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CRIMINALIZING IMMIGRANTS

BORDER CONTROLS, ENFORCEMENT, & RESISTANCE



CONFERENCE REPORT

PREPARED BY THE CENTER FOR THE STUDY OF INEQUALITY

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WE ARE DEVOTED TO UNDERSTANDING

INEQUALITY

CSI fosters new and cutting-edge research, trains undergraduate and graduate students, encourages the exchange of ideas among inequality researchers, and disseminates research findings to a broader public.

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DEMOGRAPHERS

CPC coordinates and promotes national and international population research, encourages cross-disciplinary innovation, facilitates research funding, strengthens interdisciplinary training, and translates academic studies into policy recommendations and guidance for practitioners.

1

EXECUTIVE SUMMARY

More than 250 million people emigrate from the countries of their birth in order to escape poverty, secure better opportunities for their families, or avoid political suppression and war. Their arrival in a new country often triggers a backlash in the form of new laws that limit immigration, renewed efforts to deter immigration, or more stringent enforcement of existing laws. This criminalization of immigration is often violent, and can have deep repercussions for immigrants, their families, employers, and the sending and receiving communities.

On November 9-10, 2017, CSI brought together world-class social scientists, legal scholars, and local community organizers for a conference on the criminalization of immigration. At the conference, scholars exchanged ideas, discussed results of research, engaged with immigration law practitioners and advocates, and identified policy levers that might balance the rights of countries to enforce their borders with the need to protect the basic civil and human rights of immigrants.

5 THINGS WE LEARNED



The number of immigrants who are apprehended, detained, and removed from the U.S. has been growing since 9/11, especially under the new Presidential administration. Between January 22 and April 29 of 2017, Immigrations and Customs Enforcement (ICE) made 10,800 non-criminal arrests. This is an increase of more than 150 percent from 2016, when ICE made only 4,200 arrests.



Immigration enforcement in the U.S. has become the responsibility of a much broader range of law enforcement agencies. Today, unlike the pre 9/11 era, local and state law enforcement agencies can partner with ICE and gain the authority to enforce immigration law. This has altered the relationship between immigrant communities and local law enforcement.



The criminalization of immigration, and in particular deportation, has negative effects on families, such as increasing the chances that children enter the foster, reducing the financial resources of the families of deported men, and placing new demands on children to care for other family members or enter paid labor. It can thus exacerbate inequality in the next generation.



Detainees are often held in private facilities or in remote areas where they have little access to friends, family, and legal counsel. The privatization of detention facilities contributes to political pressure for more enforcement of immigration law.



Immigration policies and on-the-ground enforcement are increasingly tied to race, religion, and national origin. Latinos are not only the primary targets of U.S. immigration control efforts, but also dominant share of the agents who carry out these efforts.



IMMIGRATION

Why it matters

“Immigration is one of the **most consequential social phenomena of our time**, not only because of the sheer number of people who are living outside their countries of birth, but because questions over whether and how to incorporate immigrants into the host society have become such political flashpoints.”

Kim Weeden

Director, Center for the Study of Inequality

2

KEYNOTE: DAVID COOK-MARTÍN

The conference began Thursday afternoon with a keynote address, **How Nation-States Enforce Boundaries: The Reconciliation of People and Markets through Migration Policy**, by David Cook-Martín, Professor of Social Research and Public Policy at New York University-Abu Dhabi.

SUMMARY

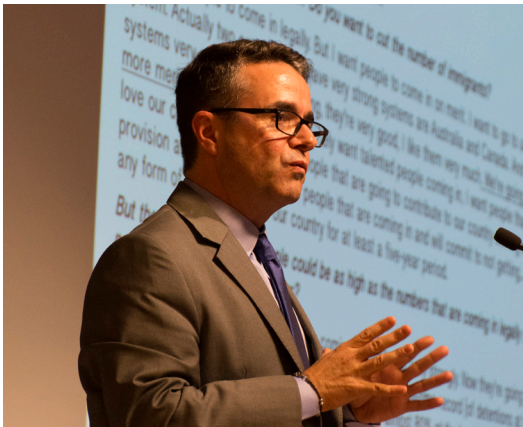


PHOTO CREDIT: MARK VORREUTER

How do nation-states police their borders and enforce internal boundaries? According to Cook-Martín, young nation-states had to gain acceptance for the notion that they should control who enters their territory, and to build bureaucratic capacity to implement this idea. Subsequently, nation-states have had to manage the competing forces of curating a “desirable” population with those of securing workers for increasingly international economies.

