

# FOREVER PRISONERS



How the United States Made the World's  
Largest Immigrant Detention System

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# Introduction

I'm not a bad person. I shouldn't be here. . . . I'm not a threat to society and I'm not going to hurt anybody. I should be taking care of my children.

—Mayra Machado, from a Louisiana immigrant detention center, 2016

Migration stories are inherently about mobility, people plowing across oceans and rivers, boarding trains and buses on dangerous journeys, and trekking across deserts in the dark of night. But those hopeful stories of flight to freedom, escaping from poverty, violence, and political persecution at home, have ended for millions with imprisonment behind bars in the United States. The caged butterfly is an apt metaphor for migrants caught in the steel jaws of a detention system that now locks up half a million people each year. This book is about these butterflies and the cages we have built for more than a century to keep their wings clipped.

In December 2015, Mayra Machado took her three kids to shop for Christmas decorations in a mall in Springdale, a suburb of Fayetteville, Arkansas. Ever since her miscarriage a few months earlier, her family was depressed, so she hoped Christmas decorations would bring some cheer to their lives. Dominic (10), Dayanara (8), and Dorian (6) were excited about the upcoming holidays. On the car ride home, Dominic realized he had left his eyeglasses at the Hobby Lobby they had visited, and so Mayra turned her car around and returned to the store. Raising three kids was difficult after the father of her children had abandoned the family. But she had a good job as an ophthalmologist's assistant and had a new fiancé. Her hopeful future came crashing

down when a police officer pulled Machado over for failing to yield, an offense she claims never happened. He discovered that Machado had an unpaid traffic fine for another failure to yield charge. Although she offered to pay the ticket immediately with a credit card, the officer arrested her and had her car towed away. In 2019, Machado told me her story from an Immigration and Customs Enforcement (ICE) detention facility in Louisiana.<sup>1</sup>

On the side of the road, Machado's three children witnessed their mother being handcuffed and arrested, an image that still haunts them to this day. This was not the first time they had heard of family members being snatched by police. At the station, Machado knew many of the police officers because they had visited the ophthalmologist where she worked. She figured she would pay the fine and be home by evening. However, an old, bald officer said, "Bring her over here," and he demanded to know where she was born and her immigration status. The officer flashed a 287(g) badge that authorized him as an ICE agent. After checking the immigration status of her mother, sister, and grandmother, the officer said he was issuing an immigration hold based on her undocumented status and felony convictions for a writing a hot check a decade earlier. Machado was born in El Salvador and brought by her mother to this country when she was five years old. Her three children were born in the United States. At that point Machado was told she was being taken to Fort Smith detention center in Arkansas where she would be issued a bond and released. Instead, Machado was shackled and sent to an ICE detention center in rural Louisiana where she was ordered deported to a country she left as a child and where she knew nobody.<sup>2</sup> For the relatively minor crime of writing a bad check when she was a teenager, Machado was punished with banishment and separation from her children. Even for a criminal justice system rife with extreme

sentences, this was an absurdly disproportionate outcome. And yet, for immigrants such extremities are the norm.

This book begins with Machado's story because it illustrates how tough-on-crime laws intersected with harsh immigration policies in the last three decades to make millions of immigrants vulnerable to deportation based on criminal acts, even minor ones, that had been committed years or decades earlier. Machado's history also shows how much had changed between 2004, when she was first arrested on felony charges for writing the fraudulent checks, and 2015, when her immigration status became the central issue in what was a routine traffic stop. The integration of local police with immigration enforcement in the 2010s cast a much wider net, entrapping millions of long-term immigrant residents in the jaws of an enhanced deportation machine. By the end of Obama's second term, he had earned the dubious distinction of deporting over three million people, more immigrants than any other president in history. In doing so, the twenty-first century became an era of mass immigrant detention and deportation. There are millions of other immigrants like Mayra Machado who have their own stories of living in the United States, some with US citizen children, some having committed crimes, but all sharing the experience of being locked up and deported. Machado's story should be familiar to us from recent media accounts, but the long history of how we got from there to here is less understood. Building on the exciting new scholarship in recent years, this book provides an explanation of how, where, and why non-citizens were put behind bars in the United States from the late nineteenth century to the present. Through select granular experiences of detention over the course of more than 140 years, I explain how America built the world's largest system for imprisoning immigrants.

## HISTORY OF IMMIGRANT DETENTION

From the late nineteenth century, when the US government held hundreds of Chinese in federal prisons pending deportation, to the early twentieth century, when it caged hundreds of thousands of immigrants in insane asylums, to World War I and World War II, when the Federal Bureau of Investigation (FBI) declared tens of thousands of foreigners “enemy aliens” and locked them up in Immigration and Naturalization Service (INS) camps in Texas and New Mexico, and through the 1980s detention of over 125,000 Cuban and almost 23,000 Haitian refugees, the incarceration of foreigners nationally has ebbed and flowed.<sup>3</sup> Although far more immigrants are being held in prison today than at any other time in US history, earlier moments of immigrant incarceration echo present-day patterns. In fact, the legal debates about incarcerating immigrants indefinitely pending deportation stretches all the way back to the late 1880s, and the rates of institutionalization (all forms of incarceration) in the early to mid-twentieth century rival those of the twenty-first century.

Until very recently, the study of incarcerated immigrants has fallen in the crack between prison and migration studies. Migration scholars focus on movement of people across borders and the communities they establish in their adopted countries. Prison scholarship has mostly ignored the question of migrant incarceration, focusing instead on the mass imprisonment of largely Black and Brown citizens.<sup>4</sup> Although the issue of migrant incarceration is touched upon in both fields, there is little sustained effort to describe, measure, or account for their imprisonment, especially before the 1980s. Recent books focusing on the rise of immigrant and refugee detention since the 1970s help to flesh out the latest period of mass immigrant incarceration and particularly the link between immigration and criminal law. These scholars show how legislation and specific

policies from the 1980s to the present have resulted in the massive growth of migrant detention.<sup>5</sup> The historical studies of Ellis Island in New York and Angel Island in San Francisco help us to understand where and how immigrants were detained in the first half of the twentieth century. The government incarcerated 300,000 migrants on Angel Island from 1910 to 1940, more than half of whom were Chinese (100,000) and Japanese (85,000), making it by far the largest detention center at the time. Ellis Island processed many more than Angel Island (around 12 million) but fewer people were held there and they were detained for shorter periods.<sup>6</sup> Legal historical studies of deportation also offer a framework for understanding the laws that provided for detention pursuant to deportation, but oftentimes these works pay short shrift to the experience of detention itself.<sup>7</sup>

