

CHAPTER 1

The US Prison Boom and the Growth of Immigrant Detention

The “nation of immigrants” incarcerates more immigrants than anywhere else in the world. Major milestones dot the history of the contemporary immigrant detention system in the United States. In 1980, when detaining immigrants was a rare practice, the arrival of Cuban and Haitian refugees by boat during the Cold War led to the birth of the modern system with the opening of the Krome Detention Center in south Florida. Later, during the height of the war on drugs, mandatory detention became law, stripping certain immigrants of due process rights. In 1996, the passage of two draconian immigration bills under president Bill Clinton expanded the grounds for deportation and doubled the existing detention capacity. But it was 9/11 that made immigrants an unequivocal target of the government in the name of protecting the “homeland,” after which billions of dollars were funneled into the deportation machinery. In recent memory, Trump’s

wholesale attack on immigration led to a considerable expansion of the system, reaching a peak of half a million people detained in 2019.

But beneath these common points of departure lies another aspect of immigrant detention’s history: the rise in mass incarceration. In 1970, the United States incarcerated less than two hundred thousand people; three decades later, that number had risen to over two million. The prison boom that took place over the last half-century is central to the story of immigrant detention in the United States. Critical Resistance defines the prison industrial complex (PIC) as “the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems.” As the PIC was fortified through various developments, including increased funding for law enforcement, harsher sentencing laws at the state and federal levels, and the promise of jobs and revenue derived from a growing prison economy, the response to unnaturalized immigrants living in the United States and those arriving at our borders increasingly took on a carceral logic. Since the 1980s, a combination of economic restructuring and increasing tough-on-crime policies have produced devastating results: the highest rates of incarceration in the world and the greatest number of deportations in US history.

In my experience organizing against immigrant detention, there is a tendency among advocates and

politicians to acknowledge the problems with the system without questioning how the United States came to have the world's largest detention infrastructure. Many will boil it down to a simple product of racism and xenophobia. Others will focus on the profit motives. While these factors are certainly salient, what is often missing is a more critical perspective on the role of the US government in the PIC. In recent years, the Trump administration's promotion of white supremacy has generated interest in examining the roots of criminalization and deportation. Yet in this process of discovery, there is a risk of taking the wrong lessons from history. Certain narratives give the impression that nothing has changed, which can fuel passivity and make us feel like there is little we can do to make things better. But in reality, mass incarceration and mass immigrant detention are recent developments, and learning about their expansion over time helps us better understand how these systems might be undone.

In this chapter, I track the growth of the modern immigrant detention system through key moments in US history. I start in the 1960s, when a backlash against social movements and civil rights gains triggered an acute and misguided focus on the problem of crime. This development coincided with a watershed in immigration policy, when the racist national-origins quota system was terminated. The United States opened its door to some immigrants, but simultaneously limited migration from Mexico for

the first time. This pattern of extending rights and opportunities to certain immigrants while tightening restrictions on others continued for more than two decades. The idea behind it was an old one: to support the "good" immigrants while keeping out the "bad" ones. In the 1980s, the combined circumstance of prison overcrowding and the arrival of Cold War-era refugees precipitated the initial transition of Immigration and Naturalization Service (INS) into a mass jail operator. This turn of events set the stage for the normalization of detention during the following decade when, amid the culture wars and influence of the New Right, immigrants became a central target in the war on crime. The rise of neoliberalism remade immigration as well as economies in the United States and around the world; meanwhile, the prison industrial complex grew to levels never seen before. It was in this context that the attacks on September 11, 2001, took place, creating the political will for expanding the detention and deportation machinery and restructuring it into the system we have today.

The Hart-Celler Act and the Dawn of the War on Crime

The 1960s proved to be a pivotal decade for changes to both the criminal legal system and immigration system. Amid civil rights protests and political unrest, concerns about rising crime were harnessed

to a conservative political agenda. Barry Goldwater, Arizona senator and Republican nominee for president in 1964, stoked fears about the deterioration of law and order in his bid against president Lyndon B. Johnson. Goldwater lost, but the focus on crime prevailed. Even though Johnson advanced civil rights and launched social welfare programs as part of his “war on poverty,” he gave credence to the racist belief that crime was in part a result of the “breakdown of the Negro family structure.”¹ In response to the right-wing moral panics over political uprisings, he “ushered in a new era of American law enforcement,” which came to be known as the war on crime.² Johnson would go on to sign legislation to provide more funding for police and establish a crime commission later that year. Prior to leaving office, he created the Law Enforcement Assistance Administration, which furthered the federal government’s role in building up state and local law enforcement to combat crime. In the wake of civil rights progress and the end of the Jim Crow era, where explicit and outward white supremacy had been inscribed into law, as Michelle Alexander notes, crime became a label through which we could “engage in all the practices we supposedly left behind.”³ Eventually, the war on crime would change the nature of the federal government’s approach to immigration control.

The advancement of civil rights also played a role in the immigration debate. The US restrictionist pol-

icy on immigration dating back to the 1920s allowed some Europeans to migrate, but banned almost everyone else from the Eastern Hemisphere. As a result, the foreign-born population in the United States at the time was barely 5 percent. After World War II, this policy began to be perceived as outdated due to its racist nature, and during the civil rights movement an effort toward immigration reform progressed. These conditions led to the passage of the Hart-Celler Act of 1965, a revision of the Immigration and Nationality Act. The new legislation eliminated the national-origins quota that barred immigration from non-European countries, opening up migration for Eastern and Southern Europe in addition to Africa, Asia, and Latin America. Immigration quotas remained, but now they would be applied universally, and there were no limits on visas for family members. While lawmakers said that it would have little impact on the “ethnic mix of this country,” the Hart-Celler Act and its inclusions and exclusions fundamentally changed the demographics and the political landscape of the United States.⁴

The 1965 law ended discrimination in immigration policies based on “race, national origin, sex, place of birth, or place of residence.” While it opened up migration from the Eastern Hemisphere, it introduced quotas—for the first time—for migrants in the Western Hemisphere. Ignoring the economic drivers of migration and citing “fairness” as the reason for its inclusion, the federal govern-

ment capped visas at 120,000 for the entire region; for Mexicans, the quota was later limited to 20,000.⁵ The previous year, the government had ended the exploitative Bracero Program, a decades-long policy that encouraged Mexican workers to come to the United States for short periods to address labor shortages. The restriction on the number of visas due to Hart-Celler coupled with the end of the Bracero Program in 1964 resulted in an unprecedented rise of unauthorized migration. At the time, some 200,000 Mexicans were coming to the United States for work annually. Now the first 20,000 immigrants from Mexico could be issued visas, but the 20,001st immigrant would not be; if they had to cross for work, they would be considered illegal.⁶ Immigration-related apprehensions increased rapidly each year after the law passed, from 44,000 arrests in 1964 to over a million in 1977.⁷ While the law is often perceived as a watershed moment for supporting immigration, it made Mexicans a target for deportation and situated “the US-Mexico border as the theatre of an enforcement ‘crisis.’”⁸

In line with the narrative of good immigrant versus bad immigrant, another framework emerged in the 1960s that further divided communities of color in the United States. The model minority myth, which positions Asian Americans as superior to members of other marginalized communities due to their presumed education and submissiveness, has persisted for decades. Its framing intentionally

erases the history, varied experiences, political agency, and class backgrounds of Asian immigrant communities. After all, some of the first laws restricting immigration, the Page Act of 1875 and the Chinese Exclusion Act of 1882, were bans on Asian migrants. Nonetheless, while it may feel dated, the model minority myth continues to under-gird race discourse in the United States. By emphasizing a model minority, it automatically implies a non-model minority, a group of people of color who are undesirable (most often Black people but also those who are criminalized or perceived as unproductive, including people with disabilities or illness and members of lower classes).

Preference categories in the Hart-Celler Act determined that people who did not have family already residing in the United States would require certain skills or education in order to be allowed to migrate. As historian Mae Ngai explains, “Political instability and lack of opportunities for professional advancement in many Asian countries . . . encouraged those of the professional and technical classes to emigrate.” After they arrived, Asian immigrants sponsored their family members (what conservatives refer to as “chain migration”), which then often “replicated the class composition” of the first generation, advancing the myth.⁹

This change to immigration law in 1965 is central to my family’s immigration story. My father came to the United States in 1968 for graduate school, and a

few years later he sponsored my mother. Over the years, they would both go on to apply to bring their many siblings and their respective spouses and children along with them. It took time. My siblings and I often felt like interlopers when we traveled to India, the rare kids in the family who had been born in the United States, who didn't speak the language as well or know the appropriate ways to show respect. But then, by the nineties, many of our aunts, uncles, and cousins had migrated to join us. Family that once had felt far away was now within reach. As a result of Hart-Celler, the Asian American population grew from less than 1.2 million in 1965 to over 22 million in 2019. But even now, Asian Americans comprise less than 6 percent of the US population.¹⁰

While the civil rights era advanced the ability for Asians to migrate, the heightened focus on crime starting in the 1960s often served to pit communities of color against each other. Despite gains to civil rights, Black communities continued to be positioned as a problem in the eyes of the American public. Media highlighted the successes of Asian Americans in comparison to African Americans and the lack of "delinquency" in Asian communities. An article from *U.S. News & World Report* from 1966 reported, "Visit 'Chinatown U.S.A' and you'll find an important racial minority pulling itself up from hardship and discrimination to become a model of self-respect and achievement in today's America." It goes on to focus on crime specifically: "In crime-rid-

den cities, Chinese districts turn up as islands of peace and stability."¹¹ The singling out of Asian Americans as superior not only promoted the model minority and good immigrant stereotypes, but advanced anti-Black racism.

