

Introduction to the Special Issue on Immigration Detention

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In a recent article, I called for the development of a systematic field of study devoted to investigating the causes, conditions, and consequences of immigration detention (Ryo 2019). The two articles in this special issue are cutting-edge studies that answer that call. They leverage multiple methods to overcome enormously difficult data challenges that plague this area of research. As I have argued, “immigration detention ... is shrouded in secrecy and bureaucratic barriers that obstruct researchers’ access to government data and detention facilities” (Ryo 2019: 98). The studies presented in this special issue illustrate how researchers can rise to this challenge with creativity and persistence to shine a light on largely hidden but critical aspects of immigration detention.

Ingrid Eagly and Steven Shafer draw on both quantitative and archival data analyses to uncover the origins, growth, and use of the Institutional Hearing Program (IHP), a little known but important program that has evolved to allow immigration judges to adjudicate deportation hearings inside prisons or jails where immigrants are serving criminal sentences. As Eagly and Shafer show, IHP originated in the 1980s with the Cuban refugee wave. The arrival of Cuban refugees, many of whom American officials perceived as dangerous criminals (despite their lack of criminal history in the United States), prompted the Immigration and Naturalization Service¹ to expand its civil detention capacity by turning to the Federal Bureau of Prisons.

After prisons became the site of immigration detention, and immigration judges began holding removal hearings in prisons

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¹ The INS is the predecessor agency to the Immigration and Customs Enforcement (ICE) (Ryo and Peacock 2020: 68).

for civil detainees, it became all but natural for the immigration judges to start holding removal hearings inside prisons for immigrants serving their criminal sentences. Eagly and Shafer draw on diverse data sources, including agency records and immigration court records, to examine this expanding system of prison-based immigration courts. Their careful analysis reveals a system that has targeted Latino and Black immigrants for swift deportation. More broadly, their nuanced investigation illuminates an important dimension of the growing intersection between immigration and criminal law: the use of carceral spaces for immigration detention and control.

Mirian Martínez-Aranda's study focuses on the inner workings of the modern US immigration detention system and its profound and pernicious collateral consequences. Drawing on her rich ethnographic fieldwork with immigrant detainees and their family members, her study provides a revealing portrayal of how indeterminate and prolonged confinement in immigration detention devastates not only the lives of individual detainees, but also the lives of their family members. To lay bare their lived experiences of trauma arising from a loved one's confinement in immigration detention, Martínez-Aranda develops a new theoretical concept called "collective liminality."

Collective liminality draws our attention to the ever-present threat of permanent family separation and economic/emotional precarity that detainees and their families experience as confinement continues. As Martínez-Aranda poignantly concludes, these families "endure not only expenses, but indefinite expenses; not only pain, but indefinite pain." Equally importantly, the study highlights how the concept of collective liminality can be extended to understand the effects of other US immigration enforcement strategies, such as the Migrant Protection Protocols, which forces migrants to remain in Mexico indefinitely as they await the adjudication of their asylum claims (Slack and Martínez 2020).

These studies are sure to inspire other innovative scholarship on immigration detention that is theoretically rich and methodologically diverse. Development on both fronts is needed now more than ever. As the COVID-19 pandemic engulfed the nation in the spring and summer of 2020, jails, prisons, and detention facilities became a tinderbox of infection (Carcamo et al. 2020). Immigrant detainees are exceedingly vulnerable due to their inability to practice the twin pillars of infection prevention: social distancing and disinfection (Meyer et al. 2020). Immigrant detainees are also at a heightened risk of COVID-19-related complications and deaths due to unsafe conditions and inadequate health care in detention facilities (see Office of Inspector General 2019a, 2019b). As of

October 20, 2020, Immigration and Customs Enforcement (ICE) has reported 6,743 confirmed COVID-19 cases among immigrant detainees, including detainees confined in family detention facilities (U.S. ICE 2020). Some researchers have estimated that the actual count of confirmed cases may be up to 15 times higher than what ICE has reported (Kuo et al. 2020). Yet in the fall of 2020, ICE resumed its enforcement operations—a move that will inevitably increase the size of the detained population (Jordan 2020).

These events remind us anew of the extreme vulnerability of immigrant detainees and the durability of immigration detention as an institutional feature of the US immigration system. What are the short- and long-term health and social consequences of the pandemic on the detainee population and the broader communities in which the detainees and their families are embedded? How has the pandemic affected detainees' access to counsel, their likelihood of release from detention, and their ability to fight removal proceedings in immigration court? What social movement tactics and legal strategies have emerged to reduce the detainee population during the pandemic, and what is the relationship between those tactics and strategies on the one hand, and the broader decarceration movement aimed at abolishing immigration detention on the other? To what extent did the pandemic and ICE's responses to the pandemic affect existing racial, gender, and class inequalities in immigration detention? These and related questions warrant careful and systematic research.

Beyond immediate questions related to the unfolding COVID-related crisis, there are other important enduring questions about immigration detention that have taken on a new meaning and salience in the current political context. In the past year, for example, the issue of privatization of immigration detention has received increased scrutiny among lawmakers, advocates, and the financial sector. In 2019, California enacted a law to phase out the use of private prison companies in the operation of state prisons and immigration detention facilities.² At the same time, major US banks announced in 2019 that they would no longer finance or invest in private prison companies (Jefferies 2019). These shifts are significant given that the majority of immigrant detainees are held in facilities operated by private prison companies (Cho et al. 2020). Analyzing the implications of these changing dynamics and the responses of private prison companies constitutes an urgent task for researchers.