Various scholars have argued that when writing about immigration and citizenship, we must not only focus on those coming from outside the country hoping to become part of the national community but must also consider the ways in which insiders have been rendered non-citizens and foreigners.<sup>8</sup> Native Americans and enslaved Africans are the most obvious examples of people who were very much inside the nation and yet were rendered “aliens” legally, politically, and socially. Free Blacks had citizenship rights in certain states, but their legal subordination made them into non-citizens in slave states and rendered them vulnerable to efforts to “repatriate” them to Africa. And even though Black people gained formal citizenship in 1868 and Native Americans in 1924, obstacles to voting, Jim Crow, and other discriminatory practices continued to limit their citizenship rights. Native Americans were subject to congressional plenary power in the late nineteenth century even after the 1887 Dawes Act conferred citizenship on individual land-owning Indians, and certain states barred Native Americans from voting up to 1962, suggesting the extent to which

citizenship rights were limited for non-white people. Although formally citizens, white US women were also considered to have less than full citizenship rights well into the twentieth century. In 1907, Congress passed a law that stripped US women of their formal citizenship if they married a non-citizen, and women lacked voting rights until 1920. The poor of all races also had limited voting rights and were subject to vagrancy laws and incarceration at extremely high rates. Thus, insiders of many stripes were rendered non-citizens or second-class citizens. Throughout the nineteenth and twentieth centuries, women, non-whites, and the poor have gained formal citizenship rights, although even today these rights are constrained through legal and extralegal means, but the line between non-citizens and citizens cuts more deeply than ever.

Although this book does not focus on the “insiders” whose citizenship rights have been stripped or limited, its aim is to draw connections between the incarceration of non-citizens and second-class citizens. Many of the same prisons and detention centers for immigrants also held citizens who were poor, Black, and disenfranchised. Japanese Americans were locked up in spite of their being citizens, and many Latinx Americans have been swept up in deportation raids notwithstanding being born in the United States or having become naturalized citizens. Historian Laura Briggs has shown how the same practices of stripping children from their parents that happened on the US-Mexico border have precedents from the colonial era through the present for Native Americans and African Americans; oftentimes the very same carceral sites and facilities have been used for non-citizens and citizens.<sup>9</sup> The bright line between citizen and non-citizen is much clearer in the law books than on the street. The eroding of rights of non-citizens and their increasing criminalization since the late nineteenth century has gone hand in hand with the denial of rights to

subordinated citizens. It is not a coincidence that the dramatic expansion of immigrant detention and deportation happened at the very same time that mass incarceration of citizens exploded.

The book's title, *Forever Prisoners*, takes its name from the term used by journalists and others to refer to the terrorist suspects being held at the US prison at the military base at Guantanamo Bay, Cuba. Some of those picked up in 2001 in the midst of the War on Terror in Afghanistan and elsewhere are still being held in Guantanamo, never having been charged with a crime and with no foreseeable end in sight to their incarceration. After almost twenty years behind bars, they are forever prisoners. From the late nineteenth century, many immigrants also found themselves facing indefinite detention, either having never been charged with a crime or having years earlier completed their criminal sentences. The forever prisoners are a small subset of the millions of all non-citizens locked up domestically or held in US-controlled prisons outside the country, but their stories demonstrate the extent to which foreigners in the United States and in US-controlled territories have found themselves beyond the protection of the Constitution or any semblance of human rights. What makes immigrants forever prisoners is not just the indeterminate time they spend locked up, but that they often remain vulnerable to detention and other forms of restrictions after release; they are never truly free. Non-citizens live in perpetual fear of incarceration and deportation for minor offenses that may have occurred decades earlier. And even naturalized citizens are under threat of having their citizenship stripped. Like twenty-first-century slave catchers, ICE agents roam highways, fields, and factories, snatching people from their homes and workplaces, and separating parents from their crying children. If immigrants are deported, they often live circumscribed lives far from their families and hemmed in

by violent gangs and corrupt police. Mayra Machado spent almost three years in prison pending deportation proceedings and although she was deported for a second time in January 2020, she still feels like a prisoner in El Salvador, hiding out in a room, cut off from her family, friends, and home. As Machado put it while fighting back tears a few days after being deported, “Nothing has changed.”<sup>10</sup>

In this book, immigrant, migrant, foreigner, non-citizen, and refugee are used to refer to the people who have been imprisoned. Not all migrants intend to become immigrants who establish long-term residence, and some of the people discussed did not even choose to come to this country but were brought here at gunpoint by the US government. However, all of the people in this book shared a legal status as “aliens.” Although the term “alien” or “illegal alien” will not be used unless referring to the government’s designation, tracking the criminalization of non-citizens and the making of the idea of “illegal aliens” is the point.<sup>11</sup> While each of the abovementioned labels carries a precise legal meaning, these labels tend to obscure the common experience shared by all of those who do not enjoy the benefits of full citizenship. That commonality is what I want to highlight.

A concept known as plenary power is the reason immigrants have found themselves so exposed to state power with little protection from the Constitution or the courts. The plenary power doctrine vests the right to devise and enforce immigration laws with the legislative and executive branches, and the Supreme Court has been reticent to review such statutes even based on constitutional constraints.<sup>12</sup> There is a long and complicated legal history of indefinite detention of non-citizens, with courts alternating between granting the government unlimited powers to incarcerate non-citizens and imposing

time limitations on their detention pending a hearing or deportation. Recently the Supreme Court decided two important cases that upheld the right of the government to hold certain classes of immigrants in detention indefinitely without a bail hearing.<sup>13</sup> Although legal scholars argue that the Court left open the possibility of a constitutional challenge to indefinite detention, the current practice allows the government unfettered and unlimited detention authority. To most lay people, the ability of the government to imprison people without end and without a criminal conviction seems unfair and a blatant disregard of the most basic of civil rights, the right to freedom.

This study of immigrant deportation and detention builds on the important work of scholars who have investigated particular periods and forms of detention by examining all the ways foreigners have been imprisoned in the United States from the late nineteenth century through the present. This wider and more comprehensive perspective highlights the waxing and waning of particular forms of incarceration over time as it appreciates the magnitude and scope of carceral institutions that have locked up millions of non-citizens for more than a century. Many recent studies argue that the recent wave of mass immigrant detention is a dramatic departure from the past, pointing to the supposed hiatus of immigrant detention from 1954 through the 1970s.<sup>14</sup> A wider and deeper examination of the pre-1980s period, however, challenges that conclusion. Although the last thirty years have been a time of mass incarceration for both citizens and non-citizens, the rates of institutionalization in the early to mid-twentieth century, which include people locked in hospitals for the mentally ill and other charitable institutions, were equal to the rates in the twenty-first century. Broadly speaking, more people were locked up in insane asylums than prisons in the early twentieth century, and by the 1960s, psychiatric institutions

began emptying out and prisons began filling up. People suffering from mental illness were likely to be found in insane asylums in the early twentieth century, but in the late twentieth century those people were being incarcerated in jails and prisons. Given this reality, one needs to look beyond jails, prisons, and immigrant detention centers to the hospitals for the mentally ill and other institutions where foreigners were denied liberty. Similarly, during World War II, tens of thousands of foreigners ended up behind bars after being accused of being “enemy aliens,” not to mention the 120,000 Japanese and Japanese Americans interned in forced relocation camps. Examining all of these different forms of non-citizen incarceration in one volume reveals for the first time that mass immigrant incarceration was as prevalent in the early twentieth century as it is in the twenty-first century. The justifications have changed and the names emblazoned on the prisons have altered, but roughly the same proportion of immigrants were deprived of their liberty then as now. As we imagine a different future, we must be cognizant of the variety of ways that immigrants have been locked up in the past. The solution to the immigrant incarceration crisis is therefore not to return to a rosy past when foreigners were welcomed, but to create a radically new vision of rights beyond citizenship.

