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Raced and Gendered Logics of Immigration Law Enforcement in the United States

On a fall day in 2005, Peter was walking down the street in Nashville, Tennessee when a police officer stopped him to question him about a nearby robbery. The officer said Peter fit the description of a tall, thin, black man who had allegedly stolen a women's purse. The officer searched Peter and took him to a nearby police station so the victim could identify him. The victim said Peter was not the assailant. The officer, however, was intent on investigating Peter. Having noticed his "foreign" accent, the officer asked Peter where he was from. When Peter told him he was from Jamaica, the officer asked if Peter minded if he called immigration authorities. Since he was a legal permanent resident of the United States and believed he had nothing to hide, Peter agreed. The officer contacted immigration authorities, who in turn asked the police officer to detain Peter, as it turned out he had missed an immigration hearing related to a 1997 charge of possession of stolen property.

The police officers detained Peter until immigration agents came to take him to a Corrections Corporation of America (CCA) private immigration detention center in Memphis, Tennessee where he stayed for six weeks, and then to another detention center in Louisiana, where he spent three months. Subsequently, he was deported to Jamaica, a country he had not even visited in nearly twenty years.

This case of mistaken identity provides a glimpse into how biased policing practices, combined with institutional cooperation between immigration and criminal law enforcement agents, can influence broader trends in deportation. In Peter's case, we know the police officer stopped him because he is a black man. The officer was looking for a black male suspect and Peter fit the description. This seems like a reasonable act of policing. However, it is part of a broader pattern of gendered racial profiling whereby police officers are more likely to stop and arrest black people than white people, and are more likely to arrest men than women (Gelman, Fagan, & Kiss 2007; Lambert 1994). It is also evident that the officer engaged in linguistic profiling as he suspected Peter may not be in the United States legally once he heard him speak. Put simply, the series of events that led to Peter's deportation are much less likely to have happened to a white female immigrant from Canada. Whereas Jamaican men have high rates of deportation, Canadian women have very low rates (Golash-Boza 2012).

Deportation laws in the United States, as written, are race and gender-blind, but their implementation is decidedly not, as black and Latino immigrant men are the primary targets of these laws. An analysis of how deportations happen that puts together on-the-ground practices of policing with immigration law enforcement cooperation helps us to understand the

gendered and racialized patterns of deportation. As we consider which people are deported, and what happens to them after deportation, it also becomes clear that deportations have much broader gendered and racialized implications that extend beyond the territorial boundaries of the United States. This analysis of the policing of immigrants by local and immigration law enforcement as well as criminal law enforcement agents reveals the raced and gendered assumptions about immigrants and their families that undergird immigration laws. The chapter draws from interviews I conducted with deportees in the Dominican Republic, Jamaica and Guatemala in 2009 and 2010, as part of a larger project that involved interviews with 147 deportees in Jamaica, Guatemala, the Dominican Republic and Brazil (see Golash-Boza 2015).

Deportation laws are race and gender-blind but policing is not

Immigration laws in the United States have no explicit race or gender provisions. Whereas people once could be barred from legal entry and citizenship based on their national origin (which were effectively racial bans), those laws have been struck down and replaced with racially neutral laws. Whereas immigration laws at one time had provisions that favored men and marginalized women, those provisions no longer exist. The latest revision to immigration laws in the United States - the Immigration and Nationality Act of 1965 - does not include any provisions that explicitly discriminate based on gender or race. Nevertheless, its most draconian provisions tend to be applied more frequently to non-whites and to men. In the United States, 97 percent of deportees are sent to Latin America or the Caribbean and 90 percent of deportees are men (Golash-Boza and Hondagneu-Sotelo 2013).

These gendered and raced patterns cannot be traced to explicit racial or gendered provisions in the law. They can, however, be attributed to the ways immigration laws are enforced. Immigration law enforcement in the United States is the responsibility of the Department of Homeland Security (DHS) and its two enforcement arms: Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE). In this chapter, I will not examine deportations carried out by Customs and Border Patrol (CBP), which usually involve apprehending would-be migrants along the border and preventing them from entering the country. Instead, I will focus on deportations from the interior of the United States - those that involve settled migrants - both legally and illegally present - who live in the United States, and who often work and have families in this country. These deportations are called interior removals and are most often carried out by ICE. The patterns for this group are similar to broader deportation patterns. 94% of interior removals involve men, even though women account for 47% of unauthorized immigrants in the United States. And, 88% of interior removals involve people from just four countries: Mexico, Guatemala, Honduras, and El Salvador, even though nationals from these countries only

make up 66.3% of unauthorized migrants (Passel and Cohn 2014; Rosenblum and McCabe 2014).

To understand these broad trends, we must think about how deportations happen. Interior removals rarely are provoked by a direct encounter with an ICE agent, as these federal agents do not have license to patrol the streets of U.S. cities and demand proof of immigration status from people. This federal agency has just 20,000 employees overall, only a fraction of whom are engaged in raiding homes and worksites to arrest undocumented immigrants, and they must seek out warrants prior to these raids. Simply put, ICE does not have the staff, resources, or license to patrol the county looking for undocumented migrants. Instead, they work closely with criminal law enforcement agencies to apprehend immigrants.

