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TECHNOLOGIES OF APPREHENSION: THE FAMILY, LAW, SECURITY, AND GEOPOLITICS IN US NONCITIZEN FAMILY DETENTION POLICY AND PRACTICE

Lauren Leigh Martin
University of Kentucky, lauren.martin.uky@gmail.com

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ABSTRACT OF DISSERTATION

Lauren Leigh Martin

The Graduate School

University of Kentucky

2011

TECHNOLOGIES OF APPREHENSION: THE FAMILY, LAW, SECURITY, AND GEOPOLITICS IN US NONCITIZEN FAMILY DETENTION POLICY AND PRACTICE

ABSTRACT OF DISSERTATION

A dissertation submitted in partial fulfillment of the
requirements for the degree of Doctor of Philosophy in the
College of Arts and Sciences
at the University of Kentucky

By

Lauren Leigh Martin

Lexington, Kentucky

Director: Dr. Anna Secor, Professor of Geography

Lexington, Kentucky

2011

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ABSTRACT OF DISSERTATION

TECHNOLOGIES OF APPREHENSION: THE FAMILY, LAW, SECURITY, AND GEOPOLITICS IN US NONCITIZEN FAMILY DETENTION POLICY AND PRACTICE

This dissertation examines how US immigrant family detention policy emerged from reinvigorated border security priorities, immigration policing practices, and international migration flows. Based on a qualitative mixed methods approach, the research traces how discourses of threat, vulnerability, and safety produce detainable child and parent subjects that displace "the family" as a legal entity. I show that immigration law relies on specific kinds of geographical knowledge, producing what I call the 'geopolitics of vulnerability.' More broadly, I analyze how current immigration enforcement practices work at local, national, and international scales, so that detention *deters* future migration as much as it penalizes existing undocumented migrants. Tracing how legal categorization, isolation, criminalization, and forced mobility discipline detained families, I show how detention bears down on migrant networks, defying individualized and national scalings of immigration law. Family detention, like the broader detention system, is authorized through overlapping forms of administrative discretion, and I analyze how the "plenary doctrine of immigration" resonates with ICE's discretionary authority. Finally, I trace how immigrant rights advocates mobilizes conceptions of "home-like" and "prison-like" facilities, and how ICE reimagined its "residential" facilities in response. Empirically and theoretically, my project contributes the first academic study of US family detention to research on kinship, citizenship, security, geopolitics, and immigration enforcement.

Keywords: Immigration, Detention, Feminism, Geopolitics, Borders.

Lauren L. Martin
Student's Signature

March 21, 2011
Date

TECHNOLOGIES OF APPREHENSION: THE FAMILY, LAW, SECURITY, AND GEOPOLITICS IN US NONCITIZEN FAMILY DETENTION POLICY AND PRACTICE

By

Lauren Leigh Martin

Dr. Anna J. Secor

_____

Director of Dissertation

Dr. Michael Samers

_____

Director of Graduate Studies

March 21, 2011

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FOR OLIVER

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CHAPTER 1: INTRODUCTION

INTRODUCTION

This dissertation examines how the US policy of detaining noncitizen families emerged at the intersection of three processes: (1) increasing connections between geopolitical and homeland security policies and immigration enforcement practices; (2) expanding legal categories of detainable and deportable noncitizens; and (3) the state's regulation of noncitizen families.[1] Implemented in March of 2001, but expanded sixfold in 2006, family detention's evolution reflect wider changes in the immigration enforcement system. Family detention provides, therefore, a discrete case study through which to trace emerging trends in the policing of citizenship and migration status. Border enforcement and boundary-making have been enduring foci for political geographers, who critically analyze the role of il/licit border-crossing in the production of political boundaries, the ways in which borders and border-crossings are contested, and the forms of border enforcement that emerge from these framings of territorial bordering, political membership, and national identity (Burridge and Loyd 2007; Dunn 1996, 2010; Nevins

[1] A Note on Terminology: Mainstream media, advocates, and policy-makers most commonly refer to "immigrant family detention," but this phrase gives me pause for a few reasons. First, it erases the fact that many people migrate to the US with no intention of establishing permanent residency or citizenship. Referring to noncitizens as *immigrants* presumes that all noncitizens seek to stay in the US, which both ignores migrants' intent to return and emphasizes a swelling noncitizen population. Second, for families in particular, "immigrant" obscures the fact that most families at Hutto and Berks seek protection by filing asylum claims. US and international law differentiates between economic or labor migration (which is supposedly "by choice") and socio-political persecution, which isthought to be without choice. Many question the boundary between political and economic refugee status, in order to emphasize how neoliberal economic reforms have created life-or-death situations for migrants that do not conform to post-World War II norms of political persecution. These distinctions are critical for how people navigate the US *admissions* process, but from the perspective of exclusion, *noncitizenship* defines migrants' relationship to border and immigration enforcement agencies. Since I focus on the process of physical containment and banishment, I use the term noncitizen. Where I discuss the asylum-process in particular, I use the term "asylum-seeker." In situations where I am paraphrasing others, I retain their terminology.

2002; Nevins and Aizeki 2009; Sundberg 2008; Varsanyi 2008). *Immigration enforcement* policies cannot be explained, however, solely by examining border enforcement policies, debates, or "boots-on-the-border" practices (Coleman 2008b). Distinct legal and governmental arrangements authorize a series of spatial strategies: interior policing, detention, deportation, and the discretionary decisions about noncitizens between "apprehension" and "removal." Beginning with the selective detention of families at the Berks County Family Shelter Care center in 2001, expanding to the mandatory of detention of families in 2005, and then receding to Berks once again in 2009, noncitizen families' shifting "detainability" provides a window onto changing detention policies. This dissertation traces these changes in order to understand, first, the range of laws, policies, and informal practices that led noncitizens to become the US' fastest growing incarcerated group, and second, the spatial practices through which Immigration and Customs Enforcement (ICE), counties, and contractors produce this detention landscape in relation to, but irreducible to, border enforcement.[2]

Family detention is not strictly a "post-9/11" development, though popular media representations recount its history as such. The Berks County Family Shelter Care Center near Reading, Pennsylvania, opened in March of 2001 with 84 beds (Figure 1.1). Prior to Berks' opening, the Immigration and Nationalization Service (INS) released family groups identified as "illegal aliens" with "Notices to Appear" before an immigration judge. For families arriving without documents and no immediate contacts

[2] Until the 2003 Homeland Security Act reorganized immigration and border agencies, Immigration and Nationalization Services (INS) was responsible for policing immigration violations and administrating admission. The Act delegated immigration enforcement to the new Bureau of Immigration and Customs Enforcement (ICE) while the new Citizenship and Immigration Services (USCIS) handled admissions and administration. Whilethe INSdetained and adjudicated unaccompanied children's cases, the conflict of interests between caregiving and the adversarial legal process led unaccompanied minors' custody to be transferred to the Office of Refugee Resettlement (ORR) (see Women's Commission 2002). When describing pre-2003 immigration enforcement, I refer to the INS.

Figure 1.1: Berks County Family Shelter Care Center.

(*Source:* Author, December 2008.)

in the United States, the INS could not verify their identities, making release problematic from an immigration enforcement perspective. Housed at Berks Heim, an elderly care home built in the 1950s, the Berks family shelter stood on a large campus of county services and next door to an INS juvenile detention facility for unaccompanied children. According to INS officials, the site was contracted specifically because Berks County staff were familiar with children's specific legal frameworks and services. Berks staff saw family detention as an extension of juvenile detention, and subject to the same 'non-penal' custodial models and operating standards applied to the detention of

unaccompanied children under 18 years of age (Herman 2001). As a child welfare facility, family detention at Berks unfolded out of a set of institutional practices aimed at attenuating the effects of detention and state custody children.

A ten-year long legal battle, fought by child advocates in California's federal district court (9th), *Flores v. Meese* was ultimately settled in the Federal Court's Ninth Circuit in 1997. Until this ruling, the INS was charged with holding, processing, and either releasing or deporting unaccompanied non-citizen children found to be out of status. The INS was in charge of age determination, which was widely found to be inaccurate, resulting in the detention of minors in adult facilities (Women's Commission 2002). The INS also ran juvenile detention centers, so that the same officials charged with proving unaccompanied minors were in violation of immigration law were also charged with their daily care, recreation, education, and discipline. Immigration and asylum interviews were held under the same "adversarial" practices as used for adults, a situation that required that children of all ages narrate their cases with the same evidenciary demands as adults. These practices disregarded the special difficulties children have obtaining records, comprehending complex legal frameworks in a foreign language, and most importantly, retaining legal counsel (Women's Commission 2002). The *Flores Settlement* addressed these explicit conflicts of interest within the INS by stipulating conditions of custody, procedures for releasing children to family members, and legal mechanisms for contesting a child's detention. The federal court intended the settlement to provide temporary guidance, and required the INS to develop standards and policies for the detention of minors, the publication of which would replace *Flores*.

The INS never wrote or implemented these policies, however, and in 2006 when

the T. Don Hutto Family Residential Facility opened, *Flores* remained the only binding legal framework on federal immigration custody of minors. A former adult detention center and medium-security prison, family detention at Hutto was implemented at a facility built for adult, male inmates and staffed by corrections officers (aka prison guards). Transforming from a pre-trial detention center for federal prisoners, to a U.S. Marshals' detention center, to a family detention center in a matter of months, the facility underwent few changes to its physical infrastructure, décor, programming, or service provision. While the popular press has placed much of the blame on the Corrections Corporation of America (CCA), who owns and operates Hutto, the intergovernmental service agreements that govern the relationship between federal and private entities contained a single alteration: the population of detainees (US Immigration and Customs Enforcement 2006b). Hutto is typical of the wider immigration detention system, which relies upon surplus bedspace in the criminal justice system, decommissioned army barracks and prisons, and speculatively-built "tent cities" (Dow 2005). The detention of non-citizen adults occurs largely in former and existing prisons and county jails, and is governed by the Detention Operations Manual, a non-binding set of standards and procedures based on the Adult Corrections Manual. By ICE's Detention and Removal Office's own admission, many detention centers fail to pass American Corrections Association criteria for the criminal justice system (US Immigration and Customs Enforcement 2003; US Immigration and Customs Enforcement 2009b). Bearing razor wire, prison scrubs, frequent head counts, paltry medical care, unsavory and insufficient food, automatically closing doors, and an hour of education a day, Hutto violated nearly every provision of *Flores*, and drew a lawsuit (*Bunikyte, et al. v. Chertoff, et al.*) in

March of 2007.

Institutionally, Berks and Hutto represent two common governmental arrangements in the noncitizen detention system. Both are contract facilities, contracted through InterGovernmental Service Agreements (IGSAs). IGSAs devolve responsibility for detention operations from the federal government to county governments, and counties stand to make significant incomes from these arrangements. As of September 2009, most ICE facilities were contracted through IGSAs, and of these, seven were dedicated to detaining noncitizens. A total of 50% of the total detained population is held in these dedicated detention facilities, and the remainder detained noncitizens in criminal justice facilities (US Immigration and Customs Enforcement 2009b). Because they are inter-governmental, these contracts are not awarded through the federal government's competitive bidding process. In Hutto's case, Williamson County subcontracts its IGSA responsibilities to the Corrections Corporation of America, who pays the county $6,000 per month for "monitoring" costs. In the context of an economic downturn and growing demands on county resources, detention has become a significant source of income for both Williamson and Berks counties. While Taylor granted CCA a property tax holiday, CCA pays taxes into the local school system. Berks, alternately, sits on a large swath of county land, amid a recycling center, community college, agricultural extension office, a new elderly care facility, a juvenile criminal justice facility, a noncitizen juvenile detention center, and a jail. Family custody is part of a larger package of county service and income generation (Herman 2001).

Figure 1.2: Children at T. Don Hutto Family Detention Center.

(*Source:* Ben Wheeler, July 2009.)

RESEARCH QUESTIONS

Family detention emerged, therefore, within a complex assemblage of legislative, judicial, administrative, and political economic processes. My purpose in this dissertation is to unravel a few of these threads: immigration geopolitics, legal subjectivity, discipline, and detention's spatial ordering. In doing so, I hope to distill the different spatial practices that constitute US noncitizen family detention and the legal, political, and governmental regimes that make families detainable. I began my research with the following questions:

1. What do the different spatial strategies of family detention and its legal contestation reveal about the relationship between space and the family, the child, and the migrant as political categories?

How are the rights of children balanced against the rights of their parents, if their treatment is governed by different legal guidelines? What do family detention policy and practices reveal about the status of the family in immigration and citizenship law? How are any particular needs or rights of families and children met or violated through the spatial strategies of family detention? How do the spatial and temporal ordering of the Hutto and Berks facilities meet or violate the needs and/or rights of families? How do different spatial strategies and/or legal statuses differentiate between families?

2. How do family detention policy and its public contestation reproduce and circulate spatialized conceptions of the family and the child?

What legal, moral, racial, gender, class, or age-specific categories are used to describe immigrant and asylum-seeking families? Are some families perceived to have special needs over others? Has detention produced a *de facto* assumption of parents' criminality or illegality? How are these differentiations established and supported? How do proponents and critics of family detention recuperate particular notions of the family and the child? What spaces of family life, such as the home, are used to support or describe particular notions of the family and the child? How have various spatial understandings of the family and the child forced changes in family detention policy?

3. What does the administration and regulation of family detention reveal about

new connections between spatial strategies of security and immigration enforcement practices (i.e. "the securitization" of immigration)?

How did immigrant and asylum-seeking families come to be understood as detainable? What kinds of problems do families present to immigration enforcement officials? What terms and assumptions framed ICE's understandings of family immigration as a problem? How did detention come to be the preferred solution for the problem? What other options were considered but rejected? How does family detention fit into a wider range of immigration enforcement practices? How has the legal challenge to family detention forced a reworking of immigration enforcement policies more broadly? How does family detention compare to other examples of "securitization" given in the secondary literature?

OUTLINE OF THE DISSERTATION

The following chapters examine specific aspects of US noncitizen family detention policy and practice, and locate family detention in relation to border enforcement and geopolitics, immigration and case law, and sexual citizenship. First, however, I describe the geographic literatures from which my research questions and methodological approach emerged (Chapter 2). This review does not exhaust the literatures used in the dissertation as a whole, but represent the project's starting points. Each chapter engages therefore with additional geographical and interdisciplinary literatures necessary to put my analysis into conversation with a broader intellectual field. Chapter 2 charts the intellectual terrain from which my broader theoretical and geographical curiosity flowed: recent engagements with (and critiques of) Giorgio

Agamben's theorization of the sovereign ban and topological power; spatial analyses of detention and confinement; geographical conceptions of the family; the securitization of immigration; and spatial ordering, calculation, and subjectification as power/knowledge practices.

Chapter 3 describes how my methodological approach evolved to accommodate the realities of researching a highly politicized topic in the midst of a highly charged campaign to end family detention. I outline my research methods, what they produced, and my analytic process. In Chapter 4, I contextualize the US' immigration detention system and offer a conceptual framework for understanding detention as a "bordering practice" (Newman 2006). While most studies of immigration enforcement focus on borderland enforcement actions, the policing of territorial boundaries, and border crossings, Mathew Coleman has argued that these studies neglect the rising importance of *interior* enforcement (Coleman 2007a). As subnational jurisdictions take responsibility for immigration policing, and proof of citizenship is required to access an increasing number of public institutions, the "where" of security and geopolitics is no longer contained by "the border" (Coleman 2009). Noncitizens are held, rather, in 350 different facilities across the US, though they remain clustered in the US Southwest. I describe not only the legal and policy measures that enabled the rapid expansion of immigration detention in the US, but the existing prison infrastructure that enabled the rapid containment of noncitizens. I place these spatial strategies in relation to each other to better understand the resonances between them. (Portions of this chapter will be published in *Engineering Earth*, edited by Stan Brunn, forthcoming 2011.)

In Chapter 5, I show how detention is not a single spatial strategy, but a complex

process of criminalization and isolation through which detainees become deportable subjects. I trace how detention came to seen as an integral component of US-Mexico border security more broadly, and how ICE's practice of family release came to be understood as a procedural vulnerability and therefore a threat to territorial closure. Engaging with interdisciplinary critical security studies, I seek to temper recent accounts of deterritorialized, biopolitical border technologies, especially those that argue that risk analysis has displaced discipline as a governmental practice. Rather, I argue that security is a *heterogenous assemblage* that recombines, recalibrates, and rearticulates biopolitical techniques. (A version of this chapter is forthcoming in *Geopolitics*.)

Chapter 6 focuses on *Bunikyte et al. v. Chertoff et al.*, the 2007 lawsuit against family detention at Hutto to trace the legal figurations of children, parents, and families. I show how noncitizen children are framed more as 'child-objects' in immigration law than agential, liberal subjects. Immigration law figures adults, however, as criminalized migrant-subjects, ineligible for the due process on which liberal legal regimes are based. I then analyze how a Federal District Court judge balanced 'irreparable harm' to detained children, the 'public interest,' and Immigration and Customs Enforcement's discretion to detain noncitizens. Relying upon "geostrategic discourses" (Ó Tuathail 2003) of external threat and internal safety, the judge argued that US detention represents a safe space compared to families' countries of origin. Twisting national security with the 'best interests of the child,' the judge authorized a legal framework for family detention, but with specific spatial requirements. These legal, discursive, and spatial tactics form what I call a geopolitics of vulnerability in which ICE seeks to displace national (in)securities onto detained families. (A version of this chapter is forthcoming in *Gender, Place, and*

Culture.)

In Chapter 7, I examine the contractual relationships between Immigration and Customs and Enforcement (ICE), Williamson County, and the Corrections Corporation of America (CCA), and outline to what extent each party was *legally* and *practically* responsible for detention center operations. In short, ICE contracted with Williamson County, which in turn contracted with the Corrections Corporation of America. This formed a chain of command in which ICE and CCA did not initially communicate directly, but used Williamson County as mediator. Thus, when the lawsuit was filed, ICE was sued for the conditions of detention created by CCA, while CCA could not be sued because private prison corporations are not parties to the *Flores* agreement. In effect, this contractual triangle surrounded the Hutto detention center in legal procedures while deferring responsibility for detention conditions between federal, private, and county agencies.

In Chapter 8, I examine how 'the family' emerged as an object of governance, and a key site/category through which to challenge state power, and a site of struggle over that power. Proper family forms—heterosexual marriage and child-rearing in particular—have become a condition of political membership. In short, the family is a core political identity, refracted through a host of legal categories, and, for many, a fundamental category of social organization and identity. In this chapter, I compare immigrant rights advocates' efforts to reform ICE's custody policies, to transform detention spaces from "prison-like" to "home-like" spaces. I trace how, on the one hand, advocates' critiques of family detention condensed around private space, autonomy and freedom of movement. ICE's architectural plans for new "family residential centers"

focused on security, surveillance, and population control. The struggle to define "family appropriate spaces" was, therefore, a struggle over the regulation of intimacy, privacy, and care. More broadly, Chapter 8 highlights the state's enduring interest in the family, reproduction, and kinship as a condition of political membership.

In the final chapter, I synthesize the previous arguments and outline their implications for theorizing detention in and beyond geography. I argue, in short, that detention should be understood as "a doing," (Gregory 2006a). In the context of the border, security, and immigration regimes analyzed in this dissertation, detention is, more specifically, a *process of creating deportable subjects*. Even as the majority of families passed their Credible Fear Interviews (CFIs) and stayed in the United States, families felt criminalized, isolated, and feared their impending deportation (as described in Chapter 5). At the same time, social services are increasingly unavailable to even "legal immigrants," so that noncitizenship precludes forms of social and political exclusion, as well. For Nicholas De Genova, "what makes deportability so decisive in the legal production of migrant 'illegality'… is that *some are deported in order that most may remain* (un–deported) as workers, this particular migrant status may thus be rendered 'illegal'" (De Genova 2002, 39). Immigration law and enforcement policy are, therefore, "deliberate interventions that have revised and reformulated the law," forming "an active process of inclusion through 'illegalization' " (ibid.). Drawing on recent engagements with different aspects of Giorgio Agamben's work, I argue that US immigration policies tie banishment from US territory to abandonment by state institutions. I conclude the dissertation by considering the political ethics required to challenge current US immigration enforcement practices like family detention. I think through the ways in which detained families are

more “bound and constrained by power relations in a situation of forcible exposure” than they are depoliticized, biological bare life (Butler 2003, 32). It is here, I argue, that the second half of Foucault's modern biopolitics, “making lives and letting die,” points to more subtle modalities of sovereign power (Foucault 2003, 241).

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CHAPTER 2: LITERATURE REVIEW

DETENTION

Governments often implement detention in an ad hoc manner, refashioning the geographies of legal access and immigration advocacy in ways that have dramatic impacts on detainees' asylum and immigration claims. For example, Mountz (2004, 2010) analyzes Canada's reaction to the arrival of 600 Chinese refugees via boat in 1999. Seemingly overwhelmed by the arrival of such a large group, Citizenship and Immigration Canada set up a temporary processing center in a former gymnasium. Designated as a 'port-of-entry' rather than a detention center, the migrants were not officially on Canadian soil. Rather, they passed through a 'long tunnel' that was not considered Canadian territory, and therefore not technically detention. And since they were not officially detained, advocates and attorneys were barred from contacting them. Citizenship and Immigration Canada then established provisional detention centers and immigration courts twelve hours by car from Vancouver, where legal experts and regular courts are located. The results of the asylum claims heard in these courts were 5% positive, while asylum claims by Chinese have a 58% approval rate in Vancouver's courts. Similarly, following a raid in which 270 beef processing plant workers were arrested for immigration-related crimes, Immigration and Customs Enforcement set up temporary immigration courts on fairgrounds in rural Iowa (Saulny 2008; and see Coleman 2007a). These ad hoc detention practices, 'long tunnels', and remote locations create 'detached geographies' through which detainees are spatially separated from the

services that facilitate their rights claims.

