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The Fiscal and Human Costs of Immigrant Detention and Deportation in the United States

Abstract

An extensive body of literature has analyzed the individual impacts and collateral consequences of mass incarceration. However, few studies explore the consequences of a parallel and overlapping system: mass immigration detention and deportation. The last thirty years witnessed a dramatic increase in the number of noncitizens detained in and deported from the United States. Individuals detained under immigration laws are held pending adjudication, often mandatorily, and without many basic constitutional protections. Immigrant detention and deportation impose severe burdens on immigrants and their households and levy significant costs to society – financially, as well as in terms of social capital and community well-being. Chiefly due to the difficulty in accessing noncitizens in the process of detention and deportation, this system has largely escaped sociological inquiry. This article provides a background for understanding the growth and consequences of detention and deportation in the United States. It reviews the literature on these immigration law enforcement programs and suggests topical and methodological directions for future research.

I. Introduction: Theorizing the Rise and Consequences of Immigrant Detention and Deportation

The population of noncitizens detained and deported by the U.S. government has grown precipitously over the past several decades. In 1973, the federal government detained a daily average of 2,370 migrants; this number more than doubled to 5,532 in 1994 and then surged to 34,000 by 2009 (Dow 2004; Golash-Boza 2012). Patterns of deportations followed a similar trajectory, rising from an annual average of 50,000 in 1996 to a peak of over 400,000 in 2013 (Golash-Boza 2015). Although the system of detention and deportation is legally considered non-punitive, in practice, it is punitive—both for individuals who are detained or deported, as well as for their loved ones and communities. We therefore join a growing group of researchers who draw parallels between the systems of mass incarceration and immigrant detention and deportation. For instance, legal scholar César Cuauhtémoc García Hernández summarizes this parallel as follows:

Individuals in immigration confinement are frequently perceived to be no different than individuals in penal confinement...They are represented as a threat to public safety, locked behind barbed wire, often in remote facilities, and subjected to the detailed control emblematic of all secure environments. Often they are held alongside their criminal counterparts...By so intertwining immigration detention and penal incarceration, Congress created an immigration detention legal architecture that, in contrast with the prevailing legal characterization, is formally punitive (2014:1349).

Given these and other concerns, Longazel, Berman, and Fleury-Steiner (2016) have applied theories of the physical and psychological “pains of imprisonment” to the immigrant detention context. This framework emphasizes the systemic and painful nature of life within detention facilities, contextualized in the racialized processes through which certain noncitizens are imprisoned in the first place. Longazel and co-authors highlight the links between the experiences of mass incarceration and mass immigration detention, arguing that the pains of imprisonment are felt similarly across individuals confined within these two systems.

In a similar vein, Reiter and Coutin (2017) compare the experience of solitary confinement in the criminal law context with deportation in the immigration law context. Although individuals experience solitary confinement and deportation as severe sanctions, these practices are legally considered “civil” punishment; as such, individuals within them do not have access to many of the protections that generally accompany punishment. Given this disjuncture between the law on the books and the law as it is experienced, Reiter and Coutin argue that individuals subject to solitary confinement and/or deportation find themselves in states of “legal nonexistence” which ultimately

lead to the “social disintegration” of the subject: “ties to others are cut off and prior identities stripped away, often with devastating consequences for individuals’ senses of self” (2017:570).

On a macro level, scholars have argued that detention and deportation programs can be understood theoretically as racialized tools of social control. Hernández posits that the federal government’s historic use of detention has resulted in the production of immigrant “illegality,” casting Latinos as especially criminal (Hernández 2008). Similarly, Golash-Boza (2016) argues that mass deportation, like mass incarceration, is best understood as a racialized and gendered tool of state repression implemented in times of crisis.

Importantly, the hundreds of thousands of individuals caught up in immigration law enforcement systems each year are part of millions of mixed-immigration-status¹ families current living in the United States (Warren and Kerwin 2017). As such, we argue that the painful and disintegrating impacts of detention and deportation go far beyond the individual to produce and reproduce inequality in immigrant communities. To be sure, the collateral consequences of detention and deportation extend to households and communities, and impact both citizens and noncitizens. In the sections that follow, we provide empirical evidence of the deleterious impacts of detention and deportation for individuals, households, families, and communities.