Equally important are questions relating to the treatment of migrant children in custody. In 2019 alone, at least six migrant

² Assembly Bill 32, 2019–20 Gen. Assemb., Reg. Sess. (Cal. 2019).

children died in Customs and Border Protection detention centers (Halevy-Mizrahi and Harwayne-Gidansky 2020). Furthermore, more than 69,000 migrant children were held in the custody of the Office of Refugee Resettlement (ORR) in fiscal year 2019—the highest ever in ORR history (Ryo and Humphrey 2021). Migrant children in custody are highly vulnerable given the trauma and violence they commonly experience in their own countries, during their journey to the United States, and once they enter into US government custody (MacLean et al. 2019; Grace and Roth 2020). Yet, recent reports indicate that the US government has implemented a “shadow immigration system” on the US–Mexico border, whereby private contractors are detaining migrant children in hotels before they are quickly expelled from the United States (Rose and Peñaloza 2020). These evolving enforcement practices underscore the need for sustained research on the detention experiences of migrant children.

The issues that I have highlighted are only a few of the many important emerging developments relating to immigration detention and immigrant detainees in the United States. I hope that this special issue will serve as a reminder and a call to action for scholars to undertake new and rigorous research that can inform policymaking in protection of some of the most vulnerable among us.

References

- Carcamo, Cindy, Andrea Castillo, Molly Hennessy-Fiske, Maura Dolan, Brittny Mejia, and Molly O’Toole. 2020. “Coronavirus is Turning an Overloaded Immigration System into a “Tinderbox.” *Los Angeles Times*, March 18. Available at: <https://www.latimes.com/california/story/2020-03-18/coronavirus-strains-immigration-system> (accessed October 3, 2020).
- Cho, Eunice Hyunhye, Tara Tidwell Cullen, and Clara Long. 2020. *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*. ACLU, Human Rights Watch, and National Immigrant Justice Center. Available at: <https://perma.cc/B86T-MZ58> (accessed October 3, 2020).
- Grace, Breanne Leigh and Benjamin J. Roth. 2020. “Bureaucratic Neglect: The Paradoxical Mistreatment of Unaccompanied Migrant Children in the US Immigration System.” *J. of Ethnic and Migration Studies* (in press).
- Halevy-Mizrahi, Noy R. and Ilana Harwayne-Gidansky. 2020. “Medication Confiscation: How Migrant Children Are Placed in Medically Vulnerable Conditions,” *145 Pediatrics* 1-3.
- Jefferies, Danielle C. 2019. “Private Prisons, Private Governance: Essay on Developments in Private-Sector Resistance to Privatized Immigration Detention,” *15 Northwestern J. of Law & Social Policy* 82-97.
- Jordan, Miriam. 2020. “After a Pandemic Pause, ICE Resumes Deportation Arrests.” *New York Times*, September 12. Available at: <https://perma.cc/J8Z7-JPKT> (accessed October 3, 2020).
- Kuo, Dennis, Noelle Smart, Zachary Lawrence, and Adam Garcia. 2020. *The Hidden Curve: Estimating the Spread of COVID-19 among People in ICE Detention*. Vera

- Institute of Justice. Available at: <https://perma.cc/SJJ8-K3FV> (accessed October 3, 2020).
- MacLean, Sarah A., Priscilla O. Agyeman, Joshua Walther, Elizabeth K. Singer, Kim A. Baranowski, and Craig L. Katz. 2019. "Mental Health of Children Held at a United States Immigration Detention Center," 230 *Social Science & Medicine* 303-8.
- Meyer, Jaimie P., Carlos Franco-Paredes, Parveen Parmar, Faiza Yasin, and Matthew Gartland. 2020. "COVID-19 and the Coming Epidemic in US Immigration Detention Centres," 20 *Lancet Infectious Diseases* 646-8.
- Office of Inspector General. 2019a. *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*. Washington, DC: U.S. Department of Homeland Security. Available at: <https://perma.cc/RZ4J-QLNV> accessed October 3, 2020.
- . 2019b. *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*. Washington, DC: U.S. Department of Homeland Security. Available at: <https://perma.cc/HP8Y-PGQU> (accessed October 3, 2020).
- Rose, Joel and Marisa Peñaloza. 2020. "Shadow Immigration System: Migrant Children Detained In Hotels By Private Contractors." *NPR*, 20 August. Available at: <https://perma.cc/6NT8-LDBL> (accessed October 3, 2020).
- Ryo, Emily. 2019. "Understanding Immigration Detention: Causes, Conditions, and Consequences of Immigration Detention." 15 *Annual Rev. of Law & Social Science* 97-115.
- Ryo, Emily and Reed Humphrey. 2021. "Children in Custody: A Study of Detained Migrant Children in the United States," *UCLA Law Rev.* (forthcoming).
- Ryo, Emily and Ian Peacock. 2020. "Jailing Immigrant Detainees: A National Study of County Participation in Immigration Detention, 1983–2013," 54 *Law & Society Rev.* 66-101.
- Slack, Jeremy and Daniel E. Martínez. 2020. "Postremoval Geographies: Immigration Enforcement and Organized Crime on the U.S.–Mexico Border." *Annals of the American Association of Geographers* (in press).
- U.S. Immigration and Customs Enforcement. 2020. COVID-19 ICE Detainee Statistics by Facility: As of 10/01/2020. Available at: <https://perma.cc/P7V5-CVQV> (accessed October 22, 2020).

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