In addition to these detached geographies within territorial boundaries of nation-states, governments strategically use these boundaries to exclude asylum-seekers from the rights guaranteed by international law. In the Australian and European contexts, Hyndman and Mountz (2008) argue that nation-states are tending toward strategies of externalization. Australia and Britain, for example, have set up asylum and visa processing centers on islands and in dominant sending countries (respectively) to prevent migrants from reaching the territorial jurisdiction of the receiving state. By forestalling their physical arrival on Australian and British soil, these governments prevent asylum-seekers access to the rights afforded them under international law. Rather than being detained on arrival (at an airport or border crossing) or within the boundaries of a nation-state, governments detain people in transit. Provisional ports-of-entry, temporary courts in rural areas, and extra-territorial detention indicate not a coherent, centralized state strategy, but nation-states' willingness to combine multiple detention strategies. There is no single geography of detention, therefore, but an emerging and continually changing assemblage of spatial tactics.

The changing character of detention directly impacts the legal geographies of detention in two ways. First, as alluded to above, the location of detention directly impacts detainees' access to rights and information (Hyndman and Mountz 2008; Mountz 2004). Analyzing legal access from the perspective of legal aid and advocacy organizations in Britain, White (2002) points out that the funding of these organizations directly impacts the spatiality of legal counseling. Official policy may include provisions for legal representation of asylum-seekers, for example, but the withdrawal of funding

from critical organizations can effectively eliminate legal representation without a change in policy or law. Law and policy domains are, therefore, situated in wider governmental networks and state apparatuses. Second, the legality of detention spaces is critical to understanding the geographies of detention. Because detainees are held under ambiguous legal norms, under vastly different conditions, and for indefinite periods, analyzing the relation between law, state power, and space has been particularly important. As explained above, detention centers and the detainees held in them are ambiguous legal entities. State governments often exempt detainees from due process, obstruct their access to legal counsel and courts, and detain individuals indefinitely in remote locations (Coleman 2007a). These remote, detached, and externalized geographies of detention work to physically segregate, contain, and exclude people to whom the law seems not to apply.

For many, detention and detainees represent material examples of Giorgio Agamben's "state of exception," a contemporary reworking of German theorist Carl Schmitt's understanding of sovereignty and law (Amoore 2006; Coleman 2007a; Gregory 2004a, 2006a,b; Hyndman and Mountz 2008; Minca 2005). Schmitt's (1985, 2003) theory of sovereignty assumes that state power flows from a single sovereign, who has the power to decide when, where, and for whom the law is in force. Likewise, the sovereign can call a "state of emergency," in which the rule of law is suspended. For Schmitt, these "spaces of exception" are concrete, bounded, territorial spaces, much like traditional political geography theorizes the nation-state as a government with power over a discrete, bounded territory. Agamben (1998, 2005) argues, however, that the "state of exception" has become the norm, a fundamental ordering principle in modern politics. In

essence, the sovereign marks boundaries between an included national citizenry and an excluded foreign Other, and this process of exclusion is, for Agamben, the founding moment of political life. Thus, excluded persons are never completely excluded, but are "included through exclusion," and, therefore, occupy a "zone of indistinction" between the force of law and the suspension of law (Agamben 1998, 2005). Held outside of the law, detainees can be rendered 'bare life', and become nothing but biological beings open to an unmediated expression of sovereign power. As a paradigm of power, the process of inclusion–exclusion operates throughout political life, as a topological relationship. Thus, inclusion–exclusion is not just bounded in discrete, territorial 'spaces of exception', but is woven into everyday decisions made by "petty sovereigns" (Butler 2004) in positions throughout state bureaucracies (Belcher et al. 2008; Coleman 2007a,b). The 'state of exception' has provided, therefore, a way of understanding detention as the production of quasi-legal spaces, as spaces in which the state has suspended the law for certain people.

Alternatively, others have asked not how the suspension of law is the exercise of executive (sovereign) power, but how law expands executive power. Tracing out the emergence of the Bush administration's claims to sovereign decisionism, the United States's post-colonial occupation of Cuba, and the detention of migrants there in the mid-1990s, Gregory (2006a) argues that Guantánamo Bay's detention camp is not so exceptional. As Reid-Henry (2006) has also argued, the current detention camp was established in this specific legal and colonial context, and the status of Guantánamo Bay as US territory has never been wholly resolved. Rather, as Belcher (2008) argues, calling Guantánamo Bay a 'space of exception' masks how the suspension of domestic criminal law for 'enemy combatants' has allowed that space to be 'filled' with military law and a

new and separate court system for detainees. In addition to housing a new court system, the camp has also served as a testing ground for 'enhanced interrogation techniques' (torture), extraordinary rendition, and indefinite detention. Thus, Guantánamo Bay has been an important site for the development, codification, routinization, and expansion of certain detention practices. These geographers understand law as performative, as made through the embodied practice of legal discourses, rather than a transcendent rule system as is often implied by Agambenian analyses (Butler 2004; Gregory 2006a). In other words, this research asks how detention and its variants have become normalized – i.e. governmentalized – through the reconfigurations of sovereign, governmental, and disciplinary power.

This method of inquiry also asks how certain people become detainable in the first place. Through changes in legal categories, media representations, and policy discourses, different groups of people come to be seen as migrants, immigrants, asylum-seekers, refugees, illegal aliens, or criminal aliens, with each term connoting raced, classed, and gendered bodies. In turn, the legal categorizations of people and spaces are linked to these representational practices. For example, applying the term "aggravated felony" to migrants only and expanding the term to include a wide range of petty offenses (e.g. shoplifting) has uniquely criminalized immigrants as a group (Coleman 2007a). These legal categorizations are linked to broader identification practices that produce detained persons as worthy or deserving of detention. Thus, the representational practices that depict different groups as unwanted, foreign, or dangerous inform legal and policy-making discourses, producing these groups as justifiably excludable and detainable (Ackleson 2005).

The material practices within detention centers are, then, bound up with the visual and textual representations of a nation-state's outsiders more generally. Based on first-hand experience, Falah (2007) describes how Israeli security forces use solitary confinement, stress positions, sleep deprivation, and repetitive questioning to purposefully dehumanize and demoralize detained persons. Gordon (2006) and Sexton and Lee (2006) point out that torture has long been institutionalized in US prisons, and that the colonial legacies of slavery are bound up with the 'colonial present' (Gregory 2004b) of mass incarceration, immigration detention, and Guantánamo Bay. In the case of the Abu Ghraib war prison in Iraq, torture practices rang an unfortunate resonance with the Baathist's use of that site for the same purpose – imprisoning and punishing perceived enemies. Performed by US soldiers, however, these practices are also linked to a global network of US-operated prisons, detention centers, and training camps (Gregory 2004a, 2006b) and to the knowledge practices that link them. Here, Gregory's (2006a) sustained engagement with both Agamben and the performances of detention demonstrates how Guantánamo's detainees were systematically stripped of their political subjectivity and treated as 'bare life' (Agamben 1998). The micro-geographies of torture, interrogation, and indefinite detention rely on interdependent representational, discursive, and spatial practices, to routinely discipline 'foreign' or 'enemy' bodies in specific ways.

Analyzing the spatialities of detention makes (at least) five significant contributions to understanding detention. First, the uneven topography of detention sites – the ways in which detention spaces vary across space – reveals the malleability of detention as a spatial practice. People are held in former jails, with prisoners in existing prisons, in tent cities, on ships, and in makeshift cells in courthouses, airports, and ports-

of-entry the world over. Second, this uneven topography is directly related to uneven geographies of legal practices and boundaries. The ambiguous legal status of detainees allows them to be held in a range of places, without oversight and without recourse to rights (or often the legal counsel that might protect them). These legal and political ambiguities help to create the overarching sense of indeterminacy that characterizes detention. Third, this indeterminacy results from the exceptionality of detention as an 'included exclusion', as a space in which there is no distinction between law and its suspension. Fourth, these 'spaces of exception' are produced through discursive practices and are imbricated with the normal, everyday operation of government. Fifth, detention practices have specific legal, political, and historical geographies that point toward the continuation of a violent, colonial past, rather than a break from a more peaceful, law-abiding near past. Studying the geographies of detention offers a critical vantage point for understanding new spatialities of state power, especially as the relationship between nation-states and territory are reconfigured in response to global migration, trade, and security concerns.

IMMIGRATION AND SECURITY

As a geographical phenomenon, migration and immigration have primarily been addressed in terms of political economy (Hierbert 2006; Samers 2002, 2003), push-pull factors (Black et al. 2006), costs and benefits to host and sending countries (Borjas 2001), identity and citizenship (Ehrkamp 2005; Leitner 1995; Leitner and Ehrkamp 2006; Secor 2004), state-level policy analysis (Ackelson 2005; Ibrahim 2003, 2005), and boundary formation (Ackelson 2005; Coleman 2005, 2007a, b; Gilbert 2005; Nevins 2002).

Political economy scholars tend to address migration as a capital-labor relationship, mediated by a capitalist state apparatus. This research frames migration as a labor market issue and analyzes both regulation and migration in these terms (e.g., Clark and Gertler 1983; Collins 2006; Hiebert 1999; Knowles 1995; van Houtum and van der Velde 2004). In contrast, scholars of national and transnational identity approach im/migration from the perspective of the subject, analyzing the ways in which national and transnational identities are reconfigured through the migration process. The scholarly work on national identity is immense and ranges from studies of assimilation policies (Ehrkamp 2006; Forrest and Johnston 2006) to generational integration of migrants (Christou and King 2006; Walton-Roberts and Pratt 2005), to patterns of inclusion and exclusion (Ellis 2006; Kofman 2002; Leitner 1995, 1997; Yeoh 2006). Researching immigration and identity from these perspectives has led scholars to question the utility of the nation-state as the proper scale of analysis as migration becomes a more permanent fixture in the lives of people (Ellis 2006; Gidwani and Sivaramakrishnan 2003; Ley and Kobayashi 2005). Methodologically, this scholarship ranges from ethnographic and qualitative studies of subjective experiences of migration to quantitative, longitudinal studies of demographic statistics.

As I explore in more detail in Chapters 4 and 5, boundary formation has focused on the role of localized border management in national identity formation (Berelowitz 2005; Browne 2006; Mahtani 2002), nation-state policy responses (Ackelson 2005; Anderson 1999; Heyman 1999), as a contested site between globalized trade and national security (Blatter 2004; Coleman 2005; Esparza et al. 2004; Gilbert 2005, 2007). This work sees the border as a spatialization of the processes examined in other migration

literatures. Current immigrant detention, including family detention, arose through a multi-scalar, multi-sited process. In my research design, I treat immigrant detention as a complex of multi-sited practices, or a *heterogenous assemblage* of spatial strategies, embodied practices, and imagined geographies that include but exceed 'the state.' As Purcell and Nevins (2005) argue, critical political economy tends to treat the state as a medium or dependent variable of the capitalist system, even when the contested character of the state is addressed. Thus, evaluating the relationship between immigration and the state as a relationship between flows of labor and capital can neglect other power relations at work.

In the case of the U.S.-Mexico border, Purcell and Nevins argue, the resulting policies were driven more by localized concerns than national policy-makers, and policing practices were shared between enforcement locations (Nevins 2002). Thus, both policy and enforcement developed through uneven multiscalar negotiations. In contrast, Coleman (2005) argues that for Washington, D.C.-based policy-makers, the border is an abstract, empty territory, while the difficulty of borderland terrains prevents border patrol employees from executing border security policies as mandated. The presumed (and oft-cited) tension between neoliberal geo-economic demands and geo-political security measures form too convenient a story. Mountz (2004) takes the argument further, and uses her ethnographic analysis of immigration bureaucracy as position from which to question the very identity of the state. Locating state power in the operation of a specific agency, during a specific time in a specific place, everyday bureaucratic practices belie the agency's coherent public image.

Where and how the state actually exists is, then, called into question. Secor (2007)

analyzes the spatiality of the state from the perspective of middle class residents of Istanbul, and notes that it is at specific points of contact (government offices, the hospital, arrests) that people experience state power. Thus, state employees' banal actions produce the effect of a menacing state apparatus. At the same time, however, rights claims can only be made to the state. This "recoiling desire" for state protections enrolls citizens as ambivalent subjects, as residents and the state mutually constitute each other, however unequally (Secor 2007). For De Genova (2002), immigration enforcement practices materialize the process of "illegalization," a historically specific, contingent process of defining undocumented transboundary migrants' relationship to the state. If we take for granted people's free movement, rather than the state's right to regulate transboundary mobility, *the state* rather than "the undocumented migrant" defines the problem, the analytic object, and methodological focus for studies of illegality and immigration enforcement.

Inland immigration enforcement is ICE's primary role in the integrated, "layered approach" to homeland security led by DHS (US Immigration and Customs Enforcement 2007a). Scholars have analyzed the implementation of new biometric surveillance technologies (Amoore 2006; Martin 2010; Muller 2004) and expedited screening for frequent travelers (Gilbert 2005; Sparke 2006). With this expansion of surveillance, everyday life becomes a field of possible threat and of security intervention (Amoore 2006; Martin and Simon 2008; Bigo 2002). Scholars refer to this process of making a group of people, a space, or an activity into objects of security practice *securitization*. While some scholars privilege elite discourses in the enrollment of new security objects (Ackelson 2005; Waever et al., 1993; Waever 1995), others look at how multiple

institutions, operating with different goals, order material relations of power to particular ends (Bialasiewicz et al., 2007; Dean 1999; Foucault 2007; Hannah 2000; Ibrahim 2005; Muller 2004; Watts 2003). For geographers, the ordering and calculation of spatial relationships is particularly salient in security discourses (Elden 2007; Hannah 2006; Rose-Redwood 2006). Implemented as part of the Secure Border Initiative, but applied to many kinds of migrants, family detention offers a discrete case from which to examine processes of "securitization" in the post-9/1 United States. In this dissertation, I seek to problematize the boundary-making and categorization practices that produce the conditions of possibility for family detention. The crisis of the 9/11 attacks has provoked a reorganization of immigration enforcement practices, including high-profile workplace raids and the integration of local law enforcement into immigration policing (Coleman 2007). If the state itself is not an object, but gains its apparent coherence within a patterned interaction between state actors, citizens, and immigrants, then any reorganization of immigration enforcement also reconfigures the relationship between these parties. Changes in immigration enforcement practices, including the expansion of detention space, represents a significant retooling of state-society relations, and a critical moment in which to analyze the specific techniques and technologies that are reconfiguring those relationships.

LAW

For critical legal geographers, laws bound space and establish the boundaries of citizenship and associated rights (Delaney 2001). Laws enforce normative socio-spatial relationships by spatially excluding certain groups from public or national spaces

(Blomley 2003, 2005; Mitchell 1996). In the case of immigration, the ill-defined "aggravated felony" has allowed petty misdemeanors to be retroactively used against undocumented migrants, thereby justifying their incarceration as "criminal aliens" (see Coleman 2007; Dow 2005; Kanstroom 2000a, b; Miller 2004; Morawetz 2000, 2004; Welch and Schuster 2005a, b). "The law" is not an objective rule system applied to the material world, but a socio-spatial practice, given meaning through the embodied performance of legal speech, testimony, consultations, and judicial decisions (Butler 1997; White 2002). Furthermore, detention centers are highly localized spaces of enforcement, however, requiring a *different conception of the scale of law* (Bigo 2007). Analyzing socio-spatial relations from the perspective of the body has focused research on how mundane activities reproduce gender, class, and racial differences (Marston 2000). Further, taking the body as a scale of geographical analysis problematizes the analytical value of "national," "regional," "local," and "household" (Braun 1997; Marston et al., 2005), since actual bodies move through multiple spaces on a daily basis. This research brings the critique of scale into conversation with legal geography by analyzing how the particular *spatial orderings of detainees' bodies* within Hutto and Berks are judged to be legal or illegal, depending on corresponding judgements of detainees' statuses. Thus, family detention reveals the contingency and malleability of law in practice, contributing an analysis of *the family* as a legal category to legal and political geography.

Tracing family detention through the spatial ordering of migrant bodies also shows how *definition of the family changes over space and time*. Sexual citizenship scholars have noted the legal privileges granted to heterosexual, nuclear families and

spouses (Binnie 1997; Bell and Binnie 2000, 2006; Elman 2000; Lubheid 2002; Lubheid and Cantú 2005; Simmons 2008), but immigration laws do not privilege all families in the same way. While marriage and kinship relations remain a primary path to US. citizenship, the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) de-emphasized family privilege by restricting the definition of family members (Inniss 1997-8). Thus, the "immigrant family" has been differently defined and legally constituted over time, with dramatic effects on the material welfare of migrants (Ackers and Stalford 1999; Dobrowlsky and Jensen 2004; Van Hook and Balisteri 2006; Willen 2007). Further, *asylum and children's rights* overlap with immigration law. Most of the plaintiffs in the ACLU's case were asylum-seeking children, whose detention is limited in both *Flores v. Reno* (1997) and U.S. asylum law. In the case of asylum-seeking parents, however, asylum law alone limits their detention, and asylum status is decided by Citizenship and Immigration Services asylum officers, located within the Department of Homeland Security. In the event asylum officers do not find credible fear and reject the claimants' evidence of persecution, the asylum-seeker is referred to Immigration Court (Ramji-Nogales et al., 2007). Thus, the paths of detained families into and out of detention are largely determined by legal frameworks that differentiate *between non-citizens*. This dissertation interrogates how governments use the law to manage populations through different legal definitions of the family. In the following chapter, I examine how different legal frameworks differentiate detained parents and children *from each other* and *from other detainees*, producing a complicated legal geography for detained families. Thus, my research contributes a geographical account of the context-dependencies of law to existing research in legal geography. This will have wider

implications for political geographic understandings of the spatial relationships between nation-states and political subjects.

FEMINIST AND CRITICAL GEOPOLITICS

If geopolitics unfolds in the everyday (Secor 2004), then feminist geopolitics could benefit from shifting its gaze to immigration law, policy, and enforcement practice. As Coleman (2008a) points out, this area is under-explored in geographers' studies of immigration precisely because of the scalar disjuncture between individualized screening, interview, detention, and deportation practices and the universalizing tropes of national security, threat, and sovereignty that dominate official policy discourses (Coleman 2008a, b). Feminist political geographers have focused their critiques of 'mainstream' political geography on just this problematic (Hyndman 2007). Bringing this approach to immigration geopolitics, Coleman (2007a) and Varsanyi (2008) show that immigration enforcement is increasingly *interior* to the U.S., part of the devolution of federal immigration powers to local law enforcement. The geopolitics of immigration unfolds, therefore, in day-laborer centers, neighborhoods, corporate security and prison contractors, churches, and workplaces. Critically, the surveillance of these spaces is increasingly linked through database merging and algorithmic data analysis (Amoore 2009), employee verification requirements (e.g. E-VERIFY), and the cooperation of local and federal police. This 'postentry landscape' of immigration enforcement demands, therefore, that the relationship between immigration *law* and enforcement *practice* be closely examined.

Feminist geopolitics, too, has neglected the role of immigration *law and policy*-

making, as it has focused at both finer and globalized scales of interaction. Particularly in the case of women's political action, understanding the ways in which politics unfolds in living rooms, kitchens, and organizations traditionally considered "non-political" is key to understanding how marginalized groups mount their own "counter-geopolitics" (Secor 2004). As Hyndman (2004a) argues, focusing on the state obscures violence and insecurity at other scales. Where the state remains the focus for feminist political geographers, it is by analyzing the embodied practices of statecraft, the banality of administrating immigration law, that allows a fuller understanding of the spatialities of state power (Mountz 2003, 2004). In fact it is often through narratives of 'the home' that migrants understand and articulate the complexities of their transnational lives (Staeheli and Nagel 2006), and migrants' "homeliness" serves as a metric of "deserving" and "undeserving" migrants (Gedalof 2007).

Yet immigration politics in the U.S. has long blurred the lines between "foreign" and "domestic," since municipal school districts and state welfare systems mediate noncitizens' access to services (see Coleman 2008b). The case of family detention further problematizes the separation of "foreign" and "domestic." That is, it is not only that public policy issues of childcare licensing and state custody overlap with national security and immigration, as I show in Chapter 6 and 7, but that the conversation takes place in and through conversations about meal and bathing times, headcounts, bodily constraint, parental discipline, and host of other topics. Analyzing the legal contestation of family detention, focuses our attention on how immigration geopolitics unfolds in the everyday lives of real people, and the ways in which daily life itself becomes criminalized. It is parents feeding children, brushing teeth, taking baths, playing, going

to school, bedtimes, etc. that becomes the *site of intervention* for immigration enforcement agents. It is precisely through the banal, everyday activities of the household that the geopolitics of family detention unfolds.