This cooperation between ICE and local law enforcement is a critical component of racial and gendered disparities in deportation trends. Police officers have a fair amount of discretion over whom they choose to stop for investigative stops (Epp, Maynard-Moody, and Haider-Markel 2014), suspected crimes, or traffic violations (Alexander 2011). For a wide variety of reasons, police officers are more likely to stop and arrest black and Latino men, which in turn leads to higher deportation rates for these groups. As Kevin Johnson (2015: 969) explains, “the racially disparate impacts of the criminal justice system exacerbate the racially disparate impacts of the modern immigration removal system.”

The racial disparities in the criminal justice system in the United States are stark. In 2008, less than one-third of the population of the United States was black or Latino. In that same year, however, blacks and Latinos made up 58 percent of the nation’s prison population (Sabol, West, and Cooper 2009). In 2009, the imprisonment rate of white males was 487 per every 100,000 in the population, as compared to compared to 1,193 per 100,000 Latino males, and 3,110 per 100,000 black males. Black males were six times as likely to be incarcerated as white males in 2009 (West and Sabol 2010).

These disparities are due, in part, to racial profiling by police officers. The propensity of police officers to pull over African Americans more often than whites is so prevalent that the moniker “driving while black” has emerged to describe this phenomenon. A study carried out by the American Civil Liberties Union (ACLU) found that 73 percent of the drivers along I-95 that Maryland state police searched were black, even though 75 percent of the drivers were white (Harris 1999). In recent years, the moniker “driving while brown” has also emerged to refer to the disproportionate stops of Latino drivers. A study in Volusia County, Florida found that both black and Hispanic drivers are more likely to be stopped and searched than whites (Mauer 1999). This profiling extends to pedestrians: a study in New York City found

that police officers in New York City are twice as likely to stop black pedestrians as they are white (Gelman, Fagan, and Kiss 2007).

Racial and gendered disparities in local policing practices become magnified when police cooperate with immigration law enforcement, due to the possibility of deportation. Although police officers are responsible for *criminal* law enforcement, they often have the ability to contact *immigration* law enforcement authorities to inquire about the status of a person whom they have arrested. For this reason, the most common way a person is deported from the interior of the country is subsequent to an arrest by a police officer. The merging of immigration and criminal law enforcement tactics has meant that police officers are often the first step in the deportation pipeline.

Police/Immigration Cooperation in the United States

Formal cooperation between local law enforcement and immigration law enforcement agents dates back nearly three decades. The first jail status check programs were created in 1988. The Institutional Removal Program (IRP) and the Alien Criminal Apprehension Program (ACAP) were designed to screen individuals in federal, state, or local prisons and jails to see if they were eligible for deportation. These programs were melded together between 2005 and 2007 to create the Criminal Alien Program, which today is active in all state and federal prisons, as well as in more than 300 local jails. The Criminal Alien Program ensures that most prisoners are checked for their immigration status prior to being released from jail or prison (Ewing 2014).

Whereas the Criminal Alien Program generally focuses on people who have been convicted of crimes, there is another set of information-sharing programs that allows local police and sheriffs to check the immigration status of people prior to them being convicted (or even charged) of any crime. The Department of Homeland Security piloted this program in 2008 and called it “Secure Communities.” Under this program, when a person is arrested, their fingerprints are run through an immigration database to see if they have an immigration record. If they do, ICE can request that a “detainer” be issued to hold the person until ICE comes to pick them up. By 2013, this program existed in every jail in the country (Ewing 2014). Secure Communities was replaced by the Priority Enforcement Program in November 2014, which has the same information-sharing guidelines. In early 2017, President Trump ordered the revival of Secure Communities.

Some jurisdictions go a step further and deputize their police officers to enforce immigration laws directly through a program called 287(g), named after its subsection in the Immigration and Nationality Act, which was revised in 1996. In some jurisdictions, 287(g)-deputized police officers are authorized to enforce immigration on the streets, meaning people can be detained for immigration offenses after being stopped for traffic violations or other minor offenses. As of 2016, ICE had 287(g) agreements with 32 law

enforcement agencies in 16 states. With 287(g), deputized officers have direct access to federal immigration databases (Ewing 2014). Using the criminal justice system to enforce immigration laws exacerbates racial disparities already present in the criminal justice system (Tonry 2011) insofar as there is now an additional consequence for foreign nationals who are stopped for driving (or walking) while black or brown: they could be placed into the deportation pipeline.

Most removal proceedings are initiated subsequent to a person being arrested and taken to a police station. It may seem that the only people who are treated in this way are those who commit crimes. However, the process is not that straightforward – you don't have to commit a crime to be arrested and you can commit a crime and never be arrested. For example, a group of college students may consume illegal drugs in their shared home and avoid detection by law enforcement because the local police has chosen not to police that neighborhood. Secondly, many people violate the law in the presence of a police officer and are not arrested because the police officer has discretion over whom they choose to arrest (Pratt and Sossin 2009).