Incarcerating poor and mentally ill immigrants has a long history in America. Before the federal government took over the enforcement of immigration restrictions in the 1880s, states like New York and Massachusetts practiced their own immigrant processing, detention, and deportation. New York established a station at Castle Garden in lower Manhattan in 1855 where immigrants deemed excludable due to their poverty or criminal past were detained and deported.<sup>15</sup> When Ellis Island was created in 1892, the federal government took over enforcement of immigration restrictions, but almost all foreigners transferred through

the center in a few hours, and those detained longer were usually held for just a few days. In contrast, at Angel Island, the immigrant processing center established in San Francisco Bay in 1910, Asians, particularly Chinese, were held for much longer periods of time, often for weeks at a time, while their eligibility to enter was determined by immigration officials.<sup>16</sup> Although immigrants detained at either Ellis Island or Angel Island were not legally considered prisoners, they experienced their detention as imprisonment. Bennie Woon Yep, who was detained for one month at Angel Island, described sleeping on metal beds and being separated from family members as "just like a jail."<sup>17</sup> One author estimated that 3,500 immigrants died at Ellis Island, including 1,400 children. Although accurate data are unavailable, multiple reports of immigrants in detention committing suicide at both Ellis Island and Angel Island illustrate their desperation when faced with the prospect of deportation or indefinite detention.<sup>18</sup> Even as detentions of prospective immigrants on Ellis Island waned, it became a convenient place for the federal government to imprison foreign radicals pending deportation. The anarchist Emma Goldman, longshoreman union leader Harry Bridges, and a host of other radicals were locked up on Ellis Island before it was finally shuttered in 1954.<sup>19</sup>

Since the late nineteenth century, the infrastructure to incarcerate immigrants has grown in periodic bouts of prison-building frenzies. From the early 1950s to the late 1970s, however, there was a pause in a long-standing policy of detaining immigrants and refugees while their claims for asylum were being adjudicated. Immigration was at a historic low in the early 1950s, and the proportion of the foreign-born American population had been in decline from the early twentieth century, so there was little public pressure to keep immigrants locked up.<sup>20</sup> Another reason for the policy of generally paroling refugees and immigrants

rather than detaining them was that the United States was projecting itself as a beacon of freedom and hope in the midst of the Cold War with the Soviet Union.<sup>21</sup> A supposedly “liberal” attitude toward immigrants was part of US foreign policy propaganda, even as the Cold War-inspired 1952 McCarran-Walter Act stepped up deportations and placed severe restrictions on Asian migration. In 1954, Attorney General Herbert Brownell Jr. announced the new policy at a naturalization ceremony on Veterans Day at Ebbets Field in Brooklyn: “In all but a few cases, those aliens whose admissibility or deportation is under study will no longer be detained. Only those deemed likely to abscond or those whose freedom of movement could be adverse to the national security or the public safety will be detained.” All others, Brownell asserted, would be released on parole. Brownell predicted that the number of those detained in exclusion proceedings outside of the Mexican border would drop from 38,000 in 1953 to fewer than 1,000 under the new policy. The new initiative was so “far reaching in scope and effect,” Brownell declared, that the Justice Department was closing six detention centers at seaports in Boston, Seattle, San Francisco, San Pedro, Honolulu, and the paradigmatic one in New York at Ellis Island.<sup>22</sup> In 1958, four years after Brownell’s announcement, Supreme Court Justice Tom C. Clark said, “The physical detention of aliens is now the exception.”<sup>23</sup>

Like magicians using sleight of hand, Attorney General Brownell and Justice Clark pointed to the closed detention centers at seaports to distract attention from the Border Patrol’s temporary camps for Mexicans in the Southwest. At the very moment Brownell was announcing the end of immigrant detention, “Operation Wetback” had reached a record number of over one million Mexicans returned to Mexico. These operations involved short-term detentions and were not formal removals involving a legal process, but

they required a massive detention structure nonetheless. The intense focus on apprehending and deporting Mexicans began well before 1954, with Mexicans accounting for over 90 percent of the hundreds of thousands of national apprehensions (1943-54) each year. Migrants were processed quickly in temporary detention centers, some in converted tomato warehouses, and then either transported to the border by bus or train, or flown to the interior on airplanes.<sup>24</sup> Thus, even in this period when immigrant detention was supposedly the exception rather than the rule, there were still hundreds of thousands of immigrants being rounded up, detained, and deported. The duration of detention was shortened, the locale had shifted from seaports to the southern border, and the detainees were Mexicans rather than Europeans, but the detention regime did not end.

The closing of Ellis Island in 1954 led to other problems when detained immigrants were transferred into New York City jails. A few days after Brownell's announcement of the new policy, author Pearl Buck complained in a letter to the *New York Times* that due to the closing of Ellis Island, immigrants were being transferred to jails alongside common criminals. "They are locked up with murderers, drug addicts and other degenerate types," Buck wrote. "Their food is inadequate, their bed mattresses dirty. They have little opportunity to get fresh air, and they must perform labor such as criminal persons perform."<sup>25</sup> Publicly shamed, the Justice Department rescinded its order to hold immigrants in jails and instead ordered them moved to the Empire Hotel in Manhattan until the agency could establish its own detention facilities.<sup>26</sup> The 1952 Immigration Act allowed the government to provide various parole alternatives to detention, even after a final order of deportation was handed down, and time limits were

established so that no immigrant would be held for longer than six months after a final deportation order.<sup>27</sup>

Scholars have pointed to Brownell's and Justice Clark's words to argue that immigrant detention was "effectively abolish[ed]" in the 1950s.<sup>28</sup> However, these scholars gloss over hundreds of thousands of Mexicans who were rounded up, detained, and deported, perhaps because the INS simply left Southwest border detentions out of the count in the 1950s, as historian Judith Irangika Dingatantrige Perera has shown.<sup>29</sup> In 1960, the INS reported that fewer than 7,000 aliens were "taken into custody under warrants of arrest," but in that same year close to 60,000 were deported, almost all of them Mexicans who were detained in three staging areas on the border. These Mexicans were apparently not part of the official count and were simply referred to as "other aliens." The INS was proud that it had managed to process them quickly, with an average detention of only seven days, but shorter detentions also allowed more people to be processed and removed.<sup>30</sup> In 1962, the INS began reporting all detentions, including those of Mexicans, and also listing which of those were in INS facilities versus other jails and prisons. Throughout the 1960s, the number of detentions grew from under 35,000 to over 215,000 in 1970. By 1978, detentions had reached a record of more than 340,000. Over time, the INS expanded its detention facilities, and by 1979, it held 204,000 immigrants in its own prisons and outsourced another 112,000.<sup>31</sup> However, even these large numbers omit the vast majority of Mexicans who were arrested by Border Patrol and dumped across the border without ever setting foot in an official detention center. The fact that the INS made over one million apprehensions in 1979 suggests the extent to which mass detentions were occurring well before the era of mass deportations supposedly began.<sup>32</sup>

