

The Intersection of the Criminal Justice System, Immigration Enforcement & Racism

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Final Research Paper
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November 14, 2020

California has passed three of the most pro-immigrant and anti-ICE laws in the country: The Trust Act, The TRUTH Act, and The Values Act. The state has made it a priority to work against anti-immigration and xenophobic federal policies which aim to criminalize immigrants and increase populations in privately-run, for-profit immigration detention centers. Those actions subsequently forced the Trump administration to file lawsuits against California in an attempt to overturn the measures. They have not been successful, and the bills have been largely effective in curbing policies which violate civil rights by denying due process to immigrants which forces them into dehumanizing and denigrating circumstances within the criminal justice system and immigration enforcement, which were enacted under policies aimed to invoke racial division and the normalization of a system where local and federal agencies work in congruence. However, the resolutions are not perfect and unfortunately, the tenure under the prospectively new Biden administration may not provide enough time to reverse the damage that has been created.

During the lead-up to his presidency, Trump made it very clear that his agenda for immigration would be founded on blatantly racist ideals. In 2015, he stated “When Mexico sends its people, they’re not sending their best, they’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people” (Reilly, 2016). By mid-January of 2017, he had signed executive orders allowing immigration agents to target all undocumented immigrants for arrest, which allowed ICE agents to arrest any undocumented immigrant they encountered regardless of any violation history outside of their immigration status.

“The result was noticeable: in the final months of the Obama presidency, nearly 90% of undocumented immigrants arrested by ICE had a criminal record. That figure fell to 64% by 2019” (Gomez, Gonzalez, 2020). His administration has enacted more than 400 immigration policy changes which have blocked legal residents, relatives of U.S. citizens, refugees, asylum seekers, foreign workers and others. In addition to barring travel from seven majority-Muslim countries as well as North Korea and Venezuela, he completely halted the refugee program resulting in the lowest number of refugees entering the country since the program was created in 1980. By far, however, the most egregious policy was one that was forged to exploit the broken criminal justice system which continues to disproportionately incarcerate Black, Brown and Indigenous people of color, with the “order for Homeland Security to ‘allocate all legally available resources’ to add more immigration detention centers” (Gomez, Gonzalez, 2020). With that order, he effectively instituted the criminalization of all immigrants while perpetuating a profit-driven carceral system.

Since 2017, there have been 40 new detention centers added, for a total of 220 and an “analysis in 2019 found that more than 75% of the detainees held by ICE are housed in privately-run facilities. ICE only runs five detention centers, relying on state and local jails for the rest” (Gomez, Gonzalez, 2020). Immigration detention has become a highly profitable business. The for-profit prison system itself has grown to become a “\$4-billion-a-year American industry” where “a key function these days is watching over undocumented immigrants” and Trump has a large stake in their continued success because “the companies spend millions on campaigns and lobbying efforts” (Haberman,

2018). Although California seems to be morally committed to refusing to abide by Trump's racist immigration policies, the fact that ICE signed 15-year contracts with private facilities in San Francisco, Los Angeles and San Diego, makes it hard to deny that under certain circumstances, immigrants will continue to be forced into detention centers, resulting in grave human rights violations including family separation. The Trust Act limited access for law enforcement to hold immigrants past their jailed release date in order for federal agents to collect them and process them through the Department of Homeland Security. The TRUTH Act built upon that and required that all local policing agencies were required to provide annual transparency reports in a public forum setting, to advise when, how and why local authorities provided immigrant information to ICE. In addition, the act set forth rules stating that an individual must be provided with the ability to give written consent to be interviewed by ICE in their native language, and requires that the law enforcement agency provide copies of documentation received from ICE to the individual and to notify the individual regarding the intent of the agency to comply with ICE requests. The Values Act, otherwise known as SB 54, is the strongest bill which eliminates any and all holds of an immigrant based on the 4th Amendment. However, this is not applicable to individuals who have state prison felony convictions, have other felony convictions within 15 years, or have higher-level misdemeanors within 5 years. Additionally, if any of the individual's information is of public record, then local authorities can provide detainee and release information to ICE to aid in facilitating the seizure of those who may be considered illegal. Therefore, that provides a loophole for local authorities to corroborate with ICE to continue sending immigrants, even those with legal residency status, to immigration detention centers. The ACLU of San Diego and

Imperial Counties have advised that in San Diego, Sheriff Bill Gore has taken advantage of this loophole by providing a list of inmates pending release on a daily basis. The list consists of names, which leads to **racial profiling**, whereby ICE agents have descending upon jailhouse parking lots with the intent of interrogating and arresting potential illegal immigrants. The ACLU is fighting to end this.

Just recently, an incarcerated US permanent resident of Khmu descent, an ethnic minority in Vietnam, was transferred to an immigration detention facility two weeks prior to his release date from prison, with an unknown status of deportation back to Vietnam, a country his family fled three decades ago. Just last month, the inmate, Bounchan Keola, was a firefighter who suffered a near-death injury on the frontlines of the Zogg fire in northern California when a “botched airdrop caused a tree to collapse on Boun, crushing him and requiring him to be airlifted to a hospital” (Asian Law Caucus, 2020). Boun was part of program that provides inmates with the opportunity to work as a firefighters, battling California’s annual deadly wildfires, with the possibility of reducing their prison sentences and with the recent legislation signed by Governor Newsom, a possible opportunity to have their criminal records expunged so they could join fire crews after prison. That was Boun’s intent. “He knew people compared the work to ‘slave labor’ given the meager wages, but he marveled at the chance to be outside, to put his hands in a river – his first time touching running water since he was a teenager. ‘There was no fence, no barbed-wire, no tower, nobody with a gun waiting for you. I felt free for the first time in 22 years.’ When a passersby honked in support and thanked them, he was stunned. ‘They treat us like firemen, not inmates. From then on, I knew this is what I was