In 1968, presidential candidate Richard Nixon employed the "southern strategy" to win: he galvanized white Democrats in the South to shift to the Republican Party, utilizing post-civil rights tensions and increasing support for tough-on-crime policies, including a call for a war on drugs. Nixon's domestic policy adviser John Ehrlichman later admitted that the war on drugs was a political tool used to discredit antiwar activists and Black communities: "By getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities."¹²

The focus on drugs also fomented tensions at the border. In 1969, Nixon implemented Operation Intercept, ordering border agents to stop and search all northbound vehicles from Mexico for marijuana, immobilizing the economies of border towns from Texas to California in the process. A drug enforcement agent stationed in Mexico, Joe Arpaio, helped develop the plan, which served to further the idea that all Mexicans were smuggling drugs and therefore needed to be surveilled.¹³ Decades later, in the early 2000s, Arpaio would become a leader of the

anti-immigrant movement as the sheriff of Maricopa County, Arizona.

As a result of restrictions on Mexican migration through Hart-Celler and the beginning of the war on drugs, media began to stoke concerns about “illegal” immigration, giving rise to the idea of a “Latino threat.”¹⁴ The passage of the Rockefeller Drug Laws in New York in 1973 increased prison time for a drug offense, including, in some cases, lifetime sentences. Other states soon passed similar laws. From 1970 to 1980, the US prison population grew from less than 200,000 people behind bars to 315,000—a 60 percent increase.¹⁵ While considerable, the sharp rise would be far outpaced by what was to come in the following two decades.

The Birth of the Modern Immigrant Detention System

Immigrant detention was a rare practice from 1954, when the federal government stopped detaining immigrants at Ellis Island, through the 1970s. Though some egregious cases existed, for the most part, if someone was detained, it was usually only for a day or two. Law enforcement agents would then release immigrants on parole while they went through immigration proceedings. In the 1980s, that started to change. While president Ronald Reagan’s rhetoric on immigration remained largely supportive, his administration’s policy toward people seek-

ing asylum was anything but. The war on drugs and the crime panics of the period transformed the prison and jail system, leading to prison overcrowding. As a result, the federal government opened new detention centers and started passing laws to support its agenda of mass immigrant detention.

In 1980, Congress passed the Refugee Act, adopting international conventions around refugee and asylum admissions, which were ostensibly “rooted in principles of humanitarianism and objectivity.”¹⁶ It was still the era of the Cold War, and the US government outwardly supported refugees, especially those who were leaving communist countries, such as Cuban and Vietnamese people. However Haitian migrants fleeing a US-backed dictatorship were almost universally denied asylum. The federal government labeled them “economic migrants” undeserving of relief, and developed a plan for the INS to start using federal prisons to process and detain Haitians.¹⁷ A month after the Refugee Act’s passage, the Mariel Boatlift began, a seven-month period named after Cuba’s Mariel Harbor in which approximately 125,000 Cubans and 25,000 Haitians arrived on the shores of Florida. In response to the arrivals, the government erected shelters at several military bases across the country to detain immigrants. One of these locations outside Miami, the Krome Avenue Detention Center, eventually became a permanent detention center that is still in operation today.

Anti-Black racism drove the response to the arrival of Cubans and Haitians during this period. The Mariel Cubans were darker and more working class than the Cubans who had previously migrated. As a portion of those arriving had at some point been incarcerated in Cuba (nearly 20,000, according to some sources, including some who had been criminalized for sex work and for being queer and transgender), the media and elected officials played up Cold War tensions to amplify claims that Fidel Castro was casting off “criminal aliens” to the United States, creating an “illegal immigration crisis.”¹⁸ Because of the political conditions of the time and the racialized labels given to the arriving migrants, the Mariel Boatlift and the increasing number of Haitians who arrived by boat to seek asylum are considered the main catalysts of the system of mass detention we have today.

Although Krome was meant to be a temporary detention site, in 1981, the Reagan administration issued a directive to INS to indefinitely detain Haitians, making Krome a permanent detention center. The facility quickly became overcrowded, and conditions at Krome were abysmal, including many health and sanitary code violations.¹⁹ Yet resistance inside prisons has existed as long as prisons have, and the situation was no different with immigrant detention. Haitian migrants locked up at Krome went on multiple hunger strikes in 1981 and around Christmas caught the attention of national Black

leaders, including Reverend Jesse Jackson, who would later visit Krome and tour the facility.²⁰ Multiple antidiscrimination lawsuits were brought against the government for the systemic detention of Haitians. Anti-Black logics that conflated the Mariel Cubans and Haitians with “bad immigrants” led to detention expansion.²¹ Historian Brianna Nofil notes that in order “to make the optics less damning,” given the racial implications of detaining only Black migrants, they started “detaining different groups of people alongside the Haitians.”²² As more immigrants arrived from Central America in the 1980s, fleeing US-backed counterinsurgent wars and violence, the Reagan administration increasingly saw detention as a tool for deterrence. The result was a de facto policy of mandatory detention that stimulated the warehousing of immigrants in detention. In 1983, the Reagan administration issued a Mass Immigration Emergency Plan that encouraged the building of more detention centers that would allow for a capacity to detain up to ten thousand at any time.²³

Before his days as law-and-order mayor of New York City and Trump lackey, Rudolph Giuliani oversaw the expansion of detention during this period as associate attorney general. Since federal prisons were overcrowded, he started pushing for the Federal Bureau of Prisons (BOP) and INS to locate “contingency space” for future Mariel-type situations.²⁴ So began a competition among multiple sites from

Oklahoma to Louisiana to Virginia to build a new INS detention center. In the end, Oakdale, Louisiana, won the battle. Located in Allen Parish, Oakdale had the highest levels of unemployment in the state after a nearby paper mill had shut down, and it was looking for new forms of revenue.²⁵ The mayor had pulled out all the stops to lure INS and Giuliani to the town, including garnering support from members of Congress. Senator J. Bennett Johnston told the mayor to let the Justice Department know “that if Oakdale cannot be considered, the appropriations for the Center will be taken out of the bill legislatively.”²⁶ Giuliani noted that “the overwhelming community support at Oakdale means it is highly unlikely that lawsuits would be brought in an attempt to block our efforts.”²⁷ After securing the contract, the mayor claimed, “The mood of this town changed from depression to euphoria,” calling the new detention center a “recession-proof industry.”²⁸ Oakdale was one of the first instances of immigrant detention being perceived as an economic development strategy, setting a new model that helped drive growth.

It was in this period that the first modern private prison company, Corrections Corporation of America (CCA), was founded. With prisons overcrowded, private prisons appealed to Reagan’s free market and small government agenda as a way to build “at a faster rate with more innovation.”²⁹ Private prisons were parasites ready to benefit from the govern-

ment’s growing desire to confine more people, and were not necessarily the central drivers of mass incarceration. After all, it was federal policy, resources, and practices that created the conditions for mass incarceration. The corporate face fit small government ideologies, but the government footed the bill. In the case of immigration enforcement, however, private prison entanglements created a unique and enduring relationship with the federal government. In January 1984, CCA converted the Olympic Motel in Houston, Texas, into a makeshift immigrant detention center by adding barbed wire around the perimeter and iron bars to the windows. At the same time, the company was building its first permanent private prison, the Houston Processing Center, an immigrant detention center.³⁰ That same year, Wackenhut Corrections Corporation was founded, seeing an opportunity to profit as federal immigrant detention capacity expanded. In 1987, Wackenhut opened its first prison, the Aurora Processing Center, outside Denver.³¹ Wackenhut rebranded as the GEO Group in 2004, and CCA changed its name to CoreCivic in 2016. Both are still in operation today.

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The war on drugs was in full swing by the 1980s. States passed harsher sentencing laws and built more prisons, while a bipartisan agenda in Congress further entrenched the federal government’s role in

the prison boom. Democratic senator and future president Joe Biden was a key champion in growing the federal response to drugs and crime, along with the notoriously racist Republican senator Strom Thurmond of South Carolina. Together they helped pass an omnibus package of bills referred to as the Comprehensive Crime Control Act of 1984, which eliminated federal parole and limited bail. As a result, people spent much more time in prisons and jails.³² The system snowballed: federal prosecutors more aggressively pursued drug charges and, due to overcrowding, the new legislation facilitated the expansion of the US Marshals Service's pretrial jail system, which included both federally run jails and the use of county jails.³³ The *Los Angeles Times* reported a year after the law went into effect that it had led to a 32 percent rise in the prison population and that bail had been denied in more than 82 percent of cases.³⁴ While the act was not directly related to immigration, it did advance the belief that pretrial detention was necessary for preventing future crime, which is one of the main arguments for detaining immigrants with criminal histories.³⁵

The arrival of the Mariel Cubans and Haitian migrants in 1980 also fed into the broader war-on-crime narratives in the United States at the time. Democratic governor of Florida (and later senator) Bob Graham labeled the Black and working-class migrants "illegal criminal aliens" and subsequently sued the federal government for overcrowding Flor-

ida's jails with immigrants.³⁶ In New York, Republican senator Alfonse D'Amato also attributed the overcrowding of prisons and jails to the increasing immigrant population. As a *New Yorker*, D'Amato promoted the idea that the problem of prison overcrowding was in part due to the increase in undocumented immigrants, as revealed by the Mariel crisis, and thus it was not merely an issue for the state of Florida, but in fact a national crisis. Both Graham and D'Amato were major proponents in Congress of passing harsher immigration laws that would grow the detention system significantly.

A key piece of legislation was what many now refer to as Reagan's amnesty bill, the Immigration Reform and Control Act (IRCA), passed in 1986. Despite his policy of detaining people seeking asylum, Reagan outwardly supported immigration by proclaiming, "We cannot erect a Berlin Wall across our southern border," alluding to Cold War-era dynamics.³⁷ The push for legalization of undocumented immigrants residing in the United States had been gaining steam, especially as the undocumented population grew after 1965. However, much like the Hart-Celler Act, IRCA has a complicated legacy. While it is often remembered as the bill that provided legal status to 2.7 million undocumented immigrants living in the United States—the last time such a bill was passed—other provisions in IRCA only reinforced harsher immigration crackdowns, including a sanction on employers who hired undoc-

umented immigrants. IRCA also passed during the height of the war on crime, in which federal and state governments were increasingly managing overcrowded prisons and jails. Senator D'Amato of New York continued to stress the issue of prison overcrowding by claiming that “criminal aliens” were “savaging our society.”³⁸ In response, lawmakers incorporated language in IRCA requiring that “in the case of an alien who is convicted of an offense which makes the alien subject to deportation . . . [officials may] begin any deportation proceeding as expeditiously as possible after the date of the conviction.”³⁹ This change in law led the INS to increase coordination with local law enforcement and state corrections departments to deport immigrants.

