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DETENTION OF UNDOCUMENTED IMMIGRANTS IN THE UNITED STATES IN THE ERA OF COVID-19: A NECROPOLITICAL ANALYSIS

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ABSTRACT

Necropolitics is a theoretical concept developed by Cameroonian philosopher Achille Mbembe to describe the exercise of postcolonial sovereignty that creates deadly spaces for certain populations in a way that is lucrative for those in power. Although Mbembe uses spaces governed by nonstate actors in the Global South as his primary examples, recent scholars have applied the theory to practices in spaces governed by the state apparatus in the Global North. This thesis argues that the detention of immigrants in the United States, specifically during the COVID-19 pandemic (defined as March 2020-March 2022 for the purposes of this project), is one such practice. Applying necropolitics to immigration detention in the US allows for a clearer understanding of the historical and financial dynamics at play. This thesis places immigration detention as a modern-day extension of colonial relationships established at the nascent stages of US history, and uses Jackie Wang's concept of carceral capitalism to analyze the financial incentives of powerful capital interests to continue forcing undocumented immigrants into the precarious spaces created by immigration detention centers. The result is a marginalized group of people being subjected to deadly conditions for the economic benefit of the people creating those conditions, the type of practice described in Mbembe's necropolitics. To provide a detailed examination and theoretical analysis of immigration detention, this thesis uses a case study of Stewart Detention Center in Stewart County, Georgia as part of its central argument.

La necropolítica es un concepto teórico desarrollado por el filósofo camerunés Achille Mbembe para describir el ejercicio de la soberanía poscolonial para crear espacios de muerte para ciertas poblaciones de una manera lucrativa para quienes tienen el poder. Aunque Mbembe usa espacios gobernados por actores no estatales en el Sur Global como sus ejemplos principales, investigadores recientes han aplicado la teoría a prácticas en espacios gobernados por el aparato estatal en el Norte Global. Esta tesis sostiene que la detención de inmigrantes en los Estados Unidos, específicamente durante la pandemia por COVID-19 (definido como marzo 2020-diciembre 2021 para este proyecto), es una de esas prácticas. La aplicación de la necropolítica a la detención de inmigrantes en los EEUU permite una comprensión más clara de las dinámicas históricas y financieras en juego. Esta tesis coloca la detención de inmigrantes como una extensión moderna de las relaciones coloniales establecidas en las etapas incipientes de la historia de los Estados Unidos, y utiliza el concepto de capitalismo carcelario, de Jackie Wang, para analizar los incentivos financieros de los poderosos intereses del capital para seguir mandando a los inmigrantes indocumentados a los precarios espacios creados por los centros de detención de inmigrantes. El resultado es un grupo marginado de personas sujetas a condiciones mortales para el beneficio económico de las personas que crean esas condiciones, el tipo de práctica descrita en la necropolítica de Mbembe. Para proporcionar un análisis teórico detallado de la detención de personas migrantes, esta tesis presenta un estudio de caso de Stewart Detention Center en Stewart County, Georgia como parte de su argumento central.

INTRODUCTION

The United States is currently the most carceral country in the world. Despite the loud cultural emphasis on the value of freedom, the US leads the world in both total number of prisoners and rate of incarceration per capita.¹ These statistics come as a result of both the recent history of mass incarceration in the US and a longer history of state punishment directed at marginalized groups. This paper will critically analyze the incarceration of one of those groups: undocumented immigrants. Just as it operates the largest prison system in the world, the US also operates the largest immigration detention system in the world.²

Immigrant detention in the United States is currently administered by the Immigration and Customs Enforcement Agency (ICE), a branch of the Department of Homeland Security (DHS) that was created in the wake of 9/11 in the name of giving more resources to national security operations. Today, the immigration detention system is comprised of around 200 facilities with varying designations including administrative processing centers and criminal detention centers. The people who are detained are all undocumented immigrants, including asylum seekers, people who have overstayed their visas or committed multiple misdemeanors, and people who have been accused felonies. Before the COVID-19 pandemic, it was detaining over half a million people a year, occasionally topping 50,000 beds occupied per day. The detainees primarily come from Central American countries such as Mexico, Honduras, El Salvador, and Guatemala.³ As the second chapter will show, this detention system has always been heavily racialized against Latinx people and has served to benefit various economic interests over the course of its history.

¹ “World Prison Brief: Prison Population Rate,” Prison Studies, accessed June 08, 2021, https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All.

² “United States Immigration Detention Profile,” Global Detention Project, accessed June 8, 2021, <https://www.globaldetentionproject.org/countries/americas/united-states>.

³ “United States Immigration Detention Profile: Enforcement Data,” Global Detention Project, accessed June 8, 2021, <https://www.globaldetentionproject.org/countries/americas/united-states>.

For the purposes of this thesis, “detention” will refer to any time a person is held against their will, regardless of whether or not the stated intent is to punish them and what the facility is called. This process could involve holding people in advance of immigration court appearances, holding people because of criminal accusations, and holding people in advance of deportation proceedings, among other justifications.

In the theoretical framework, this thesis will analyze the United States immigration system in the theoretical context of *necropolitics*, a conception of sovereignty first developed by Cameroonian philosopher Achille Mbembe as an extension of Michel Foucault’s concept of *biopower*. In his first explanation of necropolitics in a 2003 essay by the same title, Mbembe defines biopower as “that domain of life over which power has taken control.”⁴ Biopower and biopolitics are concepts that were conceived and developed by European theorists who were taking European democracies as their prime examples. Mbembe seeks to extend this analysis of sovereignty to other forms of governance, asking “under what practical conditions is the right to kill, to allow to live, or to expose to death exercised? Who is the subject of this right? What does the implementation of such a right tell us about the person who is thus put to death and about the relation of enmity that sets that person against his or her murderer?”⁵ Mbembe views sovereignty fundamentally as the right to kill and politics as war, developing a lens through which to view modern forms of subjugation of certain people to what he calls “death-worlds,” or “new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead.”⁶

⁴ Achille Mbembe, “Necropolitics,” *Public Culture* 15, no. 1 (2003): 12, doi:10.1215/08992363-15-1-11.

⁵ *Ibid*, Mbembe 12

⁶ *Ibid*, Mbembe 40

The spaces that Mbembe looks to for his examples of death-worlds are mostly in areas postcolonial Africa where non-state actors have taken control of the territory with their “war machines.”⁷ To apply the principles of necropolitics to Global North democracies, scholars have developed the concept of *rule-of-law necropower*, defined as “the sovereignty to administrate death through adherence to the rule of law and the spaces it creates.”⁸ What distinguishes rule-of-law necropower from the biopolitics framework that has been used to analyze power in western democracies is the continuation of colonial sovereignty and hierarchies described by Mbembe and the lucrative nature of the production of death.⁹

This thesis seeks to explain immigration detention in the United States through the lens of necropolitics. Necropolitics, despite being conceived to understand examples such as precarious and extractive mining practices run by non-state actors in postcolonial spaces, includes wisdom that can illuminate puzzling political practices in the Global North as well. This thesis will argue that immigration detention in the United States during the COVID-19 pandemic, for its deadly treatment of a marginalized class for the financial benefit of those in power, is one such practice. It will do so by first explaining necropolitics and its relevance to immigration detention, using the concept of carceral capitalism to explain the system of financial incentives in place and how people in power benefit economically by creating precarious spaces for undocumented immigrants. The second chapter will provide a historical analysis of immigration detention aimed at explaining how the practice arrived at the point of extreme precarity during the COVID-19 pandemic. The third chapter will bring together the theory, history, and present-day practices, including a case study of

⁷ *Ibid*, Mbembe 30

⁸ Ariadna Estévez, *Necropower in North America: The Legal Spatialization Of Disposability and Lucrative Death* (Cham, Switzerland: Palgrave Macmillan, 2021), 12.

⁹ *Ibid*, Estévez 11

the ICE detention center in Stewart County, Georgia, to demonstrate the necropolitical aspects of immigration detention during the pandemic.

Regarding the research methodology, this thesis will use both primary and secondary source data collected for the project. In order to present a more focused critical analysis of immigration detention in the United States, this thesis will analyze data from the onset of the COVID-19 pandemic in the US in March 2020 until March 2022. Over the course of the ongoing pandemic, there have been several reports from a variety of sources documenting the mistreatment of people detained in ICE detention centers across the country. The majority of reports come from either journalists or groups of advocates for undocumented immigrants who have been in direct contact with detainees. ICE itself issues official reports regarding what happens in its detention centers, but these reports have been contradicted by detainees frequently enough to be deemed untrustworthy. As will be explored in the data analysis section, ICE has a track record of under-reporting cases and executing highly questionable transfers throughout the pandemic in an attempt to disguise the abuse happening in their detention centers. Reports have indicated frequent examples of intimidation of detainees who exhibited COVID-19 symptoms by detention center guards to prevent detainees from getting tested, as well as a failure to implement social distancing policies that were said to be in effect in all detention centers.

ICE's record of obscuring the true nature of how detainees are treated goes back to before the pandemic. In 2018, a series of reports were published exposing a serious lack of compliance with federally mandated detention standards and consistent avoidance of oversight. Even the Department of Homeland Security's own Office of the Inspector General published a report outlining the various ways that ICE detention facilities have failed to follow guidelines that they claim to be following. The executive summary of the report states that "Neither the inspections

nor the onsite monitoring ensure consistent compliance with detention standards, nor do they promote comprehensive deficiency corrections...As a result, the inspections do not fully examine actual conditions or identify all deficiencies.”¹⁰ This report recognized in an official capacity what activists and researchers had been saying for years about ICE’s general disregard for detainee well-being and efforts to hide instances of abuse from the public, as testimony from detainees themselves has frequently conflicted with official reports on conditions in detention centers. That same year, former ICE spokesperson James Schwab resigned from his position and reported being told by his superiors to frequently “spin” the truth and in some cases outright lie to the press.¹¹

A report from The Intercept using data starting in 2019 detailed the exact strategy that ICE uses to avoid oversight, describing how the organization uses privately contracted inspectors who are not shown the whole picture in the case of the Otero County Processing Center. The inspection groups come at set times rather than making random visits, and their visits are controlled by ICE personnel. The reports from these inspections left out obvious and glaring problems that detainees and advocates have provided evidence for.¹² While the inspector report described the atmosphere in the facility as “safe,” “clean,” and “relaxed” with “no areas for concern,”¹³ a parallel report conducted by Advocate Visitors with Immigrants in Detention (AVID) and Innovation Law Lab on the same facility documented several serious complaints from detainees, most commonly having to do with medical neglect, facility conditions (including frequent use of solitary

¹⁰ John V. Kelly, “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements,” 18 ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements § (2018), pp. 1-28.

¹¹ Jennie Neufeld, “Watch: Former Ice Spokesperson Says He Was Asked to ‘Flat-out Lie,’” Vox (Vox, June 28, 2018), <https://www.vox.com/2018/6/28/17514964/ice-spokesperson-flat-out-lie>.

¹² Ryan Devereaux, “‘Theater of Compliance’: New Report Details How Ice Escapes Detention Center Oversight,” The Intercept (The Intercept, January 5, 2021), <https://theintercept.com/2021/01/05/ice-detention-center-oversight-report/>.

¹³ Nakamoto Group, “Annual Detention Inspection of the Otero County Processing Center,” Immigrations and Customs Enforcement, January 30, 2020.

confinement as punishment), and failure to provide due process to detainees seeking legal assistance.¹⁴

This consistent dishonesty regarding detainee well-being has continued throughout the pandemic as conditions in detention centers have become even more life-threatening. In the first few months of the pandemic, the ACLU published a report detailing the inconsistencies in ICE’s legal testimony regarding COVID-19 mitigation methods in their detention center. In one case, a senior ICE official testified all detainees with symptoms in Maryland detention facilities had been tested, which was proven in court to be far from the truth. This false testimony, as well as ICE’s general unwillingness to cooperate with investigation into such practices, compelled the court to conclude that “Respondents’ withholding of this information and failure to correct the record on this point ... raises significant doubt whether the [detention center] will reveal suspected cases when they arise as to facilitate proper testing and responsive measures to protect the detainee population, or whether it will conceal suspected cases in the future and take no action, at substantial risk to the detainee population.”¹⁵ Apart from outright lying and evasion of oversight, there is reason to believe that ICE has been deliberately under-reporting the severity of COVID-19 outbreaks in their centers. The lack of testing and various reports of intimidation of detainees with symptoms by guards makes it impossible that ICE’s official case numbers are accurate. Using a simulation of the likely spread of the virus through detention facilities, the Vera Institute estimated

¹⁴ N. Craig, “Process by Torment,” AVID in the Chihuahuan Desert, November 13, 2021, <https://avid.chihuahuan.org/2021/01/02/process-by-torment/>.

¹⁵ Eunice Cho, “ICE’s Lack of Transparency about Covid-19 in Detention Will Cost Lives: News & Commentary,” American Civil Liberties Union, May 22, 2020, <https://www.aclu.org/news/immigrants-rights/ices-lack-of-transparency-about-covid-19-in-detention-will-cost-lives/>.

that ICE's case numbers could not possibly be accurate and could be as much as fifteen times higher than the reported numbers.¹⁶

For all of the above reasons, officially reported data from ICE will be viewed critically in this project, and the data points that will be used come from sources that cite how detainees themselves report they are being treated in the facilities. Detainee reports often stand in direct contradiction to ICE reports, rendering information from ICE even less credible. Detainees have been able to make their voices heard through interviews with journalists, advocates, and researchers who have published articles about immigrant detention. While these testimonies do not immediately lend themselves to broad statistics, tendencies can be established by examining common features of detainee treatment in detention centers across the country. This data, though sporadic and not conducive to tell-all statistics, is a more accurate representation of the extent to which necropolitical practices exist within the immigrant detention system.

In order to provide a more focused analysis and allow for more detailed data points, the following data analysis will feature a case study of the Stewart Detention Center (SDC) in Stewart County, Georgia. SDC was chosen because of its shared characteristics with the majority of ICE detention centers across the country. First, it is located far away from major cities in a remote area where access to legal resources is scarce. This is the case for the majority of ICE detention centers,¹⁷ and the detention centers that have been built in recent years have only increased that margin. The placement of detention centers serves multiple purposes, among them keeping detainees away from legal services that could potentially secure their release, keeping construction

¹⁶ Dennis Kuo et al., "The Hidden Curve: Estimating the Spread of COVID-19 in ICE Detention," Vera Institute of Justice, June 1, 2020, <https://www.vera.org/the-hidden-curve-covid-19-in-ice-detention>.

¹⁷ Yuki Noguchi, "Unequal Outcomes: Most Ice Detainees Held in Rural Areas Where Deportation Risks Soar," NPR (NPR, August 15, 2019), <https://www.npr.org/2019/08/15/748764322/unequal-outcomes-most-ice-detainees-held-in-rural-areas-where-deportation-risks>.

and operating costs lower than they would be in a city, and ensuring that the detention center represents a significant enough part of a county's budget that local authorities are compelled to cooperate as much as possible. Major cities have enough revenue not to be dependent on ICE detention centers to finance their budgets, but small towns (especially in low-income areas) are often desperate for the financial stimulus that ICE provides in the absence of other federal aid.

The second important characteristic that is shared between SDC and the majority of ICE detention centers is the type of contract that it operates under. SDC is managed as a collaboration between the Stewart County government, ICE, and CoreCivic, one of the two largest private prison companies in the US. The contract is known as an Intergovernmental Service Agreement (IGSA),¹⁸ indicating that private companies and local governments work together to detain people on ICE's behalf.¹⁹ The level of involvement of local governments varies county by county, but approximately 80% of detainees are detained under some sort of private-public collaboration.²⁰ The data taken from the Stewart County case study will be placed in the context of data collected from the rest of the country to provide corroboration.

The data points themselves will come from a combination of primary and secondary sources. The secondary source data come from extensive internet searches for any forms of media that have shed light on the treatment of detainees during the pandemic. These sources include reports from investigative journalists in traditional media outlets, reports from organizations that

¹⁸ *Supra note 13*

¹⁹ Jesse Franzblau, "Policy Brief: Cut The Contracts: It's Time to End Ice's Corrupt Detention Management System," National Immigrant Justice Center, accessed May 31, 2022, <https://immigrantjustice.org/research-items/policy-brief-cut-contracts-its-time-end-ices-corrupt-detention-management-system>.

²⁰ Eunice Cho, "More of the Same: Private Prison Corporations and Immigration Detention under the Biden Administration: News & Commentary," American Civil Liberties Union, October 8, 2021, <https://www.aclu.org/news/immigrants-rights/more-of-the-same-private-prison-corporations-and-immigration-detention-under-the-biden-administration/>.

work on behalf of detained immigrants, lawsuits filed on behalf of detained immigrants, and hotlines through which detained immigrants have been able to voice their concerns about conditions inside ICE detention centers. The majority of the secondary source data that will be used comes from Stewart County, with other articles and reports providing complimentary information that indicates the extent to which dynamics at SDC are present in other detention centers across the country. The primary source data entirely focus on Stewart County. Interviews were conducted virtually with local government officials who are familiar with the workings of SDC, including the County Executive of Stewart County Mac Moye, researcher Kristen Kolenz, and activist Johanna Garcia at the non-profit organization El Refugio that works to protect the rights of and the support the families of detainees at SDC.

The interviews were semi-structured, allowing for the interviewees to speak freely when responding to prepared questions. For Moye, questions were centered around the benefits that SDC brings to the county. Interviewees were asked questions such as “What has the Stewart County government been able to do for its residents because of the ICE/CoreCivic contract?” and “What would have to change in local governance if the detention center were closed or relocated?”. Moye was especially knowledgeable about the collaboration between ICE and CoreCivic both because of his current job as County Executive and his previous job as a case manager for CoreCivic. It is a topic that he has been eager to speak freely about in the past, as seen by his defense of Stewart County’s role in immigrant detention in various publications.²¹ Moye declined the offer of anonymity for this project.

²¹ Catherine E. Shoichet, “ICE Detention: Inside America's Hidden Border,” CNN (Cable News Network, August 2018), https://edition.cnn.com/interactive/2018/08/us/ice-detention-stewart-georgia/?utm_content=chapter_04%2F.

Moye's willingness to share his knowledge and perspective on SDC sets him apart from other local officials in similar positions. During the research for this project, phone calls were made to several dozen of local governments where ICE detention centers operate to request interviews regarding the financial benefits of having an ICE detention center in their jurisdiction. The vast majority declined, usually claiming to not be knowledgeable enough to contribute to the research. This reluctance to speak about this topic could be attributed to multiple factors. It is possible that growing public pressure on ICE and immigrant detention has made them ashamed to play a part in such an unpopular practice. It is also possible that ICE has instructed them to refer any press or research requests elsewhere. Researchers, activists, and professionals who work with in this field, including the ones interviewed for this project, acknowledge that ICE prefers to keep its communication to the bare minimum and not disclose as little information as possible, so it could be that it has instructed its local partners to do the same.

To seek out the perspective of people detained at SDC, interviews were conducted with the Advocacy Coordinator of the aforementioned non-profit El Refugio, Johanna Garcia, and researcher Kristen Kolenz of Brown University. Garcia's experience working directly with and advocating for detainees throughout the pandemic has given her in-depth knowledge of the material conditions of people detained at SDC, as well as the on-the-ground tactics of ICE. Garcia responded to questions regarding her observations of ICE's use of the transfer system, interactions with ICE and CoreCivic officials, her experience trying to secure release and/or asylum for SDC detainees, and her perception of the differences (or lack thereof) between the Biden and Trump administrations' policies. Kolenz shared her perspective after having conducted a questionnaire with SDC detainees and reviewing the responses. Detainees at SDC were not directly interviewed for this project because of the health concerns related to the ongoing pandemic. As the data will

show, COVID-19 is especially dangerous inside detention centers, and any research involving detainees should place the detainees' health, safety, and privacy above all else.