Drawing on a study of immigration policy in different countries and historical eras, Cook-Martín argued that we are in the midst of a momentous change in how nation states determine which newcomers are allowed to enter and whether they have the chance at becoming full members of the host society.

For much of the last century, immigration policies were built around the assumption that those who came would eventually become citizens. This assumption is breaking down, and temporary migration programs are becoming more common again.

Temporary migration programs allow certain classes of immigrants to enter the United States for the duration of their jobs but offer few paths to permanent legal



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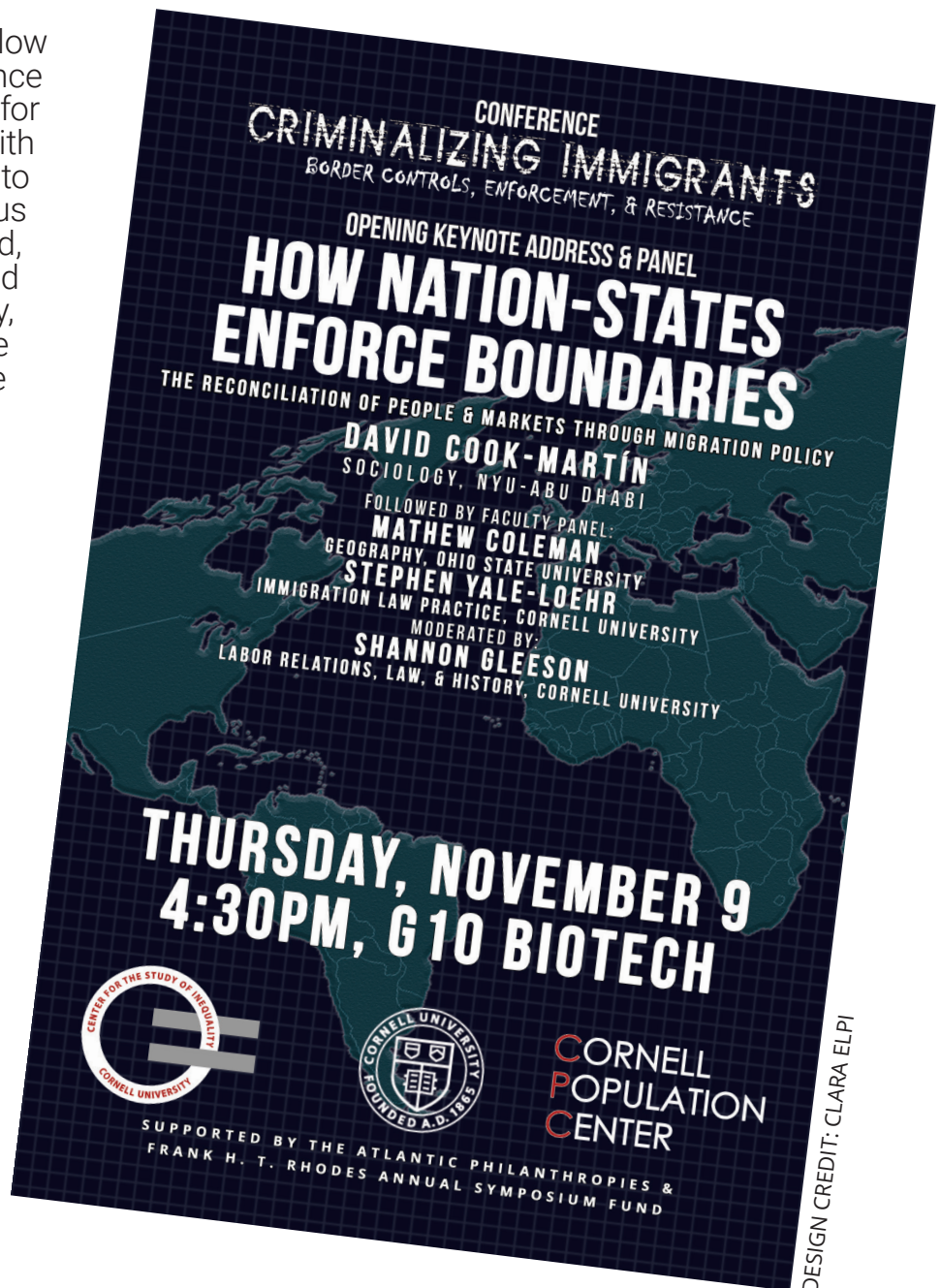
KEYNOTE

David Cook-Martín

citizenship. They allow political elites to balance two needs: the demand for labor, on one hand, with nationalistic impulses to maintain ethnic or religious purity, on the other. And, as we see in the U.S. and other countries today, temporary migrants have limited rights to participate in the economic system, political system, or civil society of their host countries.