FAMILY

In geography, feminist geographers have devoted the most attention to family-related issues, most likely driven by feminist theory's emphasis on the family and household as sites of women's exploitation. Feminist geographic work has, therefore, focused on the institutions that reproduce gendered and uneven power relations. Although addressed from a number of theoretical and methodological angles, the relationship between gender, paid work, and identity has been the focus of much of this work (Bain and Nash 2007; Bondi 1991; Gidwani 2000). Problematizing the insularity of the assumed private space of the home in liberal democratic theory, 'the home' has been the primary vehicle for examining family-related topics. The home spatializes gendered household labor, especially the organization of kitchens, washrooms, and leisure areas (see special issues of *Gender, Place and Culture* Issue 13:2, 13:6). The home is a site of paid labor, such as *au pairs*, leading scholars to argue that professional women's hiring out of domestic labor produces a gendered *international* division of labor (e.g., Cox and Narula 2003; Pratt 2002, 2004, 2005; Silvey 2004). Linda McDowell's work has examined the intersections of women's worklife, state welfare restructuring and concepts of home and belonging (e.g., 2004, 2007), while Alison Blunt (2005) devotes her book to analyzing the practices of domesticity and diaspora, the politics of home-making in postcolonial India. Thus, geographic analyses of 'the family' have tended to side-step the

family itself in favor of a broader vocabulary—household, home, domesticity, private space, reproduction labor, and care. These studies implicitly include familial relationships, but displace "the family" as the conceptual locus.

There is significant, but scattered, geographic work that can provide entry points to a productive examination of 'the family.' Geographers have shown that the family can be a site of complex labor arrangements. In these studies, the family itself can be a site of conflict, as external demands for labor (from village councils or off-farm employment) demand the re- allocation of gendered household tasks (Gidwani 2000; Mutersbaugh 1998, 1999; Roberts 1996). Analyzing income or labor power at the level of the household misses the delicate and complex negotiations of peasant agrarian economies. The family, in these analyses, is the conduit of a complex spatio-temporal arrangement, involving children, women, and men alike. Analyses of state restructuring have analyzed the reinscription of the nuclear family as a site of welfare provision. This trend has marginalized the growing number of single-parent households (Winchester 1990). Since family law privilege the mother in custody cases, this economic and political marginalization of female-headed households has led to a feminization of poverty (Jones and Kodras 1990). These studies demonstrate the crucial link between the institutionalization of the family in welfare policy and the real proliferation of non-nuclear families. Thus, the ideal nuclear family operates as a category of exclusion, often masking the role of race in policy-making.

While these diverse approaches have yielded nuanced analyses that problematize the family, home, and private space as bounded entities, could these critiques be circumscribed by their unacknowledged orientation to a white, European norm of the

nuclear family (Oyewumi 2000)? Or does the emphasis on gender signify a desire to denaturalize and decenter the family, a preference to be more specific about the processes that constitute families? The question becomes, then, *what would studying the family do for geographic knowledge?* For Valentine (2008) and Harker (2009, 2010), intimacy and "family practices" (respectively) frame employment, mobility, migration, and housing decisions over the lifecycle. Placing care practices at the center of analysis, rather than biological or marriage kin ties, provides a more flexible and, Jon Borneman argues, an ethically inclusive methodological frame through which to understand how people make lifeworlds together (Borneman 2001). A focus on care, intimacy, and family practices privileges the banal energetics of shared spaces, bodies, fluids, foods, and experiences, the "enduring ties" through which we negotiate our inherent dependency on others for survival (Butler 2002).

SPATIAL STRATEGIES

Political economic analyses of prisons provide a rich framework for understanding the Hutto and Berks facilities in terms of their economic value. Geographic research on prisons has developed a nuanced account of rural prison location (Bonds 2006; Che 2005; Gilmore 2007), criminalization of drugs and poverty (Beckett 1997; Gilmore 2007), and the commodification of space (Mitchelson 2007). As Gilmore (2007) shows, urban disinvestment and high poverty rates coincided with the devaluation of agricultural commodities in California, creating geographically marginalized labor surpluses in both urban and rural areas (see also Bonds 2006; Mitchelson 2007). These scholars analyze the ways in which the commodification of space 'fixes' capital flows,

labor patterns, and political discourses (Harvey 1982). These accounts provide an analytical model for examining the geographies of power through the circuits of capital, the organization of space, and the relative empowerment or marginalization of different groups.

This dissertation, however, focuses on different kinds of circulation, for example, the physical mobility of migrants within the Hutto and Berks detention facilities, and the mobilization of discourses of families and children and security. In Chapter 7, however, I link the circulation of detained families between detention centers and their case files between ICE and USCIS to the circulation of money between federal, state, county, and private institutions. I use the concept of *spatial strategies* to understand how immigration policy-making and enforcement practices normalize ICE's authority to police noncitizens, the federal government's authority to make national boundaries, and Congress' legislative role.

Spatial strategies normalize spatial relationships, as well as create and regulate relationships between bodies, the built environment, and mobility (De Certeau 1984). Family detention is a spatial strategy because ICE uses detention to enclose immigrants while they await immigration court dates or deportation. Within detention centers, staff use additional spatial strategies (e.g., rigid schedules, headcounts, threats of family separation) to create order within the detention center. The use of detention, in particular, to control immigrant families emerged in the context of the "securitization" of immigration, discussed above and explored in more detail in Chapters 4 and 5. These spatial strategies work together with political discourses with the aim of securing the physical survival of the U.S. nation-state. Non-governmental organizations also employ

spatial strategies, such as occupying public space and long-distance marches, to make family detention and detained families' rights visible to a wider public. This convergence of different, even opposing, governmental rationalities, institutions, procedures, knowledge practices, and spatial strategies is what Michel Foucault calls governmentality (Foucault 1991, 2007; Rose 1996). Working through spatial strategies like family detention, governmentality offers theoretical framework for analyzing how law, bureaucracies, and individuals circulate and normalize social, legal, and political categories through spatial strategies and discursive practices.

This conceptual framework provides three main analytical strengths to my research. First, this dissertation analyzes the attempts, methods, and ways of thinking about *how to control people by controlling space* in family detention centers. Second, the conceptual framework links local micro-geographies of daily life at Hutto and Berks to each other and to "national" geographies of immigration law and policy. I analyze, therefore, the consistencies and contradictions between the spatial strategies and discourses used by different actors in family detention policy. Third, this framework links spatial strategies of family detention to the legal, political, and social discourses of the family. Using a combination of qualitative methods, described in the next chapter, this dissertation draw together a diversity of sources to analyze the ways in which immigration enforcement policies—and its alternatives—use, contest, and transform the spatial ordering of detention.

CONCLUSION

My goal in this dissertation is to explore the geographies of contemporary US

state power, particularly how materiality of border, immigration, and legal practices reify the process of "illegalization" (De Genova 2002). Analyzing immigration law, enforcement practices, and the circulating textual practices surrounding family detention as an assemblage of spatial strategies, I take care to attend to the "chaotic bundle of storylines" (Coleman 2005). The literatures summarized above show how these narratives condense around a few nodal discourses: security, borders, discretion, private space, vulnerability, family, il/legality, and rights. Detention and deportation unfold through a series of spatial practices, such as externalization, neo-refoulment, remoteness, invisibility, and forced repatriation. My analysis of family detention draws imagined and material cartographies together to understand the ways in which space is ordered, calculated, and put to work to consolidate state power over national territory—and to thereby reproduce the relations of power that normalize that authority. Focusing on family detention, in particular, foregrounds the ways in which intimacy, private space, and relationships become sites of state intervention. Taking the political ethics of detention seriously, this dissertation works along different registers: textual and symbolic discourses; the writing of spaces; and the relationality of intimate ties. At the heart of the struggle to expand or end family detention lie a series of fundamental questions about the character of executive power, its limits, and the constitution of the political.

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CHAPTER 3: ETHNOGRAPHIES OF CLOSED DOORS

> If we as publicly engaged intellectuals begin not from the epistemological standpoint of the state and its functionaries but rather from the standpoint of the elementary freedom of movement as something like a basic human entitlement, then rather than presupposing that there is something inherently suspect about the human beings who migrate, the real problem comes into considerably sharper focus: *that problem, clearly, is the state itself.* (Emphasis added, De Genova 2007, 425)

INTRODUCTION

While I focus on a specific federal policy, family detention, I do so in order to problematize the regimes of authority that normalize the practice. That is, I begin from ICE's terms and inquire, *does family detention policy succeed in its aims?* Instead I ask, *what work does family detention do as a governmental technique*? My goal is not, therefore, to measure how family detention deters future family immigration, child smuggling, and illegitimate asylum-seekers, but to analyze the ways in which this discursive regime presumes and reproduces a range of legal categories, spatial hierarchies, coerced mobilities, and subject-formations. In the following chapters, I analyze the juridical and legal processes through which families became *detainable* and the spatial practices through which these detentions materialize. I explore, therefore, the relationships between legal categorizations, geopolitical imaginings of global space, the spatial ordering of detention centers and the ways in which discourses of familial relatedness, private space, and authority undergird the spatial practices of family detention.

In developing this approach, I draw on previous scholarship that has sought to trace the complex connections between symbolic national discourses, legal categories, and detention's concrete materialities. Mountz's institutional ethnography of Citizenship and Immigration Services Canada analyzes the everyday bureaucratic response to a

perceived immigrant crises. Focusing on the response to a specific incident, Mountz is able to trace how state immigration officials improvise detention practices, how civil society reacts in conflicting ways, and the mixed feelings of the bureaucrats charged with enforcing immigration law (2003, 2004, 2010). Hall (2008) spent long hours with detention center guards at a detention facility in the United Kingdom, and while this prevented her from interviewing detainees, it allowed her to explore *guards*' identity-formation processes and to fill a gap in research on detention centers. Gill (2009, 2010) and White (2002) performed extended interviews with a series of actors active in the UK asylum process, which allowed them to trace detainee mobility and access to legal services (respectively). In different but resonant ways, each of these authors connects specific spatial practices of detention and deportation to the constitution of nationhood and state power, and use these "micro" or "local" stories to disrupt depictions of a smoothly operating, monolithic state actor.

Taking these arguments seriously has some important methodological implications. First, federal employees are not the only parties producing the state. Rather, a range of actors participate in its everyday production, by ascribing intentionality to "the government," by advertising state agencies' effectiveness, and even by blaming the state for unforeseen events or consequences. Understanding family detention's authorization requires looking far beyond ICE and DHS to understand the unquestioned assumptions behind it. Second, because state actors are never of one mind (and neither are their critics), I pay close attention to ruptures and incoherencies within texts, between texts, and in the indirect conversations unfolding across the discursive field I analyze in the chapters below. Interview questions and analysis focused on these disjunctures.

Third, analyzing state power through the body can reveal relations of power obscured in policy or legal texts (Hyndman 2004b). For example, I analyze the ordering of space, time, and bodies in detention centers (Chapter 8) to question the legal distinction between detention and incarceration. As a whole, the project links detainability to the spatial ordering of detention centers, but in ways that remain sensitive to the disruptions, improvisations, and incoherencies that characterize "everyday" state practices.

De-privileging the state as the sole producer of family detention discourses requires a multi-method research design. I originally planned to combine semi-structured interviews with key participants in family detention: ICE policy-makers, lawyers, detention managers, and detainees. I had planned to collect roughly equivalent numbers of interviews from these groups, in order to ensure their respective representation in the study. Researching a "homeland security" issue, I quickly that discovered immigration officers were off limits to me. For wholly different reasons, detained families were equally difficult to access. Families released from Hutto rarely stayed in Central Texas for long, and often lost contact with their Austin-based attorneys. Fewer attorneys work at Berks, and these organizations were far more closed to research and media requests than those in Texas, making it difficult to establish contacts.

In addition, I encountered a deep asymmetry in available knowledge about families' experiences of detention and the legal and political processes behind it. A lawsuit (analyzed in Chapter 6) kept family detention in the news throughout 2007, so that by 2008, when I entered the field, much was known about conditions at Hutto and Berks. Formerly detained families appeared in documentaries, sat for interviews, and attended film screenings to testify about their treatment. Far less information was

available about how these families became detainable in the first place, and what authorized their continued detention (along with 32,000 other noncitizens). My research methods came to focus, therefore, on a broader terrain of immigration law- and policy-making than originally conceived, and more on the contracts and institutional arrangements that support family detention at Berks and Hutto.

The original research design did not, therefore, emphasize participant observation, as I had not envisioned opportunities for sustained interaction. As a public campaign against family detention waged on, my early semi-structured interviews more or less repeated accounts found in the popular media. Potential respondents continually asked me "what my angle was," and it became clear to me that my research was one of many "messaging" outlets. I found it difficult, therefore, to draw out the detailed minutia that animate the daily practices of detention, and it was these informal, unofficial, and often arbitrary disruptions that interested me. As I began to attend activist and advocacy meetings, however, I found that people exchanged much "off the record" information that evinced the banal, arbitrary and often inept actions of ICE and CCA employees. Family detention policy has been under continual revision, critique, and development, but because ICE retains wide discretion, as I explore in the following chapters, it was far more difficult to obtain documentary evidence of these changes, as very often, documents simply did not exist.

This did not significantly change my research's direction, but did change my methods and my positionality. I worked directly with advocates to draft Freedom of Information Act requests, and learned much from their experience with state-level Open Records processes. When I received responsive documents, I made copies, scanned, and

emailed those that would be of interest to different stakeholders. For example, when I received copies of the Williamson County Sheriff's office monitoring reports, I scanned them in and e-mailed them to interested parties in Williamson County. I also moderated the T. Don Hutto blog (tdonhutto.blogspot.com) from 2008 to fall of 2009, when ICE released the last families from the facility. The blog became an archive of media and public events and a key resource for investigative journalists and other writers. It was important to me–and still is–to share the outcomes of my research with the public in expedient ways, since the academic publication cycle and the process of writing this dissertation have added years to the dissemination process. I produced texts like press releases, opinionated editorials, and two book chapters in collaboration with these colleagues. In 2009, we formed a visitation program, and have trained a group of volunteers to make regular visits to Hutto. Through this visitation program (initiated 1.5 years after I began my research), I was able to gain consistent access to Hutto's public areas and a more embodied and detailed sense of how noncitizens' cases proceed from inside detention centers. While not included in the original research design, these comings and goings have provided important ambient knowledge of detention. Without this "participant observation," the research in this dissertation would not be as rich, and, personally, I would have found it difficult to weather the emotional difficulties of researching detention practices.

The research presented in the chapters that follow emerged therefore from a sensitivity to "on the ground" politics and a commitment to problematizing the relations of power that make them possible. This dissertation is often times inspired by (and in implicit) conversation with different advocates and activists, but my questions are equally

driven by theoretical questions about sovereign power, governmentality, and space. At different moments, these theoretical questions allowed me to contribute to new campaign strategies. For example, detention center's remoteness and invisibility has become increasingly important to those with family members inside, and challenging this politics of invisibility has become an explicit part of a broader anti-detention campaign and a new visitation program at Hutto. In daily meetings or calls, I tended to remain pragmatic, and helped draft relatively more limited policy recommendations for ICE. While it has been tempting at times, given the gravity of family and adult detention, I have resisted the temptation to wed this dissertation to an advocacy project in a more explicit way. I wanted to retain theoretical freedom and creativity, and the opportunity to do some "big picture" thinking outside the pragmatic demands of a campaign or more traditional policy analysis. My goal here is not to improve the detention system, but to interrogate its foundations. This dissertation is a starting point, I hope, for re-imagining the juridico-political foundations of citizenship, sovereignty, and politics in future research.

METHODOLOGY

Because the research seeks not only to detail the imaginative and embodied spatial practices of family detention, but to push on political geographical theories of power and space from the perspective of this case, I draw heavily from Michael Burawoy's (1998) call to not just critique existing theories of power, but to reconstruct them. Proposing a "reflective science paradigm" in place of positivist sociological methodologies, Burawoy foregrounds the researcher's *movement* through the socio-spatial world, the ways in which researchers change "the field" they study, and the

productivity of those collisions, conflicts, and negotiations. Rather than bracketing the researcher, or subordinating her to contextual background noise relative to the object of study, reflexive science "starts out from dialogue, virtual or real, between observer and participants, embeds such dialogue within a second dialogue between local processes and extralocal forces that in turn can only be comprehended through a third, expanding dialogue of theory with itself" (Burawoy 1998, 5). As I moved physically between my field sites and home(s), and finally came to call one field site home, this back-and-forth movement between research, field, and theory captures the periods of furious collection, reflection, and engagement through which this project emerged. Throughout the research process, I "pushed back" not just on existing theories of governmentality, abandonment, and law but on the policy-makers, local government officials, and congresspeople with stakes in the warehousing of noncitizen families.

Research Methods

Document Collection: The documents analyzed in this dissertation came from four primary sources: freedom of information act requests, online and print media, litigation, and archival research (see Figure 3.1). Because interviews with government officials never materialized, I became more creative with, in particular, how I requested documents from the federal and county agencies. Having few initial resources besides media reports to go on, I first submitted broad information requests and from them culled references to other documents. Through these inter-textual citations, and rolling information requests, I was able to build my own archive of documentary material on family detention. Because the Freedom of Information Act (FOIA) requests are subject to

Table 3.1: Data Collection Methods and Data Gathered for Current Study

Collection Method	Data Gathered	Quantity
Interviews	Semi-structured and informal interviews with attorneys, advocates, and activists.	30
	Interviews with formerly detained families gathered from other sources.	7
Documents	*Bunikyte et al. v. Chertoff et al.* litigation Documents.	1000 pp.
	Emails between County, CCA, and ICE officials.	200 pp.
	Audits of Berks and Hutto; DHS Corrective Plans.	1760 pp
	Request for Proposal documents.	200 pp.
	Press Releases, Fact Sheets, Public Testimonies.	
	Government Reports.	20 reports
	Non-Governmental Reports.	20 reports
	County Budget Records from Berks County, PA, and Williamson County, TX.	40 reports
	Contracts, IGSA's, including Renewals and Amendments	10 documents
	News articles	
Participant Observation	Meetings with advocacy organizations.	30
	Conference Calls.	15
	Public Events.	15
	Visits to Hutto.	5
	Visit to Berks (outside only).	1

a range of exemptions, responding agencies excluded many documents for security concerns. My requests went to Williamson County, Texas; Berks County, Pennsylvania; and Immigration and Customs Enforcement. In response, I received: contracts; service agreements; purchase orders; e-mails between detention center operator, ICE, and county officials; monitoring reports; communications between attorneys and ICE; detention conditions corrective action plans; and design standards for family residential facilities. Additional documents were collected from government websites, and these included requests for proposals for new detention centers, ICE public hearings, press releases, fact sheets, and the family residential standards.

These documents were supplemented by trips to Williamson County and Berks County archives, where I searched through newspapers and other sources in order to trace the history of the two detention centers I focus on in this dissertation. The state of the archives in Williamson and Berks Counties were very different. Berks County's archive is prolific. I found, for example, deeds dating back to William Penn for the land on which the Berks County Family Care Shelter now stands. The Berks County Historical Society retains a sophisticated archive, replete with folios documenting the development and change of the county's public institutions. Located at the heart of the progressive movement, this former industrial center took a great deal of pride in its workhouses, asylums, poorhouses, sanitariums, hospitals, and in prisons, and had myriad documents tracing their development. At the Williamson County archives, in contrast, I found general descriptions of the area's history and scattered newspaper archives. Thus the collection, organization, and public availability of these historical sources varied greatly between the two sites. These sources form, however, general background material rather than the bulk of the empirical study presented below. It was important to me to gain a sense of where these two family detention centers fit in the political economy and historical geography of their local places.

Interviews*:* Interviews consisted of semi-structured conversations focused on the aspects of family detention policy and practice about which respondents were most familiar. For each respondent, I developed a questionnaire that focused on their realm of expertise, and also collected general information about family detention policy and practice. Through this method I was able to collect both detailed and corroborating information. As

reflected in my research questions, one of my goals is to understand how families and children come to be understood through a wider set of concepts, such as the home, the domestic, childhood, development, and immigration law. One of my most interesting findings emerged from my difficulty in eliciting responses on how families and children were detected and understood *as families*. What families and children are was so intuitive or obvious that my questions about them raised eyebrows, but were evidently uninteresting and yielded little.

Interviews lasted from 30 to 90 minutes, and took place in locations of the respondents choosing. Despite my assurances that names and identities would be confidential, the interviews rarely strayed beyond the discursive patterns those same actors put forth in the news media. What I found was that, for most, there is no great difference between academic research and investigative reporting, so that signing an informed consent form did not arrest their apprehensions about being quoted. This difficulty reveals, I believe, one of the pitfalls of studying a high-profile government practice. Interviewees were often quite used to giving interviews to the media and did not greatly shift their responses or attitudes for me. My respondents had, for the most part, come to a series of decisions about their disposition towards family detention, so the interviews were not the opportunities for exploration, experimentation, or discovery that I hoped they would be. These interviews were, however, incredibly important for gaining a sense of the policy-making terrain during early fieldwork.

ICE never turned me down for an interview, but neither did they grant me one. I found a rather impenetrable state apparatus, but it was a bureaucracy obscured more by the convoluted delegation of responsibilities than by any discernable design. For

example, one request proceeded as follows:

> *December 17, 2008: Conversation with Director of Berks: I asked about manuals, training manuals, etc. and he said that would have to be run through ICE. All of that is included in their compliance reports. I asked if, based on his experience, I should add that to my current request, and he said yes, so there is less going back and forth. I should definitely add it to my current request so I can see those materials when I visit the facility. He said from a county level, he was fine with it, but in the last 2 years they have been careful about what information they put out there.*
>
> *December 18, 2008: My packet has been sent to Patricia Pepe, who originally received my request… everything seems to go in a circle. … Interestingly, [the Berks Director] maintained that "from a county level" or "perspective" he didn't have a problem with me seeing stuff, but ICE has their own stuff… It always got vague. My guess is that they are trying to do a better job of managing the PR…*
>
> *Jan. 12, 2008: Called Assistant Field Office Director Patricia Pepe Reiser at the phone number Ramella gave me to follow up on my request. Seemed to be confusion about how to reach her, was connected to Mr. Gonzalez "with immigration" and he took a message.*
>
> *12:55pm CST. Received message from Trish Reiser at 2:03- request still pending at headquarters.*

From there my request languished, and efforts to restart the request were ignored. These

passive rebukes occurred against a backdrop of more antagonistic rebukes. For example, CCA denied the United Nations Special Rapporteur on Human Rights access to Hutto, and other well-established advocacy organizations faced considerable obstacles gaining access to facilities or detainees. Their visits were highly constrained and monitored. Attorneys, while facing considerable hostility within detention centers, were the only group to have consistent access, were bound by attorney-client privilege, and therefore could not facilitate my entry.