Even though no detainees were interviewed for the purpose of this project, their perspectives will still be included through secondary sources. In the case of Stewart County, El Refugio has published several reports that include direct quotes from detainees describing the conditions they faced on the inside. Journalistic outlets like *The Intercept* that have reported extensively on ICE detention have published articles about SDC that also include direct quotes from detainees. The combination of interviews with people who work directly with SDC detainees, El Refugio's report, and media reports create a picture of the conditions in SDC as seen from the inside.

Among other data pertaining to Stewart County are local news reports and previously published histories of the region. Local news reports give an insight to how SDC is seen by the people living in the surrounding area, as well as providing a catalogue of coronavirus outbreaks in the region. The history of Stewart County give important context to the current economy of the region, which helps explain why SDC is located there in the first place and why local government officials feel so strongly that it should remain there. This data will be examined through a post-colonial framework, tracing the hierarchical dynamics at play in the detention of undocumented immigrants throughout the modern history of Stewart County. Finally, a lawsuit filed by several organizations including El Refugio on behalf of detainees sheds light on the violations committed by ICE even by their own standards.

Data from other parts of the country that compliment and corroborate the data from Stewart come from similar sources. Extensive journalistic reporting has been done to shine the spotlight on ICE's abuse of detainees, and activists have kept detailed records using the little information

that has been provided by authorities. For example, the Brennan Center for Justice has kept an ongoing catalogue of important events in ICE detention centers over the course of the pandemic, including major outbreaks, hunger strikes, and successful release petitions.²² The American Immigration Lawyers Association has kept a running list of deaths from COVID-19 in ICE detention centers, complete with official statements.²³ On the media front, outlets such as *Truthout* and *The Intercept* have elevated detainee voices in their reporting, providing valuable quotes and context for claims of abuse. Additionally, a podcast called “Detention Dispatches” from the Capital and Main media group recorded phone calls with detainees describing the conditions in various detention centers, all of which contain valuable insights to the detention process.²⁴

The argument is presented over three chapters. The first one is an overview of necropolitics and its Global North applications. The first section of the chapter uses the works of scholars such as Lucy Mayblin and Andrés Fabián Henao Castro who have used necropolitics to understand the treatment of asylum seekers, refugees, and immigrants in the UK and along the US border respectively to examine the existing work of necropolitics as it relates to immigration policy in the Global North. The second section of the chapter offers an analysis of carceral capitalism, the theoretical framework that explains how the expansion of the carceral state in the US has gone hand in hand with neoliberal economics, facilitating the transfer of resources from the lower class to the upper class. Carceral capitalism was originally created to understand domestic incarceration, and this section will explain how it can be extended to illuminate the financial incentives behind

²² Andrew Cohen and Lauren-Brooke Eisen, “Immigration Detention and Covid-19,” Brennan Center for Justice, January 7, 2022, <https://www.brennancenter.org/our-work/research-reports/immigration-detention-and-covid-19>.

²³ “AILA - Deaths at Adult Detention Centers,” American Immigration Lawyers Association, accessed May 31, 2022, <https://www.aila.org/infonet/deaths-at-adult-detention-centers>.

²⁴ Marco Amador, “Detention Dispatches: A New Podcast,” Capital & Main - Investigating Power & Politics (Capital & Main, July 23, 2020), <https://capitalandmain.com/detention-dispatches-0509>.

immigration detention and the ways in which the precarious conditions in detention centers are lucrative for powerful groups. The third section will dive into the elements of colonial sovereignty that are present in ICE detention. The point of this section is not to argue that immigration detention is equivalent to colonialism, but rather that immigration detention is a method through which certain relationships and colonial hierarchies are maintained in the modern age. This extension of colonial relationships is referred to as “postcolonialism.” The chapter as a whole sets the stage for the argument that necropolitics is an apt lens through which to understand immigration detention during the COVID-19 pandemic.

The second chapter aims to provide historical context for immigration detention in the US. Although the DHS and ICE are twenty-first century inventions and responses to the September 11th attacks, the US has been detaining immigrants in one way or another since the nineteenth century. The chapter is divided into three sections according to marquee pieces of legislation that have signaled shifts toward a more punitive immigration system. The analysis begins with the legislation and court cases in the late nineteenth century that served to criminalize Chinese and other East Asian immigrants. This section includes a discussion of Japanese internment during World War II, the Bracero program, and the management of the AIDS crisis in immigration detention centers. The second section addresses the increasing criminalization practices of immigration detention starting with the Immigration Reform and Control Act in 1986. This period witnessed the overlap of immigration and criminal justice systems in the US, a process known to scholars “cimmigration” that was supported by several pieces of legislation under the Clinton Administration and later by the creation of DHS and ICE. The third section bring the analysis into the present day, charting the direction of immigration detention during the COVID-19 pandemic.

Chapter 3 uses a case study of the Stewart Detention Center (SDC) in Lumpkin, Georgia to demonstrate the necropolitical practices of immigration detention during the COVID-19 pandemic. The argument is separated into two sections, the first of which establishes SDC as the modern day extension of a long, colonial history of extraction of resources from racialized groups. The history goes back to the colonization of the area and the removal of native populations and continues through the practice of slavery used in highly profitable cotton farming. The second section describes in detail the ways in which SDC financially benefits certain actors and the system of incentives established in federal law that makes SDC so important to the county government. The argument is supported by comments from Stewart County manager Mac Moye. Despite Moye's personal reservations about the mass detention of immigrants, the financial incentives for his county, one that faces severe economic hardship as one of the poorest counties in the country, are such that he sees the continued detention of immigrants at SDC as necessary for local governance.

CHAPTER 1: RULE-OF-LAW NECROPOLITICS IN US IMMIGRATION DETENTION CENTERS

This chapter will examine how those two key characteristics of rule-of-law necropower fit with the US immigration detention system. The immigration detention system is part of a larger immigration enforcement regime sometimes referred to as the “immigration industrial complex.” The idea of the immigration industrial complex is an off-shoot of the military industrial complex and prison industrial complex, both of which refer to the wide array of public and private interests that are linked with the execution of wars and imprisonment respectively. Likewise, the immigration industrial complex refers to the public and private interests associated with enforcing immigration law.²⁵ Mbembe’s notion of necropolitics requires viewing politics as a type of war being waged on subjects, and the immigration industrial complex in the US has been linked with the state’s ability to wage war since its inception. The Chinese Exclusion Acts of the nineteenth century identified immigrants as a national security threat, associating the exercise of national sovereignty with forcefully expelling and/or detaining immigrants.²⁶

The following sections of the chapter will explain in detail how these necropolitical practices are manifested in the US immigration detention system, especially during the ongoing COVID-19 pandemic. The first section will discuss rule-of-law necropower and review the literature surrounding necropolitics and immigration enforcement in the Global North. The next two sections will address the two key characteristics of necropolitics and how they apply to the US immigration detention system: lucrative death and colonial sovereignty. In the section that pertains to lucrative death, the lens of carceral capitalism will be applied to explain how both

²⁵ Karen Manges Douglas and Rogelio Sáenz, "The Criminalization of Immigrants & the Immigration-Industrial Complex," *Daedalus* 142, no. 3 (2013): 209-212, doi:10.1162/daed_a_00228.

²⁶ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton ; Oxford: Princeton University Press, 2014), 11-12.

public and private interests benefit financially and how the current system of incentives is designed to maximize the number of undocumented people detained per day. The combination of private prison companies' profit motive, ICE's ever-increasing budget supported by an army of lobbyists, and the economic benefits reaped by local governments whose municipalities have detention centers creates a perverse series of financial incentives to continue to increase the number of immigrants detained. The third section will describe the postcolonial hierarchies that are established and maintained by the US immigration detention system and argue that migrants from Latin America are often subjected to several different forms of extraction for the benefit of US capital interests. Indeed, the some of the same tools that were used to carry out colonial wars are now used to detain undocumented immigrants, the majority of whom come from countries that have been subjected to US postcolonial interventions.

1.1 The politics of life and death in immigration detention

This section will explain the role necropolitics and rule-of-law necropower in the detention of immigrants in the United States during the COVID-19 pandemic. Necropolitics was first developed by philosopher Achille Mbembe in 2003 to describe governance of postcolonial spaces in Africa in which the ruling entities are often non-state actors. Necropolitical analysis focuses on spaces in which extraction, no matter how precarious, is a primary political goal, and thus “death-worlds” are created by the powerful, for whom the deaths are lucrative.²⁷ Recently, scholars and theorists have begun to place necropolitics in a first world context to describe spaces where they believe life has been made subordinate to the power of death under the term “rule-of-law necropower”. Rule of law necropower refers specifically to these instances of necropolitics in the Global North that are results of pieces of legislations and/or interpretations of the law as written

²⁷ *Supra note 4*, Mbembe

that subject people to environments dominated by death, such as deportation to dangerous places, militarization of law enforcement that targets ethnic minorities, intentional exposure to illness, and mass imprisonment. Although it focuses on the Global North, rule-of-law necropower also includes the leverage of colonial sovereignty that allows certain groups to subjugate others to deadly spaces.²⁸ Just like in the Global South, these deaths are lucrative because they are driven by economic extraction, both in the form of destruction of living spaces and carceral capitalism.

For its analysis of rule-of-law necropower in US immigration detention centers, this thesis will utilize the concept of “slow violence” as elaborated in Rob Nixon’s book by the same name. Slow violence is defined as “a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all,”²⁹ and is a concept that is frequently applied to incarceration and securitization. This chapter will apply it both to treatment of migrants and management of epidemics in which populations can die off without much attention being called to their endangerment. Slow violence fits well with the rule-of-law necropower because it includes analysis of how the powerful benefit and profit from the deaths they cause, as well as the postcolonial relationships that allowed the powerful to be in those positions in the first place.

The concept of slow violence is especially valuable to the application of necropolitics to immigration policy in the first world, as demonstrated in the work of Henao Castro and Mayblin, Wake, and Kazemi. Henao Castro’s article “From the ‘Bio’ to the ‘Necro’: The Human at the Border” explores how the weaponization of US southern border policy can be viewed through the lens of necropolitics. In his analysis, Henao Castro focuses on the elements of necropolitics that

²⁸ *Supra note 8*, Estévez 2021

²⁹ Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge, MA: Harvard University Press, 2013), 15.

are most in line with slow violence, describing the infliction of death “through the deliberate destruction of life’s infrastructure” rather than “old forms of direct killing.” He invokes Mbembe’s idea of the status of “living dead,” imposed onto certain populations when powerful actors, be they states, non-state actors, or corporations, abandon them to die by gutting their material living conditions.³⁰ When migrants move north to give themselves a better chance of survival, whether for economic or political reasons, expulsion at the hands of the militarized border can send them into deeply perilous spaces. Notably, the creation of the perilous conditions that have caused economic migration from Mexico and Central America has been lucrative for the United States, the same country that later expels the migrants back into those spaces. They have also been created using entirely legal tools. NAFTA allowed large US-based corporations to undercut the extensive small farming industry in Mexico, leaving those affected without a way to sustain themselves and few options except to follow the profits northward.³¹ As will be further explored in the following section, the strategies for expulsion, namely the militarized enforcement led by Customs and Border Patrol (CBP) and ICE, are also lucrative for both state and corporate interests.

Henao Castro identifies the militarized border enforcement system as a necropolitical apparatus (or the Foucauldian *dispositif*) in three different capacities. He argues that increased enforcement along the border, especially along frequently crossed areas, pushes immigrants to more dangerous crossing points that endanger their lives far more due to subjection to harsher natural elements.³² Specifically, the Clinton Administration policies that took effect in 1996 fortified popular urban crossing points and forced many immigrants into the excruciating deserts

³⁰ Andrés Fabián Henao Castro, "From the “Bio” to the “Necro”: The Human at the Border," in *Resisting Biopolitics: Philosophical, Political, and Performative Strategies* by S. E. Wilmer and Audronė Žukauskaitė (London: Routledge, 2018), 242-243.

³¹ *Ibid*, Henao Castro 242

³² *Ibid*, Henao Castro 247

of Arizona, where death tolls increased significantly. These desert deaths lead into another necropolitical *dispositif*, which is the absence of recognition of those deaths. Bodies have been found in unmarked mass graves, and there are certainly many more that met similar fates but have not been found. The failure to recognize these deaths dehumanizes the dead and sanctions the abandonment of members of that group (in this case, Latinx undocumented immigrants) to die.³³ The third *dispositif* in Henao Castro's analysis is the general evaporation of rights, or the destruction of *zoē*, of undocumented immigrants caused by the economic consequences of US imperialism. The inequality that is created by the extractivist and destructive policies renders citizenship from certain countries worth less than other countries, making the people affected disposable not worth protecting. Indeed, thousands of people "disappear" every year making the journey through Mexico after being caught at the intersection of multiple systems that create death-worlds along the way.³⁴

Another salient example of rule-of-law necropower being applied to management of migrants in the Global North comes from Mayblin, Wake, and Kazemi's article "Necropolitics and the Slow Violence of the Everyday: Asylum Seeker Welfare in the Postcolonial Present" in which the authors use a necropolitical framework to analyze the slow violence committed against asylum seekers in the United Kingdom.

Like Henao Castro, the authors identify the treatment of immigrants who come from countries that have suffered under colonialism in the Global South seeking refuge in the Global North countries that benefitted from it. The analysis starts with a problematization of the "postcolonial present," which, contrary to the stated values of the human rights framework that was presented on the international level after World War II, reflects an extension of colonial

³³ *Ibid*, Henao Castro 248

³⁴ *Ibid*, Henao Castro 249

relationships rather than a fundamental shift. It is with this reasoning that the authors argue that most apt way to analyze the violence that asylum seekers from the Global South experience is as an extension of the everyday colonial violence that preceded the so-called human rights framework. In that vein, Mbembe's necropolitical analysis of postcolonial spaces and sovereignty is more useful than some of the biopolitical frameworks that are commonly used to analyze modern-day Global North governmentality. Specifically, they point to Agamben's state of exception as a concept that is useful for understanding the extermination camps in Nazi Germany but not as applicable as necropower for the ongoing administration of slow violence in the everyday lives of asylum seekers. The authors also take care to point out that the asylum system operates entirely within the limits of the law, expending just enough resources to keep people alive but, as Mbembe puts it, in a permanent state of injury, creating a system of governance that condemns people to death using slow violence.³⁵

The authors' methodology is to interview asylum seekers in northern England about a variety of aspects of their day-to-day lives and use those stories to place the management of the asylum system within a rule-of-law necropower framework. They ask the interviewees about various aspects of their daily lives, all of which were selected for their potential relationship to slow violence. The categories include food, socializing, transportation, and personal hygiene, among others. Since asylum seekers are forbidden from working by law, they rely on the basic funds given to them by the British government. Interviewees describe "living with minimum of everything" and being forced to cut down on the number of meals they ate per day.³⁶ The authors interpret those data points as follows: "Small harms (such as temporary hunger) are done today

³⁵ Lucy Mayblin, Mustafa Wake, and Mohsen Kazemi, "Necropolitics and the Slow Violence of the Everyday: Asylum Seeker Welfare in the Postcolonial Present," *Sociology* 54, no. 1 (2019): 109-111, doi:10.1177/0038038519862124.

³⁶ *Ibid*, Mayblin et. al 114-115

through policies of purposeful impoverishment and collectively these harms, or gradual woundings, add up to something much greater.”³⁷ The inability to afford transportation options is another aspect of life that weighs heavily on asylum seekers. They are forced to walk almost everywhere they go, inflicting a constant wear and tear on their bodies that is difficult to measure. On top of the daily attrition, the lack of transportation options makes emergencies such as urgent visits to the hospital extremely difficult, and many try to attend to their own emergencies instead of getting proper care as a result. The inability to move around leaves their bodies both immobilized and worn down, another form of slow violence that they suffer from.³⁸ On top of the physical difficulties in their lives, the interviewees report not being able to afford to socialize and thus being unable to construct support networks. The lack of connection takes a psychological toll resulting from feelings of ostracization, and also makes it less likely that they will know someone that they can lean on for help if need be, an example of the dehumanizing effects of slow violence.³⁹

The works mentioned above will serve as instructive examples for how to apply necropolitics to the management of immigrants in the Global North. Both were written before the pandemic, so the authors were not able to incorporate the deadly effects of the virus that have compounded existing difficulties. In recent research, other scholars have published articles linking the management of the pandemic with necropower in the Global North. One prominent example comes from Tony Sandset, whose article “The necropolitics of COVID-19: Race, class and slow death in an ongoing pandemic” explores the disproportionate death suffered by people of color in the United Kingdom at the hands of the coronavirus. He argues that the pandemic has sharply accentuated the existing necropolitical tendencies in healthcare, namely the slow violence of

³⁷ *Ibid*, Mayblin et. al 115

³⁸ *Ibid*, Mayblin et. al 117-118

³⁹ *Ibid*, Mayblin et. al 119

increased vulnerability to disease and deprivation of resources in poor communities of color.⁴⁰ He argues that the death-worlds created by the inequalities in the healthcare system are a result of the manifestation of a “state of acceptance,” a term he uses juxtaposed with Agamben’s “state of exception” to describe a permanent recognition of public acceptance that certain people will die and suffer while others will not⁴¹. He proceeds to use Berlant’s concept of “slow death” and Butler’s concept of “precarious life” to link the pandemic to Mbembe’s “power to expose” certain people to life-threatening spaces, in this case spaces with high probability of infection.⁴²

Each of these examples will inform this project’s analysis of the necropolitics of COVID-19 in the US immigration detention system. This project will also have a strong focus on the extent to which the death-worlds created by US immigration detention during the pandemic are lucrative, as aspect that is occasionally left out of similar analyses like the examples above. The following section of this chapter will provide the theoretical framework for establishing the lucrative nature of incarcerating immigrants: carceral capitalism.

1.2 Carceral Capitalism and financial incentives in immigration detention

The concept of carceral capitalism is important to this thesis first and foremost to explain how the subjugation of detained immigrants to deadly spaces is lucrative for those subjugating them. This section will apply carceral capitalism as developed by Jackie Wang in her book by the same name to immigration detention to apply the idea of lucrative death to immigration detention. The idea of carceral capitalism was conceived by analyzing the domestic criminal justice system and how it works to support the interests of capital and uphold white supremacy. Wang forcefully argues that it is no coincidence that the unchaining of capitalism and the beginning of the era of

⁴⁰ Tony Sandset, "The Necropolitics of COVID-19: Race, Class and Slow Death in an Ongoing Pandemic," *Global Public Health* 16, no. 8-9 (2021): 1412, doi:10.1080/17441692.2021.1906927.