Cook-Martín also noted that immigration law always allows for discretion and decision-making on the part of the courts or on-the-ground bureaucrats. This discretion creates a space for discrimination by race, religion, or national origin. Discrimination affects not only immigrants, but citizens of the same race, religion, or ethnicity as the immigrants.

The implication is that even if laws are stable, changes in how they are interpreted and enforced affects who has access to full civil and human rights. This, Cook-Martín argued, is why scholars need to study on-the-ground practices, identify their consequences, and call out those that lead to violations of human rights or to the growth of inequality.



3

KEYNOTE: MAT COLEMAN

“Cold Casing” Racialized Police Power and the Closure of Law Enforcement. Keynote address by Mathew Coleman, Associate Professor of Geography, Ohio State University.

SUMMARY

Scholars who study policing often begin with the assumption that police react objectively to crime, and their policing only begins once a crime has been committed. In this view, policing is rational, benign, objective, and racially neutral. According to Coleman, this assumption leads scholars to focus too much of their effort on identifying individual interactions where officers deviate from objectivity, as when officers “profile” an individual on the basis of their race.

Coleman argues that this is the wrong way to look at policing, because it ignores the power that police have to define what a crime is before reacting to it, and to use policing as a weapon to “devalue non-white bodies and non-white spaces.”

He based his argument on fieldwork that he and his collaborators did in Raleigh-Durham, North Carolina, and Atlanta, Georgia. Both of these sites are hotspots for §287(g) and Secure Communities policing in which state or local law enforcement agencies partner with ICE, and thereby gain new authority to enforce immigration law within their jurisdiction.

Although the §287(g) and Secure Communities programs do not explicitly say that enforcement officers can use routine traffic stops or licensing roadblocks to check for immigration status, immigrant rights groups report that a growing number of deportations are due to these practices. Undocumented immigrants who are stopped



PHOTO CREDIT: MARK VORREUTER

KEYNOTE

Mat Coleman

for a routine traffic inquiry or at a licensing roadblock are likely to be detained for a “no operator’s license” infraction and, later, charged with violating immigration law. However, officers have enormous discretion over whether and where to put up licensing roadblocks or stop motorists for traffic violations. This discretion, according to Coleman, opens the door to racialized policing.

One implication of Coleman’s argument is that to understand the criminalization of immigration, we need to supplement statistical data on detentions and deportations with studies of how immigration enforcement works “on the ground.” Through studies of actual policing practices, not just official outcomes, researchers can uncover how power is exercised and how it affects those who are its subjects.

THE ROADBLOCK TO STUDYING ROADBLOCKS

One of the challenges of studying licensing roadblocks is that they rarely leave a material trace or documentation. Coleman shared a story of a roadblock he encountered by accident, on his way back from interviews for the project. He was stopped at the roadblock, and his license checked, which took fewer than 15 seconds. By the time Coleman drove down the road and turned around, the roadblock had disappeared. In its place were four cars and a motorcycle on the shoulder with three police cruisers, much as one might see at an accident site or multi-car speeding stop. Roadblocks can be hidden even to scholars on the lookout for them.

4

CONFERENCE

FRIDAY, NOVEMBER 9, 2017

CONFERENCE SESSIONS

PANEL I: DETERMINANTS OF IMMIGRATION ENFORCEMENT & IMPACTS ON IMMIGRANT WELLBEING

PANEL II: RACE, DETENTION AND DEPORTATION PRACTICES, AND THE COURTS

PANEL III: FAMILY IMPACTS ON DEPORTATION & IMMIGRANT EXPERIENCES OF CRIME

PANEL IV: TEMPORARY MIGRATION REGIMES

PANEL I

DETERMINANTS OF IMMIGRATION ENFORCEMENT AND IMPACTS ON IMMIGRANT WELLBEING

Panelists: Catalina Amuedo-Dorantes (San Diego State University); Margot Moinester (Harvard University). Panel discussant: Jennifer Ifft, Assistant Professor of Agribusiness and Farm Management, Cornell University.