Since the release of families from Hutto, however, I have helped initiate a visitation program for women. So while it was not a planned component of my research, I have been able to gain access to Hutto as a visitor. Women's detention issues are not the focus of this dissertation, but Hutto's physical plant has not been significantly altered since families were released, allowing me to gain a embodied sense of daily negotiations with guards and ICE officers. Knowledge gained through the visitation project builds on the present research, and will form the basis of future work.

I had also initially planned to interview parents detained at Hutto. Unfortunately, families released from Hutto did not long remain in the Central Texas area, as most of them moved closer to family and other parts of the country. I did not contemplate including interviews with current detainees, because of the ethical implications of interviewing people in state custody. It became difficult, therefore, to locate the population I had set out to interview. I initially sought to contact formerly detained families through attorneys working at the facility, but they did not maintain contacts with their clients after their cases were resolved. Furthermore, one attorney described how she consciously distanced herself from her clients, because their post-asylum needs were

significant but beyond her capacity as a lawyer (Fieldnotes May 2008). A few families were vocal critics of family detention, and were quickly enrolled in a series of public events around family detention. Because so few families are willing to step forward and recount their detention experiences, those that did grew weary of recounting their trauma before audiences that were unable or ill-equipped to assist them in the challenges of settling in the United States. It became difficult for me to justify interviewing those same families for my own purposes, once again, when they had recounted their stories repeatedly in the public realm. Because I was not permanently located in Austin at the time, I could not develop the necessary relationships with local counselors, psychologists, or social workers in the event that the interview triggered post-traumatic stress from either the family's detention, their experiences of migration, or pre-migration violence that led them to claim asylum in the United States.

To circumvent this problem, I partnered with an Austin-based organization and social work faculty at the University of Texas to develop a survey that we would distribute to regional attorneys in the hopes of gathering systematic information about families released from Hutto. This project was developed during the fall of 2008 in spring of 2009, but faltered when the faculty partner was unable to make a long-term commitment. Because this kind of survey required long-term, sporadic bursts of contacts and interviews, it did not cohere with my fieldwork schedule well enough for me to sustain the project myself. I was concerned, however, to include families' voices in the research, because without them I risked erasing their narratives from my analysis of the spatiality of family detention. I have relied therefore on existing testimonies found in the litigation, public events where families presented their stories, and interviews collected

for two films on family detention to begin to address the perspective of detainees. My hope is that through these materials I can begin to address the perspective of detainees.

Participant Observation: My original research design did not incorporate significant participant observation, since I had not planned to base the study in ethnographic methods. As described above, it became immediately clear that I was dependent on advocates, organizers, and attorneys for the richest documents in the most detailed first-hand information of immigration detention. Furthermore, these actors were engaged in phone calls, off the record meetings, and legal meetings with immigration officials. They have a sense, in other words, of the everyday antagonisms in negotiations at work in immigration enforcement practice, yet these details were often neglected in my semi-structured interviews in favor of chosen storylines and messages. I learned much more about how immigration enforcement practices unfolded in everyday life from the offhand comments, chuckles, and sarcasm of those who interacted with them on a daily basis then from many of the official outlets. In addition, in contesting state detention practices, advocacy, legal, and organizing work pushed on the same state practices, and also produced "the government" as an acting, coherent, intentional entity. Approaching immigration enforcement practices from a postructuralist perspective, I was attuned to the ways in which various actors produced "the effect of the state" that they intended to change. Participant observation was, therefore, critical to my formulation of sufficient background knowledge, and it was in weekly meetings, conference calls, and strategy sessions that I refined my broader questions about the space of family detention, the production of various subject formations, and the securitization of immigration. It was in

this context that I was able to communicate early findings and contribute my own expertise to conversations about family detention.

While I worked closely with many advocates and activists contesting family detention, this dissertation should not be taken for a study of a social or political movement. First, I did not design the study to focus on the organizational elements of the immigrant rights movement, and my research questions were not aimed at tracing these dynamics. This is not to say that a study of immigrant rights and anti-detention organizing is not worthwhile; in fact, these kinds of studies are underway (e.g., Jimenez 2009). Rather, because I came to the research with different questions, I represented myself in terms of these interests from the beginning. It was clear to me that I could not truly pursue a study of detention through document collection alone, because many of the most interesting moments occurred "off the record" and in conversations closed to media or press outlets. These moments were recorded in fieldnotes, and revealed the ways in which detention policies and practices were continually revised and the banal antagonisms between advocates and government officials.

Analysis: While Burawoy's reflexive science paradigm framed my relationship to family detention policy and practice, Norman Fairclough's critical discourse analysis served as a method through which to capture the resonances and fractures among various actors. For Fairclough, discourse is one aspect of social practice, bundled inseparably with activities, relations between subjects, instruments, objects, time and place, forms of consciousness, and values (2006, 205). Discourse structures "the way a thing is thought, and the way we act on the basis of that thinking" (Rose 2001, 36). Meaning is not established through an

objective language system, but is temporarily anchored in discursive practices, through the embodiment of discourse and the relations produced through it (Waitt 2005). The other elements of social practice are organized by discourse, even if their corporeality exceeds their discursive purpose (Butler 1990). As such, the researcher is in a uniquely privileged position as analyst and producer of discursive formations, and this places special responsibilities upon the researcher, the method, and the communication of results (Rose 2001). Thus, critical discourse analysis provided a means through which to understand how people connect words, statements, rationalities to each other and what is produced from those connections.

To analyze the data described above, I relied upon established methods of qualitative data analysis, specifically critical discourse analysis. I first developed systematic codes for each research question and combed through the data. From this first pass I drew out "in vivo" codes: words, phrases, or tropes that framed how family detention was enacted, imagine, and performed (Cope 2005). Using in vivo and thematic codes, I processed the qualitative data a second time, revised initial hypotheses, and refined my research questions. For example, I found that threat, security, and criminality were far less pervasive than I had assumed they would be. Instead, my coding lists contained terminology from child welfare and social services, indicating, I think that while counterterrorism and security may have framed Department of Homeland Security press statements, they did not dominate facility-level policies. The coding process itself revealed, therefore, the ways in which detention practices were formulated under a broad banner of Homeland security in counterterrorism, but were implemented through specific relationships with a range of other less spectacular public policy regimes. Using my

qualitative data analysis software's quantitative tools, I then identified the most commonly used codes. To ensure that these statistics were not skewed by synonymous codes, I double checked these preliminary rankings against a code map, in which I grouped similar terms. Visualizing the relationship between these codes allowed me to identify key axes around or along which discursive formations seemed to coalesce. From here I returned to my research questions, interpreted these data in response to them, and developed new questions for further inquiry.

CONCLUSION

Fieldwork necessarily includes a mix of improvisation, problem-solving, re-routing, and making do. The following chapters are indebted to the generosity and camaraderie of my fellow organizers, and culminate three years of thinking, strategizing and theorizing about family detention. My aim has been to write relevant and responsible analysis that addresses organizers' knowledge gaps about immigration and administrative law, the distribution of authority, and the spatialities of exclusion, while engaging with current debates about power, space, and law in our current biopolitical moment. The mixed-methods approach described above allows me to move between these different spheres, and my role in advocacy implicates me in the circulation of documents and the production of detention-related public discourse. In the end, this dissertation represents a sustained critical engagement with the legal and political context of family detention, and the methods "we" have employed to challenge it.

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CHAPTER 4: BORDER ASSEMBLAGES/TECHNOLOGIES OF BANISHMENT ALONG THE US-MEXICO BORDER

INTRODUCTION

This chapter outlines border and immigration policy-making in the Southwest United States to place the detention system's recent expansion in broader historical geographical context of colonial, racial, and ethnic politics. I connect border wall contruction to detention center expansion to show how these "bordering practices" (Newman 2006) produce an infrastructure that is "ready at hand" (Graham and Thrift 2007). I argue that the assemblage of symbolic, concrete, and legal practices produce an infrastructure of exclusion. In this bordering assemblage, the topographies of infrastructure interlace with topologies of banishment, suturing a series of spatial strategies and creating momentum for future border and immigration enforcement expansions. Situating detention in relation to a material border infrastructure, Chapter 5 will show how family detention, in particular, emerged through the securitization of immigration enforcement, and Chapters 6 and 7 examine the legal techniques authorizing noncitizens detention and deportation.

As of October 23, 2008, the United States has built just over 370 miles of fencing along its 1,952 mile boundary with Mexico (US Department of Homeland Security 2008b). Mandated by Congress in the 2006 Secure Fence Act, this phase represents just over half of the 700 miles of new fencing to be completed by December 2008. A combination of 10- to 18-foot mesh fencing, 3- to 5-foot vehicle barriers, moveable fencing, and patrol roads, "the border wall" winds through flood zones, protected

ecosystems, habitats of endangered animals, properties of U.S. citizens, national parks, and urban areas. As some Texas residents continue to fight fence construction, and the Organization of American States (OAS) evaluates the wall's human rights implications, constructing this series of fences has been more than an engineering challenge (Organization of American States Interamerican Committee on Human Rights 2008). Rather, the current build-up of border enforcement infrastructure represents a concerted effort to "re-border" the US-Mexico boundary and to secure "American" territory from unauthorized trans-boundary flows.

Security studies scholars have pointed out how the "social sorting" function of borders now operates through databanking technologies, allowing airlines and security personnel to exclude individuals based on their risk categorization (Amoore and de Goede 2008; Bigo 2002, 2007; Coleman 2007a; Lyon 2003; Salter 2006; Walters 2006). As Louise Amoore has shown, biometric databanking allows federal, state, and local law enforcement to check immigration status more easily than in the past, which has allowed the exclusionary aspects of the border to operate far from the international boundary itself (Amoore 2006; and see Bigo 2002, 2007; Coleman 2007a; Walters 2006). Trans-boundary travelers and migrants are now evaluated prior to leaving their country of origin, on the basis of more intense surveillance than has been possible in the past. Combined with sweeping changes in the jurisdiction of executive agencies, these changes in immigration and border strategy have reconfigured the spatiality of the border, locating it in a complex system of risks, vulnerabilities, and security practices. This is part of ICE's strategy to "expand the border outward" and intensify expulsions from inside the U.S., leading some to argue that the border is both everywhere and nowhere (Belcher et

al. 2008; Coleman 2007a).

But if the border is portable, and is never fully "located" at the boundary itself, what role does fencing construction, surveillance, and policing along the boundary play? Fencing was initially intended to create a material disincentive for migrants attempting to cross into the U.S., and while border crossings do tend to decrease in areas with fencing, they displace crossings to more remote areas, ironically increasing criminal activity on the border by making migrants more reliant on *coyotes* to cross in remote areas (Nevins 2007; Nuñez-Neto and Kim 2008). Acknowledging this tendency, Customs and Border Patrol (CBP) and ICE, combine fencing with ground sensors, floodlighting, patrolling, guard towers, and video surveillance to slow border crossers and channel them into heavily surveilled and patrolled areas (Hostelge 2008). The construction of bordering fencing, surveillance technologies, and patrolling have gone hand in hand with the construction of new detention centers, and the emergence of entire transportation networks operated solely for the confinement, management, and expulsion of unauthorized border crossers. Border construction is linked, therefore, to a series of examinations, interviews, and hearings that code unauthorized border crossers through administrative, legal, and medical discourses.

As the most visible and highly publicized component of homeland security and border enforcement efforts, fencing strategies also symbolize the federal government's proficiency (or, to critics, lack thereof) at securing the American public from harm (Andreas 1999). For Newman (2006), the reproduction of symbolic borders between groups of people and material practices of border policing can be analyzed as interdependent *bordering processes*. The manipulation of the physical landscape to install

fencing and surveillance technologies works to order the Mexico-US boundary region as a site of territorial exclusion. The installation of fencing and different surveillance equipment projects along the boundary, along with the containment and forced movement of noncitizens, should be seen as distinct *spatial strategies*, each aimed at fixing the territorial boundary through the physical exclusion of non-citizens in different ways. As such, fencing and detention materialize categorical bordering practices by ordering the movement of people and things in space in particular ways. Thus, the spatial ordering of border enforcement and detention in part work to contain bodies for processing and removal. Yet these spatial strategies are localized in the backyards of border residents and in ecologically fragile areas, creating a scalar disjuncture between border policy-making decisions and the sites of implementation (Coleman 2005).

This chapter describes some of the historical and legal context in which family detention emerged and US boundary and detention infrastructures' concrete landscapes. I first provide a very brief historical review of creation of the Mexico-US border. The second section analyzes the legislative and policy changes through which state resources were authorized and mobilized for border enforcement. The third section describes materials and technologies used to "build up" the border and the estimated costs of these projects. I close the chapter by arguing that border walls, detention, and forced mobility should be understood as a border assemblage, a linked but heterogeneous network of different spatial strategies, knowledge practices, networks, and mobilities.

'THE BORDER CROSSED US': A BRIEF HISTORY OF THE MEXICO-US BORDER

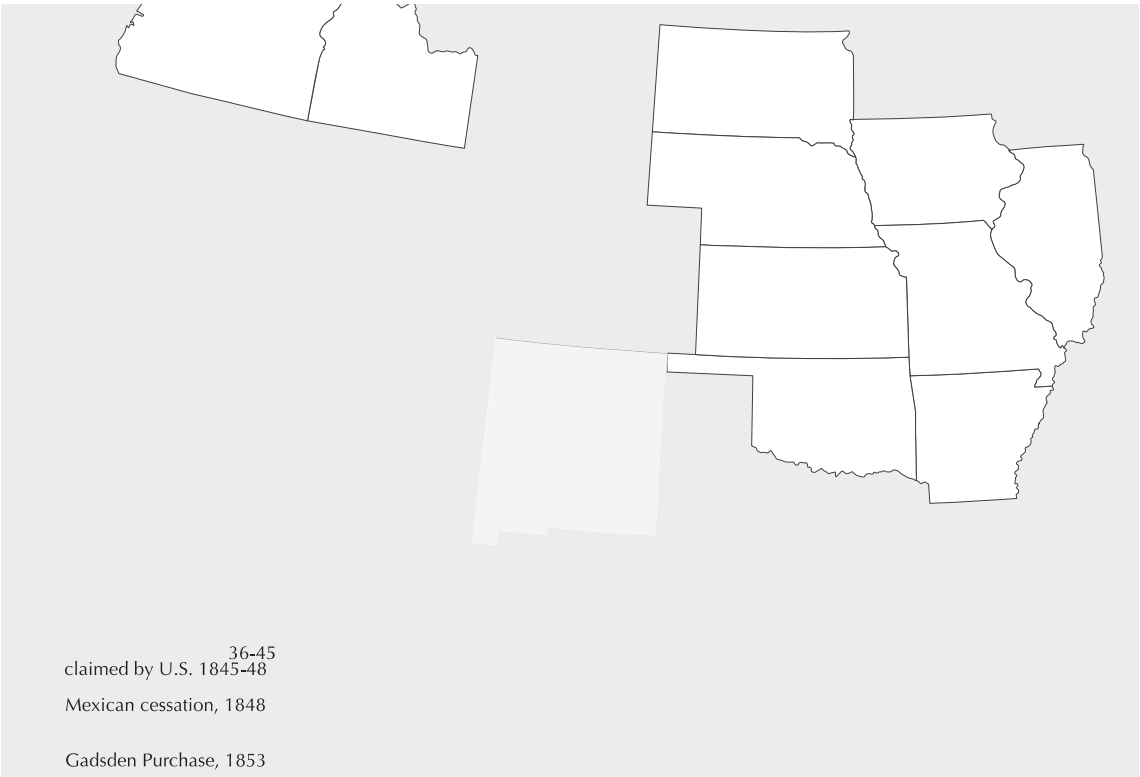
The area through which the U.S.-Mexico boundary passes has a long and rich

history, and for most of this time, the area has been unfenced, unpatrolled, and unregulated. The historical geography of this region is beyond the scope of this chapter, but a few points are necessary to contextualize current struggles over fencing and surveillance technologies. Following Texas' secession from Mexico in 1836 and the US-Mexican War ending in 1848, over half of Mexico's territory—1.5 million square kilometers—was ceded to the United States in the Treaty of Guadalupe Hidalgo. Encompassing roughly the same land area as Western Europe, the treaty granted the US parts of Kansas, Colorado, and Wyoming and Texas, New Mexico, Arizona, Nevada, Utah, and California in their entirety (Figure 4.1). 100,000 Mexicans and 200,000 indigenous people were absorbed with this massive land transfer. In the 1853 Gadsden Purchase, the US purchased more land from Mexico south of the Gila River, establishing today's Arizona and New Mexico boundaries. Neither Mexican nor Anglo residents took American integration and settlement lightly, and Mexican and indigenous residents contested the white ascendancy that accompanied the new boundary well into the twentieth century. Using both legal and illegal coercive strategies, Anglo-Americans divested Mexican-Americans of the landholdings, usually consolidating them into massive livestock ranches. In 1859 and again in 1915, Texas Mexicans led violent raids against Anglo residents in response to these legal manipulations and the massive loss of property (Dunn 1996, 7-9). In retaliation, the Texas Rangers engaged in violent repression against Mexican Americans, and the first deployment of active-duty National Guard and Army troops was deployed to establish order. By 1900, the violent retaliation had largely pacified Mexican-Americans in the southwestern US. Thus, the initial 'pacification' of the border region entailed the violent, quasi-militarized dispossession of

racially defined groups, establishing the "American" boundary as a symbolic boundary between white and non-white territorial boundary.

Yet while Mexican and indigenous people struggled against Anglo-American racial discrimination, they also moved rather freely throughout the border region until recently. Fostering cultural and economic ties, this mundane cross-border traffic has defied attempts to characterize either side of the political boundary as truly "Mexican" or "American." When the Immigration Act of 1924 established the first Border Patrol, Mexico-US boundary operations were oriented towards the exclusion of Asian migrants and controlling illicit alcohol smuggling, not the prevention of border crossings from Mexico. During the Great Depression, for example, they performed massive deportations, only to bring thousands to supplement the war-time economy with the Bracero Program in 1942. In combination with Jim Crow laws that prevented Mexicans from buying property in white-dominated towns, this "revolving door" immigration policy prevented Mexican Americans and Mexican migrants from gaining economic and political capital in the Southwest. From its inception, therefore, US border enforcement policies have been intimately tied to the management of the labor supply through immigration limitations, the use of militaristic tactics to police Mexicans and Mexican-Americans in the US, and the disenfranchisement of non-white Americans in the Southwest (Dunn 1996; Nevins 2002).

