DPhil Thesis

Punishing mobility: Membership, race, and privatization in all-foreign prisons in the United States of America

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Abstract

My DPhil thesis examines a set of outsourced, all-foreign prisons operated by the US Federal Bureau of Prisons called Criminal Alien Requirement (CAR) facilities. In operation from 2000 to 2023, these prisons were unique for a series of reasons. First, they were explicitly designed to segregate foreign national offenders from the rest of the Federal prison population. Second, they were the only outsourced prisons within the Federal prison system, and operated under a separate, less-stringent regulatory regime. These all-foreign prisons also disproportionately incarcerated Latino men (89%) in general, and Mexican men (72%) in particular.

This thesis asks what the imbrication of punishment and migration control within all-foreign prisons can tell us about the contemporary nation-state. I develop this argument along three lines. First, I argue that the emergence, operation, and closure of this outsourced all-foreign prison system illustrates the evolving relationship between prisons and migration control. Analysis of the creation of the Criminal Alien Requirement prison system shows us how political leaders imagined a new kind of penal process – what I call the 'prison-to-deportation pipeline' – in which deportation became the default result for people without citizenship.

Second, my research demonstrates how outsourced incarceration has become premised on the differential treatment of racialized foreign-national offenders. Criminal Alien Requirement prisons have pioneered a new kind of carceral economy where financial value is extracted from the social and biological reproduction of offenders themselves. I demonstrate how this economic model of incarceration is premised on the differential treatment of non-citizens, and the racialized commodification of illegality.

Finally, my research demonstrates how this system of differential penal treatment produced experiences of abandonment and precarity. These experiences of abandonment defined exclusion from political membership in material and symbolic terms. I argue that paying attention to the ways in which people incarcerated in all-foreign prisons articulated their exclusion offers us a way to begin challenging what Angelica Chazaro calls the 'criminal alien paradigm' and uncoupling practices of punishment and migration control.

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List of Abbreviations

BOP – Bureau of Prisons

CAP – Criminal Alien Program

CAR – Criminal Alien Requirement

CCA – Corrections Corporation of America

CI – Correctional Institution

DOJ OIG – Department of Justice, Office of the Inspector General

DHS – Department of Homeland Security

FCI – Federal Correctional Institution

GAO – Government Accountability Office

ICE – Immigration and Customs Enforcement

INS – Immigration and Naturalization Service

IHP – Institutional Hearing Program

MTC – Management and Training Corporation

Table of Criminal Alien Requirement Facilities[1]

Name of Facility	Location	Contractor	Contract Start Date	Contract End Date
Adams County Correctional Center	Natchez, MS	CCA / CoreCivic	2009	2019
Big Spring Correctional Facility	Big Spring, TX	The GEO Group	2007	2020
Big Spring Correctional Facility (Flightline)	Big Spring, TX	The GEO Group	2017	2020
California City Correctional Facility	California City, CA	CCA / CoreCivic	2000	2006
Cibola County Correctional Center	Grant, NM	CCA / CoreCivic	2000	2017
D. Ray James Correctional Facility	Folkston, GA	The GEO Group	2010	2021
Eden Detention Center	Eden, TX	CCA / CoreCivic	2007	2017
Giles W. Dalby Correctional Facility	Post, TX	Management and Training Corporation	2007	2022
Great Plains Correctional Facility	Hinton, OK	The GEO Group	2015	2021
Limestone County Detention Center	Groesbeck, TX	Community Education Centers	2011	2013
McRae Correctional Center	McRae, GA	CCA / CoreCivic	2002	2022
Moshannon Valley Correctional Facility	Philipsburg, PA	The GEO Group	2006	2021
Northeast Ohio Correctional Center	Youngstown, OH	CCA / CoreCivic	2005	2015
North Lake Correctional Facility	Baldwin, MI	The GEO Group	2019	2022
Reeves County Detention Center I/II	Pecos, TX	The GEO Group	2007	2021
Reeves County Detention Center	Pecos, TX	The GEO Group	2007	2022
Rivers Correctional Facility	Winton, NC	The GEO Group	2001	2021
Taft Correctional Institution	Taft, CA	Management and Training Corporation	2007	2020
Willacy County Correctional Center	Raymondville, TX	Management and Training Corporation	2011	2015

[1] This data was obtained via Freedom of Information Act Request. See BOP (2022), *Response to Request 2021-03015,* (on file with author).

Chapter One
Introduction

In 2014, a group of fifteen men incarcerated at Adams County Correctional Institution (CI Adams), filed a series of lawsuits against the prison's Warden Barbara Wagner and US Immigration and Customs Enforcement (*Albo v. Wagner*, 2014). While incarcerated people frequently file lawsuits against their jailers, these ones– and the Adams County prison – were unusual. Each of the men suing Wagner were nationals of Cuba or Vietnam serving criminal sentences in the custody of the US Federal Bureau of Prisons. As none of these men held US citizenship, each had been classed as a 'deportable alien' according to the Bureau's security designation and custody classification policy (Bureau of Prisons, 2019: 50). Classification as a 'deportable alien' assigns an offender what the Bureau of Prisons calls a 'public safety factor', which requires 'additional security measures be employed to ensure the safety and protection of the public' (*Ibid,* 48). In concrete terms, being labelled as a deportable alien means that foreign national offenders are – unlike US citizen offenders – eligible for transfer to prisons more than five hundred miles from their homes, excluded from eligibility for drug treatment, education programs, and required to be incarcerated in at least low-security prisons until the end of their sentences (*Ibid*, Kaufman, 2019). Perhaps most importantly, 'deportable aliens' are eligible for designation to a special type of privately operated, all-foreign prison called a Criminal Alien Requirement facility (Department of Justice, 2016: 2). These prisons are designed specifically to incarcerate 'low security criminal alien men' who have been convicted of Federal crimes and facilitate their deportation (BOP, 1999). The 'deportable alien' public safety factor, and this system of Criminal Alien Requirement prisons, are emblematic of the way that the Federal prison system has been transformed, as Emma Kaufman has observed, from a 'a site of corrections, in which the implicit aim was to reform prisoners and return them to the polity, into an institution dedicated to finding and sorting foreigners' (Kaufman, 2019: 1422).

As a Criminal Alien Requirement facility, CI Adams was explicitly designed to incarcerate offenders who would be deported rather than released after completing their sentences. This, however, was the problem for Armando Albo. A Cuban national, Albo was serving time for a drug trafficking conviction. During his sentencing, Albo's Judge had recommended him for placement at the BOP-run Miami Federal Correctional Institution, where he would be able to complete RDAP programming, receive placement in pre-release programs, and remain close to his elderly parents in

south Florida (*Albo v. Wagner*, 2015: 11). Instead, ICE and the BOP refused to honor these sentencing recommendations, and designated Albo to CI Adams on the basis that he was a foreign national, and therefore classified as a 'deportable alien.'

Although Albo was a citizen of Cuba and did not have immigration status in the United States, it would not be possible to deport him. Cuba is one of a number of 'recalcitrant countries' that refuse to issue travel documents or accept the repatriation of nationals ordered removed from the United States (CRS, 2020). In practice only a handful of people have been returned to Cuba since 1980 (Troyan, 1987: 183-184, Hirschfeld Davis and Robles, 2017). As offenders who lack immigration status but cannot be deported, men like Armando Albo pose thorny problems to the smooth operation of administrative processes of prison-based deportation in general and to the Criminal Alien Requirement prison system in particular. Although the Bureau of Prisons has generally acknowledged that Cuban nationals and other 'detainees from counties [*sic*] that ICE has identified that refuse to receive its citizens… will not, in all probability, be repatriated to their home country' (BOP, 1999, BOP, P5100.08, Chap 3, 2006: 9), nationals of countries like Cuba are still likely to be classified as 'deportable aliens.' Such an arrangement keeps them in crimmigration purgatory; ineligible for deportation but excluded from key prison programs and re-entry services.

For Albo, this purgatory was particularly acute because the US government had already tried and failed to deport him. On November 9th, 1992, Albo had received a removal order as part of a deportation hearing held by the Institutional Hearing Program's dedicated, prison-based court at FCI Oakdale (*Albo v. Wagner,* 2015, Loyd and Mountz, 2018: 113-115). However, because the US had no repatriation agreement with Cuba, Albo was released back to his community in south Florida in 1993, where he was placed under an Order of Supervision and ordered to report to immigration officials at frequent intervals (*Albo v. Wagner,* 2015: 3). In a lawsuit filed in December 2014 Albo attempted to remove his detainer and contest his designation to CI Adams on the basis that the Federal government had already failed to remove him (*Albo v. Wagner*, 2015). Citing the description of 'unremovable aliens' in Section Eight of the Code of Federal Regulations, Albo argued that:

'*I was given a final Order of Deportation, and it was determined I could not be removed from the United States. I am finished with the deportation proceedings. The reason inmates with immigration detainers should not be granted placement in residential pre-release programs is because they are a flight risk… Because I'm a Cuban national, I do*

not have a country to flee to. At the end of my sentence I will be released in Miami, Florida, where all my family resides' (*Ibid,* 4).[2]

Since 1986, the Federal Bureau of Prisons has implemented a series of laws and policies that subject non-citizens to a different regime of penal treatment.[3] This combination of the 'power to punish and the power to banish' has been described variously by scholars as crimmigration (Hernández, 2013; Stumpf, 2006) and bordered penality (Franko Aas, 2014; Franko, 2020). In the context of the Federal prison system, this differential penal treatment has been premised on an implicit link between punishment and political membership: excluding 'deportable aliens' from the rights and services afforded to members. In this sense, Albo's request to be re-considered for residential pre-release programs because he 'does not have a country to flee to' unsettles the implicit link between political membership and rehabilitation. Rather than a privilege granted only to members, Albo argued that:

'*This policy of maintaining the detainer on un-removable aliens not only costs taxpayers millions of dollars but causes harm to society. BOP is releasing these inmates after completing very long sentences, without having any chance to be included in programs that will prepare them for re-integration to society. For many of these inmates it was recommended by the judge that they should be placed in drug programs to have a better chance to return to society without returning to a life of drug use and crime. This cannot be accomplished at deportation facilities that are not prepared for inmates that will be returning to the United States'* (*Albo v. Wagner*, 2014: 5-6).

Eventually, Albo's suit was denied by Judge Michael T. Parker in December 2016. Parker ruled that Albo could not challenge the immigration detainer filed against him by ICE using the Habeas action established at 28 U.S.C. § 2241 because Habeas petitions require the petitioner to be 'in custody', and Albo was not yet in immigration custody (Parker, 2016: 3). However, Albo's case, and his testimony, illustrate a series of important features of the Criminal Alien Requirement Prison system.

[2] See description of 'unremovable alien' at 4 in 8 CFR § 1003.19. Online: https://www.law.cornell.edu/cfr/text/8/1003.19.
[3] See S.1200 - Immigration Reform and Control Act of 1986. Online: https://www.congress.gov/bill/99th-congress/senate-bill/1200 See also H.R. 5210 – Anti-Drug Abuse Act of 1988. Online: https://www.congress.gov/bill/100th-congress/house-bill/5210. More generally, see Chacón (2022).

At its peak in 2013, the BOP operated fifteen CAR facilities, housing roughly 30,000 sentenced, non-citizen prisoners (Lawston, 2018).[4] These facilities emerged as part of a broader set of policies designed to segregate 'low security criminal alien adult males' from US citizen prisoners in the Bureau of Prisons-run system (BOP, 1999). Yet, although ostensibly designed to facilitate deportation, the legal and administrative process of migration control is curiously absent within these institutions. Until 2022, CAR prisons were the only privately operated prisons within the Federal prison system, run by one of three private corrections firms: CoreCivic, the GEO Group, and the Management and Training Corporation (Department of Justice, 2016). Last, these all-foreign prisons disproportionately incarcerated Latino men (89%) in general, and Mexican men (72%) in particular (Kaufman, 2019).

This thesis asks what the imbrication of punishment and migration control in all-foreign prisons can tell us about the contemporary nation-state. Criminal Alien Requirement prisons exemplify the emergence of a new 'bordered penality, defined by Katja Franko as a 'differentiated, two-tier approach to criminal justice and a more exclusionary penal culture directed at foreign nationals' (Franko Aas, 2014: 521). The entanglement of crime control and migration control has received significant criminological attention (Franko Aas, 2014; Franko Aas and Bosworth, 2013; Barker, 2018; Barker and Smith, 2021; Bosworth, 2019; Franko, 2020; Stumpf, 2006; Zedner, 2016). In each of these accounts, the integration of migration control and crime control has been explained as a response to periods of crisis that threaten state authority. Where public anxieties about migration have produced the perception of a national crisis, border criminologists have argued that the integration and intensification of punishment and deportation works to re-assert the primacy of state authority (Barker, 2017, Bosworth, 2008; Franko, 2020). Building on this research, this thesis examines how outsourced, all-foreign prisons combine the symbolic meaning and material practice of punishment and deportation to re-shape the character of state institutions and re-define the value of citizenship. As part of a broader array of practices that define membership through criminal justice (Lerman and Weaver, 2014; Miller and Stuart, 2017), Criminal Alien Requirement prisons are critically important to the shifting character of the contemporary nation-state. Although the criminalization of migration has been the subject of significant research in the United States

[4] Notably, only male inmates are held in CAR facilities, while female non-citizens are held in BOP-run Federal prisons. See Lawston (2018).

(Chacón, 2009; Dowling and Inda, 2013) Emma Kaufman's (2019) legal analysis is the only study specifically examining CAR prisons to date. Nearly ten years after Bosworth and Kaufman's (2011) call to study the 'problem' of foreignness' in American prisons, this thesis offers the first empirical account of the CAR prison system.

This study explores how outsourced, all-foreign prisons reshape the nexus between outsourced incarceration, citizenship, race, and ethnicity. Outsourced all-foreign prisons raise urgent questions about how the public-private boundary shapes the meaning of foreignness in the Federal prison system. While practices of outsourced incarceration in the United States have a long history – and one that is deeply entwined with structures of racial hierarchy and white supremacy - they have not traditionally been segregated along the lines of citizenship or immigration status (Davis, 2005; Lichtenstein, 1996; McLennan, 2008). Where previous forms of public-private incarceration in the United States extracted value from the labor of prisoners, contemporary privatization extracts value from their social and biological reproduction (Martin, 2021). On one hand, outsourced confinement works to re-organize the structure and scope of state authority by excluding foreign-national prisoners from access to the resources and accountability of the public prison system. Yet, at the same time, the practice of outsourced, all-foreign confinement is viciously corrosive to the legitimacy of 'public authority' itself (Thorburn, 2017: 7-8). To contest their exclusion in both legal and extra-legal terms, the men incarcerated in Criminal Alien Requirement facilities who form part of this study, emphasized how their segregation in outsourced facilities because of their race and nationality undermined the principles of liberal democracy that such penal facilities claimed to protect.

Mapping Criminal Alien Requirement Prisons

The procurement process for the first Criminal Alien Requirement facilities occurred in 1999 and would eventually produce contracts for the California City Correctional Facility in Mojave, California and Cibola County Correctional Facility in Grants, New Mexico (Federal Register, 1999, Albuquerque Journal 2001, Santa Cruz Sentinel, 1999). While the scale of this all-foreign prison system grew relatively quickly after 2000, it received relatively little media attention or public scrutiny. In general, the Bureau of Prisons has refused to report either facility-level statistics about these institutions or information about the CAR system as a whole and has generally excluded

contracted prisons from BOP annual statistics (BOP, 2021). When Emma Kaufman requested approval from the Bureau to conduct a system-wide survey of CAR prisons, she received a denial letter from BOP Assistant Director Judi Simon Garrett stating that 'research on noncitizens is not generalizable to the whole prison population' and fails to 'contribute to the advancement of knowledge about corrections' (Kaufman, 2019: 31 supra note 175). Felipe De La Hoz, a journalist who has reported extensively on CAR prisons, told me early on in my fieldwork that 'the problem with these places is that it's easy for them to fall between the cracks – when you ask questions the BOP sends you to the contractors, and then the contractors send you back to the BOP.'

To begin to analyze this all-foreign prison system, then, it is necessary to establish a basic overview of which facilities were utilized, the period of their operation, the demographic backgrounds of the people incarcerated in these facilities. From 1999 to 2022, twenty prisons were contracted as CAR prisons (BOP, 2022). Figure 1 shows the geographical location of each one. It is no accident that six of them are located in Texas. Their location was shaped both by the geographical logics of bordering, which privileged the need for carceral capacity close to the US-Mexico borderlands, and the political economy of outsourced incarceration, which sought to maximize the financial value associated with imprisonment by re-purposing existing jails and prisons in rural areas for the purpose of segregated punishment. In their study of the expansion of the joint Bureau of Prisons and Immigration and Naturalization Service detention facility in Oakdale, Louisiana, the scholars Jenna Loyd and Alison Mountz (2018: 115) have observed how policymakers manipulated border geographies to make remote penal facilities like FCI Oakdale appear closer to the heart of border enforcement. As is explored in greater depth in Chapter Four, CAR prisons came to be located in remote geographies like Folkston, Georgia in a similar fashion. During a community meeting held in 2001 as part of the CAR II procurement process Bud Morris, the head of the Charlton County and Folkston Development Authority portrayed Folkston as the perfect place for the new 'federal immigration facility' because the town had everything: nearby airports, cheap land, and a willing workforce (Bureau of Prisons, 2001: 981).

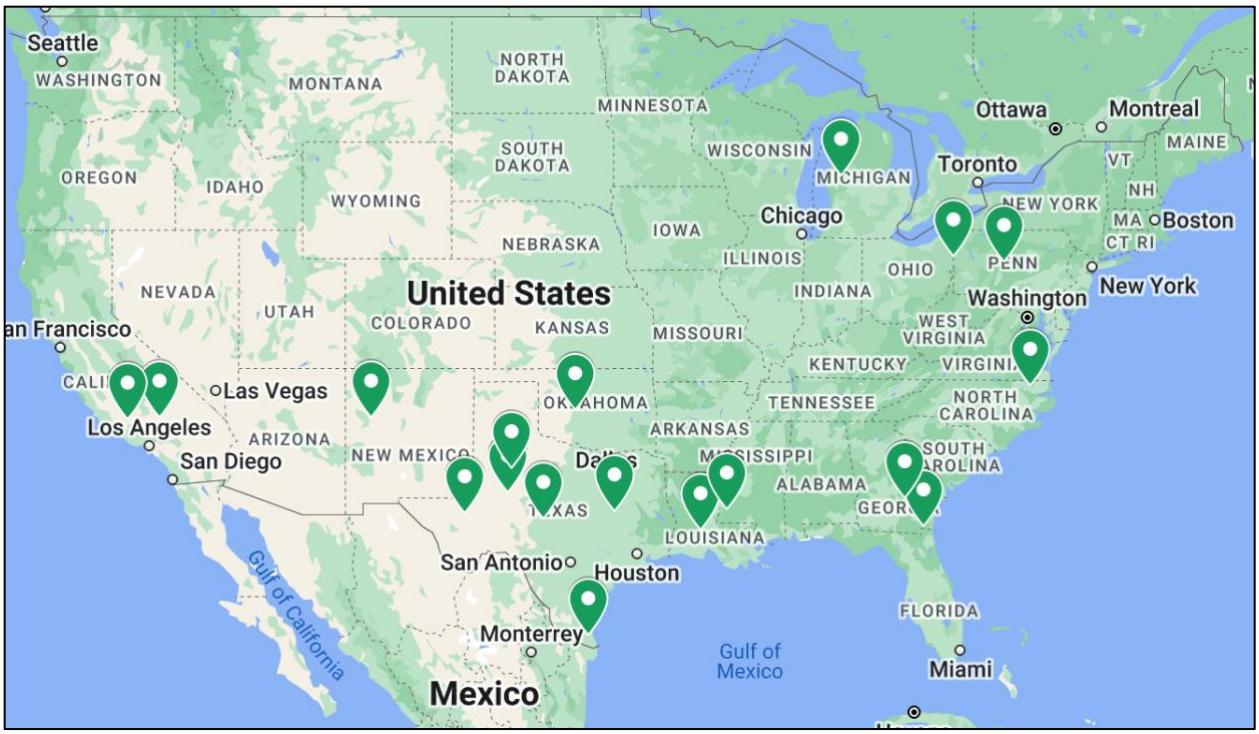

Figure 1: Map of Criminal Alien Requirement Prisons[5]

The scale of the Criminal Alien Requirement system increased rapidly in the first five years after the California City and Cibola County facilities opened. From 2000 to 2005, the average daily population of the CAR prison system increased more than fourfold from 3,921 to 16,319 (BOP FOIA, 2022). This rapid increase was the product both of an overall increase in admissions to the Federal jail, prison, and immigration detention systems, and a specifically sharp increase in the number of foreign nationals sentenced in Federal criminal courts. A report assessing 'detention needs and baselines' prepared by the Office of the Federal Detention Trustee (OFDT) in 2001 highlighted that the total number of offenders serving federal prison sentences had increased from 84,362 in 1994 to 138,000 in 2001, while the number of people in jail and immigration custody increased from 25,675 in 1994 to 58,029 in 2001 (OFDT, 2001: 6). From 2000 to 2007, the Bureau of Prisons held seven CAR procurement rounds, increasing the capacity of this system to roughly 13,000 incarcerated people (BOP FOIA, 2022). By 2013, the Criminal Alien Requirement system reached its peak, incarcerating an average daily population of 29,336 over the course of the year (BOP FOIA, 2022).

[5] This map is optimized for digital use – to view a digital version see: https://www.google.com/maps/d/u/0/edit?mid=1tZq-qsrCsGyl1_VyhVcMU5dTuaIkcX61&usp=sharing.

By comparison, this was almost equal to ICE's total detention capacity, which was 33,788 in 2013 (FFI/NIJC, 2022). Notably, the average daily population in ICE-run immigration detention only significantly outstripped CAR prison capacity after the Obama administration decides to end the use of contract prisons in 2016 (Yates, 2016, FFI/NIJC, 2022).

It is also worth reflecting on the relative scale of this system in national and global terms. During the period from 2000 to 2022, the CAR prison system averaged around 9% of the total Federal Prison population, peaking at 13.5% in 2013 (Bureau of Prisons, 2023). This system was relatively small in the broader context of total carceral capacity in the US – only roughly 1.5% of total US jail and prison population in 2013 (PPI, 2020). However, in terms of outsourced incarceration, it was among the largest. The Bureau of Prisons' contracts to operate Criminal Alien Requirement prisons were the largest single contracts within the Department of Justice (OIG, 2015, OIG, 2016), and among the largest expenditures on privately-operated confinement in the United States and the world. Contracts with GEO Group and Corrections Corporation of America to operate the Big Spring Correctional Facility, and Reeves County Detention Facility were each worth roughly $500 million over a ten-year period (*Ibid*).

Race, Ethnicity, and Nationality within Criminal Alien Requirement prisons

One of the most striking features of this all-foreign prison system is the substantial racial and national disparities among the people who are incarcerated within it. In racial terms, from 2000 to 2022, 84% of people incarcerated in CAR facilities identified as white, 13% as black, and 2% as Asian (BOP FOIA, 2022). This data is slightly misleading, however, because the Federal government measures Hispanic and non-Hispanic ethnicity separately to race. During the same period, 80% of people incarcerated in CAR facilities were Hispanic (*Ibid*). Figure 2 shows annual trends in race and ethnicity over time, from 2000 to 2022.

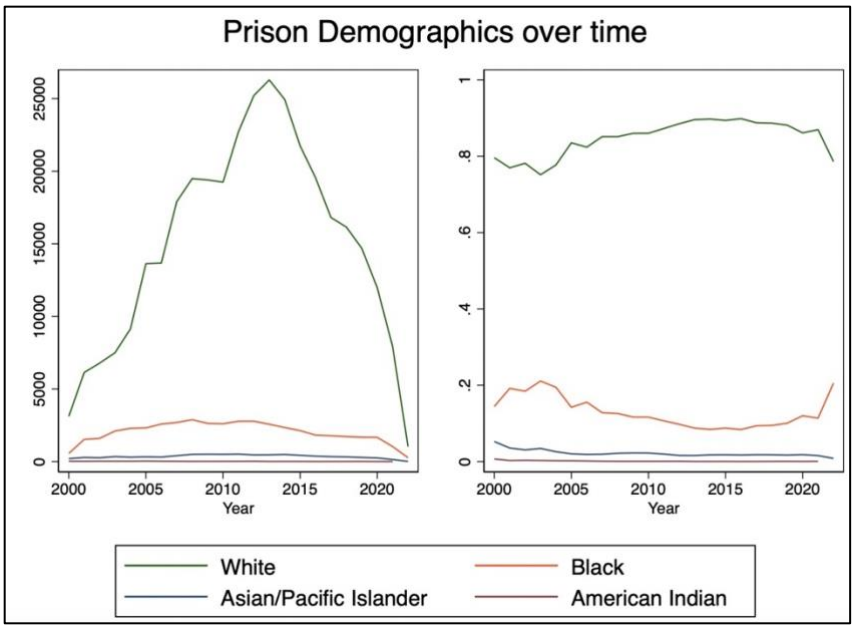

Figure 2: Racial Groups in CAR Prisons, 2000 to 2022

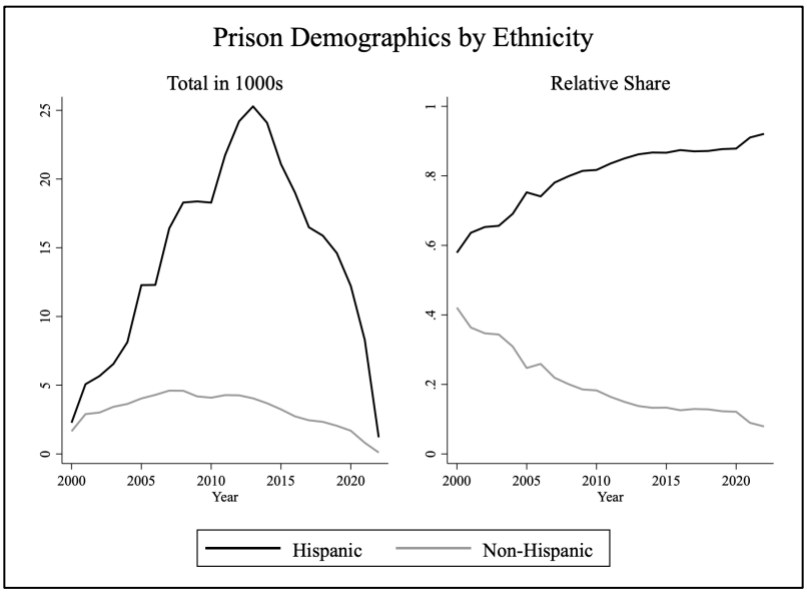

Figure 3: Ethnicity in CAR Prisons, 2000 to 2022

This elision between race and ethnicity illustrates the complex and interconnected ways in which these forms of difference take shape within the US penal system in general, and all-foreign prisons in particular. Figure 3 shows CAR prisons by ethnic group from 2000 to 2022/ Although race and

ethnicity are formally measured separately by the Federal government, in practice, the men within CAR prisons were clearly understood to occupy a position of racial difference. The Department of Justice has described these facilities as designed to house a 'specialized population', specifically 'Mexican nationals with convictions for immigration or drug offenses' (DOJ, 2016: 1). Similarly, the men incarcerated in CAR prisons whom I interviewed frequently described a shared Latino racial identity, separate from the conventional White/Black racial binary. As the scholar Gregory Rodriguez (2007: 193-195) has observed, Mexican immigration to the United States during the twentieth century confounded the established binary of the Anglo-American, forcing the production of new forms of racial difference defined with reference to skin color, linguistic difference, and national origin. While Chapter Two explores these intersections of race, ethnicity, and national origin, and offers a more comprehensive description of how I have applied each concept, it is worth noting here that I use the term race rather than ethnicity to describe these forms of social difference, following an established body of research on race, criminal justice, and migration control (Ngai, 2014, Armenta, 2017, Hernández, 2010, Chácon and Coutin, 2018).

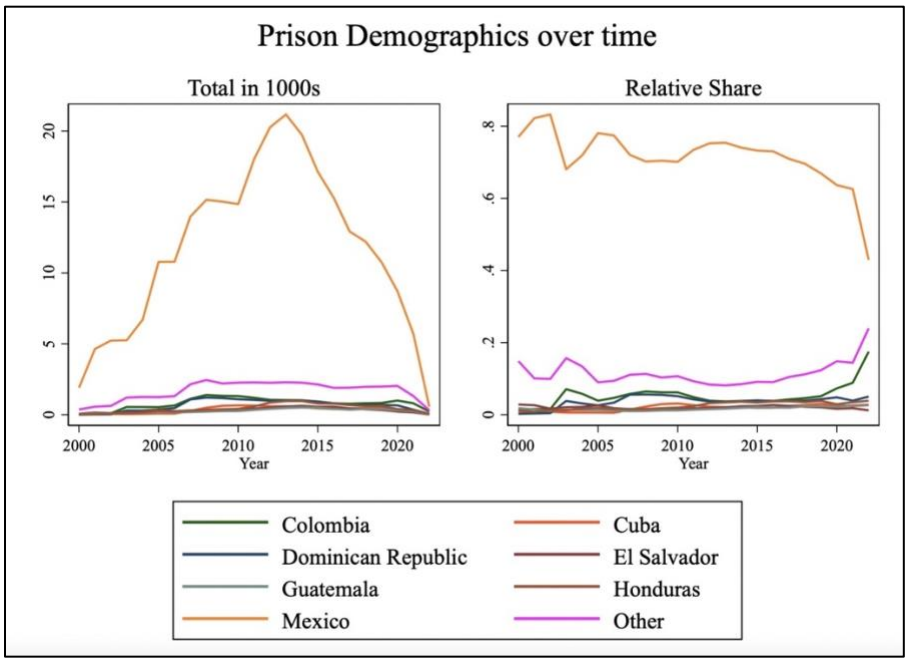

Figure 4: Nationality in CAR Prisons, 2000 to 2022

Figure 4 shows the annual composition of the CAR prison population in terms of Nationality. In national terms, roughly 64% of immigrants incarcerated in CAR prisons from 2000 to 2022 were Mexican nationals (BOP FOIA, 2021: 3). During the same period, nationals of seven Latin American countries accounted for 91% of the CAR prison population (*Ibid,* 4). This national breakdown reflected the broader picture within the Federal penal system: nationalities from these seven countries accounted for 89% of sentenced, non-citizen offenders in Federal custody, of which 74% were Mexican nationals (GAO, 2018). That Latin American men in general and Mexican men in particular were overrepresented in these facilities was the result of both specific, contemporary policies and enforcement practices, and broader, historical biases in border policing. After 1980, the evolution of entangled practices of punishment and migration control produced patterns of penal segregation along racial and national lines (Loyd and Mountz, 2018). As the Bureau of Prisons and the Immigration and Naturalization Service negotiated who would take responsibility over the provision of civil immigration detention, administrators from these agencies developed a system whereby nationals from specific countries were designated to specific facilities to facilitate the process of immigration control and deportation (Sale, 1996).

After the passage of the Immigration Reform and Control Act in 1986 and the Anti-Drug Abuse Acts in 1988, political officials became acutely concerned about the influence of so-called 'criminal aliens' within the Federal prison system. Concerns about 'criminal aliens' discursively connected racialized immigrant groups to concerns about drug trafficking, framing the drug problem as an immigration problem. In 1986, Robert Stutman, a Drug Enforcement Agency Special Agent testified to a US Senate Committee hearing on 'Emerging Criminal Groups' that the heroin problem in New York City was a 'Chinese heroin problem [and] a Mexican heroin problem' (Stutman, 1986: 68). A year later, Florida Senator Lawton Chiles opened a Senate Committee hearing on 'Illegal Alien Felons' by opining that,

'*Two of the Nation's most difficult domestic problems have banded together to create an even more difficult and dangerous problem – an expansive drug syndicate established and managed by illegal aliens*' (Chiles, 1987: 1).

In concert with this rhetoric, a series of immigration laws passed during the 1990s dramatically expanded the array of drug offenses for which people without immigration status could be deported (Yates et al., 2005). In turn, this indelibly shaped the Federal prison population. Figure Five shows

the CAR prison population by type of offense over time. From 2000 to 2022, 51% of people incarcerated in these all-foreign facilities were serving time for drug offenses (BOP FOIA, 2022: 5). During the same period, immigration offenses accounted for roughly 30%, although there was a significant increase during the period from 2006 to 2016.

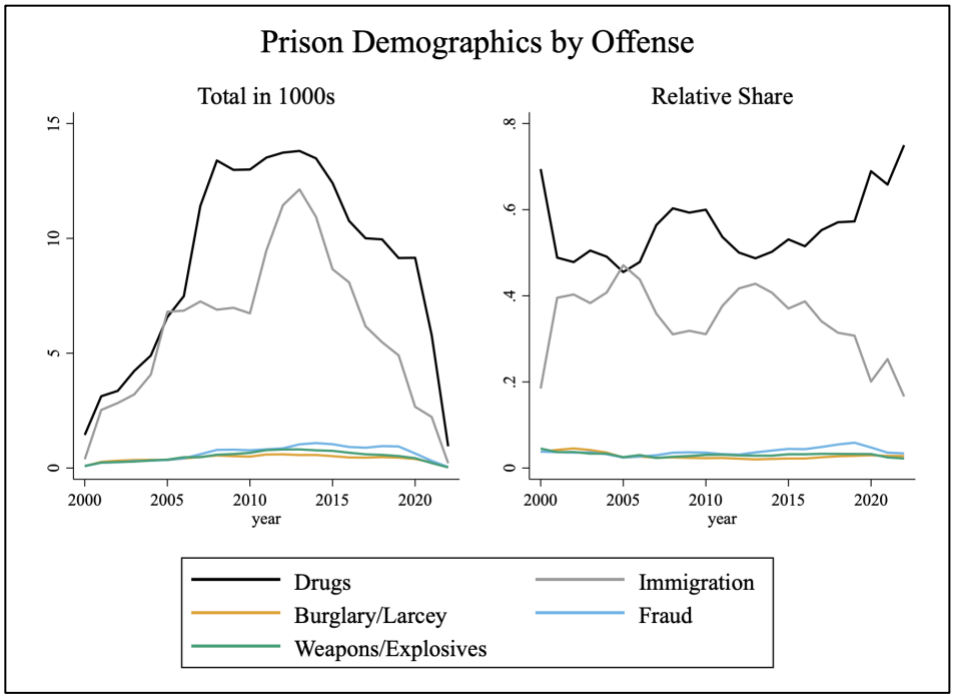

Figure 5: CAR Prisoners by Offense Type

In one sense, this data should give us pause about the rhetorical notion that 'criminal aliens' are disproportionately serious, violent offenders (See e.g. Schuck and Williams, 1999; Sherill, 1987). A very small minority of offenders were incarcerated for violent crimes. Indeed, this framing of the relationship between criminality and migration reflected what John Hagan and Alberto Palloni have called the mythology of Hispanic crime (Hagan and Palloni, 1999).

Why research private prisons?

On the 26th of January 2021, seven years after Armando Albo filed his suit against Adams County Correctional Center, President Joseph R. Biden Jr. issued an Executive Order stating that 'the

Attorney General shall not renew Department of Justice contracts with privately operated criminal detention facilities' (Biden, 2021). In December of 2022, the McRae Correctional Institution – the last CAR prison standing – closed its doors (13WMAZ, 2022). After twenty-two years, Biden's Executive Order is – for now – the final step in a series of partisan political moves over the future of the CAR prison system. In 2016, following a series of reports about poor conditions and medical neglect in CAR prisons, and growing pressure to implement criminal justice reform, the Obama Administration took the first steps to end the Bureau of Prisons' use of private prison contracts. In a memorandum to the Acting Director of the BOP written on August 18th, 2016, Deputy Attorney General Sally Yates wrote

'Private prisons served an important role during a difficult period, but time has shown that they compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource- and these services are essential to reducing recidivism and improving public safety. For all of these reasons I am eager to enlist your help in beginning the process of reducing--and ultimately ending-our use of privately operated prisons' (Yates, 2016: 1-2)

Strikingly, Yates' memo completely ignores the fact that the only private prison contracts held by the BOP were Criminal Alien Requirement facilities. That Yates failed to acknowledge this fact suggests that despite the wealth of research and policy that has been produced on privatization over the past four decades, there is still very little recognition of the intimate connection between foreignness and privatization within the Federal prison system. Notably, Yates' commitment to reducing privately contracted facilities was buttressed by a congratulatory acknowledgement of the BOP's prison system, writing that these reductions 'would be neither possible nor desirable without the Bureau's superb and consistent work at our own facilities' (*Ibid*, 2). Moreover, before this order could take meaningful effect, newly-elected President Donald J. Trump took office and ordered Attorney General Jeff Sessions to rescind Yates' memo, preserving the BOP's Criminal Alien Requirement System (Sessions, 2017). All in all, this turn of events raises questions about how scholarship should engage with the politics of prison outsourcing and privatization.

In a 2015 essay examining 'the worrying state of the anti-prison movement,' the geographer and activist Ruth Wilson Gilmore took issue with the 'tendency to aim substantial rhetorical and organizational resources at the tiny role of private prison firms in the prison-industrial complex, while minimizing the fact that 92 percent of the vast money-sloshing public system is central to how capitalism's racial inequality works' (Gilmore, 2015). Prison reform campaigners, Gilmore argued, had devoted a disproportionate share of their resources into pressuring government agencies and financial institutions to divest from private prison corporations although these firms only held about 8% percent of the US prison population (*Ibid*). Although aimed at the organizers of prison reform movements, Gilmore's observation is also relevant to academic researchers. If the vast majority of incarcerated people are held in state-run prisons, and these public prisons receive the vast majority of state spending, then it seems reasonable to suggest that academic research should engage with the subject of prison privatization with care.

The scholars Sharon Dolovich (2009, 2005) and Matt Mitchelson (2014: 327) have described three primary issues with much of contemporary research on prison privatization. First, both scholars point out that much of extant research on prison privatization has been essentially normative in character. As Dolovich (2005) points out, this body of normative research can be broadly split into two positions: on one hand, an argument which imprisonment is theorized as an 'inherent-public-function' (e.g. Cordelli, 2020; Harel, 2011; Thorburn, 2017), and, on the other hand, a viewpoint which argues that decisions about incarceration should be determined by comparing the relative cost efficiency of public and private prisons (e.g. Volokh, 2013). While this work is tremendously valuable, it is often detached from the actual empirical shape of contemporary criminal justice institutions. In a related fashion, there has been a tendency to present privatization as a recent development, abstracting these practices from their historical context, and thereby offering implicit legitimacy to an imagined version of penality in the past. In his work on punishment and public authority, for example, Malcolm Thorburn has framed privatization as a relatively recent product of *laissez-faire* ideology (2010: 428-429) and developed a normative critique seeking to 'revive a way of thinking about criminal justice that once dominated the debate' (2017: 31). This critique obscures the fact that 'robust public authority' is a relatively recent historical possibility, facilitated by the development and consolidation of the nation-state's ability to construct and administer a modern penal system (Feeley, 2014). As Rebecca McLennan's (2008) work has demonstrated, private entities played a dominant role in the administration of incarceration within the American penal system until

at least 1941. In a broader sense, as Dolovich (2009) has argued compellingly, research on privatization has often avoided questions about the broader legitimacy of imprisonment. Indeed, Dolovich (2009) and Mitchelson (2014) point out the curious fact that, although public discourse has often been dominated by concerns about efficiency and cost, it has generally ignored the fact that the least costly prison is that which is not built.

In the course of this research project, I have also encountered two further obstacles – one conceptual and one analytical – with doing research on outsourced incarceration. As I began to examine how the relationship between the Bureau of Prisons, local governments, and prison contractors was structured, it quickly became apparent that the existing conceptual language of public and private was poorly suited to describing the ways in which CAR prisons worked. Instead of a clear, binary boundary between the public and the private, the point at which the public state ended and the private sector began was impossible to pin down. Similarly, as I began to collect descriptions of the experience of segregated punishment within CAR prisons, it was often difficult to pin down whether experiences that were described as defining or emblematic of the experience of outsourced confinement – like overcrowded cells, or poor medical care – were specific to privately-operated prisons.

Each of these concerns has guided the way that I have gathered and analyzed the empirical material at the heart of this thesis. While scholars like Gilmore are right to criticize a focus on privatization in policy and research, Criminal Alien Requirement prisons raise specific questions about the relationship between membership and outsourced incarceration that have yet to be fully explicated. Indeed, both theoretically and empirically, I am interested in CAR prisons because of how they embody an increasingly important connection between outsourcing and bordered exclusion. Making sense of this relationship, I argue, is crucial to understand how the penal system has come to define political membership (Kaufman, 2012).

Similarly, I treat CAR prisons as sites embedded in a broader political economy of incarceration, in which money sloshes freely across the public-private boundary. Emma Kaufman's article emphasized how it emerged as a result of conflict between Federal agencies over who would be held responsible for the administration of civil immigration detention, and how that practice of incarceration would be managed (Kaufman, 2019). Analysis of archival records bears this out,

suggesting that political officials viewed all-foreign prisons as a parallel penal system that could be used to reduce the demand for capacity in BOP-run prisons and ICE-run immigration detention facilities. As Federal officials scrambled to expand state capacity to incarcerate 'criminal aliens' after 1986 (GAO, 1987), a diverse and relatively de-centralized network of prison entrepreneurs sprung up to sell prison beds 'like you were selling cars or real estate or hamburgers' (Beasley in Schlosser, 1998). Where the Bureau of Prisons' earliest contracts for outsourced prisons were negotiated with a mixture of county governments and small-scale contractors, the private prison industry saw significant consolidation during the 1990s, such that by 2000 the industry was dominated by four contractors – the Corrections Corporation of America, the Wackenhut Corporation, Cornell Corrections Inc., and the Management and Training Corporation (Raher, 2009). As the scholar and activist Judith Greene has argued, this consolidation occurred because it served both the interests of state and capital (Greene, 2001). In this way paying attention to how financial value was extracted from all-foreign prisons can help us to begin to make sense of the political and economic logics that sustained a larger system of mass incarceration (Gilmore, 2007, Schept, 2021).

In a practical sense, I have used the term 'outsourced' wherever possible, to describe the system of penal practices established through contractual and administrative relationships between the Federal Bureau of Prisons, local governments, and private contractors. Outsourcing has been defined in Management and Operations Research as the 'procurement of products or services from sources that are external to the organization' (Lankford and Parsa, 1999: 1). Although the term is often used to describe corporate entities rather than state governments, I use it to highlight a relationship between financial exchange, service provision, and recognition. In corporate terms, outsourcing is a strategy employed to reduce transaction and production costs, delegate responsibility for specific tasks, and expand a firm's capacity by focusing on 'core competencies' (Prahalad and Hamel, 1990). While eschewing corporate jargon, I argue that outsourcing highlights how Federal officials sought to sustain the increasingly expensive project of mass incarceration by contracting out imprisonment. Outsourcing also highlights the extent to which this financial transaction accompanied a delegation of political recognition: in a variety of ways, non-citizens in outsourced prisons were placed outside the boundaries of public recognition, and subject to a different form of legal and administrative authority than those that governed BOP-run prisons.

Outline of chapters

This thesis proceeds in eight chapters. In Chapter Two, I situate the all-foreign prison within the field of border criminology (Franko Aas and Bosworth, 2013; Bosworth, 2017), to illustrate how CAR prisons serve as a 'site for the construction and contestation of the late-modern nation state' (Kaufman and Bosworth, 2013: 171). While theoretical accounts of 'bordered penality' (Franko Aas, 2014; Franko, 2020) and 'penal nationalism' (Barker, 2018) have illustrated how the criminalization of migration control has functioned as a means of re-asserting the coherence and authority of the nation-state, empirical accounts (ACLU, 2014; Bosworth, 2014; Kaufman, 2015) of the operation of these practices and the experiences of people within them have challenged how we understand the nation-state and state power (Miller, 2014; Rubin and Phelps, 2017). All-foreign prisons (Kaufman, 2015; Ugelvik, 2013) highlight a seeming paradox, whereby an idea of the nation-state as a coherent, nonmaterial entity arises from the operation of a body of dislocated, contradictory social practices. Drawing on this work, scholars have re-framed the study of citizenship from questions of institutional and national boundaries, to focus on the contested practices that 'make' citizens (Bhambra, 2015: 104; Isin, 2009; Ong, 2003). These accounts highlight the extent to which logics of racial and ethnic difference have been central to the historical construction of political membership in the United States (Haney-López, 1996; Lee and Yung, 2010, 2010; Ngai, 2014; Omi and Winant, 2015). In turn, re-focusing attention on how political subjects are produced through specific practices and encounters has shed new light on the study of citizenship and race in studies of incarceration and border control (Bosworth, 2021; Lerman and Weaver, 2014; Miller, 2014; Miller and Stuart, 2017). I argue that all-foreign prisons should be understood as sites for the enforcement of racialized ideas of citizenship, and the production of the structural effect of the state. Combining the practice of punishment and deportation within nationally and racially segregated prisons, I suggest that Criminal Alien Requirement prisons produce the subject of the 'criminal alien' through new and alarming techniques of exclusion (Bhambra, 2015).

The third chapter discusses research methods. Criminal Alien Requirement prisons are unsettling, difficult institutions. Yet, the fact that all-foreign facilities are shrouded from public scrutiny, and raise difficult ethical and political questions, does not mean that scholars should shy away from studying them. Indeed, I argue that the strategic opacity of CAR prisons only increases the critical imperative to develop a better analytical understanding of how these places and processes work. In

this chapter, I develop a multifaceted approach to studying carceral institutions that draws on the 'institutional ethnography' developed by the feminist sociologist Dorothy E. Smith (Billo and Mountz, 2016; Bosworth, 2014: 52-54; Mountz, 2010; Smith, 2005, 2001, 1990). Like all social institutions, Criminal Alien Requirement prisons cannot be fully understood from a single point of reference. Rather, I argue that we must study these institutions from multiple sites, scales, and points of view (Marcus, 1995; Schiller and Caglar, 2011; Xiang, 2013). While grounded in established ethnographic practices of observation and interview, I combine careful description of local practices and experiences of incarceration with critical readings of texts like prison contracts, federal regulations, and political rhetoric that help us to understand 'how institutions think' (Douglas, 2011). Following Billo and Mountz (2016: 202), I suggest that studying institutions in this way can shed light on how institutional power within carceral facilities is dispersed, embedded, and entangled with specific practices of confinement, mobilization, and identification.

In Chapter Four I examine how the privately contracted, all-foreign prison emerged as part of a broader policy solution to the crisis of governance provoked by public anxieties about foreign criminals (Bosworth and Kaufman, 2011; Simon, 1998). In the first section of this chapter, I trace the emergence of the 'criminal alien' after 1980 as a novel subject of penal and border control. This new penal subject was distinct from earlier constructions of the 'illegal alien' which portrayed migrants as a threat to the economic prospects of white workers (Fernández and Pedroza, 1981; Ngai, 2014). By portraying the growing number of non-citizens in US prisons as a crisis of governance, the 'criminal alien' paradigm (Cházaro, 2016) narrated the social facts of crime and migration such that the prison-to-deportation pipeline came to be understood as the only viable solution to the 'criminal alien problem' (Schuck, 1999). In the second section, I trace the emergence of bordered penality and all-foreign imprisonment to the period after the passage of the Immigration Reform and Control Act in 1986. In an effort to meet IRCA's statutory obligation to bring deportation proceedings against all noncitizens convicted of deportable offenses, the Immigration and Naturalization Service (INS) formally created the Institutional Hearing Program, a specialized prison-based deportation process (Eagly and Shafer, 2020). Simultaneously, the INS and the Federal Bureau of Prisons began to experiment with outsourced 'dedicated IHP' facilities, all-foreign prisons designed to reduce the cost of incarcerating immigrants and simplify the conjoined process of punishment and deportation (Hawk, 1994: 167). Drawing on congressional archives and

local media sources, I show how this new carceral economy was predicated on the racialized commodification of illegality as a materially-extractable resource.

In both *de jure* and *de facto* terms, immigrant men in outsourced prisons are treated differently to US citizens in BOP-run prisons. Drawing on the testimonies of men incarcerated in all-foreign prisons collected via interview and mail correspondence, the fifth chapter examines how the differential treatment of foreign-national prisoners shapes experiences of custody, and how these men understand their citizenship and racial difference. In the first section, I examine how the differential treatment of men in all-foreign prisons manifests through specific practices, including the physical conditions of confinement, the way in which these prisons were staffed, and the ways in which foreign national men were excluded from access to key prison services like job training and drug rehabilitation programs. Echoing Michael Walker's description of the 'politics' of racial formation within penal facilities, this chapter also traces how the differential treatment of foreign-national prisoners, the vast majority of whom are Mexican or Central American (Kaufman, 2019: 4), reflects and reproduces racial difference. Drawing from the literature on the construction of racial and national identity in prison (Goodman, 2008, Walker, 2016, Kaufman, 2015), the second section examines how experiences of differential treatment shaped how men in all-foreign prison custody understand and formulate the link between race, citizenship, and outsourced all-foreign punishment. Drawing from data from interviews and mail correspondence with prisoners I then discuss how prisoners understand and experience their racial identity in relation to the differential penal treatment practiced within all-foreign prisons.

When Federal officials and private executives promised to deliver savings to taxpayers and profits to investors, these dividends were premised on the differential treatment of foreign offenders. In Chapter Six, I focus specifically on the provision and quality of medical care in Criminal Alien Requirement prisons, expanding on the analysis of the nexus between outsourced incarceration and political membership developed in the previous chapter. The difficulty associated with accessing medical care in all-foreign prisons produced the impression that people incarcerated in CAR facilities had been abandoned by the state as 'disposable prisoners' (Alba, 2006). To theorize these experiences of exclusion, I draw on the concept of abandonment developed by Ruth Wilson Gilmore (2007, 2002) and Elizabeth Povinelli (2011). Gilmore and Povinelli use the term abandonment to describe how the organized retreat of the state functions as a form of political

order, in which states govern through deliberate neglect by framing certain populations as unworthy of political recognition and surplus to economic order. In turn, exclusion from care in Criminal Alien Requirement prisons constituted a critical political encounter. Vesla Weaver and Amy Lerman (2010, 2014) have described the US criminal justice system as a 'primary site of civic education', shaping how people understand and participate in the political community. Dominic Aitken (2018: 70-73, 2022) has emphasized the need to reclaim prisons and immigration removal centres as sites of social and political analysis to combat the 'counter-democratic' tendency to treat the deaths of incarcerated people within these facilities in technocratic, politically-neutral terms. Similarly, Mary Bosworth's (2021: 14) work on experiences of pain in UK immigration removal centres emphasizes how these institutions 'communicate important political lessons about membership of the nation state.'

The seventh chapter traces how prisoners understand, locate, and resist authority in the prison context, arguing that these experiences of incarceration are definitively political experiences (Aitken, 2019; Calavita and Jenness, 2015). Reading texts from lawsuits filed by CAR prisoners as political sources reveals how incarcerated people use rights language (Benhabib, 2004: 136-140) to critique the circumstances and conditions of their confinement. Analysis of how people incarcerated in CAR facilities sought to contest their categorization by the Bureau of Prisons as 'deportable aliens' demonstrates the strange hollowness of migration control within these penal institutions (Bureau of Prisons, 2019). Similarly, analysis of grievances and lawsuits over inadequate medical care illustrates how the contractual structure of outsourced incarceration deterred people from filing claims. Yet, even in the absence of a realistic prospect of success, testimonies from grievances and lawsuits illustrate how incarcerated people used lawsuits to contest their abandonment and force prison administrators to take their pain seriously. While CAR prisons are part of a broader penal system that claims to uphold the values of liberal democracy, the testimonies of men incarcerated in segregated, outsourced facilities suggests how this system of all-foreign imprisonment undermines the principles of public authority (Thorburn, 2017).

Chapter Two

Border Criminology and the all-foreign prison

De qué me sirve el dinero? Si estoy como prisionero
Dentro de esta gran nación
Cuando me acuerdo hasta lloro
Que, aunque la jaula sea de oro
No deja de ser prisión

What use is money to me? If I am a prisoner
Inside this great nation
When I remember I cry,
That, even if the cage is made of gold
It is still a prison
- *La Jaula de Oro,* Los Tigres de Norte (1984).

In 2018, fifty years after Johnny Cash's famous concert at Folsom Prison in California, another group of performers returned to hold a concert at the prison. Unlike Cash, they sang in Spanish rather than English, and played Norteño, a genre that blends elements of Mexican folk music with instruments traditionally associated with the polka and waltz styles of Central Europe. The group – called Los Tigres Del Norte – are among the most popular Mexican and Chicano musicians of the past fifty years and are particularly well known for the modernization of the *corrido*, or ballad. While Cash and Los Tigres exemplify different genres, their music shares a kind of social realism. As Jorge Hernández, the band's lead singer and accordion player put it, the group had chosen to play the concert at Folsom Prison because

'*We want to continue Johnny Cash's legacy, but a lot has changed since 1968. These days, 43% of inmates in the California state prison system are Latino. We want to bring light to the shadows'* (*Los Tigres del Norte at Folsom Prison*, 2019).

Although born in the state of Sinaloa on Mexico's Pacific coast, each of the five members of the band are naturalized citizens of the United States (Wilkinson, 2010). The group first became famous

in 1974 for 'Contrabando y Traición' (contraband and betrayal), a *corrido* that tells the story of Emilio Varela and Camelia la Texana, a couple who manage to transport several kilos of marijuana hidden in their car's tires from Tijuana to Los Angeles (Tigres del Norte, 1974). After getting paid for their delivery, Camelia discovers that Emilio is going to betray her and move to San Francisco, so Camelia shoots Emilio and takes all of the money for herself. At the climax of their concert at Folsom Prison, the band played 'La Jaula de Oro', a *corrido* about a Mexican-born man who emigrates to the United States 'sin papeles', only to find that the promise of the American dream is a golden cage without immigration status (Los Tigres del Norte, 1984).

'La Jaula de Oro' – in which the prison serves as a metaphor for the nation-state – and *Los Tigres Del Norte*'s performance at Folsom Prison foregrounds how the shifting relationship between punishment and border control has transformed contemporary imprisonment in the United States. As Mary Bosworth and Emma Kaufman (2011: 431) have observed, the growing incarceration of non-citizens, and particularly Latino men, raises questions about the purpose of the penal institution.

Criminal Alien Requirement (CAR) prisons raise similar questions about the shifting relationship between punishment and migration control. Foreign national prisoners in CAR facilities are treated differently to US citizen prisoners in BOP-run Federal prisons in both *de jure* and *de facto* terms. CAR prisons are the only Federal prisons operated by private contractors (DOJ, 2016). As a result, they are not held to the same regulatory standards as BOP-run facilities (Wessler, 2016, 2015). Private contractors are not obliged to provide prisoners with employment, training, educational services, or rehabilitation programming (Kaufman, 2019, DOJ, 2016). A report by the Government Accountability Office in October 2007 states that 'BOP facilities generally confine U.S. citizens, and programs are designed to teach inmates skills that they can use when they are released so as to avoid returning to prison. Programs that focus on preventing returns to prison are not required of private facilities because criminal aliens are released for removal from the country and are not expected to return to US Communities' (GAO, 2007: 5). As Emma Kaufman (2019: 67) puts it, CAR prisoners are somehow 'American enough to owe the state [their] liberty but insufficiently American to deserve equal treatment while that liberty is deprived.'

Border Criminologists, like Kaufman, have paid significant attention to how the intersections of criminal justice and migration control have both reflected and provoked a shift in the nature of the

nation-state and state power (Bosworth and Guild, 2008; Kaufman and Bosworth, 2013; Simon, 1998; Stumpf, 2006). A number of scholars have examined how the criminalization of migration reflects the changing nature of the nation-state in the United States (Dowling and Inda, 2013; Peutz et al., 2010). CAR prisons seem to blur the boundaries between criminal punishment and migration control, and between the public state and private corporations. At the same time, the all-foreign prison suggests unsettling new overlaps between the boundaries of citizenship and racial difference (Kaufman, 2019: 5-6).

In this chapter I situate CAR prisons within this field of scholarship (Franko Aas and Bosworth, 2013; Bosworth, 2017) while setting out research on foreign-national imprisonment inside (Eagly, 2017) and beyond the United States (Kaufman, 2015; Ugelvik, 2012). I argue that examining CAR prisons can help to develop the ways that border criminologists have understood the nation-state, penality, and migration control. At first glance CAR prisons seem to re-affirm the state's claim to define the boundaries of the nation and the territory by identifying, segregating, punishing, and removing non-citizens. Yet the body of practices, knowledge, and modes of power through which these goals are realized contradict the idea that the state is a coherent, unified agent and unsettle the boundary between the state and civil society.

A number of scholars (Barker, 2018, 2017; Bosworth and Guild, 2008; Kaufman and Bosworth, 2013) have highlighted how the intersecting practice of criminal justice and migration re-asserts national identity and the coherence of the state. Mary Bosworth, for example, has argued that the use of criminal justice as a tool of border control in the UK constructs and secures the 'actual and symbolic borders of the British nation state' (2008: 201). In her study of all-foreign prisons in the United Kingdom Emma Kaufman likewise asserted that these penal institutions re-assert British national identity and the coherence and authority of the British state (2015: 7-8). Examining Sweden's decision to impose emergency border controls in the face of a perceived refugee crisis in 2015, Vanessa Barker has advanced a theory of 'penal nationalism' (2018: 7-8), arguing that the decisions of the Swedish state illustrate a broader trend whereby states employ penal power to control mobility as a means of re-asserting the coherence and authority of the nation-state. On one hand, these studies detail how institutions of migration control and foreign-national punishment seem to produce an image of the nation-state as a coherent with unique symbolic authority, set apart through a clear boundary between the state and civil society. Yet at the same time this research

(Bosworth, 2014; Kaufman, 2015) describes in detail the inconsistencies and contradictions that characterize the daily practices of migration control and foreign-national punishment.

As this thesis will demonstrate, CAR Prisons confound a unitary idea of the nation-state. Building on the work of scholars (Kaufman, 2015; Rubin and Phelps, 2017; Zedner, 2002) who have highlighted the disjuncture between theoretical and empirical accounts of the state, I will examine how CAR prisons invite us to re-consider established understandings of the interaction and intersection of criminal justice and migration control. CAR facilities obscure the boundary between criminal and civil authority that structures understandings of state power (Chacón, 2009). As sites of privatized confinement, governed by profit motive rather than the rehabilitative ideal they blur the line between the public state and the private sector and challenge the idea that punishment is always a practice of state power (Garland, 2013: 494). Rather than communicating wrongdoing and reinforcing the bonds of community, which have traditionally been proffered as justifications for punishment (Duff, 2001; Zedner, 2016), within CAR prisons the symbolic power of censure is deployed to enforce citizenship through exclusion, often along racial lines.

This chapter is structured in two sections. In the first, I trace the evolution of the field of border criminology (Bosworth, 2017; Franko Aas, 2007). This body of research evolved out of the critical turn in criminology during the 1960s and 1970s, and has drawn on work outside criminology on globalization, citizenship, and migration (Brown, 2010; Fraser, 2008; Sassen, 1991). Border criminology has shed new light on how governments have used the criminal justice system to manage mobility (Barker, 2018; Chacón, 2009; Dowling and Inda, 2013), and inserted the logic of migration control into prisons (Kaufman, 2015), courts (Aliverti, 2013; Stumpf, 2006) and policing (Armenta, 2017). On one hand CAR prisons and the broader turn towards the criminalization of migration in the United States since 1980 seems to complicate this body of literature to some extent, by suggesting that racial difference (Bosworth et al., 2018b; Garner, 2015), as much as 'mass mobility' was the dominant cause of 'crimmigration' (Stumpf, 2006). At the same time, by examining how the co-evolution of migration control and criminal justice reflects the shifting nature of nation-state authority, this research (Barker and Miller, 2017) helps to consider how the all-foreign prison reflects and reinforces external social and political conditions.