Reagan and Congress began using the war on drugs to deport “criminal aliens” and make mandatory detention, which had received pushback in the courts, into law. The same year IRCA passed, Congress also passed the Anti-Drug Abuse Act (ADAA) of 1986. The law is notorious for creating a racially motivated sentencing disparity between possession of crack versus powder cocaine and expanding mandatory minimums, leading to longer stays in prison. A lesser-known provision authorized the use of “detainers,” or immigration holds, that allowed INS to request that local law enforcement agencies hold immigrants until they were transferred to INS custody if arrested for a drug crime.⁴⁰

Sociologist Patrisia Macías-Rojas underscores the role that prison overcrowding played in the shift toward harsher immigration policy: “Congress proposed deporting ‘alien felons’ swept up in the drug war as a way to free up more detention space and prison beds for native-born Black and Latinx youth who would fill them.”⁴¹ Here we see how the snowballing of the criminal legal system that brought about the prison boom also furthered the mechanisms for detention and deportation. The “solution” to prison overcrowding for the federal government became ramping up deportations.

In 1988, an update to the ADAA reinstated the federal death penalty and expanded mandatory minimums. It also advanced the Reaganite anti-immigrant agenda in several ways. The ADAA created the legal category “aggravated felony,” which applied to certain offenses. At the time, only a few crimes were considered an aggravated felony: murder, firearm trafficking, and drug trafficking. The law required that an immigrant convicted of an aggravated felony be subject to mandatory detention while in immigration proceedings and prior to deportation. Mandatory detention meant that a judge could not exercise discretion and that detention would be required regardless of the individual’s circumstances. Law professor Alina Das notes that the “invention of the aggravated felony breathed new life into the the longstanding frenzy over ‘criminal aliens,’” leading to the number of crimes classi-

fied as such expanding considerably over the next decade.⁴² The ADAA also created the Alien Criminal Apprehension Program and Institutional Removal Program, both predecessors to programs that still exist today that enhance cooperation between different law enforcement agencies to expedite detention and deportation. The legal category of aggravated felony and requirement for mandatory detention expanded the tools that the federal government could use for targeting immigrant communities, melding the criminal legal system and immigration system in startling new ways.

Neoliberalism and the Fear of the “Criminal Alien”

The Clinton era would prove to be the most consequential for the growth of mass immigrant detention. The 1990s are often remembered for the “culture wars,” in which polarization deepened over certain social and political issues, such as religion, sexuality, and abortion. Despite these divisions, Democrats and Republicans aligned in a number of areas, including crime, immigration, and the economy. Neoliberal policies that favored the so-called free-market approach and small government, like the North American Free Trade Agreement (NAFTA) and the rollback of welfare, furthered economic disparities in both the United States and Mexico, increasing tensions around immigration. Terrorist

attacks during Clinton’s first term instigated fears around national security and the need to defend ourselves against the “criminal alien.” In response, Congress greatly expanded the legal framework for mandatory detention and deportation. And, perhaps most memorable in the history of mass incarceration, the passage of the Violent Crime Control and Law Enforcement Act of 1994 led to a considerable expansion of law enforcement and a surge in the prison boom. These heightened conditions—neoliberalism, anti-immigrant sentiment, tough-on-crime rhetoric, and national security initiatives—created the perfect storm for building up the prison industrial complex and deportation machine to levels never seen before.

Barely a month after Clinton’s inauguration in 1993, a bomb exploded at the World Trade Center, killing six people and injuring another thousand. One of the men who planned the attack, Ramzi Yousef, had claimed asylum when arriving in the United States in 1992. After initially being detained at an overcrowded INS jail, he was released on parole while awaiting a hearing on his case. That Yousef had been let go by the INS incensed Clinton and other politicians.⁴³ Several months after the bombing, the *Golden Venture*, a cargo ship carrying nearly 300 Chinese immigrants, docked offshore in Queens, New York. Chinese arrivals had skyrocketed in the 1990s to nearly one hundred thousand per year. News media heavily covered the arrival of the

Golden Venture, raising questions about how INS would respond. Clinton homed in on the smuggling networks that brought the Golden Venture to shore and issued a directive to “preempt, interdict, and deter alien smuggling.” The memo also specified that migrants who enter with assistance from “criminal syndicates” shall be detained as a deterrent to smuggling “to ensure repatriation if asylum status is denied.”⁴⁴ Even though both incidents took place in New York, Clinton emphasized the idea that securing the southern border would be critical to stopping these types of events from taking place: “The simple fact is that we must not and cannot surrender our borders to those who wish to exploit our history of compassion and justice.... We must say no to illegal immigration.”⁴⁵

INS decided to send 154 Chinese migrants who had arrived on the Golden Venture to York County Prison in Pennsylvania.⁴⁶ York County opened its prison in 1979 with a capacity to hold 200 people, but after the incarceration rate skyrocketed, the population in the prison reached almost 600 people a decade later. Anticipating federal use, the county expanded to an even greater capacity of 1,200. After INS began using the jail, York County officials noted that its “capability to house federal prisoners and INS detainees has been so successful that the County decided to further expand the prison facility.” York continued its expansion spree in the late 1990s, becoming the largest INS detention center in

the United States at the time.⁴⁷ Many of the immigrants who’d arrived aboard the Golden Venture spent years locked up at the York County Prison until Republican representative Bill Goodling pressured Clinton to release the fifty-three remaining immigrants in 1997, citing the hypocrisy of raising concerns over human rights in China while detaining Chinese asylum seekers.⁴⁸

The market-based political ideology of neoliberalism, which encouraged reduced government spending, had been heavily promoted by Reagan but advanced considerably in the 1990s under Clinton. Despite opposition from labor unions, Clinton ratified NAFTA during his first year in office. NAFTA was touted as a tool to help curb “illegal immigration,” yet the agreement instead spurred a major rise in Mexican migration to the United States. In NAFTA’s first decade, “1.1 million small farmers—and 1.4 million other Mexicans dependent upon the farm sector—were driven out of work.” The number of Mexican migrants arriving in the United States each year more than doubled by the end of Clinton’s time in office, reaching 770,000 in 2000.⁴⁹ While the media and politicians instilled panic over the “border crisis,” as activist and writer Harsha Walia reminds us, the “cumulative impacts of NAFTA led to a crisis of displacement.”⁵⁰

Economic restructuring and growing income inequality left many rural communities financially strained. As manufacturing was offshored and agribusiness made small farms obsolete, struggling rural towns viewed prison and jail expansion as a source of economic development. Antiprison advocate Tracy Huling notes the degree to which prison building became the economy of choice for these communities: “Between 1990 and 1999, 245 prisons were built in rural and small-town communities—with a prison opening somewhere in rural America every fifteen days.”⁵¹

Neoliberal focus on individualism and human competition only served to increase the number of people considered disposable. As social inequality grew, waning support for public benefits left poor and working-class communities reeling. These changing conditions were showcased in California in the 1990s. Many Californians became unemployed after the end of the Cold War and subsequent downsizing of the defense industry. The beating of Rodney King by Los Angeles police resulted in both uprisings by communities of color and more police on the streets.⁵² With the downturn in the economy and racial tensions at the forefront, immigrants became an easy scapegoat for the nativist right as well as for Democrats. In an op-ed in the *Los Angeles Times*, California Democratic senator Dianne Feinstein singled out immigrants with criminal convictions when she wrote that “rather than having our

taxpayers underwrite the prison costs,” the government should return them “to their home countries for imprisonment.”⁵³

In 1994, California passed two ballot initiatives that would advance both the war on crime and anti-immigrant policy. Proposition 184, or the three-strikes-and-you’re-out law, imposed longer sentences on people with repeat offenses, expanding the California prison population. California voters also approved Proposition 187, which would have denied health care to undocumented immigrants and prevented schools from letting them enroll. The initiative also focused on the notion that immigrants commit crimes: “The [people of California] have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in the state.”⁵⁴ The proposition passed in a landslide, but was challenged in the courts and days after it passed was prevented from being fully implemented. Clinton came out in opposition to Proposition 187 by proclaiming, “If you turn the teachers and other educators into instruments of a sort of a state police force, it’s like bringing Big Brother into the schools.”⁵⁵ However, he would eventually agree to cutting other benefits. Two years later he went on to sign the Personal Responsibility and Work Opportunity Reconciliation Act, more commonly known as welfare reform. It drastically curtailed public benefits for poor and working-class people, in addition to denying immigrants and anyone with a felony drug con-

viction access to welfare and certain federal medical benefits.⁵⁶ Providing welfare became a proxy for aiding the “racially undeserving,” and the campaign against it relied on divisive anti-Black and anti-immigrant discourse. Clinton was a true believer in the neoliberal hocus pocus of competition and every man for himself, which drove not only his economic policy but also his approach to crime and immigration.

The same year that California voters approved Propositions 184 and 187, Congress passed the Violent Crime Control and Law Enforcement Act, otherwise known as the crime bill, which some consider “the most extensive federal crime legislation ever passed.”⁵⁷ Future president Joe Biden continued his tough-on-crime agenda and championed the bill in the Senate. The new law funded one hundred thousand more police officers, expanded the federal death penalty to an additional sixty criminal offenses, and increased funding for prisons. The funding was partially earmarked for states that enacted “truth-in-sentencing” laws, which prevented people from being granted parole. As with previous drug- and crime-related legislation, the crime bill resulted in a ballooning of the prison system and included immigration provisions. Much of the framing around immigration restrictions focused on the “criminal alien,” which became common vernacular that was often interchangeable with “illegal alien.” Again, the provisions on immigration focused on boosted fund-

ing, expedited deportations, and greater coordination between federal and local law enforcement. These reforms to immigration policy in the crime bill further entrenched the fusion of the criminal legal system and the immigration enforcement system. Then came 1996.