Figure 4.1: Phases of US Land Acquisition



(Map by Richard Gilbreath)

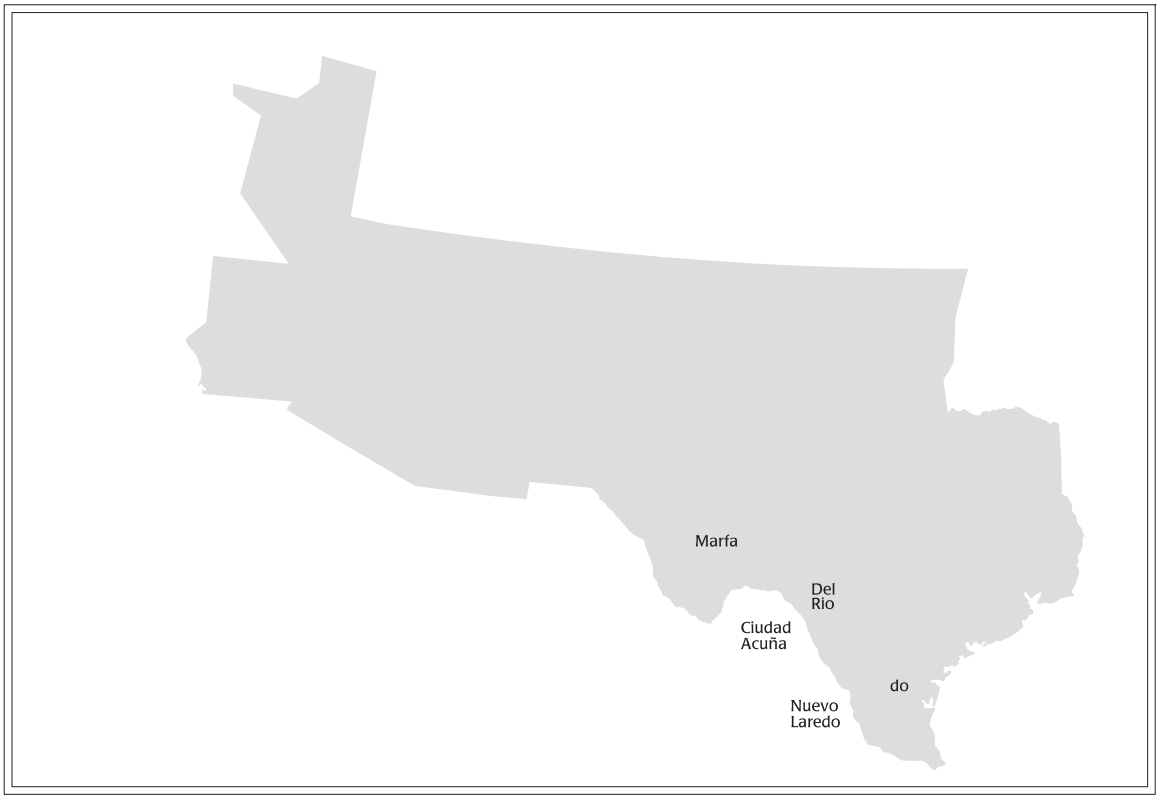
Beginning in 1978, border policy shifted from limited physical presence on the territory boundary and a pattern of labor recruitment and deportation to a territorial emphasis on the criminality of border crossers policy and their implicit threat to white America. The current combination of militaristic surveillance and policing can be traced to anxieties over a brown-skinned, Spanish-speaking "American Quebec," spurred in part by a vocal Chicana/o civil rights movement in the 1960s and 1970s and the subsequent increased visibility of Mexican-Americans in the southwestern US. A recession, rising unemployment, and the highly publicized arrival of 125,000 Cuban and 40,000 Haitians in 1980 destabilized the dominant "imagined community" of white, Anglo America and

created a perceived crisis of nation-statehood. In 1986, the Immigration and Reform Control Act (IRCA) responded to this perceived demographic crisis by mandating a closed border and the end of the underground migrant economy (Pub. L. 99-603). In addition to a program that legalized migrants living the US, IRCA increasied funding for detention facilities, surveillance technologies, fencing, roads, and border policing. Executed through cooperative agreements between Departments of Defense, Justice, and the Treasury, IRCA quietly undermined *posse comitatus*, the statute limiting the role of the military in domestic policing (Coleman 2005; Dunn 1996). In 1990, the Immigration Act increased funding for Border Patrol agents, expanded categories of "excludable aliens," limited migrants' judicial appeals, and awarded arrest power to the INS—at the same time as it promoted family reunification and employment-based migration (Pub. L.101-649). And in 1996, the Illegal Immigration Reform and Control Act (IIRIRA) codified the INS' Southwest Border Strategy, described below (Pub. L.104-208). IIRIRA greatly expanded the categories of excludable persons, granted INS officers authority to order removals, and streamlined the removal process, effectively removing judicial oversight from the immigration enforcement process. Thus, immigration legislation in the 1980s and 1990s framed immigration and border enforcement as intertwined issues of criminality and national security, necessitating enforcement-led strategies. By increasing funding and resources for border policing, the CBP and INS became a significant material presence in the borderlands

After IIRIRA added resources to immigration and border enforcement, the field was relatively unchanged until the 2003 Department of Homeland Security Act, which reorganized enforcement operations and codified border security as a homeland security

priority. In 2005, however, two major legislative changes occurred changing the face of border security. First, the REAL ID Act expanded the Secretary of Homeland Security's waiver authority to "all legal requirements necessary to ensure expeditious construction" of security barriers (Pub. L. 109-13; Nuñez-Neto and Kim 2008, 7). Second, the Secure Fence Act amended IIRIRA and mandated the construction of 850 miles of fencing, later amended to "not less than 700 miles of fencing." The Act mandated the 370 miles be built in priority areas by December 2008 (Figure 4.2).

Figure 4.2: Existing and Future Fence Projects



(Map by Richard Gilbreath)

Thus, beginning in 2005, the U.S.-Mexico boundary saw an unprecedented influx of funding.

The cursory overview provided above is meant to show, first, that the border has

long been contested by the people living in the region, and that "the border" has never been a settled, established entity (House 1982). In part, it is the continual flux and indeterminacy of the border region that has provided justification for an increasingly rigidified boundary; in order for the border to be *in force*, it must be continually reproduced through policing and exclusion practices. Infrastructure is a nominally *durable* enforcement strategy, built to stand in for the physical presence of border patrol officers and to ensure the border's reproduction in the future. Providing what CBP calls "persistent impedence," border barriers serve three purposes. First, they represent the range of policing, surveillance, detention, and deportation practices aimed at unauthorized border-crossers and in doing so they, second, aim to deter migrants from crossing into the US and, third, legitimize the federal government as the purveyor of "security." The visuality and stark physicality of fencing, in particular, fuses the exclusionary symbolism of the border to the physicality of forcible exclusion. As Andreas argues: "Border enforcement is about deterrence, but it is also about propping up state claims to territorial authority and symbolically reaffirming the traditional political boundaries of an 'imagined community'" (Andreas 2000, 143). In the context of post-9/11 border enforcement, counter-terrorism, national security, and the protection of "us" from "them" offered a new sense of urgency and nearly unassailable justifications for the expansion of coercive power at the US-Mexico border (Grundy-War and Schofield 2005).

BORDER CONSTRUCTION

A series of immigration and border enforcement bills augmented investments in

border infrastructure and fostered new levels of cooperation between the Department of Defense and border enforcement agencies. Culminating in IIRIRA in 1996, INS border enforcement strategy focused on "prevention through deterrence" (US Immigration and Nturalization Services 1996; and see Sundberg and Kaserman 2007). Beginning in 1978, seven miles of 10-foot chain link fencing was installed in El Paso, San Diego, Yuma, and Tuscon sectors. These were eventually upgraded to 10-foot corrugated steel walls, and in 1991 to welded panels of surplus steel and military landing mats left over from the Gulf War (Dunn 1996, 66; Fernandes 2007). As today, early fencing projects were accompanied by helicopter and small aircraft surveillance, footfall ground sensors, and the expansion of detention centers for apprehended migrants. Between 1978 and 1988, the INS added twenty helicopters, 278 night vision scopes, in addition to night vision goggles, infrared scopes, and remote imaging technologies. Ground sensors were expanded and upgraded, as was low-light-level television surveillance. Other communications and surveillance projects were developed with the U.S. Army, Air Force, and Federal Aviation Administration (Dunn 1996, 44). Twenty-two border patrol stations were built, and INS's budget allocations grew dramatically, comparable only to post-9/11 increases in border enforcement. In 1989, the Joint Task Force 6 (JTF-6) was formed at El Paso's Fort Bliss, and armed forces were enrolled in a permanent cooperative relationship with the INS. Aimed at drug trafficking, the majority of support entailed "operational" missions, largely ground reconnaissance missions used as much to detect unauthorized border crossings as to locate illicit drugs. While new building projects were the most visible evidence of this cooperation, engineering and construction constituted only 10% of the JTF-6 missions (Dunn 2001, 70). This signaled an

unprecedented role for the armed forces in the policing of U.S. territory. Extending the paramilitary legacy of border pacification, the Mexico-US boundary has, therefore, long been a site where geopolitical, military, and domestic policies intersect.

In the 1990s, border patrol operations were integrated across the borderlands, as enforcement strategies were bundled and implemented throughout the region. This "Southwest Border Strategy" entailed four phases of Border Patrol staffing, technology, and infrastructure increases in all 9 southwest sectors, the northern border, and coastal borders. Beginning with El Paso's Operation Hold-the-Line in 1993, the Border Patrol deployed law enforcement and surveillance resources at popular points of entry, displaying a "show of force" intended to dampen unauthorized border crossings (Andreas 2000, 92). From 1994 to 1998, fencing increased from 19 miles to more than 45 miles, including a 20-foot cement and metal wall topped with razor wire in Nogales, Arizona (Fernandes 2007). As the JTF-6 assisted with previous construction efforts, the Armed Forces and National Guard assisted the INS with construction projects in 1990s, as well (Andreas 2000). The strategy successfully reduced attempted border crossings in El Paso, and the effort was expanded to the San Diego sector with Operation Gatekeeper in 1994 (see Nevins 2002 for a detailed account). In 1995, Operation Safeguard began in Nogales, Arizona (expanded to Douglas and Naco in 1999), and in 1997 Operation Rio Grande was implemented in Brownsville, Texas (see Figure 4.2).

This succession of "operations" was enabled by the resources granted in the 1996 IIRIRA, which specifically mandated the construction of 14 miles of triple-layered fencing in the San Diego sector. The Sandia National Laboratory had recommended additional layers of fencing, patrol roads and floodlights to detect and delay crossers long

enough for Border Patrol officials to apprehend them (Nevins 2002; Nuñez-Neto and Kim 2008). This triple fencing was to stretch from the Pacific Ocean westward, but the California Coastal Commission halted construction at Smuggler's Gulch, arguing that the Border Patrol's plans to fill in the canyon with 2 million cubic yards of dirt was environmentally unsound (see California Coastal Commission 2003). As of 2000, USBO and its armed service counterparts had constructed a total of 73 miles of fencing, and the implementation of the Border Strategy has stalled in its second phase (US Government Accountability Office 2001). Border enforcement had seen steady increases in funding, and decreased border crossings in targeted areas, but each decrease was followed by an almost immediate increase in crossings in a neighboring sector. The short-term, localized effectiveness of fencing provided some justification for its expansion, the assumption being that with enough fencing, border crossers will be sufficiently deterred.

Under the Department of Homeland Security, the Southwest Border Strategy's "prevention through deterrence" doctrine was infused with unprecedented funding levels, allowing DHS to coordinate border, drug, and immigration enforcement with more federal agencies and armed service support that in the past. Called the Secure Border Initiative (SBI), this multi-agency strategy to "secure America's borders and reduce illegal immigration" increased detention and deportation rates, particularly of Central and South Americans (US Department of Homeland Security 2008a). Previously, INS/ICE released Central and South Americans because they claimed asylum (and asylees were eligible for release) or they could not immediately deported. In addition, SBI included interior immigration enforcement and the implementation of the Boeing Corporation's SBI*net*, a complex of surveillance technologies used to detect foot and vehicle traffic

along the border (US Government Accountability Office 2008). While not departing significantly from pre-9/11 border policy discourses and enforcement practices, SBI signalled three major changes to border enforcement. First, the initiative began unprecedented cooperation between federal agencies who had been previously antagonistic: federal, state and local law enforcement (see Coleman 2007). Second, DHS made wide use of contracts with private security and technology firms, where it had previously relied upon the military for construction and technology implementation. This shift dramatically increased the cost of security, since surplus materials, JTF-6 and other military labor was not charged to USBP, but used for training exercises or otherwise included in Department of Defense funding (Neto and Nuñez 2008). Third, Secretary of Homeland Security Chertoff used his waiver authority to suspend 37 local and federal regulations to build the more than 700 miles of fencing mandated by Congress in the Secure Fence Act (See Figure 4.3, 4.4). Current border construction projects signal, therefore, a larger reconfiguration of relationship between domestic law, homeland security priorities, and United States territory, leaving large areas of the United States without recourse to the protections traditionally offered by judicial and legislative oversight of the executive branch.

New sections of the border wall significantly impact the land and people of the borderlands. The costs of recent border infrastructure projects demonstrate something of the scale of these changes. From 2005 to 2008, Congress allocated over $2.7 billion for SBI projects, $950 million of which was directed towards “tactical infrastructure.” By comparison, tactical infrastructure was allocated $20 million from 1996 to 1999 (Nuñez-Neto and Kim 2008, 21). Border patrol staff increased from 9,902 to over 17,000 between

2002 and 2008. Pedestrian fencing (Figure 4.5) is estimated to cost $4 million per mile

Figure 4.3: Border Areas Affected by the REAL ID Act

(Map by Richard Gilbreath)

build and $600,000 per year to maintain, while vehicle fencing (Figure 4.6) is estimated to cost $2 million per mile and $300,000 to maintain and cost upwards of $9 million per mile. In each case, the effects of the wall are felt, reported, and redressed at the local level, but these effects rarely reached national news sources and receiving scant mention in Congressional and Government Accountability Office reporting. Thus, while DHS and CBP argue that the benefits of wall construction accrue to the nation as a whole, border construction's negative consequences remain localized.

Figure 4.4: Laws Waived under REAL ID Act

National Environmental Policy Act (NEPA)	Migratory Bird Treaty Act (MTBA)
Administrative Procedure Act (APA)	Military Lands Withdrawal Act
Administrative Procedure Act (APA)	Multiple Use and Sustained Yield Act of 1960
American Indian Religious Freedom Act (AIRFA)	National Forest Management Act of 1976
Antiquities Act	National Historic Preservation Act (NHPA)
Archaeological and Historic Preservation Act (AHPA)	National Park Service General Authorities Act
Archaeological Resources Protection Act (ARPA)	National Wildlife Refuge System Administration Act,
Arizona-Idaho Conservation Act of 1988	Native American Graves Protection and Repatriation Act (NAGPRA
Clean Air Act (CAA)	Noise Control Act (NCA)
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)	Otay Mountain Wilderness Act of 1999
Costal Zone Management Act (CZMA)	Religious Freedom Restoration Act
Eagle Protection Act	Rivers and Harbors Act of 1899
Endangered Species Act (ESA)	Safe Drinking Water Act (SDWA)
Farmland Protection Policy Act (FPPA)	Section 102(29) and 103 of Title I of the California Desert Protection Act
Federal Grant and Cooperative Agreement Act of 1977	Sections 301(a)-(f) of the Arizona Desert Wilderness Act
Federal Land Policy and Management Act (FLPMA)	Sections 401(7), 403, and 404 of the National Parks and Recreation Act 0f 1978
Federal Water Pollution Control Act (Clean Water Act)	Sikes Act
Fish and Wildlife Act of 1956	Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act (RCRA)
Fish and Wildlife Coordination Act (FWCA)	Wild and Scenic Rivers Act
Historic Sites, Buildings, and Antiquities Act (HSBAA)	Wilderness Act

Figure 4.5: Pedestrian Fencing, Arizona

(*Source:* Jay Johnson-Castro)

Figure 4.6: Border Fence, Lighting, and Patrol Roads

(*Source:* Jay Johnson-Castro)

DETENTION INFRASTRUCTURES

Where the PATRIOT and REAL ID Acts expanded DHS' authority to build border fencing, to appropriate land from borderland property owners, and to waive environmental regulations, immigration legislation has long granted the INS/ICE and the Attorney General wide authority to detain noncitizens. The 1952 Immigration and Nationality Act (INA) authorized administrative detention for immigration enforcement purposes for the first time, and through a IRCA, IIRIRA, and the HSA, has given the INS/ICE the unilateral discretion to detain noncitizens seeking admission, prior to their entrance into US territory (explored in more detail in Chapter 7). Until the 1980s, however, there was no "detention system" to speak of because immigration officials, judges, and the Supreme Court exercised their discretion *not* to detain noncitizens in the vast majority of cases. IRCA introduced the first criminal penalties for immigration violations, particularly for employers who knowingly hire unauthorized workers. The 1996 IIRIRA created, however, large classes of excludable *residents*, and mandated detention for "criminal aliens." Broadening deportability and mandating detention, IIRIRA began the expansion of the detention system as we now know it. In 1994, the INS detained an average of 6785 migrants per day; in 2001, the daily detained population settled at around 19,500, where it stayed until 2006. Between 1999 and 2009, the INS and ICE detained noncitizens in 1,528 different facilities. From 2006 to 2010, the daily detention population spiked again, settling at the current capacity of approximately 32,000 (Haddal and Siskin 2010; See Figure 4.7). All detention and removal programs have garnered at least 28% funding increases, while the total budget increased 69% between 2005 and 2010 (Figure 4.7).

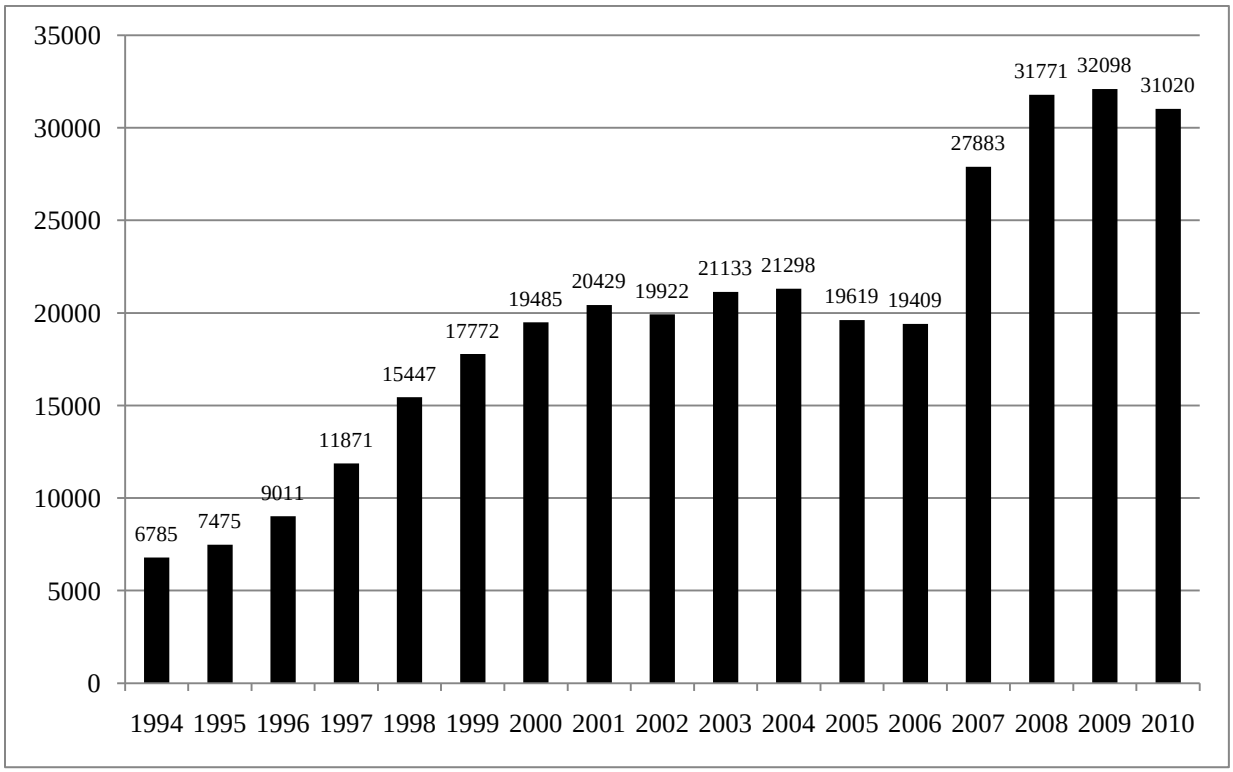
Figure 4.7: Budget Appropriations for Immigration Enforcement Programs 2005-2010 (in $1000)

YEAR	Custody	Fugitive Ops	Institutional Removal	Alternatives to Detention	Transport.	Construction	Automation	Total
2005	864125	79049	53518	20712	200987	26179000	39605000	67002391
2006	1161627	121852	93029	38212	230650	26281000	39748000	67674370
2007	1381767	183200	137494	43600	238284	56281000	15000000	73265345
2008	1547212	218945	178829	53889	282526	16500000	30700000	49481401
2009	1721268	226477	189069	63000	281399	5000000	57000000	64481213
2010[1]	1770000	229700	192500	69900	281900	4800000	90000000	97344000
Percent increase	49%	34%	28%	30%	71%	18%	44%	69%

Note: Institutional Removal refers to law enforcement collaborations, such as the Criminal Alien Program. It does not include 287(g) or Secure Communities, as these are separate budget lines. Construction is a separate line item, but supports detention and removal operations. Automation "allows ICE to improve information sharing with DHS and across ICE organizations." *Source:* US Immigration and Customs Enforcement 2006a, 2007a, 2008a, 2009c, 2010b.)

[1] Includes Enacted only.

Figure 4.8: Average Daily Detained Population, 1994-2010



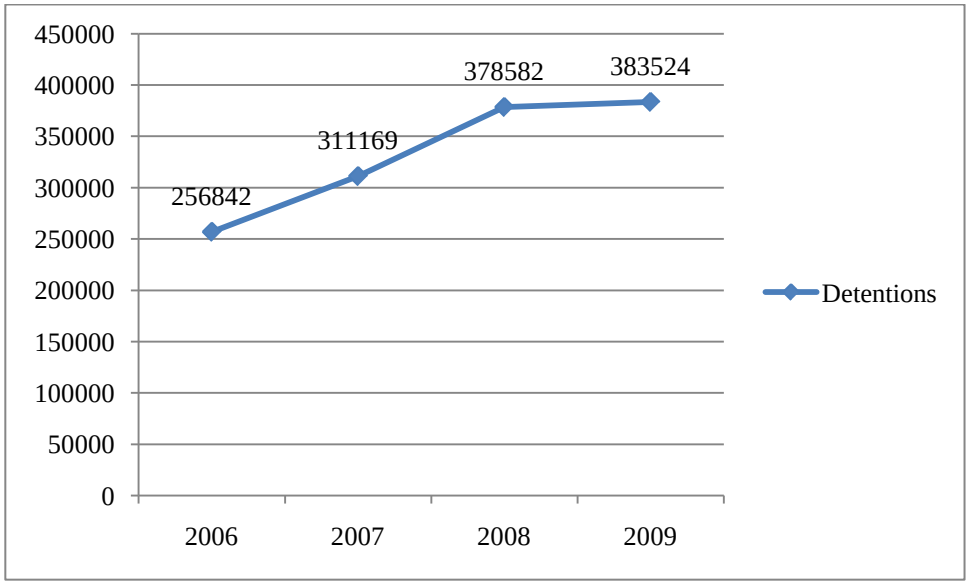
(*Source:* Haddal and Siskin 2010, p. 12)

The Secure Border Initiative included an expansion of the expedited removal program (ER) from ports of entry to land and sea areas *between* checkpoints, and to noncitizens apprehended within 100 miles of a border within 14 days of arrival. Expanding ER expanded the detention system's capacity exponentially, as then Interim Director of Detention and Removal John Torres stated,

> Before we implemented expedited removal across the Southwest border, the Southwest border, the *average amount of time that a person spent in detention was about 90 days*. Once we implemented expedited removal in South Texas last summer, we saw that timeframe drop to about *30 days*. *Our goal is to get to 15 days*. ... Our current time right now is *eighteen-and-a-half days*. Why do I mention this? It is because it's simple math. If I have one bed, I can hold four people in that bed over the course of a year at a 90-day detention rate. As we break that down to about eighteen-and-a-half days, I can use that same bed for 20 people without getting any additional resources….So in effect, we're *looking to increase by over 100 percent the amount of people we can detain and remove with just the addition of 6,700 beds.* (emphasis added, Department of Homeland Security 2006b, 6)

This "speeding up" of deportation allowed ICE to detain and deport noncitizens without immigration court appearances, increasing the number of people ICE could hold with the same number of beds (See Figure 4.9).