⁴¹ *Ibid*, Sandset 1414

⁴² *Ibid*, Sandset 1417

mass incarceration in the United States happened simultaneously: both jump-started under the Reagan Administration and continued to gain steam under Clinton until they became seemingly irreversibly woven into the fabric of twenty-first century US domestic policy. The crux of the argument is that while taxes were cut for the rich, municipal budgets, which do not have the same flexibility as the federal budget, came to rely largely on extracting money from their poor and Black citizens through a system of fines, municipal penalties, and prison sentences. This system serves not only to keep the working class exploited and at the mercy of the powers of both capital and the state but also to keep police budgets funded while social services are slashed in the name of lowering taxes. The slashing of social services in turn creates conditions that are conducive to more crime which in turn creates more justification for more extraction by the criminal justice system.⁴³

This section of the essay will apply the principles of carceral capitalism to immigration detention. In contrast to the domestic prison system, the immigration detention system is a civil detention system, which many scholars have argued is an oxymoron. Another distinct feature of immigration detention is that about 80% of detainees are in in detention centers that are run by private prison companies, as opposed to the less than 10% of people in domestic prisons.⁴⁴ Private prison companies have seen their profits increase steadily since the expansion of the immigration detention system in the Bush and Obama years, and in turn spend much of that money lobbying for more immigration detention centers to be built. Carceral capitalism, however, teaches us to go beyond the direct profits of private companies and look at how the continued construction of new

⁴³ Jackie Wang, *Carceral Capitalism* (South Pasadena, CA: Semiotext(e), 2018).

⁴⁴ Lauren-Brooke Eisen, "Breaking Down Biden's Order to Eliminate DOJ Private Prison Contracts," Brennan Center for Justice, November 15, 2021, accessed December 14, 2021, <https://www.brennancenter.org/our-work/research-reports/breaking-down-bidens-order-eliminate-doj-private-prison-contracts>.

detention centers upholds broader financial interests, namely those of local governments that can use detention as a way to support their budgets while cutting taxes and social services and corporations that profit off of all aspects of detention, from transporting detainees to managing the centers themselves. To accomplish this task, this part of the chapter will discuss the history of detainee labor, the strategic threats of deportation, and the municipal contracts that local governments depend on to sustain neoliberal budget principles.

Immigration enforcement in the US has always been directly tied to capital. Before the advent of ICE and enormous modern immigration detention industrial complex, the US government used the tools at its disposal to regulate incoming labor, especially from Latin America, according to the interests of corporations. During World War II, the Roosevelt Administration initiated the Bracero Program to encourage people from Mexico to come to the United States to fill the labor shortage left by the war, but shortly after the war ended and the troops came home the Eisenhower Administration began “Operation Wetback” to deport people who had come up with the Bracero Program who were now seen as a threat to farmers.⁴⁵ Many of these workers who came through the Bracero workers were detained and threatened with deportation if they did not submit to extremely exploitative detention labor, allowing for even more profit to be extracted from them.⁴⁶ The dramatic expansion of the immigrant detention industrial complex that led to it expanding to the size it is today began around the turn of the century when overzealous construction of private prisons following the “tough on crime” wave of the 1980s and 1990s led to too many unfilled beds, meaning there would be less money available from federal contracts. The contractors for these facilities, be they local governments or private companies, realized that

⁴⁵ *Supra note 26*, Douglas and Saenz 202

⁴⁶ Jessica Ordaz, *The Shadow of El Centro: A History of Migrant Incarceration and Solidarity* (Chapel Hill: University of North Carolina Press, 2021), 20-21.

these beds that could be filled by turning attention to undocumented immigrants. Like all business, the incarceration business depends on continued growth to survive. This trend later snowballed into bed mandates for ICE detention facilities to ensure increased detention, starting at 18,500 in 2005⁴⁷ and eclipsing 30,000 by 2009. Although the policy was eliminated, detention continued to balloon as the Trump Administration set records by detaining over 50,000 people before the COVID-19 pandemic restricted migration.⁴⁸ This rise coincided with the change in ICE policy in 2006 from “catch and release” to “catch and detain,” meaning people who otherwise would have been set free immediately were detained for extended periods of time, allowing the facilities that detain them to request more federal money for the additional days of detention and continue to profit from their labor.⁴⁹ That time period also saw what many have referred to as the “immigrant gold rush” in Texas, a corporate rush to build as many immigration detention facilities in anticipation of stricter immigration enforcement laws.⁵⁰

The actors who profit most egregiously from immigration detention are the private prison corporations such as CoreCivic and GEO Group, whose facilities hold around 80% of the detainee population at any given time. These companies have spent heavily on lobbying the federal government to increase immigration detention contracts and have seen their stock prices shoot up as a result,⁵¹ but theirs are far from the only corporate interests at stake. Businesses that provide services related to incarceration from the mundane (transportation of prisoners, telephone services)

⁴⁷ Anita Sinha, “Slavery by Another Name: ‘Voluntary’ Immigrant Detainee Labor and the Thirteenth Amendment,” *Stanford Journal of Civil Rights and Civil Liberties* XI, no.1 (2015): 17-18.

⁴⁸ “Policy Brief: Cut the Contracts: It’s Time to End ICE’s Corrupt Detention Management System,” National Immigrant Justice Center, accessed December 14, 2021, <https://immigrantjustice.org/research-items/policy-brief-cut-contracts-its-time-end-ices-corrupt-detention-management-system>.

⁴⁹ *Supra note 26*, Douglas and Saenz 206

⁵⁰ Judy Greene, “Crime Rates Down? Immigrant Detentions R Us,” in *Prison Profiteers: Who Makes Money from Mass Incarceration*, edited by Tara Herivel and Paul Wright (New York: New York Press 2007), 43-44.

⁵¹ *Supra note 26*, Douglas and Saenz 217

to the essential (food and medical care) also profit handsomely from expanded immigration detention and the contracts that come with it.⁵² Generally speaking, these businesses do everything they can to cut costs in the services they provide to incarcerated people so they can take home as much of the contract money as possible. These companies, especially the major private prison corporations, also profit from exploiting the labor of their detainees to cut down on costs. Immigration detention facilities are allowed to pay their detainees as little \$1 per day, and it is estimated that having such exploitatively cheap labor saves the corporations about \$40 million per year.⁵³ Many scholars have likened this system to modern-day slavery, with an under-class composed almost entirely of people of color that is forced to work for almost no compensation for the benefit of existing capital. It is certainly reminiscent of Bobby Banerjee's concept of "necrocapitalism" in which postcolonial relationships are exploited to extract as much as possible physical labor and from the colonial under-class who are forced to suffer the slow violence of everyday exploitation.⁵⁴

Even more important than the profits of corporations in the carceral capitalism framework are the financial interests of municipal governments. State and local governments do not have the same seemingly unlimited spending ability as the federal government, so they need to balance their budgets. Injections of federal funds, however they come, offer a convenient path to a balanced budget. Since the turn of the century, many municipal governments across the country have come to depend on federal immigration detention contracts as a way to keep themselves funded without raising taxes or otherwise threatening capital interests.⁵⁵ In the most common type of ICE detention

⁵² *Supra note 48*, Sinha 22

⁵³ *Supra note 48*, Sinha 6

⁵⁴ Subhabrata Bobby Banerjee, "Necrocapitalism," *Organization Studies* 29, no. 12 (2008): doi:10.1177/0170840607096386.

⁵⁵ Cesar Cuauhtémoc Garcia Hernandez, "Abolishing Immigration Prisons," *Boston University Law Review* 97 no. 245 (2017): 259.

contract, known as a Non-Dedicated Intergovernmental Service Agreement (IGSA), a complex arrangement in which state and local governments in whose jurisdiction the detention center is located act as intermediaries between ICE and the private companies. The municipal governments in turn receive a payment from the contractors.⁵⁶ In other cases, ICE contracts directly with state or local governments who in turn manage the facility themselves. Just as private companies receive a certain amount of money from the federal government per detainee that they hold in their facilities per day, so do state and local governments in the facilities that they run. Local sheriffs and politicians are strongly incentivized to push for the detention of more immigrants, even if many of them admit to being apprehensive about detention on such as mass scale on a personal level. Regardless of how wrong it may feel, their jurisdictions cannot or will not get the money they need from taxes or the federal government, so they see increased detention as the best way to secure funds for their municipality and keep government employees employed.⁵⁷

An article in USA Today published in December 2019 and then updated in April 2020 provides an extraordinarily revealing series of examples of how local governments profit from detaining immigrants. Local governments often earn two or three times more money through ICE contracts for detaining immigrants than they do from the state for detaining citizens. In small county budgets, those figures are on top of the significant real estate and property taxes that the detention centers pay. In the town of Richwood, Louisiana (population 3,400), that money was used to buy patrol cars for the police force and give local government employees a raise, a direct reinvestment in the carceral state. In the case of Adams County, Mississippi, one of the poorest counties in the country per capita, those funds are enough to keep taxes stable despite the lack of other types of aid from the state and federal governments. The article explains,

⁵⁶ *Supra note 49*, National Immigrant Justice Center 2021

⁵⁷ *Supra note 26*, Douglas and Saenz 211-212

The detention center is the largest taxpayer in the county, said Adams County Administrator Joe Murray. The facility generates more than \$1.8 million in real and personal property taxes that help fund the county and the school district. ICE, which started placing detainees at Adams in June, promised to pay the county 50 cents per detainee per day, which could generate an additional \$800,000 a year for the county. Mike Lazarus, a county supervisor, said taxes haven't risen for 12 years because of the detention center, which held convicts for the Federal Bureau of Prisons before transitioning to an ICE facility in June.

“I know there are a lot of people who disagree with the politics and all of detention, but as far as Adams County is concerned, it’s been a blessing,” Lazarus said. “You take that money and you turn it into blacktop roads and bridges, which you’re not getting from the state right now.”⁵⁸

This remarkable reporting offers a variety of clear-cut examples of how immigration detention upholds capitalism and neoliberalism in the United States. Multiple local officials describe a budgetary dependence on incarceration, a dependence instilled on them by neoliberal policies of keeping taxes low at the state level. The municipalities may not receive benefits for providing adequate public services, but there are plenty of federal benefits to go around for those who incarcerate immigrants. As seen above, the business of detaining immigrants is even more lucrative than regular incarceration, and the people whose job it is to arrest and detain know this. They also know that the source of their salaries grows with every person they detain. Sometimes the benefits are extremely direct, such as the use of funds received from ICE to purchase more police cars which could in turn be used to expand detention capabilities, creating the exact sort of investment in incarceration cycle that Wang describes. Financially, municipalities are incentivized to invest in law enforcement instead of social services because of the money they receive for the results of expanded law enforcement. It is also well-established that police officers seek out Latinx people

⁵⁸ Monsy Alvarado et al., "'These People Are Profitable': Under Trump, Private Prisons Are Cashing in on ICE Detainees," USA Today, April 23, 2020, accessed December 14, 2021, <https://www.usatoday.com/in-depth/news/nation/2019/12/19/ice-detention-private-prisons-expands-under-trump-administration/4393366002>.

to ask for their immigration papers in their daily practices,⁵⁹ likely because they are aware of the financial benefits for their precinct if they can detain as many undocumented people as can fill the beds of the local ICE detention center. In this way, as laid out in the principles of carceral capitalism, an under-resourced, racialized group is disproportionately targeted for detention in the name of protecting the financial interests of the wealthiest citizens. The incarceration of immigrants is extremely lucrative, and when conditions of incarceration become deadly, it means that the deaths of the incarcerated people are lucrative as well.

Section 1.3 Colonial sovereignty and immigration detention

Understanding the governmentality of rule-of-law necropower requires and understanding of the extension of colonial dynamics at play, known as postcolonialism. Scholars who approach critical migration studies from a necropolitical perspective often argue that necropolitics is an apt frame of analysis because of its emphasis on colonial violence using examples such as the slave plantation colonial treatment of indigenous peoples instead of the modern governments using examples such as Nazi extermination camps frequently referenced in biopolitical analyses such as Agamben's *Homo Sacer*.⁶⁰ As previously stated, the inclusion of necropolitics does not exclude biopolitical analysis from relevance—its aim is to provide a different, perhaps more apt dimension to the discussion of state control of migrants' bodies. The two terms build upon each other rather than contrast one another.⁶¹

In the aforementioned work "Necropolitics and Slow Space," Mayblin et. al explain their choice of the necropolitical lens through a criticism of the "human rights framework" that followed

⁵⁹ Amada Armenta, "Racializing Crimmigration," *Sociology of Race and Ethnicity* 3, no. 1 (2016): doi:10.1177/2332649216648714.

⁶⁰ Giorgio Agamben, *Homo Sacer*. Paris, Seuil (1997).

⁶¹ Ariadna Estévez, "Biopolitics and Necropolitics: Opposite or Constitutive?" *Estudios Sobre Estado Y Sociedad* 25, no. 73 (2018): 9-43.

the Second World War in Europe. Horrified by the offenses of the Nazi Regime, leading powers used organizations like the newly-formed United Nations to draft human rights declarations but took care to leave out colonized people as many countries had still yet to achieve independence from their colonial rulers. These colonial norms continued after independence with the idea that some countries were “undeveloped” or “traditional” while others were “advanced” and “modern” and therefore the exclusion of people from previously colonized countries was justified on the basis that they did not share the values of the Western powers. The treatment of migrants and refugees bears resemblance to the violence of colonial sovereignty described by Mbembe because of the continual war of attrition being waged against them that leads to the creation of what Mbembe called “death-worlds.”⁶²

Authors Thom Davies and Arshad Isakjee have also contributed important works of necropolitical analysis for treatment of migrants in the Global North. They also invoke Agamben, writing “In the context of forced migration into Europe, it is groups that have been rendered subaltern who are subject to such necropolitical governance. Just as Agamben argued that the production of bare life has extended beyond the borders of the Camp, so too can necropolitics be extended beyond the spatio-temporal confines of the Colony.”⁶³ The essay points out that there are direct through lines from violence committed by the colonial governments against indigenous people to the violence committed by modern governments against unauthorized migrants. The camps and methods of confining people considered to be disposable and exploitable, specifically indigenous people, in both the Spanish and British colonies have been retooled to render Latinx undocumented migrants disposable and exploitable in detention centers.⁶⁴ In some cases, the

⁶² *Supra note 36*, Mayblin et. al 110-111

⁶³ Thom Davies and Arshad Isakjee, "Ruins of Empire: Refugees, Race and the Postcolonial Geographies of European Migrant Camps," *Geoforum* 102 (2019): 1, doi:10.1016/j.geoforum.2018.09.031.

⁶⁴ *Ibid*, Davies and Isakjee 3

continuing use of colonial tools is overt. To use an example from the US, the Fort Sill military base in Oklahoma was originally used to incarcerate indigenous people who resisted settler-colonialism before being converted into a Japanese internment camp during World War II and later into a migrant detention for children during the Obama Administration.⁶⁵ The repurposing of the exact same place to subjugate three different groups of people provides an all too blatant example of the use of immigrant detention as a tool that reinforces the extension of colonial relationships in the modern age.

Although the United States was a settler-colony and not a colonial power in and of itself during the era of colonialism, it has since taken up the mantle of global imperial power, especially on the American continent. The more blatant conquer-and-occupy model of imperialism has been replaced by a less direct form of political and financial control from afar in a way that maintains the United States' position atop the global hierarchy. Harsha Walia's 2021 book *Border and Rule* lays bare the part that US immigration enforcement plays in creating and maintaining the colonial relationships that have determined the global hierarchy for the past 500 years. The second chapter of the book makes clear that the US government does all it can to ensure that that the ability of major US corporations to establish their dominance in other countries' markets, and the preferred tool for cleaning up the mess caused by this intervention is the carceral state.

This section uses Haiti as a prime example of how US imperial policy and the immigration system function together. The US forced the post-revolution government to pay reparations to its enslavers, seized land for US corporations, and propped up the dictators of the Duvalier family in an attempt to draw a contrast with Cuba that ended up causing extreme poverty by putting domestic

⁶⁵ Harsha Walia, Robin D. G. Kelley, and Nick Estes, *Border and Rule: Global Migration, Capitalism, and the Rise of Racist Nationalism* (Chicago, IL: Haymarket Books, 2021), 48-49.

producers out of work. When Haitians sought refuge in the US, many of them were intercepted and detained at Guantanamo Bay, and those who did manage to make it to US soil were denied asylum claims and deported. The example of Haiti is just one of the ways in which the US immigration system goes about “creating” races by identifying undesirable immigrants and racializing them to justify criminalizing them.⁶⁶ Indeed, there can be no doubt as to who the immigration detention system aims to detain. Despite the fact that recent studies have found that Canadians commit more civil immigration law violations than any other group (e.g. overstaying one’s visa), the vast majority of people targeted and detained by ICE has been and continues to be people from Latin America. Although there is certainly personal bias present in individual police officers, the targeting of Latinx people has also been enshrined as a legal tactic by court cases. Decisions such as *United States vs. Brignoni-Ponce* and *United States vs. Martinez-Fuerte* in the 1970s authorized immigration enforcement officers to use racial appearance as a way to justify increased scrutiny of certain people’s immigration status.⁶⁷

The same intervention-to-incarceration through line that occurred in the case of Haiti can be applied to Mexican and Central American migrants. The US’s history of intervening in the Northern Triangle is well-documented and summarized neatly in the chapter. Through a slew of military interventions, electioneering, and money-laundering operations, the US government eliminated any chance of a successful left-wing government in Central America that would aim to keep profits from their natural resources in local hands. US corporations, specifically the United Fruit Company, gained control of the countries’ natural resources at the expense of local producers

⁶⁶ *Ibid*, Walia 80-82

⁶⁷ Carrie Rosenbaum, "Crimmigration — Structural Tools of Settler Colonialism," *Ohio St. Journal of Criminal Law* 16, no. 9 (April 22, 2019): 40, accessed December 14, 2021, <https://ssrn.com/abstract=3366712>.

by force, sending the profits from Central America's resources north.⁶⁸ The tight control of these small nations' economies was mirrored by the tight control of those who came seeking asylum when the multinational corporations' control of the land made it impossible for them to provide for themselves. If they make it to the border, they are still treated as a colonial underclass, heavily racialized, marginalized, and constantly subjected to the threat of detention and/or deportation.

While the recent interventions in Mexico have been less militaristic, debt programs controlled by the World Bank and the IMF that were designed to subordinate Latin American economies in the 1970s and 1980s and the deregulation that followed allowed US corporations to become the main beneficiary of 70% of capital goods production income in Mexico.⁶⁹ It is also no coincidence that the signing of the North American Free Trade Agreement (NAFTA) and the immigration legislation that most dramatically shifted the US immigration system towards crimmigration happened during the same presidential administration. In the 1990s, NAFTA cracked open the Mexican market and allowed US corporations to take control of agricultural resources which had been controlled by the state and distributed through the ejido system since the revolution. Millions of people who had previously been able to sustain themselves were now at the mercy of these multinational agricultural corporations, and many of them were forced northward. In the same decade, the Clinton Administration passed draconian immigration legislation under the policy of deterrence, leading to mass increases in death, deportation, and detention of undocumented immigrants at various points in the immigration process.⁷⁰ This process pushes previously self-sustaining small agricultural producers from Mexico to either be subservient to US corporate interests in their own countries or to the US immigration enforcement

⁶⁸ *Supra note 66, Walia 77-78*

⁶⁹ *Supra note 66, Walia 85*

⁷⁰ *Supra note 66, Walia 87-88*

system on the other side of the border. Either way, they remain subject to extensions of colonial hierarchies established and maintained by US imperialism.

