomers found their experience of temporary detention and medical inspection at Ellis Island and Angel Island severely traumatic and depressing.”<sup>151</sup> While individual experiences were obviously complex, understanding detentions on either coast and throughout the country through a common exclusionary lens provides insight into the ways in which noncitizen detention began and how it transformed over the course of the twentieth century.

Before the federalization of immigration control in 1891, immigration enforcement was part of state police powers. In fact, Hirota argues that it was state-level immigration enforcement in New York and Massachusetts, in particular, that laid the groundwork for what later became federal immigration policy.<sup>152</sup> Notably, Hirota contends that state-level practices in detention and removal set national policy. In 1885, for instance, the Treasury Department “formalized the practice of immigrant detention exercised by the New York Commissioners of Emigration, officially authorizing them to detain all excludable foreigners ‘either on shipboard or elsewhere’” until shipping companies brought them back to their places of departure. The department later extended this power to other states.<sup>153</sup> Moreover, the federal government subsidized states to operate various landing stations. For instance, New York received federal funding to operate the center at Castle Garden from 1855 to 1890, where people were detained and excluded by state officials.<sup>154</sup> As Hirota has pointed out, “Prior to 1882 the New York

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<sup>151</sup> Hirota, *Expelling the Poor*, 202.

<sup>152</sup> Hirota, *Expelling the Poor*, 203.

<sup>153</sup> Hirota, *Expelling the Poor*, 207.

commissioners routinely detained pauper and criminal passengers at Castle Garden to expedite their exclusion.”<sup>155</sup> Many officials from Castle Garden would go on to serve at Ellis Island.<sup>156</sup>

Following the Immigration Act of 1891, immigration authorities established the first federal processing center at Ellis Island. As Hirota notes, “The act placed issues of immigration under the control of the federal superintendent of immigration in the Treasury Department and appointed federal commissioners of immigration at major ports, replacing state enforcers with federal employees.”<sup>157</sup> Opening in 1892, Ellis Island would mark the experiences of millions of noncitizens attempting to gain entry into the country. According to one estimate of the 12 million noncitizens who passed through Ellis between 1892 and 1924, about 80 percent went through “in a matter of hours.”<sup>158</sup> While the process for most seemed relatively quick, those who could not pass the initial inspections would be detained at Ellis Island while their cases were pending. Legal scholar Daniel Wilsher notes in his analysis of admission numbers at Ellis Island that “the detention process was linked very clearly to the separation of migrants into admissible and inadmissible categories.”<sup>159</sup> Such categories demarked who would be admitted and

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<sup>154</sup> Roger Daniels, *Coming to America: A History of Immigration and Ethnicity in American Life* (New York: Harper Perennial, 2002), 272.

<sup>155</sup> Hirota, *Expelling the Poor*, 195.

<sup>156</sup> Hirota, *Expelling the Poor*, 202.

<sup>157</sup> Hirota, *Expelling the Poor*, 201.

<sup>158</sup> Vincent J. Cannato, *American Passage: The History of Ellis Island* (New York: Harper Collins, 2009), 5.

<sup>159</sup> Daniel Wilsher, *Immigration Detention: Law, History, Politics* (New York: Cambridge University Press, 2011), 16.

who would be excluded. While awaiting a determination, those detained would sleep, cook, and eat at Ellis Island where facilities were “usually grossly overcrowded.”<sup>160</sup> The ill were housed in the hospital or in isolation wards for those thought to have contagious diseases. Many were detained for such purported medical reasons or because they were deemed likely to become a public charge.<sup>161</sup> Detentions premised on public health rationales carried racialized presumptions about “troublesome diseases” believed to be found in arriving noncitizen bodies.<sup>162</sup> As scholar David Manuel Hernández argues, “In many ways, fear of disease served as the ideal ideological justification for the exclusion or segregation of non- and lesser-white migrants who Americans feared would contaminate the slowly consolidating sense of whiteness of the nation.”<sup>163</sup>

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<sup>160</sup> Ronald H. Bayor, *Encountering Ellis Island: How European Immigrants Entered America* (Baltimore: Johns Hopkins University Press, 2014), 82.

<sup>161</sup> In one public health report notes, “The average immigrant remains at Ellis Island two or three hours, during which time he undergoes an examination by the Public Health Service in order to determine his mental and physical condition, and by the Immigration Service in order to find out whether he is otherwise admissible.” E. H. Mullan, “Mental Examination of Immigrants: Administration and Line Inspection at Ellis Island,” *Public Health Reports (1896-1970)* 32, no. 20 (May 18, 1917), 733.

<sup>162</sup> Such medical exclusions were in addition to quarantine practices at the time. As one scholar writes, “quarantine usually targeted acute diseases, but federal immigration exclusions extended to chronic diseases, whose victims were not likely to recover or die after a limited period of isolation. The federal medical exclusions were adopted in addition to, not instead of, a quarantine system. Indeed, the emphasis on *nonfatal* chronic diseases at the turn of the century reflected a desire to be more selective in the choice of immigrants, not merely the need to protect the resident population from infection” (emphasis in original). Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton: Princeton University Press, 1996), 31.

<sup>163</sup> David Manuel Hernández, “Undue Process: Racial Genealogies of Immigrant Detention,” in *Constructing Borders/Crossing Boundaries: Race, Ethnicity, and Immigration*, edited by Caroline B. Brettell (Lanham: Lexington Books, 2007), 73.

While detained for such exclusionary purposes, noncitizens would have to fight their cases through the Board of Special Inquiry.<sup>164</sup> They would then either be admitted or sent back to their countries of origin. Detention at Ellis Island, however temporary or brief, marked the experiences of a significant number of people as evidenced by contemporary news articles. Five years after it opened, Ellis Island was destroyed by a fire in 1897. As one article noted, the fire had started at the end of the building where the “detention pen” was housed, a place “in which there are always a considerable number of immigrants being held for investigation.”<sup>165</sup> Although there were “scenes of terror,” no one was killed in the fire.<sup>166</sup> Despite intrusive medical inspections and brief detentions, most immigrants gained entry through Ellis Island.<sup>167</sup> After all, as Roger Daniels concludes, “Ellis Island was, all things considered, a relatively benign institution.”<sup>168</sup>

Two years before the fire at Ellis Island, there was a trial in the Arizona Territory. In 1895, five Pima Indians were indicted by a grand jury for grand larceny in the territorial district court of Pinal County. They were accused of stealing six horses, 3 geldings, and 15 mares listed as the “personal property” of other Pima Indians. Three

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<sup>164</sup> The Board of Special Inquiry was a “quasi-judicial body comprised of several persons who, in consultation with the Commissioner, reviewed preliminary inspections in a special room at the federal facility.” Louis Anthes, “The Island of Duty: The Practice of Immigration Law on Ellis Island,” *New York University Review of Law & Social Change* 24 (1998), 575.

<sup>165</sup> “Destructive Fire at Ellis Island,” *The Saint Paul Globe*, June 15, 1897, p. 1.

<sup>166</sup> “Scenes of Terror at Ellis Island,” *The Brooklyn Daily Eagle*, June 15, 1897, p. 1.

<sup>167</sup> Erika Lee and Judy Yung, *Angel Island: Immigrant Gateway to America* (Oxford University Press, 2010), 57 (“Eighty percent of applicants passed the Ellis Island immigrant inspection and medical examination and were released to the ground floor of the administration building to wait for ferries to transport them to Manhattan or to the Jersey City railway terminal.”)

<sup>168</sup> Daniels, *Coming to America*, 273.

Pima Indians and two Apache Indians served as witnesses to the grand jury.<sup>169</sup> One of the Pimas indicted was We Paps. Represented by attorneys Sniffen & Freund, We Paps, a husband and father, demurred by alleging that the indictment did not substantially conform to the Revised Statutes of the Territory of Arizona.<sup>170</sup> Regardless of such legal efforts, We Paps was found guilty and sentenced to one year in the territorial prison in Yuma. He explained his motive as follows: “Until the past few years we have always had plenty of water to irrigate our farms, and we never knew what want was... The Government refuses to give us food and we do not ask for it; we only ask for water, for we prefer to earn our own living if we can. I am no thief, and I will not beg, but my wife and children were hungry, and I must either steal or they must starve.”<sup>171</sup>

One of the reasons We Paps, his family, and other Pimas were on the edge of starvation by the 1890s was the establishment of Florence. The town of Florence, one of

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<sup>169</sup> *The Territory of Arizona v. We-Paps*, et. al., No. 158, Indictment for Grand Larceny, District Court of the Second Judicial District, Territory of Arizona, Pinal County, 8 May 1895.

<sup>170</sup> *The Territory of Arizona v. We Papa*, Demurrer to Indictment, In the District Court of Pinal. The demurrer alleges the indictment does not substantially conform to Sections 1457-1457 and 1459 of the Revised Statutes of the Territory of Arizona. Section 1457 states, “The indictment or information must contain: - 1. The title of the action, specifying the name of the court to which the same is presented and the names of the parties. 2. A statement of the acts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understand to know what is intended.” Section 1458 states, “The indictment or information may be substantially in the following form...” Section 1459 states, “The indictment or information must be direct and certain as it regards: - 1. The party charged. 2. The offense charged. 3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.” *Revised Statutes of Arizona*, 1887, p. 779. Arguably, the attorneys could have been challenging the indictment listing all five defendants and their charges together rather than individually. There is no record of the court ruling on the demurrer but because We Paps was found guilty, it can be assumed it was dismissed.

<sup>171</sup> David H. DeJong, *Stealing the Gila: The Pima Agricultural Economy and Water Deprivation, 1848-1921* (Tucson: The University of Arizona Press, 2009), 100. We Paps’ name is spelled in several different ways across various documents. DeJong cites him as “Wee Paps.” Court and prison documents use both “We Paps” and “We Papa.”

the oldest in Arizona, was founded by Pima Agent Levi Ruggles in May 1866 eight miles above the Pima Reservation. Using the proximity to the reservation as security against Apaches, settlers ambitiously irrigated Indian land while Ruggles became the largest private landowner in the central Arizona Territory.<sup>172</sup> As settlers moved in, they appropriated increasing amounts of the waters off the Gila River for their lands to the detriment of the Pima and Maricopa communities. Three years after the town was founded, settlers in Florence “wasted ‘large quantities’ of water in order to deprive the Pima.” For two years “settlers above the reservation had ‘opened large acequias for the purpose of irrigation. Instead of [the water] being returned to the river after it has served its purpose, it is allowed to run waste, thereby greatly diminishing the volume of water before it reaches the Pima.’” As historian David DeJong notes, such incidents “demonstrated that the settlers saw the Pima as economic competitors.”<sup>173</sup>

Commanding the Gila River naturally favored the settlers in this supposed economic competition. By the end of the 1860s, Ruggles and another Indian Agent Ammi White had “cornered the Pima wheat market and speculated in land above the reservation.” The Homestead Act brought settlers to the Gila River valley without protecting Pima water rights. As settlers appropriated more and more water, Pima fields were left dry.<sup>174</sup> The Pima open resistance to settler encroachments in 1869 was met with a detachment of troops from Camp McDowell.<sup>175</sup> Eventually, removal was on the

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<sup>172</sup> DeJong, *Stealing the Gila*, 69.

<sup>173</sup> DeJong, *Stealing the Gila*, 70.

<sup>174</sup> DeJong, *Stealing the Gila*, 71.

<sup>175</sup> DeJong, *Stealing the Gila*, 72.



horizon. Meanwhile, Florence became the county seat of Pinal County in 1875. The discovery of silver led to the opening of the Silver King Mine in 1877 and an economic boom for the town.<sup>176</sup> After the mine closed in the late 1880s, Florence struggled but not all hope was lost. Copper would anticipate another “big mining boom” for Florence which anticipated “a period of prosperity far beyond the expectations of the oldest inhabitant.”<sup>177</sup> While Florence boomed, nearby Pima, those who had remained on their lands, starved.

As extraction industries brought prominence and economic opportunities to settlers, Florence would soon embrace another type of industry. That story starts with a river, a bridge, and a prison and spans more than a century. Westward expansion in the middle of the nineteenth century saw not only Indian removal but also the embryonic carceral state where jails and penitentiaries started dotting the landscape. Responding to travelers heading to California chasing dreams for gold, the Territory of Arizona decided to include itself in the growing but still rudimentary carceral landscape. Arizona’s territorial prison opened in Yuma in 1876, a former army post converted into a jail. It was here where We Paps served his time two decades later and was discharged in March 1896 at the end of his sentence.<sup>178</sup> By the late 1890s, the territorial prison had become the “most expensive state institution” and lawmakers were looking to cut costs.<sup>179</sup> One way

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<sup>176</sup> Edward Schieffelin, *Portrait of a Prospector: Edward Schieffelin’s Own Story* (Norman: University of Oklahoma Press, 2017), 60 n.14.

<sup>177</sup> “Mines and Mining,” *Arizona Republican (1890-1922)*, October 3, 1899, p. 7.

<sup>178</sup> Prison Record: We Papa, No. 1068, Territorial Prison at Yuma, Arizona State Library, Archives and Public Records. Phoenix, Arizona.

was to experiment with convict labor (an experiment that eventually failed). As Paul Knepper notes, “The convict-lease system was the natural product of the drive for profitable prison labor. Territorial officials, anxious to make the Yuma penitentiary self-supporting, entertained a wide range of plans before their faltering attempt to hire out inmates. The brief history of the canal project, however, represented more than failed prison policy. It also showed that prison practices were not always formulated in response to criminal behavior. Party politics and judicial decision-making, rather than the beliefs of governors and legislators concerning the proper treatment of criminals, determined the contours of Arizona’s convict-lease system.”<sup>180</sup> Another option was to move the Yuma prison elsewhere. In 1897, there were discussions about moving the territorial prison to Prescott.<sup>181</sup> Ten years later, however, plans were put into place to build a new prison on the banks of the Gila River in Florence. As one newspaper noted, the Yuma prison was “nothing more than an adobe-built stockade, in which the prisoners are herded under the muzzle of rifles, borne by warders who pace the walls. It is intended that the new prison shall be modern in all respects.”<sup>182</sup>

Yet, safely crossing the Gila would be a prerequisite before the state’s carceral institution could be moved east to central Arizona. Over the course of several decades,

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<sup>179</sup> David R. Berman, *George Hunt: Arizona’s Crusading Seven-Term Governor* (Tucson: University of Arizona Press, 2015), 65.

<sup>180</sup> Paul Knepper, “Converting Idle Labor into Substantial Wealth: Arizona’s Convict Lease System,” *The Journal of Arizona History*, Vol. 31, No. 1 (Spring, 1990), 94.

<sup>181</sup> David R. Berman, *George Hunt: Arizona’s Crusading Seven-Term Governor* (Tucson: University of Arizona Press, 2015), 65.

<sup>182</sup> “Fewer Rifles to be Needed,” *Los Angeles Times (1886-1922)*, September 16, 1907, p. 111.

attempts were made to build and maintain a bridge into Florence that was once hailed as the “only safe crossing of the Gila.” When floods destroyed part of the bridge in 1891, efforts were made to “speedily” erect a new structure to withstand future currents.<sup>183</sup>

After plans for the new prison were in place, the bridge was linked to both the prison and a possible railroad spur line through town. A bridge that carried the possibility of running a railroad track on it could link the railroad to the town and the new prison site. As one newspaper noted, “Florence needs a railroad spur from the depot on this side of the river, almost as bad as she needs a bridge and it is not unlikely now that with the proper cooperation she can get both at the same time.”<sup>184</sup> After all, in the development of the greater Casa Grande valley, Florence was and remained “the metropolis.”<sup>185</sup>

After much planning and calls for bids, bridge construction began in early 1910.<sup>186</sup> By May 1910, work on both the territorial road and the Florence bridge were moving along as planned.<sup>187</sup> Meanwhile, prison building was also under way in Florence. Prisoners from Yuma were brought to construct the new prison while materials were

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<sup>183</sup> “The Florence Bridge,” *Arizona Republican (1890-1922)*, March 25, 1891, p. 3.

<sup>184</sup> “May Build Railroad to the Prison Site,” *Arizona Republican (1890-1922)*, February 10, 1908, p. 12.

<sup>185</sup> “Over on the Gila,” *Arizona Republican (1890-1922)*, September 5, 1909, p. 2.

<sup>186</sup> “Bridge at Florence to be Built at Once,” *Arizona Republican (1890-1922)*, September 17, 1909, p. 1. “Florence Bridge Plans Are Ready,” *Arizona Republican (1890-1922)*, October 17, 1909, p. 10. “Notice to Contractors and Builders,” *Arizona Republican (1890-1922)*, November 12, 1909, p. A3. “Bids Opened for Florence Bridge,” *Arizona Republican (1890-1922)*, January 16, 1910, p. 7. “Florence Bridge Plans Discussed,” *Arizona Republican (1890-1922)*, January 31, 1910, p. 5. “Material for the Florence Bridge,” *Arizona Republican (1890-1922)*, February 15, 1910, p. 7. “Bids Opened for Bridge Materials,” *Arizona Republican (1890-1922)*, February 26, 1910, p. 4.

<sup>187</sup> “Progress of Work on Territorial Road,” *Arizona Republican (1890-1922)*, May 27, 1910, p. 9.

“being hauled across the Gila as rapidly as possible, but owing to a great amount of quicksand, the hauling is more tedious as smaller loads have to be taken.”<sup>188</sup> Prisoners were offered commutations of their sentence of one day for each day worked on the new prison and the bridge and some gained their freedom this way.<sup>189</sup> By the end of 1910, the bridge, the territorial road, and the prison were completed. As one newspaper noted, “the Gila river crossing... is now almost completed work. A good road has been built by the convicts from the river to the prison and the bridge will be finished in a few days.” The bridge was anticipated to be “a great public institution for dwellers in those parts, serving Florence as a sort of an information bureau, almost a city hall and board of trade combined.” Florence made plans for a formal opening of the bridge with a “gala occasion, getting up a celebration and inviting the world to attend.”<sup>190</sup>

Officially opened in 1910, the new territorial prison in Florence soon made national headlines. Describing Florence as a “little adobe Mexican town on the Gila River,” the *New York Times* wrote that the prison was “set down in a treeless desert near the ruins of some prehistoric race, whose broken pottery one’s feet tosses up from the sand. The prison is a walled inclosure [sic] of steel and cement... It has nothing of the frowning exterior one is accustomed to see.” Driving the article was the then-governor’s approach to incarceration. Governor George W.P. Hunt had firm beliefs when it came to prison policy:

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<sup>188</sup> “Prison Work at Florence,” *Arizona Republican (1890-1922)*, April 13, 1909, p. A1.

<sup>189</sup> “Commutations for Arizona Convicts,” *Arizona Republican (1890-1922)*, October 10, 1910, p. A1.

<sup>190</sup> “Fine Results Shown by Engineer Girand,” *Arizona Republican (1890-1922)*, December 14, 1910, p. 3.

There are only three reasons for a penitentiary—revenge, punishment, and protection to society. The first two have had their day. The third holds. Society must be protected against the criminal. But when you have shut him up that duty is done. What remains is the man himself. Shall we go on making penitentiaries schools of crime, or make an effort to build up the man’s character, restore his self-respect, strengthen his weakness, and cultivate in him a proper appreciation of his relation to others, and to society in general?<sup>191</sup>

As a first task, Hunt traded in the stripes for a “neat gray uniform.”<sup>192</sup> As political scientist David Berman argues, “Hunt felt that many prisoners, especially first offenders, could be restored through humane prison policies to a status of self-respect and become better people and good citizens.”<sup>193</sup> To show this, Governor Hunt would often release prisoners to visit their families showing trust in “his prison family.” In addition to a “convict baseball team,” those held inside the state prison also engaged in public works projects such as cutting mesquite, building sewers and bridges. When people in Florence expressed concerns that “unguarded convicts” were out in public during a sewer project, the offended “convicts” refused to return to work until Florence made amends. The *New York Times* noted all this as an “amusing situation.”<sup>194</sup>

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<sup>191</sup> “Gov. Hunt’s Plan for Making Men Out of Convicts,” *The New York Times* (1857-1922), August 11, 1912, p. SM11.

<sup>192</sup> “Gov. Hunt’s Plan for Making Men Out of Convicts,” *The New York Times* (1857-1922), August 11, 1912, p. SM11.

<sup>193</sup> Berman, *George Hunt*, 67.

<sup>194</sup> “Gov. Hunt’s Plan for Making Men Out of Convicts,” *The New York Times* (1857-1922), August 11, 1912, p. SM11.

## Detentions at Ellis and Angel Islands

Nationally, conditions of confinement were far less amusing, especially for noncitizen detainees for whom exclusionary laws played out with a violent reality. After the fire had destroyed Ellis Island in 1897, the new buildings constructed were deemed “generally defective.” However, there was little recognition of the seriousness of these conditions from official channels. H.A. Taylor, the Assistant Secretary of the Treasury Department (which housed the Bureau of Immigration), stated in 1901 that the “interior brick work was not finished... [and] was frequently left rough. Certain broken stones were used which had to be patched up and various other defects were found, none of which was of so serious a character as to affect the general stability of the buildings.” Despite this, Taylor maintained that the “buildings at Ellis Island are well put up and in splendid condition.” While Taylor admitted it was “true that we found water seeping into the basement of the hospital, but that is not due to imperfect construction. The hospital is located on made ground and some water has found its way into the basement.”<sup>195</sup> At a meeting discussing conditions at Ellis in front of a president-appointed board to investigate the Bureau of Immigration, a pastor replied to the question, “Did you ever observe any vermin in the rooms?” bluntly by stating, “Yes, there are lots of bugs there. They come off the steamers with the other immigrants. We got them too, sometimes. I tell you our work over there is more dangerous than missionary work in Africa.”<sup>196</sup>

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<sup>195</sup> “Troubles With Buildings at Ellis Island,” *The Brooklyn Daily Eagle*, October 18, 1901, p. 5.

<sup>196</sup> “Ellis Island Conditions,” *The New York Times*, October 8, 1903, p. 16.

Curiously, one recent work states that after the 1897 fire, “Ellis Island buildings reappeared better than before.”<sup>197</sup>

Physical conditions at Ellis Island were compounded by staff-driven abuses. A news article in 1902 reported that “immigrants were subjected to many abuses; that immigrants were detained unnecessarily and made to work for the personal gain of those interested, and that they were subjected to many extortions.” The then Commissioner of Immigration Thomas S. Fitchie was not held responsible for the abuses, was soon let go from the post, and all his assistants were fired.<sup>198</sup> Nearly a decade later, the abuses were left unresolved. In 1911, the Brooklyn League of the National German-American Alliance, representing 15,000 German-Americans, appealed to President Taft and Congress about the conditions and abuses at Ellis Island seeking to remove then Commissioner of Immigration William Williams.<sup>199</sup> The next month, Williams maintained that the allegations of abuses were entirely false but admitted that it was “impossible to apply the law with the requisite thoroughness on days when we are compelled to receive 4,000 to 5,000 people.” While insisting that immigration officials are doing the best they can despite inadequacies, the “conditions are not nearly as bad as depicted.”<sup>200</sup> Commissioner Williams shared nativist sentiments of “backward races” and in order to keep out “low grade immigrants” had imposed a requirement that all new

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<sup>197</sup> Ronald H. Bayor, *Encountering Ellis Island: How European Immigrants Entered America* (Baltimore: Johns Hopkins University Press, 2014), 32.

<sup>198</sup> “Many Abuses at Ellis Island,” *The Philadelphia Inquirer*, January 9, 1902, p. 4.

<sup>199</sup> “Germans After Williams,” *The Brooklyn Daily Eagle*, March 8, 1911, p. 7.

<sup>200</sup> “Investigation Is Courted,” *The Brooklyn Daily Eagle*, June 16, 1911, p. 2.

immigrants have at least \$25 and a ticket to their final destination, which led to many Jewish immigrants being excluded and deported.<sup>201</sup> Four years later, Ellis Island began offering English classes to children who have been ordered deported but could not be physically returned to their countries of origin until wars in those countries had ended.<sup>202</sup> In 1916, charges of “immorality and mismanagement” at Ellis were investigated by congressional representatives.<sup>203</sup> Despite such circumstances, enforcing exclusionary laws kept Ellis Island open and operational.

Exclusionary impulses drove detentions not only in Ellis Island but starting in 1910 at Angel Island as well. For the next thirty years, Angel Island operated as the primary port of entry for Asian immigrants into the United States, processing over one million people, as officials sought to enforce anti-Asian immigration policies.<sup>204</sup> Described by Roger Daniels as “primarily a detention facility for Asian immigrants,”<sup>205</sup> there were problems from the start. In 1910, the year it opened, the Chinese League of

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<sup>201</sup> Lee and Yung, *Angel Island*, 221.

<sup>202</sup> “To Teach Them English,” *The Daily Ardmoreite*, February 12, 1915, p. 1.

<sup>203</sup> “Probe Ellis Island,” *The Salina Evening Journal*, July 20, 1916, p. 1.

<sup>204</sup> Some of these include the Page Act of 1875 directed at Chinese women, Chinese Exclusion Acts, and the Immigration Act of 1917 that created the Asiatic Barred Zone. As Erika Lee argues, “From the mid-nineteenth to the mid-twentieth centuries, Asian immigrants were considered a single “despised minority.” They faced discrimination in every part of their lives.” Erika Lee, *The Making of Asian America: A History* (New York: Simon & Schuster, 2016), 7. In regards to the Page Act, John Park notes, “Led by congressional leaders from California, the law would be the first of many federal exclusion laws targeting the Chinese.” John S.W. Park, *Elusive Citizenship: Immigration, Asian Americans, and the Paradox of Civil Rights* (New York: New York University Press, 2004), 63.

<sup>205</sup> Roger Daniels, “No Lamps Were Lit for Them: Angel Island and the Historiography of Asian American Immigration,” *Journal of American Ethnic History* 17, no. 1 (Fall 1997), 3.



Justice of America related “intolerable conditions” at Angel Island.<sup>206</sup> Daniels notes a report by the Public Health Service Surgeon at the same time, which detailed the contaminated water supply, fly and cockroach infested kitchen facilities, and “gross overcrowding.”<sup>207</sup> H.M. Lai has pointed out that the sanitary conditions in the dormitories, for example, were “barely adequate... janitorial services were limited. Ten months after the station’s opening, the acting commissioner was already criticizing the filthy conditions of the facilities.” In the 1920s, the Chinese Benevolent Association protested unhealthy conditions to President Coolidge and Secretary of Labor J.J. Davis which had “allegedly caused several detainees to sicken and die.” In the 1930s, the Angel Island Liberty Association was compelled to negotiate with officials to provide soap and toilet tissue for those detained.<sup>208</sup> The problems remained as Angel Island continued operating.

Chinese community leaders also continually protested overcrowding and harsh enforcement procedures.<sup>209</sup> Harsh procedures included invasive medical examinations and prolonged lengths of detention. Recent scholarship has attempted to uncover the systematic nature of these lengths of detention at Angel Island with one study indicating there is “great variability” in this regard.<sup>210</sup> Regardless of average detention times, many

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<sup>206</sup> “Chinese Complain of Angel Island Conditions,” *Deseret Evening News*, June 4, 1910, p. 8.

<sup>207</sup> Roger Daniels, “No Lamps Were Lit for Them,” 5.

<sup>208</sup> H.M. Lai, “Island of Immortals: Chinese Immigrants and the Angel Island Immigration Station,” *California History* 57, no. 1 (Spring 1978), 95.

<sup>209</sup> Lee and Yung, *Angel Island*, 321.

<sup>210</sup> Robert Barde and Gustavo J. Bobonis, “Detention at Angel Island: First Empirical Evidence,” *Social Science History* 30, no. 1 (Spring 2006), 104. The longest recorded detention at Angel Island is considered to be that of Quok Shee, a Chinese immigrant who applied to enter the

noncitizens who were detained would later refer to the notorious West Coast detention center using the language of incarceration. After all, as H.M. Lai notes, it was those who experienced detention first-hand who “sampled the full flavor and effect” of the anti-Asian exclusion laws.<sup>211</sup> For instance, Benjamin Choy, who was detained at Angel Island, later recalled the place as “a place of confinement... I was away over there, only two weeks. You just sleep, and eat, and play. That’s all, there’s nothing else.”<sup>212</sup> Bennie Woon Yep, who was detained for one month, later stated in an oral history interview that Angel Island was “just like a jail... you sleep on a metal bed... they have a big building, all the Chinese sleep in the building. No families, just like going to jail...” When asked about who was detained, Bennie Woon Yep replied, “All Chinese... mostly young people... all poor people.”<sup>213</sup>

Exclusionary impulses highlighted by detentions and deportations took heavy tolls nationwide highlighting the violent reality for those subjected to them. According to one report published in 1986, in its first forty years of operation, there were 3,000 suicides at Ellis Island.<sup>214</sup> A *New York Times* article from 1985 links the suicides to those

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country to join her husband, who was detained for twenty months. See Robert Eric Barde, *Immigration at the Golden Gate: Passenger Ships, Exclusion, and Angel Island* (Westport, CT: Praeger, 2008).

<sup>211</sup> H.M. Lai, “Island of Immortals,” 93.

<sup>212</sup> Benjamin Choy, interview with Caitlin Fischer, December 2, 2004. Oral History Project, Angel Island, Pacific Regional Humanities Institute, available at <https://escholarship.org/uc/item/323175bz>.

<sup>213</sup> Bennie Woon Yep, interview with Melody Chin, May 24, 2005. Oral History Project, Angel Island, Pacific Regional Humanities Institute, available at <https://escholarship.org/uc/item/7j99z91x>.

<sup>214</sup> “Facts about Ellis Island,” *INS Reporter*, Vol. 34, No. 2, U.S. Government Printing Office (Spring 1986), 20.

rejected from admission into the country by noting that the “implications for the rejected were dreadful. For some, there was nothing to go back to, or there was certain death; for others, who left as adventurers, to return would be to adopt in local member the fool’s role, and the failure’s. No wonder that the island’s history includes reports of 3,000 suicides.”<sup>215</sup> However, one author notes in his work that while “more than 3,500 immigrants died [at Ellis Island], including 1,400 children,” there were “also three known suicides.”<sup>216</sup> Suicides seem to have begun even before arrival at Ellis Island. Molly Mendelsohn noted of her passage to New York: “They stopped at night. Then at one point, the boat suddenly turned back and everybody was terribly worried. We thought we couldn’t go to America. And the story was that a purser had committed suicide. He had jumped off the boat, and they had to go back and search for him, even though there was no hope.”<sup>217</sup> Regina Rogatta later reflected, “We were lucky. There were many that were sent back. And my sister said some of them were jumping off the boats because they were told to go back, and they were committing suicide. Just the thought of that voyage going back and not being able to stay in this country. We were the lucky ones.”<sup>218</sup> While on board the liner *Olympic* near New York, Thomas Brassington, a native of England, left a note that he was afraid of detention at Ellis Island, said goodbye to his fiancé, and

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<sup>215</sup> Mary Gordon, “More than Just a Shrine: Paying Homage to the Ghosts of Ellis Island,” *The New York Times*, November 3, 1985, p. SMA65.

<sup>216</sup> Peter M. Coan, *Ellis Island Interviews: In Their Own Words* (New York: Fall River Press, 1997), xxvii.

<sup>217</sup> Quoted in Coan, *Ellis Island Interviews*, 207.

<sup>218</sup> Quoted in Coan, *Ellis Island Interviews*, 56.

jumped overboard.<sup>219</sup> News stories detailed suicides at the Island as well. When Marie Gorda, an immigrant from Germany, found out her little daughter, Anna, had died of measles in the Ellis Island hospital, she threw herself into the bay in grief. Her body was later recovered floating in the ferry slip beside the hospital.<sup>220</sup> When Carl. C. Morgensen, a native of Denmark, was found deportable by the Board of Special Inquiry for an “act of moral turpitude,” he went into the next room and shot himself.<sup>221</sup> Historian Ronald Bayor argues, “Immigrants put into detention for further mental observation sometimes became so distraught that they committed suicide, indicating actual mental problems or desperation after the long journey.”<sup>222</sup> After being detained for four days and eventually granted admission after friends and family vouched for her, Martha Marshall allegedly jumped from the upper balcony of the main hall. No motive was assigned and her death was ruled a suicide.<sup>223</sup> Two days after Christmas 1929, Theresa Papp, a native of Hungary, died after jumping into the harbor from the window of the marine hospital on Ellis Island. Despite having lived in the U.S. for 21 years, she was barred from re-entry for having a contagious disease.<sup>224</sup>

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<sup>219</sup> “Fear of Ellis Island is Cause of Suicide,” *The Ottawa Journal*, September 1, 1921, p. 3.

<sup>220</sup> “Grieving Mother Commits Suicide,” *The New York Times*, May 19, 1907, p. 3.

<sup>221</sup> “Man Ordered Deported Commits Suicide,” *San Francisco Chronicle*, February 25, 1915, p. 18.

<sup>222</sup> Bayor, *Encountering Ellis Island*, 58.

<sup>223</sup> “Woman, Near Entry Into U.S., Dies in Leap at Ellis Island,” *The Brooklyn Daily Eagle*, December 23, 1926, p. 2.

<sup>224</sup> “Barred After 21 Years in U.S., Woman Is Ellis Island Suicide,” *The Brooklyn Daily Eagle*, December 27, 1929, p. 1.

Suicides at Angel Island also point to the despair and desperation noncitizens grappled with while they remained in detention. Days into being detained in 1919, Fong Fook hanged himself with a towel tied to a gas fixture. Lester Tom Lee and Gerald Won recalled separate suicides in 1931 and 1936. An interpreter told the story of a Chinese woman who was “so distraught about being deported back to China that ‘she sharpened a chopstick and stuck it in her brain through the ear and died.’”<sup>225</sup> Those who managed to survive detention, later recalled the experience marked by stories of suicides. For instance, David Chan Leong, who was held at Angel Island later described his experience, “going to the latrine at night was kinda scary because they say ghosts... People there hung themselves and all that stuff. That was scary. I was afraid to get out of bed at night.”<sup>226</sup> Dick Jeong, formerly detained at Angel Island, later stated, “Some people suicided there. Yeah because some people stay a long time. You know some people, some of the older people especially.”<sup>227</sup> Myron Ning Wong, who was also detained later recalled, “People hung themselves over there, people killed themselves, which is true, so we were kind of scared, you know... I didn’t see it, but people did that because they interrogate them, they couldn’t come up. They’d lose face in China and, you know, they would kill themselves.”<sup>228</sup> A fire in August 1940 eventually destroyed the

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<sup>225</sup> Lee and Yung, *Angel Island*, 101.

<sup>226</sup> David Chan Leong, interview with Christine Trowbridge (June 10, 2005), Oral History Project, Angel Island, Pacific Regional Humanities Institute, available at <https://escholarship.org/uc/item/75x0z4w7>.

<sup>227</sup> Dick Jeong, interview with Anna Cheng (May 28, 2005), Oral History Project, Angel Island, Pacific Regional Humanities Institute, available at <https://escholarship.org/uc/item/4p3130xs>.

<sup>228</sup> Myron Ning Wong, interview with Anna Cheng (May 29, 2005), Oral History Project, Angel Island, Pacific Regional Humanities Institute, available at <https://escholarship.org/uc/item/9pd6k1hd>.

administration building at Angel Island, along with many of the records. A few months later, the last of those detained – 125 Chinese men, 19 Chinese women, a few Filipinos, and 35 Central European refugees – were transported to the mainland and Angel Island closed down.<sup>229</sup>

Like Angel Island during its operation, detention conditions at Ellis Island remained problematic throughout the early decades of the twentieth century. In 1921, government officials, health inspectors, and volunteers were embattled in “open warfare.” The New York health commissioner noted Ellis Island was “disease-ridden, a plague-hatchery and a dangerous menace.” Volunteers from welfare organizations cited “instances of ill treatment, neglect, filth, inadequate accommodations and incompetence.” Among other details of conditions, immigrants are “herded like cattle in the ill-ventilated, fetid detention room,” there were no separate quarters for mothers with babies, there were 1,100 beds for nights when anywhere from 2,000 to 4,500 people are housed, and the water supply was contaminated that “officials will not drink it.” The immigrant “comes full of hope; he often leaves the island full of hate.”<sup>230</sup> Days later, the Harding administration promised to remedy the “evil conditions at Ellis” immediately by correcting the “inefficient and inhumane methods” of immigration enforcement. The new Commissioner General of Immigration W.W. Husband promised that “everything possible be done to remove the confusion that has caused the detention of thousands of immigrants in unhealthy conditions at the island and aboard ship.”<sup>231</sup> Five months later,

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<sup>229</sup> Roger Daniels, “No Lamps Were Lit for Them,” 5.

<sup>230</sup> “Ellis Island Throttles Hope,” *The Evening Journal*, March 22, 1921, p. 8.

63-year-old Kate Kalish, who had contracted pneumonia during her month-long detention at Ellis Island because of restrictive immigration quotas, died in her home in St. Louis.<sup>232</sup>

The early 1920s saw the passing of two quota laws meant to curtail immigration. The Emergency Quota Law of 1921 was passed in anticipation of World War I refugees from Europe and limited immigrants to 3 percent of their national origin based on the 1910 census. The Immigration Act of 1924, spearheaded by Albert Johnson and superintendent of the Eugenics Record Office Harry Laughlin, reduced this to 2 percent of the 1890 census, which disproportionately favored immigrants from Northern and Western Europe.<sup>233</sup> As scholar Miroslava Chávez-García has noted, Laughlin had been working since the late 1910s to “draft and support legislation advocating the sterilization of those labeled ‘unfit’: primarily poor, white southern European immigrants” and in March 1924 testified in Congress about the “dangers of continued immigration from countries with degenerate peoples. His testimony helped pass the Immigration Act of 1924.”<sup>234</sup> As historian Libby Garland argues, “These new laws were a grand experiment in statecraft and social engineering. They attempted to codify a precise formula for American unity. They applied to European immigrants, albeit less harshly, a nation- and

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<sup>231</sup> “Administration Promises To Clean Up Ellis Island,” *The Charlotte Observer*, March 29, 1921, p. 1.

<sup>232</sup> “Ellis Island Detention Fatal To East Side Woman,” *The St. Louis Star and Times*, August 28, 1921, p. 9.

<sup>233</sup> Libby Garland, *After They Closed the Gates: Jewish Illegal Immigration to the United States, 1921-1965* (Chicago: University of Chicago Press, 2014), 14-15. The 1924 also introduced substantial documentation requirements for all immigrants, including valid passports, certificates of medical exams, passport pictures, copies of military and prison records, and copies of birth certificates as well as a visa fee and head tax.

<sup>234</sup> Miroslava Chávez-García, “Youth of Color and California’s Carceral State: The Fred C. Nelles Youth Correctional Facility,” *The Journal of American History* (June 2015), 50.

race-based principle of exclusion similar to that which had been pioneered with Asian immigrants.”<sup>235</sup> Moreover, Mae Ngai argues that the 1924 Act brought about a “new kind of thinking,” where cultural nationalism based on “prejudices among white Protestant Americans from norther European backgrounds and their desire to maintain social and political dominance” transformed into “a nationalism based on race.”<sup>236</sup> Compounded by the introduction of these immigration quotas in the early 1920s, noncitizen detention conditions drew international attention. In 1921, “distressing accounts” by British subjects detailing bad treatment and “filthy” conditions at Ellis came under discussion at the House of Commons. There the under-secretary of Foreign Affairs, Cecil Harmsworth, stated, “Repeated representations made to the United States government have, I regret to say, had no tangible result.”<sup>237</sup> Commissioner Husband responded, “I don’t know what is meant by tangible results. We have expressed our sincere regrets and are sure it cannot happen again.”<sup>238</sup> Early investigations laid part of the blame on steam ships that were carrying more British nationals than the quota numbers allowed which meant there was “no recourse save to detain the excess arrivals at Ellis Island until such time as the quota for the British empire permitted their admittance or until they could be returned to the port of embarkation.”<sup>239</sup> Recommendations by an advisory committee appointed by

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<sup>235</sup> Garland, *After They Closed the Gates*, 15.

<sup>236</sup> Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 23.

<sup>237</sup> Associated Press, “Ellis Island Condition Protested by British,” *The Town Talk*, November 4, 1921, p. 7.

<sup>238</sup> “Express Regrets On Ellis Island Condition,” *The Capital Times*, November 4, 1921, p. 6.

<sup>239</sup> “Inquiry is Begun at Ellis Island,” *The Indianapolis Star*, November 5, 1921, p. 3.



Commissioner Husband were to be adopted immediately. Among them were policies to give women and children improved quarters, larger facilities for immigrants to communicate with friends and family, and Sunday services held by Catholic, Protestant, and Jewish clergymen. Moreover, those refused entry would have their cases explained to them and noncitizens “will not in future be detained in the Ellis Island barges but in commodious quarters in the main building.”<sup>240</sup>

A year after Harmsworth had spoken about Ellis at the House of Commons, his successor, Ronald McNeill, voiced similar concerns about conditions being “very bad.”<sup>241</sup> Secretary of Labor James Davis went on the defensive and responded, “Immigrants are better treated at Ellis Island than any other port in the world.”<sup>242</sup> Davis then met with the British ambassador, Sir Auckland Geddes, to discuss British citizens being subjected to “indignities and insanitary treatment at the American ports of entry.” After defending the treatment of immigrants, Davis discussed with Geddes rebuilding Ellis Island so that “different races may be segregated.” Moreover, Davis admitted there was “room for improvement” and that the station is “overcrowded from 50 to 100 per cent.” Davis later stated Geddes was “quite impressed” with the efforts being made at “handling aliens.”<sup>243</sup> A few months later, an editorial in a Manitoba newspaper took issue with the exclusivity of those being assisted. The editorial remarked, “What is needed is not better treatment for British immigrants at Ellis Island, but better treatment for all

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<sup>240</sup> “Ellis Island Conditions,” *Arkansas City Daily Traveler*, January 3, 1922, p. 1.

<sup>241</sup> “Ellis Island Conditions Protested,” *The Yale Expositor*, December 14, 1922, p. 8.

<sup>242</sup> “Aliens Treated Well, Davis Contends,” *The Washington Times*, December 8, 1922, p. 31.

<sup>243</sup> “Urges British Immigrants Be Treated Better,” *Chicago Tribune*, December 17, 1922, p. 12.

immigrants.” The editorial objected to the “harsh and prison-like treatment” where noncitizens “are numbered, ticketed, and housed like so many dumb creatures” and concluded, “The situation should be relieved by making conditions better for everyone, and by officially assuming that all newly-arrived immigrants are human beings with well-defined rights to courteous and kind treatment.”<sup>244</sup> Two years later, when the Secretary of State for Home Affairs in the House of Commons was asked whether he was satisfied with the conditions back in the United States, he replied, “No, I cannot say I am satisfied with conditions, and I hope an improvement will come before long.” However, he also stated that no retaliatory measures would be taken to force improvements.<sup>245</sup>

With the Immigration Act of 1924, much of the admission process shifted to consular offices abroad and negated the need for processing centers. This meant for the most part that medical examinations were performed and visas were issued overseas before noncitizens arrived at ports of entry in the United States. Starting in 1924, therefore, line inspections were eliminated at Ellis Island. Historian Mae Ngai notes that this meant “upon arrival, immigrants’ visas were inspected, not their bodies.”<sup>246</sup> Yet, quota restrictions had worsened conditions at Ellis Island in the first half of the year. In early June, more than 1,400 immigrants were detained at Ellis where sleeping accommodations were available for 1,000. Another 8,800 were detained pending permission to land.<sup>247</sup> The congestion was alleviated when Congress stepped in to

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<sup>244</sup> “Ellis Island Conditions,” *The Winnipeg Tribune*, June 28, 1923, p. 4.

<sup>245</sup> “Britain Will Not Retaliate On Ellis Island Conditions,” *The Brooklyn Daily Eagle*, July 27, 1925, p. 3.

<sup>246</sup> Ngai, *Impossible Subjects*, 61.

overturn a Supreme Court decision. *Commissioner of Immigration v. Gottlieb* centered on whether wives and children of residents would be subjected to the quota restrictions. Under a lower court ruling in *Gottlieb*, 8,000 immigrant wives and children had been admitted. However, the Supreme Court reversed that decision and held that wives and children came under quota restrictions.<sup>248</sup> This then meant that the 8,000 immigrants admitted were all liable to arrest, detention, and deportation. In order to avoid large-scale detentions and deportations, Congress passed a joint resolution to overturn the Court decision, legalize their status, and permit them to remain.<sup>249</sup>

As visa processing and inspections shifted abroad, it is often argued that Ellis Island experienced a transformation of sorts. In its last thirty years or so of operation, Ellis Island became essentially an “island prison” primarily for those deemed “radicals.”<sup>250</sup> Following the Mexican and Russian Revolutions of the 1910s, “radicalism” seemed to have “fanned the flames” of rising nativism. As Shana Bernstein argues, “Americans feared foreign radicalism would contaminate their country by way of southern European, Asian, and Mexican immigrants. They associated foreigners with radicalism and persecuted them.”<sup>251</sup> Or as Bill Ong Hing puts it, “To many Americans,

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<sup>247</sup> “Lifting of Ban on 8,800 Aliens Ends Ellis Island Jam,” *The Brooklyn Daily Eagle*, June 10, 1924, p. 24.

<sup>248</sup> *Commissioner of Immigration v. Gottlieb*, 265 U.S. 310 (1924).

<sup>249</sup> Martha Mable Gardner, *The Qualities of a Citizen: Women, Immigration, and Citizenship, 1870-1965* (Princeton University Press, 2005), 130, n. 22.

<sup>250</sup> Justice Black refers to Ellis Island as an “island prison” in his dissent. *Shaughnessy v. Mezei*, 345 U.S. 206, 217 (1953).

<sup>251</sup> Shana Bernstein, *Bridges of Reform: Interracial Civil Rights Activism in Twentieth-century Los Angeles* (Oxford: Oxford University Press, 2011), 25.

the ghost of Bolshevism seemed to haunt the land in the specter of immigrant radicals.”<sup>252</sup> Thus, many were targeted for detentions and deportations. In 1920, a group of 40 “radicals” were held at the island for deportation to Russia. As a news article noted, “Most of the deportees have been held by the Federal authorities several months and some have been detained for more than a year. Others have been captives for several years.”<sup>253</sup> As Robert Elias has argued, the targeting did not remain exclusive: “Patriotic America sought a “return to normalcy” after World War I, and those who stood out were labeled aliens, radicals, and outsiders. The emerging Red Scare targeted not only political activists and labor leaders but immigrants generally.”<sup>254</sup> “Radicals” as well as other noncitizens were also being detained and deported along the southern border in Arizona. In 1921, Johann Diermeyer was arrested and held in the Winslow jail for “certain Bolshevik utterances.” He was later investigated and found to be a “radical” by the immigration service where a “quantity of red literature and soviet propaganda, found in his possession at the time of his arrest, was confiscated and destroyed.” He was ordered deported along with four other men deemed “illegal entrants,” all of whom were from Europe and held at the immigration detention headquarters in Tucson.<sup>255</sup> In the meantime, there is evidence of further suicides and attempts among those detained at Ellis Island. In 1937, for instance, Sara J. Rodriguez, an 18-year-old Cuban immigrant detained by

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<sup>252</sup> Bill Ong Hing, *Defining America: Through Immigration Policy* (Philadelphia: Temple University Press, 2012), 62.

<sup>253</sup> “Orders Radical to Boston,” *The Washington Post*, September 28, 1920, p. 6.

<sup>254</sup> Robert Elias, *The Empire Strikes Out: How Baseball Sold U.S. Foreign Policy and Promoted the American Way Abroad* (New York: The New Press, 2010), 96.

<sup>255</sup> “Five Aliens On Way To Be Deported,” *The Arizona Daily Star*, May 25, 1921, p. 2.

immigration officials while in New York, attempting suicide by drinking poison as she was being taken to Ellis Island.<sup>256</sup> Ten years later, when Sofia Feldy, a 38-year-old immigrant from Poland, was refused entry by the Board of Special Inquiry, she hung herself in the detention room.<sup>257</sup>

After the passing of the Internal Security Act in 1950, Ellis Island became overcrowded once again. The *New York Times* reported that the “one-time gateway of hope has become a hotel of detention.”<sup>258</sup> The 1950 Act required the registration for communist or communist-front organizations and authorized detention “in a time of internal security emergency.”<sup>259</sup> The Act would be followed by the McCarran-Walter Act of 1952. As Jenna M. Loyd and Alison Mountz argue, “Both acts built on legislation passed in the 1910s targeted immigrants with anarchist politics and the 1940 Smith Act, which required the registration of noncitizens and enabled the deportation of individuals who belonged to organization that advocated the violent overthrow of the government.”<sup>260</sup> Despite a high wire fence, there were escapes. In 1953, for instance, three people escaped from Ellis Island by tying sheets and blankets together, sliding down to the ground from a window, and swimming four hours to the pier. They had

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<sup>256</sup> “Cuban Girl Takes Poison,” *The New York Times*, April 28, 1937, p. 16.

<sup>257</sup> “Immigrant A Suicide,” *The New York Times*, February 12, 1947, p. 52.

<sup>258</sup> A.H. Raskin, “New Role for Ellis Island,” *The New York Times*, November 12, 1950, p. 181.

<sup>259</sup> Internal Security Act, 64 Stat. 987 (1950).

<sup>260</sup> Jenna M. Loyd and Alison Mountz, *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States* (Berkeley: University of California Press, 2018), 123.

packed dry clothing together in a plastic shower curtain. While two were later caught, the third remained at large.<sup>261</sup>

### **Detentions in Arizona**

Exclusionary detentions and deportations were simultaneously operating in Arizona along the southern border with Mexico. In 1909, it was reported in Tucson that the “ranks of immigration prisoners at the local detention quarters are again being thinned out, several having been deported since the last of the week.”<sup>262</sup> A year later, a local newspaper headline read, “More Undesirables To Be Deported,” while listing two Hindus, a Russian, and nine Chinese men who would be taken from the noncitizen detention headquarters in Tucson to the Pacific coast and deported.<sup>263</sup> The headquarters, which housed both the immigration district office and detention quarters, was inside a two-story brick structure just north of Pennington Street on Church Avenue. When it first began operations in 1910, it was handling mostly Chinese.<sup>264</sup> This is in line with enforcement priorities of the time. As historian Kelly Lytle Hernández notes, “In 1904, the U.S. Immigration Service had established a small force of officers assigned to enforce the Chinese Exclusion Acts along the nation’s borders. Never numbering more than

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<sup>261</sup> “2 Ellis Island Aliens Captured in Jersey,” *The New York Times*, April 3, 1953, p. 11.

<sup>262</sup> “Arizona News: Tucson Star,” *The Oasis*, August 7, 1909, p. 2.

<sup>263</sup> “More Undesirables To Be Deported,” *Tombstone Weekly Epitaph*, August 21, 1910, p. 3.

<sup>264</sup> “Parking Space Demand Gobbling Up Landmark,” *The Arizona Daily Star*, October 4, 1957, p. A-7. The immigration building was scheduled to be razed in 1957 to make room for a parking structure. “Immigration Building To Come Down,” *Tucson Daily Citizen*, October 4, 1957, p. 17. “Rediscovered,” *Tucson Daily Citizen*, August 4, 1969, p. 3.

seventy-five men for the Mexican and Canadian borders, the Mounted Guard monitored border towns and patrolled the borderlands to apprehend undocumented Chinese immigrants.”<sup>265</sup> Yet, noncitizens of Mexican descent too were caught in the detention and deportation process. When Antonio Sanchez, an alleged deserter of the Mexican army, was brought to the detention center in Tucson, it was found that he had worked for a time at the Douglas smelter, got “ingloriously drunk” and has since been a “chronic inebriate.” As the article noted, “deportation will be the inevitable result.”<sup>266</sup> As Lytle Hernández has argued, while Mexican migration continued all through the 1910s, it would be in the 1920s when “Mexican labor emigration surged with massive expansion in southwestern agribusiness,” which would lead Congress to tightened U.S. immigration laws and establish the Border Patrol.<sup>267</sup>

Detentions and deportations crossed gender and age lines. When Juliana Delgado, a native of Mexico and well known to be a “practitioner of immorality,” was found across the border on several occasions showing “more than usual persistence in her efforts to return to this country,” a warrant was issued for her arrest, incarceration, and eventual deportation.<sup>268</sup> Even minors were not spared. When six Mexican boys were to be put on a train to Nogales, there was “rejoicing” at the noncitizen detention headquarters in Tucson because “pandemonium has reigned in the vicinity of their place of confinement.” The

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<sup>265</sup> Kelly Lytle Hernández, *Migra! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010), 36.

<sup>266</sup> “Sympathy Aroused By Clever Story,” *Arizona Republic*, August 2, 1911, p. 7.