For immigrant justice activists, the effects of the year 1996 linger like a perpetual dark cloud. Following a decade of laws that expanded the grounds for detention and deportation via the criminal legal system, the 1996 laws supersized the immigration enforcement system. Both the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) were passed that year. Together they changed the paradigm on immigration to one that emphasized citizenship rather than residency and laid the legal foundation for the expansion of the deportation machine that emerged following 9/11. New York University law professor Nancy Morawetz describes the severity of the 1996 immigration laws, “Overnight, people who had formed their lives here—came here legally or had adjusted to legal status, were working here, building their families . . . suddenly, because of some conviction, weren’t even allowed to go in front of a judge anymore. They were just fast-tracked to deportation.”⁵⁸

After the 1995 Oklahoma City bombing perpetrated by Timothy McVeigh, a white US military veteran, Clinton and Congress went into high gear to pass legislation to quell the country's fears about domestic terrorism. AEDPA has turned out to be one of the most harmful pieces of legislation passed in recent history. Its most notorious provision limits the use of habeas corpus, or the ability to appeal wrongful imprisonment. It also requires the Supreme Court to defer to state rulings, preventing the federal government from intervening when there are constitutional errors, even in capital punishment cases. On immigration, AEDPA greatly expanded the scope of what is considered an aggravated felony to a whole host of crimes, including misdemeanors with sentences as little as one year, down from the previous five-year threshold. Many crimes that were not technically felonies and would not be considered aggravated in the criminal context became aggravated felonies, including "bribery, counterfeiting or mutilating a passport, obstruction of justice, gambling offenses, and transportation for the purposes of [sex work]."⁵⁹ Upon signing AEDPA, Clinton said that it stood "as a tribute to the victims of terrorism and to the men and women in law enforcement who dedicate their lives to protecting all of us from the scourge of terrorist activity."⁶⁰ The singling out of law enforcement as being uniquely endangered by doing their jobs to protect citizens reinforced the

idea that ensuring police safety is more essential than protecting civil liberties.

While AEDPA was another instance of bipartisan efforts in Congress to incorporate anti-immigrant provisions into crime-related legislation, IIRAIRA was a concerted Republican strategy to create an even harsher immigration system. Prior to its passage, legal permanent residents, or green card holders, were still able to make their case against being detained if they were convicted of an aggravated felony, but now they were required to be locked up while they went through immigration proceedings. The law applied retroactively, meaning that if you had committed a crime in the past and served your time, you could still be detained and deported. As the law expanded the scope of who could be targeted and imprisoned it effectively manufactured a growing number of "criminal aliens." IIRAIRA also took collaboration between law enforcement and INS one step further by creating the 287(g) program, which gave local police the authority to enforce immigration laws.

IIRAIRA made it much more difficult for immigrants to obtain legal status, ensuring that the undocumented immigrant population would grow. Rather than allowing immigrants to apply to adjust their status while in the United States, IIRAIRA introduced three- and ten-year bars, as they are commonly called. It required immigrants to "leave the United States to apply for their green card abroad,

but as soon as they depart, they are immediately barred from reentering the country for a period of time”—three years for those who had been in the country without status for six months, ten years for those who had been in the United States for over a year without status.⁶¹ The provisions resulted in many migrants being trapped in the United States, living without status out of fear that they would not be able to come back if they were to leave.

Combined, the 1996 laws normalized mandatory detention as a legitimate way to treat noncitizens. INS began pushing for more detention to manage deportations. In 1997, Doris Meissner, INS commissioner, explained to Congress, “We do very well on deporting those people who are in detention. It is very difficult and labor intensive to deport people who have orders of deportation who are not in detention. It’s crucial. That’s why we ask for it.”⁶² Meissner’s quote shows how detention served to facilitate deportation. As capacity grew, so did deportations.

INS continued its expansion plan and, in 1998, opened the Batavia Detention Center near Buffalo, New York, far from the southern border, but where prisons were omnipresent. After the 1996 laws, the average daily population in detention more than doubled from 7,475 in 1995 to 15,447 in 1998.⁶³ In response to these shifts, in 1997, Detention Watch Network was founded by a group of legal service providers who afforded counsel to immigrants and

who felt the immediate impact of the laws on their clients. Attempts were made by advocates to “fix ’96” in the late nineties by rolling back some of the harsh provisions. And in president George W. Bush’s first year in office, a growing effort toward another amnesty was also gaining steam. However, the events of September 11, 2001, stalled the reform attempts.

The Homeland Security State Takes Shape

It is difficult to fully comprehend the impact of the September 11th attacks on US institutions, culture, and social life. With almost no debate, the United States became a fortress state focused on limiting the rights of both citizens and immigrants in the name of national security. The “war on terror” permeated all facets of domestic law enforcement and resulted in deadly wars in Iraq and Afghanistan—invasions that took years to end and had generational impacts. In the wake of 9/11, every aspect of the existing immigration enforcement infrastructure expanded, from the number of immigration agents to immigrant detention capacity and miles of border wall. The legal framework for immigrant exclusion preceded the attacks, but 9/11 created the political and institutional will to build up the massive border enforcement and deportation apparatus we have today. While Islamophobia was nothing new in the national discourse, after 9/11 it became a core component of the federal approach to immigration. The

implementation of the National Security Entry-Exit Registration System, which required men sixteen and older from twenty-five predominantly Muslim countries to register with the government, resulted in over 13,000 Muslim men being put into deportation proceedings.⁶⁴ Domestically, the war on terror became an extension of the war on crime.⁶⁵

But, as previously noted, much of the groundwork for expanding the detention and deportation system had been laid by the time 9/11 happened. The detention capacity of INS and US Marshals Service (USMS) was overburdened because of harsher sentencing and an increase in policing. Months before the attack, attorney general John Ashcroft established the Office of the Federal Detention Trustee (OFDT). The goal of the OFDT was to strengthen detention operations and secure more bed space for INS and USMS. Its creation further strengthened the symbiotic relationship between the federal government and local counties for immigrant detention. The OFDT identified the need to “form strategic alliances with state and local governments and private industry to develop proactive ‘results oriented’ acquisition practices” and to use “long-term contracting vehicles to stabilize government costs.”⁶⁶ To increase pretrial federal jail capacity, the federal government provided funding to certain counties to expand local jails and contracted with private prison companies. During the decade it existed, the OFDT expanded the federal jail system (pretrial criminal and immi-

grant detention) to an average daily population just shy of one hundred thousand people, which was roughly half the total number of people who were incarcerated in the United States in 1970.⁶⁷

The growth of detention was aided by the establishment of the Department of Homeland Security (DHS) in 2002, which consolidated power across multiple federal agencies and normalized the idea that immigrants are a security threat. The INS, previously housed under the Justice Department, shifted to DHS and was split into three separate agencies: Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and Citizenship and Immigration Services (USCIS). Upon its creation in 2003, ICE adopted a strategic plan called Operation Endgame, which further solidified the relationship between national security and immigration. Its new mission became to “promote the public safety and national security by ensuring the departure from the United States of all removable aliens through the fair and effective enforcement of the nation’s immigration laws.”⁶⁸ Unlike INS, which existed to both enforce immigration law and process migrants through adjustment of their status, ICE’s sole purpose is to arrest, detain, and deport immigrants.

While much of the post-9/11 discourse focused on combating terrorism, since the undocumented population had grown after NAFTA, Latinx immigrants were disproportionately impacted by the ramp-up of

immigration enforcement under Bush. Wisconsin Republican representative Jim Sensenbrenner led legislative efforts to further restrict immigration and target immigrants living in the United States. The proposed legislation galvanized Latinx immigrant communities to protest in opposition, resulting in the largest immigration-related mass mobilizations in US history. But the protests did little to deter DHS's deportation agenda. Just weeks after the mass mobilizations on May Day 2006 in which millions came out for immigrant rights, ICE unleashed Operation Return to Sender, and "within a month, the operation swept away nearly 2,200 immigrants in raids across more than thirty states."⁶⁹ ICE conducted worksite raids throughout the Bush administration. One of the largest took place in 2008 at a meatpacking plant in Postville, Iowa, in which ICE agents detained some 400 immigrant workers. Of those arrested, 297 were charged with document fraud and sentenced to five months in prison before being deported.⁷⁰

Prior to 9/11, private prison companies had been struggling. CCA was on the verge of bankruptcy and Wackenhut had been court ordered to shut down its youth jail in Jena, Louisiana, due to "animal-like" conditions of confinement.⁷¹ The future of the private prison industry was in question. Then the events of 9/11 provided the windfall the industry needed to keep going. Steve Logan, CEO of Cornell Corrections, exposed the parasitic nature of the

industry in a conference call with stakeholders later that fall: "What we are seeing is an increased scrutiny, a tightening up of the borders. . . . So I would say that's positive. And if anything, the federal system—that is already overburdened—is indicating to us that they need even more help as a result of 9/11. So that's a positive for our business."⁷² The government shifting immigration into a "homeland security" paradigm proved to be quite lucrative for the prison industry. Companies began building facilities on speculation, anticipating growing demand from the federal government.

In addition to private companies, sheriff's departments also emerged as key beneficiaries of increased deportations and expansion of the carceral state. Many sheriffs and county commissioners entered into agreements with the federal government to rent out bed space in local county jails or to play intermediary between the federal government and private prison companies. While 287(g) agreements, which deputized local police to enforce immigration laws, had been codified in IIRAIRA, the first agreement didn't take effect until 2002, when the Bush administration began implementing it given the "new urgency" after 9/11.⁷³ Sheriffs are dubious entities among law enforcement agencies, as journalist Jessica Pishko points out: "Long tenures with limited oversight allow some to run their counties as small fiefdoms, subject to their own rules."⁷⁴ Joe Arpaio, who served as sheriff of Maricopa County, Arizona,

for twenty-four years, is a prime example of how sheriffs use ICE-police collaboration programs to advance their anti-immigrant agendas. ICE entered into a 287(g) agreement with Maricopa County in 2007 and trained 160 deputies to enforce immigration law. Eventually, the county had the highest rates of apprehensions in the United States. Alessandra Solar, ACLU of Arizona executive director, explained, “The federal government gave Arpaio his power, and it turned him into a monster that terrorized our community for years.”⁷⁵ Arpaio was notorious for detaining immigrants in a sweltering “tent city” detention complex, where they were required to wear pink underwear and cartoonish black-and-white-striped prison uniforms. The tent city had been constructed as a temporary solution to jail overcrowding in 1993, but endured for over twenty years.