In the modern iteration of the ties between colonial power and immigration detention, the ballooning immigration detention system has gone hand-in-hand with the ballooning of the national security apparatus in the years following the attacks of September 11th, 2001. The “War on Terror” abroad has given pretext to the dramatic expansion of the immigration detention system at home. As David Hernandez describes in his work “Surrogates and Subcontractors: Flexibility and Obscurity in U.S. Immigrant Detention,” the very essence of immigrant detention is linked to the history of waging war to establish colonial sovereignty as it arose out of the systems of detention used to displace native people and capture slaves. From there, the immigrant detention system was weaponized against a series of unwelcome, racialized immigrants, starting with Chinese immigrants in the 19th century and going up to Latinx immigrants today.⁷¹ The ongoing military interventions in the Middle East are mirrored in several ways by the expanding immigration detention system. Hernandez writes,

Both systems achieve increased power and flexibility due to legal exceptionalism and juridical ambiguity, historiographic compartmentalization, muted recognition in contemporary debates about comprehensive immigration reform, and... the use of surrogate actors and partners in the material execution of noncitizen incarceration... each system of antiterror or anti-immigrant suspicion can work as a pretext for the other, enhancing the flexibility of immigrant detention as an enforcement tool. The global war on terror, like past efforts to secure the nation, has doubly underscored the links between homeland security and the control of domestic migration. Whereas the principal concern in the national security context is terrorism and more broadly defined associations with terrorism, the primary result has been an expanded domestic detention regime, impacting noncitizens within the United States from around the world, but in particular the demographically significant and increasingly targeted Latin American immigrant communities throughout the nation.⁷²

⁷¹ David M. Hernández, "Surrogates and Subcontractors: Flexibility and Obscurity in U.S. Immigrant Detention," *Critical Ethnic Studies*, 2016, 305-306, doi:10.2307/j.ctv11hpkv8.20.

⁷² *Ibid*, Hernández 303-304

Another important trend that the two apparatuses share is the enrichment of private companies and contractors in the process of carrying out militarized operations. The War on Terror has been much more privatized than previous wars, with increased use of private military contractors. In both cases, national security operations are run like a business, meaning that the continuing profits of the companies involved will take precedent over the interests of those being detained.⁷³ The similarities to the US military apparatus make it clear that immigration detention fits with Mbembe's view of politics as war, and the pretexts of the war are heavily influenced by ideas of colonial sovereignty.

Conclusions

Archille Mbembe himself has discussed the role of borders in extensions of colonialism, placing them within a necropolitical framework. In a 2018 article, he writes “[Borders] are no longer merely a line of demarcation separating distinct sovereign entities. Increasingly, they are the name used to describe the organised violence that underpins both contemporary capitalism and our world order in general.”⁷⁴ He also references the “war of attrition” that is being waged by Global North countries against migrants from the Global South.⁷⁵ This essay has offered an explanation of how Mbembe's ideas about necropolitics can be specifically applied to the United States immigrant detention system. In the necropolitical framing of politics as war and with colonial sovereignty as the point of reference, the US immigration enforcement apparatus carries out the everyday slow violence that protects and enforces postcolonial hierarchies in a way that is lucrative for those at the top of those hierarchies and those executing the enforcement.

⁷³ *Ibid*, Hernández 312

⁷⁴ Achille Mbembe, "The Great Riddance," *The Mail & Guardian*, June 22, 2018, accessed December 14, 2021, <https://mg.co.za/article/2018-06-22-00-the-great-riddance/>.

⁷⁵ *Ibid*, Mbembe 2018

As explained in the first section of the chapter, the concept of rule-of-law necropower as developed by Estévez and others is necessary to understand how necropolitics, a concept developed originally for postcolonial spaces where non-state actors rule, is relevant to Global North governance. As opposed to the death worlds described by Mbembe in postcolonial Africa in which deadly spaces are constructed by non-legal entities using unwritten rules, the deadly spaces in the Global North described by scholars like Mayblin and Henao Castro are constructed by state governments using entirely legal tools. Indeed, the conditions present in ICE detention centers were created by federal government contracts and the act of detention is carried out entirely by government authorities. Although the duties of managing the detention centers themselves are often farmed out to private companies, these companies are understood to act on behalf of the government and within the rules set by their contracts. The harmful effects of detention usually occur out of the public view and over an extended period of time rather than in the form of mass executions, reflecting what Nixon refers to as “slow violence.” The lack of public attention focused on the deaths of undocumented immigrants allows the war of attrition against them to continue across presidential administrations. The COVID-19 pandemic turned the already precarious conditions in immigrant detention centers deadly, and the continuation of the legal practices in place created deadly spaces for undocumented detainees.

The second section of the chapter explained the various financial interests at play in mass immigrant detention in the United States. Mbembe emphasizes the importance of “lucrative death” in necropolitical practices, meaning that certain capital interests benefit from the creation of deadly conditions. US immigration detention is notorious for being extremely profitable for private prison companies, as well as the various subcontractors that work with them to provide various services for detention centers. On top of the massive amounts of money received directly from ever-

increasing ICE contracts, these companies also profit from the labor they force detainees to do for compensation as low as \$1/day. Despite the importance of private prison companies, the framework of carceral capitalism as developed by Jack Wang demonstrates that the financial benefits of detention are deeply ingrained at the government level as well. Local governments especially oftentimes rely on detention to fund their budgets, whether in the form of charging excessive fees and fines or taking a percentage of ICE contracts for detention centers that operate in their jurisdiction. The incentives built into the contracts are such that local authorities receive more money for each person they detain per day, with immigrant children and families being among the most lucrative people to detain. Just as is the case with imprisonment of citizens, the local municipalities where detention centers are located could either finance their budgets by raising taxes and inconveniencing capital interests in the area or by detaining more and more people, which has significant benefits for capital interests but comes at the severe expense of the people being detained. Even those corporations that are not directly involved in immigrant detention benefit from it in the form of lower taxes, while resources are extracted from undocumented communities through the immigration detention system.

The third section addressed the second key characteristic of necropolitics as it pertains to immigration detention: colonial sovereignty. Modern day Global North democracies operate within the post-World War II human rights framework, a type of governance that claims to be a departure from the colonial ways of the past and an attempt to protect the basic rights of all. In some cases, however, instead of colonial institutions of governance being overthrown, they were reformed and given different names. The modern-day US immigration enforcement system is notorious for its disproportionate targeting of immigrants from Latin America, and the original conditions for that migration flow are also heavily influenced by US imperialism in the region.

Although the conquer-and-occupy method of colonization has largely been abandoned, the US and other powers assert their control over the Global South through electioneering, clandestine operations, and financial pressure. The top priority of US corporations in Latin America is direct access to the rich natural resources of the region, and in several instances have engineered coups or trade deals to ensure their continued access. In this way, US capital interests end up engaging in extraction both by controlling the resources in their countries of origin and later through the carceral capitalist immigration enforcement strategies described above, establishing modern-day relationships and hierarchy that represent an evolution of the colonial age.

Together, these theories allow us to have a richer understanding of the nature of immigration detention in the United States and why it has led to so many deaths, especially over the course of the recent pandemic. When the precarity of the conditions increases when more people are confined to a small space, the incentives to detain as many people as possible create much more deadly spaces. Necropolitics, through analysis of carceral capitalism and postcolonial hierarchies, helps us understand those practices, incentives, and hierarchies.

CHAPTER 2: IMMIGRATION DETENTION IN HISTORICAL CONTEXT

This chapter is divided into three sections. The first section discusses the often-glossed over history of immigrant detention before the late twentieth century. While it is true that immigrant detention (along with all other forms of incarceration) has increased exponentially in the past few decades, there are important historical antecedents and plenty of examples that point to the growing use of immigration detention as punishment. The goal of this chapter is to illustrate the historical parallels to the phenomena we see in immigrant detention today, especially since the effects of the COVID-19 pandemic became apparent in March 2020. Section 2 deals directly with the mass increase in detention that occurred starting in the 1980s and 1990s and has continued to this day. Scholars have named this era “cimmigration” because of the near total overlap of the criminal justice system and the immigration system in practice despite their theoretical separation in the legal system. Just as the mass incarceration movement targeted the Black community in the US, the cimmigration system simultaneously broadened its reach over the unauthorized immigrant population, particularly those of Central American origin. Next, the third chapter offers an in depth description of the dynamics of immigration detention during the COVID-19 pandemic. The virus has devastated incarcerated populations around the world, and immigration detainees have been subjected to its worst effects. The actions of ICE during this period have been heavily scrutinized because of the multiple deaths that have occurred within their facilities. This paper will attempt to provide as complete a picture as possible given the incomplete information and untrustworthiness of official sources.

As a whole, this chapter aims to provide a step-by-step analysis of how the immigration detention system arrived at its current state and what its current state means for the spread of the virus among the detainee population.

Section 2.1 Beginnings of immigration detention in the United States through 1985

The detention and incarceration of immigrants is often associated with the era of crimmigration in which the criminal justice system and the immigration system began to overlap in a very public and visible way. Indeed, the number of immigrants detained by the Immigration and Naturalization Service (INS) and subsequently ICE rose significantly in the 1990s and then even more drastically under the Bush Administration in the early 2000s. While it is understandable that much of the discussion around immigration detention revolves the past three decades, the United States has been building up the practice of incarcerating immigrants since well before the advent of mass crimmigration. The rich history of INS and ICE detention helps us understand the current moment of immigrant detention during COVID-19, and demonstrates that the practices of stripping away immigrant's rights and inflicting carceral punishment on non-citizens have been honed for much longer than many realize.

The incarceration of unauthorized immigrants is primarily justified as a way to prevent undocumented people from escaping their deportation hearings and/or the act of deportation itself. The first iteration of enforcing immigration law in the United States came in the late nineteenth century and was primarily directed against immigrants from East Asia, specifically China. A series of racist pieces of legislation and court cases in the 1880s and 1890s established a new category of people: the illegal alien. Laws put strict restrictions on who could enter the country based on national origin in place, and, importantly, the Supreme Court held that people with undocumented status were not granted the same protections of due process as US citizens. This new category of people could be detained without being arrested or going to trial, making them the first group of

people in the United States since slavery who could be imprisoned without trial by jury.⁷⁶ This category of people, then as now, was easily identified by their race and accused of taking things that rightfully belonged to US citizens. Not enough incarceration infrastructure existed at the time for undocumented immigrants to be subjected to mass detention, but the ground work had been laid for future immigration enforcement.

During World War II, the US immigration policy surrounding the southern border generally steered away from enforcement due to the need for more laborers. Still, this period saw one of the most concerning uses of racialized mass detention without trial: internment camps for anyone of Japanese heritage in the US. The United States was at war with Germany, Italy, and Japan, but Japanese people were the only ones targeted for mass detention and loyalty tests throughout the war. Shortly after the attacks on Pearl Harbor, President Franklin D. Roosevelt issued an executive order under the authority of the Alien Enemy Act that allowed the Justice Department to arrest and detain a couple hundred German and Italian nationals and over two thousand Japanese nationals. For the most part, the German and Italian nationals were released in short order, while the Japanese nationals were sent to internment camps for further loyalty testing.⁷⁷ The Supreme Court upheld the Justice Department's ability to detain civilians en masse without trial, citing the state of emergency created by the war and allowing for racial discrimination when the military deemed it to be necessary. Japanese people in the US were forced to prove their loyalty to the US under threats of citizenship nullification and internment, up to the point that men were forced to declare for the draft to fight against the Japanese army in the Pacific.⁷⁸ Although

⁷⁶ Kelly Lytle Hernández, "Amnesty or Abolition?" *Boom* 1, no. 4 (2011): 75, doi:10.1525/boom.2011.1.4.54.

⁷⁷ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, NJ: Princeton University Press, 2014), 175.

⁷⁸ *Ibid*, 176-177

the immigrants crossing the southern border today are not from countries with which the US is currently at war, the principles of using racial identity to question whether a person deserves the rights of US citizenship remain. Undocumented immigrants face demands to assimilate and the risk of being detained without being granted due process, not unlike the dark period of Japanese internment during World War II.

Shortly after the war, the INS began to think about how to deal with the influx of immigrants from Mexico that had come over through the Bracero program. The migrant worker program quickly took a turn towards exploitation, as the INS began to construct temporary holding facilities (in some cases with materials taken from old Japanese internment camps) to better control the immigrant population.⁷⁹ The INS opened the El Centro Detention Center in California in 1945 as a means of efficiently processing unauthorized migrants for deportation or other legal proceedings, but the facility quickly became used as a vehicle for forced labor. Internally, INS officers could threaten detainees with unfavorable legal decisions if they refused to work, and externally they did all they could to encourage legal rulings in favor of extended detention rather than deportation so they could continue to sell and exploit the detainees' labor.⁸⁰ Although the detention center seems to be the opposite of the welcoming Bracero program, the two functioned together to exploit Mexican labor. Many of the detainees were Braceros who had over-stayed their visa, and the influx of racially distinct people migrating to the US created a new racialized alien. Ngai writes, "Mexicans emerged as iconic illegal aliens. Illegal status became constitutive of a racialized Mexican identity and of Mexicans' exclusion from the national community and polity."⁸¹ The INS agents running the facility treated the detainees as such, frequently denying

⁷⁹ Jessica Ordaz, *The Shadow of El Centro: A History of Migrant Incarceration and Solidarity* (Chapel Hill: University of North Carolina Press, 2021), 12.

⁸⁰ *Ibid*, Ordaz 20-21

⁸¹ *Supra note* 78, Ngai 58

them access to health resources, exposing them to dangerous chemicals and work conditions, and threatening to withhold food if the detainees did not follow orders.⁸² The INS was able to abuse and exploit the Mexican detainees precisely for the same reasons that ICE does today: their status as the alien other places them outside of the protection of state.

In the 1970s, detention of immigrants started to become more and more commonplace. Immigration, especially from Latin America, had been increasing in response to regional instability, much of it orchestrated and financed by the United States itself as part of its efforts to prevent any form of socialism or communism from taking root in the region. INS's response to this new wave was more incarceration.⁸³ Incarceration infrastructure expanded, as did the ability of the INS to mistreat their detainees. Reports of continued physical and sexual abuse by INS guards inside the facilities, as well as targeted raids of people's private homes and work places to arrest and incarcerate more undocumented people, were consistent with how detainees in past facilities had been treated. They were also made to live in squalid conditions while being denied access to medical resources.⁸⁴ These conditions earned the facilities accusations of being concentration camps from a Mexican newspaper.⁸⁵ In other words, a journalist who viewed the detainees not as some alien other but as human beings with the same rights as everyone else, the state of migrant detention in the US met the definition of a concentration camp. In the following decade, INS incarceration expanded hand-in-hand with the war on drugs conducted by the Reagan Administration. Undocumented immigrants from Mexico were already associated with the harmful stereotype of drug use, so the significantly ramped-up attention to drug use in the criminal

⁸² *Supra note 80*, Ordaz 35

⁸³ *Supra note 80*, Ordaz 60

⁸⁴ *Supra note 80*, Ordaz 62

⁸⁵ *Supra note 80*, Ordaz 64

justice system saw more unauthorized immigrants punished more harshly.⁸⁶ By May 1985, conditions in the El Centro Detention Center had deteriorated to the point of necessitating a hunger strike. Their demands included an end to the abusive and coercive behavior of the guards, who frequently verbally and physically harassed the detainees to encourage self-deportation while denying access to legal resources to argue their case before a court. Detainees echoed concerns from previous decades, describing being underfed, made to work for little to no compensation in brutal conditions, and being denied access to all medical resources beyond basic painkillers to help them work.⁸⁷ This hunger strike can be seen as a precursor to the hunger strikes that have been conducted in multiple ICE detention facilities during the pandemic. Then as now, detainees are aware of their treatment as people with fewer rights who are subjected to state enforcement without any state protection, making collective action among themselves the only way to improve their conditions.

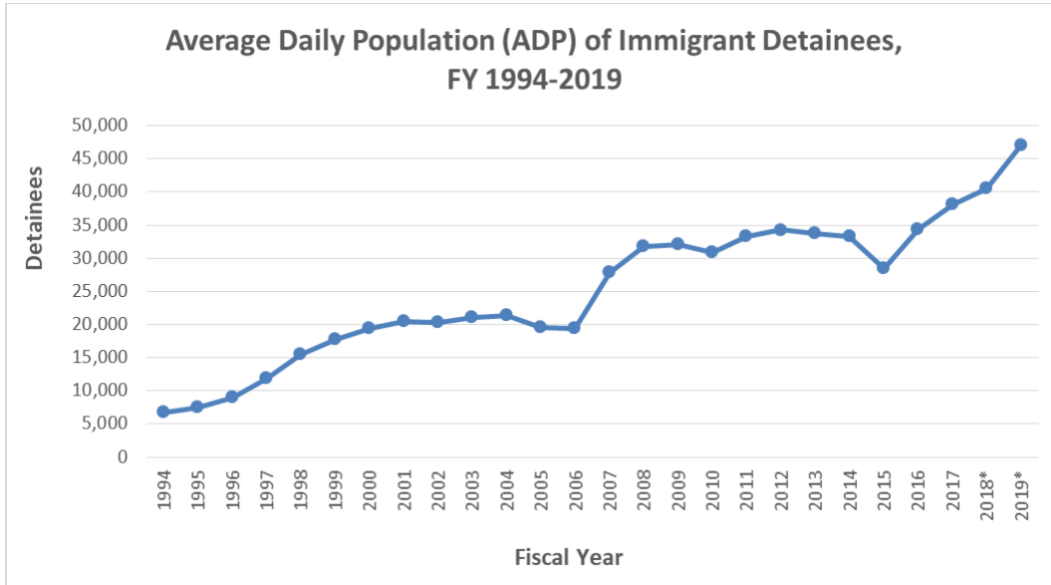
Section 2.2 Immigration detention since 1986: Crimmigration and mass detention

It is well documented that immigration detention has been growing steadily for the past twenty-five years. Detention numbers increased significantly under the Bush and Trump Administrations and for the most part remained stable under the Obama Administration. As the graphs from the Center for Migration Studies⁸⁸ below demonstrate, detention has more than doubled since the turn of the century, and is strongly correlated with the increases in the immigration custody budget.

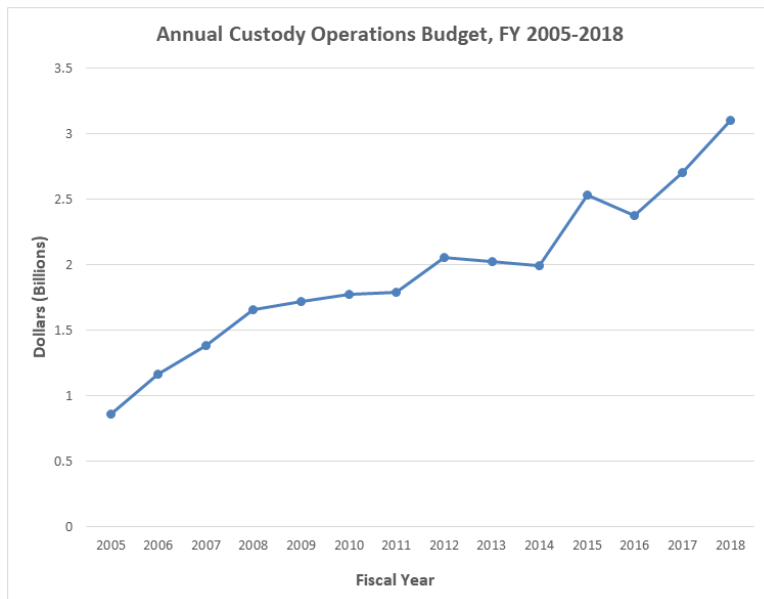
⁸⁶ *Supra note 77*, Lytle Hernandez 63

⁸⁷ *Supra note 80*, Ordaz 81-82

⁸⁸ J. Rachel Rays, "Immigration Detention: Recent Trends and Scholarship," The Center for Migration Studies of New York (CMS), May 03, 2018, accessed May 25, 2021, <https://cmsny.org/publications/virtualbrief-detention/>.