<sup>267</sup> Hernández, *Migra!*, 25-26.

<sup>268</sup> “Insists Upon Coming Back Goes to Jail,” *The Arizona Daily Star*, July 9, 1911, p. 2.

boys apparently “fought and screamed, laughed and shouted and were the liveliest specimens ever held in confinement.” Their deportation, however, was noted as the “end even if that end be a chapter of a continued story.”<sup>269</sup> Less than three months later, the *Arizona Daily Star* celebrated the emptying of the detention quarters in Tucson for the first time since 1908 after the deportation of 15 Chinese men.<sup>270</sup>

Meanwhile, about 70 miles northwest of Tucson, the Florence bridge was under attack by consecutive storms in 1914, 1915, 1916, and 1917.<sup>271</sup> In September 1916, Governor Hunt and several others visited Florence to inspect the storm-damaged bridge. During their visit, their car plunged into the Gila River. As the engine stalled, the group faced a choice: waiting all night for help or getting out of the car and wading. Hunt led the charge, took off what clothes he thought would not get wet, and dove into the chilly water. The rest followed. At the other end of the river, they met a prison car that took them to the penitentiary. Hunt later stated, “if the people of the state could have seen me Saturday night wading the Gila river at Florence, with the major portion of my clothes on my head, they would have been of the unanimous opinion that I was creating quite the ripple.”<sup>272</sup> Twenty years later, Hunt’s name would attach to “The State Highway to

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<sup>269</sup> “Boys Sent to Nogales for Deportation,” *The Arizona Daily Star*, August 16, 1911, p. 5.

<sup>270</sup> “U.S. Officers Take Chinamen to Mexico,” *The Arizona Daily Star*, November 2, 1911, p. 6.

<sup>271</sup> “Gila Pours Around Both Bridge Ends,” *Arizona Republican (1890-1922)*, December 24, 1914, p. 2. “Cars Can Now Cross Bridge at Florence,” *Arizona Republican (1890-1922)*, April 8, 1915, p. 5. “To Protect Approach to Florence Bridge,” *Arizona Republican (1890-1922)*, August 16, 1915, p. 8. “River At Florence Leaves Its Banks and Farm Lands Ruined,” *Arizona Republican (1890-1922)*, January 23, 1916, p. 1. “Big Problem at Florence Bridge,” *Arizona Republican (1890-1922)*, February 12, 1916, p. 12. “Florence Bridge Soon Span Water,” *Arizona Republican (1890-1922)*, February 15, 1916, p. 8. “Passage of Gila Crossing Is Risky,” *Arizona Republican (1890-1922)*, February 24, 1916, p. 11. “Florence Bridge Is Again Impassable,” *Arizona Republican (1890-1922)*, October 16, 1916, p. 3.



Florence,” that ends at what is now Highway 79 at nearly the point where the Florence Bridge begins.

Along the southern border in Arizona, exclusionary detentions and deportations operated broadly encompassing people of diverse backgrounds. In particular, there is evidence that detentions allowed counties to negotiate with the federal government in renting out bed space and bring in revenue. Tucson provides an example of how immigration prisoners exacerbated overcrowding issues during this time while bringing in revenue to the city and surrounding county. Since the mid-1910s, the immigration headquarters had been located in the building at the back of the A.U.O.W. building, which housed immigrant detainees. Three days after Diermeyer and the others were deported, Francisco Nosaragari and Rafael Ramirez were taken from the Tucson immigration headquarters to Nogales and deported on the charge of being “illegal entrants.”<sup>273</sup> In 1923, six Europeans were brought to be held at the noncitizen detention camp in Tucson after seven Mexicans had been deported to Nogales the day before.<sup>274</sup> The next year, 12 immigration prisoners were moved from the Tucson headquarters to the Pima county jail where they were to be held “temporarily until permanent arrangements are made.”<sup>275</sup> Incarceration at Pima county jail would prove fatal for Wong Mook a few months later. In February 1925, he was found dead in his jail cell after hanging himself

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<sup>272</sup> “Gov. Hunt Wades the Gila River,” *Arizona Republican (1890-1922)*, September 26, 1916, p. 6.

<sup>273</sup> “Illegal Entrants Deported,” *The Arizona Daily Star*, May 28, 1921, p. 2.

<sup>274</sup> “Aliens Arrive,” *The Arizona Daily Star*, July 8, 1923, p. 2.

<sup>275</sup> “Officers Move Prisoners to County Jail,” *The Arizona Daily Star*, July 1, 1924, p. 3.

with a short cord and a handkerchief. The news article reported, “No reason for the suicide was evident this morning.”<sup>276</sup> Pima county jail would continue housing a variety of prisoners, including federal, immigration, county, and city, during this time.<sup>277</sup>

Exclusionary detentions provided revenue to local jurisdictions such as Pima county that were paid by the federal government to jail federal detainees, including those held for immigration violations. In 1929, for instance, the Department of Justice (DOJ) and the Department of Immigration together paid Pima county more than \$11,259. While the DOJ paid \$8,599 for 315 prisoners, immigration paid \$2,660 for 303. The discrepancy was explained by the longer waiting times for DOJ prisoners.<sup>278</sup> Three years earlier, the county jail had seen a record number of 265 prisoners, mostly coming from Prohibition and immigration violations, housed in a building set to hold 96. As a result, the men were “bedded down on the floor, on the roofs of the tanks or anywhere else where it was possible to spread blankets.” When the number of federal immigration prisoners dropped to a 16-year low at the end of 1932, it was deemed a “sigh of relief” for the sheriff but difficult for the board of supervisors who would be getting a “new low record” in the “check for meals.”<sup>279</sup> In May 1933, there were nearly 100 immigration

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<sup>276</sup> “Chinese Held In Pima County Jail Kills Self In Cell,” *Arizona Republic*, February 17, 1925, p. 13.

<sup>277</sup> In October 1928, it was reported that six prisoners were removed from Pima county jail. Three had finished serving their sentences and three were immigration prisoners who were deported. The jail then received 19 more federal prisoners. “Tucson Topics,” *The Arizona Daily Star*, October 19, 1928, p. 3. In January 1929, Pima county jail held 103 prisoners: 43 federal, 48 immigration service, and 12 county. “Jail Holds 103,” *The Arizona Daily Star*, January 24, 1929, p. 3.

<sup>278</sup> “County Has Money For U.S. Prisoners,” *The Arizona Daily Star*, July 5, 1929, p. 3.

<sup>279</sup> “Prisoner Total Drops to 59 From 265 High of Years Ago,” *The Arizona Daily Star*, December 28, 1932, p. 5.

prisoners at Pima county jail.<sup>280</sup> A year later, the county budget reported a decrease in revenue for several reasons one of which was that “the federal government is now not housing immigration prisoners in the county jail any longer than possible under its economy program and the moving of federal prisoners to the Mt. Lemmon prison camp has materially decreased the source of revenue from prisoners’ meals.”<sup>281</sup>

Providing a necessary service to the federal government in housing noncitizen detainees meant bargaining power for local jurisdictions. A few months after the county budget report, the Board of Supervisors voted to charge the Immigration Service 80 cents per day for boarding detainees.<sup>282</sup> The next year, the rate went up to 85 cents which was maintained in a new contract in 1936. As a news article noted, “The U.S. immigration service, at least, still loves Pima county in so far as its jail is concerned.”<sup>283</sup> The negotiations and contracts paid off for the county. That year, the sheriff collected \$61.20 for support of federal prisoners while collecting \$1,885.30 for immigration prisoners.<sup>284</sup> For the next several years, Pima county collected thousands of dollars for housing hundreds of noncitizens each year.<sup>285</sup> In 1944, the Board of Supervisors signed a contract

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<sup>280</sup> “Busy Barber Trims His Way From Cell,” *The Arizona Daily Star*, May 13, 1933, p. 3.

<sup>281</sup> “County Budget Report Is Made,” *The Arizona Daily Star*, January 24, 1934, p. 12.

<sup>282</sup> “Legal Notice: Minutes of Board of Supervisors Meeting,” *The Arizona Daily Star*, May 17, 1934, p. 10.

<sup>283</sup> “Immigration Units Asks To Renew Jail Contract,” *The Arizona Daily Star*, May 5, 1936, p. 13.

<sup>284</sup> “Sheriff’s Office Puts Out Report,” *The Arizona Daily Star*, July 9, 1937, p. 5.

<sup>285</sup> In 1937, the sheriff’s office collected revenue in the amount of \$3,603.55 for 417 immigration prisoners, surpassing the amount it received for federal and city prisoners. The county received \$2,857.90 for federal prisoners and \$1,315.75 for city prisoners. “Sheriff Reports on Work of Year,” *The Arizona Daily Star*, January 6, 1938, p. 2. In 1938, the sheriff collected \$3,870 for 417

with the INS to house prisoners for \$1.20 per day.<sup>286</sup> Four years later, an initial bid of \$1.50 per day was revised to \$1.25.<sup>287</sup> Such revenue generation highlights not only the financial benefit noncitizen detainees held for local jurisdictions but also the way in which such carceral relationships had been operating for much of the twentieth century.

Alongside this revenue generation, federal judges sentenced noncitizens to time in jails all along the border, which added to the carceral expansion. In August 1932, for instance, Judge Albert M. Sames was “speeding back and forth” across southern Arizona “busily engaged in cleaning up the court docket.” On a Tuesday, 59 noncitizens were sentenced to prison in Nogales for one day sentences. The previous day, 90 noncitizens were sentenced in Bisbee and Douglas. Nearly all were “Chinese who have slipped across the line recently.”<sup>288</sup> A week later, a train “carrying only Chinese immigration prisoners” passed through Tucson, picked up all the Chinese noncitizens held in southern Arizona border jails, and took them to San Francisco for deportation.<sup>289</sup> In July 1934, Sames

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immigration prisoners. “Ups and Downs Seen in Report,” *The Arizona Daily Star*, January 6, 1939, p. 3. In a “busy first half” of 1938, the sheriff collected \$2,616 for 216 immigration prisoners “Sheriff Submits First Half Report for Pima County Jail,” *The Arizona Daily Star*, July 3, 1938, p. 4. For the first half of 1939, the sheriff took in \$4,009 for 161 immigration prisoners. “Echols Reports Period’s Tasks,” *The Arizona Daily Star*, July 5, 1939, p. 11. In the first three months of 1939, the sheriff collected \$2,622 for 84 federal immigration prisoners. “Sheriff Makes March Report,” *The Arizona Daily Star*, April 5, 1939, p. 5. The sheriff collected \$615 for 87 immigration prisoners in the first six months of 1940. “Sheriff Reports His Collections,” *The Arizona Daily Star*, July 3, 1940, p. 6. In 1941, the sheriff collected revenues of \$1,887 for 227 immigration prisoners. “Sheriff’s Annual Report Announced,” *The Arizona Daily Star*, January 23, 1942, p. 16.

<sup>286</sup> “Contracts Regarding Immigration and Naturalization Service Prisoners,” *The Arizona Daily Star*, April 15, 1944, p. 7.

<sup>287</sup> “Revised Quotation on Detention and Maintenance of U.S. Immigration Prisoners,” *Arizona Daily Star*, May 4, 1948, p. 15.

<sup>288</sup> “Sames Is Handling Immigration Cases,” *The Arizona Daily Star*, August 18, 1932, p. 2.

sentenced 11 immigration prisoners who had pleaded guilty.<sup>290</sup> Two years later, Sames was still sentencing noncitizens in Tucson to terms ranging from a day to six months in prison after which they were to be deported.<sup>291</sup> In September 1941, Judge Dave Ling sentenced ten noncitizens to six months in prison and one noncitizen to five years' probation for unauthorized entry. One of the noncitizens sentenced to six months, Angel Zuniga-Morales, asked Ling if immigration authorities could beat up people like him by explaining, "They shook me and made me say English words I did not know the meaning of." Judge Ling replied that Zuniga-Morales "could avoid such incidents if he would stay on the Mexican side of the line or enter this country legally."<sup>292</sup>

Noncitizen detainees held within Pima County reacted against their confinement by attempting to or actually escaping. In December 1930, for example, ten noncitizens broke out of the newly completed Pima county jail by sawing through a bar on a window. The sheriff later explained that only immigration prisoners were kept in that part of the jail because he had always "considered it unsafe" and no "dangerous criminals" were ever kept there.<sup>293</sup> Two months later, a second jail break attempt at Pima county was halted and the noncitizen was placed in solitary confinement. The new sheriff repeated the earlier sentiments that the "jail needs an inner wall of steel." As the article noted, only

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<sup>289</sup> "Tucson Topics," *The Arizona Daily Star*, August 26, 1932, p. 8.

<sup>290</sup> "Topics of Tucson," *The Arizona Daily Star*, July 10, 1932, p. 2.

<sup>291</sup> "Immigration Prisoners Sentenced in U.S. Court," *The Arizona Daily Star*, May 12, 1936, p. 2.

<sup>292</sup> "2 Sentenced For Draft Offenses," *The Arizona Daily Star*, September 11, 1941, p. 7.

<sup>293</sup> "Ten Prisoners Saw Way Out," *The Arizona Daily Star*, December 14, 1930, p. 3. The men were listed as: Marcelo Ruiz, Miguel Rivera, Marcel Gomez, Fernando Gonzales, Eduardo Perez, Manuel Espinosa, Joaquin Garcia, Jose Carlos Samiengo, Jose Marie Montano, and Edmund Perez.

federal immigration prisoners are kept in that part of the jail and the sheriff and his force do not have direct control over them “other than to hold them for the federal government.”<sup>294</sup> A month later, four men escaped from the Santa Cruz county jail in Nogales after breaking through the wire screening. One of the men was an immigration prisoner. The hole they used had “originally been made by a woman prisoner about two months ago, who was frantic to return to her infant baby, in Mexico. She was caught before she managed to escape, and later was released on account of the baby.”<sup>295</sup> When a group of seven noncitizens escaped out of the east window at Pima county jail in October 1931, five of them were recaptured less than a year later.<sup>296</sup>

Such escapes and attempted escapes were not limited to county jails. In August 1933, Augustin Ortiz, who was reported to “have a thick face below the cheek bones... extremely short hair... and has a scar near the right eye,” escaped from the local immigration office in Tucson while immigration prisoners were being examined.<sup>297</sup> In May 1940, Tomas Cervera, a 40-year-old immigration prisoner, escaped from the federal prison camp at Mt. Lemmon.<sup>298</sup> In July, the camp had three more escapes. One of the escapees was 23-year-old Carlos Rivera who had been transferred there from the federal prison at La Tuna, Texas. Rivera had escaped on a Sunday evening by following “the telephone line from the prison, thus avoiding all highways until he reached Sahuarita.”

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<sup>294</sup> “Second Jail Break Attempt is Halted,” *The Arizona Daily Star*, February 1, 1931, p. 5.

<sup>295</sup> “Four Prisoners Flee Jail Cell,” *The Arizona Daily Star*, March 16, 1931, p. 1.

<sup>296</sup> “Tucson Topics,” *The Arizona Daily Star*, May 25, 1932, p. 3.

<sup>297</sup> “Three Prisoners of Uncle Sam Escape,” *The Arizona Daily Star*, August 19, 1933, p. 4.

<sup>298</sup> “Tucson Topics,” *The Arizona Daily Star*, May 20, 1940, p. 3.

He was caught there the next day and returned to the prison camp.<sup>299</sup> While U.S. marshal for the Arizona district, Ben J. McKinney, was celebrated in early 1950 for his “efficiency” and having only one prison escape of “nearly 15,000 prisoners handled,” the sole escapee was an immigration prisoner, who “slipped his handcuffs while being brought to Tucson from Nogales and faded back into Mexico.”<sup>300</sup> In 1954, another three immigration prisoners escaped from the Mt. Lemmon federal prison by walking away from the camp. Two were held for “illegal entry” from Mexico and one for “falsely representing himself as an American citizen.” The article noted they were “being hunted by prison camp guards and FBI agents.”<sup>301</sup>

Another local jurisdiction grappling with the ebbs and flows of immigration enforcement was Maricopa County. A sole existing record shows not only names of immigration prisoners but also sums listed for their housing. The Register of Immigration Prisoners details that between July 1949 and February 1953, there were 6,690 people arrested for immigration violations.<sup>302</sup> Of those listed, 6,661 are listed as Mexican while 11 were listed as “white” and 12 as Canadian.<sup>303</sup> Also listed are days and amounts periodically throughout the register where the amounts total to \$5,914.60.<sup>304</sup> At the same

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<sup>299</sup> “Fugitive Caught Put Back in Jail,” *The Arizona Daily Star*, July 3, 1940, p. 6.

<sup>300</sup> Dorothy Kalil, “Roaring History of Six-Guns Belongs to Marshal’s Office,” *Tucson Daily Citizen*, February 23, 1950, p. 80.

<sup>301</sup> “Federal Prison Escapees Sought,” *Tucson Daily Citizen*, 5 April 1954, p. 2.

<sup>302</sup> Register of Immigration Prisoners, No. 1, Arizona State Library, Archives and Public Records. Phoenix, Arizona. I am grateful to Carlos Lopez for bringing the Register to my attention.

<sup>303</sup> Register of Immigration Prisoners, No. 1. There is one person listed as Central American, one as Guatemalan, one as English, one as Puerto Rican, and one as Syrian (one nationality is illegible).

time, the Maricopa county jail was experiencing severe overcrowding. In March 1952, Judge Renz Jennings visited the jail and said conditions were “intolerable” and that the jail’s overnight cells are “100 per cent overcrowded.” The sheriff explained that as many as 390 people had been held at the jail that was built to accommodate 236. As Judge Jennings noted, “There is hardly standing room and some of the prisoners don’t have room to lie down. I’m not criticizing any public officials. But conditions are so bad that something must be done now.”<sup>305</sup> Two days later, the county supervisors promised to help the sheriff “clear up” the overcrowded conditions. The board chairman stated, “We will take action as soon as Sheriff Boies submits his plan for enlarging jail facilities.”<sup>306</sup> By August, a split board of supervisors ordered architectural plans to expand the courthouse annex for more courtrooms and expanded facilities for the county jail. One board member noted the “new jail facilities would get highest priority in the new construction.”<sup>307</sup>

In 1942, the War Relocation Authority constructed an internment camp approximately thirty miles west of Florence and thirty miles northwest of Eloy over the strong objections of the Gila River Indian Reservation government. Constructed in two months, the internment camp remained operational until 1945. In 1944, on the outskirts

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<sup>304</sup> Register of Immigration Prisoners, No. 1.

<sup>305</sup> “Judge Jennings Calls Jail-Overcrowding Parley,” *The Arizona Republic*, March 6, 1952, p. 1.

<sup>306</sup> Jack Karie, “County Supervisors Promise End to Jail Crowding,” *The Arizona Republic*, March 8, 1952, p. 1.

<sup>307</sup> “Plans Ordered for Courthouse Annex; Kimball, Seeking City Hall, Bucks Deal,” *The Arizona Republic*, August 8, 1952, p. 21.



of Florence was the largest prisoner-of-war camp ever built on American soil.<sup>308</sup> Two years earlier, the army had paid \$4 million for 500 acres for property north of the Gila River. Despite opposition from local community members, construction began and by May of 1943, the first Italian POWs were being housed at Camp Florence.<sup>309</sup> When braceros could not fill the labor demands of the cotton crop, growers turned to the camp and by the end of the year POWs were involved in picking cotton.<sup>310</sup> Wages for this labor were deposited into the U.S. Treasury. In 1944, the government earned \$22 million dollars from POW labor.<sup>311</sup> Axis prisoners also worked alongside U.S. civilians in such work as reconditioning motor vehicles to be sent to the Pacific.<sup>312</sup> In February 1945, German prisoners of war working on Arizona cotton fields picked an average of more than 370,000 pounds of cotton per day in their six-day work weeks.<sup>313</sup> After the war, the Arizona State Hospital used the camp's hospital facilities for a year. In 1951, the federal government assumed jurisdiction of the camp.<sup>314</sup> About 20 acres at the south end of the former POW camp was then used by the Bureau of Prisons as a federal prison camp.<sup>315</sup>

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<sup>308</sup> Jack Hamann, *On American Soil: How Justice Became a Casualty of World War II* (Chapel Hill: Algonquin Books, 2005), 5.

<sup>309</sup> Hamann, *On American Soil*, 8-13.

<sup>310</sup> Hamann, *On American Soil*, 21.

<sup>311</sup> Hamman, *On American Soil*, 22.

<sup>312</sup> "Axis Prisoners Doing Good Work In Arizona Camps," *The Washington Post*, October 31, 1944, p. 7.

<sup>313</sup> "Nazi Cotton Harvest High," *Arizona Republic*, February 15, 1945, p. 10.

<sup>314</sup> Ralph Mahoney, "The Florence Story: Built on Solid Foundations, This Arizona Town Grows, Thrives, Mellows With The Passing Years," *Arizona Days and Ways Magazine*, May 5, 1957, p. 24.

Standards were lax at the camp as there were “neither guards nor guns.” One article reported, “There is little difficulty with escapees for the inmates realize Uncle Sam has a long arm even though most of them are Mexican Nationals.”<sup>316</sup> In 1957, part of the camp housed hundreds of elementary school children when their school was destroyed by a fire. As the newspaper reported, the Federal Prison Bureau “lent a helping hand to this community.”<sup>317</sup>

In May 1952, a radio broadcast in Moscow claimed the United States was building Nazi-style extermination camps with barbed wire fences at El Reno, Oklahoma and Wickenburg and Florence, Arizona. The broadcaster stated, “The United States imperialists would like to get hold of the blueprints of the furnaces and gas chambers set up in a death camp on Kojima Island. They are building new Maidaneks and Oswiecims in Arizona and Oklahoma, intended for the extermination of all who do not agree with their aggressive policies.”<sup>318</sup> In fact, a “federal network of detention camps for dangerous subversives” was being constructed for occupancy starting in 1954 in the midst of Cold War hysteria. In addition to El Reno, Wickenburg, and Florence, camps were also to be placed at Avon Park, Florida, Allenwood, Pennsylvania, and at the old Japanese relocation center at Tule Lake.<sup>319</sup> Renovated with the use of prison labor at a cost of \$1.5

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<sup>315</sup> “Camp Was One of Many in Arizona,” *Florence Reminder and Blade-Tribune*, December 29, 1994, p. 5.

<sup>316</sup> “Federal Camp Near Florence Has Neither Guns Nor Guards,” *The Arizona Republic*, January 4, 1953, Section 5, p. 3.

<sup>317</sup> “Florence Prison Camp Becomes School House,” *Arizona Republic*, January 14, 1957, p. 15.

<sup>318</sup> Associated Press, “Moscow Paper Says U.S. Sets Up Nazi-Style Camps,” *The New York Times*, May 21, 1952, p. 7.

million, the camps were designed for use in any emergency under the 1950 Internal Security Act which authorized “rounding up and holding persons likely to commit espionage or sabotage should there be an invasion of the United States or its possession, a declaration of war by Congress, or an insurrection within this country in aid of an enemy nation.” However, as the head of the Bureau of Prisons James V. Bennett noted there were no plans for immediate use. Bennett said, “We are just being prudent. We want to be prepared, so we are sort of keeping a fleet of ‘mothball’ camps available.”<sup>320</sup> Yet, two years later, the camps remained ready and some occupied. At the end of 1955, the Florence camp had about 150 prisoners and two-thirds of them were “illegal immigrants.” Security was not a question. As the *New York Times* noted, bloodhounds from the Arizona State Prison were available for recapturing escapees and despite the dogs sometimes faltering “in the desert before the fugitives do...almost all are caught.”<sup>321</sup>

Immigration enforcement along the southern border was overwhelming authorities in the late 1940s and into the 1950s with troubling impacts on detention. As Kelly Lytle Hernández has argued, “U.S. immigration control was failing” along the border despite Mexican and U.S. officials expecting deportations further inland to reduce unauthorized immigration. As Lytle Hernández notes in this expectation “they were

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<sup>319</sup> A. Naomi Paik, *Rightlessness: Testimony and Redress in U.S. Prison Camps since World War II* (Chapel Hill: The University of North Carolina Press, 2016), 236.

<sup>320</sup> Joseph Paull, “5 Detention Camps To Be Ready in ’54,” *The Washington Post*, May 12, 1953, p. 5. Another consequence of the Internal Security Act was that it made Ellis Island “severely overcrowded.” At one point the population grew from 400 to 1500, while dining hall could only seat 300. Charles D. Weisselberg, “The Exclusion and Detention of Aliens: Lessons from the Lives of Ellen Knauff and Ignatz Mezei,” *University of Pennsylvania Law Review* 143, no. 4 (April 1995), n. 307.

<sup>321</sup> Luther A. Huston, “U.S. Keeps Detention Camps Ready,” *The New York Times*, December 27, 1955, p. 6.

wrong. Then they tried fences to discourage illegal immigration. But, again, they had miscalculated, and immigrants continued to cross through, around, over, and under the fences.”<sup>322</sup> Particularly problematic was the impact of arrests and deportations on detention facilities. As Hernández argues, by the early 1950s, Border Patrol was “apprehending so many Mexicans that there was no place to keep them as they awaited deportation. INS detention centers were filled beyond capacity.” While waiting for additional funds to build new detention centers in Brownsville, Texas, and El Centro, California, immigrants were detained temporarily in “barns and fields.” Meanwhile, local governments recognizing “an opportunity in the Border Patrol’s lack of space and allowed the INS to rent beds for migrants in local jails.” As Hernández notes, renting jail space was “so financially successful for border counties that they invested in expanding their jail facilities to accommodate the thousands of migrants being apprehended.”<sup>323</sup>

Yet, such contracts with immigration officials were not a new phenomenon in the early 1950s as county jails along the southern border had long been collecting revenue this way. Perhaps what may be striking is the way in which this era of exclusionary detentions culminated in the early 1950s with two simultaneous developments. On the one hand, arrests, detentions and deportations were accelerated along the southern border for much of this time period. Yet, on the other hand, formal detention facilities would be closed along sea ports after a change in policy in 1954. These two coinciding

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<sup>322</sup> Lytle Hernández, *Migra!*, p. 143.

<sup>323</sup> Lytle Hernández, *Migra!*, p. 143. There had been some initial controversy over the selection of the Brownsville location because the site was on privately owned land. Associated Press, “Texas Site Selected As Detention Camp For Illegal ‘Wetbacks’ To Be Deported,” *The Arizona Republic*, June 17, 1952, p. 16.

developments would set the stage for the next phase in noncitizen detention when formal policy and detention numbers carefully hid an increasingly problematic reality for immigrants detained, especially along the southern border.

Several policies along the southern border impacted the evolution of noncitizen detention in the early 1950s. In June 1954, immigration officials launched “Operation Wetback,” a “militarized, aggressive massive effort” in the Southwest to arrest and deport one million undocumented Mexicans.<sup>324</sup> The operation, which was “conceived and executed as though it was a military operation,” involved about 750 immigration officers, Border Patrol agents, and investigators. Starting with apprehensions numbering about 3,000 a day, the operation had arrested some 170,000 people within the first three months.<sup>325</sup> Scholars have increasingly detailed the various causes and effects of this massive deportation campaign including its effect on detention. As Lytle Hernández points out, officials “arrested more Mexicans than they could handle. To hold the detainees, the officers turned public spaces into temporary detention facilities.”<sup>326</sup> Less well analyzed is the impact on detention of a change in federal policy that came a year earlier. In June 1953, it was announced that all unauthorized immigrants arrested would go through the court system and be sentenced. This move away from the “voluntary departure” procedure meant that unauthorized workers would be given prison terms of anywhere from 30 days to six months. As the *New York Times* noted, “Instead of the

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<sup>324</sup> Natalia Molina, *How Race Is Made in America: Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley: University of California Press, 2014), 112.

<sup>325</sup> Ngai, *Impossible Subjects*, 155-56.

<sup>326</sup> Lytle Hernández, *Migra!*, p. 185.

usual free bus ride back to the border when caught, the wetback will face a term in jail without pay.”<sup>327</sup> Four days later, a group of 65 immigrants “most of them youths” from Safford, Douglas, and Nogales were given 30 day sentences after pleading guilty to illegal entry charges.<sup>328</sup> In a single day in October 1953, 113 people were sentenced in the Phoenix district court to a month in the Florence detention camp before their deportation.<sup>329</sup> In November 1953, 12 immigration prisoners received 30 day sentences while one received four months and another six months.<sup>330</sup>

The result was overcrowded jails across Arizona. A week after the policy went into effect, nearly 500 immigration prisoners were held in county jails at Bisbee, Nogales, Tucson, Florence, Phoenix, and Prescott. Two federal work camps in Florence and Tucson were “filled near capacity.” The Florence camp was only used as an emergency since it was not eligible for use by federal marshals. Still, Florence had 60 immigrants. In one afternoon, district court Judge James A. Walsh sentenced 60 people “nearly all” of who got 30 days and some “repeaters got stiffer penalties.”<sup>331</sup> As the *Associated Press* noted, “Southern Arizona jails are crammed with Mexicans caught jumping the border in search of farm jobs. And the situation is growing worse.”<sup>332</sup> Overcrowded jails meant

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<sup>327</sup> “Arizona Jails Full In ‘Wetback’ Drive,” *The New York Times*, June 21, 1953, p. 33.

<sup>328</sup> “65 Wetbacks Are Given Sentences On Guilty Pleas,” *The Arizona Daily Star*, June 25, 1953, p. 12A.

<sup>329</sup> Gladwin Hill, “‘Wetback’ Influx Near the Record,” *The New York Times*, November 22, 1953, p. 65.

<sup>330</sup> “Draft Deserter Faces Army Prosecution; Kin Await Trial,” *Tucson Daily Citizen*, November 24, 1953, p. 9.

<sup>331</sup> S.C. Warman, “Current Campaign Takes Heavy Toll In This Area,” *Tucson Daily Citizen*, June 16, 1953, p. 28.

conditions worsened. U.S. Marshal Ben Kinney stated, “Sometimes the prisoners complain that they haven’t enough room to sleep in but there isn’t much we can do.” Officials had to “stow the prisoners wherever they can find room, then haul them to court for disposition of their cases.” Pima County jail, for instance, had 148 federal prisoners and was built to accommodate about 80. It was further noted that if the situation got worse immigrants would “have to sleep standing up—they’ll be packed in so tight.”<sup>333</sup>

Overcrowded jail conditions led to building new and expanding old facilities. In early February 1954, for example, the county jail in Phoenix, housed atop the Maricopa County Courthouse, was having “tremendous business” with 476 prisoners in a space built to accommodate 225. As the article noted, “When the jail is full, like now, sometimes almost 100 prisoners sleep on floor pallets.” The sheriff noted that the “situation will be eased somewhat” when the new county jail annex was opened.<sup>334</sup> The county jail annex began operations in mid-March with a “spacious and well-equipped kitchen” where all meals would be cooked for 250 to 450 prisoners housed in addition to “a large, clean dining room for prisoners, an office and storage rooms.”<sup>335</sup> Meanwhile, overcrowded conditions in other states was also leading to more federal prisoners in Arizona. For instance, around this same time, more prisoners from northern California

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<sup>332</sup> Associated Press, “Wetbacks Fill Jails In Southern Arizona,” *The Arizona Republic*, June 17, 1953, p. 14.

<sup>333</sup> Al Leance, “‘Wetback’ Worries Plague Marshal’s Office,” *The Arizona Daily Star*, June 17, 1953, p. B-1. McKinney was retired from his post on December 31, 1953. S.C. Warman, “McKinney To Retire From Post Of U.S. Marshal On Dec. 31,” *Tucson Daily Citizen*, December 1, 1953, p. 1.

<sup>334</sup> “County Jail Overcrowded,” *The Arizona Republic*, February 2, 1954, p. 18.

<sup>335</sup> “County Jail Annex Will Begin Operation March 15,” *The Arizona Republic*, February 23, 1954, p. 8.

were sent to the federal prison camp in Florence and Tucson. The camps were already “drawing men from all bordering states, including northern California.” But the “chief change will be more prisoners from northern California.” Immigrants accounted for a great portion of those prisoners. As one article explained, for the past year, most prisoners at the camps “were Mexican nationals serving time for immigration violations.”<sup>336</sup>

### **End of an Era**

As detention facilities were overwhelmed and new ones built and expanded along the southern border and elsewhere, official noncitizen detention policy was on the cusp of change driven by public outcry against Ellis Island. Conditions at Ellis had remained problematic for much of the first half of the twentieth century. A newspaper commended then Secretary of Labor Frances Perkins in June 1933 for her “determination to have a real probe of Ellis Island conditions,” and for assembling a committee for the investigation that embodied “efficiency, broad-mindedness and human sympathy.” As the article noted, immigration laws “are really incapable of being enforced in a genuinely humane way” but people detained at Ellis “are not criminals... at worst they are accused of illegal entry” so the system “need not be brutal” in its methods of exclusion. After all, Ellis Island “puts us on our defensive in the high court of world sentiment.”<sup>337</sup> However, 15 years later, conditions remained “intolerable.” CIO Leader Irving Potash described his

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<sup>336</sup> “Mt. Lemmon, Florence Will Get More Federal Prisoners,” *Tucson Daily Citizen*, February 11, 1954, p. 32.

<sup>337</sup> “A Real Probe of Ellis Island,” *The Brooklyn Daily Eagle*, June 24, 1933, p. 6.



detention at Ellis inside a “small cell with no room to move around in, an adjoining toilet which could not be closed off even when in use, and a guard posted 24 hours a day at one of two small tables inside the cell.” Potash further explained that the “cell was so draughty that two of the prisoners came down with bad colds. The guard’s function was just ‘watching and listening.’”<sup>338</sup>

Detention at Ellis Island would end at the close of 1954 as official policy changed. In late July of that year, immigration officials announced they would move detention facilities off the island and into Manhattan where immigrants would be detained in a 12-story office building previously occupied by the U.S. Atomic Energy Commission. Edward J. Shaughnessy, district director at the INS living on the island, stated costs and savings for the government as primary factors.<sup>339</sup> In October came word that there would be “no need for detention facilities” because a “much more lenient” system was on the way.<sup>340</sup> Considering the timing, it may appear that this lenient policy was in response to political and diplomatic pressures faced by the U.S. government during the Cold War years. As scholar Mary Dudziak argues, “In spite of the repression of the Cold War era, civil rights reform was *in part* a product of the Cold War... At a time when the United States hoped to reshape the postwar world in its own image, the international attention given to racial segregation was troublesome and embarrassing...

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<sup>338</sup> “CIO Leader, Free On Bail, Condemns Intolerable Ellis Island Conditions,” *The Gazette and Daily*, March 6, 1948, p. 2.

<sup>339</sup> Robert Zimmerman, “Government Pulling Up Stakes On Ellis Island,” *The Daily Herald*, July 29, 1954, p. 7 (United Press). “Government To Move Last of Operations From Ellis Island,” *Medford Mail Tribune*, July 29, 1954, p. 2.

<sup>340</sup> “Ellis Island Closing to Mark More Lenient Immigrant Policy,” *The Kansas City Times*, October 20, 1954, p. 14.

The need to address international criticism gave the federal government an incentive to promote social change at home.”<sup>341</sup> In light of previously mentioned international pressures, it is likely a more lenient detention policy followed a similar path.

On November 11, 1954, Attorney General Herbert Brownell introduced the more lenient policy at a naturalization ceremony in New York. Brownell was “pleased to announce” a policy that “will make a vast improvement in one phase” in immigration enforcement. As Brownell noted, “It is one more step forward toward humane administration” of immigration laws. Brownell then explained, “In all but a few cases, those aliens whose admissibility or deportation is under study will no longer be detained. Only those deemed likely to abscond or those whose freedom of movement could be adverse to the national security or the public safety will be detained. All others will be released on conditional parole or bond or supervision, with reasonable restrictions to insure their availability when their presence is required by the Immigration and Naturalization Service.”<sup>342</sup> The Immigration and Nationality Act of 1952 had established a universal visa system that transferred screening to consuls abroad, negating the need to detain all new arrivals. Still, mandatory detention would continue under Section 235(b) since it dictated that anyone who “is not clearly and beyond a doubt entitled to be admitted shall be detained.” However, Section 212(d)(5) gave the Attorney General

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<sup>341</sup> Mary Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2002), 12.

<sup>342</sup> “Address by Honorable Herbert Brownell, Jr., Attorney General of the United States,” prepared for delivery at Naturalization Ceremonies, Ebbets Field & Polo Grounds, New York, New York (November 11, 1954), p. 5-6.

discretion to release rather than detain someone “for emergent reasons or reasons deemed strictly in the public interest.”

Brownell stated that under the new policy “somewhat less than 1,000 might be detained in any given year in exclusion proceedings.” The effects were to be broad. Brownell stated, “The new detention policy is so far-reaching in scope and effect that the Department of Justice is discontinuing its six seaport detention facilities at New York, Boston, Seattle, San Francisco, San Pedro and Honolulu.” The next day, one article reported, “The seagulls took over Ellis Island today.”<sup>343</sup> Ellis Island would be closed on November 19.<sup>344</sup> As one article noted, “Ellis Island, once a picnic ground, then an arsenal, later a fort and finally the nation’s busiest immigration station, fell victim to lack of business.”<sup>345</sup> Scholars have noted the significance of the policy change. As legal scholar Daniel Ghezelbash states, “From 1954 onwards, the US Immigration and Naturalization Service adopted a policy of using these parole provisions to release all arrivals, except those deemed to pose a risk to the community.”<sup>346</sup> Loyd and Mountz argue that the INS “had ended its policy of mass detention (as at Ellis and Angel Islands) in 1954.”<sup>347</sup>

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<sup>343</sup> Robert Zimmerman, “New Entry Plan Leaves Ellis Is. To the Seagulls,” *The Brooklyn Daily Eagle*, November 12, 1954, p. 3 (United Press).

<sup>344</sup> “Address by Honorable Herbert Brownell, Jr., Attorney General of the United States,” prepared for delivery at Naturalization Ceremonies, Ebbets Field & Polo Grounds, New York, New York (November 11, 1954), p. 5-6.

<sup>345</sup> Associated Press, “Ellis Island, Alien Detention Office, Closed,” *The Pantagraph*, November 13, 1954, p. 1.

<sup>346</sup> Daniel Ghezelbash, *Refuge Lost: Asylum Law in an Interdependent World* (New York: Cambridge University Press, 2018), 37.

<sup>347</sup> Loyd and Mountz, *Boats, Borders, and Bases*, 72.

Yet, the closing of Ellis Island raised significant questions about the nature of noncitizen detention itself that predicted future debates. In the weeks leading up to Brownell's announcement, detained noncitizens at Ellis had been gradually transferred to federal detention facilities in metropolitan New York, including county jails.<sup>348</sup> This brought the issue of noncitizens tangled in the criminal justice web to the forefront. In a letter to the editor in November 1954, Pearl Buck described the condition of those moved out of Ellis and into other detention spaces as "most unfortunate." Buck wrote, "Here their plight is exactly the same as though they were common criminals. They are locked up with murderers, drug addicts and other degenerate types. Their food is inadequate, their bed mattresses dirty. They have little opportunity to get fresh air, and they must perform labor such as criminal persons perform." Buck ended with a comment on family separation. She wrote that "husbands are separated from wives and children from parents. One lady from Rumania, for example, cannot see her 12-year-old son because no one under 16 is allowed to visit in the prison where she is incarcerated. The child is somewhere else in New York."<sup>349</sup>

The intermingling of noncitizens with "criminals" brought urgent calls for reform. A week after Buck's letter, the *New York Times* questioned, "Should any detainees be thrown into prison? Also, regardless of where they may be housed, do existing laws and regulations give detained aliens sufficient protection from possible harsh and unjust treatment by immigration officials?" To the first question, they answered an "emphatic

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<sup>348</sup> "Ellis Island Ends Alien Processing," *The New York Times*, November 13, 1954, p. 20.

<sup>349</sup> Pearl S. Buck, "Plight of Immigrants," Letter to the Editor, *The New York Times*, November 16, 1954, p. 28.

‘no’ because jails house “those convicted or indicted by due process of law of having committed some crime.” Detained noncitizens, they noted, “haven’t even been accused, much less convicted, of anything.”<sup>350</sup> After all, noncitizens held in detention are awaiting administrative, or civil, hearings to determine the resolution of their immigration cases. To justify the objection to immigrants being housed in jails, the article referred to Section 242 of the Immigration and Nationality Act (INA) of 1952 which stated, “The Attorney General is hereby authorized and directed to arrange for appropriate places of detention for those aliens who he shall take into custody and detain under this section.”<sup>351</sup> The *Times* article argued that the provision made “no reference to the use of penal institutions.” The article concluded by urging that the government “has a special obligation to give aliens seeking entry every possible consideration, both for the sake of the aliens themselves and for the nation’s reputation.”<sup>352</sup> The 1952 Act, which replaced the Immigration Act of 1917 while maintaining the national origins quotas, had been passed over President Truman’s veto.<sup>353</sup> As Mae Ngai argues, “the retention of the national origins quotas reflected that logic which cast the native-born as the most loyal

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<sup>350</sup> “Aliens’ Detention,” *The New York Times*, November 24, 1954, p. 22.

<sup>351</sup> Immigration and Nationality Act, Public Law 414, 68 Stat. 210 (June 27, 1952). The provision further held, “Where no Federal buildings are available or buildings adapted or suitably located for the purpose are available for rental, the Attorney General is hereby authorized, notwithstanding section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or section 322 of the Act of June 30, 1932, as amended (40 U.S.C. 278a), to expend, from the appropriation provided for the administration and enforcement of the immigration laws, such amounts as may be necessary for the acquisition of land and the erection, acquisition, maintenance, operation, remodeling, or repair of buildings, sheds, and office quarters (including living quarters for officers where none are otherwise available), and adjunct facilities, necessary for the detention of aliens.”

<sup>352</sup> “Aliens’ Detention,” *The New York Times*, November 24, 1954, p. 22.

<sup>353</sup> Ngai, *Impossible Subjects*, 239.

Americans, especially whites of British and north European descent, and the foreign-born as subversive, especially Jews, who were imagined as Bolsheviks, and Italians, who were viewed as anarchists.”<sup>354</sup> While quota policies remained in place, detention policy would continue to be debated.

Discussions about where Ellis Island detainees were transferred to sparked back and forth strikes between federal immigration officials, the media, and the public. A week after Buck’s article, the *Times* printed a letter from M.F. Karman who had been detained at Ellis and later spent a week inside Eastview Jail. According to Karman, despite Shaughnessy saying that the jail was a “Class A” facility, there were many inadequacies: “the substandard food, dirty mattresses, lack of recreation and fresh air. Most serious is the menial prison work that detainees were required to do. Deplorable is the fact that there is an absence of any recreational facilities... Fresh air and exercise are dependent on the whims of matrons. Weeks pass before the inmates are taken to the roof of the prison.”<sup>355</sup> The *Times* had printed that letter hoping the “actual experience of human beings is often more effective for reform than exhortation.” The same day, the *Times* reported that Sheriff Hoy of Westchester County was refusing to accept any more immigrants to Eastview Jail because he “did not like the idea” of putting people in jail without a conviction. After all, as the *Times* explained, “Jail is no place for detainees.”<sup>356</sup> The next day, Shaughnessy fired back saying immigration officials “now hold only fifty-

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<sup>354</sup> Ngai, *Impossible Subjects*, 237.

<sup>355</sup> M.F. Karman, “Plight of Immigrants,” Letter to the Editor, *The New York Times*, December 2, 1954, p. 30.

<sup>356</sup> “Detained Aliens and Jails,” *The New York Times*, December 2, 1954, p. 30.

six in detention,” despite Ellis averaging more than 200 before its closure. Commissioner of Immigration Joseph Swing added that the “disposition made of those who had been on Ellis Island should dispel fears that persons held on technicalities would be put into jails with hardened criminals. Such fears for those who may seek admission hereafter need not be entertained.”<sup>357</sup>

Three days later, the *Times* mocked the “only fifty-six” immigrant detainees comment and retorted that the jailing of immigrant detainees raises a fundamental question best put by Representative Jacob K. Javits: “Are aliens ‘second-class human beings’ without the protection from abuse that should be everyone’s right?” Again referring back to Section 242 of the INA and its provision on “appropriate places of detention,” the article argued that prisons “can hardly be called ‘appropriate’ – at least in a civilized democracy.” As the *Times* noted, “Unlike the totalitarians and despots, we Americans abhor imprisonment by administrative officers’ fiat” and urged Brownell to do “his obvious duty.”<sup>358</sup> Four days later, the INS rescinded the order to send detained immigrants to prisons and informed district directors that “under no circumstances may alien detainees any longer be placed in jail.” Immigration officials in New York were ordered to house all immigrants present and future at the Empire Hotel “pending the establishment of quarters at the agency’s headquarters.” But the move to the headquarters at 70 Columbus Avenue remained in doubt as the agency’s lease was set to expire and “the owner is not prepared to grant a renewal.”<sup>359</sup> Still, hotels would only be for the

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<sup>357</sup> Luther A. Huston, “U.S. Sharply Cuts Alien Detention,” *The New York Times*, December 3, 1954, p. 51.

<sup>358</sup> “Second-Class Humans,” *The New York Times*, December 6, 1954, p. 26.

detention of “non criminal types awaiting deportation.” The Justice Department maintained that detention in jails would continue for “those aliens who are considered to be subversives or dangerous criminals.”<sup>360</sup>

Through a combination of domestic and international pressures concerning noncitizen detainees, Ellis Island had been shut down and detention policy was on the cusp of change. While objections to detaining noncitizens in jails seemed to have guided such debates, the practice did not end. In fact, as detention policy would change in the decades after 1954, noncitizens across the Southwest would be increasingly housed in jails and other detention facilities. Deemed the era of humane detentions by the federal government, it would be the final divergence between policy and reality.

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<sup>359</sup> Joseph J. Ryan, “Detained Aliens Lodged in Hotel As U.S. Ends Housing Them in Jail,” *The New York Times*, December 10, 1954, p. 1.

<sup>360</sup> Eve Edstrom, “Jailing Aliens To Be Limited To Criminals,” *The Washington Post and Times Herald (1954-1959)*, December 12, 1954, p. M10.



## CHAPTER 3

### HUMANE DETENTIONS, 1954-1981

While the closing of Ellis Island had been discussed starting in the late 1930s, it was not until the mid-1950s that such discussions came to fruition driven by financial motivations. In May 1954, a study by the Immigration and Naturalization Service (INS) stated that the Island was not economically advantageous, and money could be saved if it was shut down.<sup>361</sup> In late July 1954, Joseph Swing, then Commissioner of INS, recommended to Attorney General Herbert Brownell that Ellis Island be closed, and all immigration “business” be moved to the field office in New York City. As Swing explained, “this will mean not only a saving of \$800,000 to \$900,000 annually, but will provide for greater operating efficiency.”<sup>362</sup> Four months later, when Brownell made the announcement of Ellis Island’s closure at a naturalization ceremony on Veterans Day at the Polo Grounds in New York City, he framed the closing as an introduction of a new “humane” immigration administration and enforcement era. Yet, perhaps the more than 8,000 in line to become American citizens at the Polo Grounds that day did not realize the ceremony was a culmination of what historian James Patterson calls a “massive effort” in 1954 by the INS to actively promote “a more homogenous society” seizing on the “formidable patriotic fervor exerted by the Cold War.” 55,000 people were inducted into American citizenship that Veterans Days while the INS aggressively pursued campaigns to deport undocumented noncitizens.<sup>363</sup>

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<sup>361</sup> Barry Moreno, *Encyclopedia of Ellis Island* (Westport: Greenwood Press, 2004), 37.

<sup>362</sup> “Immigration Chief Asks U.S. Quit Ellis Island,” *The New York Times*, July 29, 1954, p. 25.

For his part, Brownell would later dispute notions that those years were an “undemanding time” by writing in his autobiography that it was in fact an era of “great change in response to significant political challenges both in domestic politics and in foreign affairs.”<sup>364</sup> Part of those challenges lay in heightened security scares of the late 1940s and early 1950s. Legal scholar Daniel Wilsher states after those years of upheaval noncitizen “detention nearly disappeared.” Pointing to the Immigration Act of 1952, which “created a range of parole alternatives even after deportation had been ordered,” Wilsher argues that the “new law was very liberal” and detention became “truly discretionary.” Moreover, Wilsher notes the Act introduced “important time limits” and that “detainees were not held longer than six months after a final deportation order.” All in all, Wilsher argues, “The 1952 Act was an important first expression by Congress of the need for alternative arrangements to separate out detention from deportation issues.”<sup>365</sup>

Perhaps if the rhetoric of federal officials is believed, Wilsher’s argument holds. In early 1955, the INS celebrated the previous year as its “busiest year on record.” Swing attributed this to a mass roundup of Mexican “wetbacks,” a 50 percent increase in

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<sup>363</sup> James T. Patterson, *Grand Expectations: The United States, 1945-1974* (Oxford: Oxford University Press, 1996), 327-28.

<sup>364</sup> Brownell writes, “In 1953 to 1954, to take merely the first two years, in my own department alone we faced and responded to unprecedented developments in race relations in the aftermath of the Supreme Court’s decisions in *Brown*, the dilemma of dealing with the problem of internal security, the appointment of a new chief justice that would change the complexion and the direction of the Supreme Court, and the challenges presented by Senators Joe McCarthy and John Bricker. The list would surely lengthen if one reviewed the rosters of the other cabinet officers and considered the issues they too faced.” Herbert Brownell, *Advising Ike: The Memoirs of Attorney General Herbert Brownell* (Lawrence: University Press of Kansas, 1993), 286-87.

<sup>365</sup> Daniel Wilsher, *Immigration Detention: Law, History, Politics* (New York: Cambridge University Press, 2011), 64-65.

criminal and subversive deportations, and nearly twice the usual number of naturalizations. As Swing pointed out, all this was in addition to the agency's detention policies being "humanized."<sup>366</sup> The "humane" detention policy was quickly deemed a success. As Brownell reported at the end of January, "Only seventy-five aliens are now in immigration detention in this country." Most of those detained are "housed in hotels or other facilities" maintained by the INS. Yet, Brownell added that this number was "not counting Mexican 'wetbacks.'"<sup>367</sup> Brownell further insisted that "operation wetback" had been "carried out 'humanely' in line with the Immigration Service's new effort to put heart into the immigration laws." The new detention policy was a further illustration of this purported humane administration. As Brownell noted, "We are giving both heart and conscience to the administration of immigration laws as American justice requires."<sup>368</sup> Even the Supreme Court later commended the liberal policy in 1958 by writing: "The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted... Physical detention of aliens is now the exception, not the rule, and is generally employed only as to security risks and those likely to abscond... Certainly this policy reflects the humane

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<sup>366</sup> "1954 Busiest Year For U.S. Immigration Service," *The Arizona Republic*, January 3, 1955, p. 13.

<sup>367</sup> "Aliens in Custody Show Sharp Drop," *The New York Times*, January 27, 1955, p. 25. Brownell further noted that "if an alien who has been previously released, or detained in a service or hotel facility, absconds or becomes physically obstreperous he may be held in immigration custody at an approved jail. Transfers to jail are made only upon the personal approval of the district director of the service, and a public record is made of such detention. It would be hard for there to be any abuse of this limited power."

<sup>368</sup> "Wetback Apprehensions Drop From 3,000 to 300 Per Day," *The Morning Sun*, January 27, 1955, p. 16. Brownell further stated, "At the same time we are strictly enforcing the immigration laws against security risks, criminals, and other undesirables who are deportable more vigorously than ever before in our history."

qualities of an enlightened civilisation.”<sup>369</sup> The official rhetoric of the federal government seems certain about this coming of a new age.

### **A New Era?**

Yet, this celebrated era of “humane” detentions laid the groundwork for the violent detentions that would begin in 1981. It did so in several steps. First, official detention figures either arbitrarily counted or completely discounted those noncitizens held temporarily in “southwest staging areas,” which maintained the fiction that detentions were no longer a de facto part of immigration enforcement. Second, these detentions nevertheless took place in both federal detention camps and local and city jails which had long been in the business of expecting federal funds for housing federal prisoners. These detentions stressed the aging infrastructure of these jails and led to massive overcrowding, which then called for reform through either building new facilities or updating old ones to improve conditions. Yet, taxpayers continually ignored these conditions and the plight of prisoners within these facilities by rejecting bond measures. Thus, local municipalities turned to the federal government for funding, which allowed for renovating, updating, and expanding prison and jail facilities across the Southwest. This era of humane detentions, therefore, saw not only continued apprehensions, detentions, and deportations of noncitizens in the Southwest but also the growth of the carceral infrastructure that laid the groundwork for the violent detentions to come.

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<sup>369</sup> *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958).