Aided by Congress and increased federal funding for immigration enforcement, ICE continued its expansion spree throughout Bush’s tenure. In 2005, the Bush administration announced an end to the practice of “catch and release,” repeating something that elected officials periodically claim to do to show their toughness on immigration. The term can mean many different things in terms of policy. In this case, ICE contracted with CCA to open the Hutto Detention Center in Taylor, Texas, to detain immigrant parents with their children. The expansion of Hutto, which had a capacity for roughly five hundred peo-

ple, signaled a new terrain for immigrant detention. Later, in 2008, the GEO Group (formerly Wackenhut) converted its shuttered youth jail in Jena, Louisiana, into an immigrant detention center, which is still open today.⁷⁶ Dozens of jails opened for immigrant detention after 9/11, growing the average daily population of detained immigrants from twenty thousand to thirty-two thousand during Bush’s tenure.

Abolitionist Lessons

Contrary to popular thinking on the issue, the expansion of immigrant detention was not merely a xenophobic response to increasing undocumented immigration. It was a direct outgrowth of the rise in mass incarceration in the United States. While the 1960s were a moment of relative inclusivity, with the advancement of civil rights and the passage of the Hart-Celler Act opening the door to some immigrants, since then, a backlash to the shifting demographics has led to an exponential rise in incarceration and deportations. The tough-on-crime agenda of the 1980s and 1990s, employing racist logics and often working through economically challenged communities, permeated immigration discourse and policymaking throughout the period. As a result, the US government’s mass deportation agenda started to extend the carceral state into new territory. This was not inevitable. In taking stock of how the United States came to have the largest

detention infrastructure in the world, we can better explain the arbitrary and contingent nature of its existence.

Immigrant detention has often been described as particularly immoral and inexplicable because immigrants in custody are not serving a sentence for a crime. But when examining the growth of the system from the early 1980s, the fact that immigrants are not serving a sentence is almost beside the point. We know from studies of the PIC that prisons became a space for warehousing the undesirable. Rather than being purely a tool for compliance with the legal system or for ensuring deportation, immigrant detention functioned similarly to warehouse undesirable migrants. This dynamic became more pronounced as the prison boom took place. The arguments used to expand immigrant detention cemented xenophobic beliefs that migrants are undeserving of rights, and over time the law changed to support the belief. But immigrants are not unique in this regard; the same logic has been used to strip rights from Black, brown, Indigenous, and poor and working-class white communities in the United States. While the story often told about “crimmigration” is that of a merger of the systems that should be disentangled, as laid out in this chapter, the systems have become so enmeshed that it has become impossible to think of them as separate. Immigrant detention is part of the broader carceral landscape in the United States, and thus abolition of

immigrant detention must be seen as concurrent with the demand to abolish the prison industrial complex.

—President Barack
Obama, Address to
the Nation on
Immigration,
November 20, 2014

CHAPTER 2

Obama, Criminalization, and the Limits of Reform

Even as we are a nation of immigrants, we're also a nation of laws. Undocumented workers broke our immigration laws, and I believe that they must be held accountable—especially those who may be dangerous. That's why, over the past six years, deportations of criminals are up 80 percent. And that's why we're going to keep focusing enforcement resources on actual threats to our security. Felons, not families. Criminals, not children. Gang members, not a mom who's working hard to provide for her kids. We'll prioritize, just like law enforcement does every day.

Many aspects of president Barack Obama's immigration policy are worth critiquing, but perhaps the most impactful—and one that helped set up what the Trump administration unleashed in the years following—was how he convinced the public that sorting immigrants into two groups, criminals and noncriminals, was a progressive reform. In fairness, this approach was also heavily promoted by well-resourced immigration advocacy organizations, but Obama fully realized and perfected it. While Clinton before him solidified the relationship between the criminal legal system and the immigration enforcement system, after nearly eight years of Bush's domestic war on terror, Obama said he would be different. He campaigned on the promise of hope, after all. He was going to help immigrants “get out of the shadows” by finally passing comprehensive immigration reform.¹ He was going to “crack down on employers abusing undocumented immigrants.”² He was going to address the conditions that had led to numerous deaths in immigrant detention centers across the country.³ But instead, by claiming to prioritize “felons, not families” for deportation, President

Obama reinforced the idea that criminalizing and deporting certain immigrants was essential to fixing the “broken” immigration system.

By the end of Obama’s tenure in office, over three million people had been detained and formally deported—more than under any other president.⁴ It was also under Obama that prosecutions for immigration in the federal courts reached their highest levels before Trump took office (more on this in [chapter 3](#)). How did Obama, the bearer of hope and change, end up with one of the highest detention and formal deportation numbers in United States history? Many have pointed to Obama’s desire to pass comprehensive immigration reform as a core reason. In an effort to secure legalization for undocumented immigrants, the Obama administration ramped up immigration enforcement to placate Republicans who criticized him for being soft on the issue. While this was certainly part of Obama’s play, it was also clear, as with most Democrats, that he was fully invested in the war-on-crime approach to governing. Thus many of the reforms he proposed further legitimized the narrative of the good immigrant versus the bad immigrant and the use of detention and deportation as a “tool for public safety.”

In response to outcries over mass worksite raids and reports of deaths in detention, DHS announced two major reforms to immigration enforcement during Obama’s first year in office. The administration

prioritized the nationwide implementation of Secure Communities, a database system that identified immigrants in local jails for deportation, which was touted to improve public safety by targeting “criminal aliens.” By retreating from the mass raids of the Bush era and more effectively commandeering the vast existing network of police departments, sheriffs, county jails, and private prisons to arrest, detain, and deport immigrants, Obama made the system bigger and more effective. Turning to the massive penal apparatus in the United States, the largest in the world, drove the number of deportations higher and higher.

DHS also announced sweeping changes to the immigrant detention system to improve conditions and consider release for some “low risk” individuals. The detention reforms emphasized the need to move away from the punitive nature of immigrant detention in recognition of the fact that immigration proceedings are technically civil in nature. The administration responded by building new facilities with better conditions. Despite the insistence that detention was not punishment, the administration continued to argue that it was targeting only “dangerous criminals.” As a result, the reforms under Obama served to expand and extend detention and deportation.

I started working as an organizer at DWN in 2009, shortly after Obama took office. While I had already embraced prison abolition as a vision, it wasn’t until

this time that I fully understood how essential it was to our strategy as a movement. DWN had joined the ICE-NGO working group that DHS had set up under Obama to push for administrative reforms. However, early on it became clear that ICE's goal was not to reduce the number of people in detention or deportation proceedings, but rather to create nicer cages and to justify the deportations taking place. The mystique around Obama made it even more difficult to challenge the reforms being put forth. Despite their claims of transparency and accountability, rules around the working group were dubious, with access often removed on a whim. Many advocates had bought into the hype and the supposed access to power afforded by having a seat at the table, failing to acknowledge that each reform ICE implemented served to either legitimize the existing system or expand tools to further criminalize immigrants. As the system grew amid reform efforts, it became clear to me that it wasn't enough to just call for the end of detention. We needed a way to discern which strategies would get us closer to abolition.

The story of Obama-era immigration enforcement policy is an important cautionary tale for the immigrant justice and prison abolition movements. Advocates and the Obama administration affirmed the idea that immigration was a "public safety" issue, reinforcing the narrative of immigrants as criminals. Our experience during the Obama years underlined for me the way that reformist reforms

setting out to "improve" prison and detention actually serve to expand it. This is a critical lesson to carry forward that explains why we must redirect our movement energy to abolitionist and decarceral reforms that dismantle and defund the system rather than try to make it "more humane."

Early Promises of Reform

Prior to Obama's presidency, the immigrant detention system operated much like so-called black sites or clandestine jails. The detention system existed to isolate and disappear people, and it did that at a tremendous scale, with over 350 detention facilities, mostly county jails, in use. Little information was available about how to find immigrants who had disappeared into the system and were being transferred frequently between facilities. A Human Rights Watch report found that more than three hundred thousand transfers had taken place in 2008 alone.⁵ At the time of Obama's election, DWN's online map of detention center locations had been the sole centralized resource for lawyers, journalists, and family members looking for clients or loved ones in detention. In response to the inability to locate people in detention, ICE created the Online Detainee Locator System in 2009. The ICE locator was one of the most significant improvements of the Obama administration. But all it did was inform people about where a person was located in detention. It didn't let people

out of detention, reduce the scale of the system, or even improve detention conditions. It was a procedural, not substantive, reform.

In addition to the locator tool, ICE announced a set of reforms to the immigrant detention system in Obama's first year, some of which were received positively. Most welcome was the announcement that ICE would no longer detain children at the Hutto Detention Center in Texas, one of two family detention centers in the United States at the time. After a sustained three-year campaign against the practice by local organizers, attorneys, and national advocates, the end to family detention at Hutto gave the movement some of that hope Obama had promised on the campaign trail. But the jail was converted into a women's detention center, and there was no net reduction in immigrant detention.