J. Rachel Rays, "Immigration Detention: Recent Trends and Scholarship," The Center for Migration Studies of New York (CMS), May 03, 2018, accessed May 25, 2021, <https://cmsny.org/publications/virtualbrief-detention/>



J. Rachel Rays, "Immigration Detention: Recent Trends and Scholarship," The Center for Migration Studies of New York (CMS), May 03, 2018, accessed May 25, 2021, <https://cmsny.org/publications/virtualbrief-detention/>

This increase in detention is strongly linked with the creation of what many scholars refer to as “cimmigration,” or the increasing overlap between the criminal justice system and the immigration system. In the 1980s, United States immigration law and the dialogue around it made

an important shift: cases of illegal entry began to be prosecuted more and more with the purpose of “protecting” the United States from immigrants who were accused of being dangerous criminals.⁸⁹ The first piece of legislation that mark this shift came in 1986, when the United States Congress passed the Immigration Reform and Control Act (IRCA) to punish employers for knowingly employing undocumented immigrants.⁹⁰ More importantly, the bill significantly increased the Border Patrol budget. As Border Patrol line-watch hours increased, the likelihood that an undocumented will be apprehended increases along with it.⁹¹

The overlap between criminal justice law and immigration enforcement occurred, not coincidentally, at a time when the carceral state was being significantly expanded. Despite the insistence of ICE and others in the immigration enforcement industry that immigration detention is a just a step in the process of the civil immigration system and not meant to be a punishment for those detained, expanded immigration detention has developed hand-in-hand with mass incarceration and the War on Drugs, both of which were designed to be punitive. The terms “detention center” and “processing center” that are used for immigrant detention facilities were deliberately chosen to obscure the punitive nature of immigrant detention, following the Supreme Court order in *Zadvydas v. Davis* that mandated that immigration proceedings remain civil instead of criminal in nature.⁹² As crimmigration scholar Juliet Stumpf points out, the reality is that “civil” detention does not really exist, as all detention is inherently punitive:

⁸⁹ Doug Keller, "Re-Thinking Illegal Entry and Re-Entry," SSRN Electronic Journal, 2011, 69, doi:10.2139/ssrn.1884354.

⁹⁰ James F. Smith, "A Nation That Welcomes Immigrants: An Historical Examination of United States Immigration Policy," U. C. Davis Journal of International Law & Policy 1, no. 2 (1995): 236, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ucdl1&div=19&id=&page=>.

⁹¹ Michael J. White, Frank D. Bean, and Thomas J. Espenshade, "The U.S. 1986 Immigration Reform and Control Act and Undocumented Migration to the United States," Population Research and Policy Review 9, no. 2 (May 1990): 99, <https://www.jstor.org/stable/40229886>.

⁹² César Cuauhtémoc García Hernández, "Immigration Detention as Punishment," UCLA Law Review 61, no. 5 (2014): 1351-1352, <https://www.uclalawreview.org/immigration-detention-as-punishment-2/>.

Civil detention is an oxymoron. The detention of non-citizens in the United States bears only a hazy resemblance to the resolution of civil disputes and has a much closer connection with criminal and national security law. Immigration detention is the mirror image of criminal detention. It is no coincidence that mass immigration detention grew up in the same time and space as mass incarceration, sharing the same facilities and actors to achieve a nearly identical restraint on liberty.⁹³

The expansion of immigration detention is inextricably linked to the era of mass incarceration and the national effort to heavily criminalize drug use known as the War on Drugs. Domestically, Black people were cast as drug addicts who were abusing the supposedly generous social safety net provided by the United States government to live without contributing to the country. Likewise, undocumented immigrants, specifically Latinx immigrants, were grouped in with drug-traffickers and called undeserving of the benefits of living the US. In both cases, mass detention was the policy weapon of choice.⁹⁴ Reagan Administration laws such as the Anti-Drug Abuse Act and the Immigration Reform and Control Act greatly expanded INS authority to detain any immigrant suspected of drug crimes in their facilities.⁹⁵ As we know from the vast scholarship on mass incarceration, these drug charges were often exaggerated and disproportionately enforced based on race.

The INS's power continued to grow in the 1990s. The HW Bush Administration increased their funding and gave them the authority to "investigate" crimes committed by non-citizens, blatantly converting a supposedly civil bureaucratic agency into another branch of law enforcement.⁹⁶ 1996 saw another dramatic shift in the direction of crimmigration. Although the presidential administration was a Democratic one and theoretically less conservative than its

⁹³ Juliet P. Stumpf, "Civil Detention and Other Oxymorons," *Queen's Law Journal* 40, no. 1 (2014): 57, accessed May 24, 2021, [https://journal.queenslaw.ca/sites/journal/files/Issues/Vol 40 i1/2. Stumpf.pdf](https://journal.queenslaw.ca/sites/journal/files/Issues/Vol%2040%20i1/2.Stumpf.pdf).

⁹⁴ *Supra note 93*, Garcia Hernandez 1360

⁹⁵ *Supra note 94*, Stumpf 2014, 70

⁹⁶ *Supra note 93*, Garcia Hernandez 1368

predecessors, it did far more to merge immigration law with criminal justice law and expand enforcement capabilities that turn criminalization from an idea into a reality. The Illegal Immigration Reform and Immigrant Responsibility Act, the Personal Responsibility and Work Opportunity Reconciliation Act, and the Antiterrorism and Effective Death Penalty Act were all passed in 1996 and all gave the criminal justice system vast new power over immigrants.⁹⁷ These three laws represented the first major weaponization of the rapidly expanding carceral state against immigrants. Just as the 1994 Crime Bill used mass incarceration as a bludgeon against the Black community in the United States, these three laws created tools to detain and deport undocumented migrants while depriving them of resources that could be used to combat their own criminalization.⁹⁸ This slate of laws had direct and immediate consequences on immigrant detention. For example, the INS was now authorized to detain any non-citizen convicted of any drug charge without review of an immigration charge. The laws also significantly expanded the definition of “aggravated felony,” ensuring that many more undocumented people fell under the umbrella of justified INS detention. Capitalizing on the moment of increased detention, the INS was also authorized to work through local law enforcement to find and detain non-citizens, a further expansion of surveillance and enforcement against the undocumented community.⁹⁹

The next significant development in the path to mass detention of immigrants was the reaction to the attacks of September 11th, 2001, when the movement toward criminally persecuting more immigrants was given a new apparatus in the form of the Department of Homeland Security

⁹⁷ Walter E. Ewing, "Opportunity and Exclusion: A Brief History of U.S. Immigration Policy," American Immigration Council, December 2012, 6, accessed May 25, 2021, <https://www.americanimmigrationcouncil.org/research/opportunity-and-exclusion-brief-history-us-immigration-policy>.

⁹⁸ Jennifer Chacon, "The 1996 Immigration Laws Come of Age," *Drexel Law Review* 9, no. 2 (2017): 299, accessed May 24, 2021, <https://drexel.edu/law/lawreview/issues/Archives/v9-2/chacon/>.

⁹⁹ *Supra note 93*, Garcia Hernandez 1370

and its immigration branch, ICE. Putting immigration enforcement under the direction of the DHS was a reflection of the intention to frame immigration as a national security issue in the years following 9/11, leading to the militarization and securitization of border enforcement¹⁰⁰. The tools and resources for this new agency continued to grow, including the capacity to detain more non-citizens than ever before. In the early 2000s, a series of internal mandates relating to the DHS and ICE further built up the capacity to detain immigrants. In 2006, ICE complained about the lack of funding that allowed, in their words, “criminal aliens” to roam free instead of being detained and predicted that a budget of over \$1 billion dollars would be necessary to accomplish their detention goals.¹⁰¹ In that same year, ICE was given a “bed mandate” of 34,000, meaning their funding was conditioned on their ability to maintain an average of 34,000 detainees in their facilities on any given night. The justification for the bed mandate was the link between deportation and detention: the more people ICE took into custody, the more they would be able to deport.¹⁰² Both the ICE custody budget and the number of detainees have been increased since then, using the same logic of the criminality of immigrants. In a 2009 internal report, the Director of the ICE Office of Detention Policy and Planning Dona Schriro observed the following:

With only a few exceptions, the facilities that ICE uses to detain aliens were originally built, and currently operate, as jails and prisons to confine pre-trial and sentenced felons. Their design, construction, staffing plans, and population management strategies are based largely upon the principles of command and control. Likewise, ICE adopted standards that are based upon corrections law and promulgated by correctional organizations to guide the operation of jails and prisons.¹⁰³

¹⁰⁰ Walter A. Ewing, Daniel E. Martínez, and Ruben G. Rumbaut, "The Criminalization of Immigration in the United States," June 2015, 12, accessed May 24, 2021, <https://escholarship.org/uc/item/9hw9c28d>.

¹⁰¹ Mariela Olivares, "Intersectionality at the Intersection of Profiteering and Immigration Detention," *Nebraska Law Review* 94, no. 4 (2016): 974, <https://digitalcommons.unl.edu/nlr/vol94/iss4/5>.

¹⁰² *Supra note 94*, Stumpf 2014, 88

¹⁰³ United States, Department of Homeland Security, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations*, by Dora Bess Schriro, October 6, 2009, <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

The above statement can be interpreted as institutional confirmation that immigrant detention functions with the same purpose as criminal detention, meaning that immigrant detainees, despite their status as civil detainees, are treated as equally dangerous as criminal detainees in jails and prisons across the country.¹⁰⁴ By 2018, the ICE budget for custody operations had ballooned to over \$3 billion,¹⁰⁵ mirroring the constantly growing federal incarceration budget that always seems to have room for more punishment.

The immigrant detention complex has been allowed to swell to its current state because of the political and economic interests of those who have benefitted from it. As mentioned above, the ICE budget has shot up in the years of mass immigrant detention. This continued stream of funds has allowed them to enrich both the agency itself and the many private prison companies that they provide contracts too. ICE has always responded to political demand for more immigrants to be detained with requests for more funding. Oftentimes, such as in the 2006 report mentioned above, ICE itself has played an important role in manufacturing that demand. After a somewhat static level of incarceration between 2006-2014, ICE again asked for significantly more resources after Border Patrol apprehended over twice as many unaccompanied children in 2014 compared to 2013 (49,959 vs. 21,553) and, astonishingly, over seven times more “family units” (52,326 vs. 7,265). As the DHS put it, “in the summer [2014] ICE sought substantial resources and authority to build additional detention capacity to detain and remove family units.” To quickly meet this demand, ICE contracted with private prison companies Corrections Corporations of America (CCA, now known as CoreCivic) and GEO Group, Inc. These companies rapidly constructed and managed what the DHS referred to as “family residential centers” that were reported to inflict miserable conditions on their detainees. The decision to detain more women and children without giving

¹⁰⁴ *Supra note 93*, García Hernández 1384

¹⁰⁵ *Supra note 89*, Rays 2018

them sufficient access to costly resources such food, medical attention, and education provided a huge windfall for the private prison companies.¹⁰⁶ Finally, mass immigrant detention also serves as a catalyst for more and more deportations. Part of the stated intention of the ICE bed quota was to increase deportations, and mass detention certainly helps drive removal of non-citizens. Immigrants who are detained are far less likely to be able to successfully argue their case in court because they have far less access to social and legal resources necessary to navigate the immigration law system. Detention also pressures non-citizens into voluntary removal by subjecting them to the often violent conditions in the detention centers that compel many people who could have otherwise pleaded their case before a judge to take a plea deal for deportation.¹⁰⁷

2.3 Immigration detention practices during the COVID-19 pandemic

The COVID-19 pandemic has fundamentally changed the reality of all kinds of incarceration and detention of human beings. The risk of being in close contact with other people, as people being detained typically are, has increased drastically as the deadly virus has spread throughout the world. The pandemic has forced both dramatic individual behavioral changes and policy changes across the board in an effort to reduce all person-person contact down to no more than what was deemed to be absolutely essential. Many individuals, however, have had no choice but to expose themselves to the virus in order to maintain economic security. The group of people with the least agency and least able to protect themselves from the spread of the virus is the incarcerated class. Incarcerated people have been stripped of most of their freedoms just by nature of being incarcerated, and are generally granted very few protections even without the threat of a pandemic. Despite calls from activists for officials to release everyone who does not pose a clear

¹⁰⁶ *Supra note 102, Olivares 975-976*

¹⁰⁷ *Supra note 94, Stumpf 2014, 97-98*

and present danger to the community, neither Republican nor Democratic governors have responded with the necessary action to protect as many people as possible from the spread of the virus. Although there was a brief decrease in the prison population shortly after the pandemic started to affect the US in March 2020, by the summer it was back to pre-pandemic levels.¹⁰⁸

Immigration detention has followed a similar path. Though we do not know the exact rate of contagion in ICE facilities, data from Texas has indicated that detained immigrants are fifteen times more likely than the rest of the population to test positive for COVID-19.¹⁰⁹ Even before the pandemic, occasional deaths in ICE camps due to insufficient medical attention were an accepted part of life in the camps. The American Immigration Lawyers Association keeps a running list¹¹⁰ of those deaths and reports of drastic lack of patient care, including some cases so egregious that they can only be defined as willful neglect. The list is compiled only of official reports, but demonstrates a trend in denying patient care that started well before the pandemic. On their official website, ICE claims that they are collaborating with the Center for Disease Control (CDC) to try to “evaluate its detained population based upon the CDC’s guidance for people who might be at higher risk for severe illness as a result of COVID-19 to determine whether continued detention was appropriate.”¹¹¹

In the years immediately leading up to the pandemic, there were strong indications that detainee health would be ignored—sanitary conditions in the expanding immigration detention system under the Trump administration were repeatedly criticized by immigrant advocates.

¹⁰⁸ Andrew Cohen and Lauren-Brooke Eisen, "Immigration Detention and Covid-19," Brennan Center for Justice, May 24, 2021, accessed May 25, 2021, <http://www.brennancenter.org/our-work/research-reports/immigration-detention-and-covid-19>.

¹⁰⁹ Elizabeth Trovall, "People in Texas ICE Detention Centers Are 15 Times More Likely to Have COVID-19," KERA News, July 30, 2020, accessed May 25, 2021, <http://www.keranews.org/texas-news/2020-07-21/people-in-texas-ice-detention-centers-are-15-times-more-likely-to-have-covid-19>.

¹¹⁰ *Supra* note 24, AILA

¹¹¹ "ICE Guidance on COVID-19," ICE, accessed May 25, 2021, <http://www.ice.gov/coronavirus>.

Specifically, a report published by the American Civil Liberties Union in April of 2020 detailed the precarious health circumstances of ICE detainees. The expansion of the immigrant detention system under President Trump led several contracts with prisons that had been deemed to not meet safety requirements under previous administrations. The vast majority of these new facilities were managed by private prison companies, and usually located hours away from the nearest city, making detainee's access to legal and medical resources all the more difficult.¹¹² Release and parole orders for asylum seekers were granted exceedingly rarely, contributing to the overcrowded conditions that make the facilities ripe for the spread of viruses. The abysmal conditions are compounded by the lack of access to medical attention. The report describes detention center staff ignoring serious medical conditions, making detainees wait up to a week to see a doctor for a broken bone and, in the case of at least one facility, being unable to locate serious medical emergency equipment.¹¹³ These findings are in line with previous reporting from the Human Rights Watch, whose research into the deaths of 15 detained immigrants in 2017 found that dangerously poor medical services, including failure to provide emergency care, were directly responsible for all but one of the deaths.¹¹⁴

Detention is not the only tool of the immigration system that has put unauthorized immigrant's health at risk during the pandemic. The agency has released detainees and in many cases reduced their capacities to below 75%, but many of those released were children who were

¹¹² Eunice Hyunhye Cho, Tara Tidwell Cullen, and Clara Long, "Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration," American Civil Liberties Union, April 2021, 5, accessed June 08, 2021, <https://www.aclu.org/report/justice-free-zones-us-immigration-detention-under-trump-administration>.

¹¹³ *Ibid*, Cho et. al 6

¹¹⁴ "Code Red," Human Rights Watch, July 18, 2018, 1, accessed June 08, 2021, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

promptly deported to potentially unsafe communities.¹¹⁵ Any non-citizen who is released is also at risk to carry the virus into their communities if they are not properly screened for COVID-19 after being in the dangerous conditions of the detention centers. These communities are often made up of other undocumented people, adding to the total impact. Reporting from *The New York Times* has confirmed this ripple effect in communities where ICE detention centers are located. Researchers have traced the spread of the virus in towns with ICE facilities in Florida, Texas, Georgia, Louisiana, and California by looking at case numbers in the weeks following outbreaks among ICE detainees. It is impossible to know exactly how many cases and deaths can be attributed to the virus spreading first within the facility and then to the surrounding communities, but it has been well-documented that cases and hospitalizations have increased dramatically. In the rural community of Frio County, Texas, for example, the only known cases in the county on May 5, 2020 were in the ICE facility. Within a week, cases in the county overall tripled.¹¹⁶ Even when detainees are released, it is very unlikely that they are able to go straight into quarantine without first making contact with people in the community, whether they be friends, family members, or people at a shelter. The virus can also spread to employees of the detention center, who can then spread it throughout their close contacts.

Though not considered to be formal detention centers and not subject to ICE internal policy, the camps in Mexican border cities that have popped up as a result of the Trump Administration's so-called Migrant Protection Protocols (MPP), a policy that required asylum seekers to await their immigration court hearings in Mexico, have also undergone fundamental changes as a result of the pandemic. These camps, despite not being on US soil, were created and

¹¹⁵ *Supra note 109*, Cohen and Eisen 2021

¹¹⁶ Isabelle Niu and Emily Rhyne, "4 Takeaways from Our Investigation into ICE's Mishandling of Covid-19," *The New York Times*, May 8, 2021, sec. A, accessed May 24, 2021, <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>.

continue to be managed by US government immigration policy.¹¹⁷ The immediate relevant policy reaction to the first wave of COVID-19 infections in the US was the CDC's invocation of Title 42 of the Public Health code to shut down all non-essential movement across the border, superseding immigration law and standing court orders.¹¹⁸ Asylum seekers and other immigrants were deemed non-essential, while other groups such as commercial truck drivers and temporary workers were allowed to continue crossing the border as they had done before. The Physicians for Human Rights (PHR) group issued a statement in May 2020 condemning the order, accusing the Trump administration of weaponizing the public health crisis to implement its agenda of strangling the flow of asylum seekers into the US. They refer to the ban on asylum seekers crossing the border as "inhumane, illegal, and [having] no basis in public health," arguing that PHR experts in infectious disease epidemiology have found that asylum seekers pose no greater risk to public health through the spread of COVID-19 than any other given group that is allowed to continue to cross the border.¹¹⁹ The result has been the mass removal of immigrants, including asylum seekers, unaccompanied minors, and others that might be eligible for legal protection under current immigration law.¹²⁰ Border Patrol's website lists the number of Title 42 expulsions at over 420,000 people as of April 2021,¹²¹ each individual case representing a person sent back to a potentially dangerous situation and denied the right to due process in the US.

¹¹⁷ Sarah A. Blue et al., "Im/Mobility at the US–Mexico Border during the COVID-19 Pandemic," *Social Sciences* 10, no. 2 (2021): 4, doi:10.3390/socsci10020047.