CATALINA

AMUEDO-DORANTES

SUMMARY



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Immigration Enforcement and Foster Care Placements. Catalina Amuedo-Dorantes, Professor of Economics, San Diego State University.

The past decade has seen an unprecedented increase in immigration enforcement in the U.S. Intensified immigration enforcement, particularly at local and state levels, has been responsible for approximately 1.8 million deportations between 2009 and 2013.

These deportations often break up families and, when parents are deported or detained, put children into the foster care system. This, in turn, puts children at greater risk for severe mental and physical health problems, greater risk for adult poverty, greater risk for criminal behavior, and other negative outcomes.

According to data presented by Amuedo-Dorantes, changes in interior immigration enforcement between 2001 and 2015 raised the share of Hispanic children in foster care by between 15 and 21 percent. This increase seems to be driven by the police-based local initiatives, such as Secure Communities, that increased parental deportations.

Amuedo-Dorantes highlighted how immigration enforcement and criminalization can have unanticipated consequences. These consequences are felt by immigrant families and, in this case, their children, many of whom are American citizens. However, they also put additional strain on social services, such as the foster care system, that serve many different constituencies.

WHY SHOULD WE CARE?

THE NUMBER OF PEOPLE AFFECTED:

- In 2009, 23% of youth under 18 resided in an immigrant household—29% of them had an undocumented parent
- Most of those children are U.S.-born and accounted for 8% of all U.S.-born children in 2012—twice as many as in 2002
- In 2010, 5,000 children had entered foster care due to the deportation of a parent—a figure estimated to triple in the next 5 years

CHILDREN WHO GREW UP IN FOSTER CARE:

- Are more likely to have mental and physical health problems
- Tend to have worse and fewer labor market opportunities
- Are far more likely to commit crimes

MARGOT MOINESTER

SUMMARY

Disparities by Nationality in U.S. Immigration Apprehensions, Detentions, and Deportations, 1980-2015. Margot Moinester, PhD student in sociology, Harvard University.

In the U.S., immigrants are increasingly likely to be apprehended, detained, or removed (deported). From 1980 to 2010, the probability of removal for noncitizens residing in the U.S. rose from a 6 in 100,000 chance in 1980 to a 570 in 100,000 chance in 2010.

Compared to immigrants of decades past, today's immigrants are also much more likely to spend the full amount of time between being apprehended and being deported in detention. One possible factor, according to Moinester, was the privatization of prisons to hold immigrant detainees, which began in the early 1980s. Others include the introduction of immigrant detainers in 1986 and mandatory detention statutes in 1988.

The risk of being apprehended, detained, or deported has also become more closely linked to nationality. All noncitizens have seen an increase in the probability of removal, but this growth was especially extreme for immigrants from Central America and Mexico. Central Americans faced the highest probability of apprehension, but once apprehended, Mexicans have the highest probability of being detained and removed. These disparities point to rising racial and ethnic inequality in the criminalization of immigration.



DAVID NELSON PHOTOGRAPHY

PANEL II

RACE, DETENTION & DEPORTATION PRACTICES, & THE COURTS

Panelists: Irene Vega (UC Irvine), Emily Ryo (University of Southern California), Asad Asad (Cornell University). Panel Discussant: Ben Rissing, Assistant Professor of Organizational Behavior, Cornell University.

IRENE VEGA

SUMMARY

Patrolling Territorial Borders, Negotiating Symbolic Boundaries: How Latino Border Patrol Agents Grapple with their Racialized Mandates. Irene Vega, Postdoctoral Fellow in Criminology, Law and Society, University of California Irvine.

Latinos are **not only the primary targets** of U.S. immigration control efforts, they are also a **large portion of agents** carrying out that work.

Irene Vega
University of California - Irvine

The U.S. immigration system is racialized on both sides of the bureaucratic encounter—Latinos make up fifty percent of the U.S. Border Patrol agents, and nearly one third of ICE officers, as well as the majority of migrants apprehended

and deported by these government agents. Vega's paper draws on semi-structured interviews with sixty active Border Patrol agents, thirty seven of whom are Latino, to ask: How do race and ethnicity shape agents' understanding of their work and their identities as professionals?