Analyzing the expansion of the carceral landscape during the era of “humane” detentions proves challenging for several reasons. While official national policy insisted that most noncitizens were not detained, it seemed to disguise the expansion of detentions in the Southwest with detention figures that were arbitrary at best and racist at worst. In 1955, for instance, the INS reported that “only 184,000” noncitizens were detained “of which 173,000 were Mexican nationals who were detained for extremely brief periods pending their return to Mexico.”<sup>370</sup> In June of that year, the *New York Times* alleged that the INS had “reversed its previous policy and is again throwing into jail aliens held while their cases are pending” and demanded “a frank explanation by whoever is responsible” for seven noncitizens held in the federal prison on West Street. The article acknowledged that immigration law allows authorities to detain individuals in “appropriate places” but argued that jails were not such places. Answering District Director Shaughnessy’s claim that six of the seven had served prison terms before, the article asks, “But isn’t this in effect punishing them twice for the same offense? And how about the seventh, who hasn’t been convicted of any crime? The public is entitled to the answers.”<sup>371</sup>

The INS then began a haphazard policy of both counting and excluding Southwest “staging area” detentions in their annual reports. In 1956, they report that “only 145 aliens in detention per day exclusive of those Mexicans held in staging areas.” The same holds true for 1957 when the “number who were detained, exclusive of those in staging

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<sup>370</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1955* (Washington, DC: GPO, 1955), 17.

<sup>371</sup> “More Detainees in Jail,” *New York Times*, June 11, 1955, p. 14.

areas in the Southwest, was 20,472.”<sup>372</sup> Also that year, the INS instituted airlifts to take “hard core violators” who had repeatedly entered the U.S. without authorization “far into the interior of Mexico.” The airlifts would be cheaper than “housing and processing repeat violators” and was thought to be “effective in cutting down the number of repeat illegal entries.”<sup>373</sup> In 1959, however, the INS reported that of the total 30,259 people held in detention, 20,125 were “other aliens, principally Mexicans, were assembled at Service facilities on the southern border for transportation to Mexico,” thus reversing their exclusionary counting policy.<sup>374</sup>

Official statistics are further complicated by ambiguity. The year 1960 states a total number of 6,694 detentions but no further breakdown of who was detained. That report notes, however, that “three detention facilities on the Mexican border were used as staging areas for Mexican aliens scheduled to be returned to the interior of Mexico, either by bus and rail, or by airlift.”<sup>375</sup> Culminating these years of arbitrary counting is the year 1961 when official numbers reported that 10,272 were held in detention facilities. However, as the INS also reports, another “10,108 Mexican nationals were assembled for transportation back to Mexico at detention headquarters” and were not included in the detained figures.<sup>376</sup>

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<sup>372</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1957* (Washington, DC: GPO, 1957), 13.

<sup>373</sup> “Wetbacks Face Long Plane Ride,” *The Arizona Daily Star*, November 29, 1957, p. D-5.

<sup>374</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1959* (Washington, DC: GPO, 1959), 9.

<sup>375</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1960* (Washington, DC: GPO, 1960), 8.

More broadly, detention facilities expanded throughout the Southwest during this era. While larger detention facilities at Ellis Island, Boston, San Francisco, and San Pedro were closed by 1955, contracts were awarded for the construction of a “detention establishment at El Paso, which serves as a collecting center for apprehensions in one of the most populated areas adjacent to the Mexican border.”<sup>377</sup> A few weeks after celebrating the “humanizing” of detention policy, Swing announced plans to build this new alien detention facility in El Paso that was “in line with a new Administration policy designed to eliminate the holding of aliens in U.S. jails.”<sup>378</sup> The plan was to build three barracks to house 200 aliens charged with illegal entry.<sup>379</sup> By 1961, the El Paso facility was used as a staging area for deporting people from the north central section of Mexico and “taken by bus to Ojinaga, Chihuahua, thence by train to Chihuahua, Chihuahua.”<sup>380</sup>

Explicit links between detention facilities and income for counties continued. In 1957, for instance, a sheriff complained to the INS that the detention camp in McAllen, Texas was making his county jail lose income because federal prisoners are housed at the camp instead of at his jail and asked the INS to close McAllen. As the sheriff put it, “At considerable expense to the county we enlarged the jail by about one-third. But because prisoners were soon afterward moved to the McAllen camp, our county was left holding

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<sup>376</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1961* (Washington, DC: GPO, 1961), 9-10.

<sup>377</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1955* (Washington, DC: GPO, 1955), 35-36.

<sup>378</sup> “Alien Detention Camp Here Okayed,” *El Paso Herald-Post*, January 24, 1955, p. 26.

<sup>379</sup> “Bid Call Near On U.S. Detention Camp,” *El Paso Herald-Post*, March 14, 1955, p. 16.

<sup>380</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1961* (Washington, DC: GPO, 1961), 10.

the bag.”<sup>381</sup> Several years later, the McAllen detention camp was closed and “a new, up-to-date facility” opened at Port Isabel, Texas.<sup>382</sup> In operation for eight years, McAllen had “housed thousands of aliens... for the most part they were Mexicans who illegally entered the United States looking for work.” People held at McAllen were then moved to similar camps in El Paso and Port Isabel.<sup>383</sup> The sheriff had won.

Such detentions took place amidst Cold War hysteria-driven national policies that expanded the carceral landscape. In 1969, the *Associated Press* quoted civil rights attorney, William Kunstler stating that the government had “set up six major detention camps and at least one of them contains some convicted draft resisters.” The Justice Department denied the allegation, “It’s all untrue. There are no such camps.” Yet, the attorney had visited the Allenwood camp and said the other five detention camps are in

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<sup>381</sup> United Press, “Alien Detention Camp Makes Jail Lose Money,” *El Paso Herald-Post*, December 4, 1957, p. 2. The sheriff further notes that although the county jail gets \$1.75 a day for each federal prisoner, it “costs about the same to maintain the jail whether it is full or empty.” McAllen gained notoriety in 1961 for being one of several “permanent camps” detaining anti-Castro figures who had fled Cuba. Tad Szulc, “Ex-Batista Aide Working For U.S. At Refugee Camp,” *The Arizona Daily Star*, October 22, 1961, p. A-5 (*New York Times News Service*). Cuban exile leaders were apparently “bewildered by the continued confinement” of these men at McAllen and Port Isabel, Texas and stated that detention policies “not only turn anti-Castro figures against the United States, but also complicate the underground operations in Cuba, including the program for encouraging defections by important members of the Castro regime.” *Id.* Of the 62,000 Cuban exiles, 16 had been detained at McAllen since August 1961. They were transferred to Opa-Locka, Florida at the end of November. Associated Press, “Anti-Castro Leaders Help Screen Cuban Refugees,” *The Arizona Daily Star*, November 28, 1961, p. B-8.

<sup>382</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1962* (Washington, DC: GPO, 1962), 11.

<sup>383</sup> B.F. Kellum, “McAllen’s Alien Detention Site Is Closed Now,” *Longview News-Journal*, November 5, 1961, p. 16 (Associated Press). Another article noted that although the camp was initially created to “process Mexicans before sending them back to Mexico it has also been used in recent years to process persons of other countries whose presence in this country was questioned.” Associated Press, “State Moves Alien Detention Facility,” *The Odessa American*, November 8, 1961, p. 24.



the West.<sup>384</sup> A few months later, Edwin McDowell, an editor of the *Arizona Republic* who later worked for the *Wall Street Journal* and *The New York Times*, decided to investigate. McDowell states that he first heard of “concentration camps in America” in a “far left” magazine in 1966. Yet, McDowell notes that in addition to Charles R. Allen, Jr., Stokey Carmichael, Rap Brown, and “other militants,” even a “reputable organization” like the Japanese American Citizens League (JACL) are all concerned with the detention camp issue. The JACL was giving high priority to S. 1872, a bill to repeal Title II of the Internal Security Act of 1950. However, as McDowell notes, the campaign to repeal has not yet “picked up broad support because the general public refuses to take the Emergency Detention Act seriously.” The Emergency Detention Act of 1950 had authorized the attorney general to arrest and detain “each person as to whom there is reasonable cause to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage” during internal security emergencies.<sup>385</sup> McDowell clarified that while six locations had been selected and camps built in 1954, they were never used. McDowell continued, “By 1957, Congress decided there was no further need to maintain them, and it is no longer appropriated any money.” In the next line, McDowell writes, “The Florence camp is now a minimum-security federal jail for prisoners awaiting trial.”<sup>386</sup>

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<sup>384</sup> Associated Press, “6 detention camps in U.S., lawyer says,” *The Arizona Republic*, March 7, 1969, p. B-12. Kunstler, a “famed leftist lawyer,” was one of the observers Attica prisoners would later ask for by name. Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York: Pantheon Books, 2016), 91.

<sup>385</sup> Barbara Olshansky, “What Does It Mean To Be An “Enemy Combatant”?” in *America’s Disappeared: Detainees, Secret Imprisonment, and the “War on Terror,”* edited by Rachel Meeropol and Reed Brody (New York: Seven Stories Press, 2005), 211.

Hearings regarding the repeal were held in 1970. Carl T. Rowan, a columnist at *The Arizona Republic*, claimed in March that the hearings will “remind millions of Americans of some of the most infamous days in the nation’s history,” referring to Japanese internment. Of the Emergency Detention Act, Rowan wrote, “This never-used law has been the basis of a lot of rumors in the last couple of years that ‘the establishment’ has plans to round up black militants, white revolutionaries, and other unpalatable dissenters and lock them up in the various detention centers authorized” by the Act. Citing the recent Chicago 7 trial against the Black Panthers, Rowan stated “there are ways to put troublemakers ‘on ice’ other than corralling them into anything that sounds as cruelly tyrannical as a concentration camp.” According to Rowan, what is needed is not only the repeal of the Act but also “some positive guidance and firm restraints set forth by Congress.”<sup>387</sup> In September, the Justice Department urged the repeal of the law.<sup>388</sup> Several weeks later, a House panel approved an amendment to the Act that an insurrection exist before detention powers are used and added new working that “no citizens of the United States shall be apprehended or detained pursuant to the provisions of this title on account of race, color or ancestry.”<sup>389</sup> A year later, Congress passed the Non-Detention Act signed by President Nixon to repeal the law. Nixon stated:

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<sup>386</sup> Edwin McDowell, “‘Concentration Camp’ Rumors Untrue, But Detention Act Is Still On Books,” *The Arizona Republic*, May 25, 1969, p. 6.

<sup>387</sup> Carl T. Rowan, “Loyalty And The Emergency Detention Act,” *The Arizona Republic*, March 14, 1970, p. 7.

<sup>388</sup> United Press International, “Justice Dept. asks repeal of ‘detention camp’ security act provision,” *The Arizona Republic*, September 11, 1970, p. 32.

<sup>389</sup> United Press International, “House panel votes to curb use of detention camps during wartime,” *The Arizona Republic*, September 24, 1970, p. 19.

“In taking this action, I want to underscore this Nation's abiding respect for the liberty of the individual. Our democracy is built upon the constitutional guarantee that every citizen will be afforded due process of law. There is no place in American life for the kind of anxiety—however unwarranted—which the Emergency Detention Act has evidently engendered.”<sup>390</sup> The Emergency Detention Act then “passed quietly into history.”<sup>391</sup>

Yet, accusations of the government running “concentration camps” continued in the 1970s, perhaps foreshadowing events to come in the next decade. Although the official national policy seemed to have remained in place, the 1960s and 1970s saw a steady increase in the numbers of those detained even despite the seemingly arbitrary counting methodology. From more than 34,000 detentions in 1962, detentions had risen to more than 94,000 in five years. In a 14-year time period, total detentions rose from 34,512 in 1962 to 213,026 by 1975. Interestingly, the INS report from 1965 attributed a 43 percent increase in initial admissions to “the result of the illegal influx of Mexican laborers seeking work after the “Bracero” law expired.”<sup>392</sup> By 1968, detentions exceeded 127,000. By 1970, this number had grown to more than 215,000 with non-Service facilities accounting for more than 121,000 of those detentions.<sup>393</sup> By 1978, total

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<sup>390</sup> Richard Nixon: "Statement on Signing Bill Repealing the Emergency Detention Act of 1950.," September 25, 1971. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=3158>.

<sup>391</sup> Richard Longaker, “Emergency Detention: The Generation Gap, 1950-1971, *Western Political Quarterly*, Vol. 27, No. 3 (September 1974), p. 395.

<sup>392</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1965* (Washington, DC: GPO, 1965), 14.

<sup>393</sup> “INS Detentions in Service and Non-Service Facilities, 1962-79,” entries compiled from U.S. Immigration and Naturalization Service, *Annual Reports of the Immigration and Naturalization Service* (Washington, DC: Government Printing Office), table 1.

detentions had increased to 340,297. These figures are parallel and consistent with an overall increase in the number of apprehensions by the U.S. Border Patrol.<sup>394</sup> Also during this time, records indicate that the INS used both Service and non-Service facilities as detention centers. For a period of eight consecutive years from 1964 to 1971, more noncitizens were detained at non-Service facilities than at Service facilities. The importance of non-Service facilities in studying the expanding carceral landscape proves invaluable because such facilities were and are paid to house noncitizen detainees as federal prisoners. Tracing the money received housing noncitizen detainees helps challenge the notion that this era saw a “humane” detention policy leaning away from detention and towards parole because localities received incomes from the detention of increasing numbers of noncitizens.

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<sup>394</sup> Kelly Lytle Hernández, *Migra! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010), 216.

**TABLE 1** INS Detentions in Service and Non-Service Facilities, 1962-79

Year	Service Detention Facilities	Non-Service Detention Facilities	Total
1962	21,505	13,007	34,512
1963	17,119	16,571	33,690
1964	11,426	19,372	30,798
1965	17,041	26,918	43,959
1966	35,027	43,041	78,068
1967	37,621	56,427	94,048
1968	53,796	73,965	127,761
1969	59,771	89,477	149,248
1970	94,053	121,670	215,723
1971	111,627	145,562	257,189
1972	148,839	125,710	274,549
1973	171,559	120,985	292,544
1974	132,382	154,444	286,826
1975	109,138	103,888	213,026
1976	N/A	N/A	N/A
1977	N/A	N/A	294,699
1978	N/A	N/A	340,297
1979	204,000	112,312	316,312

Source: Entries compiled from U.S. Immigration and Naturalization Service, *Annual Reports of the Immigration and Naturalization Service* (Washington, DC: Government Printing Office).

In order to accommodate the rising figures, INS expanded its facilities. In the first years of the 1970s, for example, contracts were awarded to build “an alien detention facility at El Centro, California; a bus repair garage at Port Isabel, Texas; border stations at Calexico and San Diego, California.”<sup>395</sup> Total number of detentions remained above 200,000 for much of the 1970s. By 1978, this number had increased to more than 340,000. In addition to El Paso and Port Isabel, El Centro was the third and largest of the INS detention centers. The El Centro facility soon drew attention for its conditions. After less than a year in operation, activists charged the facility as a “concentration camp,” where people detained were kept for “months at a time with no regard for their legal rights” and are “not given adequate medical care.” Criticism also came from present and former members of the staff. One concern by both detainees and guards was poor ventilation especially in the Imperial Valley’s hot summers. Yet, INS officials reported to Congress that the “ventilation is adequate.” Moreover, longer detention times were used to threaten those detained. As former guard Antonio Benitez stated, “They used to tell us to get them to buy bus tickets so some guards tell the aliens it’s either a bus ride or another two or three months of waiting.”<sup>396</sup>

Three years later, the *Associated Press* again reiterated the charge by describing the center as a “barbed-wire concentration camp.” The article noted that “mostly it is a sea of brown faces with looks of despair, people known only to their families in other countries and to U.S. immigration authorities.” While the vast majority of those

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<sup>395</sup> *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1973* (Washington, DC: GPO, 1973), 23.

<sup>396</sup> Frank del Olmo, “Alien Detention Center at El Centro Stirs Up Criticism,” *Los Angeles Times*, February 24, 1974, p. B1, B6.

processed at El Centro are of Mexican origin, there are as “many as 25 nationalities” detained while people came from Arizona, Colorado, Wyoming, Montana, Utah, Idaho, Washington, Oregon, California, and Hawaii. James O’Keefe, district director of the INS, stated, “The centers are not ideal and we know it. They are way stations moving an endless wave of humanity from one country to dozens of others.”<sup>397</sup> Two years later, the global contingent of detainees remained unchanged. As one official noted, “Every nationality under the sun comes through here at one time or another.”<sup>398</sup>

A new detention facility in Brooklyn also came under fire soon after it opened. As one article noted in 1976, “There is no visible evidence on the outside that would describe the Immigration facilities in Brooklyn as a ‘concentration camp’” responding to critics.<sup>399</sup> The facility had opened a year ago on the fifth floor of Building 300 at 136 Flushing Avenue, where the Naval Support Activities Headquarters was housed. 70 detainees were transferred from the INS building at 20 West Broadway in May 1975.<sup>400</sup> As one article described, “The top floors of four of the buildings toward Park Avenue are covered with iron bars and the glass windows are shut tight that no movement inside can be seen from the street.”<sup>401</sup> The center held noncitizens from around the world. As one

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<sup>397</sup> Associated Press, “Deportation Center Only Slows Losing Battle with Time,” *Tri-Valley Dispatch*, March 23 and 24, 1977, p. 8.

<sup>398</sup> United Press, “NonMexican Aliens Cost U.S. \$11 Million,” *Los Angeles Times*, June 24, 1979, p. 3.

<sup>399</sup> George Todd, “Inside The Alien Detention House,” *New York Amsterdam News*, May 29, 1976, p. A1.

<sup>400</sup> George Todd, “Brooklyn Navy Building Now Home For Illegal Aliens,” *New York Amsterdam News*, May 14, 1975, p. B3.

<sup>401</sup> George Todd, “Inside The Alien Detention House,” *New York Amsterdam News*, May 29, 1976, p. A1.

INS official noted, “It’s a real mixture. We have as of yesterday, for instance, people from China, Lebanon, Colombia, Ecuador, Greece, Mexico, Trinidad, San Salvador and Guatemala.” But more than half the population was from the Western Hemisphere – Mexico, Central and South America. The facility, however, did not hold women. As the INS official stated, “When and if we do have an occasion to detain them, they are sent to Rikers Island.”<sup>402</sup> A year later, there were 150 detainees at the Brooklyn facility and 9 women in a special wing at Rikers Island prison.<sup>403</sup>

Conditions at the center brought criticism and an eventual lawsuit. One reporter stated after the visit, “Originally established as a navy prison, the facility can best be described as crude and antiquated.” There was no privacy. The detained “use an open toilet facility that offers no privacy whatever. There are no individual rooms or cells... The men sleep in three large dormitories furnished with bunk beds and arranged in three rows of about fifteen in each row.”<sup>404</sup> To protest conditions at the Brooklyn detention center, the Committee Against Racism held a march in mid-June 1976. Members stated they were “marching and demanding a full investigation of the living conditions... particularly, health facilities, crowding, treatment of persons being detained and Department of Immigration raids, which they say are increasing where people work.”<sup>405</sup> Yet, conditions did not improve. In March 1979, the New York Civil Liberties Union

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<sup>402</sup> Todd, “Brooklyn Navy Building Now Home For Illegal Aliens,” p. B3.

<sup>403</sup> George Todd, “Inside The Alien Detention House,” *New York Amsterdam News*, June 5, 1976, p. A12.

<sup>404</sup> Todd, “Inside The Alien Detention House,” *New York Amsterdam News*, June 5, 1976, p. A1.

<sup>405</sup> “Committee Sets March On Alien Detention,” *New York Amsterdam*, June 19, 1976, p. B8.



filed suit alleging noncitizens at the center were subject to “cruel and unusual conditions.” The class-action suit, filed on behalf of Man Chung Lam, a 28-year-old native of China, alleged that “up to 120 men are detained in two locked dormitories where the lights are kept on all night and that they are punished arbitrarily by being placed in isolation cells for up to three weeks at a time with no opportunity to appeal their punishment.” INS responded that “three ‘night lights’ were kept on in the dormitories for ‘surveillance’ because ‘we’ve had a number of escapes.” The lawsuit further alleged noncitizens had no opportunity to meet privately with their attorneys and that most detainees remain at the center for an additional three weeks after a deportation order had been entered.<sup>406</sup>

As his case, *Lam Man Chung v. Bell, et al.*, was making its way through the federal court system, Chung was deported.<sup>407</sup> During a city regional hearing in 1980, INS stated the facility “is by its nature minimal.” However, experiences at the center depended on length of stay. The INS noted, “For the average stay, which is 6.5 days, and for perhaps up to a month, the facility probably does not deny detainees their constitutional rights. However, in the relatively rare cases where persons must be detained for longer periods, the facility falls short.” Yet, this was being remedied. As the INS noted, they had recently contracted with the Bureau of Prison’s Metropolitan Correction Center in New York City to “take, as transfers, all aliens when their detention surpasses thirty days. INS is also preparing to spend about \$300,000 in improvements to

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<sup>406</sup> Charles Kaiser, “Use of Isolation Cells In a Detention Center For Aliens Is Charged,” *The New York Times*, March 27, 1979, p. B9.

<sup>407</sup> Immigration Law Bulletin, Vol. 1, National Center for Immigrants’ Rights (1979), p. 8.

the New York Service Processing Center. The shortcomings of the present facility are being considered to prevent their replication in the new center.”<sup>408</sup>

Detentions in the Southwest continued to expand throughout the late 1970s. In August 1977, there were a “record 35,000 illegal aliens” arrested in the San Ysidro area in California and “almost 70,000” north of Los Angeles. That same month, the chief Border Patrol agent in the Tucson area reported arresting “3,100 aliens.”<sup>409</sup> These arrests contributed to the overcrowding situation at Pima County jail. As one editorial noted, “On the average, 110 of the jail’s inmates are federal detainees – mostly illegal aliens awaiting deportation hearings.”<sup>410</sup> In 1977, there were 294,699 recorded detentions while the next year the figure hit 340,297.<sup>411</sup> In the fiscal year 1979, more than 204,000 people were admitted into INS Service Processing Centers and another 112,312 were admitted to non-Service centers. Most of the admissions were in the southwest and 93 percent were of Mexican nationals.<sup>412</sup> At the same time, detention conditions drew both national and international attention. In June 1974, the Mexican Foreign Minister, Emilio O. Rabasa,

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<sup>408</sup> “Briefing Paper, New York City Regional Hearing, January 21, 1980, INS Interior Enforcement Procedures, p. 6-7” in “U.S. Immigration Policy and the National Interest Appendix G to the Staff Report of the Select Commission on Immigration and Refugee Policy Papers on the Administration of Immigration Law,” Select Commission, Vol. 8 (April 20, 1981), p. 74-75.

<sup>409</sup> “Arrests of illegal aliens rising on Arizona border,” *The Arizona Daily Star*, September 7, 1977, p. B-4.

<sup>410</sup> “The state prison: Crisis is here... and in Tucson,” comment, *The Arizona Daily Star*, September 7, 1977, p. 14.

<sup>411</sup> “Detention and Deportation,” *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending September 30, 1978* (Washington, DC: GPO, 1978), 23.

<sup>412</sup> “U.S. Immigration Policy and the National Interest: Staff Report of the Select Commission on Immigration and Refugee Policy,” Select Commission, Vol. 8 (April 20, 1981), p. 74. See also, United Press, “NonMexican Aliens Cost U.S. \$11 Million,” *Los Angeles Times*, June 24, 1979, p. 3.

sent a “diplomatic protest note” to the U.S. government over the treatment of unauthorized migrant workers. Rabasa’s note specifically mentioned the operation of detention centers. Rabasa wrote, “The Ministry considers that the existence of these detention centers, whose title already indicates a situation which must be remedied, do not contribute at all to resolving the problem. On the contrary, it is worsened.” The note further called for “fair and humane” treatment for those arrested and held for deportation.<sup>413</sup> Yet, unlike when the British protested conditions at Ellis, diplomacy this time heeded no results. That same day, another news story described Mexican-American rights activists calling for congressional investigations in U.S. immigration policies all along the southwest. Herman Baca, chairman of the ad hoc committee on Chicano rights, stated that allegations of corruption in the INS should be further investigated although “to us of the Chicano community, the alleged charges are old and have long been common knowledge. Baca noted that deportations are expected to total 1 million for fiscal year 1974 and this “will ultimately result in numerous violations of people’s civil and constitutional rights.”<sup>414</sup>

As new facilities were built, officials celebrated the modern facilities and their conditions. One example is the INS facility in El Paso, Texas. That facility had originally been located on South Hammett street but was moved in October 1967 following the Chamizal Boundary Treaty, which turned over that land area to Mexico. A new Border Patrol sector headquarters along with a detention center “built as inconspicuously as

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<sup>413</sup> Associated Press, “Mexico Protests Handling Of Illegal Aliens in U.S.,” *Casa Grande Dispatch*, June 20, 1974, p. 2.

<sup>414</sup> Associated Press, “Group Urges Investigation Into Immigration Policies,” *Casa Grande Dispatch*, June 20, 1974, p. 2.

could be,” located behind the Border Patrol office was built on 27 acres of federal land at a cost of \$700,000.<sup>415</sup> As the officer in charge of the facility explained in 1969, “The new facility doubled the holding capacity of the old facility. Moreover, it is more modern, less congested, and less like a prison. None has ever escaped detention here and only one escaped the old facility just prior to moving here.” Yet, for detainees, El Paso was known as “El Corralon” (the large corral) after learning of the facility from former detainees. The compound is enclosed by a 12-foot wire fence with a “mil electrical” charge. The officer in charge insisted, “They [the detainees] are usually amazed at the treatment they receive.”<sup>416</sup> Five years later, El Paso being compared to a prison continued. As the *New York Times* noted, even though detention centers are “not actually prisons, there are many similarities.” As the article explained, “Detainees sleep in large dormitories inside compounds surrounded by tall wire fences. Although they are not required to work, not even to clean up their beds, those who volunteer to do so are fed extra treats and are given cigarettes.” But most noncitizens apprehended by Border Patrol were not brought to the detention center. Instead, the vast majority are “taken across the border in vans and ‘dumped.’” In May, Border Patrol had arrested 11,000 in El Paso but only “about 1,000” were brought to the detention center. The others were “Taken across the river to Juarez and released on the streets.” Of those brought, some were either facing formal

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<sup>415</sup> Bob Ybarra, “U.S. Detention Facilities Almost Like Army Camp,” *El Paso Herald-Post*, June 17, 1969, p. 9. *Annual Report of the Immigration and Naturalization Service for Fiscal Year Ending June 30, 1966* (Washington, DC: GPO, 1966), 27. *Annual Report of the Attorney General, United States Department of Justice* (Office of the Attorney General, 1966), p. 462.

<sup>416</sup> Bob Ybarra, “U.S. Detention Facilities Almost Like Army Camp,” *El Paso Herald-Post*, June 17, 1969, p. 9.

deportation charges for multiple entries or others were from small towns in the interior of Mexico.<sup>417</sup>

The expansions of detentions across the Southwest meant the construction of temporary facilities while waiting for facilities to be expanded or built. Conditions at these temporary sites would soon become problematic. For instance, in 1977, the *Los Angeles Times* ran an article describing the conditions inside a temporary detention facility in Bell, California. Representative Edward R. Roybal (D-California) then visited the facility after seeing the article and stated it was “fit to house only ‘dog food’” and that it was “dehumanizing and in complete disregard of human rights.” The facility “resembling a large cage about 10 feet tall” was constructed inside a large warehouse and included “crude toilet facilities and limited seating.” As the *Times* described further, “It had no heating or air conditioning and had only three toilets – one of them a ‘portable potty’ – and two unsheltered urinals to serve the male detainees, who numbered up to 200. There was seating for no more than 80 persons.” The facility was used “from two to four times a week” when the “regular holding tank” at the federal building at 300 N. Los Angeles Street in downtown was overcrowded. Local INS officials had said people were held at the facility only “for a few hours” and it was meant to be temporary until a permanent facility was completed in the downtown federal building. The INS commissioner ordered the facility closed; however, it “would be reopened if it can be brought up to standards.”<sup>418</sup> That would prove unnecessary. A few months later, the new

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<sup>417</sup> Martin Waldron, “Detention Centers Last U.S. Stop for Thousands of Mexican Aliens,” *The New York Times*, July 15, 1974, p. 16.

<sup>418</sup> Narda Zacchino, “Closure of Bell Alien Detention Cage Ordered,” *Los Angeles Times*, December 6, 1977, p. B3.

permanent facility in the basement of the federal building opened. As the *Times* noted, “The new facility has a capacity of 350 detainees, 50 each in seven separate holding cells. Each holding cell is enclosed in tinted glass and has two stainless steel toilet bowls built into its walls.” Readers were further reassured, “Just as at the controversial Bell facility, most detainees are held only a few hours before being expelled or paroled.”<sup>419</sup>

Another cause of the rising detention numbers was because of those held as material witnesses against human smugglers in the late 1970s. After serving his 18-month prison sentence for the Watergate scandal in Safford, Arizona, John Ehrlichman published two articles in the *Arizona Daily Star* in 1979 taking up “the cause of Mexican aliens.” According to Ehrlichman, one reason for overcrowded jails in Arizona is because people are being held as material witnesses. Ehrlichman writes,

The U.S. marshal in Arizona says there isn’t room for all of them in federal detention facilities, so he contracts with rural sheriffs to keep the Mexican witnesses in their jails. This is good business for the Arizona counties. In one county jail, the sheriff gives his prisoners cheese sandwiches twice a day but draws \$11 a day from the U.S. marshal for the care and feeding of each federal prisoner.<sup>420</sup>

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<sup>419</sup> Frank del Olmo, “Postscript: Suspected Illegal Aliens Now Being Held in Modern Facility,” *Los Angeles Times*, December 15, 1978, p. E1. Also during this time, the city of El Monte (less than 20 miles northeast of Bell) billed the U.S. Treasury \$207,000 in October 1976 for “the estimated cost for the detention of illegal aliens by the Police Department during the last year.” According to one council member the estimate was “conservative,” because it did not account for medical care, jailer, secretarial and administrative costs involved and only included the time it cost for officers to arrest and process noncitizens. Mayerene Barker, “El Monte Cites Police Work: U.S. Billed for Alien Cost,” *Los Angeles Times*, October 3, 1976, p. SG1.

<sup>420</sup> John Ehrlichman, “Action against illegal aliens depends on locale, economics,” *The Arizona Daily Star*, October 8, 1979, p. 2. Ehrlichman contests the way the Bureau of Prisons calculates costs. He writes, “It probably costs U.S. taxpayers between \$5,000 and \$12,000 to keep a Mexican alien in a federal prison for five months and 29 days. The estimate is vague because of the way the Bureau of Prisons keeps its books. It is nearly impossible to figure accurately the average daily cost of incarceration of an alien at a minimum-security prison like Safford. But if the 400 Mexicans who pass through Safford each year cost only \$5,000 each to process and keep, I witnessed an annual expenditure of more than \$2 million to house and feed them.” *Id.* For his first article see, John Ehrlichman, “Moved by jail plight of illegals, Ehrlichman touts bracero

But this good business was not limited to Arizona. In Brownsville, Texas, for example, 10-year-old Silvia Alvarado and her grandmother, María González-Mejía, were detained in a county juvenile detention center for 25 days. The two were caught at the border by Border Patrol while attempting to make their way to Virginia, where Silvia believed her mother was living. Her grandmother was held in case she was needed to testify against the man accused of having smuggled them. The ACLU filed a class action against the Justice Department for “unlawfully and unnecessarily” jailing hundreds of noncitizens seized in alien-smuggling cases. U.S. Marshals estimated that in the last fiscal year “15,000 adult aliens and 900 children will have been held as witnesses in local and Federal jails for up to three months. There are no reliable estimates on how many children will have been incarcerated while waiting for their parents or guardians to testify.”<sup>421</sup>

### **Federal Prisoners in Arizona**

Despite the official policy change in 1954, detentions on the ground operated under a different reality, particularly in Arizona. By the time Arizona started making national headlines for its punitive approach to immigration enforcement, it had long been accustomed to using noncitizens, grouped together with all other federal prisoners, to expand its own carceral landscape. In particular, negotiations with INS for immigration

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program,” *The Arizona Daily Star*, October 7, 1979, p. 8. See also, “Ehrlichman starts his term at federal prison in Safford,” *Tucson Daily Citizen*, October 29, 1976, p. 4.

<sup>421</sup> John M. Crewdson, “Suit Challenges Jailing of Aliens Over Smugglings,” *The New York Times*, August 22, 1980, p. A12.

prisoners as well as non-Service facilities proves significant for this expansion.

Analyzing the Board of Supervisors minutes in counties across Arizona during the era of humane detentions shows some evidence in the way in which the contracting of non-Service facilities helped build the carceral landscape in Arizona during the era of “humane” detentions. Specifically, non-Service facilities continued receiving federal money to house prisoners.<sup>422</sup> Within six counties analyzed in Arizona, for instance, the income received for housing federal prisoners is listed under “receipts from sources other than taxation.” Three counties show trends of peak incomes received for housing federal prisoners in the 1960s.<sup>423</sup> Though incomplete and few in number, the existing records of

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<sup>422</sup> I am deeply grateful to Wendi Goen at Arizona State Library, Archives and Public Records, for pointing me in the direction of tracing the money received by these counties through Board of Supervisor minutes.

<sup>423</sup> For instance, in Yavapai County, the two highest incomes were received in 1959 for \$10,461.50 and in 1964 for \$13,520. Incomes received in the decade of the 1960s stay consistently above \$4,000. “Yavapai County, Arizona Board of Supervisor Minutes, 1949-1973, Receipts from sources other than direct taxation: Board of Prisoners,” table 2, entries compiled from Yavapai County Board of Supervisors Minutes, Arizona State Library, Archives and Public Records. Phoenix, Arizona. Similarly, Mohave County received \$3,459.80 for fiscal year 1962-63 which increased to \$7,265.78 in fiscal year 1965-66. Mohave County Board of Supervisors Minutes, Arizona State Library, Archives and Public Records. Phoenix, Arizona. In 1979, because of overcrowding at the county jail, Mohave County decided to stop booking federal prisoners. The previous year, the county jail had booked 100 federal prisoners. Sheriff Dave Rathbone cancelled the contract with the U.S. Bureau of Prisons. The *Arizona Republic* noted that the decision would “affect the arrest of illegal aliens, military deserters, servicemen who are absent without leave and any suspect picked up by any agency on a federal warrant.” Steve Daniels, “Mohave plans to quit jailing U.S. prisoners,” *The Arizona Republic*, April 25, 1979, p. B-1. While smaller in scale, Navajo County also received federal money for housing prisoners. Their figures culminated in receiving more than \$2,000 for fiscal year 1961-62. For nearly a decade starting in the mid-1950s, Navajo County averaged an income for federal prisoners of more than \$1,000 per year. Navajo County Board of Supervisors Minutes, Arizona State Library, Archives and Public Records. Phoenix, Arizona. Gila County, on the other hand, shows a downward trajectory from the 1950s to the 1960s. While receiving more than \$2,400 in both fiscal years 1950-51 and 1954-55, the 1960s see a decline in the total amount received by the county. Gila County Board of Supervisors Minutes, Arizona State Library, Archives and Public Records. Phoenix, Arizona. Rather than focusing on specific upward or downward trajectories, it seems critical to note that counties across the state in fact received income for housing federal prisoners during this era of “humane” detentions.



receipts of federal funds reveal the expansion of detentions in Arizona throughout this era. This expansion and buildup would lay the groundwork for the violent detentions to come.

**TABLE 2** Yavapai County, Arizona Board of Supervisor Minutes, 1949-73  
Receipts from sources other than direct taxation: Board of Prisoners

Fiscal Year Budget	Adopted Budget (Past FY)	Actual Receipts (Past FY)	Estimated Receipts (Present FY)
1949	\$7,500.00	\$5,883.50	\$6,000.00
1950	\$6,000.00	\$5,314.00	\$5,000.00
1951	\$5,000.00	\$3,371.00	\$3,600.00
1952	\$3,600.00	\$3,950.00	\$3,600.00
1953	\$3,600.00	\$2,228.00	\$2,000.00
1954	\$2,000.00	\$4,610.00	\$3,000.00
1955	\$3,000.00	\$6,043.50	\$5,000.00
1956	\$5,000.00	\$5,717.50	\$5,000.00
1957	\$5,000.00	\$4,894.50	\$4,000.00
1958	\$4,000.00	\$8,930.50	\$7,000.00
1959	\$7,000.00	\$10,461.50	\$7,569.74
1960	\$7,569.74	\$7,948.50	\$7,500.00
1961	\$7,500.00	\$7,817.25	\$7,500.00
1962	\$7,500.00	\$7,482.55	\$7,500.00
1963	\$7,500.00	\$7,468.75	\$7,500.00
1964	\$7,500.00	\$13,520.00	\$13,000.00
1965	\$13,000.00	\$9,942.00	\$9,000.00
1966	\$9,000.00	\$4,886.00	\$5,000.00
1967	\$5,000.00	\$4,303.00	\$5,000.00
1968	\$5,000.00	\$6,014.25	\$5,000.00
1969	\$5,000.00	\$4,628.20	\$4,500.00
1970	\$4,500.00	\$5,205.75	\$5,000.00
1971	\$5,000.00	\$5,908.00	\$5,000.00
1972	N/A	N/A	N/A
1973	N/A	\$6,195.00	N/A

Source: Entries compiled from Yavapai County Board of Supervisor Minutes, Arizona State Library, Archives and Public Records. Phoenix, Arizona.

Maricopa County provides a demonstrative example of the expansion of the carceral landscape during this era. Throughout the 1950s, there is evidence that overcrowding jail conditions in the county worsened. In October 1958, for instance, a superior court judge was “deeply distressed by the many women, some of them pregnant, having to wait in line as much as an hour before getting to visit prisoners” in the county jail. The judge called the situation “inhumane.” She and another judge noted the “acute need for expanded jail facilities” and agreed that the public should be “awakened to the cramped conditions in the courthouse, and especially in the jail.”<sup>424</sup> Yet, the public would not be awakened. Blame was passed around. County Manager Tom M. Sullivan noted in November 1959, “The board has, for years, been keenly aware of the crowded conditions in the county jail. In fact, this administration has twice submitted bond issues to the electorate which would have solved the problem. In each instance the citizens of Maricopa County defeated the bond issues.” This foreshadowed county officials turning to the federal government for funding they deemed necessary. A citizens committee was appointed, with a Phoenix hotel operator as chairman and assisted by Stanford Research Institute, to evaluate the situation.<sup>425</sup> Two years later, the situation remained unresolved. The County then requested a special inspection by the Federal Bureau of Prisons over “its overcrowded, obsolete jail.” Despite being built for 200, the jail was housing as many as 600 men and women in recent years. There was even a threat that “unless something is done to improve conditions, the bureau will discontinue holding federal prisoners

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<sup>424</sup> “Overcrowded Jail Hinders Visiting,” *The Arizona Republic*, October 11, 1958, p. 13.

<sup>425</sup> “County Studies Jail Expansion,” *The Arizona Republic*, November 3, 1959, p. 1.

there.”<sup>426</sup> As even Sheriff Boies admitted, “We are sitting on a powder keg. It’s a wonder something bad hasn’t already happened there.”<sup>427</sup>

Yet, something bad was coming. The Bureau of Prisons inspections reported that the Maricopa County jail was “terribly overcrowded” and that the “management of the jail was seriously handicapped” because of this. However, there were no “complaint of mistreatment or improper operation of the jail.”<sup>428</sup> Despite this and the potential of a bond election in May that could have authorized several millions for new facilities, change did not happen. Six months after the Bureau of Prisons inspection, federal officials moved all the federal prisoners from Maricopa County jail. The move came on the heels of the torture of 19-year-old William Fernando Champlin, Jr., who had been continually beaten by other federal prisoners for two weeks. Champlin stated that he had “been the victim of a ‘kangaroo court’ during which an attempt had been made to hang him with his trouser belt.” Under the “personal order” from Attorney General Robert Kennedy, the Bureau of Prisons moved the 52 federal prisoners to other jails in Florence, Casa Grande, Prescott, and Tucson.<sup>429</sup> Although Sheriff Boies would not comment, his chief deputy stated, “This is their [BOP] move so let them make the comments. The county jail is the same as it has

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<sup>426</sup> “County Asks Federal Advice On Crowded Jail,” *The Arizona Republic*, March 24, 1961, p. 18.

<sup>427</sup> “U.S. Bureau Inspector Takes Look At Antiquated Maricopa County Jail,” *The Arizona Republic*, March 29, 1961, p. 14.

<sup>428</sup> “County Jail Too Small, Study Shows,” *The Arizona Republic*, April 7, 1961, p. 16.

<sup>429</sup> “Federal Prisoners Moved From Phoenix County Jail,” *The Arizona Republic*, October 7, 1961, p. 15. Associated Press, Maricopa County’s Jail Boycotted By U.S. Government,” *The Arizona Daily Star*, October 7, 1961, p. B-6. Casa Grande had built a new jail and fire station back in 1955 at a cost of \$150,000. The city manager called the jail “one of the most modern in the southwest.” “Casa Grande Jail Completed,” *The Arizona Daily Star*, May 19, 1955, p. A-9.

been in the past 10 years. We know it and they know it.”<sup>430</sup> Perhaps it was evident that those involved in the detention process knew about the nature of the conditions. A few days later, federal prison officials offered remedies for the county jail which they deemed “a jailer’s nightmare.”<sup>431</sup> The County eventually cancelled its agreement with the federal authorities, which meant it would not be receiving federal money for housing prisoners.<sup>432</sup> Other jails in Mesa and Scottsdale were then used as temporary lockups for federal prisoners including the Arizona State Prison, where the warden stated that a “few ‘tough’ federal prisoners would pose no problem at the crowded” facility.<sup>433</sup>

Sheriff Boies’ powder keg eventually exploded in early 1963. At 2:30 p.m. on January 2, prisoners at the Maricopa County jail set fire to mattresses and blankets in two of the nine tanks. The “blazing riot” lasted about four hours. The *Arizona Republic* described, “Scores of armed deputies and city police converged on the scene as smoke and flames poured from the outside windows of cells holding the rampaging prisoners. Ringleaders of the riot said they wanted public attention brought to what they termed unhuman conditions.” Sheriff’s Capt. Dave Edwards stated, “I used two canisters of tear gas when I saw they weren’t going to pay any attention to me.” Two hours into the situation, firemen “used high-pressure hoses aimed into the two tanks containing the troublemakers.” Deputies continued firing tear gas into the tanks. According to the story,

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<sup>430</sup> United Press, “U.S. Removes 52 Prisoners,” *Tucson Daily Citizen*, October 7, 1961, p. 1.

<sup>431</sup> “Federal Prison Men Term County Jail ‘Nightmare,’” *The Arizona Republic*, October 11, 1961, p. 17.

<sup>432</sup> “U.S. Jail Funds Asked,” *The Arizona Republic*, April 4, 1962, p. 8.

<sup>433</sup> “State Able To House Federal Prisoners,” *The Arizona Republic*, November 22, 1961, p. 7.

the riot quieted when an *Arizona Republic* reporter “went into the cellblocks and promised the prisoners their grievances would be aired and something would be done if there was any foundation to their complaints.”<sup>434</sup> A second story quoted an unnamed “prisoner spokesman,” who said the riot began when prisoners lost their privileges after someone had whistled out of the window at someone on the street below. He apparently insisted there was more to come, “That’s just a little taste. Let them come in here and you’ll find out what we’re going to do.” He further stated that someone went into an epileptic fit after tear gas was fired into the tank. That same person had been “refused medical care a week ago when he suffered” a fit. The rioters repeatedly demanded, “Get rid of Edwards” because repeated requests to see him go unanswered. As the spokesperson noted, “We ask for him, but he never comes up here. We’re human beings, too, even if we are in jail. We just want our privileges and some decent meals. That ain’t too much to ask for.”<sup>435</sup>

The uprisings continued for a second day. This time prisoners “secured barred doors with strips of blankets. Then they refused to emerge as ordered.” Sheriff Boies ordered deputies with ax handles and billy clubs to “use necessary force” to “compel inmates to behave.” As Boies stated, “I want you men to understand that I’m the boss of this jail, and I’m not about to let you tell me how to run it. You’ll abide by the rules set by my office or suffer the consequences. I’m here to tell you that I’m not going to take any more nonsense from any of you men. I’ve ordered my officers to use any force

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<sup>434</sup> Jack Karie, “Jail Prisoners Riot,” *The Arizona Republic*, January 3, 1963, p. 1.

<sup>435</sup> Ken Hudson, “Man’s Whistle Blamed For Rioting,” *The Arizona Republic*, January 3, 1963, p. 1.

necessary to put down any further disturbances.” After the riot was subdued, the county board estimated damages at about \$10,000.<sup>436</sup> Despite complaints voiced about the food, Boies further insisted, “The food here is good. In fact, it’s a damn sight better than a lot I’ve eaten.”<sup>437</sup> The riot was quieted without meeting demands. Yet, Boies laid partial blame on the “shamefully overcrowded” conditions at the jail. This was to be alleviated by a new county jail, located between Jefferson and Madison from First to Third avenues, to be completed in early 1964.<sup>438</sup>

Riots and attempted riots continued at the county jail. In July 1963, mattresses were again burned in an uprising that “recalled a similar riot in the same cell block in January.” About 40 mattresses were burned “by disgruntled prisoners” in a riot. Club-wielding deputies eventually ended the two-hour uprising. All mattresses were then removed from the tank. As Chief Deputy Bill Deatsch put it, “If they want to burn their mattresses they can sleep on the springs. They’re in jail and the sheriff says we’re going to run the jail the way we think it should be run.” Deputies were not certain who instigated the uprising but believed one person responsible was Ernesto Miranda, who was scheduled to be taken to the Arizona State Prison the next day to start his 45-to-50 year sentence.<sup>439</sup> In September, two potential riots were cut short when the Sheriff’s office was tipped off. As one article noted, “All available deputies in the office took off

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<sup>436</sup> Jack Karie, “Sheriff Breaks Barrier, Warns Sullen Prisoners,” *The Arizona Republic*, January 4, 1963, p. 1.

<sup>437</sup> Karie, “Sheriff Breaks Barrier, Warns Sullen Prisoners,” p. 7.

<sup>438</sup> “New Jail Ready In Early ’64,” *The Arizona Republic*, January 5, 1963, p. 13.

<sup>439</sup> “Mattresses Set on Fire In Jail Riot,” *The Arizona Republic*, July 2, 1963, p. 4.

their pistols, grabbed their night sticks and rushed into the jail elevator. The demonstration was quickly quelled.” As punishment, those involved in the uprising were forced to sleep without their mattresses.<sup>440</sup> Federal prisoners would be kept away from the Maricopa County jail for the next decade. Eventually their return in the 1970s would bring back federal revenue.

Situations at the Pinal County jail further demonstrate the ebb and flow of federal money coming in and ongoing negotiations with federal authorities. In January 1962, six federal prisoners escaped from the county jail by sawing the bars. Getting a saw inside the jail would not have been a challenge. As Sheriff Laurence White explained, “It’s easy. This jail was built for looks, not security. The jail’s on the ground floor. Why, someone could stick a machine gun through the bars without any trouble. Once, a prisoner sawed his way out with razor blades. They can twist those bars and it’s pretty hard to detect.”<sup>441</sup> Despite all six being recaptured by the next month, the Board of Supervisors voted to close the jail to federal prisoners and stated the jail was adequate for county prisoners only.<sup>442</sup> Yet, less than two weeks later, the Board agreed to continue housing the federal prisoners at the jail for another 30 days after a meeting with federal officials.<sup>443</sup> Inevitably, money was promised because this was later extended with a new

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<sup>440</sup> “Potential Jail Riots Cut Short,” *The Arizona Republic*, September 5, 1963, p. 21.

<sup>441</sup> Associated Press, “Six Prisoners Missing At Pinal County Jail,” *The Arizona Republic*, January 21, 1962, p. 1.

<sup>442</sup> Associated Press, “Federal Prisoners Out At Pinal Jail,” *The Arizona Daily Star*, February 27, 1962, p. A-14.

<sup>443</sup> Associated Press, “Pinal Jail Keeps U.S. Prisoners,” *The Arizona Daily Star*, March 14, 1962, p. B-5.



contract where the county would receive \$2 per day for each federal prisoner.<sup>444</sup> In February 1963, Pinal County again renewed their contract to house federal prisoners in the county jail until March, while awaiting completion of the new federal jail at the prison camp in Florence.<sup>445</sup>

Pinal County also housed the prison camp at Florence, which continued pulling in federal money. Several public vouchers show in detail the names of federal prisoners, the per day rate, and total amounts earned by the county for those held in Florence. For instance, a voucher for December 1961 paid to the Pinal County Board of Supervisors by the Department of Justice shows a total amount of \$1,499 for housing prisoners for 858 days at a rate of \$1.75 per prisoner per day for 66 total prisoners. The price then increased to \$2 a day.<sup>446</sup> While it is difficult to ascertain what percentage or what prisoners were specifically held on immigration-related charges, there is evidence that the prison camp had been housing federal prisoners, including immigration detainees, since the early 1950s.<sup>447</sup> In April 1962, President Kennedy asked Congress for \$300,000 to

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<sup>444</sup> Associated Press, "Pinal Agrees To Offer U.S. Use Of Jail," *The Arizona Republic*, April 17, 1962, p. 13.

<sup>445</sup> Associated Press, "Pinal Renews Prisoners Agreement," *The Arizona Republic*, January 3, 1963, p. 29. Associated Press, "Pinal Renews Jail Contract," *The Arizona Daily Star*, January 3, 1963, p. 31. "The Pinal County," *Tucson Daily Citizen*, January 3, 1963, p. 35.

<sup>446</sup> For June 1962, Pinal County was paid \$850 for 425 days for 37 total prisoners. For July 1962, the County received \$766 for 383 days for 34 total prisoners. For September 1962, Pinal County was paid \$1,226 for 613 days for 58 total prisoners. In January 1963, the County received \$1,020 for 510 days for 46 total prisoners. For the next month, the County was paid \$950 for 475 days for 57 total prisoners. March brought in \$708 for 354 days for 47 prisoners. "Public Voucher for Purchases and Services Other than Personal," U.S. Department of Justice, prepared at Tucson, Arizona to Pinal County Board of Supervisors. Arizona State Library, Archives and Public Records. Phoenix, Arizona.

build a federal jail in Arizona. The detention facility would be built at the prison camp and hold those awaiting court appearances.<sup>448</sup> While the camp housed 223 minimum security prisoners, the new funds would allow authorities to house higher security inmates. Of the allocated money, \$240,000 would be used to build a new maximum-security cell block at the camp with remaining \$60,000 used for improvements on existing facilities. Until the facility is built, Pinal County offered the use of the county jail for maximum security prisoners.<sup>449</sup> By November, construction was under way for the facility that would include three 20-man dormitories. Because the new federal jail will also not include rooms for female prisoners they would continue to be housed at the Pima County jail in Tucson.<sup>450</sup> The BOP's new maximum security federal detention center was formally dedicated on March 15, 1963. The total cost had amounted to more than \$325,000 while all the concrete blocks had been made by prisoners themselves. The new facility was expected to relieve the overcrowding at Pima County jail and remove prisoners from Pinal County jail. A 21-year veteran of the Bureau of Prisons, Robert Burns, was put in charge of the facility along with 11 guards, two of whom were

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<sup>447</sup> In 1958, it was reported that Cruz Valenzuela Rodriguez, identified as a 31-year-old "Mexican wetback," escaped from the prison camp without officials knowing how he did so. Associated Press, "Mexican Wetback Flees Prison Camp," *The Arizona Republic*, February 17, 1958, p. 33.

<sup>448</sup> "U.S. Jail Funds Asked," *The Arizona Republic*, April 4, 1962, p. 8. Associated Press, "JFK Seeks \$300,000 For Federal Jail In Arizona," *The Arizona Daily Star*, April 4, 1962, p. 3.

<sup>449</sup> Associated Press, "Pinal Agrees To Offer U.S. Use Of Jail," *The Arizona Republic*, April 17, 1962, p. 13. Associated Press, "U.S. Officers To Hold Men In Pinal Jail," *The Arizona Daily Star*, April 17, 1962, p. 11.

<sup>450</sup> "New Federal Jail Built At Florence," *The Arizona Daily Star*, November 3, 1962, p. B-4.

transferred from the decommissioned Alcatraz.<sup>451</sup> Three years later, the detention center had 60 to 70 prisoners and 19 guards.