In spring 2009, former Arizona governor and newly confirmed DHS secretary Janet Napolitano brought on prison reformer Dora Schriro as a special adviser to assess and review the immigrant detention system and develop a report on her findings. The two had previously worked together when Schriro was the director of the Department of Corrections for Arizona. Schriro, a licensed social worker, had a long history in state-level prison management. An unfavorable 2004 profile of her in the *Phoenix New Times* described her approach: "In Schriro's world, parolees are called 'clients,' not criminals. . . . She's selling ice cream sandwiches to

prisoners, with profits going to victims' groups."⁶ The weekly newspaper chided her for being too academic for prison management and described her as living in a "parallel universe." Schriro's reputation as a reformer made her an ideal candidate for reviewing the immigrant detention system, according to Napolitano, but in doing so, Schriro soon discovered that it served a different purpose than prisons did. The core framework for her eventual report focused on the distinction between the administrative purpose of immigrant detention and the punitive nature of criminal incarceration:

As a matter of law, Immigration Detention is unlike Criminal Incarceration. Yet Immigration Detention and Criminal Incarceration detainees tend to be seen by the public as comparable, and both confined populations are typically managed in similar ways. Each group is ordinarily detained in secure facilities with hardened perimeters in remote locations at considerable distances from counsel and/or their communities.⁷

For Schriro, the fact that immigrant detention was a civil proceeding and not criminal punishment meant that the government should provide a higher standard of care for those in ICE custody. Despite her acknowledgment of the supposed divergent objectives between immigrant detention and criminal incarceration, she never questioned detaining

immigrants for civil purposes. In the report, Schriro noted that “ICE operates the largest detention and supervised release program in the country.” While not explicitly calling for a reduction in detention, throughout the report Schriro called attention to the fact that noncriminals were often detained, and she indicated that Secure Communities “has the potential to identify large volumes of aliens with low level convictions or no convictions,”⁸ which could grow the system unnecessarily.

This idea—that immigrant detention was not the same as criminal incarceration—became the driving force behind the Obama-era detention reforms. Her recommendations focused on population management through risk assessment, expanding “alternatives to detention,” improving conditions of confinement to create a “truly civil” system, and increasing oversight and data tracking. As a result, ICE created an Office of Detention Oversight to regularly inspect detention centers and investigate deaths of immigrants in ICE custody. Notably, even though Schriro differentiated the nature of the criminal and immigration systems, all her proposed reforms had been tried ad nauseam in the criminal legal system, and most had done little to reduce the number of people incarcerated in the criminal sphere.⁹

Advocates initially welcomed the detention reforms but stressed the need to reduce the government’s reliance on immigrant detention. However,

by the time the report was released in October 2009, Schriro had left her new post as the director of the ICE Office of Detention Policy and Planning and had moved on to lead New York City’s Department of Corrections and oversee the massive jail complex on Rikers Island. Despite Schriro’s departure, creating a different civil detention system remained the administration’s publicly stated goal.

The Detention Bed Quota and the Federal Budget

Even if Schriro’s recommendations had called for a reduction in detention, this was unlikely to happen for a few reasons. First, the implementation of Secure Communities meant that more people were being funneled into the system than ever before (as explained in the following section, “A Growing Deportation Dragnet”). Trying to reform a system while increasing the number of people in it undermined the very possibility of reform. The administration also hit a wrinkle in Obama’s first year in office when senator Robert Byrd, a Democrat from West Virginia, incorporated language into the fiscal year 2010 appropriations bill that essentially functioned as a quota for detention beds. The language, which came to be known as the detention bed mandate, stated that the administration “shall maintain a level of not less than 33,400 detention beds.” The bed quota, which was later raised to 34,000, would

remain a feature of the federal budget for eight years, facilitating the expansion of the detention system. Byrd had a long history as a racist politician with former ties to the Ku Klux Klan. While he renounced his white supremacist origins and even voted against the Iraq War resolution in 2002, he was always staunch in his anti-immigrant agenda. He died in 2010.¹⁰

A former aide to Byrd shared that “the senator wanted to ensure that cost increases [to detention contracts] wouldn’t lead ICE to fund fewer beds.”¹¹ Democratic senator Richard Durbin of Illinois, someone many consider one of the Senate’s immigrant rights champions, presented the goals of the detention bed mandate to the Appropriations Subcommittee on Homeland Security:

No. 1, securing our borders and enforcing our immigration laws; No. 2, protecting the American people from terrorist threats and other vulnerabilities; No. 3, preparing and responding to all hazards, including natural disasters; No. 4, supporting our State, local, tribal and private sector partners in homeland security with resources and information; and finally, giving the Department the management tools it needs to succeed.¹²

The quota acted as an artificial floor, propping up the size of the detention system as part of the evolving “homeland security” paradigm.

Democrats put the bed quota in place, but Republicans became its defender. A battle between the Obama administration and Congress emerged regarding the relationship between bed numbers and immigration enforcement. In February 2013, right before a three-week period of sequestration in which the federal government required agency funding cuts, ICE released some immigrants from detention. Ironically, these cuts had been orchestrated by the Tea Party, a right-wing nativist movement. ICE director John Morton came under fire from Republicans after initially claiming a few hundred people had been released but later revealing that 2,228 immigrants had been freed from detention. Republican representative Bob Goodlatte of Virginia claimed that “the Administration is needlessly endangering American lives.”¹³ Obama’s emphasis that they had been targeting only criminals for detention gave Republicans fodder for the attacks. The quota became a tool by which to measure whether the administration was doing enough to deport immigrants. Napolitano’s response was, “All I can say is, look, we’re doing our very best to minimize the impacts of sequester. But there’s only so much I can do. I’m supposed to have 34,000 detention beds for immigration. How do I pay for those?”¹⁴ The sequestration episode revealed the arbitrary nature of detention and the role funding plays in decisions about how many people are detained.

“Civil” Detention and the Return of Family Detention

To address concerns from media and advocates that conditions in detention centers were leading to unnecessary deaths, the Obama administration concentrated on improving the national detention standards. Advocates pushed for better conditions that could ostensibly have an impact on the day-to-day lives of those detained. In 2013, for example, Jorge García-Mejia, age forty, and Elsa Guadalupe-Gonzalez, age twenty-four, both Guatemalan nationals, committed suicide within three days of each other at the Eloy Detention Center in Arizona, which was then the deadliest detention center in the country.¹⁵ It was soon revealed that Eloy, operated by CCA, had not updated its standards and was still operating under previous standards that did not include updated suicide prevention protocols—or improvements to medical care, protections from sexual abuse, or access to family and counsel.¹⁶ This incident underlines the inefficacy of efforts to improve detention standards: The existing detention standards didn’t protect García-Mejia or Guadalupe-Gonzalez. Further, the focus on revising standards did nothing to diminish the size of the detention system itself. Facility inspections often gave a pass to detention centers, no matter how they were functioning. The fact is, the national detention standards are merely recommendations. They are not a real tool for accountability; immigrants can’t enforce them in

court. The way that standards work is actually antithetical to reducing immigration detention—instead, they lead to improved pretenses for detention, legitimizing the system.

ICE owned and operated only six of its detention centers at this point. All other facilities were subcontracted out to county jails and private prison companies. (See [chapter 5](#) for details on the different kinds of contracts.) The central reform goal based on the Schriro report was to create a more civil detention system, which meant setting new standards. Improving standards at the many county jails where ICE rented bed space alongside local jailed populations proved to be quite difficult because of the numerous and varied actors running those jails. Private prisons designed exclusively to detain immigrants became even more attractive to the administration. For their part, the private companies were more willing to play ball and provide ostensibly better conditions for detention, such as outdoor recreation, which many county jails meant for short-term stays did not provide.

In 2010, ICE started to send out feelers to local governments to either build or acquire new bed space. The intended goal was to create a “civil detention system that is not penal in nature.” The new detention centers would ideally be located near urban centers to reduce the number of transfers to remote communities and to afford more access to counsel. “Civil” was never really defined. ICE used

vague language to market aspects of the new facilities like “softer construction techniques with traditional brick and mortar penal structures” that would supposedly help reduce costs while “promoting the least restrictive detention environments.”¹⁷ Advocates had long pushed for detention centers to be located near metropolitan areas so that detained people would be in closer proximity to counsel, family, and medical services. ICE focused on consolidating the system away from the hundreds of county jails used for detention and expanding in the Chicago area as a hub for the Midwest, New Jersey for the Northeast, and outside Miami for the Southeast.

One such facility was Delaney Hall in Newark, New Jersey, operated by the private prison company Community Education Centers. In 2011, as part of an ICE stakeholder engagement, I joined a tour of Delaney Hall along with other advocates. The facility, a former halfway house located next door to the Essex County Jail, was surrounded by barbed wire. Upon entering, visitors were inundated with self-help signs with messages such as “stop lying” and “admit when you are wrong,” which ICE referred to as artwork. As we made our way through the jail, taking in the dim environment (there were few windows) and bleak living conditions, many of us questioned what made the facility civil. Throughout the tour, ICE public advocate Andrew Lorenzen-Strait continuously stated, “This is not a jail,” in what

seemed to be an attempt to convince himself as much as the advocates present.

Attempts to expand in the Midwest and Florida were less successful because of strategic organizing campaigns that stopped ICE proposals from moving forward. (We’ll come back to this in [chapter 6](#).)

Many detention centers opened or expanded under Obama’s watch, but no other facility exemplified the dog and pony show that ICE employed to promote civil detention more than the Karnes County Civil Detention Facility in Texas. ICE entered into a contract with Karnes County with very little opportunity for public comment. And Karnes County, which is located about an hour southeast of San Antonio, signed another contract with the GEO Group, which owned and operated the new immigrant detention center. Journalists and advocates were invited to the opening, and organizers coordinated an action and press event after the tour ended. The *New York Times* covered the opening and described the scene at the detention center: “Unarmed staff members, dressed in blue polo shirts and khaki trousers, are known as ‘resident advisers,’ not guards.” Much of the media coverage affirmed ICE talking points about the civil aspects of the facility. The *Times* story continued, “The gentler approach is immediately evident in the center’s modernist facade, which is painted in bright primary colors—a far cry from the dreary bunkerlike structures that have characterized the system.”¹⁸ Karnes

was purportedly designed to “improve confinement conditions” with “enhanced recreational opportunities and . . . contact visitation.”¹⁹ Those eligible to be held there were “low custody” immigrants, meaning they were deemed low flight risks and had no or minor criminal histories. Based on ICE’s own assessment of risk factors at the time, they should have been eligible for release, calling into question the purpose of the facility altogether. Karnes came to exemplify not only how senseless the expansion of civil detention was but also how detention reforms proliferated new kinds of facilities, all in the name of more humane treatment of immigrants.