Building on this analysis, in the second section I examine how scholars of border criminology have thought about penality (Garland, 2013, Barker, 2017, 2018) and the nation-state (Bosworth, 2008, Kaufman, 2015). The concepts of penality and penal power have been central to most accounts of the convergence of criminal justice and migration control (Bosworth, 2008, Barker, 2017, 2018) and the emergence of the foreign-national prison (Kaufman, 2015, Ugelvik 2012). While penality provides a compelling framework for thinking about the convergence of criminal justice and migration control, as Emma Kaufman (2015: 48-49) has suggested, it tends to produce grand narratives (Zedner, 2002) that overstate the coherence of the state. This theoretical coherence sits in tension with a wide body of empirical research both within (Bosworth, 2014, 2012; Kaufman, 2015) and outside criminology (Coleman and Stuesse, 2016; Heyman, 1995; Martin, 2017). As Bosworth (2019: 82) has pointed out, the fact that it is difficult to define the borders of penal power and the nation-state does not mean that they are immaterial. Rather, the porousness of these boundaries has become a constitutive feature of the exercise of state power.

The critical turn in criminology

In 1967, Howard Becker published an influential article in *Social Problems*, asking 'Whose side are we on?', calling on scholars to think critically about how prison research reflected and reinforced the goals of prison officials and administrators (Becker, 1967; Liebling, 2001). The re-publication of Rusche and Kirchheimer's classic *Punishment and Social Structure* in 1968 opened the subject of punishment up to a range of Marxist analyses, contending that punishment is a social institution shaped by the broader structure of economic relations (Rusche and Kirchheimer, 1939).

In the United States, the critical turn brought new attention to an established body of literature on prisons and punishment (Bursik, 2012). Gresham M. Sykes' classic *The Society of Captives* detailed the internal organization, administration, and power dynamics of New Jersey State Prison (Sykes, 2007). Describing the 'pains of imprisonment' that characterized the deprivations of daily prison life, Sykes's work shaped subsequent influential accounts of the internal social dynamics of prison (Jacobs, 1977). Notably, scholars such as Jonathan Simon (2000) have observed how the difficulty of gaining access to US prisons and shifting research methodologies have led to a decline in attention to the complexities and internal dynamics of 'captive society' in favor of macro-level studies that focus on purely managerial concerns (Bosworth and Sparks, 2000: 261-262). The growth of the

prisoners' rights movement, and in particular the 1971 murder of activist George Jackson and the subsequent riot at New York's Attica Prison, drew public attention to dire prison conditions and the racial disparities of incarceration (Thompson, 2016). In that same year Angela Davis, who was herself imprisoned on weapons charges in connection with Jackson, published a searing account of her incarceration which would prove to be a touchstone in the movement against the 'prison-industrial complex' (Davis, 1971).

The work of French critical theorist Michel Foucault (1977) was extremely influential to the critical turn in criminology. In *Discipline and Punish* (1977) and later work (Foucault et al., 1991; Senellart et al., 2009), Foucault articulated a new concept of the relation between power and social order. Where the concept of sovereignty depicted power as the property of individuals or institutions, exercised to shape the actions of others in negative terms (Hobbes and Gaskin, 1998: 123-131; Rawls, 1971), Foucault articulated power as a relation, deeply imbricated with knowledge, language and thought (Brown, 2009: 65). Foucault sought to understand the ways that power operated to "'categorize the individual, mark him by his own individuality, attach him to his own identity, impose a law of truth on him which he must recognize and which others must recognize in him … a form of power which makes individuals subjects" (Dreyfus et al., 1982: 212). Where the construction of political order within social contract theory relied on the related concepts of individual sovereignty and state sovereignty (Rawls, 1971), Foucault suggested that sovereignty was itself a historically specific expression of power relations (Foucault, 1977). In contrast to the negative exercise of sovereign power, Foucault articulated power as a productive force, 'the conduct of conduct', whereby techniques of government produced new political subjects by channeling the behavior of the individual body and the body politic (Foucault et al., 1991).

Foucault's work gave rise to the field variously known as the sociology of punishment or punishment and society (Garland, 2001, 1990; Hannah-Moffat, 2016; Simon, 2007; Simon and Sparks, 2013; Wacquant, 2009). Within this field, scholars have employed the concept of 'penality' (Garland, 2013) or 'penal power' (Hannah-Moffat, 2001, Barker, 2017) to articulate how particular forms of state power reflect and enforce social order. Within a Durkheimian tradition, punishment holds a symbolic power to ordain and convey collective meaning (Durkheim, 2013; Garland, 1990). Rather than simply attempting to end crime, penal power strengthens the bonds of social solidarity, and reinforces the legitimacy of the state (Garland, 2013, 1996). Garland (1985) defines penality as

the discourses, institutions, and practices that make up criminal law, criminal justice, and penal sanctioning. Penality is understood broadly, as a 'power-laden exchange' between specific practices of discipline and the wider social space (Kaufman, 2015: 40). For Garland (2013) it assumes a defined boundary between the state, as the agent of penal power, and society, as the subjects of penal order. Although scholars have engaged with forms of penality delivered by non-state actors (Bosworth, 2014, Kaufman, 2019) the implicit assumption throughout this work has been that penality is always a deployment of state power. Influenced by punishment and society, the critical study of penality has become a key focus of border criminology (Bosworth, 2008, Kaufman, 2015, Barker, 2017, 2018).

Globalization and migration

Border criminology has pushed the boundaries of the discipline by drawing on a wide range of scholarship from outside the formal boundaries of criminology. In particular, scholars have drawn on research on globalization (Fraser, 2008; Lash and Urry, 1994) and migration (Sassen, 1988, 1993, Brown, 2010). This literature has provided the critical context for research within border criminology on the criminalization of migration (Simon, 1998, Stumpf, 2006, Bosworth, 2008, 2012) and the analysis of foreign-national imprisonment (Ugelvik, 2012, Kaufman, 2015).

Since the end of the Cold War, the phenomenon of globalization has become a central aspect of study within the social sciences. Although there are many competing definitions, one worthy approach has been to characterize globalization as the 'widening, deepening and speeding up of worldwide interconnectedness in all aspects of contemporary social life' (Held, 1999: 2). Criminology has been particularly influenced by scholarship which has examined how globalization has re-structured social, political and economic life, and increased the mobility of capital and labor. Saskia Sassen's classic (1988) study argued that transnational capital mobility deepened uneven economic development, producing new conditions for the mobility of labor from poor to rich countries. For Sassen (1988: 94-125), globalization is an asymmetric process, exacerbating the already uneven access to political and economic resources among countries, communities, and individuals (1988: 94-125). Scott Lash and John Urry (1994: 4-7) argued influentially that globalization brought an end to 'organized capitalism', giving way to a new pattern of social relations whereby capital, commodities, and labor all circulated across increasing distances with greater velocity. Where previously the

international economic system was contained within the nation-state, this work (Sassen, 1988, 1996, Lash and Urry, 1994) argued that globalization weakened the national as a spatial unit, in favor of new trans-national, sub-national and supra-national forms (Fraser, 2008, Brown, 2010). For Sassen (1996) and Brown (2010) the intensification of patterns of mobility, the growth of supra-national organizations such as the European Union and the World Trade Organization, and the consolidation of international business activity in a small number of urban areas have all challenged the coherence and authority of the nation-state.

This body of research on globalization has influenced border criminology in two ways. First, globalization has been central to how many sociologists of punishment have explained the rise of mass incarceration and the turn towards 'penal populism' (Roberts, 2003; Todd-Kvam, 2019). In this view, global social, political, and economic changes during the second half of the 20th century weakened nation-state institutions, forcing the state to employ harsher penal policies to re-assert authority. Across a number of publications, David Garland (1996, 2001, 2013) has argued that global social and economic forces have restructured labor markets, democratized cultural life, and undermined the institutions of the welfare state, producing the distinct condition of 'late modernity' (Garland, 2001: 82-94). Comparing the hyper-incarceration of Black men in the United States to the treatment of immigrants in European prisons, Loïc Wacquant (1999: 215-216) identified three key forces that had fueled the global regime of 'carceral hyperinflation:' the generalization of precarious employment; the dismantling of public assistance programs for the poor; and the 'crisis of the ghetto' (*Ibid*, 215) as an instrument used to control the poor. Wacquant (2009) and others (Dowling and Inda, 2013; N. S. Rose, 1999) have characterized this process as the rise of neoliberal rule. Along similar lines, Jonathan Simon (1997, 2007) has argued that US political leaders faced a crisis of legitimacy during the 1960s, fueled by a confluence of global social and political forces, that discredited the welfarist ideals of the New Deal-era political order (Simon, 2007: 154-159). In the face of this crisis, Simon argues, the state turned to mass imprisonment not as a means of solving the social problem of crime, but as a means by which the control of crime could be used to solve the central problem of governmental legitimacy (2007).

While studies of penality and the state have used the terms globalization (Simon, 1997), late modern (Garland, 2001), and neoliberal (Wacquant, 2009) in frustratingly ill-defined ways, there is a clear consensus within this body of work that global social, political, and economic changes after 1945

fueled a sense of crisis associated with the rise in crime from 1960 to 1980. In turn, this literature has argued that this sense of crisis eroded the popular 'myth that the sovereign state is capable of providing security, law and order, and crime control within its territorial boundaries' (Garland, 1996: 448). The shift towards harsher penal policies was a 'core political capacity' (Wacquant, 2010: 1) of the state, used to enforce social order and re-assert state authority. As we shall see, the notion that the penal system might serve as a tool for managing social and political crisis has heavily influenced border criminology (Barker, 2017, 2018) and the literature on all-foreign prisons (Kaufman, 2015).

Research on globalization has also reshaped how scholars have understood the boundaries of criminal justice. Citing the work of Lash and Urry (1994), Katja Franko Aas (2007) suggested that scholars need to expand their frame of reference beyond the nation-state in response to transnational social forms and global mobility. Attention to globalization and migration also led scholars to examine how practices traditionally associated with criminal justice seeped into the administration of migration control. Jonathan Simon's (1998) study of immigrant detention in Miami drew explicitly on Sassen's work (Sassen, 1991, 1996). For Simon, the global redistribution of manufacturing, and the ascendancy of Miami as a 'global city' (Simon, 1998: 589) unleashed new kinds of social disorder and anxiety. In turn, Simon argues (1998: 603) the Federal Government turned towards imprisonment as a means of managing this social disorder. Simon's concept of 'governing through crime' (2007) has also influenced US scholarship on the criminalization of migration (Dowling and Inda, 2013) and deportation (Peutz et al., 2010).

Notably, scholars of border criminology have described how the manipulation of boundaries between migration control and criminal justice has been an instrumental feature of state power. Juliet Stumpf's (2006: 62-65) classic account of 'crimmigration' described how the two distinct bodies of criminal and immigration law merged in legislation such as IRCA and the Anti-Drug Abuse Act in 1986, the 1996 Illegal Immigration Reform and immigration Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA). To explain this merger, Stumpf draws on membership theory to suggest that, beyond solving criminal or immigration violations, criminal and immigration law function as key mechanisms to sort and classify membership in the polity (*Ibid*). Jennifer Chacón (2009: 135-136) likewise, has charted how the growing use of criminal prosecution for migration-related offenses has been a central feature of

contemporary US immigration policy, arguing that the manipulation of the boundary between criminal law and civil law has been central to 'managing migration through crime.'

Equally, scholars have described how the state has drawn the logics of citizenship and migration control into the application of criminal law and punishment. Lucia Zedner (2010) has examined how legislation passed in the UK after 2001 mobilized citizenship as a tool of exclusion in the name of security. That non-citizens should need to earn the protection of citizenship by 'playing by the rules' implies that non-citizens are inherently predisposed to criminality (Zedner, 2010: 387). At the same time, Zedner (2013: 51-52) has eloquently described how the non-citizen represents a 'problem' for the application of a criminal law which is itself bounded by the liberal idea of community.

Finally, research on foreign-national imprisonment has examined how state power has involved the manipulation and re-inscription of boundaries, turning prisons into sites for migration control (Kaufman, 2013). Referencing Sassen's work, Ugelvik (2012: 66-67) has argued that globalization and increased migration have been perceived to rupture the social homogeneity of Norwegian society, threatening the coherence of the Norwegian welfare state. In turn, Ugelvik (2012, 2013) suggests that the state has responded by employing the criminal justice system to enforce migration control (Ugelvik, 2012). Emma Kaufman's study (2015) of the introduction of the 'hubs and spokes' policy in the UK after 2009 illustrates how the all-foreign prison collapsed the boundary between the state's power to punish and its power to deport, transforming the prison into a 'border of the British state' (Kaufman, 2015: 5). In Sweden, Vanessa Barker, contends that globalization has increased the flow of people and capital across Europe and thereby called the coherence and authority of the nation-state into question (Barker, 2012: 113). In response to the forces of globalization and 'mass mobility', Barker (2018) argues that states have deployed 'penal nationalism', whereby practices traditionally associated with the penal system are used to shore up national identity and assert state sovereignty. Situating the foreign-national prison within the body of research on penality and border control, this research is analyzed in greater depth in the following section.

Membership and Exclusion

As Ayelet Shachar and others have pointed out, citizenship is an 'essentially contested concept' (Gallie, 1956; Shachar et al., 2017: 2). While the term is used colloquially to refer both to nationality

and to the duties and responsibilities required of a member of society (OED Online, 2023), it is difficult to ascribe citizenship a singular, all-encompassing definition. Schachar et al. (2017). Unsurprisingly, there has been extensive debate within political theory over its normative contours. In his influential work on transnational citizenship, for example, Rainer Bauböck (1994) argues that citizenship must be detached from the territorial nation-state if liberal democracies are to remain true to the cosmopolitan principles of equal rights. In *The Ethics of Immigration*, Joseph Carens similarly argues that citizenship should be almost unconditionally granted to those who possess 'social membership', a term he defines as a dense network of relationships, associations, and identities intimately bound to the political community and its residents (Carens, 2013: 164). In contrast to Baubock and Carens, however, David Miller has defended the broad right of nation-states to exclude immigrants, arguing for a 'weak cosmopolitanism' in which states have only limited obligations to accept those fleeing persecution (Miller, 2016).

These varied accounts of citizenship are united by the conceptual core of membership in a political community. Membership, as Baubock has observed, is both a relational and a categorical concept (Bauböck, 2017). It relates an individual or group to a larger social entity, and when this relation exists, it can be described as inclusion (*Ibid*, 65). By contrast, exclusion implies a horizontal relationship, defining who is in and who is out of the political community (Allen, 2005). Unlike belonging or identity, membership can only be generated through (formal or informal) recognition by others – to paraphrase Groucho Marx, you can only refuse to join a club that is willing to have you as a member. In this sense, membership entails not only a formal relation between an individual and a social category but also a status that individuals or groups enjoy within an entity that has some 'social life' of its own (Baubock, 2017: 66).

Membership has also often been understood as the ability to access certain rights and privileges – the 'right to have rights' (Arendt, 1973). Famously, the English sociologist T.H. Marshall described the emergence of 'social citizenship' as a function of the evolving relationship between the nation-state and citizen-subjects (Marshall, 1949). Tracing the history of the British state, Marshall argued that the bundle of rights associated with political membership involved the universal extension of privileges previously associated with high-status social groups (*Ibid*). In the first instance, this involved the gradual acceptance of the idea of equal civil rights, due process, and universal franchise during the 18th and 19th centuries. During the 20th century, Marshall argued, a new category of 'social

rights' including universal access to education, health care, and housing replaced the earlier notion that the provision of material assistance was a matter of private charity (*Ibid*). While Marshall's concept of social citizenship has rightly been subject to critique from various angles (Fraser and Gordon, 1992), it is nonetheless widely accepted that political membership creates certain social obligations from states to citizens.

A growing body of scholarship within political theory has argued that exclusion is crucial to the definition of political membership. In an obvious sense, exclusion from membership entails a denial of some or all of the formal rights and benefits associated with participation in the political community (Macedo and Williams, 2005: 3). Yet, those who are excluded also retain a relationship to the political community. In her analysis of the work of Hannah Arendt and Ralph Ellison, for instance, the political theorist Danielle Allen argues that in the contemporary United States those who are excluded from membership are not simply placed outside of politics, but rather dominated within it (Allen, 2005: 55-56). Inverting the question of 'what to do about foreigners?' asked by Bauböck, Carens, and Miller, Bonnie Honig (2003) has traced the construction of the foreigner as a political subject to demonstrate how foreignness – and exclusion – solves key problems of democratic membership.

Along similar lines, Engin Isin (2009: 383) has suggested that studies of political membership should shift their analytical focus from 'who is the citizen?' to the question of 'what makes the citizen?' In their study of immigration control in the United Kingdom, Bridget Anderson, Matthew Gibney and Emanuela Paoletti argue that deportation constitutes citizenship in both legal and normative terms (Anderson et al., 2011). In a legal sense, deportation defines the citizen's essential right not to be expelled from the state (*Ibid,* 553). In normative terms, the practice of deportation defines who is considered to be unfit for membership; whose presence is, in the language of UK law 'not conducive to the public good' (*Ibid,* 555). In historical terms, the boundaries of citizenship in the United States have been defined through differential inclusion and exclusion along racial lines. From 1790 until 1952, the Federal government restricted full political membership to 'white persons' (Haney-López, 1996: 1). Ian Haney-López's study of the application of racial pre-requisites for US citizenship demonstrates how whiteness, as a category for membership, had no positive values (*Ibid,* 6). Rather, Haney-López argues that whiteness only gained meaning in negative terms, through the legal exclusion of groups deemed to be non-white (Haney-López, 1996: 7; Harris, 1993). Echoing

Isin, Gurminder Bhambra (2015) has called for a re-evaluation of the ways in which contemporary national citizenship, as a form of political membership, is premised on exclusion.

The claim that exclusion constitutes political membership is central to the concepts of 'crimmigration' (Hernández, 2013; Stumpf, 2006), 'bordered penality' (Franko Aas, 2014; Franko, 2020), and 'penal nationalism' (Barker, 2018). Describing membership's role in crimmigration law, Juliet Stumpf quotes Justice White's observation in *Cabell v. Chavez-Salido* that, 'The exclusion of aliens from basic governmental processes is not a deficiency… but a necessary consequence of the community's process of political self-definition' (Stumpf, 2006: 381). All-foreign prisons, Emma Kaufman (2015: 140-141) argues, are key sites of this political self-definition, reinforcing the national community through exclusion. Building on Seyla Benhabib's (2004) work, Vanessa Barker argues that the universal, egalitarian principles of contemporary democracies like Sweden, the United States, and the United Kingdom are defined by the exclusion of specific groups from membership (Barker, 2013). Echoing Stumpf, Barker argues that penal exclusion 'reflects, sustains, and molds political orders over time and space' (Barker, 2017: 446). Barker connects the sorting function of 'crimmigration' law directly with the exercise of sovereignty (Barker, 2017: 447-448). In this view, the purpose of the 2015 closure of the Öresund bridge at the Swedish-Danish border was not to keep refugees out. Rather, exercising penal power at the border kept Swedish values 'in', re-affirming the boundaries and coherence of the welfarist institutions that define Swedish society (Barker, 2018: 79-80).

The question of how the political community depends on the exclusion, of at least some people, casts new light on the privatization of Criminal Alien Requirement prisons. While other national governments have operated all-foreign prisons, CAR prisons are the only such facilities to have been operated by private contractors (Tuck et al., 2022). If, as discussed at greater length below, penal power binds offenders into the political community because it retains an essentially public authority (Thorburn, 2017; Von Hirsch and Ashworth, 2005), then what does it mean that only non-citizens are subject to outsourced incarceration?

One answer to that question is to conceive of the segregation of non-citizens in outsourced, all-foreign prisons as a form of abandonment. Here it is helpful to turn to the work of critical geographers Ruth Wilson Gilmore (2002) and Elizabeth Povinelli (2011) who have described how

the organized retreat of the state functions as a form of political order, in which states govern through deliberate neglect by framing certain populations as unworthy of political recognition and surplus to economic order. Rather than an example of state failure or withdrawal *per se*, Gilmore and Povinelli argue that abandonment operates as a way of managing and maximizing state capacity (Gilmore, 2007: 113). On a structural level, as detailed further in Chapter Four, Federal officials resorted to the use of privately-managed prisons as a way to expand prison capacity while appearing to reduce the size and scale of the state. For the people incarcerated in Criminal Alien Requirement facilities, experiences of outsourced incarceration came to define how they understood their exclusion from membership. Jonathan Simon's (2021) analysis of the *Brown v. Plata* decision demonstrated how the relationship between state and offender entailed both the infliction of penal harm, but also a recognition of responsibility for basic forms of care. Delegating the penal custody of 'criminal aliens' to privately operated facilities represented a rejection of recognition that came to define how people incarcerated in all-foreign prisons understood their exclusion from political membership.

Race, ethnicity, and nationality

Within Criminal Alien Requirement prisons the complex meanings of race, ethnicity, and nationality are deeply intertwined. While the concept of race has gained the most traction within prison scholarship (Western, 2004, Alexander, 2010), ethnicity would appear at first glance to be the primary form of difference within CAR prisons. According to the demographic data I obtained from the Bureau of Prisons, from 2000 to 2022, 84% of people in CAR facilities recorded their racial identity as white, and 80% recorded their ethnic identity as Hispanic (BOP FOIA, 2022). As noted in the previous chapter, however, this data is slightly misleading because the Federal government measures Hispanic and non-Hispanic ethnicity separately to race. Following the Federal Office of Management and Budget's Directive No. 15, which in 1975 instituted Hispanic as the label for all people whose 'culture of origin' is Spanish, 'regardless of race' (Alcoff, 2005: 403). As Nicholas De Genova and Ana Ramos-Zayas (2003: 2) have observed, the simultaneous incoherence and meaningfulness of the social categories of Latino and Hispanic indicate how both categories operate as racial formations in relation to the hegemonic polarity of color in the United States. The CAR prison data also obscures the process of 'racialization through enforcement' described by Jennifer Chacón and Susan Coutin (2018), eliding more complicated slippages between racial and ethnic

difference. Echoing Chacón and Coutin, I employ the concept of race to describe the construction of difference within CAR prisons.

In the United States, the rise of Critical Race Theory during the 1980s and 1990s revolutionized how legal scholars thought about race, highlighting the historical centrality and complicity of the law in upholding white supremacy, and the intersecting hierarchies of class, gender, and sexual orientation (Crenshaw, 1995: xii). Kimberlé Williams Crenshaw's (Crenshaw, 1988) classic study highlighted how anti-discrimination law eliminated the symbolic manifestations of racial oppression while allowing the material subordination of Black communities to continue. Building on this work, Cheryl Harris' (Harris, 1993) study of 'whiteness as property' drew attention to the central role played by both the legal system and criminal justice in constructing and perpetuating hegemonic ideas of whiteness. Subsequently, Ian Haney Lopez's (1996) study of the legal construction of race traced how shifting conceptions of whiteness shaped the boundaries of citizenship and social inclusion.

Common to all of these accounts is the belief that race is a social construction, both historically and politically unstable and yet at the same time a constant, dominant logic structuring the social hierarchy. If, as Paul Gilroy astutely observed, 'there can be no general theory of 'race'', then the essential meaninglessness of the concept should 'continually refer us to the precise but changing conditions in which racial groups become possible in politics, ideology, and economic life' (Gilroy, 1981: 207-208). To describe this process of constant struggle and negotiation, Michael Omi and Howard Winant (2015: 109) developed the term 'racial formation', which they defined as 'the sociohistorical process by which racial identities are created, lived out, transformed and destroyed.' In focusing on the simultaneous instability and longevity of racial identity and hierarchy, Omi and Winant (1994: 54) argue, that this phrase avoids the pitfalls of thinking of race as an 'essence' or a 'mere illusion.'

Omi and Winant (2015) have developed the concept of the racial project to describe how abstract, socially constructed racial categories gain concrete, empirical meaning through the differentiated access to and distribution of material and social resources. The racial project is 'simultaneously an interpretation, representation, or explanation of racial identities and meanings, and an effort to organize and distribute resources (economic, political, cultural) along particular racial lines' (2015: 125). This process of interpreting and representing difference links the discursive or ideological

meaning of race to the ways in which both social structures and everyday experiences are racially organized. In the context of Criminology, this linking of structure and signification might help to avoid the pitfalls of grand narratives and intricate miniatures by offering a way to make conceptual sense of how social categories of difference are linked to ground-level practices and experiences (Kaufman, 2015: 41; Zedner, 2002: 341-347).

The concept of the racial project has been particularly influential among scholars who have attempted to study the construction of racial identity within custodial facilities (Goodman, 2008; Walker, 2016). In his research on the racial classification of inmates in the California Department of Corrections and Rehabilitation system, Philip Goodman (2008: 737) has shown how decisions to classify incarcerated people are 'negotiated settlements', reached through a layered, hierarchical interaction between prisoners, prison officers, and prison administrators. Through interactions with new transfers, Goodman's work describes how prison officers make subjective decisions that give meaning to the abstract racial categories created by prison administrators (2008: 741). Building on Goodman's work, Michael Walker's auto-ethnographic research in the Southern California county jail system describes how micro-level interactions between incarcerated people sustain the project of racial classification (2016: 1065-1067). Incarcerated people themselves structured nearly every element of social life – exercise, recreation, eating, and sleeping – in accordance with tightly determined rules designed to reward and reinforce racial classifications (Walker, 1067). As Omi and Winant (2015: 125) suggest, both Philip Goodman and Michael Walker's research demonstrate how prison housing assignments give abstract racial categories concrete meaning by relying on subjective decisions made by prison officials - in negotiation with incarcerated people – to interpret perceived biological traits against the prototypical standards for race constructs (Goodman, 2008, Walker, 2016: 1062).

In her research on the local police cooperation with Federal immigration enforcement in Nashville, TN, Amada Armenta (2017) demonstrates how subjective, ground-level decisions made by Patrol Officers to issue citations or make arrests disproportionately affects Latino residents. While local Patrol Officers implemented an 'order-maintenance' policing strategy designed to identify guns, weapons, and 'criminals' through increased traffic stops, in practice the most common offenses encountered were driver's license violations (*Ibid,* 87). In turn, officers frequently approach these traffic stops with the presumption that Latino drivers are foreign-born, unauthorized migrants who

are unlicensed and uninsured (*Ibid*, 89). In short, echoing Kelly Lytle Hernández (2010: 57), Armenta demonstrates how the subject of the Mexican immigrant, produced through top-down institutional police and bottom-up local interactions, has become the 'master category' for policing illegality.

As I argue in chapter five, the concept of racial project illuminates how difference takes shape in outsourced, all-foreign prisons. Within prisons in general and CAR facilities in particular, race is not simply reducible to cultural forms, rather it is primarily ascribed, or imposed on individual subjects by external forces. As noted briefly above, and discussed at greater length in Chapter Six, practices of outsourced incarceration constituted a form of abandonment (Gilmore, 2015; Povinelli, 2011), in which the Bureau of Prisons refused to recognize responsibility for foreign-national offenders. By focusing on how structural forms of difference take shape through micro-level practices, the racial project offers a way to understand how these forms of abandonment came to produce and reinforce the political subject of the 'deportable alien' (Bureau of Prisons, 2019).

Situating Criminal Alien Requirement Prisons

Although there has been very little research conducted on all-foreign prisons in the United States, to the extent that this literature exists (Bosworth and Kaufman, 2011; Kaufman, 2019; Loyd and Mountz, 2018) it suggests that analyzing CAR prisons against the frame of border criminology would help to develop that field of scholarship in promising ways. From a broad historical perspective, Jenna Loyd and Alison Mountz's (2018) recent work has highlighted the importance of racial anxieties to the integration of the Federal Bureau of Prisons and the Immigration and Naturalization Service in the wake of the passage of IRCA. After 1980, the arrival of Haitian and Cuban asylum seekers during what Loyd and Mountz (2018: 61) call the 'long Mariel crisis' created widespread perceptions of social instability (Hamm, 1995). Where previously the acceptance of refugees was a key plank of the US commitment to Cold War humanitarianism (Long, 2013; Ngai, 2014), media coverage of the arrival of Black and Latino people seeking refuge in southern Florida stoked racial anxiety and put significant pressure on the Reagan Administration to prevent future unauthorized flows (Loyd and Mountz 2018, 90-91). At the same time, the escalation of the 'war on drugs' turned public and political focus inwards, towards the expulsion of so-called 'criminal aliens' (Kanstroom, 2007). Drawing on Stuart Hall's (1978) *Policing the Crisis*, Loyd and Mountz (2018: 130) argue that political officials during the 1980s and 1990s discursively linked unauthorized immigration

and crime as forces of social disorder. Framing unauthorized migration as a threat to public safety created the political conditions that allowed for the expanded criminalization of immigration offenses, and the extension of the logic of migration control into the prison.

The racial and national disproportionality of the CAR prison population, and the Federal crimes for which they were serving time suggests that segregating Federal prisoners by citizenship enforces a regime of *de facto* racial segregation (Kaufman, 2019). Moreover, the efforts of Congressman Lamar Smith and Senator D'Amato illustrate how the creation and consolidation of CAR prisons was rhetorically tied to the goals of immigration enforcement. Yet, Kaufman's (2019: 1437) finding that 54% of CAR prisoners were convicted of a drug crime, whereas only 37% committed an immigration offense suggests that contemporary CAR prisons have become detached from the logic of migration control. Although CAR prisons could serve to streamline the removal process by concentrating non-citizens in specific prisons at the end of their sentences, this does not seem to be the case (*Ibid*). Prisoners in these facilities face an average sentence of six years, and nearly a quarter are serving ten years or more (*Ibid,* 1438). For Kaufman, the absence of migration controls suggests that all-foreign prisons are 'less a means to facilitate deportation than an emergent penology in which non-citizens are punished differently than citizens of the United States' (*Ibid*).

The evidence presented by Loyd and Mountz (2018) and Kaufman (2019) suggests that while unauthorized mobility was an important force behind the turn towards 'crimmigration' (Stumpf, 2006) and the creation of CAR prisons, racial difference played a critical role in shaping how mass mobility was perceived as a threat to state legitimacy by US political leaders. The primacy of racial difference in this context suggests that analysis of CAR prisons would do well to follow the call for more explicit research on race within border criminology (Bosworth et al., 2018b; Garner, 2015).

As noted above, criminologists have examined how the state has manipulated the boundaries between criminal justice and migration control to re-assert state authority. In so doing, they have drawn on Simon's (1997, 2007) concept of 'governing through crime' to trace how practices of migration control and criminal justice reflected an attempt to solve a perceived crisis of government. Citing Simon's work, for example, Teresa Miller (2003) has observed how perceptions of crisis during the Mariel Boatlift collided with the broader crisis of state legitimacy during the 1970s and 1980s that had been discursively tied to drugs and crime in urban areas. In this context, Miller argues

(*Ibid,* 626), the perceived need to shore up state legitimacy drove the decision to connect criminal sanctions to migration offenses and target 'criminal aliens' after the passage of IRCA in 1986.

As Nevins (2010) and Loyd and Mountz (2018) suggest, the perceived crisis of Federal authority continued during the 1990s as heavily racialized public anxiety about so-called criminal aliens fueled the militarization of the US-Mexico border. In the period after the 9/11 attacks, political efforts to secure the border against the threat of terror led to a massive increase in funding for immigration enforcement (Loyd and Mountz, 2018), and the expansion of criminal prosecutions for immigration offenses under 'Operation Streamline' (De La Rosa, 2019; Lydgate, 2010: 482). As the rhetoric and actions of Congressman Smith and the Immigration Subcommittee in 1997 illustrate, the decision to create CAR prisons was directly influenced by the sense of anxiety and insecurity surrounding so-called criminal aliens at the turn of the 21st century. Critically, the literature within the field of Border Criminology illustrates that this rush to identify and deport non-citizens in Federal prison was not simply a narrow, actuarial question. Rather, it reflected a broader transformation of the shape and power of the nation-state. In this sense, this body of research suggests that CAR prisons should be taken seriously as a key site for the construction and contestation of the nation-state.

Penality and the nation-state

CAR prisons confound established ideas about penality and the nation-state in multiple ways. CAR prisons emerged out of a period where political leaders sought to solve a perceived problem of state authority by increasing the scope and authority of the penal system (Simon, 2007, Bosworth, 2008, Chacón, 2009). Yet, as the riot in Willacy illustrates, the creation of the system of CAR prisons has muddied the boundaries between crime control and migration control, and delegated state authority to the private sector. Tellingly, when asked to comment on the riot in 2015, BOP spokesperson Ed Roberts stated clearly that the BOP should not be held account for the disturbance, because the force used to quell rioting inmates was not state force (Wessler, 2015). Indeed, Roberts declared dryly 'It's MTC's facility. From our perspective, we just have a contract with them' (*Ibid*).

By segregating prisoners according to citizenship, CAR prisons seem to reinforce the state's authority to determine who is allowed 'in' and 'out' of the nation and the territory. Yet, at the same time, the body of practices, knowledge, and modes of power through which the impression of state

authority is generated reveals the incoherence of penality and the state. Rather than communicating wrongdoing and reinforcing the bonds of community (Duff, 2001; Zedner, 2016), CAR prisons enforce citizenship through exclusion, often along racial lines (Kaufman, 2019). As sites of privatized confinement, governed by profit motive rather than the rehabilitative ideal (Kaufman, 2019), these prisons blur the line between the public state and the private sector, and challenge the idea that punishment is always a practice of state power (Garland, 2013).

The tension between the coherence of the theoretical idea of the state and the seemingly contradictory practices through which this coherence is achieved echoes a broader debate over penality within border criminology. Penality has been central to many accounts of the convergence of criminal justice and migration control (Bosworth, 2008, Barker, 2017, 2018) and the emergence of the foreign-national prison (Kaufman, 2015, Ugelvik 2012). Some scholars have broadened the concept of penality to include practices designed in response to non-criminal violations of immigration law, such as immigration detention or deportation (Bosworth and Guild, 2008; Kaufman and Weiss, 2015; Pickering et al., 2017). This has provoked renewed debate about the boundaries of punishment and the nation-state. On one hand, Lucia Zedner (Ashworth and Zedner, 2014; Zedner, 2013) and others have highlighted how narrow definitions of punishment offer procedural protections unavailable to subjects of administrative law. At the same time, Zedner has observed how states have 're-labeled' coercive measures as non-punitive in ways that amount to a 'cynical subversion of the criminal process and its human rights protections' (Zedner, 2016: 4). In their ethnographic accounts of migration control, Emma Kaufman (Kaufman and Weiss, 2015) and Mary Bosworth (2019) have observed how the porousness of the boundary between administrative and criminal penalty suggests that punishment has been transformed (*Ibid:* 82-83) and 'is not punishment at all' (Kaufman and Weiss, 2015: 36).

By raising this scholarly debate, my intention is not to contribute to the normative definition of punishment. Rather, I raise this debate to suggest that the fact that punishment seems to have multiple, shifting definitions may tell us something important about the nature of the state and state power. CAR prisons bring into focus a broader contradiction concerning how scholars have understood penality and the nation-state in the context of the overlap of criminal justice and migration control. Specifically, there is a tension and disjuncture between theories of penality (Garland, 2001, 2013, Barker, 2017, 2018) which assume the state to be a singular, coherent agent

with defined boundaries, and empirical accounts of migration control and foreign-national imprisonment (Bosworth, 2014; Coutin, 2000; Kaufman, 2015; Martin, 2017) which suggest that state authority is contested and fragmented, and does not seem to have a clear interior or exterior.

Other scholars have observed this tension within the literature on penality. Reviewing David Garland's (2001) *The Culture of Control*, Lucia Zedner (2002: 341) applauded Garland's attempt to produce a grand social and historical narrative, where many institutional accounts of prisons tend towards the 'production of miniatures.' Yet by producing this sweeping narrative, Zedner argued (2002: 350), Garland oversimplified a complex picture. Emma Kaufman (2015, 48-49) has suggested that by seeking to unmask and identify the repressive features of state power in a wide variety of practices, scholarship on penality implies that 'the state is a real and identifiable thing', lurking beneath criminal justice practices. Similarly, Ashley Rubin and Michelle Phelps (2017: 423) have described how treating the 'penal state' as a coherent, unified entity tends to overlook recent scholarship that highlights the 'fragmentation, variation and contestation within penal power, policy, and decision making.' Exploring this tension is critical to understand how CAR prisons serve as sites for the construction and contestation of the nation-state.

Scholars have deployed the concept of penality to highlight how the convergent practice of criminal justice and migration control 'reflects, sustains, and molds political orders over time and space' (Barker, 2017: 446). Barker (2017) suggests that penal power at the border has two distinct functions. First, echoing Foucault, Barker (2017: 445-449) contends that penal power has a structural capacity to produce political authority. To illustrate this, Barker draws on Juliet Stumpf's (2006) concept of 'crimmigration' as the intersection of crime control and immigration law. Barker connects the sorting function of 'crimmigration' law directly with the exercise of sovereignty (Barker, 2017: 447-448). In this view, the purpose of the 2015 closure of the Öresund bridge at the Swedish-Danish border was not to keep refugees out. Rather, exercising penal power at the border kept Swedish values 'in', re-affirming the boundaries and coherence of the welfarist institutions that define Swedish society (Barker, 2018).

Second, Barker suggests that the penality is vested in singular ways with unique symbolic authority. This reflects Durkheim's view that the state was the 'organ of social thought', employing punishment to produce social cohesion (Durkheim, 2013; Durkheim and Giddens, 1986: 54). HLA

Hart's (1994) account of legal authority suggests that state sovereignty is qualitatively different than the naked force mobilized by individuals or institutions. People obey state law, Hart argues (1994: 19), in ways that they would not obey a bank robber with a loaded gun, because state sovereignty embodies communal social rules, and is vested with symbolic authority. This theory of penality is founded on the notion that there is a clear boundary between the state and civil society.

If penality is vested with a distinct kind of symbolic power (Bourdieu, 2014), Barker suggests that this unique authority is related to the communicative capacity of punishment (Duff, 2001, Zedner, 2016). Penality 'creates new meaning, status, and confers legitimacy where there was none' (Barker, 2017: 449). Indeed, Zedner suggests that punishment, at a basic level, communicates censure or wrongdoing by inflicting a burden or pain on the offender (Zedner, 2016: 7). In turn, Von Hirsch and Ashworth (2005) argue that the pain imposed by state punishment provides a 'public valuation' of conduct. 'Public valuation' here can be defined as the extent to which the state may legitimately speak on behalf of the community of citizens (*Ibid*: 30). State censure carries unique communicative weight precisely because it is a judgement passed on behalf of the public. The fact that states have turned the weight of censure to the regulation of mobility, Barker argues, tells us that these states perceive mass mobility and globalization as threats to their structure, sovereignty, and moral authority (Barker, 2017: 443).

Barker's application of the concept of penal power offers a unified framework for thinking about how particular state practices reinforce the coherence of social and political order. The concept of 'penal nationalism' (Barker, 2018), and Barker's account of the productive quality of power are extremely insightful. Indeed, Barker's work responds to Kaufman's observation that critiques of penality tend to either merge the state with the nation or ignore the fissures between the two (Kaufman, 2015: 48). In concert with Bosworth (2008, 2012) and Kaufman's (2015) work, Barker offers a new and useful way to think about the construction of the nation-state in the context of CAR prisons. Yet Barker's work also reflects the tension between theoretical coherence and empirical disorder described above. In what follows, I describe three ways in which this tension manifests: (1) First, through the manipulation of the internal boundaries between migration control and punishment, (2) second, through the blurring of the boundary between the public state and private, civil society, and (3) finally through the fragmented, dislocated, and uncertain nature of state authority.

Analysis of the convergence of migration control and criminal justice in general, and the CAR prison in particular, has illustrated how state power seems to rely on the constant manipulation and re-inscription of boundaries. Juliet Stumpf (2006) and Jennifer Chacón (2009) have illustrated how the state has manipulated the boundaries between criminal and immigration law to expedite deportation and punishment in ways that amount to a 'cynical subversion' (Zedner, 2015: 4) of both bodies of law. Empirical work on this subject has demonstrated that those people subject to administrative confinement or deportation consistently feel themselves to be subject to punishment (Bosworth, 2019; Hernández, 2014; Turnbull and Hasselberg, 2017). These experiences are no accident, rather they are the result of deliberate attempts to turn the immigration system into a 'deterrent' (USBP, 1994: 5) or a 'hostile environment' (Bolt, 2016). Along similar lines, Emma Kaufman's (2019) study of CAR prisons suggests that all-foreign prisons challenge the established rationale of punishment as a means of communicating censure. If punishment has been justified as communicative (Duff, 2001), expressing a 'public valuation' (Von Hirsch and Ashworth, 2005), it is not clear what the precise purpose of censure is if the subject of punishment is to be banished from society. The evidence of racial segregation within CAR prisons presented by Kaufman (2019) and others (Wessler, 2015) suggests that the CAR prison has turned the state's power to exclude on the basis of citizenship into a tool for the racialized control of people of color.

Similarly, the daily practices and experiences of penality within privatized detention centers and CAR prisons confound the idea that 'penal practice is always a deployment of state power' (Garland, 2013: 494). In these privatized sites of confinement, evidence suggests that detainees and prisoners experience the deprivations caused by the economic logic of cost-cutting and profit-making as a form of penal sanction (Bosworth, 2014, ACLU, 2014, Wessler, 2015). As Lauren Martin's analysis of the public-private partnerships employed by the US Department of Homeland Security to operate immigration detention facilities suggests, empirical analysis seems to blur the distinctions between the aims of public policy and the goals of private economies (Martin, 2017). On one hand, individuals and groups on either side of the public-private divide may operate as 'economic actors' (*Ibid,* 345*)*. At the same time, the process of contracting and commodification does political work (*Ibid*), structuring incarceration and confinement as a question of 'comparative efficiency' (Dolovich, 2009, 2005) rather than a moral or political question. In the case of the inmates interviewed before and after the riot at Willacy (ACLU, 2014, Wessler, 2015), it is remarkable that the aspects of

confinement that they experienced as punitive, and which they felt the need to riot to fix, were precisely those aspects, such as overcrowding, poor medical care, and the lack of programming, that were the product of the 'private' drive to cut costs. This suggests, following Martin (2017) that at the same time as privatization relies on ambiguity as a technique of governance, it also works to shore up the boundaries between public and private, and uses these boundaries to indicate who may make claims as a political subject, and on what terms.

The notion that penal practice is always a deployment of state power does not fit with the historical record. Although punishment is frequently framed as an essential function of the state (Harel, 2011), within the broader history of punishment in the United States, total state control of the penal system has been the exception rather than the norm (Dolovich, 2005: 455). Penal servitude, and the private use of prison labor, became the established norm across the US in the early 19th century (McLennan, 2008). Rebecca McLennan's historical work on imprisonment, labor, and the penal state highlights how non-state actors shaped penal norms and practices from the earliest days of the US government (*Ibid*). Contract servitude, in which the labor of prisoners was sold to private business, was the dominant form of punishment throughout the United States until the early 20th century (*Ibid*, 4-5).

The boundary between the public state and civil society is a shifting, historically specific construction. Historical research on slavery and punishment illustrates how the state manipulated the boundary between public and private forms of penality during the 19th century to enforce racial control (Baptist, 2016; Beckert and Rockman, 2016). Besides the myriad forms of violence required to extract labor from slaves, maintaining slavery required placing the power of the penal system in the hands of private white individuals, what Michelle Alexander (2010: 60) has called the 'racial bribe'. This was institutionalized in legal statutes called slave codes, which gave slavery a developed legal architecture and a veneer of institutional legitimacy (Hadden, 2013; Harris, 1993: 1718). The Alabama Code of 1852 stipulated that all able-bodied white male slaveowners and other 'free white persons' between the ages of eighteen and forty-five were required to perform 'patrol duty' (W. L. Rose, 1999: 178). Patrols were empowered to enter 'all negro cabins or quarters… and apprehend all slaves who may there be found, not belonging to the plantation or household, without a pass from their owner or overseer; or strolling from place to place, without authority' (*Ibid,* 180). As Cheryl

Harris (1993) has brilliantly demonstrated, the legal construct of slavery relied specifically on privatized violence to police the boundary between white citizens and slaves.

In the period after the end of the Civil War, the involvement of private interests in racialized systems of imprisonment was cemented through the convict lease system. In a 1901 article, W.E.B. Du Bois defined the convict lease system as 'the slavery in private hands of persons convicted of crimes and misdemeanors in the courts' (Du Bois, 1901). For Du Bois, the institution of the black codes and the emergence of the convict lease system represented a critical point of transition in the formal legal relationship between race and punishment (*Ibid*). Angela Davis, drawing on Du Bois' writing, argues that the 'convict lease system served as a decisive lever for the transition from a bifurcated system of criminal justice - privatized punishment for blacks and public punishment for whites- to a system in which the state concentrated on the punishment of blacks and functioned as a mediator for punishment through privatized labor' (Davis, 1998: 88-90). Davis' observation feels eerily familiar in the context of the CAR prison, where the privatization of punishment clearly overlaps with citizenship and racial difference. Moreover, this historical evidence suggests that scholarship on penality has retained a 'narrow temporal frame' (Bosworth et al., 2018a), and could benefit from a deeper investigation of the historical links between race, citizenship, and penality.

The tension between coherent theory and empirical disorder has also manifested in conflicting accounts of the shape of the state. Drawing on the work of Theda Skocpol (Skocpol et al., 1985) both Garland (Garland, 2017, 2013) and Barker (2017, 2018) view the state as a coherent, unified agent, with clear internal divisions, a defined external boundary, and the ability to exercise authority autonomously over society (Garland, 2013: 494). Following Skocpol, Garland (2013: 495-496) and Barker (2017) locate the state narrowly in the figure of those elites who direct and control the use of the state apparatus. This narrow definition is the foundation of a distinction Garland (2013: 496, 2017) makes between the apparatus through which the state exerts control, which Garland calls the penal field, and the elites who hold final decision-making authority.

Constricting the definition of the state to a narrowly circumscribed group of elites produces two related problems. On one hand, Garland's definition tends to 'see like a state' (Scott, 1998). Contesting Garland's view, Kaufman (2015: 48-49) and Rubin and Phelps (2017) have illustrated how empirical accounts of imprisonment and migration control suggest that state authority is

fragmented, dislocated, and subject to multiple forms of contest and conflict. Taking the example of the State Prison system in Michigan after 1975, Rubin and Phelps (2017: 429-433) illustrate how the state was not a coherent, singular entity, but a disparate group of actors, split between the court system, the Department of Corrections, and State political leaders. From an ethnographic perspective, Bosworth's (2014) research in the UK has illustrated how immigration removal centres (IRCs) are sites of constant paradox and contestation. From the perspective of the state, detainees are simply foreigners with no right to remain in the country (*Ibid,* 87). Yet, as Bosworth illustrates, the identities assigned by the state are slippery and hard to prove (*Ibid*, 162). In practice, both detainees and IRC staff struggle to articulate their identities and negotiate the uncertainties of the detention system (*Ibid*, 165). In this sense, Bosworth (2014: 162) argues that the uncertainty and fragmentation of state authority 'is both a means of governance and a potential site of resistance.'

The theoretical coherence attributed to the concept of penality sits in tension with the material incoherence of practical, mundane features of the nation-state. The co-mingling of criminal and civil law, the privatization of confinement and other practices, and the unstable link between the nation and the state all suggest how the external boundary of the state seems to be malleable and incoherent. Yet, as Bosworth (2019: 92) points out, the fact that it is difficult to define the borders of penal power and the nation-state does not mean that these things are immaterial. Rather, the porousness of these boundaries, Bosworth argues (*Ibid:* 82), has become a constitutive feature of the exercise of state power. There is need for a mode of thinking about the state and state power that can account for these tensions, and account for how the boundary-manipulating aspects of state power operate.

Conclusion

On August 18th, 2016 Deputy Attorney General Sally Yates issued a memorandum to the Acting Director of the Federal Bureau of Prisons, stating plainly that 'I am eager to enlist your help in beginning the process of reducing- and ultimately ending- our use of privately operated prisons' (Yates, 2016). Nearly seventeen years after the solicitation for the first CAR facility, Yates' memo signaled an end to the system of all-foreign prisons in the United States. The memo was a shock, perhaps most of all to CoreCivic and GeoGroup, the two largest US private prison corporations, whose stocks fell by 35 and 39 percent respectively that day (Eisen, 2018).

Yet, to paraphrase L.P. Hartley's famous line, the future is a foreign country. In reality, the Federal Government never ended or substantially reduced the use of CAR prisons. Two months after Yates' memo was issued, Donald Trump was elected as 45th President of the United States of America. On February 21st, 2017, barely a month after Trump's inauguration, newly appointed Attorney General Jeff Sessions rescinded Yates' order to end the Federal use of private prison contractors (Sessions, 2017). In his memo, Sessions suggested that the Bureau of Prisons needed private contractors to 'meet the future needs of the Federal correctional system' (*Ibid*). Just over a year later, in May 2018, Sessions announced a 'Zero Tolerance' policy for illegal entry along the US-Mexico border (Sessions, 2018). In practice, this policy resulted in the criminal prosecution of thousands of mainly Central American migrants and asylum seekers, many of whom were separated from their children and sent to Federal prison (Lind, 2018). As Federal criminal prosecutions rose sharply, from 59,797 in 2017 to 99,479 in 2018, more and more non-citizens entered CAR prisons (Gramlich, 2019). Nearly four years after Yates' memo, all-private, all-foreign prisons remain at the heart of the Federal Prison system.

On one hand, given the racial disparities within CAR facilities (Bureau of Prisons, 2022) analysis of these prisons fits well with the call to focus more explicitly on race, and the links between race and citizenship (Garner, 2015, Bosworth, Parmar, Vasquez, 2018). Indeed, the available evidence (Loyd and Mountz, 2018, Kaufman, 2019) suggests that race has played a critical role in shaping how political leaders perceived 'criminal aliens.' Analysis of all-foreign prisons in the United States can also help to develop the ways that border criminologists have understood the nation-state, penality, and migration control. CAR prisons bring into focus a disjuncture within the literature on penality, exclusion, and membership in border criminology. On one hand, CAR prisons seem to reinforce the coherence and authority of the nation-state through 'penal nationalism' (Barker, 2018), employing practices of punishment and migration control to define the boundaries of the nation and the territory in exclusive terms (Kaufman, 2019). Indeed, research on penality 'at the border' (Barker, 2017, Bosworth, 2008, Bosworth, 2012, Kaufman, 2015) provides a useful framework for thinking about the links between the state and nation. Yet, the practices of punishment and migration control through which the appearance of coherence is achieved seem to contradict the definition of the state. Indeed, the porousness of the borders between criminal justice and migration control has become a constitutive feature of the exercise of state power (Bosworth, 2019: 82).

To understand, then, how CAR prisons serve as a 'site for the construction and contestation of the late-modern nation state' (Kaufman and Bosworth, 2013: 171), requires understanding how the apparent coherence of the nation-state is achieved through the constant manipulation and re-inscription of social boundaries. Yet, as the research on prisons and other custodial sites discussed above suggests, doing research about and within carceral sites is a difficult process which involves negotiating conceptual, ethical, and practical challenges. This question of how best to research outsourced, all-foreign prisons is considered in the next chapter.

Chapter Three

Researching all-foreign prisons

Unlike forms of inquiry involving pure theory or logic, empirical research is founded on observation and experience of the external world. This process of observation is not neutral. As the philosopher Lorraine Code asserts knowledge is not 'just knowledge' (1995: 13). Rather, it bears the textures and residues of the people, institutions, and social relations through which it is produced, known, and re-produced. Since the early days of social science, scholars have wrestled with the way in which empirical research is mediated through individual experiences, subjective beliefs, and collective social processes (Boas, 1920; Du Bois, 2014; Durkheim, 1982; Mead, 2001)

Yet, within the fields of migration studies and border criminology, established research methods seem to have less purchase on our social world (Günel et al., 2020). Our 'stock methods' (Casas-Cortes et al., 2015: 70) no longer seem sufficient to describe and analyze the growing complexity of global mobility and the intensification of border regimes. Rather than confining research on border control to the territorial locale of borderlands, constructivist approaches to the 'what' and 'where' of bordering practices have produced new ways of studying the border as a field-site (Andersson, 2017; Coutin, 2005). Within prison studies and the sociology of punishment, the growing salience of citizenship and migration control to the 'prison community' (Clemmer, 1958), have led many scholars to call for new methodological tools to study incarceration as a bordered social phenomenon (Franko Aas, 2014; Franko, 2020).

Like all custodial environments, Criminal Alien Requirement (CAR) prisons are difficult places to study (Reiter, 2014). Even compared to other US prisons, however, CAR facilities are unusually opaque institutions, about which comparatively little basic information is known. While the Bureau of Prisons regularly reports demographic data on race, ethnicity, and offense type for offenders in BOP-run prisons, these statistics are not publicly available for contracted facilities (Carson, 2021). When the legal scholar Emma Kaufman proposed a qualitative survey of CAR facilities to the BOP's Assistant Director for Information, Policy, and Public Affairs in 2018, her request was denied, and she was told that research on noncitizens is not generalizable to the whole prison population and therefore fails to "contribute to the advancement of knowledge about corrections" (Kaufman, 2019: 1442). Access was made even more difficult by the spread of the COVID-19

pandemic in the spring of 2020, which led to restrictions on social and legal visits and months-long lockdowns within facilities (Anderson and Jignan, 2022). Yet, the fact that all-foreign facilities are shrouded from public scrutiny by design does not mean that scholars should shy away from studying them. Indeed, the strategic opacity of CAR prisons only increases the critical imperative to develop a better analytical understanding of how these places and processes work.

Criminal Alien Requirement prisons, like all social institutions, cannot be fully understood from a single point of reference. Rather, I argue that we must study these institutions from multiple sites, scales, and points of view (Marcus, 1995; Schiller and Caglar, 2011; Xiang, 2013). In this chapter I develop a multifaceted approach to studying carceral institutions that draws on the 'institutional ethnography' developed by the feminist sociologist Dorothy E. Smith (Billo and Mountz, 2016; Bosworth, 2014: 52-54; Mountz, 2010; Smith, 2005, 2001, 1990). While institutional ethnography retains a focus on careful observation, it can be differentiated from other ethnographic methods by a focus on the description and analysis of what Smith calls 'ruling relations' (2005: 10). Broadly, 'ruling relations' can be defined as the complex of social relations that connects people across space and time and organizes their everyday lives: political organizations and government bureaucracies, corporations, cultural discourses, and the mass media (*Ibid).* Institutional ethnography is 'institutional' in the sense that it works to link individual and local experiences with the macro-level processes and practices that coordinate and structure social relations.

Institutional ethnography links individual experience to macro-level structure by combining detailed observation with the critical analysis of texts. Sociologists have long described the key role that texts play in coordinating social life across time and space (Giddens, 1987: 203; Weber, 2013). Texts define institutions and organizations, providing a replicable and portable set of rules and symbolic meanings through which social structures can shape local, individual actions (Smith, 2001: 172-173). Studying texts, Smith argues, can extend the ethnographic method into the objectified, translocal relations of ruling (*Ibid,* 191). In this sense, institutional ethnography is committed to 'studying up' (Nader, 1972) by describing how the 'organizing power of texts' structures social relations and shapes individual experiences (Billo and Mountz, 2016: 204; Devault, 2006: 295).

To be sure, institutional ethnography is not without limitations. In one sense, the focus on texts emphasized by this approach might leave out or obscure other relevant social forms that were not written down. In a more specific sense, the analysis of ruling relations (Smith, 2001: 191) relies on

the accessibility of key texts, which is a particular concern in the context of CAR prisons, because of the difficulty of conducting research via public records request. While documents like prison contracts are critically important to replicating this system of imprisonment over time and space, they can be difficult to obtain. To the extent that institutional ethnography focuses on 'studying up', it places relatively little emphasis on the agency of individual political elites. Unlike the highly structured method of elite interviews (Aberbach and Rockman, 2003), which aim to collect information about how individual elites made specific decisions, the interviews and textual analysis I conducted aimed to describe individual experiences within social processes or structures. Finally, as discussed at length below, I have deployed institutional ethnography in a patchwork fashion, piecing together multiple methods of observation and analysis rather than relying on a single method. Unlike conventional ethnographic methods of immersive participant observation, this patchwork method does not claim to offer the thick description of the interior of a social community or institution.

The method of institutional ethnography is particularly well-suited to studying outsourced, all-foreign prisons. While grounded in established ethnographic practices of observation and interview, I combine careful description of local practices and experiences of incarceration with critical readings of the texts like prison contracts, federal regulations, and political rhetoric that help us to understand 'how institutions think' (Douglas, 2011). Prisons research has often suffered from a problem of scale: where studies of incarceration and border control have struggled to link careful observation of individual institutions to macro-level accounts of social relations (Kaufman, 2015: 50-51; Zedner, 2002: 347), institutional ethnography offers a method of understanding individual subjects in the context of institutional practices and social structure. Following Billo and Mountz (2016: 202), I suggest that studying institutions in this way can shed light on how institutional power within carceral facilities is dispersed, embedded, and entangled with specific practices of confinement, mobilization, and identification.

This chapter unfolds in two parts. In the section that follows, I discuss the complicated nature of going to the 'field' (Stellmach, 2022), and consider the politics and ethics of researching all-foreign prisons. I explicate two meanings of the terms of the term politics: as a set of personal beliefs and ideas that shape the positions held by researchers, and as a set of activities associated with the process of making decisions and distributing power within a group. Following recent ethnographic work that has explored how encounters with criminal justice institutions shape understandings of

civic participation and membership, I argue for a more expansive conception of the meaning of the political within outsourced, all-foreign prisons (Aitken, 2019; Bosworth, 2021, 2019; Lerman and Weaver, 2014; Miller, 2014; Miller and Stuart, 2017).

In the second section, I discuss the four qualitative approaches I employed to collect material for this project, each designed to produce distinct forms of knowledge from different perspectives. First, I gathered and analyzed data from a wide range of archival sources, including the archives of the US Congress and Senate, the Reagan and Clinton Administration presidential libraries, local and national print media outlets, and non-governmental organizations. Second, I filed seven public records requests, and was granted access to documents from four separate public records requests made by other researchers. These records relate to the procurement, administration, and regulation of all-foreign prisons, including solicitation and contract documents, audits and regulatory records, internal reports produced by private contractors, professional correspondence, and quantitative demographic data. Third, facilitated by grassroots advocacy groups, I corresponded with 32 foreign national men in five criminal alien requirement prisons awaiting deportation. This correspondence was extended, contingent, and periodic in ways that both closed off and opened up ways of understanding the experience of custody in outsourced, all-foreign prisons. Finally, I gathered and analyzed legal documents from 112 lawsuits filed by prisoners challenging the conditions and circumstances of confinement in Criminal Alien Requirement facilities. Rather than judging these documents as narrow legal records, I treat them as testimonies of contestation, reading them alongside interviews with prisoners engaged in hunger strikes, work stoppages, or other forms of collective action to provide insight into how men in CAR facilities understand, negotiate, and contest confinement.

Developing the project and going to the field

Originally, I set out to be a lawyer rather than an academic. In 2016, I was working as a legal assistant at a legal charity when my boss offered me the opportunity to volunteer with the CARA pro-bono project, a group that provided free legal assistance to the women and children incarcerated at the South Texas Family Residential Center in Dilley, Texas and the Karnes Residential Center in nearby Karnes, Texas. Although I had never before spent an extended period of time in a custodial

institution, practicing law in those conditions resembled what I would later come to understand as the ethnographic method (Boas, 1920; Katz, 2019)

At each detention center, lawyers and legal assistants passed from the outside to the inside of a tightly defined community with a different set of rules and social cues to life outside the center's walls. This process of 'going inside' (Crewe, 2018) was always fraught, and the CARA project's staff endeavored to maintain the complicated balance between cultivating the trust of detained clients, while avoiding open hostility with the jailers and court officials who could revoke access at any time. Once inside, the lawyers' goal was to help their clients translate their deeply subjective and personal experiences of trauma, persecution, and displacement into a set of objective facts cognizable as an asylum claim. There are of course fundamental differences between legal representation and ethnography: in exchange for testimony, an attorney helps a client prepare a brief or appear in court. By contrast, researchers produce knowledge, often in the form of a written piece of research that participants are unlikely to read. Yet, much like producing academic knowledge from ethnographic interviews, the practice of law in these conditions required an ability to ask the right questions, and to listen carefully to the words that interviewees said and did not say (Rapley, 2001).