Vega's interviews show that Latino agents are socially sanctioned by migrants and by people in their personal networks because they violate an expectation of ethnic solidarity. Border Patrol agents have different responses to the tension between the expectation of ethnic solidarity, on one hand, and the demands of their jobs, on the other. Some agents adopt a strategy of what Vega calls "impartial professionalism": they downplay race and ethnicity, and they adhere to strict ideas about equal treatment. Others adopt a strategy of "compassionate professionalism": rather than downplaying race and ethnicity, they leverage their cultural similarities with the migrants to "do their job better" than non-Latino agents. These "compassionate professionals" tend to have more meaningful attachments to the ethnic community, but compartmentalize these attachments from their roles as agents who police this community.

EMILY RYO

SUMMARY

Inequalities in U.S. Immigration Detention: A National Study. Emily Ryo, Associate Professor of Law and Sociology, University of Southern California and Ian Peacock, Ph.D. Candidate, Sociology, University of California – Los Angeles.

The Department of Homeland Security has broad authority to detain noncitizens



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who are in deportation proceedings. Because immigration detention is considered a civil matter, detained immigrants do not have the same legal protection that criminal defendants have. For example, immigrant detainees do not have the right to government-appointed counsel, nor the right to a speedy trial.

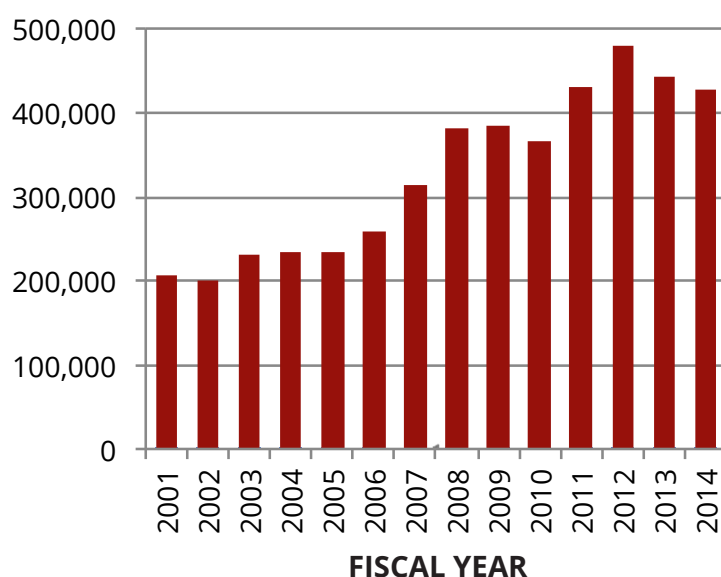
Immigrant detention on the ground, however, is indistinguishable from criminal incarceration in many respects. As is the case with criminal incarceration, immigrant detainees must wear prison uniforms, face strict daily regimens under constant surveillance, and are often confined in remote areas that are far removed from family,

friends, and legal services.

Drawing on data pertaining to all noncitizens held in immigration detention in the United States in fiscal year 2015, Ryo and Peacock conducted comprehensive analysis of inequalities in immigration detention. Ryo and Peacock's analysis shows that detainees who are confined in privately-operated facilities and in facilities far away from legal services had longer detention lengths than those in other types of facilities.

They also analyzed inequalities in detention by nationality and gender. They find, first, detainees from Africa (and to a lesser extent, those from Latin America and Asia Pacific regions) generally experienced the longest detention, whereas Mexican detainees generally experienced the shortest detention. Second, although men who were ultimately removed from the United States spent less time in detention than women, men who obtained legal relief from removal or temporary release during the pendency of their deportation proceedings experienced longer detention than women.

ICE DETAINEE POPULATION, 2001-2014



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ASAD L. | ASAD

SUMMARY



DAVID NELSON PHOTOGRAPHY

Immigration Court and the Social Processes of Judicial Decision-Making. Asad L. Asad, Postdoctoral Fellow, Center for the Study of Inequality, Cornell University.

In 2011, 265 immigration judges completed more than 300,000 removal proceedings, and another 100,000 asylum hearings, bond hearings, and filings of motions. These detention and deportation court proceedings have an enormous impact on noncitizens. But how do immigration courts operate? How do immigration judges make decisions about whether to order a removal (deportation) of a noncitizen? Asad's research draws on archival documents and ethnographic observations in five immigration courtrooms in Dallas, Texas, to begin to understand how immigration judges interpret the law and make removal decisions.