For example, it is illegal in the United States to fish in certain bodies of water without a license. If an officer sees a person fishing, they may or may not choose to ask that person if they have a license to fish. If the police officer asks and finds that the person does not have a fishing license, the officer makes a decision either to issue a citation (ticket) or to arrest the person. For most minor offenses, police officers are supposed to issue a citation rather than make an arrest. However, the officer may arrest a person if they are unable to produce acceptable identification or if the officer believes the suspect will not appear in court. Most people found to be fishing without a license will be issued a citation or even just a verbal warning. In those cases, if the person is in the country illegally, this police encounter will not lead to deportation. If, however, the police officer decides to arrest the person, that encounter could lead to deportation. When a police officer brings an arrestee to the police station, the judicial commissioner has the power to dismiss an arrest if it is found that a citation should have been issued instead of an arrest. For example, the commissioner could verify with the arresting officer what sort of identification the suspect produced and whether or not an arrest was warranted. However, a study in Nashville, Tennessee found that a judicial commissioner who is unsympathetic to immigrants may be unlikely to dismiss the arrests of undocumented migrants (ACLU 2012). Thus, even though judicial commissioners are supposed to be a safeguard against unwarranted arrests, they often are not.

In sum, depending on the jurisdiction, people can be placed into the deportation pipeline subsequent to either a stop, an arrest, being charged, or being sentenced. Immigrants who live in jurisdictions where police officers can hand them over to immigration authorities subsequent to a stop are at

most risk for deportation whereas those who live in jurisdictions where authorities only hand immigrants over to immigration authorities subsequent to people having completed a jail or prison sentence are at the least risk. In all jurisdictions, nevertheless, there is some form of a police to deportation pipeline, which means that across the United States the racial disparities present in policing have a spillover effect on deportations.

The Racial Implications of Deportation Trends

Racism is both an ideology and a set of practices (Golash-Boza 2016a). In the case of deportations, there are racial *ideologies* that justify mass deportation and policing *practices* that ensure certain groups are targeted by deportation policies. The racial ideologies that justify deportation are based on racialized logics and discourses about black and Latino criminality and illegality. The racial ideology that black men have criminal tendencies leads to the deportation of a disproportionate number of Dominicans and Jamaicans. The racial ideology that Mexicans, and those who look “Mexican,” are “illegals” leads to the targeting of Mexicans and Central Americans in immigration enforcement efforts.

The practices that lead to racial disparities in mass deportation include racially discriminatory laws and policing practices. The copious literature on racial disparities in policing practices (Tonry 2011; Gottschalk 2016) can directly inform our understanding of racial disparities in deportations. In the United States, blacks and Latinos are more likely to be arrested than whites, and these disparities are particularly pronounced for drug-related crimes. African Americans are sent to prison on drug charges at nearly twelve times the rate of whites, even though blacks and whites use and sell drugs at about the same rates (Alexander 2010). One of the main reasons for this disparity is that police officers target open-air drug markets in black neighborhoods yet often ignore the widespread usage of narcotics in primarily white suburban areas and on college campuses. Because whites are less likely to be arrested for drug offenses, they are less likely to be charged, convicted, or sentenced to prison for drug offenses. This means that harsh penalties for drug offenses have had a disproportionate impact on people of color. When immigrants are caught up in this dragnet, the consequence for them is often deportation, due in part to aggravated felony provisions of U.S. immigration laws.

One of the more draconian provisions of the current version of the Immigration and Nationality Act is related to deportations after aggravated felony convictions, which is the kind of deportation that Peter experienced. Any person convicted of an aggravated felony in the United States faces automatic deportation. An aggravated felony is a specific class of criminal convictions and includes a crime of violence, theft or burglary for which the term of imprisonment is at least one year. Drug offenses count as aggravated felonies for immigration purposes if they either contain a

trafficking element or would be punishable as a felony under federal drug laws. When a non-citizen is convicted of an aggravated felony, they face automatic deportation, which means an immigration judge does not have the opportunity to weigh equities in the case. A Jamaican, for example, could have come to the United States at age two. If, in his early twenties, he is caught riding in a stolen car and pleads guilty to a suspended sentence of one year, he could face automatic deportation to Jamaica even though he has a U.S. citizen wife and two children and no family or friends in Jamaica.

Peter moved to the United States when he was a teenager, in 1989. He was a legal permanent resident and worked in several jobs, including landscaping, the restaurant business, a steel factory, and house painting. In 1997, he ran into problems. He got into an argument with his girlfriend. She was angry, and called the police and said he stole money and jewelry from her apartment. Peter says she had lent him some money and had asked him to clean her gold jewelry. The total value of the items was \$1800. She said he stole the money and jewelry. When his court date came up, she did not show up, but the state pressed charges anyway. Peter was sentenced to one year in jail. He served part of his sentence, and was let out on parole. Once released, he thought that he could put his past behind him and move forward. It took a while for him to get back on his feet, but, eventually, he was painting houses again and making ends meet until he was arrested and the police decided to check on his immigration case.