II. Immigrant Detention

We begin by reviewing some of the features of contemporary U.S. immigration detention. We address several particularly troubling and punitive characteristics of this system, including mandatory quotas for detention bed space and a growing reliance on for-profit prison corporations to meet those quotas, coupled with a lack of basic constitutional protections for individuals experiencing detention. We then document the significant human and social costs of detention for the families and communities of detained individuals.

a. The Detention Bed Mandate & Reliance on For-Profit Contractors

The expansion of the immigration detention system would not have been possible without Congressional intervention in the expansion of detention, coupled with the availability of for-profit corrections corporations to meet the needs of that expansion. In 2009, Congress amended the Department of Homeland Security (DHS) Appropriations bill to *require* the agency to maintain “not less than 34,000 detention beds” at all times (National Immigrant Justice Center 2014: 1), representing a dramatic increase from detention rates in the 1980s, and ensuring that available detention beds

¹ Mixed-immigration-status (or “mixed status”) families are those in which family members have differing immigration statuses, with at least one family member being undocumented and therefore eligible for deportation.

would be filled. The DHS subcontracts immigration detention to local jails and facilities run by private prison corporations at a cost of about \$2 billion per year—or approximately \$161 per detainee per day (National Immigration Forum 2014, Simanski 2014). In 2015, 62 percent of immigrant detention beds were in for-profit facilities, up from 49 percent in 2009 (Carson and Diaz 2015, Gruberg 2015). In comparison, about 8 percent of prisoners in the United States are held in private prisons (Gottschalk 2016). The detention bed mandate has been profitable for private corporations such as the GEO Group and CoreCivic (formerly Corrections Corporation of America) (Carson and Diaz 2015).

b. Detained without Due Process

U.S. immigration policy is civil law, as opposed to criminal law, and the Supreme Court has repeatedly ruled that immigration detention is legally administrative and non-punitive. Consequently, detained immigrants lack access to constitutional protections, including the Sixth Amendment right to counsel (Kaufman 2008). A recent study of more than 1.2 million deportation cases decided between 2007 and 2012 found that only 37% of all noncitizens (and only 14% of detained noncitizens), had an attorney (Eagly and Shafer 2015). Individuals with attorneys had far better case outcomes: “the odds were fifteen times greater that immigrants with representation, as compared to those without, sought relief, and five-and-a-half times greater that they obtained relief from removal” (Eagly and Shafer 2015:2).

Concerns have also been raised about the indefinite and long-term detention of certain groups of noncitizens. As a reminder, detained individuals are not serving a sentence, but rather being held administratively while their deportation cases unfold. Because detention is legally considered non-punitive, there are no constitutional limits on the length of time an individual can be detained²; as a result, individuals can be held mandatorily for the entirety of their removal proceedings. In 2013, Immigration and Customs Enforcement (ICE) detained approximately 10,000 individuals for six months or longer (Transactional Records Access Clearinghouse 2013). A recent study by the Mexican government found that over 15% of Mexicans deported from the interior of the United States were detained for more than one year prior to deportation, half of whom were held for more than three years (Bermudez n.d.).

Serious allegations have emerged about life inside detention centers, including improper management and operation, particularly regarding the provision of preventative and emergency healthcare services and access to

² Detained individuals have brought several class-action lawsuits challenging the constitutionality of long-term mandatory detention. As of this writing in summer 2017, one such challenge (*Jennings v. Rodriguez*) was pending decision in the United States Supreme Court.

attorney visits (Brownstein 2016, Longazel, Berman and Fleury-Steiner 2016, Wessler 2016). Other forms of inequality also exist within detention facilities. A recent study of 462 detained parents found that access to child visitation was not equally distributed: individuals detained in private facilities were less likely to receive visits from their children, and individuals with undocumented children received relatively fewer visits from their children than those without undocumented children (Patler and Branic 2017). Another study found that people who experienced both prison and immigration detention often reported that detention was the worse of the two experiences, due to the lack of programming, the inability to purchase food from the commissary, and the uncertainty surrounding their release date (Golash-Boza 2015). Bosworth's (2014) study of immigration detention in the United Kingdom also found that the uncertainty regarding the length of detention generates extreme stress, especially for individuals detained for long periods of time. Although detention is technically not punitive, and not considered a sentence, this research reveals that most detained individuals experience it as punishment.

b. Collateral Consequences: The Economic and Human Costs of Detention

The costs of detention go far beyond the \$2 billion spent annually by the DHS to house detainees. A recent study surveyed 562 detained individuals in California who had been detained for six months or longer, and found that long-term detention removed millions of dollars from local communities (Patler 2015). For example, approximately 90% of study participants were employed in the six months prior to detention; therefore, based on their pre-detention earnings, the estimated lost wages for the sample due to detention was \$43,357 per day.