By the mid-1960s, the prison camp's population decreased. As Loyd and Mountz explain, "With this reduction, the BOP indicated that 'a substantial portion' of the 456.5 acres it currently maintained would become available for other users."<sup>452</sup> After operating for 15 years, the federal prison camp in Florence closed by the end of 1966 and the government declared the area "surplus property."<sup>453</sup> Negotiations ensued between local and state officials over who would take the property. In late 1967, more than 400 acres of the camp were transferred to the Florence Chamber of Commerce. It was thought the land would be developed for "municipal recreation, education facilities and possible industrial site development."<sup>454</sup> The city attorney wanted to turn the property into an industrial park.<sup>455</sup> Florence seemed to be on the rise. Three years later, a news article had declared in 1970 that Florence was a "town too tough to die." Harkening back to its glory days, the story evoked nostalgia for the wild west past. Comparing Florence to the likes of Charleston, Benson, Patagonia, Globe, Payson, Prescott, and Tombstone, the article

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<sup>451</sup> Bob Thomas, "Maximum Security Detention Center At Florence Dedicated By Officials," *The Arizona Daily Star*, March 16, 1963, p. 12. See also, *Report of the Attorney General of the United States for the Fiscal Year Ended June 30 1963* (Washington, DC: GPO, 1963), 386.

<sup>452</sup> Jenna M. Loyd and Alison Mountz, *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States* (Berkeley: University of California Press, 2018), 125.

<sup>453</sup> "Five Area Development Proposal," prepared by The Florence Community Development Corporation, folder: U.S. Federal Prison Camp, Florence, Arizona, 1967-1971, Arizona State Library, Archives and Public Records. Phoenix, Arizona.

<sup>454</sup> "U.S. Prison Camp Site Is Awarded To Florence CofC for Use as Park," *The Arizona Republic*, November 16, 1967, p. 30.

<sup>455</sup> Loyd and Mountz, *Boats, Borders, and Bases*, 125.

described, “Like those towns, oldtimers were tough because they had to be. They were adventurers because they had no choice.” The story ended, “Every lover of the real Old West has to define it and find it for himself. There are still places to look as long as towns like Florence survive.”<sup>456</sup> Yet, Florence began 1970 by being sued by the Arizona National Guard and the Arizona Department of Corrections, who alleged that the city renegaded on a deal to lease one-fifth of the former prison camp property back to the state for 50 years at \$1 a year.<sup>457</sup> Yet, that year the Florence Industrial Authority sold 600 acres of the camp for \$700,000 to the Western American Land and Cattle Co. of Phoenix. The company planned to use the land primarily as a residential community, to be known as the Florence Gardens.<sup>458</sup> The next year, one article declared that after falling on hard times, Florence was “building again.”<sup>459</sup> Eventually, the BOP will transfer their detention center, about a mile south of Florence Gardens, to the INS. During the era of violent detentions, Cubans detained at the INS facility would destroy it in protest of prolonged detention. The riot would be quelled, and the facility rebuilt. That rebuilt facility still functions as a Service Processing Center today.

Meanwhile, during the era of humane detentions, Pima County in southern Arizona provides another illustrative example of detentions and negotiations over federal

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<sup>456</sup> “Florence also town too tough to die,” *The Arizona Republic*, February 25, 1970, p. 22.

<sup>457</sup> “Two Arizona departments sue Florence in land deal,” *The Arizona Republic*, January 20, 1970, p. 19.

<sup>458</sup> “Development planned at former prison camp,” *The Arizona Republic*, August 19, 1970, p. 8. Mary Leonhard, “Florence restoration to get new boost,” *The Arizona Republic*, August 19, 1970, p. K1.

<sup>459</sup> “Florence-building again,” *The Arizona Republic*, January 10, 1971, p. K1.

prisoners expanding the carceral landscape. In the late 1950s, Pima County jail was approved “only as a holding jail” for federal prisoners who were moved out after sentencing.<sup>460</sup> The jail had been built in 1923 and was housed on the second floor of the courthouse. In addition to federal prisoners including “immigration (wetbacks), both men and women,” the jail also housed city, county, and South Tucson prisoners.<sup>461</sup> The County received tens of thousands in revenue for housing federal prisoners.<sup>462</sup> Accounts surrounding the Pima County jail indicate that some of these federal prisoners were held on immigration-related charges. For example, when prisoners at Pima County jail set fire to mattresses in 1960 to protest medical policy, the undersheriff blamed the federal prisoners “most of them illegal immigrants, whom he said the county has no choice but to accept.”<sup>463</sup> Pima County Sheriff Waldon Burr, however, believed the prisoners had set the fire “in the belief they could gain access to a jail corridor during the ensuing furor.”<sup>464</sup> A year earlier, Burr denied a story alleging that overcrowding conditions at Pima County jail had sent “a busload of aliens – to be airlifted back into Mexico” to the Santa Cruz County jail in Nogales. Burr had insisted that Pima County jail’s “federal wetback tank”

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<sup>460</sup> Charles Hoffman, “Transporting Of Federal Prisoners Involves Top Secret Procedure,” *Tucson Daily Citizen*, March 22, 1958, p. 4.

<sup>461</sup> Bob Thomas, “Veteran Jailer To Quit Job Behind Prison Bars,” *The Arizona Daily Star*, December 11, 1959, p. D-4.

<sup>462</sup> The County received \$55,398.75 to keep federal prisoners in 1955 but no records exist until 1963 when the county received \$46,702.30. “Pima County, Arizona Board of Supervisor Minutes, 1948-1974, Receipts from sources other than direct taxation: Prisoners’ Keep,” table 3, entries compiled from Pima County Board of Supervisors Minutes, Arizona State Library, Archives and Public Records. Phoenix, Arizona.

<sup>463</sup> Steven Emerine, “Protest Policy: Prisoners Set Fire to Bedding At Jail,” *Tucson Daily Citizen*, August 8, 1960, p. 18.

<sup>464</sup> “6 Prisoners Blamed For Jail Blaze,” *The Arizona Daily Star*, August 9, 1960, p. B-1.

holds 100 prisoners and that he did not know “offhand how many are in it at the moment, but it is not full or crowded. We could put a great many more prisoners in it.”

Alternatively, and perhaps just in case, Burr also noted that federal officials often move “wetbacks” to border cities and hold them “overnight and sometimes longer” before sending them back to Mexico so he could not “see anything unusual about their being at Nogales.”<sup>465</sup> Either way, such descriptions like the “federal wetback tank” point to the way in which detentions were still operating along the Southwest in the era when official policy said they did not. While clearly delineating the discrepancy between policy and reality, these detentions would continue to expand under a different regime after the 1980s.

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<sup>465</sup> Associated Press, “Overcrowded Pima Jail Story Denied,” *The Arizona Republic*, December 11, 1959, p. 16. “Burr Denies Prisoners Housed In Nogales Jail,” *Tucson Daily Citizen*, December 10, 1959, p. 4. The Santa Cruz County jail was housed in the basement of the county courthouse. After several youths died at a jail in Payson of carbon monoxide poisoning, Santa Cruz county officials inspected the heating system of its 62-year-old jail and “declared it unsafe.” The board of supervisors voted to advertise for bids to replace the system that was “not considered safe where people are sleeping.” Despite this, prisoners were “kept in the jail while the county” awaited bids. “Nogales Jail Heaters Are Declared Unsafe,” *Arizona Daily Star*, January 16, 1965, p. 15. The jail continued to detain noncitizens. In 1966, for example, the State Tax Commission allowed the county to exceed its budget by \$3,500 for prisoners’ meals. The “unanticipated expense resulted from the county’s detainment of immigration prisoners for the federal government, which will reimburse the county.” Associated Press, “Santa Cruz Can Exceed Budget,” *Tucson Daily Citizen*, March 22, 1966, p. 32. For more on the deaths of the four boys see Wade Cavanaugh, “Jail Death Data Kept In Secrecy,” *The Arizona Republic*, January 15, 1965, p. 19. Also Wade Cavanaugh, “Inquest into Jail Deaths Opens in Payson Tomorrow,” *The Arizona Republic*, January 27, 1965, p. 10.

**TABLE 3** Pima County, Board of Supervisor Minutes, 1948-74  
 Receipts from sources other than direct taxation: Prisoners' Keep

Fiscal Year Budget	Estimated Receipts (Past)	Actual Receipts	Estimated Receipts (Next)
1948	N/A	\$22,436.30	\$20,000.00
1949	\$20,000.00	\$29,735.25	\$25,000.00
1950	N/A	N/A	N/A
1951	\$25,000.00	\$26,871.70	\$26,000.00
1952	\$26,000.00	\$48,430.24	\$35,970.61
1953	\$35,970.61	\$42,504.40	\$40,000.00
1954	\$40,000.00	\$54,119.10	\$50,000.00
1955	\$50,000.00	\$55,398.75	\$50,000.00
<i>1956-1962 Not Available</i>			
1963	\$45,000.00	\$46,702.30	\$48,000.00
1964	N/A	N/A	N/A
1965	\$55,000.00	\$43,886.20	\$45,000.00
1966	\$45,000.00	\$46,821.95	\$50,000.00
1967	\$50,000.00	\$66,072.50	\$70,000.00
1968	\$70,000.00	\$68,072.50	\$90,000.00
1969	\$90,000.00	\$92,224.00	\$100,000.00
1970	\$100,000.00	\$130,731.25	\$258,000.00
1971	\$258,000.00	\$305,569.34	\$300,000.00
1972	\$300,000.00	\$342,633.10	\$367,000.00
1973	\$367,000.00	\$317,572.02	\$300,000.00
1974	\$300,000.00	\$456,896.12	\$600,000.00

Source: Entries compiled from Pima County Board of Supervisor Minutes, Arizona State Library, Archives and Public Records. Phoenix, Arizona.

Throughout the late 1960s, Pima County's estimated receipts for housing federal prisoners matches quite closely with money actually received, which seems to indicate how county officials could uncannily predict the inflow of prisoners into their jails. Or, perhaps they were numerologists. Regardless, this funding steadily increased as the years went by. From 1965 to 1974, the income received by Pima County for federal prisoners increased more than ten-fold.<sup>466</sup> Moreover, the County received more money for federal prisoners than for city and county prisoners because of the high turnover attributed to federal immigration prisoners. For example, in 1968, the County received \$3.50 a day per federal prisoner, which covered food and was also "prorated to cover the costs of bedding, lights, laundry, power, jailers' time and jail upkeep." It was noted that the rate was 50 cents higher than for city and county prisoners because a "generally greater turnover of federal prisoners ups the cost of such items as laundry." This was particularly true for immigration prisoners "such as 'wetbacks'" who "usually are not held in the county jail as long as other prisoners."<sup>467</sup> In 1969, the price went up by \$1.75 to a new per diem of \$5.25. In August of that year alone, the county pulled in more than \$11,800 for housing federal prisoners and the money was deposited into the county general fund.<sup>468</sup>

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<sup>466</sup> The incomes increased from \$43,886.20 to \$456,896.12. Pima County Board of Supervisors Minutes, Arizona State Library, Archives and Public Records. Phoenix, Arizona. In 1964, a legal notice in the newspaper indicated that the Board of Supervisors authorized the signing of a contract with the Bureau of Prisons to house federal prisoners at a rate of \$2.50 a day. "Legal Notice," *The Arizona Daily Star*, September 17, 1964, p. D-6.

<sup>467</sup> "The Ombudsman," *The Arizona Daily Star*, August 26, 1968, p. 13.

<sup>468</sup> "Federal Prisoner Jail Cost Rise," *The Arizona Daily Star*, September 12, 1969, p. 35.



Despite the income drawn in with federal prisoners, their conditions of confinement remained dismal, which questions the quality of services the federal government was paying for. In 1970, in response to a reader's question about the conditions of confinement and the number of federal prisoners in the county jail, the *Arizona Daily Star* noted, "The county gets \$5.25 per day for boarding each federal prisoner. It is true that some are confined for more than a month in jail awaiting trial, or transportation to prison." As to the number, the newspaper stated, "The number of federal prisoners in jail here varies widely, especially when a large number of persons are held in a roundup, such as that of aliens who have entered the country illegally." Conditions were noted as somewhat the same as others incarcerated in the county jail. According to the newspaper, "the cells are windowless, but air is pulled from outside by the air-conditioning system. However, their opportunities for exercise are limited to the jail cells and corridors since they cannot become trustees as some non-federal prisoners can."<sup>469</sup>

As federal income came in, however, plans were put in place for a new jail perhaps in an attempt to address the conditions. In June 1964, federal officials met with Undersheriff James Wyckoff to discuss construction details of a new facility. As one article noted, the U.S. marshal "houses federal prisoners in the county jail and therefore has an interest in jail construction."<sup>470</sup> A few days before the meeting, six people, two of whom were federal prisoners, had escaped from the Pima County jail. All were later apprehended and charged.<sup>471</sup> The new \$700,000 jail was nearing completion in

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<sup>469</sup> "The Ombudsman," *The Arizona Daily Star*, July 6, 1970, p. 13.

<sup>470</sup> "Federal And County Officials Study Construction Plans For New Jail," *The Arizona Daily Star*, June 4, 1964, p. 4.

October.<sup>472</sup> In April 1965, 165 prisoners from the old jail were transferred to the brand new facility on West Ajo Way. The new jail was supposed to accommodate 250 people and “meet the county’s needs for 15 to 30 years.”<sup>473</sup> Yet, this would prove to be an overly ambitious expectation.

There were no qualms about the link between federal money received and jail expansion. In August 1970, Sheriff Burr unequivocally noted that the “money paid to the county for housing federal and city prisoners is earmarked to help finance expansion of jail prisoners.”<sup>474</sup> As expected, the new jail would not meet the needs for long. Expansion would be needed again at the end of the year as overcrowding compelled Burr to ask the Board of Supervisors for a \$1 million jail addition. According to Burr the situation was “pressing,” and the proposal would be “more of a demand. We can’t crowd many more people into the jail.” Half the money would come from federal funds and the other half from “revenues the jail receives for housing city and federal prisoners.” As one article notes, these revenues totaled \$200,000 and are “kept in a special fund.” Additionally, immigration enforcement was a significant factor because the Border Patrol alone paid the County “about \$25,000 a month.” This filled the county coffers. Burr stated, “I think

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<sup>471</sup> “3 Prisoners Arraigned In Sunday’s Jailbreak,” *The Arizona Daily Star*, June 4, 1964, p. 4. Tony Payton, “4 Escapees Must Face Superior Court Trials,” *The Arizona Daily Star*, June 23, 1964, p. 20. “Federal Prisoners Who Fled Jail Sentenced,” *The Arizona Daily Star*, June 23, 1964, p. 20.

<sup>472</sup> “New Jail Is Nearing Completion,” *The Arizona Daily Star*, October 29, 1964, p. B-1.

<sup>473</sup> Keith Carew, “Too many city prisoners: New jail still not the answer,” *Tucson Daily Citizen*, April 19, 1972, p. 14.

<sup>474</sup> “The Ombudsman,” *The Arizona Daily Star*, August 17, 1970, p. 11.

there is enough money so the addition won't cost the taxpayers any more in the way of a bond issue. But we can't wait until it catches up with us."<sup>475</sup>

Here, federal prisoners played a key role. As Burr noted, "The jail was built for 10 years but we're pushing the walls out after six. If the Border Patrol brought in a heavy load of wetbacks (Mexican nationals caught entering the U.S. illegally) today, they would be sleeping on the floor." Burr hoped the addition would alleviate trouble at the jail including "fist fights between inmates, attempted suicides and homosexual activity." There had been "one inmate who tried to kill himself three times and that the fist fights occur nearly every day." Additionally, federal prisoners required separate treatment. As Burr put it, "Even if a federal prisoner is lying there dying, we have to get a U.S. Marshal before the prisoner can be removed to a hospital."<sup>476</sup> The addition was thought to possibly allow the County to ask for an increase in the federal prisoner rate of \$5.25 a day. However, not everyone agreed with Burr's taxpayer-less funding plan. Although the city and federal government paid the county more than \$32,000 per month for housing prisoners, County Supervisor Dennis Weaver stated, "that may not be enough to match the costs of running the jail and providing prisoner space."<sup>477</sup>

Immigration prisoners specifically were still providing some of this income. According to Burr, "One entire dormitory cellblock is contracted to the federal government for detention of federal prisoners – mostly illegal entrants from Mexico. The

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<sup>475</sup> Richard Gilman, "Burr To Seek \$1 Million For Jail Addition," *The Arizona Daily Star*, November 3, 1970, p. 19.

<sup>476</sup> Richard Gilman, "Burr To Seek \$1 Million For Jail Addition," *The Arizona Daily Star*, November 3, 1970, p. 19.

<sup>477</sup> "\$1 Million Asked For Jail Addition," *Tucson Daily Citizen*, November 3, 1970, p. 6.

number of men coming and going from that cell during a week's time averages about 150."<sup>478</sup> In at least one instance, immigration prisoners were robbed by officials at the county jail. In November 1970, Gerald David Marlar, along with three others, filed suit in the U.S. District Court against Sheriff Waldon V. Burr and five deputies for brutal treatment. Specifically, Marlar alleged that in processing noncitizens of Mexican descent on September 10, deputy Gregory "Red" Treadhand had collaborated with some prisoners to "force the aliens, as they deposited their personal belongings in envelopes, to sign the envelopes indicating they contained less cash than they surrendered." When Marlar, who had been acting as the interpreter, objected, he was transferred to a different cell and given "no mattress or blanket and forced to sleep on the floor."<sup>479</sup>

Prisoners continually reacted against the overcrowded and dismal conditions. For example, in September 1970, about 30 of the 282 prisoners took over the jail for nearly an hour while holding deputies hostage. They succeeded in releasing about 100 men out of their cells. Deputies wielding shotguns eventually regained control. When one of the ringleaders, Robert Fierro, was caught he "begged to be shot rather than sent to prison." Fierro and another man, Rocky Moore, had smuggled in a revolver through a trustee. According to Deputy Sheriff Michael Barr, "The 30 or so who went on the rampage picked up fire extinguishers, broomsticks, mop handles, and other articles, but laid them down when they saw the shotguns."<sup>480</sup> Federal prisoners, in particular, continued to

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<sup>478</sup> Tom Turner, "Jail Boss Pushes Improvements," *The Arizona Daily Star*, November 14, 1970, p. 6.

<sup>479</sup> "Burr, Five Deputies Named: Suit Charges Jail Beatings, Theft," *Tucson Daily Citizen*, November 10, 1970, p. 1.

challenge the conditions of confinement. In February 1971, 15 federal prisoners were transferred to the Pima County jail after seven of them allegedly led a riot at the Santa Cruz jail in Nogales. Other prisoners were removed by immigration officials.<sup>481</sup> The rioting in Nogales had left that jail unable to be used by federal prisoners. Dismissing initial reports that the prisoners had rioted because of inadequate jail food, the sheriff there later claimed the riot had involved drugs. Santa Cruz County Sheriff Zeke Bejarano said, “As the disturbance began, I approached the cell and asked the prisoners what they wanted. ‘Give us a kilo of marijuana,’ one prisoner answered. ‘We’ll settle for that.’”<sup>482</sup> When Bejarano ignored these demands, the prisoners started a fire. According to Bejarano, the riot eventually ended when “prisoners started to become asphyxiated from smoke in their burning cell.” Blame fell on aging infrastructure. As Bejarano complained, “We’re facing danger here daily. We just can’t control prisoners in this antiquated jail.”<sup>483</sup>

The blame also fell on the federal government for housing federal prisoners there. As one news article explained, “These federal felony suspects are hard-core types, desperate men, and more often than not are narcotics users.” Perhaps it helped the

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<sup>480</sup> Michael A. Chihak, “30 Prisoners Take Over Jail, Hold Deputies For 50 Minutes,” *Tucson Daily Citizen*, September 22, 1970, p. 1.

<sup>481</sup> James Kiser, “Prisoners Set Fire To Santa Cruz Jail,” *The Arizona Daily Star*, February 13, 1971, p. B-1.

<sup>482</sup> “15 Federal Prisoners Brought Here Following Santa Cruz Jail Riot,” *Tucson Daily Citizen*, February 13, 1971, p. 4.

<sup>483</sup> James Kiser, “Prisoners Set Fire To Santa Cruz Jail,” *The Arizona Daily Star*, February 13, 1971, p. B-1. Two years later, the Arizona Planning Agency had received a \$250,000 federal grant to build a new jail; however, disputes between the board of supervisors and city council members over a jail site left the grant in doubt. James Kiser, “Squabble Over Site Threatens New Jail For Nogales, Ariz.,” *The Arizona Daily Star*, January 18, 1973, p. B-1.

argument that about seven of the riot instigators had in fact been federal prisoners. Sheriff Bejarano stated, “They had weapons, made by tearing out strips of the metal walls and chunks of exposed pipe. They intimidated the other prisoners into following them.” This implicated both aging infrastructure and practical considerations. Calling the jail “a time bomb that could go off again at any moment,” the analogy was combined with the aging infrastructure: “The bomb’s shrapnel is composed of metal and stone – the huge, dungeon-like blocks of stone used to build the jail in 1903, and the corroded metal cells, so decomposed the prisoners can tear off strips to make themselves knives and daggers.” Additionally, there were practical considerations of all prisoners being placed in a single tank. As Bejarano noted, “We have no way of segregating hard-core felons from Saturday night drunks and kids caught overstaying their work permits from Mexico. We have no individual cells. They all go into the tank.” Such indiscriminate housing not only harkens back to the debates of the 1950s that questioned whether noncitizens should be held in jails but also foreshadows the eventual criminalization of immigration itself.

That tank was described as “an unbelievable hole, a filthy, dripping, kennel that would get a dog owner fined for keeping an animal there.” The article further described, “The tank has bunks for 30 men, yet it often holds 50. It has two toilets. It has a shower, but who needs it. The exposed water pipes pour down enough water day and night so a man is always soaked. An open hole in the floor regurgitates the day’s garbage.” In Bejarano’s defense, he had “been yelling” since he became a sheriff in 1963 for a new jail. Yet, that did not help the prisoners. One 16-year-old prisoner named Roberto from Jalisco had crossed the border to earn a few dollars and was at the jail on the night of the riot. As a federal prisoner, the government would have paid the County for his care.

Roberto explained the events that unfolded, “If I didn’t join the rioters, they would have killed me. If I did, I was afraid the deputies might shoot me.”<sup>484</sup> Yet, federal officials continued housing prisoners at the jail based on alleged need. Rep. Morris K. Udall (D-Tucson) contacted federal officials about their prisoners. Norman A. Carlson, director of the Bureau of Prisons, replied: “We do use this jail for the housing of federal prisoners, but only on a limited basis. We know that the jail is overcrowded and has only minimal supervision and housekeeping standards, however, the volume of federal prisoners in this area makes it necessary for us to continue to use it for holding our prisoners for a period less than 24 hours.”<sup>485</sup> As a border county, perhaps “volume of federal prisoners in this area” referred to those like Roberto who were held on immigration violations.

Nevertheless, Roberto’s plight, and anyone who was similarly situated, demonstrates the conditions he faced at a time when national detention standards were deemed humane.

Trouble at the Santa Cruz County jail continued the next year. In September 1972, after a “mass escape attempt,” deputies “were able to herd 30 prisoners into the antiquated, four-cell middle tank in the center of the high-ceiling room.” Those locked inside then reacted by “breaking up the trays by bending them between the bars of the cells. When officers attempted to interfere they were bombarded by rock fragments.”

There was reportedly “serious damage” to the structure. Sheriff Bejarano stated, “We will accept no federal prisoners and no felony cases from the Nogales Police Department until

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<sup>484</sup> George McEvoy, “Santa Cruz Jail Called Time Bomb,” *The Arizona Daily Star*, February 17, 1971, p. B-1. Following the riot, federal funds were expected to pay 75 percent of the cost for building a new facility later that year. “New Jail At Nogales Indicated,” *Tucson Daily Citizen*, February 18, 1971, p. 2.

<sup>485</sup> “U.S. Prisoners To Stay In Nogales Jail,” *The Arizona Daily Star*, March 18, 1971, p. 5.

after repairs are made.”<sup>486</sup> Seventeen of the 30 men were transferred from the jail immediately and the “13 left were confined to a four-cell maximum security cage, in the middle of the high-ceilinged 25- by 35-foot jail” with “16 bunks and one toilet in the cage.” All federal prisoners were then moved to Tucson.<sup>487</sup>

Meanwhile, back in Tucson, overcrowding continued at the Pima County jail. In March 1971, Jesus Ricardo Leyva-Marquez, a federal prisoner held on drug charges, answered to the name of a noncitizen who was asleep and was deported. Or as Burr put it, he was “definitely freed in Mexico.” Despite federal prisoners normally being separated between immigration violations and other charges, overcrowding had “forced jailors to place federal prisoners charged with being illegal entrants in the same tank with federal prisoners accused of committing felonies.” Additionally, jail officials did not fingerprint or photograph “suspected illegal aliens” but after the escape Burr wanted to ask, “Federal agencies to begin using plastic bracelets as identification tags for all their prisoners.”<sup>488</sup> A hunger strike at the jail in November 1971 to protest jail conditions was short-lived allegedly because, as acting Sheriff Michael Barr put it, it was “poorly organized.” At the time the jail housed 349 people. The petition had listed demands asking for better food, clothing, medical attention, and better treatment of prisoners by jailers. Barr dismissed all allegations as a “way of getting attention” except that there “was some justification to the

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<sup>486</sup> Alma Ready, “30 prisoners seize, damage Santa Cruz jail,” *The Arizona Republic*, September 19, 1972, p. 1.

<sup>487</sup> Alma Ready, “17 in aborted jailbreak transferred,” *The Arizona Republic*, September 20, 1972, p. D-1.

<sup>488</sup> James Kiser, “Sheriff Blames Jail Overcrowding For Escape Of Federal Prisoner,” *The Arizona Daily Star*, March 12, 1971, p. 12. “Free Trip To Mexico Follows Jail Mixup,” *Tucson Daily Citizen*, March 11, 1971, p. 13.



charge of poor medical treatment, but only among federal prisoners.” As Barr explained it was not within the jurisdiction of the county to transport those prisoners to the hospital and “the lack of speedy treatment for them may be due to poor communication with federal authorities.”<sup>489</sup> Despite the overcrowding, escape, and the brief hunger strike, the acting sheriff still deemed the jail “way ahead of any other jail in the Southwest” several months later.<sup>490</sup>

Overcrowded conditions brought inspections and calls for reform. In February 1972, a team of “specialists,” including representatives from the Washington State Bureau of Corrections, the U.S. Bureau of Prisons, and architects from the National Clearing House of Programming and Architecture, deemed the jail “inadequate.” Following Sheriff William Cox’s request, the team had been sent by the Arizona Justice Planning Agency. The Agency had been created by Executive Order in 1968 by Arizona Governor Jack Williams to implement two major federal laws passed that year.<sup>491</sup> The team reported the “jail was inadequate from the time it was built seven years ago; not able to handle more than 100 prisoners humanely.” The jail then had more than 300 people.<sup>492</sup> Two weeks later, Superior Court Judge Lee Garrett demanded an immediate

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<sup>489</sup> “Weekly Meetings Due: Hunger Strike At Jail Short-Lived,” *Tucson Daily Citizen*, November 2, 1971, p. 5.

<sup>490</sup> James Kiser, “Pima Jail Termed ‘Way Ahead’ Of Others In Southwest,” *The Arizona Daily Star*, November 6, 1971, p. 19.

<sup>491</sup> The two laws were the Omnibus Crime Control and Safe Streets Act of 1968 and the Juvenile Delinquency Prevention and Control Act of 1968. *Executive Order 68-3: Creating the Arizona State Justice Planning Agency*, Arizona Executive Orders, State of Arizona Research Library, p. 2. As historian Elizabeth Hinton notes, “States began to create criminal justice planning agencies on their own shortly after the start of the crime war in 1965, and by February 1968, half of the states had implemented such bodies.” Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Boston: Harvard University Press, 2016), 143.

investigation into alleged brutal beatings and sexual assaults of prisoners at the county jail.<sup>493</sup> The need for a new facility to relieve overcrowding was blamed on the federal government. As Board Chairman Jim Murphy stated, “They (the federal government) are forcing us to build a larger facility when no other county is forced to share the obligation.” According to Murphy, no other “Arizona county houses an average 150 federal prisoners as long as Pima County does.” Yet, unhappiness with the contract seemed to go both ways. As U.S. Attorney William Smitherman retorted, the Board “has been threatening to throw us out of the jail, but that wouldn’t bother me a bit. We pay them \$286,000 a year to house our prisoners and we get about 15 cents worth of service.” Smitherman relayed the experiences of federal prisoners at the county jail. He stated that prisoners get “beat up and raped in there. One of our prisoners gets beaten up, the FBI goes over and asks for an investigation and there’s no one there who will investigate this.”<sup>494</sup>

At the same time, Sheriff Cox continued calls for a new jail. Under the federal Justice Planning Agency, a study was conducted into jail conditions at Pima County. At a conference releasing the results of the study, Cox claimed, “An entirely new jail is the only solution.” The study, while praising Cox for efforts made to correct current issues, blamed the jail’s construction. A correctional programs advisor with the Bureau of Prisons stated in the study that the jail was a “monstrosity of design, impossible to

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<sup>492</sup> “Probers criticize Pima County Jail,” *Tucson Daily Citizen*, February 4, 1972, p. 3.

<sup>493</sup> Nicki Donahue, “Judge Garrett to demand probe of jail assaults,” *Tucson Daily Citizen*, February 18, 1972, p. 31.

<sup>494</sup> “Supervisors Considering Building New County Jail,” *The Arizona Daily Star*, March 31, 1972, p. 12.

adequately supervise.” According to the advisor, the jail was completed with the “assistance of the Southern Steel Corporation and a local architect who apparently had never seen a jail before.” One recommendation made by the report was to house “illegal aliens, misdemeanor suspects, and ‘selected sentenced prisoners’” in the city jail annex. Cox saw only one option, “The new jail would be a regional facility that would also house federal prisoners from Pima, Santa Cruz, and Cochise counties.” Cox thought there was a “good possibility” federal funding would pay some of the estimated cost which was “in the millions.”<sup>495</sup>

A week later, the Board of Supervisors gave Cox approval to apply for a grant to study the feasibility of building a new jail. Additionally, the Board considered an idea to cut the jail population in half by dropping the contracts with the city and the federal government. Federal prisoners were a unique point of contention. As Chairman Jim Murphy noted, “Our county jail is the only one in the state that houses federal prisoners.” According to Murphy, there would be no reason federal prisoners could not be sent to Florence to await trial so that local taxpayers did not have to pay the bills.<sup>496</sup> However, Sheriff William Cox did not think such a proposal would solve all the problems and specifically noted the \$5.25 per diem rate the County received for federal prisoners. Cox stated that the County received about \$300,000 a year to house federal prisoners and “last year received \$89,000 from the city and about \$22,000 from the Border Patrol to house their prisoners.”<sup>497</sup> In a more immediate move, a week later 35 prisoners were moved to

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<sup>495</sup> John Rawlinson, “Experts Criticize Present Facility: New Jail Sought By Sheriff,” *The Arizona Daily Star*, March 22, 1972, p. 1.

<sup>496</sup> “Sheriff Cox asks study of county jail,” *Tucson Daily Citizen*, March 30, 1972, p. 6.

the county jail facility in Ajo to relieve overcrowding. As the sheriff's information officer noted, "We've had over 400 prisoners here (in Tucson) all week."<sup>498</sup> Several days later, of the 400 prisoners still held at the county jail, 160 were federal prisoners.<sup>499</sup>

The next month, the Board met with federal officials to discuss removing federal prisoners from the county jail at a time when they made up "almost 50 per cent of the 400 inmates" being held at the jail.<sup>500</sup> Negotiations between federal and county officials were tense. Threats were exchanged at a meeting in April 1972. When the County supervisors threatened not to renew the contract to house federal prisoners in the county jail after the July 1 expiration date, Smitherman asked for as much notice as possible if this course of action was taken and then said he would ask the Law Enforcement Assistance Administration (LEAA) "to take a hard look at the \$500,000 bloc money" granted to local law enforcement agencies. This not-so-thinly veiled threat was significant as the LEAA dispersed substantial funds at that time. In fact, as historian Elizabeth Hinton has pointed out, the LEAA was the fastest-growing federal agency in the 1970s, where its budget grew from \$10 million in 1965 to \$850 by 1973.<sup>501</sup> Block grants were a large

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<sup>497</sup> Ben Mac Nitt, "Plan Weighed To Cut Jail Population In Half," *The Arizona Daily Star*, March 25, 1972, p. 21.

<sup>498</sup> "Jail here full: 35 prisoners moved to Ajo," *Tucson Daily Citizen*, April 1, 1972, p. 12.

<sup>499</sup> "County Jail patrolled after inmate beatings," *Tucson Daily Citizen*, April 6, 1972, p. 29.

<sup>500</sup> "County And U.S. Aides To Meet On Jail Crowding," *The Arizona Daily Star*, April 5, 1972, p. B-1.

<sup>501</sup> As Hinton notes, "When the LEAA was finally disbanded in 1981, during Reagan's first year in office, it had funded roughly 80,000 crime control projects and awarded 155,270 grants amounting to nearly \$10 billion in taxpayer dollars – roughly \$25 billion in today's dollars. No less than three out of every four dollars the LEAA dispersed during its fifteen-year life span went to police operations..." Hinton, *From the War on Poverty to the War on Crime*, 2.

component. As Hinton explains, “Federal policymakers used block grants to empower state planning agencies to develop their own path for the War on Crime by funding local projects and programs of their choice... In order to be eligible for LEAA grants, governors had six months to organize local and law enforcement officials to craft a criminal justice improvement plan. Once the LEAA reviewed plans... each state received a grant of at least \$100,000 with additional funds available based on their population.”<sup>502</sup> If Smitherman’s threat materialized, the County could stand to lose hundreds of thousands of dollars in federal block grant money.

As the back-and-forth went on, more immediate action was taken to attempt to alleviate the overcrowding at the county jail. The U.S. Marshal said he would attempt to transfer about 40 or 50 federal prisoners to other federal institutions leaving about 100 federal prisoners at the jail.<sup>503</sup> Days later, federal officials moved 31 prisoners from the county jail to facilities in Bisbee, Prescott, and Florence.<sup>504</sup> But county officials were not the only ones raising red flags about the conditions at the jail. As federal officials met with the Board of Supervisors about housing federal prisoners, the city of Tucson, too, objected to the conditions faced by their prisoners. As Mayor Lewis Murphy noted, “The revolting inhumane conditions that I know exist there are intolerable in terms of the city’s

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<sup>502</sup> Hinton, *From the War on Poverty to the War on Crime*, 143.

<sup>503</sup> Jacklyn Becker, “County Jail Called Too Crowded For U.S. Inmates,” *The Arizona Daily Star*, April 8, 1972, p. 1. “County, U.S. at odds over jail facility,” *Tucson Daily Citizen*, April 7, 1972, p. 8.

<sup>504</sup> Ben MacNitt, “Grand Jury To Review Jail Probe,” *The Arizona Daily Star*, April 13, 1972, p. B-1.

responsibility to the accused person. I want to get our city prisoners out of the county facility.”<sup>505</sup>

Weeks later, overcrowded conditions continued to draw warnings about trouble brewing. “It’s an above-ground dungeon. It was intended to be a humane institution, but that’s not the way it turned out,” stated one of the original planners of the jail. The jail was deemed “an invitation to mayhem” and a place that appears a “little better than an 18th-century madhouse,” where you have “all the ingredients for a riot.”<sup>506</sup> At the same time, drugs and alcohol arrests were held responsible for the overcrowding. A deputy commander at the jail estimated that “80 per cent of the county and federal prisoners are brought in on drug charges or drug-related offenses.” Officials seemed bewildered at drug related arrests rising since the 1960s. Pete Rubi, a supervisor at that time, stated, “Nobody figured then that we’d have a rash of drug prisoners. We had only a few federal prisoners, wetbacks, detained for a few days and then sent to the federal youth camp on Mt. Lemmon.” Dennis Weaver, another supervisor, noted, “Marijuana came into use, and the government has swamped us with federal prisoners.” Still, noncitizens were referenced as continuing to be a part of the problem of the jail population. Of the 150 federal prisoners in total, about “20 of them are Mexicans illegally entering the United States, and they are detained only two or three days.” Objections continued to be raised. Supervisor Thomas Jay insisted, “I think a county jail should be a county jail, and not a regional prison.”<sup>507</sup> Yet, an editorial in the *Tucson Daily Citizen* challenged the

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<sup>505</sup> Pam Engebretson, “Mayor labels jail ‘inhumane,’” *Tucson Daily Citizen*, April 7, 1972, p. 6.

<sup>506</sup> John Winters, “Overcrowded jail is asking for trouble,” *Tucson Daily Citizen*, April 19, 1972, p. 1.

contention of one supervisor that “drug offenses were virtually unheard of in 1965 when the jail opened.” The editorial stated, “A check on *Citizen* files shows that drug arrests in Pima County were increasing rapidly as long ago as 1953” and insisted, “The jail no longer is adequate or even up-to-date. It hasn’t been for years. It’s becoming more and more obvious that the jail was ill-conceived, improperly used by too many governments and carelessly supervised for too many years.”<sup>508</sup> Perhaps jurisdictional overlaps had created too many complications.

The time had come for one government to take over. In late April 1972, the Board of Supervisors gave formal notice to the city and the federal government that contracts would be terminated unless there was a solution to the overcrowding. At that point, the average county jail population averaged “slightly under 400” people with about 50 city prisoners and 150 federal prisoners. Excluding all other prisoners would mean the population would come within capacity. Chairman Jim Murphy wanted city and county officials to come together to apply for federal funds jointly to solve the “detention and correctional problems.”<sup>509</sup> Several days later, the Bureau of Prisons stated they would move between “80 and 100 federal prisoners” out of the Pima County jail. Federal officials insisted they would also try to “reduce the time remaining federal prisoners spend in jail from an average of 40 days to 20 days.” The prisoners removed from the jail would be transferred to Florence which will “not be enlarged, but more beds and other

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<sup>507</sup> “Drug, alcohol arrests crowd jail,” *Tucson Daily Citizen*, April 19, 1972, p. 14.

<sup>508</sup> “Beatings, rapes: Who’s responsible for jail fiasco,” editorial, *Tucson Daily Citizen*, April 20, 1972, p. 30.

<sup>509</sup> “County Sending City And U.S. Conditional Jail Eviction Note,” *The Arizona Daily Star*, April 27, 1972, p. B-1.

essential items will be provided,” according to a federal official. Supervisor Thomas Jay noted that while the government was not yet “off the hook,” now the “door has been left open for the continuation of a county-federal jail contract.” In fact, as for the County to formally notify the federal government that the contract may be terminated, Murphy stated, “I don’t know that it is necessary now.”<sup>510</sup>

Various attempts were then made to ease the overcrowding all of which involved the use of additional facilities and none of which attempted to even mention underlying causes of the overcrowding. In May 1972, for example, federal and city officials considered reopening the old city jail farm, on Silverbell Road about one mile north of Grant Road near the west bank of the Santa Cruz River, to house both city and federal prisoners.<sup>511</sup> Meanwhile, federal officials had begun to transfer 80 to 100 federal prisoners “to ease the pressure,” where the majority would go to Florence. Mayor Lewis Murphy believed overcrowding would get worse in the future specifically because of immigration prisoners noting the “federal government’s stepped up control-and-arrest program” along the Mexican border from Texas to California.<sup>512</sup> This correlates to a time when distinctions between drug arrests and immigration enforcement in the U.S.-Mexico borderlands was starting to blur. As historian Kelly Lytle Hernández has pointed out, “By

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<sup>510</sup> Ben MacNitt, “U.S. Will Relieve Crowding At Jail,” *The Arizona Daily Star*, May 5, 1972, p. B-1.

<sup>511</sup> A bond program in 1958 authorized for \$73,000 to double the capacity of the annex to about 250 prisoners by 1960 to relieve overcrowding. “Dignitaries To Dedicate New Rural Hoosegow,” *Tucson Daily Citizen*, June 8, 1960, p. 30.

<sup>512</sup> “Jail farm may be used to ease overcrowding,” *Tucson Daily Citizen*, May 5, 1972, p. 1. Associated Press, “Tucson considers jail farm for city and U.S. prisoners,” *The Arizona Republic*, May 6, 1972, p. 23.



the early 1970s, U.S. Border Patrol officers reported that the line between drug interdiction and migration control had become almost too difficult to decipher as it became increasingly difficult to distinguish between illegal immigrants and drug smugglers.”<sup>513</sup> Reopening the old city jail annex would then relieve overcrowding in the county jail but it was believed this would be only “a temporary measure.” The annex would be used primarily for those accused of misdemeanors, including federal, county, and city prisoners.<sup>514</sup>

The City of Tucson, in particular, was keenly interested in seeing the reopening take place. In early 1971, the city had requested Post Auditor Mrs. Irene F. Curry to examine options to move away from housing city prisoners in the county jail due to expensive procedures and faulty record keeping by the County. According to Curry, since most of the city prisoners were “drunks,” the 118-acre jail farm would provide an ideal solution. Curry noted, “Rehabilitation and detoxification could be accomplished for many of these prisoners through hard and healthy labor on the prison farm” where prisoners would raise crops, chickens, cows, and sheep. Roger O’Mara, the city manager, further noted, “Revenues from the farm products could very well make the jail annex self-sufficient,” although he acknowledged that this option might involve “some legal problems.”<sup>515</sup> Regardless, by the next year, Pima County revenues were used to restore

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<sup>513</sup> Lytle Hernández, *Migra!*, 213.

<sup>514</sup> Cheri Cross, “City-county study: Old city jail annex reopening discussed,” *Tucson Daily Citizen*, May 16, 1972, p. 27. Keith Carew, “Payment at issue: City, county clash on jail,” *Tucson Daily Citizen*, May 17, 1972, p. 8. “City okays jail proposal, but county delays action,” *Tucson Daily Citizen*, May 23, 1972, p. 25.

<sup>515</sup> Al Bradshaw, Jr., “City Weighing Reopening of Jail and Farm,” *The Arizona Daily Star*, March 17, 1971, p. 1. County jails files were found missing after grand jury investigations and

the farm. “The barracks-style facility, surrounded by chain-link fences topped by barbed wire, is being rehabilitated with \$30,000 of county money,” noted one news article.<sup>516</sup> At the end of May 1972, after some initial hesitation from the Board of Supervisors, a deal was eventually reached between the county and the city to reopen the old jail annex to relieve overcrowding.<sup>517</sup>

While those jail farm negotiations were taking place, the per diem price for federal prisoners increased in June 1972 from \$5.25 to \$8.50 because of “rising costs involved in the keeping of prisoners.” The County anticipated “no difficulties” with the Bureau of Prisons accepting the new rate.<sup>518</sup> Along with this new “maintenance increase,” there would be a limit on the total number of federal prisoners allowed to be admitted to the county jail. Per the agreement, no federal prisoners would be accepted when the prison population reaches 275 at the jail and 125 at the soon-to-be-opened city farm jail.<sup>519</sup> At the same time, Judge Lee Garrett was again calling attention to conditions at the county jail. Garrett stated, “I have had complaints of cases where seriously injured or

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eventually led to agreements between the sheriff and reporters for access to information previously denied them. “More Files Are Missing From Jail,” *The Arizona Daily Star*, July 19, 1972, p. B-1. Ben MacNitt, “Sheriff, Star Near Agreement On Jail Records,” *The Arizona Daily Star*, August 11, 1972, p. 1.

<sup>516</sup> Bob Thomas, “Just 10 years old, Pima jail is already jammed,” *The Arizona Republic*, August 3, 1972, p. 29.

<sup>517</sup> Ben MacNitt, “City, County Work Out Jail Pact,” *The Arizona Daily Star*, May 20, 1972, p. B-1. “Supervisors Balk At Jail Proposal; Decision Put Off Till Wednesday,” *The Arizona Daily Star*, May 23, 1972, p. 7. Jacklyn Becker, “Jail-Annex Deal Wins Approval Of Supervisors,” *The Arizona Daily Star*, May 27, 1972, p. 1.

<sup>518</sup> “U.S. said ready for jail rate hike,” *Tucson Daily Citizen*, June 7, 1972, p. 16.

<sup>519</sup> “Inmate cost at Pima jail going up,” *Tucson Daily Citizen*, June 30, 1972, p. 16. Bob Thomas, “Just 10 years old, Pima jail is already jammed,” *The Arizona Republic*, August 3, 1972, p. 29.

ill prisoners went unattended for as long as eight days although they begged for medical care. Other judges also report such cases. It's a terrible situation."<sup>520</sup> A year earlier, the Pima County Health Department had requested Sheriff Burr to "correct health deficiencies" at the jail. The letter from the Health Department stated the jail was "overcrowded and there is an insufficient supply of bedding. Mattresses are not in good repair and there are no covers. Blankets are not clean nor are they disinfected daily. A few inmates do not have blankets or mattresses." One guard had stated that "week-old bread is served to the inmates." Moreover, cockroaches were sometimes in some jail tanks, and floors, walls, ceilings, toilets, and washbowls are "not cleaned regularly." At the time of the investigation, one urinal had been blocked and a toilet in another tank was not operating properly. Despite these conditions, the letter noted that the "overall construction of the jail was satisfactory."<sup>521</sup> Sheriff Burr blasted the report as "lacking all the facts." According to Burr, the Health Department "talked only to the prisoners. They're not going to give any establishment a good name." He did not account for the details of the report that could have been ascertained without prisoner testimonials.<sup>522</sup>

By October 1972, a newly renovated jail annex was opened at 3100 N. Silverbell Road to house minimum security prisoners. The annex would "house only inmates jailed on misdemeanor charges, all trustees and federal immigration detainees." However,

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<sup>520</sup> Nicki Donahue, "Judge blasts medical care of jail inmates," *Tucson Daily Citizen*, June 21, 1972, p. 4.

<sup>521</sup> "Inspector Notes Health Problems In County Jail," *The Arizona Daily Star*, March 18, 1971, p. 1, p. 5.

<sup>522</sup> "Burr Says Pima Jail Survey Report Lacks All Facts," *The Arizona Daily Star*, March 19, 1971, p. 13.

Sheriff Cox emphasized the annex was “only a stopgap measure” while the County looked at “long-range plans to enlarge jail facilities.”<sup>523</sup> Security standards perhaps remained less tight. In June 1973, for instance, three federal prisoners to be deported after their prison terms escaped through an open air vent. Others were preparing to follow before the opening was discovered by deputies.<sup>524</sup> The next year, the federal prisoner rate increased from \$8.50 to \$9.50, which was expected to “add \$35,000 each year to jail funds.” At that time, of the average 250 jail population, nearly half, about 110, were federal prisoners. The jail commander, Earl Rowe, planned to use the money to buy “light green jumpsuits, 15 color televisions and athletic equipment” in addition to electric shavers available to all of the male and female inmates at the jail. As Rowe noted, “It’s part of our rehabilitation program. After all, you can’t rehabilitate a man until he’s in jail.” Chief Deputy Lee B. Pitzer echoed the sentiment, “These additions are designed to make life a little easier for the inmates.”<sup>525</sup> The next year, amidst lawsuits from prisoners asking for more showers, reading materials, clean clothing, and bedding,” the Board of Supervisors inquired from Sheriff Cox on the progress of his year-long jail improvement program. Cox responded that “the majority of the recommendations have been implemented.”<sup>526</sup> However, not all was well inside the jail and transfers were coming. A

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<sup>523</sup> “Jail annex ready to open,” *Tucson Daily Citizen*, October 28, 1972, p. 6.

<sup>524</sup> The three men were identified as Jose G. Garcia (120-day sentence), Juan Mesa (90-day sentence), and Manuel R. Ortega (90-day sentence), all sentenced for “illegal entry into the United States from Mexico.” “3 Prisoners Escape From County Jail,” *The Arizona Daily Star*, June 7, 1973, p. 13.

<sup>525</sup> “With federal OK: New equipment planned for jail,” *Tucson Daily Citizen*, September 28, 1973, p. 4.

<sup>526</sup> Thomas P. Lee, “Supervisors ask sheriff if jail is being improved,” *Tucson Daily Citizen*, June 1, 1974, p. 2.

month after Cox's response, there were two further disturbances in the jail's C Tank. In a purported attempt to alleviate overcrowding, twenty prisoners, half of those coming from the C Tank, were moved to the Maricopa County jail.<sup>527</sup> The Public Defender's office filed a lawsuit arguing these prisoners were denied access to attorneys because of the transfer to Phoenix and asked they be returned to the Pima County jail. Sheriff's deputies maintained the move was "to prevent violence in the jail here and relieve overcrowding."<sup>528</sup> Despite continued per diem increases for federal prisoners housed at the county jail (about half the population on average) that continued to bring in federal income, overcrowded conditions remained.

Yet, by the next year, overcrowded conditions remained, and conditions were ripe for another increase in per diem rates. In March 1975, an editorial in the *Tucson Daily Citizen* stated, "It is a fact that Pima County needs a bigger jail." Despite reports of "beatings, rapes, and unhealthy conditions – all of which are intensified, and probably often caused, by the overcrowding," the "most important" issue was the "effect on the crime rate." The editorial argued overcrowding would mean more people would be released. In the end, the onus was on the public. "The county jail, admittedly, is not a glamor issue and is one voters no doubt would rather not have to think about. However, they are being forced to face the problem as crime grows more and more threatening," the

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<sup>527</sup> Betty Beard, "20 County Inmates Sent to Phoenix," *The Arizona Daily Star*, July 17, 1974, p. B-1.

<sup>528</sup> "Sheriff Sued Over Inmates' Legal Rights," *The Arizona Daily Star*, July 20, 1974, p. 2. The suit was filed by Pima County Public Defender John M. Neis and Chief Deputy Public Defender William H. Callaway. The 20 plaintiffs were identified as: Kenneth L. Cotton, David Curia, Carlos M. Espinosa, Thomas W. Fimbres, Jerry L. Glaze, Charles Henry, Delbert R. Henry, George L. Sayre, Larry W. Scott, Richard L. Sisk, Keith W. Thompson, Michael J. Venezia, Robert W. White, Spencer Watson, Eddie L. Wilson and Carl M. Delane.

editorial argued.<sup>529</sup> In April, the jail was so overcrowded that federal prisoners were turned away and not for the first time. In that instance, officials had turned away women prisoners because the 35-bed women's dorm was full with three women sleeping on mattresses on the floor. Federal officials kept several others at the Santa Cruz County jail in Nogales while refusing to give a concrete number of how many were turned away. As the U.S. marshal put it, "We don't discuss our problems with the press." Sheriff Cox continued to lament, "There is no relief in sight for the packed jail."<sup>530</sup>

Nevertheless, such fatalism would hardly address overcrowding issues. A Pima County supervisor suggested either an increase in the amount charged to the federal government for housing its prisoners or the building of a new federal prison in Tucson as ways to ease the overcrowding.<sup>531</sup> Questions of who would pay for a new facility dominated discussions among County officials as attempts were made to raise the federal \$9.50 per diem rate.<sup>532</sup> In June 1975, the Board of Supervisors set aside \$150,000 for designing a detention facility while anticipating a possible \$10 million bond for a new jail. Meanwhile, Sheriff Cox wanted to increase the federal prisoner rate to \$25 per prisoner per day although actual costs were "about \$18.50." The higher cost of housing federal prisoners, then accounting for 25 percent of the jail population, would go toward

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<sup>529</sup> "Find a way to enlarge jail... end easy outs," editorial, *Tucson Daily Citizen*, March 31, 1975, p. 21.

<sup>530</sup> Betty Beard, "Crowded Jail Turning Away Some U.S. Prisoners," *The Arizona Daily Star*, April 16, 1975, p. 1. The article noted a study in 1973 by Man-Ser, Inc., of Lake Havasu that had stated the jail was "little more than a warehouse" and there was a need for a new 400-inmate jail.

<sup>531</sup> Thomas P. Lee, "New federal jail suggested," *Tucson Daily Citizen*, March 22, 1975, p. 9.

<sup>532</sup> Thomas P. Lee, "New jail to be asked; funding is problem," *Tucson Daily Citizen*, May 29, 1975, p. 25.

paying for a new jail, which was estimated to cost more than \$10 million.<sup>533</sup> Cox wanted federal officials to build a regional jail in Tucson to reduce the federal prisoner population but was not hopeful that this would happen. “The federal people tell us that if they build one in the Southwest, it will be in El Centro (California) because of the large number of federal prisoners they say they handle over there,” Cox explained.<sup>534</sup> But that did not prevent County officials from soliciting the regional prison. Several months later, the County filed a \$6-million grant approved by the Arizona Regional Justice Planning Agency to pay for the majority of a new 600-bed regional jail. If approved, the public would be off the hook as the \$10 million bond issue would become a moot point.