The policy of limiting detention for asylum seekers, at least in terms of duration if not numbers of people, began to erode with the arrival of Haitians fleeing violence, political instability, and economic crisis in the 1970s. Out of 50,000 Haitian asylum petitions from 1972 to 1980, fewer than 100 were granted. Instead of paroling asylum seekers into the United States while their petitions moved through the hearing process, the INS began to detain all Haitians in hastily erected detention centers. In March 1980, the INS entered into an agreement with the Bureau of Prisons to use their facilities to “screen, process and detain aliens who are in the United States illegally,” and a Haitian processing center was created at the Federal Correction Institute in South Florida. In the very same month, the 1980 Refugee Act established a universal procedure to determine eligibility for all people claiming refugee status. The long-standing automatic parole for Cubans was summarily ended; for the first time, Cubans would have to undergo a review to determine if they were refugees.<sup>33</sup> It is no coincidence that mass immigrant detention was revived with the arrival of tens of thousands of poor, Black Haitians. Racism has always been central to immigration restrictions and enforcement.<sup>34</sup>

In April 1980, Castro’s announcement that he would open up the port of Mariel and allow people to leave the island triggered a massive exodus of people. In what became known as the Mariel Boatlift, 125,000 Cubans boarded rickety boats and fishing trawlers to make the short journey across the straits of Florida that spring and summer. The INS quickly established detention and processing centers in the Orange Bowl and Krome, a former missile base in Miami, as well as military bases in Fort Chafee, Arkansas; Fort Indiantown Gap, Pennsylvania; and Fort McCoy, Wisconsin. Over 300 Cuban refugees even ended up in a federal prison on McNeil Island off the Pacific Coast near Tacoma,

Washington. Within a few months, almost all of the Cubans were released on parole to US-based family members, but the Haitians and many Black Cubans, most of whom had no family in the country, found themselves in detention for longer periods of time. By May 1981, the INS had a blanket policy of mandatory detention of Haitians with no possibility of release on bond. In the first ten years, only eight of 25,000 Haitians were allowed to pursue asylum claims. Although immigrants in the United States theoretically had some constitutional due process protections, the government attempted to circumvent these by interdicting refugees before they reached US shores and by creating a new status of "Cuban/Haitian entrants" that defined them as being still outside the United States even though they were inside. In August 1981, nearly 800 Haitian asylum seekers were detained in the US military camp, Fort Allen, in Puerto Rico.<sup>35</sup> These measures were designed to deny Haitians and Cubans the right to petition for asylum and to limit their constitutional protections. In September 1991, following a new wave of exiles fleeing a coup, Haitians were interdicted at sea and locked up at the US naval station at Guantanamo Bay, Cuba, where they would have an even harder time to claim asylum due to lack of access to lawyers. What began as a policy for Haitians and Cubans was soon expanded to include Central Americans.<sup>36</sup> A Justice Department spokesperson defended the new policy in 1982 by arguing they were just doing their jobs: "The rules say that if illegal aliens come to this country without proper documentation they will be detained. All we're doing is enforcing the law."<sup>37</sup> In that same year, a young Justice Department lawyer, Rudolph Giuliani, went to Congress to make an urgent plea for \$35 million to build two new prisons to "enforce our immigration laws."<sup>38</sup> As mayor of New York City in the mid-1990s, Giuliani ordered police to use a heavy hand to enforce low-level offenses. Giuliani was therefore one of the

principal architects of mass incarceration for both citizens and immigrants.

## **CRIMMIGRATION**

The harsh detention and asylum policies applied to Haitians and Cubans in the early 1980s morphed into a much more expansive criminalization of immigrants by the 1990s. What law scholar Juliet Stumpf aptly calls “crimmigration,” the merging of criminal and immigration law, has been mostly seen as a late twentieth-century phenomenon. Stumpf acknowledges that criminal and immigration law emerge from a common state interest in exclusion, but she argues that detention of non-citizens with criminal backgrounds was “less common than now.”<sup>39</sup> However, the overlapping of criminal and immigration law began in the late nineteenth century with Chinese being imprisoned for unlawful entry, and there is ample evidence that non-citizens with criminal records were being imprisoned at high rates in the early twentieth century. In the 1990s, harsher immigration restrictions expanded the crimes for which immigrants could be deported at the same time that police across the country began to step up their enforcement of low-level offenses. Expanded policing of low-level offenses and mandatory sentencing laws for drug and other charges led to the explosion in incarceration rates for citizens, and for immigrants it resulted in increasing numbers of mandatory detentions due to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Within five years of the act, the number of non-citizens detained by the INS more than doubled, from around 72,000 in 1994 to over 188,000 in 2001.<sup>40</sup> While increased detentions were already apparent by 2000, the number of detentions continued to grow as local police were more fully integrated with immigration authorities during the Obama administration. Criminal immigration prosecutions remained at less than