Faced with full dockets and an unprecedented backlog of cases, the judges delivered what Asad calls "scripted justice": well-rehearsed legal scripts regarding the limited rights and legal remedies available to noncitizens. In most cases he saw, this scripted justice resulted in routine removals, regardless of which immigration judge sat on the bench. However, when the particulars of a case deviated from the routine, judges delivered "extemporaneous justice": they acknowledged in open court the personal or social "worthiness" of the noncitizen, and in some cases offered lifestyle advice, even as they ordered noncitizens removed.

Judges described how immigration law constrains their discretionary authority in detention and deportation proceedings, particularly if a noncitizen has a criminal record. Criminal law takes primacy in immigration law, and can lead to the removal of noncitizens who judges think are worthy to stay. Asad's findings suggest that immigration law and enforcement, rather than individual proclivities of judges, delimits the legal remedies available to noncitizens. The law, not simply the attitudes or motivations of judges, creates the conditions that reproduce social inequality once a noncitizen has been apprehended or detained.



PANEL III

FAMILY IMPACTS ON DEPORTATION AND IMMIGRANT EXPERIENCES OF CRIME

Panelists: Tanya Golash-Boza (University of California – Merced), Amada Armenta (University of Pennsylvania). Discussant: Steven Alvarado, Assistant Professor of Sociology, Cornell University.

TANYA

GOLASH-BOZA

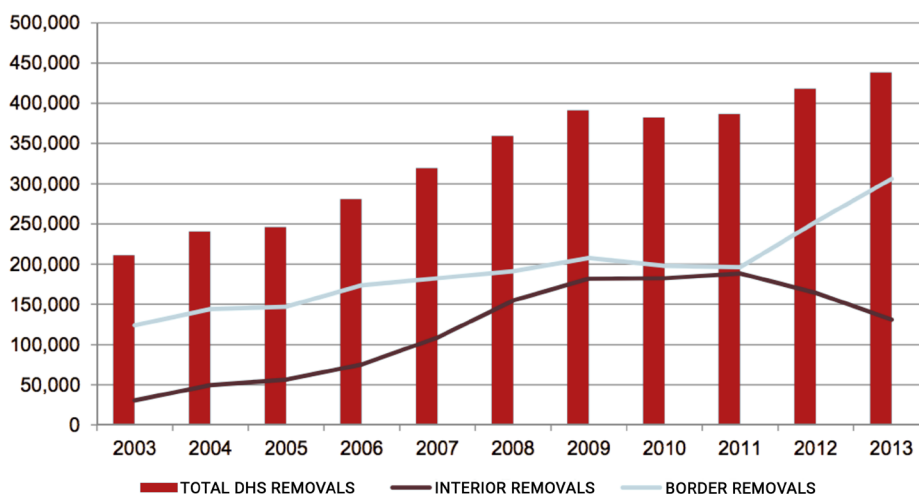
SUMMARY

The Collateral Consequences of Mass Deportation: A Study of the Family Members of Deportees in the Central Valley of California. Tanya Golash-Boza, Professor of Sociology, University of California Merced.

Deportations from the U.S. reached record highs in the aftermath of the Great Recession. In 2008, over 400,000 people were deported—more than were deported in all of the 1980s. Over 90% of these deportees are men, and nearly all are sent to Latin America. Most have family members who are U.S. citizens, nearly all of whom continue to live in the U.S. Golash-Boza's paper draws from interviews with 25 people from California who experienced the deportation of a family member to try to understand the effects of deportation on families.

According to Golash-Boza, there are many parallels between how families of deported men fare and how families of an incarcerated parent, also usually the father, fare. Deportation, like incarceration, typically leads to the loss of an income, which in turn requires the families to move and children to change schools. The deportation of a parent leaves the other parent with less time and money to invest in their children, and children often take on new responsibilities such as caring for younger siblings, housework, or paid labor. Like children with incarcerated parents, children of deported parents are more likely to suffer mental health problems such as depression, anxiety, and aggressiveness, or show signs of post-traumatic stress disorder. The criminalization of immigrants, like mass incarceration, contributes to inequality in the next generation.

DHS REMOVALS BY ARREST LOCATION, '03-'13



SLIDE CREDIT: ROSENBLUM, MARC R. AND KRISTEN MCCABE. 2014. DEPORTATION AND DISCRETION: REVIEWING THE RECORD AND OPTIONS FOR CHANGE. WASHINGTON, DC: MIGRATION POLICY INSTITUTE. ALL RIGHTS RESERVED.

AMADA | ARMENTA

SUMMARY



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Immigrants & Justice: Perceptions of Vulnerability among Latino Immigrants in Philadelphia. Amada Armenta, Assistant Professor of Sociology, University of Pennsylvania.