Patler's study also revealed that detention contributed to extreme financial insecurity for the family members of detained individuals. Respondents had, on average, lived in the United States for 20 years and 69% have a U.S. Citizen or Lawful Permanent Resident spouse or child. A full 94% reported being a source of financial or emotional support for their families prior to detention. Respondents had been detained for an average of approximately nine months at the time of the survey, often following the completion of a criminal sentence. This long-term detention produced severe economic and health consequences for these families: 63 percent of respondents reported that family members had difficulty paying mortgage, rent, or utilities, and approximately four in ten said that they had trouble covering medical expenses (42%) and paying for food (37%) (Patler 2015).

The system of immigration bond also perpetuates inequality in immigrant communities. Many detained individuals are unable to support their families during detention because they are either ineligible for bond or receive bond amounts beyond their financial means. For instance, individuals held under

mandatory detention provisions are ineligible for bond for the entirety of their removal proceedings, except in jurisdictions where ongoing litigation such as *Rodriguez v. Robbins* (803 F.3d 502 [9th Cir. 2015]) allows them access to bond hearings after 180 days of detention. Even for those who can access bond hearings, bond decisions can vary greatly across immigration judges and access to attorneys, and even detained individuals who are granted bond can face prohibitively high bond amounts (Eagly and Shafer 2015). Indeed, *Rodriguez v. Robbins* class members received bond amounts of up to \$2,500,000, with an average bond amount of \$20,372 (American Civil Liberties Union of Southern California 2014) – which make up a significant portion of the average yearly earnings of many immigrant families (Warren and Kerwin 2017). Additionally, unlike criminal cases, where the purchase price of a bond is generally about 10% of the value (Jones 2013), immigration cases require that bonds be paid in full for a detainee to be released. Finally, alternatives to detention³ for those detained mandatorily are practically non-existent: less than 1% of *Rodriguez v. Robbins* class members received non-monetary alternatives to detention (American Civil Liberties Union of Southern California 2014; Figure 5).

III. Deportation

We now turn our attention to deportation. We begin by laying out the historical rise of this expansive system and then turn to its fiscal and human costs—both for individuals who are deported and for their families and communities.

a. The Historic Rise of Deportation

Corresponding to the rise in mass incarceration, a series of immigration enforcement policy changes paved the way for a prodigious expansion in deportation over the past several decades. Between 1892 and 1995, the number of removals from the United States averaged about 17,000 per year, reaching peaks of over 30,000 twelve times during that period. In contrast, during the one-year period from 1996 to 1997, the number of removals nearly doubled from 69,680 to 114,432. The number of removals continued to rise steadily after that point, peaking at 435,498 removals in 2013 (Office of Immigration Statistics 2014). Scholars attribute the most recent spike in mass deportation to the passage of 1996 legislation the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) (Golash-Boza 2015, Kanstroom 2007). These laws opened the door for a vast growth in deportations by expanding the grounds for removal, narrowing opportunities for appeal, and allocating additional funding for immigration law enforcement.

³ Alternatives to detention can include, for example, electronic monitoring or regular reporting without cash bond.

While the 1996 laws provided the architecture for the unprecedented increase in annual removals, scholars have argued that the foundations of this growth can be documented even earlier, paralleling the expansion of mass incarceration in the 1980s. For instance, Patrisia Macías-Rojas (2016) argues that the then-Immigration and Naturalization Service (INS) developed the Criminal Alien Program – which ensures that convicted prisoners are transferred to immigration authorities subsequent to serving time—in 1988 with the goal of deporting foreign-born individuals who had committed crimes in order to relieve the overcrowded prison system. Overall, as jails and prisons have rapidly expanded over the past decade, so too has the system of immigration detention and deportation.