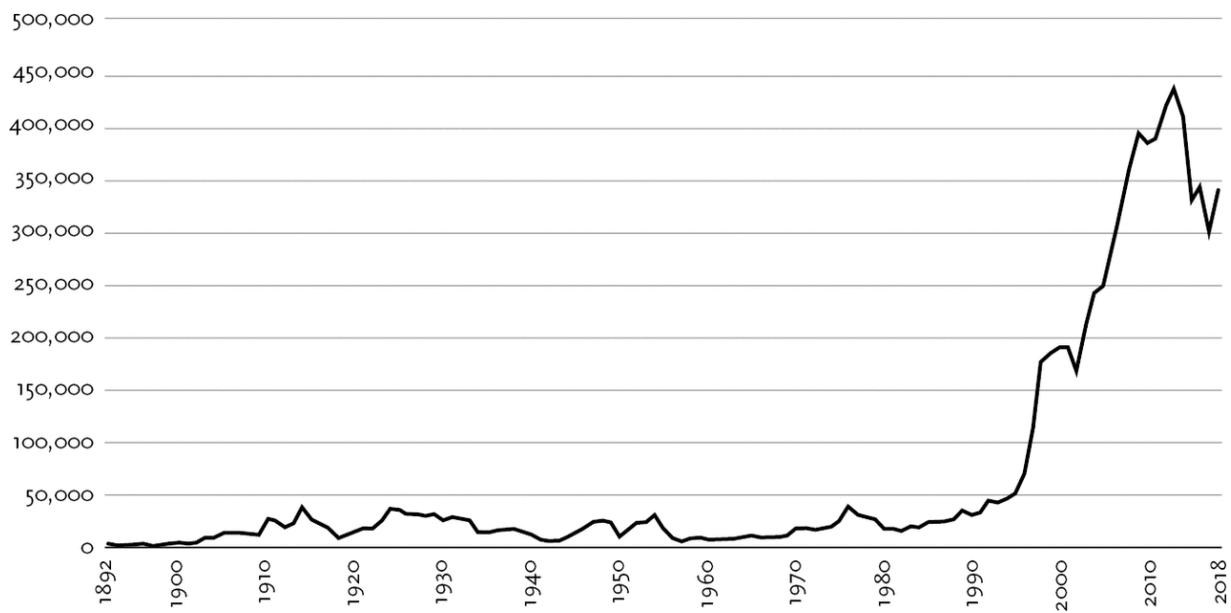
20,000 per year from the 1970s through the early 2000s, and then shot up to over 80,000 a year from 2008 through 2014. Criminal immigration prosecutions have remained high ever since.<sup>41</sup> The number and length of detentions increased along with the growing number of criminal prosecutions and deportations from an average of four days in 1981 to 30 days in 2001, where it has remained.<sup>42</sup> Since the average length of stay of immigrant detainees is about a month, the total admissions on an annual basis is much higher than the daily count. The number of immigrant detentions has been dramatically growing as the Trump administration has sought mandatory detention of almost all immigrants, adults, children, and even infants, who come into the country without proper papers. In 2019, a record of more than half a million immigrants were detained. For the first time ever, the US government held more than 50,000 immigrants in their detention centers each day, and Trump's 2021 budget asked for increased funding to detain 60,000. Equally significant, an additional 3.3 million other immigrants were under ICE supervision, either on parole or bond, or were being sought by the government as fugitives.<sup>43</sup> Given that an estimated one-in-ten immigrant families, both citizens and documented immigrants, live in mixed-status families with someone who is undocumented, the impact of immigrant detention and deportation ripples out to millions more.<sup>44</sup> Asylum seekers who present themselves to immigration officers at the border are also being held in detention, or sent to dangerous border cities in Mexico, while the lengthy legal process for claiming asylum unfolds. The immigrant detention archipelago echoes infinitely inside and outside the borders of the nation.

To apprehend and hold all of these migrants has required a massive build-up in the prison infrastructure, including the construction of government detention facilities and private prisons, as well as the use of hundreds of local jails and

state and federal prisons. In 1980, the INS spent just over \$21 million on detention. By 2010, ICE spent almost \$1.8 billion annually detaining immigrants, and by 2018, its yearly spending topped \$3 billion.<sup>45</sup> While the government does not publicize the extent of its detention footprint, a Freedom of Information request revealed that from 2003 to 2017, millions of immigrants in the United States were imprisoned at 1,685 facilities solely on civil charges. In fiscal year 2018, immigrants had spent nearly 18 million “mandays” locked up; that’s 18 million days immigrants spent behind bars in just one year.<sup>46</sup> In 2016 alone, more than 350,000 new immigrants were booked into 637 civil detention facilities around the country, in addition to about 115,000 immigrants locked up in state prisons and local jails for other offenses.<sup>47</sup> The number of immigrants being detained in non-criminal proceedings has increased since 1994 from less than 7,000 to well over 50,000 per day in 2019.<sup>48</sup> Although the point-in-time snapshot incarceration rates of foreign-born individuals is significantly lower than that of native-born citizens, from 2011 to 2016 an average of more than 380,000 immigrants have been expelled from the country every year.<sup>49</sup> Viewed as elimination, deportation together with incarceration serves to disappear about half a million immigrants from civil society annually. Therefore, almost 5 percent of the undocumented immigrant population (whose total is estimated to be around 10.5 million) is removed from society and put in detention centers or deported each year.<sup>50</sup> The devastation of losing one in twenty people each year cannot be overestimated. The cumulative effect of this massive deportation machine over the past two decades has touched nearly every immigrant family in the country, particularly from Mexico, Guatemala, El Salvador, and Honduras. The loss of human potential by caging people for 18 million days a year is incalculable.

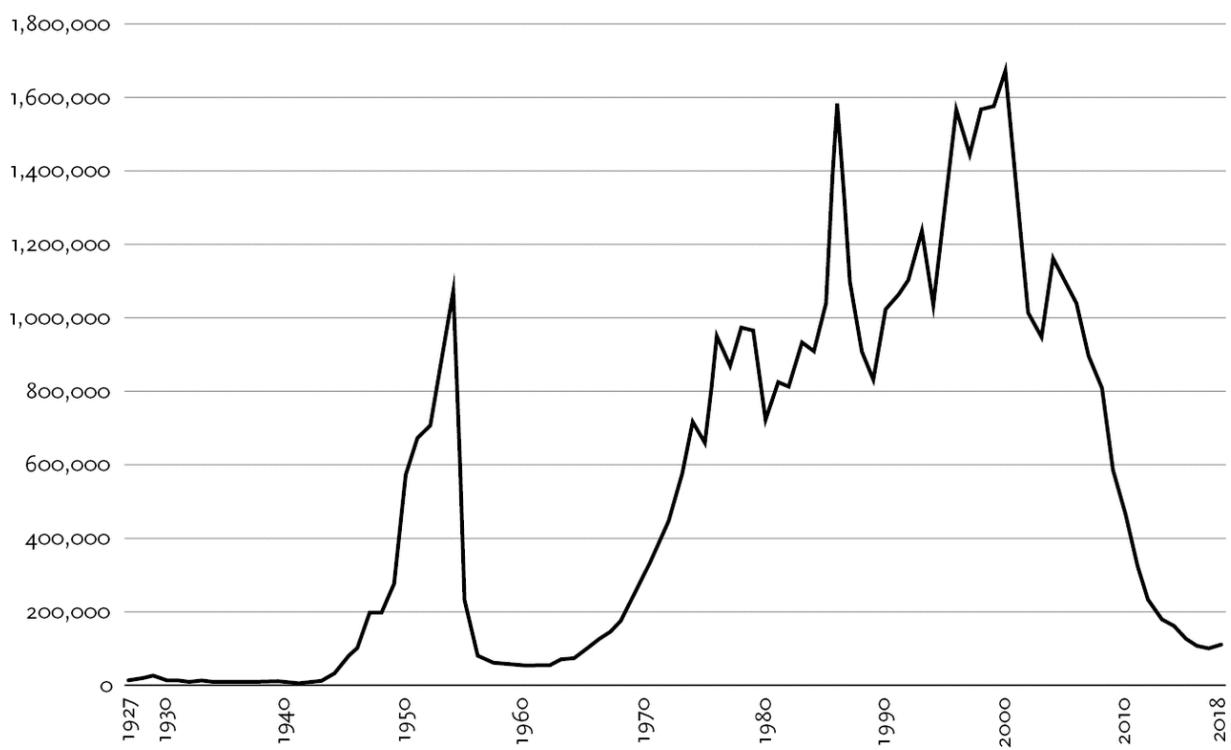
## **DETENTIONS AND DEPORTATIONS IN HISTORICAL PERSPECTIVE**

It is difficult to grasp the magnitude of immigrant detentions because such data have been sporadically and inconsistently reported. Since 1892, when the government started tracking removals, the US has deported more than 57 million people.<sup>51</sup> Many immigration scholars focus on formal removals as a proxy for tough restrictionist policies because of the existence of consistent deportation data since 1892. Looked at from this perspective, deportations remained low through most of the twentieth century and then dramatically shot up in the 1990s. However, that truth is only part of the story. Since 1927, the government has distinguished between removals and returns, the former being a formal deportation while the latter is a “voluntary return” after being apprehended near the border. Although formal deportations remain low up to the 1990s, returns read like the electrocardiogram chart of a cardiac patient, with sudden spikes almost every decade since the 1950s. Since the late 1990s, voluntary returns have fallen to levels not seen since the 1960s, but removals have spiked. What this means is that more people are spending longer in detention while their deportation cases wind their way through the courts.