When the police officer made the call to immigration authorities, he discovered Peter had a Notice to Appear in immigration court. Peter had never received the Notice and thus had missed his court date. When he did not show up, the immigration judge ruled in absentia that Peter was deportable. This ruling, however, was not sufficient to ensure Peter's deportation - that only would happen if he were actually apprehended by law enforcement agents.

Due to the way immigration law enforcement works in the United States, there are millions of deportable people like Peter, who will never actually be forced to leave. Just as there are 35 million illegal drug users, the vast majority of whom will never go to prison (Alexander 2011), there are at least 11 million undocumented immigrants and an unknown additional number of people who have violated the terms of their visa and are thus deportable. Immigration laws are not designed to removal all unauthorized immigrants. Nicholas De Genova (2002) made this clear many years ago when he explained:

It is deportability, and not deportation per se, that has historically rendered undocumented migrant labor a distinctly disposable commodity. There has never been sufficient funding for the INS to evacuate the United States of undocumented migrants by means of

deportations, nor even for the Border Patrol to "hold the line." The INS is neither equipped nor intended to actually keep the undocumented out.

De Genova wrote those lines nearly two decades ago. The Immigration and Naturalization Service (INS) has since been replaced by the Department of Homeland Security (DHS). Even though the DHS has a much bigger budget than the INS, and deportations have increased five-fold since 2002 (Golash-Boza 2012), De Genova's words continue to ring true – the intention of this agency is not to remove all deportable migrants, but to deport enough to ensure the continued marginalization of those that remain. More recent work has highlighted how the merging of criminal and immigration law enforcement in the United States has enhanced the marginalization of Latinos (Vasquez 2011) and immigrants of color more broadly (Johnson 2015).

Back in Jamaica, Peter had nowhere to go. His whole family is in the United States. He had not kept in contact with school friends. When he left, his friends did not own telephones, so he could not call them. Back in Jamaica, people in his neighborhood scorn him for never sending anything back when he lived in America. They look down on him because he was in America for so long and came back empty handed. When Peter arrived in Jamaica, he had ten dollars in his pocket. He changed it into Jamaican dollars, and took a taxi to the neighborhood he grew up in. He found a school friend, and they let him spend the night on the porch. He set out to look for work the next day so he could eat, but found it difficult to find employment – a common problem among deportees in Jamaica and beyond (Anderson 2015; Golash-Boza 2016b; Olvera and Muela 2016).

When we spoke, Peter had been back for three years and things had gotten a bit easier for him. A friend had let him stay at his home and he had found a temporary construction job. However, he continued to experience harassment by young men in his neighborhood and his place had been broken into several times.

Peter was deported to his country of birth and despite considerable difficulties has been able to rekindle old ties to help him in a very difficult situation. Some people, however, are deported to countries they have never visited before. Natalia, for example, was born in the Bahamas to a Haitian woman, which made her a citizen of Haiti, even though she had never been to Haiti. When Natalia was two days old, her mother brought her to the United States. Twenty years later, when Natalia, herself was the mother of a newborn, she was caught shoplifting. Her attorney advised her to plead guilty to receive a lesser sentence. She did. Based on that plea, she now faces deportation to Haiti, a country she has never set foot in, whose

language she does not speak, and that is still recovering from a massive earthquake, political unrest, and a cholera outbreak.¹

If deported to Haiti, Natalia would face extreme difficulties, both because of her unfamiliarity with her country of citizenship, and because of her strong attachments to the United States, including a U.S. citizen child and husband. Because of her status as a legal permanent resident, Natalia could have applied for U.S. citizenship five years after her arrival in the United States. She never applied and thus remained vulnerable to deportation as legal permanent residents can be deported if convicted of aggravated felonies. Between 1992 and 2006, about 300,000 people were deported from the United States under aggravated felony provisions. It is unclear how many of these people were legal permanent residents, yet we do know that all had entered legally, as there is a different set of provisions in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) for people who entered the country illegally. The top three countries to which these people were deported were: Mexico (43%); the Dominican Republic (8.2%) and Jamaica (5.5%). Nationals of these three countries were thus over-represented among this group of deportees. Mexicans account for 25% of all legal permanent residents, Dominicans for 3.7% and Jamaicans 1.8%, meaning people from these three countries are over-represented among deported legal permanent residents. In contrast, less than one percent of people deported under aggravated felony provisions were from Canada or the United Kingdom, and even fewer from other European countries, even though people from the United Kingdom make up 2.2% of the legal permanent resident population and Canadians make up 2.4%.²

The aggravated felony provisions are colorblind in principle, yet rarely applied to white immigrants. Likewise, white people are much less likely to be arrested than the non-white population, particularly black and Latino people. For similar reasons, men are much more likely to be ensnared in the deportation dragnet than women.