Though mass deportation has risen extensively, it is unevenly distributed in both implementation and consequences (Golash-Boza 2015). Although about half of all non-citizens are women and only 60 percent of non-citizens are from the Americas, 90% of deported individuals are men and nearly all (98%) are from the Americas. Jamaican and Dominican legal permanent residents – black immigrants who often live in urban areas – are five times as likely to be deported as other legal permanent residents (Golash-Boza 2015). This stratification in the implementation of deportation also means that the families of those who are deported—most commonly Latina and black women and their children—are disproportionately more likely to bear the burden of deportation than other groups (Golash-Boza and Hondagneu-Sotelo 2013).

b. Collateral Consequences: The Economic and Human Costs of Deportation

Deportations have continued to rise in the first two decades of the twenty-first century. This is largely a consequence of the immense influx of funds directed to immigration law enforcement with the creation of the DHS in 2003 in the aftermath of the events of 9/11. DHS' establishment provided the necessary infrastructure for mass deportation. Indeed, removals rose above 200,000 for the first time in 2003, increasing steadily thereafter to an all-time high of 435,489 in 2013 (Office of Immigration Statistics 2014). When the DHS was created, it subsumed and vastly expanded all the functions of the former Immigration and Naturalization Services (INS). In 2002, the last full year of the INS' existence, its budget was at an all-time high of \$6.2 billion, up from \$1.5 billion in 1993 (Golash-Boza 2012). In contrast, the DHS' 2016 budget was \$64 billion. Even adjusting for inflation, that figure is at least ten times the total INS budget in 2002. Currently, more than half of the DHS' budget – or about \$30 billion—is spent on immigration law enforcement each year. The United States now spends more money on immigration law enforcement than on all other principal federal criminal law enforcement agencies combined (Meissner et al. 2013).

Mass deportation comes with tremendous costs at the individual, household, and community levels. In an analysis of data compiled by the Center for

Migration Studies, Warren and Kerwin (2017) estimate there were 3.3 million mixed-immigration-status households in the United States in 2014. These households contain 6.6 million U.S.-born children, most of whom (5.7 million) are under 18 years old. Based on these figures, Warren and Kerwin estimate that a massive deportation program in which all undocumented immigrants in the United States were deported would have a “major negative effect on the national economy (2017:6).” For example, removing undocumented residents would cut the median household incomes in mixed-status families nearly in half, resulting in the impoverishment of millions of U.S. families. Because undocumented immigrants hold 2.4 million mortgages, mass deportation could also generate a significant blow to the housing market. Overall, a mass deportation program would reduce the U.S. Gross Domestic Product by \$4.7 trillion over 10 years (Warren and Kerwin 2017).

Mass deportation also has significant human costs in the form of family separation. Currently, approximately 100,000 people deported from the United States each year have U.S. citizen children (Capps et al. 2015). Thus, millions of children are growing up in the United States after experiencing forced family separation. The consequences for these children are devastating: they experience economic hardship, housing instability, mental and emotional health challenges, and reduced school performance (Brabeck and Xu 2010, Dreby 2012, Dreby 2015a, Dreby 2015b, Koball et al. 2015). In some of the worst cases, deportation results in the dissolution of parental rights. As of 2011, around 5,100 children of deported parents were in the foster care system (Wessler 2011).

Though it is likely that the impacts of deportation are felt most acutely by those families in which a loved one has already been removed (Brabeck and Xu 2010), the *threat* of deportation looms large among immigrant families more broadly (Dreby 2012, Menjivar and Abrego 2012). In a study of Mexican immigrant families, Dreby finds that this fear of deportation can lead to serious mental health consequences for spouses of the undocumented (Dreby 2012, Dreby 2015b). Children as young as five years old come to equate police with Immigration and Customs Enforcement (ICE) officials, and to have negative associations of the word “immigrant,” regardless of their own legal status (Dreby 2015b). Worry about the deportation of family members is a consistent concern even for young immigrants who have transitioned from undocumented to lawfully present status (Patler and Pirtle 2017).

Five million people have been deported from the United States since 1997. Deportation is nearly always a difficult process as immigrants are arrested, detained, and often sent involuntarily, in shackles, to their country of birth. For some deported individuals, deportation is primarily a financial setback as their plans for repaying debts and/or accumulating capital in the United States are foiled. For others, deportation is akin to social death as the United States is the only country they have ever known and it is where all

family, friends, and memories reside. Many face stigma due to the perceived association between deportation and criminality (Brotherton and Barrios 2009, Golash-Boza 2015, Zilberg 2004). In the best of cases, deported individuals are able to get back on their feet and reintegrate into their home countries. In the worst of cases, they are stigmatized as criminals, failures, or gang members and denied integration into their countries of birth (Dingeman-Cerda and Bibler Coutin 2012, Dingeman-Cerda 2017, Golash-Boza 2015). Mass deportation can therefore exacerbate inequality not just in the United States, but in countries across the globe.