Figure 4.9: Total Number of Noncitizens Detained, 2006-2009



(*Source:* US Department of Homeland Security 2008b, 4; US Department of Homeland Security Office of Immigration Statistics 2008c, 3; US Department of Homeland Security Office of Immigration Statistics 2009, 3; US Department of Homeland Security Office of Immigration Statistics 2010, 3.)

Detention infrastructure includes not only detention capacity, but a web of legal and transportation networks that allow ICE to move noncitizens through deportation proceedings "more efficiently." In 2009, ICE detained 369,000 noncitizens in two types of temporary facilities ("holding areas" and "staging locations") and two types of detention facilities (those housing noncitizens more or less than 72 hours). "Holding areas" contain noncitizens for up to 12 hours, after which time they must be transferred to a short- or long-term detention facility. "Staging locations" may hold noncitizens for up to 16 hours. (It should be noted that the 12 and 16 hour limits do not prevent DHS from holding noncitizens overnight, as detainees can be detained in the evening and transferred in the morning.) Neither type of temporary facility has sleeping or shower capabilities. Together, holding areas and staging locations hold 3% of the daily detained population, but represent 84% of all "book-ins," or initial apprehension interviews (US Immigration

and Customs Enforcement 2009b, 9). Because these facilities do not have to be licensed for long-term care, they are virtually unregulated. They may include locked sections of ICE offices or unmarked subfield offices in unmarked office and industrial parks (Stevens 2009). In 2009, ICE operated 186 of these temporary facilities, which are excluded from published lists of detention centers. These lists contain only the 300+ short- and long-term detention centers, or those that hold noncitizens less than and more than three days, respectively.

ICE owns seven "service processing centers, but operations are subcontracted to the private sector. Private corrections corporations own and operate seven more "contract detention facilities," such as Hutto, while counties own and operate seven jails via Intergovernmental Service Agreements, such as Berks. These 21 dedicated detention centers hold around 50% of the detained population, while the remaining 50% is scattered throughout "mixed population" county jails and state prisons (US Immigration and Customs Enforcement 2009b, 9-10). These statistics do not include the growing numbers of noncitizens detained by local law enforcement agencies under the Secure Communities or 287(g) programs. Local law enforcement agencies participating in SComm report persons of questionable immigration status or violent offenders to ICE, and may hold them for up to 48 hours awaiting transfer to ICE custody (Guttin 2009; Shahani and Greene 2010). Thus, the detention system coexists with *and within* the criminal incarceration system.

A sophisticated transportation network connects these 300 jails, prisons, army barracks, and temporary facilities, and this network has seen a 71% increase in funding since 2005, the highest increase across removal-related budget lines (Figure 4.8). ICE

transfers most detainees at least once, and 24% of detainees endure two or more transfers. So where ICE detained over 369,000 noncitizens in FY2009, it also performed as many inter-facility transfers (Transactions Records Access Clearinghouse 2009). Because detention capacity is concentrated in the SW border region, those apprehended in the Northeast, for example, find themselves in Texas detention centers. Not only are they far from their communities of support, but the borderlands lack sufficient legal representation and immigration judges (Human Rights Watch 2009). In addition, federal district courts rule different on various aspects of immigration law, such as *habeas corpus* claims, and scholars and advocates have shown that ICE strategically transfers noncitizens from more to less immigration-friendly districts (Human Rights Watch 2009; Morawetz 2004). Detention and transportation infrastructure work to physically locate detainees in regions where ICE can achieve its desired ends: increased deportation. To speed deportation, and thereby increase the number of noncitizens per bed per year, ICE contracts commercial airlines to fly noncitizens to their countries of origin. "ICE AIR" deported over 367,000 migrants from 22 airports, flying through hubs in Texas, Arizona, and Louisiana at a cost of $680 per noncitizen per flight (Harris and Soichet 2008; Olivio 2009). In short, this topography of legal and transportation infrastructure means that noncitizens in the Northeast, Midwest, and Northwestern US are transferred south in order to be deported.

ICE has leveled its detention capacity and funding for construction in recent years, but has shifted its emphasis to information sharing and collaborations with local law enforcement. While Figure 4.9 shows a 28% increase in "institutional removal" funding, ICE has added new budget lines for Secure Communities, a program which

allows county jails to check the immigration status of people coming through its cells. Aimed at identifying "criminal aliens," the program tends to funnel misdemeanants into ICE custody, rather than violent offenders (Guttin 2009). So while border wall construction has worked to push migrants into increasingly dangerous areas, noncitizen residents (with or without documents) navigate an interior, post-entry landscape with more points of contact between ICE and noncitizen communities. As desert border-crossings and criminal aliens dominate popular migration imaginaries, border wall construction is integrated into a broader network of apprehension, containment, forced mobility, banishment. The policing, inspection, and detention tactics associated with territorial borders and ports of entry are now distributed—albeit unevenly—across the US, creating a thicker network of institutions that police citizenship. These spatial strategies are linked, institutionally, and deployed, strategically, to create a generalized sense of unease, insecurity, and inevitable exclusion for noncitizens (Coleman 2009).

CONCLUSION

Rather than sealing US territory from illegal incursions, concrete and steel infrastructures seem to proliferate zones of extra-legality, where some US residents find themselves without access to information, grievance procedures, and more or less stripped of the rights afforded to citizens who do not live near the boundary (Hyndman and Mountz 2008). From DHS' perspective, the REAL ID waivers apply to particular stretches of territory—not citizens—and are necessary to ensure the sovereignty of the US. These waivers do not, in theory, prevent residents from exercising their rights, but they do appear to negate any specific, place-based or territorial rights residents may

claim. The construction of the border wall appears, therefore, to have dramatically reconfigured the relationship between law, the federal government, and citizens; the 'uniquely American freedoms' supposedly secured by border enforcement are actually diminished in the process of securing them. Just as enforcement escalations in the 1980s and 1990s led to increased illegal activity throughout the borderlands, it appears that building the border wall diminished citizens' access to a host of legal procedures. Thus, homeland security practices may create the conditions of insecurity they are engineered to prevent (Bialasiewicz et al., 2007).

What does detention mean when detainees must be housed with "regular" prison populations, in repurposed prisons, or in tents? To proponents of stiffer penalties, "illegal immigration" is perceived as a threat to "every facet of our society—security, education, social services, and health care" (Pryce in Coleman 2008, 5). That is, the problem of immigration is represented as an on assault the state's ability to ensure survival of US citizens. Yet, the border wall impacts the mobility, property, and livelihoods of people on living near the border in myriad ways. As such, the localized and individualized effects of border enforcement infrastructural are borne disproportionately by communities in the borderlands, while the Department of Homeland Security announces the completion of each section of fencing as a victory for the United States as a whole. Border infrastructure remains, as Andreas (2000) argued, an important "stage" for the performance of state power. But as Coleman (2005), the borderlands operate in this way precisely because policy-makers imagine it as an open terrain and develop policies without consideration of its social, economic, political, or geomorphological particularity.

Taken together, border and detention infrastructures combine spatial strategies of

deterrence and containment, an ironic internalization of Cold War anti-proliferation tactics. The re-use of military landing mats, army barracks, surplus prison space shows, furthermore, how the infrastructures of successive military interventions interlace with wars on terror, drugs, and crime. Wall building concretizes the US' symbolic mastery of the US Southwest, and appears to sediment US claims to national space. Yet, these projects occurred alongside long-standing efforts to "push the border outward," such as US consulates' administration of new immigrant applications abroad, ICE operations abroad, and DHS inspections of international ports. Interior policing, detention, mobility between centers, and deportation rely upon a complex logistical infrastructure, as well, translated from the world's largest criminal justice system. While these material landscapes naturalize and normalize exclusion, they must be seen as instruments, "ready at hand" (Graham and Thrift 2007) to be repurposed and re-deployed. As spatial strategies, they spatialize power relations in different ways, but in combination, they form a complex assemblage of bordering practices. Enclosing national territory from unauthorized entries and criminalizing populations, this assemblage of bordering practices weaves topographical with topological relations of banishment.

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CHAPTER 5: DETENTION, DISCIPLINE, AND DETERRENCE IN US NONCITIZEN FAMILY DETENTION PRACTICE

INTRODUCTION

As the previous chapter described, US immigration officials more than doubled the yearly detention of noncitizens from 146,760 to 369,483 between 1999 and 2009 (TRAC 2009). Moving this volume of noncitizens through its 33,000 bed system, ICE now manages the fastest growing incarcerated population and the largest prison system in the United States (US Immigration and Customs Enforcement 2009b). Considering that the US incarcerates over 2 million people, the world's largest national prison population, the size and scope of the US's detention of noncitizens is locally and internationally significant. Implementing a "catch and remove" approach to immigration enforcement, the Secure Border Initiative (SBI) both ramped up policing activities and eliminated "loopholes" that prevented the older Immigration and Naturalization Service (INS) from detaining noncitizens suspected of violating immigration law. The expanded use of detention reflected a more general sense among federal immigration authorities that something more was needed – beyond regular border patrol, interior investigations, and port of entry inspection operations – to deter undocumented migration to the US (US Immigration and Customs Enforcement 2003). As a result, a whole range of individuals who previously would not have been detained in order to effect deportation – including arriving asylum-seekers, Central Americans who could not be quickly deported, and "vulnerable" populations, such as families – were caught up in a growing immigration prison complex.

Immigration scholars often treat detention as a function of deportability. Indeed,

the specific legal, institutional, and infrastructural conditions of detention are rarely addressed as strategic components of immigration enforcement. A small but growing detention literature has tracked, however, how confining noncitizens and transferring them to isolated centers is a crucial aspect of state strategy vis-à-vis the regulation of immigration. This research not only links detention to a "deportation turn" in the wealthiest states across the globe (Collyer forthcoming), but shows how detention includes a series of surveillance practices that migrants internalize before, during, and after their encounters with immigration authorities (e.g., Bigo 2007, Coutin 2010, Martin and Mitchelson 2008, Mountz 2004, Schuster 2005a, b). Moreover, this previous research outlines how the location and conditions of detention allow states to engineer detainees' access to legal protections, representation, and resources (Gill 2009, Hyndman and Mountz 2008, White 2002). In the US, detention falls to the administrative side of immigration policy-making, and administrative discretion to detain noncitizens is thereby protected from federal court oversight beyond immigration law, itself notorious for its deference to lawmakers over courts (Neuman 2005). Policing, detention, and deportation have reverberating effects, however, and interrupt household incomes, force migrants to give up possessions and savings, and fragment the relations of care that sustain transnational migrant networks. As I show below, the effects of detention-as-deterrence policies exceed those policies' stated aims. Detained families' accounts of isolation, family separation, bodily ordering, and criminalization reveal heterogeneous, but resonant, impacts on transboundary migrants.

This chapter has two primary goals. First, I want to show that noncitizen detention has become a key strategy—specifically a spatial strategy—in the US Department of

Homeland Security's approach to border and immigration enforcement. Most importantly, I show how DHS agencies have come to understand transboundary migration as a territorial vulnerability, and how confinement in prison facilities became a central US immigration enforcement tactic, and then a key counter-terrorism strategy. I trace shifts in detention policy and practice through the case of family detention because the difficulties in detaining parents and children together illuminate the improvisational character of enforcement policy-making. Second, I argue that conceptualizing detention's increasingly central role in risk-based, biopolitical security regimes requires a new lens on disciplinarity. ICE's apprehension and detention policies seek to *deter* future migrants as much as ensure deportation, yet detained families' understood their detention in terms of its effects on their relationships to each other and to broader support networks. Their narratives reveal how ICE's detention policies impact noncitizens' decision-making, but more importantly, the ways in which these interactions exceed ICE's aims. Detention's disciplinarity is not defined by institutional efforts to remake individuals, but oriented towards the behavior of entire populations of future, potential migrants, disciplinary tactics--spectacular enforcement practices and subjectification. As risk and security have become dominant themes in for scholars of international relations and geopolitics, it is critical to attend to the ways in which disciplinary modalities of power are reconfigured—and re-incorporated—into the risk-based security practices (and ontologies).

DETENTION, RISK, AND DISCIPLINE

The scale of US noncitizen detention may be novel, but detention and confinement have become common policies in major receiving countries and, increasingly, in transit countries, as well (Collyer 2007, Coleman 2007, Hyndman and Mountz 2008). Liza Schuster locates detention in a European states' efforts to control transboundary migration: the *deportation* of out-of-status migrants, the *detention* of those suspected of being out-of-status, and the *dispersal* of settled refugees away from communities of support (Schuster 2005a, b). From the perspective of migrants' journeys, however, status changes with a series of arrivals, departures, and everyday mobilities, so that "status mobility" and "geographical mobility" are more complexly linked than the geopolitical marking of territorial boundaries would allow. This range of state and self-management practices lead Schuster to conceptualize exclusion in a way that captures not just territorial removal, but forms of legal (documentation regimes, education, healthcare) and social (racism, xenophobia and prejudice) exclusion. In the UK, Nicholas Gill has shown how a range of middle-men impact migrants' mobilities *within* detention system, in addition to asylees' pathways into and out of detention center (Gill 2009). Similar criminalization, presumed guilt, and "bogus asylum seekers" discourses frame government responses to migration, a pattern that Alison Mountz has documented in Canada, as well (Mountz 2010). Though couched in specific jurido-political milieux, speedy deportation, frequent inter-center transfers, isolation from legal representation, and strategic invisibilization characterize detention practices in the EU, US, Canada, and Australia. For Bigo, the agglomeration of waiting zones, centers, and malleable status place migrants on a "long march," "where circulating is tolerated, but stopping to rest or

settle is not allowed…It is the time of endless circulation, of constant rotation" (Bigo 2007, 30). Detention is not the final point or a limit case of "mobility management," but a space in which exclusion and banishment congeal (ibid., Foucault 2007, 107-110).[3]

Quite apart from these ethnographies of detention, critical border and security studies scholars have analyzed how newly implemented technologies of border inspection, identification, and surveillance follow transboundary travelers before, during, and after their passage through a port of entry. Identity profiling, databanking, and risk analysis techniques work together with x-ray scans, pat-downs, "behavior observation," and "passenger imaging" allow security professionals to calculate a transnational migrant's *probability* of committing a crime (Adey 2009, Amoore 2009, Amoore and de Goede 2008, Amoore and Hall 2009, Martin 2010). While these inspections are more visible in places like airports and government buildings, security agencies have linked a number of previously distinct databases and access to credit card transactions and phone records, allowing them to continually evaluate risk. Surveillance studies scholars have long argued that these risk-based "social sorting" (Lyon 2003, 2006) mechanisms remain diffuse and disconnected, forming a fragmented "surveillant assemblage" (Haggerty and Ericson 2000) rather than a coherent, "Big Brother" surveillance apparatus. The social sorting that differentiated between more and less dangerous subjects has been redeployed to evaluate risk to the "population and the way of life," so that everyday security practices aim to pluck "the hidden terrorist" from the everyday comings and goings required for capitalist circulation (Martin and Simon 2008). Focused on risk

[3] Stuart Elden offers a similar argument regarding Foucauldian discipline. He argues that Foucault understands disparate disciplinarity modalities of army barracks, schools, hospitals and asylums to meet in Bentham's Panopticon, rather than emanate from the prison, as many scholars have argued. S. Elden, 2001. *Mapping the Present: Heidegger, Foucault and the Project of Spatial History*. London: Continuum, pp. 120-150.

management's knowledge practices, and ways in which state security institutions integrate the techniques, this strain of research has emphasized the respatialization of the border, as borders are pushed both outward and inward and exist "everywhere and nowhere" (Coleman 2009, Belcher et al., 2008).

For Michael Dillon, infusing national security decision-making with risk-based evaluation represents a fundamental shift in political ontology, and therefore at security professionals' concept of the *human* (Dillon 2007, 2008). Where liberal law and disciplinary regimes revolved around various notions of a whole human, defined by labor, language, or signification, Dillon argues that risk-based power/knowledge regimes model the biopolitical governance as a transactional space. In this transactional space, neither the biological species being nor the moral individual are the primary objects of intervention. Instead, risk modeling defines this transactional space in terms of networks, associations, and patterns between digitized pieces of information. Represented by credit card transactions, travel patterns, and criminal records, life in this transactional space unfolds through the circulation of commodified goods, the connections between people and things, and the spontaneous emergence of disruptions. More a digital *aggregate* than an individual, a "person" exists only insofar as s/he is related to the circulation of goods and services. The connections and associations produced by this circulatory existence map, therefore, a terrain of continually shifting possibilities (see also Amoore 2009). Seeking to calculate and control risk, homeland security has become, Dillon argues, a science of contingency, through which security professionals deploy ever-more sophisticated algorithms at a shifting terrain of possibilities. As security agencies link nationality, religion, language, and dress to risk profiles, people become threatening *in*

and through their connections to suspicious places, people, and things. Weaving risk analysis into immigration and border enforcement, these risk-based modeling practices produce a political ontology of connection, circulation and contingency, and a subject that is more a risk-pooled cohort than a whole moral individual or liberal subject.

For penologists, however, risk management does not represent a leaving behind of imprisonment or disciplinary technologies, but reconfigures the prison's transformative function. Actuarial approaches to crime control produced a shift—if a halting, incomplete, and discordant one—from rehabilitative approaches to imprisonment towards to the segregation of risky populations from safe ones. The purpose of imprisonment is no longer to return reformed individuals to society, but to contain risky populations for the sake of public safety (Feeley and Simon 1992, Garland 2001). Furthermore, criminal history determines access to citizenship benefits, and adjudication has been replaced by an administrative criminal justice system with wide discretionary authority. As states respond to the pressures to protect their citizens from the negative effects of neoliberal globalization and state security agencies scrutinize transnational mobility, policy-makers have framed immigration both as an issue of social order/crime control and national security. In this context, a person's guilt, innocence, or political identity is secondary to state security agencies' efforts to segregate, contain, and control risky populations. In addition, administrative boards decide sentencing and parole, so that punishment's distribution has become largely an administrative matter, separate from the adjudication processes that (nominally) guarantee due process. Placing authority with administrative rather than judicial bodies, the criminal justice system has come to resemble the immigration system. While it has become commonplace in the US to refer to the

"criminalization of immigration," the concurrent "immigrationization of crime" and "criminalization of immigration" indicate, Miller argues, the emergence of "a new system of social control that draws from immigration and criminal justice, but is purely neither" (Miller 2002-3, 618). What we may be witnessing is not just a blurring of domestic and foreign policy (Coleman 2008b), a threshold or a mobius strip folding inside into outside (Bigo 2001), but the generalization of confinement as a spatial practice of neoliberal biopolitical governmentality (Peck 2004, 392).

What do we make, then, of detention's strategy of bodily confinement alongside digitized risk analysis technologies, like biometric data collection, identity management, digital imaging, and databanking? How do we square detention's blunt instruments with these diffuse, less invasive surveillance technologies? And conceptually, how does detention's disciplinary legacy diverge from or cohere with the aforementioned biopolitical technologies? Dillon's analysis distinguishes between disciplinary, legal, and risk-based subjects, yet securitized spaces continue to require legible subjects (Martin 2010). Studies of risk-based national security practices have, for the most part, avoided questions of disciplinarity, choosing instead to focus on emerging biopolitical assemblages. Without reducing detention centers to disciplinary institutions, detention scholars have noted, however, how key aspects of Foucauldian discipline remain important to border and immigration enforcement.

For Mountz (2010), detention belongs to a spectrum of containment practices: categorization, physical enclosure of detention centers, performances of strong state responses to migration, and strategic in/visibilities. She details, further, the ways in which "feeling watched" defines migrants' lives and border-crossings experiences, even when

they obtain legalized status. For Mountz, this spectrum of containment practices work to produce migrant identities even where state immigration authorities are not present. Coutin, similarly, illuminates how US immigration enforcement practices confine noncitizens' movements before, during, and after their detention and deportation (2010). Faced with stigmatization in the US and in the countries to which they are deported, migrants internalize judgment, criminalization, and restricted mobility of the detention center. They, in turn, stay close to home, restricting their own mobility. Post-entry deportability also works as a form of social control for noncitizens. As Coleman (2008a) has shown, noncitizens can be excluded *after they have been admitted*, judged by both actions (e.g., criminal charges) and characteristics (e.g., homosexuality). That is, the border inspection haunts the post-entry landscape of noncitizen residency. De Genova (2002) argues that deportability's (and detainability's) indeterminacy is far more conducive to producing a docile labor force than the 100% deportation DRO envisions. Thus, as a site of surveillance's performance and internalization, the detention's disciplinary power works through a double movement of spectacle and subjectification that reverberate far beyond the detention center itself (c.f. Elden 2001; Foucault 2007, pp. 107-110).