When I interviewed deported Jamaicans in 2009 and 2010, many of them recounted stories of discriminatory policing practices that led to their deportations. Their stories, like Peter's, were often sagas of family separation and despair. When I interviewed deportees in the Dominican Republic, also in 2009 and 2010, I heard similar accounts. Emanuel's story is one. Emanuel moved to the United as a legal permanent resident in the late 1970s, when he was a teenager. Upon finishing high school, he served two years in the

¹ <http://www.counterpunch.org/2011/04/27/born-in-the-bahamas-raised-in-the-us-deported-to-haiti/>

² http://trac.syr.edu/immigration/reports/158/include/rep158table2_a.html and https://www.dhs.gov/sites/default/files/publications/ois_lpr_pe_2012.pdf

army. He then completed a technical degree that allowed him to secure a job repairing security cameras for supermarkets.

When Emanuel was in the army, he purchased a gun for his personal use. When he left the army, he moved to North Carolina, where it was legal to own guns. However, he took the gun with him to New Jersey, where he did not have a valid permit for it. One day, in early 1996, a New Jersey police officer pulled Emanuel over for speeding and asked to search his car. Emanuel agreed. Michelle Alexander (2011: 66) explains that these “pretext stops” are “favorite tools of law enforcement in the War on Drugs. A classic pretext stop is a traffic stop motivated not by any desire to enforce traffic laws, but instead motivated by a desire to hunt for drugs in the absence of any evidence of illegal drug activity.” In Emanuel’s case, the officer found not drugs but an unlicensed firearm.

Emanuel was sentenced to one year in prison for illegal possession of a firearm. He served nine months and was released. Emanuel began working again, but had to report to the parole officer each month. On one occasion, he showed up for his meeting with the parole officer, and, to his surprise, the parole officer turned Emanuel over to immigration. He was then sent to detention and deported to the Dominican Republic in 1998.

The deportation of Emanuel, a college graduate, legal permanent resident, and U.S. army veteran, for illegal possession of a firearm, is considered by the Department of Homeland Security to be the deportation of one more dangerous criminal alien. Emanuel, like many deportees with whom I spoke, qualified for U.S. citizenship, based on being a legal permanent resident for two decades and having served in the U.S. army. However, he chose never to apply. He thus remained a denizen of this country, deportable, no matter his ties to the United States.

Gendered Deportation Trends

Less than ten percent of deportees are women, even though they constitute about half of the non-citizen population (Golash-Boza and Hondagneu-Sotelo 2013). The laws governing deportation do not have any provisions that explicitly prevent the deportation of female non-citizens. Why, then, are mostly men deported? We do not have systematic data on how deportations happen, from the point of arrest to detention, and then deportation. Nevertheless, it is possible to piece together an explanation for these gendered deportation trends based on what we know from interviews with deportees as well as an understanding of how public and private spaces are gendered.

A gendered lens can help us to understand the disparities in deportations and their gendered effects. One of the main reasons men are more likely to be deported is that men are more susceptible to arrest, both because of

gendered policing practices and gendered divisions of labor, i.e. men are more likely to work outside the home and to drive to work than women. Although the reasons immigrant women are more likely than their male counterparts to have primary responsibilities in the home are related to gendered inequalities, these gendered roles can work as a protective factor against deportation for women. At the same time, these inequalities create a situation where deportation can have severe consequences for women. When men are deported, women are often left behind to support the household on their own. Because of gendered divisions of labor and unequal pay, immigrant women often earn far less than their husbands (Hondagneu-Sotelo 1994; Menjívar 1999; Menjívar, Abrego, and Schmalzbauer 2016.), and thus find themselves unable to make ends meet when their husbands are deported.

Of course, some deportees are not in heteronormative relationships, do not have partners, or live alone and unattached. Men and women can be deported without leaving children, wives, girlfriends, or co-parents behind. However, when a man who is the primary provider for a household is deported, his treatment usually has considerable effects on his partner and children, as we can see in the case of Walter, who was sent back to Guatemala.

Dolores, Walter, and their two children lived in a five-bedroom home in a suburb of Washington, DC, had two cars, and took regular vacations with their significant disposable income. With Walter's successful flooring business, they were solidly upper middle class. In 2008, however, immigration agents raided their home, arrested Walter in front of his wife and children, and deported him to Guatemala.³ Dolores and her children followed him to his home country. However, they quickly depleted the \$250,000 they had from their savings combined with the sale of their home and cars. Moreover, the sudden changes put stress on their marriage, and Dolores and the children returned to the United States two years after Walter's deportation, empty-handed. Dolores moved in with her parents and secured a job at a gas station, where she earns minimum wage.

Despite their U.S. citizenship, Dolores and their two children are experiencing the full brunt of the collateral consequences of deportation. As Ruth Gomberg-Muñoz (2016: 350) argues, immigration laws "disproportionately destroy the lives of racial minorities, women, and the working poor." Importantly, these practices reveal the limited privileges of U.S. citizenship for people with non-citizen family members and show how middle-class immigrant families can be transformed into working poor

³ Walter's arrest likely happened through the National Fugitive Operations Program (NFOP), in which ICE agents targeted people with criminal convictions as well as those designated as "fugitive aliens."

families with a deportation of a family member. Dolores and her children's U.S. citizenship did not protect them from the dissolution of their nuclear family and middle-class lifestyle.