In 2017 I left my job in New York and began the MSc in Migration Studies at the University of Oxford. While studying, I kept in touch with two attorneys from the CARA project who moved to Lumpkin, a small town in southern Georgia to join a legal project called the Southeast Immigrant Freedom Initiative (SIFI). The goal of the SIFI project was to provide legal representation for men incarcerated at Stewart Detention Center, a privately-operated immigration detention facility. Within a harsh national detention system, Stewart was notorious both for the poor conditions – eight men have died in custody there since 2017 – and the fact that roughly 95% of detained respondents in the facility's immigration court are issued with removal orders (Olivares, 2021).[6] In January 2018, I traveled to Lumpkin for two weeks of ethnographic fieldwork as part of the MSc, studying the social practices and processes that constituted the detention system, and how this system of detention shaped the capacity of men in immigration custody to contest their cases in immigration court (Tuck, 2018).

[6] Data on removal orders at Stewart Detention Center comes from the TRAC Project at Syracuse University. See TRAC (2022). *Outcomes of Deportation Proceedings in Immigration Court*. Online: https://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php.

Throughout this legal work, and my subsequent academic career, I have been attentive to and guided by what anthropologist Erin Routon (Routon, 2020: 146) calls the 'tensions of care' that legal practitioners navigate within immigration detention. In her doctoral research on the practice of law within the Dilley and Karnes family detention centers, Routon describes how the critical legal services provided by attorneys are always entangled with the legal and administrative structures of the family detention system, which limit seemingly basic acts of human solidarity and care. Tensions evolve, then, between the legal effort to resist the punitive immigration detention regime while simultaneously being implicated within it (*Ibid*, 150). While the ethical and practical choices facing attorneys and researchers are significantly different to those facing academics, I find Routon's work particularly compelling because it points to the difficult and open-ended nature of questions of method and ethics. In both cases, there are no easy or definite answers. Rather, Routon's work eloquently suggests the importance of taking the uneasy tensions of research as a kind of guiding line, towards an ever-more reflexive and critical approach.

My DPhil project evolved from my MSc work in both content and method, while also incorporating multiple disciplinary and empirical departures. After conducting fieldwork at Stewart, I became particularly interested in how practices of migration control were integrated within the criminal justice system (Franko Aas, 2014; Chacón, 2009; Stumpf, 2006). I was also struck by the critical role played by private firms in administering the incarceration of non-citizens in the United States (Martin, 2021). Settling on the specific topic of all-foreign prisons was both deliberate and accidental: during observation of the immigration court proceedings at Stewart Detention Center, I made a series of field notes about men who had been transferred to the facility from two nearby outsourced Federal prisons, called McRae and D. Ray James. Months later, when discussing potential DPhil research topics, I learned about a strange kind of all-foreign facility called the Criminal Alien Requirement prison. After returning to my field notes, I realized that both McRae and D. Ray James were CAR prisons. Out of interest, I did a cursory Google search, and was surprised to find almost no publicly information about these prisons, and only passing reference from the Bureau of Prisons to the fact that they existed (Department of Justice, 2016). From then on, so to speak, I was hooked.

The politics of researching all-foreign prisons

As Alison Liebling (Liebling, 2001: 481) eloquently reminds us, all social research is a 'political act' because it involves 'wielding power, wading into other people's power and perhaps feelings powerless.' This observation implies two interrelated meanings of the term politics: as a set of personal beliefs and ideas held by an individual, and as a set of activities associated with the process of making decisions and distributing power within a group. Following these two meanings, it is worth reflecting on two similarly interrelated aspects of the politics of research on all foreign prisons. If politics are individual beliefs about the current and proper shape of our social world, then it is worth understanding how these beliefs shape our position as social researchers. Similarly, in an epistemological sense, our views of the limits of the political shape how we research incarceration and deportation. In other words, how does our concept of the political shape the way that we know things about incarceration and deportation?

Politics as personal: taking a research position

In his seminal essay 'Whose Side Are We On?' (1967) the Sociologist Howard Becker describes the 'hierarchy of credibility', a phenomenon whereby the ability to define the truth and tell the 'whole story' within any social system is disproportionately wielded by those at top (1973: 242-3). Building on this claim, Becker and Irving Louis Horowitz argued that much good sociological work is necessarily radical to the extent that it violates the hierarchy of credibility claimed by the people and institutions in positions of power and authority (Becker, 1967; Becker and Horowitz, 1972; Hammersley, 2001: 100-101). While social research need not advocate a political goal, Becker (1967, 1973) and others (Hammersley, 2001) argue persuasively that critical sociology is necessarily politically subversive to the extent that it works to describe and analyze power's conditions of possibility. This work has been carried forward by disciplinary critiques that have demonstrated how positivist criminology and the state 'share notions of ontology and social order' (Agozino, 2003; Brown and Schept, 2017; Loader and Sparks, 2011; Taylor, 2013)

Engaging with Becker's work, Alison Liebling (2001: 476) has questioned the implications of this orientation for empirical research in prisons. Following Gouldner (1975), Liebling argues that Becker's view that prison officials necessarily employ their position within the hierarchy of credibility to manipulate the 'truth' of incarceration risks neglecting the experiences and worldviews

of prison staff and administrators. Prison staff require researchers' sympathy, Liebling (2001: 476) argues, because they are precisely the ones tasked with deploying the material power of the prison. Instead, researchers should seek to develop a 'third perspective' that operates from a distance and attempts to synthesize multiple competing perspectives (Liebling, 482). Yet, the possibility of 'neutral truths' (Liebling, 2001: 480) is a subjective belief, and one that is enabled by specific resources of power. In the context of her research on the quality of life in prison, Liebling's 'neutral' position reflected a shrewd decision to preserve and increase her credibility within the institutional hierarchy of the Prison Service.

While I am sympathetic to Liebling's view, my own methods reflect a different approach to the politics of positionality. I am deeply skeptical of the capacity for carceral sites in general, and Criminal Alien Requirement facilities in particular, to function as 'legitimate' institutions (Liebling, 2004). Liebling's 'third perspective' aims to produce a detailed ethnographic picture of the 'prison world' to make prisons better places (Liebling, 2001: 478, Liebling, 2004, 2011). As Emma Kaufman (2015: 33) observes, however, this concern for the internal 'moral performance' of prisons is not neutral. Rather, it tacitly acknowledges their legitimacy, and implies that the goal of research is to 'work within the state's framework to improve its penal institutions' (*Ibid*).

To attempt to study Criminal Alien Requirement prisons from the 'third perspective' would limit rather than expand the critical purchase of this research project. Globally, the US penal system is an outlier in terms of size, scale, and intensity (Fair and Walmsley, 2021; Lacey, 2008). Within the context of the US penal system, the available evidence demonstrates that CAR facilities have a concerning record of poor medical care, chronic understaffing, alarming rates of violence and security issues, and poor monitoring and oversight (Department of Justice, 2016; Department of Justice, Office of the Inspector General, 2016, 2015; District of Columbia Corrections Information Council, 2020). In addition to evidence produced by Federal auditors, independent reviews conducted by non-governmental organizations have raised serious concerns about alarming rates of overcrowding, racial and ethnic disparities, and poor medical care (ACLU, 2014; Wessler, 2016, 2015). Federal officials themselves have repeatedly acknowledged that the all-foreign prison has failed in practical terms: although briefly re-instated by the Trump Administration in 2017, both the Obama and Biden Administrations implemented policies ordering the Bureau of Prisons not to

procure future contract facilities, or renew existing contracts for CAR facilities (Biden, 2021; Yates, 2016).

To borrow a phrase from the radical British historian E.P. Thompson, my goal throughout this project has been to read and think 'against the grain' (2013: 109). In this sense, my aim is to treat empirical data and primary sources in ways that unsettle the hierarchy of credibility and explicate the mechanisms and discourses of power bound up within the practice of all-foreign imprisonment. The consequences of this approach for specific research methods are discussed in more detail in the following sections. Broadly, though, the choice to read 'against the grain' is a choice I make to try and open space for a form of criminology that can sustain an alternative politics, one that attempts to unsettle the conjugation of criminal justice and migration control and imagine different futures (Bosworth et al., 2018; Brown and Schept, 2017).

Carceral epistemology and the definition of the political

While many criminologists argue that mass incarceration is the central institution of government in contemporary American society (Alexander, 2010; Garland, 2001; Lerman and Weaver, 2014; Schoenfeld, 2018; Simon, 2007; Wacquant, 2009; Western, 2007) those who study the way incarceration is practiced have been strikingly hesitant to study prisons as political institutions (Clemmer, 1958; Goffman, 1974; Jacobs, 1977; Sykes, 2007). As Lucia Zedner (2002: 341) and Emma Kaufman (2015) have pointed out, this approach has produced narrow, institutional accounts of incarceration, without considering the broader social and historical context. By contrast, a rich vein of research in criminology has examined the ways in which incarcerated people exercise agency and negotiate and contest practices of incarceration (Bosworth, 1999, Bosworth and Carrabine, 2001, Carrabine, 2004, McLennan, 2008, Reiter, 2014, Rubin, 2015, 2017, Gundersson, 2021). Yet, interest in prisoner agency and resistance has also provoked significant debate about the extent to which the experiences and actions of incarcerated people should be understood analytically as political.

In one influential analysis of prisoner lawsuits, Milovanovic and Thomas (1989: 52) suggest that these suits are not a form of political action because they demonstrate an interest in 'resolving the mundane problems of the prison world' rather than producing a coherent class consciousness. The

authors argue that prisoners are 'primitive rebels' (Hobsbawm, 2017) who engage in legal suits against their jailers as a kind of pre-political social action in an effort to confront and resist incarceration. More recently, the scholar Ashley Rubin (2015, 2017) has argued that agency-centered accounts (Carrabine, 2004, Bosworth and Carrabine, 2001) dilute the concept of resistance and overstate prisoners' political consciousness. Rubin (2015: 26-27) argues that these 'secondary adjustments' (Goffman, 1974: 54) should be thought of as a form of 'friction' rather than political action because they work to 'resolve the mundane problems of the prison world' (Milovanovic and Thomas, 1989: 52).

Cordoning off the mundane problems of the prison world limits our ability to understand incarceration, punishment, and deportation. Prisons and detention centers are political institutions (Aitken, 2019). If we are to grasp how outsourced, all-foreign prisons act as critical sites for the definition of membership, then we need a new carceral epistemology that takes a broader view of the political. Taking experiences of custody seriously as political encounters reflects a more nuanced mode of studying the state that centers the testimony of incarcerated people themselves (Kaufman, 2015, Bosworth, 2021). As recent work in political anthropology reminds us, (Sharma and Gupta, 2006; Trouillot, 2001) taking mundane experiences of government seriously can help us to develop a more nuanced picture of the state.

On a basic level, I take an expansive view of the political within US all-foreign prisons because this reflects the direct testimony of men in CAR prisons. These men repeatedly described quotidian aspects of their incarceration as political, mirroring recent anthropological work describing how the social inequities of mass incarceration are embodied in physical and mental terms (Crane and Pascoe, 2021; Fassin, 2003). Glenn, a black Jamaican man who was incarcerated at CI North Lake described the trouble he experienced moving to a different housing pod, where he could be with other Jamaican prisoners (GS Interview, June 2021). While formally Glenn could simply request a transfer, changes in housing arrangements required informal agreements between each of the prisoner groups, and the Mexican prisoners' group refused to allow the transfer. Glenn explained to me that 'that was just the politics', implying that because Mexican prisoners made up the majority of people incarcerated at the facility, they deliberately limited the ability of other prisoner groups to associate and organize themselves (*Ibid).* Glenn's observation echoes what the sociologist Michael Walker (2016) has described as the process of racial formation (Omi and Winant, 2015) within US

penal institutions. The intense racial segregation described at North Lake reflects a microlevel project of race-making, whereby material resources are distributed according to racial categories, giving these socially constructed categories concrete meanings (Walker, 2016: 1052).

Taking the 'politics of pain' (Bosworth, 2021) seriously expands our concept of the political and helps to develop a more nuanced approach to the nature of the state in the context of incarceration. Rubin's limited concept of the political in prison reflects a top-down agent-centric definition that locates the state in specific people and institutions (Garland, 2013; Rubin and Phelps, 2017: 428). In contrast, institutional ethnography takes lived experience seriously as a criterion of political meaning (Bhambra, 2015; Hill Collins, 2014: 257-260). If the prison is a critical 'site for the construction and contestation of the late-modern nation state' (Kaufman and Bosworth, 2013: 171), this combination of observation, elicitation, and textual analysis can help us to understand how lived experiences of custody define collective understandings of membership and civic identity.

Rather than the 'mundane problems of the prison world' (Milovanovic and Thomas, 1989: 52), I found that encounters between individual subjects and institutional authority within CAR facilities shape external social relations and meanings. Recent work in sociology has described how interactions with criminal justice institutions form a kind of 'civic education' (Weaver and Lerman, 2010, Lerman and Weaver, 2014, Bosworth, 2014) shaping how people understand, negotiate, and enact their political membership. In his research on men released from criminal custody, Reuben Jonathan Miller (Miller, 2014, Miller and Stuart, 2017, Miller, 2021) describes how the possession of a criminal record subjects individuals to specific forms of government supervision, and social and legal exclusion, that mark them out as 'carceral citizens' (Miller and Stuart, 2014: 533-534). Miller and Stuart emphasize that the condition of carceral citizenship is not simply produced through formal legal exclusion or supervision, but also through day-to-day interactions with people who respond to the fact of their exclusion (2014: 541). In this sense, seemingly mundane, personal interactions with family, friends, and other community members signify and reproduce specific conditions of political membership (*Ibid,* 541-542). Similarly, Mary Bosworth's (2021) recent work on pain in immigration detention shifts the sociological frame of analysis outwards, linking personal experiences of custody to broader constructions of membership and belonging. Bosworth (2021: 7) argues that sites of immigration custody are focal points for what Chantal Mouffe (1998) calls the 'moment of closure', wherein liberal democratic societies define and enforce the boundaries of

membership. Rather than simply the 'pains of imprisonment' (Crewe, 2011; Sykes, 2007), Bosworth argues that mundane experiences of deprivation need to be understood as a 'civic education' (Bosworth, 2021: 13; Weaver and Lerman, 2010), working to define the boundaries of membership. In this sense, all-foreign prisons are layered with unique political meaning, as concrete sites where the limits of liberal democracy take shape (Benhabib, 2004; Bosworth, 2021: 7).

Patchwork method: Combining qualitative techniques to study Criminal Alien Requirement prisons

In their recent work on 'patchwork ethnography', anthropologists Gökçe Günel and Chika Watanabe call for a new concept and practice of fieldwork that makes the 'seams' of qualitative research methods visible (Günel et al., 2020). Echoing earlier critiques (Asad, 1995; Nader, 1972), Günel and Watanabe question the hierarchical boundary between the 'home' and the 'field', and suggest that qualitative research has always been 'patched' together in spatial, temporal, and social terms. Rather than attempting to portray the fieldwork process as a single, immersive, linear act, Günel and Watanabe (2020) argue that paying attention to the interruptions, seepages, and omissions bound up in empirical research will improve the quality of that research, and reduce the inequalities bound up in the process of knowledge production. Paying careful attention to the 'seams' of my research, in this section I describe the methods through which I have gathered empirical material on all-foreign prisons in the US. Specifically, I employed four distinct, yet interconnected, qualitative methods: archival research, public records requests, interviews, and mail-based correspondence, and analysis of prisoner lawsuits, grievance documents, and testimony concerning riots, strikes, and other forms of collective action. The goal of this combination of methods is to link multiple scales of analysis, extending the object of analysis from local experiences and practices to the objectified, translocal relations of authority that define institutions (Smith, 2001: 191, Billo and Mountz, 2016, Xiang, 2013).

Re-constructing the 'deportation prison': Archival and historical sources

In the first stage of my archival research, I gathered records, hearing transcripts, and supplementary reports produced by key Congressional committees. During the period from 1985 to 2000, I focused on the House of Representatives' Subcommittee on Immigration, Refugees and International Law, and the Senate's Subcommittee on Immigration and Refugee Policy, both of which are accessible via

the ProQuest Congressional databases. Using the search function within the ProQuest database I identified 11 hearings directly related to the issue of 'criminal aliens' (Senate, 1995) during the period from 1986 to 2000 (Condit, 1994; Gallegly, 1997; USC, 1999). To supplement records produced by these Committees, I also collected and analyzed a series of reports produced by the GAO on the subject of 'Criminal Aliens' during the period from 1986 to 2000 (Government Accountability Office, 1999, 1998, 1997, 1989, 1987, 1986). These GAO reports are particularly interesting sources because they are intended to be non-partisan, relaying the nominally objective data that Federal officials used to make decisions about prison and detention policy.

As many scholars have noted, the Executive Branch holds significant plenary power to shape immigration and penal policy (Kaufman, 2019: 47-50; Martin, 2015). Beyond formal legal authority, Presidential Administrations play a key role in shaping political discourse and choosing policy priorities. To understand evolving rhetorical constructions of the 'criminal alien', I examined archival material from the Reagan and Clinton Presidential Libraries' Digital Archives. Both archives provided extremely useful sources, holding speeches made by Reagan, Clinton, and other White House Staff, transcripts of radio and television interviews, and other campaign events. Many of the Clinton Library's holdings were organized as the files of specific Policy Advisors, collecting correspondence, specific media clips, memoranda, and other records.[7] This offered insight into how the White House perceived and reacted to specific political pressure from media coverage of immigration and crime. These archives also hold a wide range of documents related to the 1987 and 1993 Presidential Commissions on Privatization, providing an extremely useful source of data on the political and economic ideology behind the neoliberal approach to Federal governance (Kamensky, 1999; Reagan, 1987). Following archival methods employed by other historians of borders and migration control (Goodman, 2020; Hernandez, 2010; Loyd and Mountz, 2018; Ngai, 2014), I pay careful attention to how government policy narratives render specific patterns of mobility criminally subversive. Specifically, I focus on the ways in which Federal officials naturalize specific modes of power. In so doing, I trace how representations and practices of criminal justice and migration control came to be linked together and focused on the singular subject of the criminal alien.

[7] See, for example, documents produced by Clinton Policy Advisor Irene Bueno. "FOIA 2011-1044-F -" *Clinton Digital Library*, accessed June 8, 2022, https://clinton.presidentiallibraries.us/items/show/14648.

Alongside political rhetoric employed by Federal politicians, media representations played a key role in shaping constructions of the 'criminal alien' (Chazaro, 2016, Loyd and Mountz, 2018). To analyze national media, I conducted a keyword search of six national publications with the largest circulation using LexisNexis: *USA Today*, *the New York Times*, *Washington Post*, *LA Times*, *Miami Herald*, and *Chicago Tribune*. First, I searched for articles including the term 'criminal alien' or 'alien criminal.' I also conducted subsequent periodized searches to reflect specific events and points of discourse: E.g. in a search from 1980 to 1990 I included linked terms relating to the Mariel Boatlift, ('Mariel', 'Mariel Cubans') and specific legislation passed in 1986 and 1988 that created new immigration consequences for criminal offenses. I also conducted geographically restricted searches of local news to gather information on early BOP experiments with outsourced 'deportation prisons' (Condit, 1994) during the period from 1986-1996 using the Newspapers.com database. This allowed me to collect a variety of local news pieces, editorials, and government information releases about the pre-history of CAR prisons.

(Not-so) Public Records

The 1966 U.S. Freedom of Information Act (FOIA) enshrines public access to public records in law, effectively allowing any person to request any Federal agency record for any reason. The Act, and the practice of public records requests that it has produced have been celebrated as a keystone of government transparency, described by the Supreme Court as 'a structural necessity in a real democracy.'[8] Under the system created by the 1966 act, 'any person' is allowed to submit a request for a Federal government record. After receiving and acknowledging the request, Federal agencies are obligated to turn over 'reasonably described' records promptly – i.e. within twenty working days absent 'unusual circumstances' or uniquely complex requests (Department of Justice, 2021). Records that fall under one of nine exemptions are protected from public disclosure. All other records are subject to disclosure. Although making a compelling case for the public relevance of requested records may increase the likelihood of obtaining records, requesters are under no obligation to explain why they are seeking records in the first place.

Request Number	**Subject of Request**	**Federal Agency**	**Request Status**

[8] See: *National Archives and Records Administration v. Favish*, 541 U.S. 157. 172 (2004).

1	Names, dates, locations of CAR prison facilities.	Bureau of Prisons	Response received
2	Records from 2015 Audits of three CAR facilities	DOJ OIG	Partial response – awaiting appeal.
3	Demographic information – e.g. race, citizenship, nationality for CAR facilities, 2000 to 2020.	Bureau of Prisons	Response received
4	Records related to deaths in CAR Custody, 2000 to 2020.	Bureau of Prisons	Partial response – see notes.
5	Partnering Meetings	Bureau of Prisons	Denial – awaiting appeal.
6	Data on detainers processed and transfers from CAR prisons to ICE custody.	US Immigration and Customs Enforcement	Response received.
7	Data on transfers into and out of CAR facilities	US Marshals Service	Response Received.

Table 6: Public Records Requests filed by Author

On its face, the FOIA process seems to represent a radical keystone of democratic transparency. In practice, however, this transparency is partial at best. Rather than proactively disclosing government records, disclosures are made in response to ad hoc requests in a 'reactionary' fashion (Pozen, 2017). Additionally, many Federal agencies fail to meet the response timelines stipulated by law: a study conducted by the advocacy group MuckRock found that the Bureau of Prisons took an average of 247 days to respond to records requests, and that only 18% of requests successfully disclosed records (Ratliff, 2019). In practice, David Pozen argues that the law's efficacy depends on a 'steady supply of tenacious requesters who know what to look for' (2017: 1099): corporate lawyers, information resellers, and other private rent-seekers. According to a report from the US Department of Justice, requests by concerned citizens and advocates made up a minute fraction of the roughly 700,000 FOIA requests received in 2015 (Ibid, supra note 32). Pozen's work articulates the promise and pitfalls of using FOIA to study all-foreign prisons. Nominally, a wide scope of data related to Criminal Alien Requirement prisons should be available through public record requests. Indeed, FOIA would seem to be the ideal method to unearth data on such practices about which very little

information is proactively disclosed. Yet in practice, obtaining these records presents significant practical challenges.

As part of my research project, I submitted seven public records requests, four with the Federal Bureau of Prisons, one with US Immigration and Customs Enforcement, one to the Department of Justice, and one to the US Marshals service. The first five were all submitted during the first four months of 2021, while the latter two were submitted in late 2021 and early 2022 respectively. The topics covered in each of the requests I filed are detailed in Table 6. These requests were divided into discrete topics intended to make the processing of requests as simple as possible. In practice, the responses to my requests have reflected the adversarial, attritional culture of FOIA practice described by Pozen (2017) and others (Hiemstra and Conlon, 2021; Kaufman, 2019). Of the seven requests, I have received four full responses, two partial responses, and one denial. Three of these requests responses produced useful information on offender demographic data, deaths in custody due to COVID-19, and numerical data on the number of transfers in and out of CAR facilities. The other responses I received were so redacted as to be almost meaningless. Although I have appealed these redactions, I have yet to receive a response to my appeals from the Bureau of Prisons or the Department of Justice.

Thankfully, I have been granted access to three large existing FOIA datasets which fill the remaining gaps left open by delays and redactions. From 2010 to 2013, the lawyer and advocate Stephen Raher carried out an extensive FOIA request on the procurement and contracting process used by the Bureau of Prisons to establish all-foreign facilities, gathering a wealth of data on CAR procurement processes and contracts.[9] Similarly, the journalist Seth Freed Wessler (2016) carried out an extensive records request from 2012 to 2016 on CAR facility monitoring, access to medical care and deaths in BOP custody. I was also granted access to a database compiled by legal scholar Alison Guernsey, detailing motions for compassionate release and deaths in custody in CAR facilities (Guernsey, 2021).

My approach to FOIA research was shaped by conversations with scholars who previously used records requests to gather information about Criminal Alien Requirement prisons (Kaufman, 2019,

[9] In the spirit of transparency, Raher has made most of the records he obtained available to the public. Online: https://app.box.com/s/e541c0a813751fdf2e09.

Eagly and Shafer, 2020). While Eagly, Kaufman, Raher, and Wessler each acknowledged the importance of public records requests to their work, they were ambivalent about the FOIA process, and cautioned me about how record requests produced data: as Raher put it, the FOIA request is a blunt instrument that often produces material that is difficult to organize and analyze. When requestors do receive responsive documents, these are often formatted as single files that are hundreds of pages long with no table of contents or clear organization. In this sense, using FOIA requests to do qualitative social science is akin to bringing dynamite to an archaeological dig: if you are successful you will turn up a lot of material, but you cannot always be sure that the material you produce will fit together once you have it.

While journalists are likely to use records requests to uncover facts, FOIAs have become an increasingly popular technique for academic researchers interested in 'studying up' (Nader, 1972). Records obtained via FOIA have been treated as key sources for understanding state authority, and governance (Conlon and Hiemstra, 2022; Eagly and Shafer, 2020; Hiemstra and Conlon, 2021; Savage and Hyde, 2014; Walby and Luscombe, 2018). In this sense, researchers have dissected public records as 'state discourse' (Butler, 2011; Foucault, 1977; Medby, 2019: 1279), examining how representations of specific events or practices organize and reproduce particular structures of authority or hierarchy.

I use FOIA to establish basic statistical data about the practice of all-foreign prisons, e.g. the number of people held in CAR prisons over time, their racial, ethnic, and national demographics, the offenses for which they were serving time, and the price of incarceration outsourced through contracts. More broadly, I use public records to trace how the system of outsourced, all-foreign prisons evolved out of interactions between specific individuals, government agencies, and corporate entities. As distinct forms of language or numbers organized in a materially replicable form, texts allow institutions to transcend spatial and temporal localities by hooking people into specific practices and relationships (Smith, 2001: 164). Following Smith (1991, 2001), I treat these records as critical documents that define the institutional practices of Criminal Alien Requirement prisons. Documents obtained by Stephen Raher are particularly helpful in this regard as they detail the solicitation, procurement, and contracting process for eight CAR facilities during the period between 2001 and 2015. These records provide a granular look at how BOP officials articulated their need for outsourced prison beds, how private firms marketed themselves to the BOP, and how the BOP

chose contractors based on procurement bids. Additionally, the specific contract materials allow us to examine the legal and economic logics governing these facilities: how foreign-national prisoners were valued, and how the terms of their confinement were formally regulated. In addition to contract documents, Raher obtained minutes and presentations from four 'partnering' meetings held between BOP Privatization Branch officials and private prison contractor staff to discuss specific concerns about the day-to-day management of specific facilities. These documents are particularly interesting when juxtaposed against monitoring and oversight documents obtained and shared with me by Seth Freed Wessler (2016), which give us critical insight into how all-foreign prisons operated in practice.

In this way, FOIA records help to develop a multi-sited account of the practice of outsourced, all-foreign prisons and the mechanics of the 'state effect' (Abrams, 1988; Mitchell, 1991; Trouillot, 2001). As Smith (2001: 191) suggests, these texts are critical to the separation of the institutional organization of the state from the particularities of inter-personal relationships. In some cases, reading these records critically involves analyzing omissions, redactions, or other forms of deliberate withholding made by Federal officials. The scholars Nancy Hiemstra and Dierdre Conlon (2021) have eloquently described this as the 'absent presence' of the state, shaping 'public' records through selective repression. While frustrating, these absences are keenly indicative of how particular constructions of state authority take shape. Raher's years-long FOIA lawsuit was successful, ironically, because he proved that information the BOP had attempted to redact as the proprietary data of contractors had in fact already been made publicly available by those contractors in SEC filings.[10] Even more so for omissions and redactions, records like procurement announcements, bid proposals, contracts, and monitoring documents all provide a wealth of insight into how specific practices took shape through a complex of blurred relationships between nominally public and private actors. Rather than a neat dividing line between two concrete entities, Raher's anecdote suggests that the public-private boundary is a shifting, strategic relation that works to protect specific resources of power (Mitchell, 1991).

Towards an ethnography of all-foreign prisons

[10] See *Raher v. Federal Bureau of Prisons* CV-09-526-ST (D. Or. May. 24, 2011)

As I worked through the early process of developing my research methods, two pieces of work always came to mind as classical ethnographies *par excellence*: Phillipe Bourgeois and Jeff Schoenberg's *Righteous Dopefiend* (2009) and Aaron Fox's *Real Country* (2004). In the former, the authors conducted twelve years of research with homeless heroin addicts on the streets of San Francisco, often living in informal settings with their research participants for extended periods of time. In the latter, Fox examined language and emotion in the country music performed in two honky-tonk bars in Lockhart, Texas, a small town where he lived and performed himself for ten years. Both books are immaculately detailed, combining intricate descriptions that are varyingly beautiful, intimate, lonesome, and harrowing. Each develops a nuanced argument supported by analysis of ethnographic data and a rigorous theoretical framework. In short, reading both of these books made me excited about the research process, and shaped my understanding of what ethnographic work should look like.

To put it mildly, the research I have done is not an ethnography like *Real Country* (2004) or *Righteous Dopefiend* (2009), not to mention *Argonauts of the Western Pacific* (Malinowski, 2014). In lieu of in-person interactions, I gathered material via telephone interviews and mail-based correspondence. In choosing these methods, my goal was to engage CAR prisons as a field site in time and space beyond a specific or physical or digital boundary (Hine, 2015; Howlett, 2022; Stellmach, 2022). While so-called remote ethnographies conducted through video or phone calls have become an increasingly popular mode of qualitative research (Berg et al., 2022: 7; Howlett, 2022; Pink et al., 2016), letter-writing or mail correspondence has received less attention (Bosworth et al., 2005; Burtt, 2021). As a research method, letter writing is radically graphic in the sense that it places the responsibility of description in the hands of research participants themselves. This helps to reduce the extractive 'exchange imbalance' (Katz, 2019: 23) that often characterizes ethnographic work. If participants do not wish to participate, they may choose not to respond to a letter. As a method, letter writing is unique in descriptive terms, in the sense that the primary form of interpretation and representation is done by the author of the letter. The job of the researcher, then, is to ask the right questions and to synthesize the descriptions in the right way.

I began the research process by reaching out to grassroots groups, journalists, immigration advocates, and legal practitioners. Among the most important of these contacts were the Southeast Immigrant Freedom Initiative, a legal advocacy organization that represents men in immigration

detention at Folkston ICE Processing Center in Folkston, GA, and No Detention Centers in Michigan (NDCM), a grassroots group organized in 2019 to support men at CI North Lake and advocate to close the facility. My contact at SIFI agreed to share my contact details with men screened by the organization at FIPC who were transferred from D. Ray James or McRae. Similarly, after introducing myself at two NDCM meetings, the group agreed to share my contact details and a participant information sheet with the men at CI North Lake they had been corresponding with through their pen-pal campaign. In total, I conducted eleven phone interviews with men who had recently been released from ICE custody, and mailed sixty-four letters to men in CAR custody, to which I received 32 responses. After making initial contact via mail, communication sometimes shifted to phone calls. Participants, like Raul, who were particularly keen to share their experiences with me and had spare phone minutes called me from the shared phone in his unit. Others, like Riordan, called me sparingly to save costly phone minutes, but wrote long and frequent letters.

While all qualitative research is shaped by contingency in some ways, this strategy felt particularly vulnerable to the vagaries of unpredictable prison schedules, mail processing within each institution, and postal infrastructure. Mail frequently took weeks to arrive and return, causing frustration and anxiety about whether participants had received my letter. In some cases, men whom I had exchanged multiple letters with would go silent for weeks or months at a time. In one case, Jan a man with whom I exchanged letters frequently, abruptly failed to respond to one, causing me concern about his wellbeing. When I was eventually able to get in touch with him, I learned that the facility he had been transferred to, CI Herlong, had gone into lockdown because of a wildfire within miles of the prison, limiting his ability to receive or send mail for weeks. Although phone interviews provided immediate contact, they were also logistically fraught. While access to the phone is generally a scarce, shared commodity in many custodial settings, during the pandemic lockdown measures and the limits on visits increased the pressure on shared phone usage, reducing the flexibility participants had in choosing when to call me. Moreover, I was always at the whim of the prison's schedule: phone calls had to be initiated by participants calling my mobile phone, rather than the other way around. Often, I attempted to mutually agree on times to speak on the phone, but in practice this was very difficult. If, by chance, going to chow or doing count took longer than

expected, or if a medical call-up was rescheduled, then the agreed time to speak had to be moved.[11] In practice this meant that I had conversations in strange places. I kept a field notebook in my car in case someone called while I was driving, and also used a note-taking app on my phone to make field notes digitally. On one occasion, I had a twenty-minute conversation with Raul from the vegetable aisle at the supermarket. On another occasion, I spoke to Alejandro for an hour from the parking lot of a Dunkin Donuts in rural West Virginia. When I was able to answer the phone, the length of calls was automatically limited to ten minutes, so if we wanted to speak for longer, I had to ask the caller to call me back when the line cut off.

Although at first, I found this process of phone calls and letter-writing frustrating and intrusive, I came to appreciate how this method of communication reflected the social effects of incarceration. Unlike US citizens, people without immigration status in the Federal prison system are not guaranteed to be placed in a facility within 500 miles of their home, and on average they are held 737 miles from the place where they are sentenced (BOP, 2021, Kaufman, 2019: 33). Like many other custodial institutions, CAR prisons are not just physically remote, but also deliberately removed from social networks through specific techniques of surveillance and control. Slow mail, crowded phone lines, and limited calling minutes all reflect the ways in which incarceration severs people from their families, friends, and communities. These contingencies produced feelings of anticipation, anxiety, frustration, and surreptitious joy. I began to repeatedly check my empty mailbox and felt elated when I received an unexpected letter or phone call. While I cannot claim to know what it is like to have a family member or close friend in a CAR facility, these experiences shaped my understanding in small but important ways, helping me to appreciate how exclusion takes shape as a kind of social loss.

In their manifesto for a 'patchwork ethnography,' Günel and Watanabe (2020) argue that the established 'truisms' of ethnography are increasingly coming unstuck. While the discipline still holds up works like *Real County* (2004) and *Righteous Dopefiend* (2009) as the gold standard of ethnography, this mode of research is increasingly untenable. Drawing together feminist and anti-colonial critiques, Gunel and Watanabe (2020) argue that contemporary ethnography is never as spatially and

[11] 'Chow' was the English term used by participants to refer to going to eat meals in the shared mess hall. Taking 'count' is a common carceral practice that involves a process of counting prisoners in their cells to ensure that every person is accounted for and in the right place.

temporally immersive as some authors might suggest. Rather than post-hoc efforts to make fieldwork appear like a singular process of immersive detachment, the goal of this approach, as the scholar Rihan Yeh puts it, is to 'make the seams visible' (Yeh in Cardoza, 2021).

Making the seams visible in my project has involved foregrounding the multiple contingent processes surrounding the collection of data, and the decisions I have made to contextualize or decontextualize particular information. While frustrating, this method of communication shifted the impetus for data collection to the participant: picking up the phone or writing me a letter. Moreover, the enforced distance between myself and the 'field' (Stellmach, 2022) produced new ways of understanding the social repercussions of incarceration. Overall, acknowledging the fragmented nature of this fieldwork process has improved rather than detracted from the analytical insight of my research.

Reading against the grain: Prisoner litigation, prison grievances, and collective action

Outsourced, all-foreign prisons raise important questions about agency, identity, and resistance (Bosworth, 1999, Bosworth and Carrabine, 2001, Carrabine, 2004, McLennan, 2008, Reiter, 2014, Rubin, 2015, 2017, Gundersson, 2021). As racially and ethnically homogenous institutions, CAR prisons would seem to both reinforce and unsettle the dominant racial politics associated with American prisons (Walker, 2016), forcing prisoners and prison officials to make complicated choices about identity and belonging (Goodman, 2008). Similarly, the outsourced nature of facilities raises questions about how prisoners contest and locate authority in the absence of 'state identity' (Medby, 2018).

To situate and study prisoner agency and resistance in Criminal Alien Requirement prisons, I collected three sources of data: written legal documents filed by prisoners (and, in a limited number of cases, their attorneys) as part of lawsuits challenging the circumstances and conditions of their confinement, documents from the internal grievance procedures at six CAR facilities, and interviews with prisoners engaged in collective action at three CAR facilities. These documents, I suggest, are primary sources that should be read 'against the grain' (Thompson, 2013: 109), focusing on how prisoners' narratives negotiate, affirm, or contest established practices of incarceration.

Overall, I analyzed 112 lawsuits and release motions filed by prisoners in CAR custody from 2001 to 2021. With a small handful of exceptions, these legal actions fell into one of three categories: habeas corpus petitions, civil rights claims, and motions for compassionate release. Broadly, habeas corpus petitions challenge the lawfulness of a given person's confinement, while civil rights claims are used to allege specific violations of constitutional rights (Gunderson, 2021: 610-611). Both types of filings offer prisoner plaintiffs the opportunity to request either injunctive or damage actions (*Ibid*). By contrast, each of the requests for compassionate release I analyzed were filed as motions within larger criminal cases in which prisoners had been convicted of specific offenses. Each of the compassionate release motions I analyzed involved requests for early release based on medical vulnerability to the COVID-19 virus. After collecting each case, I categorized them using an Excel sheet that tracked the specific issue prisoners were contesting. These categories included access to medical care, conditions of confinement, staff misconduct, and issues related to immigration status or immigration detainers.[12] Although these legal actions cover a range of facets of the prison experience, at base they each represent an attempt to contest the practice of bordered penality and argue for the equal treatment of non-citizen prisoners.

Alongside these lawsuits, I also analyzed 65 sets of grievance records from 6 CAR facilities. In most cases, these records were gathered from legal filings made by prisoners. Under the regulations included in the 1996 Prison Litigation Reform Act, prisoner plaintiffs are required to meet strict exhaustion requirements when filing suits. Plaintiffs must fully exhaust the grievance procedure at the facility where they are incarcerated before they can file legal action against prison staff. Rather than the BOP, grievance processes are administered by the staff of the three private contractors who run each CAR prison: the GEO Group, CoreCivic, and Management and Training Corporation (Bureau of Prisons, 2000a, 2000b; Department of Justice, 2016). Rather, prisoners at outsourced facilities cannot appeal their treatment to the BOP but must fully navigate a grievance process that is administered internally by private contractors. In practice, this exhaustion requirement has significantly limited the number of successful suits. It also has the unintended effect of shining significant light on how these grievance processes operate. Plaintiffs included records of the adjudication of their grievances as part of their legal suits, making hundreds of documents that

[12] Most non-citizens in Federal prison receive detainer requests from US Immigration and Customs Enforcement, which serve as notices that those individuals will be placed in immigration custody after finishing their prison sentence. See ACLU (2019). *Backgrounder on ICE Detainer Requests.* Online: https://www.aclu.org/sites/default/files/field_document/aclu_backgrounder_on_detainers_1.31.19_-_public.pdf.

would be practically impossible to obtain via public records request available as public filings in federal court.

On a basic level, critical analysis of prisoner litigation and grievance processes must reckon with the fact that, in the vast majority of cases, prisoners who seek to challenge the circumstances or conditions of their confinement are unlikely to succeed (Gunderson, 2021; Schlanger, 2015). Grievance procedures are administered via written forms, making them effectively irrelevant if you are illiterate. Based on my conversations with attorneys and prisoners, the only grievances that received responses were those written in English. Once completed and submitted prisoners receive a written response from facility staff. If the response received is unsatisfactory, they may appeal the response to a higher level of authority. Notably, because I have obtained grievance records through public court records, the data I have obtained can only tell us what unsuccessful grievances look like. While this is a limitation, the available data suggests that the vast majority of grievances in BOP-run facilities are denied, which clearly suggests the blunt imbalance of power in prison (Bierie, 2013; Palacios et al., 2022).

Efforts to limit prisoner litigation have been ever more deliberate. Since the mid-twentieth century, the structure and conditions of the litigation process for incarcerated people has undergone a series of transformations and reforms ultimately designed to reduce the number of successful claims made by prisoners (Schlanger, 2017; Schoenfeld, 2010). During the period from 1963 to 1980, a series of favorable Supreme Court decisions and an organized prisoners' rights movement put these new procedural entitlements to good use, winning a series of significant legal victories in Federal courts that put pressure on state and federal prison systems to remedy overcrowding and poor prison conditions (Jacobs, 1980). Yet these victories failed to significantly improve conditions in jails and prisons, and some scholars have argued compellingly that this litigation contributed to an intensification of mass incarceration (Schoenfeld, 2010). Rather than attempting to fundamentally change the way incarceration was practiced, policymakers responded to judicial intervention by building new prisons to reduce overcrowding (Chase, 2015: 73-74). Moreover, by the mid-1990s Republican policymakers passed a series of laws intended to reduce Federal intervention in State prison systems and reduce the success of prisoner litigation (Schlanger, 2015; Thompson, 2016).

Prisoner lawsuits can tell us a great deal about the political encounter between state and subject, offering a chance to read the 'ruling relations' (Smith, 2005) of all-foreign prisons in a different light. In their work on 'organizing documents', Kameo and Whalen (Kameo and Whalen, 2015) trace how the institutional use of incident records forms during 911 calls shapes and channels the ways in which the subjects of 'emergency incidents' are constructed. When dispatchers answer calls, they gather information from callers using specific forms and written rules, documentary practices that reify set social and political categories (*Ibid,* 211-215). Legal filings and grievance documents deploy a similar kind of 'organizing work' (211), forcing prisoners to articulate grievances using specific language in specific textual forms. These documentary practices govern pain in particular ways, rendering a small number of grievances and lawsuits cognizable as legitimate while dismissing the rest as frivolous. Reading these sources 'against the grain', then, insists on paying attention to how these documentary forms channel and reinforce ruling relations, and paying careful to the moments of disjuncture, where the processes of 'organizing work' break down and alternate narratives bleed through in subversive ways. Rather than narrow factual claims to be judged either as true or false, or examples of the failure to maintain prison order, the testimony contained in these primary sources can be read as a narrative claim to membership. Following Lerman and Weaver (2014), Miller (2017), and Bosworth (2021), these sources can help us to understand how all-foreign prisons work to define and reinforce ideas about race, nationality, belonging, and citizenship.

Conclusion

Like all sites of custody, all-foreign prisons are inherently violent institutions. In attempting to study them, researchers must ask themselves uncomfortable questions about their own role in the unequal power dynamics that define incarceration (Reiter, 2014). These questions force researchers to grapple with their ethical obligations to incarcerated people, posing problems to which there are often no clear cut and dried solutions. Yet the same facets of Criminal Alien Requirement prisons that make them difficult institutions to study are precisely why we must.

CAR facilities also ask difficult questions about the political consequences and functions of imprisonment. Strikingly, prison ethnography has often failed to grapple with the political functions of incarceration. If we are to believe that prisons are crucibles for the definition and contestation of national membership and citizenship, then, as argued by Dominic Aitken (2019) and others, we must treat prisons and other sites of custody as political institutions. This is not to argue that all-foreign prisons are uniquely important, or that we should afford them some special or unique causal value in our understanding of the shape of social and political relations. Rather, I suggest that quotidian practices and experiences of custody have something important to tell us about the meaning of punishment, citizenship, and deportation.

Criminal Alien Requirement prisons are unique among all-foreign prisons globally in that they are entirely outsourced to private contractors (Department of Justice, 2016; Tuck et al., 2022). While there is a growing body of research on what is variously called crimmigration, bordered penality, or penal nationalism (Franko Aas, 2014; Barker, 2018; Franko, 2020; Stumpf, 2006), the relationship between bordered penal power and outsourced incarceration has not been fully understood. If we are to understand prisons as crucibles for the definition and contestation of membership, then we must begin to understand how and why segregated, all-foreign prisons came to be the only outsourced facilities within the Federal prison system.

Chapter Four

The 'criminal alien problem' and the origins of the Criminal Alien Requirement prison

In an article in the *Harvard Journal of Law and Public Policy* in 1999, the conservative legal academic Peter Schuck diagnosed the chief problem facing the United States immigration system as: 'an increasing number of aliens who commit crimes in the United States but are not removed' (Schuck and Williams, 1999: 368-369).[13] For Schuck, this 'criminal alien problem' had two dire consequences: outside prison, foreign-national offenders threatened public safety; while incarcerated they wasted scarce public resources and weakened the capacity of already overcrowded prisons (*Ibid*, 370-371). Drawing directly on the rhetoric of Republican Senator Alfonse D'Amato (1983), Schuck's framing provided an academic gloss to a depiction of the relationship between immigration, crime, and public resources that had gained significant traction in public discourse since 1980. In an effort to bolster his bid for re-election in 1996, President Bill Clinton also drew on the rhetoric of bordered penal populism, promising to target non-citizens in state and federal prisons for deportation (Clinton, 1995; Todd-Kvam, 2019). As Clinton put it, 'when an illegal alien enters our courts, we shouldn't stop until they leave the country… I want the plane to be waiting on the tarmac, revved up, when they walk out of prison' (1995)

In this chapter, I examine how the privately contracted, all-foreign prison emerged as part of a broader policy solution to the crisis of governance provoked by public anxieties about foreign criminals (Bosworth and Kaufman, 2011; Simon, 1998). Drawing on the intellectual tradition of critical criminology (Hall, 1978; Simon, 2007) and recent work on 'migration crisis' (Dines et al.,

[13] Notably, to provide evidence for the claim that immigrants are responsible for a national crime wave, Schuck cites an article in *The Social Contract*, a publication founded and edited by John Tanton, See Schuck, (1999) *supra* note 3. The Southern Poverty Law Center (SPLC) has described John Tanton as 'the racist architect of the modern anti-immigrant movement', who used *The Social Contract* to espouse the nativist view that immigration from non-European countries needed to be restricted to protect the 'European-American majority' from inferior cultural and ethnic values. See SPLC (2022) *John Tanton*. Online: https://www.splcenter.org/fighting-hate/extremist-files/individual/john-tanton. See also Doty, RL (2016) *The Law Into Their Own Hands: Immigration and the Politics of Exceptionalism*. University of Arizona Press. 46-47.

2018), I theorize crisis less as a temporal condition triggered by specific causes, and more as a narrative device that defines and describes social phenomena in ways that constrain and mobilize specific political outcomes. Specifically, I draw on the concept of the 'Long Mariel Crisis' developed by the scholars Jenna Loyd and Alison Mountz (Loyd and Mountz, 2018: 60). In the period after the Mariel Boatlift in 1980, Loyd and Mountz argue that media coverage, political rhetoric, and public discourse created a visual and rhetorical spectacle of crisis in which foreign criminals were portrayed as a threat to both public safety and state capacity. By narrating the relationship between migration and crime in this way, I argue that the 'Long Mariel Crisis' created the conditions of possibility for new constructions of bordered penal power.

Tracing the evolution of public anxieties about foreign-national prisoners, and the ways in which Federal officials attempted to solve them, makes visible the meta-narratives of what is variously called 'crimmigration' or 'bordered penality' (Franko Aas, 2014; Dowling and Inda, 2013; Franko, 2020; Hernández, 2013; Stumpf, 2006). Efforts to target non-citizens in penal custody and suture together punishment and deportation forced policymakers to define the 'criminal alien' as a new penal subject, and to develop what I call the 'prison-to-deportation pipeline.' Echoing the work of Emma Kaufman (2015, 2019) and Adam Goodman (2020) I use this phrase to refer to the historically-specific body of logics and practices that re-purposed federal prisons as key sites for the identification, segregation, and deportation of non-citizens, combining the 'power to punish and the power to banish' (Franko, 2020: 54).

In the first section of this chapter, I argue that the 'criminal alien' emerged after 1980 as a novel subject of penal and border control, distinct from earlier constructions of the 'illegal alien' which had presented migrants as a threat to the economic prospects of white workers (Fernández and Pedroza, 1981; Ngai, 2014). I examine how media accounts of migration and crime and political rhetoric mobilized discourses of race and gender to glue together foreignness and criminality in ways that made foreign-national prisoners 'ideal villains' (Chavez, 2013; Cházaro, 2016; Christie, 1986; De Noronha, 2015). By portraying the growing number of non-citizens in US prisons as a crisis of governance, the 'criminal alien' paradigm (Cházaro, 2016) narrated the social facts of crime and

migration such that the prison-to-deportation pipeline came to be understood as the only viable solution to the 'criminal alien problem' (Schuck, 1999).[14]

In response to concerns that foreign-national prisoners threatened both public safety and the coherence of public services, Federal officials implemented a series of legislative and policy reforms after 1986 that brought the process of deportation firmly into the prison setting. In the second section, I trace the emergence of bordered penality and all-foreign imprisonment to the period after the passage of the Immigration Reform and Control Act in 1986. In an effort to meet IRCA's statutory obligation to bring deportation proceedings against all noncitizens convicted of deportable offenses, the Immigration and Naturalization Service (INS) formally created the Institutional Hearing Program, a specialized prison-based deportation process (Eagly and Shafer, 2020). Simultaneously, the INS and the Federal Bureau of Prisons began to experiment with outsourced 'dedicated IHP' facilities, all-foreign prisons designed to reduce the cost of incarcerating immigrants and simplify the conjoined process of punishment and deportation (Hawk, 1994: 167). Drawing on congressional archives and local media sources, I show how this new carceral economy was predicated on the racialized commodification of illegality as a materially-extractable resource.

Yet, legislative efforts to target non-citizens in prison for deportation were not easily implemented by prison and immigration officials who struggled to manage already overcrowded prisons and detention facilities. In the third section, I trace how confinement outsourced through agreements with local governments and private firms, came to be the default solution to what Ruth Wilson Gilmore calls the 'crisis of state capacity' (Gilmore, 2007). Drawing on the work of Kitty Calavita (1996), I show how efforts to scapegoat non-citizens as the cause of prison overcrowding, and exclude them from access to the prison services provided to US citizens was deeply connected to broader efforts to exclude immigrants from access to public services ("Criminal Aliens: Hearing before the Subcommittee on Immigration, House of Representatives," 1997). In this context,

[14] Although media and political rhetoric often implied that the rise in the number of non-citizens in US prisons during the period from 1980 to 2000 was caused by higher rates of offending amount immigrant groups, there is very little evidence for this claim. To a large extent, the 'criminal alien problem' was a self-fulfilling prophecy: the number of deportable non-citizens in US prisons increased as politicians passed punitive measures like the 1988 Anti-Drug Abuse Act which dramatically increased the immigration consequences of contact with the criminal justice system. See Butcher, K and Piehl, A (1998) 'Recent Immigrants: Unexpected Implications for Crime and Incarceration' ILR Review. 51(4). https://doi.org/10.1177/001979399805100406. See also: Jennifer M Chacon, 'Overcriminalizing Immigration' (2012) 102 J Crim L & Criminology 613.

privatization emerged as the default solution for Federal policymakers who wished to target non-citizens in Federal prison but were constrained by an overcrowded prison system and public opposition to increased spending on incarceration.

While practices of outsourced incarceration in the United States have a long history – and one that is deeply entwined with structures of racial hierarchy and white supremacy - they have not traditionally divided along the lines of citizenship or immigration status (Alexander, 2010: 74-75; Davis, 2005: 29-33; Lichtenstein, 1996; McLennan, 2008). In the final section, I examine how non-citizens became the default targets of outsourced incarceration within the Federal prison system. When Federal and State political leaders attempted to outsource prison custody for US citizens during the 1990s these efforts met with stiff opposition from public sector unions. Efforts to outsource Federal prison custody for US citizens in 1997 - at Taft Correctional Institution and Northeast Ohio Correctional Center – were high-profile failures marked by a series of prisoner-led riots. Where these facilities quickly lost their contracts, I show how all-foreign prisons succeeded as outsourced facilities precisely because Federal policymakers made deliberate choices to exclude non-citizens from a wide range of prison services and BOP oversight.

'Another kind of refuse': the construction of the 'criminal alien'

Although the criminalization of migration has a long history in the US (Goodman, 2020), the shift towards all-foreign prisons began in the early 1980s during what the scholars Jenna Loyd and Alison Mountz (2018: 60) have called the 'Long Mariel Crisis.' In 1987, the New York Times Magazine published a feature-length article titled 'Can Miami Save Itself', portraying the city as a 'juvenile delinquent' overrun by drugs, violent crime, and simmering racial tension (Sherill, 1987). This sense of crisis, according to the *Times*, was a consequence of seven years of social and racial turmoil that had roiled the city since 1980. During that year, the Mariel Boatlift saw the arrival of roughly 125,000 Cubans seeking asylum in South Florida, alongside a 'wretched, illegal armada' (*Ibid*) of 70,000 Haitian asylum-seekers fleeing the Duvalier regime (Stepick and Portes, 1986). As the 'Long Mariel Crisis' wore on after 1980, portrayals of Cuban and Haitian migrants came to embody the stereotypical figure of a new, dangerous subject of crime and migration control: the 'criminal alien' (Senate, 1995)

Portrayals of Cuban and Haitian migrants during the period after 1980 represented a significant shift from popular depictions of immigration during the 1970s, which focused on migrants as a threat to the labor interests of native workers. Fernández and Pedroza's (1981) pioneering analysis of media coverage of immigration has demonstrated how the chief subject of US immigration concern during the 1970s was the 'illegal alien', stereotypically depicted as a poor, Mexican man seeking seasonal work in the US. As a subject of state control, the 'illegal alien' reflected a nativist archetype that emerged out of the explicitly racial system of immigration quotas and border policing codified in the 1924 Immigration Act (Ngai, 2014: 23-27) and the 1929 Undesirable Aliens Act (Hernández, 2017: 138). Where criminal justice institutions focused on arresting Mexican migrants, they did so with the explicit goal of labor control: Kelly Lytle Hernández's study of the Los Angeles Police Department's campaign to arrest Mexican nationals after the passage of the 1924 and 1929 laws shows that 86% of the 76,327 Mexicans arrested during the period from 1928 to 1939 were charged with low-level public order offenses (2017: 148-149). These public order offenses were a key tool of labor control used to force striking workers to go back to work: during a 1933 strike by Mexican berry pickers the LAPD cooperated with the Agricultural Bureau of Los Angeles Chamber of Commerce to orchestrate a campaign of mass arrests against striking workers (*Ibid,* 149). In short, the stereotype of the 'illegal alien' framed the issue of unauthorized migration across the US-Mexico borderlands as an economic threat to the racial hegemony of native, white workers rather than a crime issue *per se.*

By contrast, Cuban and Haitian arrivals during the 1980s were subject to anti-black racism in ways that were distinct from the racial categorization of other Latino migrants. As Loyd and Mountz (2018: 57-58) note, the term 'Mariel Cubans' was often used to distinguish between Miami's established Anglo-Cuban community, and newly arrived Afro-Cuban refugees. Tina Shull's recent historical work highlights how established Chicano migrant communities depicted Mariel Cubans as 'drug dealers and pimps', employing pejorative rhetoric used to portray black communities to distance themselves from Mariel Cubans (El Centro de la Raza, 1980 in Shull, 2022: 41). When asked by the *Times* to describe the effect that Cuban migrants had on crime, Miami Police Department Lieutenant Mike Gonzalez put it plainly: 'in one year, we got 10,000 additional killers and thieves' (Sherill, 1987). The figure of the 'criminal alien' embodied by portrayals of Cuban and Haitian emigrants after 1980 explicitly linked migration to concerns about drug trafficking, violent crime, and overburdened public services (Simon, 1998).

Portrayals of Cuban refugees also reflected gendered anxieties about the deviant sexual threat of foreign masculinity. In some cases, as in a 1981 Associated Press profile of 27-year-old Narcisco Pedro, Cubans were portrayed as 'loitering refugees', economically, and sexually unattached in ways that implied a threat to the vulnerable domesticity of white American women (Associated Press, 1981: 8A). In other cases, public rhetoric reflected the rumors that Castro had used the Boatlift as an opportunity to forcibly remove queer men from Cuba. One INS officer told *People* magazine that '85% of the refugees are convicts, robbers, murderers, homosexuals, or prostitutes (Shull, 2022: 31-32). Tony Montana, the protagonist in Brian De Palma's 1983 film *Scarface* and arguably the most famous cultural portrayal of the 'Marielito', is the archetypal violent drug lord, a kind of perfect symbolic representation of Nils Christie's 'ideal villain' (Christie, 1986, De Noronha, 2015). In this sense, Montana's character synthesizes the various dimensions of the 'criminal alien' stereotype: initially an unemployed foreigner, he is successful as a drug trafficker because of his propensity for violent crime and predatory sexuality. Of course, as the film critic Armond White (2015) suggests, *Scarface* holds a mirror up to American society, telling the viewer more about the nature of race, class, and capitalism in the Reagan era than it does about Cuban refugees. Montana's own method of gaining immigration status embodies the basic violence involved in determining claims to membership. In exchange for false papers, Montana agrees to assassinate a fellow refugee. 'I kill a communist for fun, but for a green card, I gonna carve him up real nice' (*Scarface*, 1983).

These portrayals of Cuban migrants carried over into the prison setting where 'Mariel Cubans' were portrayed as a uniquely violent and difficult to manage group (Government Accountability Office, 1986; "Prepared Statement of Kathleen M. Hawk, Director, Federal Bureau of Prisons - Criminal Aliens," 1994). During the peak of emigration in 1980, 19,000 Cuban refugees were transferred to Fort Chaffee, an Army National Guard facility in Western Arkansas. In late May and Early June, a group of refugees frustrated with their continued detention and the slow resettlement process set fire to a number of the camp buildings and fought a pitched battle with State police while attempting to leave the Fort (Shull, 2022: 30). Marilyn Smith, a Fort Chaffee resident told the Miami Herald, 'I'm scared to death… they can't keep those Cubans inside Fort Chaffee. They slip past the guards, they stab their own people. I heard they stole an Army truck, sneaked into town and broke into some poor woman's house and scared her half to death' (Rose, 1980). For then-Governor of Arkansas Bill Clinton, the riot at Fort Chaffee would prove a formative lesson in the politics of crime and migration control. Clinton would lose the 1980 gubernatorial election to his Republic

opponent Frank White, who campaigned almost exclusively on the issues of 'Cubans and Car Tags' – a slogan intended to criticize Clinton's weak response to the Fort Chaffee incident and his increase on automobile taxes (Miller, 2006).

After 1981, a series of lawsuits filed by advocacy groups and State officials in Florida meant that most Cuban detainees were transferred to Federal custody (Eagly and Shafer, 2020: 794-795). Although initially Federal officials chose to disperse Cuban 'long-term detainees' (Hawk, 1994) throughout facilities across the country, after a series of incidents at INS detention sites, the INS and BOP chose to concentrate Cubans in a small number of facilities. In response to one high-profile incident at an INS detention facility in Manhattan, The *Daily News* argued that non-citizens convicted of criminal offenses deserved a different, harsher kind of treatment than US citizens: 'When Emma Lazarus wrote of "wretched refuse," she meant it kindly… Today there's another kind of refuse: human trash, peddlers of drugs and misery. It's time to kick them out, and slam the golden door behind them' (Daily News, 1986). Months later, New York Senator Alfonse D'Amato pushed to concentrate Cuban detainees at the maximum-security US Penitentiary in Atlanta (Fein, 1987; Rainie, 1986).