In the soliciting process, the County sought to establish their unique position among jailors in the Southwest because of the housing of federal prisoners. “We’re telling the federal government that we know of no other situation like Pima County in the Southwest or the rest of the United States. This is why we think the federal government should be involved in helping us build a jail. We’re just too cramped as it is,” Cox argued.<sup>535</sup> At the same time, negotiations continued for an increase in the per diem rate. Ultimately, such negotiations proved fruitful. In October 1975, the federal government agreed to a rate of \$21 per federal prisoner per day. Federal prisoners then made up about a third of the jail’s population. The finance director estimated that the County “will

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<sup>533</sup> “County To Study New Jail, Raise Fees,” *The Arizona Daily Star*, June 20, 1975, p. 15. While charging federal prisoners brought in by the U.S. marshal, the U.S. Border Patrol, and the U.S. Immigration Service at \$25 a day, city prisoners would be assessed at \$18.50 under the new charges.

<sup>534</sup> Thomas P. Lee, “Jail design funds slated,” *Tucson Daily Citizen*, June 20, 1975, p. 29.

<sup>535</sup> Thomas P. Lee, “Funding for jail sought,” *Tucson Daily Citizen*, September 5, 1975, p. 31.

collect an additional \$800,000 to \$1 million a year in increased payments for prisoners.”<sup>536</sup> The jail was remodeled at the end of 1975, expanding the capacity from 254 to 318. However, this was not deemed a permanent fix. As one news article put it, “the growth of the prisoner population will probably quickly outstrip it.” In December 1975, there were about 290 people in the jail including 43 federal prisoners. During the remodeling, another 50 federal prisoners were held in Nogales, Phoenix and other county jails in Southern Arizona.<sup>537</sup>

Despite the remodeling, dismal conditions remained. The next year, two people held at the jail set their mattresses on fire because they had “not received a change of clothing for at least two weeks.” While admitting the men “had a legitimate complaint,” a representative from the sheriff’s department nevertheless stated, “they were using the clothing delay as an excuse to cause trouble.”<sup>538</sup> At the same time, 18-year-old Jose Manuel Aguirre had been held at the Pima County jail for 33 days without charges against him. Apparently, Aguirre was held to be a material witness in an investigation of a deputy who arrested and later assaulted him. That deputy had handcuffed an injured Aguirre and transported him to the hospital in the trunk of his patrol car. Aguirre was

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<sup>536</sup> “Pima jail payments raised,” *Tucson Daily Citizen*, October 30, 1975, p. 33. The previous rate of \$8.50 was called an “absurd” bargain by one news editorial. It also mocked Sheriff Cox for his math in estimating savings by cutting meal costs. As the editorial noted, “Sheriff W. Coy Cox has discovered, not surprisingly, that serving county jail inmates a sandwich and a cup of Kool-Aid for lunch every day does not cost the county the \$60,000 a year he thought it did when he stopped serving the lunches in July.” The actual savings were “about \$20,000.” “New Jail Math,” editorial, *The Arizona Daily Star*, September 13, 1975, p. 50.

<sup>537</sup> John Young, “Remodeled Jail Expected To Be Filled,” *The Arizona Daily Star*, December 26, 1975, p. B-1.

<sup>538</sup> Danny White, “Jail Fires Blamed On Laundry Delay,” *The Arizona Daily Star*, April 13, 1976, p. 7.



treated, released, and charged for assaulting the police officer. Although the charges were dismissed the next day, Aguirre was “still in jail as a federal prisoner on charges of violating immigration laws.” The head of the local immigration office denied allegations that Aguirre had been held that long without charges being filed for financial reasons. As the official put it, “I would never leave a prisoner in there for a month at \$21 a day.”<sup>539</sup> Five months later, there were 470 people housed in the jail as investigations into beatings and suicides “re-focused public and official attention” on the facility. The Board of Supervisors indicated that instead of acceding to Cox’s recommendation of a new jail facility, most of them would “like to see the sheriff get out of the jail business.”<sup>540</sup> This would prove to be wishful thinking.

Overcrowding also continued into the 1970s in Maricopa County. Four years after the new county jail was built, it was beyond capacity. One deputy indicated the situation was approaching a “critical” point. Sheriff’s deputies attributed the conditions to the “rising crime rate, the increase in population and higher bonds for criminal suspects.”<sup>541</sup> Yet, purportedly increasing crime rates were hardly a new phenomenon. As scholar Mona Lynch argues, “although Arizona did experience a crime bump during the 1960s and 1970s, the state had experienced a relatively high crime rate throughout its history (especially theft-related crime), so it was not a new concern within the polity. Arizona

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<sup>539</sup> “Deputy Hauled Alien In Trunk, Witness Says,” *The Arizona Daily Star*, February 7, 1976, p. 1. “Man Held Without Charges,” *The Arizona Daily Star*, March 13, 1976, p. 1.

<sup>540</sup> Vikki Porter, “Most Supervisors Would Remove Jail Duties From Sheriff’s Office,” *The Arizona Daily Star*, September 27, 1976, p. 1.

<sup>541</sup> “4-year-old jail crowded, addition may be needed,” *The Arizona Republic*, September 24, 1970, p. 27.

also experienced a population bump over the same period, so even to maintain the same rate of incarceration that had hovered around 100 per 100,000 citizens in the 1960s and early 1970s, the capacity of the system would still have had to increase.”<sup>542</sup> Perhaps planning ahead, the new Maricopa County jail was constructed so a two-story addition could be included at a later date. The jail addition would reportedly cost the county \$1.5 million.<sup>543</sup> But financial help was available. A few months later, the County was considering a \$225,000 federal grant from the LEAA to expand its jail facilities, which are “now bursting prisoner capacity.” At that point, a total of 701 prisoners were housed at the jail. A sheriff’s official noted that the jail is “filled to capacity at all times now.”<sup>544</sup>

Two years later, Maricopa County signed a new contract with the federal government for housing federal prisoners after abstaining for a decade. The price was now \$8.50 per federal prisoner per day for up to 50 prisoners as space allowed. According to U.S. marshal Pat Madrid, the contract would save the federal government thousands of dollars a year. As Madrid states, “We have been using the Federal Detention Center at Florence for the bulk of our prisoners since 1961. By using the county jail—only four blocks from the federal court building—we’ll save countless man-hours and expense involved in transporting these prisoners to and from court appearances.”<sup>545</sup> Yet, the

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<sup>542</sup> Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford: Stanford University Press, 2010), 112.

<sup>543</sup> “4-year-old jail crowded, addition may be needed,” *The Arizona Republic*, September 24, 1970, p. 27.

<sup>544</sup> “Federal funds available: County plans expansion of jail,” *The Arizona Republic*, February 18, 1971, p. 10.

<sup>545</sup> “U.S. begins housing prisoners in county jail,” *The Arizona Republic*, March 6, 1973, p. 25.

conditions had hardly changed since the last time the county jail housed federal prisoners. The year after federal prisoners returned, protests again erupted at the jail. In September 1974, two fires were set to mattresses, paper, and bedclothes. There were disagreements about the grievances that caused the protests. While some deputies reported that the prisoners were protesting the “midnight curfew on television watching,” others attributed “part of the problem” to overcrowding. Either way, at the time of the protests, there were “about 700, almost 100 more than the building was designed to hold.”<sup>546</sup>

In 1976, the Bureau of Prisons sought to build a detention center in Tucson or Phoenix modeled after their new high-rise facility in San Diego. The San Diego facility was apparently “so plush that it has been called a Hilton hotel.” Yet, opponents had a different take. As one news article noted, “Critics of the center call it the ‘Tijuana Hilton’ or the ‘Hotel Mexicano’ because more than half the inmates are illegal aliens reportedly living better than they do at home in Mexico.” The executive assistant to the director of the federal bureau, Joseph B. Bogan, stated that the center and two others in Chicago and New York are “humane, but not what we consider luxurious.” Bogan noted that the Bureau’s objective was to “provide an environment for our prisoners that is humane, one that would minimize corrosive or detrimental acts by inmates.” After all, as Bogan stated, those awaiting deportation or trial are “presumed innocent until proven guilty.” Bogan’s words presumably indicate the official policy of humane administration was still in place. Meanwhile, the proposed facility in Arizona was to house 400 prisoners. Congress was asked to appropriate \$2.7 million for site acquisition, preparation, and preliminary

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<sup>546</sup> “Inmates at jail again set fires in TV protest,” *The Arizona Republic*, September 30, 1974, p. 1.

architectural work. If approved, construction money would be sought the next year and building would begin in 1978.<sup>547</sup>

Yet, there were some objections raised. For one, it was argued that a federal prison would not be a permanent fix to the overcrowding issue. As the head of corrections at the Sheriff's Department in Pima County noted, "Although about one third of Pima County's prisoners are federal, the problem of overcrowding would be eased only temporarily."<sup>548</sup> For another, federal money coming in would be lost. As an editorial in *The Arizona Daily Star* noted, "The county already stands to lose more than \$800,000 per year it receives to detain federal prisoners. A proposed new federal prison could be built here. Part of that fee has also gone for jail improvements. A new federal facility here would reduce the county jail population by about 20 per cent."<sup>549</sup>

The prison-or-no-prison gambit continued in the late 1970s. In July 1976, federal officials declared they would build not just one but two high-rise federal prisons in both downtown Phoenix and downtown Tucson after President Ford signed the \$2.7 appropriation. Bureau of Prisons spokesman Mike Aun stated that "both cities needed a federal prison because the situation in both cities is critical." Location and aesthetics were deemed important. Each prison, called a "metropolitan correctional center," (MCC) would be 10 to 22 stories. According to Aun, "We insist on having the facility downtown.

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<sup>547</sup> Keith Carew, "Tucson could get 'plush' new federal jail," *Tucson Daily Citizen*, April 30, 1976, p. 1.

<sup>548</sup> John Young, "Remodeled Jail Expected To Be Filled," *The Arizona Daily Star*, December 26, 1975, p. B-1.

<sup>549</sup> "City Is Entitled To Inspect County Jail," comment, *The Arizona Daily Star*, July 13, 1976, p. 12.

You build them near the federal court. This cuts down on security problems.” In fact, the MCCs would be “very secure and look like office buildings.” Relieving overcrowding was the driving motivation. At that point, the Pima County jail had “about 500” people with “about 110” federal prisoners.<sup>550</sup> The BOP later explained the MCC moniker was “to acknowledge the metropolitan areas served and more importantly, to accurately reflect their functional mission: the housing of federal detainees awaiting trial, sentencing or other judicial disposition.”<sup>551</sup> Yet, less than a year later, the proposed number of prisons was again down to one and even that was stalled as officials considered putting more federal prisoners in local jails rather than building a new facility. The \$14 million request to build a federal prison had been cut by the Ford administration by May 1977. “All we’re doing is drawing back. We’re absolutely aware of the problem. We’re going to do something about it. We’re just not sure what that will be,” Aun explained. Yet, Pima County jail remained overcrowded. As Sheriff Richard Boykin put it, “I’ve got a story to tell them: I haven’t got room for anyone else.”<sup>552</sup> But it turned out to be needless anxiety as both Tucson and Phoenix were on their way to winning their carceral solicitation battles.

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<sup>550</sup> Alex Drehsler, “Downtown Site: City May Get Federal Prison,” *The Arizona Daily Star*, July 15, 1976, p. 1.

<sup>551</sup> “Metropolitan Correctional Centers,” in Departments of State, Justice, Commerce, the Judiciary, and Related Agencies Appropriations for Fiscal Year 1983, Hearings Before a Subcommittee of the Committee on Appropriations, U.S. Senate, 97<sup>th</sup> Congress, Second Session (Washington, D.C.: GPO, 1982), 339.

<sup>552</sup> Ken Burton, “\$14 million prison for Arizona stalled,” *The Arizona Daily Star*, May 21, 1977, p. B-1.

Tucson was the first to win. In February 1978, federal officials announced that plans were back on for a new federal prison in the city. All that was left was purchase of the selected 40 acres of city-owned land on Silverbell Road near the Pima County jail annex. The site had been used as a landfill and had yet to be appraised. If bought, however, federal officials planned to build a 200-bed detention center to be completed in 1980 that would be used to house federal prisoners awaiting trial, some sentenced offenders, and “illegal aliens awaiting deportation.”<sup>553</sup> The prison eventually opened in 1982. “From the outside, the federal prison on South Wilmot Road looks like an easy place to do time. The dirt yard is clean and freshly raked. The buildings are new,” a news article reported. When it opened, it was “hailed for its humane approach, its single cells with no bars, its campus-style design.” But the article continued that “iron bars have been replaced by irony” at the Metropolitan Correctional Center and the prison is “tougher on inmates than older and more notorious state prisons.” English classes were offered because “many inmates are illegal Mexican immigrants awaiting deportation.”<sup>554</sup> Immigration prisoners continued their incarceration within the prison system on the eve of a change in detention policy.

As groups of law enforcement, prison officials, and politicians battled with the troublesome state of expanding incarceration in Arizona, those subjected to the carceral state endured continuing bouts of overcrowding and dismal conditions. Their protests were put down and then purportedly alleviated with renovated, expanded, and newly-

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<sup>553</sup> Gene Nail, “Federal prison likely to be built on city’s westside in two years,” *The Arizona Daily Star*, February 22, 1978, p. 1.

<sup>554</sup> R.H. Ring, “Prison appearance is deceiving,” *The Arizona Daily Star*, May 2, 1983, p. 2.

built facilities. Among those caught in the midst of this struggle were noncitizen detainees, classified as federal prisoners and served up as income for Arizona counties. Their incarceration during a time of humane detentions questions the very core of official policy narratives and highlights the way in which policy and reality stayed disconnected. This disjunction would come to be resolved by a change in policy when detention would be premised on deterrence and the violent reality that detention had been all along would finally be coalesced with its purported policy objectives.

### **Detention for Deterrence**

In 1980, immigration enforcement policy driven by noncitizen detention took a punitive turn. Mass asylum movements in the 1960s and 1970s culminated in an immigration crisis after 1980, the year presidential power changed parties. Attempting to address the refugee crisis, Congress had passed the Refugee Act of 1980, which finally aligned federal law with United Nations protocols, particularly as it pertained to the definition of ‘refugee.’<sup>555</sup> Yet, several months later, official detention policy changed toward mass detention of nearly all potential refugees, particularly the seeming influx of Haitians. Detention was meant as deterrence. President Reagan’s Attorney General William French Smith explained, “Detention of aliens seeking asylum was necessary to discourage people like the Haitians from setting sail in the first place.”<sup>556</sup> A year later, the Justice Department was busy enthusiastically enforcing the new policy by issuing

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<sup>555</sup> *Refugee Act of 1980*, Public Law 96-212, 96th Cong. (Mar. 17, 1980).

<sup>556</sup> Stuart Taylor Jr., “Smith Sees Immigration Plan as a Means to Avert Boatlifts,” *New York Times*, October 23, 1981, quoted in Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* (Berkeley, CA: University of California Press, 2004), 7.

regulations that called for “the jailing of virtually all future illegal aliens.”<sup>557</sup> Associate Attorney General Rudolph Giuliani further explained, “This administration will firmly enforce the law. The day of just coming into this country and getting in whether you have a right to be here or not is over.”<sup>558</sup>

Those experiencing such deterrence-based detentions paid a heavy price. By May 1982, at least six Haitians had died because of inadequate care at detention facilities. Suicide attempts continued with at least nine reported cases at Krome since March of that year. Such attempts were painfully linked to inhumane detention conditions. “They are so overcrowded that they can’t even get the privacy to commit suicide,” explained Sue Sullivan, the director of the Haitian Refugee Project.<sup>559</sup> Elsewhere, INS officials tranquilized an asylum seeker from El Salvador and forced her to sign a voluntary departure form before deporting her. The asylum seeker later testified, “I felt horrible. I felt I was going to die.”<sup>560</sup> As the decade wore on, people held inside immigration prisons were beaten, drugged, strip-searched, put into solitary confinement without explanation, denied access to lawyers, deported illegally, and tortured. Rather than aberrations, such

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<sup>557</sup> Mary Thornton, “Justice to Jail New Illegal Aliens,” *The Washington Post*, July 10, 1982. The policy of detaining to deter refugees violated both international and domestic law, including the statutory right of asylum seekers to apply for asylum, the non-refoulement principle, the Refugee Act, the rights of asylum seekers under the Fifth Amendment of the U.S. Constitution, and the right not to be penalized or unnecessarily subjected to restrictions on movement under the 1967 UN Protocol. Helsinki Watch, *Detained, Denied, Deported: Asylum Seekers in the United States* (U.S. Helsinki Watch Committee: June 1989), 49-50.

<sup>558</sup> Mary Thornton, “Despite Setback, Administration Vows to Keep Illegal Aliens Out,” *The Washington Post*, July 24, 1982.

<sup>559</sup> Lee May, “Refugee Groups Deplore Haitian Centers,” *Los Angeles Times*, May 26, 1982.

<sup>560</sup> Jane Applegate, “Was Doped, Forced to Sign Papers, Refugee Says,” *Los Angeles Times*, February 5, 1986.



realities were “how the system operated.”<sup>561</sup> The 1990s continued the trend of violent detentions. A nurse at a detention center in Houston recalled how immigration officials would call people for their “interviews,” take them outside, beat them, and bring them to the clinic saying they had gotten into a fight. Jesus Abreu, an INS detainee, stated about his captors, “We are completely without protection from their reprisals, and believe you me, they are expert at causing you harm, bodily and mental. They’ll just bury you in prison forever.”<sup>562</sup> Violence had come calling.

Smith’s explicit declaration not only changed immigration enforcement priorities but also set the stage for mass, violent detentions through the 1980s and 1990s into the present. Today, the U.S. incarcerates 34,000 noncitizens a day and around 400,000 noncitizens a year with the majority subject to mandatory detention provisions.<sup>563</sup> Such mandatory detentions highlight the way in which noncitizen detention is now premised on deterrence and the breaking of the will of noncitizens fighting their cases through prolonged appeals processes. While noncitizen detainees fight back by mounting legal challenges, they continue to face grueling detention conditions that have come to have tragic results. Since authorities began keeping track in 2003, more than 170 people have died while held in immigration custody across the country. Systemically inadequate medical care seems a large culprit.<sup>564</sup> Or perhaps violence by another name. Arizona has

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<sup>561</sup> Robert Kahn, *Other People’s Blood: U.S. Immigration Prisons in the Reagan Decade* (Boulder, CO: Westview Press, 1996), 14.

<sup>562</sup> Dow, *American Gulag*, 105, 289.

<sup>563</sup> *Consolidated Appropriations Act, 2012*, Public Law 112-74, 112th Cong. (Dec. 23, 2011). Philip L. Torrey, “Rethinking Immigration’s Mandatory Detention Regime: Politics, Profit, and the Meaning of “Custody,”” *University of Michigan Journal of Law Reform* 48 (2015).

a unique role in this brutality. One hundred and twenty miles north of where Roberto was held 46 years ago is now the deadliest detention center in the nation where 15 people have died while held at the facility.<sup>565</sup> No longer maintaining the narrative of humane detentions, the detention regime today has escalated from its punitive turn in the early 1980s into a brutal and lethal expression of state power.

As this virtually unchecked state power stealthily expanded throughout the era of humane detention in the U.S. Southwest, immigration prisoners bore witness to the inhumanity that played out in front of their eyes, the inhumanity they lived within the overcrowded, dismal conditions of county jails. As overcrowding increased and jail conditions deteriorated in Arizona, sheriffs and federal officials along with state and local politicians gambled with the lives of federal prisoners in their care to bring in more revenue. They then used this federal money to expand the carceral landscape. Yet, as old facilities expanded and newer ones were built, overcrowding and inhumane conditions continued. Many federal prisoners, among whom noncitizen detainees were counted, repeatedly fought back with protests hoping to call attention to their plight and change the conditions of their confinement. In doing so, they both contested official narratives of “humane” detention and demanded their humanity. Perhaps in their reaction against being held inside aging human cages, they foresaw the violence of the future and attempted to

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<sup>564</sup> “Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention,” *Human Rights Watch*, May 8, 2017.

<sup>565</sup> U.S. Immigration and Customs Enforcement, “List of Deaths in ICE Custody, Data from 10/01/2003 to 06/05/2017,” available at <https://www.ice.gov/sites/default/files/documents/FOIA/2017/detaineedeaths-2003-2017.pdf>.

stop its advance. It was a battle they, and their future counterparts, would ultimately lose.

The calls for humanity in the era of its namesake went unheeded.

## CHAPTER 4

### VIOLENT DETENTIONS, 1981-PRESENT

#### **Introduction**

The era of “humane” detentions would end when mass asylum movements in the 1960s and 1970s culminated in a supposed immigration crisis in 1980. The perceived “crisis” anticipated later developments in the 1990s when the ending of the Cold War saw refugee movements “reframed as unprecedented in scale and chaotic in scope in order to fit with a narrowing of Western asylum space.” As migration scholar Katy Long further argues, “International actors and academics alike tend to talk about the end of the Cold War as the trigger for major changes in the nature of refugee flows, with a close to the era of widespread individual asylum. Yet while it is certainly true that the early 1990s saw a number of major refugee crises involving massive and complex patterns of flight, what the end of the Cold War altered was not the nature of refugee movement, but the nature of international response.”<sup>566</sup> In the United States, this response would involve first replacing the previous case-by-case asylum policy with a purportedly comprehensive one. In that regard, Congress passed the Refugee Act of 1980, signed into law by

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<sup>566</sup> Katy Long, *The Point of No Return: Refugees, Rights, and Repatriation* (Oxford: Oxford University Press, 2013), 105. As Long further notes, “Between 1977 and 1982, the number of refugees of concern to UNHCR rose from three to ten million. Such numbers spoke to the fact that an increasing number of refugee crises – in post-colonial African, Asian, and Latin American states – were stagnating, trapping refugees in protracted exile. This was in part because host states were reluctant to offer refugees permanent local integration, and Western donor states similarly hesitant to facilitate large-scale refugee resettlement. As a result of this impasse, from 1970 onwards, the international community moved away from trying to protect refugees from forcible returns towards encouraging ‘voluntary’ repatriation but attempts to protect this liberal value within refugee return in practice were increasingly problematic.” *Id.* at 88.

President Carter, which sought to finally align federal law with United Nations protocols from 1951 by adopting a more ideologically-neutral definition of ‘refugee.’<sup>567</sup> Only those who met the definition could be admitted into the United States.

Yet, several months later, President Reagan’s Attorney General William French Smith reintroduced de facto detentions.<sup>568</sup> However, detention would now be explicitly premised on deterrence. The era of Brownell’s policy that had purportedly moved away from de facto detentions was officially over. A Justice Department spokesman stated, “The rules say that, if illegal aliens come to this country without proper documentation, they will be detained. All we’re doing is enforcing the law, while the other administrations looked the other way... All we’re trying to do is regain control of our borders.”<sup>569</sup> Deterrence would not be effective, and the consequences would be grave. One recent work has argued that “legislators sought to remedy the failure of deterrence both through continued detention and criminalization efforts that were concerned explicitly with rendering Afro-Caribbean people as the problem. The salience of deterrence would continue with Central American asylum seekers fleeing conflict in their countries.”<sup>570</sup> The United States would show “relatively little interest” in aiding these

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<sup>567</sup> Public Law 96-212, 94 Stat. 102 (Mar. 17, 1980). Until the 1980 law, the United States limited the recognition of ‘refugees’ to those fleeing Communist or Communist-dominated countries and the Middle East.

<sup>568</sup> Stuart Taylor Jr., “Smith Sees Immigration Plan as a Means to Avert Boatlifts,” *New York Times*, October 23, 1981. Quoted in Mark Dow, *American Gulag: Inside U.S. Immigration Prisons* (Berkeley: University of California Press, 2004), 7 and T.J. Dunn, *The Militarization of the U.S.-Mexico Border, 1978-1992: Low-Intensity Conflict Doctrine Comes Home* (Austin: CMAS Books, University of Texas at Austin, 1996), 46.

<sup>569</sup> Joyce Walder, “As Others Go Free, 50 Haitians Still Detained Feel Only Despair,” *The Washington Post*, August 25, 1982, p. A2.

refugees because the vast majority were “peasant aligned with guerrilla forces looking to remove corrupt regimes propped up by the American military... In the eyes of the US, socialists could not be national liberators.”<sup>571</sup> So, once they entered the borders of the United States, they would be collectively detained instead.

The policy of detaining to deter refugees clearly violates both international and domestic law. As the U.S. Helsinki Watch Committee reported in 1989, this detention policy violated the statutory right of asylum seekers to apply for asylum, the non-refoulement principle, the Refugee Act, the rights of asylum seekers under the Fifth Amendment of the U.S. Constitution, and the right not to be penalized or unnecessarily subjected to restrictions on movement under the 1967 United Nations Protocol. The non-refoulement principle in Article 33 of the 1951 Refugee Convention, which forbids states to return a refugee to a place where their life or freedom would be threatened, is generally accepted by most legal writers as part of customary international law.<sup>572</sup> The Committee

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<sup>570</sup> Jenna M. Loyd and Alison Mountz, *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States* (Berkeley: University of California Press, 2018), 120.

<sup>571</sup> Long, *The Point of No Return*, 89. As Carl Bon Tempo argues, the refugee policy pertaining to Central Americans was “closely intertwined with Regan’s foreign policies.” According to Bon Tempo, “The Administration made little effort via Refugee Act quotas to admit Central American refugees, many of whom were fleeing repression and violence in countries allied with the United States. Yet Central American refugees were also tools to forward the Reagan foreign policy agency. Reagan consistently played up fears of a Central American refugee influx into the United States as he made the case for increased American military and economic aid to the Salvadoran government and to the Contras.” Carl J. Bon Tempo, *Americans at the Gate: The United States and Refugees during the Cold War* (Princeton: Princeton University Press, 2008), 189.

<sup>572</sup> Article 33(1) of the 1951 United Nations Convention relating to the Status of Refugees states: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” For an argument concerning the principle as customary law see Roberta Mungianu, *Frontex and Non-Refoulement: The International Responsibility of the EU* (New York: Cambridge University

also noted that the policy was inconsistent with the Universal Declaration of Human Rights and the American Convention on Human Rights both of which stated that no one shall be subjected to arbitrary arrest or detention. Moreover, the policy also went against the Executive Committee of the UNHCR's conclusion in 1986 that refugees should not be detained automatically.<sup>573</sup> The Committee recommended an end to the detention program "directed against undocumented aliens which heavily affects asylum seekers. The detention program should be restricted to its purpose before 1980: to detain only those individuals who either constitute a threat to society or are likely to abscond."<sup>574</sup>

The expansion of noncitizen detention in the 1980s onward had tragic human consequences far surpassing what had come before. As scholar Michael Welch argues, this change in enforcement policy produced Kafkaesque detentions of essentially "warehousing illegal immigrants." Despite some national trends of correctional facilities becoming "less-than-total institutions," by allowing more contact with the outside world, Welch argues that noncitizen detentions are the exception to that trend, where "detainees remain exceedingly isolated from their families, their lawyers, and the courts."<sup>575</sup>

Between the frequent transfers, the lack of legal representation, the harsh conditions of

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Press, 2016), 102. Another scholar argued a decade before that the principle is not customary international law: "Customary law is not simply a matter of words, wherever spoken and however frequently recited: custom can evolve only through interstate practice in which governments effectively agree to be bound through the medium of their conduct. This standard simply is not yet met in the case of the duty of non-refoulement." James C. Hathaway, *The Rights of Refugees under International Law* (New York: Cambridge University Press, 2005), 363.

<sup>573</sup> Helsinki Watch, *Detained, Denied, Deported: Asylum Seekers in the United States* (U.S. Helsinki Watch Committee: June 1989), 49-50.

<sup>574</sup> Helsinki Watch, *Detained, Denied, Deported*, 7.

<sup>575</sup> Michael Welch, *Detained: Immigration Laws and the Expanding I.N.S. Jail Complex* (Philadelphia: Temple University Press, 2002), 110.

confinement, deplorable living conditions, language barriers, inadequate medical care and mental health services, and brutality against detainees through physical and sexual abuse, the experience of often prolonged detentions “can be traumatic.”<sup>576</sup> Such characterizations can be seen as the devolution of the noncitizen detention regime now involving figurative death, characterized by pain, suffering, isolation, unfairness, and ultimately, injustice. Compounding this would eventually be the rise in deaths for those held inside administrative cages pending resolution of civil proceedings.

Prison building and the expansion of detention facilities were operating in full speed throughout the 1980s driven by the birth of private prison companies. In 1983, Thomas Beasley, Doctor R. Crants, and T. Don Hutto began Corrections Corporation of America (CCA, today rebranded as CoreCivic), the world’s first private prison company. CCA began operations in a county jail and juvenile detention facility in Tennessee in 1984. That year, Wackenhut Corrections Corporation (WCC) formed as a division of The Wackenhut Corporation (today known as the GEO Group). After CCA lost a bid to take over Tennessee’s entire prison system for \$250 million in 1985, the company went public the next year.<sup>577</sup> Recent scholarship has increasingly analyzed the origins and development of the private prison industry at this time. As criminologist Michael Hallett argues, the private prison industry is a reemergence of for-profit imprisonment industry that began with the post-Civil War convict lease system, which “reinscribed forced labor as a viable source of economic production.”<sup>578</sup> According to Hallett, “private prisons are

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<sup>576</sup> Welch, *Detained*, 109-127.

<sup>577</sup> Cody Mason, “Too Good to be True: Private Prisons in America,” *The Sentencing Project* (January 2012).



best understood not as the product of increasing crime rates (rates have been falling for many years), but instead as the latest chapter in a larger historical pattern of oppressive and legal discrimination aimed primarily at African American men.”<sup>579</sup> Hallett also notes that “Hispanic men also have a far higher likelihood of going to prison than do white males, though this likelihood is still lower than that for African Americans.”<sup>580</sup> Other scholars have noted the uniqueness of the private prison industry of the 1980s. As Judith Greene argues, “Private prison companies represent just one sector of the business interests that have profited greatly from the U.S. prison boom. But it is the only sector that was founded for the explicit and paramount purpose of profiting from this phenomenon, creating a financial momentum that strives to grow its market share even while a declining crime rate and a slowing economy have combined to moderate the prison population growth curve.”<sup>581</sup>

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<sup>578</sup> Michael A. Hallett, *Private Prisons in America: A Critical Race Perspective* (Urbana: University of Illinois Press, 2006), 3. According to Hallett, “The most striking thing about the reemergence of for-profit imprisonment in the United States, however, is not simply that it has reappeared, but that it should once again involve the disproportionate captivity of black men. During the two periods of U.S. history in which corrections policy facilitated private profit through imprisonment, first during the proprietary operation of the Convict Lease system and again today [since the mid-1980s], the incarceration of disproportionate numbers of African American males has been the industry’s chief source of revenue. Although the nature of prisoners’ commodity value has changed somewhat in modern times – prisoners are no longer profitable solely for their labor, but for their bodily ability to generate per diem payments for their private keepers – imprisonment for private profit is once again a viable economic industry in the United States.” *Id.*

<sup>579</sup> Hallett, *Private Prisons in America*, 9.

<sup>580</sup> Hallett, *Private Prisons in America*, 15.

<sup>581</sup> Judith Greene, “Banking on the Prison Boom,” in *Prison Profiteers: Who Makes Money from Mass Incarceration*, edited by Tara Herivel and Paul Wright (New York: The New Press, 2007), 24.

The incorporation of the private prison industry into the carceral landscape in the mid-1980s had a particular impact on noncitizen detention. As Mark Dow points out, the first two privatized prisons in the United States were noncitizen detention centers. WCC ran a facility in Aurora, Colorado and CCA had a facility in Houston, Texas. Dow explains, “When CCA was first awarded its Houston INS contract, it had not built a facility. So it locked up its first immigration prisoners in rented motel rooms and soon had its first escapes when the inmates pushed the air-conditioning units through the walls.”<sup>582</sup> Yet, the contract had been justified on economic efficiency. An INS spokesman reported that the CCA facility in Houston costs \$23.84 per person per day in 1984 whereas it averages the federal government \$30.26 per person per day at its own detention facilities.<sup>583</sup> Of course it does not hurt that CCA investors would be earning money. After all, financial gain for investors in private prison companies is “another blunt reminder of the economic forces driving correctional policy.”<sup>584</sup> As Greene argues, when state prison populations “slowed to a near halt” in the early 2000s, business was “booming for private prison companies thanks to anticipation of a rapid increase in the federal market for immigrant detention.”<sup>585</sup> The increased criminalization has led to

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<sup>582</sup> Dow, *American Gulag*, 97.

<sup>583</sup> Associated Press, “Private Firms Operate Jails: Legality Challenged,” *The Washington Post*, December 20, 1984, p. E1.

<sup>584</sup> Welch, *Detained*, 166.

<sup>585</sup> Greene, “Banking on the Prison Boom,” 24. Greene further argues that the crackdown on immigrants shares many characteristics with the war on drugs, where enforcement strategies that “were ineffective in the war on drugs are no more effective when redeployed against undocumented immigrants because the demand for immigrant workers in the United States will not be abated by supply-side tactics. But—as with the drug war—the punitive crackdown on immigrants is producing explosive growth in jail and prison capacity.” *Id.* at 25.

increased economic exploitation. As Daniel E. Martínez and Jeremy Slack argue, “Rather than merely deporting the surplus labor force in times of economic downturn, systematic criminalization and incarceration ensures that excess undocumented labor is economically exploited to its full potential before being removed. Detention facilities have become sites of capital extraction beyond the surplus value of labor, ultimately extending to the commodification of the imprisoned body, especially in its extreme form with the exponential growth of for-profit private prisons.”<sup>586</sup> This trend continues as private prison companies such as CCA continue to be awarded government contracts even despite systematic problems. In the case of CCA, there have been charges of “understaffing prisons, denying pensions to workers, abuse of inmates by prison guards, violence, and escapes. Worse still, CCA prisons have not provided adequate medical treatment to inmates and have maintained substandard prison conditions that have led to prison protests and uprisings.”<sup>587</sup> Yet, CCA remains in business.

On the downside of corporations and investors profiting economically from the incarceration of noncitizens are the human consequences. As Dow argues, “where there is no accountability, the arbitrary use of authority governs the trivial as well as the substantial. One insidious aspect of the private contractor’s relationship with the INS is that it pairs bureaucracies that are hostile to public scrutiny. The buck stops nowhere.”<sup>588</sup>

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<sup>586</sup> Daniel E. Martínez and Jeremy Slack, “What Part of ‘Illegal’ Don’t *You* Understand? The Social Consequences of Criminalizing Unauthorized Mexican Migrants in the United States,” in *The Shadow of the Wall: Violence and Migration on the U.S.-Mexico Border*, edited by Jeremy Slack, Daniel E. Martínez, and Scott Whiteford (Tucson: The University of Arizona Press, 2018), 125.

<sup>587</sup> Deepa Fernandes, *Targeted: Homeland Security and the Business of Immigration* (New York: Seven Stories Press, 2007), 194.

Within this unfettered arbitrariness, the human consequences take shape as “unjust detention of undocumented immigrants and asylum seekers who, in effect, become raw materials for the corrections business.”<sup>589</sup> However, as we have seen, they have been “raw materials” for much of the twentieth century and certainly way before the 1980s when the private prison industry entered the carceral landscape.

Yet, the decade of the 1980s provides a defining marker for understanding the transformation of noncitizen detention. It was here that policy and reality melded as both became violence. After official detention policy changed, noncitizens detentions expanded dramatically. Concurrently, the Southwest was expanding its carceral landscape to meet immigration demands. In April 1987, for example, Arizona Governor Evan Mecham signed a letter of intent to sell the state’s new prison in Yuma to the INS for \$11 million. The proceeds would be used to help build a 400-bed, medium-security prison addition in Tucson. The INS had sought the prison to relieve overcrowding at its facility in El Centro, California.<sup>590</sup> Of course, counties were still in the business of raising revenue through housing federal prisoners. In June 1987, for instance, Val Verde County in Texas expected a \$300,000 shortfall and looked to the county jail for more revenue. The new Immigration Reform and Control Act (IRCA) was held to blame for the “dramatic decrease” in their jail population, which decreased revenue paid by the INS and the Bureau of Prisons. As scholar Amada Armenta notes, IRCA, which is famously

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<sup>588</sup> Dow, *American Gulag*, 90.

<sup>589</sup> Welch, *Detained*, 166.

<sup>590</sup> “Governor moves to sell new Yuma prison to INS,” *The Arizona Republic*, April 22, 1987, p. B1.

remembered for granting amnesty to nearly 2.7 million undocumented noncitizens, also called for “a massive deployment of resources to the United States-Mexico border, in the form of agents, physical barriers, and technological surveillance, and included provisions for interior enforcement.”<sup>591</sup> According to jail officials, normally the county jail received “\$24,000” a month from the BOP but was now receiving “only \$600” a month. But it was simply a matter of time. As Sheriff J.R. Koog noted, “Once the (immigration) law is tested, we’ll be right back in business again.” In addition to adding the jail to a waiting list for more prisoners, Koog was also considering bringing in 24 Cuban prisoners. The INS was willing to pay \$700 a day to house the group. But Koog was concerned, “They (Cuban prisoners) are a high risk. We may be biting off more than we can chew. They have nothing to lose, and nobody wants them.”<sup>592</sup>

The next month, the County instituted a hiring freeze and deposited federal income into the general fund to stay in the black for the fiscal year. The county auditor estimated they would receive \$238,140 from the federal marshal and \$32,256 from the Bureau of Prisons and the INS.<sup>593</sup> Eventually, 24 Cubans were moved to Val Verde County jail, where 12 escaped in July, were captured within a few hours, and were transferred to Mississippi. While Koog was told that the 24 prisoners had committed crimes, he found out the majority had been on “administrative hold” for seven years.

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<sup>591</sup> Amada Armenta, *Protect, Serve, and Deport: The Rise of Policing as Immigration Enforcement* (Berkeley: University of California Press, 2017), 23.

<sup>592</sup> Ann Thomas, “County seeks ways to hike jail revenue,” *Del Rio New Herald*, June 8, 1987, p. 1.

<sup>593</sup> Judi Cooper, “Hiring freeze, federal funds deposits to keep county in black, says auditor,” *Del Rio News Herald*, July 6, 1987, p. 1.

Koog noted, “We were very surprised to learn that most were being imprisoned on administrative hold. After the 12 Cuban prisoners attempted to escape, we divided the Cubans up among the other prisoners. We had very little trouble with these prisoners’ behavior. The main problem all along was the lack of information regarding their future releases.”<sup>594</sup>

But trouble could come soon enough. Political rhetoric facilitated the drive toward who was policed during the 1980s when it “brought together two indefensible enemies of the state: the criminal, especially the drug criminal, and the alien,” according to *American Gulag* author Mark Dow.<sup>595</sup> The INS then in the late 1980s instituted several programs meant to make immigration enforcement more efficient by pursuing these “enemies of the state.” The INS introduced the Alien Criminal Apprehension Program (ACAP) and the Institutional Removal Program (IRP) to identify “criminal aliens” earlier as the first formal “jail status check” programs. The programs called for immigration officers to “conduct on-site interviews with potentially deportable inmates in jails and prisons to prevent their release from criminal custody.” The programs focused on the new category of “aggravated felonies,” an immigration offence created by the Anti-Drug Abuse Act of 1988.<sup>596</sup> In December 1988, the INS instituted a new policy directed at

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<sup>594</sup> Ann Thomas, “Border Patrol agents sent to assist with prisoner crisis,” *Del Rio News Herald*, November 24, 1987, p. 1.

<sup>595</sup> Dow, *American Gulag*, 163.

<sup>596</sup> Armenta, *Protect, Serve, and Deport*, 23. INS internal procedures state the concern over efficiency: “An item of concern for many years is the lack of detention bed space and funding for the INS Detention and Deportation Program. It is advantageous for the INS and an efficient use of tax dollars to commence the length deportation and exclusion process against criminal aliens who are serving sentences so that the final orders of exclusion and deportation can be obtained before the alien is released into our custody. Quoted in Patricia Macías-Rojas, *From Deportation*

Central Americans that required asylum seekers to remain in the Rio Grande Valley until their claims were settled. By early January 1989, the policy was challenged and a judge issued a temporary restraining order against the INS. However, the order was later vacated by the court because it prohibited “the functions and operations of an agency of the Federal Government.” In February, the INS was again allowed to enforce the travel restriction and Commissioner Alan Nelson stated plans to begin detaining and deporting Central Americans who were economic rather than political refugees. Asylum seekers would be given one-day hearings and then detained while they appealed their rejected claims. They would then come in front of a judge to ask for bond which varied between \$1,000 and \$4,000. If they could not post bond, they would be held in detention for weeks, or months, or until they left the country “voluntarily.” The Helsinki Watch Committee called the new policy “inhumane, unjust and not adequate to address the complex problems that cause mass influxes of asylum seekers.”<sup>597</sup>

Inhumanity extended naturally to conditions of detention. By early January 1989, 300 Central Americans were camping in a “tent city with no sanitary facilities outside a church-sponsored refugee center” in Harlingen, Texas. Another 150 people were living in “an abandoned motel with no windows, heat or plumbing.”<sup>598</sup> Local officials in Harlingen pursued court action to close down the processing center, which was a former furniture store on a shopping street where officials accepted asylum applications, because of

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*to Prison: The Politics of Immigration Enforcement in Post-Civil Rights America* (New York: New York University Press, 2016), 59.

<sup>597</sup> Helsinki Watch, *Detained, Denied, Deported*, 59-61.

<sup>598</sup> Helsinki Watch, *Detained, Denied, Deported*, 61-62.

sanitation and fire code violations. In mid-February, the processing center was moved to Bayview, Texas. Conditions at Bayview, also called the Port Isabel Service Processing Center, or the *Corralón* by those held there, had remained abysmal for much of the 1980s. In his expose, Tony Hefner, who worked as a security guard for five years at the facility writes, “The camp reminded me of a slaughterhouse I’d seen as a boy. The rancid smell of urine and feces, stale tobacco, and sweaty bodies packed tightly together permeated the concrete rooms and hallways.”<sup>599</sup> When officials announced the decision to move processing to Bayview to asylum seekers still waiting at Harlingen, the reaction seemed expected. As *The New York Times* described, “Many of the aliens seemed perplexed, but they were given no other information. Nonetheless, some of them took map in hand, put their thumbs to the air, and started hitchhiking, the method of transportation that had carried them thousands of miles from their homes to Texas.” The center itself was crude. As the article noted, “A former army base, now used by the immigration service primarily as a detention camp, the Bayview center is surrounded by rough scrub forest, farm fields and citrus groves.”<sup>600</sup> The journey from Harlingen to Bayview was 20 miles. As the Helsinki Watch Committee reported, “Reportedly, asylum seekers walking there are arrested on their way and thus prevented from applying for asylum affirmatively.”<sup>601</sup> By March, about 2,500 immigrants were held at Bayview. On

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<sup>599</sup> Tony Hefner, *Between the Fences: Before Guantánamo, there was the Port Isabel Service Processing Center* (New York: Seven Stories Press, 2010), 35. Hefner puts it quite bluntly when he says, “The abuse in this facility is horrifying. The only people who tried to do something about it lost their jobs. The others are still in charge.” *Id.* at 19.

<sup>600</sup> Roberto Suro, “Crude Camp Arises in Texas Brush After Immigration Center Is Moved,” *The New York Times*, February 15, 1989.

<sup>601</sup> Helsinki Watch, *Detained, Denied, Deported*, 62.



March 16, about 200 to 300 people protested their confinement by chanting in Spanish, “We want freedom,” and “The people united will never be defeated.” The nearby Border Patrol office called the disturbance “minor.” When 50 to 70 people rushed one of the chain-linked fences, 170 Border Patrol agents and riot police were called to restore order. Border Patrol agents claimed they “did not know what caused the brief uprising,” although people have “complained about a lack of food, an inability to contact their families and other problems at the camp.”<sup>602</sup>

Immigration enforcement, particularly along the southern border, would demonstrate this punitive turn most clear starting in the early 1980s. In July 1979, several immigrants picked up by border patrol agents near San Ysidro, California were beaten over two days by border patrol agents. The incident was likely neither unremarkable in its frequency of occurrence nor unprecedented. Yet, in January 1980, two of the agents, Jeffrey Otherson and Bruce Brown, were convicted in a U.S. district court for depriving and conspiring to deprive the victims of federal rights. The defendants appealed the verdicts. The Ninth Circuit affirmed the convictions. The court stated, “The message of this case is clear. So long as the American flag flies over United States courthouses, the federal courts and the federal justice system stand as bulwarks to assure that every human being within the jurisdiction of the United States shall be treated humanely and dealt with in accordance with due process of law by those entrusted with the power to enforce the law.”<sup>603</sup> What is remarkable about the case was that the convictions were

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<sup>602</sup> “Attorney says uprising stemmed from refugees’ frustration,” *United Press International*, March 16, 1989. Associated Press, “Immigrants stage uprising at INS detention center in Texas,” *The Arizona Daily Star*, March 17, 1989, p. 4.

<sup>603</sup> U.S. v. Otherson, 637 F.2d 1276 (9th Circuit, 1980).

“unprecedented,” the first time INS employees had been convicted of criminal charges stemming from their work.<sup>604</sup> Yet, criminal conduct was just beginning to be noticed. Two years after the unprecedented conviction, immigration officials were again abusing their powers with the treatment of those in their care. In *Orantes-Hernandez v. Smith*, the Ninth Circuit found that immigration officials had forced Valium down the throat of an asylum seeker from El Salvador and guided her hand to sign a form waiving her right to seek asylum. The judge in the case stated, “You don’t treat people like that. I wouldn’t do that to the worst criminal who came into this courtroom.”<sup>605</sup>

Like seen in *Orantes-Hernandez*, noncitizen detentions would also take a more punitive turn after 1981. In May 1982, the Bureau of Prisons was put in charge of detaining Haitians and not the INS. This was explained as a practical issue at a House of Representatives subcommittee hearing. Associate Attorney General Giuliani explained that the “nature of detention... has changed.” This was purportedly because of the dramatic increase in asylum applications, going from “I think 1,000 or 1,500” to “over 100,000,” which has “produced a backlog.” INS only had experience with short-term processing. Giuliani stated, “The typical Mexican situation is a good example. The Immigration and Naturalization Service will apprehend large numbers of illegal aliens from Mexico each year. They will be held for several days. Most of them will agree to voluntarily return to Mexico. That is short-term detention and it is the kind of thing that

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<sup>604</sup> Ted Vollmer, “2 Border Agents Accept Guilt in an Unusual Plea,” *Los Angeles Times*, January 30, 1980, p. A1. “Immigration chief to add investigators,” *The Arizona Republic*, February 17, 1980, p. B-1.

<sup>605</sup> Quoted in Robert S. Kahn, *Other People’s Blood: U.S. Immigration Prisons in the Reagan Decade* (Boulder, CO: Westview Press, 1996), 18.

INS is very well equipped to handle... It made sense that the Bureau of Prisons would have primary responsibility much the same way the Bureau of Prisons does for other organizations with INS acting, in essence, as a client of the Bureau of Prisons.”<sup>606</sup> After all, the Bureau of Prisons was well trained in this situation. The bureau director noted at the hearing that “for many years, the Bureau of Prisons has housed illegal aliens. The magnitude of the problem, of course, has grown in recent months because of the influx of the Cubans and Haitians. But it is certainly nothing new for us to be responsible for INS detainees.” Admittedly, the Southwest played a key part in preparing the Bureau. As the director explained, “For example, in our southwest institutions, particularly out in San Diego, for many years we have housed illegal aliens who have been picked up coming across the Mexican border into California, Texas, and Arizona. This, of course, is something new in the northeast areas, particularly with Cubans and Haitians.”<sup>607</sup>

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<sup>606</sup> “Detention of Aliens in Bureau of Prisons Facilities,” Hearing Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Seventh Congress, Second Session on Detention of Aliens in Bureau of Prison Facilities, June 23, 1982, p. 21.

<sup>607</sup> “Detention of Aliens in Bureau of Prisons Facilities,” Hearing Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Seventh Congress, Second Session on Detention of Aliens in Bureau of Prison Facilities, June 23, 1982, p. 32-33. The arrest and incarceration of Mexican immigrants in Arizona continued throughout the 1980s. Escapes from the federal prison camp in Safford, Arizona was common in the early 1980s. By May 1983, there had already been 25 to 30 escapes (whereas the total number for the previous year was 12). Most escapees were identified as “Mexicans convicted of immigration-related offenses.” “It’s easier to go south at Safford,” *The Arizona Daily Star*, May 2, 1983, p. 2.

## Haitians and Cubans

The stories of Haitian asylum seekers demonstrate the punitive and brutal transformation. As Jenna M. Loyd and Alison Mountz argue in their recent work, the implications of the policy change that focused on the mandatory detention of Haitian asylum seekers is a significant consideration in understanding both the criminal law system and refugee policy. As the authors argue, “the concerted and creative efforts employed by the U.S. government to remove and prevent the arrivals of Haitians and Afro-Cuban people repeatedly led to the invocation of exceptional categories, the creation of new laws, and the consolidation of the tight discursive connections between Blackness and excludability, detainability, and criminality.”<sup>608</sup> In the early 1970s, hundreds of Haitians fled their country and reached Florida in overcrowded boats. Some of the boats had come from the Bahamas where Haitians had worked for years with special work permits. However, as that country headed toward independence from Britain, new work permits were no longer issued because of “demands by natives that Haitians were taking jobs from citizens.” By 1974, after reviewing about 400 cases, the State Department found that over 90 percent had fled for “economic reasons,” and were denied political asylum. Six were granted political asylum. Detentions expanded. In mid-March, 91 Haitians were in custody in Miami after which 50 were moved to Port Isabel. Detentions took a toll. In April 1974, 27-year-old Tirenne Deville was found dead in his cell in Miami with a sheet tied around his neck a day before his scheduled deportation back to Haiti.<sup>609</sup> Deville’s suicide brought protests and INS raids in Haitian communities.

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<sup>608</sup> Loyd and Mountz, *Boats, Borders, and Bases*, 19-20.

One example is the Haitian community in Brooklyn that was raided several times in April 1974. As one article noted, “Many Haitians see this dragnet as a response by the government to the protests that have occurred since the death of Tirenne Deville and as an attempt to silence them.”<sup>610</sup> In September 1975, William Isidor, one of 81 Haitians detained at a jail in Immokalee, Florida, slashed his throat. Isidor feared death if returned to Haiti and become despondent after more than four months of detention. Isidor survived. At the jail, Father Antoine Adrian reported that the Haitians were “confined to two rooms, each about 35 by 45 feet, and are permitted in the prison yard a mere 30 minutes every two weeks!” While receiving \$6.50 per person from the federal authorities, jail authorities were apparently spending only \$1.50.<sup>611</sup>

The Haitian community in the U.S. reacted against prolonged detentions. On Christmas Eve 1981, Haitians detained at Krome began a hunger strike to protest their incarceration. At that point, there were more than 700 Haitians detained there. Three days later, the Haitian Refugee Center in Miami organized a demonstration in front of Krome

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<sup>609</sup> John W. Lewis, Jr., “Are Haiti ‘refugees’ getting a raw deal?” *The Baltimore Afro-American*, April 6, 1974, p. 1.

<sup>610</sup> York College, founded as a four-year college within the City University of New York in 1966, ran an article in their student-run newspaper, *Spirit Magazine*, in Spring 1974 detailing such raids. The article reported, “In a clear attempt to intimidate the Haitian community into silence, the Immigration and Naturalization Service has begun a series of dragnets in the Haitian community in Brooklyn. During the first week in April, Immigration officers began making raids to round up undocumented Haitians. Such public places as barber shops have been raided. Immigration officers have approached people who ‘look’ Haitian on Brooklyn’s Eastern Parkway demanding ‘green cards.’ A factory in Brooklyn was reportedly raided by the INS and several Haitians jailed for not producing the proper documents. At this writing (April 11) there has been no word on the status of those reportedly detained.” Jay Ressler, “Dragnets: A New Danger for Haitians,” *Spirit Magazine*, Vol. 1 No. 3 (Spring 1974), p. 3, available at CUNY Digital History Archive, <http://cdha.cuny.edu/items/show/5072>.

<sup>611</sup> “Jailed Haitian Refugee Tries Suicide,” *New Pittsburgh Courier*, October 11, 1975, p. 2.

that drew 500 people, most of whom were thought to be from Miami's Little Haiti neighborhood. As the demonstration went on, about 200 people broke through the security lines, some chanting "liberte, liberte" in an attempt to free the detained immigrants. The charge was stopped by immigration security guards and Metro Dade police using clubs and tear gas. As the demonstrators retreated, they began setting fires and nearly 12 acres of the Everglades were set on fire. In the melee, about 30 Haitians escaped although 20 "returned voluntarily or were recaptured" according to an INS spokesperson. An attorney for the Haitian Refugee Center called out the "unnecessary violence" by police and the beating of a demonstrator. According to the attorney, "There was blood."<sup>612</sup> Detention conditions deteriorated quickly for Haitians at detention centers around the country. In April 1982, the INS reported 2,014 Haitians in detention facilities with the largest populations in Fort Allen, Puerto Rico and Krome, Miami.<sup>613</sup> By May that year, at least six people had died because of inadequate care and suicide attempts continued to increase with at least nine unsuccessful attempts at Krome in the previous two months. Suicides were painfully linked to overcrowding. As Sue Sullivan, the

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<sup>612</sup> Associated Press, "Haitians storm immigration camp," *The Arizona Daily Star*, December 28, 1981, p. 1.