When women are deported, they often face even more obstacles than their male counterparts. Betty came to the United States as a toddler. She was deported to Guatemala when she was 32, after being arrested in a domestic violence dispute. Betty's mother was Salvadoran, but Betty was born in Guatemala to a Guatemalan father. She had relatively little extended family in Guatemala, yet although she had not seen her father since she was a toddler, he welcomed her into his home in Guatemala City when she was deported. However, her stepmother disapproved of Betty and eventually kicked her out. As a homeless woman in Guatemala, Betty fears for her safety, particularly the very real possibility of sexual assault. In addition to the challenges she faces to survival on the streets of Guatemala, Betty has lost all five of her children to foster and adoptive homes in the United States. When men are deported, like when they are sent to prison, the mother of their children usually take custody of the children even at great personal and financial cost. Men, however, are less likely to take responsibility for their children when the mother is deported. This often means that the children end up in foster care and eventually are adopted into another family.

Betty's experiences in the United States included sexual abuse and domestic violence. Her experiences in Guatemala include living in fear for her safety, unemployment, and a disapproving stepmother. These experiences are all related to the fact that women are viewed as less valuable in both U.S. and Guatemalan society. Betty's stepmother accused her of being promiscuous and that was enough to convince her father to ask her to leave. In contrast, many Guatemalan male deportees were welcomed into their fathers' homes and none of the 33 Guatemalan men I interviewed told me that their father's partner asked them to leave.

Family Separation and Nativism

Deportation laws are often represented as a means of protecting the interests of U.S. citizens. However, in some cases deportations are counter to the interests of particular U.S. citizens, especially when they are family members of the person deported. It is useful for us to consider how the government deals with parental deportation, as these processes also reveal the racialized and gendered logics of deportation policy.

In the United States, when a parent is arrested, Child Protective Services (CPS) steps in and takes measures designed to ensure that the child's best interests are served. Unlike police officers, CPS workers are not law enforcement agents. Nevertheless, their actions, like those of police officers, can exacerbate inequalities. CPS workers can place the children of parents who have been arrested either in temporary foster care or with relatives. It is

often easier for children to deal with the arrest of their parents when they are placed with people familiar to them. However, according to an Applied Research Center (2011) report, when a parent is arrested and the only available relatives are undocumented, CPS workers often opt to place the children in foster care with strangers. This is due to a belief among CPS workers that a home environment with undocumented caregivers is inadequate. The logic behind this practice is that undocumented caregivers may be at risk for deportation themselves. However, the likelihood that an undocumented caregiver actually would face deportation proceedings is often less than one percent, particularly if the caregiver is a woman.

If an undocumented parent is arrested, local law enforcement agencies may choose to contact immigration authorities, who may then decide to place the parent in immigration detention. If a parent is in immigration detention and their child is in foster care, the detained immigrant often is unable to attend any hearings related to their parental rights. If the detained immigrant is then deported, CPS may move to terminate parental rights. The deported immigrant can contact the child welfare caseworker and attempt to regain custody of the children. At this point, in some cases, CPS may terminate parental rights anyway. In other cases, they may ask the parent to complete parenting classes, a home study, and secure employment in the country to which they have been deported. In one case described in the ARC report, a parent did all of these things, working with Mexican child welfare workers, who produced a “glowing home study.” In addition, the father had a house, a car, and a job that paid a living wage. Nevertheless, the child’s attorney objected because at least one of the children was asthmatic. The attorney said: “It’s dusty there and we don’t know what kind of care they’d get.” Because of this opinion about Mexico, the parental rights were terminated and the children were adopted.

The facility with which the state renders these (primarily) Latino children orphans is related not only to a system of racist patriarchy but also to a global order in which Mexican and Central American families are deemed unworthy of raising U.S. citizen children and Mexico and Central America are deemed unsuitable places to raise these children. When Mexican, Central American, and Caribbean parents are deported, caseworkers often decide that living with a stranger in the United States is preferable to a *de facto* deportation for the U.S. citizen child. The facility with which orphaning happens is evident in the story of a Central American woman, one of thousands of women whose children have ended up as wards of the state. This woman was detained due to an immigration violation. As a result, her children were placed in foster care. The case worker in North Carolina told a reporter:

Reunification has been taken off the table on this one in part because of the deportation that’s coming. We would have been working toward

reunification had it not been for the fact that she'll be deported. So we made no case plan at all. It would be totally different if she were a citizen... If she were not going to be deported, we could work toward reunification while she was in jail and then see what happened when she was released. (ARC: 53)

In this case, the case worker would not even consider the possibility that the mother may be able to care for the children in her home country. In Florida, another case worker said:

As long as they are not deported, we give them a case plan, even in detention, but as soon as [they're] deported, a lot of times it goes straight to termination of parental rights... Once they're gone, it's usually over for them. (ARC: 53-54)

U.S. child protection laws operate similarly to other laws in the United States insofar as they apply to children who are physically present in the United States, regardless of citizenship. The job of CPS workers in the United States is to put the children's best interests first. Of course, it certainly is sometimes the case that biological parents are not ideal parents for their children. However, these interview excerpts make it clear that the caseworker is not making a decision based on the fitness of the parents, but instead the caseworkers have decided that it is in the best interest of children that they be raised in the United States, where they will presumably have access to schools, hospitals, and a safe home environment. Caseworkers often also presume that children will not have access to these basic human rights in their parents' country of birth. These assumptions are not always true.