Modulating imprisonment with risk management has not, therefore, made the prison nor disciplinarity less important, nor have they been superceded by biopolitical security practices. Rather, as I hope to show below, disciplinary techniques—categorization, spatial partitioning, hierarchical ordering—have long been remodulated to provide the spatial ordering, visibility, and models of correct behavior necessary for a society "governed through freedom" (Rose 1999). Releasing the prison from its reform

imperatives (Garland 2001), physical confinement is portable social risk mitigation strategy; prisons are recombinant institutions and confinement a versatile risk management practice. Aimed at inherently mobile, transnational, and connected populations, this "geopolitics of mobility" combines nominally domestic public policy, immigration law, and exceptional executive powers to secure particular territorial orders. Interdiction, dispersal, transfers between detention centers, voluntary return, forced repatriation, and off-shore detention locate detention in a different relation to receiving countries' sovereign territory. Foreigners' detention is, as Bigo (2007) argues, the price of security, as illiberal border zones are essential to the liberal governance. Linked to an assemblage of surveillance, policing, profiling, and forced mobility practices, detention is a key spatial strategy in the US' mapping of national and global space.

CRIMINALIZATION, SECURITIZATION, AND TERRITORIAL VULNERABILITY

As various immigrants have been understood as the primary source of "internal enemies" and threats to national security, tying noncitizen detention to US geopolitical positioning. In the case of Chinese exclusion at the turn of the 19th century and Japanese internment during World War II, detention and deportation policies were explicitly racial and ethnic. Immigrants—as opposed to non-permanent residents—have been variously understood as racial, religious, linguistic, and ideological threats that cannot be distinctly separated from efforts to establish particular territorial and geopolitical orders (Nagel 2002; Tesfahuney 1998). Following a series of large refugee influxes (such as the 1980 migration of 125,000 Cubans to Florida) and a growing public perception of the southern border as "out of control," the 1986 Immigration Reform and Control Act (IRCA)

instituted the first criminal penalties for immigration–related crimes into immigration law (Pub.L. 99-603, 100 Stat. 3359). In the decade following, immigration law became more punitive, and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) institutionalized mandatory detention for a broad range of documented and undocumented migrants (Pub.L. 104-208, Div. C, 110 Stat. 3009-546). In particular, the bill broadened the category of "aggravated felony" and created the Expedited Removal (ER) program. In particular, IIRIRA broadened the category of "aggravated felony" to include a range of petty crimes and worked retroactively. This ever-expanding list of "aggravated felonies" funneled noncitizens with criminal records—both recent and long past—into mandatory detention. Further, the Expedited Removal (ER) program deputized INS (and now ICE) officers to issue deportation orders to undocumented migrants apprehended at ports of entry with limited court oversight. Migrants in ER processing became subject to mandatory detention. Noncitizens in the US face, as a result, expanded spaces of policing and shrinking judicial oversight since the mid-1980s (Coleman 2007). Even while administrative detention is not technically considered punishment for immigration-related infractions, mandatory detention both practically and symbolically linked immigration status to criminality.

Detaining Children

Migration-related detention took an exclusively penal form in the US, which created specific problems for detaining families. Old army barracks, former prisons, existing prisons and jails, and a range of impromptu holding areas produce a highly uneven landscape of detention (Dow 2005, Welch 2002). Unaccompanied children were often detained in these facilities, languishing for long periods without legal representation

or the ability to navigate the adversarial legal system on their own (Women's Refugee Commission 2002). In 1997, *Flores v. Meese* required the INS to stop holding minors in restrictive facilities, and to release them to family members or sponsors (*Flores v. Meese Settlement* 1997). The lawsuit also stipulated access to education, counseling, medical and dental care, recreation, and state child welfare institutions, effectively creating a separate INS custody system for children. In the 1990s, the INS routinely released families with "Notices to Appear" (NTA) before an immigration judge, but, as I show below, releasing "vulnerable populations" came to be understood as a "procedural vulnerability" in the immigration enforcement system. In cases where parents had criminal convictions or fell into mandatory detention categories, the INS often detained parents and children separately (Women's Refugee Commission 2007). The problem of family of where to detain families arose, therefore, from contradictions between mandatory detention of parents and INS' inability to detain children in penal facilities.

The Detention and Removal Office's *Endgame* strategy specifically laments the lack of *Flores*-compliant, child-appropriate facilities, and notes that the lack of "soft facilities" for low-risk detainees impedes DRO's 100% removal target (US Immigration and Customs Enforcement 2003). In similar statements, Secretary of Homeland Security Michael Chertoff observed:

> There are certain housing needs that are required when you have children. We're working … to find a way to solve those housing needs so that when family groups come across, we have the ability to detain them as well, until we can remove them. And, we don't release them into the community where, more likely than not, they're going to abscond. (Department of Homeland Security 2006b).

As with smuggling and border "illegalities" more broadly, DHS and ICE couched family release as a (potential) vector of illegality: "by expanding Expedited Removal to cover illegal alien families, DHS is closing down a loophole that has been exploited by human smugglers and helping stop future illegal immigration" (US Department of Homeland Security 2006). Migrating families represented not only an opportunity for terrorists, but were framed as uniformly illegal. Families' exceptional status came to be viewed as an entry point for potential terrorists. Perceived as vulnerabilities, ICE's previous policies and procedures became categorical pathways into and out of the US, and legal status and smuggling logistics became vectors of threat in the same complex system. For DHS, the problem of detaining "low-risk" noncitizens was a matter of *infrastructural suitability*, rather than a conflict between legal precedent, humanitarian need, and "catch and remove."

INS responded to these difficulties by detaining families in a variety of *ad hoc* facilities, such as guarded hotel rooms, and Berks opened as the first dedicated family detention center in March 2001. Housing only 84 beds, Berks did not accommodate all families apprehended by ICE, and as of 2001, ICE had not developed overarching family detention or release policies to guide its field offices. Families' treatment varied widely, therefore, between border checkpoints, ports of entry, and INS field offices, and the agency continued to release most families encountered at the US-Mexico border with NTAs. When Berks opened, the INS announced plans to open Berks-like facilities across the US, to accommodate the larger number of families seeking asylum (Schmitt 2001, Rosin 2001).

Detention and the War on Terror

During the flurry of security policy-making after 11 September, 2001, immigration law's wide administrative authority to detain and deport quickly became a strategic legal component in US domestic counter-terrorism operations (explored in more detail in Chapter 7). Attorney General John Ashcroft expanded INS detention rules in lieu of obtaining real authority to preemptively detain terrorist suspects. Immigration and Naturalization Services, and the then-new Department of Homeland Security after it, targeted noncitizens, Arabs and Muslims for increased surveillance and self-reporting, and many were detained and eventually deported through these "voluntary reporting programs" (Aldana 2004, Nguyen 2005). ICE detained others under the pretenses of immigration investigations, allowing counter-terrorism officials more time to investigate potential criminal charges. ICE detained others under the pretenses of immigration investigations, allowing counter-terrorism officials more time to investigate potential criminal charges. Ashcroft also stiffened asylum's evidenciary requirements, which made it more difficult for political refugees to seek protection in the United States. In other cases, the INS and ICE enforced long-ignored clauses in immigration law, such as an Immigration and Nationality Act (INA) clause requiring noncitizens to report address changes within 10 days of a move. ICE (and the INS before it) did not have the resources or procedures to keep track of the address change forms it demanded, so that bureaucratic mismanagement landed many authorized residents in detention (Miller 2002-3). Without reconfiguring immigration law's admission and exclusion principles, executive branch agencies exploited immigration officers' administrative authority to make enforcement policy, especially their discretionary powers to detain noncitizens without court

oversight, charges, or evidence. These policy recalibrations embedded immigration enforcement in an emerging security-driven institutional context. Administrative immigration detention became, therefore, a key spatial strategy in the domestic War on Terror, though it operated with considerably less public visibility than the military's administrative detentions.

Against this backdrop of expanded administrative detention, DHS reframed border and immigration enforcement to become synonymous and interchangeable with counter-terrorism. The border-crossers and drug traffickers of 2000 became potential conduits for terrorist operations:

> Prior to the terrorist attacks of 9/11, the primary focus of the Border Patrol was on illegal aliens, alien smuggling, and narcotics interdictions.… After 9/11, it was apparent that *smugglers' methods, routes, and modes of transportation are potential vulnerabilities* that can be exploited by terrorists and result in terrorist weapons illegally entering the United States… [T]he potential exists for a single individual or small group to cross the border undetected with biological or chemical weapons, weapons of mass effect, or other implements of terrorism. (Emphasis added, US Customs and Border Protection 2004, 4)

Emphasizing smugglers' strategic invisibility, transportation infrastructure, and pathways across the border and back, CBP's border became not a line, secured through a series of barriers, but a complex of networks, material assets, and wealth. Incorporating networks into CBP's concept of the border, undocumented labor migration became a condition of possibility for terrorist attacks and constituted, in the context of the War on Terror, a significant territorial vulnerability. ICE's investigative sub-agencies focused on tracking

and freezing trafficking assets, which included detaining and criminally charging smugglers. ICE's investigative sub-agencies focused on tracking and freezing trafficking assets, which included detaining and criminally charging smugglers. As "illegal migration" came to be understood as a conduit, transboundary mobility itself came to be understood as a pre-condition for terrorist activity, and border and immigration enforcement as preempting certain conditions of possibility for another attack.

"Catch and Remove"

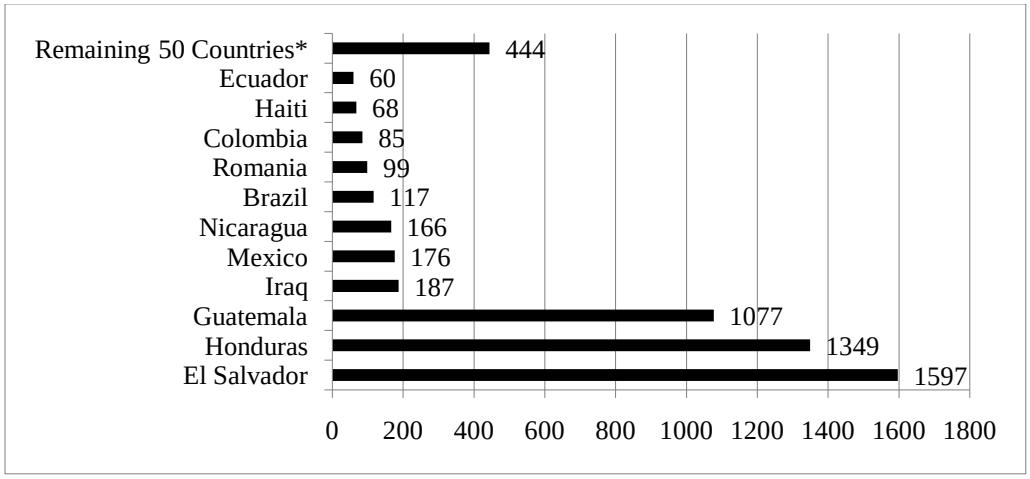
Learning from its 1994 "Prevention through Deterrence" Southwest Border Strategy, CBP asserted that "the proper mix of assets increases the 'certainty of apprehension' of those intending to illegally cross our borders," which "has established a deterrent effect in targeted locations" (Customs and Border Protection 2004, pp.8, 9). These "mission alignment" efforts linked border security to interior immigration enforcement and prosecution efforts in new ways. ICE's Office of Detention and Removal Operations, as mentioned in this paper's opening, sought to "deport all deportable aliens" and to "support DHS efforts to deter illegal migration" (US Immigration and Customs Enforcement 2003, p. ii). Integrating these then-new agency missions into SBI, DHS rolled out a bundle of border surveillance technologies (SBInet), increased border patrols, and expanded Expedited Removal's time, space, and applicability. DHS expanded ER from ports of entry to zones within 100 miles of the southern or coastal borders, and to *all* transboundary migrants caught within 14 days of arrival. "Ending catch and release policy," DHS targeted "Other Than Mexicans" (OTMs), especially Central American migrants who could not be immediately deported and for whom the INS and then DRO did not have sufficient detention space (Department

of Homeland Security 2006b). As more migrants became detainable, and then detained, confinement came to occupy an increasingly important role in DHS' attempts to manage "illegal pathways" and flows. Expanding detainability and bedspace required a series of legal, administrative, and infrastructural changes and concretized detention's increasingly important institutional location in immigration and border enforcement.

By creating new detainable populations nearly over night, "catch and remove" produced an immediate detention bed shortage. To address this shortfall, DHS opened a number of new, primarily private detention centers in the southwest United States, contracted with county jails through Inter-Governmental Services Agreements (IGSAs), and added beds to existing ICE facilities. While the 596 family beds represented a small percentage of this total, family detention's story reveals three key elements of these changes. First, DHS addressed the SBI-produced family detention space shortage by opening the T. Don Hutto Family Residential Facility (Hutto hereafter), a 512-bed medium security prison, owned and operated by the Corrections Corporation of America (CCA) in Taylor, Texas. As of September 2009, ICE owned six detention centers; of the remaining 250+ detention centers, 14 are private, dedicated detention facilities, and the remaining 240 hold noncitizens in mixed facilities that hold both convicted prisoners and civil immigration detainees, as described in Chapter 4. Second, Hutto operates under an Inter-Governmental Service Agreement (IGSA) between ICE and Williamson County, Texas' Commissioners' Court, who in turn contracted with CCA to operate Hutto. Both privatized and devolved to local government, Hutto's contractual relationships are typical of the complex of jurisdictional delegations and deferred liabilities that dominate the detention sector. Third, almost two-thirds of Hutto's families came from Central

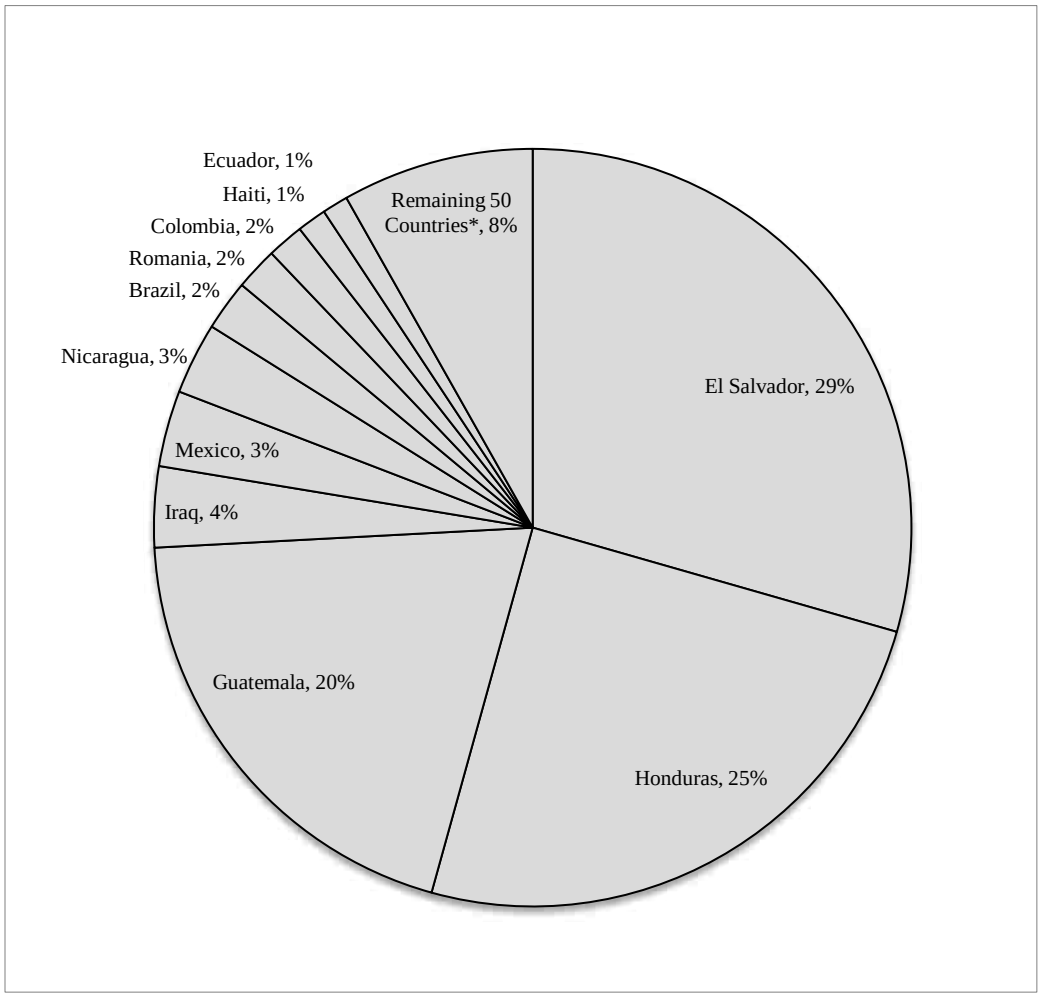
America, and fell into DHS' new categories of detainability (Coutin 2010). Mexican families represented 3% of the total between May 1, 2006 and June 23, 2009, while Salvadoran families were 29%, Honduran families 25%, and Guatemalan families 20% (Figure 5.1, 5.2). Family detention succeeded then, in drawing new populations into the detention system, even if these groups do represent a large percentage of border crossers annually.

Figure 5.1: Number of Adults and Minors Detained from May 1, 2006 to June 23, 2009 at the T. Don Hutto Family Residential Facility, by Country of Citizenship.



(*Source*: US Immigration and Customs Enforcement Responsive Materials to American Civil Liberties Union Freedom of Information Act Request. On file with author.)

Figure 5.2: Percentage of Total Families Detained at T. Don Hutto from May 1, 2006 to June 23, 2009, by Country of Origin



(*Source*: US Immigration and Customs Enforcement Responsive Materials to American Civil Liberties Union Freedom of Information Act Request. On file with author.)

While Hutto was not exceptional in the juridical and political-economic landscape described above, DHS focused on the facility's "success" in detaining families, and used the policy to represent the efficacy of the "catch and remove" policy as a whole:

> The practice of "catch and release" for non-Mexican aliens existed for years and was one of the greatest impediments to border control. DHS and ICE re-engineered the detention and removal process to end this practice along the border, an accomplishment considered impossible in FY05 when only 34 percent

> of non-Mexican aliens apprehended along the border were being detained. In May, ICE opened a new 500-bed facility in Williamson County, Texas that is specially equipped to meet family needs. In August 2006, only 28 family units were released, compared with 820 in the month before the facility opened; a 97 percent decline in family releases on the southern border. (US Immigration and Customs Enforcement 2008d)

These statistics mask the fact that many of Hutto's families were not apprehended at the border, but elsewhere within the United States. For example, one mother was detained with her child when she arrived to pick her/him up from the Division of Unaccompanied Children's Services, a Department of Justice agency charged with noncitizen children's custody (Interview 2008). Further, a majority of detained families file for asylum and are granted political asylum in the United States (*America's Family Prison* interviews 2007, Interview 2008). They are not, therefore, deportable, but their detention comes to stand in for and imply mass deportation, and as Coutin argues, is "designed to convince migrants that they are on their way out" (Coutin 2010, 5). The excerpt implies, further, that Hutto's 500 beds remain filled, when the San Antonio Field Office Director admitted that far fewer families appeared at the southern border than expected, and adult women filled half the facility from 2007 onwards (*In re: Hutto Detention Center*, Deposition of Marc Moore).

As a spectacular and strategic representation of "success," family detention served as a metonymic performance of the detention system as a whole. Using the relatively small and more easily apprehended group to represent non-Mexican migration as a whole, family detention performed DHS' hardened sensitivity to humanitarian

migrations. Beyond these performances of strong state power, however, detention works on noncitizen populations in a number of ways that cannot be reduced to deportation or disciplinary norms of imprisonment. Detention combines a range of geographical imaginings, as I described above, and spatial practices that mediate detainees' relationships to themselves, each other, and to networks "on the outside." Rather than opposing detention's geopolitical role to its application, i.e. policy to practice, detention works through an heterogenous and often contradictory combination of spatial practices.

Hoping to "catch and remove" existing undocumented migrants and to deter future migrations, detention is as much a spectacle of state power as it is an enforcement tactic (Andreas 2000). ICE's attempts to create a purely "lawful" national territory are, therefore, bound up with ICE's attempts to discipline potential migrants. Ironically, intensifying border and immigration enforcement often encourages smuggling operations, as those seeking to cross the border increasingly require assistance to cross highly patrolled and remote areas (Cornelius 2001, Hing 2001, Nevins and Aizeki 2009). As others have argued, border and immigration enforcement practices often produce the so-called problem of illegality they ostensibly intended to solve (Massumi 2005, Bialasciewicz et al., 2007, Martin and Simon 2008). Working to secure national populations by changing the behavior of an abstract, global population of potential migrants, detention intertwines the disciplining of individuals and populations with geopolitical mappings of global space.

DETENTION'S DISCIPLINARITY: ISOLATION, ORDERING, AND CRIMINALIZATION

ICE's legal authority and institutional position does not, however, capture detention's full effect on detained families, nor facility-specific policies and practices. It is the quotidian ordering of bodies, space, and time within detention centers that constitutes the practice as a spatial strategy. While I described how ICE links detention to border and counter-terrorism policing above, daily life in detention is, for most detainees, managed by non-federal actors and unfolds through a host of other practices. At Hutto, for example, CCA coordinates visitation, head count, telephone, recreation, education and detainee work policies. They stock and set prices for commissary items, including phone cards. The embodied practice of detention unfolds through a diverse set of material practices that cannot be collapsed with the geopolitical imaginings that comprise ICE's "catch and remove" policies. Yet for detained noncitizens—families, in this case—it is the daily spatio-temporal ordering that dominates their experience. As I show below, detention's disciplinarity works through location, isolation, criminalization, and forced mobility, a combination of spatial practices that both perform state power and changed the ways in which detained parents and children understood themselves.