<sup>613</sup> Appendix 2: Immigration and Naturalization Service, *Haitians in Detention Facilities*, April 30, 1982, found in "Detention of Aliens in Bureau of Prisons Facilities," Hearing Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Seventh Congress, Second Session on Detention of Aliens in Bureau of Prison Facilities, June 23, 1982, p. 187. The totals were as follows: Krome 554, Miami (Fed Pen) 31, Miami Hospital 15, Golden Door (Florida Lutheran Counsel, Miami) 35, Red Shield (Salvation Army, Miami) 6, Fort Allen, Puerto Rico 762, INS Brooklyn Detention 63, Otisville, New York (Fed Pen) 97, Ray Brook, New York (Fed Pen) 157, Alderson, W. Virginia (Fed Pen), 57, La Tuna, Texas (Fed Pen), 31, Lexington (Fed Pen), 198, New Orleans (Local Jail) 7, and Springfield, Missouri (Fed Pen) 1.

director of the Haitian Refugee Project, noted, “They are so overcrowded that they can’t even get the privacy to commit suicide.”<sup>614</sup>

Some detained Haitians were almost transferred to Arizona. In early March 1982, the Bureau of Prisons announced they would be moving more than 200 Haitians from New York to Arizona, most likely to detention center in Florence and the prison camp at Safford.<sup>615</sup> Days later, U.S. District Court Judge Eugene Spellman halted the transfer ruling that the relocation would deprive the Haitians from pro bono legal services and the INS had not specified reasons for the transfer.<sup>616</sup> Spellman then reversed his decision at the end of March and authorized the transfer of 157 Haitians to Florence but rejected the transfer of an additional 85 Haitians to Safford. The mixed decision was justified by the notion that the Haitians would have “better access to legal counsel and would be comfortable” in Florence but would not have legal counsel and access to other service programs in Safford. The Arizona climate was also deemed a factor as the judge held that Haitians would be more comfortable because the “climate is comparable to that of the Haitians’ island home.”<sup>617</sup> Nevertheless, the planned transfer was eventually canceled. Norman Carlson stated, “There are 158 Haitians, and the facility in Florence could take

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<sup>614</sup> Lee May, “Refugee Groups Deplore Haitian Centers,” *Los Angeles Times*, May 26, 1982, p. 27.

<sup>615</sup> The transfer was justified as complying with a court order that bars juveniles from being housed with adults. Apparently, there were juveniles held in New York prisons where the Haitian refugees were held. “200 Haitian refugees to be sent to Arizona,” *The Arizona Republic*, March 3, 1982, p. A10. Associated Press, “Haitians to be sent to Arizona,” *The Arizona Daily Star*, 3 March 1982, p. C-9.

<sup>616</sup> Anne Q. Hoy, “Judge halts relocation of Haitians to Arizona,” *The Arizona Republic*, March 5, 1982, p. A2 (States News service).

<sup>617</sup> “Shift of 157 Haitians to Florence OK’d,” *The Arizona Republic*, March 25, 1982, p. B1, B14.

only 75 or 80 of them. We decided early on that they would not be split up in any way, and there just aren't the facilities in Florence to take them all – we'll have to find some other place.”<sup>618</sup>

The Haitian story is often contrasted with the Cuban one. In 1980, 125,000 Cubans arrived in Florida in small boats. This ‘Mariel Boatlift,’ has been called “one of the most remarkable migration events in U.S. history.” Most Cubans were admitted to the U.S. and became permanent residents or citizens. Despite most benefitting from a more lenient admissions policy, several thousand Cubans were “immediately ordered excluded from the U.S. and were detained pending repatriation. Several thousand others were temporarily admitted to the U.S. pending completion of their application for permission to enter but were later arrested for crimes committed in the U.S., and then ordered excluded due to these crimes.” Although Cuba agreed to repatriate 2,746 Mariel Cubans in 1984, several thousand Cubans have remained in INS detention over the last twenty years.<sup>619</sup> The U.S. held these noncitizens in “indefinite detention, often in maximum-security federal penitentiaries.”<sup>620</sup> Their detentions bring the story back to Arizona, and specifically Florence in Pinal County. In Florence, the INS Service Processing Center was about to witness a tense atmosphere in the 1980s. The INS Center was built on the former POW camp that BOP had taken over and turned into a prison. When the prison

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<sup>618</sup> “U.S. drops plan to house Haitians at prison in Arizona,” *The Arizona Republic*, April 1, 1982, p. B1, B5. Associated Press, “Haitian move to Florence is called off,” *The Arizona Daily Star*, April 2, 1982, p. B10.

<sup>619</sup> Charles Weisselberg, “Prisoners of the INS,” in *Human Rights* 28 (Winter 2001), 6.

<sup>620</sup> Kevin Johnson, *The Huddled Masses Myth: Immigration and Civil Rights* (Philadelphia: Temple University Press, 2003), 161.



had moved to Tucson, INS took over in 1983. Placed between an Arizona National Guard armory and the Florence Gardens subdivision, the 20.5-acre center was surrounded by wire-mesh fences topped with barbed wire. The fences had gone up after there were two escapes. While imprisoning only men, the facility was globally representative with people from Mexico, El Salvador, Cuba, Guatemala, New Zealand, Argentina, Iran, Belize, Jordan, and Denmark. In 1984, supervisor Manuel Cornejo noted that besides the two escapes, the “only trouble at the facility has occurred during soccer games.” The center had mainly been created because state and county prisons and jails could no longer sustain immigrant detainees. But the center also had economic benefits. According to Patrick Kane, INS Phoenix district assistant director, the facility was saving the INS hundreds of thousands of dollars a year.<sup>621</sup>

The summer of 1985 began with a hunger strike at the INS Center. Twenty-three Cubans began the protest on July 13 to call attention to their uncertain legal status.<sup>622</sup> One protester passed out and received medical treatment.<sup>623</sup> According to officials, there were 15 hunger strikers on the second day and only three by the third day.<sup>624</sup> After going without food for nearly four days, the remaining protesters ended the hunger strike when

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<sup>621</sup> Paul Davenport (AP), “Former POW Camp Processes Illegal Aliens,” *Tri-Valley Dispatch*, December 19 and 20, 1984, p. 1a. Leo W. Banks, “Florence prison camp marches only in history,” *The Arizona Daily Star*, September 2, 1984, p. 49. Mark Coast, “Out of the past: Retirement community is rising amid memories of POW camp,” *The Arizona Republic*, February 1, 1985, p. 87.

<sup>622</sup> United Press International, “Cuban aliens vow to extend ‘hunger strike,’” *The Arizona Republic*, July 16, 1985, B8. Kahn, *Other People’s Blood*, 143.

<sup>623</sup> Associated Press, “Cuban alien weakened by hunger strike,” *The Arizona Republic*, July 16, 1985, B8.

<sup>624</sup> Kahn, *Other People’s Blood*, 143-44.

officials convinced them that “their complaints couldn’t be handled in Florence but that INS authorities in Washington had been notified of the problem.”<sup>625</sup> Yet, as Robert Kahn notes, when he got to the prison on July 23, he was told by a Cuban prisoner that the hunger strike was still going on and a guard told him there had just been “almost a riot.”<sup>626</sup> Cubans were not the only ones enduring prolonged detentions at Florence. In a letter to the editor printed in July 1985, Ann Adams of Tempe noted how she had “just had the rare privilege of helping to bond out two Central Americans” from the Florence detention center, who had been there for nine months. When she helped one man from El Salvador direct dial to his native country, a recording noted, “Due to the conditions in our country, your call cannot go through.”<sup>627</sup> By July 30, there were 128 immigrants detained at Florence and 81 of them were Cubans. Prolonged detentions continued. As Manuel R. Cornejo, the facility supervisor, noted, “Out of eighty-one that I have here, I don’t think there’s one of them that’s had a hearing.”<sup>628</sup> The powder-keg was once again ripe for explosion.

The riot that “almost” happened in July would actually happen the next month. At 10 p.m. on August 21, 1985, 65 people held inside began chanting for their freedom or to be sent back to Cuba. They were among more the 102 Cubans held at the center. They

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<sup>625</sup> Associated Press, “Cuban detainees end Florence hunger strike,” *The Arizona Republic*, July 17, 1985, C8.

<sup>626</sup> Kahn, *Other People’s Blood*, 144.

<sup>627</sup> “Land of the Free?” letter to the editor, *The Arizona Republic*, July 17, 1985, A14. Adams stepped in to assist the men. As she further notes, “I am proud to say that they are now members of my family and my church.”

<sup>628</sup> Kahn, *Other People’s Blood*, 145.

had arrived during the 1980 boatlift. None had yet had a hearing in front of an immigration judge. Mark Dow has written that the “act of protest sometimes seems to be a negotiation not just between the keeper and the kept but between demand and despair.”<sup>629</sup> Perhaps in this desperation, protesters barricaded themselves in the cell blocks, tore up the plumbing and electrical fixtures, broke windows and furniture, and smashed televisions. The “uneasy situation” ended by early afternoon the next day. No one was injured. Officials estimated the damage would take four to six weeks to repair. One official noted it was the “worst he’s ever seen following a riot at an immigration center.”<sup>630</sup> Ruth Anne Myers, district director of the INS, reported, “The place is an absolute disaster.” As a 12-member SWAT team stood by, Cornejo had spoken to the prisoners through a bullhorn say he was “concerned about them getting hurt and about us getting hurt” should authorities forcibly enter. Meyers noted, “We’ve been aware that something like this was going to happen at any time since they’ve been here” because the prisoners were “just a powder keg of people who don’t know what’s going to happen to them.” At the end of the riot, “helmet-clad officers led shackled prisoners out of the cellblocks and onto buses bound for holding facilities in Phoenix and El Paso.” From Phoenix, they were sent to federal prison facilities in Oklahoma and California. As Meyers stated, they were sent “wherever space is. We have been in big trouble looking for space.”<sup>631</sup>

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<sup>629</sup> Dow, *American Gulag*, 126.

<sup>630</sup> Kahn, *Other People’s Blood*, 145. “Cuban Inmates Riot: Time to Clean Up Empty INS Center,” *Florence Reminder and Blade-Tribune*, August 29, 1985, p. 1, p. 3. “Immigration Riot,” *The Press Democrat*, August 23, 1985, p. 6.

Finding available space was critical since the INS reported they had “no plans at present to release any of the Cubans... or to deport them to Cuba or any other country.”<sup>632</sup> Repair costs were estimated at more than \$200,000 and was estimated to take two months. Finding available space added to the costs of repair because contract space was calculated per head per day. Maricopa County jail, a long detainer of federal prisoners, was now charging the INS \$50.50 a day, whereas bed space at the INS-run Florence center had cost much less.<sup>633</sup> Clean-up of the facility was completed and repairs began by early September to restore the center left “uninhabitable” by the riot. The repairs would include a new building to serve as administrative offices. Nearly a 100 Cubans would be returned once the repairs were completed.<sup>634</sup> By November 1985, about 5,500 Cubans were still held in federal, state, or local prisons across the country in Florida, Texas, New York, and Arizona.<sup>635</sup> Their situation remained unchanged. As Kahn noted, “The Cubans were sent to whatever prisons had space to hold them. Their situation

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<sup>631</sup> Ric Volante, “Cubans moved from Florence following riot,” *The Arizona Daily Star*, August 23, 1985, p. 1. Ric Volante, “28 Cuban prisoners leave Tucson for California,” *The Arizona Daily Star*, August 24, 1985, p. 13.

<sup>632</sup> “Repair cost uncertain in Cuban inmates’ riot,” *The Arizona Republic*, August 24, 1985, p. B4.

<sup>633</sup> Ric Volante, “Riot-repair cost near \$225,000,” *The Arizona Daily Star*, August 28, 1985, p. 13.

<sup>634</sup> Associated Press, “Detention-unit repairs start; Cubans to return,” *The Arizona Republic*, September 4, 1985, p. B3. Laurie Asseo, “Repairs Begin After Riot: Cubans Will Return To INS,” *Florence Reminder and Blade-Tribune*, September 5, 1985, p. 1. “Inmates Will Return: Clean-up, But Not the Repairs, Complete After August Riot,” *Florence Reminder and Blade-Tribune*, September 12, 1985, p. 1, 3.

<sup>635</sup> Associated Press, “Sen. Chiles Sues Over Criminals at Immigrant Center,” *The Washington Post*, November 26, 1985, p. A14. Sen. Lawton Chiles (D-Fla.) sued to force the Reagan administration to remove “Cuban criminal refugees” from Krome. As Chiles noted, the mixing of “Mariel criminal refugees” with “more than 400 illegal immigrants” is a “constant threat to the community at large as well as to U.S. personnel and other peaceful alien detainees at Krome.”

had not changed, only their location. Rioting would be repeated nine months later at Miami, at Oakdale and Atlanta in 1987, and at Talladega, Alabama, in 1991.”<sup>636</sup> While the Atlanta riots in November 1987 were going on and more than 70 people were taken hostage, the *Arizona Republic* reported that the 112 Cuban prisoners in Florence “worked on rocking chairs to give to children for Christmas.” Ventura Brizuela, 32, of Bayamo, Cuba, remarked, “Everything is normal. Nobody inside wants any problem.” Officials credited “ongoing talks and education programs” for the calm in Florence. Yet, six additional guards, Florence police, Pinal County sheriff’s deputies, guards at the nearby State Prison, and Border Patrol agents in Tucson were all on standby. After all, prolonged detentions were still ongoing. Brizuela, who was jailed in Cuba for stealing a bag of rice, had been in INS facilities for seven years for a murder accusation he denied. As Brizuela noted, “I’ve never been free. Seven years for nothing. I thought I was going to be free.”<sup>637</sup> The director and the district director of the INS visited Florence and informed the Cubans that they would not be deported without “a full and fair and equitable review,” regardless of how long such a process would ultimately take.<sup>638</sup>

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<sup>636</sup> Kahn, *Other People’s Blood*, 145. According to Mark Hamm, the Oakdale and Atlanta riots were “political events: Detainees preferred to die in American prisons rather than live again under Fidel Castro’s form of government.” Hamm, “The Abandoned Ones: A History of the Oakdale and Atlanta Prison Riots in *Crimes by the Capitalist State: An Introduction to State Criminality*, edited by Gregg Barak (Albany, NY: SUNY Press, 1991), 170.

<sup>637</sup> Steve Yozwiak, “Cubans in Florence prison quiet, work on Christmas gifts,” *The Arizona Republic*, November 24, 1987, p. A6. “Cubans seize 75 hostages in Atlanta riot,” *The Arizona Republic*, November 24, 1987, p. A1. Meanwhile, 18 Border Patrol agents from the Del Rio sector were sent to Oakdale and Laredo to “assist in the uprising of Cuban prisoners.” Ann Thomas, “Border Patrol agents sent to assist with prisoner crisis,” *Del Rio News Herald*, November 24, 1987, p. 1.

<sup>638</sup> United Press International, “‘Fair review’ promised for Arizona detainees,” *The Arizona Republic*, November 26, 1987, p. A14.

The first 34 Cubans arrived at the renovated Florence facility in February 1986. At the end of the month, 92 of the 192 detainees at the center were Cubans.<sup>639</sup> The restored INS facility learned from past mistakes. A protest led by Central Americans in April 1986 was dealt with swiftly. Manuel Cornejo, the chief of the center, noted on April 7 that “no more than 18 inmates had joined for a few days last week in an ‘informal’ work stoppage that ended without affecting operations.” However, six protesters were immediately removed from the facility and transferred to Maricopa County Jail. The protest was likely more widespread and organized than Cornejo reported. More than 30 people participated in a hunger strike beginning on April 3 to protest their prolonged detention, being overworked, and being denied medical care.<sup>640</sup> Cornejo admitted on April 8 that “some inmates had been refusing to eat and that slight disciplinary action had been taken Tuesday against 18 inmates who refused to follow guards’ orders.” The 18 were locked in isolation cells. Disciplinary actions focused on not allowing the August riot to repeat. Part of that had to do with the belief that the “presence of Cubans has contributed to the unrest.” As Cornejo noted, “We’re aware of the changing complexion of the population and becoming more cautious.” Scott Coffin, the INS deputy district director stated, “It’s very important that the Cubans see that we are in control.”<sup>641</sup> Cornejo and Coffin were right to worry about the power struggle with Cubans.

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<sup>639</sup> Associated Press, “Cubans being housed again at Florence site,” *The Arizona Daily Star*, February 22, 1986, p. 22.

<sup>640</sup> Andy Hall, “6 taken from immigration site after protest; new riots feared,” *The Arizona Republic*, April 8, 1986, p. B2.

<sup>641</sup> Andy Hall, “Detention facility lays unrest to Cubans, hardened criminals,” *The Arizona Republic*, April 9, 1986, p. B2.

Four months later, on a Sunday morning in August, 16 Cubans cut holes in the fences around the recreation yard at the INS center and escaped. Twelve were captured “within hours.” The others gave chase to federal officials in hot pursuit. Two men were captured Monday morning. While chasing down the others, a Border Patrol pilot flying his Cessna-182 low to the ground, ran into a dust devil, crashed his plane, and landed in the hospital. The last two men were captured late Monday afternoon.<sup>642</sup> While the Cuban contingent failed in their efforts, another group succeeded a month later. On an early September morning, seven people from Argentina, Colombia, Guatemala, El Salvador, Ghana, and Fiji escaped from the center. Unlike the Cubans, they had been housed in the “facility’s minimum-security dormitory.” They remained at large.<sup>643</sup> The presence of 116 Cubans was producing “some unease” in the town of Florence. In particular, Chief of Police Tom Rankin had “never seen a Cuban” when they arrived at the INS center and emphasized their supposed criminality. As Rankin noted, “We have to remember these Cubans are felons. Knowing what I know of them, I approach them the same way I would a rabid dog.” Yet, while Florence residents “weren’t thrilled,” there was no panic or protest when they arrived. Even after the escape of the 16 Cubans, “Florence went about its business” and “Cubans were hardly the talk” of the town. Yet, Rankin would just as soon “dump the Marielitos back in Cuba.”<sup>644</sup>

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<sup>642</sup> Martin Van Der Werf, “Last 4 of 16 in breakout are caught,” *The Arizona Republic*, August 12, 1986, p. B2.

<sup>643</sup> “Authorities seeking 7 aliens who fled from detention center near Florence,” *The Arizona Republic*, September 17, 1986, p. B9.

<sup>644</sup> Chris Limberis, “116 Mariel Cubans producing some unease in Florence,” *The Arizona Daily Star*, August 24, 1986, p. 5.

Early the next year, after being in charge of the facility for three years, Cornejo took over as assistant district director for detention and deportation in San Juan, Puerto Rico. Cornejo remarked, “It’s been a real challenge to start this facility up from nothing... It’s been gratifying seeing the facility grow from the time I came here... The facility now speaks for itself. It’s very well organized. I can walk away and know that things are going to be done, the detainees taken care of, and that things are on schedule.” Cornejo noted,

I enjoy seeing the different people from literally all over the world come in and out of the facility and dealing with them. They come here sometimes from very harsh environments and don’t know what to expect, and to watch them leave here knowing that they’ve been treated fairly – a lot of them take that with them back to their own countries, or if they stay here, to wherever they go.<sup>645</sup>

Replacing Cornejo was Phillip C. Crawford, a second-generation immigration officer and a 10-year veteran of the INS. Crawford stated his intentions for the Florence detention center: “Over the next two years we’ll develop it into one of the most modern facilities.”<sup>646</sup> Such modernity was certainly in line with the plans of high-ranking state officials for the future of Arizona’s original carceral town.

### **Detentions in Arizona**

In Arizona, Florence was about to gain unexpected carceral notoriety. In her first state of the state address in January 1989, Governor Rose Mofford offered a “long term solution for locating prison facilities.” Mofford explained her vision, “It is my strong

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<sup>645</sup> Beverly Metevia, “INS Official Moving From Arid Desert to Balmy Caribbean,” *Tri-Valley Dispatch*, January 14 and 15, 1987, p. 1.

<sup>646</sup> Beverly Metevia, “Head of Florence INS Facility Following in Father’s Footsteps,” *Tri-Valley Dispatch*, May 6 and 7, 1987, p. 1.



belief that an expansion of the facilities at Florence into a ‘prison city’ represents the most effective long-term means of resolving the thorny issue of locating prison sites.” The “one major impediment” to that carceral goal was the “lack of adequate housing in the Florence area.”<sup>647</sup> House Majority Leader Jim Meredith was thrilled saying, “To make Florence a prison city is an exceptional idea, something that should have happened a long time ago.” *The Arizona Republic* reported that residents and town officials were “delighted” adding that Police Chief Rankin felt “honored” to have the town mentioned by the governor.<sup>648</sup> Others weren’t as thrilled but felt not much would change in terms of Florence’s notoriety. As Mayor Wilbur Freeman noted, “Florence has had the reputation of being a prison town for years and years. When people in Phoenix and Tucson think of Florence, the first thing they think of is the prison.”<sup>649</sup> Regardless of the impact on the town’s reputation, town growth was expected to follow the state-sanctioned housing expansion. As City Councilman Carl Douglas put it, “Whether you like it or not, let’s face it, the prison is another business. Half the time, most of us don’t even know it’s there, so if it expands, it won’t bother us a bit.” Store owner Bill Day added, “The prison

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<sup>647</sup> *State of Arizona, Journal of the House of Representatives, 1989* (St. Paul, Minn.: West Publishing Co.), 20. Associated Press, “Mofford Calls For Florence ‘Prison City,’” *Florence Reminder and Blade-Tribune*, January 12, 1989, p. 1.

<sup>648</sup> Sam Negri, “Florence lauds ‘prison city’ bid,” *The Arizona Republic*, January 10, 1989, A8. Interestingly, when third-grade students in Greg DeKanek’s class in Florence were asked about the idea of a “prison city,” they responded predominantly in the negative, frequently saying they were “very upset,” “really not sure,” “mad,” “really mad,” and “so upset.” One student, though, was “excited because we might have a Wal-Mart and K-Mart.” “Looking at ‘Prison City,’” letters to the editor, *Florence Reminder and Blade-Tribune*, January 26, 1989. As of this writing, Florence has neither.

<sup>649</sup> Jac Polsgrove and AP, “Local Leaders Support Notion,” *Florence Reminder and Blade-Tribune*, January 12, 1989, p. 1.

is not a detriment. It's an asset to the community.”<sup>650</sup> The next week, three members of the Florence town council formed a ‘prison city’ committee to travel to Phoenix to meet with Mofford and a state task force to “begin exploring ways to create more housing in Florence.”<sup>651</sup>

While Mofford and town officials set great carceral expectations for Florence, other cities in Arizona were hardly about to take a back seat. In the fall of 1991, the Bureau of Prisons requested proposals to construct a 1,000-inmate, medium-security facility for its prisoners and INS detainees. Companies starting bidding and cities starting negotiating. One company, Dominion Leasing Inc. of Oklahoma, held discussions with Tucson city officials about using city property on South Wilmot Road, across from the state prison complex and near the federal Metropolitan Center. The property itself was being considered for a police-fire training academy. However, Kendall Bert, director of Tucson economic development, did not think the two uses would be mutually exclusive. According to Bert, “Early discussions have made it clear that the detention facility could help underwrite a significant portion of the infrastructure costs for the academy plus provide a very substantial annual return to the city.”<sup>652</sup> But in March 1992, the City Council rejected the lease. Recall petitions were issued against three council members who voted against the lease. In April, the Metropolitan Tucson Chamber of Commerce and the League of United Latin American Citizens (LULAC) called on the City Council

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<sup>650</sup> Sam Negri, “Florence lauds ‘prison city’ bid,” *The Arizona Republic*, January 10, 1989, A8.

<sup>651</sup> Jac Polsgrove, “Council Forms 3-Member ‘Prison City’ Committee,” *Florence Reminder and Blade-Tribune*, January 19, 1989, p. 1.

<sup>652</sup> Chris Limberis, “Officials urge public input on private prison,” *The Arizona Daily Star*, September 23, 1991, p. 1B, 2B.

to approve the lease to build the private prison, citing the “300 permanent jobs and \$6.5 million annual payroll” expected to the city. Chamber Chairman Dr. Bill Mangold argued that the prison would allow Tucson to “play a role in alleviating overcrowded conditions in other such prison facilities, facilities that offer less than adequate living conditions.”<sup>653</sup>

LULAC, in particular, provided a significant voice. Formed in 1929, LULAC pursued a political mission aimed at helping Mexicans naturalize and claim rights as U.S. citizens. As David G. Gutiérrez notes LULAC “proved remarkably successful in achieving many of its state political goals... From 1929 through World War II LULAC organized successful voter registration and poll-tax drives, actively supported political candidates sympathetic to Mexican Americans, and aggressively attacked discriminatory laws and practices in communities throughout Texas and the Southwest. More important over the long run, LULAC also achieved a number of notable legal victories in the area of public education.”<sup>654</sup> Yet, LULAC was also selective in their pursuit of “an agenda of assimilation, excluding from membership Mexicans who were not U.S. citizens.”<sup>655</sup> During the 1930s, LULAC officials fought to make sure Mexicans were formally designated as white instead of a separate race.<sup>656</sup> As Vicki Ruiz notes, “In their quest for respectability and political clout, LULAC members distanced themselves from working

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<sup>653</sup> Joe Burchell, “Prison jobs, income too good to pass up, supporters say,” *The Arizona Daily Star*, April 4, 1992, p. 1B, 4B.

<sup>654</sup> David G. Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley: University of California Press, 1995), 78.

<sup>655</sup> Natalia Molina, *How Race Is Made in America: Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley: University of California Press, 2014), 40-41.

<sup>656</sup> Molina, *How Race Is Made in America*, 65.

class, *mestizo* identities.”<sup>657</sup> During Operation Wetback, for instance, LULAC “remained skeptical of allegations of brutality, convinced that they originated from interests intent on employing illegal laborers” and “went so far as to characterize its support for Operation Wetback as in the best interests of deported workers, because farm work effectively turned them into animals.”<sup>658</sup>

When it came to the private prison in Tucson, potential benefits to the city were emphasized. David Rodriguez, the director of LULAC, was “optimistic that many of the jobs at the proposed prison, which would be built to hold Immigration and Naturalization Service detainees, would go to Hispanics.” Yet, one of the reasons some council members had rejected the lease was because of their “concern about reports of immigration service mistreatment of prisoners and fears that the prison would lead to increased arrests of illegal immigration in this area.” Rodriguez said LULAC was “equally concerned” about that but LULAC also “has a responsibility to those Hispanic Americans in our community who have a genuine need for the gainful employment necessary to raise a family and educate our children. We are in no position to export jobs from this community. All of us as a community must vigorously pursue opportunities which will result in employment.” The prison was to be a saving grace. Rodriguez highlighted that the prison “will provide opportunity for hundreds of Spanish-speaking, career-seeking individuals... It is the very type of clean industry we need to encourage. It

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<sup>657</sup> Vicki L. Ruiz, *From Out of the Shadows: Mexican Women in Twentieth-Century America* (New York: Oxford University Press, 2008), 31.

<sup>658</sup> Craig A. Kaplowitz, *LULAC, Mexican Americans, and National Policy* (College Station: Texas A&M University Press, 2005), 56.

is the very type of career opportunity that we see many Hispanic Americans pursue.”<sup>659</sup>

In a parallel development, historian Kelly Lytle Hernández calls the dramatic rise in the number of Hispanic Border Patrol officers since the late 1970s the “most significant change” in the Border Patrol personnel.<sup>660</sup>

Two sites in Pinal County and one site in western Arizona were also marked for the prison bidding game. Seventy-five miles northwest of Tucson, CCA was considering a prison location in Casa Grande. That bid competed against United Concepts’ bid for neighboring town, Eloy, about 20 miles southeast of Casa Grande. United Concepts, a joint venture between Kentucky-based Concept Incorporated and Texas-based United Correctional Corporation, proposed a 35-acre facility northeast of Eloy on Hanna Road. Yet, there was confusion about the nature of the prisoners to be housed. The Justice Department had specified 500 beds for sentenced prisoners from the Bureau of Prisons “primarily illegal aliens,” and another 500 beds in a separate facility for immigration detainees awaiting deportation “primarily illegal aliens with criminal histories.” Bonnie Sinsel, a Bureau contracting officer, stated that most would be “illegal aliens” although “we can’t say they will all be illegal aliens.” There was similar ambiguity with the nature of crimes committed. Ernie Bartolo, the bureau’s assistant administrator for community corrections, stated in response to questions about the nature of criminality to be expected, “Well, no, not really because you’re talking about illegal aliens. There are very few exceptions where you have some kind of history about these individuals. But based on

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<sup>659</sup> Burchell, “Prison jobs, income too good,” *The Arizona Daily Star*, April 4, 1992, p. 1B, 4B.

<sup>660</sup> As Lytle Hernández notes, by 2008, 51 percent of Border Patrol officers were Hispanic. Lytle Hernández, *Migra! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010), 227.

our experience, we haven't run into a significant number of problems in dealing with this type of offender at our other facilities." CCA and United Concepts operated with two different interpretations of what this meant. CCA thought half would be "detainees who had violated no crime other than being the United States illegally," and the other half would be medium-security prisoners who had violated immigration laws, "like smuggling." Meanwhile, United Concepts thought half would be "INS detainees" and the other half would be "regular medium-security prisoners," where half of those would be "undocumented aliens."<sup>661</sup>

Both Pinal County sites were competing against Quartzsite, a city 200 miles northwest of the county. Initially, Quartzsite won the bid for the five year \$85.8 million, 1,000-bed contract though to bring 300 jobs to that city. A spokesperson for the Bureau of Prisons justified, "Several factors were involved. They met all bid specifications and agreed to begin construction almost immediately." The Casa Grande mayor Jimmie Kerr was "flabbergasted and very disappointed" because he felt that city "had a very good shot" but was nevertheless "glad it's coming to Arizona." Eloy city manager John Vidaurri stated, "I feel disappointed. I'm sure that the city council will echo that same disappointment... I got a copy of some of the requirements in original request for proposals, there's some information in the bid proposal that seems to indicate a contradiction as to site chosen and other requirements. I don't know whether we'll register a protest. That's a council decision." He was right.<sup>662</sup> Eloy mayor Armida Flores

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<sup>661</sup> Susan Wootton, "County P&Z Board OK's Eloy Prison Center Plans," *The Eloy Enterprise*, November 28, 1991, p. 1.

joined by United Concepts filed a formal protest. Flores had been selected mayor by a unanimous vote of the city council a few months earlier.<sup>663</sup> In a letter to Sinsel, Flores wrote, “the City of Eloy bases its protest on what appears to be the selection of a site and a contractor that should have been less competitive in the bid award process... The City expresses its concerns in the hope that BOP/INS officials will consider a review of the bid awarded.” Flores noted the original bid had required the facility be “near a jet-capable airport and emergency services.” Flores argued the nearest airport to the Quartzsite location was more than 36 miles away. Meanwhile, the City of Eloy had a jet-capable municipal airport about seven miles from the proposed site. Flores also pointed out that the original bid required off-site medical facilities and noted that the Casa Grande Regional Medical Center was less than eight miles away.<sup>664</sup>

Two months later, the Quartzsite contract was canceled without explanation and hopes “in Eloy and Casa Grande [were] on the rise again.” A bureau of prisons public information officer stated, “What happens next has not been determined... Anything is

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<sup>662</sup> Joe Meahl, “Quartzsite Wins Bid For Prison Over City,” *The Eloy Enterprise*, June 18, 1992, p. 1. “City loses to Quartzsite in bid for private prison,” *The Arizona Daily Star*, June 18, 1992, p. 1.

<sup>663</sup> “Armida Flores picked as Eloy mayor,” *The Arizona Republic*, March 11, 1992, p. B2. Flores is a member of a large, longtime Eloy-area family. In 1985, as a council member Flores led a group of about 800 area residents campaigning to oust then City Manager Bill Little as well as Police Chief Ed Cibbarelli and “much of the police force and many others who came from out of town and who now are on the city payroll.” The issue seemed to stem from Little’s efforts to push through a proposal to bring a recycling facility to Eloy, a measure opposed by Flores as part of an ad hoc committee. Little stated, “We’ve got people who want to move into the 20<sup>th</sup> century. And we’ve got those who want to go back to poking cattle, and that’s where Armida wants to go.” Flores did not agree. According to Flores, “These people found refuge in this little town because they couldn’t get away with the things they wanted to in California.” Mark Shaffer, “Eloy opponents stir big fuss about Little,” *The Arizona Republic*, June 9, 1985, p. B10.

<sup>664</sup> “Mayor Flores Files Formal Protest over Prison,” *The Eloy Enterprise*, July 2, 1992, p. 1.

possible.”<sup>665</sup> Prison bidding was formally reopened. In December 1992, in the hopes of keeping their private prison dreams alive, Eloy City Council agreed to annex 1,640 acres of land on the site where United Concepts wanted to build the prison. At the same time, the City voted to join the Greater Casa Grande Valley Economic Development, by paying \$5,000 a year annual membership, to provide more jobs to the city. Flores was appointed the city’s representative. Council Member John Escarcega, who agreed that “we should pay something” also explained his hopes for the future of Eloy, “I believe in Santa Clause. We’re going to get (economic development).”<sup>666</sup>

Perhaps Eloy got itself put on the nice list. In May 1993, BOP/INS gave United Concepts a notice of intent to award the contract and had 30 days to prove they had the financing to build the prison. CCA was going to “count the days” and then ask the bureau whether it was next in line since it was ready with the site and the financing.<sup>667</sup> 1994 would be a good year for Eloy and those who had solicited the private prison. In February 1994, Flores resigned from the previously council-picked mayor position to run for the city’s first election for mayor and won.<sup>668</sup> Eloy Detention Center opened in July 1994 and was divided into two sections, 500 beds for INS and 500 beds for BOP. Concepts Inc. was to receive \$4 a day per inmate under a three-year contract, with two one-year

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<sup>665</sup> “Prison Hopes Up: Quartzsite Contract Canceled, BOP Studying Many Options,” *The Eloy Enterprise*, September 10, 1992, p. 1.

<sup>666</sup> “Council Support Is Expected For Prison Bid,” *The Eloy Enterprise*, October 22, 1992, p. 1. “More Jobs Sought Here,” *The Eloy Enterprise*, December 17, 1992, p. 1.

<sup>667</sup> “New Prison May Come Here,” *The Eloy Enterprise*, May 20, 1993, p. 1.

<sup>668</sup> Flores defeated John Escarcega 577-527. “Eloy voters pick ex-mayor in 1st election,” *The Arizona Republic*, February 24, 1994, p. B2.



renewal options.<sup>669</sup> The facility had been “designed with courtrooms for EOIR [Executive Office for Immigration Review] judges and office space for INS and EOIR staff to provide an IHP [Institution Hearing Program] for the Bureau inmates and deportation proceedings for the INS detainees.” Eloy had a unique claim to fame. As John L. Clark, assistant director, community corrections and detentions, noted in a House subcommittee hearing later, “The IHP at Eloy was the first program where non-U.S. citizens are designated specifically to receive their immigration hearings at the beginning of their sentence. After completion of their hearings, inmates are transferred to other institutions to free up beds for more non-U.S. citizens in need of hearings. Furthermore, the Eloy program provided hearings for Mexican nationals.”<sup>670</sup> In August, Eloy Detention Center received a \$192,400 grant from the state’s job-training fund to create 296 jobs.<sup>671</sup> That summer the U.S. prison population exceeded one million for the first time in the nation’s history.<sup>672</sup>

On October 23, 1994, about 300 people of the nearly 800 incarcerated at the Concept Inc.-run Eloy Detention Center rioted. The center had been open less than three months. The Associated Press reported “inmates went on a rampage.”<sup>673</sup> The “rampage”

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<sup>669</sup> Associated Press, “Recent Riots at Eloy Facility ‘Typical Testing’ of New Prison,” *Florence Reminder & Blade Tribune*, November 24, 1994, p. 8.

<sup>670</sup> Statement of John L. Clark, Institutional Hearing Program: Hearing before the Subcommittee on Immigration and Claims of the Committee on the Judiciary House of Representatives, 105th Congress, 1st Session, July 15, 1997, Serial No. 75 (US GPO: Washington, 1997), 54-55, available at <https://www.loc.gov/resource/conghear04.00064973010/?st=gallery&c=80>.

<sup>671</sup> “Eloy center to get job-training grant,” *The Arizona Republic*, August 27, 1994, p. D10.

<sup>672</sup> Steven A. Holmes, “Ranks of Inmates Reach One Million in a 2-Decade Rise,” *The New York Times*, October 28, 1994.

evolved into a “destructive rampage” in newspapers as wire stories circulated in the days following.<sup>674</sup> The incident began late that Sunday afternoon involving about a 100 people from the BOP side of the prison who refused to leave the recreation yard for the evening meal for “no discernible reason.”<sup>675</sup> Although “a large majority did not want to be involved,” the scene escalated a few hours later when “the feeling of solidarity may have prompted” others to go along.<sup>676</sup> Warden J.B. Hopkins said a fire broke out when some people “got inside a building and ignited something, possibly a mattress.”<sup>677</sup> One article noted, “Television broadcasts showed smoldering mattresses which apparently had been burned in protest.”<sup>678</sup> A later article confirmed that “anybody looking could see smoke coming from one of the buildings indicating a fire was inside.”<sup>679</sup> The fire activated the sprinkler system and flooded the building with a 24-bed segregation unit where “unruly inmates are kept.”<sup>680</sup> Hopkins claimed the damage was “superficial” since those involved

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<sup>673</sup> William F. Rawson (AP), “Inmates at Eloy prison go on rampage; no one injured,” *The Phoenix Gazette*, October 24, 1994, p. B2. Wire stories circulated across the country. “Inmates riot,” *The Republic* (Columbus, Indiana), October 24, 1994, p. 2. “Inmates at Arizona federal prison riot,” *Chicago Tribune*, October 25, 1994, p. 18. “Hundreds of inmates riot,” *South Florida Sun Sentinel* (Fort Lauderdale, Florida), October 25, 1994, p. 3.

<sup>674</sup> “Prison quiet after inmate rampage,” *Mesa Tribune*, October 25, 1994, p. B3. “Food, lack of cable cited by Eloy inmates,” *The Phoenix Gazette*, October 25, 1994, p. B12.

<sup>675</sup> Enric Volante, “Eloy prison stays locked down after riot by 275 inmates,” *The Arizona Daily Star*, October 25, 1994, p. 2B.

<sup>676</sup> Tara Meyer, “Prison uprising probed,” *Tucson Citizen*, October 24, 1994, p. 5A.

<sup>677</sup> Kelly Pearce, “250 inmates riot, set fire at Eloy prison,” *The Arizona Republic*, October 24, 1994, p. B3.

<sup>678</sup> “Prisoners protest at Eloy center,” *Mesa Tribune*, October 24, 1994, p. B3.

<sup>679</sup> Joe Meahl, “Concerns About Prison Security Growing As Second Riot Leaves 5 Guards Injured,” Opinion Page, *The Eloy Enterprise*, November 17, 1994, p. 2.

had “just ransacked the place,” without causing structural damage.<sup>681</sup> Hopkins further noted, “The inmates themselves were not in a mood where they wanted to hurt anybody. They just wanted to be destructive.”<sup>682</sup>

No one escaped. There was only one injury to a guard who was “hit by coincidence by a rock but the skin was not broken.” She did not need medical help. Apparently the protesters did not know the guard was hiding on the roof and she had radio contact with officers outside the whole time.<sup>683</sup> In addition to the Eloy police, the Pinal County Sheriff’s Department, the state Department of Public Safety, the Border Patrol, Southwest Ambulance, and the Casa Grande and Eloy fire departments all responded to the “major” disturbance.<sup>684</sup> Governor Fife Symington put National Guard units on standby but were not sent to the prison.<sup>685</sup> People were heard yelling “libertad.”<sup>686</sup> Some were pepper sprayed and later “allowed to take showers” in exchange

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<sup>680</sup> David Fritze, “Uprising quelled at Eloy prison,” *The Arizona Republic*, October 25, 1994, p. B1.

<sup>681</sup> Enric Volante, “Eloy prison stays,” p. 2B.

<sup>682</sup> Rawson (AP), “Inmates at Eloy,” p. B2.

<sup>683</sup> Joe Meahl, “Federal Prisoners Riot at Eloy; Guard Trapped on Roof,” *Coolidge Examiner*, October 26, 1994, p. 5.

<sup>684</sup> Pearce, “250 inmates riot,” p. B1, B3. One article reported that “inmates set small fires, hit a corrections officer with a rock and broke windows. They calmed down after a special team of law officers from several agencies were called in.” “Complaints of food, TV led to Eloy prison riot,” *Tucson Citizen*, October 25, 1994, p. C1.

<sup>685</sup> Enric Volante, “Eloy prison stays locked down after riot by 275 inmates,” *The Arizona Daily Star*, October 25, 1994, p. 1B.

<sup>686</sup> Angélica Pence, “Guard is sent to control riot at Eloy prison,” *The Arizona Daily Star*, October 24, 1994, p. 4A.

for settling down without retribution.<sup>687</sup> Early on, officials claimed to be dumbfounded about why the protest took place. Several articles claimed Hopkins did not know why the riot took place.<sup>688</sup> Others claimed that “inmates were angry over several issues, including the food, lack of cable TV and fuzzy signals from Spanish-language TV stations.”<sup>689</sup> The *Tucson Citizen*, *The Phoenix Gazette*, and the *Mesa Tribune* ran nearly identical stories that Tuesday about the causes being food and the lack of cable television.<sup>690</sup> Hopkins also thought it was “not uncommon for a new facility to experience problems in its infancy” because as he put it, “It’s like a new home.”<sup>691</sup> It is perhaps an oddly appropriate analogy since someone would not normally set fire to a new home three months after moving in unless something was seriously wrong.

Yet, what exactly was wrong perhaps remained less obvious. The riot was not the first “disturbance” since Eloy Detention Center had opened in late July. Four weeks earlier, there had been a food strike. Official accounts noted that the predominantly Hispanic population held inside “demanded more Hispanic-type meals.”<sup>692</sup> According to Hopkins, prison officials had solved the problem by “changing the portions and type of

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<sup>687</sup> Rawson (AP), “Inmates at Eloy,” p. B2.

<sup>688</sup> “Guard Escapes Rioting Inmates,” *The Eloy Enterprise*, October 27, 1994, p. 1. Joe Meahl, “Inmates with Blocks Broke Into Buildings at Eloy Prison,” *Florence Reminder and Blade Tribune*, October 27, 1994, p. 10.

<sup>689</sup> David Fritze, “Uprising quelled at Eloy prison,” *The Arizona Republic*, October 25, 1994, p. B1.

<sup>690</sup> “Complaints of food, TV led to Eloy prison riot,” *Tucson Citizen*, October 25, 1994, p. C1. “Prison quiet after inmate rampage,” *Mesa Tribune*, October 25, 1994, p. B3. “Food, lack of cable cited by Eloy inmates,” *The Phoenix Gazette*, October 25, 1994, p. B12.

<sup>691</sup> Pearce, “250 inmates riot,” p. B3.

<sup>692</sup> Tara Meyer, “Prison uprising probed,” *Tucson Citizen*, October 24, 1994, p. 5A.

food.” Once it had been solved, “everything’s been fine,” which was why Hopkins remained “totally shocked” by the riots.<sup>693</sup> While acknowledging this sit-in food strike, Hopkins maintained the Tuesday after the riots that “there was no sign of trouble at the prison” before the riot.<sup>694</sup> That Monday at noon after the riots, the cafeteria at the detention center had resumed serving food and the “prison was back to normal.”<sup>695</sup> Nearly a week later, the story remained that food and lack of cable television had been the “driving forces.”<sup>696</sup>

Retired Judge Donna Hamm, head of the prisoner-rights group Middle Ground, received letters from those held inside that told a different story. According to Hamm, the letters stated that Eloy was “run like a maximum-security facility.” As she noted, “There is no freedom to walk around on the yard. Their movement is highly restricted.”<sup>697</sup> Hamm believed the riots probably stemmed from a lack of a proper grievance system. Hamm said, “When the grievance system is a kangaroo court, a rubber stamp for the administration, the prisoners will sometimes take matters into their own hands.”<sup>698</sup> More than two decades later, Hamm still believes the official account remained at the margins of the whole story. Hamm notes, “Those ‘reasons’ are not reasons at all. They might be

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<sup>693</sup> Enric Volante, “Eloy prison stays,” p. 2B.

<sup>694</sup> “Prison quiet after inmate rampage,” *Mesa Tribune*, October 25, 1994, p. B3.

<sup>695</sup> Joe Meahl, “Inmates with Blocks Broke Into Buildings at Eloy Prison,” *Florence Reminder and Blade Tribune*, October 27, 1994, p. 10.

<sup>696</sup> Tara Meyer, “Management the key to orderly jails,” *Tucson Citizen*, Saturday 29, 1994, p. C-1.

<sup>697</sup> David Fritze, “Uprising quelled at Eloy prison,” *The Arizona Republic*, October 25, 1994, p. B1.

<sup>698</sup> “Prison quiet after inmate rampage,” *Mesa Tribune*, October 25, 1994, p. B3.

the catalyst which set things off, but the underlying reasons are usually related to prison staff who don't treat inmates fairly, who abuse authority, who demonstrate a lack of concern for the overall welfare of inmates, and an administration that is unresponsive to expressed concerns. When prison officials blame major riots on 'food' and 'lack of cable tv,' they are attempting to divert attention from their own responsibility in creating problems via poor management practices and sloppy attention to best practice procedures."<sup>699</sup> Hamm continues to sometimes receive letters from those held at Eloy. As she notes, "Their primary complaints center on medical care, visitation problems, disciplinary unfairness, complaints of excessive use of force or abuse of authority by guards, [and] an unresponsive grievance system."<sup>700</sup> Hamm's account was in fact confirmed by *The Arizona Daily Star* two years after the riot. According to a BOP report requested under FOIA, the prisoners had rioted because officials "failed to meet basic needs ranging from medical care to toilet paper." The report noted that overall sanitation was "very poor" and the dining and kitchen areas had a "significant pest problem."<sup>701</sup>

Another riot followed in November 1994. This time in the INS side and involved about 80 or more people who "grabbed fencing pipe, baseball bats, broom handles and other makeshift weapons." Five guards suffered minor injuries.<sup>702</sup> Apparently, they "were

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<sup>699</sup> Donna Hamm, email exchange with author, February 12, 2017.

<sup>700</sup> Donna Hamm, email exchange with author, February 12, 2017.

<sup>701</sup> Enric Volante, "Denied basics, inmates rioted in '94, report says," *The Arizona Daily Star*, December 1, 1996, p. 15.

<sup>702</sup> Angélica Pence, "Eloy INS detainees riot, injuring five," *The Arizona Daily Star*, November 15, 1994, p. 11. "Riots at Eloy Facility Called 'Typical Testing,'" *Casa Grande Dispatch*, November 16, 1994, p. 2. Associated Press, "Recent Riots at Eloy Facility 'Typical Testing' of New Prison," *Florence Reminder & Blade Tribune*, November 24, 1994, p. 8.

upset about getting timely releases as the Thanksgiving and Christmas holidays are approaching.”<sup>703</sup> Officials from Tucson’s Consulate of Mexico visited Eloy the day after the riot and noted that frustration over delays had caused the riot. People had thought they would get a hearing within 14 days of being transferred to the facility. It turned out the 14 days was a minimum and some people had been waiting as long as 40 days. Their news release stated, “INS assured us that they would expedite deportations. Additionally, INS will conduct meetings with Mexican national groups and individuals were requested.” Taking this “compromise” to the people rioting, consulate officials asked them “to cease their protest attitude.” Marco Antonio Garcia Blanco, then Mexican consul in Tucson, specifically noted, “It is important to emphasize that the consulate officers did not receive any complaints against the authorities or services provided in the prison at Eloy. Their protest was only based on the delay in the deportation hearings.”<sup>704</sup>

Tucson attorneys representing people on the BOP side of the prison did not seem surprised by the first riot back in October. One attorney stated, “It was a really wretched place to be, with nothing to do and very little in the way of programs.” The same attorney noted there had been complaints of poor food and the slow pace of deportation proceedings. Another attorney had remarked three days before the October riot that the facility “seemed ripe for a riot.”<sup>705</sup> Yet, Warden Hopkins maintained the October and

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<sup>703</sup> “Prison Quiet After Second Riot,” *The Eloy Enterprise*, November 17, 1994, p. 1. Another news story noted that the disturbance “appears to have been motivated by bureaucracy, not bad food or living conditions.” “Anger over red tape caused prison riot, officials say.” Associated Press, *Mesa Tribune*, November 17, 1994, p. B6.

<sup>704</sup> Norma Coile, “Deportations get priority,” *Tucson Citizen*, November 17, 1994, p. C-1.

<sup>705</sup> Enric Volante, “Deportation delays fed riot at Eloy prison, consul says,” *The Arizona Daily Star*, November 17, 1994, p.1.

November riots were “unrelated” because they involved “different inmates and issues.”<sup>706</sup> The November protest had begun peacefully around 2 p.m. and was over by 5 p.m. Two protesters were involved in negotiations over timely releases. However, around 200 others “became more aggressive and started using rocks and steel bars to damage the prison, breaking windows and possibly setting some fires.” Eloy police were alerted at 4 p.m. Half an hour later, all but 20 people were back in their cells. As the Eloy police chief noted, “This time the prison had their own riot team and they were successful in moving inmates to an area where they could be controlled.”<sup>707</sup> Another thirty minutes and Eloy was quiet again.

There had been concern about safety issues from the public when the detention center opened. Current Eloy City Council Member Andrew Rodriguez, who claims to be the youngest person ever elected to the position, recalls debates during that time although he was too young then to participate. Rodriguez, who was born in Casa Grande in 1985 and raised on the south side of Eloy, states, “I remember I was young my mom... heard both sides... and my dad heard both sides... some people were saying, ‘oh no, it’s going to be dangerous... for the kids.’” This was vital since some of Rodriguez’s fondest memories of growing up in Eloy was that “you can actually be outside, you can play outside, ride your bikes, and not have to worry.” Rodriguez eventually took a job working as a guard at the detention center, where he would remain until his election to the city council. Rodriguez reflects, “at the end of the day, it hasn’t really been a big

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<sup>706</sup> “Prison Quiet After Second Riot,” *The Eloy Enterprise*, November 17, 1994, p. 1.

<sup>707</sup> Joe Meahl, “Eloy Prison Quiet After Disturbance,” *Florence Reminder and Blade Tribune*, November 17, 1994, p. 5.



issue... when they first opened they had that riot... like a small riot... I have no idea [what it was about]... it was nothing major... CCA took care of it... nobody in the city was at any time in harm's way."<sup>708</sup> After all, CCA is just "like a normal business... they come to the city and... want to build a new prison and they have to go through the same process as everyone else. They have to go through planning and zoning, they have to get city permits, they have to pay the same fees – of course, they have to pay more because their building is so huge – they got to go through every single step...." Besides there was tax money on the line. As Rodriguez notes, "when inmates buy commissaries it's taxed. When CCA does construction out there... the City of Eloy gets construction tax." Pass through monies were also in play. Rodriguez explains, "ICE gives us a check for whatever amount on the inmates they have there. Then we give that to CCA... that's their money. Then Eloy Detention Center turns around and gives the city money for whatever was negotiated per person."<sup>709</sup>

Meanwhile, 30 miles northeast from Eloy, Florence was pursuing Mofford's vision for the city. The Central Arizona Detention Center, the new prison on state Highway 79 built at a cost of \$17 million, had accepted its first prisoners in late October 1994 while work on the facility was expected to be completed by mid-November. The CCA-run prison was meant to help the U.S. marshal house its prisoners in a facility that was not an overcrowded county jail. An editor of the local newspaper remarked that the prison betrayed expectations, "There are no bars on holding cells, just locked doors with windows. Prisoners are milling about within secured areas doing any one of a number of

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<sup>708</sup> Andrew Rodriguez, interview with author (February 15, 2017).