In 2014, the number of families arriving at the border began to increase. Instead of responding by offering support to families seeking refuge, the administration ramped up mass detention at the border with an intention to deter future migrants. First, ICE opened a temporary site for detaining families at the Federal Law Enforcement Training Center in Artesia, New Mexico. Then, in what was perhaps one of the most infuriating detention-related developments of the Obama era, the administration chose to convert Karnes, their model civil detention center, into a center for detaining parents with their children. The administration further expanded family detention when it quickly contracted with CCA to open the 2,400-bed South Texas Family Residential Center in Dilley, Texas.

An end to family detention at Hutto in Obama’s first year in office indicated a shift from the previous administration, but by the end of his time in office, Obama had completely retreated on his earlier position. He had expanded family detention from a capacity to detain 600 people to 3,000 at any given time. By bringing back family detention and emphasizing the need for deterrence, the Obama administration laid the groundwork for Trump’s attack on families in 2018. Senior ICE officials, including Thomas Homan, even proposed family separation as a tool for deterrence in 2014 as the Obama administration was considering how to respond to families. Homan went on to serve under Trump, where he ultimately succeeded in helping implement the policy four years later.²⁰

During Obama’s tenure, ICE consolidated the detention system from 350 facilities made up mostly of contracts with county jails to roughly 200 detention centers, with high-capacity private prisons holding the most people. In 2009, 49 percent of ICE beds were operated by private prisons; by the time Obama left office in 2017, that figure had risen to over 70 percent.²¹ The Obama administration’s detention reforms served to fortify the system and entrench private prison companies even further. Now ICE had multiple new detention centers that were a “model.” When the Department of Justice announced a phaseout of private prisons in the federal system in 2016, DHS concluded that the same phaseout wasn’t

possible for ICE because of the agency's dependency on them.

A Growing Deportation Dragnet

While ICE was “reforming” detention, it also began expanding ICE-police collaborations. Secure Communities was one of several programs ICE used to target people for deportation with the aid of local law enforcement; other such programs included 287(g), which deputizes police as immigration enforcers, and the Criminal Alien Program (CAP, renamed the Criminal Apprehension Program under Biden), which houses ICE agents within local, state, and federal jails and prisons across the country. Unlike 287(g) and CAP, which relied on ICE agents or local police, Secure Communities automated sharing data between agencies. When police took someone to jail, as part of the regular booking process, they scanned the person's fingerprints through FBI and DHS databases to determine whether they could be subject to an ICE hold. This in turn could lead to that person being transferred to immigration detention and eventually deported. The integration of different databases made booking processes at local jails a gateway to the federal immigration process. Secure Communities was the beginning of ICE's shift toward a more digital, surveillance-driven approach to immigration enforcement that paved the way for greater expansion of criminalization.

Obama's calculated use of the criminal legal system to apprehend immigrants not only increased the scale of the system but made deportations more severe. Many terms are used to describe the act of deportation: removal, departure, return, expulsion. They have varying consequences for those deported. The particular legal form of deportation that was dominant under Obama, known as removal—where immigrants are placed in formal deportation proceedings—came with some of the harshest consequences for immigrants. After someone is formally deported, they typically have at minimum a five-year bar from reentering the country. If they reenter without authorization again, they could face prosecution, resulting in sentences ranging from several months to twenty years in federal prison. By contrast, the same bars to reentry do not apply to immigrants who are coerced into “voluntary departure” or those who are turned away at the border or expelled. While expulsions had been higher under previous administrations, formal deportations increased dramatically during Obama's tenure, earning him the moniker “deporter-in-chief.” The emphasis on formal deportations meant that immigrants attempting to return to the United States after deportation would have a more difficult time doing so and faced lengthy prison sentences if they were caught trying to reenter.

Secure Communities debuted in 2008 in Houston, Texas. By 2013, the program had been implemented

in more than 3,000 counties in all fifty states. After the creation of DHS under Bush, formal deportations had already more than doubled, from 165,000 in 2002 to 360,000 in 2008. Obama essentially followed suit, and formal deportations reached a record high of 438,000 in 2013. The continued increase in deportations under Obama, which were already high in the late Bush years, dealt a major blow to immigrant communities nationwide.²²

As the number of people funneled into the deportation pipeline grew, so did the immigrant detention system. In 2010, Immigration Centers of America, a small private prison company, was awarded an ICE contract for the one-thousand-bed Farmville Detention Center in Prince Edward County, Virginia. ICE assistant director Robert Helwig commented that Farmville was opened “to address the impact of Secure Communities. . . . We do anticipate a surge in detainees.”²³ One of the largest detention centers in the mid-Atlantic, Farmville became a hub for the region. From 2008 to 2012, the number of people detained annually grew by 26 percent, from 378,582 to 477,523.²⁴ In Obama’s second term, these numbers started to reduce as more local communities fought back against rising deportations (more on this in [chapter 4](#)).

As more and more people were rounded up, Secure Communities became increasingly controversial. Advocates pointed out that in Obama’s first two years in office, more than 75 percent of people

arrested and deported under Secure Communities were either non-criminals or those who had low-level criminal convictions and that the administration had “failed to target violent and dangerous criminals.”²⁵ Some 3,600 US citizens had even been arrested by ICE because of the program.²⁶ Obama’s emphasis on targeting “dangerous criminals” became the opening for advocates to reveal how the program was scooping up people indiscriminately. Instead of critiquing the narrative of good immigrant versus bad immigrant, advocates argued that the law was being applied too broadly, accepting that criminal history should be a determining factor for detention and deportation.

Despite the growing concerns about police violence being highlighted through Black Lives Matter protests, advocates focused on how collaborations between ICE and local police made immigrants less likely to seek assistance from police. For example, immigrant women might not report instances of domestic violence for fear of being deported. Ignoring the racist and sexist frameworks that under-gird policing in the United States and result in deportations in these situations, advocates emphasized that Secure Communities prevented police from doing their purported job of protecting women. These types of carceral feminist frameworks, in which people believe that police and prisons are necessary tools for stopping gender-based violence, disregard the violence these institutions perpetrate on women

and nonbinary people. Abusive partners have been known to use the police to lock up and punish survivors, including threatening to call ICE. And rates of domestic violence are two to four times higher among police officers.²⁷ Despite these concerns, emphasizing a need to restore trust in police became an easy argument to fall back on as the movement fought the expansion of Secure Communities. While these arguments seemed persuasive to many decision makers, they often served to reinforce the idea that some immigrants deserved arrest and furthered divisions between the immigrant rights movement and those organizing against discriminatory policing.

The Morton Memo

During this period, many advocates and organizers pushed to increase prosecutorial discretion as a tactic for stopping deportations. Prosecutorial discretion that deprioritizes certain immigration cases has two justifications for its use in enforcement proceedings: first, to prioritize the time and resources of ICE to focus on high-priority cases; second, to provide protection for those who are potentially vulnerable or whose cases have humanitarian factors that should outweigh the pursuit of deportation. In 2010, the Obama administration released a set of priorities meant to guide ICE's discretionary decisions on whom to target for deportation, commonly referred

to as the Morton Memo after ICE director John Morton. While some advocates and organizers found the memo to be a useful tool in waging individual deportation defense campaigns, it soon became clear that it was failing to significantly reduce deportations. A year after its implementation, only 1 percent of deportation cases had been closed because of the memo.²⁸ For example, data from the Transactional Records Access Clearinghouse documented that in Baltimore, only 230 of 5,256 pending cases were closed; in Denver, only 186 of 7,579 pending cases (excluding detained individuals) were closed as of March 2012.²⁹

The memo and prosecutorial discretion did provide protection from deportation for some seventy-five thousand immigrants under Obama.³⁰ But deportations continued to rise. The memo as written in a 2011 update included a laundry list of factors to consider for granting prosecutorial discretion. Positive factors included, for example, whether someone was a veteran or pregnant, and negative ones followed predictable categories of purported dangerousness, such as national security concerns, past criminal activity, gang affiliation, and risk to public safety. An additional category included people who had a “record of egregious immigration violations, including those with a record of illegal reentry.”³¹ This category was where the impact of Obama's commitment to formal deportations was increasingly felt, because when people attempted to return

to the United States and rejoin their families, they violated the bar on their reentry.

In 2011, reentry prosecutions accounted for nearly a quarter of all federal criminal prosecutions. The number of reentry prosecutions rose significantly under Obama's tenure, from just over 20,000 in fiscal year 2008 to 37,000 in fiscal year 2012.³² At the same moment that the Obama administration was supposedly providing more discretion for deprioritizing some deportations, it was simultaneously increasing the criminalization that would make it harder for many immigrants to get relief. [Chapter 3](#) explains further how Obama's focus on building up the infrastructure for migrant prosecutions helped lay the groundwork for Trump's weaponizing of entry violations during the family separation crisis.

The Morton Memo did not provide the relief to immigrants that some believed it would. Activists evolved their strategies and started to push for expansive sanctuary policies at the local and state level to limit ICE's reach. Alongside these actions, a growing movement of undocumented youth continued to pressure the administration (more on this in [chapter 4](#)). In 2012, Obama announced Deferred Action for Childhood Arrivals (DACA), which provided work authorization and some protection from deportation to over eight hundred thousand immigrants. DACA was Obama's most positive reform to the system during his eight years as president. Even with all of its exclusions (including of people with

criminal records), it became an effective tool for providing relief to large numbers of immigrants.

The ICE-NGO Working Group and the Illusion of Reform

As deportations increased, advocates continued to push the Obama administration to address the issues with immigrant detention. The Schriro report promoted the expansion of alternatives to detention (ATD) and the implementation of a risk assessment tool for determining whether someone should be detained or not. These reforms were the central focus of the ICE-NGO working group, a space for advocates to engage with the administration on ICE operations and policy. Advocates spent countless hours meeting with ICE and developing recommendations for tweaking these reforms. But ICE's goal remained the same: detaining and deporting immigrants in large numbers.