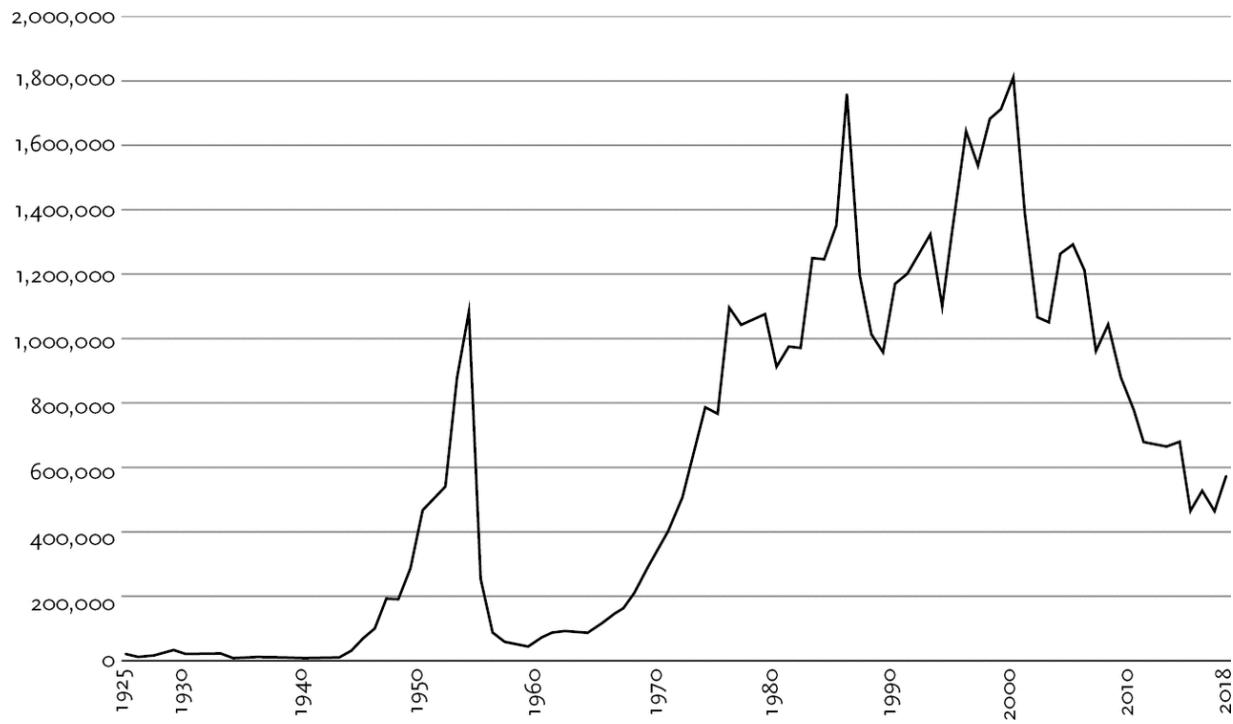
**Figure I.1** Alien removals, 1892–2018.

Source: Department of Homeland Security, Table 39, FY 2018.



**Figure I.2** Alien returns, 1927–2018.

Source: Department of Homeland Security, Table 39, FY 2018.



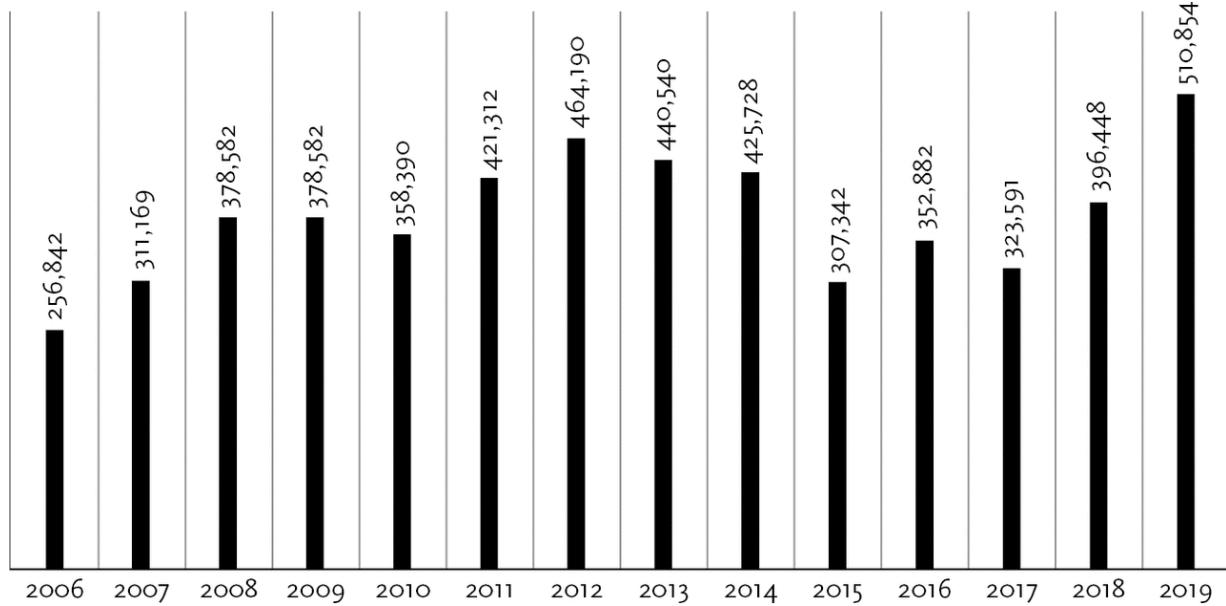
**Figure I.3** Alien apprehensions, 1925-2018.

Source: Department of Homeland Security, Table 33.