<sup>709</sup> Andrew Rodriguez, interview with author (February 15, 2017).

things... As the warden roams through the bright white halls prisoners seem to greet him in a friendly manner.” The editor attributed this to CCA’s attitude toward incarceration which “not everyone agrees with.” But despite this, security is not lax as the system “appears complex and modern. There are cameras and intercoms everywhere. Employees carry radios. A person has to go through two doors to get from one section of the facility to the other.”<sup>710</sup> Elsewhere, by December, the senior warden at the Arizona State Prison urged Florence to clean up its act or risk jeopardizing future prison projects. Charles L. Ryan, the Senior Warden, noted, “The only thing I’m certain of about convicted felons in the state of Arizona is that they will continue to go to prison... as taxpayers we should get a better bang for our buck.” This involved offering better housing options for prison employees, most of whom commute from out of town. Ryan wanted to see a change in the “almost non-existent” Florence rental market and utilize inmate labor for street and park maintenance to “help better the appearance of the town.”<sup>711</sup>

While Florence worked on their town appearance, Eloy had other carceral concerns. In December 1994, a newspaper article cited several current and former employees at Eloy Detention Center who gave alternative accounts of what had sparked the twin riots. One former guard stated, “My life is worth more than \$5.42 an hour” at a time when the federal hourly average for guards was \$6.74.<sup>712</sup> Low pay, lack of training

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<sup>710</sup> Jason Vosu, “CCA Prison Opens in Florence; Not Quite What You Expect,” *Florence Reminder and Blade Tribune*, November 10, 1994, p. 7.

<sup>711</sup> Jason Vosu, “Prison Warden Says Town Appearance is Key,” *Florence Reminder and Blade Tribune*, December 8, 1994, p. 1, 4.

<sup>712</sup> Miriam Davidson, “Workers: Shortages sparked prison riots,” *The Arizona Republic*, December 27, 1994, p. B1. John E. Buckley, “Occupational Pay Across Regions in 1994,” in

and supply shortages were all mentioned by the employees. As the article pointed out, these were “hallmarks of the private-prison industry.” As Dennis Palumbo, a criminal-justice professor then at Arizona State University noted, “It’s not easy to make a profit in that business, so they’ve got to cut corners any way they can.”<sup>713</sup> Months later, an editorial in *The Arizona Daily Star*, lambasted policies at Eloy Detention Center that hired recent high school graduates, trained them for two weeks, and paid them much less than state prison guards. As the editorial noted, “You don’t save money when you must periodically muster every available law-enforcement officer in the state to put down riots. And a cheaply run, unsafe facility will cost you more in injury, death and lawsuits than it will ever save.”<sup>714</sup> Yet, Warden Hopkins retorted that rather than inadequate pay or the lack of training, the riots demonstrated that his employees lacked confidence in their abilities. According to Hopkins, “We’re working to build maturity and a law-enforcement mind-set, which takes time to develop.”<sup>715</sup>

But the private prison company was not willing to wait. After the two riots, Concept Inc. decided to hire an experienced warden to help run the facility. In early 1995, John Gluch, who had experience as a warden in three separate states, came to head Eloy Detention Center. Gluch had worked for BOP for 24 years and had been the warden at

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*Compensation and Working Conditions* (June 1996), p. 35-38, available at <https://www.bls.gov/opub/mlr/cwc/occupational-pay-across-regions-in-1994.pdf>.

<sup>713</sup> Miriam Davidson, “Workers: Shortages sparked prison riots,” *The Arizona Republic*, December 27, 1994, p. B2.

<sup>714</sup> The editorial noted that while Eloy guards are paid \$5.87 an hour, Arizona state guards are paid about \$10 an hour. “Underpaid prison guards,” *The Arizona Daily Star*, editorial, February 4, 1995, p. 16.

<sup>715</sup> Miriam Davidson, “Workers: Shortages sparked prison riots,” *The Arizona Republic*, December 27, 1994, p. B2.

four federal prisons in Connecticut, Michigan, and Texas. The BOP had given Concept a “cure notice” for Eloy Detention Center that they were not meeting the conditions of the contract. Essentially, according to Gluch, BOP told Concept, “if you don’t do the things we are asking you to do... we are going to withdraw the contract or cancel the contract.” As Gluch notes, “I was hired specifically by Concept at that time to take care of those issues... so that was my mission.” According to Gluch, Concept faced several problems. He states, “The problem was the Concept folks had run some small operations in Texas and never had experience with the Bureau of Prisons and didn’t – couldn’t – really comprehend the requirements of the contract that was spelled out in there. In addition, they started with a warden who didn’t have any real experience. He was a naval officer that ran a brig which is entirely different than a major prison and it was all brand new staff and he had very little experience.”<sup>716</sup>

In April 1995, CCA purchased Concept Incorporated, the then third largest company in the prison industry, in a stock-for-stock transaction worth \$40 million. In May 1995, after Gluch had taken over, another riot took place at Eloy Detention Center. It was the same day CCA announced it had bought Concepts Inc. Gluch notes that once he got the issues over the cure notice “taken care of, the cure notice was lifted then Corrections Corporation bought the facility from Concept.”<sup>717</sup> A newspaper reported the two events were “unrelated.” The riot took place in the INS side of the prison and involved about 100 people. There were 100 INS officers at the scene. INS officers fired rubber bullets at the rioters. There were no apparent injuries. The “incident” last six

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<sup>716</sup> John Gluch, interview with author (February 22, 2017).

<sup>717</sup> John Gluch, interview with author (February 22, 2017).

hours. A sergeant from Eloy Police Department said he did not hear why “the INS inmates were rioting.”<sup>718</sup> Gluch recalls, “Right after I got here we had a disturbance but by then our staff had been trained and we knew how to deal with it. Really it was not a big issue at all, it was handled right away.”<sup>719</sup> A few months later all was well again. By the end of August, Eloy chamber members toured the detention center and CCA would donate \$200 to the Eloy Food Bank. As the news article noted, CCA “prides itself on being an active community member and hopes to help local non-profit groups with projects.”<sup>720</sup> But by the end of the following year, CCA would sue the City of Eloy over having to pay too much in taxes.

The year 1996 had started with such promise. In April, CCA was set to expand the detention center by increasing the number of beds to 1,500 and adding more than 100 jobs for the city. It helped that the center’s support facilities “were overbuilt to handle an expansion.” The expansion and improvement project was estimated at \$5.3 million. But signs of trouble in the CCA-Eloy relationship appeared. In the same article, the warden at Eloy expressed concern that the city “has been working on new ways to tax” the detention center which was “counterproductive.”<sup>721</sup> Meanwhile, in July, five people escaped from the detention center and were never found.<sup>722</sup> Despite admitting that as a

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<sup>718</sup> “Small Riot at INS Half Of Prison Over Quickly,” *The Eloy Enterprise*, May 4, 1995, p. 1.

<sup>719</sup> John Gluch, interview with author (February 22, 2017).

<sup>720</sup> “Chamber Members Get Tour of CCA Eloy Detention Center,” *The Eloy Enterprise*, August 31, 1995, p. 3.

<sup>721</sup> “Detention Center Increasing Number of Beds by 50 Percent, More Jobs, Promotions, Expected; Officials Unhappy with City over Tax,” *The Eloy Enterprise*, April 18, 1996, p. 1. “Private prison to add jobs in expansion plan,” *The Arizona Republic*, April 21, 1996, p. B2.

neighbor of the detention center he would have felt better if “prison officials sent word to me of the escape,” the *Enterprise* editor urged the community to appreciate the economic developments of the city that have “really paid off” with the increase in tax revenue brought by the detention center.<sup>723</sup> A week later, CCA Detention Center appeared as a contributor to the Santa Cruz Valley Food Bank.<sup>724</sup> A later newspaper article noted that the city budget that year had “more money in it than in the past years “thanks to Eloy Detention Center.”<sup>725</sup> Yet, in November CCA sued Eloy over being assessed \$371,947 in privilege taxes, a sales tax normally imposed on hotels, restaurants, and rental properties within the city. CCA had paid the tax and \$60,000 in penalties under protest but sued for the return of that money with interest.<sup>726</sup> The more than \$400,000 in dispute was placed in a trust.<sup>727</sup> A year later, an agreement was reached where Eloy kept half of the disputed funds, returned the rest, and agreed to assess a tax on lease payments. The tax would bring in about \$10,000 per month to the city from 1994 until 2009 but was “considerably less” than what the city would have received by taxing the detention center as a motel.

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<sup>722</sup> “5 still at large from detention center,” *The Arizona Republic*, July 9, 1996, p. B2. “5 Prisoners Escape From Detention,” *The Eloy Enterprise*, July 11, 1996, p. 1.

<sup>723</sup> Joe Meahl, “Community Should Appreciate Tax Money Increase Because of Eloy Detention Center, Opinion,” *The Eloy Enterprise*, July 11, 1996, p. 2.

<sup>724</sup> “Food Bank Gives Report, History of Group,” *The Eloy Enterprise*, July 18, 1996, p. 2.

<sup>725</sup> “Looking back through the years: Fifteen years ago,” *Eloy Enterprise*, June 30, 2011, p. 2.

<sup>726</sup> J.P. Finet, “Detention Center Files Suit Against City Over Special ‘Hotel’ Tax,” *The Eloy Enterprise*, December 26, 1996, p. 5.

<sup>727</sup> “Council Hires Lawyer For CCA Tax Lawsuit,” *The Eloy Enterprise*, January 30, 1997, p. 1.

Both CCA and Eloy agreed to drop the lawsuit and pay their own attorney's fees. Both sides had won.<sup>728</sup>

Yet, CCA also had other problems. In October 1996, six prisoners from Alaska cut through the razor-wire fences at their Central Arizona Detention Center in Florence and escaped. The prison had 1,300 prisoners at the time. All six men were "considered dangerous." Four men were later recaptured but two remained at large.<sup>729</sup> Governor Fife Symington was infuriated and demanded reimbursement from CCA for costs of capturing the prisoners. In a letter, Symington wrote, "This escape threatens the security of all Arizona citizens and requires state and local law enforcement agencies to take special action to locate and apprehend these dangerous felons." CCA expressed their willingness to fully cooperate and meet his demands.<sup>730</sup> In March 1997, an editorial in *The Arizona Republic* urged that while they supported private prisons they also support "needed" regulation of the industry. Citing the escape of the six prisoners and the transfer of more than 250 inmates from New Mexico to CADC in Florence, there needed to be "prudent regulations" of private prisons in Arizona. As the editorial stated about the New Mexico prisoners, "hazardous material was being shipped into Arizona with scant control or regulation. And this was hazardous material... with legs."<sup>731</sup>

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<sup>728</sup> "CCA, city settle tax dispute, both sides win," *The Eloy Enterprise*, March 12, 1998, p. 1. "CCA agreement tabled by council," *The Eloy Enterprise*, April 29, 1999, p. 1.

<sup>729</sup> "Murderer, 2nd felon still free after break from private prison," *The Arizona Republic*, October 21, 1996, p. B2.

<sup>730</sup> Pamela Manson and Guy Webster, "Governor demands answers on escape," *The Arizona Republic*, October 22, 1996, p. 1. The next month, two Oregon prisoners climbed over a privately-run prison fence near Houston and made it nearly 200 miles before they were caught. Oregon later took back all of their prisoners amid the outcry. Associated Press, "Legal loopholes wide open for private-prison escapees," *The Arizona Republic*, November 7, 1996, p. A2.

The next month, Symington proposed a plan to build a private prison in Mexico to house the majority of Arizona's Mexican prisoners. His chief of staff offered rural carceral solicitation as sufficient justification, "We have a lot of rural communities around Arizona that compete for prison projects. So it is not as if we are trying to send some kind of ugly industry south of the border." In fact, this was a humanitarian measure: there would be no border to prevent family visits, Spanish would be the prison language, and the food would be Mexican. Critics condemned the proposal. The president of the State Bar of Arizona called it a "lousy idea." A law professor asked, "What if inmates want to challenge conditions? What if an inmate falls and breaks a leg? How does he sue?" The state corrections director countered, "We would still be liable for the lawsuits. It's so simple and common-sensical that I don't know why anyone hasn't thought of it before."<sup>732</sup> At the same time, while deportations surged dramatically in every major metropolitan area nationwide, Phoenix was left out. As INS officials "scrambled" to explain why Phoenix was an exception to the upward national trend, partial blame was laid on lack of detention beds. Phoenix bed space was "not on-line yet, so we're a little bit behind the curve on the other districts due to a contracting problem," the Phoenix district director noted. But there was nothing to worry about. The district director emphasized, "I don't believe this is anything alarming. This should be a momentary blip. Our removals are definitely going up."<sup>733</sup>

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<sup>731</sup> "Private Prisons: Needed regulation," *The Arizona Republic*, editorial, March 2, 1997, p. H4.

<sup>732</sup> James Brooke, "With Jail Costs Rising, Arizona Wants to Build Private Prison in Mexico," *New York Times*, April 20, 1997, p. 18.

<sup>733</sup> Jeff Barker, "Deportations up everywhere except Phoenix," *The Arizona Republic*, May 14, 1997, p. A1, A18.



Gluch served as the warden of Eloy Detention Center for five years. He notes his part in seeing the vision of a well-run prison facility realized. Gluch states that “one of the things I worked on a lot was morale. [The staff] had virtually none because they didn’t have very much leadership before... to get them to get pride in their operation that’s a very important part of running any facility like that.” Gluch prides himself on being a “good warden” that interacted with staff and inmates on a regular basis. As Gluch notes, “you got to be out on the compound running around.” In his interactions with people held at Eloy, he notes that while “some complain about everything, the vast majority want to do their time and go home without as much issue as they can.” However, there was a common complaint even when he was there as the warden. Gluch states, “They always complain about medical care. They want medical care better than you and I can get on the street or more quickly than we can get it.” When asked about how the medical care is(was?) at the facility, Gluch replies, “It was better than you can get on the street – more responsive. We have immediate response to any medical situation and trained staff... We meet all the requirements of whatever contract it is... we were in full compliance.”<sup>734</sup> At the end of December 2000, Gluch was promoted to managing director of CCA’s western region and Thomas Long took over as warden of Eloy Detention Center. Gluch noted upon his promotion, “Right now the company’s focus is on customer relations and filling empty beds as well as institutions running smooth and safe.”<sup>735</sup>

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<sup>734</sup> John Gluch, interview with author (February 22, 2017).

<sup>735</sup> Jose Garcia, “Gluch, Long receive promotions,” *The Eloy Enterprise*, December 28, 2000, p. 1.

Governor Rose Mofford's dream eventually came true in Florence. Today, there are three Arizona state prisons, seven county and federal prisons, and two private prisons (both CCA facilities) in the city. Florence has indeed become a "poster child for the expansion and profitability of the prison-industrial complex."<sup>736</sup> For those living and working in the city, "prisons are their lifeline." Journalist Deepa Fernandes notes, "As the desert town of Florence attests, prisons can in fact sustain a community while making private companies a lot of money."<sup>737</sup> Interestingly, the city is still waiting on a major grocery store. However, not everyone is pleased about the lifeline of the town. Florence Vice-Mayor Vallarie Woolridge moved to the town in the mid-1980s from Kansas City. Her main draws were the small town and weather. A few months after moving to Florence, Woolridge was hired by the Coolidge School District for her expertise in using computers. She later noted how she trained other staff members since she was the only one with the technical knowledge. When Woolridge was elected to the Florence city council, she was the first African American to hold such a position. During our interview, Woolridge reflected, "it was pretty sad. 2004 and there had never been a black person on council but needless to say that's another story." She describes the prisons as their "own little community" separate from the town. Woolridge states, "we don't have a lot of involvement... we don't have any say in how they run their facilities as long as they are doing it per state laws and guidelines... so we're kind of separate entities... they're their own community or entity separate from ours although they do have to follow the town

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<sup>736</sup> Christopher Stenken, "Detention and Access to Justice: A Florence Project Case Study," in *Beyond Walls and Cages: Prisons, Borders, and Global Crisis*, edited by Jenna M. Loyd, Matt Mitchelson, and Andrew Burrige (Athens: The University of Georgia Press, 2012), 211.

<sup>737</sup> Fernandes, *Targeted*, 193.

procedures and guidelines. But we don't get to tell them what to do... and they don't get to tell us how to run our town." When asked about whether more prisons should come to Florence, Woolridge responds, "I don't really want to see more prisons. I really don't like the private prisons but they're here. But I'd really like to see the state do away with private prisons. I don't think they serve their useful purpose. And even prisons have gotten away from rehabilitating people. They've just become a big money making business and I would really like to see us do away with those private prisons. But no, I don't want to see more prisons here. We have enough."<sup>738</sup> Pensive and somber, she then stares off into the distance. Perhaps it was carceral fatigue.

The relatively quiet expansion of the carceral landscape in Pinal County took place against the backdrop of more loudly prominent law enforcement developments in neighboring Maricopa County. There, in 1991, voters had rejected a \$40 million bond issue that would have funded prison expansion by building a 1,000-bed facility.<sup>739</sup> Instead, riding on a no-new-taxes yet tough-on-crime campaign, voters elected Joseph M. Arpaio as sheriff the next year. Born to Italian immigrants in the early 1930s, Arpaio had served in the U.S. Army, as a police officer, and then later as a special agent with the Drug Enforcement Administration. The year after being elected, Arpaio considered putting people in tents to "make more room for the bad guys." The tents were to go up around the county's Durango Jail in southwest Phoenix. "I'm tired of hearing about jail overcrowding, and I don't think we have enough people in jail. This is realistic, and I'm

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<sup>738</sup> Vallarie Woolridge, interview with author (March 10, 2017).

<sup>739</sup> Dennis Wagner, Mike McCloy and Clint Williams, "Arpaio's jails unique, experts say," *The Arizona Republic*, November 19, 1996, A3.

confident it will be done,” Arpaio stated. The tents were to be up by June that year. As Arpaio explained, “With the crime and drug problem out there, we need more space, and this is a good way to do it at a very reasonable cost. I’m sure people will back me up on this.”<sup>740</sup> Arpaio was not wrong. Voters of Maricopa County would back him and his tent city prisoner housing for more than two decades.

On August 2, 1993, the In-Tents Jail, located behind the Estrella Jail at 29<sup>th</sup> Avenue and West Durango Street, “opened for business.” The jail was surrounded by a “16-foot-tall fence topped with razor wire” and had tents that were donated by the federal government. Arpaio planned to use the tents to house people sentenced to work-furlough and work-release programs, serving their time at nights and on weekends. There was widespread agreement from many sources that all seemed well. A news story in *The Arizona Republic* declared that the jail had “hot and cold running water and portable toilets on site.” The managing editor of *American Jail* declared it was a “feasible idea.” The executive director of the Arizona Civil Liberties Union relayed that it was only a temporary fix but that he had heard the jail was planned well. According to Arpaio, Phoenix planning-and-zoning officials, the Maricopa County Health Care Agency, and the state fire marshal had all given their approval.<sup>741</sup> An editorial in *The Arizona Republic* commended Arpaio for following through on his campaign promise to erect a tent city to ease overcrowding “in fine style.” As the editorial pointed out, “Arpaio is thinking big.” Readers who may be “hoodwinked into thinking the tents constitute cruel and unusual

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<sup>740</sup> Susan Leonard, “Sheriff weighs tent jails to ease crowding,” *The Arizona Republic*, March 12, 1993, B7.

<sup>741</sup> Frederick Bermudez and Richard F. Casey, ““A place to put the bad guys,”” *The Arizona Republic*, August 4, 1993, A1.

punishment” were reassured: evaporative coolers were to be installed in each tent.<sup>742</sup>

Some readers, however, did not need such reassurances. Bruce Bushing of Waddell wrote a few weeks later, “Don’t get me wrong; I have nothing against prisoners being kept in tents in the Phoenix heat during the summertime. It’s almost ironic how justice is sometimes served.”<sup>743</sup> Perhaps what is ironic is his use of the word justice. That same day, Arpaio wrote a guest column that tent city “lets the people of Maricopa County know that they don’t have to build jails costing as much as hotels to be safe in their homes and on the streets.” Arpaio also had advice for other law enforcement officials: “police officers and judges should not hesitate because of concerns about jail capacity as they contemplate arrests and sentences.” But, just in case, Arpaio made the argument that tent city does not come “close to the cruel and unusual punishment prohibited by the U.S. Constitution.” In a misapplication of domestic and international legal precedent, Arpaio fallaciously reasoned that this was because “jails in the Middle East and Latin America” are in fact the real definition of “cruel and unusual punishment” and “inhumane.”<sup>744</sup>

To little surprise, all was not well as the jail erupted on at least three separate occasions in its first six years. The first took place a little more than two months after opening. On October 27, 1993, more than 100 people who had recently been transferred rose up at In-Tents Jail to protest living conditions. The incident was not immediately

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<sup>742</sup> “The Sheriff’s Tent City: Well worth a try,” *The Arizona Republic*, editorial, August 5, 1993, A12.

<sup>743</sup> Bruce D. Bushing, “Wasteful prison spending likely would build many cells,” Letters, *The Arizona Republic*, August 29, 1993, C4.

<sup>744</sup> Joseph M. Arpaio, “In-Tents Jail shows we’re tough on criminals,” Guest Column, *The Arizona Republic*, August 29, 1993, C5.

reported to the media. News outlets eventually broke the story a week later describing it as the “first outbreak of widespread violence at the tent city.” Despite this Arpaio downplayed its seriousness, “It wasn’t a riot or anything close to it. I call this a learning process for us.” It took 16 or 17 detention officers to “quell the disturbance.”<sup>745</sup> People also protested by escaping. In June 1994, Benjamin Walker, who was halfway through a six-day jail term, broke a padlock and scaled a fence around the tents. He was caught and two years were added to his sentence.<sup>746</sup> Three months later, Jeffrey Talent climbed a fence and walked out. He was later caught in Tucson and faced additional charges.<sup>747</sup>

Despite calling the 1993 incident a “learning process,” little was learned or changed three years later. Arpaio was reelected in November 1996. That month the jail erupted for the second time. On November 17, about 300 or 400 people (about half the jail population) held at the tent city jail took control for five hours to protest conditions. Fires were set and rocks were hurled. Initially, news articles reported that the riot began when a fight broke out between two inmates. A few hours later, 100 police officers and a squad of rifle-carrying National Guard moved in.<sup>748</sup> For County Attorney Rick Romley, the riot was not unanticipated. “Those of us in law enforcement were not surprised this happened. I want to support Joe, but we want to provide at least minimal care,” Romley

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<sup>745</sup> David Schwartz, “Tent-city prisoners attack unarmed officers,” *The Arizona Republic*, November 5, 1993, B1. Associated Press, “Disturbance reported at Maricopa tent jail,” *The Arizona Daily Star*, November 6, 1993, B3.

<sup>746</sup> “Escape turns 6-day jail term into 2 years,” *The Arizona Republic*, June 1, 1994, B2.

<sup>747</sup> “Inmate who fled prison-tent unit is snared,” *The Arizona Republic*, September 13, 1994, B2.

<sup>748</sup> Alfred Azula, Jodie Snyder, Pat Flannery, and DeWayne Smith, “Inmates riot at tent jail,” *The Arizona Republic*, November 18, 1996, A1, A2.

stated.<sup>749</sup> A later 2,100-page report obtained by *The Arizona Republic* found the story of inmate fighting to be false. The report stated that the riot was set off when a detention officer pepper sprayed Bobby Joe Baxter as he was using a portable toilet. But conditions in general were dismal and ripe for protest. According to *The Arizona Republic*, the report “contains a chilling account of jail conditions – and of a riot that could have been far more disastrous but for sheer luck.” The article quotes people held at the prison stating, “The DOs (detention officers) get their attitude from the big boss, the sheriff. They know he says we should be treated like garbage, so they think it’s OK to push us around to act like a bunch of thugs.” The report further noted that people held at the jail came together to target specific guards, jail facilities, and Arpaio. As one person held there stated, “If it would have been a race riot, it’s either kill or be killed. But every thing out there was a unity, that’s all it was. Everyone stuck together.”<sup>750</sup>

Two days after the riot, Arpaio started moving people back into tent city jail. Despite what may seem to be obviously problematic conditions, federal and county officials continued to mull the causes of the riot while Arpaio and his officers defended the jail. The riot had taken place amidst an ongoing investigation by the U.S. Justice Department over civil-rights abuses in Maricopa County jails. In March, a Justice Department letter to a county supervisor noted that the use of excessive force was “especially and unacceptably prevalent” in at least three sites, including tent city.<sup>751</sup> The

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<sup>749</sup> Mike McCloy and Pamela Manson, “Romley ‘not surprised’ by rampage,” *The Arizona Republic*, November 18, 1996, A1, A2.

<sup>750</sup> Dennis Wagner, “Jail Riot: The Story,” *The Arizona Republic*, February 8, 1998, A1, A10. See also Robert M. Freeman, *Correctional Organization and Management: Public Policy Challenges, Behavior, and Structure* (Amsterdam, The Netherlands: Elsevier, 1999), 115.

union representing county detention officers later laid blame on the Board of Supervisors for not building more jails and hiring more officers.<sup>752</sup> But Arpaio maintained the riot did not have anything to do with overcrowding or conditions because “even coddled” prisoners riot.<sup>753</sup> Elsewhere, there was agreement among national prison experts that no other sheriff “keeps inmates in a tent city, deploys chain gangs, deprives prisoners of coffee or serves green bologna sandwiches.” A director at the Institute of Criminal Justice stated, “This was inevitable. I would think this is sort of a wake-up call for the guy, I hope.”<sup>754</sup> Donna Hamm, director of Middle Ground, stated, “His [Arpaio’s] attitude is that these people are throwaway people. That attitude has bled down into the staff attitude. The staff feels it has license to abuse and humiliate inmates.”<sup>755</sup> Affirming this perspective were the people directly experiencing tent city. Days after the riot, there was unanimous agreement of its cause: “It’s the sheriff’s fault.” Phoenix attorney Joel Robbins explained, “The way that jail is run comes from the top down. Sheriff Arpaio has taken this ‘toughest sheriff in America’ reputation and used it to make conditions at

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<sup>751</sup> Pat Flannery, “Sheriff reopening tent city after riot,” *The Arizona Republic*, November 19, 1996, A1, A2.

<sup>752</sup> Clint Williams, “Arpaio vows improvements for tent city,” *The Arizona Republic*, November 20, 1996, B2. A statement by the American Federation of State, County and Municipal Employees Local 3190 read: “Sunday’s riot was not about abuse of inmates, it was about an abuse of the public trust by elected officials who think they can continue to underfund and understaff county jails and still manage to uphold public safety.”

<sup>753</sup> Dennis Wagner, Mike McCloy and Clint Williams, “Arpaio’s jails unique, experts say,” *The Arizona Republic*, November 19, 1996, A1.

<sup>754</sup> Dennis Wagner, Mike McCloy and Clint Williams, “Arpaio’s jails unique, experts say,” *The Arizona Republic*, November 19, 1996, A1.

<sup>755</sup> Associated Press, “Sheriff is criticized in jail riot,” *The Arizona Daily Star*, November 19, 1996, 1B.



the jail almost unbearable for the inmates.”<sup>756</sup> As the jail was being cleaned up, Arpaio maintained, “I am not going to change the program. This is not a country club. If I start changing everything now, they’ll riot every time they’re not happy.”<sup>757</sup>

Nevertheless, Arpaio met with four people held inside tent city jail two days after the riot and promised to make some changes. A news story claimed that what people had complained about was medical service and sanitation so Arpaio, who canceled a speech at the International Narcotics Officers Association in San Diego to make the meeting, promised to provide trash cans, more portable toilets, and make efforts to improve medical service. However, Arpaio also noted, “All my programs will stay in place. I don’t think this riot was caused by pink underwear or bologna.”<sup>758</sup> Two months later, Arpaio would again change his mind, this time about taxes, new prisons, and the limits of tent city. “It’s very difficult, because I am the one who’s been saying I’ll put up tents from here to Mexico, but the reality is, I cannot put dangerous criminals in tents.” For the “dangerous criminals” Arpaio suggested a new medium- to maximum-security jail for 3,000 people.<sup>759</sup> After holding on to a no-new-jails position for years, Arpaio would join other law enforcement officials advocating prison expansion.

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<sup>756</sup> William Hermann, “‘Brutal’ policies caused riot, inmates, their lawyers say,” *The Arizona Republic*, November 19, 1996, A2.

<sup>757</sup> Dennis Wagner, Mike McCloy and Clint Williams, “Arpaio’s jails unique, experts say,” *The Arizona Republic*, November 19, 1996, A3.

<sup>758</sup> Clint Williams, “Arpaio vows improvements for tent city,” *The Arizona Republic*, November 20, 1996, B1. Clint Williams, “Tent-city riot sparks changes in jail system,” *The Arizona Republic*, November 25, 1996, A1.

<sup>759</sup> “Arpaio says limits of tent cities make new county jails inevitable,” *The Arizona Republic*, January 29, 1997, B1.

Tent city continued to make the news. In February 1997, faced with a shortage of detention officers, Arpaio decided dogs with cameras would do. Four “specially trained German shepherd dogs” were to be equipped with miniature video cameras to monitor the jail. In addition to saving money, there would be security benefits. As Arpaio explained, “Are you going to jump over a fence with some crazy dog there?”<sup>760</sup> In mid-May, the dogs, bred and raised in the former Czech Republic and costing \$32,000, were introduced to tent city at 7 at night because Arpaio did not “want the animals to suffer heat exhaustion.”<sup>761</sup> The next year, California Governor Pete Wilson visited Maricopa County jails to find possible solutions to his state’s jail overpopulation problem. Wilson commended Arpaio, “He is trying to prevent people from coming back here. That’s even more important than the cash savings for the taxpayers. This is a very good operation for people smart enough to learn from an unpleasant experience and not have to repeat it.”<sup>762</sup> California was not alone. Counties in Ohio, Florida, Louisiana, Nevada, and Texas were all considering modeling tent city facilities.<sup>763</sup> All the while, federal investigations into prisoner abuse continued.

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<sup>760</sup> Jim Walsh, “Jail getting canines with video cameras,” *The Arizona Republic*, February 9, 1997, A1, A12.

<sup>761</sup> Abraham Kwok, “‘Seeing-eye’ dogs to prowl tent jail,” *The Arizona Republic*, May 21, 1997, B1.

<sup>762</sup> Richard Ruelas, “Show and tell at jail: Calif. governor draws ideas from Tent City,” *The Arizona Republic*, January 18, 1998, B1.

<sup>763</sup> Ruelas, “Show and tell,” B6. Wilson was also introduced to 18 female prisoners who were part of Arpaio’s female chain gangs as they stepped off a bus. Asked if he would have liked to talk to them, Wilson passed. As the women walked away, they chanted, military style, “I don’t know but I’ve been told. Sheriff Joe is mighty bold.” To this, Wilson “chuckled.” Ibid. Female prisoners had been moved to tent city back in the summer of 1996. “Moving to a tent for the summer,” *The Arizona Republic*, May 16, 1996, B1.

Yet, at the end of June 1998, the Justice Department ended its three-year investigation over jail operations (begun in August 1995) and dropped a lawsuit over prisoner abuse. The Department claimed Arpaio had complied with jail improvement requirements. Arpaio, on the other hand, claimed the dismissal proved prisoners were never victims of systematic mistreatment and declared victory. Arpaio's public information staff claimed the headline: "Justice is done. Jail brutality claims unfounded." The article stated that while the use-of-force issue was "resolved, medical and mental health care within the jails remain under a federal investigation."<sup>764</sup> A year earlier, Amnesty International had visited Maricopa County to investigate treatment of people held in jails. They reported that most people held at tent city spent their time "confined to the tents." The tents themselves "provide serious environmental hazards which make them unsuitable for inmate housing."<sup>765</sup>

After an eight-month inquiry into whether jail conditions had in fact changed, *The Arizona Republic* reported that they had not. At that point, Arpaio was listed as a defendant in more than 800 lawsuits, while having written a book and made 500 talk-show appearances. While commanding an 85 percent approval rate in Maricopa County, his jail continued business as usual. Despite the lawsuit being dropped, Arpaio maintained, "Conditions are the same. Nothing's changed." Just in January 1998, Cedric Saulsberry, held at tent city jail, had been "kicked, choked, and jolted with a stun gun, then hauled to a jail infirmary where guards pinned him down and shoved a catheter up

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<sup>764</sup> Dennis Wagner, "Jail suit dropped by feds," *The Arizona Republic*, June 30, 1998, A1, A2.

<sup>765</sup> Amnesty International, "United States of America: Ill-treatment of inmates in Maricopa County jails, Arizona," (August 1997), 10.

his penis, drawing blood instead of urine.” Five people held inside relayed the same events in separate interviews. Yet, a sheriff’s report blamed Saulsberry for violating jail policy and using obscene language.<sup>766</sup> Such unfiltered state violence carried on uninterrupted in Maricopa County. Arpaio’s popularity was a significant contributor. When he is asked how he gets away with tent city operations, Arpaio responds, “You know how to get it done? You do it! If we were so bad, do you think I’d still be sheriff after five years? I haven’t been driven out of town.”<sup>767</sup> As Hamm noted, “Joe Arpaio is a good snake oil salesman... People are buying his snake oil... They think he has it under control. It’s far out of control.”<sup>768</sup>

But critics could not stop tent city operations. In August 1998, Arpaio threw a birthday party for the jail “with himself as the guest of honor and a 500-pound, black-and-white-striped birthday cake as a prop.” The executive director of the Arizona ACLU condemned the jail “as horrible today as it was five years ago.” But Arpaio would not retreat, “They can eat it along with their criticisms. This shows that I’ll never back down.”<sup>769</sup> At the same time, Pima County started considering proposals for a smaller version of Maricopa’s tent city although with much less enthusiasm. As Sheriff Clarence Dupnik explained, “I have not been fond of using tents. I am not fond of using tents. I will never be fond of using them. The only reason we are considering using tents is that

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<sup>766</sup> Dennis Wagner, “Arpaio rules,” *The Arizona Republic*, July 5, 1998, A1.

<sup>767</sup> Wagner, “Arpaio rules,” A16

<sup>768</sup> Wagner, “Arpaio rules,” A16.

<sup>769</sup> Associated Press, “Maricopa sheriff hypes 5 years of Tent City,” *The Arizona Republic*, August 4, 1998, B2.

we don't have any money to build more buildings." Paul Gattone, an attorney with the Southern Arizona People's Law Center, called the tents "cruel and unusual punishment." Gattone stated, "We're dealing with human beings and people with constitutional rights. I don't know if Sheriff Clarence Dupnik is trying to match the ridiculous reputation of Arpaio. I hope not. I think it's just a recipe for disaster."<sup>770</sup> Disaster would strike Maricopa's tent city a third time. On the night of June 12, 1999, about 200 people rose up and set fires to the tents. The rebellion was put down with patrol dogs and pepper spray. All was quiet after about an hour. Arpaio was not dissuaded, "These tents will always be here. They're not going anywhere. This is only the second little disturbance in the whole jail system."<sup>771</sup>

Even after the "disturbances" of the 1990s had subsided, Arpaio's tent city continued to make headlines. In 2001, Arpaio used "posse members, canine units, mounted patrols and his SWAT team" to shakedown Tent City and its visitors after reports that contraband was being smuggled in to facilitate escapes. The search came after officers had stopped a recent escape attempt by two people held at the jail.<sup>772</sup> Two years later, it was reported that more than 100 people held at Tent City could have been exposed to active tuberculosis.<sup>773</sup> The next month, in July 2003, when temperatures

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<sup>770</sup> Hipolito R. Corella, "Sheriff considers tents to expand county jail space," *The Arizona Daily Star*, August 9, 1998, 1B.

<sup>771</sup> Graciela Sevilla, "Cigarettes lit jail riot," *The Arizona Republic*, June 14, 1999, A1, A10. L. Anne Newell, "Deputies arrest 20 visitors, cite inmates at Tent City," *The Arizona Republic*, July 3, 1999, B2.

<sup>772</sup> "Tent City shakedown looks for escape tools," *The Arizona Republic*, May 5, 2001, B2.

<sup>773</sup> "130 Tent City inmates possibly had TB contact," *The Arizona Republic*, June 11, 2003, B5.

reached 126 degrees inside the tents, Arpaio “offered one concession” and allowed people to strip while insisting, “They’re tough, they’re used to the tents.”<sup>774</sup> A year later, in July 2004, Arpaio made another concession: he allowed country singer Glen Campbell to perform for those held at Tent City after Campbell completed his 10-day sentence for DUI. According to Arpaio, the mini-concert was part of Campbell’s time served. “We have some guys in here who cut hair, some who work in the kitchen and some who clean the floors. This inmate’s work is singing, and it’s not costing me anything,” Arpaio stated.<sup>775</sup>

### **Eloy Detention Center**

Three months later, on October 13, 2004, the third and last Bush-Kerry presidential debate took place at Arizona State University in Tempe. The topic of the night was domestic affairs. A year earlier, in March 2003, INS (which had been part of the Justice Department since 1940), was transitioned to the newly-created Department of Homeland Security (DHS). Within DHS, detention functions were handed over to the Bureau of Immigration and Customs Enforcement.<sup>776</sup> During the debate, Kerry said we absolutely must be safe and secure again. Bush replied we could if “we stay on the offense against the terrorists.” On immigration Bush wanted to increase border security

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<sup>774</sup> “Tent City inmates strip to pink skivvies,” *The Arizona Republic*, July 10, 2003, B3.

<sup>775</sup> Larry Rodgers, “Rhinestone Cowboy says so long to Tents,” *The Arizona Republic*, July 10, 2004, B1, B2.

<sup>776</sup> Dow, *American Gulag*, 11. In his book published in 2004, Dow predicted that this “bureaucratic reshuffling,” would have potentially dangerous consequences. Dow wrote, “The secretive immigration prison world is likely to be pulled even further from public scrutiny.” *Id.*

with new equipment and a temporary worker card that allowed a “willing worker and a willing employer to mate up.” And he obviously would not “reward illegal behavior.” Kerry wanted to fix the “leaking” border, crack down on illegal hiring, and an “earned-legalization program” for people who have “stayed out of trouble.”<sup>777</sup>

No one mentioned noncitizen detention.

Yet, 60 miles southeast from the debate, lives were about to intersect. Jesus A. Ruiz, an immigrant from Mexico who became a U.S. citizen in 2000, faced an opportunity for promotion from his position as a Sergeant at Eloy Detention Center to Inmate Systems Manager. Ruiz had spent most of his life living and working in Pinal County and is grateful today to the private prison company in charge of the center for his livelihood. As he notes, “my kids have food, I’m very grateful for the opportunity – to my home and my family.”<sup>778</sup> Ruiz received the promotion. Meanwhile, José López-Lara sat in his cell inside the detention center where Ruiz worked, his case pending within the barbed wire fences and locked doors of the 1,500-bed facility operated by CCA. The private prison company had by then become an integral part of the small rural community. Just a few months before, CCA teamed up with Home Depot and various community organizations to host the town’s annual “Christmas in April” project to revitalize two homes. As one CCA official noted, the event was “proof that a community can come together for the betterment of its citizens.”<sup>779</sup> Later, Ruiz would note of the

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<sup>777</sup> Commission on Presidential Debates, The Third Bush-Kerry Presidential Debate, October 13, 2004, Debate transcript, <http://www.debates.org/index.php?page=october-13-2004-debate-transcript> (accessed February 25, 2017).

<sup>778</sup> Jesus A. Ruiz, interview with author (March 8, 2017).

<sup>779</sup> Staff Reports, “Eloy gears up for X-mas in April,” *The Eloy Enterprise*, March 18, 2004, p. 1.

detention center, “We’re always doing something with the City of Eloy.”<sup>780</sup> Yet, it appeared the betterment was intended for ‘citizens’ in the most literal sense. Because even though the detention center provided revenue and jobs to the community and was not supposed to be a jail (despite locals referring it as a “prison”), José remained incarcerated. Most certainly few in this rural community thought about coming together for his betterment. Seven days after the presidential debate in which the plight of those like him were ignored by both candidates, José turned 56. He was probably anxious to get home. But four days after his birthday, José was dead.<sup>781</sup>

José died at the Maricopa Medical Center in Phoenix. His official cause of death is listed as cerebral infarction, an ischemic stroke caused by a reduction in the blood supply to an area of the brain.<sup>782</sup> There is no way to know with certainty whether his death was preventable. Perhaps better medical care could have made a difference. Maybe not. Yet, what is known with certainty is that José’s death marked a grim beginning and brought notoriety to Eloy in a way that few could have anticipated.

Perhaps if José’s death had remained isolated, the vastness of the Sonoran Desert and the remoteness of Eloy may have allied to conceal the human cost of the city’s lucrative facility. Yet, four days after the new year, death came for another at the detention center. Elias Lopez Ruelas was 54 years old when he died after being taken to the RTA Hospice in Casa Grande. His official cause of death was cirrhosis of unclear

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<sup>780</sup> Jesus A. Ruiz, interview with author (March 8, 2017).

<sup>781</sup> List of Deaths in ICE Custody, October 2003 – December 2, 2013, available at <https://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf> (hereafter List of Deaths).

<sup>782</sup> List of Deaths.



etiology.<sup>783</sup> While cirrhosis, or chronic liver damage, cannot be cured, it can often be treated if diagnosed. Diagnosis often requires lab tests or imaging for detection. Like José, perhaps if Elias had received better care, he may not have died when he did. The sons of Maya Nand are certain that would have been true of their father. Almost a month after Elias died, Maya suffered cardiac arrest while detained at Eloy Detention Center. He was twenty-two days away from turning 57. Maya, who was diabetic, had been frantically calling his family for more than 10 days after being abruptly taken into custody at the family home in Sacramento in mid-January. The last call Maya made to his family was the first time his sons ever heard their father cry. One son, Jay Ashis, later relayed that call, “He said, ‘Son, if you don’t get me out of here today, I’m going to die.’” Maya foretold his own fate. The day after the last call, Maya was taken to an emergency room in Casa Grande. After being diagnosed with congestive heart failure and later a heart attack, he was airlifted to St. Mary’s Hospital in Tucson on life support. His family drove twelve hours to watch his heart fail. He died shackled to a hospital bed.<sup>784</sup>

The lack of proper care inside noncitizen detention centers has also had devastating consequences for those facing psychological symptoms. This is particularly true at Eloy Detention Center. Three days before Christmas 2005, the *Eloy Enterprise* ran a story titled “CCA death in cell” in the section “Of interest... In Brief.” The story, totaling less than 60 words, told how guards at Eloy Detention Center had found a “detainee unresponsive in his cell.” He was pronounced dead at 5:20am on December 14

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<sup>783</sup> List of Deaths.

<sup>784</sup> Nina Bernstein, “Family Struggled in Vain to Help Suffering Detainee,” *New York Times*, May 5, 2008. See also, List of Deaths.

of an “apparent suicide.”<sup>785</sup> No further details were provided. In a later investigation of 83 deaths of immigrant detainees between 2003 and 2008, *The Washington Post* found that 30 were “questionable.” Juan Salazar-Gomez’s death that December morning at Eloy was one such listed.<sup>786</sup> Almost certainly Juan, who was 29 at the time he was found in his cell, never anticipated the grim precedent his death would set.<sup>787</sup> Juan’s death marked the fatal beginning of a string of suicides that have since followed.

In early 2006, BOP decided not to renew its contract with the Eloy Detention Center due to budget issues. Nearly 500 BOP inmates were to be moved out of the Center.<sup>788</sup> Prison jobs were on the line. Eloy Mayor Byron Jackson, a former corrections officer, wrote to ICE, “The city of Eloy has had discussions with CCA regarding the development of a Residential Services Agreement for the housing of detainees/ inmates at the Eloy facility. Should ICE have a need for detention space at this facility, the city would be happy to enter into discussions/ negotiations with ICE.” CCA was attempting to find employees new jobs. In the meantime, employees at EDC were asked to sign non-disclosure agreements “designed to limit their conversation with reporters and others.”<sup>789</sup> While waiting for ICE to approve the contract, prison employees anxiously awaited their future. One corrections officer who went by “Mr. Ray” noted that 126 people had already

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<sup>785</sup> “CCA death in cell,” *Eloy Enterprise*, December 22, 2005, p. 6.

<sup>786</sup> “A Closer Look At 83 Deaths,” *The Washington Post*, found at: <http://www.washingtonpost.com/wp-srv/nation/specials/immigration/map.html>.

<sup>787</sup> List of Deaths.

<sup>788</sup> Josh Kelley, “Prison shuffle puts Eloy workers at risk,” *The Arizona Republic*, February 8, 2006, p. B1.

<sup>789</sup> Temple A. Stark, “Feds told Eloy wants inmates,” *The Eloy Enterprise*, February 2, 2006, p. 1.

been laid off. Ray said, “I’ve been there 12 years and they’re doing cuts by seniority. But if there are pay cuts your senior officers are going to be looking for work elsewhere. A lot of people are leaving now.”<sup>790</sup> ICE eventually approved the intergovernmental service agreement with Eloy. The per diem rate per detainee was \$68.45.<sup>791</sup> Meanwhile, Jackson had little reservation of Eloy “becoming known as a prison town.” Jackson noted, “I think people are comfortable with the environment... Heck, it’s been 10 years now with very little problems whatsoever.”<sup>792</sup> Despite four deaths so far, Eloy Detention Center stayed open for business.

Yet, conditions at Eloy Detention Center remained the same. On New Year’s Day 2006, Jose López-Gregorio had turned 32. The husband and father likely spent his birthday and the coming of a new year worrying about how to feed his family. They were going hungry and he had to make a choice. In mid-August, he left his family with a month’s supply of food and headed north. By the end of September, he was at Eloy Detention Center.<sup>793</sup> For twenty-one days after being incarcerated, Jose did not receive a physical examination. After he was finally examined, medical personnel ignored a sick call for seven days.<sup>794</sup> Guilt-ridden over leaving his family and being unable to rejoin

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<sup>790</sup> Temple A. Stark, “Prison contract with ICE close to being signed,” *The Eloy Enterprise*, February 16, 2006, p. 3.

<sup>791</sup> Inter-Governmental Service Agreement City of Eloy, DROIGSA-06-0002, p. 1.

<sup>792</sup> Kelley, “Prison shuffle,” p. B2.

<sup>793</sup> “Suicide Autopsy: Jose Lopez-Gregorio,” October 12, 2006, available at: [http://media.washingtonpost.com/wp-srv/nation/specials/immigration/documents/day3\\_lopezgregorio.pdf](http://media.washingtonpost.com/wp-srv/nation/specials/immigration/documents/day3_lopezgregorio.pdf).

<sup>794</sup> Stacey A. Tovino, “The Grapes of Wrath: On the Health of Immigration Detainees,” 57 *Boston College Law Review* 167 (2016), 174.

them, Jose contemplated ending his life. On September 24, he was placed on suicide watch in isolation after fellow detainees reported he was voicing suicidal thoughts. A medical doctor met with him at 7 p.m. that night. The doctor reported his risk as low, discontinued suicide watch, and placed him on 15-minute checks. The next day, the doctor met with Jose. Jose was “very upset, sobbing, expressing much guilt.” The doctor diagnosed Jose with Adjustment Disorder with Depressed Mood. As Jose was scheduled to leave the facility the next day, no further follow up was scheduled.<sup>795</sup> Four days later Jose, still at Eloy, was found in his cell with a bedsheet tied to the upper bunk. He was taken to Casa Grande Regional Medical Center and later pronounced dead.<sup>796</sup> ICE later stated after an investigation, “Medical care in this facility does not meet ICE standards.”<sup>797</sup> Yet, the facility stayed open.

As Eloy Detention Center continued to operate as if nothing was amiss, the death toll increased. In November 2006, a few months after Jose’s death and less than a year after Juan’s death, Mario Francisco Chavez-Torres turned 27 years old. A month later he would suffer headaches, dizziness, and vomiting at Eloy Detention Center while the medical staff ignored his symptoms.<sup>798</sup> Mario’s sick call from solitary confinement was ignored for four days. When a nurse finally responded, it took her one hour to get to

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<sup>795</sup> “Suicide Autopsy: Jose Lopez-Gregorio,” 12 October 2006,” available at: [http://media.washingtonpost.com/wp-srv/nation/specials/immigration/documents/day3\\_lopezgregorio.pdf](http://media.washingtonpost.com/wp-srv/nation/specials/immigration/documents/day3_lopezgregorio.pdf).

<sup>796</sup> “Eloy Police Reports: Friday, Sept. 29,” *Eloy Enterprise*, October 12, 2006, p. 4. *See also*, List of Deaths.

<sup>797</sup> Tovino, “The Grapes of Wrath,” 174.

<sup>798</sup> Margaret Regan, *Detained and Deported: Stories of Immigrant Families Under Fire* (Boston: Beacon Press, 2016), 30.

Mario, whose cell was a two-minute walk from the medical office. Once she got to his cell, she said she was not qualified to assess him and she was “only a pill pusher.” There is no evidence that a doctor ever saw Mario.<sup>799</sup> A week later he collapsed in the shower. On December 13, 2006, Mario was found unconscious in an isolation cell after an “unwitnessed seizure” had left him brain dead. His official cause of death is listed as a ruptured arteriovenous malformation midbrain.<sup>800</sup> Eloy Detention Center continued to stay open for business. An ICE memo investigating Mario’s death concluded he “should have been referred for outside treatment and that Eloy failed to protect [Mario]’s health, safety, and welfare.”<sup>801</sup> A later DHS investigation found that Eloy Detention Center had “failed on multiple levels to perform basic supervision and provide for the safety and welfare of ICE detainees.”<sup>802</sup>

The brutality of noncitizen detention at Eloy continued away from public scrutiny or legal remedy. Five days after Mario’s death, Felix Franklin Rodriguez-Torres called his mother, Maria, in Queens from Eloy Detention Center. Felix, a construction worker who loved to play soccer, told her that he had been sick from coughing and fever. He had developed swelling in his neck that his sister had noticed some time before “most likely a sign that cancer was blocking his lymph system.” Felix promised to call his mom again on Christmas. He never did. Two days after Christmas, Felix was taken to the emergency room at Maricopa Medical Center in Phoenix. He had laid “pleading for medical help on

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<sup>799</sup> Tovino, “The Grapes of Wrath,” 175.

<sup>800</sup> List of Deaths.

<sup>801</sup> Tovino, “The Grapes of Wrath,” 175.

<sup>802</sup> Nina Bernstein, “Hurdles Shown in Detention Reform,” *New York Times*, August 20, 2009.

the floor of his cell, unable to move.” The mass in his neck had tripled in size and obstructed his breathing. He was too far gone for chemotherapy since his cancer had gone undiagnosed and untreated. He was placed on life support. On January 12, 2007, the hospital gave notice to CCA that Felix had a week to live. The deportation officer refused to tell his family where he was hospitalized. The officer offered to release Felix to his family if they paid for a plane ticket to New York. But Felix was too sick to travel. A nurse had secretly lent Felix her phone so he could call his family. His parents finally came to his bedside once they heard from him. Felix’s face lit up when he saw them. They spoke to him for a few hours before the visit was cut off by detention guards. The next morning, Felix was in a coma. On January 18, his family took him off life support. Felix died of a cancer that was treatable in a “vast majority of cases.” He was 36. His mother later lamented, “I never want another immigrant to feel this pain.”<sup>803</sup> Two months after Felix’s death, Eloy underwent its annual review. It was assigned a final rating of “acceptable.”<sup>804</sup>

It would be inaccurate to say that the detention center was completely closed to public scrutiny. Four months after Felix’s death and a month after the annual review, the then editor of the *Eloy Enterprise*, Lindsey Gemme, visited Eloy Detention Center for the first time. Perhaps there was hope the town newspaper would finally shed light on the happenings inside the detention center for the community and the world to see. Yet, Gemme would not be the journalist to do so. After thanking CCA for “their time and

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<sup>803</sup> Nina Bernstein, “Hurdles Shown in Detention Reform,” *New York Times*, August 20, 2009.

<sup>804</sup> Eloy Detention Center Annual Detention Review, Office of Detention and Removal, March 30, 2007, available at: <https://www.documentcloud.org/documents/1865591-elyo-az-2007-ero-inspection.html>.

hospitality,” Gemme details her introduction to the “prison system and its inner workings.” As she notes, prison is not just a place where “the rest of society hopes to lock away our undesirables and throw away the key” but also a place meant to “rehabilitate, teach, and maybe even heal people who have maybe made a few mistakes.” Perhaps someone should have informed Gemme that the detention center was not meant to be a prison since people are held there while their “administrative proceedings” are being adjudicated. But then again, considering the visual markers of barbed wire, locked doors, and armed security, she described what she saw. Regardless, perhaps such subtleties are meaningless anyway in a “prison town.” Gemme found that detainees “were friendly, talkative, and not scary at all,” despite the barbed wire fencing. She highlighted that she believes “in forgiveness and second chances. Sometimes third and fourth chances.” She ended by hoping that the women she met can “get ‘back to a normal life’ in their new one as soon as they possibly can.”<sup>805</sup> If only serving time at Eloy gave hope to that possibility. A few months later, CCA’s Anytown Scholarship funded three Pinal County high school students to attend a leadership development camp. As a CCA official noted, “As one of the largest employers in Pinal County, it is vital for us to invest in our host communities.”<sup>806</sup> As people kept losing their lives at Eloy Detention Center, money kept being circulated and there was little indication the community would raise any objections.