Empirical research from the last decades has found no relationship between immigrants and crime. Still, American political discourse is filled with presumptions that immigrants are criminal and “illegal.” Armenta argues that “illegality” makes immigrants vulnerable to being victims of crimes, because they are, or at least are believed to be, less likely to report crimes to authorities. However, undocumented immigrants still interact with elements of the state on a regular basis.

How do unauthorized immigrants strategically resolve problems of law in their everyday lives? How do respondents manage and explain legal compliance and noncompliance? To answer these questions,

Armenta interviewed Latino immigrants with precarious legal status, police officers, and other local stakeholders in Philadelphia. Philadelphia, unlike many new immigrant destinations, has relatively inclusive policies affecting unauthorized immigrants.

Armenta’s early results show that immigrants believe there is more “order” and “respect” for the law in the U.S. than in their home countries, and this affects their interactions with police. However, immigrants’ attitudes toward the law differ according to their social and economic attachments to the U.S. Those



DAVID NELSON PHOTOGRAPHY

with family and jobs in the U.S. were oriented toward staying in the U.S. and “getting by the right way”; these immigrants would bend the rules when necessary and often justify this with claims about moral worthiness. Like non-immigrants, unauthorized immigrants interact with laws and legal institutions strategically to achieve their goals.

PANEL IV

TEMPORARY MIGRATION REGIMES

Panelists: Natasha Iskander (New York University); Daniel Costa (Economic Policy Institute). Discussant: David Cook-Martin, Professor of Sociology, NYU-Abu Dhabi.

NATASHA ISKANDER

SUMMARY

The Spatial Segregation and Surveillance of Migrants: The Case of Qatar. Natasha Iskander, Associate Professor of Public Policy, New York University.

Qatar is often represented as a dystopian outlier in its treatment of migrant workers, with an anachronistic regime of labor management that harkens back to slavery. Despite this, only somewhat milder versions of Qatar's emergent strategies of migrant control are being adopted by many other countries. Qatar's migration policies, according to Iskander, are not qualitatively different from America's policies, although they are a more extreme case of the same logic.

What is that logic? In Qatar, security and detention practices tag migrants as skilled or unskilled and sort migrants into distinct categories based on these labels. These categories affect immigrants' political rights, or lack thereof. Unskilled migrants, in particular, are subject to more of what Iskander calls "bodying practices" (see inset box) that reduce migrants to their bodies, strip them of their political and social rights, and prevent them from asserting their membership in any political and economic community.



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BODYING PRACTICES IN DETENTION SPACES

PRACTICES

Detention	Depriving of political rights
Sorting by demographics, separating families	Depriving of right to family and social ties
Constraints on physical movement	Depriving of right to mobility through space
No language, no information, no clear process	Depriving of right to time and to a future

BODYING EFFECTS

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Iskander concluded by noting that as technologies change, so will skills, and so will the boundaries between skilled and unskilled migrants. One way forward may be to devise a "politics of immigration" that relies on learning rather than on fixed categories of skill.

DANIEL COSTA

SUMMARY



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Temporary Foreign Worker Programs: Expansion and Exploitation Under Trump? Daniel Costa, Director of Immigration Law and Policy Research, Economic Policy Institute.

Temporary foreign worker programs—commonly referred to as guestworker programs—allow foreign citizens to work in the U.S. temporarily on nonimmigrant visas. Guestworkers, in effect, are the modern-day equivalent of indentured servants: they pay hefty fees to recruiters

ESTIMATED NUMBER OF TEMPORARY FOREIGN WORKERS EMPLOYED IN THE US, 2013


NONIMMIGRANT VISA CLASSIFICATION OR STATUS	NUMBER OF WORKERS
H-2A visa for seasonal agricultural occupations	74,859
H-2B visa for seasonal non-agricultural occupations	94,919
H-1B visa for specialty occupations	460,749
J-1 visa for Exchange Visitor Program participants	215,866
J-2 visa for spouses of J-1 exchange visitors	8,243
L-1 visa for intracompany transferees	311,257
L-2 visa for spouses of intracompany transferees	38,952
O-1/O-2 visa for persons with extraordinary ability (O-2 for their assistants)	29,894
F-1 visa for foreign students, Optional Practical Training program (OPT) and STEM OPT extensions	139,155
TN visa or status for Canadian and Mexican nationals in certain professional occupations under NAFTA	50,000
Total	1,423,894

to find a U.S. job, their visas tie them to a single employer, and, legally, they can be paid less than the going rate for their labor. This status leaves guestworkers without much recourse if they experience wage theft or other safety and labor violations in the workplace.