While 'criminal alien' was used widely by media organizations and politicians during the 1980s, it evolved as a term of art with no fixed legal definition.[15] When attempting to measure the number of 'criminal aliens' in the United States, Federal officials relied primarily on FBI arrest data, which classified offenders based on their country of birth, rather than their current immigration status (Government Accountability Office, 1987, 1986). As a 1987 report prepared by the Government Accountability Office (GAO) put it 'no one knows how many deportable criminal aliens exist. However, according to the Immigration and Naturalization Service, they are a growing threat to the nation's security' (GAO, 1987: 44-45). Rather than a fixed category, the 'criminal alien', as Angélica Cházaro (2016: 40) has observed, was a shifting signifier, heavily shaped by racial hierarchy, working to justify who would be arrested, detained, and deported. During the 1990s the racial and national boundaries of the term 'criminal alien' grew, from a term narrowly used to describe Mariel Cubans to one used more generally to refer to Latino men convicted of drug offenses. A full-page article in

[15] The term 'criminal alien' has not been defined in Federal immigration law. See US Senate Committee on Governmental Affairs. 1995. *Criminal Aliens in the United States*. Report 104-48. 5. Online: https://www.congress.gov/104/crpt/srpt48/CRPT-104srpt48.pdf. The term is generally used to denote a non-citizen who has convicted of an offense which makes them subject to deportation.

the *Los Angeles Times* in 1991 covering riots at the INS's El Centro Detention Facility outside Los Angeles contrasted migrants from Asia as 'jet-age immigrants' with 'criminal aliens' from Latin America (Dunn, 1991: 30). Interviewed by the *Times*, INS spokesman Rudy Murillo complained that INS was having difficulty maintaining order at the detention facility because of the 'mixing of criminal aliens and excludable aliens', citing a recent assault on another detainee committed by a Mexican man convicted of drug trafficking (*Ibid,* 31). Murillo's rhetoric demonstrates how the INS publicly characterized the relationship between race, nationality and crime. Rather than simply combining the categories of migrant and criminal, these portrayals of the 'criminal alien' overwhelmingly depicted Latino men involved in drug trafficking and violent crime. Echoing Luke De Noronha's (2015) analysis of depictions of the 'foreign criminal' in the United Kingdom, race and gender sutured together the categories of migrant and criminal, and gave the term 'criminal alien' meaning as the focal point of a crisis of governance within US prisons.

The Institutional Hearing Program and the emergence of bordered penality

When Alfonse D'Amato arrived in the United States Senate in 1981 as the junior Republican Senator from New York he devoted himself to the so-called 'emergency' of 'aliens in prison' (D'Amato, 1983 in Loyd and Mountz, 2018: 131). Incensed that non-citizens were 'savaging' the United States, D'Amato called a senate hearing on the 'crime problem' in New York City, focusing in his words on 'the role of alien felons in exacerbating this crisis in several states' (Loyd and Mountz, 2018: 131-132; Rainie, 1986). After commissioning a series of studies by the Government Accounting Office (1986) on the New York City prison system, D'Amato defined the 'criminal alien problem' as two-fold: while they were free, these 'violent offenders' (*Ibid,* 4) threatened public safety; while they were locked up, they wasted taxpayer money that could be better used to incarcerate and rehabilitate US citizen prisoners.

After 1986, the solution to this perceived 'criminal alien problem' (GAO, 1986) was to bring immigration enforcement into state and federal prisons, joining punishment and migration control together to form what I call the 'prison-to-deportation pipeline.' In 1986, President Ronald Reagan signed the Immigration Reform and Control Act (IRCA), a landmark piece of immigration legislation designed to 'solve the problem of illegal immigration' once and for all (Reagan, 1986). IRCA granted immigration status to roughly three million unauthorized migrants, while creating a

range of new enforcement mechanisms designed to deter future unauthorized migration (Durand and Massey, 2003: 237-239). Although unremarked on at the time, D'Amato added a provision to IRCA that required the US Attorney General to begin removal proceedings against any noncitizen who had been convicted of certain qualifying crimes (Meissner and Kerwin, 2013). Together with the 1988 Anti-Drug Abuse Act, this legislation laid the foundation for 'crimmigration' law (Stumpf, 2006), entangling the legal process of criminal punishment with nominally-civil immigration law. As Emma Kaufman has put it, this shift towards targeting non-citizens in criminal custody transformed the prison system from a 'a site of corrections, in which the implicit aim was to reform prisoners and return them to the polity, into an institution dedicated to finding and sorting foreigners' (Kaufman, 2019).

To implement this new set of laws, the Immigration and Naturalization Service created two programs designed to bring immigration control firmly into the prison setting: the Alien Criminal Apprehension Program (ACAP), designed to streamline the process by which INS officials identified and took custody of non-citizen prisoners, and the Institutional Hearing Program (IHP), a specialized system of prison-based deportation hearings (Kandel, 2016: 9). Notably, the IHP formalized a network of institutions and practices developed to speed up the deportation of Cubans incarcerated at USP Atlanta (Eagly and Shafer, 2020: 797). In 1981, as the Federal Government began to incarcerate Cuban migrants at USP Atlanta, a District Court Judge had ruled that Cuban migrants could not be removed without an 'exclusion hearing' to allow them due process to make an asylum claim (*Fernandez-Roque v. Smith*, 1981: 124 in Eagly and Shafer, 2020: 796). In response, Judges within Immigration Court system had begun to hold legal proceedings within USP Atlanta to facilitate the deportation of Cuban detainees (*Ibid*, 796). Together, the Alien Criminal Apprehension Program and the Institutional Hearing Program represented the first formal efforts to practice bordered penality (Franko Aas, 2014, 2020) in the United States. Through these programs, the crucial work of identifying and rendering non-citizens formally illegal entered the physical and administrative space of the prison for the first time (Franko, 2020, 26-28).

In concert with the Institutional Hearing Program, Federal officials from the Bureau of Prisons scrambled to find new facilities in which to consolidate non-citizen prisoners marked for deportation (Eagly and Shafer, 2020, 794-795). In 1985, the Bureau of Prisons quietly agreed a contract with Reeves County in Texas to hold non-citizen men in a newly built lockup in the Federal

Prison system's first significant experiment with outsourced custodial facilities. From 1985 to 1991, the Bureau of Prisons held prisoners at nine such facilities, eight of which would later come to be described as 'dedicated Institutional Hearing Program' facilities by BOP Director Kathleen Hawk (see Table 1, Hawk, 1994: 167-168). These facilities were all contracted through intergovernmental service agreements, allowing the BOP to circumvent procurement rules in the Federal Acquisition Regulations by using local governments as pass-through entities who sub-contracted with private firms. Nearly all of the prisoners were Mexican men convicted of drug or immigration offenses; to the extent that the Bureau offered a public rationale for this pattern of segregation, BOP Officials told media sources that concentrating non-citizens in prisons close to the US-Mexico border facilitated the goal of deportation (Webber, 1985).

These agreements to outsource incarceration between the Federal Government and local government reflected the high level of fluidity between civil and criminal custody (see also Loyd and Mountz, 2018; and Kaufman , 2019). In most cases, the Bureau of Prisons held primary contracting authority, and leased space out to the US Marshals Service or the INS. In other cases, as with the Torrance County Detention Facility in New Mexico, a privately operated prison in Estancia, NM, the US Marshals Service held primary contracting authority, but leased out a majority of beds to the BOP and INS (Albuquerque Journal, 1991; Lorber, 1990). In this context, race, nationality and citizenship defined the organization of carceral custody. Whether incarcerated men were pre-trial detainees, sentenced prisoners, or merely in civil immigration custody mattered less than the fact that they were Latino migrants who were nominally deportable.[16]

As the Federal Government scrambled to find facilities to hold non-citizen prisoners, local governments, urged on by lobbyists from a burgeoning array of private prison entrepreneurs, sought to cash in on prison overcrowding by speculatively building new penal facilities. In 1985, the Reeves County Law Enforcement Center opened, under an inter-governmental service agreement contract with the US Marshal's Service to hold immigrant prisoners (Fort Worth Star-Telegram, 1987; San Angelo Standard Times, 1987). Around the same time, Concho County officials agreed a contract with the Federal Bureau of Prisons to hold 'illegal aliens until they have served their sentences and

[16] Joint INS-BOP facilities, such as the facility in Oakdale, Louisiana, segregated incarcerated people based on national origin. Records collected by Loyd and Mountz suggest that Mexican nationals were designated to facilities in Texas while Cuban nationals, who were much less likely to be deported because of the lack of return agreement between the US and Cuba, were designated to Oakdale. See Loyd and Mountz (2018) pp 114-115.

then are returned to their countries' (Webber, 1985; Del Rio News Herald, 1985). A year later, a series of articles in local newspapers reported that 'detention center sweepstakes' were spreading across West Texas, as a series of counties facing population loss and economic downturn competed to 'gain income from housing immigration prisoners' (Power Jr., 1986; Fort Worth Star-Telegram, 1985). Often, the contracting arrangements and physical sites of custody reflected the Federal government's makeshift approach to locking up immigrants. In 1989, Mid-Tex Detention Center Inc, a ramshackle firm led by Trucking entrepreneur and former Mayor Ed Davenport, reached an agreement with Big Spring City Council and the Bureau of Prisons to hold 240 'non-violent immigration violators' in a remodeled Ramada Inn hotel near the airport on the outskirts of town (Long, 1989). Two years later, the city turned the former Webb Air Force Base into a second prison designed to hold 375 'deportable aliens' (Abilene Reporter-News, 1991).

The scramble to cash in on immigrant prisoners reversed the expected economic behaviors of public and private entities. Often, local governments were more aggressive in their competition and profit-seeking than newly formed prison firms. In 1986, Presidio County sued Marfa for holding secret meetings with a private contractor, alleging that failing to hold these meetings in public violating the Texas Open Meetings Act and undermined fair market competition for prison beds (Victoria Advocate, 1986). Across west Texas, local government officials marketed the expansion of outsourced incarceration for non-citizens as a way to keep small towns alive in the face of demographic decline and decreasing revenues from oil extraction, cattle ranching, and cotton farming (Fort-Worth Star Telegram, May 5th 1985: 1). As Federal officials searched for 'a detention center for illegal aliens' in 1985, the Mayor of Eden, TX Jim Schumann promised the public that bringing the facility to Concho County would create jobs for local grocery stores and contractors and bring a full-time dentist to town for the first time (San Angelo Standard-Times, 1985). This dynamic - between Federal officials searching for ways to offload immigrant prisoners and local economies desperate for investment - would come to define the evolution of outsourced incarceration as a 'fix' to the crisis of Federal capacity (Gilmore, 2007: 130). Many scholars have noted how the outsourcing of incarceration has allowed overcrowded State and Federal prison systems to displace the financial and political costs of incarceration when these criminal justice institutions cannot afford to build new prisons or meet constitutional standards for confinement (Kaufman, 2020: 1820; Raher, 2009: 8). During the Bureau of Prisons' early experiments with all-foreign prisons in Texas in the 1980s, the public-private boundary worked to make the economic

logics of outsourcing appear self-evident. Chuck Haugh, Davenport's successor as the CEO of Mid-Tex Detention Centers Inc, rationalized the 1991 prison expansion in Big Spring as a win-win: Federal officials found a cheap way to offload 'deportable aliens' while the Big Spring municipal government received an additional $1.5 million annually in tax revenue (San Angelo Standard-Times, 1991: 5). Davenport's comments reflect the institutional logic of 'comparative efficiency' (Dolovich, 2009: 128-129). As Sharon Dolovich has observed, this logic frames practices of outsourced incarceration solely in terms of fiscal and administrative efficiency (*Ibid*). Setting aside the question of whether contract facilities actually saved money, rendering outsourced incarceration as a rational resolution of Federal demand and local supply obscured how these practices were founded on the commodification of human beings.[17]

The feasibility of this burgeoning prison economy was, from the start, explicitly tied to the business of locking up Latino immigrants. Interviewed by a local paper in Gatesville, TX in 1986, Bill Robinson, a spokesperson for private firm Corrective Concepts Inc, framed Reeves County's decision to borrow $6 million to build a new prison as a sensible financial decision because of the unprecedented need for new Federal prison beds to house immigrants (Gatesville Messenger, 1986). A year later, when Reeves County's contract with the Federal Prison system failed to deliver the promised revenue, County Judge Bill Pigman blamed the problems on the fact that there were fewer 'illegal Mexican workers' who normally filled the prison's beds crossing the border after 1986 (Lisson, 1987: 24). This remark clearly reflects what the geographer Lauren Martin calls 'status value' (Martin, 2021: 8). For Pigman, 'illegal Mexican workers' are valuable not for their economic contributions as laborers, but precisely because their liminal legal status subjects them to incarceration. Operationalized in explicitly racial terms, this carceral economy relies precisely on the commodification of illegality as a materially-extractable resource akin to previous extractive West Texas economies like oil drilling and cattle ranching.

[17] The evidence that outsourced prisons save public money is mixed, at best. Within the Federal Prison system, the GAO has argued compellingly that these public-private comparisons are misleading because all of the prisoners in contract facilities are non-citizens, and therefore not eligible for the same prison services as US citizens, which makes them significantly cheaper to incarcerate in practice. See GAO (1996) *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service.* GAO/GGD-96-158 and GAO (2007) *Cost of Prisons: Bureau of Prisons Needs Better Data to Assess Alternatives for Acquiring Low and Minimum Security*. GAO-08-6.

Interestingly, efforts to advocate for or against these prisons within local communities often mobilized competing racializing discourses surrounding Latino and Caribbean immigrants. To the extent that local residents contested prison expansion, their concerns focused on the presence of migrant groups like Cubans and Haitians whom they associated with drug trafficking and violent crime. When city officials in Odessa, Texas debated building a new prison to house immigrants in Federal custody, an editorial by local doctor Donna Williams pointed out that 'one thousand non-English speaking Cubans had been relocated from California to the prison in Big Spring' (Williams, 1989). Williams' editorial implies that 'Mariel Cubans', in contrast to Mexican migrants, were dangerous criminals who might escape from the prison and cause unrest similar to the events at Fort Chaffee in 1980. In response to Williams, local minister Donald R. Clevenger wrote an editorial in support of a new prison, arguing that only two prisoners at the Federal Prison in Big Spring were Cuban, and the rest were Mexican men who had come to Texas for work (Clevenger, 1989). Implied in this response is a contrast between threatening 'Mariel Cubans' and more palatable Mexican migrants.

Despite these initial experiments with privatization, by 1991 the leaders of the Bureau of Prisons and the Immigration and Naturalization Service were coming under sustained pressure for their inability to implement the enforcement provisions of the Immigration Reform and Control Act and Anti-Drug Abuse Act (GAO, 1989). First and foremost, their failure to identify, apprehend, and deport all non-citizens in Federal prison was framed as a problem of capacity. A series of reports issued by the General Accounting Office from 1986 to 1989 found that immigration officials were being forced to release hundreds of non-citizens with felony convictions on bond each month because they didn't have enough beds to keep them in custody, largely because the INS had struggled to cope with a 300% increase in the prosecution of non-citizens in Federal Prison since 1986 (GAO, 1987: 28-29, 1989). A 1989 article in the Washington Post detailed how the agency was frequency forced to let 'criminal aliens go free' because of overcrowding (Anderson and Van Atta, 1989). Describing an immigration raid in California where 12 people were arrested, one INS source told the Post that 'We had space for 10. We had the aliens draw lots. Two of them got the short stick and they went back on the streets' (*Ibid*). As the pressure to develop state capacity to identify, separate, and deport non-citizens grew during the early 1990s, outsourced, all-foreign facilities would become central to the administrative machinery of the prison-to-deportation pipeline.

'Simply more felons than beds': The crisis of state capacity and the turn to privatization

In his 1996 State of the Union address, President Bill Clinton famously told the assembled congressional delegates that 'the era of big government is over' (Clinton, 1996). Clinton's 1996 budget proposed a 20% cut to all Federal domestic agencies, and the firing of 100,000 Federal employees (National Performance Review, 1997). Yet, these efforts to reduce the size of government could only go so far, 'there are some areas that the federal government should not leave and should address and address strongly. One of these areas is the problem of illegal immigration. After years of neglect, this administration has taken a strong stand to stiffen the protection of our borders' (Clinton, 1996)

That the Clinton Administration focused taxpayer money and federal resources on immigration enforcement while cutting federal aid and welfare spending at every turn is unsurprising. Kitty Calavita's study of the debate over Proposition 187 in California has shown how the targeting of immigrants was linked to the 'crisis of Fordism' reflected in stagnant wages, increasing insecurity, and dismantling of the welfare state. (Calavita, 1996: 285). Within this nativist politics, immigrants were framed as a burden on taxpayers through their costly consumption of social services and as a racial threat to the territorial stability of white, suburban society (*Ibid*, 300). As anti-immigrant activist Glen Spencer said in 1994, 'What we have in Southern California is not assimilation; it's annexation by Mexico. We took it fair and square, and we're not giving it back' (Adams, 2000). This logic rationalized the increased exclusion of non-citizens and racial minorities from social services and the intensification of punitive enforcement measures at the US-Mexico border.

Echoing Schuck and D'Amato, nativist portrayals of the 'criminal alien' suggested that these 'violent offenders' embodied a double threat (Goldstein, 1983; Schuck and Williams, 1999). On one hand, they threatened the safety of the (implicitly white) public when released from prison without being deported. Stricter measures towards non-citizens in prison custody were rationalized by spectacular anecdotes of the violent crimes committed by immigrant men from Mexico. In an effort to attack the Clinton Administration's record on immigration and crime in Congress in 1999, Republican Congressman Elton Gallegly told the story of Jose Zavalla, a Mexican man who had been convicted of rape three times and returned to the community in California each time, rather than being deported (Gallegly, 1997: 61). Zavalla's story, Gallegly argued, demonstrated the need for a stronger

commitment to the identification and removal of non-citizens in Federal prisons, 'we are catching hundreds and hundreds of criminal aliens that should not even be in this country. We do not need to import criminals. We have enough of our own' (*Ibid*).

On the other hand, while incarcerated, foreign-national prisoners were framed as unwanted burdens who took precious taxpayer-funded resources away from US-citizen prisoners who might be successfully rehabilitated. As the US prison population surged, growing six-fold from 1980 to 2000, and social scientists proclaimed that 'nothing works' (Ghandnoosh, 2019; Martinson, 1974), this hollow concern for the rehabilitation of US-citizen prisoners served simply to rationalize bordered penal exclusion. In 1989 Democratic Chair of the House Subcommittee on Immigration Rep. Bruce Morrison told the Associated Press that the Federal prison system was 'overwhelmed by hundreds of thousands of criminal aliens', and suggested that Federal immigration officials could save precious resources by deporting non-citizen prisoners as quickly as possible (Orlando Sentinel, 1989: 6). Much in the same way that state officials from California baulked at immigrant access to welfare services, Federal officials from the state complained about the supposed fiscal burden produced by the growing number of non-citizens in custody. In 1994, California congressman Gary Condit complained to the House Subcommittee on Immigration that his state spent nearly $50 million dollars annually incarcerating non-citizens (Condit, 1994: 156). In the same year, Florida's Democratic Governor Lawton Chiles sued the Federal Government to collect $1.5 billion that Chiles claimed Florida had spent incarcerating and caring for migrant prisoners who were the Federal government's responsibility (The Los Angeles Times, 1994). In Congress, Florida Representative Tom Lewis fumed that, 'incarceration costs the taxpayer between $800 million and $1.5 billion keeping these criminals aliens in our overcrowded prisons. We clothed them, housed them, and fed them, we put them through the drug treatment and job training programs to make them better citizens, then we deported them' (Lewis, 1994: 142). Condit, Chiles, and Lewis followed the logic of prison welfare chauvinism to a logical conclusion: prison was a public service to which non-citizens should rightfully be excluded. This logic connected citizenship and deportability to a kind of less-eligibility: non-citizens in Federal prison did not deserve proper housing, rehabilitation, or care precisely because they were eligible to be deported. Beyond foreignness, race played a critical role in suturing together the logics of punishment and deportation and rationalizing the differential treatment of non-citizens. Much like Calavita and Chavez's observation that concerns over welfare

use by immigrants in California were narrated as a Latino 'invasion', the threat posed by 'criminal aliens' in Federal prisons was clearly understood in racial terms (Calavita, 1996; Chavez, 2013).

The solution to this perceived crisis of criminal aliens was to dramatically expand the scope of immigration enforcement, bringing the process of deportation directly into state and federal prisons. In a 1995 radio address, Clinton told listeners that, 'criminal aliens should move directly from the prison to the plane and right out of the country without passing go' (Clinton, 1995). He also explicitly tied the consequence of deportation to any interactions with the criminal justice system, 'When an illegal alien enters our criminal justice system, the process shouldn't end until they leave our country. If they are found innocent, they should be deported immediately. If they are found guilty, they should be deported immediately after they do their time' (*Ibid*). This commitment expanded upon the existing infrastructure of the Institutional Hearing Program, which worked to expedite deportation proceedings for non-citizens in Federal prisons. Specific measures targeting 'criminal aliens' were combined with a broader program of immigration enforcement, passed in 1996, that dramatically expanded the grounds for deportation while shrinking the avenues available to contest removal, and made lawful permanent resident status far more precarious.[18]

The Clinton administration projected a clear image of the state's crimmigration powers as a prison-to-deportation pipeline. The prison-to-deportation pipeline embodied a mode of governance with specific social, temporal, and administrative dimensions. In Clinton's formulation, the US criminal justice system would be re-purposed as a tool for identifying and excluding non-citizens. To reinforce the deterrent effect of criminal punishment, deportation was clearly framed as a spatial and temporal appendage to the penal sentence – something that would happen 'after they do their time' (Clinton, 1995). The seamlessness of this process – that non-citizens would move directly 'from the prison to the plane' – also offered a powerfully seamless image of exclusion. To be sure, Clinton's rhetoric represented an ideal rather than an actually-existing-practice – as we shall see in Chapter Seven, the interface between incarceration and deportation was rarely this seamless in practice.[19] Nonetheless, the prison-to-deportation pipeline offered Clinton – and subsequent political leaders –

[18] See: Illegal Immigration Reform and Immigration Responsibility Act of 1996. Online: govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf. Also, The Antiterrorism and Effective Death Penalty Act of 1996. Online: https://www.congress.gov/bill/104th-congress/senate-bill/735. See also: Jennifer M Chacon, 'Overcriminalizing Immigration' (2012) 102 J Crim L & Criminology 613.

[19] It should also be noted that the systems of immigration enforcement and deportation are significantly more effective in the United States than in other liberal democracies in the global North. See Tuck et al (2022).

a powerful rhetorical device, which deployed the unique communicative capacity of penal power to define and reinforce the boundaries of the nation-state (Barker, 2017: 443-444). Clinton's remarks distilled the envisioned relationship between punishment and deportation that Katja Franko has called 'bordered penality.' Building on the concept of 'Crimmigration law' (Stumpf, 2006, 2013, Hernandez 2014), Franko's work has traced the emergence of 'a differentiated, two-tier approach to criminal justice and a more exclusionary penal culture directed at non-citizens.' For Franko (2020: 54) and others (Chacon, 2009, Bosworth, 2011), the defining feature of this exclusionary penality is the combination of the 'power to punish and the power to banish': non-citizens are no longer to be returned to society, but instead expelled from the territory of the state.

This shift away from rehabilitation towards exclusion led to material changes in Federal prison policy that, in turn, consolidated the differential treatment of non-citizen prisoners (Kaufman, 2019: 1408). In 1994, a D.C. Circuit Court ruling, for example, confirmed that non-citizens were ineligible for placement in halfway houses because they were considered to be 'flight risks'.[20] In 1996 and 1998 the Bureau of Prisons issued policy memos that excluded non-citizens from a wide range of rehabilitative services (Department of Justice, Office of the Inspector General, 1995; GAO, 2012: 32). These policy changes also exempted non-citizen prisoners from placement closer to their families in the United States.

As part of the broader trend towards mass incarceration, however, the Clinton administration struggled to reconcile incarcerating an increasing number of immigrants with the goal of ending the era of big government. In response to the near-exponential growth of prison populations during the period after 1980, courts put pressure on State and Federal officials to reduce overcrowding (Raher, 2010: 215). To a large extent, focusing on immigration as a cause of overcrowding within the Federal criminal justice system obscured the broader causes and consequences of the war on drugs and mass incarceration. While the number of immigration prosecutions in Federal Court roughly tripled to 16,495 from 1994 to 2000, drug or property violations still accounted for 55% of offenses in 2000 (Office of the Federal Detention Trustee, 2002: 2). Nonetheless, by dramatically expanding the collateral immigration consequences for low-level criminal offenses, the 1996 laws substantially expanded the number of people in the prison-to-deportation pipeline. In turn, this overwhelmed the

[20] United States v. Smith, 27 F.3d 649, 668 (D.C. Cir. 1994). See also BOP Program Statement 7310.04 Page 10. Online: https://www.bop.gov/policy/progstat/7310_004.pdf.

Institutional Hearing Program's system of dedicated immigration courts within federal prisons, leading to damaging reports by the GAO that suggested that the IHP was failing to identify and deport a large majority of non-citizens in Federal prisons (GAO, 1999, 1998, 1997). Yet, while voters supported putting more and more people in prison, they frequently balked at the idea of having to pay the costs of prison construction and operation (McCarthy, 1989: 245). Pressing to lock up more non-citizens while at the same time reducing the size and cost of the Federal government, the Clinton Administration and Congress turned to the use of privately-operated facilities.

The growth of privately-operated prisons, as Ruth Wilson Gilmore (Gilmore, 2007: 122-125) has observed, depended on the claim that expanding prison capacity through private contracts avoided the need for state borrowing or the expansion of public payrolls. In 1999, Congress obligated the Federal Bureau of Prisons to begin the procurement process for two 'Criminal Alien Requirement' facilities designed to hold 'low security criminal alien men' in 1999 (BOP, 1999). By June of the following year, the Bureau of Prisons had issued contracts for two all-foreign facilities to the Corrections Corporation of America: Cibola County Correctional Facility in New Mexico, and California City Correctional Facility in California (BOP, 2000a, 2000b). A report published by the Department of Justice in 1999 trumpeted the role played by these new all-foreign facilities in helping the Clinton Administration to achieve the goal of reducing prison overcrowding through contract confinement (Department of Justice, 1999). Perhaps more importantly, these CAR facilities brought racially disproportionate migration control into the heart of the Federal prison system. As INS Assistant Director John L. Clark testified in 1997, these facilities were 'targeted at the Mexican citizens' by design (Clark, 1997: 91). Clark's testimony made explicit the oft-implicit connection between exclusion along the lines of immigration status and exclusion along the lines of race: in practice targeting 'criminal aliens' in Federal prison meant targeting Latino men (Hernandez, 2010: 19).

Privatization for all?

When the Bureau of Prisons began the procurement process for the first Criminal Alien Requirement prison in 1999, it was not their only private contract (Greene, 2001). In the late 1990s, the Bureau of Prisons had begun experimenting with privatizing prisons for US citizens at two facilities in California and Ohio, in addition to at least four other privately contracted facilities

operated through inter-governmental agreements with county-level governments.[21] This begs a broader question: How did immigrant men become the singular subjects of public-private incarceration within the Federal prison system?

All-foreign prisons emerged from an unsettled period of 'turf battles' in which Federal agencies and congressional leaders fought over the shape and scale of the Federal prison and immigration detention system (Kaufman, 2019: 1394). From the beginning of 'mandatory detention' policies in 1981 until the late 1980s, there was significant debate between the White House, the Department of Justice, the BOP, and the INS over which agency should be responsible for immigration detention (Loyd and Mountz, 2018: 92-96). Tina Shull's (2022: 202-211) detailed history of the early efforts to expand the contemporary immigration detention regime under the Reagan administration highlights how INS officials settled on the use of private contractors in the absence of alternatives. From 1979 to 1981, the California-based company Behavioral Systems Southwest received a series of INS contracts to house migrants in repurposed warehouses and motels (*Ibid*, 206). In 1983, Corrections Corporation of America and the Wackenhut Group received contracts worth $8.2 million each to build detention facilities in Houston, Texas and Aurora, Colorado, respectively.[22] Unlike the Federal Prison system, by 1985 the INS had a relatively long track record of contracting with private firms to operate immigration detention facilities.

From the early 1980s, public sector unions mounted vocal opposition to private confinement. At the American Federation of State, County and Municipal Employees (AFSCME) convention in June 1984, union members adopted a resolution that opposed the contracting of corrections, resolving that privatization 'creates an inherent conflict of interest between the desire for profits and the desire to rehabilitate inmates' (AFSCME, 1984). Yet, this opposition only went so far. The resolution also noted the established precedent set by the Bureau of Prisons and Immigration and

[21] From 1986 to 1989, the Federal Bureau of Prisons opened four privately-contracted, so-called 'dedicated Institutional Hearing Program' prisons. While these facilities were not explicitly all-foreign, they were clear predecessors to the CAR system. See: Kathleen Hawk Sawyer. 1994. *Hearing Before the Subcommittee on International Law, Immigration, and Refugees.* Serial No. 37, Feb 23rd. 167-168. Online: https://books.google.es/books?id=gIEAcQqPG94C&redir_esc=y. See also Ingrid Eagly and Steven Shafer. 2020. 'The Institutional Hearing Program' in *Law and Society Review*. 54(4). 813.

[22] Founded in Florida in 1954, the Wackenhut Corporation was the largest security firm in the US for much of the second half of the 20th century. In 2002, after years of debt-related issues stemming from over-leveraged expansion, the Wackenhut Corporation was bought by a Danish firm Group 4 Falck and merged again to become British firm G4S in 2004. See: Marcia Heroux Pounds (2002) 'Danish Firm Agrees to buy Wackenhut' *Sun Sentinel.* Online: https://web.archive.org/web/20110725001528/http://articles.sun-sentinel.com/2002-03-09/business/0203081071_1_falck-george-wackenhut-security-firm.

Naturalization Service's use of contractors to house non-citizens, and called for Federal subsidies for States and local governments to construct new publicly-run facilities (*Ibid*).

When the Clinton Administration began the National Performance Review in 1993, organized labor put significant pressure on Federal elected officials and civil servants to resist privatization (AFSCME, 1996). Key among these groups was the American Federation of Government Employee's Council of Prison Locals. Both AFSCME and the Council of Prison Locals were key opponents of the Capital District Revitalization Act, passed in 1997, which obligated the Bureau of Prisons to place sentenced prisoners from the District of Columbia in privately operated, low-security facilities (AFSCME, 1998). Organized labor spent millions of dollars, and conducted dozens of campaigns, contesting the spread of privately-operated Federal prisons (Kelly, 2019). Although these labor groups were frequently massively outspent by private contractors, their resistance played a key role in shaping Federal policy (*Ibid*, 15-16). Interviewed about the role played by organized labor, prominent anti-privatization activist Judith Greene mentioned how the AFGE opposed wholesale privatization, but had little to say about the expansion of the all-foreign prison system (Greene, 2021). Greene felt strongly that union officials struck a tacit deal with Federal administrators after 1999, rendering no opposition to contracts that locked up immigrants.

The battle over privatization in California after 1998 is perhaps the best example of public sector opposition to outsourced incarceration. In 1998 the Correction Corporation of America announced plans to build two new prisons in Mendota and California City, two towns in the San Joaquin Valley that were both among the poorest in California (Arax, 1999; Morain, 1999). From a financial perspective, these projects seemed like a canny effort to take advantage of the massive overcrowding in state prisons. Despite the fact that California's state government had gone on a prison-building binge in the San Joaquin Valley during the early 1990s, by 1999 the California Department of Corrections and Rehabilitation held 160,000 men in thirty-three prisons with a rated capacity for 79,000 people (Geissinger, 1999: 12; Gilmore, 2007). In an interview with the *Santa Cruz Sentinel*, CCA's West Coast Regional President David Myers publicly promised that outsourcing state prisoners to his firm's prisons would save taxpayers $4,000 a year per inmate (Santa Cruz Sentinel, 1999: 32). Indeed, the firm was so confident that it spent $98 million constructing a facility with capacity for 2,305 prisoners at the California City site (Geissinger, 1999: 13).

After 1998, the 27,000 members of the California Correctional Peace Officers Union waged political war on CCA and the other private firms that threatened to take prisoners out of CDCR prisons. The prison officer's union donated two million dollars to Governor Gray Davis' re-election campaign and spent significant political and financial capital on key state politicians from both parties (Napa Valley Register, 1999). In an interview in 1999, the vice president of the prison officers' Union Lance Corcoran said that, 'there's no place for private prisons in California. Incarceration should never be in anybody's hands other than correctional officers who answer to the public, not to corporations' (Santa Cruz Sentinel, 1999: 32). The public sector campaign against CCA was remarkably successful. In February of 1999, the California Department of Corrections and Rehabilitation had announced a procurement process for two new private facilities. In May, two union-backed bills reached the legislature which would prohibit the state from signing new agreements to use private facilities, and bar out-of-state inmates from being transferred to non-CDCR facilities in California (Brulte, 1999; Kuehl, 1999). By December, the state had cancelled the procurement process, and prohibited prisoner transfers from other states (Napa Valley Register, 1999). Victory for the prison officers' union had two immediate consequences. On one hand, CCA began to invest significantly in lobbying, spending $6.5 million on political contributions during the period from 1998 to 2004 (Leonard, 1999; Shelden, 2011). More importantly, absent prisoners from the California state prison system, CCA turned to the Federal Government to fill these facilities. In early 2000, CCA's California City Correctional facility would become one of the two first Criminal Alien Requirement facilities (BOP, 2000a).

After 1997, BOP experiments with privatization for US citizen prisoners were marked by highly-publicized scandals. Congress obligated the Bureau of Prisons to procure and operate Taft Correctional Institution (CI Taft) under contract with Wackenhut in 1997 as a 'demonstration project' to evaluate and compare outsourced incarceration with three other BOP-run facilities (Lappin, 2005; Nelson, 1999). For the advocates of privatization in White House and Congress, the decision to contract out Taft marked the first step towards fulfilling Clinton's promise to remain tough on crime while also slashing Federal payrolls (Belluck, 1999). Yet the cost-savings promised by privatization never materialized. A study by the National Institute of Corrections in 1999 found that CI Taft's contract was more expensive than comparable BOP facilities, specifically due to the costs of staffing and providing medical care to prisoners (Nelson, 1999). On November 14th, 1999 hundreds of prisoners at Taft rioted in protest over poor conditions. One prisoner, Nathaniel

Osuorji, wrote to Prison Legal News to contest the one-sided depiction of the 1999 riot in the local media (Prison Legal News, 2000). Taft, as Osuorji put it, was a 'prison for profit' that was built to make money, rather than rehabilitate prisoners. Osuorji pointed out that Taft offered no vocational, education, or similar programs provided to prisoners of the same classification in BOP-run facilities, 'Inmates are simply wasting away without gaining any of the special skills they will need for post-release survival' (*Ibid*). Echoing the 1999 report, a BOP study published in 2005 found that the potential savings available through privatization were outweighed by the extra costs associated with monitoring and administering the contract (Camp, 2001; Camp and Gaes, 2002; Lappin, 2005: 69).

Like CI Taft, the 1997 Revitalization Act set a timeline for the closure of prison facilities operated by the District of Columbia and obligated the Bureau of Prisons to house sentenced DC prisoners in privately contracted facilities.[23] In May 1997, Corrections Corporation of America opened the Northeast Ohio Correctional Center in Youngstown, Ohio, housing 900 medium and high-security DC prisoners. Almost immediately, the facility encountered a series of problems with understaffing, security, and poor medical care (Yeoman, 2000). By the end of May, prisoners had begun to protest the lack of basic necessities, health screenings, and other services by refusing to obey count (Corrections Trustee, 1998). Despite these issues, the BOP renewed its contract with CCA in September, increasing the total bed space at NEOCC to 1,700 (*Ibid,* Chapter XI). In February 1998, two prisoners, Derrick Davis and Bryson Chisley were stabbed to death by other prisoners. Davis bled to death while awaiting medical attention because the facility was so short-staffed that there was no officer on the floor (Yeoman, 2000). A Department of Justice inquiry into the failures at the facility found that, 'in response to a perceived emergency need for contract prison beds, the District of Columbia rushed into an abbreviated procurement process which minimized competition [resulting in] a flawed contract, at a somewhat inflated price, with weak requirements on the contractor and minimal provisions for enforcement' (Corrections Trustee, 1998: Chapter III).

The cloud of negative publicity produced by CI Taft and NEOCC made privately contracted confinement an albatross around the Bureau of Prisons' neck. During a Congressional Oversight Hearing in 2000, BOP Director Hawk-Sawyer actively pressed to change the privatization requirement in the DC Revitalization Act, arguing that the 'private sector has not yet established a

[23] See: National Capital Revitalization and Self-Government Improvement Act. 1997. Sec. 11201. Bureau of Prisons. Online: https://www.govinfo.gov/content/pkg/COMPS-10833/pdf/COMPS-10833.pdf.

sufficient track record in housing [medium and high security] offenders' to do so safely ("Oversight of the Federal Bureau of Prisons," 2000). Despite internal opposition, the BOP awarded Cornell Corrections a contract for a new low-security facility to house sentenced DC prisoners in 1998 per the obligations set out in the 1997 District of Columbia Revitalization act (Buckso, 2006; Cornell Corrections, 1999). When Cornell Corrections began construction in Philipsburg, Pennsylvania a year later, the proposal was immediately met by legal challenges from the State Attorney General, and from local citizens groups (Joseph, 2003; Walker, 2000). Notably, the legal challenge made by local citizens groups was directly funded by the American Federation of State, County, and Municipal Employees (Colton, 2000).

A memo prepared by BOP counsel shows that in the wake of the cost overruns at CI Taft and the scandals at NEOCC, the BOP replaced sentenced DC prisoners with non-citizens at the planned facility in Pennsylvania (Carney, 2004). By 2003, when both legal challenges had been resolved, Cornell pressed the Bureau to consider design changes to the facility, and the substitution of a different prisoner population, to 'reduce the costs associated with the [construction] delay' (*Ibid*). The proposed changes provide critical insight into how the public-private relationship shaped the creation of the prison. Rather than a three-building facility designed to house a range of prisoners with varied needs, Cornell proposed a massive, one-building facility where prisoners could be warehoused in a single large space to reduce cost (*Ibid*). While the BOP rejected this initial proposal out of hand, they eventually agreed to a design for a two-building facility. Moreover, BOP officials agreed to replace all DC prisoners with 'criminal aliens.' BOP Assistant General Counsel Mary Carney wrote that 'the original population was expected to be very expensive because DC inmates require a great deal of programming… The substitution of criminal aliens for many of the DC male inmates and the entire [youth offenders] program… was expected to lead to even lower per diem rates than in the original proposal' (*Ibid*).

In addition to the lack of programming, outsourced facilities for non-citizens were cheaper to operate because they were not held to the same regulatory standards as BOP-run facilities. BOP-run facilities are regulated by criteria outlined in 'program statements.'[24] These regulations set forth clear standards for healthcare, educational programming, rehabilitative services and more. While BOP-run

[24] For a list of all BOP program statements, see: BOP. 2021. *BOP Policies* [website]. Online: https://www.bop.gov/PublicInfo/execute/policysearch?todo=query.

facilities may fail to live up to these standards, the fact that these rules exist sets a clear standard of operations. Among eight contracts for all-foreign facilities, none contained language holding contractors to the rules set forth in BOP program statements.[25] As Donna Mott, a former employee in the BOP's privatization management unit wrote, "If you put in specificity exactly like BOP program statements then it is basically going to cost the contractor the same amount to operate their facility as it does a bureau facility, which then takes the draw for private contracting off the table—because the draw is that it costs the government less money" (Mott in Wessler, 2016).

Overall, the decision to replace sentenced US citizen prisoners with non-citizen prisoners in the plans for the Philipsburg facility shows how the privately-operated, all-foreign prison emerged as a contingent solution to the problems faced by Federal political and administrative officials, private contractors, and local governments. The integration of the logics of migration control and punishment within a privately-operated facility allowed politicians to project the image of being tough on 'criminal aliens' while simultaneously being seen to reduce the size and cost of the Federal government. In practice, BOP decisions to restrict non-citizen access to a wide range of prison services, and the exemption of all-foreign facilities from the same regulations applied to BOP facilities, made all-foreign facilities significantly cheaper to operate. Yet cost was predicated on the foreign racial identities of prison subjects: the incarceration of 'criminal aliens' was rendered available for private contractors precisely because of the drive expressed by the Clinton administration and the House Subcommittee on Immigration to treat non-citizens differently.

Conclusion

In the aftermath of the Mariel Boatlift in 1980, the figure of the 'Criminal Alien' emerged as a novel political subject. Where discursive constructions of the 'illegal alien' during the 1970s cast unauthorized migrants as a threat to the native white labor force, portrayals of the criminal alien tied migration to anxieties about crime, sexual violence, and drug trafficking. As Tina Shull's (2022) description of the response to the riot at Fort Chaffee in 1980 points out, these portrayals drew heavily on the rhetorical language of anti-blackness and gender deviance to suture together

[25] Contract and proposal documents for eight CAR facilities were obtained by Stephen Raher, an attorney with the Prison Policy Initiative via Freedom of Information Act request. Raher has kindly shared these documents with me, and made many of the documents available online at: https://app.box.com/s/e541c0a813751fdf2e09.

foreignness and criminality. Building on the work of Shull and others, this analysis has traced how the figure of the 'criminal alien' evolved over the 1980s and the 1990s into a perceived threat to both public safety and state capacity.

Public anxieties about migration and crime created a crisis of governance that would transform the systems of criminal justice and immigration control in the United States. The passage of the Immigration Reform and Control Act in 1986, and the subsequent creation of jail status check programs including the Criminal Alien Program and the Institutional Hearing Program, brought migration control into the prison setting for the first time (Stumpf, 2006, Kaufman, 2019: 1394, Eagly and Shafer, 2020). As Jennifer Chacón (2009) has observed, governing immigration through crime changed the meaning of both punishment and migration control (Franko Aas, 2014). Reagan and Clinton-era programs designed to identify and target non-citizens in federal prison formed the administrative foundation for the prison-to-deportation pipeline, where prison came to function as a site for the identification and deportation of non-citizens. Echoing previous work on the relationship between crisis and state authority (Chacón, 2009; Hall, 1978; Simon, 2007), these examples highlight how the extension of bordered penal practices was predicated on the perceived crisis caused by the 'criminal alien problem' (US Senate, 1995, Schuck, 1999).

By the 1990s, the increasing number of non-citizens in an already overcrowded Federal prison system caused severe problems for Federal policymakers. Reluctant to borrow money or raise taxes to build new BOP-operated prisons, or to consider proposals to reduce the number of people in custody, Federal officials turned to outsourced incarceration as a solution to the crisis of state capacity (Gilmore, 2007). The integration of the logics of migration control and punishment within a privately-operated facility allowed politicians to project the image of being tough on foreign criminals while simultaneously being seen to reduce the size and cost of the Federal government. By re-framing the location and practice of punishment in terms of the economic logic of comparative efficiency, private contractors facilitated the expansion of a network of ad-hoc 'deportation prisons' (Schumer, 1994: 119-122) across Texas and Oklahoma.

Crucially, the evolution of privately contracted confinement within the Federal prison system was predicated on the incarceration of Latino men. Exemplifying Lauren Martin's concept of 'status value' (Martin, 2021: 8) 1980s prison entrepreneurs like Ed Davenport of Mid-Tex Detention Center

Inc saw immigrant men as a material commodity, whose incarceration would provide enough revenue to replace the previous economies of extraction in west Texas. During the 1990s, Federal officials took progressive steps to target and exclude non-citizens within the federal prison system. Often, the drive to exclude non-citizens reflected a racially motivated drive to exclude Latino immigrants from public services, echoing Emma Kaufman's (2019) observation that citizenship has increasingly come to 'mean race', in practice. In turn, the BOP's deliberate decision to restrict non-citizens from access to key prison services, and the exemption of all-foreign facilities from the BOP's program statements, made all-foreign facilities much cheaper to operate in practice. Critically, as the analysis of the contest over the BOP's facility in Philipsburg, PA has shown, this cost judgement was predicated on the race and immigration status of the people who would be incarcerated.

Chapter Five

'Because we are deportable people': Race, foreignness and outsourced incarceration

Since the turn of the 21st century, the Bureau of Prisons has, in the words of the Department of Justice, attempted 'to think outside of the 80-square-foot-box' (DOJ, 2005: 211). In practice, this meant prioritizing 'more cost-effective approaches to confinement, particularly contracting out for prisoner bed space' (*Ibid,* 4). Following in the footsteps of the Reagan and Clinton Administrations, the Bush-era Department of Justice's commitment to increase the use of outsourced incarceration was grounded in concerns over the growing cost of mass incarceration: 'At present, the Bureau of Prisons incarcerates over 174,000 inmates… This represents a $25-billion investment and almost $4 billion in annual costs' (*Ibid*). The increased use of outsourced prison space, the DOJ budget justification argued, would 'yield cost savings and represent a more flexible approach than additional prison construction.' To this end, the fiscal year 2005 budget placed a moratorium on new prison construction, and explicitly promoted 'more aggressive BOP contracting with State, local, and private sector prison providers' (*Ibid,* 5).

To a large extent, these terms of reference have dominated public debate and discourse over prison privatization in the United States for the past twenty-five years.[26] The scholar Sharon Dolovich (2009) has described the tendency to reduce debates about privatization to arguments about administrative and fiscal efficacy as the framework of 'comparative efficiency.' On one hand, politicians like Rep. Lamar Smith and academics like Alexander Volokh (2013) have argued that privately-operated confinement could offer a more flexible and cost-efficient alternative to state-run prisons. On the other hand, a diverse array of voices from across the spectrum of politics, practice, and academic research have developed empirical and normative critiques of privatization that question this singular focus on administrative and fiscal efficacy (Public Services International, 2016; Sanders, 2017; Thorburn, 2017).

Yet, the debate over outsourced incarceration in the federal system – both in political and academic terms – has failed to grapple with the fact that the distinction between public and private has been

[26] It is worth noting that no Federal prisons are entirely 'public' or 'private.' All BOP-run facilities rely on a wide range of contractors for the provision of food, medical, and transport services. E.g. see DOJ OIG, 2019. *Audit of the Federal Bureau of Prisons' Contract Awarded to Correct Care Solutions***.** Online: https://www.oversight.gov/sites/default/files/oig-reports/a1937_0.pdf.

premised on the differential treatment of foreign-national prisoners. Since the end of the Taft Demonstration project in 2006, the three Federal Agencies that oversee incarceration - the Bureau of Prisons, US Marshals Service and US Immigration and Customs Enforcement – have outsourced the confinement of non-citizens (DOJ, 2016). At the end of 2020, contracts with the Federal government accounted for roughly 60% of the consolidated revenue generated by private prison firms (CoreCivic, 2020; The GEO Group, 2020: 24). While political support for privatization has wavered among all but a small number of conservative State legislatures, private contractors like CoreCivic have increasingly marketed the incarceration of non-citizens to investors as a 'potential growth channel' (CoreCivic, 2022: 19).

In this chapter, I argue that the Criminal Alien Requirement prison system offers an important case study through which to understand the evolving relationship between outsourced incarceration, race, and political membership. That race and immigration status came to define the distinction between public and private incarceration within the Federal prison system was, I argue, the result of a broader shift in the economic logics of outsourced incarceration. Historically, outsourced incarceration in the United States generated economic value by using the coerced labor of prisoners to produce goods to sell (Alexander, 2010: 74-75; McLennan, 2008). As a result of campaigns led by organized labor, the Federal government has tightly regulated the sale of goods produced within Federal prisons since the 1930s (GAO, 2020). Instead of selling goods produced by incarcerated people, since the early 1980s prison officials and private contractors have sought to extract financial value from outsourced incarceration through a technique the critical theorist Lisa Guenther calls 'warehousing' (Guenther, 2017: 42-43). Warehousing refers to practices of incarceration that aim to extract value from the social and biological reproduction of incarcerated people by maximizing numbers incarcerated in any given facility and reducing the costs associated with keeping them alive. In concrete terms, this meant maximizing the number of people incarcerated per prison, reducing levels of staff, eliminating programming and services, and narrowing the scope and cost of medical care.

As BOP General Counsel Karen Carney observed in 2004, 'criminal aliens' were much cheaper to incarcerate than other groups of offenders (Carney, 2004). Indeed, foreign-national prisoners became the default subjects of carceral practices of warehousing because they were excluded from the rights, benefits, and regulatory protections afforded US citizens in BOP-run prisons. Under BOP policy, any 'inmate who is not a citizen of the United States' is classified as a 'Deportable

Alien' and assigned the 'Deportable Alien' public safety factor.[27] As detailed in the previous chapters, after 1994 the Bureau of Prisons implemented a series of policies that excluded all 'deportable aliens' from most prison programs including placement in residential drug abuse programs (RDAP), college and vocational education courses, and employment through the Federal Prison Industries program (Kaufman 2019, 34). Moreover, as described above, all-foreign prisons were subject to a regulatory regime distinct from the system of program statements that governed the confinement of US-citizens in BOP-run prisons. Analysis of CAR prison contracts, procurement documents, and administrative records obtained via public records request demonstrates how BOP officials and private contractors negotiated the development of a regulatory regime that was designed to provide Federal officials with the maximum flexibility at the lowest cost. As the Criminal Alien Requirement prison system expanded during the first two decades of the 21st century, non-citizens, and in particular Latino men, became the default subjects of a regime of outsourced incarceration premised on extracting financial value from incarcerated life (Martin, 2021).

Until the passage of the Immigration and Nationality Act in 1952, race was a formal prerequisite to eligibility for US citizenship (Haney-López, 1996). Similarly, a wide body of scholarship has demonstrated how practices of border control and deportation have focused disproportionately on racialized Mexican men (Hernández, 2013; Hernández, 2010; Lee and Yung, 2010; Ngai, 2014). Tracing the evolution of the 'deportation machine', Adam Goodman's historical analysis has demonstrated that nine out of ten people deported by the US government have been Mexican nationals (2020). Although the Bureau of Prisons has rejected allegations of racial segregation within all-foreign prisons, the application of the 'deportable alien' public safety factor has been hugely racially disproportionate. From 2000 to 2016, 77% of 'deportable aliens' were Mexican nationals (Government Accountability Office, 2018: 16).

In this chapter, I draw on the testimony of men incarcerated in Criminal Alien Requirement prisons to examine how experiences of outsourced, all-foreign incarceration gave meaning to the racialized category of the 'deportable alien' (BOP, 2019). To theorize the connection between outsourcing and

[27] Confusingly, the Bureau of Prisons and the Department of Justice use the terms 'criminal alien' and 'deportable alien' somewhat interchangeably. See e.g. DOJ OIG (2016a). However, in reference to designation and custody decisions, the Bureau exclusively uses the term 'deportable alien.' The regulations governing the 'deportable alien' public safety factor are set forth at Chapter 5, Page 9 in BOP Program Statement P5100.08 - Inmate Security Designation and Custody Classification. See: BOP (2019).

practices of exclusion within sites of incarceration I draw on research that has demonstrated how prisons operate as 'racial projects' (Goodman, 2008, Omi and Winant, 2015, Walker, 2016). In their classic work on racial formation, Michael Omi and Howard Winant (2014: 125) develop the concept of the racial project to describe how abstract, socially constructed racial categories gain concrete, empirical meaning through the differentiated access to and distribution of material and social resources. Within CAR prisons, the term 'deportable alien' gained concrete meaning through the multiple ways in which immigrant men were excluded from rights, benefits and protections afforded to US citizen prisoners, and subject to a system of outsourced incarceration.

To make sense of this differential penal treatment I employ accounts of all-foreign imprisonment from three sources – men whom I interviewed directly, transcripts from interviews conducted with incarcerated men by grassroots or advocacy groups, and written testimonies included as part of lawsuits filed by men in CAR prisons.[28] Across these sources, people describe four main ways in which the economic logics of outsourced incarceration shaped practices and conditions of their confinement: prison crowding and the physical space in which they were housed, the ways in which these prisons were staffed, the absence of equivalent programs and services offered to US citizen prisoners in BOP-run facilities, and the quality of and access to medical care. These experiences of penal warehousing were understood as a direct consequence of racial and national exclusion.

Yet these testimonies also raise questions about how to make sense of differences and continuities in penal practices. In an obvious sense, Criminal Alien Requirement prisons were excluded from the same regulatory requirements that applied to BOP-run facilities, in an arrangement that allowed outsourced prisons to operate with significantly lower levels of staff, and exempted them from the requirement to provide a wide variety of services or programs designed to help offenders prepare for release from custody (Department of Justice, 2016: 4). Moreover, the distribution of economic resources was clearly measured differently in both systems. Where spending within the Bureau of Prisons reflects the Federal budget process, and is generally tracked in terms of changes in year-to-year totals (Bureau of Prisons, 2018; Government Accountability Office, 2007), spending on

[28] The interview transcripts conducted by other groups are drawn from three sources. First, the surveys of five CAR prisons in Texas conducted by the American Civil Liberties Union in 2011-2014 (ACLU, 2014). Second, the surveys of CI Rivers, a CAR prison in eastern North Carolina, conducted by the DC Corrections Information Council in 2017 and 2020 (DC CIC, 2017, 2020). Finally, the interviews conducted by men incarcerated at CI North Lake by members of the No Detention Centers in Michigan Group (NDCM, 2020).

outsourced prisons is often measured in individual or marginal terms, through the *per diem* and the 'compensated man day' (CoreCivic, 2022).

Yet, other elements of the treatment described by the people incarcerated in CAR prisons seemed to reflect elements of the penal system that are common across the United States. Indeed, many of the practices and conditions described in this chapter are similar to those in BOP-run low security prisons. That these all-foreign prisons were crowded places which frequently forced offenders to sleep in makeshift cells reflects a broader shift in the scale and character of imprisonment in the United States (Zimring, 2010). Before the pandemic, the Bureau of Prisons and nine State prison systems operated at 100% capacity or more (Widra, 2020). Although non-citizens have been explicitly excluded from prison programs designed to help offenders re-integrate, this exclusion has taken place within the broader context of a shift away from the 'rehabilitative ideal' towards the goals of incapacitation and pacification (Burton, 2023; Simon, 2000).

However, the fact that CAR prisons segregated 'deportable alien' offenders defined racial and national boundaries regardless of whether penal practices are qualitatively different. As Omi and Winant (2015) and others (Goodman, 2008; Walker, 2016) have argued, race and nation take shape through the distribution of resources according to social categories of difference. Jan, whom I interviewed after his incarceration at Great Plains Correctional Facility, a GEO Group-run CAR prison in Oklahoma, had already experienced difficulty accessing medical care in the BOP-run facilities he was incarcerated in before Great Plains. Yet, at Great Plains, Jan explained his medical barriers in terms of the make-up of the prison population, writing to me that 'I think it's weird as hell that only noncitizens went to these private prisons.. and had all of these problems getting sick and stuff' (JC, Sep 1st, 2021, letter). As his words suggest, whether or not penal practices varied, racial and national segregation made experiences of hard treatment in all-foreign prisons qualitatively distinctive, since, for him, it felt as though inadequate medical treatment was a consequence of his lack of US citizenship.

In a broader sense, the continuities in penal practices across these systems also highlight the varied ways in which incarceration produces a 'civic education' (Lerman and Weaver, 2014). Reuben Jonathan Miller's (Miller, 2014; Miller and Stuart, 2017) work has demonstrated how penal practices constrain and exclude the political participation of racially and economically marginalized people. If

the criminal justice system is a critical site for the definition of political membership, then these continuities highlight how national citizenship is one among a variety of forms of political association that are defined within contemporary penal institutions

This chapter proceeds in three sections. The first section examines the strange absence of the legal process and immigration control within CAR prisons. In the absence of migration control, the following section describes how the logic of the 'compensated man day' comes to govern these outsourced prisons in further detail, and connects that this logic is critical to the racial project within CAR prisons (Goodman, 2008, Omi and Winant, 2014, Walker, 2016). The second traces how the economic logics of outsourced incarceration shaped practices and conditions of confinement, focusing on prison crowding, staffing, and programs and services. In the final section, I analyze the testimony of men incarcerated in CAR prisons, suggesting that outsourced confinement produced experiences of abandonment connected to exclusion from political membership.

The conundrum of migration control in CAR prisons

Ostensibly, CAR prisons are organized to facilitate the identification of foreign national offenders, the administration of the legal process of deportation, and the physical removal of 'deportable aliens' (BOP, 2019). However, the physical and administrative processes of migration control are strikingly absent from these facilities. In her study of CAR prisons, Emma Kaufman (2019: 1440) found that there was little evidence to support the notion that all-foreign prisons improve the efficiency of the prison-based deportation process. Indeed, the men who I interviewed frequently expressed confusion and frustration that the immigration process seemed not to take place within CAR facilities. Andres, whom I exchanged letters with while he was incarcerated at the Management and Training Corporation-run Giles W. Dalby Correctional Facility, wrote that:

'*Management and Training Corporation are fleecing the American taxpayer. Although designated as an Immigration Hearing Facility, hearing [sic] are few and far between … despite the statutory command that said hearings are to be conducted expeditiously. MTC, however, has no interest as it aids corporate goals of extending a foreign national sentence… If you don't afford the hearing until after the sentence is completed then you are in a position to extend someone's prison time and increase corporate profits*' (AG Letter, Sept 8th, 2021).

Andres' testimony highlights the confounding absence of migration control within CAR prisons. Ostensibly, all-foreign prisons segregated foreign-national offenders for the purpose of deportation. Yet, in practice these institutions facilitated very little of the administrative or legal processes of migration control. For Andres, as for many of the men who I interviewed during or after their incarceration in CAR facilities, the segregation of immigrant men into contract prisons worked to 'increase corporate profits' rather than facilitate deportation.

The relative absence of the legal and administrative processes of migration control within CAR prisons is a function of the evolving relationship between criminal justice and migration control in the United States. Criminal Alien Requirement prisons are embedded in a broader set of enforcement initiatives and programs created by the INS and the Department of Justice after the passage of the Immigration Reform and Control Act in 1986. As noted in the previous chapter, the passage of the Immigration Reform and Control Act prioritized the deportation of non-citizens who had been convicted of certain qualifying offenses (P.L. 99-603). In 1988, the Immigration and Naturalization Service established a pair of programs to comply with this new enforcement priority: the Institutional Removal Program and the Alien Criminal Apprehension Program (Kandel, 2016: 23). The ACAP program focused on identifying 'deportable aliens' in federal, state and local corrections facilities before their release from prison (GAO, 1986a, Kandel, 2016: 23). Through the Institutional Removal Program, INS formalized a process of prison-based deportation proceedings created to administer the legal processes of Cuban nationals incarcerated at USP Atlanta after 1980 (Eagly and Shafer, 2020).

From 2005 onwards, ICE combined these aforementioned programs into a single entity called the Criminal Alien Program (Cantor et al., 2015; US Immigration and Customs Enforcement, 2003). Both the Alien Criminal Apprehension Program and the Criminal Alien Program involved what ICE termed a 'jail status check' process (American Immigration Council, 2013). As part of this process, ICE-employed immigration officers identified foreign-born offenders, and gathered the information required to issue them with a charging document, called a 'Notice to Appear' (Executive Office for Immigration Review, 2022). Before 2005 most state prison systems and the Bureau of Prisons would provide ICE with 'periodic listings of foreign-born inmates to the INS/ICE offices within the relevant jurisdiction' (Matuszewski, 2012; 6). In certain cases, immigration officers had to 'proactively check local booking records of inmates identified as foreign-born for potentially

deportable criminal aliens' (*Ibid*, 7). In both cases, because criminal identity records and immigration identity records were held in separate databases, INS/ICE officers had to ensure they matched before issuing a 'Notice to Appear' (GAO, 1997). The administrative process required to match identity records was extremely time-consuming and frequently required immigration officers to travel to geographically dispersed jails and prisons. The physical segregation of foreign-national offenders aimed to reduce the inefficiency of this process by allowing identification checks - and deportation hearings carried out through the IHP – to all happen in one centralized location. As Deputy Immigration and Naturalization Service Commissioner Chris Sale put it to the House of Representatives:

'Sentenced aliens are funneled into a single prison intake center where we can work most efficiently with them. By staffing these centers, the INS is able to process all aliens coming into the penal system in just a few locations rather than trying to deal with a panoply of locations that are now incarcerating criminals' (Sale, 1994: 175-176).