meant to do” (Levin, 2020). With his current circumstance now within immigration detention, he will not be afforded that opportunity. Boun was born in Laos during the aftermath of the Vietnam War, an area that was part of a CIA-led “secret war” where the U.S. “... covertly dropped two million tons of bombs” making it “the most heavily bombed country per capita in the world” (History.com). His family belonged to an ethnic minority, the Khmu, who were **oppressed** by the Lao government. His family fought alongside the United States during the Vietnam War and eventually, they escaped to Thailand and later to the United States, arriving when Buon was 4 years old. A refugee in extreme poverty, who attended “poorly-funded schools (which) **lacked culturally competent** resources to help refugee youth,” (Asian Law Caucus, 2020), he was **discriminated** against and routinely bullied. He eventually fell into a trap of gang affiliation and alcohol abuse and at 16, Buon was prosecuted as an adult and sentenced to 28 years in prison for his participation in the death of an individual during a gang shooting. His family was abandoned in Vietnam during an unjust war, they suffered **barriers to social mobility** as immigrants of color, he became the victim of **racially motivated discrimination**, was failed by our education system and ultimately by our judicial and carceral systems, and is now being failed by our immigration system. Although California has no obligation to collaborate with ICE, and has passed bills in effect to eliminate all possible avenues where that could occur, prison officials are continuing to abide by the system that Trump enacted in order to detain and deport as many “illegal” immigrants as possible, and in fact, “California has transferred more than 500 people from prison to Ice this year” (Levin, 2020). While Buon sits in the McFarland Detention Facility awaiting his deportation hearing, he has stated that “I just want to help

my mom clean, wash the dishes, do the laundry, even to water her garden. Play with my nephews and nieces. I just want to be there for them” (Levin, 2020).

The criminal justice system and the immigration system were both built on racist **ideologies** which **stratify** “us” above “them” in both institutions. The **intersection** of those organized systems contributes to corrosive **inequality** and continued **racial divides**. With Biden as our President-elect, there is hope to reverse some of the **xenophobic** policies that Trump set forth, however his tenure will not allow for a complete overhaul of the systems. To fight the corrupt and racist policies which aim to dehumanize immigrants, the work needs to start locally. Organizations like the ACLU work on a regular basis to fight for immigrant rights and to make their stories and cases public so that citizens have an understanding of exactly what is occurring on a daily basis. Continuing to stay active in the voting process, especially on a local level, is also key in enacting change. Sherriff Bill Gore will be up for reelection in 2022 and local San Diego residents should be made aware of his repeated infringements upon immigrant rights with his continued cooperation with ICE. On the federal level, Biden has announced that he plans to reform the juvenile justice system; to end for-profit detention centers, where “the major two detention providers, CoreCivic and GEO Group, made about \$1.3 billion last year in contracts with ICE, and each company relies on ICE for around 30 percent of its revenue” (Staff, The Marshall Project, 2020); and to reduce the prison population – all efforts that could have changed the situation for Buon Keola. In addition, congress should create a pathway to citizenship for the 10.5 million undocumented immigrants who have built lives here. I would argue that that pathway

should include individuals who have been convicted of serious crimes because if there is a proposal to reform policing and the criminal justice system in an effort to rehabilitate felons and provide them with opportunities to fold back into society, that effort should not disqualify immigrants.

REFERENCES

- Asian Law Caucus. "Sign the Petition." Change.org, 2020.
<https://www.change.org/p/gavin-newsom-demand-that-gov-newsom-pardon-detained-firefighter-boun-keola-and-stopicetransfers?signed=true>.
- "California Values Act (SB 54)." ACLU of Southern California, 10 Jan. 2020,
www.aclusocal.org/en/know-your-rights/california-values-act-sb-54.
- Gomez, Alan, and Daniel Gonzalez. "Biden Might Need Years to Reverse Trump's Immigration Policies on DACA, Asylum, Family Separation, ICE Raids, Private Detention and More." USA Today. Gannett Satellite Information Network, November 13, 2020.
<https://www.usatoday.com/story/news/nation/2020/11/12/how-biden-reverse-trump-immigration-policies/6228892002/>.
- Haberman, Clyde. "For Private Prisons, Detaining Immigrants Is Big Business." The New York Times. The New York Times, October 1, 2018.
<https://www.nytimes.com/2018/10/01/us/prisons-immigration-detention.html>.
- History.com Editors. "Vietnam War." *History.com*, A&E Television Networks, 29 Oct. 2009, www.history.com/topics/vietnam-war/vietnam-war-history.
- Levin, Sam. "After an Incarcerated Firefighter Was Nearly Killed on the Frontlines, California Delivered Him to Ice." The Guardian. Guardian News and Media, November 12, 2020. <https://www.theguardian.com/us-news/2020/nov/12/after-an-incarcerated-firefighter-was-nearly-killed-on-the-frontlines-california-delivered-him-to-ice>.
- Press, Associated, and Max Rivlin-Nadler. "Supreme Court Rejects Trump Bid To Void California Sanctuary Law." KPBS Public Media. KPBS, June 15, 2020.
<https://www.kpbs.org/news/2020/jun/15/justices-reject-trump-bid-to-void-california/>.
- Reilly, Katie. "Donald Trump: All the Times He's Insulted Mexico." Time. Time, August 31, 2016. <https://time.com/4473972/donald-trump-mexico-meeting-insult/>.
- Staff, The Marshall Project. "What Biden's Win Means for the Future of Criminal Justice." The Marshall Project. The Marshall Project, November 8, 2020.
<https://www.themarshallproject.org/2020/11/08/what-biden-s-win-means-for-the-future-of-criminal-justice>.