¹¹⁸ *Ibid*, Blue et al. 9

¹¹⁹ Kevin Short, "Indefinite Extension of Border Shutdown Has No Credible Basis in Public Health: PHR," Physicians for Human Rights, May 20, 2020, accessed May 25, 2021, <https://phr.org/news/indefinite-extension-of-border-shutdown-has-no-credible-basis-in-public-health-phr/>.

¹²⁰ *Supra note* 118, Blue et al. 9

¹²¹ "Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions," U.S. Customs and Border Protection, accessed May 25, 2021, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

The MPP camps present their own risks for spreading the virus. Since they are not operated by any state entity, we do not know officially how many people have been infected and/or killed by the virus in the temporary camps. Advocates have raised several alarm bells about the conditions of the camps and their potential to be hotbeds for the spread of COVID-19, especially given the lack of proper housing and overcrowded nature of the camps.¹²² We do know that border towns such as Matamoros have seen disproportionately high deaths due to COVID-19, likely a result of the massive numbers of migrants who have been forced to set up camp in those communities without any sort of protections against the virus.¹²³ However direct the effects of the MPP are on COVID-19 infections, it is clear that the virus would be better contained if the people who have been made to wait in Mexico were allowed to stay with friends or family members in the US (which over 90% of them have)¹²⁴ while they wait for their court dates. It is also clear that the disregard for the health of the people in ICE detention centers and MPP camps during a pandemic has unnecessarily risked the lives of the people going through the immigration process in the US, and the results have been deadly.

Along with the MPP policy, “voluntary” deportation has been ICE’s primary tool to reduce their detainee populations, with many detained immigrants determining that the risk of returning to their country of origin (and in some cases, violent communities that they were trying to escape) is outweighed by the risk of continued ICE detention during the pandemic. The extent to which these repatriations are truly voluntary deserves to be called into question for two reasons. First, an

¹²² "US: COVID-19 Policies Risk Asylum Seekers' Lives." Human Rights Watch. October 28, 2020. Accessed May 25, 2021. <http://www.hrw.org/news/2020/04/02/us-covid-19-policies-risk-asylum-seekers-lives>.

¹²³ Julian Resendiz, "Advocates Fear 'catastrophic' COVID-19 Crisis at Migrant Camps If 'Wait in Mexico' Not Terminated," Border Report, June 05, 2020, accessed May 25, 2021, <http://www.borderreport.com/hot-topics/immigration/advocates-fear-catastrophic-covid-19-crisis-at-migrant-camps-if-wait-in-mexico-not-terminated>.

¹²⁴ *Supra nota 123*, Human Rights Watch 2020

action cannot be called voluntary if it is done under threat. In this case, the threat is the person's own assessment of the dangers of being in ICE custody during the pandemic, which must have been serious enough to make people weigh the risk of returning to the places from which they fled. Second, there have been reports of ICE agents violently abusing detainees and threatening torture until they agreed to sign deportation papers.¹²⁵ We do not know how widespread this practice is, but if ICE agents in one facility are engaging in these practices it is not difficult to imagine that they have engaged in such practices in multiple facilities.

It is also important to take into account the extent to which deportations from the United States spread COVID-19 in the person's country of origin. Especially in the early months of the pandemic when ICE was providing as little testing as possible for people in their custody, untold numbers of people were sent back to their countries of origins while carrying the virus. The deportation process involves the deportee making contact with a myriad of other people along the way, including potential overnight stays in crowded migrant shelters and/or visits to community resource centers. Several leaders of common migrant sending countries have expressed their concern about the spread of the virus caused by these deportations. In Guatemala, for example, 186 deportees had been confirmed to be carrying the virus upon arrival by May 2020. ICE did not begin to test deportees to Guatemala until Guatemalan President Alejandro Giammettei raised the issue. In some cases, the countries that deportees are being sent back to have far less healthcare infrastructure than the US, making each breakout of the virus extremely dangerous. For example,

¹²⁵ "ICE Is Using Torture Against Cameroonian Immigrants to Coerce Deportation, According to New Complaint Filed by Immigrant Rights Groups," Southern Poverty Law Center, October 08, 2020, accessed May 25, 2021, <http://www.splcenter.org/presscenter/ice-using-torture-against-cameroonian-immigrants-coerce-deportation-according-new>.

ICE continued to deport untested immigrants to Haiti, a country that only had 200 beds available for COVID-19 patients at the beginning of the pandemic.¹²⁶

Conditions inside the ICE facilities themselves contribute significantly to the spread of the virus. Part of the reason that detained immigrants have felt compelled to request deportation are the health conditions in the ICE facilities. Activists and health professionals have expressed serious concern over the extent to which ICE facilities are really following the CDC protocols they say they are implementing, noting that the over-crowded and under-resourced conditions of the facilities make it extremely unlikely that they can follow the rules.¹²⁷ Reports from people in contact with detainees have affirmed this suspicion, as multiple instances of lack of soap, personal protective equipment, and space to socially distance have surfaced from facilities across the country. In response, several groups of detainees have engaged in hunger strikes, one of the few forms of protests available to prisoners.¹²⁸ ICE has also been frequently accused of misleading the public and the courts regarding their health and safety practices,¹²⁹ meaning the conditions inside the facilities could be even more dangerous than we know.

The totality of the human effects of the spread of COVID-19 in these migrant detention centers and camps is difficult to quantify. The virus can be difficult to track, especially in places with severe outbreaks and limited access to testing. What we do know is that the prison population

¹²⁶ Donald Kerwin, "Immigrant Detention and COVID-19: How a Pandemic Exploited and Spread through the US Immigrant Detention System," The Center for Migration Studies of New York (CMS), August 12, 2020, 4-5, accessed May 25, 2021 <https://cmsny.org/publications/immigrant-detention-covid/>.

¹²⁷ Cat Cardenas, "'There's Been Absolutely No Change in Procedure': ICE Detention Facilities Are Not Prepared for the Coronavirus," Texas Monthly, March 21, 2020, accessed May 25, 2021, <http://www.texasmonthly.com/news-politics/ice-detention-facilities-not-prepared-coronavirus>.

¹²⁸ *Supra note* 109, Cohen and Eisen 2021

¹²⁹ "New Documents Reveal ICE and Private Prison Contractor Exacerbates a COVID Outbreak at Immigration Detention Center," Lawyers Committee for Civil Rights of the San Francisco Bay Area, November 11, 2020, accessed May 25, 2021, https://lccrsf.org/pressroom_posts/new-documents-reveal-ice-and-private-prison-contractor-exacerbates-a-covid-outbreak-at-immigration-detention-center/.

in the US has suffered greatly compared to the rest of the population, an unsurprising data point given the crowded nature of prisons and the general lack of health resources afforded to incarcerated people in the most carceral country in the world. As of April 2021, approximately 34% of incarcerated people in the US have been infected with COVID-19, a rate more than three times higher than the US general population with a death toll of over 2,700 incarcerated people.¹³⁰

As previously mentioned, people in ICE detention centers have been subjected to numerous outbreaks and deaths as well, and reports of blatant refusal of medical care to detainees are all too common. For example, in the Otay Mesa Detention Center in California, detainees were forced into a pods with other detainees who had tested positive without appropriate PPE and provided little to no access to health resources. They also ignored detainees who were exhibiting serious COVID symptoms, one of whom ended up dying in custody during the outbreak. When the detainees complained about the lack of health resources, resisted being put in close quarters with other infected patients, or went on a hunger strike, they were hit with pepper spray by the guards.¹³¹ At the Stewart Detention Center (which is discussed in detail in the following chapter) multiple medically vulnerable detainees reported being physically beaten for requesting medical assistance after experiencing COVID symptoms. When one tried to protest, he was told to “go die with the other sick ones in the hole,” i.e. go suffer in solitary confinement. He was eventually able to receive medical treatment, but he was punished when he returned to the detention center and later deported.¹³² Detainees in ICE facilities across the country have reported being punished for

¹³⁰ "Home." COVID Prison Project. May 24, 2021. Accessed May 25, 2021. <https://covidprisonproject.com/>.

¹³¹ Amy Goodman and Juan González, "Hunger Strikers at COVID-Infected ICE Jail Were Pepper-Sprayed in Retaliation," Truthout, July 07, 2020, accessed May 25, 2021, <https://truthout.org/video/hunger-strikers-at-covid-infected-ice-jail-were-pepper-sprayed-in-retaliation/>.

¹³² Gaby Del Valle and José Olivares, "Immigrants at Privately Run ICE Detention Center Were Thrown Out of Wheelchairs When They Asked for Medical Help," The Intercept, July 23, 2020, accessed May 25, 2021, <https://theintercept.com/2020/07/23/ice-guards-excessive-force-sick-immigrants/>.

requesting resources to help to avoid and/or treat COVID-19, and many have engaged in hunger strikes to try to force hands of the administrators.¹³³

The result of this disregard for detainee health has been a series of mass outbreaks, including some centers with over 400 positive cases. According to official ICE numbers, 11,318 people had tested positive and 9 people had died from COVID-19 while in ICE custody. The family of the first person to die of COVID-19 in ICE custody, Carlos Ernesto Escobar Mejia, has already filed a law suit that accuses ICE of knowingly exposing to him to the deadly virus and then withholding medical resources that could have prevented his death.¹³⁴ Escobar Mejia had diabetes, and was included on a list that ICE was mandated to create by a federal judge of detainees who could be at high risk of death from COVID-19 and should be considered for release. Unfortunately, by the time ICE got around to publishing and considering the names on the list for release, Escobar Mejia was already in the hospital. He had appeared in court to request his release a few weeks earlier, but the judge delayed the request on what turned out to be a case of mistaken identity.¹³⁵ Others have died in facilities that have the subjects of similar complaints.¹³⁶ In the same detention center, detainee Jose Martinez Gonzalez told journalists that he feared for his life because of the way ICE agents were handling the virus. Martinez Gonzalez reported that his unit had been COVID-free until ICE agents knowingly mixed their unit with people who were COVID-positive. He also reported that whenever detainees communicated to the guards that they were experiencing COVID symptoms, the guards would give them nothing more than a glass of water and ibuprofen

¹³³ *Supra note 109*, Cohen and Eisen 2021

¹³⁴ Kate Morrissey, "Lawsuit Filed for First COVID-19 Death in Immigration Custody," The Garden City Telegram, December 22, 2020, accessed May 25, 2021, <https://www.gctelegram.com/story/news/2020/12/22/covid-19-death-immigration-custody/4008959001/>.

¹³⁵ Kate Morrissey, "San Diego Detainee Is First in ICE Custody to Die of COVID-19," Los Angeles Times, May 07, 2020, accessed June 08, 2021, <https://www.latimes.com/california/story/2020-05-06/first-ice-detainee-dies-coronavirus-otay-mesa-detention-center>.

¹³⁶ *Supra note 109*, Cohen and Eisen 2021

and then leave them in their cell despite knowing that many other people in the facility were testing positive.¹³⁷ According to a call by a detainee in Arizona to an anonymous hotline set up by the Puente Human Rights Movement, detainees who ask for medical assistance related to COVID-19 symptoms or complain about the sanitary conditions are frequently thrown into solitary confinement, which is considered a form of torture by many experts. This punitive approach has made detainees reluctant to report symptoms and therefore made the virus more likely to spread throughout the facility.¹³⁸ It should also be noted that the number of people who have died while in ICE custody does not include people who were exposed to COVID-19 in ICE custody and later died after being released. Activists have identified multiple clear examples of recently released people dying from COVID-19 symptoms,¹³⁹ and it is unknown how many such cases exist. Even more difficult to trace are the effects on the released individual's communities, who could have seen an increase in infections due to making contact with someone who was in ICE custody.

ICE has also made a curious habit of transferring detainees to different facilities after they have tested positive or displayed symptoms. Under the highly questionable and illogical justification of wanting to reduce the capacities of detention centers where the virus had begun to spread, ICE has in multiple instances transferred detainees from facilities with high case rates to facilities that had far fewer confirmed cases. These transfers normally occur between one ICE detention center and another or between an ICE detention center and a jail or prison for administrative reasons, but during the pandemic ICE seemed to be shuffling detainees around to

¹³⁷ "Episode 3: Medically Vulnerable Detainees Fear for Their Life," interview, *Detention Dispatches* (audio blog), May 26, 2020, accessed June 8, 2021, <https://capitalandmain.com/detention-dispatches-podcast>.

¹³⁸ "Episode 5: By the Time I Get to Arizona," interview, *Detention Dispatches* (audio blog), June 6, 2020, accessed June 8, 2021, <https://capitalandmain.com/detention-dispatches-podcast>.

¹³⁹ Katy Murzda, "How Many ICE-Related COVID-19 Deaths Have Gone Unreported?" *Immigration Impact*, March 26, 2021, [PAGE], accessed May 25, 2021, <https://immigrationimpact.com/2021/03/26/unreported-covid-deaths-ice/#.YHUtbelKgnU>.

appear to be depopulating facilities with high case numbers. As could be predicted by everything that was known about the spread of the virus, the transfers ended up serving to introduce the virus into new detainee populations more than anything else. For example, immigrants who were transferred from the Bexar County Jail in San Antonio were transferred to ICE facilities across the state such as the South Texas ICE Processing Center and the Prairieland Detention Center during the first few months of the pandemic despite a massive outbreak involving 303 cases among the incarcerated population. At the Rolling Plains Detention Center in North Texas, several incoming transfers tested positive upon arrival in April, leading to an outbreak of at least 55 COVID-19 cases in the facility.¹⁴⁰

When the Trump Administration was voted out of office, there was hope in some circles that newly elected President Biden's more friendly rhetoric would bring about positive changes to the immigrant detention system. However, only two months into Biden's term, detention of immigrants along the border became a flashpoint when thousands of unaccompanied immigrant children and teenagers were detained in Border Patrol tent facilities because the Health and Human Services facilities were at capacity. At first, the Biden Administration did not allow lawyers to see the conditions of the camps, which they had been told were dangerously overcrowded.¹⁴¹ When lawyers were allowed in, they found thousands of children packed into holding facilities without access to sanitary products and no way to contact their families for far long than what is allowed by CBP regulations. The camps were too crowded for all the children to have sleeping mats, so many of them slept on the floor. The children also reported not being allowed outside for days on end. Although it is difficult to know the exact number, advocates estimate that the vast majority

¹⁴⁰ *Supra note 127*, Kerwin 8

¹⁴¹ Nomaan Merchant, "Children Packed into Border Patrol Tent for Days on End," AP NEWS, March 12, 2021, accessed June 08, 2021, <https://apnews.com/article/immigration-coronavirus-pandemic-border-patrols-texas-9b959d739d59f03dd5873927171f2e29>.

of these children had family or extended family that they could stay with in the US based on their conversations with the detainees. Still, Border Patrol insisted on prolonged detention. The Biden Administration's solution was not to release detainees en masse as recommended by the CDC and advocacy groups but rather to create emergency facilities that could hold more people in the custody of a more humane organization like the Office of Refugee Resettlement.¹⁴²

Unfortunately, solutions revolving around more detention have been all too common in the Biden Administration despite original condemnations of the Trump Administration's handling of border security. When President Biden issued an executive order ending federal contracts with private prison companies, he excluded ICE detention contracts. 75% of ICE detention facilities are run by private companies, compared to just 16% of the federal prison population.¹⁴³ On May 20, 2021, the Department of Homeland Security issued a memo to say that it would be closing the Irwin Detention Center in Georgia, which had become notorious for forcing detained women to undergo hysterectomies among other egregious human rights abuses. As of June 8, 2021, the facility has yet to be closed, and business seems to be continuing as usual. Detained immigrants are still being transferred into the facility, and the facility's guards continue to flaunt COVID protocols as they had done under the previous administration. The lack of clarity around exactly when and how the facility will close is representative of many of the gaps between Biden's rhetoric and his administration's actions regarding migrant detention. The federal budget submitted for fiscal year 2022 revealed funding for 32,500 ICE detention beds per day, just 1,500 fewer beds than

¹⁴² Adolfo Flores, "Unaccompanied Immigrant Children Said They're Being Held Inside an Overcrowded Facility Without Showers," BuzzFeed News, March 15, 2021, accessed June 08, 2021, <https://www.buzzfeednews.com/article/adolfoflores/unaccompanied-immigrant-children-say-theyre-being-held>.

¹⁴³ Madeleine Carlisle, "Advocates: Biden's Private Prison Ban Didn't Go Far Enough," Time, January 29, 2021, accessed June 08, 2021, <https://time.com/5934213/private-prisons-ban-joe-biden/>.

the final Trump Administration budget.¹⁴⁴ As of this writing, Biden has only been in office for a few months, so the sample size for analysis is small. Preliminary observations, however, do not offer much encouragement for significantly decreasing immigrant detention.

Conclusions

This chapter has endeavored to track the development of immigration detention practices in the United States and demonstrate how they have been manifested in the era of the COVID-19 pandemic. Although the detention system has not always been nearly as expansive as it is today, from early on in its history it has targeted people of color who have neither the resources nor the legal status to protect themselves, usually for the benefit of the prevailing economic interests of the time. From the incarceration of Chinese immigrants in the nineteenth century to the advent of crimmigration to the devastating of COVID-19 in mass detention centers, immigration detention has preyed on the most vulnerable members of society with dire human consequences. Whatever its intention may be, detaining non-citizens creates a system of fear and punishment that severely inhibits its subjects from exercising civil or political rights. Detention cuts off access to social support, employment opportunities, and legal avenues that would typically be available to people going through the immigration process and instead threatens them with extended incarceration and attempts to cajole them into accepting deportation.

Given its history, it should come as no surprise that the immigration detention has caused so much harm to its detainees during the pandemic. By this point, it is beyond clear that immigration enforcement is allowed to operate with near legal impunity and that its subjects are given little option but to accept its control over their lives. The primary beneficiaries of the ever-

¹⁴⁴ John Washington and Jose Olivares, "'Nothing Is Changing': ICE Sends Detainees to Irwin Prison Despite Pledges to Close It," *The Intercept*, June 03, 2021, accessed June 08, 2021, <https://theintercept.com/2021/06/03/ice-irwin-closing-open-detainees/>.

expanding immigration detention system have been private prison companies, who have reaped the benefits of lobbying for more detention centers to be built and more beds to be filled, and ICE itself, which continues to be given more resources and tools to impose its will on unauthorized immigrants, specifically those from the global south. Individual ICE agents, though nowhere near the primary beneficiaries of the system, understand that their jobs depend on maximizing the number of people they detain and deport, giving them motivation to use their tools at every opportunity and prevent any form of resistance from or on behalf of undocumented immigrants. As one detention center guard allegedly put it when addressing a detainee, “if you leave, we would be without a job.”¹⁴⁵

The fundamental characteristics of the system that have been outlined above allow us to see in greater clarity how easily the virus was able to tear through the incarcerated immigrant community, and can help us understand how best to assist those who are most vulnerable to it going forward.