IV. Discussion

The last several decades witnessed an unprecedented and prodigious rise in the practice of noncitizen detention by the U.S. government. Indeed, the daily detained population increased more than fourteen-fold between 1973 and 2009. Deportation has followed a similar trajectory, rising sharply to a peak of over 439,000 removals in 2013. Scholars have advanced several theoretical frameworks to emphasize the links between how individuals experience detention and deportation, and to compare these experiences with those of individuals experiencing incarceration and other forms of punishment under criminal law. The “pains of imprisonment” framework highlights individuals’ experiences within carceral settings (Longazel, Berman and Fleury-Steiner 2016). The “social disintegration” framework further underscores how deportation, like solitary confinement, creates a new type of political subject by pushing individuals into states of “legal nonexistence” (Reiter and Coutin 2017). The perceived disposability of detained and deported individuals is an important component of the racialized and gendered system of mass detention and deportation (Golash-Boza 2016, Hernández 2008). We further argue that detention and deportation have extensive collateral consequences for mixed-immigration-status families, impacting both noncitizens and U.S. citizens. Indeed, emerging social science research suggests that the systems of immigration detention and deportation are severely compounding disadvantage in detained individuals’ households and communities and becoming a significant producer and reproducer of inequality.

Additional research is necessary to further explicate the ways that immigration law enforcement programs transform social life in immigrant and mixed-status communities. Empirically, we still need to know more about the conditions of confinement and the process of deportation. For instance, calls should be made for increased public access to aggregate DHS data on detained and deported individuals in order to more clearly understand enforcement practices in the same way scholars can access data on actions taken by other law enforcement agencies. Moreover, local police agencies, sheriffs, and jails should make public the number of individuals they transfer to immigration authorities. A database of arrests that lead to deportation would be an extremely useful source of information for researchers and

policymakers concerned with the unequal distribution of law enforcement programs.

In addition to administrative data, in-depth and ethnographic research can also help us understand these enforcement programs as they are taking place and experienced by detained individuals. For example, researchers could follow families throughout the enforcement process in order to understand the ways in which these experiences shape mobility, perceptions of fairness and equality, and other outcomes. Finally, we know very little about the experiences of individuals who are released back into their communities in the United States; how does the detention experience shape their actions and worldview? Each of these questions must be examined intersectionally, with an eye toward the complex social backgrounds of individuals in communities subject to enforcement programs.

There is much work to be done to build theory on the complex ways immigration law enforcement leads to social stratification. For example, how might researchers continue to build on theories about incarceration under criminal law to account for the experiences of noncitizens? What is similar and what is different about these experiences, and how do they influence one another? These are just some of the questions that can guide future research.

V. Conclusion

As this article makes clear, the present context of mass detention and deportation has been building steadily since the 1980s. The 2016 Presidential election has exacerbated fears in immigrant communities and drawn increased attention to deportation, especially in the aftermath of recent Executive Orders aimed at increasing the detention and deportation of noncitizens with previous criminal justice system contact. These proposed expansions of immigration enforcement programs will require significant resources and will undoubtedly lead to increased human costs in mixed-immigration-status households and communities (Warren and Kerwin 2017).

Though the U.S. is unique in both the overall number and proportion of individuals it detains and deports, its policies and policy failures may be important examples for other countries that have expanded detention in recent years, such as Australia and the United Kingdom (Bosworth 2014). If the state has a responsibility to recognize the human and legal rights of all individuals residing within its territories, then noncitizens subject to deportation, and their communities, should not be an exception. However, given the current policy context in which the U.S. is poised to face increasingly restrictive immigration law enforcement programs, the recognition of the rights of detained and deported individuals and their communities may now be more important than ever before.

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Additional recommended reading

#immigrationdetentionsyllabus (<https://imm-print.com/syllabus/home>), compiled by CIVIC, a national nonprofit working to end U.S. immigration detention (www.endisolation.org).