Katja Franko (2020: 27-28) and others have described how identification has become a vital practice of the modern state. This 'identificatory logic' (*Ibid,* 26) is exemplified by efforts to control cross-border movements through new technologies like biometric ID cards, fingerprint scans, and DNA databases that connect physical bodies to paper and digital records. Since 1999, the evolution of identification technology has produced significant changes in the way that foreign-national offenders are identified in Federal prison. Although the INS and the Federal Bureau of Investigations had discussed the possibility of developing a joint fingerprint database in 1990, the integration of federal criminal and immigration databases did not progress because both agencies had significantly different operational requirements (DOF OIG, 2003). INS required that an automated fingerprint system provide a response in two minutes, to allow Border Patrol officers who had apprehended a large group of border crossers to process each individual quickly (*Ibid*). To meet this requirement, INS decided that it would implement a fingerprint system that used two fingerprints and a photograph. With an eye toward the evidentiary requirements for criminal prosecutions, the FBI chose to implement a system that obtained ten fingerprints, but would require far more time to capture prints and identify a match (Donohue, 2019: 421). The result was that INS' fingerprint database, called IDENT, and the FBI's database, called IAFIS, were inoperable and, in the words of Congressman Alan Mollohan 'redundant' (Monohan in Donohue, 2019: 422).

After 1999, however, political pressure spurred INS to improve the inter-operability of criminal and immigration databases. On June 1st, 1999, Rafael Resendez-Ramirez – a Mexican national who had multiple outstanding warrants for murder – was apprehended by Border Patrol (Department of Justice, Office of the Inspector General, 2003). When the Border Patrol Officers who apprehended him searched the IDENT database for his records, they identified his previous criminal history, but received no notice of his outstanding warrants, so deported him to Mexico (*Ibid).* Weeks later, he returned to El Paso, Texas, and committed a series of murders before turning himself into law enforcement (Acosta, 1999). Resendez-Ramirez's case offers an illustrative example of the ways that 'criminal alien' served as 'ideal villains' (De Noronha, 2015). Months after his apprehension, the Department of Justice issued a report condemned INS' failures, and recommending that the agency 'aggressively and expeditiously link the FBI and INS automated fingerprint systems' (Department of Justice, Office of the Inspector General, 2000). After the September 11th terrorist attacks, President Bush signed the USA Patriot Act which stipulated the immediate integration of the IDENT and IAFIS systems, and provided $571 million in funding for the project (Department of Justice, Office of the Inspector General, 2003). The databases would eventually become fully inter-operable in 2006 (*Ibid*). As a result of this pressure, and the increase in spending on border security measures after 2001, the scale of the 'jail status check' process has increased exponentially. As part of the 'War on Terror' the Federal Immigration agencies were re-organized into the Department of Homeland Security in 2003 (Office of Homeland Security, 2002). Since 2003, Congress has poured money into the Criminal Alien Program: From 2004 to 2015 the program's annual funding increased nearly fifty-fold, from $6.6 million to $322.4 million (Cantor et al., 2015: 7).

Improvements to the technical inter-operability of immigration and criminal databases have allowed ICE to review and match biographic and biometric identifiers digitally, and conduct screening interviews remotely over the phone (Matuszewski, 2012: 8). In 2006 ERO created the 'Detention Enforcement and Processing Offenders by Remote Technology' (DEPORT) center, designed to serve as the centralized unit responsible for placing 'deportable aliens detained in the BOP into removal proceedings, with the cooperation of the local field offices' (*Ibid,* 12). The DEPORT center represents a terrifying, technocratic solution to the problem described by INS Assistant Commissioner Chris Sale in 1994. Rather than wasting time and money traveling between prisons, the improvement of ICE's system of identity records means that officers assigned to the DEPORT center can provide '100% screening coverage to all sentenced inmates in Bureau of Prisons (BOP)

facilities' simply by conducting a search on a digital database and picking up a phone to call the person in the prison (Matuszewski, 2012: 7). As a result, the DEPORT center makes the process of physically segregating foreign national offenders obsolete.

Name of Facility	**Total cases**	**Removal Orders Issued (%)**	**Share - Reinstatement of Removal**	**Share - Expedited Removal**
Giles W. Dalby Correctional Facility	5,277	98%	75%	10%
Big Spring Correctional Facility	4,227	98%	63%	9%
Moshannon Valley Correctional Facility	3,272	94%	38%	5%
D. Ray James Correctional Facility	3,213	94%	42%	18%
Taft Correctional Institution	3,054	90%	42%	18%
McRae Correctional Institution	2,090	94%	36%	14%
Great Plains Correctional Institution	1,768	99%	77%	7%
Reeves County Detention Center	1,710	94%	29%	14%
Eden Detention Center	1,662	97%	62%	6%

Table 7: Removal order by type, CAP Federal Incarceration/Facility Data, 2015-2018[29]

In addition to digitization of the identification process, the increasing punitiveness of crimmigration law has meant that fewer people in CAR prisons are eligible for immigration hearings. The immigration reforms passed by the Clinton Administration in 1996 (see Chapter Four), created two new legal processes of deportation – called 'Reinstatement of Removal' and 'Expedited Removal', which exclude certain non-citizens from eligibility for an immigration hearing (Department of Justice, 1997). Under Reinstatement of Removal, non-citizens who are barred from the United States as a result of a previous removal order are ineligible for most forms of relief, and are to be removed under the terms of the prior order (Congressional Research Service, 2021: 1). Similarly, Expedited Removal establishes a process whereby certain non-citizens can be issued removal orders by low-level immigration officers, and are not entitled to a court hearing, and are excluded from most procedural safeguards (Kennedy, 2007: 1849). From 2005 to 2013, the number of deportation

[29] See Transactional Records Access Clearinghouse (2018). *Immigration and Customs Enforcement Arrests*. Online: https://trac.syr.edu/phptools/immigration/arrest/.

orders issued via expedited removal annually increased fourfold, from roughly 50,000 to 200,000 (American Immigration Council, 2019).

Alongside changes to ICE's practices of identification, these new removal processes have shaped the legal process of deportation in CAR prisons. Table two shows the type of removal order issued to people apprehended by the CAP Federal Incarceration program for the nine CAR facilities for which data was available. While the prevalence varies significantly by facility, within seven of the nine facilities, more than half of the removal orders were issued via a process that did not involve a court hearing. That eighty-five percent of the men incarcerated at Giles W. Dalby were issued removal orders via these extrajudicial processes illustrates Andres' perception that immigration hearings were 'few and far between.'

In short, the evolving relationship between criminal justice and migration control has meant that the segregation of foreign-national offenders serves little purpose in terms of the legal or administrative processes of migration control and deportation. Although the formal legal process of deportation rarely took place, all-foreign prisons remained premised on the differential penal treatment of offenders designated as 'deportable aliens' by the BOP (2019). This conjuncture – between the absence of migration control, the persistent, segregated incarceration of immigrant men in privately-operated prisons, and their exclusion from the same rights and benefits afforded to US citizen prisoners – defined the meaning of exclusion from membership within CAR prisons.

Per diems and Compensated Man-Days: Outsourced incarceration as a racial project

During his tour of New York State prisons in 1840, Charles Dickens remarked that the institutions he visited were so similar to textile mills that he found it 'difficult to persuade myself that I was really in a jail' (Dickens, 1985: 148-149). Dickens' remark eloquently captures the historical character of outsourced incarceration in the United States. In a newly established republic with little carceral infrastructure, prison administrators pursued regimes of penal servitude that generated economic value by using the coerced labor of prisoners to produce goods to sell. Rebecca McLennan's analysis of the evolution of the penal system in the early American republic has demonstrated the central importance and influence of the model of contract servitude developed at Auburn Prison in 1825 (McLennan, 2008: 58).

After the end of the Civil War and Reconstruction, former slaveholding states throughout the Southeast shifted to a system of convict leasing wherein control over the entire state prison population was sold to a private employer (Davis, 1998: 78; Lichtenstein, 1996). From 1884 to 1896, the Tennessee Coal and Iron Company leased the entire state penitentiary for an annual fee of roughly $101,000, producing a brutally violent system with a higher mortality rate than the economic system of chattel slavery (Shapiro, 1998: 47). The convict lease system also replicated the stark racial inequalities of chattel slavery. Described by W.E.B. DuBois as the 'spawn of slavery', the convict lease 'linked crime and slavery indissolubly', almost immediately producing a prison system with tremendous racial disparities (Du Bois, 1901). In Alabama the prison population tripled from 1874 to 1877, fueled almost entirely by a rapid growth in the incarceration of black men (Davis, 1998: 79).

In the century since the end of the Tennessee Coal and Iron Company, the economy of outsourced incarceration has changed substantially. During the early days of the New Deal President Franklin Roosevelt's administration pursued a platform of penal reform and consolidation focused on regulating the labor of incarcerated people (Pehl, 2019). After creating the Federal Bureau of Prisons in 1930, the Roosevelt Administration established the Federal Prison Industries in 1934, a program designed to provide incarcerated people with rehabilitative employment training while protecting workers from competition with incarcerated labor (BOP, 2022, Pehl, 2019: 78). In an effort to modernize national penal practices, Roosevelt's Attorney General Francis Biddle issued Circular No. 3591 in 1941, formally prohibiting the practice of convict leasing (Biddle, 1941).

As described in the previous chapter, since the 1980s State and Federal officials have pursued a new form of outsourced incarceration (Lloyd and Mountz, 2018, Shull, 2021). Rather than selling the labor of prisoners to private firms, prison administrators now pay private contractors handsomely for the service of incarceration. This structural change has altered how incarceration is valued and measured in financial terms. Where previously value was tied to manufacturing output, the Bureau of Prisons and contractors CoreCivic, Management and Training Corporation, and the GEO Group now use two measures to quantify outsourced confinement: the 'per diem' and the 'compensated man day' (GEO, 2020, CoreCivic, 2020, DOJ OIG, 2016).

To secure the service of privately-operated incarceration, the Federal Bureau of Prisons must complete a procurement process involving multiple stages of solicitation, bidding, evaluation, and award-making, all governed by rules set forth in the Federal Acquisition Regulations.[30] From 1999 to 2019 the BOP held nineteen Criminal Alien Requirement procurement rounds, each of which followed a nearly identical structure. To initiate the process, the Bureau's Privatized Corrections Contracting Section would circulate information about the number of beds, location, and projected start date of the contract to potential bidders in a pre-solicitation (BOP, 2005). Interested bidders were then required to submit basic details about their proposed facility and location (Clark, 2006). Once the Bureau had received this information, they would then issue the formal procurement documents. Crucially, these documents included a template pricing schedule document to be used by firms to indicate how much they would charge for the service of incarceration, and a statement of work, with detailed information on contract requirements including security, staffing, medical care and program regulations, among other things (BOP, 2006).

Throughout this process, the Bureau of Prisons and contractors used a quota called a 'per diem' to negotiate the exchange of money for the service of carceral confinement. In this context, the term 'per diem' referred to the price paid by the Bureau of Prisoners per-offender-per-day (GAO, 2012). In 2005, the GEO Group's bid to operate Reeves County Detention Center I/II as part of the Criminal Alien Requirement V procurement process included a document titled 'Contract Bed Pricing Schedule – Option Periods' (Reeves County, 2005: 7). This pricing schedule detailed a series of prices for a specified number of beds, offering both a 'total price' and a per diem rate for each of the ten years of the contract (*Ibid*). For the management of 1,356 'contract beds', the GEO Group sought a per diem rate of $42.00, and a total yearly contract price of $20,787,485 (BOP, 2006: 8). For the BOP, the per diem measure offered a useful measure of spending per-prisoner, per-day, allowing the Bureau officials like Chief Budget Officer Carol J. Durkee to measure the 'resource efficiency' of outsourced carceral confinement (Durkee, 2011: 1). Evaluation documents obtained from the CAR V and CAR VI procurement processes show how, the BOP obsessed over per diem rates while evaluating bids for prison contracts, and compared the fiscal efficacy of outsourced incarceration to other modes of prison operation (BOP, 2006a, 2006b).

[30] See 48 CFR Title 1 – Federal Acquisition Regulation. Online: https://www.ecfr.gov/current/title-48.

To determine per diem rates BOP officials and contractor staff bargained over what services would be provided for a specific price. During each procurement process, the Bureau of Prisons held a pre-proposal conference to allow interested bidders to request potential modifications to the solicitation. During the conference for the CAR 15 solicitation in 2013, contractors asked to remove language from the proposed statement of work requiring each facility to maintain compliance with American Correctional Association (ACA) standards. As one bidder put it 'We respectfully note that as ACA does not require 100% compliance with non-mandatory standards in order to achieve and maintain accreditation, that the suggested language is the language we typically see industry wide' (BOP, 2015: 2). During another meeting held as part of the CAR VI solicitation in 2006, a bidder representing GEO Group attempted to secure commitments from BOP contracting officials that only low-security offenders without intensive medical care requirements would be transferred to the proposed facility (BOP, 2006). Another representative queried whether the BOP would be willing to cap healthcare costs in exchange for lower *per-diem* rates offered by contractors (*Ibid*, 28). These negotiations illustrate who contractors viewed as the ideal offender to be incarcerated within Criminal Alien Requirement facilities. They clearly sought low-security offenders who could be incarcerated in facilities with low staff-to-offender ratios, who would be unlikely to require costly medical care, and would not require expensive prison programming. In this regard, offenders designated by the Bureau of Prisons as 'deportable aliens' were ideal candidates for outsourced incarceration, because they were disproportionately incarcerated for drugs or immigration offenses, and categorically excluded from eligibility for drug treatment, vocational, or re-entry programming (BOP, 2019).

Where the *per diem* measure was used by BOP officials and private contractors to negotiate the exchange of federal funds for carceral confinement, contractors like GEO Group and CoreCivic used the 'compensated man-day' to measure the profitability of incarceration (The GEO Group, 2012: 43). The annual report filed by CoreCivic's predecessor the Corrections Corporation of America during the 2015 fiscal year describes the measure thus:

'A key indicator we use to measure the revenue and expenses associated with the operation of the facilities we own or manage is expressed in terms of a compensated man-day, which represents the revenue we generate and the expenses we incur for one offender for one calendar day. Revenue and expenses per compensated man-day are computed by dividing facility revenue and expenses by the total number of compensated man-days during the period. A compensated man-day

represents a calendar day for which we are paid for the occupancy of an offender' (Corrections Corporation of America, 2015: 55-56).

As a financial measure, the 'compensated man-day' offered an important shift from the 'per diem' measurement. To understand how the intertwined measures of the *per diem* and the compensated man-day shaped practices and experiences of confinement, it is useful to briefly trace how these metrics were used by federal officials and private firms to evaluate the financial performance of outsourced prisons.

Although the data that inform the calculation of *per diem* is closely guarded by both firms and BOP officials (*Raher v. Federal Bureau of Prisons*, 2014), the process by which these rates were calculated has been well defined (Corrections Corporation of America, 2013: 27-28). As with any asset, the firms first determined a return on investment (ROI) target for each facility. While ROI targets were set in slightly different ways for facilities owned by firms (like CI McRae) versus facilities that were managed on behalf of a separate owner (like Reeves County Detention Center), in both cases ROI was calculated by dividing facility EBITDA (a measure of net profitability) by the fair value of the facility (generally investment or replacement cost). According to documents from quarterly earnings presentations by CCA and the GEO Group, ROI targets were generally set between 13% and 15% at 95% occupancy (CCA, 2014: 27; The GEO Group, 2022). Therefore, if a firm had invested $100 million in a given facility and set a 14% ROI target, the firm would then aim to produce $14 million in EBITDA at 95% facility occupancy to meet the ROI target. Once this ROI target has been set, firms add operating costs to reach a total revenue figure (CCA, 2014: 28). So, if operating costs at the aforementioned facility were $4 million per year, the total revenue target would be $18 million. To determine the proposed *per diem*, this total revenue target would be divided by the number of incarcerated people held in the facility at 95% occupancy, and the number of days in the year. Therefore, if the 95% occupancy rate at the aforementioned facility was 1,500 beds then dividing 18,000,000 by 547,500 (365*1,500) would give us a rough *per diem* rate of $32.87.

As noted above, profitability in this context referred to the revenue received from prison contracts, minus the costs associated with prison operations. In this context, revenue referred to the income received per-person incarcerated. Costs were quantified as both 'fixed expenses' like salaries, fringe benefits, and other staffing costs, and 'variable expenses' which included medical care, food services,

and the other goods and services provided to incarcerated people (Corrections Corporation of America, 2015; The GEO Group, 2012: 55-56). To maximize profitability, then, meant to maximize the number of people incarcerated at a given facility while minimizing the costs associated with operating prisons. Or, to paraphrase Lauren Martin (Martin, 2021: 750) the goal was to keep the most people alive in custody as cheaply as possible.

Critically, the financial viability of outsourced incarceration rested on the fact that offenders designated by the BOP as 'deportable aliens' were excluded from specific rights, benefits, and protections. This differential treatment was directly acknowledged by the Government Accountability Office (GAO) as part of a study comparing the costs of BOP-run prisons to contract facilities:

'In general, BOP facilities confine U.S. citizens and programs are designed to teach inmates skills that they can use when they are released, such as job training skills, so as to help avoid their return to prison. By contrast, private facilities primarily confine criminal aliens—non-U.S. citizens or foreign nationals, who are serving time for a U.S. federal conviction. Programs that focus on preventing returns to prison are not required of private facilities because criminal aliens are released for removal from the country and are not expected to return to U.S. communities or BOP custody' (GAO, 2007: 11).

In other words, where prisons operated by the BOP are organized, at least ostensibly, to facilitate rehabilitation and social reintegration, all-foreign prisons were structured by the logic of exclusion, explicitly excluding foreign-national offenders from the programs and services offered to US citizen offenders. As Emma Kaufman (2019: 35) notes, these policies made 'noncitizens less costly to incarcerate and more certain to serve their full prison sentences.' Indeed, the GAO study from 2007 directly acknowledged that the cost advantages provided by excluding non-citizens from eligibility from programs and services was a key reason why Criminal Alien Requirement facilities operated at a lower *per diem* cost than comparable low-security facilities run by the Bureau of Prisons (GAO, 2007: 15)

When reading procurements documents like the 'Contract Bed Pricing Schedule', it is often easy to forget that these are negotiations over the price to be paid for the service of forcibly confining immigrant men. Lisa Guenther (2017: 41) has observed how the contemporary economic model of

prison outsourcing relies on the unit of the 'prison bed' because it is an 'abstract unit of carceral profit' that makes the 'heads' in those beds invisible. While measuring transactions in terms of per diem rates and bed space may shift the focus away from the essentially violent features of incarceration, the exchange these metrics render is at the center of the system of outsourced incarceration. On a basic level, government officials must exchange money for the service of confining and providing for the basic needs of incarcerated people. Read critically, procurement and contract documents offer a glimpse of the slippage between the external image of the carceral economy and its internal logic. In these texts, government officials and private sector firms employ specific rhetorical and descriptive techniques to transform the coercive practice of custodial confinement into a seemingly bloodless real estate transaction. Nonetheless, despite this dissembling rhetoric, this system requires the pricing of incarcerated life.

When Bureau of Prisons officials and contractors negotiated per diem rates, they negotiated the price of incarcerated life. When officials like Carol J. Durkee sought to maximize the 'resource efficiency' of Criminal Alien Requirement prisons, this meant an effort to reduce the cost of incarcerating immigrant men (Durkee, 2011: 1). In other words, efforts to price - and reduce the cost of – incarcerated life sought to find ways to keep as many offenders classed as 'deportable aliens' locked up for the lowest cost possible. In the context of CAR prisons, BOP officials and contractor staff sought to achieve this goal through four principal techniques: maximizing the number of people incarcerated per prison, reducing the costs associated with staffing, wages, and fringe benefits, reducing the range of services and programs including education, drug treatment and employment, and reducing the cost of medical services. As the following sections will demonstrate, these carceral practices were made possible by BOP policies which allowed for exclusion and differential treatment of non-citizens. If the concept of the 'racial project' describes a process by which abstract racial and national categories gained meaning through differentiated access to material resources, then by analyzing how the economic logics of outsourced incarceration came to be premised on the differential treatment of 'deportable aliens' (GAO, 2007: 15) we can see how the definition of race and nation took shape within Criminal Alien Requirement prisons.

Overcrowding and the physical space of confinement

The logic of the compensated man-day came to shape the physical and social structure of confinement in CAR prisons in critical ways. In a primary sense, this meant increasing the occupancy capacity of contracted facilities as much as possible. As CCA's board put it in 2015: 'Our industry benefits from significant economies of scale, resulting in lower operating costs per inmate as occupancy rates increase' (CCA, 2015: 19). For Federal Officials, maximizing the occupancy rate at outsourced facilities was intended both to reduce the pressure on overcrowded BOP-run facilities and maximize the fiscal value extracted from contractual agreements.

Indeed, the contractual agreements that established the terms of confinement in CAR prisons created administrative and fiscal incentives for Federal officials to designate the maximum number of foreign-national offenders to these facilities. From 2002 onwards, when the Federal government paid firms for the service of forcibly confining immigrant men, the payment was not simply governed by a single *per diem* rate times the number of days that each incarcerated person spent in custody. Rather, each CAR prison contract was structured as a 'fixed-price' agreement (Whelan III, 2002). Federal Agencies paid a fixed price for a set number of beds for the term of the contract, and then an 'incremental unit price' for every person incarcerated above the fixed-price level. For example, under the terms agreed between the Bureau of Prisons and Corrections Corporation of America to operate the California City Correctional Facility as a CAR facility, the BOP agreed to pay a fixed price of $147,215,310 for the incarceration of 2,189 non-citizen men for a three-year-long 'base period' (Bureau of Prisons, 2001). Notably, this payment was made whether or not there were 2,189 people incarcerated at the California City facility.

According to the rationale offered by the Office of the Federal Detention Trustee (OFDT), this system was designed to ensure Federal agencies had sufficient access to bed space that was 'guaranteed' and accessible in a 'timely' fashion (OFDT, 2002: 31). In theory, this fixed-price system prevented private firms from marketing spare beds in a given facility to multiple prison systems, in an effort to ensure beds were never vacant.[31] Yet, understandably, many advocates raised concerns that guaranteeing minimum payments placed pressure on the BOP and other Federal agencies to

[31] E.g., for much of the period from 2001-2006 in which Reeves I/II was operated as an all-foreign prison under an intergovernmental agreement, the County and GEO also incarcerated prisoners from the Arizona DOC at the facility.

ensure sufficient numbers of incarcerated people were designated to these institutions to make the best use of fixed payments (Grassroots Leadership, 2016: 103-194). In other words, if the fixed-price contract structure guaranteed that the BOP paid for 2,189 incarcerated people, it created strong incentives to ensure that 2,189 were actually incarcerated at that facility.

As the criminologist Simone Santorso (2023: 43) has observed, prison capacity is often fungible, shaped by political efforts to manage or sustain periods of 'prison crisis', rather than a fixed relation of people-to-space. The desire to maximize 'occupancy rates' on the part of both the BOP and contractors meant that the definition of 'prison capacity' was vague and fungible. As legal documents related to the expansion of the Reeves County Detention Center in 2001 noted, 'prison capacity and the extent of crowding are difficult to determine because of the absence of uniform measures for defining capacity' (Reeves County Detention Center Trust, 2001: 28). Prison officials and contractors used a range of terms to distinguish between different types of capacity – *rated capacity* denoted the total number of incarcerated people that could be confined in dedicated beds at a given prison, not including hospital wards or disciplinary segregation (Bureau of Prisons, 1997: 2; Government Accountability Office, 2012). In practice, the BOP measured *rated capacity* in CAR prisons using the standard defined by the American Correctional Association, which required thirty-five square feet of unencumbered space per incarcerated person, and explicitly excluded temporary housing in re-purposed spaces (GAO, 2012: 8). *Operational Capacity*, on the other hand, referred to the number of inmates that could be accommodated based on a given facility's staffing levels, programs, and services (GAO, 2012). Although the BOP allowed contractors to define the rated capacity of each proposed prison facility, the structure of BOP contracts incentivized contractors to increase the operational capacity of each institution as much as possible, specifying explicitly that 'the contractor will be required to house a daily population of up to 15% over 100% of the number of contract beds, including the 10% segregation beds' (Bureau of Prisons, 2006). While crowding was by no means unique to all-foreign prisons, the fungibility of capacity in the context of the CAR prison system produced the impression that immigrant men were being packed together to generate cost savings for private contractors.

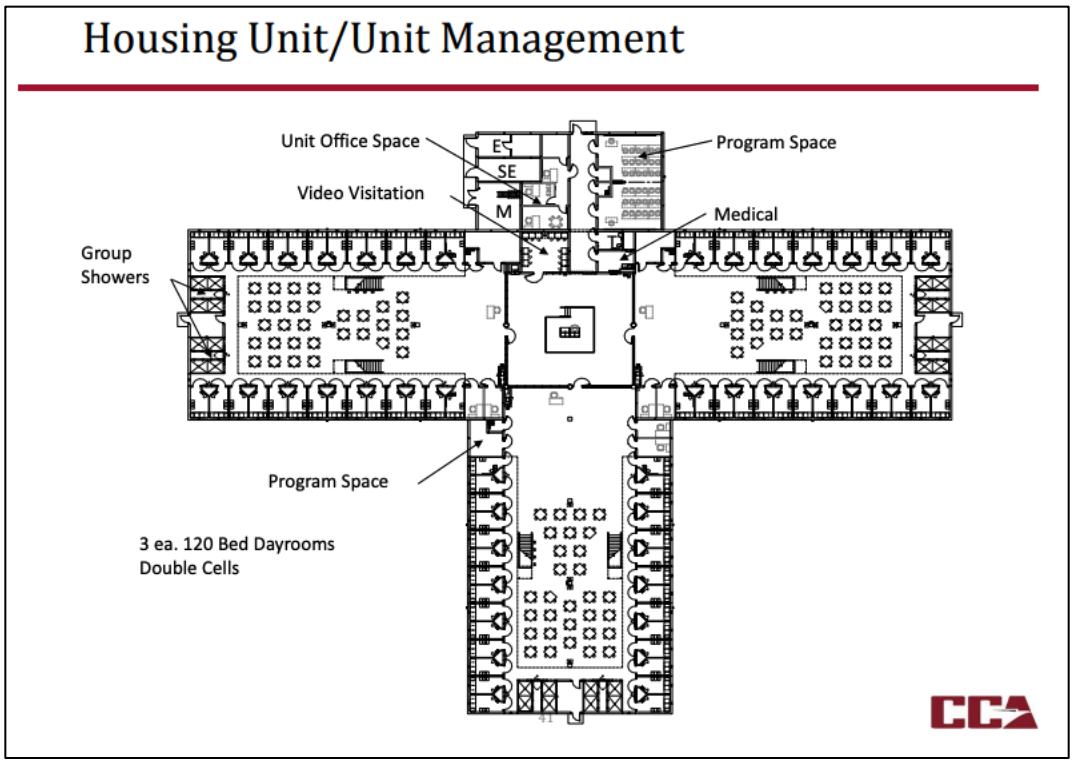

Figure 8: Corrections Corporation of America's Prototypical Design plan for low-security facilities, (CCA 2013, 37).

In an investor relations presentation from 2013, former BOP director and CCA Chief Corrections Officer Harley Lappin described how the firm's management philosophy reflected a 'prototypical design' for their prisons (CCA 2013, 39).[32] In physical terms, this prototypical design included larger housing units, direct supervision and unit management, and a centralized dining hall. Often, these design principles produced a standardized t-shaped prison block with double cells lining a dayroom area (see Figure 8). This design was chosen to reflect an 'optimal balance' between meeting the quality standards set by the American Correctional Association, while minimizing per-bed cost of construction, operation, and maintenance. Lappin's presentation also highlighted efforts to maximize the desirability of beds, by balancing a competitive *per diem* with a location that was logistically suitable for multiple customers, facilities that could house offenders from a variety of security levels and offered customers 'just-in-time' availability (CCA 2013, 39).

[32] Notably, Harley Lappin profited tremendously from the sale of CoreCivic stock from 2016 to 2017. Online: https://wallmine.com/people/31052/harley-g-lappin.

While contractors like CCA liked to advertise the administrative and fiscal efficacy of their 'modular design' strategies, since the late 1990s, prison firms have built relatively few new penal facilities, preferring instead to purchase unused prisons on the cheap and re-purpose them (Raher, 2009). None of the physical sites used as CAR prisons were built for this purpose. Of the nineteen facilities employed as CAR prisons during the period from 1999 to 2023, eight facilities – like Great Plains Correctional Institution in Hinton, OK and California City Correctional Facility in California City, CA – were built on speculation by local governments or private firms. The remaining eleven facilities were re-purposed as all-foreign prisons after being constructed for other purposes. In some cases, as with Limestone County Detention Center in Groesbeck, TX, Cibola County Correctional Facility in Grants, NM, or D. Ray James Correctional Facility in Folkston, GA, prisons originally constructed to house county or state prisoners purchased by private firms and then marketed to the Bureau of Prisons (Bureau of Prisons, 2008). In other cases, prisons like Taft Correctional Institution in Taft, CA, Rivers Correctional Institution in Winton, NC, and Moshannon Valley Correctional Facility in Clearfield, PA that were originally intended to hold other groups in BOP custody were re-purposed as all-foreign facilities. That no CAR facilities were built-for-purpose was the deliberate result of BOP procurement policy: every solicitation issued after the CAR 3 solicitation in 2003 explicitly specified that the Bureau of Prisons was only interested in contracting existing prison sites, rather than funding new prison construction. In turn, this solicitation policy squeezed smaller firms and local governments out of the market and concentrated it in the hands of larger firms like GEO Group, CCA, and Management and Training Corporation (Greene, 2001).

CCA's 2015 annual report boasted that one of the firm's key strengths was its ability to 'reconfigure facility bed space to optimize capacity utilization' (CCA, 2015: 18). In simpler language, this claim reflected a strategy agreed between the BOP and contractors like CCA whereby existing prison sites would be renovated to maximize the number of people who could be incarcerated in a given space. For example, financial documents filed by CCA with the Securities and Exchange Commission in 2006 listed the 'design capacity' at Eden Detention Center in Texas to be 1,225 prisoners (CCA, 2005: 10). However, when CCA submitted a bid to operate Eden as a CAR facility as part of the CAR VI process later that year, the cover letter submitted by CCA Vice President Damon Hininger to the BOP contracting office on August 4th, 2006 confidently projected that the facility would be able to run at a 115% rated capacity of 1,558 beds. To accommodate the 333 additional beds,

Hininger promised that CCA would 'convert the existing 96 bed segregation unit to general population and build a new 136-bed segregation unit' (Hininger, 2006).

In practice, efforts to 'optimize capacity utilization' (CCA, 2015: 18) simply meant that nearly all available space was re-purposed to house incarcerated people. Notably, re-purposing carceral spaces not originally intended to function as cells or dormitories was not unique to contract prisons. Within the rampantly overcrowded prison system managed by the California Department of Corrections and Rehabilitation, for example, these practices were nearly ubiquitous, and accounts of these practices offered some of the most damning testimony in the Supreme Court's 2011 *Brown v Plata* decision (Reiter and Pifer, 2015). Nonetheless, people incarcerated in CAR prisons frequently described crowding as a consequence of the greed of prison contractors, rather than a generalized feature of the US penal system. Table 4 indicates the rated capacity listed in the contracts for five CAR prisons in Texas, versus the average daily populations at those facilities in 2014. Each of these prisons operated at or close to the limit of 115% of rated capacity specified by the BOP in CAR prison contracts. Operating over the rated capacity limit established in prison contracts was not accidental. During the CAR V procurement process, BOP Contract Officer Carey Cleland emailed Acquisitions manager Randy Taylor to clarify whether the maximum number of beds for the Reeves I/II should be listed as 1,200 – the rated capacity established according to the ACA standard – or 1,380, the 115% 'maximum' stipulated in previous contracts (Cleland, 2005). Taylor responded brusquely that 'we know BOP intends to always have them filled up to 115%. We have already changed the language to read 'approx" (*Ibid*). Together with the population data, these internal communications indicate how the BOP and contractors used the 'incremental unit price' system to maximize the number of offenders incarcerated at each CAR prison. In this sense, the logic of the 'compensated man day' structured incarceration as an economic exchange that worked to the benefit of both the BOP and contractors. For Bureau officials like Cleland and Taylor, maximizing capacity in contract facilities offered a convenient solution to reduce overcrowding in BOP-run facilities. For contractors like CCA, this facilitated a model of penal warehousing that sought to produce profits by maximizing the number of people incarcerated per facility.

Facility	Rated Capacity	Average Daily Population in FY 2014
Big Spring Correctional Facility	3,051	3,486
Eden Detention Center	1,355	1,550
Giles W. Dalby Correctional Facility	1,670	1,860
Reeves Detention Center I/II	1,179	1,287
Reeves Detention Center III	1,093	2,325

Table 9: Rated Capacity and Average Daily Population in five CAR Prisons, 2014[33]

Unsurprisingly, routinely operating facilities at 115% of their Rated Capacity had significant negative effects on the conditions of confinement in CAR facilities. Prisoners transferred to Eden Detention Center during the period from 2011 to 2015 were regularly held in the segregated housing unit (SHU) during their intake period, while the facility waited for space to open up in general population (ACLU, 2014: 77). Consistent overcrowding meant that Corrections Corporation of America, the prison contractor, forced incarcerated people to sleep in spaces not designed as prison cells. One offender named Richard described how four men were forced to sleep in cubicles designed for three people, and that the hallways in between the cubicles were lined with additional beds (*Ibid,* 77). William, another person incarcerated at Eden in 2014 said that 'I sleep in a hallway with about 80 inmates. I sleep right next to the bathroom so it's like I'm sleeping in the toilet. I feel like my head is in the toilet' (*Ibid,* 78).

At Reeves County Detention Center, efforts to maximize rated capacity as much as possible meant that Reeves County and GEO Group chose to repurpose recreation rooms as open dormitories, each containing forty-two bunks and three toilets (Reeves County Law Enforcement Center Trust, 2005). These open dorms were later called 'chicken coops' by the people incarcerated at Reeves, referring to how cramped and dirty each unit was. At Rivers Correctional Institution, a CAR prison run by the GEO Group in Winton, North Carolina incarcerated people complained that they were being forced to sleep on improvised bunks in common areas called 'bus stops', which they made

[33] See: ACLU, (2014) *Warehoused and Forgotten.* 36.

them feel unsafe and exposed (District of Columbia Corrections Information Council, 2017: 8) he practice of arbitrarily using SHU cells to relieve overcrowding in the general housing units was also widespread among CAR prison contractors. Site visits conducted by the Department of Justice in 2015 and 2016 found that CI Giles W. Dalby also routinely housed newly transferred prisoners in their Segregated Housing Units due to a lack of bed space in the general population (OIG, 2016: 29-30). From 2007 to 2011, staff employed by GEO Group at Reeves County Detention Center regularly transferred sick prisoners to the SHU because the facility did not have a functioning infirmary (Department of Justice, Office of the Inspector General, 2015: 39). Similarly, until the GEO Group added 84 additional beds to the total general population capacity at CI Rivers in 2013, offenders were regularly housed in the SHU until space opened up in general population units (District of Columbia Corrections Information Council, 2017: 47).

Willacy County Correctional Facility, used as a CAR prison from 2011 to 2015, offers a similarly stark example of how carceral re-purposing shaped the practice and experience of confinement (Blue Tyx, 2015). Originally built to house non-citizens in the custody of US Immigration and Customs Enforcement (ICE), the entire 2,000-bed facility was constructed by the Management and Training Corporation in just 90 days in 2006 (Government Accountability Office, 2007). Operated as an ICE detention center by MTC from 2006 to 2011, ICE refused to extend MTC's contract because of widespread sexual abuse, overcrowding, and unsanitary conditions (Leanos Jr, 2017). A month after their contract with ICE expired in 2011, MTC reopened the facility as a criminal alien requirement prison under contract with the Bureau of Prisons (Wessler, 2015).

The ways in which the Willacy facility was constructed, and then re-purposed as an all-foreign prison, was exacerbated by overcrowded conditions. Instead of brick walls, offenders were housed in 10 'pod-like domes' built out of steel beams and covered with Kevlar fabric (CoAFC, 2007). An audit conducted by the American Corrections Association noted how the facility's architecture was 'designed for speed of construction' in an effort to cope with ICE's FY2007 budget which called for '28% growth in illegal immigrant bed space' (*Ibid,* 2). Unsurprisingly, the desire to dramatically increase bed space quickly and cheaply had a negative effect on the conditions of confinement at Willacy. Dozens of men interviewed by the ACLU in 2014 while incarcerated at Willacy described a combustible mix of claustrophobic overcrowding, rampant understaffing, and a lack of prison programming. One offender named Theodore described how the bunks in his unit were so close

together that when he lay down on his bed, he could touch the other bunks with his feet (2014: 37). Dante, a 38-year-old Mexican man described how the two-hundred person units were constantly dirty, infested with bugs, and reeked from shared, open toilets (*Ibid,* 38).

In and of itself, overcrowding did not distinguish CAR prisons from other prison settings. Indeed, overcrowding is so endemic throughout jails and prisons in the United States as to be ubiquitous (ACLU, 2015). However, the men incarcerated in CAR facilities understood crowded prison conditions to be a product of deliberate attempts to achieve 'economies of scale' by incarcerating as many people as possible in a given facility (CCA, 2015: 19). Antonio, who served time at North Lake Correctional Institution, a CAR facility in Michigan operated by the GEO Group described the consequences of deliberate crowding:

'This place needs to be closed down… if you [are] in the general population, if you in the showers, people could see you taking a shower… like they could count the bubbles, the soap on yours body. The rooms are the smallest rooms… It's basically a one-man cell but they have two guys in there' (NDCM Call, April 8th, 2020).

Deliberate crowding – or, the feeling that contractors deliberately put two people in a one person cell - was felt to be a direct product of racial and national exclusion. Omar Jdaitwai, a man incarcerated at CI North Lake in the spring of 2020 told the journalist Felipe De La Hoz that,

'Because we aren't American citizens, they don't give a heck about us. They just have to get the money, and that's it. Meanwhile, whatever is going to happen to us, [they] let it happen' (De La Hoz, 2020).

In Jdaitwai's formulation, incarcerated people with US citizenship were shielded from extractive carceral arrangements in ways that non-citizens were not. To be clear, foreign-national offenders in private prisons were not the only group whose incarceration involved the mobilization and extraction of vast sums of money. As noted in the first chapter, one of the pitfalls of the analysis of prison privatization is that it tends to conceal the ways in which an array of public and private institutions have extracted tremendous amounts of value from publicly operated prisons (Gilmore, 2015, 2007, Schept, 2022). However, the fact that outsourced incarceration was reserved only for non-citizens generated experiences of custody that were qualitatively different from other penal systems.

In other words, offenders designated as 'deportable aliens' by the BOP clearly understood incarceration in contract prisons to be a consequence of their absence of immigration status. This sentiment was expressed particularly acutely by men incarcerated in CAR facilities who were excluded from sentence reduction programs because of their immigration detainers. When Nathan, a Sierra Leone-born man serving the final two years of his sentence at CI Giles W. Dalby in April 2021 was refused a sentence reduction for earned time credit, he fumed that the BOP and MTC had been permitted to 'illegally execute [my] sentence because I am deportable' (*Silla v. Friend*, 2021: 3). In 2017, a Dominican man named Juan Paulino was denied a thirty-two month court-recommended sentence credit by the Bureau of Prisons. Paulino, who was serving a fifty-seven-month sentence at the GEO Group-run Moshannon Valley Correctional Facility for unlawful re-entry, was denied the sentence reduction because of his immigration detainer (*Paulino v. Kuta*, 2017: 2). In a grievance addressed to Warden Stephen M. Kuta, Paulino said that he was being denied his court-ordered time credit because the BOP and GEO want to 'keep us locked up as long as possible' (Paulino, 2016: 2). Alejandro, a Mexican man incarcerated at CoreCivic-run McRae Correctional Institute, described how 'if you don't do your GED they take your good days away. Even though the BOP has a rule that – if you have a hold for ICE– you don't have to take GED. [But] they do it to us, because remember, if a guy is there for sixty days extra, well, 60 times 30 that's 1,800 dollars more' (AM Call, July 2021). Each of these remarks clearly portrays how it was only offenders designated as 'deportable aliens' who had the 'potential to be warehoused' (Guenther, 2017: 42).

'They just wanna do their time': Staffing all-foreign prisons

In 2006, the Bureau of Prisons' Privatization Management Branch began the CAR VI procurement process – what would become one of the largest in agency history. This procurement was part of a larger process that had been described by the Department of Justice as 'thinking outside of the 80-square-foot box' (DOJ, 2005), designed to adapt the Federal prison system to changing conditions. Initially considering a dozen locations, the BOP would eventually issue contracts to five separate contractors totaling roughly seven thousand prison beds altogether. The procurement process also offered an exemplary opportunity for the BOP's Privatization Management Branch to press contractors for 'cost savings initiatives' (DOJ OIG 2015: 21).

During the procurement process, officials from the BOP's Privatization Management Branch asked each contractor to submit two alternative 'pricing options': one that met all of the BOP's normal staffing requirements, and another that included the price for the contract if all minimum staffing requirements were eliminated (Reeves RFP CAR 6, 2-3). These minimum requirements obligate contractors to maintain specific levels of staffing: 90 percent for correctional services, and 85 percent for health services and all other departments (*Ibid,* DOJ OIG 2015). After deliberating on the pricing options, the BOP chose to remove minimum staffing requirements from the five contracts awarded as part of the procurement process (DOJ OIG 2015: 21). In other words, the BOP and private contractors explicitly sought to reduce the cost of incarceration by reducing the total number of staff in CAR facilities. When questioned by the Department of Justice's Office of the Inspector General, Bureau officials stated that they had chosen to remove the 90% staffing requirement as part of a 'cost savings initiative' implemented as part of the CAR procurement process (BOP, 2006: 3; DOJ OIG, 2015: 21).

Notably, this 'cost savings initiative' was only implemented at all-foreign facilities. The BOP has closely monitored offender-to-staff ratios since at least 2005 and implemented strict minimum staffing guidelines in 2010 (GAO, 2021: 13, 2012: 23). Since 2010, the Bureau has committed to maintaining a 5:1 offender-to-officer ratio within Bureau-run facilities (GAO, 2021: 13-14). While these minimum staffing guidelines have received significant criticism from Congressional agencies, Correctional Staff Unions, and advocates for their lack of clarity and specificity, it remains significant that BOP-run facilities operated under a regulatory standard that CAR prisons were simply not held to. More broadly, this 'cost savings initiative' echoed a longer history of using the confinement of immigrants to experiment with new carceral techniques and economies (Loyd and Mountz, 2018; Shull, 2022). In 2015, the Bureau estimated that removing minimum staffing requirements from the Reeves County Detention Center contract had saved the federal government $10 million over the course of the contract, and generated $4.6 million in revenue for Reeves County and the GEO Group (DOJ OIG 2015: 22). Yet, the consequences of deliberate understaffing were lethal – as we shall see in the following chapter, eight people died in custody during this period of RCDC's contract.

Even in circumstances where contractors met the requirements stated in their respective staffing plans, CAR facilities operated strikingly low levels of staff. Table 1 displays rated capacity and staff numbers at six CAR facilities, based on staffing plans contained in BOP contract documents.[34]

Facility Name	**Rated Capacity**	**Officers on first shift**	**Staff-to-offender ratio**	**Officers on third shift**	**Staff-to-offender ratio**
Giles W. Dalby	1,670	47	36:1	21	80:1
D Ray James	1,550	50	31:1	33	47:1
McRae	1,753	61	29:1	31	57:1
Great Plains	812	59	14:1	28	29:1
Big Spring	2,880	96	30:1	56	51:1
Eden	1,558	61	26:1	31	50:1

Table 10: Rated Capacity and Staff-to-offender ratios at six CAR Facilities

These strikingly low numbers of staff had a concrete impact on the conditions of confinement in CAR facilities. In comparison, the six BOP-run low security facilities in the South Central region averaged 12 offenders per correctional officer (Lauria, 2021). A review conducted by the Office of the Inspector General in 2016 found that CAR prisons had higher rates of telephone and contraband seizure, more incidents of inmate-on-staff and inmate-on-inmate assault, and more periods of lockdown than BOP-run facilities (DOJ OIG, 2016: 15-21). Critically, OIG auditors suggested that lower staffing levels were likely to have played a critical role in higher incident rates in CAR prison levels. Staff at Willacy County Correctional Facility interviewed by the journalist Seth Wessler described how the prison's staffing plan posted a single Correctional Officer to each of the 200-bed housing pods for the duration of an eight-hour shift (BOP, 2011; Wessler, 2015). Unsurprisingly, these staff told Wessler that low staffing numbers had a significant negative impact on relations between staff and offenders (*Ibid).*

[34] These figures are drawn from procurement and contract documents obtained via Freedom of Information Act Request by the lawyer Stephen Raher. See Raher, supra note 7.

In addition to reducing the number of staff, contractors also offered lower staff salaries and fewer benefits to produce competitive *per diem* rates. Thus, a class action suit in California during 2020 forced the Management and Training Corporation to pay $3.5 million in a settlement to former employees after employees alleged that the firm refused to pay them for mandatory breaks, and deliberately rounded down the time for which an employee was paid (*Lopez v. Mgmt. & Training Corp*, 2020). In other cases, contractors simply did not pay benefits that staff were legally entitled to. An audit of the BOP's contract for the Reeves County Detention Center found that GEO Group and CCS incorrectly requested reimbursement for more than $3 million in fringe benefit payments including health care and workers' compensation that were not paid out to staff (DOJ OIG, 2015: 12-15). While employees did not receive full benefits, Senior BOP procurement officials also acknowledged that it was 'common practice for contractors receiving Privatized Corrections Contracts' to request price adjustments for health and welfare benefits, allowing them to charge the BOP more for benefits that were not paid out (DOJ OIG, 2015: 20). Given that contractors used this variety of techniques to extract value from the labor of prison staff, it is unsurprising that CAR Prisons were often not easy or safe places to work: Data compiled by the Occupational Safety and Health Administration suggests that at least dozens of workplace violations have been filed at CAR facilities since 2000 (OSHA, 2011).

Contractors also frequently forced incarcerated people to substitute their labor for that of prison staff. In 2016 a group of men incarcerated at D. Ray James Correctional Institution sued the GEO Group for coercive labor practices employed as part of the facility's 'Voluntary Work Program' which forced incarcerated people to clean, maintain, and operate the facility for wages between $0.50 and $1.00 a day (*Ibarra et al v GEO Group*, 2016). Edwin Ibarra, the suit's lead plaintiff, alleged that incarcerated people had been 'forced and submitted to scrub bathrooms, toilets, and windows, clean and maintain the on-site medical facility, clean housing units, prepare and serve inmate meals, perform clerical work for GEO… and maintain the exterior and landscaping of GEO buildings including welding, painting, etc' (*Ibid*, 4). Like prison crowding, the use of prisoner labor to maintain penal facilities was not specific to CAR prisons (Sawyer, 2017). The use of incarcerated labor to reduce staffing costs was widespread across privately-operated facilities: Raul, a Mexican-American man who was incarcerated for four years at CoreCivic-run CI McRae told me that he was forced to work in the facility's kitchen for one dollar an hour. Incarcerated plaintiffs who filed suit over similar practices at immigration detention facilities operated by GEO Group and CoreCivic in Georgia and

Washington have won substantial financial damages (*Barrientos v. CoreCivic, Inc.*, 2020; *Washington v. The GEO Group Inc.*, 2019). In CoreCivic's own words, this reflected a 'standard approach to staffing' that 'reduced fixed expenses' (CCA, 2015). While this practice was not specific to CAR facilities, it took on an alternate meaning in the context of the all-foreign prison. Ibarra's suit noted dryly that the plaintiffs had been forced to perform all of this work despite the fact that 'most of the inmates are illegal immigrants, who are not allowed to working [sic] in the United States' (*Ibarra et al v GEO Group*, 2016: 3).

Unsurprisingly, efforts to reduce expenses affected relations between offenders and correctional officers within CAR prisons. Raul, a Mexican-American man who served time at both BOP-run and outsourced prisons, described the difference in staffing to me:

'[At McRae Correctional Institution] the guards are mostly ok. They make 16 dollars an hour. They just wanna do their time, they don't wanna do paperwork. It also means they don't want to help you… It's different to the BOP guards. [BOP COs] make good money, so they do paperwork. The BOP I was at, at Yazoo City, Mississippi, the guards got $500 dollar bonuses if they caught a phone. The ones at McRae, they don't want to catch a phone, because all they catch is eight hours of paperwork' (RTN Call, April 22nd, 2021).

Raul's description re-frames the conventional relationship between prison officers and incarcerated people. That an officer, not an offender, would attempt to negotiate their jobs by just 'doing time' appeared to Raul as a unique and distinctive feature of the staffing practices at CI McRae. To be certain, research suggests that seeking to simply get their jobs over with was a common feature of how prison staff negotiated the complexities of their work (Crawley, 2013: 168-181). Nonetheless, that Raul draws such a parallel between prison officers and offenders offers a telling detail of the effect of staffing practices on experiences of incarceration in CAR prisons.

'They don't correct anything': Exclusion from prison programs and re-entry services

As discussed in the previous chapter, from the mid-1990s onwards the Bureau of Prisons implemented a series of policies that effectively excluded non-citizen offenders from access to the rehabilitative services and prison programming offered to US citizen offenders. In practice, this meant that CAR prison contracts had few if any contractual requirements obligating contractors to

provide drug treatment, educational programs, vocational training, or release preparation (See e.g. Bureau of Prisons, 2011, 2006a, 2006b). As noted above, excluding non-citizens from eligibility for prison services was a boon to the warehouse model of outsourced incarceration (GAO, 2012). When public officials and contractors like GEO and CoreCivic made confident projections about the lower cost of contract prisons, these savings were the product of exclusion rather than the magic efficiency of privatization (GAO, 2012, OIG, 2016: 12).

The lack of substantive programming within CAR prisons produced the impression that these facilities operated at a higher security classification than their designation. Under the Bureau of Prisons' designation system, all Criminal Alien Requirement prisons were classified as 'low' security institutions, meaning that only offenders with a security point score of fifteen or lower were eligible for designation (Bureau of Prisons, 2019). For example, at FCI La Tuna, a BOP-run low-security prison in west Texas, offenders are housed in open dormitories, move through the prison under their own supervision during designated periods of 'open movement', and are expected to complete educational programming and participate in work assignments (Bureau of Prisons, 2016). The latter included courses provided through a local community college, inmate-taught Adult Continuing Education classes, employment opportunities through the Federal Prison Industries, and drug treatment through a dedicated Residential Drug Abuse Program (RDAP) wing.

By contrast, Rivers Correctional Institution offers a useful example of how the absence of correctional programming shaped the practice and experience of custody. Although contracted as a Criminal Alien Requirement facility, a small number of offenders from the District of Columbia were designated to CI Rivers after 2001 under the terms of the 1997 District of Columbia Revitalization act (United States Congress, 1998). In 2019 roughly 200 male offenders from the District of Columbia were in custody at Rivers, alongside 1,200 immigrant men serving federal criminal sentences (*Ibid*). As part of the Bureau of Prisons' obligation to house offenders sentenced by the District of Columbia, the DC Corrections Information Council (DC CIC) conducted a series of audits of Rivers, including surveys of the offenders from the District of Columbia serving time there. According to these audits, Rivers provided no education programming other than GED classes, and no vocational programs other than a construction training program and a Commercial Driver's License course, both of which were limited to a few dozen participants (DC CIC, 2013, 2017: 32-34, 2020). While Rivers maintained an RDAP unit, it was only open to fifty offenders from

DC custody and excluded all non-citizen offenders (DC CIC, 2020: 9). In practice, this absence of correctional programming meant that Rivers was not being run like a low security prison. The 2017 audit wrote that to ensure 'successful reentry into the community, the CIC recommends that Rivers take steps to provide the programming and atmosphere of a low security facility' (DC CIC, 2017: 49).

Unsurprisingly, offenders serving sentences from the District of Columbia expressed frustration at the fact that they received differential treatment in an institution designed to house so-called 'criminal aliens' despite the fact that they were US citizens. As one man put it,

'*There is a severe lack of productive programming offered at Rivers. I know we do not get the same opportunities other federal inmates receive in terms of meaningful training. No UNICOR, no college programs, no meaningful vo-tech program, and very few inmate-taught courses*' (DC CIC, 2020: 8).

For the men sentenced in the District of Columbia, this differential treatment was unfair precisely because they believed they would be allowed to reenter society, whereas the social system of confinement at Rivers was designed for people who were to be excluded:

'*There are no programs here at rivers correctional institution for me to sign up for. I took so many programs while in BOP that RCI does not have… They don't got programs that can help me in society to get a job. I already took the custodial maintenance class, nothing else will help me'* (DC CIC, 2020: 19-20).

Another offender framed this absence of programming as the key distinction between normal prisons and all-foreign prisons:

'*I'm a federal inmate with a federal case. Due to the first step act, non-violent offenders should get access to programs to work off their projected time. Here, being that this is not a FBOP facility, I can't get the benefit of programming to get time off. I've only been here 2 weeks. The jobs here is horrible [they] force you to work in the kitchen. If you refuse, then you are going to the SHU. All because we are housed in an immigration institution.*' (DC CIC 2020: 19).

This testimony suggests how the differential treatment of non-citizens took shape in practice: to be in 'an immigration institution' meant exclusion from the programs designed to help offenders return

to society. In granular terms, exclusion from political membership meant exclusion from access to RDAP, college courses or vocational training, and meaningful employment. Moreover, this differential treatment was clearly understood as a product of racial difference as much as national exclusion. As one DC offender wrote, 'I'm in the middle of Mexico, [I] do not want to be here. [Rivers] is for Hispanics… There is nothing to do. This place is real stressful.' (DC CIC, 2019: 33).

The testimonies of US citizen offenders designated to CI Rivers illustrate how re-entry became a contested site of bordered exclusion. Rather than simply indicating exclusion from the national territory, excluding men in CAR prisons from re-entry services meant excluding them from the social institutions like education, employment, and social welfare that gave meaning to political membership

The testimonies of immigrant men in CAR prison custody echoed the notion that all-foreign facilities were not being run as low-security institutions. One man incarcerated at North Lake Correctional Institution complained that 'they say this is a low, but they're not running it as a low, they're running it like a USP' (No Detention Centers in Michigan, 2020). As Riordan, another man incarcerated at CI North Lake put it,

'*NLCF is designed to be, and is operated as, a high security facility. We are treated like the worst of the worst criminals rather than what we are, which is low level, zero risk. I am actually meant to be in a camp. There is no free movement, and we are locked in for 23.5 hours a day. The facilities are useless – library awful, education awful, activities awful. This place is designed to keep dangerous people under lock and key and fully controlled, not to rehabilitate - which is the aim of incarceration, apparently*' (RM letter July 14th).

Echoing Riordan's account, many of the men interviewed by the ACLU while serving sentences at CI Reeves described how low staffing numbers made it difficult to let them move around on the facility. (ACLU, 2014: 37). Similarly, although a description of the Willacy County Correctional facility posted by the contractor Management and Training Corporation (MTC) described music and arts classes, and a religious study group led by a local church, offenders interviewed by the ACLU did not find any educational or rehabilitative programming (ACLU, 2014: 85; MTC, 2015). Theodore told the ACLU that, 'people don't have nothing to do here. Three thousand people in this facility and you can't move around' (ACLU, 2014: 36). The prison also offered little formal

employment. Cristobal, a Mexican national incarcerated at Willacy, said that one guard told him 'Jobs are not for you. You only have five months left. You're one of 1,500 in line' (*Ibid*, 40). In turn, the absence of programming produced hopelessness. As Dante, who was serving time at Willacy put it:

'Sometimes I feel suffocated and trapped. A lot of people get very upset and angry. Sometimes they become so frustrated that they even speak of burning down the tents. But what's the point? They'd build them back up' (ACLU, 2014: 5).

Critically, for the people incarcerated in CAR prisons, the absence of programming designed to help them return to society warped established penal rationales, and, they believed, eroded the legitimacy of the social system of incarceration. Jan, with whom I exchanged letters after his time at Great Plains Correctional Institution, exclaimed to me that:

'[These] so-called correctional facilities don't actually aim to correct anything. This is just punishment, and if they were up front about it, I could deal with it. But, they hide behind a veil of 'Treatment and Education Programs and Rehabilitation' while locking offenders up for 5, 10, 15, 20 years during which time most lose their families, finances, and grasp on the modern world' (JC, Sep 1st, 2021, letter)

These testimonies demonstrate the culmination of a kind of bordered penal logic generated during the panic over 'criminal aliens' in the period after 1986. Indeed, this exclusion offers a concrete vision of the penal arrangement imagined by Florida Congressman Tom Lewis in 1994 when he decried the fact that:

'[It] costs the taxpayer between $800 million and $1.5 billion to keep these criminals aliens in our overcrowded prisons. We clothed them, housed them, and fed them, we put them through the drug treatment and job training programs to make them better citizens, then we deported them' (Lewis, 1994: 142).

The result of Lewis' logic was a carceral practice that functioned simply to identify, warehouse, and exclude foreign-national offenders. As James, a man incarcerated at Big Spring put it, 'I had the idea: I have three years, I will do something so I have something to make of myself… but there's nothing to do here' (ACLU, 2014: 38). These feelings of isolation and hollowness dominated experiences of

all-foreign imprisonment, producing the perception that this system had warped the established penal rationales: this was, as Jan put it, nothing more than 'just punishment.'

At the intersections of public-private and citizen-foreign

Many of the men I interviewed believed that facilities for people without immigration status were privatized so that companies could make money from the absence of protections afforded to US citizens. Describing the conditions of confinement at CI North Lake, a GEO group-run all-foreign prison in northern Michigan, Gabriel put it,

'*And because we are immigrants, they don't treat us right… This is my sixth prison. I've never seen stuff like this. You know, I feel- whoever built this place, they built this place really wrong.'*

'Because we are deportable people, that's why they're doing what they're doing with us. One of the CO's told me that we are not allowed- you know, the Constitution of the United States, it don't protect us, because we're not from here. And I told him that we're on American soil, we should be protected. He told me no. That's why they're doing what they're doing with us.' (NDCM, 2020).

This testimony offers perhaps the clearest formulation of the intersection between outsourced incarceration and foreignness. At North Lake, as at CAR prisons across the country, immigrant men were segregated in privately-run prisons because they lacked the protections afforded to US citizen prisoners in BOP-run facilities. Yet, as Bonnie Honig suggests in her analysis of René Girard's *Violence and the Sacred*, exclusion is a social practice that finds or produces the object it needs (Honig, 2003: 34). Foreignness is not a fixed or self-evident social relation. Rather, it gains concrete meaning through the variety of cultural and social processes that combine to deny access to the rights and protections associated with membership. For Gabriel, what it meant to be 'deportable' was constituted only by exclusion from the rights and benefits afforded to others.

Raul, who I interviewed during his time in McRae Correctional Institution and after he was released had much to say about the relationship between outsourced incarceration and foreignness. For Raul, the sense of abandonment he felt in CAR prisons was intimately connected to racial difference and language barriers. In his opinion, the fact that the vast majority of incarcerated people at CI McRae

could not speak or write in English made it easy for CoreCivic's staff to treat them poorly without consequences.

'[At McRae] if you do not speak English, they treat you like crap. In every situation. It's the same with COs, case managers, and medical. They just can't understand you, and they don't care. I talked about this for a while with an Indian guy that was in my unit. The [COs] know that you speak English, and that you have the ability to write them up, so they leave you alone, but these other guys get treated like crap.'