¹⁴⁵ *Supra note 139*, Detention Dispatches Episode 5

CHAPTER 3: RULE-OF-LAW NECROPOWER IN STEWART COUNTY, GEORGIA: A CASE STUDY

Introduction

The objective of this chapter is to place the treatment of detained immigrants during the pandemic within the theoretical framework of necropolitics, carceral capitalism, and postcolonial hierarchies by using Stewart Detention Center (SDC) in Stewart County, Georgia as a case study. The concept of necropolitics, as discussed in the first chapter, was developed by Achille Mbembe to explain methods of postcolonial sovereignty that endanger the lives of a new colonial underclass in the name of extracting wealth for the powerful. This chapter will use data collected through both primary and secondary sources, using SDC as a case study, to explain the necropolitical aspects of immigration detention in the United States during the pandemic. It begins with a historical analysis of colonial sovereignty in Stewart County, and argues that current immigrant detention practices in SDC represent a continuation of the hierarchies established during the eras of colonization and slavery. Once the historical context is established, the analysis turns to the explanation of the financial incentives surrounding detention to describe the lucrative nature of detention. The use of detention centers to fund local governments can be explained by Jackie Wang's framework of carceral capitalism, a concept used to explain how taxes can be kept in accordance with neoliberal ideology if that revenue is supplemented by using the criminal justice system. This chapter argues that ICE contracts in rural areas like Stewart County fit this framework perfectly, and uses comments from Stewart County Executive Mac Moye in an interview conducted for this project to support the argument. The lucrative nature of keeping as many people detained as possible combined with a highly contagious and deadly virus creates conditions that are extremely

precarious for detainees but economically beneficial for the powerful groups like private prison companies and municipal governments. The data demonstrates that the combination of putting undocumented immigrants' life in danger for the economic benefit of the powerful and the extension of colonial hierarchies makes immigrant detention in the United States a phenomenon aptly explained by the principals of necropolitics.

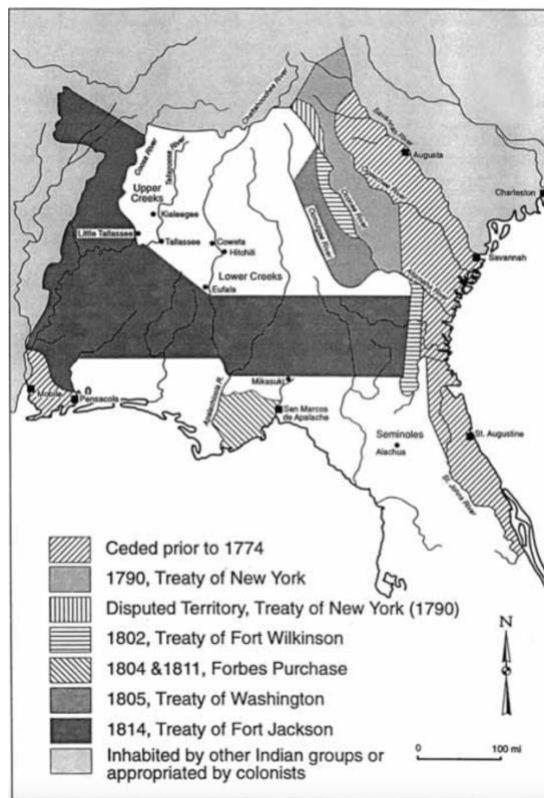
3.1 Colonial history of Stewart County

Stewart County has a long colonial history that extends back to its very founding and continues with the postcolonial dynamics at play today with the dominance of the CoreCivic ICE detention center in its local politics. The very names of Stewart County and Lumpkin, the town that SDC is closest to, make reference to the violent removal of the indigenous people from the area. A marker erected by the Georgia Historical Commission in Lumpkin explains that the county is named after Brigadier General Daniel Stewart as a commendation for his bravery in “Georgia’s Indian Wars,”¹⁴⁶ which refers to the Creek Wars of 1813-1814 in which the US military asserted control over the southern parts of Georgia and Alabama and the Florida panhandle. The Creek people (a name originally given to them by English settlers and later adopted as their own)¹⁴⁷ inhabited the land currently called Stewart County until they were forcefully removed by the US military. The primary driver of conflict between the settlers and the native people at the time was differing ideas about the ownership and use of the land. The Creek people did not believe in accumulating land for profit, and individuals only claimed rights to specific plots of land while they were using it to produce for the community. Everyone in the community had the right to hunt

¹⁴⁶ “Lumpkin and Stewart County,” Georgia Historical Society, accessed May 31, 2022, https://georgiahistory.com/ghmi_marker_updated/lumpkin-and-stewart-county/.

¹⁴⁷ Claudio Saunt, *A New Order for Indians: Creeks and Seminoles in the Deep South, 1733-1816* (Cambridge: Cambridge University Press, 1999). 13-14.

on the group's lands, which was mostly used for hunting deer¹⁴⁸. Conflict arose when the settlers over-hunted the area and continued to expand their livestock farms and plantations onto the hunting grounds, causing disruptions in the Creeks' ability to sustain themselves as they had before¹⁴⁹. The settlers arrived in Georgia to establish their private property and extract economic benefit from that property, while the mere idea of wealth accumulation through private property was a foreign one to the Creeks.



“Creek land cessions”. *Saunt, A New Order, 271. Drawn by Mike Feeney, Campus Graphics and Photography, University of Georgia*

Relations between Creeks and settlers reached a breaking point in 1813. Many members of the Creek elite (some of whom had a settler parent) had become more wealthy since the arrival of the English and wanted to adopt the ideas of property that had come over from the other side of

¹⁴⁸ *Ibid*, Saunt 41

¹⁴⁹ *Ibid*, Saunt 46

the Atlantic, while members of other classes of Creek society rejected the intrusion of colonial concepts of property.¹⁵⁰ The latter group became known as the Redstick Creeks, a coalition of like-minded Creek people inspired by the Pan-Indian Movement who used violence to resist the new order being imposed by the settlers. Their targets were often chosen to disrupt economic extraction, such as their destruction of cattle and spinning wheels for cotton.¹⁵¹ They often responded violently towards people of mixed Creek and settler heritage who did not support their cause, but took in many Black people who had escaped slavery in the region in an alliance against the brutally exploitative and extractive plantation farming system.¹⁵² Despite the fierce resistance from the Redsticks, the US military and Creek elite ultimately won the war under the leadership of General Andrew Jackson. The Redsticks ceded large swaths of land including what is now Stewart County to the US in 1814,¹⁵³ and sixteen years later in 1830 Andrew Jackson, now president, signed the Indian Removal Act to force all remaining native people from the area to relocate to west of the Mississippi River in what is now known as the tragic Trail of Tears.

This violent assertion of colonial sovereignty over indigenous people in the region was followed by the extraordinarily lucrative economic pursuit of cotton farming using slave labor. Stewart County was officially incorporated in 1830, and that decade witnessed a significant increase in settlers and the establishment of massive cotton plantations. Even though in one of the largest cotton-producing parts of the country, Stewart County stood out as one of the three most important producers in the state of Georgia. The period of 1836-1850 represented the peak of Stewart County's economic power and prosperity, an economy built on extraction of resources

¹⁵⁰ *Ibid*, Saunt 249

¹⁵¹ *Ibid*, Saunt 254

¹⁵² *Ibid*, Saunt 268-269

¹⁵³ *Ibid*, Saunt 271

from the land and enslavement of Black people after the expulsion of the Creek people.¹⁵⁴ Many plantations were built and operationalized during this period, among them West Hill, an extensive and hugely profitable cotton farm and timberland that depended on slave labor. After being assigned in a land lottery and changing hands a few times, in 1853 it was acquired by William West, an ancestor of the current County Executive Mac Moye's family.¹⁵⁵ The farm had among the highest acreages and one of the highest rates of production in the state before the Civil War, and the Moye family lineage has maintained ownership of the property to this day through the various evolutions of the Stewart County economy.¹⁵⁶

The slave labor that allowed the wealthy white families to extract enormous wealth from the region in the 1830s, '40s, and '50s at the expense of the lives of Black slaves was made illegal after the Civil War in 1865. The South's and slavery's defeat, together with overly-extractive farming practices that caused soil erosion, precipitated a decline that Stewart County has never fully recovered from.¹⁵⁷ Still, despite not having the same success as they did with cotton before the Civil War or being able to enslave people outright, the region's wealthy land owners turned to alternative ways of exploiting labor: sharecropping and convict leasing. Sharecropping was a practice widely considered to be a continuation of slavery under a different name in which Black tenant farmers were given housing and land to tend by white land owners in exchange for a share

¹⁵⁴ Matthew M. Moye, "Stewart County," New Georgia Encyclopedia, August 26, 2020,

<https://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/stewart-county/>.

¹⁵⁵ L. M. Moye, "National Registry of Historic Places Inventory Nomination Form: West Hill/Moye Farms," National Registry of Historic Places Inventory Nomination Form: West Hill/Moye Farms § (1977).

¹⁵⁶ Brian Brown, "West Hill, circa 1836, Stewart County," Vanishing Georgia: Photographs by Brian Brown, February 26, 2022, <https://vanishinggeorgia.com/2018/08/26/west-hill-circa-1836-stewart-county/>.

¹⁵⁷ *Supra note 155*

of the profits.¹⁵⁸ In reality, the land owners kept nearly all of the profits while Black farmers remained poor and dependent on white capital.¹⁵⁹ In the case of Stewart County, recently freed slaves formed a community in Green Grove but found it almost impossible to escape the trappings of poverty even though Black people made up about half of the roughly 15,000 people in the county.¹⁶⁰ In her book about the people of Green Grove during this period, Willie Marie Porter describes her own father's sharecropping arrangement:

“My father produced many bales of cotton and tons of peanuts. The settlement was at the end of the year. Most times, my father would end up with no money or was given an old, run-down car.... Land was not the only thing sharecroppers needed from the owners. The owners of larger farmlands would sell or facilitate the sale of fertilizer, seed, clothing, shoes, and some food from the “company” store. The laborers rarely had cash, however, so in both cases they were extended credit to make purchases. In the fall, after harvesting the crop, the settlement, to which I alluded earlier, was executed. Landowners gave the workers their shares of the crop. With whatever cash the laborers made in this sale, they attempted to pay back the debt accrued during the season from the supplier. In many cases the sharecropper was told that the amount he made selling his crop was not sufficient to settle the debts accrued during the year. In this case the workers were bound to the land for another season.”¹⁶¹

In this way, the white land owners of Stewart County continued to exploit Black labor for their own profit, and continued their erosive and extractive farming practices despite the abolition of slavery.

The other prominent exploitation practice was known as convict leasing, a system that forced people convicted of crimes to work for the state or private corporations for free. Former slave states like Georgia forced thousands of Black men back into slavery by accusing them of

¹⁵⁸ Henry Louis Gates, *Stony the Road: Reconstruction, White Supremacy, and the Rise of Jim Crow* (New York, NY: Penguin Books, 2020).

¹⁵⁹ Sven Beckert, *Empire of Cotton: A Global History* (New York, NY: Vintage, 2015). 287.

¹⁶⁰ Willie Marie Porter, *A Grateful People: An Historical Account of the Founding of a Community* (Bloomington, IN: iUniverse LLC, 2014). 20-21.

¹⁶¹ *Ibid*, 56-58

petty crimes such as “mischief” for the continued economic benefit of white landowners.¹⁶² In the decades following the Civil War, the state of Georgia would arrest Black men and then sell their labor to private corporations to carry out infrastructure projects. This practice was lucrative for the state because of the revenue generated by selling the labor and for the corporations because of the significantly reduced cost of labor. Capital interests were able to continue extracting labor and value from Black people, who continue to suffer extreme abuse and in several cases die on the job.¹⁶³

This historical trajectory of Stewart County’s economy has the common theme of depending on the extraction of value from racialized people for the economic benefit of the wealthy white ruling class. To achieve this economic benefit, first native people were violently removed from the land and then Black people were enslaved and exploited, all under the same colonial sovereignty that enriched white land owners and made precarious the lives and livelihoods of racialized groups. As sharecropping and convict leasing decreased in prominence and eventually became illegal in the twentieth century, Stewart County suffered a steady decline into being one of the poorest counties in the country, losing population in every decade until the almost 16,000 inhabitants in 1900 became barely 5,000 by the turn of the century.¹⁶⁴ Much of this loss was due to the Great Migration, the migration of Black farmers from the South to urban centers in the north in search of a more equitable economic arrangement.¹⁶⁵ Despite the disappearance of these specific methods of exploitation, the relationships and power dynamics established during this period remain in place today. Even by tracing just one family, it is clear that colonial hierarchies have

¹⁶² Michelle Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness* (La Vergne: The New Press, 2020), 38.

¹⁶³ William Andrew Todd, “Convict Lease System,” *New Georgia Encyclopedia*, July 17, 2020, <https://www.georgiaencyclopedia.org/articles/history-archaeology/convict-lease-system/>.

¹⁶⁴ *Supra note* 161, Porter 20-21

¹⁶⁵ *Supra note* 161, Porter 88-89

been maintained. The county is currently governed by one of the same families that owned one of the most productive plantations in the state,¹⁶⁶ maintaining their position in Stewart County over the course of centuries. The county's Black population as of 2021 is higher than its white population,¹⁶⁷ but the ruling class remains predominantly white as a result of generational wealth and power being passed down all the way from the antebellum period.

3.2 Stewart Detention Center and carceral capitalism

In the current stage of Stewart County's history, the group whose lives are being put in danger for economic benefit are undocumented immigrants. The region's economy has always focused on resource extraction instead of industrialized production, so when the fields became too eroded and the Black labor force began to move north the county was unable to avoid a steady decent into being one of the poorest counties in the country. As of 2021, the per capita income of Stewart County residents is approximately half of that of the country as a whole (\$17,244 vs. \$35,384), and almost a third of its residents live below the poverty line, compared to 11.4% nationally.¹⁶⁸ One of the County Executive's attempted solutions to the extreme poverty in Stewart County has been to turn to the practice of carceral capitalism through immigrant detention to secure government revenue that could be used to benefit residents outside of the detention center. For many municipal governments with budgetary issues, contracts with ICE represent a relatively easy way to receive funds from the federal government, an institution with nearly infinite financial power that offers very little support apart from the ICE funds.

In an interview conducted for this project, Moye laid out all of the benefits that having the detention center in Stewart County brings to the municipal government and the county's residents

¹⁶⁶ *Supra note 156*

¹⁶⁷ "U.S. Census Bureau Quickfacts: Stewart County, Georgia," US Census Bureau, accessed June 1, 2022, <https://www.census.gov/quickfacts/fact/table/stewartcountygeorgia/PST045221>.

¹⁶⁸ *Ibid*

on the outside of SDC. Since the detention center is run by CoreCivic through an Intergovernmental Service Agreement (IGSA), Stewart County's costs are minimal. CoreCivic constructed the facilities, and the employees of the center are trained and paid by CoreCivic. The county receives \$1.00 per detainee per day with a guarantee, and as part of the contract ICE guarantees that it will fill at least 1600 beds per day. According to Moye, that adds up to at least \$600,000 for their annual operating budget with no stipulations or restrictions. Although that sum of money might not sound important for a government budget, Moye stressed that it makes a significant difference in a place like Stewart County when the total annual budget is only five million dollars. That direct payment only represents part of the financial benefits that Moye and county government receive from CoreCivic. Given their prominence as a land owner and an employer, Moye estimates that taxes from CoreCivic account for 20% of the total budget every year, making them essential for Stewart County's ability to operate.¹⁶⁹

Beyond the massive sums of money that the county receives from CoreCivic, SDC brings well-paying jobs to a place that is desperate for them. Moye claims that there are approximately 600 jobs in the Lumpkin area as a result of SDC and all of the businesses surrounding detention such as food, transportation, and technology services. Ninety-two of those employees work inside SDC. The pay that CoreCivic employees receive is closer to what is normally offered in places like Columbia or Atlanta, where people from Lumpkin typically move to in search of better employment. Moye explained, "Last I checked they had 92 people from Stewart County itself that worked out there out of a total of about 600 total employees of all sorts, from ICE to a transportation branch called TransCore and they've got Catholic Charities out there, and Trinity, the food service. You add 92, which is the number of people, and that's huge."¹⁷⁰ For such a small

¹⁶⁹ Ian Scholer, Mac Moye Stewart County Detention Center Interview. Personal, January 13, 2022.

¹⁷⁰ *Ibid*

county, that number represents a significant number of well-paying jobs that Moye does not want to lose. Even if they don't live in Stewart County, having that many people with disposable incomes in the area gives the economy an injection of funds. The reference to the other services affiliated with ICE is an important reminder of how many businesses survive off of ICE detention and would be incentivized to flex their financial muscle to ensure that the business of detention continued as usual.

Moye's incentives to work with CoreCivic grow every year as the company becomes more ingrained in the community. CoreCivic has offered to pay for an infrastructure project of his choosing, something that the federal and state governments have not offered to do and he wouldn't even be able to think about doing with his own budget. The jobs offered by CoreCivic have also increased social indicators in Stewart County, specifically the high school graduation rate. CoreCivic requires a high school diploma to work one of their comparatively well-paying jobs, and since their arrival the local high school graduation rate has shot up from a dismal 46%, the worst in the state at the time, to an impressive 92%. That type of extreme increase is impressive by any standards, and makes Stewart County students more competitive in the job market even if they are not hired by CoreCivic.¹⁷¹

Moye is proud of CoreCivic's contribution to life in Stewart County, and emphasized that neighboring counties in similarly desperate economic situations have not been able to achieve such metrics because they do not have ICE contracts. Moye is also proud of not having raised property taxes in 20 years, which he credits to the revenue the county receives from CoreCivic. Other counties' governments, meanwhile, are suffering without the injection of ICE funds. As Moye put it,

¹⁷¹ *Ibid*

“That is really the difference between us and some of our neighbor counties. Let me just explain that Stewart County is in a very poor area in Georgia. We’re one of the 50 poorest counties in the US, we’re in the bottom 10 in terms of per capita income in the US. The money that we get then, is really, really important to the county. The counties around us, I don’t want to characterize them as unstable, but they are having difficulty meeting their budgetary obligations, and Stewart County is by no means wealthy but we have not raised property taxes in 20 years, and that would have almost certainly had to have happened without CoreCivic’s participation.”¹⁷²

Despite how poor the county is, Moye and others in Stewart County know that the alternative to hosting the detention center is far worse than their current state, and prefer to keep property taxes stable for a population that faces severe economic hardship rather than reject the significant funds that ICE offers them.

All of these factors add up to Stewart County being almost entirely dependent on the SDC contract as it currently operates. This method of local governance amounts to Stewart County relying heavily on indirect financial support from the federal government, an institution with exponentially more financial power and ability to take on debt. County governments operate a fundamentally different role in the economy as currency users instead of currency creators. The US federal government debt is currently an ever-increasing trillions of dollars, but can continue to spend and operate as normal because of its ability to create money for itself using the Treasury. County governments, on the other hand, do not have the power of the treasury to create currency and must therefore balance their budgets every year. In other words, they cannot continually spend more than collect in taxes and federal subsidies or else they will go bankrupt and fail to provide basic services.

As the history in the first part of this chapter illustrates, Stewart County has always maintained itself by extracting wealth from an exploited, racialized class. Though the systems of

¹⁷² *Ibid*

slavery and sharecropping have been made illegal, the tradition of extracting from bottom continues. In this stage, it operates under the previously described framework of carceral capitalism. As described in the theoretical framework, carceral capitalism refers to a series of law enforcement practices that were put in place beginning in the 1980s to extract funds for municipal governments from low-income, marginalized communities instead of from property taxes or progressive income taxes.¹⁷³ The concept was originally designed around the over-policing of the Black community and other communities of color and the ever-increasing fines and penalties that they are assessed within the criminal justice system, taking money from the most vulnerable while lowering taxes on the wealthy. In the context of immigration detention, the resources for local are not extracted directly from detained immigrants through fines but rather from the federal contracts that are awarded in exchange for detaining undocumented people and the presence of business interests in the county that come with it.