Caseworkers are cognizant of the pervasive problems associated with the foster care system in the United States. It is also clear that millions of children thrive in homes when they are raised by their Mexican parents in Mexico. Mexico is not in fact a poor country.⁴ It is a middle-income country and many Mexican children have more than adequate access to health care, schooling, and nutrition. But, the caseworker, the judge, and many others involved in the child welfare system in the United States presume, based on nativist notions, that these basic amenities are simply not available in Mexico or anywhere south of the U.S./Mexico border.

That said, it is most likely in the best interest of the child that their parent not be deported in the first place. When children's parents are deported, the fragility of the children's citizenship rights is revealed, whether they end up

⁴ In 2015, Mexico ranked at 91st in terms of GDP per capita, placing it right in the middle of all countries. <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>

in foster care, adopted, or *de facto* deported due to their parents' deportation. Their citizenship does not protect them "from the destructive effects of state intrusion" (Gomberg-Muñoz 2016: 350).

Deportees often experience a complete loss of parental rights due to CPS practices. In other cases, they do not officially lose their parental rights, but have no way to access them. When a parent of a minor child is deported, and the child stays with the other parent, it is often up to the non-deported parent to ensure they can stay in touch with their children. Sometimes, the parent in the United States chooses to break off contact with the person who has been deported. And, there often is nothing a deported person can do to regain contact with their children in the United States. Several men told me that the mothers of their children had chosen not to maintain contact with them.

Harold, a Jamaican deportee, told me that he has lost contact with his thirteen-year old daughter. The mother chose not to maintain contact, and he has no way to contact his daughter. Another Jamaican deportee, Roy, lived with his four children prior to his deportation, and his ex-wife changed her phone number, and he has no way of contacting his children. Federica, a Dominican woman who had been deported, also told me that her ex-husband has cut off ties with her, and refuses to bring the children to the Dominican Republic to visit her. The effective loss of parental rights is of course very painful.

Others remained in contact with their children, but feared that the caretaker in the United States could lose custody. For example, Diallo, a Guatemalan deportee had raised his child since she was an infant. When he was deported, he left his daughter with his mother. He fears that her biological mother could find out and demand custody, even though she abandoned the child years before. For this reason, his mother has not applied for social services for the child, even though she needs them.

These deportees have not officially lost parental rights, but they have no control over their access to their children. They may technically have legal rights, but those rights are only exercisable in the United States, and, insofar as they do not have access to the United States, they don't have access to their rights. Deportees who leave children behind in the United States must remain in the good graces of the caretaker of their children, who has complete discretion over whether or not the children should remain in contact with their deported parent.

Conclusion

These cases of deportations and family separations allow us to think through how U.S. immigration laws further aggravate inequalities based on race, gender, and citizenship. Deportation exacerbates racial inequalities in

criminal law enforcement; it also exacerbates gendered inequalities in caregiving by placing additional financial and emotional burdens on women when their partners are deported. Finally, deportation not only removes non-citizens from the United States, it also often separates them from their children, thereby further deepening the disadvantages non-citizens experience as compared to citizens.

Deportation thus not only denies people access to the territorial boundaries of the United States; it also can deprive them of their right to cultivate a relationship with their children and other family members. In U.S. law, deportation is an administrative procedure that denies a non-citizen territorial access to this country. However, U.S. immigration laws are out of sync with reality insofar as there are millions of undocumented migrants who have settled in this country and millions of legal permanent residents who are susceptible to deportation. The deportation of all undocumented migrants and all legal permanent residents who have criminal convictions would have devastating effects on a broad swath of people. For these and other reasons, only a small portion of these populations are deported each year.

Nevertheless, draconian deportation laws have three critical racialized consequences. Firstly, deportations nearly always happen as a consequence of local law enforcement practices, meaning that police/immigration cooperation further exacerbates existing racial disparities within the criminal justice system. Secondly, the vast majority of people who are deported are Latino or black, meaning deportation law exacerbates racial inequality in the United States. When deportees have partners and children, they are usually also black or Latino. Deportations thus further exacerbate racial inequality by removing breadwinners from these families. Thirdly, the spectre of enforcement hangs over the lives of millions of people who are at risk of deportation, thereby further subordinating an already marginalized group.

The United States is exceptional among Westernized countries both in the harshness of its deportation provisions and in the punitive nature of its criminal laws. The fact that deportation and criminal laws primarily target racialized minority groups is part of the explanation for why the United States is so punitive. The targets of these laws are dehumanized as criminals and criminal aliens and this dehumanization is all the more seamless due to the racialization of these labels in the American imaginary.