This language barrier was part of a broader regime of poor treatment that Raul believed was targeted at people from a specific ethnic and national background in Federal prison custody. Raul's perspective was particularly pertinent because he claimed a multiplicity of identities – American, Chicano, and Mexican. Although he had been born in Baja California, Raul had moved to Los Angeles as a child, and maintained strong connections to family and social networks in both Mexico and the United States. During our conversations, he frequently suggested to me that this dual identity had allowed him to negotiate incarceration at McRae in unique ways:

'Look, I spent a lot of time talking to the other guys at McRae.. the Hispanic guys. They reminded me of my grandparents. I grew up in East LA during the 70s and 80s, and my grandparents didn't speak English. They had a really hard time, because they couldn't figure out how the system worked. Those guys right there reminded me of my grandparents. They don't understand how the system works, so they couldn't get the stuff they needed.'

When I asked him what he meant by this, he offered three examples in which people in CAR prisons were disadvantaged: in navigating the initial housing designation process, in requesting medical care, and in contesting disciplinary procedures – called 'shots.' Upon arrival at McRae – as at most prisons – prisoners must go through an intake process. Raul believed that many of the Spanish-speaking offenders simply did not know that they could request a unit for designation, and so got stuck in the least-desirable units.

'*I asked for a closed unit, so I got sent to a closed unit right away. The guys that don't know, they don't ask for anything, and they got sent to Houston or to Lee, which are the two big open units, because most people want to be in a closed unit. You're locked up at night, there's no noise. In the other one, you have to hear everyone snoring, every*

bathroom trip, everything. In the closed unit you don't have to hear anything, you got a bathroom inside, and you close your door and you're good.'

In addition to communication barriers, Raul suggested that Spanish-speaking offenders simply did not understand how to manage McRae's administrative system. These difficulties also extended to accessing care via McRae's medical services unit.

'*I'm not kidding you, if I didn't write three or four thousand sick calls or cop outs, I didn't write any. I guarantee you they miss me right now [Raul laughs]. Because, I know how the system works – for example, if you say that you got a pain in your stomach, I know how to make it where they have to see you, and the doctor has to see you instead of the nurse. For example, if you say, I have a pain in my stomach, on my left side, it might be my kidney, and the pain is eight out of ten, the guy only told me that his left side hurt. But, I wrote all that so that when the doctor sees it, he says, 'oh this is serious, he maybe can sue us, let's see him right away.*"

Raul's observation that 'I know how to make it where they have to see you' belied a granular knowledge of the problems associated with accessing medical care in contract prisons – a subject discussed at length in the following chapter. The ability to successfully negotiate prison bureaucracy also extended to the disciplinary process:

'*I helped a bunch of guys win their shots*[35]*, just simply by looking at the shot and if it's one date on the top and one date on the bottom, or one time at the top and one time at the bottom, the shots have to be perfect. I helped them beat these incident reports simply because they were written up wrong. [The COs] make sixteen dollars an hour, they don't write this stuff right, but most of the guys go in and take their beating. They say 'well, all they're gonna do is take my commissary away for a month, what does it matter, I won't go to the SHU or anything like that' I say, 'yea, but you'll see, get enough of those, and you'll go to the SHU and your points will go up, if you can fight any shot, you gotta fight them. Cause, you don't know how many shots I got taken off of me – even in the BOP, that's where I learned that everything has to be written perfect, and that's why my points are so low.*'

In each of these cases – housing designation, medical calls, or contesting shots – what Raul describes is a system in which 'doing time' well requires an understanding of and capacity for a kind of penal-

[35] The term 'shot' refers to an incident report or disciplinary infraction that an incarcerated person receives from a member of prison staff.

civic participation. In his formulation, the problem was that the form of civic action required to navigate the bureaucracy of outsourced confinement successfully was effectively inaccessible to people who did not speak English, and did not possess a detailed knowledge of the intricacies of BOP administrative regulations. If outsourced incarceration operated a racial-national project designed to exclude non-citizens from access to the same prison services and programs provided to US citizens, Raul's experiences suggested that one remedy to this exclusion was to develop a kind of institutional integration, to make sure that everything was 'written perfect.'

This capacity to know how to navigate bureaucracy was, in and of itself, a product of Raul's deep connections to the United States. After his transfer to the Folkston ICE Processing Center, Raul learned from an ICE official that he was actually a US citizen, having gained derivative citizenship through his mother and grandmother. Although born in Southern California, Raul's grandmother was forcibly removed to Tijuana during the wave of deportations carried out as part of 'Operation Wetback' during the 1950s (Hernandez, 2010). Yet, as we shall see in the following chapter, Raul's citizenship and his knowledge of how the system 'worked' did not protect him from the harms of outsourced, all-foreign imprisonment.

Chapter Six

Medical care, abandonment, and the definition of political membership

On November 20th, 2003, Kurt P. Hofmann M.D., a surgeon at Meadows Medical Center in Vidalia, Georgia removed a non-cancerous growth from Luis Alba's neck (Hofman, 2003). After the procedure, Hofmann made Alba an appointment for a post-operation evaluation and recommended that he return to the hospital for monthly physiotherapy appointments. Alba never showed up (Roy, 2004). Instead, what followed was a five-year-long legal battle over access to medical care in the US Federal Bureau of Prisons' privately-operated, all-foreign prison system.

Medical records published as part of a lawsuit that Alba filed two years later show that he never left McRae Correctional Institution (CI McRae), an all-foreign prison in Telfair County, Georgia operated by the Corrections Corporation of America (CCA). Instead, he received one post-operation evaluation from Joan Roy, a general practitioner who also served as CI McRae's Clinical Director. When Alba reported to Susan Montford, CI McRae's Health Services Administrator, that he had begun to lose his voice, Montford declined Alba's request to seek follow-up care outside of the facility (Montford, 2004). After nearly two years, Alba was finally taken to a surgical specialist who found that Alba had 'right vocal fold paralysis', and recommended a surgical procedure that would allow him to recover his voice (Johns III MD, 2005: 2). Six days later the CCA-employed Health Services team denied Alba's request because he had a 'pre-existing condition' and the proposed surgery was an elective procedure that was not covered under the regulations set forth by the Bureau of Prisons (Montford, 2005).

On April 23rd, 2005, Alba filed an administrative grievance arguing that the procedure was not elective, but rather was necessary to correct the lack of medical care he had received in the years after the first surgery. Alba also noted wryly that 'When it is to CCA's convenience they use BOP program statements, when it is not convenient for CCA, employees claim that that they do not have to abide by BOP Program statements' (Alba, 2006). One month later, CI McRae's warden Michael V. Pugh denied Alba's grievance (Pugh, 2005). In a final appeal to Bureau of Prisons' head office in Washington, DC written on June 10th, 2005 Alba exclaimed that 'Instead of serving my sentence in a Federal Bureau of Prisons institution, I have been illegally dumped by the BOP into the care of a

private, for profit, Corrections Corporation of America facility as a 'disposable prisoner' based on my race, national origin, and citizenship' (Alba, 2006).

While prisons rely on physical force to enforce social discipline, 'total institutions' are also necessarily sites of care, within which state officials are legally and morally responsible for keeping incarcerated people alive (Foucault, 1977; Goffman, 1974). In *Estelle v. Gamble* (1976) the United States Supreme Court established that 'deliberate indifference by prison personnel to a prisoner's serious illness or injury constitutes cruel and unusual punishment contravening the Eighth Amendment'. Writing in *De Shaney v. Winnebago County Social Services* (1989) Justice William Rehnquist observed that 'When the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.' More recently, the Supreme Court's 2011 decision in the *Brown v. Plata* case found that courts had a responsibility to remedy violations of the Eighth Amendment's prohibition against cruel and unusual punishment in the State of California's prison system because 'prisoners retain the essence of human dignity inherent in all persons' (Kennedy, 2011: 12). In his study of the California Department of Corrections and Rehabilitation's response to the *Brown v. Plata* decision, Jonathan Simon has demonstrated how contemporary practices of incarceration are increasingly incompatible with the constitutional rights to dignity and humane treatment (Simon, 2016: 133-138). To be sure, a legal obligation to provide incarcerated people with adequate medical care does not necessarily mean that this obligation will be met (Schlanger, 2013). Yet while the State of California has struggled to comply with the Supreme Court's population reduction order, the *Brown v. Plata* decision has nonetheless reaffirmed the basic rights to care possessed by those in state custody (Simon, 2021).

By contrast, Luis Alba's testimony suggests that the system of outsourced confinement in Criminal Alien Requirement prisons does not operate according to the norms defined by *Brown v. Plata*. That Alba suggested he had been 'illegally dumped' into the care of a private corporation suggests a crucial elision between two meanings of public and private (Alba, 2006). Within Alba's formulation, the boundaries of the political community are mapped onto the 'public', BOP-operated prison system such that to be placed into private care is to be placed outside of the political community and beyond the boundaries of recognition. Facilities like CI McRae were to be reserved for racialized

immigrant men without immigration status because these offenders were to be excluded from the rights and benefits afforded to those incarcerated in public prisons (*Ibid*).

In the previous chapter, I argued that the economic logics of outsourced incarceration produced specific practices and social relations that defined the political subject of the 'deportable alien' (BOP, 2019). Focusing specifically on the provision and quality of medical care in Criminal Alien Requirement prisons, this chapter builds on the analysis of the relationship between outsourced incarceration and political membership developed in the previous chapter. I argue that the denial of medical care was part of a broader process of exclusion from political membership in which the state abandoned the responsibility to keep men like Alba alive.

To theorize experiences of exclusion, I draw on the concept of abandonment developed in various guises by Ruth Wilson Gilmore (2007, 2002) and Elizabeth Povinelli (2011). Although deployed in different contexts, Gilmore and Povinelli both use the term abandonment to describe how the organized retreat of the state functions as a form of political order, in which states govern through deliberate neglect by framing certain populations as unworthy of political recognition and surplus to economic order. Charting the expansion and transformation of the Los Angeles Police Department in the five decades since the 1965 Watts uprising, Gilmore employs the term organized abandonment to refer to the ways in which successive State and Federal governments have offloaded responsibility for social welfare programs while handing more and more money to the police (Gilmore, 2002, 2022: 303-308). Elizabeth Povinelli's (2011: 57) influential analysis of the socialization of vulnerability in indigenous communities in Northern Australia argues that 'late liberal governance' techniques including incarceration work to manage and distribute abandonment in ways that reproduce and reinforce existing political order. Rather than an example of state failure or withdrawal *per se*, Gilmore and Povinelli argue that abandonment operates as a way of managing and maximizing state capacity (Gilmore, 2007: 113). As I elaborate further below, this concept of abandonment captures both the physical denial of medical care and the process of social and political exclusion described to me by men incarcerated in CAR prisons.

In turn, experiences of the deferral or denial of medical care in Criminal Alien Requirement prisons constituted critical political encounters. Vesla Weaver and Amy Lerman (2010, 2014) have described the US criminal justice system as a 'primary site of civic education', shaping how people understand

and participate in the political community. In racially and economically marginalized communities where the criminal justice system is the primary mechanism by which people interact with the state Weaver and Lerman (2010: 823-825) find that a 'substantial civic penalty' occurs, negatively affecting political and civic participation. Dominic Aitken (2022, 2019: 70-73) has emphasized the need to reclaim prisons and immigration removal centres as sites of social and political analysis to combat the 'counter-democratic' tendency to treat the deaths of incarcerated people within these facilities in technocratic, politically-neutral terms. Similarly, Mary Bosworth's (2021: 14) work on experiences of pain in UK immigration removal centres emphasizes how these institutions 'communicate important political lessons about membership of the nation state.' Throughout this chapter, I trace how exclusion from medical care in Criminal Alien Requirement prisons constituted a form of abandonment that defined a broader process of exclusion from political membership.

Outsourcing, illegality, and the boundaries of medical care

Within the Federal prison system, the standard of medical care is set forth in a series of program statements, including P6031.04 on 'Patient Care' (Bureau of Prisons, 2014). These regulations detail a series of clear standards for the scope, quality, and method of access for medical care in Bureau of Prisons-run facilities, indicating that 'health care will be delivered to inmates in accordance with proven standards of care without compromising public safety concerns inherent to the agency's overall mission' (*Ibid,* 2014: 2). Despite the established right to decent care held by incarcerated people, the provision of medical services in Federal prisons is remarkably poor. An audit on the Bureau's medical services conducted in March 2022 found that 'the BOP did not have a reliable, consistent process in place to evaluate either the timeliness of inmate healthcare or the quality of that… we believe it is difficult for the BOP to determine whether inmates are receiving care within the required community standard' (DOJ OIG, 2022: 4). Nationally, incarceration is associated with alarming increases in negative health outcomes and higher mortality rates both during and after release (Daza et al., 2020).[36]

[36] Notably, the impact of incarceration depends significantly on racial and ethnic group. Patterson (2010), Rosen et al. (2011) and Spaulding et al. (2011) all find that incarceration significantly increases the standardized mortality rate for white male prisoners. However, Mumola (2007) finds that the same rate was 19% lower for incarcerated black men between the ages of 15-64 than non-incarcerated black men of the same age. While Mumola speculates that incarceration may reduce the mortality rate among black men by increasing access to health care (e.g. access to prison medical facilities), Spaulding et al (2011) and Massoglia and Pridemore (2018) argue that this differential is a result of

The majority of incarcerated people in BOP-run prisons receive medical care provided by clinical staff at individual prisons (DOJ OIG, 2016). Each facility run by the Bureau maintains health services units, each of which are designed to include primary care physicians, dentists, nurses and pharmacists (*Ibid,* 2). In addition to health services within individual prisons, the Bureau operates eleven dedicated Federal Medical Centers, designed to hold prisoners with long-term or serious medical conditions in custodial confinement (BOP, 2022). However, as the average age of the Federal prison population has increased, the medical needs of people in BOP custody have become more complex, forcing the Bureau to rely increasingly on service contracts with private medical practitioners to provide a wide range of services that BOP staff cannot provide (DOJ OIG, 2022, 2016: 2-3). In fiscal year 2021, the BOP spent $700 million on medical contracts to provide care for over 150,000 incarcerated people (OIG, 2022: 1).

As the cost of providing health care to incarcerated people has increased, the Bureau of Prisons has come under pressure to 'understand and control rising inmate health care costs' (GAO, 2017). An audit conducted by the Government Accountability Office (GAO) found that from 2009 to 2016 the BOP saw a 37% increase in overall health care costs and a 36% increase in per capita health care costs (GAO, 2017: 16-17). According to the Bureau, these cost increases have been driven by an aging prison population, rising pharmaceutical prices, and the increased price of outside medical services (BOP, 2015, BOP, 2016). According to the GAO (2017: 28), these increases are disproportionately driven by outside medical services – accounting for 40% of expenditures from 2009 to 2016 – which is itself driven by a failure to recruit and retain medical staff sufficient to meet the agency's own targets.

Concerns about the quality of medical care have been repeatedly sustained by people incarcerated in Federal Medical Centers. Daniel S. Murphy, a 'convict criminologist' who spent four years incarcerated in a Federal Medical Centre in Lexington, Kentucky described a 'symbolic medical care system [operated] out of legal compulsion, not for the welfare of prisoners' (2005: 26). For Murphy, and the men he interviewed at four Federal Medical Centres, the dehumanization of incarcerated

compassionate release policies which mean that prisoners who are nearing the end of their life are released before death. See: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6124689/ see also Dabney and Vaughn, 2000, Welch, 2004: 58-78, https://doi.org/10.1177/0032885500080002003.

people and the pressure on the BOP to reduce costs, frequently meant that medical care was inaccessible, insufficient, or rationed.

This brief description of how the Bureau of Prisons provides medical coverage at BOP-run facilities suggests the continuities with the economic logics that shaped outsourced incarceration in CAR prisons described in the previous chapter. Indeed, these are not separate systems with distinct economic logics, but rather different carceral forms within a shared system whose economic logics reinforce one another. Although the public-private boundary often creates the appearance of a clean separation, the economic and administrative logics are not neatly cordoned off. Even within the nominally public prison facilities, the provision of medical care is heavily commodified, frequently carried out by private entities, and subject to market logics that seem to privilege fiscal value above the wellbeing of incarcerated people (DOJ OIG, 2022: 5). As the federal prison population has aged, BOP officials have come under significant political pressure to cut the costs associated with incarcerated medical care (GAO, 2017, US Senate, 2022). In turn, pressure to cut costs has often had negative impacts on access to and the quality of medical care (Blakinger, 2021; Hurwitz, 2023). It has informed decisions about outsourcing, shaping policy choices about the use of contract prisons, the quality of medical care provided within those prisons, and the way in which medical care is regulated.

Costs, foreignness, and medical care at Reeves County Detention Center

At Reeves County Detention Center, an all-foreign prison in west Texas operated by the GEO Group and the Reeves County Sheriff's Office, the pressure to contain medical costs while incarcerating more people produced alarmingly low staffing levels within the medical services unit (DOJ OIG, 2015, 2016, Wessler, 2016). In staffing terms, Reeves' Medical Services unit was uniquely under-resourced because of the removal of the BOP's usual minimum staffing requirements for correctional and medical staff. As discussed in the previous chapter, during the CAR 6 procurement process in 2006 the Bureau chose to eliminate the requirement that contractors maintain staffing at 85% of the level set by the staffing plan submitted by GEO Group and medical care sub-contractor Correct Care Solutions (BOP, 2006: 2-3). In other words, in an effort to prioritize 'cost saving initiatives' (DOJ OIG, 2015: 21) the Bureau allowed the GEO Group and Correct Care Solutions to get away with not employing a full-time physician in the medical unit at

both of the Reeves County Detention Center facilities. An audit conducted in 2015 found that the contractors saved $4.67 million by failing to employ sufficient numbers of staff during the period from 2006 to 2009 (DOJ OIG, 2015: iii).

That the Bureau's Privatization Management Branch chose to remove the minimum staffing requirements was particularly notable because of the history of medical understaffing at the facility when it was operated under a pre-CAR facility intergovernmental agreement. In 1999, before Reeves County brought in GEO Group to manage the facility, a mass protest erupted after a Mexican-born man died as a result of what many prisoners believed was substandard care (Flores, 1999). After an investigation, the Bureau found that the lack of medical staff at the RCDC I/II facility was so egregious that it violated the facility's Statement of Work, and threatened to end the contract if the medical issues were not resolved (Flores, 2002). In 2002, Reeves County agreed a sub-contract with the Physicians Network Association to take over medical services for foreign national prisoners in BOP custody at Reeves County Detention Center (Reeves County Law Enforcement Center Trust, 2005).

After PNA took over the contract for medical services, RCDC Warden Rudy Franco argued to the Reeves County commissioners court, that county-run physician services lacked the appropriate experience with needy and difficult immigrant prisoners. With a regular doctor, "The inmate can talk him into prescribing any medication that he wants… some of these inmates have been former drug users, they just tell the medical supplier what they want and if the physician isn't used to dealing with inmates will just give them that" (Flores, 2002). During the same meeting, Franco also bragged about how the number of medical procedures and total medical costs had been significantly reduced under PNA's stewardship. 'We had 101 x-rays [last year] and this year we have had four since we went with PNA, the number of surgeries required went from 15 to two, outside services from 3,148 to 222… The number of inmates leaving the facility has gone down' (Franco in Flores, 2002). According to documents submitted to the County Commissioner's court, this reduction in operations and medical visits delivered a $400,000 savings annually (RCDC IGA, 2006, Flores, 2002).

Compounding its chronic understaffing, the Medical Services Unit used medical professionals with lower levels of qualifications than would be required to perform similar levels of primary care in

non-incarcerated settings (DOJ OIG 2015: 22). The staffing plan agreed between the BOP, GEO Group, and medical subcontractor PNA under the 2006 contract for the Reeves I/II facility indicates that a single physician was hired for a 0.8 FTE role to cover the entire facility (BOP, 2006: 18). In other words, the BOP, GEO Group, and PNA all found it appropriate to leave the medical care of 1300 incarcerated people in the hands of a single physician on a less-than-full-time contract. In addition to this physician, the staffing plan listed a single Registered Nurse, one physician's assistant, and three Licensed Vocational Nurses. This staffing plan relied heavily on Licensed Vocational Nurses – medical staff who receive only a year of training - to make key decisions about primary care. Indeed, LVNs were the only medical staff on call for all weekend, morning, and evening shifts. While the Bureau of Prisons has faced its own set of staffing challenges, it has maintained a much higher ratio of medical staff to offenders, averaging roughly 1 physician to 400 offenders during the same time period (DOJ OIG, 2016c: 1). Moreover, Licensed Vocational Nurses are rarely hired by the Bureau of Prisons because they fail to meet the criteria established by the Federal statutes, regulations, and policy statements that govern how the BOP provides healthcare to incarcerated people (Congressional Research Service, 2020).[37] Analysis of medical records by three clinical experts found that the overextension of LVNs played a key role in 19 of 77 deaths in CAR prisons for which medical records were available (Wessler, 2016a).

The pressure to 'contain costs' from both sides of the public-private boundary had predictable effects on the quality of medical care. On December 20th, 2007 Jesus Manuel Galindo was transferred to CI Reeves I/II to serve the remainder of a 30-month sentence for unlawful reentry under 8 U.S. Code § 1326. Galindo was apprehended while trying to wade across the Rio Grande in May 2007. In August 2006, US immigration officials implemented Operation Streamline, a policy designed to increase the deterrent effect of border controls by increasing criminal sanctions (Chertoff, 2007). Before Operation Streamline, prosecutions under 8 U.S. Code § 1326 for cases like Galindo's were virtually unheard of, meaning that if he had crossed the border nine months earlier Galindo would have been returned to Mexico instead of being sent to an all-foreign prison in Reeves, TX.

[37] The relevant regulations can be found in Title 28, Part 549 of the Code of Federal Regulations, and the relevant BOP policy statements are PS 6010.05, Health Services Administration, online: https://www.bop.gov/policy/progstat/6010_005.pdf and PS 6031.04, Patient Care, online: https://www.bop.gov/policy/progstat/6031_004.pdf.

In 2004 Galindo was diagnosed with epilepsy, and prescribed the drug Topamax, which was to be taken at eight-hour intervals (*Graciela Galindo et al v. Reeves County et al*, 2010: 4). According to his medical records, this regular course of Topamax allowed him to control his epilepsy and prevent seizures (*Ibid*, 21). During Galindo's sentencing, Judge David Briones recommended that Galindo be designated to FCI La Tuna, a BOP-run facility classified as a CARE Level 2 facility, where he would receive the most appropriate care for his epilepsy (*USA v Galindo*, 2007: 5). Instead of following Judge Briones' recommendation, the BOP designated him to CI Reeves III. Almost immediately after Galindo arrived at Reeves County Detention Center, the prison's medical staff prescribed him Dilantin, a cheaper anticonvulsant than Topamax (*Graciela Galindo et al v. Reeves County et al*, 2010: 21). After the switch, Galindo complained to medical staff at Reeves that he had begun to suffer with swollen and bleeding gums – a known side effect and contraindication for continued Dilantin usage- five times, yet they kept him on the drug (*Ibid*, 25). According to Graciela Galindo, Jesus' mother, when she asked the RCDC medical staff to switch Jesus back to Topamax, the nurse she spoke to told her to 'remember that her son was in a prison' (*Ibid,* 23). Topamax, however, is included by the Bureau of Prisons in its National Formulary, meaning that it is regularly prescribed to people incarcerated in BOP-run prisons like FCI La Tuna (BOP, 2021).

Medical staff at Reeves also simply failed to administer anticonvulsant medication or monitor Galindo's medication levels regularly enough to effectively manage his condition. In the twelve months that Galindo's case was managed by medical staff at Reeves, his medical records indicate that he missed 90 doses of Dilantin (*Graciela Galindo et al v. Reeves County et al*, 2010: 24). On May 12th, 2008 Galindo wrote a grievance to James Fitch, Reeves' Health Services Administrator stating:

'*I am epileptic and for some reason the medication I am given doesn't help me. Actually I have been having more seizures at least two a week sometimes more, and the left side of my head has been hurting me like an ongoing migraine headache. I need medical attention, my whole body aches from head to toes, due to the frequent seizures. Please check my meds…*' (*Ibid,* 28).

Two months later, Galindo again filed a grievance report, writing that:

'*I have been here for aprx. 7 months and during this period I have been experiencing numerous epileptic seizures. I have requested to the medical department for better medication, but the medication I am getting is not working. My*

mouth and [tongue] hurt from falling on my face and when things like this happen the people around me don't know what is going on and they get scared. Please help me before something really bad happens…' (*Ibid*, 29).

In the final month of his life, medical staff at Reeves failed to check Galindo's level of medication a single time, despite his requests do so. On November 11th, 2008 – after more than two dozen minor seizures, and countless requests for changes to his medication and care, Galindo suffered a grand mal seizure and was transported to Reeves County Hospital for emergency treatment (Wilder, 2010). Upon his return, medical records indicated that Galindo had sub-therapeutic levels of Dilantin in his blood. Despite this evidence, Walter Brady, the sole physician employed in Reeves' Health Services' unit, accused Galindo of being noncompliant with his medication, and ordered that he be placed in solitary confinement in the Special Housing Unit (SHU) (*Graciela Galindo et al v. Reeves County et al*, 2010: 32). Incredibly, there is substantial evidence that staff at Reeves used the SHU as a de-facto infirmary, segregating offenders who were seriously ill, or complained frequently about poor care, to make them easier to manage (ACLU, 2014, DOJ OIG, 2015). Galindo suffered at least two seizures while in the SHU. On December 2nd, 2008, Galindo woke from an unattended seizure in his isolation cell alone and bleeding. Despite reporting this to the COs and to Brady and the Health Services unit, he remained in the SHU without consistent access to his medication (*Graciela Galindo et al v. Reeves County et al*, 2010: 34). Weeks before his death, Galindo wrote a letter to Judy Madewell, his attorney, saying he was 'afraid I will choke to death on my tongue or hit my head and nobody will realize' (*Ibid*, 37).

On Tuesday, Dec 3rd, 2008 an investigator named Octavio Vazquez traveled from the Federal Defender's office in Alpine to visit Galindo in the SHU (Barry, 2009). As part of this visit, Galindo met with Vasquez and Fed Bullock, Reeves' Medical Administrator, and showed them bruises on his face and shoulders, and scars on his tongue received after falling as a result of seizures (*Graciela Galindo et al v. Reeves County et al*, 2010: 35). Despite this meeting, and further consultations with Reeves' lone physician Dr. Brady and the Warden Dwight Sims, Galindo remained in the SHU, where he failed to receive medication or have the levels of medication in his blood monitored.

As the writings of Daniel Murphy (2005) demonstrated, the rationing of medical care is an alarmingly common practice in Federal prison. In his final letter to his mother from his solitary confinement cell in Reeves County Detention Center, Galindo wrote:

'*Mom today is already Wednesday, and the warden and the doctor already came and I spoke with them and I told them that they have not checked my blood and that they need to do this so they can release me from here. I told them that I have been here for one month alone and I have gotten sick twice. Let's see if they move me or do something soon. Oh, they only tell me yes, yes and they don't do anything… I've already asked if they can place me with someone else so I won't be by myself anymore… All of a sudden, I am very sad but I think of you and my father and my children and that's when I ask God and I get more willpower to get out ahead and not look back'* (Galindo, 2008: 5-6).

For Galindo, as with many of the men incarcerated in CAR prisons, the seemingly unending process of requesting medical care without resolution was intensely painful. The anxieties about isolation and exclusion Galindo described to his mother, make concrete the processes of abandonment that characterized bordered penal exclusion within CAR facilities. The process of carceral isolation and exclusion from care prefigured the process of deportation and exclusion from political membership. Abandonment outside the scope of care or authority offered a shared thread across experiences of incarceration in CAR facilities (Gilmore, 2002).

Tragically, as he had feared, Galindo died alone in his cell in the SHU, unattended, sometime between the evening of December 11th and December 12th, 2008. His body was found by Correctional Officer Raymond Cantu while Cantu was making rounds to deliver breakfast. An independent autopsy report conducted by County Medical Examiner Juan Contin M.D. identified Galindo's cause of death as 'epileptiform seizure disorder' related to the sub-therapeutic levels of Dilantin in his bloodstream at the time of his death (Contin, 2008). After his death, Galindo's family filed a lawsuit against the GOP, GEO Group and PNA (Wilder, 2010). This complaint alleged that four factors had played a key role in Galindo's death: inadequate formulary and limiting of access to medication, denial of access to specialized, intensive, and emergency care, failure to maintain medical records and provide follow-up care, and a paucity of staffing, supervision, and review (*Graciela Galindo et al v. Reeves County et al*, 2010: 40). These features eloquently summarize the broader experiences of medical care in outsourced, all-foreign custody.

Barely one year after Galindo's death, in January 2009, Claudio Fagardo-Saucedo was transferred to Reeves. Like Galindo, Fagardo-Saucedo was born in Mexico, emigrated to California as a teenager in the 1980s, and was convicted of unlawful reentry under 8 U.S. Code § 1326 (Turck, 2016). After

being apprehended by US Border Officials near Tijuana in 2008, he received a four-year sentence and was transferred to Reeves County Detention Center (*Ibid*). When he arrived, the medical staff at Reeves were notified that he had tested positive for Tuberculosis, which meant – under the terms of the Statement of Work with BOP – that he should have been promptly screened for HIV (Bureau of Prisons, 2006). Despite this requirement, Fagardo-Saucedo never received an HIV test (De Jesus, 2011: 4).

Almost immediately after arriving at the facility, Fagardo-Saucedo sought medical care for severe headaches, chronic pain, and nausea (Wessler, 2016). According to a review of medical records conducted by Dr. Daniel De Jesus (2011), Fagardo-Saucedo was never seen by a physician despite visiting the medical unit at least twenty-five times during his two years at Reeves. Instead, during each of these visits he was seen by a nurse or physician's assistant and prescribed Tylenol, Ibuprofen and Naprosyn (*Ibid,* 4). On New Year's Eve, 2010 one of the Correctional Officers in Fagardo-Saucedo's unit called medical on his behalf because of 'headaches, nausea, vomiting, weakness, dizziness and unsteady gait.' After being seen by an LVN, he was given an injection of the painkiller Toradol and left alone. The next day Fagardo-Saucedo collapsed and was sent to a hospital in Odessa, where he had a seizure almost immediately on arrival. With the exception of the two guards assigned to watch him, Fagardo-Saucedo died alone, shackled to his hospital bed on January 5th (Wessler, 2016). De Jesus' review offered a quietly scathing evaluation of the care Fagardo-Saucedo received:

'*I note that medical management has not been adequate. [Fagardo Saucedo] complained of headaches at least 9 times (sometimes were severe headaches), and not even once a physician evaluated him… It looks like his complaints were not taken seriously… A more complete evaluation by the doctor could have helped in identifying possible causes of the headaches and could have helped in providing an earlier intervention.'* (De Jesus, 2011: 1-2).

While the deficient medical care at Reeves County Detention Center was particularly well-documented, it was not an outlier from the rest of the CAR prison system. In 2014, Nestor Garay suffered a stroke while lying in his bed on the top bunk of a shared prison cell at Big Spring Correctional Institution, a CAR prison a hundred miles east of Pecos in Howard County, Texas (*Estate of Nestor Garay v. GEO Group Inc. and Correct Care Solutions LLC.*, 2016). When he was found by his cellmates at around 1:30 a.m., they urgently called one of the unit's Officers for medical

attention (*Ibid,* 3). Garay's cellmate Gustavo Jaen told the officer to 'take [Nestor] to the hospital, this man is dying' (Wessler, 2016a). Thirty minutes after calling for medical attention, Garay was seen by Gary Austin, a Licensed Vocational Nurse (LVN) who was the only member of medical staff physically present within the Prison that evening (*Estate of Nestor Garay v. GEO Group Inc. and Correct Care Solutions LLC.*, 2016: 3). Austin called Russell Amaru, a Physician's Assistant and the Big Spring's Medical Clinic's on-call supervisor, and was directed to give Garay anti-seizure medication and return him to his cell (*Ibid,* 3-4). Around 8 a.m. Garay was finally taken to the hospital, where the neurologist who examined him confirmed that he had suffered a stroke, and that it would not be possible to save his life because of the delay in providing him care (Wessler, 2016a).

Two of the medical staff at CI Big Spring admitted to Wessler that they were under significant pressure to reduce medical costs while practicing in CAR prisons. Dr. John Farquhar, who served as the facility's only physician for roughly 3,500 incarcerated people from 2010 to 2013, told Wessler that 'the pressure of budget is always felt' (Wessler, 2016a). Administrators advised Farquhar to 'cut down' the rate of ER referrals to contain costs and rejected nearly all of his requests to transfer sick offenders to local hospitals or Federal Medical Centers (*Ibid).* Russell Amaru, the Physician's Assistant who instructed Austin to give Garay anti-seizure medication told Wessler that 'The fact is that the system, BOP and GEO, allows people to be short-staffed and in positions that they're not properly trained for' (Wessler, 2016b). The GEO Group's own Mortality Review suggests that Austin did not properly diagnose or communicate Garay's symptoms, which is unsurprising given that Licensed Vocational Nurses are not trained to provide that form of care (The GEO Group, 2016). It is also not surprising that many deaths in CAR prison involved medical emergencies that occurred during nights or weekends, when LVNs are the only in-person medical staff available (Private Equity Stakeholder Project, 2019: 4). This is notably different to BOP-run facilities, which generally contract with local EMT services to provide critical care cover during periods when staff physicians and nurses are unavailable (Bureau of Prisons, 2016: 65-67).

Strikingly, while the issues underlying the deaths of Galindo, Fagardo-Saucedo, Acosta and Garay were well known to Federal officials, the executives of GEO Group and PNA, and the prison staff on the ground, very little seemed to change. In 2007, months after the facility's contract started, BOP monitors cited concerns about medical care, understaffing, and failures to comply with contractual standards in a monitoring report (Stephens, 2008: 2). On January 10th, 2008 the Bureau's

Contract Facility Monitoring Branch issued Reeves County, GEO Group, and PNA a series of repeat deficiencies for poor medical care, noting specifically that the medical services unit was not properly managing the care of offenders with chronic health issues, failing to conduct mental health appraisals, and refusing access to specialist care outside of the prison (*Ibid,* 3). Another monitoring report issued by BOP Monitors later that year found that 'prescribed medications were not always appropriate for diagnosis', and specifically referenced the inappropriate prescription of Ibuprofen (Adams, 2008: 6). In 2009, monitors found 18 repeat deficiencies that had been cited in five past monitoring reports without correction, and directly attributed these to 'a lack of oversight by GEO management staff [or] a viable quality control program' (Patton, 2009: 4). The report noted that 'an inmate's medical condition and the events that caused his death were not handled timely' and that 'on-site emergency cases were not managed according to policy' (*Ibid,* 3). A year later, monitors issued another report that found 'inadequate controls in the clinical care area of Health Services to ensure compliance with established procedures and practices' including the 'failure to recognize the potential seriousness of incomplete medical care, poor documentation of clinical evaluation, rapid turnover of key medical staff, [and] inadequate training and management of infectious disease processes' (Patton, 2010: 3-4).

Keeping the dust down: Valley Fever, race, and vulnerability at Taft Correctional Institution

Three weeks after he was transferred to Taft Correctional Institution, a Criminal Alien Requirement prison in the San Joaquin Valley in Central California, Richard Nuwintore developed an unexplained cough and serious chest pain (Klein, 2017). As he would later tell a reporter from Valley Public Radio, 'I would touch my skin and I was really hot. I had the coughing, the night sweats. My appetite was gone. I couldn't eat, I couldn't swallow, and I was losing weight really, really fast' (*Ibid*). Unbeknownst to him, Nuwintore had developed a serious fungal infection called Coccidioidomycosis, or Valley Fever, a disease caused by the inhalation of the airborne spores of the soil-growing fungus Coccidioides (MacLean, 2014: 5). Rather than passing from person to person, these spores are dispersed when dry soil containing the Coccidioides fungus is disturbed, increasing the likelihood of human exposure. Although the fungus is endemic to wide swaths of the American Southwest, Mexico, and parts of Central America, the vast majority of cases occur within six counties in the San Valley (*Ibid).*

Valley Fever infections, and their long-term consequences, are strikingly unequally distributed. Data collected by the California Coccidioidomycosis Collaborative from 2007 to 2011 – the period immediately after CI Taft became a Criminal Alien Requirement prison – found that after infection, 60% of people either do not develop any disease, or they do not develop significant enough symptoms to prompt them to seek medical treatment (MacLean, 2014: 9). The other 40% developed flu-like symptoms with symptoms that mirror Nuwintore's: fever, chills, chest pain, headache and fatigue. While most patients recover from this infection without treatment, a small number of patients develop a more serious disseminated version of the disease. In roughly 5-10% of cases, the fungal infection spreads from the lungs into the bloodstream, where it may threaten a wide range of vital organs (Ferry, 2015). In a limited number of cases, the infection may spread to a person's brain, where it produces a potentially life-threatening swelling of tissue.

Although there is no treatment currently available to reverse the disseminated version of Coccidioidomycosis, the disease has been well-known to the local and national medical community for nearly forty years. In June 1994 the Centers for Disease Control and Prevention issued an article surveying the 'devastating impact of Valley Fever in California' during the period from 1991 to 1993 (*Edison v USA,* Doc 1: 9). Notably, 70% of cases in California during this period originated in Kern County (*Ibid*). Two years later, two physicians from the University of California San Diego published a study of Valley Fever cases in central California and found that 'Simple environmental measures, such as planting grass or paving roads in highly populated areas, decrease the amount of airborne dust and lower the risk for coccidioidomycosis' (Ibid, 9-10). Although these measures could not eradicate the fungus from the soil, they were found to significantly lower the risk of airborne dispersion and subsequent infection (*Ibid*).

Incarcerated people are disproportionately likely to contract valley fever, and to develop a serious version of the disease. From 2007-2011 roughly one in five (19%) of cases reported were people incarcerated in state or federal prisons (MacLean, 2014: 30). During this period, people incarcerated at CI Taft were three times more likely to contract valley fever than residents of the nearby city of Taft, CA (*Ibid,* 31). In an obvious sense, incarcerated people lack the same agency over their relationship to the built environment possessed by other members of the community: they cannot move to a different location, control air filtration or ventilation, or choose when they are exposed to airborne dust. Epidemiological evidence has also identified a host of demographic factors including

gender, race, and immune status that increase the likelihood of serious infection (MacLean, 2014; Odio et al., 2017). Men, and individuals from Black or Asian ethnic backgrounds are at significantly higher risk for developing the disseminated version of Coccidioidomycosis (Odio et al, 2017: Table 1). Individuals who were pregnant, or who had suppressed immune systems, also faced a significantly higher risk of disseminated infection. Notably, 23% of incarcerated cases had Hep C and 16% had asthma (MacLean, 2014: 33). From 2005 to 2015, roughly 4,000 people incarcerated in California contracted Valley Fever and 62 died (*Ibid,* Dannenberg, 2013).

As a result of the increase in Valley Fever infections in Central Valley prisons after 2005, Dwight Winslow, the California Department of Corrections and Rehabilitation's statewide medical director, circulated a memorandum to all CDCR medical staff with recommended measures to control the spread of Valley Fever (Winslow, 2007). On one hand, Winslow's memo called for the deferral of new prison construction in endemic areas and the provision of indoor recreation areas during high wind/dust events (*Ibid*). Notably, Winslow's memo called for the transfer of inmates with conditions that affected their immune system like HIV, but failed to follow the advice of state epidemiologists Dr. Janet Mohle-Boetani and Dr. Charlotte Wheeler, who urged the Winslow and California prison officials to transfer all African-American and Filipino prisoners incarcerated in endemic areas to CDCR facilities outside of the Central Valley (Ferry, 2015). In 2013, after years of inaction, CDCR officials specifically prohibited African-American or Filipino prisoners from being designated to Pleasant Valley or Avenal State Prison, because both ethnic groups were determined to be particularly vulnerable to the virus (Klein, 2017). Two years later, on the recommendation of the Centers for Disease Control and Prevention, the CDCR also began testing all people entering the state prison system for immunity to valley fever in 2015 using a skin test called Spherusol (Klein, 2017). The results of this test allowed prison officials to determine which offenders were potentially susceptible to infection, information which was then used to help shape decisions about facility designations.

Critically, the differentiated vulnerability of racial groups is as much the product of social ecology as is genetically inherited immunity. In her doctoral research, the sociologist Sarah M. Rios (2018) traces how two vulnerable groups – farmworkers and incarcerated people – acquire and recover from Valley Fever. Rios' analysis draws attention to the myriad ways in which both groups are disproportionately exposed to uncontrolled dust and pollutants (*Ibid*, 49-54). Rural, low-income,

immigrant communities and prisons are overwhelmingly more likely to have higher levels of volatile organic compounds, particulate matter, pesticides, ground ozone, and drinking water contamination (*Ibid*, 48). Similarly, census tract-level data from Kern County shows that these areas have fewer miles of sidewalk, less access to public transit, and more foreclosed or disused property likely to generate dust (*Ibid,* 51). While prison policymakers like Winslow hold up evidence that people with black and Asian heritage lack 'host immunity' carried by people from other racial and ethnic backgrounds, Rios argues compellingly that these claims shield racial and economic inequality from public examination (*Ibid,* 54). Recent work by the physicians Davis Ansell, Christina Amutah, and others has emphasized how the focus on race at a molecular level tends to discount the social origins of racial inequality, presenting race as a pathology, rather than social and economic inequality (Amutah et al., 2021; Ansell and McDonald, 2015). In this sense, vulnerability to Valley Fever was the product of an accumulation of policy choices that specifically exposed prisoners and people from marginalized racial groups rather.

The response to the Valley Fever epidemic during the period from 2006 to 2012 clearly reflected how criminalization and racial discrimination shaped the unequal distribution of public health resources. As the journalist David Ferry wrote in a meticulously reported study of the epidemic 'if valley fever was endemic to the hills above Rodeo Drive or the boulevards of Palo Alto and struck down Caucasians with the ferocity it lays out African Americans, it would be the kind of public health emergency that sends Anderson Cooper into the field with a face mask' (Ferry, 2015). Mike MacLean, the chief public health officer of Kings County put it more directly, 'none of this would've happened if they weren't prisoners' (*Ibid*). For incarcerated men interviewed by Ferry, the failure to take measures to protect them from Valley Fever was explicitly racial. Arthur Jackson, a Black man incarcerated at Pleasant Valley asked rhetorically, 'if this disease were to have affected all races alike, would the response of prison officials been the same or would more have been done to protect and treat us?' (*Ibid*). LaCedric Johnson, another Black man incarcerated at Pleasant Valley put it more directly, 'Who gives a fuck if a few thousand inmates are housed in a prison built on soil that contains a fungus in the ground that kills African Americans at a high rate?' (*Ibid*). This testimony offers a precise synthesis of how racial hierarchy take shape through differential vulnerability in prison.

While men incarcerated at Taft Correctional Institution experienced similar forms of racialized vulnerability, the spread of Valley Fever was complicated by the fact that the prison was operated by a private firm through a contract with the Bureau of Prisons. As noted in Chapter Five, CI Taft was opened by the BOP in 1997 as part of a high-profile demonstration project intended to compare the cost and quality of privatization to BOP-run facilities (Lappin, 2005). From 1997 to 2006, CI Taft was operated by Wackenhut Correction Corporation and the GEO Group (Martz, 2011: 2). From 2006 until 2020, the facility was operated by the Management and Training Corporation (MTC). While CI Taft incarcerated US citizen offenders during the period of the demonstration project from 1997 to 2006, the facility was re-purposed as a Criminal Alien Requirement prison when MTC took over the contract after 2006 (DOJ OIG, 2016).

Much like the California Department of Corrections and Rehabilitation, the Bureau of Prisons' response to the initial spread of Valley Fever was muted and reactive. The first formal litigation over the spread of Valley Fever at CI Taft occurred in 2002 when Kevin Walker, an African-American man incarcerated at CI Taft filed a claim against the Federal Government under the Federal Torts Claims Act (*Walker v. United States*, 2007). Walker alleged that the Bureau of Prisons had acted negligently by transferring him to a facility constructed on soil known to be contaminated by fungal spores that cause valley fever (*Ibid,* 3). After contracting a disseminated version of the disease, Walker was left unable to work because of chronic fatigue, and requiring constant, expensive medical treatment to reduce the symptoms of the virus (*Ibid*). Notably, Walker specifically alleged that the BOP had vetoed efforts by the GEO Group to plant grass and make other landscape modifications that would mitigate dusty conditions. Although Walker's case was eventually dismissed years later, the issue was clearly raised to the BOP and contractors.

In 2004, the BOP's Medical Director issued a system-wide memorandum to all Bureau health services staff which included a 'risk management alert' for Valley Fever (*Edison v. USA et al*, 2012). The alert provided a brief description of the disease, and the regions in which it is endemic, and advised that 'Persons at risk for valley fever should avoid exposure to dust and dry soil in areas where valley fever is common' (*Ibid,* 14). Emails from Bureau officials obtained by Ian Wallach, an attorney who represented Nuwintore and a number of other immigrant men in Federal Tort claims over Valley Fever at CI Taft, demonstrate that the agency knew that 4% of the people incarcerated at Taft contracted the disease, and roughly 5% of those who contracted the disease developed

serious infections (*Panah v. USA*, 2010). Despite this hard evidence, these emails also show that Bureau officials explicitly overruled GEO's plans to plant grass around the facility (*Ibid:* 13).

Like Richard Nuwintore, Arjang Panah contracted Valley Fever after being transferred to CI Taft in 2005. Although Panah was made aware of the disease by prison staff, neither the BOP nor GEO took specific measures to prevent the men incarcerated at CI Taft from inhaling airborne dust (*Ibid,* 9). They also did not provide breathing masks, air filtration systems, or any kind of personal device to filter out dust in Panah's cell (*Ibid*). Initially, Panah – a US Permanent resident who was born in Iran – was misdiagnosed with pneumonia, and only correctly diagnosed two months after he originally became ill (*Ibid*, 8). As a result of chronic pain and fatigue, Panah began to lose contact with his family. Panah's mother later testified in court that

'Up until December 2005, Arjang was still in very good health… In January, I didn't hear from him for two weeks. Then when I could call, Arjang would tell me not to visit. I later learned that Arjang, my husband Nasser, and my other son had decided to not tell me that Arjang was sick… Once I saw him, I got sick. I couldn't believe it was him. He had lost almost fifty pounds. He was thin and pale. I feared that he had AIDS. I couldn't stop crying. I thought that something very bad had happened. Later that day, a guard at CI Taft explained to me that Arjang had Valley Fever' (Panah, 2012: 3)

The consequences of this diagnosis have appreciably diminished Panah's quality of life. To suppress the further dissemination of the fungal infection, Panah takes 400 mg of Fluconazole every day. If he gets sick, he is extremely likely to get seriously ill. In 2008, Panah's lung collapsed after he contracted a common cold, requiring emergency hospitalization and the use of a ventilator to help him recover (*Panah v USA:* 10). For men like Nuwintore, Panah, and Walker, this lifetime of medical supervision, treatment and medication will likely cost hundreds of thousands of dollars (*Edison v USA,* 16-17). Instead of a cure, the best that they can hope for is 'an uneasy truce with the disease, with the help of prescription drugs and knowledgeable doctors' (*Ibid,* 17).

Asserting their claims under the Federal Tort Claims Act, the plaintiffs in the *Edison* lawsuit argued that the defendants (the Bureau of Prisons, GEO Group, and MTC) could have chosen one of three options to protect incarcerated people at CI Taft. First, the BOP could have 'provided greater protection, housing, or removal to any inmate at Taft C.I. who did not have a positive coccidioidin

skin test indicating immunity' (*Edison v USA*, 15). Second, the Bureau could have shut down the facility. Last, failing other options, both the Bureau and contractors could have 'implemented the common and available preventative measures to protect all non-immune inmates from exposure to the dust-borne disease' (*Ibid*). Faced with these choices, the US Court of Appeals for the Ninth Circuit Court judged that 'although [the Bureau's] original plan included protocols for prevention, in addition to diagnosis and treatment, the BOP subsequently reversed course, abandoning its prevention efforts to focus exclusively on diagnosis and treatment' (Tashima, 2016: 24). In practice, this decision to abandon prevention was a tacit acknowledgment that a small but significant number of the most vulnerable men would become infected with a disease that represented a potential death sentence.

The response to Nuwintore and Panah's tort claims demonstrate how the outsourced, contractual relationship between the BOP and GEO operates as a resource of power, limiting the ability of men incarcerated at CI Taft to claim recourse for medical damages. In a declaration filed in 2011 in response to Panah's suit, Douglas M. Martz, Chief of BOP Privatized Corrections Contracting Section noted that Taft operated under a 'performance-based contract' in which 'GEO determined the day-to-day procedures and practices that would achieve the performance goals' (Martz, 2011: 1). Martz also noted that the Bureau of Prisons simply pays 'contract sums' for 'operational expenses', and is not directly responsible for hiring, firing, paying, or otherwise regulating the behavior of prison staff (*Ibid,* 2). Other than accreditation requirements and record-keeping procedures, Martz argued that 'GEO was responsible for the day-to-day operations at TCI Taft' (*Ibid*, 3). Based on this state of affairs, the Bureau claimed that they could not be held liable because of the Independent Contractor exemption to the Federal Tort Claims Act.

For their part, the GEO Group and Management and Training Corporation also used the flexibility of the prison contract to deny culpability. In response to the *Edison* complaint, both firms argued that the nature of their contract with the BOP meant that they could not be held liable for damages under the Federal Tort Claims Act. In practical terms, as will be discussed in the following chapter, this has been a remarkably successful legal defense. In their 2016 decision in the *Edison* case, the Ninth Circuit found that the independent contractor exemption did not bar plaintiffs incarcerated at CI Taft from claiming medical damages as a result of Valley Fever infections (Tashima, 2016: 1). In the wake of this decision, Richard Nuwintore and the other plaintiffs reached settlements with the

Bureau of Prisons that included the payment of monetary damages (Proctor, 2016). This decision stemmed, in large part from the unique ownership and operating structure at CI Taft – unlike every other contract prison operated by the BOP, the Bureau owns the land and physical prison structure. In this sense, the Ninth Circuit found the BOP liable as much as the prison's landowner as it's jailer. In many other circuits, however, Federal Courts have found that incarcerated plaintiffs seeking medical damages cannot make claims under 42 U.S.C. § 1983, but rather must file civil tort actions in state court if they want to seek damages from nominally private prison management firms.

More broadly, the defenses brought by the BOP and their contractors in the *Edison* case illustrate how outsourcing offers the state a powerful form of flexibility. Rather than fixing a specific regime of legal and administrative regulations, CAR prison contracts blur the boundaries of the Federal government, allowing the state to dramatically expand prison capacity through private contractors while simultaneously denying the 'stateness' of outsourced prisons. When pressured by Congress or the media about lax oversight, officials like Martz frequently portrayed the contractual relationship between the BOP and GEO as an indication of the Bureau's firm and thorough control over CAR prisons. Yet, when subject to legal scrutiny, during suits like those filed by Panah, Nuwintore, or thousands of other men in CAR prisons as a result of medical negligence, the Bureau relied on this contractual relationship to defer responsibility and retain deniability. In turn, negotiating the public-private boundary has become a distinctive feature of all-foreign prison custody.

The spread of Valley Fever within prisons in the San Joaquin Valley helps to illustrate the 'politics of vulnerability' (Munro, 2017) in carceral settings. As one man who was incarcerated at CI Taft in 2009 put it, 'It's one thing to pay back society for my crime, but to send me to a prison which could kill me is another thing' (Plevin, 2012). In the case of Valley Fever, preventing the spread of the disease required a collective, prevention-oriented response that might have included changes to the built environment of prisons, the use of new medical tests to identify individuals without immunity, and system-level changes to designation policy which would have prevented certain groups of offenders from being transferred to prisons in endemic areas. Although their demographic backgrounds put them at higher risk for serious infections, men like LaCedric Johnson and Richard Nuwintore were not by definition vulnerable to Valley Fever. Rather, they became vulnerable because the people and institutions in charge of administering CAR Prisons made deliberate choices

that exposed them to the airborne Coccidioides fungus in specific ways. On one hand, vulnerability to Valley Fever across California State prisons and CAR prisons reflected the shared accumulation of racial inequalities described by Rios (2018). At the same time, however, the dislocated, outsourced structure of authority at CI Taft shaped the social fault lines of access to medical care in ways that were specific to foreignness and the absence of political membership.

COVID-19, Carceral (im)mobility and organized abandonment

On March 17th, as the novel coronavirus (COVID-19) began to spread rapidly though the United States, two physicians serving as medical subject matter experts for the Department of Homeland Security, Dr. Josiah Rich and Dr. Scott Allen published an editorial piece in the *Washington Post*, urging the Federal Government to begin releasing prisoners to prevent the spread of the virus (Rich et al., 2020). As they put it,

'*Despite being physically secure, jails and prisons are not isolated from the community. People continuously enter and leave, including multiple shifts of corrections staff; newly arrested, charged and sentenced individuals… Even if this flow is limited to the extent possible, correctional facilities remain densely populated and poorly designed to prevent the inevitable rapid and widespread dissemination of this virus'* (*Ibid:* 2).

Mirroring Rich and Allen's grimly accurate prediction, COVID-19 tore through sites of custody across the United States. Data from the COVID Prison Project suggests that within the Federal Prison system, 45,756 people tested positive, of 128,649 people tested, during the period from March 2020 to February 2023 (Covid Prison Project, 2023). During the same period, the BOP reported that 314 incarcerated people died as a result of COVID-19 (*Ibid*), although many experts suggest that both data on testing and deaths represent a significant undercount (Blakinger and Neff, 2021; Guernsey, 2021).

Much like the spread of Valley Fever years earlier, the spread of COVID-19 exposed existing inequalities and vulnerabilities produced by a medical system shaped by the logic of the 'compensated man day' (Abedi et al., 2021; Corrections Corporation of America, 2005: 39). However, the spread of COVID-19 also illustrated a form of vulnerability specific to the carceral condition at the juxtaposition of mobility and isolation. In the context of a pandemic in which social

distancing was portrayed as a critical public health response by authorities, the inability to control one's movement was experienced as an acute medical risk. At the same time, however, the spread of the pandemic exacerbated the hollowness and isolation imposed by custody, dramatically reducing the amount of time incarcerated people were allowed out of their cells, limiting access to commissary, and significantly reducing connections to the outside world. For many of the men that I interviewed, this juxtaposition exemplified a form of organized abandonment that was a specific consequence of the racial and national segregation imposed by all-foreign prisons.

On March 12th, 2020, as the COVID-19 virus began to spread across the United States, the Bureau of Prisons announced a halt to the transfer of incarcerated people into and out of BOP-run facilities (BOP, 2020). The decision to reduce movement between custodial sites was codified a week later as part of the 'Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities', a document designed to serve as a national guide to help prison administrators prevent the spread of the virus (BOP, 2022). On March 13th and 31st, the Bureau also issued guidance on how to reduce the movement and congregation of incarcerated people to all BOP-run facilities (BOP, 2020). In addition to halting the transfer of people into and out of BOP-run prisons, the Bureau also made haphazard efforts to reduce the number of sentenced offenders in prison custody. Within the Federal Prison system, there are two ways to seek early release: transfer to home confinement or compassionate release. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (United States Congress, 2020) signed on March 27th granted the Director of the Bureau of Prisons statutory authority to lengthen the amount of time an offender could spend in home confinement beyond the normal statutory maximum (Department of Justice, 2022). On April 3rd, 2020 Attorney General William Barr issued a memorandum directing the Bureau of Prisons to 'immediately maximize appropriate transfers to home confinement' to 'combat the dangers that COVID-19 poses to our vulnerable inmates' (Barr, 2020: 1). As a result of Barr's decision, 23,700 people were sent to home confinement from Bureau facilities. Of those transferred only seventeen have committed new offenses, nearly all of which are drug offenses (Johnson, 2022). Data collected by The Marshall Project, a US NGO, indicates that 3,221 people left BOP custody on

compassionate release, virtually all of which were granted by federal judges over the Bureau's objections.[38]

Scholars and activists have rightly criticized the Bureau for interpreting Barr's criteria too narrowly (US House of Representatives, 2022). As Keri Blakinger and Joseph Neff's reporting demonstrated, Bureau officials denied motions for compassionate release almost by default during the height of the pandemic, often failing to specify why motions had been denied (Neff and Blakinger, 2020) As Shon Hopwood, a law professor at Georgetown with first-hand experience of the Federal prison system put it, 'They let people die in prison that shouldn't have had to die' (Hopwood in Blakinger and Neff, 2021). While deeply imperfect, that thousands of people were released to home confinement by the BOP under the CARES act represented a material effort to reduce the exposure of incarcerated people at high risk for severe COVID-19 illness. Indeed, 2020 saw the largest single annual decrease in population in the Federal prison system's history (BOP, 2023). In symbolic terms, the releases represented a critical act of inclusion, an acknowledgement in the most basic terms of the Federal government's responsibility to care for people whom it incarcerates. In a real sense, Barr's decision recalls the language of dignity and care traced by Jonathan Simon in the *Brown v. Plata* decision, and a striking reversal of the logic of incapacitation (Simon, 2021, 2011).

Yet there was no such compassion afforded to foreign-national prisoners. Even at the peak of the COVID-19 pandemic the logic of expulsion trumped the claims to release of immigrant men in outsourced prison custody. Strikingly, while the transfers into, out of, and between BOP-run facilities stopped (*Ibid*), incarcerated people continued to move into, out of, and between CAR prisons at an alarming rate during March and April of 2020. Data obtained via public records request from the US Marshals Service, the Federal agency responsible for overseeing the transportation of sentenced offenders, indicates that 1,564 people entered CAR prison custody during March and 721 entered in April (US Marshals Service, 2022). By contrast, 304 people left CAR prison custody in March, and 877 in April, transferred either to another Federal prison or an immigration detention facility (*Ibid).* Moreover, while BOP leaders issued regulations on how to limit the movement and congregation of incarcerated people to BOP-run facilities, this guidance was provided to the

[38] While the BOP has sole authority over decisions about transfer to home confinement, decisions about compassionate release are subject to appeal to federal courts. See BOP (2019). *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g).* Online: https://www.bop.gov/policy/progstat/5050_050_EN.pdf.

contractors' corporate offices as a "best practice measure" while each contractor was left to develop and enforce their own specific COVID-19 response plans (DOJ OIG, 2020 supra note 7). Unlike US nationals, non-citizens in BOP custody are categorically ineligible for transfer to home confinement because they are subject to deportation, which is considered a 'public safety factor' under BOP designation policy (Bureau of Prisons, 2016: 3). In practice, this made release under the CARES act practically impossible. Where vulnerable people with immigration detainers were able to make successful claims to compassionate release from BOP custody, they were often immediately transferred to immigration detention, increasing their risk of exposure to the virus (Blackburn, 2021: 23-24).

In short, CAR prisons experienced neither the shut-down in mobility nor the reduction in population that occurred across the rest of the BOP-run system. The logic of deportation continued to override the basic measures of dignity and care implemented to protect US nationals in federal custody. While a wealth of research on 'carceral mobilities' (Brooks and Best, 2021; Turner and Peters, 2018) has drawn attention to the ways in which involuntary mobility – as much as immobility – defines experiences and practices of incarceration, the juxtaposition between the threatening circulation of the virus and the inability to control one's own movement came to define CAR prisons during the pandemic.

The large-scale transfer of immigrant men from Taft Correctional Institution (CI Taft) to North Lake Correctional Institution (CI North Lake) in northern Michigan during March and April 2020 offers a calamitous example of this vulnerable (im)mobility. Although transfers into and out of the BOP-run system had effectively halted on March 12th, 2020 the Bureau had announced plans to close CI Taft by May 2020 (Keeler, 2019). Notably, the facility had been marked for closure because of the high cost of repairs to the recreational areas because of issues associated with the spread of Valley Fever. As a result of this closure, 1,062 people left CI Taft during the months of March and April 2020 (US Marshals Service, 2022). Roughly four hundred people were transferred to CI North Lake in the months of March and April, from CI Taft as well as other CAR prisons (De La Hoz, 2020). At CI North Lake, hundreds of incarcerated people would contract the virus, and at least four would die (US Marshals Service, 2022; Aboagye-Agyeman and Guernsey, 2021).