ICE developed the risk classification assessment tool over Obama's first term in office and implemented it nationwide in 2013. According to the Schriro report, the risk assessment tool was essential to determining whether someone could be released on an alternative to detention rather than become subject to formal detention. Assessment tools are often touted as more "objective" than individual determinations because "the predictive information they produce is free of the taint of racial

bias.”³³ As with other supposedly scientific enforcement tools, such as predictive policing, risk assessments seem to come straight out of *Minority Report*. In the science fiction novella and later film, mutant “precogs” determine who will commit a crime and then share the information with the police in advance of the criminal activity. Similarly, risk assessment tools, often trained on data drawn from racist systems, decide if someone should be detained based on the projection of whether they will abscond or commit a future crime.

At the time, there had been little data on how risk assessments might impact immigration enforcement. Advocates in the ICE-NGO working group saw the development of the risk assessment tool as an opportunity to provide recommendations that could result in fewer people being detained. The risk assessment tool considered three central factors: whether someone was especially vulnerable in detention (i.e., people with medical conditions, elderly people, LGBTQ people), whether they were a public safety risk, or whether they were a flight risk. Based on discussions with ICE, many advocates had thought that the risk assessment tool would apply to everyone who was subject to detention. But as the tool was being rolled out, an additional category was added that had not been discussed: whether the person was subject to mandatory detention. When someone is mandatorily detained, their detention is required based on their criminal record. Under the

statute that first became law in 1988, the number of people subject to mandatory detention has fluctuated, but the existence of mandatory detention law continues to be a main driver of detaining immigrants with criminal histories and keeping them in detention during the entirety of their immigration proceedings. This exclusion meant that most people detained would be immediately disqualified from being considered for release.

The research of legal scholars Kate Evans and Robert Koulish illuminates how ICE’s risk assessment tool “became a vehicle to impose detention on the executive branch’s least favored migrants, regardless of whether they presented a risk to public safety or a risk of flight.”³⁴ ICE agents locally had full discretion to override the decisions of the risk assessment tool, and they did. As a result, enforcement became even harsher.³⁵ Ultimately, the risk assessment tool did nothing to reduce detention, and low-risk people continued to be detained. It served to further entrench the tools available to the federal government for making the case that someone should be detained rather than released. These types of data-driven technologies are designed so that once someone has any interaction with the criminal legal system, they “continue to be criminalized in the future, whether or not they break any laws.”³⁶

The other major reform, alternatives to detention, has evolved considerably over time, but in those

days, ICE was still figuring out the technology. Ravi Ragbir, an immigrant leader from Trinidad, was on an ATD when I met him in 2009 in New York City. He was speaking at an event organized by the American Constitution Society. When I went up to introduce myself, he lifted his leg to reveal an ankle monitor. Ragbir had been previously detained for nearly two years at jails in Alabama and New Jersey. Now he lived with a shackle on his leg. While I was aware of the problems with electronic monitoring, learning about Ragbir's day-to-day life on an ATD helped me understand more. Ragbir later married Amy Gottlieb, a longtime immigrant rights advocate with American Friends Service Committee. On their honeymoon, they had to stay close to home, given Ravi's limited travel range. Gottlieb recalls the experience: "The Saturday after we got married, we went to the Rockaways. We went to the beach and the next thing we know, we start hearing something say, 'You have exited your master zone. You've exited your master zone.' And it's beeping."³⁷

The newlyweds had crossed over to Nassau County, which is not part of New York City's five boroughs and technically outside of his movement radius. The reference to "your master zone" evokes the era of chattel slavery. In doing so, it recalls a long and disturbing history of racism, exclusion, and exploitation in the United States; ATDs are now another tool for the deprivation of liberty. Ragbir often talked about how he would charge the ankle monitor while he

was sleeping so that he wouldn't have to be tethered to the wall during the day. It wasn't a jail cell, but it remained its own type of confinement.

Disregarding concerns raised by Ragbir and others, advocates continued to push for the expansion of ATDs as a tactic for reducing detention. Once it became clear that ICE had settled on electronic monitoring as the best way to expand ATDs, the GEO Group pounced on the opportunity and acquired the company BI Incorporated, which had been contracting with ICE to operate its ATD program. Once again, ICE saw the private prison industry as a resource for employing their carceral agenda, evidenced by their invitation to the CEO of GEO, George Foley, to an ICE-NGO working group meeting. In the meeting, when DWN's policy director, Emily Tucker, posed a question to Foley about how the shift from physical detention to electronic monitoring might affect GEO's profits, ICE public advocate Andrew Lorenzen-Strait immediately removed her from the meeting. The meeting further revealed how the federal government and private companies' interests aligned, promoting a neoliberal approach to governance that favored privatization and outsourcing. Many former ICE officials from this period, such as David Venturella and Julie Myers Woods, went on to work for or sit on the board of the GEO Group, creating a revolving door between the agency and industry.³⁸

In light of the concerns about electronic monitoring, or what some have dubbed e-carceration, advocates began proposing a more humane model of case management that would provide immigrants with both a lawyer and a social worker to support them through their proceedings. After endless conversations within the working group, in February 2015, ICE finally posted a request for proposals for a five-year case management pilot program to be rolled out in five regions: Baltimore/Washington, Chicago, Los Angeles, Miami, and the New York/Newark area.³⁹ The idea was that NGOs could submit proposals for programs that would be much more humane than immigrant detention. Groups such as the Lutheran Immigration and Refugee Service and the US Conference of Catholic Bishops, both service providers, submitted proposals. In response to the potential for a new contract, the GEO Group created a new subsidiary, GEO Care, and also submitted a proposal. In September 2015, ICE awarded the contract to GEO Care. Advocates who had pushed for the program had no idea this was a possibility. Mary Loiselle, another former ICE employee, became the director of GEO Care's family case management program.⁴⁰

The case management program itself was minuscule: fewer than a thousand families were served over the year and half it existed. (The Trump administration ended the program in 2017.)⁴¹ As we've seen with other types of ATDs, it only widened the net of

who would be under some form of ICE surveillance. Case workers provided support but also functioned as a check on immigrants. Instead of being used as a strategy for releasing people, case management became another tool for expanding control over a greater number of people.

From 2015 to 2016, the Obama administration nearly doubled the number of people under ATDs from 26,625 to 46,777.⁴² The focus on ATDs under Obama laid the groundwork for their explosion in the years to follow. The technology continued to evolve. As advocates cautioned against the use of ATDs, GEO adapted. The current ATD of choice is a phone app called SmartLINK. (Smartwatches have also been rolled out as a possible ATD.) Under Biden, detention capacity finally began to retreat, but ATDs skyrocketed sixfold to over 300,000 in 2022, through a mix of people on ankle monitors, SmartLINK, and telephonic reporting.⁴³

Despite Dora Schriro's emphasis on the difference between "civil" immigrant detention and criminal incarceration, every single reform she proposed in her review of the system had been tried before by criminal justice advocates. Ultimately, the intention to improve conditions only served to expand detention, consolidate the system, and benefit private prison corporations. The implementation of a risk classification assessment tool did little to release people from detention and reinforced existing racist frameworks. Along with ATDs, such reforms have

repeatedly failed at reducing the number of people incarcerated or improving the lives of those subject to incarceration. By the time Obama's tenure came to an end, many of us questioned whether the purpose of the ICE-NGO working group was to engage advocates or merely to provide cover for an administration bent on expanding detention and deportation.

Abolitionist Lessons

Secure Communities and the detention reforms illuminate the core failures of the Obama administration on reforms to immigration enforcement and advocates' responses to them. These two efforts, the expansion of Secure Communities on the premise of targeting "criminal aliens" and the shift toward a model of "civil" detention to improve conditions, ultimately operated in contradiction to each other. On one hand, ICE claimed that Secure Communities would protect communities by taking "dangerous criminals" off the streets. At the same time, the administration stressed that immigrant detention was not the same as criminal incarceration, since it was not intended as punishment, and that immigrants in ICE custody deserved better treatment. As deportation numbers went up, many advocates argued that the problem with Secure Communities and the existing detention system was that innocent and vulnerable immigrants, not deserving of harsh treatment, were caught in the cross fire. Instead of

challenging the idea of deportation as a public safety policy, the focus on "innocents" threw those with criminal records under the bus, along with any critique of the criminal legal system that had deemed them disposable in the first place.

In reflecting on Obama's eight years in office, two key lessons emerge. First, by accepting that the use of the criminal legal system for targeting immigrants was tolerable and warranted, the immigrant rights movement treated the PIC as natural and normal, rather than a source of injustice. The reforms proposed further fortified both the criminal legal system and the immigration enforcement systems, leading to more deportations. Beyond that, the Obama administration expanded and set up a powerful machinery for Trump to exploit by plugging in the detention and deportation system much more closely to criminal law enforcement across the country. While some of this relationship has been reduced in recent years due to growing movement pressure, people continue to be deported every day due to ICE's access to prison and jail systems at the state and local levels. The abolitionist lens becomes critical, not only in fighting back against growing criminalization of Black, brown, poor, and working-class immigrants but also for ensuring that proposed reforms don't lead to more detentions and deportations, as they did under Obama.

Political scientist Naomi Murakawa argues: "Liberal notions of racial violence and agendas for race-

neutral machinery actually propelled development of a punitive carceral state.”⁴⁴ It was Obama’s approach to reform, to make the system more effective at targeting “criminals,” that drove detention and deportation numbers up to their dramatic heights in the twenty-first century. Obama continued a path that had been laid out before him by previous administrations. The quote from his speech that opens this chapter even mirrors Clinton’s framing of immigration in the 1996 State of the Union address: “We are still a nation of immigrants; we should be proud of it. We should honor every legal immigrant here, working hard to become a new citizen. But we are also a nation of laws.”⁴⁵ The focus on legality, while also signaling support for (good, hardworking) immigrants, is a common theme among Democrats. Obama accepted nativist arguments that immigrants were threats to national security and public safety and enabled racial profiling through strengthening the ties between immigration enforcement and the criminal legal system, just as Clinton had done before him. In doing so, he not only oversaw more formal deportations than any other president, but likewise gave credence to Republican attacks on immigrants.