Unlike detentions, which have only been sporadically and inconsistently recorded by immigration bureaucrats, apprehensions have been steadily tracked since 1925. These data do not measure the number of individuals apprehended, since one person can be apprehended multiple times. Nonetheless, tracking apprehensions measures the total number of temporary detentions, a subset of whom will be held for much longer periods of time. The chart shows various spikes in apprehensions, reaching highs of 1.8 million in 1986 and again in 2000.<sup>52</sup> Since 2000, the total number of apprehensions has steadily dropped to fewer than half a million per year. Looked at in terms of arrests, immigration detention has fallen dramatically since 2000 signaling a shift in immigration enforcement. The vast majority of immigrants formerly were detained for brief

periods by the Border Patrol before being released across the Mexican border, but increasingly more immigrants are being detained by ICE and held for weeks, if not months or years.<sup>53</sup>

For the purposes of understanding the ebb and flow of detention, removals, involving a formal legal procedure, are more significant than returns or apprehensions. Migrants captured near the border may be held for a few days before they agree to voluntarily return to Mexico, and therefore their detention experience, while perhaps traumatizing, is brief. Immigrants who formally go through a legal deportation process or who are petitioning for asylum can spend months or years in detention, depending on their ability to fight their deportation. The average length of detention varies greatly depending on nationality and criminal status, with criminals spending more time locked up and non-Mexicans spending twice as long in detention as Mexicans.<sup>54</sup> By December 2012, almost 5,000 people had been in detention for more than six months, and a dozen had spent six to eight years behind bars.<sup>55</sup> This means that although the vast majority of immigrants do not spend a long time locked up in immigration detention, a significant minority spend years behind bars while their cases drag on in the courts. It is important to remember that in addition to ICE, the Border Patrol is also detaining hundreds of thousands for shorter periods of time. Furthermore, by 2019, ICE was monitoring an additional 120,000 immigrants on a daily basis through home and office visits, court tracking, and ankle bracelets.<sup>56</sup> In short, the forty-year trend has been toward lengthier and greater numbers of immigrant detentions, reaching a record-breaking half a million in 2019.<sup>57</sup>

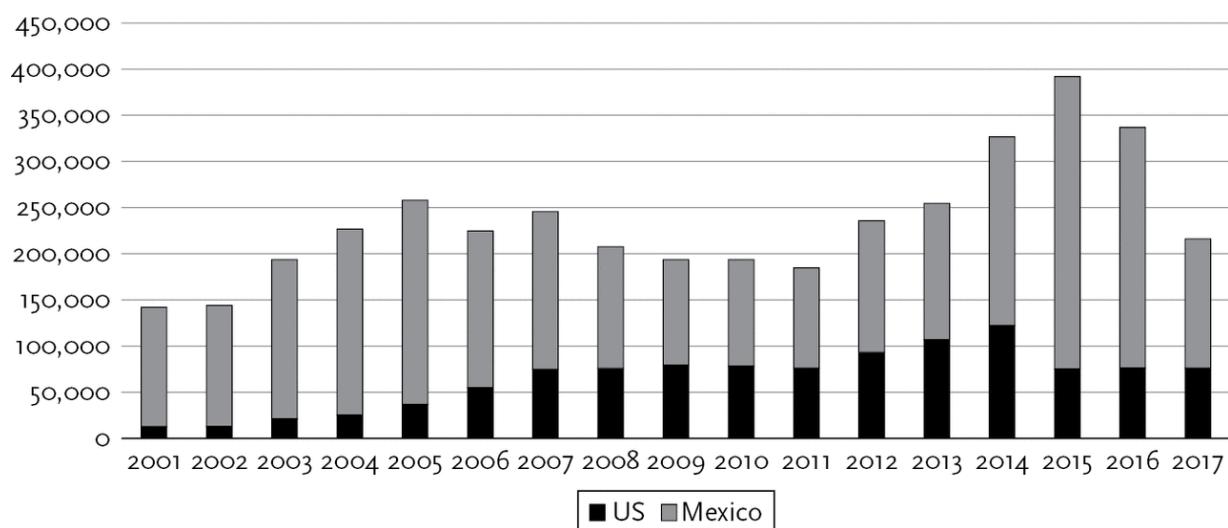


**Figure I.4** Book-ins to ICE detention, FY 2006–2019.

Source: Department of Homeland Security, Immigration Enforcement Action Reports.

Even though US immigration data show an increasing number of long-term detentions, especially in the last decade, they significantly underestimate detentions and deportations because they do not account for the increasingly large number of Central Americans who are being captured in Mexico and deported without ever reaching US soil. Mexico's vigilance over its southern border with Guatemala increased with the second phase of the Mérida Initiative, when the United States pumped \$200 million into Mexico's efforts to police its border (2014–18) and made border security one of four pillars of the Initiative. As a result of this funding and US diplomatic pressure, Mexico began to apprehend, detain, and deport hundreds of thousands of Central Americans each year. Mexico deported 600,000 people between 2014 and 2018, almost all of them coming from Central America's northern triangle (El Salvador, Guatemala, and Honduras) heading farther north. While the Mérida Initiative pumped money into these efforts, Mexico has been cooperating on enforcing US

immigration policy for quite some time. From 2002 to 2017, Mexico deported 1.9 million from these three Central American countries, compared to US deportations of 1.1 million.<sup>58</sup> Thus, in addition to the millions of immigrant detentions taking place on US soil, the US has been funding and directing millions of additional immigrant detentions in Mexico. Since these are really US deportations through remote control, they should be included in attempts to account for the number of detentions and deportations done by or at the behest of the United States.<sup>59</sup>



**Figure 1.5** Total removals and returns of people from Northern Triangle Countries (El Salvador, Guatemala, and Honduras), 2001-2017, by US and Mexico.

Source: Based on DHS data, <https://www.dhs.gov/immigration-statistics/yearbook>. DHS data include only removals from 2001-2008. Mexico data from Secretaría de Gobernación, "Extranjeros presentados y devueltos," tables 3.2.1 and 3.2.7, [http://www.politicamigratoria.gob.mx/es\\_mx/SEGOB/Boletines\\_Estadisticos](http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletines_Estadisticos).

There is no doubt that the United States locks up far more immigrants than any other country. Just as with incarceration of citizens, the nation has the dubious distinction of being a global leader in imprisoning foreigners.

Mexico detains the second highest number of migrants, reaching close to 100,000 in recent years, but almost all of those detentions are at the behest of the United States. Although accurate data and lack of standardized reporting makes global comparisons difficult, the well over 500,000 annual US immigrant detentions far surpass those of other countries with high detention rates (Malaysia, 87,000; France 46,000; Russia 38,000; and the United Kingdom 33,000).<sup>60</sup> The very absence of globally accepted definitions of what constitutes migrant detention or accessible data helps explain why these prisons have remained understudied and in the shadows.<sup>61</sup>

## **STORIES, NOT NUMBERS**

The figures in this introduction excepted, *Forever Prisoners* avoids reducing the story of immigrant detention to a dizzying pile of statistics on apprehensions, detentions, and deportations, and instead narrates this history through intimate portrayals of six illustrative stories. One of the stories focuses on an incident involving a group of Chinese detainees whose names are barely mentioned in government documents, while others focus on a single individual or family whose stories have been the subject of numerous newspaper articles. All of the stories capture the feelings of helplessness and uncertainty experienced by people who faced indefinite detention based on their status as “illegal aliens.” Some of the stories end in deportation or death in detention; others end with the immigrants winning their legal battles and gaining US citizenship. In early January 2020, Mayra Machado was deported to El Salvador while her appeal was still pending in the 5th Circuit Court of Appeals. Whether she remains in El Salvador hiding from violent gangs or returns clandestinely to the United States, evading ICE and traffic cops, she will live in fear.