In 2013, there were 1.4 million temporary foreign workers in the U.S., or about 1% of the labor force. More than half of these workers are in seasonal occupations, the H1-B “specialty occupations,” and the J-1 and J-2 visa program, which over the years has transformed into a low-wage work program.

Seasonal guestworker programs, in particular, are expanding rapidly. The H-2A program for seasonal agricultural workers has more than doubled in the last 5 years, and now provides about 10% of the farm labor force. The limit for the H-2B program, for seasonal nonagricultural occupations, was increased by 15,000 in July 2017.

Costa also discussed the visa policies that are currently being implemented, proposed, or debated in the Executive Branch and Congress. President Trump changed his position on H-1B visas many times during his campaign, and so far has expanded rather than restricted H-2B programs. His position seems to be pro-business, in that he has expanded the pool of low-wage guestworkers, while also making it more difficult for businesses to bring college-educated workers from abroad.



LASTLY

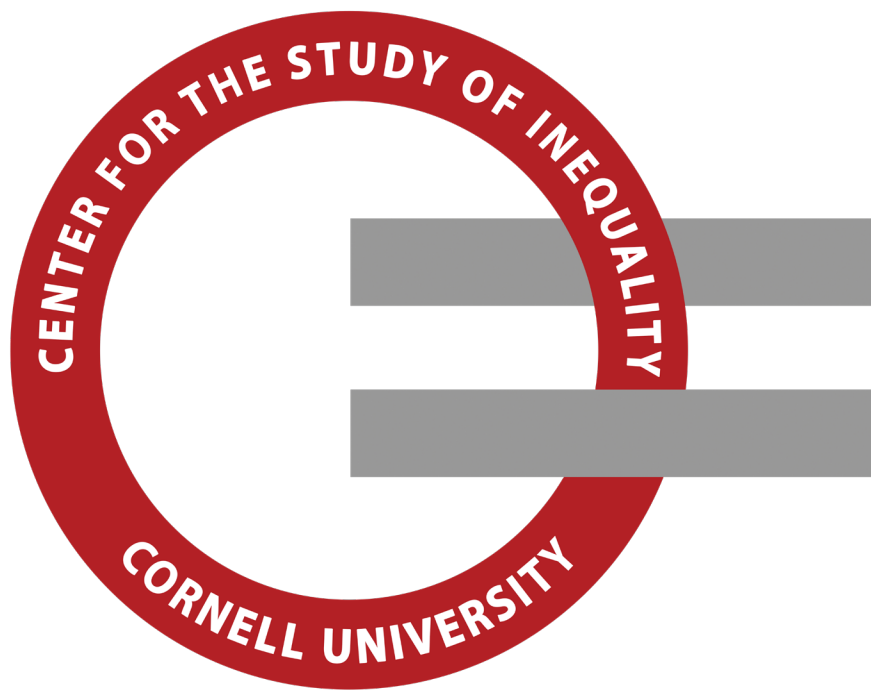
THANK YOU

TO ALL WHO MADE THIS POSSIBLE!

The conference was organized by CSI staff and Cornell faculty members: Filiz Garip, Professor of Sociology in the College of Arts & Sciences; Shannon Gleeson, Associate Professor of Labor Relations, Law, and History in the School of Industrial & Labor Relations; and Matthew Hall, Associate Professor of Policy Analysis and Management in the College of Human Ecology.

The conference is co-sponsored by the Center for the Study of Inequality and the Cornell Population Center. It was made possible through generous funding from the Frank H. T. Rhodes Annual Symposium Fund and the Atlantic Philanthropies. The keynotes and panel talks are summarized in this document. For more information on the conference, please contact the Center for the Study of Inequality, 363 Uris Hall, Ithaca, NY 14853; 607/254.8674; or inequality@cornell.edu.

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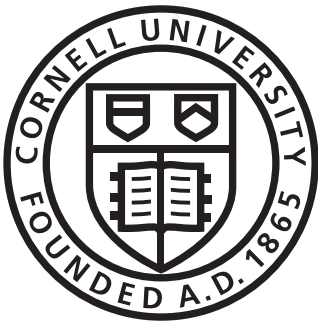
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