For many of the people incarcerated at CI North Lake, the reckless transfers into the facility were a symptom of how immigrant prisoners were abandoned, left to be governed by the greed of prison contractors rather than Federal prison regulations. David, who was incarcerated at North Lake prior to the transfers testified that, 'They bring people from coast-to-coast, from close to their families, they drag them over here. They were doing transfers from other states when they knew about this COVID thing - this is like a big negligence' (NDCM, 2020). Another incarcerated man named Juan Carlos wrote that 'the prison kept receiving prisoners from other places, but they never thought about the risks this could mean for us' (Porras Quintero, 2020: 1). David also pointed out that transfers from Taft to North Lake would have been prevented for US citizen prisoners irrespective of COVID because of the extreme length of the transfer, 'People live in Arizona and they send them all the way over here. I believe it's a law – the new First Step Act - that says you're supposed to be within 500 miles of your family' (NDCM, 2020). Echoing the testimonies of men in CAR prisons interviewed by the ACLU in 2014, Riordan, one of the men sent from Taft to North Lake, emphasized how isolating the transfer had been,

'What civilized society (which the US purports to be) places a father of five children under fourteen twelve thousand miles away from them? I have now not seen my wife or children for nearly two years. It is unthinkably draconian… how can it not be a human rights violation to place people thousands of miles from their family? I know that citizens are placed within five hundred miles but not us' (RM Letter, 14th July 2021).

That the transfers continued despite the pandemic demonstrated to David that the viability of the carceral economy mattered more than the well-being of immigrant offenders. As he put it, 'the only thing [the BOP and GEO] see is the money sign. How are they gonna keep filling [the prison] up? The yard that they give us for 1,800 inmates, it's like super super small. And they say they want to fill it to capacity… there's no way in hell they can fit 1,800 inmates' (NDCM, 2020). Riordan agreed, writing plaintively that 'the truth is that this is just a massive money-making racket' (RM Letter, 14th July 2021). For both David and Riordan, immigrant prisoners were the essential commodity at the heart of this exclusionary carceral economy.

Once they arrived at North Lake, transferred offenders were housed in a separate unit. Nominally, this segregation was intended to reduce the transmission of the virus. However, transferred prisoners were placed on the same work shifts as other prisoners in the general population (De la

Hoz, 2020). Prison staff, employed by the contractor GEO Group, also failed to distribute personal protective equipment to incarcerated people. Jorge Villalolobos, one of the men transferred from CI Taft to CI North Lake reported that GEO Group staff refused to distribute masks, gloves, or soap, encouraging incarcerated people to purchase them from the commissary instead (Zambrano, 2020: 5). By April 25th, nine offenders and five staff had tested positive for COVID-19 at North Lake. Yet, even as the virus ripped through the prison, staff made precious little information available to incarcerated people, or to the public, about who was symptomatic or positive for COVID-19. A motion for compassionate release filed by a group of incarcerated men in June 2020 described how staff at North Lake simply ignored requests for testing or medical treatment:

'*More than half of the inmates here have COVID symptoms, and it is possible that some inmates or staff will die… If prisoners develop complications [from COVID] we are only able to see the nurse, not a hospital or doctor. The North Lake facility nurse informed us that the medical department is open only for prisoners with emergencies… Inmates in D4 unit have COVID symptoms, but the nurse and the Warden say they can't be tested… they ignore inmates symptoms of COVID-19 and put us at high risk of death*' (*Jorge Guillermo Velez et al v. Warden Donald Emerson et al*, 2021: 5).

Across the CAR prison system, there was precious little testing, and neither contractors nor the Bureau publicized information about the number of offenders presumed to be positive based on symptoms (Chrastil, 2020; De La Hoz, 2020). David emphasized that North Lake's staff simply denied or stonewalled requests for information:

'The major told us not to listen to the news. That it wasn't really happening. They treat us like we are dumb. They like to hold a lot of information from us… None of [the staff] are really prepared to do the job. They don't want us to complain, so they kind of lie to you… They always tell you, 'Oh, come back tomorrow, come back tomorrow, come back tomorrow.' They never tell you the truth.' (NDCM Call, 2020)

Less than three months after the closure of CI Taft, while the rest of the country remained under COVID lockdown, the Bureau of Prisons began to transfer thousands of offenders out of CI D Ray James, a CAR prison in southeastern Georgia, to prepare for that facility's closure (The Charlton County Herald, 2021). Noel, who was incarcerated during the end of his sentence at D Ray James

before his transfer to ICE detention, described how the BOP and GEO Group prepared to move hundreds of people around the federal prison system at the height of the pandemic:

'On July 8th, they told us that we were gonna move to a different location and to start packing. It was some place in Texas, I think called Big Spring. But then on the 12th I got sick. I had a really high temperature, so they isolated me. I did a test and the next day it came back positive. So, I never was transferred- I finished my time in D Ray James… There were like 300 to 400 people that got transferred to Big Spring in the end. [The staff] knew that there were some infected cases and they didn't really care, they mingled infected people with not infected people, they transferred people without taking the proper precautions.' (NG call, March 3rd, 2021)

For many other people incarcerated in the CAR prison system during the COVID-19 pandemic, the connections between foreignness, abandonment and the carceral economy seemed self-evident. Alexander, who was incarcerated at CI Big Spring in the summer of 2020 just as hundreds of offenders were transferred to the facility from CI D Ray James, implicitly framed the denial of the spread of COVID-19 as a symptom of the desire to reap the profits of a full prison, 'When we would tell the doctor 'hey, we're sick,' they didn't want to report that there were people with Covid in here. That's how they operate, they don't tell the [Bureau of Prisons] that there's Covid here, because the BOP is going to send people, keep doing transfers here' (De La Hoz, 2021). When he asked for a COVID test, staff at CI Big Spring told him "no, no what you have is a cold.' What do you mean a cold, my back hurts, I don't have a sense of smell' (*Ibid*).

The inability to control or reduce contact with other people in congregate settings produced feelings of isolation, exclusion, and vulnerability. During the spring and summer of 2020, one man whom I exchanged letters with named Jan was locked down at CI Great Plains, a CAR prison in Hinton, Oklahoma. In April, CI Great Plains implemented a series of lockdown measures intended to reduce the transmission of the virus. Despite these lockdown measures, Jan's cellmate continued to work in the prison kitchen, where prisoners and guards interacted without masks or social distancing measures. One day, Jan's cellmate collapsed during his shift with aches and chills. Rather than transferring him to quarantine, the guards simply brought him back to the cell. As Jan put it, 'we knew he for sure had it because he was in contact with people who tested positive. So, I'm just, like, sitting there, waiting to get it' (JC Letter, August 8, 2021).

Accounts of the spread of the virus at CI North Lake directly echoed Jan's anxiety about the inability to distance himself from his cellmate and his unit's COs. According to David,

'*Me and my cellmate, it's two person per cell. About two feet, three feet away. Very small cell. It's impossible to have this six-feet distance. Can't do that. I gotta buy my own hygiene [and] the people who are here, they control the water, and I don't get a lot'* (NDCM Call, April 19th, 2020).

In conjunction with difficult-to-access medical care, the inability to distance oneself from cellmates, or to control one's interactions with prison staff produced feelings that the men in CAR prisons like CI Great Plains and CI North Lake were being exposed to COVID-19 and abandoned. In Jan's case, after spending two days with his seriously ill cellmate, he began to experience tell-tale COVID-19 symptoms, including coughing, body aches, and a loss of the sense of taste and smell (JC Letter, 2021). Soon afterward, Jan's entire unit of roughly sixty men was put into lockdown because so many were sick. Prison staff, however, relied solely on temperature to make decisions about which prisoners should be placed in isolation to receive specific care. Despite his symptoms, Jan was refused a COVID test and left in his cell because he failed to register a temperature above 100 degrees Fahrenheit. Without the ability to know for sure whether he had COVID, Jan described how he would anxiously test his symptoms, 'I started testing [my sense of smell]… I put my nose up to a sriracha bottle… I'm like squeezing it trying to get the air into my nose and I can't taste anything or smell it at all' (Chandler, 2021). This sense of isolation and uncertainty was particularly difficult. As Jan put it, 'What if it was worse? What if it was, like, a flesh-eating bacteria and I was in that same position… locked in a cell with somebody and I'm just waiting to get it?' (*Ibid*).

The inability to control their own movement and contacts with other people compounded people's feelings of exclusion and abandonment produced by the difficulties associated with accessing medical care. Emilio Martinez got sick soon after his transfer from CI Taft to CI North Lake, 'About two weeks [after arriving] I started feeling feverish, my bones hurt, I was tired and very sleepy" (De La Hoz, 2020). As a result of his fever, Martinez was removed to a unit reserved for symptomatic detainees, where he said he was kept for two weeks with only minimal supervision.

'They'd come in, take my temperature, and say, 'It's OK, you're OK,' and then they'd close the door and leave. They wouldn't check up on you all day, just in the morning and the afternoon. The whole night would go by without anyone coming to check in. You could die there' (De La Hoz, 2020).

Martinez's testimony echoes the isolation and abandonment described by Jesus Manuel Galindo. In segregation, Martinez was left alone in a cell where no one would notice if he fell seriously ill. This sense of exclusion – of being left alone with no one to look after you – gave brutal material meaning to the broader social and administrative process of exclusion from political membership. Moreover, Martinez's testimony is not an exaggeration: at least three people incarcerated at CI North Lake did die during 2020 (USMS, 2022: 6).

Alexander, a Mexican-born man, described a similar experience when his unit contracted COVID-19 at McRae Correctional Institution (CI McRae) in the early days of the pandemic,

'Almost everyone in the prison got sick. The symptoms that I had – I lost my sense of smell, I lost my sense of taste, I had fever and body aches for about two days. What they were doing there was, [the staff] would come to check our temperature, to check if we had a fever. If there was no fever, or some symptoms that were really bad, they wouldn't do anything. They just left us there, left us to wait until the virus passed.' (AM Call, March 30th, 2021).

That the testimonies of Jan, Emilio, and Alexander bear such haunting parallels to the letters written by Galindo to his mother before his death suggests that this sense of abandonment is produced by structural features of the CAR prison system. Rather than a symptom of COVID-19, the feeling of abandonment was a consequence of material choices about who deserved care, embedded within the system of outsourced confinement.

In addition to the denial of medical care, the spread of COVID-19 emphasized people's physical isolation and disconnection from the physical and social world outside prison walls. In an attempt to prevent the spread of the virus, many CAR facilities were placed on a near-permanent lockdown, in which access to recreation was severely limited, movement within the facility stopped, and social visits from family and friends were forbidden. For Jan, this period was the most difficult of the time that he spent at CI Great Plains:

'That time when we were being locked in our cells nearly 24 hours a day was the hardest time I have ever done. We were hearing about countless people being released, or put on home arrest, but instead, the same people (elderly, health conditions) were being locked in a cell, only allowed to shower three times a week, with no ability to cook food and getting one fifteen-minute phone call on the days we didn't shower.' (JC, Sep 1st, 2021, letter).

Jan also described how his social isolation was compounded by an intense, painful physical isolation:

'There was a 12 month stretch from 2020-2021 where I spent a total of maybe six hours outdoors. I was freakishly pale and lacked vitamin D and any peace of mind that comes from seeing the sky. I've kind of repressed that whole experience and when I think back it's like 'holy shit, that actually happened." (JC, Sep 1st, 2021, letter).

Frequently, incarcerated people described a fear that they would become seriously ill and die unnecessarily because of a faulty or delayed response to a medical emergency. One man incarcerated at CI North Lake described a harrowing incident involving his cellmate,

'Yesterday an incident happened. This guy was complaining to somebody that he was sick. They ended up coming to get him later, later on, like 4:00 am. By the time they come and get him, the guy was on the floor, with yellow stuff coming out of his mouth… The medical system here is horrible… The guy was on the floor and all they did was staring at him. They didn't even know what to do. It took like five hours from when he asked to be seen to when they seeing him. So he was already on the floor. They say his heart was going a little bit too fast, beating too hard of too fast' (NDCM, 2020b).

This is what abandonment meant in the most concrete possible terms: that a person might collapse and lie unconscious on the floor of a prison cell for five hours before receiving medical attention. Raul, the Mexican-American man whose testimony I described in the previous chapter, had a particularly harrowing experience while incarcerated at CI McRae.

'*I went to medical, and I thought I had a stomach virus, because I couldn't eat, and I was losing of weight. But they told me, right now we're not taking anybody, we'll give you a pepto-bismol, but then you go back to your unit. Luckily, they checked my temperature, and my temperature was 100.4. Not 104, 100.4. Barely five points above the limit. So, they said, 'you have to stay here until your fever goes away'… I was there for seven days. Tuesday night at 10:38 I went to sleep. At 11:30 I wake up like it's out of a nightmare. I've never had a nightmare in my life, but it felt like*

that. My heart was beating at 200 beats per minute, and I was sweating cold. I thought initially that my sugar was really down. I had a Gatorade there that I was saving for the morning, so I drank the Gatorade, the whole thing, and it wouldn't go away. When the guard passed by, I knocked and told her, 'Hey, can you please call the nurse because either something is wrong with my blood sugar or my blood pressure.' So, two nurses came right away. They checked my blood pressure, perfect. They checked my blood sugar, perfect. But at the same time, they put that thing on my finger that checks the oxygen level, and my oxygen level was super low and my heart rate was 203. The nurse got scared, so she did the thing with all the wires – the cardiogram. She got three readings of it, and then she called the doctor. And then she came back and told me, 'Hey we called 911 because the doctor thinks you might be having a heart attack.' The whole time I was awake. I never passed out. I was sweating cold. At 1:32 AM, they turned me over to the ambulance guy. I'm on a stretcher, with plastic handcuffs on my hands and plastic handcuffs on my feet. When the nurses explained to the ambulance guy that I had been two hours at 200 beats per minute, he didn't even ask the captain, he got on top of me, he took something out of his belt, and he cut off my handcuffs. And even the captain said, 'hey you can't do that, because of security' and the EMS guy said 'I don't care about security. This man has been like this for two hours, his heart could blow up' (RTN Call, April , 2021).

After removing Raul's handcuffs, the Emergency Medical Technician administered an injection intended to rapidly slow and stabilize Raul's heart rate. This treatment is likely to have saved Raul's life (Blackburn, 2021). The EMT then drove Raul to a local hospital in McRae. However, this hospital had no cardiologist on staff, so Raul was loaded back into the ambulance and driven to a bigger hospital in Dublin, GA. There, it was confirmed that Raul had contracted COVID-19, which had probably caused his heart attack. After his condition stabilized, Raul was transferred back to CI McRae. At McRae, Raul was understandably terrified for his life, and so contacted a Federal Public Defender in Alabama, who helped Raul prepare a motion for compassionate release (Blackburn, 2021: 1).

Although his motion for compassionate release was successful, Raul's immigration detainer meant he was immediately taken into ICE custody at the Folkston Processing Center after his release from McRae (*USA v. Topete*, 2021). For Raul, being incarcerated at Folkston represented a repetition of the same risks he had faced at McRae. As he put it to me:

'In this place right here, I'm in the same situation as McRae- the closest good hospital they could probably take me to is Jacksonville, and that's 45 minutes away. And then I don't know how long it takes to get me out of here… I don't

know what would have happened last time if I had been in the unit instead of being in medical... What if I'm in my unit when it happens here? The guards here, you can already tell they just wanna do their time and get out. So even if I push the button, I don't know how long it will take until they come and see me. And at night if I'm locked up in my room- I don't know what will happen by the time they get me out of here. And this time I don't know if I will have the strength to last two hours that I lasted last time. So, I am deathly, deathly, deathly afraid of this COVID thing.'

The definition of political membership

From Jesus Manuel Galindo to Arjang Panah and Raul Topete, people incarcerated in Criminal Alien Requirement Prisons depict a harrowing catalogue of neglect, abandonment, and an absence of care. CAR prisons were places where, as Emilio Martinez suggested, 'you could die' (De La Hoz, 2020) augmented the perceived legitimacy of the hard treatment imposed by criminal sentence. As James, a man incarcerated at Big Spring Correctional Facility during the height of the pandemic put it, 'This is not what most of us bargained for. People here came with federal sentences, they pleaded guilty, but they didn't come here to serve a life sentence' (De La Hoz, 2021). As part of his application for compassionate release, Juan Carlos Porras Quintero, a Colombian national incarcerated at CI North Lake while serving a sentence for drug offenses, wrote a letter to Judge Robert J. Jonker asking him to consider early release for the purposes of deportation (Porras Quintero, 2020). Quintero wrote:

'Honorable Judge, I am aware that I committed an error against the United States and as a man that I am, I understand that we committed errors and are here [at North Lake] paying for them. As a Colombian, I want to return home to where my family is healthy, I don't want to return in a casket… Because of mismanagement by the administration here at North Lake this pandemic could be fatal for me' (*Ibid,* 2).

Quintero's testimony offers a critical formulation of the relationship between penal and bordered forms of exclusion. While Quintero accepted the terms of his sentence, and his deportation, the fact that he might return to Colombia 'in a casket' demonstrated the essential illegitimacy of the system of outsourced, all-foreign imprisonment at CI North Lake.

In turn, exclusion from care was understood by incarcerated people to be intimately connected to race, nationality, and immigration status. Lenroy McLean, a Bahamian man incarcerated at the MTC-

run Giles W. Dalby Correctional Facility in Post, TX complained that the nursing staff in the facility didn't take his complaints seriously because he was not a US citizen. In response to a complaint that he could no longer access the same pain medication he had been provided with by BOP doctors, McLean wrote that, 'The nurse told me 'you are getting deported right? What does it matter?' (McLean, 2021: 8). Jose Martinez-Gallegos, another man incarcerated at Dalby wrote that,

'*The medical department here has been rubber stamping inmates' medical records to avoid spending any additional funds to administer the proper care for inmates housed here. We are constantly reminded by medical staff that 'it's our tax paying dollars providing care for you inmates'* (Martinez-Gallegos, 2021: 7).

Both McLean and Martinez-Gallegos's complaint implicitly contest the boundary between the 'tax paying' providers of care and the foreign, incarcerated receivers of care. That they are denied necessary medical care simply because they are 'deportable aliens' (BOP) is understood as a fundamental abrogation of the obligation of care established by the process of incarceration.

Drawing on the work of Engin Isin, Saskia Sassen and others, the social theorist Gurminder K. Bhambra has argued compellingly that theories of modern citizenship which see it as a mechanism for producing inclusion fail to account for citizenship's historical emergence as a mechanism of exclusion (Isin, 2009, Sassen, 2006, Bhambra, 2015: 104-106). Indeed, Congress' earliest definition of citizenship explicitly limited naturalization to 'free white persons', and some form of racial prerequisite to citizenship would remain in place in the United States until 1952 (Haney Lopez, 2006: 1). As Bhambra (2015: 108) points out, the classic account of the emancipatory potential of citizenship in Alexis De Tocqueville's 1835 study *Democracy in America* tempers optimism about 'equality of conditions' in an observation of the exclusion and subjugation of indigenous and enslaved people. Echoing Edmund S. Morgan's (1975) classic account of the simultaneous, seemingly paradoxical expansion of democratic politics and chattel slavery in 17th-century Virginia, Bhambra (2015: 110) argues that the definition of modern citizenship – the 'formal bundle of rights' granted by membership in a national state (Marshall, 1950) – required the exclusion and subjugation of people outside the boundaries of membership. Echoing Bhambra, and Ian Haney López, Cristina Beltrán (2020) has argued provocatively that migrant suffering has defined political membership by reinforcing racial standing. The experiences of abandonment described by men like Jesus Galindo, Arjang Panah and Raul Topete offer a granular account of how exclusion from care in outsourced,

all-foreign prisons worked to define the boundaries of the modern nation-state. Yet this exclusion was not received passively. Chapter Seven traces how incarcerated people understood and contested exclusion through a variety of forms of legal and political action.

As described in the previous chapters, the decision to starve resources from medical services within Criminal Alien Requirement prisons was part of a broader set of economic logics that allowed private firms and Federal officials to market outsourced incarceration as financially and administratively efficient (Dolovich, 2009). The perceived efficiency of outsourced incarceration helped to expand the capacity of the Federal prison system and contain the contradictions of mass incarceration and punitive policies of border deterrence (Ryo, 2019). Yet the Criminal Alien Requirement prison system bore its own set of contradictions, which proved difficult to sustain. Despite the BOP's abject failure to properly monitor or regulate these facilities, the record of medical negligence within CAR prisons had consequences. The deaths of men like Jesus Galindo provoked sustained resistance within and outside prison walls that would ultimately play a significant role in the Department of Justice's decision to end the BOP's use of privately-operated prisons in 2016 and 2021 (Shah, 2022). While I analyze the meaning of incarcerated resistance and the closure of the CAR prison system at further length in Chapters Seven and Eight, it is worth touching briefly on the political consequences of prison conditions here.

While the public reaction to medical neglect and deaths in Criminal Alien Requirement custody put pressure on the Bureau of Prisons to end the all-foreign prison system (Cho, 2021), this pressure was not sufficient to keep these prisons closed. On the morning of December 17th, 2020 Anthony Jones, a Bahamian national who had lived in the United States since 2006, woke up in his cell at the Adams County Detention Center with a severe pain in his chest (Aleaziz, 2021). After requesting to see a doctor, Jones waited forty-five minutes before he was taken to the CoreCivic medical services unit. After conducting an electrocardiogram which revealed an irregular heartbeat, medical staff chose to place Jones in the observation unit, rather than sending him to the hospital. Records obtained during a lawsuit filed by the NGO Al Otro Lado indicate that Jones died an hour later, slumped over in a chair as he was waiting to be taken back to his cell (Al Otro Lado, 2022). An investigation into Jones' death conducted by the Department of Homeland Security found that 'had Adams' medical staff compared [Jones'] 2019 ECG with the one conducted on December 17th, 2020, it should have prompted them to call 911 and send the detainee to the hospital' (DOJ OIG,

2021). In a tragic sense, Jones's death reflects and re-treads the past. In 2016, the Bureau of Prisons ended their contract with CoreCivic to operate Adams County as a CAR prison. Months later, the facility was quickly re-contracted as an ICE detention facility in early 2017. Jones' tragic death suggests that it is not enough to focus simply on ending the differential penal treatment of non-citizens, or closing private prisons. Rather, these goals must be embedded within a broader social and political project that imagines an alternative to incarceration, whether as a form of pre-trial, criminal, or immigration detention. In political terms, focusing disproportionately on poor conditions in a specific custodial site without a positive alternative may hamper the overall goal of ending carceral harm. As we shall see in Chapter Eight, jail operators – whether private firms, or local, state or federal government agencies – often circumvent concerns about prison conditions by re-purposing existing cages as different forms of carceral custody (Ghandehari et al., 2023).

Chapter Seven

'If you treat a human as an animal, the response will be as an animal': Individual and collective resistance within Criminal Alien Requirement Prisons

During the spring and summer of 2020, the spread of the novel Coronavirus sparked a wave of unprecedented unrest in prisons and detention centres across the globe. In Italy, six thousand incarcerated people participated in protests over COVID-19 measures held at twelve jails and prisons (Tidman, 2020). Across Latin America protests and unrest involving thousands of incarcerated people in Colombia, Brazil, Peru, and Venezuela left hundreds dead (Cheney-Rice, 2020; Raghavan and Loveluck, 2020; Turkewitz, 2020). Frequently, uprisings led by incarcerated people were met with brutal force. At Mahara Prison in Colombo, Sri Lanka, guards opened fire on a demonstration demanding early release and better hygiene, killing eight and injuring fifty-two (BBC News, 2020). The United States was no exception to this wave of carceral resistance. At New York City's Rikers Island Jail complex, hundreds of men refused to work or return to their cells, provoking a running standoff with the Jail's administration that would force the facility into lockdown for months (Bromwich, 2022). Data collected by the National Immigration Detention Hotline suggests that more than a thousand people incarcerated in US Immigration and Customs Enforcement (ICE) detention centers participated in hunger strikes and work stoppages (Freedom For Immigrants, 2021).

North Lake Correctional Facility, a Criminal Alien Requirement prison operated by the GEO Group in Baldwin, Michigan became one of the most prominent sites of resistance in the United States. From April 2020 onwards, the men in North Lake began to organize against the transfer of offenders from Taft Correctional Institution and the failure to prevent the rapid spread of the Coronavirus. On May 9th, hundreds of incarcerated people began a hunger strike demanding adequate medical care and testing for COVID-19 (NDCM, 2020). As one of the leaders of the strikes put it bluntly, 'If we don't eat it's a problem to them, so they gotta do everything to get us to eat… [I'm] not gonna eat until either I pass out… or they give us what we're supposed to get' (NDCM, 2020b).

In an immediate sense, as with strikes elsewhere, the men sought to force North Lake's administration to improve the quality of medical care and food, restore access to recreational

activities that had been curtailed during the pandemic, and reverse restrictions on telephone and mail privileges (NDCM, 2020). In the longer term, however, the goals of the hunger strike at North Lake reflected the unique system of outsourced, segregated imprisonment. Strikers sought transfer to BOP-run prisons, inclusion in re-entry programs, and an end to the differential treatment of non-citizens in Federal prison custody. As David, one of the strikers, told JR, a member of the grassroots advocacy group No Detention Centers in Michigan:

'*The 14th Amendment of the United States guarantees us the same protections as any of the citizens of the United States. Because we were sentenced in the United States court, by a sentencing judge, under [the] United States Constitution… Proper rehabilitation, proper reentry preparation, and proper programming to get us ready to reenter society—all of that has been taken away from us, just simply because we was Black…. I deserve the same rights as any other human, the same rights as any other prisoner across the country. For that purpose and that reason only, I will not eat until they accommodate and understand our situation and the position that we're in'* (NDCM, 2020c).[39]

While forms and goals of the action taken by incarcerated people at North Lake were directly shaped by the unprecedented effects of the Coronavirus pandemic, David's testimony illustrates how participants in these hunger strikes understood their efforts to improve prison conditions to be located within a broader struggle against the differential penal treatment of racialized immigrant men.

This chapter explores how men incarcerated in Criminal Alien Requirement prisons sought to contest and resist the system of outsourced, all-foreign imprisonment. In it, I explore four modes of contestation: prison grievance and administrative remedy processes, lawsuits filed by incarcerated people, work and hunger strikes, and physical disturbances involving the use of force. Although resistance takes many forms, and its definition is subject to debate (Carrabine, 2004; Rubin, 2015), these forms of action illustrate the manifold ways in which incarcerated people sought to challenge prison order. They also reveal how their actions were governed and, ultimately, repressed.

[39] During the period from April 2020 to November 2022, No Detention Centers in Michigan conducted a series of interviews with men incarcerated at CI North Lake, a CAR prison in Baldwin, Michigan, as part of their campaign to close the prison. JR and the other members of the campaign kindly allowed me to join their monthly campaign meetings and gave me access to the transcripts of interviews they conducted with incarcerated men. For more details see Chapter Four.

In their research on the California Department of Corrections and Rehabilitation, Kitty Calavita and Valerie Jenness (2015, 2013) argued that the grievance system constitutes a 'pyramid of disputes.' While the willingness and frequency of grievance filing observed by Calavita and Jenness (2013: 75-76) is surprisingly frequent given research suggesting that vulnerable people are less likely to participate in formal legal processes of dispute resolution, successfully scaling the 'pyramid' of the dispute process is highly unlikely. Building on Calavita and Jenness' work, this chapter traces how the structure of grievance systems and the regulations governing prisoner lawsuits shaped resistance to incarceration within Criminal Alien Requirement facilities.

Much like the California Department of Corrections and Rehabilitation system, grievances filed within Criminal Alien Requirement prisons were almost universally rejected by the federal prison authorities (DOJ OIG, 2016). Yet, even if unsuccessful, the ability to file an administrative or legal dispute against a member of staff was understood to be a critical element of the limited agency retained by incarcerated people. As Raul, a Mexican American man described his experience at McRae Correctional Institution to me,

'*If they know you have the ability to write them up, they leave you alone… I can smell a racist twenty-five feet away, so I knew which guys were racist. But they wouldn't show it to me, because I could write 'em up'* (RTN Call, Apr 19th, 2021).

Paying attention to the ways in which the legal challenges filed by men like Raul failed can offer critical insights into the governance of prisoner resistance in general, and the distinct structure of social and political relations that governed Criminal Alien Requirement prisons. Unlike people incarcerated in BOP-run facilities who submit disputes through the Bureau's Administrative Remedy Program, men held in CAR prisons are obligated to use separate grievance processes administered by prison contractors (DOJ OIG, 2016: 28). Under the terms of this separate process, people in CAR prisons are held to much shorter filing deadlines and are not eligible to appeal denials of their grievances beyond the institutional level (*Ibid,* 29). Analysis of the grievance process at Adams County Correctional Facility, a CoreCivic-run CAR prison in Natchez, Mississippi, conducted by the Department of Justice in 2016 found that the disparities in the appeals process 'constituted unjustifiably disparate treatment between the populations that the BOP places in BOP-managed facilities and the populations it places in its contract prisons' (*Ibid,* 30).

Analysis of how people incarcerated in CAR facilities sought to contest their categorization by the Bureau of Prisons as 'deportable aliens' demonstrates the strange hollowness of migration control within these penal institutions (Bureau of Prisons, 2019). Ostensibly organized for the purposes of expediting and streamlining the legal process of deportation, testimony drawn from grievances and lawsuits demonstrates how incarcerated people found it nearly impossible to access or engage with the Institutional Hearing Program's prison-based deportation process (Eagly and Shafer, 2020 – see Chapter Four). These findings echo Emma Kaufman's (2019) observation that the penal segregation at work in Criminal Alien Requirement facilities enforces racial and national boundaries more than the physical process of deportation.

Similarly, analysis of grievances and lawsuits over inadequate medical care illustrates how the contractual structure of outsourced incarceration deterred people from filing claims. In a series of decisions issued since the turn of the century, the Supreme Court has both curtailed the ability of individuals in privately-operated custody to file Federal tort claims against private prison operators, and established a high, deferential bar for court intervention in prison conditions (See *Turner v. Safley, 1987,* Driver and Kaufman, 2021: 536). Yet, even in the absence of a realistic prospect of success, testimonies from grievances and lawsuits illustrate how incarcerated people used lawsuits to contest their abandonment and force prison administrators to take their pain seriously. By taking these disputes seriously as a form of political encounter between subject and state, we can see how efforts to contest differential treatment were not simply about the material conditions of confinement in CAR prisons. Rather, incarcerated people understood the failure to take their pain seriously as a consequence of their designation to outsourced prisons. In this context, to paraphrase Iris Marion Young (1990), justice was not concerned only with the distribution of goods, but rather with the kind of standing deserved vis-à-vis other people. As David's testimony suggests, efforts to redress medical neglect sought to force prison administrators to recognize claims to basic rights that were consistently denied to 'deportable aliens' (BOP, 2019).

Searching for migration control in the 'deportation prison'

Under 28 Code of Federal Regulations § 542, all people in Federal custody are allowed to seek formal review of issues regarding their confinement. Within institutions managed by the Bureau of

Prisons, this process is established through the Bureau's Administrative Remedy Program (DOJ 2016, 28). If individuals are not satisfied by the resolution of their issue at the institutional (facility) level, they may appeal that decision up to the BOP's General Counsel. Under the terms of Criminal Alien Requirement prison contracts, contractors are required to establish an equivalent grievance process at each facility, operated by contractor staff. People incarcerated in Criminal Alien requirement facilities are only allowed to use the BOP's Administrative Remedy Program when their grievances are considered to be outside of the contractor's scope of responsibility (BOP, 2006: 84)

Frequently, men incarcerated in CAR prisons filed grievances to contest their classification by the Bureau of Prisons as a 'deportable alien.' According to BOP Program Statement P5100.08 (2019: 50), all 'male or female inmates who are not citizens of the United States' receive the Public Safety Factor designation of 'deportable alien.' As discussed in earlier chapters, incarcerated people with this public safety factor are excluded from a wide range of BOP programs, and cannot be designated to a minimum-security camp facility or halfway home (*Ibid,* 49). Often, men incarcerated in CAR prisons contested their exclusion from prison services by challenging their status as deportable aliens.

On December 7th, 2005, Efrain Jaimes received a 46-month sentence in Federal prison for possession with the intent to distribute a controlled substance (*Jaimes v. McDaniel*, 2007: 3). During Jaimes' sentencing, Judge Helen Berrigan recommended that he serve his sentence at the Federal Correctional Institute in Beaumont, Texas, where he would be able to participate in an intensive drug treatment program (Jaimes, 2007: 27). Instead, on March 9th, 2006, Jaimes was transferred to Reeves County Detention Center. Given that the Reeves facility was re-opened under the CAR V contract agreed between the Bureau of Prisons, Reeves County, and the GEO Group signed in late 2005, it is likely that Jaimes was one of the first men to be transferred to the re-opened facility.

Although Jaimes was born in Mexico – and retained Mexican citizenship – he had naturalized as a US citizen on May 3rd, 1996 at the US District Courthouse in Beaumont, Texas (Maland, 2006: 1). Almost immediately after he was transferred to Reeves, Jaimes wrote to his case manager, Theresa Alligood, to ask her to help arrange his transfer to FCI Beaumont. After receiving no response from Allgood, Jaimes spoke to Rochelle Carrasco, Reeves' Case Management Supervisor, who told Jaimes

plainly that 'you have to finish your program here because there are many people like you here' (Jaimes, 2007: 2)

Carrasco's remark hints at the long, historical elision between race, nationality, and immigration status within the Bureau of Prisons. During the period from 1986 to 1999, when Reeves operated as a pre-CAR all-foreign prison under an inter-governmental agreement with the BOP, the facility was used as a 'dedicated immigration hearing program' facility to incarcerate Mexican nationals (Hawk, 1994: 168-169). In 1994, BOP Director Kathleen Hawk testified that the Bureau had implemented a policy of de-facto national segregation, whereby Mexican nationals were segregated FCI La Tuna and the four 'dedicated immigration hearing program' facilities in Texas while Cuban nationals were designated to USP Leavenworth in Kansas, and all other nationalities were designated to FCI Oakdale in Louisiana (Hawk, 1994: 168). Evidence from the Bureau of Prisons obtained via public records request (BOP, 2022), and from the Institutional Hearing Program (Eagly and Shafer, 2020: 816) confirms that this pattern of national segregation continued until at least 2019. In this sense, Jaimes' effort to contest his designation as a 'deportable alien' (BOP, 2019) collided with a deeply engrained system of de-facto racial and national segregation.

In September, Jaimes again wrote to Allgood, including a copy of his certificate of citizenship with his 'informal resolution form' (Jaimes, 2006). He wrote that,

'I feel that my civil rights are being violated because I am a naturalized citizen who is being held in a detention center for illegal aliens where the 500-hour drug rehabilitation program that the judge told me to attend is not offered' (*Ibid: 2*).

Even when presented with physical documentation, prison officials continued to assume that Jaimes was not a US citizen. In response to his grievance, Allgood responded that she had contacted the Court Clerk at the District Court in Beaumont, who had been unable to find a copy of Jaimes' certificate of citizenship (*Ibid*), even though this was not necessarily proof that Jaimes had not naturalized. In an example of bureaucratic fallibility that would make Kafka blush, Allgood noted that this 'this is not conclusive proof that [the certificate] is not authentic because [the District Court's] records are in a state of disarray due to public access' (*Ibid*).

After receiving confirmation from the District Court that he was, in fact, a US citizen, Jaimes submitted a request to Warden Edward Gonzalez, asking for a transfer to Beaumont so that he could participate in the RDAP program (Jaimes, 2007). Despite the fact that Jaimes had provided his certificate of citizenship, and confirmation from the District Court in Beaumont, Gonzalez replied that

'You were designated to this facility for participation in the Immigration Hearing Program. It was determined your case required further processing by Immigration and Customs Enforcement. Before a transfer can be requested of the Bureau of Prisons, the local Immigration and Customs Enforcement (ICE) office must review your case and drop their 'hold' on you… they will confirm or reject your naturalization and approve or deny the release or their hold. A personal interview may, or may not, be necessary' (Gonzalez, 2006: 1).

Strikingly, Jaimes' experience was not a one-off. Instead, evidence suggests that his predicament occurred relatively frequently. In 2015, a group of seven men incarcerated at the GEO Group-run Moshannon Valley Correctional Center (MVCC) in western Pennsylvania filed a lawsuit against the Bureau of Prisons, ICE and MVCC's warden, Stephen Kuta. The suit alleged that immigration detainers lodged against them by ICE unfairly excluded them from eligibility for key prison services, violating constitutional rights protected by the Eighth Amendment (*Saleh v. DHS*, 2016). Among the plaintiffs was Otto Portillo, a US citizen who had been mistakenly classified as a 'deportable alien' and designated to Moshannon Valley.

Portillo, a Honduran-born man who had naturalized as a US citizen in the early 2000s, did not have an immigration detainer lodged against him. However, because he was identified as a Honduran national in records held by the Bureau of Prisons, he automatically received the 'deportable alien' public safety factor (Portillo, 2015a: 1). Like Jaimes, Portillo was recommended for participation in and intensive drug treatment program during his sentencing. After arriving at MVCC, Portillo submitted an 'Inmate Request to Staff' form to his case manager, writing,

'I have no detainer issued against me [because] I am a United States citizen by naturalization… Please, I would like you to start my transfer procedure, because, as an American citizen I'm entitled to housing at a camp' (Portillo, 2015b: 1).[40]

Despite the fact that Portillo's request included a copy of his US passport and Social Security Number, his case manager responded bluntly that 'until ICE meet with you and tell us they have no interest in you, no transfer process can begin' (*Ibid*). In an effort to correct this situation, Portillo mailed a copy of his identity documents to the ICE field office in Allenwood, PA, asking to arrange 'a meeting with an ICE representative to obtain my fingerprints to assist you in confirming my identity' (Portillo, 2015c: 1). Portillo wrote plaintively that 'I have been wrongly classified and placed in this institution… The programs here are for those who are facing deportation' (*Ibid*). After receiving no response from ICE, Portillo again wrote to his case manager that,

'I am eligible for prison and drug programs, and since this facility does not have such programs in-place, I would like to be transferred to the BOP where I can effectively participate in the BOP's sentence reduction programs. I am a citizen of the United States of America' (Portillo, 2015b).

In response Portillo's case manager wrote that 'you are listed as a citizen of Honduras' and ruled out a transfer until ICE had verified Portillo's identity documents (*Ibid*). A declaration filed by Portillo in the lawsuit weeks later encapsulates the exclusion produced by this inability to get ICE to verify his citizenship status, writing that:

'Being incarcerated at MVCC is causing me pain and suffering, as well as anxiety. I should be designated to a facility without the more harsh restraints applied in this facility. My liberty and liberty to move freely is restrained, because ICE has interest in me without a lodged detainer' (Portillo, 2015: 3).

In both cases, Jaimes and Portillo were stuck in strange and frustrating predicaments. Although they were able to prove that they were US citizens, they were designated to all-foreign facilities and excluded from drug treatment programs while they waited for an ICE officer to verify their records.

[40] The term 'camp' here refers to a Federal Prison Camp, the lowest-security type of BOP-run prison. Under BOP policy, individuals with the 'deportable alien' Public Safety Factor are not eligible to be designated to Federal Prison Camps. See: Bureau of Prisons, (2023) 'About our Facilities'. Online: www.bop.gov/about/facilities/federal_prisons.jsp.

Within these all-foreign prisons, ostensibly designed to expedite the identification and administration of deportation (Sale, 1994), it is confoundingly difficult for these men to actually get in touch with immigration officials. This predicament hints at a broader, confounding feature of the all-foreign prison system: although these institutions are designed to exclude non-citizens, the administrative process of confirming identity – what Katja Franko calls 'identification work' (Franko, 2020: 118) – is curiously absent.

Equally, Jaimes and Portillo each formulated their legal claims as a response to the violation of their constitutional rights. By transferring them to a facility explicitly designed to exclude non-citizens from rehabilitative services and programs, each argued that the Bureau of Prisons had violated their constitutionally protected rights (*Jaimes v. McDaniel*, 2007). In legal terms, the claim that this transfer policy represented a rights violation was not a successful argument. In his judgement to dismiss Jaimes' suit, Judge Durwood Edwards finds that the 'a prisoner does not have a protected due process liberty interest in participating in a BOP drug treatment program' (Edwards, 2007: 3). Moreover, Judge Edwards finds that even if Jaimes had established a rights violation, it is not clear that court intervention would have been merited, because of the wide discretion in the operation of penal institutions afforded to prison authorities established by *Turner v. Safley* (Edwards, 2007, *Overton v. Bazzetta*, 2003; *Turner v. Safley*, 1987). Nonetheless, these arguments tell us something important about the way that incarcerated men understood the all-foreign prison, reinforcing the notion that the meaning of political membership came to be understood by access to or exclusion from re-entry programs like the Residential Drug Abuse Program.

Many of the testimonies contained in grievances and lawsuits filed by men incarcerated in CAR prisons reframed the dominant paradigm of crimmigration, asking not what foreign nationals deserved, but how the penal process might bind so-called criminal aliens into the political community. In 1983, Thuan Minh Pham was brought to the United States as a ten-year-old child by his parents, through a program established by the US government to re-settle people displaced after the end of the Vietnam War (United States Congress, 1980). Although Pham acquired legal permanent resident status in 1985, he never naturalized as a US citizen. From 1992 to 1995, Pham was convicted of burglary and aggravated robbery, and served a six-year sentence in Texas State prison (*Pham v. Wagner*, 2016). In 1998, after his release, Pham was placed in removal proceedings as a result of his criminal convictions. On December 39th, 1998, Immigration Judge Jimmie Lee Benton

ordered Pham removed, on the basis that 'he is a lawful permanent reside of the United States, and has been convicted of aggravated felony and sentenced to confinement for five or more years (Benton, 1998: 2). In his decision, Benton noted that Pham did not quality for derivative citizenship through his parents because his mother had failed to naturalize before Pham turned eighteen. When questioned by Benton about this, Pham testified that this was because his mother had never developed sufficient proficiency in English to pass the US citizenship test (*Ibid,* 3).

Although Pham was ordered removed in 1998, he was never deported because the US did not, until 2008, have a repatriation agreement with Vietnam. In any case, the repatriation agreement eventually agreed between the US and Vietnam explicitly excluded Vietnamese nationals who arrived in the US before 1995, meaning that it did not apply to Pham (US Department of State, 2008). Unable to physically remove him, US Immigration and Customs Enforcement ordered him to attend regular supervision meetings (Parker, 2016: 2). On September 23rd, 2005, Pham received a 188-month sentence for a series of offenses related to the trafficking of methamphetamine (*Ibid,* 2). Despite the fact that ICE had not lodged a detainer against Pham, the Bureau of Prisons assigned Pham the Public Safety Factor of 'Deportable Alien', on the basis that he was not a citizen of the United States (See BOP 2019, Ch. 5, p 9). In 2013, he was designated to CI Adams, where he was unable to participate in the residential drug treatment program recommended by his sentencing Judge (*Pham v Wagner,* 2016). In January 2014, Pham filed a series of grievances requesting that CI Adams' staff help him to contact the ICE and the BOP to remove the PSF of Deportable Alien. As Pham put it,

'*Despite being deemed non-deportable, I continue to be held in this immigration facility. Consequently, I continue to endure substantial harm, embarrassment, inconvenience, unfairness and adverse determinations related to my rights, benefits, and privileges'* (Pham, 2014a: 1).

Eventually, after his grievances were denied by CI Adams' Warden Barbara Wagner, Pham filed a writ of habeas corpus alleging that the misapplication of the Public Safety Factor of 'Deportable Alien' had violated his civil rights (Pham, 2014b). Pham identified six 'privileges' from which he had been excluded by this misclassification:

'*(1) Transfer to minimum security prison, (2) participation in residential drug abuse program, (3) participate in the BOP policy for pre-release placement in residential re-entry centers, (4) being transferred to a facility closer to the family (5) able to be reunited with the family at the earliest possible time and (6) participate in the Federal Prison Industries work program'* (*Ibid*: 7).

The argument that exclusion from prison services might constitute a violation of constitutional rights – even for individuals who are US citizens or cannot be deported – has not been successful in court. In 2007, the Third Circuit's decision in *Becerra v. Miner* (2007), a case involving a Colombian-born man challenging his classification as a 'deportable alien', found that the assignment of this security designation did not implicate the Due Process Clause. In a similar decision issued in 2009, the DC District Court found that Juan Perez – a Cuban-born man who had arrived in the United States during the Mariel boatlift in 1980 – could not state a constitutional claim based on the fact that he was designated as a 'Deportable Alien' even though he could not practicably be deported (*Perez v. Lappin*, 2009). Similarly, in 2014 a judge in the Southern District of Mississippi found that Phuong Dong Duong, a Vietnamese-born US permanent resident, could not raise a constitutional claim to challenge his exclusion from drug programming based on his classification as a 'deportable alien' (*Phuong Dong Duong v. Martin*, 2014). In each of these decisions courts afford prison administrators a wide deferential berth, reflecting a tradition of prison law that Emma Kaufman and Justin Driver have traced to the Supreme Court's 1987 *Turner v Safley* decision (2022: 536).

Often, because of the absence of the legal and administrative process of migration control, people incarcerated in CAR prisons felt the need to begin the immigration court process more urgently than officials from the Executive Office for Immigration Review (the US Immigration Court system) or US Immigration and Customs Enforcement. In 2013, Eduardo Perez, a Cuban national serving a ten-year sentence for the distribution of a controlled substance, was designated to CI Adams (*Perez v. Wagner*, 2015). In February of the following year, Perez filed an Inmate Request to Staff form requesting that his CCA-employed Case Manager Gerald Mister contact ICE on his behalf to help remove his ICE detainer:

'*The Bureau of Prisons has determined that I will not be removed from the United States… I am eligible for transfer to a facility where I can receive the benefits as a non-deportable Cuban National. I am requesting my Case Manager Coordinator to contact ICE to expedite my deportation proceeding so my detainer can be removed*' (Perez, 2013: 1).

Perez's grievance echoes Albo's testimony, suggesting that the 'benefits' of prison programming ought to flow to individuals who are 'non-deportable.' In response, Mister deflected Perez's request, stating simply that, 'You will not be considered for any re-entry programming as long as you have the ICE container [sic]' (*Ibid,* 2). On March 25th, Perez appealed Mister's decision, writing that

'*Adams County Corrections unit staff has the authority to inform ICE of my immigration situation. What I am requesting is that my unit team or Case Manager to contact ICE so I can have an immigration hearing before my 120-month sentence ends'* (*Ibid,* 4).

When Warden Barbara Wagner eventually responded to Perez's appeal weeks later, she effectively re-stated Mister's denial, writing plainly that until ICE or EOIR had determined that Perez would not be deported, his designation as a 'deportable alien' would not be changed (Perez, 2014: 8). This denial put Perez in a strange and frustrating situation. Although CAR prisons ostensibly function to expedite and increase the efficiency of the legal process of deportation, it was Perez rather than BOP or ICE officials who was most keen to pursue the removal process. In his appeal of Wagner's denial to the BOP's Privatization Management Branch, Perez wrote that:

'My petition is very clear, I am requesting my Unit Team or more specifically the Case manager to contact ICE to expedite my immigration deportation proceedings before my drug offense sentence ends so ICE can remove any detainers or public safety factors so I can receive the pre-release programs I so desperately need' (Perez, 2014: 3).

Much like Perez, another Cuban national named Luiz Cruz who was incarcerated in CI Adams during the same period described his frustrated efforts to contact immigration officials and access the legal and administrative process of deportation. In 2013, Cruz was designated to the Adams County facility by BOP officials – like all other offenders at the facility – for the ostensible purpose of participating in the Institutional Hearing Program (IHP) (*Cruz v. Holder*, 2014). Yet, as Cruz approached the end of his program, prison officials were unconcerned with the IHP process.

'I badly need to successfully reintegrate back to a US community, since I am an undeportable alien…. In my inmate request I asked that you look into policy (ps 5111.04) a policy written in 2006. It is the policy my case manager from

FBOP Mr Bowen gave to me, and explained my eligibility. This policy clearly states that Case Management Coordinator is to serve as the local liaison between the Bureau, ICE, and EOIR' (Cruz, 2014a: 11).

While Cruz's request indicated that he felt unfairly excluded from eligibility for placement in a halfway house, it is also striking how basic his request is. Incarcerated within a facility designed to incorporate the IHP's prison-based immigration court process, Cruz is simply asking for his day in court.

'*I've been told by staff that the reason [for the delay] is that immigration is currently backed up, but you know as well as I do they come every two weeks and only see 3 or 4 inmates. I ask that in your response you tell me who's responsibility the delay is, institution or immigration?'* (Cruz, 2014b: 2).

After Judge Michael T. Parker denied his lawsuit in August 2016, Thuan Minh Pham filed a further legal brief. Citing *Plyer v. Doe*, Pham wrote that, 'whatever his status under the immigration laws, an Alien is surely a 'person' in any ordinary sense of that term, and thus is entitled to protection under equal protection clause' (Pham, 2014: 4).[41] These cases – and the testimony of men like Jaimes, Portillo, Pham, and Albo – suggest that the segregation on which CAR prisons are premised was not the men's deportability per se, but their alienage. As officials from the Bureau of Prisons readily acknowledge, these men were placed into CAR prisons because they were foreign-born men without US citizenship, not because they were deportable. In a finding that echoes Kaufman (2019) – their cases reveal that these segregated penal institutions function not to make the immigration process more efficient, but rather to define national boundaries and communicate exclusion from political membership.

'Pain is a subjective finding': Contesting inadequate medical care

In October 2002 David Lajara, a Dominican-born US permanent resident serving an eighty-six month sentence for conspiracy to distribute cocaine at the Metropolitan Detention Center, tried to lift a commercial microwave as part of his food service job in the prison's kitchen and immediately

[41] In *Plyer v. Doe* (1982) the US Supreme Court struck down Texas legislation which denied children without immigration status access to free public education. It is notable how Pham's petition equates access to public education and access to prison programming and services in federal prisons.

felt severe pain in his groin (Lajara, 2006: 2) After a year of delay, Lajara received a surgical procedure called a varicocelectomy (*Ibid*). He was then transferred to Reeves County Detention Center, a CAR facility operated by the GEO Group in Pecos, TX. Unfortunately, Lajara's Varicocelectomy seemed to only make his condition worse. Almost immediately after arriving at Reeves, Lajara filed a grievance requesting further specialist care to manage his pain, writing:

'I was told I would be sent to a medical facility, but I was sent to a facility where the nearest specialist is about 100 miles away. I have pain 24 hours a day in my left leg and testicle' (*Ibid,* 43).

On November 1st, 2006, Lajara received a response from the office of Harrell Watts, the National Inmate Appeals Administrator within the Bureau of Prisons Office of General Counsel:

'You contend the left varicocelectomy procedure completed in 2003 is causing pain to your left leg and the area of your left testicle… Following your transfer to Reeves County Detention Center, the record shows you continue to receive medical evaluations. Pain is a subjective finding, meaning it is more difficult to ascertain its origin… Our records indicate staff are providing appropriate medical care' (Watts, 2006: 1).

The response from Watts' office is revealingly blunt. Lajara's grievance was denied on the basis that he had been offered basic care, whether or not it had diagnosed or treated his pain. Indeed, the remark that 'pain is a subjective finding' illustrates a broader feature of what Vanessa Barker (2007) and Mary Bosworth (2021) have called the 'politics of pain' within all-foreign prisons. Drawing on testimonies from the 'Measure of the Quality of Life in Detention' survey in UK Immigration Removal Centres, Bosworth has observed how the pain inflicted by incarceration serves to communicate exclusion from liberal democracy (2021: 7). The testimonies collected within grievances and lawsuits filed by people incarcerated in CAR prisons illustrate a similar process of exclusion. Although legal attempts to challenge inadequate medical care were almost always unsuccessful, these actions offered a rejoinder to the liberal-democratic boundaries of political membership, articulating a version of penality in which all subjects deserved both medical care and political recognition.

Often, these administrative and legal disputes illustrated the inherent dynamics of power bound up in the provision of care, demonstrating whose pain was taken seriously and whose was not. In 2012,

Rashford Galloway fell down the stairs at FCI Fort Dix, a BOP-run low-security prison in New Jersey (Galloway, 2014: 2) After his fall, Galloway, a Jamaican-born man serving time for drug trafficking, began to experience crippling pain in his lower back, later diagnosed as lumbar degenerative disc disease (Muchnok, 2013). In November 2013, Galloway was transferred to CI McRae, where he began a frustrating and unsuccessful process of requests and complaints to receive the care he believed was needed to accommodate the pain in his lower back (*Galloway v. McRae*, 2014).

During the intake process at McRae, Galloway requested an extra mattress for his bed to support his lower back. The officer conducting the intake process denied Galloway's request, telling him that he would have to see medical to do this, and promptly ordered for him to be transferred to Houston Unit, an open dormitory unit with shared cubicle cells (Galloway, 2014: 2). Within Houston unit, Galloway shared a seven-by-seven prison cell with two other men. As Galloway required the use of a cane to walk, the cramped layout of this cell made it extremely difficult for him to move in and out of his bed. Moreover, despite what Galloway described as a chronic disability, Lynette Harris, the Manager of Houston Unit, enforced his participation in various work assignments, working janitorial jobs and cleaning the walls and kitchen of the prison (Spires, 2014).

For Galloway, this treatment amounted to a form of deprivation and indifference to his pain that was inhumane. On March 27th, 2014, after his initial grievance was denied, Galloway wrote to the BOP's Medical Director Newton E. Kendig, asking for him to intervene in his treatment:

'*I am a disabled chronic inmate who suffers from severe nervous problem… I have been forced by unit Correctional Counselor and Unit Manager to clean walls, as a work assignment… I am suffering from pain day and night and to be forced to work is causing me mental anguish and unnecessary physical pain*' (Galloway, 2014: 1).

Tellingly, during litigation years later, CoreCivic staff framed Galloway's requests to accommodate his back pain as requests for special treatment that were inappropriate and unnecessary in a penal setting (*Galloway v. McRae*, 2014). A declaration filed by McRae's Warden Stacey Stone in 2015 questioned the veracity of Galloway's claim, writing that

'Prisoner Galloway is unhappy about living in a three-man cell and dissatisfied with the two mattresses that he has… This is a prison and not a college dormitory or a hotel… [the design] is equal to or longer than other prisons to which I have been assigned' (Stone, 2015: 5).

Similarly, in response to Galloway's claim that he had received inadequate care from McRae's medical clinic, Health Services Administrator Stacy Giles testified that,

'Galloway came to us with a long history of back complaints… Like many people in civilian life, he had back pain. His condition, per the medical records, was stable… The medical record shows he had forty-nine medical encounters over an eighteen- month period. That indicates his level of medical evaluation and care likely exceeds anything that would be available to civilian patients outside of prison' (Giles, 2015: 2).

The substantial differences between the accounts of Galloway and CI McRae's staff offer a useful demonstration of what Howard Becker famously called the 'hierarchy of credibility' (Becker, 1967; Becker and Horowitz, 1972). Stone and Giles both possess positions of authority within the penal system, they are represented by a (presumably expensive) private attorney while Galloway represents himself, and they hold the tools of the CI McRae's surveillance apparatus at their disposal. In an obvious sense, Stone and Giles' positions of power afford them the ability to discredit and pathologize Galloway. To do this, their accounts draw on racialized stereotypes of work ethic and public assistance, echoing Martin Gilens' study of racial attitudes toward welfare recipients (Gilens, 2000). In his study, Gilens found that the racist perception that Blacks lacked a work ethic and relied unnecessarily on public assistance played a definitive role in public perception of welfare recipients (*Ibid,* 68-72). By suggesting that Galloway – a Black immigrant - had unnecessarily asked for extra mattresses, had refused to work despite being able to, and had seen more than his fair share of the doctor, Stacy and Giles deploy these tropes to discredit Galloway's claim. Yet, of course, their description of Galloway's care is misleading. Whether or not he was seen frequently by McRae's medical clinic does not mean that Galloway received adequate care. Indeed, if the staffing plan listed in McRae's contract is anything to go by, it is overwhelmingly likely that Galloway was seen by a Licensed Vocational Nurse on most of those occasions, rather than a registered nurse or a physician (Bureau of Prisons, 2002: 12).

As with nearly all of the medical claims filed *pro se* by men in CAR prison, the actual facts of Galloway's treatment were essentially immaterial to the outcome of the litigation. Judge Brian K. Epps dismissed Galloway's claim for lack of jurisdiction (Epps, 2017). Like many similar decisions (e.g see *Alba v Montford,* 2005, *Hernandez v Dixon,* 2012, *Rosa-Delgado v GEO Group*, 2016), Epps cited a series of Supreme Court decisions that have limited the ability of people incarcerated in privately-operated confinement to redress violations of federally-protected constitutional rights (Epps, 2017: 6-8). In the 2001 decision in *Correctional Services Corp v Malesko* (2001), the US Supreme Court found that an implied cause of action against Federal officials recognized under the *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* decision could not be extended to private corporations operating prison facilities or halfway houses under contract with the Bureau of Prisons. In 2012, the Supreme Court's decision in *Minneci v. Pollard* (2012) re-affirmed this precedent, and barred recovery against private entities acting under the color of Federal law, instead finding that these claims should be raised as tort claims in State court. As a result of these decisions, immigrant men held in CAR prisoners are effectively barred from bringing suit for violations of their constitutional rights inflicted in private prisons (ACLU, 2014: 12). Instead, they are forced to pursue the state tort claims, a process entailing rigorous filing and information requirements that are almost impossible to meet from within Federal prison custody.

While suits over medical care in CAR prisons often contained requests for damages, on a more basic level people sought court intervention to compel prison administrators to take their medical concerns seriously. On October 21st, 2014, Rogelio Rosa-Delgado fell from his bed on the top bunk in a two-man cell at the GEO Group-run D. Ray James Correctional Institution, a CAR prison in Folkston Georgia (Rosa Delgado, 2015a: 2) As Rosa-Delgado put it, he 'fractured lips, teeth, and hurt [his] head and neck' (Rosa Delgado, 2015b: 1). After experiencing continuous pain in his face, neck, and back for a year, Rosa-Delgado filed a Step 1 Remedy form in September 2015, asking for further treatment and to see a specialist to help diagnose and treat his chronic pain (*Ibid*). In response, Rosa Delgado's case manager wrote that 'you have been seen multiple times by our providers… all tests performed were normal' and refused to request further treatment (Chalmers, 2015: 1). Rosa Delgado then filed a 'Step Two Remedy' form, writing that:

'*I am not satisfied… I continue to suffer from pain in my neck, side of face, ear, and regular bouts of headaches. Your response does not offer any resolution to these medical issues. The tests may state that everything is normal, however, I continue to have pain and my hands shake'* (Rosa Delgado, 2015: 1).

Dodging the question of diagnosis, and Rosa Delgado's request for referral to a specialist, Warden Johns suggested that Rosa Delgado was receiving adequate care because he was being prescribed a series of over-the-counter painkillers and muscle relaxants. Johns wrote:

'*Your pain medications have been increased over the last year, and have included; Tylenol, Ibuprofen, Naproxen and Robaxin. We cannot prescribe you any stronger medications than you are currently taking'* (Johns, 2015: 1).

Rosa Delgado quickly appealed this denial, writing that:

'I am not receiving the necessary medical attention required… I have gone to 'sick call' complaining about the constant pain I have been dealing with in my back of the neck area, side of my face, and debilitating headaches. The pain medicine I have been prescribed does nothing to alleviate this pain. They state there is nothing further that can be done [but] I have yet to be taken to have a specialist see me and figure out what is wrong' (Rosa Delgado, 2015: 1).