This was particularly true as time passed and the incarcerating entity and job provider became even more embedded in the community. On Valentine’s Day 2008,

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<sup>805</sup> Lindsey Gemme, “A past can be a lifetime sentence,” *Eloy Enterprise*, May 3, 2007, p. 2.

<sup>806</sup> “CCA hosts winners in Camp Anytown scholarship contest,” *The Eloy Enterprise*, August 16, 2007, p. 1.

there was a company barbeque at Eloy Detention Center in celebration of CCA turning 25. John Ferguson, then president and CEO of CCA, attributed the company's success to their "dedication in providing a safe and secure environment for the inmates in our care, our employees and the communities we serve."<sup>807</sup> At the annual inspection of the facility later that month, EDC would again be given a rating of "acceptable."<sup>808</sup> Five months later, Nail Yoursef Dawood died at Eloy Detention Center. His official cause of death is listed as "natural/coronary artery vasculitis." Nail was 23 days away from turning 42. Less than three months later, Emmanuel Owusu committed suicide while held at Eloy. Emmanuel was a 62-year-old barber who had lived as a permanent resident for 33 years mostly in Chicago. He was a diabetic with high blood pressure. He had been detained for two years at Eloy. He was found hanging weeks after he had lost his last appeal. He died at Casa Grande Regional Hospital from "complications of acute cerebrovascular accident."<sup>809</sup> Updating its national detentions standards from 2000, ICE issued performance-based national detention standards in 2008. As one work notes, "Both the original standards for civil detention and subsequent revisions largely replicate the ACA

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<sup>807</sup> "Corrections Corporation of America, operator of Eloy Detention Center & Red Rock, celebrates 25 years of business," *Eloy Enterprise*, February 14, 2008, p. 7.

<sup>808</sup> Detention Review Worksheet: Eloy Detention Center, Creative Corrections, February 19-21, 2008, available at: <https://www.documentcloud.org/documents/1865590-eloy-az-2008-ero-inspection.html>.

<sup>809</sup> Nina Bernstein, "Officials Hid Truth of Immigrant Deaths in Jail," *New York Times*, January 9, 2010. Owusu was arrested in 2006 "because of a 1979 conviction for misdemeanor battery and retail theft. Even the Phoenix ICE field office director was struck by the case: "Convicted in 1979? That's a long time ago." Nevertheless, a government report on his death referred to a "lengthy" criminal history ranging from 1977 to 1998. It did not note that this lengthy history, which had ended more than a decade earlier, consisted mostly of shoplifting offenses." Daniel Kanstroom, *Aftermath: Deportation Law and the New American Diaspora* (New York: Oxford University Press, 2012), 91.



jail detention standards for pretrial criminal defendants. ICE made no modifications to tailor correctional standards to fit the unique legal, medical, and cultural requirements of foreign-born, administratively held detainees. And where its standards were modified, the standard of care was diminished.”<sup>810</sup> Regardless, as another work points out, these standards are “not legally enforceable because, unless they face criminal prosecution as well as deportation, detained immigrants are covered by administrative law, but not the constitutional protections that accompany criminal procedures.”<sup>811</sup>

As Eloy Detention Center continued to stay open, the rural community continued to seemingly benefit despite the graveyard being created at the edge of town. In its February 2010 annual review, Eloy Detention Center got a final rating of “superior.” In July 2010, representatives from the detention center donated “notebooks, pencils, paper, rulers, glue and much more” to the Eloy Elementary School District “just in time for the start of the new school year.”<sup>812</sup> In November, veterans employed at Eloy Detention Center received a “special commemorative pin that pays homage to their bravery and commitment to the country.”<sup>813</sup> The annual review in February of 2011 stated that Eloy Detention Center met all standards. Yet, whatever guidelines this fiction denoted, it did not mean an end to the reality of deaths. On October 5, 2011, Pablo Gracida-Conte

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<sup>810</sup> Dora B. Schriro, “A Civil System of Civil Detention,” in *The New Deportations Delirium: Interdisciplinary Responses*, edited by Daniel Kanstroom and M. Brinton Lykes (New York: New York University Press, 2015), 66.

<sup>811</sup> Deirdre M. Moloney, *National Insecurities: Immigrants and U.S. Deportation Policy since 1882* (Chapel Hill: The University of North Carolina Press, 2012), 222.

<sup>812</sup> Robby Gal, “Eloy Detention Center donates supplies to elementary district,” *The Eloy Enterprise*, July 22, 2010, p. 5.

<sup>813</sup> “Eloy Detention Center honors employees this Veterans Day,” *The Eloy Enterprise*, November 11, 2010, p. 1.

submitted a call slip while held at Eloy Detention Center that said, “Can you please help me?” Pablo had had no appetite for three weeks and threw up whenever he did manage to eat. A second call slip read, “my stomach hurts, unable to eat well, will vomit after eating. Pain in stomach.”<sup>814</sup> Pablo only spoke his native dialect of Mixtec. He likely had someone write the call slips for him in English. At 3:30 p.m. three days later, a nurse at the clinic tried to use a Spanish interpreter but noted that “something was definitely lost when trying to communicate over a speaker phone.” The nurse recalls that “all he wanted to talk about were tortillas saying tortillas and meant were the only things that didn’t hurt his stomach.” The nurse recorded that Pablo was a “thin male, appears older than stated age.”<sup>815</sup> At 10 a.m. on October 14, Pablo stated he had “not felt well for two months.” He had no appetite and a level of pain that did not “let him sleep.”<sup>816</sup> On October 22, Pablo was sent to medical for suffering shortness of breath. The nurse practitioner stated, “I’m not going to see him.” Instead, he instructed to “increase fluids, continue his medications and refer to the primary [midlevel practitioner] for follow-up next week.”<sup>817</sup> The next day, Pablo submitted another sick call in English that he wanted to stop taking the medications because the pills made him feel bad, they gave him heartburn, and made him feel dizzy.<sup>818</sup> On October 24, Pablo stated that he had not “been eating for two months

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<sup>814</sup> DHS Report of Investigation, Case Number 201201174, Detainee Death Review: Pablo GRACIDA-Conte, Section 1 – Medical Compliance Review, Creative Corrections, LLC, p. 6.

<sup>815</sup> DHS Report, Pablo Gracida-Conte, p. 8.

<sup>816</sup> DHS Report, Pablo Gracida-Conte, p. 10.

<sup>817</sup> DHS Report, Pablo Gracida-Conte, p. 11.

<sup>818</sup> DHS Report, Pablo Gracida-Conte, p. 12.

and was even unable to recall his last meal.” He stated he “was going to court tomorrow and just wanted to go home.”<sup>819</sup> At 7 p.m. the next day Pablo was admitted to Casa Grande Regional Medical Center. Three days later, he was airlifted to the University Medical Center in Tucson. In likely one of his last words, at 12:57 a.m. on October 30, he noted that he “can’t take a deep breath.”<sup>820</sup> At 4:42 a.m. Pablo passed away. The Medical Compliance Review repeatedly noted that various individuals “failed.”<sup>821</sup> A few months later in early 2012, DHS conducted a performance-based national detention standards inspection at Eloy Detention Center. Eloy received a final rating of “Meets Standards.”<sup>822</sup> In 2011, CCA reported a net income of \$162 million.<sup>823</sup>

One might perhaps think that once deaths in a single detention center had risen to double digits, something would have been done. Yet, in a seemingly natural indication of how this nation has long cast off individuals deemed the “other” nothing was in fact done. A community had jobs, a company made money, and the detention center stayed open. On January 12, 2012, Manuel Cota-Domingo turned 34 years old. We can only guess whether he made plans then for his travels north. Regardless, by early December of

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<sup>819</sup> DHS Report, Pablo Gracida-Conte, p. 13.

<sup>820</sup> DHS Report, Pablo Gracida-Conte, p. 16.

<sup>821</sup> DHS Report, Pablo Gracida-Conte, p. 17-18.

<sup>822</sup> DHS, “Performance-Based National Detention Standards Inspection Worksheet for Over 72 Hour Facilities,” Dates of Review: 1/31/2012 to 2/2/2012, p. 99.

<sup>823</sup> Daniel E. Martínez and Jeremy Slack, “What Part of ‘Illegal’ Don’t *You* Understand? The Social Consequences of Criminalizing Unauthorized Mexican Migrants in the United States,” in *The Shadow of the Wall: Violence and Migration on the U.S.-Mexico Border*, edited by Jeremy Slack, Daniel E. Martínez, and Scott Whiteford (Tucson: The University of Arizona Press, 2018), 123.

that year, he had made his way to Sasabe, Arizona.<sup>824</sup> On December 12, he was at Eloy Detention Center. That morning, he was offered a phone call and he called his father, Mateo. Manuel had been carrying a “bag of meds” that was taken from him once he got to Eloy because it was “non-allowable property.”<sup>825</sup> The next day, Manuel signed a form indicating he wanted to tell the consulate he was detained.<sup>826</sup> For the next 10 days, Manuel would suffer a series of medical symptoms. They started with congestion and a cough. Manuel verbally denied he had any serious medical conditions. As a registered nurse later claimed, “some detainees are afraid to disclose medical conditions because they fear it will either cause them to be held in detention longer, or speed up their removal.”<sup>827</sup> His cellmate later noted that Manuel was “worried he would have to pay for medical care which he could not afford.” So, he suffered in silence.

A week after being brought to Eloy Detention Center, Manuel was medically cleared “to be removed” and tentatively scheduled for removal via ICE Air the day after Christmas.<sup>828</sup> At 11 p.m. on December 19, his cellmate heard Manuel having “very labored breathing.” His cellmate banged on the cell door and yelled “CO” and “sick.” A corrections officer responded at 2 a.m.<sup>829</sup> Manuel was finally evaluated by a registered

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<sup>824</sup> DHS Report of Investigation, Case Number 201302544, Detainee Death Review: Manuel COTA-Domingo, p. 2.

<sup>825</sup> DHS Report, Manuel Cota-Domingo, p. 6.

<sup>826</sup> DHS Report, Manuel Cota-Domingo, p. 11.

<sup>827</sup> DHS Report, Manuel Cota-Domingo, p. 12.

<sup>828</sup> DHS Report, Manuel Cota-Domingo, p. 13.

<sup>829</sup> DHS Report, Manuel Cota-Domingo, p. 14. “CO” refers to corrections officer.

nurse at 4:30 a.m.<sup>830</sup> Manuel talked about “his family and seemed distressed about not being able to reach them.” The nurse thought he was having “an anxiety attack.”<sup>831</sup> After 5 a.m. it was recommended that Manuel be taken to the hospital.<sup>832</sup> But no ambulance was called. Instead, Manuel was restrained in irons and then driven to Florence Anthem Hospital in Florence in a van. On the way, neither of the two correctional officers spoke Spanish. One commented on how bad Manuel’s breath smelled. They noted that his “breathing became noticeably more labored during the trip” and he had “started out sitting upright, but gradually slouched down in his seat until he was laying down.”<sup>833</sup> Hours after arriving at the hospital, he was shocked with a defibrillator.<sup>834</sup> Manuel remained unresponsive the next day. On December 22, he was transferred to St. Joseph’s Hospital in Phoenix.<sup>835</sup> 57 minutes after midnight on December 23, 2012 Manuel was declared dead.<sup>836</sup> The later Medical Compliance Review found that Eloy Detention Center was not fully compliant with ICE standards for medical care.<sup>837</sup> Yet, the detention center remained open.

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<sup>830</sup> DHS Report, Manuel Cota-Domingo, p. 19.

<sup>831</sup> DHS Report, Manuel Cota-Domingo, p. 20.

<sup>832</sup> DHS Report, Manuel Cota-Domingo, p. 21.

<sup>833</sup> DHS Report, Manuel Cota-Domingo, p. 23.

<sup>834</sup> DHS Report, Manuel Cota-Domingo, p. 24.

<sup>835</sup> DHS Report, Manuel Cota-Domingo, p. 25.

<sup>836</sup> DHS Report, Manuel Cota-Domingo, p. 26.

<sup>837</sup> DHS Report, Manuel Cota-Domingo, p. 28.

Perhaps it would be inaccurate to say nothing was ever done after lives were lost. In their final days alive, Elsa Guadalupe-Gonzales and Jorge Garcia-Maldonado lived almost parallel lives. Although by different means, they both found themselves at Eloy Detention Center in March 2013. Elsa was 24. Jorge had just turned 40. They both had significant others and children. Elsa was assigned to Bravo housing unit Pod 200, Cell 206. Jorge was assigned to Echo housing unit Pod 200, Cell 208. After being booked, they were both allowed to take their shoes inside the facility as “allowable property.” They were both deemed to be in good mental health during initial intakes. They were both given a pamphlet on managing stress.<sup>838</sup> Three days apart, they both met with their assigned deportation officers. Elsa’s officer later said that “he did not specifically remember” her. Jorge’s officer later said that “he did not have any recollection” of him.<sup>839</sup> The attendance log indicates they both went to Christian religious services several times although with no overlapping dates. The Chaplain who was interviewed later said she did not “specifically remember” either of them.<sup>840</sup> Perhaps the circumstances of their deaths were different but their lives ended the same way. On April 28, Elsa waited for others in her unit to leave for dinner. She then “shut her cell door while still inside, and smiled through the window in her cell, at the detainees in the dayroom.”<sup>841</sup> As Margaret

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<sup>838</sup> Elsa was booked on March 20. DHS Report of Investigation, Case Number 201307166, Death of ICE Detainee Elsa GUADALUPE-Gonzales, April 28, 2013, Eloy, AZ, p. 4. Jorge was booked on March 23. DHS Report of Investigation, Case Number 201307302, Investigative Findings for the Death of Detainee Jorge GARCIA-Maldonado, aka Jorge Garcia-Mejia, p. 4.

<sup>839</sup> DHS Report Elsa, p. 4. DHS Report Jorge, p. 6.

<sup>840</sup> DHS Report Elsa, p. 6. DHS Report Jorge, p. 5.

<sup>841</sup> DHS Report Elsa, p. 11.

Regan describes, “Elsa sat down on the lower bunk and pulled the laces out of her sneakers. She knotted them together into a circle, looped the string around the trop bed frame, and tied it. Finally she climbed up onto the bottom bunk, circled the noose around her neck, and stepped into the air.”<sup>842</sup> She was found hanging from the top bunk with her shoelaces around her neck.<sup>843</sup> Two days later, Jorge placed a towel to cover the cell door’s window. He was found hanging from the top bunk with shoestring around his neck.<sup>844</sup> On May 10, 2013, Eloy Detention Center employees received an email stating that “all shoelaces have been taken from all detainees and are now considered contraband.”<sup>845</sup> Finally then, something was done about the deaths at the detention center.

By this point, rather than the deaths connected to its detention center, the City of Eloy had gained prominence among the noncitizen detention circles and the summer of 2014 provided an opportunity to showcase themselves as a well-connected prison city. Central American refugees were overwhelming the border. There was a need for a place to house the mothers and children. All eyes were on CCA to take the lead. CCA had a place in Dilley, Texas they called the “South Texas Family Residential Center.” If opened it would be the largest ICE facility in the country. But contracts would have to be written and negotiated, a process that takes time. So, the City of Eloy stepped in to save the day and avoid bureaucratic delays. As Lauren-Brooke Eisen explains, “DHS wanted a facility built quickly, and they turned to CCA. In an odd contractual arrangement the

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<sup>842</sup> Regan, *Detained and Deported*, 25.

<sup>843</sup> DHS Report Elsa, p. 13.

<sup>844</sup> DHS Report Jorge, p. 13.

<sup>845</sup> DHS Report Elsa, p. 22. DHS Report Jorge, p. 21.

most knowledgeable contract attorney would be hard pressed to explain, the federal government did not engage in a public bidding process but amended an Intergovernmental Service Agreement between the City of Eloy, Arizona and ICE to house up to 2,400 detainees at the South Texas Family Detention Facility.”<sup>846</sup> On September 25, 2014, the town newspaper carried the headline, “City takes on \$290M deal with ICE.” The deal had two agreements: one between ICE and Eloy and another between Eloy and CCA. At the request of CCA, the City of Eloy agreed to modify the terms of its Intergovernmental Service Agreement with ICE. But the council had “dug in its heels and held out for twice the fee that CCA had offered.” CCA offered 25 cents per day per detainee. The City Council wanted a \$1 a day per detainee. They settled for 50 cents per detainee. Eloy would net \$438,000 per year from the family detention center in Dilley. Money was the only point of contention. No efforts were made to reform standards of care. The city did not reference the conditions inside its own detention center. As City Manager Harvey Krauss stated, “This is a business deal for the city – it is not about immigration.”<sup>847</sup> Krauss is part of what surrounding cities have come to label as Eloy’s “A team.” According to current City Council Member Andrew Rodriguez, when other cities find out about Krauss there is notable envy. Rodriguez brags that Krauss has “been with the city for a while, he was the city planner, and then he became the city manager... Eloy was always straight and narrow... we didn’t want that no more... we

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<sup>846</sup> Lauren-Brooke Eisen, *Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration* (New York City: Columbia University Press, 2017), 155.

<sup>847</sup> Lora Neu, “City takes on \$290M deal with ICE,” *The Eloy Enterprise*, September 25, 2014, p. 1, 6.



wanted the best of the best.”<sup>848</sup> Before the vote, Mayor Joseph Nagy stated, “It’s the council’s opinion that we should participate in some of the rewards of working with CCA and the government.”<sup>849</sup> After the vote, Nagy noted, “The citizens won.”<sup>850</sup> Indeed, it would then matter little who lost.

Of course, the money coming in to the City of Eloy had no impact on the rising death toll. In fiscal year 2015-16, the city adopted a tentative budget of more than \$39 million. In 2015, the city received \$108,000 in pass through revenue for Eloy Detention Center and \$215,000 in pass through revenue for Dilley.<sup>851</sup> Despite the large sums circulated around, nothing changed inside the detention center. For Elisa Deniz this would mean unbearable heartache. Elisa last saw her son, José de Jesús Deniz-Sahagun, when they celebrated his birthday on May 13, 2015 at the family home in Jalisco, Mexico. The occasion was bittersweet as José was heading north to join his three young children in Las Vegas. Two days later, José encountered border patrol agents in Douglas, Arizona. He was “hysterical and visibly emotional” and “expressed fear that someone was going to kill him.”<sup>852</sup> On May 17, José was taken to Banner University Medical Center in Tucson after “twice jumping from a concrete bench in a Border Patrol hold room and landing on his head.” He was later discharged into USBP custody and listed as

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<sup>848</sup> Andrew Rodriguez, interview with author (February 15, 2017).

<sup>849</sup> Neu, “City takes,” p. 1.

<sup>850</sup> Neu, “City takes,” p. 6.

<sup>851</sup> Resolution No. 15-1346: A Resolution of the Mayor and City Council of the City of Eloy, Arizona, Adopting the Fiscal Year 2015 – 2016 Tentative Budget in the Amount of \$39,464,545.

<sup>852</sup> Detainee Death Review – Jose De Jesus DENIZ-Sahagun, JICMS #201506640, p. 1.

“stable.”<sup>853</sup> Once he was booked into Eloy on May 18 he told a registered nurse during his intake that he was taken to the hospital the day before after “throwing himself off a table to try to kill himself. He stated he wanted to break his neck and die because his life was threatened, and he would rather kill himself than allow someone else to do it.” The registered nurse later said José at that time was not “suicidal, symptomatic, or urgent,” and described him as appearing “stable.”<sup>854</sup> He spoke to his sister on the phone one time.<sup>855</sup> She never heard from him again.

The story of José de Jesús depicts in raw terms the brutality and state violence that has become the modern noncitizen detention regime. His story tells the systematic way in which the evolution of administrative caging has left entire groups of people, namely noncitizens of color, on the bare plane of unfettered state discretion. The details are important because within them the violence comes alive. On May 19, José de Jesús reacted to his incarceration on four separate occasions. Each time he was met with force. Around 9:30 a.m., two CCA employees attempted to interview him. José refused to answer any questions and insisted his attorney be present. When the employees gave up and returned him to his cell, José attempted to run out the main door. An officer pointed pepper spray at him and ordered him to face the wall and place his hands behind his back. José complied. After being handcuffed, José again attempted for the door. Two officers

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<sup>853</sup> Review Jose de Jesus Deniz-Sahagun, p. 2

<sup>854</sup> Review Jose de Jesus Deniz-Sahagun, p. 3-4.

<sup>855</sup> Marlon Bishop/Latino USA, “The Strange Death of José de Jesús: Lost in America’s deportation bureaucracy,” *The Marshall Project*, July 22, 2016, <https://www.themarshallproject.org/2016/07/15/the-strange-death-of-jose-de-jesus#.qKQrZhi9S> (accessed February 26, 2017).

then took him down and later described the take-down maneuver as “one of the easiest he has seen in his ten years in corrections.” The officers described José as “completely uncompliant, uncooperative, and aggressive” during the incident.<sup>856</sup> Camera footage of the incident remains less than useful because “there was bright sunlight... obscuring clear view” and “some of the incident took place in a blind spot.”<sup>857</sup> While José is on the floor, handheld video footage shows him surrounded by staff and “he is crying out and screaming.” José refused to comply with the medical exam and repeatedly stated, “This is brutality. I need my lawyer.” A registered nurse later recalled that he was “verbally combative, agitated, not making sense, and demanding his lawyer be called.” She was only able to determine that he had “no visible signs of bleeding.” José was again held face-down on the floor in the medical unit to “control his movements.” José screams in English and Spanish, “Help me,” “Call my lawyer,” “This is brutality.”<sup>858</sup>

After 14 minutes at the clinic, José was placed in a wheelchair to be taken back to his cell. José refused to cooperate and tried to slide out of the wheelchair. A CCA employee applied a pressure point technique to the base of his neck for five seconds and a second pressure point to his hypoglossal nerve for two seconds. Upon release of the pressure points, José stopped resisting. Four officers, one holding each of his limbs, carried him face down back to his cell. José was sobbing.<sup>859</sup> José was then placed on suicide watch and had to be moved to a different location. A “five person cell extraction

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<sup>856</sup> Review Jose de Jesus Deniz-Sahagun, p. 7.

<sup>857</sup> Review Jose de Jesus Deniz-Sahagun, p. 8.

<sup>858</sup> Review Jose de Jesus Deniz-Sahagun, p. 9.

<sup>859</sup> Review Jose de Jesus Deniz-Sahagun, p. 10.

team was assembled.” José was taken by a gurney without issue. However, once he got to the new cell, he refused to get off the stretcher and the staff had to carry him inside.<sup>860</sup> On May 20, José saw a doctor who wrote that José was “embarrassed about the events of yesterday” and that he has already written CCA staff an apology letter. A later report found that because he was on suicide watch, José did not have access to “implements necessary to write an apology letter,” there is no evidence they were given and no apology letter was ever found.<sup>861</sup> The doctor then changed José’s status from suicide watch to mental health observation because “he believed the detainee was no longer a danger to himself.”<sup>862</sup> At 5:28 p.m. a medical emergency was called after an officer checked in on José.<sup>863</sup> Ten minutes later 911 was called.<sup>864</sup> Paramedics got to José at 5:52 p.m.<sup>865</sup> José was pronounced dead at 6:09 p.m. The autopsy found an orange sock stuck in his esophagus had caused him to asphyxiate.<sup>866</sup> A later interview noted that the “nurses seemed preoccupied with taking the detainee’s blood pressure instead of initiating the ‘ABCs’ of CPR: Airway, Breathing, and Circulation... the nurses seemed to have limited awareness of the contents of the emergency bag.”<sup>867</sup> The Security and Healthcare Review

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<sup>860</sup> Review Jose de Jesus Deniz-Sahagun, p. 12-13.

<sup>861</sup> Review Jose de Jesus Deniz-Sahagun, p. 16.

<sup>862</sup> Review Jose de Jesus Deniz-Sahagun, p. 17.

<sup>863</sup> Review Jose de Jesus Deniz-Sahagun, p. 20.

<sup>864</sup> Review Jose de Jesus Deniz-Sahagun, p. 22.

<sup>865</sup> Review Jose de Jesus Deniz-Sahagun, p. 23.

<sup>866</sup> Review Jose de Jesus Deniz-Sahagun, p. 24.

<sup>867</sup> Review Jose de Jesus Deniz-Sahagun, p. 25-26.

later found that Eloy Detention Center “did not fully comply” with ICE standards for medical care, significant self-harm and suicide prevention and intervention, special management units, and use of force and restraints.<sup>868</sup> The Review further noted that even though there have been five suicides since 2005, Eloy Detention Center has not yet developed a suicide prevention plan.<sup>869</sup> Perhaps the change of policy behind shoelaces did not in fact amount to having a suicide prevention plan.

In a telling counterstory, Juan Miguel Cornejo, who was held at Eloy at the same time, has a different take on how José de Jesús’s life ended and what came next. Cornejo explains, “The month I entered Eloy, was when they killed Mr. José de Jesús Salgun and well I felt, impotent. I felt, I saw everyone and no one did anything. It caused a lot of anger. I asked for support from the organization Puente where I was able to get many papers, much documentation, and in conjunction with them I asked them to help me in organizing a strike. They helped me and the strike took place on the 13<sup>th</sup> of June. Close to 250 people were outside demanding that they respect our human rights and that the death of José de Jesús be clarified.”<sup>870</sup> The claim that people held inside were on a hunger strike was disputed by ICE officials.<sup>871</sup> Regardless, in response to his efforts at

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<sup>868</sup> Review Jose de Jesus Deniz-Sahagun, p. 26.

<sup>869</sup> Review Jose de Jesus Deniz-Sahagun, p. 30.

<sup>870</sup> Juan Miguel Cornejo, interview with Leah Sarat, September 26, 2016, transcript, *Stories of Immigrant Detention*, transcriptions by Stacey Gama and Berenice Pelayo, translated by Berenice Pelayo. Puente, a grassroots organization in Arizona, was formed in 2007 to address those who are impacted by anti-immigrant policies and laws. According to one author, Puente “seized national attention after Arpaio marched 220 immigrant detainees in shackles along the streets toward his Tent City jail” in January 2009. Andrew Ross, *Bird on Fire: Lessons from the World’s Least Sustainable City* (New York: Oxford University Press, 2011), 205.

<sup>871</sup> “Hunger strike is claimed, disputed at Eloy ICE Center,” *Arizona Daily Star*, June 14, 2015. “ICE denies detainees are on a hunger strike,” *The Arizona Republic*, June 14, 2015.

organizing a protest, Cornejo was locked in solitary confinement. Cornejo explains, “they realized I was the one that organized the event and they put me in the hole, disciplinary segregation, for a month and a week. I couldn’t see my family, couldn’t receive calls, make calls, couldn’t buy food, they treated me poorly. Afterwards they let me out... and about a month after they again put me in the hole... I was there in total close to three months and a half, four months, in the hole.”<sup>872</sup> Detention officials are notorious for the use of solitary confinement, in particular for indiscriminate or retaliatory purposes. Federal data released in 2013 showed that on any given day about 300 noncitizens are held in solitary confinement at the largest detention facilities across the country. About half are held in solitary for 15 days or more.<sup>873</sup> Undoubtedly, Cornejo is not alone in his experience. One recent work noted, “Isolation is frequently used in an arbitrary and inconsistent manner, as a weapon to retaliate against those who speak out, to single out members of the LGBTQ community, and as a substitute for mental health treatment. Consistently, the reasons why immigrants are confined appear to involve abuse of power and unfettered discretion as well as discriminatory attitudes toward vulnerable populations.”<sup>874</sup>

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<sup>872</sup> Juan Miguel Cornejo, interview with Leah Sarat, September 26, 2016, transcript, *Stories of Immigrant Detention*, transcriptions by Stacey Gama and Berenice Pelayo, translated by Berenice Pelayo. The “hole” refers to solitary confinement, which are isolation cells.

<sup>873</sup> Ian Urbina and Catherine Rentz, “Immigrants Held in Solitary Cells, Often for Weeks,” *The New York Times*, March 23, 2013.

<sup>874</sup> Azadeh Shahshahani and Ayah Natasha El-Sergany, “Challenging the Practice of Solitary Confinement in Immigration Detention in Georgia and Beyond,” *City University of New York Law Review* 16:2 (Summer 2013), 249.

During our interview, Jesus Ruiz, now serving as the Assistant Chief of Security reflected on well-run procedures he oversees at Eloy Detention Center. If one is contemplating working in corrections, Ruiz says “Eloy is a great place to start” and can serve as a “great stepping stone.” Although people start out with some hesitation about working in a prison because of the supposed danger involved, many say after the training that it was “not as bad as I thought it was.” Ruiz insists, “We run a smooth operation – the detainee population tends to respect the staff officer in charge.”<sup>875</sup> Ruiz reflected on the logic behind the supposed deference. He reasoned, “I never felt [threatened]. There’s always a potential for dangerous situation... I don’t see a lot of danger. I know... born in Mexico... if I got in trouble before becoming a U.S. citizen, I could have ended up in a place like this. Why would I get in trouble before my hearing... most of the population agrees with that.”<sup>876</sup> When pressed on how he became a U.S. citizen, Ruiz responded matter-of-factly, “I applied.” Bearing that sentiment in mind, Ruiz offered words of advice for future immigrants, “Being a Mexican national we all chose our paths... choose the right path.”<sup>877</sup> Ruiz is looking forward to the facility expanding as there will be more opportunity for jobs.

Meanwhile, Council Member Andrew Rodriguez is currently attending Rio Salado College for public administration and pursuing plans to continue developing Eloy as part of the council. Of the current city council, Rodriguez notes, “we all have a vision,

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<sup>875</sup> Jesus A. Ruiz, interview with author (March 8, 2017).

<sup>876</sup> Jesus A. Ruiz, interview with author (March 8, 2017).

<sup>877</sup> Jesus A. Ruiz, interview with author (March 8, 2017). It became evident over the course of the interview that Ruiz was able to apply for citizenship because he and his family had likely been the recipients of amnesty through the 1986 legislation.

each one of us have a vision but we have a vision for the betterment of Eloy. We see the street needs to be fixed, let's do it now. We see the water lines are busting, let's not just fix that little piece, let's fix that whole mile. There's a problem, let's look into it and fix it... we all have our goal... to make Eloy a city that we all love... and we want everybody to come to Eloy.”<sup>878</sup>

Raquel Calderon de Hildago spent Thanksgiving 2016 at Eloy Detention Center. The 36-year-old noncitizen had no criminal history. She had been suffering a series of seizures that went untreated. That weekend, she was “rushed to the hospital by ambulance,” before dying at the Banner Casa Grande Medical Center.<sup>879</sup> An autopsy later found that Raquel had died of blood clots in her right lung that had traveled from her leg upward after a leg injury. One story reported that it “remains unclear whether Calderon’s death was preventable.”<sup>880</sup> Perhaps clarity could come from rumblings inside the detention center. Those rumblings seem to indicate that Raquel fell to the ground as she suffered seizures and was in great pain. The guards ignored her, thought she was faking it, and yelled at her to get back up. When she didn’t they finally called for medical help. The medical cart was locked in a room some distance away. People had repeatedly expressed concerns to the guards that the medical cart should not be locked in cases of emergencies. They had been ignored. The medical cart was finally brought and Raquel was transported to the hospital suffering continual seizures along the way. Whether she

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<sup>878</sup> Andrew Rodriguez, interview with author (February 15, 2017).

<sup>879</sup> Roque Planas, “Guatemalan Detainee Dies In ICE Custody In Arizona,” *The Huffington Post*, November 29, 2016.

<sup>880</sup> Daniel González, “Autopsy: Eloy immigration detainee died of blood clots in her lung,” *The Arizona Republic*, January 2, 2017.



was “rushed” there does not seem as relevant. By then it was too late. The day after Raquel died, the room with the medical cart was unlocked.

Charles Bowden once wrote, “We can only endure the place that kills by pretending the place will not kill us.”<sup>881</sup> Since its punitive turn in the early 1980s, the historical devolution of noncitizen detention policy and its consequences today, in particular at a place like Eloy Detention Center, bears witness to the way in which unadulterated state violence has and continues to literally and figuratively kill people. Justifying the policy of de facto and prolonged detentions is a purported goal of deterrence. As that goal is played out in reality, however, it exposes those caught within the trap to legal state violence. This violence is tolerated, as evidenced by its continued perpetuation and expansion, with pretensions that the cloak of citizenship will spare those not directly affected. Yet, as the mass incarceration crisis has shown, such a cloak is hardly sufficient. The devolution of noncitizen detention policy demonstrates that when the state is allowed to arbitrarily draw boundaries between those who are deserving of legal protections and deserve to be shielded from state violence and those who are not, there is little doubt about how the story ends. Eloy Detention Center, an example of the culmination of this state project that began at the turn of the twentieth century, should compel the reevaluation of the entire project of the carceral state. No longer is it sufficient to merely discuss reformations of the noncitizen detention regime. No longer is it sufficient to pretend that noncitizen detention has no relevance or implications for all members of the community. Understanding the historical devolution of noncitizen detention should compel the community to reevaluate taken-for-granted positions that

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<sup>881</sup> Bowden, *Murder City*, 150.

some among us deserve to be kept in cages at all. Because for now, violence keeps claiming victims and victory.

## CHAPTER 5

### CONCLUSION

In March 2018, the U.S. Supreme Court held in a 5-3 decision that noncitizens in detention do not have “the right to periodic bond hearings during the course of their detention,” reversing a previous Ninth Circuit ruling that granted people a hearing every six months.<sup>882</sup> Essentially, the Court affirmed that those in detention must remain there without a bond hearing (that could allow them to be released on parole after paying an oftentimes large sum of money) until their cases are resolved either by the grant of immigration relief or an order of deportation. The opinion is neither remarkable nor surprising. What is noteworthy, however, is Justice Breyer’s dissent. Breyer argues,

No one can claim, nor since the time of slavery has anyone to my knowledge successfully claimed, that persons held within the United States are totally without constitutional protection. Whatever the fiction, would the Constitution leave the Government free to starve, beat, or lash those held within our boundaries? If not, then, whatever the fiction, how can the Constitution authorize the Government to imprison arbitrarily those who, whatever we might pretend, are in reality right here in the United States? The answer is that the Constitution does not authorize arbitrary detention. And the reason that is so is simple: Freedom from arbitrary detention is as ancient and important a right as any found within the Constitution’s boundaries.<sup>883</sup>

Leaving aside the fact that when such protections were purportedly included in the Constitution, millions of people were treated as property within the borders of the United States (since Breyer explicitly discounts the days of slavery), Breyer’s reasoning is still perplexing.

Whatever protections the Constitution may or may not offer has consistently remained theoretical as the United States has been arbitrarily detaining people for much

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<sup>882</sup> Jennings v. Rodriguez, No. 15-1204, slip op. at 2 (2018).

<sup>883</sup> Jennings v. Rodriguez, No. 15-1204, slip op. at 7 (2018) (Breyer, J., dissenting).

of the twentieth and certainly, into the twenty-first century. This arbitrary detention has certainly also involved both citizens and noncitizens. Perhaps some historical context could help. Convict labor and convict leasing, for instance, demonstrate that the government and private entities have in fact been “free to starve, beat, or lash those held within our boundaries.”<sup>884</sup> Whatever its supposed justifications may have been, *Korematsu v. US* demonstrated that the Court believed the Constitution did in fact “authorize the Government to imprison arbitrarily” those within its borders, both citizens and noncitizens.<sup>885</sup> The Red Scares and the continuing War on Terrorism demonstrate that arbitrary arrest, detention, and deportation have run rampant over the course of the twentieth century. If anything, what the holding in *Jennings v. Rodriguez* affirms is that purported constitutional protections were and are, in fact, the fiction.

This fiction is so clearly demonstrated by the historical devolution of noncitizen detention policy in the United States. The era of exclusionary detentions began with Ellis Island. After the official federalization of immigration enforcement in 1891 along with

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<sup>884</sup> See, e.g., Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008).

<sup>885</sup> To be fair, the Court did say it was unjustifiable to call the camps “concentration camps” since it was simply an “exclusion order.” In the Court’s words: “The power to exclude includes the power to do it by force if necessary. And any forcible measure must necessarily entail some degree of detention or restraint, whatever method of removal is selected. But whichever view is taken, it results in holding that the order under which petitioner was convicted was valid. It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice. Regardless of the true nature of the assembly and relocation centers -- and we deem it unjustifiable to call them concentration camps, with all the ugly connotations that term implies -- we are dealing specifically with nothing but an exclusion order. To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue.” *Korematsu v. United States*, 323 U.S. 214, 223 (1944).

Supreme Court decisions that removed noncitizen detention from purported constitutional protections due to proceedings being deemed “civil” and deportation “not punishment,” the stage was set for the expansion of detentions throughout the twentieth century. With Angel Island on the West Coast as well as detention facilities across the country, the government enforced immigration laws based on exclusionary motivations. In the middle of the century, official detention policy created a narrative against de facto detentions and purportedly turned toward parole. During this time, however, detention numbers and facilities expanded throughout the Southwest, particularly in Arizona where counties and cities continued to collect revenue for housing federal prisoners. As facilities became overcrowded with the concurrent war on drugs, counties turned first to bond measures but then, to the federal government, which dispersed significant sums of money through law enforcement block grants. When detention policy again changed starting in 1981, the stage was set for policy and reality to finally meld together as both became premised on state violence.

While detention policy transformed over the course of the century, from exclusionary motivations to rhetoric about humane enforcement to finally deterrence, those experiencing it were continually subjected to its violent reality. From the voices of the detained, from Ellis to Angel to Eloy and the web of detention spaces across the country, we can ascertain the ways in which despite whatever the official policy was, their experiences of noncitizen detention were and remain horrific. Certain enduring themes – such as dismal conditions, overcrowding, sense of isolation and hopelessness, and deaths – transcend space and time. What is new to this era is that such shared experiences became the official policy. No longer needing the pretext of exclusionary

rationales nor the fiction of humane policies, the state consolidated its official detention policy with a purported rationale of deterrence. Deterrence meant using the force of the state, through a jurisdictional mélange of public institutions and private entities operating the growing leviathan of detention spaces, to break the will of those deemed as asking for permission to enter or remain in the country. So, in other words, official policy is now state violence.

Noncitizen detention was and continues to remain a remarkable power exercised by the state. The justification for detention can range from explicit motivations such as ensuring noncitizens appear for their hearings or guaranteeing they will not commit crimes (since they are locked behind bars) to implicit impulses such as ensuring noncitizens in detention cannot compete with those on the outside for jobs and resources. Yet, as legal scholar Peter Schuck once noted, “the detention authority is more than a programmatic resource, ancillary to the power to exclude and deport. Detention is also an awesome power in its own right.”<sup>886</sup> Using this awesome power, the United States today incarcerates at least 34,000 noncitizens a day and around 400,000 noncitizens every year.<sup>887</sup> Scholars have noted how noncitizens represent one of the fastest growing segments of the jail and prison populations in the United States.<sup>888</sup> Media outlets have

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<sup>886</sup> Peter H. Schuck, “The Transformation of Immigration Law,” *Columbia Law Review* 84, no. 1 (January 1984), 28.

<sup>887</sup> Scholars have attributed this to the detention bed mandate included in the Consolidated Appropriations Act of 2012, which set a quota per day figure. The Department of Homeland Security Appropriations Act, 2010 had initially stated, “*Provided further*, That funding made available under this heading shall maintain a level of not less than 33,400 detention beds,” a provision introduced by Senator Robert Byrd (D-WV), chair of the Senate Appropriations Committee. The Act in 2012 raised this figure to 34,000. Lauren-Brooke Eisen, *Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration* (New York City: Columbia University Press, 2017), 153.

echoed the sentiment.<sup>889</sup> As noncitizen detention continues to make national headlines, two main considerations should compel our evaluation of not only the detention regime but the future of the carceral state.

First, a policy versus reality framework should be applied to all rights-based discourses, particularly as it relates to incarcerated populations. This is significant because applying theoretical rights-based policy models in practice to understand reality through individual experiences should lead us to reevaluate the entire discourse of rights themselves. One recent work is useful to illustrate the problems faced when scholars apply such frameworks. Consider Naomi Paik's *Rightlessness*. While negating the existence of "inalienable rights," as an idea that "remains a fiction," Paik nevertheless seems to assume that "fundamental rights" are in fact not a fiction.<sup>890</sup> For instance, Paik notes that prisoners at Guantánamo have been denied "access to legal redress, even to habeas corpus, that fundamental right of each prisoner to know the specific reason for his or her detention."<sup>891</sup> If, as Paik argues, such fundamental rights in fact do exist both in theory and practice, then they need to be subjected to further historical and legal analysis,

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<sup>888</sup> Teresa A. Miller, "The Impact of Mass Incarceration on Immigration Policy," in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, edited by Marc Mauer and Meda Chesney-Lind (New York: The New Press, 2003), 214. Erika Lee and Judy Yung, *Angel Island: Immigrant Gateway to America* (Oxford: Oxford University Press, 2010), 319. Matt S. Whitt, "Sovereignty, Community, and the Incarceration of Immigrants," in *Death and Other Penalties: Philosophy in a Time of Mass Incarceration*, edited by Geoffrey Adelsberg, Lisa Guenther, and Scott Zeman (New York: Fordham University Press, 2015), 174.

<sup>889</sup> Jeremy Raff, "So What? Maybe It Is a Concentration Camp," *The Atlantic*, February 23, 2018. Edwidge Danticat, "Detention Is No Holiday," opinion, *The New York Times*, March 27, 2012.

<sup>890</sup> A. Naomi Paik, *Rightlessness: Testimony and Redress in U.S. Prison Camps since World War II* (Chapel Hill: The University of North Carolina Press, 2016), 4-5.

<sup>891</sup> Paik, *Rightlessness*, 189.

which she fails to do. This is especially problematic in light of Paik's contention that rightlessness is "a condition that emerges when efforts to protect the rights of some depend on disregarding the rights of others." The "some" are in Paik's argument "the rightful." As Paik notes, "The rightful—as worthy, deserving subjects—enjoy the protection of rights only because other, rightless subjects are so devalued that they are excluded from those protections."<sup>892</sup> So, fundamentally, Paik's argument rests on what rights the "rightful" purportedly have that are then juxtaposed against the "rightless" who do not have such rights. If fundamental rights are assumed to fall within such rights of the "rightful," then further discussion is crucial. In particular, as it pertains to constitutional law (and leaving aside for this discussion which rights are or are not considered fundamental), fundamental rights raise certain standards of review. These standards vary widely which creates a range of problems when fundamental rights are so blindly invoked within frameworks of analysis.

Unlike the perhaps taken-for-granted position that fundamental rights always trigger the highest standard of review, that is laws passed that restrict fundamental rights will be subjected to strict scrutiny and upheld only if it furthers a compelling government interest and is narrowly tailored, this is hardly actually true in practice. As legal scholar Adam Winkler persuasively argues,

Fundamental rights do not trigger strict scrutiny, at least not all of the time. In fact, strict scrutiny—a standard of review that asks if a challenged law is the least restrictive means of achieving compelling government objectives—is actually applied quite rarely in fundamental rights cases. Some fundamental rights trigger intermediate scrutiny, while others are protected only by reasonableness or rational basis review. Other fundamental rights are governed by categorical rules, with no formal "scrutiny" or standard of review whatsoever. In fact, only a small subset of fundamental rights triggers strict scrutiny—and even among those strict

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<sup>892</sup> Paik, *Rightlessness*, 4.



scrutiny is applied only occasionally. In short, the notion that government restrictions on fundamental rights are subject to strict scrutiny review is fundamentally wrong.<sup>893</sup>

Winkler aptly concludes that “laws infringing upon fundamental rights are subject to strict scrutiny, but only some of those rights, only some of the time, and only when challenged by some people.”<sup>894</sup> As it pertains to the legal implication of applying a fundamental rights framework then, policy and reality are highly incongruent. So, reasoning that prisoners held at U.S. prison camps are “rightless” because they are deprived of “fundamental rights” when such rights may or may not legally be applicable to them questions the entire framework of how rights are applied, litigated, and protected in the first place. Moreover, considering the fundamental rights applicable through the ambiguities of standards of review leaves open the question of who among the supposed “rightful” can in fact claim such rights as well and whether such a group actually even exists. What such analyses should reveal is the obscurities of whether whatever theoretically is deemed as “fundamental rights,” like Paik’s assessment of inalienable rights, are fictitious in practice.

The above analysis of constitutional law and fundamental rights brings up the issue of standards of review themselves, which further questions the use of rights-based frameworks by scholars. Notably, the various standards of review are not applied equally within the same purported category of discriminatory laws. Consider what happens when courts have decided the constitutionality of laws that discriminate based on alienage, that

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<sup>893</sup> Adam Winkler, “Fundamentally Wrong About Fundamental Rights,” *Constitutional Commentary* 23 (2006), 227-28.

<sup>894</sup> Winkler, “Fundamentally Wrong,” 239.

is, invoking the question of how to handle challenges to the Fifth Amendment's equal protection guarantee for laws that differentiate between citizens and noncitizens. Courts have sometimes applied strict scrutiny for these cases.<sup>895</sup> In the late 1970s, however, certain alienage-based discriminatory laws passed by the federal governments were given only rational basis review (the lowest among the standards of review).<sup>896</sup> This was also true in 1982 for the Texas law that denied public education to children of undocumented persons, which was struck down as unconstitutional under rational basis review.<sup>897</sup> So, if there is little consistency in how standards of review themselves are applicable to various laws that discriminate based on alienage, there is further doubt about the usefulness of invoking rights-based frameworks to challenge state action.

This is particularly true in the post-9/11 era when the United States has been able to use existing and new laws directed at noncitizens to arrest and detain en masse. As legal scholar Shoba Sivaprasad Wadhia argues, the “government has re-characterized many of the 9/11 policies as general immigration enforcement tools, forgetting the context under which such policies arose and the individuals that continue to suffer as a consequence.”<sup>898</sup> Analyzing the *Iqbal* case, which heightened the pleading requirements

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<sup>895</sup> See, *Graham v. Richardson*, 403 U.S. 365, 376 (1971) and *In re Griffiths*, 413 U.S. 717, 721 (1973). *Graham* involved a law that based state welfare benefits on citizenship, which was struck down. *Application of Griffiths* involved a state law that restricted bar membership to citizen, which was also struck down.

<sup>896</sup> See, *Matthews v. Diaz*, 426 U.S. 67, 79-80 (1976). A federal law requiring noncitizens be in the United States for five contiguous years before being eligible for federal medical insurance was upheld.

<sup>897</sup> *Plyler v. Doe*, 457 U.S. 202, 208 (1982).

<sup>898</sup> Shoba Sivaprasad Wadhia, “Business as Usual: Immigration and the National Security Exception,” *Penn State Law Review* 114 (2010), 1509.

for plaintiffs seeking relief, the author argues that “far from creating a new standard in the immigration realm, the *Ighal* decision perpetuates a longstanding ‘Business As Usual’ standard that permits the federal government to create and sustain laws that selectively discriminate against foreign nationals during times of national security, with minimal accountability.”<sup>899</sup> American history in the twentieth century is littered with examples. Legal scholar Dawinder S. Sidhu picks up on the consequences of this decision, which is argued as “one of the most infamous and harmful to American jurisprudence and individual rights of this generation.” Drawing a parallel to *Korematsu*, Sidhu positions that *Ighal* “as a practical consequence, will provide the government with greater latitude to institute security programs and policies that are discriminatory, and conversely, will increase the burden on alleged victims of those programs and policies to seek redress for violations of their constitutional rights.”<sup>900</sup> Sidhu’s analysis is accurate assuming, of course, such rights exist in the first place. If rights-based arguments must grapple with both the flexibility in standards of review for fundamental rights and the randomly applied standards of review themselves, then the purview of legal state power could potentially be limitless. This should then compel an examination of the usefulness of such a framework in the first place. Thus, in evaluating the noncitizen detention regime, scholars should avoid using rights-based arguments to question the legitimacy of the institution and the state power involved. There must be a different approach.

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<sup>899</sup> Wadhia, “Business as Usual,” 1489.

<sup>900</sup> Dawinder S. Sidhu, “First *Korematsu* and Now *Ashcroft v. Ighal*: The Latest Chapter in the Wartime Supreme Court’s Disregard for Claims of Discrimination,” *Buffalo Law Review* 58 (2010), 423.

This leads to the second main contention evoked by the historical devolution of noncitizen detention policy, which is that any conversation about purported reform or a way forward should principally conclude with abolition in a post-carceral world. That is, rather than justifying caging a few on behalf of protecting the liberty of the many, the argument should rest on caging none at all. Yet, this requires certain conversations that seem to be outside the scope of consideration for most. As scholar Naomi Murakawa argues, the

twenty-first century carceral apparatuses do not suffer any overwhelming credibility problem. If the American public evaluates judges negatively, it is for sentencing too leniently, not too aggressively... a majority of Americans have a great deal of confidence in the police, and most see police officers as fair... When twenty-first-century students learn about carceral practices, they tend to propose a number of possible reforms: hire more African American police officers; reinstate judicial discretion; limit police discretion; train police. Like federal lawmakers, they search for ways to improve the administration of justice for fairness and predictability.<sup>901</sup>

This can be applied to immigration enforcement as well, as state laws like SB1070 continue to legally racially profile through the “show your papers” provision that was upheld by the Supreme Court and the consequences of the twin 1996 laws AEDPA and IIRIRA that demand certain noncitizens be held in mandatory detention.

Precisely for these reasons, conversations about noncitizen detention should aim to make the institution suffer a “credibility problem” as a starting point. In facilitating that pivotal credibility problem, scholars should no longer contend that detention should be “civil” or used as the “exception.” Continuing to do so would likely repeat mistakes of the past. As Murakawa aptly argues, “This history of liberal law-and-order matters

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<sup>901</sup> Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York: Oxford University Press, 2014), 152-53.

because the same proposals for better administration, proffered with the same good intentions, are likely to reproduce the same monstrous outcomes in the twenty-first century.”<sup>902</sup> To avoid the perpetuation of a system that from its inception had been experienced as violence by those subjected to it, the way forward should be eradication of the noncitizen detention regime altogether without exception.

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<sup>902</sup> Murakawa, *The First Civil Right*, 153.

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APPENDIX A

ARIZONA STATE UNIVERSITY INSTITUTIONAL REVIEW BOARD APPROVAL



APPROVAL: EXPEDITED REVIEW

Leah Sarat  
 SHPRS - Religious Studies Faculty  
 -  
 Leah.Sarat@asu.edu

Dear Leah Sarat:

On 6/20/2016 the ASU IRB reviewed the following protocol:

Type of Review:	Initial Study
Title:	Stories of Immigrant Detention: Voices from Arizona
Investigator:	Leah Sarat
IRB ID:	STUDY00004476
Category of review:	(6) Voice, video, digital, or image recordings, (7)(b) Social science methods, (7)(a) Behavioral research
Funding:	None
Grant Title:	None
Grant ID:	None
Documents Reviewed:	<ul style="list-style-type: none"> <li>• Stories of Immigrant Detention_ Questions.pdf, Category: Other (to reflect anything not captured above);</li> <li>• Stories of Immigrant Detention_ Spanish questions_ backtranslation.pdf, Category: Translations;</li> <li>• Stories of Immigrant Detention_ Questions_ Spanish.pdf, Category: Translations;</li> <li>• Stories of Immigrant Detention_ Protocol_rev, Category: IRB Protocol;</li> <li>• Stories of Immigrant Detention_ Consent_ Spanish_rev, Category: Translations;</li> <li>• Stories of Immigrant Detention_ Consent_rev, Category: Consent Form;</li> <li>• Stories of Immigrant Detention_ Consent_ backtranslation.pdf, Category: Translations;</li> </ul>

	<ul style="list-style-type: none"><li>• Stories of Immigrant Detention_Consent_Spanish_rev, Category: Consent Form;</li><li>• Stories of Immigrant Detention_Translator Certification Form (BK)-3.pdf, Category: Translations;</li></ul>
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The IRB approved the protocol from 6/20/2016 to 6/19/2017 inclusive. Three weeks before 6/19/2017 you are to submit a completed Continuing Review application and required attachments to request continuing approval or closure.

If continuing review approval is not granted before the expiration date of 6/19/2017 approval of this protocol expires on that date. When consent is appropriate, you must use final, watermarked versions available under the "Documents" tab in ERA-IRB.

In conducting this protocol you are required to follow the requirements listed in the INVESTIGATOR MANUAL (HRP-103).

Sincerely,

IRB Administrator

cc:

Judith Dingatantrige Perera