The five stories that comprise this book are told in chronological order and also address different themes: immigration violations, mental illness, national security, criminality, and terrorism. The criminalization of migration, indefinite detention, and racism are the threads that have stitched this carceral landscape together for more than a century. Criminalization of migration began with Chinese labor exclusion in the mid to late nineteenth century. Not only were Chinese in the Pacific Northwest locked up in the McNeil Island federal prison and sentenced to hard labor for immigration violations, but a large number of immigrants served time in the prison for drug and alcohol violations. The suggestion that criminalization of migration was not a fundamental part of the immigration system until the latter part of the twentieth century obscures these early carceral experiments.<sup>62</sup> The first chapter explores the western birthplace of these criminalization efforts by focusing on the thousands of Chinese and other immigrants locked up on a remote prison island near Seattle, many of whom were deported after serving their sentences.

Just as criminalization of immigration has an earlier genesis than is typically acknowledged, so does mass incarceration. If one considers “insane asylums” and other so-called charitable carceral institutions, the rate of incarceration at the beginning of the twentieth century is equivalent to that experienced in the last few decades. Hospitals for the mentally ill locked up far more immigrants (and citizens) than did jails and prisons in the early twentieth century. Between 1960 and 1980, mental hospitals began emptying out and jails and prisons began to fill up. After the mid-1970s, immigrants and citizens alike were more likely to be incarcerated in jails and prisons than in mental institutions, a trend that has continued to the present. [Chapter 2](#) explores this world of foreigners trapped by psychiatrists and immigration agents through the story

of a Russian-Jewish-Brazilian immigrant who was declared insane in 1914 and deported.

Foreign policy is always part of the calculus of immigration control, but during moments of heightened fears about national security provoked by wars or imagined threats to the nation, immigrants and marginalized citizens face greater threats of incarceration and fewer legal protections. The primary example of this is the detention of more than 120,000 Japanese and Japanese Americans during World War II, but World War I and the War on Terror in the twenty-first century also have led to spikes in detention of immigrants and even citizens perceived as “aliens.” The third chapter explores the intersection of national security and immigration policy through the story of a little-known program run by the FBI during World War II to kidnap Japanese, Germans, and Italians living in Latin America and incarcerate them in camps run by the Immigration and Naturalization Service (INS) in Texas and New Mexico.

The most recent wave of legislation criminalizing immigrants in the 1980s and 1990s led to a massive growth in the immigration detention footprint and the steady growth of the number of immigrants put behind bars. “Tough on crime” policies and a carceral turn in the country prompted a prison-building frenzy for citizens and non-citizens alike. In both cases, Black and Brown men were the ones occupying the new cells. In the 1970s and 1980s, tens of thousands of Haitian refugees arrived in the United States, along with 125,000 Cuban refugees in 1980. Instead of releasing them on parole, as had been the general policy since the 1950s, the United States set up mass detention camps to process the asylum seekers. It was not simply a coincidence that the liberal parole policy ended when a group of largely Black migrants arrived on our shores. Although more Cubans than Haitians were eventually paroled into the United States, the Cubans who ended up remaining in prison due to prior criminal convictions or

mental illness were almost entirely Black. And when Cuban parolees committed minor criminal offenses in this country, they also ended up back in prison after serving their sentences, waiting to be deported to a country that refused to accept them. The indefinite detention of the Cubans because of their criminal histories augured what would become an increasingly overlapping system of criminal and immigration law. [Chapter 4](#) focuses on a two-week prison uprising in 1987 by Mariel Cuban refugees in Oakdale, Louisiana, and Atlanta, Georgia, when they discovered they would be deported back to Cuba. Following this prison takeover, legislation demanded mandatory detention of immigrants who had committed an ever-expanding list of crimes. By the 1990s, the INS had developed a robust network of detention facilities capable of caging asylum seekers, those fighting deportation orders, and those labeled “criminal aliens.” It was the era of mass incarceration of citizens and also the era when millions of immigrants were put behind bars and barbed wire.

The Haitian and Cuban detentions were the opening salvo in the recent trend of criminalizing immigrants that saw its fruition in the first two decades of the twenty-first century. In this period, the number of immigrants facing criminal prosecutions skyrocketed as did the number of immigrants detained and formally deported. Since federal immigration enforcement began in the 1880s, the vast majority of immigrants were allowed to return voluntarily without going through formal deportation procedures. Although people were being forcibly removed from the country, very few were subject to lengthy detention in immigration detention facilities. The historic shift from voluntary removal to formal deportations in the second decade of the twenty-first century resulted in millions of immigrants accruing criminal records based on their illegal entry and reentry. It was also in this decade when technological advances allowed local law enforcement to identify those who were in the country

without authorization during routine police stops. The penultimate chapter explores our present moment of criminalization of immigrants through the story of Mayra Machado, the woman from El Salvador whose story opened the book.

The incarceration of foreigners and those turned into non-citizens by white settlers has been a feature of the United States since its origins as a British colony. Native Americans and Africans were enslaved and forced to work on plantations and farms, which were themselves essentially prison work camps.<sup>63</sup> The United States restricted the mobility of Native Americans, forcing them onto reservations and attempting to wipe out indigenous cultures by forcing Native children into assimilationist boarding schools. Slave catchers kept enslaved Africans on the plantation under the whips of their overseers, and in the post-emancipation period vagrancy laws and Jim Crow limited the mobility of African Americans. In the antebellum period, state governments deported poor Irish immigrants to other states or back to Ireland. However, it was not until the late nineteenth century that the US government developed an immigration enforcement bureaucracy that allowed it to detain thousands of immigrants for violation of immigration laws. Since that time, unauthorized immigration has been criminalized, and immigrants have been disproportionately incarcerated for other low-level criminal offenses and for mental illness. While all evidence suggests that immigrants commit crimes at levels lower than native-born citizens, in the early twentieth century they were locked up at rates higher than those of the general population for low-level crimes where police discretion is more of a factor.<sup>64</sup> Police targeting these immigrant communities rather than criminal behavior explains the high rates of immigrant incarceration in the early twentieth century. Numerous studies have found that

in the twenty-first century, immigrants, both legal and undocumented, either have no effect on crime rates or help to lower them in the United States.<sup>65</sup>

Even though there have been peaks and valleys in roundups of immigrants over the course of the last 140 years, beginning in the 1980s, we entered a new era in the mass imprisonment of immigrants, coinciding with the mass incarceration of citizens. In both cases, Black and Brown men are the ones most likely to be locked up. Although there have been serious efforts to reduce mass incarceration of citizens, especially in California, bipartisan immigration policies have led to more immigrants being put behind bars for longer periods of time.<sup>66</sup> Today, the same country that declares itself a “nation of immigrants” locks up far more immigrants than any other country on earth.<sup>67</sup>