Like nearly every other claim contesting inadequate medical care filed by people incarcerated within CAR facilities, the lawsuit filed by Rosa Delgado in April, 2016 was eventually denied. This suit requested that he be 'transferred to a hospital outside of this facility, where a specialist can see him and treat the medical situation, in an adequate manner' (*Rogelio Rosa-Delgado v. The GEO Group et al*, 2016: 7). Citing *Minneci v Pollard* and *Alba v Montford*, Judge Stan Baker denied Rosa Delgado's suit on the basis that his treatment did not constitute a violation of constitutional rights under the eighth amendment (Baker, 2016). Specifically, Baker judged that GEO Group's failure to refer Rosa Delgado to a medical specialist did not constitute deliberate indifference (*Ibid,* 7-8).

At CI Giles W. Dalby, a CAR prison operated by the Management and Training Corporation in Post, TX, a number of incarcerated people filed suits in an attempt to force the facility to refer them to outside medical treatment. In March 2012, Juan Carlos Hernandez, a Mexican-born man serving time for a drug offense, wrote to his Case Manager requesting specialist care to help manage chronic pain (Hernandez, 2012a). Hernandez wrote in his Step 1 form,

'*I am formally complaining that nearly September 28th, 2011, this institution has not provided special medical treatment required to [address] my concern with an arthritis that was diagnosed while or shortly after arriving to this institution. Medical staff has informed me that there is a required treatment this institution has not been able to perform and the only solution is to go to a hospital with special services in arthritic illness. My request for treatment with a specialist has been disregarded without reason.*' (*Ibid,* 1).

At the heart of Hernandez's claim was the notion that his pain was not being taken seriously, resulting in a level of deprivation that violated his constitutional rights:

'*My concerns are extremely serious and I am suffering pain every day. [It is] harder to walk to come to the kitchen to eat. Sometimes I cannot come to eat because my pain is extremely hard… Deprivation of medical needs are violations of the US laws and constitution. There could also be claimed discrimination because my status in the United States or because my alien status'* (Hernandez, 2012b: 1).

In response, assistant Warden Harry Bryan rejected Hernandez's request for referral to specialist care, writing that he could find 'no evidence of neglect by medical staff… They have been doing everything they can to help relieve some of your pain' (Bryan, 2012: 1). In practice, however, this meant simply prescribing Hernandez over-the-counter anti-inflammatories and muscle relaxants (*Ibid*). In response, Hernandez contested this characterization:

'*Warden Bryan asserts that after checking he found medical status doing everything they can to help on my medical concerns [but] my concerns have not been resolved at all. Instead, it has been increased everyday and make it harder for me to walk as times passes over. I do not have a specific information as what is causing my problem'* (Hernandez, 2012b: 2).

That Hernandez believed he was forced to suffer without information or medical treatment – because of his 'alien status' – illustrates how the boundaries of membership were often understood as a failure to take pain seriously.

Another man incarcerated at Dalby, Jesus Renaga Soto, described a similar process of abandonment, in which his chronic medical conditions were left untreated:

'Since my arrival into this institution, I have been denied elementary medical needs. I have been requesting dental treatment for at least this last two years. The institution medical staff has continually stated that it will not be possible to receive such treatment… [but] this situation makes it difficult for me to eat… I am also having serious complications with one of my knees… I have been informed that it will not be possible to receive treatment because I am not eligible [because of] alien status. In other words, because I am not an American citizen of the United States, that at the end of the sentence I will be deported. Thus, I am ineligible for appropriate medical treatment' (Renaga Soto, 2012: 1).

For Renaga Soto this 'deprivation of elementary medical needs results in cruel and unusual punishment which is in violation of the United States Constitution' (*Ibid*). In response to this grievance, Warden Harry Bryan wrote brusquely that 'According to your medical records medical has addressed every issue you have complained of and given appropriate treatment. Grievance Denied' (Bryan, 2012: 1). In turn, Renaga Soto found no succor with the courts. In her dismissal of his suit, Judge Nancy Koenig wrote that:

'*there is no indication that health officials at Dalby Facility have ignored his dental needs. As Renaga-Soto acknowledged, several of his teeth were missing when he began his incarceration at Dalby… Dentists at the prison attempted to salvage some of his teeth by filling cavities but were unsuccessful and resorted to extracting them… Having few or even no teeth does not, per se constitute a serious medical need'* (Koenig, 2012: 4).

Koenig's decision illustrates the relationship between pain, abandonment, and membership. If Koenig herself suddenly lost all of her teeth, it seems likely that she might feel that constituted a serious medical need. Men like Renaga Soto filed grievances and lawsuits to force prison administrators to take their pain seriously. Yet, Koenig's decision suggests how partial the recognition offered by the grievance processes in CAR prisons was. The capacity to file a grievance or legal claim might offer men like Renaga Soto protection against the worst forms of abuse or neglect – as Raul suggested, 'If they know you have the ability to write them up, they leave you alone' (RTN Call, Apr 19th, 2021). Equally, that a prison Warden like Harry Bryan could be forced to respond to Renaga Soto's claims in court offered incarcerated men the semblance of standing. However, the overwhelming rejection of the legal claims filed by men like Renaga Soto – due in no small part to a body of case law which placed the circumstances of their confinement outside the

boundaries of public responsibility (*Correctional Services Corp. v. Malesko*, 2001; *Minneci v. Pollard*, 2012) – suggests that prisoner lawsuits were ineffective tools for generating meaningful legal or political change (Schlanger, 2017; Schoenfeld, 2010).

'They got organized': Contesting exclusion through collective action

In August 2016, the Department of Justice's Office of the Inspector General (OIG) published a wide-ranging review of the Federal Bureau of Prisons' use of contract prisons (DOJ 2016a). Comparing Criminal Alien Requirement facilities to low security BOP-run prisons, this investigation revealed that contract facilities recorded significantly higher levels of assault, more incidents involving the use of force by Correctional Officers, and saw nearly ten times as many periods of partial and full lockdown (*Ibid*, 21). The report also referenced a series of high-profile riots at CAR facilities, including a series of disturbances at Reeves County Detention center in 2008 and 2013, an organized assault on a series of Correctional Officers at Big Spring Correctional Facility in 2011, and peaceful protests that turned violent at Adams County Correctional Center in 2012 and Willacy County Correctional Facility in 2015 (DOJ OIG, 2015, 2016a, 2016b). This body of evidence, that outsourced prisons were comparatively dangerous, unruly facilities would play a critical role in convincing officials within the Obama Administration's Department of Justice to phase out the use of private prison contracts. Days after the Office of the Inspector General's report was issued, Deputy Attorney General Sally Q. Yates issued a memorandum instructing the Director of the Bureau of Prisons to decline to renew all of the Bureau's contracts with private prison firms (Yates, 2016).

That Criminal Alien Requirement facilities were framed as penal institutions with disproportionately high rates of prisoner unrest brought into focus the causes of and social contexts within which incarcerated people chose to take collective action against prison staff and administrators. Notably, in response to the OIG report, Corrections Corporation of America, GEO Group, and the Management and Training Corporation each argued that 'demographic variables, particularly as they relate to housing a homogenous foreign national population, have a significant impact on rates of inmate misconduct' (Metcalf, 2016: 1). CCA Vice President Natasha Metcalf argued that 'the criminal alien population housed in contract prisons has a higher rate of Security Threat Groups (STG) members and associates that strongly define their identity by geographical areas, such as the

Mexican state they are from, than US citizens of the comparable security level' (*Ibid,* 2). GEO Group Executive Vice President Patricia McNair Persante made a similar claim, arguing that because 72% of the CAR prison population were Mexican nationals, there was a 'high number of gang affiliations' (Persante, 2016: 1). The homogeneity of this group meant that 'the contract facility population responds as one to any issue, real or perceived… Group leaders can control of direct a large majority [more easily] than in facilities with a mixed US citizenry' (*Ibid*). Scott Marquardt, CEO of the Management and Training Corporation argued a similar point, '90% of the inmates in the contract facilities are Mexicans… The normal practice is to disperse groups as much as practical to weaken any STG groups. Any difference is [sic] incident rates would be far more attributable to this factor' (Marquardt, 2016: 1).

In an obvious sense, the objections raised by Metcalf, Persante, and Marquardt are cynical efforts to suggest that unrest within privately-operated prisons was caused by the tendency of Mexican nationals to be more disruptive than US citizens, rather than abjectly poor conditions within outsourced facilities. That men incarcerated in CAR prisons were more likely to be disruptive simply because they were Mexican explicitly recalls the racialized rhetoric of politicians like Alfonse D'Amato, Lawton Chiles, and Lamar Smith (Chazaro, 2016). Nonetheless, it would be inaccurate to dismiss the effect of the racial and national homogeneity of CAR prisons in shaping the ways in which incarcerated people took collective action.

When contractors and BOP officials referenced the 'security threat group' problem within CAR prisons, they referred in almost every case to an inmate group called the Paisas classified by the Bureau of Prisons and US Customs and Border Protection as a 'prison gang' (Associated Press, 2018).

That the prevalence of incarcerated people affiliated with the Paisas was portrayed as a threat to the security of Criminal Alien Requirement prisons is bitterly ironic because of the social history of the group. Unlike most other prevalent prison gangs, the Paisas have no formal connection to external street gangs or organized criminal enterprises (Jacobs, 1978, NGCRC, 2019: 36). Instead, records from the Bureau of Prisons and Customs and Border Protection suggest that the group first appeared in Federal prisons in Arizona and Texas after the implementation of Operation Streamline in 2006 (DOF OIG, 2022; US Customs and Border Protection, 2021). Julio

Almanza, a Mexican-born man who grew up in Chicago and served a series of sentences in Federal custody for drug offenses described the emergence of the Paisas as a direct consequence of the decision to increase criminal prosecutions for immigration offenses.

'*I first went into Federal prison in the late '90s.. there wasn't a lot of people that were in the federal system for illegal entry. There was a couple – most of them were homies from California that I guess had came over at a young age and didn't have papers. They start banging and got arrested, caught cases and then they got charged with illegal entry. It wasn't a big deal because back in the day they would just toss you over back to Mexico. It wasn't really a big case unless you got caught a bunch of times. They were in the Federal system, but they were not organized, they were not considered a gang. They were considered nothing because they rode by themselves, they hung out by themselves, you know, they just didn't click up.*

Well, all that changed in the 2000s because some of them were getting taken advantage of. This is the thing – in prison whether you like it or not you're gonna ride with somebody because you can't be alone. Prison is fucking prison. There's a bunch of wolves in there, and you don't want to be the fucking victim. Everybody has their own TV, everybody has their own tables, everybody has their own phone. And, everything works by either race or gang.

Imagine you got a bunch of Mexican nationals, they don't have no TV, they don't have no chairs, they don't have nowhere to sit. Guess what, they start arresting them in the early 2000s, and they start putting them in by the hundreds. When I was at [Federal Correctional Institute] Florence, in Arizona they were bringing those buses in every day with illegal entry cases. You got a bunch of guys that pretty much don't have no rights, and in prison that's not good.

So, they got organized, picked a spokesperson, and fought for a table, fought for a TV. And now the Paisas are classified as a gang in the Federal system… but, a lot of these dudes are not gang members, you have a couple of dudes that are lowlifes, but more than half of 'em are workers that came to the US trying to get that dream and just work… but there's so many of them now that they're classified' (Almanza, 2020)

In this context, the term 'paisa' – short for 'paisano' or countryman – reflected a critical distinction between Mexican and Chicano identity. Among the incarcerated people who I spoke to, the term 'homie' was most frequently used to refer to Chicano men in custody, whereas the term 'paisa' referred to a dominant Mexican identity (GZ Call, Nov, 2020). Often, the organization of the Paisas

mirrored the intensely racial logics of US prison gangs. At Reeves County Detention Center, for example, the organization consisted of representatives from various Mexican states like Sinaloa, Durango, and Jalisco, who reported to a designated representative (DOJ OIG, 2022). Although classified by the Bureau of Prisons as a 'security threat group', opinions varied widely about the nature and influence of the Paisas as an organization. For Andres, a Mexican man incarcerated at Giles W. Dalby Correction Institution, the relatively low level of staffing combined with racial and national homogeneity of the prison population meant that the Paisa group wielded disproportionate influence, 'the institution allows four inmates to run the institution, all of whom are Mexican. They are basically in charge of all the jobs, regulate the TVs, and subject Black and non-Mexican inmates to only two hours of viewing' (AMG Letter, Aug 11th, 2021). Gabriel, a Mexican-born man who had grown up in Illinois agreed, suggesting that at Moshannon Valley Correctional Facility 'Paisas were all over the yard, they controlled everything' (GZ Call, Nov, 2020). This was a problem for Gabriel, because he had previously been a member of the Latin Kings, a rival prison gang, in conflict with the Paisas. In contrast, Alejandro, a Cuban-born man incarcerated at McRae Correctional Institution played down their influence, suggesting that 'it's not really a gang, it's more like a strength in numbers thing. If something happens then they have strength in numbers' (AM Call, Feb 2021).

After the highly publicized riots at the GEO Group-run Reeves County Detention Center, CCA-run Adams County Detention Center, and Management and Training Corporation's Willacy County Detention Center, public statements made by the contractors frequently foregrounded the role of 'unruly inmates' led by 'security threat groups' (NYT, 2015). Yet, investigations conducted by the Federal Bureau of Investigations and the Department of Justice told a more complicated story (Department of Justice, Office of the Inspector General, 2016b, 2015; Fleck, 2008; Markovitz, 2012).

According to a series of reports produced by the FBI, Odessa Police Department, and the Texas Rangers, the unrest at Reeves in 2008 began shortly after the death of Jesus Manuel Galindo (Wilder, 2009). After a group of men in the Solitary Housing Unit observed Galindo's body being removed, they became upset, and used the wires in an electrical outlet in their cell to set a mattress on fire (Fleck, 2008: 9). After breaking out the windows of their cell, the men in the SHU yelled through the window, encouraging offenders in the prison's recreation yard to join in the disturbance (*Ibid*, 10). In response to the disturbance in the SHU, a group of offenders blocked the doors from each housing

unit into the central recreation yard and took two correctional officers hostage. In the evening, a delegation of seven 'representatives' went to meet with prison authorities, detailing a wide array of concerns about conditions, and demanding 'better treatment, better food, and better medical care' (*Graciela Galindo et al v. Reeves County et al*, 2010: 39). In 2013, incarcerated people across the facility conducted a mass work stoppage, refusing to comply with orders from RCDC staff to leave their dorms for work assignments (DOJ OIG, 2015). Again, their concerns were nearly identical, demanding better treatment from prison staff, better food, reduced commissary prices, and better pay for facility work (DOJ OIG, 2022: 4).

Tellingly, the response to this work stoppage from GEO Group officials at Reeves was to re-purpose one of the prison's general population wings as a 'modified monitoring unit', where they could isolate and surveil offenders who they believed were instigating protests (DOJ OIG, 2015: 39). Four hundred men believed to have organized the work stoppage were moved to J Unit, where they were isolated from the rest of the prison and excluded from work details and prison programs (*Ibid*, 40). Staff also identified a smaller group, whom they believed had served as prisoner representatives or 'reps.' Notably, rather than the conventional organizational structure of a prison gang (Jacobs, 1978), in which a single leader makes decisions through trusted subordinates, this representative system reflected the unique characteristics of Reeves' prison population. Rather than a single leader, interviews conducted with incarcerated people by the OIG found that each 'rep' represented one of the 32 states of Mexico (OIG FOIA, 2023: 11). That the structure of this prisoner organization so directly reflected the Mexican nation-state gives new meaning to the claim that the prison is a critical site for the definition of the late-modern nation state (Bosworth and Kaufman 2014: 171).

Four years after the first disturbance at Reeves, an eerily similar pattern of events repeated itself at Adams County Correctional Facility, a CCA-run CAR facility in Natchez, Mississippi. After lunch on Sunday, May 20th, 2012 hundreds of men incarcerated at Adams County Correctional facility, a CAR prison operated by Corrections Corporation of America (CCA) in Natchez, walked into the prison's main recreation yard and began to hold a series of meetings (Delcker, 2016). According to the Federal Bureau of Investigations, after a short period, hundreds of men began to gather in the prison's central corridor, where they walked to a gate below the Central Control unit, and requested to see Warden Vance Laughlin (Strada, 2012: 4). Although CCA staff began to order the crowd to disperse, and return to their cells, they failed to do so. As the crowd continued to grow, a group of

CCA officers climbed on to the roof of the prison, where they fired tear gas canisters into the crowd (Delcker, 2016; Strada, 2012: 5). According to the testimony of both CCA staff and incarcerated people, this turned the previously peaceful crowd violent (Strada, 2012: 6-7, OSHA, 2013). As the riot escalated, a group of offenders used a janitorial ladder to climb up onto the roof of the prison, and proceeded to beat Correctional Officer Caitlin Carithers to death, and knocked another Officer unconscious (Delcker, 2016). As the riot escalated, one of the participants commandeered a telephone, and called a local television station, where he testified that the CCA guards "always beat us and hit us. We just pay them back.... We're trying to get better food, medical [care], programs, clothes, and we're trying to get some respect from the officers and lieutenants' (Clarke, 2014). While the unrest was eventually brought under control by a group of State Police and CCA officers after twenty-four hours, the facility remained on lockdown for three months.

In their investigation of the disturbance, federal investigators readily acknowledged that the material conditions of confinement played a direct, contributing role (Markovitz, 2012: 2). A report produced by the FBI found that the riot could 'be directly attributed to actions taken by [CCA] administration' which had failed to properly respond to the expressed intentions of incarcerated people to protest using force (FBI, 2012). In an obvious sense, the riot was the culmination of frustrations accrued through the material conditions at the facility. Doug Martz, head of the Bureau's Contract Management division in 2012, told the journalist Seth Wessler that the riot was caused by 'significant issues – inadequate medical care, low staffing levels, food-service issues' (Wessler, 2016b). Staffing was a particularly acute issue. In an almost identical fashion to the contract awarded to Reeves County and the GEO Group to operate Reeves County in 2006, the BOP's contract with CCA for Adams County awarded in 2009 did not stipulate minimum staffing requirements and did not require the contractor to seek BOP approval when making changes to the agreed staffing plan (DOJ OIG 2016b, 2016: 7-8). When the BOP eventually introduced a contract modification in 2011 that established minimum staffing thresholds, CCA used a contractual loophole to hide the fact that the facility was chronically understaffed from Bureau of Prisons monitors (DOJ OIG, 2016b). Instead of reporting the full-time equivalent (FTE) staff working on each of the prison's three shifts, CCA reported simple headcounts but failed to indicate that many staff were hired on a part-time basis (Ibid, 8). As a result, during the ten-month period from July 2011 to May 2012, CCA only met the minimum threshold for two months, and would continue to fail to meet the minimum threshold for long periods after the 2012 riot (*Ibid,* 9). Astoundingly, analysis conducted by OSHA found that in

the weeks before the riot, CCA regularly employed only forty-three security staff on shift duty in a prison incarcerating 2,537 people (OSHA, 2013).

These issues also extended to the provision of medical care. From 2012 to 2015, Adams incarcerated roughly 2,100 people on an average daily basis (DOJ OIG, 2016b). According to BOP guidelines, the facility should have had at least two full-time dentists and physicians of staff. Instead, Adams was staffed with a single physician for 43% of the time, and a single dentist for 69% of the time (DOJ OIG, 2016b: 23). During these three years, patient loads were twice the BOP guidelines (DOJ OIG, 2016b: 24). Unsurprisingly, inordinately low staffing levels had serious negative effects on the medical care received by incarcerated people. From January 2011 to March 2012 three people died while in custody at the Adams County facility. In January 2011, Lucio Gonzalez Perez died from AIDS-related illness in a local Emergency Room (Delcker, 2016). Medical records obtained by the journalist Seth Wessler later demonstrated that CCA had failed to test Perez for HIV as contractually required when he had arrived at Adams (Wessler, 2016b). In April, Hilario Cabrera Trejo died of a heart attack in an ambulance on the way to the ER - a trip delayed significantly because the duty nurse couldn't reach Adams' physician (*Ibid*). On May 10th, 2012 – days before the eventual uprising – Juan Villanueva was transferred from Adams to a BOP-run medical facility in North Carolina, where he died from lung cancer (Delcker, 2016). Villanueva's sister, Angelica Moreno, believed firmly that he would have lived had he been seen by a physician rather than a Licensed Practitioner Nurse during his six visits to Adams' medical unit over a four-month period (Wessler, 2012). A day after the riot, the *Jackson Free Press* received an email from a person incarcerated at Adams, stating 'the guard that died yesterday was a sad tragedy, but the situation is simple: If you treat a human as an animal for over two years, the response will be as an animal' (Clarke, 2014).

On the evening of February 19th 2015, a group of incarcerated people began a work strike at the Willacy County Correctional Facility, a Criminal Alien Requirement facility operated by the Management and Training Corporation. At the Willacy facility, most offenders sleep in 10 oval-shaped Kevlar pods that each house 200 men in bunk beds (CoAFC, 2007: 3). Early the following morning, officers began to conduct count, ordering offenders in each unit to stand by their beds so that they could be accounted for (Wessler, 2016a). Men in Willacy's Echo unit refused to obey the order, telling the CO on staff that they wanted to meet with senior management to discuss a series

of complaints related to medical care, overcrowding, and issues with staff. In response to this refusal, MTC staff assembled a 'disturbance control team', consisting of eight officers dressed in riot gear, armed with tears gas canisters and rubber bullets (*Ibid*). According to MTC spokesperson, Issa Arnita, the riot that then unfolded was precipitated by 'unruly inmates [who] forced officers out of one of the housing units' (Wessler, 2016a). According to people incarcerated at the facility, the protest turned violent when a member of MTC's disturbance control team tear-gassed a group of men who were peacefully refusing to comply with count (Clarke, 2016). The riot then escalated significantly, as offenders set fire to their housing pods, and occupied the recreation yard (Dunbar, 2015). As a result of the riot, the facility was so badly damaged that it could no longer operate as a prison, forcing the BOP to end the contract with MTC and transfer all of the people incarcerated there to other facilities (Clarke, 2016).

In the aftermath of the riot, MTC sought to emphasize the riot as a consequence of the aberrant actions of 'unruly inmates' (Reuters, 2015). Yet an 'After-Action Report' prepared by Angela Dunbar from the BOP's Correctional Programs Division concluded that the 'disturbance can be directly attributed to the perception of the inmate population regarding the delay of medical treatment' (Dunbar, 2015: 20). Much like the pattern of events at the Reeves and Adams facilities, two Mexican-born men who were serving sentences for unlawful re-entry had died in custody at Willacy in 2014 (Wessler, 2016a).

Dunbar's report also noted that Willacy's alarmingly low ratio of security staff to incarcerated people meant that officers relied heavily on offenders to ensure order within the prison (Dunbar, 2015: 7, ACLU, 2014). Ricardo Garza Jr, who worked as a Correctional Officer at the Willacy facility before it's closure, admitted to Wessler that 'If I really had a problem and I needed it fixed, I would tell the Paisa representative of the dorm… 'Hey this is not working, I don't want to give you a hard time, just respect me and I respect you.' And it would be fixed' (Wessler, 2016a). According to the BOP's After-Action Report, staff at Willacy held biweekly meetings with 'inmate representatives from each housing unit' and 'local executive staff' in an effort to indicate to offenders that they were taking concerns about health care, food, and commissary seriously (Dunbar, 2015: 9). In short, what emerges from Dunbar's 'After-Action Report', and the detailed accounts of staff and incarcerated people collected by Wessler, is a picture of a system of incarceration that struggled to contain its own contradictions.

Conclusion

Not all forms of collective action taken by incarcerated people in CAR prisons involved force. As noted in the introduction to this chapter, a group of men incarcerated at North Lake Correctional Institution carried out a series of hunger strikes during the summer and fall of 2020. As a technique of resistance, the hunger strike was by no means specific to CAR facilities. Data collected by the advocacy group Freedom for Immigrants suggest that at least 1,600 people have participated in hunger strikes at ICE detention facilities since 2015 (Freedom For Immigrants, 2021). Hunger strikes were also a particularly common response to the unsafe conditions in sites of custody during the COVID-19 pandemic. Almost exactly at the same time that men at North Lake began their hunger strikes, a group of men incarcerated at the GEO Group-run Mesa Verde ICE Detention Facility in California began a hunger strike to protest the lack of hygiene products, proper testing, and continued foot traffic in and out of the facility (*Zepeda Rivas v. Jennings*, 2020).

While both hunger strikes sought to redress the material harms caused by incarceration in a GEO-run custodial facility during the COVID-19 pandemic, the strikers at North Lake demanded to be transferred to a BOP-run facility. As one participant put it, 'GEO- this private company made a deal with the BOP, but this place right here don't fit the correct conditions to hold federal inmates' (NDCM Call, 2020b). Another participant emphasized that the hunger strikers 'are really trying not to go back to no GEO. They want to actually go back to the BOP, instead of this' (NDCM, 2020d). This demand for transfer out of outsourced, all-foreign prison custody produced remarkable forms of solidarity in the highly racially divisive prison context. As David put it to JR during their conversation:

'Latinos as well as Blacks as well as white. Everybody's on the hunger strike for the purpose of human rights violations… We demand to be moved [back to BOP], and they told us we can't be moved. So, our human rights is being compromised' (NDCM, 2020c).

To be clear, this is not to suggest that BOP-run prisons are good or normal. As I have emphasized throughout this thesis, people in BOP-run prisons experience a litany of harms and rights violation that people incarcerated in CAR prisons were not oblivious to (Blakinger and Neff, 2021). Rather,

transfer to a BOP-run facility became a central political claim of the hunger strike campaign because it offered a basic form of recognition – the chance to be subject to the same prison system as everyone else.

Scholars of border criminology (Stumpf, 2006, Bosworth, 2008) have warned about the corrosive effects of integrating border control and punishment – that by doing so, this corrosion of penal rationales may erode both the normative and practical justifications for the state violence of punishment. In turn, rather than communicating deterrence, practices of bordered penality simply produce the impression that the entwined system of criminal justice and border control is illegitimate, guided by prejudice rather than justice (Ryo, 2021). On one hand, the various administrative and legal modes of resistance described in this chapter echo the skepticism of an established body of research that has examined the capacity of legal tools to improve the material conditions of confinement in US jails and prisons (Schlanger, 2015; Schoenfeld, 2018). Yet, although the legal actions challenging inadequate medical care were almost always unsuccessful, these actions offered a rejoinder to the liberal-democratic boundaries of political membership, articulating a version of penality in which all subjects deserved care.

The deaths of men like Jesus Manuel Galindo and Juan Villanueva, and the varying forms of individual and collective action taken by incarcerated people within Criminal Alien Requirement facilities, raise thorny questions about the strategies, goals, and successes of prisoner resistance. From the perspective of political organizing, the impossibility of legal victory makes it tempting to view the forms of collective action displayed at Reeves, Adams and Willacy, as the most viable tool in enacting change. Indeed, long-time activists like Judith Greene suggested to me during interviews that the disturbances at these facilities – combined with a broader shift in public perceptions of private prison firms – played a decisive role in the Obama administration's decision to phase out the CAR prison system. Yet, even in these situations, the underlying political economy of incarceration was such that these facilities quickly reinvented themselves. After the end of the Bureau of Prisons' contract with MTC to operate Willacy County Correctional Facility, it was rapidly re-contracted as a jail operating under the US Marshals Service (Management and Training Corporation, 2022).

In a broader sense, these forms of resistance also call into question the future of bordered penality after the end of the Criminal Alien Requirement system. If the end of the BOP's contracts with

CAR facilities in Adams and Willacy Counties might be viewed as an example of the capacity of liberal penal systems to self-correct, the rapid re-purposing of those prisons as immigration detention facilities highlight the powerful persistence of what Judah Schept (2022) calls carceral social reproduction. In the same way that CAR prisons first came to exist in physical sites originally constructed to serve other penal purposes, once closed these sites were quickly repurposed to serve other government contracts. The final chapter considers the meaning of the end of the CAR prison system, the rapid re-purposing of these physical sites, and the future of entangled practices of criminal justice and border control in the United States.

Chapter 8: Conclusion

Who can really use a prison beside a prison?

In the summer of 1991, Democratic Congressman Romano L. Mazzoli, the Chair of the House Committee on the Judiciary's Subcommittee on International Law, Immigration, and Refugees commissioned the General Accounting Office (GAO) to examine the Immigration and Naturalization Service's detention policy and practices, focusing specifically on the detention of 'criminal aliens' (GAO, 1992: 2). The following year, Harold Valentine, the GAO's Associate Director of Justice issues, produced a report that offers a remarkable point of view from which to examine changing practices of punishment and migration control in the United States. In the view of the GAO, the US immigration and penal systems were at a crossroads,

'*When Congress passed the Immigration and Nationality Act of 1952, the illegal flow of aliens into this country was not a major problem. Since then, however, the flow has become a torrent. Apprehensions of aliens illegally entering the country have risen from 46,666 in 1969 to 1.17 million in 1986… Given the average 23 days of detention per alien in 1990, INS can detain about 99,000 aliens a year at its current facilities. However, according to INS data, about 489,000 aliens were subject to detention between 1988 and 1990 because they were criminal, deportable, or excludable. INS has released criminal aliens and not pursued illegal aliens because it did not have the detention space to hold them'* (*Ibid*, 3).

In an obvious sense, the terms 'flow' and 'torrent' are used here to dehumanize migrants and simplify complex migration dynamics (Chavez, 2001; Strom and Alcock, 2017). People do not flood or flow. This framing conveniently obscures the fact that the 1952 Immigration Act – the end of the proposed antediluvian period – upheld the racist system of national origins quotas created in 1924 (Ngai, 2014). Equally, this perspective frames the growing number of unauthorized migrants as a social fact entirely external to Federal immigration and penal policy. Instead, as Douglas Massey, Karen Pren and Jorge Durand have argued, the dramatic increase in the number of unauthorized migrants from Mexico was a product of tougher rather than looser immigration policies, which effectively criminalized a long-established pattern of circular migration across the US-Mexico border (Durand and Massey, 2003; Massey et al., 2016; Massey and Pren, 2012). The GAO's concern with so-called criminal aliens reflects the transformation of border control and criminal justice, rather than a qualitative shift in the behavior of migrants in the US. Indeed, the observation that INS had

'released criminal aliens' in the period from 1988 to 1990 obscures the extent to which the figure of the 'criminal alien' and the concept that deportation should occur as the result of a criminal offense was the result of legislation passed only two years prior in 1986 (Das, 2018).

In short, the GAO report illustrates a specific way of thinking about the relationship between migration, crime, and penality, for which there existed a limited range of political solutions. The report continued that,

'Unless the programs designed to prevent aliens from illegally entering the country and to remove those who have no legal basis to remain here are made more effective, INS has little hope of detaining any more than a small fraction of the criminal and other aliens meeting its detention criteria. Inevitably, proposals to tighten the nation's borders and to expedite the expulsion of deportable aliens have to take into account their rights to constitutionally based protections and must deal with complex and sensitive issues... Until Congress comes to grips with these problems and trade-offs, little progress in resolving detention issues can be expected.

Congress may therefore wish to address border security and deportation issues in the course of future deliberations on immigration policy, specifically: How tight do we want our borders to be; how aggressively should we expel deportable aliens, and how much additional funding are we willing to invest in these efforts? (GAO, 1992: 33-34).

These questions about the stringency, aggression, and capacity of the powers to punish and to banish were effectively rhetorical. As discussed in the fourth chapter, after 1986 the 'criminal alien problem' (Senate, 1995) was framed such that the intensification and expansion of bordered penality appeared to be the only solution. A decade later, there was no longer any question of whether the Federal government should develop the capacity to identify, incarcerate, and expel 'deportable aliens' aggressively, but rather a question of how this capacity should be developed. After the reorganization of the INS into the Department of Homeland Security in 2003, the newly created Bureau of Immigration and Customs Enforcement's (ICE) Office of Detention and Removal issued a ten-year plan eerily titled 'Operation Endgame' (ICE, 2003). The stated goal of this strategic plan was to develop a 'cohesive enforcement program that will build the capacity to remove all removable aliens' (*Ibid,* ii). As part of this enforcement program, Endgame promised to expand the presence of immigration officers within jails, prisons, and other sites of criminal custody across the country in an effort to 'create consequences for and deterrence to illegal immigration' (*Ibid,* 1-4).

Although Operation Endgame did not succeed in reducing the number of unauthorized immigrants in the United States (Budiman, 2020), it did massively increase the scale of the prison-to-deportation pipeline. From 2006 to 2011, the number of deportation orders issued by ICE through the Criminal Alien Program more than tripled, from 67,580 to 212,744 (Immigration Policy Center, 2013: 4-5). After 2008, the Obama Administration took the 'criminal alien paradigm' to new heights, consolidating and expanding the use of biometric databases to screen the immigration status of people entering jail and prison custody across the United States (Rosenblum and Kandel, 2012: 15). The expansion of these programs radically changed the characteristics of the people removed from the US, and, for them at least, effectively re-purposed the criminal justice system into a tool for mass deportation. From 2010 to 2016, men apprehended after contact with the criminal justice system made up the majority of those deported by ICE for the first time (ICE, 2016: 5). In 2012, 409,849 people were deported by ICE, of whom 225,426 had been apprehended as a result of contact with the criminal justice system (*Ibid*). In the period after 2000, the figure of the criminal alien evolved, representing undeserving migrants rhetorically in contrast to those unauthorized migrants who deserved limited protection from deportation. When President Obama announced the Deferred Action for Childhood Arrivals program in 2014, the stated goal was to ensure that the federal government focused on deporting 'felons, not families' (Obama, 2014).

That the scale and intensity of efforts to deport non-citizens as a result of contact with the criminal justice system increased so dramatically between 2000 to 2016 raises questions about the choice to end the Bureau of Prisons' use of private contracts in 2016 (Yates, 2016). Given the Obama Administration's deep political investment in the 'criminal alien paradigm' (Cházaro, 2016), it seems counterintuitive that the Department of Justice might be willing to reduce the Federal government's capacity to identify and remove 'criminal aliens.' In other words, it is worth reflecting on the broader meaning of the closure of the CAR prison system, and the conclusions of this DPhil thesis. Bound up in this consideration, I suggest, are two inter-connected questions. On one hand, the closure of the CAR prison system can tell us something important about the future of bordered penality, the elision between penal custody and immigration detention, and the idea of the prison-to-deportation pipeline. At the same time, closure raises thorny questions about the future of privately-operated prisons in particular and outsourced incarceration in general. Considering these questions separately,

then, what might the end of this system of all-foreign imprisonment tell us about the future of efforts to target non-citizens in criminal custody?

It is tempting to view the closure of this system as a public policy success. Looking back on the decisions to end the BOP's use of private prisons, Silky Shah, an abolitionist activist and the executive director of Detention Watch Network, writes that 'from a liberal perspective, the system worked like it was supposed to. The media exposed the harms of DOJ's private prisons, while the government evaluated itself and then determined that the use of the prisons was no longer tenable' (Shah, 2022: 1). Both the Obama and Biden Administrations framed their decision to end the Bureau of Prisons' use of contract prisons as part of a broader set of reforms aimed at reducing inequality (Dockery, 2016). The Biden administration framed the decision to re-instate the 2016 memorandum instructing the BOP to phase out the use of contract facilities as a step towards changing the government's approach towards the 'scourge of systemic racism' (Madhani, 2021). Shah and others, however, contest this view, arguing that the decision to end the use of CAR prisons reflected political opportunism rather than a genuine effort to reduce the capacity of the carceral state.

In the years before the 2016 Yates memo, a series of protests within CAR facilities, alongside concerted work by activists and high-profile media coverage, drew uncomfortable attention to these BOP contracts. There are glaring similarities in the Bureau's response to the period of high-profile unrest at Northeast Ohio Correctional Center in 1997, and the response to the unrest at the Criminal Alien Requirement facilities in Reeves County, Adams County, and Willacy County (Corrections Trustee, 1998). In 1998, an investigation into Corrections Corporation of America's management of the NEOCC facility found a record of 'pivotal failures in its security and operational management as a result of seriously flawed decisions by leaders of both CCA and DOC' (US Attorney General, 1998). In 1999, incarcerated plaintiffs won $1.65 million in a class-action settlement, which included a court order forcing CCA to improve the security, medical care, and increase staffing levels (Yeoman, 2000). As a result of this public pressure, CCA's original contract was phased out in 2003, and the facility was quietly re-contracted as a Criminal Alien Requirement facility in 2004 (Department of Justice, 2004). In a similar fashion, after the unrest at the Adams County Correctional Facility in 2012 and the Willacy County Correctional Facility in 2015, the Department of Justice published a series of reports finding serious flaws in the operation and

oversight of CAR prisons (Department of Justice, 2016; Department of Justice, Office of the Inspector General, 2016, 2015). Yet, less than a year after the BOP chose not to renew the contracts for both facilities, they were re-purposed as immigration detention facilities through contracts with US Immigration and Customs Enforcement (ICE, 2017). In each case, the Bureau of Prisons responded to high-profile incidents of unrest by ending the contracts at the Northeast Ohio Correctional Center, Adams County, and Willacy County facilities. Yet, even after these contracts ended, each facility continued to serve as a carceral site.

Rather than an effort to reduce the scale of incarceration employed by the Federal government, Shah argues that the decisions taken by the Obama and Biden administrations to end the use of private facilities like Criminal Alien Requirement prisons sustained the legitimacy of the Federal government's broader carceral project (Shah, 2022). While both decisions to end the use of private prison contractors were framed as part of the response to the racial inequality and disproportionality of the US penal system in the wake of the deaths of Michael Brown and George Floyd at the hands of police officers in Ferguson, Missouri and Minneapolis, Minnesota, neither resulted in substantive changes in penal policy (Biden, 2022). Indeed, Deputy Attorney General Sally Yates' memorandum instructing the BOP to end private prison contracts implicitly reinforces the necessity of the Bureau's own prisons, noting that the closure of contract prisons 'would be neither possible nor desirable without the Bureau's superb and consistent work at our own facilities' (Yates, 2016: 2).

By 2016, two important issues that had created sustained pressure to expand the Criminal Alien Requirement system during the 1990s and 2000s had subsided. Since 2013, the number of people in the custody of the Bureau of Prisons has decreased substantially, falling from 219,298 to 192,170 in 2016 and to 155,562 in 2020 (Bureau of Prisons, 2023). At the same time, the scale of the immigration detention system has increased. Indeed, so much bed space now exists in that parallel administrative system of custody that the capacity provided by Criminal Alien Requirement facilities is no longer essential to prevent the release of foreign national offenders after they complete their criminal sentences. From 2000 to 2016 the average daily population in immigration detention rose from 19,458 to 34,376 (Center for Migration Studies, 2018). Similarly, ICE's budget for detention increased from $864 million in 2005 to $2.36 billion in 2016 (*Ibid*). This evidence supports Shah's view that the decision to end the use of CAR prisons reflected a response to penal trends rather than an effort to change them.

Unlike the Federal prison system, privately-operated facilities have become essential to the US immigration detention system. In 2019, nearly 80% of people held in immigration detention were held in privately operated facilities (ICE, 2019). Tellingly, after the 2016 Yates memo, the Homeland Security Advisory Council convened a Subcommittee on Privatized Immigration Detention Facilities (Homeland Security Advisory Council, 2016). Convened to evaluate ICE's use of privately-operated custodial facilities, the subcommittee judged that,

'*Fiscal considerations, combined with the need for realistic capacity to handle sudden increases in detention, indicate that DHS's use of private for-profit detention will continue*' (*Ibid*, 2).

In a historical sense, the closure of the CAR prison system represents the consolidation of ICE's control over the incarceration of immigrants, resulting in massive increases in fiscal and material resources. Emma Kaufman (2019) and Jenna Loyd and Alison Mountz (2018) have observed that the legal and administrative responsibility for civil immigration detention was subject to a series of 'turf battles' between the Bureau of Prisons and Immigration and Customs Enforcement during the final two decades of the twentieth century. Thirty years on from 1992 the notion that a dedicated immigration enforcement agency like ICE would oversee an annual budget of eight billion dollars, including roughly two billion dollars in funding for immigration detention, would surely be inconceivable to Congressman Mazzoli (Department of Homeland Security, 2022: 3).

The closure of the CAR prison system also reflects the ways in which practices of criminal justice and migration control have evolved since 1999. After 1986, the Immigration and Naturalization Service struggled to meet the provision in the Immigration Reform and Control Act within required immigration officials to identify and deport all non-citizens convicted of deportable offenses (Inda, 2013). As described in Chapter Four, the practice of segregating foreign-national offenders into separate penal facilities aimed to make it easier for federal immigration officials to meet this statutory obligation. Until 2006, the process of identifying and removing foreign-national offenders required immigration officers to physically attend jails and prisons to interview potentially deportable aliens before issuing them a charging document called a 'Notice to Appear' (General Accounting Office, 1992: 12-13). Alongside the Institutional Hearing Program, in which Immigration Judges were designated to specific facilities to carry out the legal process of

deportation, the all-foreign promised to improve the efficiency of these processes of identification and control by allowing immigration officials to concentrate their efforts in a small number of facilities (Eagly and Shafer, 2020, Sale, 1996).

By 2016, the process by which immigration officials identified non-citizens in criminal custody had evolved to the extent that physically segregating foreign-national offenders offered few tangible benefits in terms of the efficiency of 'criminal alien removals' (ICE, 2009). In June 2006, ICE began efforts to transition away from maintaining a physical presence in jails and prisons through the Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) center (Immigration Policy Center, 2013). Under this system, ICE officers based in Chicago, IL interviewed people incarcerated in jails and prisons via phone or video teleconference, and then issued charging documents to people in federal prisons remotely (Cantor et al., 2015: 27). This system of remote processing facilitated improvements in the inter-operability of law enforcement databases, which allowed ICE officials to check immigration and biographic documents against jail, prison, and other records databases (*Ibid*, 10). As argued in Chapter Five, these changes to the ways in which the identification and removal of people in Federal prisons were processed made the logic of segregation within CAR prisons superfluous in migration control terms. As soon as it was possible to identify and process incarcerated people remotely, physical segregation became unnecessary. An immigration lawyer whom I interviewed early in my fieldwork contrasted the CAR prison system to the Obama-era program Secure Communities, which effectively allowed ICE to receive a notification whenever a local police force encountered a person without immigration status. As he put it, 'To be honest, a place like D. Ray James doesn't really make sense if you've got Secure Communities.'

In addition to the future of bordered penality, the end of the CAR prison system raises questions about the future of privately-operated prisons and outsourced incarceration. Since 2016, the stock prices of GEO Group and CoreCivic – the only publicly-traded firms that currently manage custodial sites in the United States - have become something of a political football. After Obama Administration Deputy Attorney General Sally Yates directed the Bureau of Prisons to end the use of private prisons in August 2016 the price of both firms' stock was cut in half almost immediately. Weeks later, CoreCivic's stock was trading at $13.45 per share, down from $34 in June, and GEO

Group's stock had fallen to $13.90 per share from $33 during the same period.[42] The election of Donald Trump months later, however, caused both firms share prices to soar on the back of Trump's promise to rescind Yates' order and expand immigration detention (*Ibid*). When Trump lost to Joseph Biden four years later, The GEO Group's share price fell once again, down 14% and CoreCivic's by 19%, as the markets anticipated another policy reversal (Pauly, 2020).

Since 2020 prospects for both firms have looked dire. Almost immediately after taking office in January 2021, President Biden kept good on his campaign promise and announced that he would re-instate Yates' Memo from 2016, and instruct the Bureau of Prisons to phase out its private contracts (Biden, 2021). The COVID-19 Pandemic has also proved damaging to the financial fortunes of the private prison industry. While the virus tore through the Federal prison system with terrible consequences (De La Hoz, 2021; Neff and Blakinger, 2020), it had equally devastating impacts within immigration detention facilities. An investigation conducted by the Vera Institute of Justice estimated that one in five people in ICE detention contracted COVID during 2020 (Kuo et al., 2020). At the same time, a fall in ICE apprehensions and the implementation of an arcane public health statute called Title 42 which allowed the Federal government to expel border crossers without court hearings dramatically reduced the number of people in immigration detention. From October 2019 to March 2021, the number of people in ICE detention custody fell from 51,000 to 14,000 (TRAC, 2023). The timing of this fall in the number of people in prison and immigration detention was particularly damaging for CoreCivic and the GEO Group because both firms held huge amounts of debt. In 2020, CoreCivic and GEO Group received 51% and 53% of their revenue from Federal contracts, the loss of which revenue has caused issues with creditors, and forced both firms to re-organize their corporate structures (Richard, 2022).

Nonetheless, when the Bureau chose to end contracts with CAR facilities, the firms that operated them were almost always able to find new contracts very quickly. Indeed, one of the most striking features of the system of outsourced incarceration has been the capacity for re-purposing and re-inventing sites of custody. As noted above, after the Bureau of Prisons moved to end contracts at the Adams County and Willacy County facilities, the contractors CoreCivic and the Management and Training Corporation quickly signed agreements with ICE to keep these facilities open. In a

[42] See, Google Finance (2023) 'GEO Group', Online: https://g.co/finance/GEO:NYSE?window=MAX and Google Finance (2023) 'CoreCivic', Online: https://g.co/finance/CXW:NYSE?window=MAX.

similar fashion, when CoreCivic's contract to operate the Northeast Ohio Correctional Center as a CAR facility ended in 2014, the firm managed to secure a contract with the US Marshals Service to incarcerate pre-trial offenders (Koff, 2016). Ironically, because of this switch from a BOP to USMS contract, the facility was able to remain in operation after the Yates memo was issued in 2016 (*Ibid*).

During the period from 2000 to 2020, the Bureau of Prisons chose not to renew the contracts of four other facilities: Eden Detention Center, Pine Prairie Correctional Center, Cibola County Correctional Center, and California City Correctional Facility. After the Bureau chose not to renew the contract with CoreCivic to operate the Eden Detention Center in 2017, it re-opened as an ICE immigration detention facility less than a year and a half later (Edgin, 2019). In 2006, the firm LCS Corrections Services won a contract worth $65 million to operate the Pine Prairie Correctional Facility as a Criminal Alien Requirement prison (Department of Justice, 2007). After the Bureau of Prisons chose not to exercise an optional contract renewal period in 2015, LCS and the Pine Prairie facility were acquired by the GEO Group (GEO Group, 2015). The facility re-opened as an ICE detention facility before the end of 2015 (ICE, 2015). In early 2016, a series of investigations uncovered three deaths at the Cibola County Correctional Facility, each of which involved sustained neglect or deficient medical care (Macaraeg, 2017; Wessler, 2016). In July, the Bureau of Prisons announced that it would end Cibola County's contract. By October 2016, CoreCivic announced that it had agreed a contract with ICE to house people in immigration custody at the facility (Macaraeg, 2017). In 2006, the Bureau of Prisons' contract with CoreCivic to operate the California City Correctional Facility as a CAR prison ended, but the facility quickly re-opened under a joint intergovernmental services agreement with ICE and the US Marshals Service (Department of Justice, 2011). After seven years under this arrangement, CoreCivic agreed a deal with the California Department of Corrections and Rehabilitation (CDCR) to incarcerate 2,300 people at the California City facility (Bedell, 2013). Notably, CDCR – so opposed to outsourced confinement when the facility was built in 1998 (as discussed in Chapter Four, see Geissinger, 1999) – decided to contract with CoreCivic as part of a last-ditch effort to comply with the Supreme Court's ruling in the *Brown v Plata* case (Bedell, 2013). That the *Brown* legislation kept the lights on at the California City facility recalls Heather Schoenfeld's (2010) observation that prison conditions litigation aiming to reduce the scale of incarceration in the United States has often had the practical effect of increasing prison capacity.

Since the Biden Administration's announcement of the decision to re-instate the Yates memo in January 2021, private contractors like CoreCivic and the GEO Group have had a remarkable amount of success finding customers to buy, lease, or agree contracts with former CAR prisons. In some cases, contractors sold or leased empty prisons to State governments to help reduce debt or interest burdens. CoreCivic sold the McRae Correctional Institution to the Georgia Department of Corrections for $130 million in November 2022 (13WMAZ, 2022). In April of this year, the GEO Group agreed a five-year lease arrangement with the State of Oklahoma for the Great Plains Correctional Facility, bringing in an annual revenue of $8.5 million (The GEO Group, 2023). In other cases, facilities have been quickly re-purposed as ICE facilities, despite declining numbers in immigration detention. Less than nine months after the BOP's contract with the GEO Group to operate the D. Ray James Correctional Facility in Folkston, Georgia ended, the GEO Group, Charlton County and ICE signed an intergovernmental services agreement to re-purpose the facility as an immigration detention center with 3,018 beds (Redmon, 2022). This agreement made the Folkston ICE Processing Center the largest single immigration detention center in the United States, and possibly the world (ICE, 2022). Months after the facility re-opened under the contract with ICE, the Department of Homeland Security's Office of the Inspector General conducted an audit and found thirteen violations of detention standards at the facility (Department of Homeland Security, 2022).

That the Federal agencies can re-purpose former prisons as detention centers so quickly raises questions about the meaning of the distinction between penal custody and civil custody. Unlike jails or prisons, immigration detention facilities operate under civil law, and detainees are therefore afforded none of the constitutional protections associated with the criminal legal process (Schriro, 2017). Unlike churches – which may be de-consecrated, and sold to private owners to operate as cafes, shops, or even nightclubs (FOX News, 2023) – prisons cannot be so easily abstracted from their previous purposes. That D. Ray James Correctional Institution can become the largest detention center in the United States without meaningful changes to the physical structure or administration of the facility suggests that the distinction between criminal and civil custody works mainly to constrain the legal capability of people in ICE custody.

The constant re-purposing of CAR prisons also demonstrates the strong fiscal and political pressures to keep prisons open. As discussed in Chapter Four, many local governments issued

bonds to fund the construction of the physical facilities that became CAR prisons. To maintain debt payments and keep their credit ratings intact, those county and city governments must find new lessors, or risk catastrophic fiscal consequences (Albright, 2019). Since the end of the BOP's contract with the Management and Training Corporation to operate Giles W. Dalby Correctional Facility, Garza County has scrambled to find a new lessor (KCBD, 2022). While the County hopes to either secure a contract with ICE, or with other Texas County Jail systems, failing to do so would mean default on the $32 million borrowed in 1998 to build the prison (*Ibid).* For Willacy County, the home of the Willacy County Correctional Facility, avoiding default has not been possible. In 2015 the County defaulted on $78.5 million worth of municipal bonds used to build the prison, which has effectively ruined the County's credit rating, and seriously hampered its ability to invest in other kinds of infrastructure (Williamson, 2015). A year later, Reeves County was forced to go through a similar default process as a result of their inability to pay down debt from the repeated expansion and renovations of the Reeves County Detention Center Complex (Albright and Preston, 2016; The Bond Buyer, 2003). That local governments have been forced to bear the brunt of these closures illustrates the corrosive instability of this new kind of prison economy (Martin, 2021). If, as argued in Chapter Five, the economic arrangement of outsourced incarceration was premised on pricing and profiting off of the differential penal treatment of non-citizens, the closure of these facilities demonstrates the fallibility of the prison economy's promise of long-term economic stability (Gilmore, 2007; Schept, 2022).

In another sense, these local sites of closure offer a kind of microcosm of the broader inability to think beyond or after the carceral state. After the BOP announced the closure of the GEO Group-run Taft Correctional Facility in the spring of 2020, Taft's Mayor Dave Noerr lamented the Bureau's decision as a bad economic choice that threatened the 'financial stability of hundreds of people and families who rely on that prison for work' (ABC News, 2020). Beyond the loss of jobs, the closure of the prison meant that the roughly 3,000 incarcerated people and prison staff who worked at the facility would no longer be counted towards the town's population of 9,400. In turn, Taft Police Chief Damon McMinn told a local TV station that this could cripple the town's public services because, 'any State or Federal funding that's based on population, that will mean a loss of funding that our budget is counting on' (*Ibid*). Tiffany Scott, who had been employed by the GEO Group as a Correctional Officer at the facility framed the closure of the prison as a kind of displacement, 'This will cause a domino effect, it will make people leave, it will make people go look elsewhere for work'

(ABC News, 2020). After CoreCivic sold the former CAR prison McRae Correctional Institution to the Georgia Department of Corrections for $130 million, local officials in Telfair County framed the loss of the prison as the loss of a kind of material resource. (13WMAZ, 2022). Even though the Georgia Department of Corrections' purchase promised to keep jobs in McRae, it meant the loss of $651,000 in annual corporation taxes paid by CoreCivic, which funded critical local infrastructure and services (*Ibid*). Telfair County Sheriff Sim Davidson told a local TV news station that, 'the tax base will be diminished, and taxes are a large part of the funding we get as an office', suggesting that the CI McRae's closure might have the unintended consequence of defunding the police (*Ibid*). In Big Spring, Texas Mayor Shannon Thomason took a similar tack when asked about the closure of the Big Spring Correctional Center, 'How do you look at these folks and say I'm sorry, but the government is taking away your livelihood? (Porter, 2021). While Thomason's language is the sort that one might expect from a beleaguered mayor of a rust-belt city, it is worth reminding oneself that the 'livelihood' he is referring to is forcible confinement. Indeed, each of these cases throws into relief how easily local governments came to rely on the incarceration of immigrants as a kind of material resource.

This reliance raises questions about how to meaningfully achieve the goal of de-carceration and abolition. For towns like McRae and Big Spring, the relative scale of money and material poured into constructing carceral infrastructure made it very difficult for politicians and local communities to imagine alternate futures (Albright and Preston, 2016). Indeed, when asked about what alternate uses might be found for the Big Spring Correctional Facility, Mayor Thomason replied glibly, 'Who can really use a prison besides a prison? A very interesting summer camp?' (Porter, 2021). Thomason's refusal to see beyond the prison is somewhat ironic, because the Big Spring Correctional Facility itself had been cobbled together from an old motel and a former air force base (San Angelo Standard-Times, 1991). In turn, this path dependency helped the economy of outsourced incarceration to sustain itself, putting pressure on local leaders to become prison entrepreneurs and find new people to lock up. The end of the CAR prison system, then, suggests the need for a more nuanced understanding of the economic logics that shape contemporary practices of incarceration. Beyond the existing language of public and private, the closure of CAR prisons re-affirms the need to understand how money is raised, channeled into, and then extracted from the practice of incarceration.

Border Criminology and the meaning of the Criminal Alien Requirement Prison

Drawing on research within the field of Border Criminology, this thesis has examined how outsourced, all-foreign prisons combine the symbolic meaning and material practice of punishment and deportation to reshape the character of state institutions and redefine the value of citizenship. As part of a broader array of practices that define membership through criminal justice (Lerman and Weaver, 2014; Miller and Stuart, 2017), Criminal Alien Requirement prisons demonstrated the shifting character of the contemporary nation-state. Indeed, as noted in the first chapter, although there have been repeated calls to study the 'problem of foreignness' in American prisons (Bosworth and Kaufman, 2011), this thesis has offered the first empirical account of this system of outsourced, all-foreign prisons.

In a broad sense, this thesis has examined what the imbrication of punishment and migration control within all-foreign prisons can tell us about the contemporary nation-state. In doing so, this thesis has made three primary contributions. First, I have argued that the emergence, operation, and closure of this outsourced all-foreign prison system illustrates important features of the evolving relationship between prisons and migration control. Analysis of the creation of the Criminal Alien Requirement prison system shows us how political leaders imagined a new kind of penal process – what I have called the 'prison-to-deportation pipeline' – to manage the perceived intersections of the crises of prison overcrowding and the so-called 'criminal alien problem' (Schuck and Williams, 1999). The prison-to-deportation pipeline embodied an ideal type of governance with specific social, temporal, and administrative dimensions in which jails and prisons would be re-purposed as a tool for identifying and excluding non-citizens, and deportation was clearly framed as a spatial and temporal appendage to the penal sentence. The same logic of frictionless movement 'from the prison to the plane' that motivated the creation of the Criminal Alien Requirement prison system continues to motivate the efforts to target and deport foreign national offenders under Secure Communities and the Criminal Alien Program (Clinton, 1995; US Immigration and Customs Enforcement, 2009). Equally, echoing the preceding section, the recent closure of this system demonstrates the importance of both shifts in technological practices of border control and the expansion of civil immigration detention, as well as the evolving politics of criminal justice reform.

This historical analysis has also demonstrated how immigrant men became the default subjects of privately-operated incarceration within the Federal prison system. Indeed, the second key contribution of this thesis has been to demonstrate how outsourced incarceration has become premised on the differential treatment of racialized foreign-national offenders. As Federal policymakers sought to expand the incarceration and deportation of immigrant men, the totalizing logic of the 'prison to deportation pipeline' came into conflict with the practical constraints of neoliberal governance. As argued in Chapter Four, Federal politicians began to experiment with penal outsourcing precisely because it promised to allow for the ongoing expansion of incarceration and deportation, while reducing the cost and centralization of incarceration.

Critically, the model of penal outsourcing that emerged from this period of experimentation was predicated on the differential treatment of racialized foreign national offenders. As argued in Chapter Five, achieving the cost savings promised by privatization was only possible by excluding racialized immigrant men from the same rights, regulations, and benefits afforded to US-citizen men in Bureau of Prisons-run facilities. Politicians like Rep. Lamar Smith and Sen. Lawton Chiles used the racializing language of welfare chauvinism to scapegoat non-citizens as the cause of prison overcrowding, and exclude them from access to the prison services provided to US citizens (Chiles, 1987). That race and immigration status came to define the distinction between public and private incarceration within the Federal prison system was, I argue, the result of a broader shift in the economic logics of outsourced incarceration. The CAR prison system pioneered a new model of penal warehousing which sought to extract value from the social and biological reproduction of incarcerated people by maximizing the number of people incarcerated in a given facility while reducing the costs associated with keeping those incarcerated people alive (Guenther, 2017). As argued in Chapters Five and Six, the economic logics of outsourced incarceration shaped the social and material circumstances in which foreign-national men were incarcerated, how these facilities were staffed, and the absence of rehabilitative programs within them.

In turn, people incarcerated in Criminal Alien Requirement prisons understood their experiences of outsourced incarceration as a consequence of racial and national exclusion. Through the close analysis of the testimonies of incarcerated people, the final key contribution made by this thesis has been to demonstrate how the system of outsourced, all-foreign imprisonment produced experiences of organized abandonment. In Chapter Six, I demonstrated how exclusion from access to medical

care within CAR prisons was understood by incarcerated people to be intimately connected to race, nationality, and immigration status. For men like Jesus Galindo, Arjang Panah and Raul Topete, their exclusion from access to medical care was intimately tied to the absence of political recognition implied by the practice of outsourced incarceration. These experiences of abandonment constituted a kind of 'civic education' which defined exclusion from political membership in material and symbolic terms.

In turn, these experiences of abandonment provoked a variety of forms of resistance. By paying attention to the ways in which people incarcerated in all-foreign prisons articulated their exclusion, we have begun to see a way of challenging what Angelica Chazaro calls the 'criminal alien paradigm' and uncoupling practices of punishment and migration control. Even in the absence of a realistic prospect of success, men incarcerated in CAR prisons used administrative grievances and legal suits to contest their abandonment and force prison administrators to take their pain seriously. These forms of contestation did not just seek to redress the material conditions of confinement in CAR prisons. Rather, efforts to redress medical neglect sought to force prison administrators to recognize claims to basic rights that were consistently denied to 'deportable aliens' (BOP, 2019).

This thesis has been guided by the words of incarcerated people. It seems fitting, then, to end with the testimony of a participant in the final hunger strike at North Lake Correctional Facility in August 2020,

'Our time is past due. It is not past due by three days, it is not past due by five days. It's past due by almost three months … I do deserve the same rights as any other human, the same rights as any other prisoner across the country' (NDCM, 2020d)

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