References

Alexander, M. (2011). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.

Anderson, Jill. 2015. "Tagged as a criminal": Narratives of deportation and return migration in a Mexico City call center. *Latino Studies*, 13(1), 8-27.

Applied Research Center. 2011. Shattered Families: The Perilous Intersection of Immigration

Enforcement and the Child Welfare System. Available online at:

<https://www.raceforward.org/research/reports/shattered-families?arc=1>

De Genova, N. P. 2002. Migrant “illegality” and deportability in everyday life. *Annual review of anthropology*, 31(1), 419-447.

Epp, Charles R., Steven Maynard-Moody, and Donald P. Haider-Markel. *Pulled over: How police stops define race and citizenship*. University of Chicago Press, 2014.

Ewing, Walter, 2014. “The Growth of the U.S. Deportation Machine” Immigration Policy Center, Washington, DC.

Gelman, A., J. Fagan, and A. Kiss. 2007. An analysis of the New York City police department’s “stop-and-frisk” policy in the context of claims of racial bias. *Journal of the American Statistical Association* 102: 479.

Golash-Boza, Tanya. 2012. *Immigration Nation: Raids, Detentions, and Deportations in the United States*. Boulder, CO: Paradigm

Golash-Boza, Tanya. 2015. *Deported: Immigrant Policing, Disposable Labor, and Global Capitalism*. New York University Press: New York.

Golash-Boza, Tana. 2016b. “A critical and comprehensive sociological theory of race and racism. *Sociology of Race and Ethnicity*, 2: 2.

Golash-Boza, Tanya. 2016b. ‘Negative credentials,’ ‘foreign-earned’ capital, and call centers: Guatemalan deportees’ precarious reintegration. *Citizenship Studies*, 20(3-4), 326-341.

Gomberg-Muñoz, R. (2016). The Juarez Wives Club: Gendered citizenship and US immigration law. *American Ethnologist*, 43(2), 339-352.

<http://doi.org/10.1111/amet.12309>

Harris, David A. 1999. *Driving While Black: Racial Profiling on Our Nation’s Highways*. American Civil Liberties Union Special Report. Washington, DC: American Civil Liberties Union. <https://www.aclu.org/racial-justice/driving-while-black-racial-profiling-our-nations-highways>.

Johnson (2015)

Hondagneu-Sotelo, Pierrette. 1994. *Gendered transitions: Mexican experiences of immigration*. Univ of California Press: Berkeley, CA.

Johnson, K. R. 2015. "Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals." *Case W. Res. L. Rev.*, 66, 993.

Lamberth, J. 1994. *Revised Statistical Analysis of the Incidence of Police Stops and Arrests of Black Drivers: Travelers on the New Jersey Turnpike Between Exits or Interchanges 1 and 3 from the Years 1988 Through 1991*. http://www.lamberthconsulting.com/downloads/new_jersey_study_report.pdf.

Mauer, Marc. 1999. *The Crisis of the Young African American Male and the Criminal Justice System*. Sentencing Project. http://www.sentencingproject.org/doc/publications/rd_crisisoftheyoung.pdf.

Menjívar, C. 1999. The Intersection of Work and Gender Central American Immigrant Women and Employment in California. *American Behavioral Scientist*, 42(4), 601-627.

Menjívar, C., Abrego, L. J., & Schmalzbauer, L. C. 2016. *Immigrant families*. John Wiley & Sons.

Olvera, J. J., & Muela, C. 2016. Sin familia en México. *Mexican Studies/Estudios Mexicanos*, 32(2), 302-327.

Passel, Jeffrey S. and D'Vera Cohn. 2014. "Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases." Washington, D.C. Pew Research Center's Hispanic Trends Project, November

Pratt, A., & Sossin, L. 2009. A brief introduction of the puzzle of discretion. *Canadian Journal of Law and Society*, 24 (3), 301-312.

Rosenblum, M. R., & McCabe, K. (2014). *Deportation and Discretion: Reviewing the Record and Options for Change*. Washington, DC.

Sabol, William, Heather West, and Matthew Cooper. 2009. *Prisoners in 2008*. Bureau of Justice Statistics Bulletin. <http://www.bjs.gov/content/pub/pdf/p08.pdf>.

Tonry, Michael. 2011. *Punishing Race: A Continuing American Dilemma*. Oxford University Press: New York.

Vazquez, Yolanda. 2011. "Perpetuating the Marginalization of Latinos: A Collateral Consequence of the Incorporation of Immigration Law into the Criminal Justice System." *Howard LJ* 54 (2011): 639.

Wellman, David T. 1993. *Portraits of White Racism*, 2nd ed. Cambridge and New York: Cambridge University Press.

West, Heather, and William Sabol. 2010. *Prisoners in 2009*. Bureau of Justice Statistics. <http://www.bjs.gov/content/pub/pdf/p09.pdf>.