Stewart County once again exemplifies how this model works in practice. Moyer says that the county has not raised property taxes in 20 years, and was clear that the stagnant tax rate is a direct result of the income the county receives from the contract and CoreCivic's presence.¹⁷⁴ In this system, business interests benefit across the board at the expense of the people being detained. Lower tax rates and lucrative federal contracts provide a win-win for companies like CoreCivic and other businesses associated with immigrant detention. Instead of providing federal aid to Stewart County so Moyer could implement stronger social services, the ICE contracts ensure that the county remains dependent on earning money from detaining undocumented immigrants. Carceral capitalism is the modern day iteration of the extractive economies of Stewart County's

¹⁷³ *Supra note 44, Wang*

¹⁷⁴ *Supra note 170, Moyer interview*

history, ensuring that wealthy land owners and business interests continue to win out over the well-being of racialized and marginalized groups.

This economic structure and system of financial incentives all point toward SDC detaining as many people as possible and keeping them detained for as long as possible. Since both Stewart County and CoreCivic are paid per person detained per day, they have every incentive to maximize the number people who are brought into the detention center and to keep them there for as many days as they can, no matter how much of a risk they run of spreading COVID-19 within the facility. The people on the ground carrying out the detention practices are keenly aware of how these incentives directly influence their livelihoods. When asked what the direct impacts on local government would be if SDC were to close or be relocated, Moye responded, “That would inevitably cause us to have to have some sorts of layoffs in county government.” The people whose jobs depend on the IGSA contract funds are also the ones who carry out the contract, meaning they are financially incentivized to do their part to ensure that SDC’s beds remain filled, even during a deadly pandemic. That includes the commissioners who Moye says are responsible for overseeing the facility and ensuring that there are no “illegal or unethical incidences,” according to Moye.¹⁷⁵ As previously mentioned, detainees have expressed in other media that the CoreCivic detention center guards are clearly aware of the effects of not keeping the beds filled. One anonymous detainee reported that during a protest at a different detention center, detainees were continually asking the guards why they couldn’t be let out due to sanitary conditions. One of the guards responded that if the detainees leave, the guards would be out of a job.¹⁷⁶

From a detainee’s perspective, these incentives have meant continued exposure to a deadly virus. Many of them quickly recognized the injustice of being forcibly kept in cramped detention

¹⁷⁵ *Supra* note 170, Moye interview

¹⁷⁶ *Supra* note 139, Detention Dispatches Episode 5

conditions even while officials were recommending that everyone limit their in-person interactions for the good of the public health. Beyond the risk of being detained in and of itself, detainees were also denied appropriate personal protective equipment, hygiene products, and medical care. In SDC, detainees reported frequent use of disciplinary tactics such as solitary confinement being used for people who tried to ask for medical care or reported COVID-19 symptoms. When the detainees attempted to protest the medical neglect, they were punished even further with measures such as tear gas and lockdowns. The testing policy was also insufficient, as many detainees reported never receiving their results despite being symptomatic. All of these factors point toward symptoms being underreported and cases being undercounted.¹⁷⁷

The result of this treatment has been a series of devastating COVID outbreaks and deaths among detainees in the facility. SDC recorded significant outbreaks in July 2020, August 2020, February 2021, July 2021, and February 2022, with the highest number of recorded daily cases (378) occurring during the Omicron wave in early 2022. As explained in previous chapters, these numbers are almost certainly an underestimation due to chronic undertesting and underreporting reported at SDC and other ICE facilities.¹⁷⁸ When trying to receive medical care for their illnesses, detainees frequently reported abuse from SDC guards. In the *Cage of Fear* report, several respondents describe being sent to solitary confinement when they developed COVID symptoms without being told whether or not they had the virus, a form of punishment rather than medical isolation. Using disciplinary tactics for medical cases is in clear violation of legal detention standards, and the policy strongly discourages detainees from even seeking medical assistance, let

¹⁷⁷ “Cage of Fear: Medical Neglect and Abuse in Stewart Detention Center during the COVID-19 Pandemic,” El Refugio (El Refugio, May 11, 2021), https://www.elrefugiostewart.org/wp-content/uploads/2021/05/CageOfFear_FINAL_English.pdf.

¹⁷⁸ Dennis Kuo, “Tracking Covid-19 in Immigration Detention,” Vera Institute of Justice, June 29, 2020, <https://www.vera.org/tracking-covid-19-in-immigration-detention>.

alone receiving adequate care. Detainees are well aware of the dangers of solitary confinement, as one responded that they feared dying if they were sent to solitary confinement with the virus.¹⁷⁹

The reluctance to release detainees has led to conditions in which detainees are knowingly exposed to the virus and unable to do anything to protect themselves, causing inevitable outbreaks. During these outbreaks, detainees were consistently denied medical care despite demonstrating extreme symptoms such as frequent fainting.¹⁸⁰ Even during the worse outbreaks, SDC employees withheld tests in an effort to hide the real case numbers, perhaps to prevent judge's orders to reduce the detainee population for public health reasons. SDC employees also did not hesitate to use force against detainees whenever detainees advocated for their own healthcare needs. When some detainees protested their medical neglect by placing sheets on the windows and doors to their cells, correctional staff deployed tear gas, through detainees to the floor, and sent them to solitary confinement.¹⁸¹ According to researcher Kristen Kolenz, who received reports from SDC detainees during the pandemic, this punitive approach led detainees to the overwhelming conclusion that they were being forgotten and left for dead. The precarity of their situation combined with the punishment for seeking improved conditions put them in a position of extreme vulnerability with no protection from the virus. Many were justifiably angry that they could not be released for public health reasons.¹⁸² Johanna Garcia, the advocacy coordinator at El Refugio, the organization that exists to support detainees at SDC, reported that being released or granted asylum is an especially difficult proposition for Black and Central American detainees, who face even lower success rates

¹⁷⁹ *Ibid*, 7

¹⁸⁰ *Ibid*, 10

¹⁸¹ Jose Olivares, "Ice's Immigration Detainees Protested Lack of Coronavirus Precautions - and Swat-like Private-Prison Guards Pepper-Sprayed Them," *The Intercept* (*The Intercept*, May 5, 2020), <https://theintercept.com/2020/05/05/ice-stewart-immigration-detention-coronavirus-protest-pepper-spray/>.

¹⁸² Ian Scholer, Kristen Kolenz Stewart County Detention Center Interview. Personal, March 30, 2022.

in immigration courts, a further indication of the bias against racialized groups in the immigration system¹⁸³.

Releasing detainees, however, is not how SDC and other detention centers are incentivized to operate. The financial incentives in place for everyone in charge, from CoreCivic executives to county managers to facility guards, are to keep detainees in the facilities for as long as possible to continue to receive the per diem funding that contributes to their paychecks. The consistent growth in number of people detained in the past has insured consistent growth in the business surrounding immigrant detention. In recent years, in order to continue this growth and justify further funding, ICE has turned to detaining more and more undocumented immigrants with no criminal convictions. At its peak in 2019, the number of detained immigrants held per day was close to 50,000, with 64% of those detained having no criminal conviction.¹⁸⁴ These numbers have declined to below 20,000 as of April 2022 because of the significantly reduced movement across borders during the pandemic, making it all the more important for those with the financial incentives to hang on to as many detainees as possible. Strategies such as the violent suppression of protest,¹⁸⁵ the placement of detention centers in isolated parts of the country far from support systems to prevent detainees from receiving adequate legal support for their asylum cases,¹⁸⁶ and transferring detainees from facility to facility instead of releasing them¹⁸⁷ serve to keep detainees

¹⁸³ Ian Scholer, Johanna Garcia Stewart County Detention Center Interview. Personal, March 17, 2022.

¹⁸⁴ “Growth in Ice Detention Fueled by Immigrants with No Criminal Conviction,” TRAC Syracuse (TRAC Syracuse, November 26, 2019), <https://trac.syr.edu/immigration/reports/583/>.

¹⁸⁵ *Supra* note 182

¹⁸⁶ Frank Etheridge, “A Rock and a Hard Place: Stuck Way down in the Stewart County ”, Electric City Life, September 13, 2018, <http://electriccitylife.com/a-rock-and-a-hard-place-stuck-way-down-in-the-stewart-county/>.

¹⁸⁷ Marco Amador, “Capital and Main,” *Capital and Main* (blog) (Capital and Main, September 18, 2020), <https://capitalandmain.com/detention-dispatches-podcast>.

in extremely precarious situations for the financial benefit of businesses associated with detention and property owners whose taxes are kept down thanks to ICE funding of municipal governments.

Stewart County once again provides a telling example of how placing detention centers in such remote locations boosts ICE's and CoreCivic's bottom lines as the expense of detainees. Having an attorney in an asylum cases has proven to almost double the asylum seeker's chances of a successful resolution,¹⁸⁸ so being in a location as far away from legal services makes it far more likely that detainees will remain detained instead of being released on asylum. El Refugio, the main organization in the area that provides assistance for SDC detainees, splits its operations between Lumpkin and Atlanta, a two hour drive away. In an interview for a 2018 report on SDC, immigration attorney Martin Rosenbluth described how SDC's remote location allows it to get away with cutting corners on healthcare services, in some cases not providing meds at all.¹⁸⁹ Keeping people detained for longer period of time and cutting services are both profitable for CoreCivic and ICE, as well as extremely dangerous to detainees when there is a deadly virus that spreads easily in crowded spaces.

As discussed in the previous chapter, it is difficult to look at the inexplicable mass use of the transfer system to shuffle detainees around during the pandemic as anything other than a strategy to keep detainees in the ICE detention system for as many days as possible. On the Detention Dispatches podcast, one asylum seeker describes being moved between seven different detention centers before finally being given a court date. The only explanation she could think of was that after three months in one place, her lawyer could force her case to be reopened and therefore force ICE to release her.¹⁹⁰ This constant movement from one place to another both

¹⁸⁸ "Asylum Denial Rates Continue to Climb," Asylum denial rates continue to climb (TRAC Immigration, October 28, 2020), <https://trac.syr.edu/immigration/reports/630/>.

¹⁸⁹ *Supra note 187*

¹⁹⁰ *Supra note 188*

makes spreading COVID-19 from one center to another more likely and benefits several economic interests, including the companies and county governments who receive a per/diem payment for detaining her, and the transportation companies that ICE contracts to carry out the transfers. Especially during the pandemic when not as many people were coming across the border, detainee transportation companies relied on moving people who were already detained instead of their normal routine of taking new detainees to detention centers. This movement, combined with the lack of testing and medical care, contributed significantly to the precarity of living as an ICE detainee.

Necropolitics provides a framework to understand this precarity. In ICE detention, racialized immigrants are made to risk their lives for the financial benefit of the capital owning class. This process is a clear continuation of colonial sovereignty through which white land owners have extracted value from a racialized working class, oftentimes at severe risk of death. The pandemic has demonstrated the willingness of the capital owning class to continue to further endanger the lives of undocumented immigrants, even at the clear expense of public health. While each individual death in an ICE detention center is not directly lucrative for capital interests, the process of keeping people detained despite the enormous risk certainly is. The deaths of detained immigrants are a result of the convergence of capital interests and continued colonial sovereignty, a replication of the precarious and extractive processes described by Mbembe. In this case, the perpetrators are doing so legally using the tools of the security state, as described by Estevez and others in their descriptions of rule of law necropower.

The people who are put in the most precarious situations are undocumented immigrants from the Global South who continue to be exposed to extensions of colonial hierarchies and power

structures. Of the four confirmed deaths at SDC, all were from Mexico and Central America,¹⁹¹ nationalities that are notoriously unlikely to be released on asylum. As discussed in the previous chapter, US imperialism has already contributed to the destruction of livelihoods in those parts of the world, and people who flee north are once again faced with a new iteration of colonial hierarchy in which the endangerment of their lives once again proves lucrative for existing power structures. To apply the lens of rule of law necropower is to understand that the creation of spaces in which lives are endangered for the economic benefit of the ruling class can occur in the Global North under the guise of legality, under different processes but with similar consequences as the death worlds described by Mbembe.

¹⁹¹ *Supra* note 24, AILA

CONCLUSIONS

This thesis has presented data and theoretical analysis to argue that the detention of undocumented immigrants in the United States during the pandemic can be understood through a necropolitical framework. The data used for this argument was taken from both primary and secondary source statements from people involved in both sides of the detention process. Data from official sources such as COVID case numbers from ICE were taken into account but viewed with a critical lens given ICE's history of hiding the severity of the virus in its facilities. The data that was used to create a more complete picture came from published statements from detainees themselves or people such as professional journalists, activists, and lawyers who have been in close contact with detainees during the pandemic. While these data points do not encompass the entirety of ICE detention the way that official statistics claim to, they provide a more accurate picture of the harsh realities that detainees have endured during the pandemic. Although many detainees have not spoken about their experiences due to fear of retaliation from ICE, the ones who have told their stories have provided bleak descriptions of treatment and extreme medical neglect from facility staff in various detention centers across the country.

The first chapter discussed the theory surrounding necropolitics and how it can be applied to immigration detention. Although necropolitical analyses originally focused on postcolonial spaces in the Global South, the core elements of colonial sovereignty and lucrative deaths can be traced to spaces in the Global North. The postcolonial relationships that are maintained through the mass detention of Latinx immigrants and the resource extraction through the practice of carceral capitalism make immigration detention centers an apt example. During the COVID-19 pandemic, the financial incentives to keep as many people detained as possible and keep healthcare costs as low as possible while a highly contagious and deadly virus made putting detainees lives

at risk lucrative for actors with power, including local governments and private prison companies. Using the lens of necropolitics, as modern-day scholars have done to analyze treatment of undocumented immigrants in various Global North settings, helps us understand the historical context and financial incentives behind the precarious and deadly conditions created by immigration detention system.

Chapter 2 identified the historical roots of immigration detention and explored how and why it has ballooned into the mass incarceration system that it is today. Through concepts such as crimmigration, we can see how immigration detention has historically been a tool to target, intimidate, and control people of color in the United States, oftentimes for the benefit of prevailing capital interests. Well before the advent of ICE and DHS in the twenty-first century, the INS detained immigrants from Latin America and sold their labor to corporations for well below a dignified salary. These interests have changed over time, and are now dominated by private prison companies and the various detention services business surrounding them seeking to increase their profits every year and use their lobbying power to advocate for continued expansion of detention.

In an attempt to narrow the focus of the research and explain in detail how immigrant detention during the pandemic has operated, the third chapter used the Stewart Detention Center in Stewart County, Georgia as a case study. Stewart County was chosen because of its shared characteristics with facilities across the country, such as its management as a cooperation between private prison company CoreCivic and local government and its location in a rural, isolated location. In an interview conducted for this project, the Stewart County Executive Mac Moye described that various ways in which the county benefits and in many ways depends from the revenue generated by the facility. The ICE contract is responsible for funding a significant portion of Stewart County's activities, and has allowed Moye to keep property taxes low. This method of

operation is consistent with the principals of carceral capitalism, which explains the process of the using carceral system to fund city governments instead of raising taxes on the wealthy. The nature of ICE detention center contracts is such that all parties involved receive funding based on how many people they detain per/day, giving authorities every financial incentive to detain as many people as possible despite the enormous health risk presented by detaining people during a pandemic. The risk, as described by the detainees and the people who work with them, has been life-threatening, but despite numerous deaths in ICE facilities, detention against public health advice continues.

Stewart County was also used to provide an example of the aspects of the exploitative and extractive processes that began under colonialism are still present in immigration detention. The case of Stewart County is particularly poignant because of the direct descendance of the current country executive from one of the wealthiest slave-owning families in the country before the Civil War. The land and capital owning class of Stewart County continue to extract wealth from the exploitation of racialize groups in the form of immigration detention, a stark example of extension of colonial sovereignty to the modern day. The combination of the extreme precarity immigrant detention being lucrative for capital interests and an reproduction of colonial sovereignty demonstrates clear links to necropolitics. In Mbembe's work, he describes the management of a colonial underclass in situations of extreme, life-threatening precarity to extract wealth for the benefit of the powerful. This process is clearly visible in immigration detention during the pandemic, as detainees' lives have been put in danger by their continued detention and medical neglect during the pandemic to ensure that ICE contracts continue to pay the powerful parties involved.

This thesis, using the lines of reasoning described above, has aimed to place the efforts to continue to detain undocumented immigrants within a necropolitical framework. Necropolitics involves forcing a postcolonial underclass into situations of such precarity their lives are in significant danger for the benefit of the powerful. Mbembe describes the deaths as lucrative, because the extraction that caused them creates wealth for the land owning class. In the case of immigrant detention in the United States, detained undocumented immigrants are the colonial underclass, and the powerful class are the private prison companies and municipal governments that benefit by extract enormous wealth from detaining as many undocumented people as possible. The same hierarchies that were in place during the eras of colonialism and slavery in the United States, as well as during periods of exploitation of former slaves after the Civil War, remain firmly in place in this process, as the predominantly white land-owning class continues to benefit by putting racialized groups in precarious, life-threatening situations. Necropolitics helps us understand why these practices are in place, and who benefits most from them.

The perverse financial incentives of immigration detention and the dangerous conditions it creates for marginalized groups is a vitally important topic to understand with a broad set of dynamics and implications, only a portion of which have been covered by this thesis. Stewart Detention Center provides a clear example through which to understand many parts of the immigration detention system, but it only detains immigrants who are adult men. Researching the dynamics at play in the conditions of detention of women and minors would be an important and meaningful expansion to the understanding of the issues presented in this thesis. The specific histories and contracts of detention centers other than SDC also present ample future research opportunities. While most detention centers are built in rural areas, that is not a universal characteristic and future research could explore carceral capitalism in larger urban settings.

Necropolitics, a concept developed in the Global South, can be an illuminating theory for political practices that endanger the lives of marginalized for the benefit of capital interests in the Global North. This thesis has endeavored to use it to explain a specific time and place in immigration detention history and to inspire others to apply it where they see fit.

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Guion de la entrevista semiestructurada (creado por Junek Vargas de León).

	Descriptions	Possible questions	Theoretical basis
1. Transfer system	Search for more in-depth information about how the transfer system has been used in Stewart County, especially in regards to transferring detainees who have shown symptoms or recently tested positive	<ul style="list-style-type: none"> - What differences have you noticed in the transfer system since the beginning of the pandemic? - What justifications have you heard from officials regarding transfers during the pandemic? - Do you attribute any of the COVID outbreaks to incoming transfers? - Have transfers been used as substitutions for releases? - Reason for inter-unit transfers? 	Carceral capitalism
2. Interactions with officials	Find out if people working for ICE, CoreCivic, or Stewart County have communicated justifications for not releasing detainees that have differed from official justifications.	<ul style="list-style-type: none"> - How have your communications with ICE/CoreCivic officials changed during the pandemic? 	Carceral capitalism

		<ul style="list-style-type: none"> - Have you heard any new justifications for why detainees can't be released? What percentage have been released? - Have you heard officials become more concerned about bed counts during the pandemic? - Have you heard officials become more concerned about protecting business interests during the pandemic? 	
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3. Demographics of detainees	<p>Inquire about differences in treatment based on gender, race, nationality within the ICE/legal system, especially pertaining to the virus.</p>	<ul style="list-style-type: none"> - Do any nationalities seem to get more favorable treatment for release/asylum? Which ones and why? - What sort of stereotypes are associated with the various nationalities that are commonly detained at SDC in the Stewart County area? 	<p>Colonial sovereignty</p>
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