Location

In choosing between two sites to house the second family detention center, an internal report mentioned Hutto's proximity to a strong immigrant advocacy community: "Austin, which is 25 miles from Hutto, has a broader NGO and CBO base that have typically been very strong advocates for immigrants. The Political Asylum Project of Austin also known as PAPA is a pro bono agency actively involved in advocacy for immigrants" (Emphasis in original, *Bunikyte et al. v. Chertoff et al.* Anonymous

Memorandum). (PAPA, now known as American Gateways, is one of the few entirely pro bono legal organizations in Austin and does not engage in lobbying or political advocacy.) Hutto, however, was selected, indicating a degree of both conflict and improvisation among ICE decision-makers. What these internal evaluations reveal is that ICE is acutely aware of detainees' relationships to surrounding communities. Valuing isolation/connectedness to surrounding communities and supporting institutions as a *negative* geographical characteristic implies a concerted effort to remove detainees' rights "by geographical design" (Mountz 2010). Hutto's proximity to Austin does not overcome the fact, however, that the facility is functionally separate from Taylor, serviced by a single asphalt road, and hidden from town by a large railroad depot. Bordered by softball fields, a state highway, and agricultural land, the former prison is virtually invisible to most of Taylor. Thus, detaining noncitizens in remote detention centers serves to both manage noncitizen flows and to enclose "illegal" populations from "legal" ones, a practice that attempts to create territorial orders based on legal status and im/mobility.

Length of Confinement

For migrants seeking to stay in the US, detention is a long series of medical exams, intake interviews, mental health check-ups (more available at Hutto than any other detention center), and court appearances interspersed with indefinite waiting periods. Showers, meals, headcounts, and recreation time pace the days of waiting for decisions, appeals, and release dates. While ICE opened Hutto to receive families in Expedited Removal, most of Hutto's families applied for asylum, which removed them from the average 30-day ER processing, and placed them in a much longer series of

interviews and hearings. Further, fewer families arrived than expected, and ICE detained non-ER families at Hutto, as well. Immigration and asylum case management is distributed among 2 DHS agencies (ICE, Citizenship and Immigration Services) and the Department of Justice's Executive Office of Immigration Review (EOIR). So while asylum-seeking families became eligible for release after passing their credible fear interviews, immigration judges set bond and field office directors set parole. Many families arrived with few resources to pay the $1-7,000 bond and parole costs, and asked for these amounts to be reduced. Their files travelled, therefore, from CBP (for those detained at the border), to ICE, to an immigration judge, to CIS, and back to ICE and an immigration judge. Each court appearance, request, and decision in the *release* process, which runs separately from their asylum decision process, took weeks, so that even the most fortunate of families spent months in detention (Interview 2008).

While Hutto's families were able to take advantage of the nearby *pro bono* legal services described above, detainees' lack of legal knowledge and services protract their legal cases. As one detained parent stated, "When you're inside, you don't know nothing about the law, you don't know nothing what is going on. So everything some guy tell you, you believe it, whether is true or false, you believe it. Because no one will tell you what is your right" (*America's Family Prison* Interview 2007). Without sufficient funds for bond/parole, Hutto's early residents spent up to 11 months at Hutto, until a federal lawsuit required ICE to review families' eligibility for release monthly (*In re: Hutto Settlement* 2007). This situation is not unique to Hutto, as Berks' families and adult asylum-seekers have spent years in detention (Women's Refugee Commission 2007). Fed up with long detention stays, some detainees chose to sign voluntary deportation orders

and forego legitimate claims and return home in order to avoid continued detention. Long detention stays compounded the sense of physical isolation, as detained families' felt more removed from their families, and more anxious about their potential removal.

Isolation

For detainees, family relationships spanned beyond Hutto's fenced perimeter and included kinship networks in the US and abroad. Some families were settled into marriage with US citizens, while others had both close and distant connections with family members with refugee, asylum, legal permanent resident, and undocumented status. Thus, Hutto's enduring isolation, phone, visitation, and disciplinary policies shaped families' relationships to undetained family and friends. ICE sets minimum detention conditions standards for its contractors, but these standards have no legal "teeth." That is, they are non-binding guidance documents and do not constitute legal obligations, nor rights or entitlements. CCA (a for-profit firm) sets phone card and commissary prices and sales that detainees can purchase either with their own money or CCA's $1/day work opportunities. In many cases, however, phone cards are prohibitively expensive or unavailable. One detainee, held for seven months, reported:

> You buy a phone card, about $10 or $20 and you get 10 minutes, and that's only inside the US. Outside it's going to be less [fewer minutes]. I think I talked to my family about two times only. So I didn't have much contact because the card was too expensive. I was missing my family….Because before I was released, there was a war in [my country]. And I didn't know where they are, how can I connect with them, if they're okay (*America's Family Prison,* Interview 2007).

For ICE, detaining parents and children together constituted family unity, but for detained

families, contact with their families members in the United States and abroad mitigated the isolation of detention and helped them manage their cases. Another detained parent testified to the following in the 2007 lawsuit against Hutto's detention practices:

> We have not been able to purchase phone cards for about a week, and when I asked about it, I was told by the officer, we have more important things to do rather than worry about your calling cards. Without the phone card, I'm cut off from anyone who can support me. That is not family friendly. I can't even talk to my family. The Hutto overview says the facility operates in accordance with certain standards. The CCA and ICE run the facility to suit themselves. (*In re: Hutto Detention Center* Transcript of the Injunction for Equitable Relief, 21)

For this parent, communication sustains family relationships, and the control over—and neglect of—this communication revealed the asymmetrical power relationships at work between ICE, CCA, and detained families.

For those families who could afford to visit, Hutto's visitation policies disrupted families' physical intimacy, as the traditional plexi-glass separators prevented physical contact. This was particularly difficult for families who travelled long distances, and found they were able to visit with their relatives for an hour (and sometimes less) at a time. For detainees, the ordering of these visits, their uniforms and identity bracelets, stigmatized them as criminals before their families, an intensely humiliating experience:

> If my sister or my mother came to visit, the children and I would not be allowed to hug them or even to talk directly to them. We would have to stay on the other side of the glass and talk to them through the phone. I could not bear for my family to see me and my children in jail like we are criminals trapped on the other

> side of a plexiglass wall, talking only through phone in the wall. That would be so sad and upsetting that we have told our relatives not to visit us at Hutto. (*In re: Hutto Detention Center*, Declaration of Deka Warsame, 7.)

Hutto's visitation room now curtains these plexi-glass windows, and women currently detained at Hutto retain the contact visits families won in the *Hutto Settlement* in 2007. These visits are still overseen by CCA guards and limited to one hour, but are far more hospitable than visitation polices in other adult facilities (which indicates that these dynamics are likely more acute elsewhere in the detention system). In conversations with detained women, however, the stigma of criminalized detention remains, and some still refuse visits from family members (Fieldnotes March 2010). As Ruth Gilmore has argued, families "on the outside" do time with their imprisoned loved ones, producing emotional and financial effects that reverberate far beyond Hutto's chain link fences (Gilmore 2007). Thus, while detention centers' enclosure creates a partitioned cartography, the regulation of detainees' access to "the outside" bears down on networks of care.

Criminalization

The symbolic economy of detention relies upon archetypal imprisonment practices, familiarized through popular representations of criminality. "Feeling like criminals," parents and children both internalized and rejected their *de facto* punishment, as reflected throughout these quotes. Children, for example, acted out the process of being released, enrolling dolls as detainees, ICE officers, and lawyers (Interview 2008). One parent recounted how her children stopped asking her for things, even after they had been released. The "criminalization" of immigration enforcement unfolds not only

through institutional linkages between the criminal justice and immigration systems, but permeates the selection of detention centers, their internal spatio-temporal ordering, and detainees' relationships to surrounding communities and their kinship networks. Detention's disciplinarity works through the imbrication of public performance, the controlled circulation of noncitizen bodies, and the scripting of detainees as prisoners; it is thoroughly relational, presuming certain connectivities while wearing down others.

Forced Mobility: Transfers

Family detention diverges from broader detention trends in one important aspect: inter-facility transfers. I note this here, because frequent transfers impact adult detainees' relationships to their families, legal representation, and communities as much as isolation, spatial enclosure, and criminalization. With two family detention centers, and now one, detained families' only transfers are from short-term CBP facilities to Hutto or Berks. In 2008, however, ICE transferred 52.4% of its detainees, up from 19.6% in 1999. In addition, ICE transferred 24% of its detainees multiple times (compared to 5.6% in 1999; Human Rights Watch 2009). Some detainees report being transferred six times over the course of their detention (Del Bosque 2010). Considering that detention rates reached 369,483 in 2009 (and are expected to reach 400,000 in 2010), transfers require an entire transportation and logistics system all their own. This reveals, I think, that ICE's detention system utilizes forced mobility and relocation as much as confinement.

While isolation diminishes legal access, legal scholar Nancy Morawetz (2005) has shown how ICE often transfers detainees to federal district courts that refuse to hear *habeas corpus* complaints through which detainees constitutionally challenge their detention, in order to ensure removal. Recent Supreme Court decisions state that

detainees must file *habeas corpus* claims in the jurisdiction in which they are detained; since ICE retains discretion over all detainee transfers, ICE effectively chooses the venue for *habeas* claims. Louisiana's Federal District Court refuses to hear *habeas* cases, deferring to ICE in every case, even though other district courts commonly hear these challenges and grant release. Transferring detainees between facilities allows ICE manipulate "due process," exploiting the US Federal Court's uneven legal geography to attain its desired legal outcomes. The remote location and arbitrary forced mobility between facilities undermine detainees' ability to retain lawyers, receive family support, or build relationships with fellow detainees (Dow 2005, Del Bosque 2010). ICE is known to transfer or seclude detainees who attempt to organize politically, and to move known organizers frequently to prevent them from establishing relationships with new groups of detainees. So while facility operators mediate detainees' relationships to their families and surrounding communities, ICE's repeated and frequent transfers further destabilize detainees' relationships to each other. These affective and emotional connections are of a different character than the transboundary conduits or risky populations, yet detention bears down on them in ways that resonate.

CONCLUSION

Detention is not a single spatial practice of confinement, but a combination of textual policy discourses, knowledge practices, geographical imaginaries, and material orderings. Through "catch and remove" policy's geopolitical design, ICE may imagine a purified legal cartography of externalized, illegal others and documented, legalized persons, but this dream of purified community does not determine the material conditions

of actual detention centers. Instead, detention practices stitch together a range of geographical imaginings, bureaucratic improvisation, and institutional legacies from the criminal justice system. And even while detention depresses families' communication and visits, and Hutto's interior ordering restricts personal mobility, neither are detained noncitizens entirely locked down or enclosed from national space. Rather, on the one hand, ICE's discretionary transfers keep them in forced circulation, and on the other hand, detainees do organize inside detention centers, make connections with community members, and contest their detentions. ICE may seek to minimize territorial vulnerability long the border, and embed confinement in complex system of digital surveillance and risk analysis, but those detained produce detention discourses, as well, both through everyday embodied routines and in their own narratives of it. Private corrections firm employees perform detention, as do ICE policy-makers, detainees' attorneys, families, and surrounding communities. Detention is, I have emphasized, a heterogenous assemblage of knowledge practices, geographical imaginings, geopolitical designs, infrastructure, institutions, daily routines, and media representations.

What I hope my analysis illuminates is that, in a particular way, disciplinary *relations* of power haunt confinement and security practices. Neither ICE nor CCA may seek to reform detained families, but family members react to and remake themselves through the process of their criminalization. Detention policies may not seek to remake detainees, but ICE does hope family detention *deters* future migration. Through the spectacle of confinement, ICE seeks to perform its response to crisis and the inevitability of deportation. As a deterrence strategy, detention figures a transnational field of potential, future migrants, subjects that calculate the risk of border crossing and seek to

maximize their returns on migration. For Mountz (2010), this arrangement produces a "transnational panopticism" through which migrants also produce surveillant state power by presuming its omniscience. Immigration geopolitics works through, therefore, the recalibration of disciplinary *relations of power* with emergent risk ontologies and security institutions. So while constructing a whole, human individual is no longer the purpose of confinement, detention does make relational, circulating, connected subjects that cannot be reduced to the risk-pooled cohort alone.

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CHAPTER 6: THE GEOPOLITICS OF VULNERABILITY: CHILD-OBJECTS, MIGRANT-SUBJECTS, AND IMMIGRATION LAW

INTRODUCTION

In April 2007, a group of lawyers sued the Department of Homeland Security (DHS) for detaining children at the T. Don Hutto Family Detention Center, a former medium-security prison in Taylor, Texas (*Bunikyte et al. v Chertoff et al.* 2007). Citing Hutto's prison-like conditions, the plaintiffs argued that the facility violated noncitizen children's protections under an existing legal settlement, *Flores v. Meese* (1997), which granted minors in federal immigration custody with the right to release, unrestrictive environments, and a range of services unavailable in adult facilities. Because ICE detained parents and children together at Hutto, the case revolved, in particular, around the spatiality of children's legal protections in the immigration system. Specifically, the parties to *Bunikyte et al. v. Chertoff et al.* debated whether existing law confined children's protections to children's bodies, or included the relationships and spaces that constitute "home-like environments." Immigration law endows ICE with wide "discretion to detain" noncitizens, and federal courts have limited power to intervene in immigration enforcement practices (Coleman 2007a; Varsanyi 2008). Litigated in federal court (Fifth Circuit Western District), *Buniktye* became a site of struggle over the limits of both ICE's discretion to detain noncitizen children and federal courts' authority to challenge immigration enforcement practices. This struggle unfolded through broader narratives of American territorial sovereignty, childhood development, and immigrant criminality and shows how immigration law (re)spatializes US geopolitical orders. I argue that debates about children's rights in the immigration system—understudied in geographic research

on immigration, borders, and security—illuminate deeper struggles over executive power, the spatial practices of immigration enforcement, and immigration law.

The case provides fresh empirical insights into the struggle over the role of judicial, executive, and civil rights in current US immigration law, but *Bunikyte et al. V. Chertoff et al* has wider implications for conceptualizing the spatiality of immigration law and its geopolitical designs. Since 1889, US immigration policy has fallen to the legislative and executive branches of government, allowing them wide latitude to formulate admission and exclusion policies beyond the purview of the Constitution. *Bunikyte's* transcripts demonstrate, as I show below, how positioning immigration as foreign policy authorizes ICE's broad administrative discretion, and does so in and through federal court rulings. Immigration law-making is more than institutionally or jurisdictionally geopolitical, however. As I show below, "geostrategic thinking" (Ó Tuathail 2003) permeated the legal reasoning of both ICE and the federal judge, who used parents' asylum claims to map a world of vague external danger, and then twisted children's (essentialized) vulnerability with national security vulnerabilities, and "children's best interests" with the "public interest in enforcing immigration laws." More broadly, the case elucidates the ways in which formal immigration law includes *ad hoc* mappings of (dangerous) global space, and how the blurring of these formal and informal geopolitical discourses legitimates the spatial practices of detention.

Children's specific legal figurations illuminate the ways in which this geopolitics of vulnerability authorizes detention, family detention's spatio-temporal ordering, and the policing practices that channel noncitizen's into detention. Below, I first situate my analysis in recent work in immigration geopolitics, children's rights, and feminist

political geography. In the second section, I trace out how current immigration law and precedent figure a "child-object" rather than an agential "child-subject." Intriguingly, the presumed innocence and vulnerability of this child-object both restricts ICE's ability to detain children and reinforces parents' status as criminalized migrant-subjects. The third section analyzes how the parties to *Bunikyte et al v. Chertoff et al* articulated different geopolitical visions in and through specific configurations of children's and families' legal subjectivity. I show how the plaintiffs' attorneys argued that children's right to release include family release and used children's rights as the basis for more expansive family rights. ICE, for their part, argued that parents retained custody of children within Hutto, releasing the agency from its obligations to noncitizen children under *Flores*. The judge, alternatively, argued that children's rights to release did *not* extend to parents, but that ICE had legal custody of children at Hutto and was bound by *Flores*. In contrast to these formal legal arguments, parents' descriptions of Hutto's daily life challenged the easy bounding of legal rights to children, forming a counter-narrative to all three 'official' legal arguments. Approaching the practice of immigration law as a polyvocal site of struggle (Chouinard 1994), I will argue that immigration litigation is a critical site for feminist engagements with the geopolitics of mobility. I argue that these geostrategic discourses spatially constitute a governmental regime that maximizes precarity for "them" while minimizing it for "us" (Butler 2009), producing what I call a "geopolitics of vulnerability."

CONCEPTUALIZING A GEOPOLITICS OF VULNERABILITY

Children's Legal Subjectivity

Migrating children present immigration authorities with specific legal challenges that have not been taken into account in geographical research on detention or immigration geopolitics. Children's transboundary migration is rarely interrogated in geographical analyses of children's legal subjectivity and political agency. Recent work on children's political participation has, however, contemplated the methodological difficulties studying children's political agency (Bell 2008), and argued for a fuller conceptualization of the ways in which children actively make spaces (Aitken 2001; Bessant 2004; Jans 2004; Katz 2004; Leiter et al. 2006). In immigration law, children's immigration claims are solely derivative of parents' claims (Thronson 2007-8), and for Bhabha (2003, 2009), this displacement of children's 'best interests' produces a "citizenship deficit" through which children are rendered *de facto* stateless subjects. Yet, children's rights and feminist scholars have cautioned against fetishizing existing legal regimes as sources of children's empowerment, enfranchisement, or political participation, however. For example, the 1989 Convention on the Rights of the Child (CRC) contains an expansive set of entitlements for children, but its realization has been limited (Mayall 2006; Stasiulis 2002). Ruddick argues, further, that the child-subject defined by "best interests" principles is "an impossible subject since, by liberal definition, the child cannot speak for him or herself without adult authorization" (Ruddick 2007a: 514). Intriguingly, some citizen children have been vocal spokespersons for their undocumented parents, a form of political theater that dramatizes the parents' displacement from their what is implicitly their proper role as family representatives

(Pallares 2009). While child-subjects are always already in a relation of dependence with a series of caregivers (Ruddick 2007a,b), the political agency of children is not materially confined to the child-object of immigration law or the partial subject of domestic family law.

As Katz (2004) argues, analyzing children's paradoxical legal subjectivity evidences geopolitical processes difficult to see at other scales. At the margins of the nation-state, where liberal law is suspended for noncitizens, how do we understand the relationship between children and their caregivers, when immigration law considers parents *aliens* not *persons*? How do we understand the position of the precarious child-subject in the context of an immigration regime that suspends constitutional rights for *adults*? How do we understand children's legal subjectivity where their immediate caregivers are not full liberal subjects either? Where caregivers represent children in family and children's courts, *Bunikyte*'s plaintiffs were children. *Flores v. Meese* (1997) created a contractual relationship between "minors in immigration custody" and immigration officials, while adults' alien status prevented them from federal court protections. *Bunikyte* reveals not only how US geopolitical agendas mobilize immigration law to create wide spaces of *administrative discretion* over noncitizens' bodies, but that specific constructions of childhood and adulthood underly immigration law and enforcement policy. In the context of immigration geopolitics, these categorical differences are directly related to the *spatialities of immigration enforcement*: policing and arrests, detention center conditions and location, deportation decisions, and the embodied process of physical removal from the United States.

Immigration Geopolitics

Beginning in 1889, the Supreme Court issued a series of rulings that the federal government held "inherent sovereign powers" to determine political membership--and exclusion--because otherwise it would be "subject to the control of another power" (*Chae Chan Ping v. United States* 1889, 603 quoted in Varsanyi 2008, 884). Mobilizing "racialized narratives on the penetration of external menaces in national space through immigration" (Nagel 2002, 972) the Supreme Court considered noncitizens' admission an issue of sovereign territorial power, enabling the limitation of judicial authority over immigration matters, and culminating in what is understood as the federal government's "plenary powers." *Fong Yue Ting v. United States* (1893) took the plenary doctrine one step further, ruling that the federal government retained sovereign right to deport noncitizens from the territorial US without judicial intervention (Varsanyi 2008). Making noncitizens subject to rejection and deportation, plenary power over immigration treats noncitizens as "aliens" rather than "persons" (Varsanyi 2008). Authorizing a separate immigration law regime, the plenary doctrine "works paradoxically through the law as it at once holds [constitutional] law at bay," thereby suspending constitutional protections for noncitizens (Coleman 2007b, 62). In other words, noncitizens do not have recourse to the full gambit of constitutional protections when encountering the law as via the immigration system. Through this series of court decisions, federal courts made non/citizenship a discursive, legal, and political axis in a broader "geopolitics of mobility," in which national elites used admission and exclusion policies to create specific politico-territorial orders (Coleman 2007b, 2008a,b; Hyndman 2004a; Nagel 2002; Tesfahuney 1998). The plenary doctrine of immigration authorized, therefore, the

suspension of noncitizen's constitutional protections—including the right to liberty—in the interests of national security.

Criminalizing Asylum

In addition, immigration officials have approached asylum-seekers with skepticism since the 1980s, when large numbers of Cuban and Haitian migrants arrived on Florida's shores. The refugee resettlement and asylum system has long been charged with geopolitical bias (Cianciarulo 2007), and in the 1990s, immigration officials began to view asylum as an *immigration strategy* abused by "bogus" claimants (see also Coutin 2003; Mountz 2010). Following the 1996 immigration reforms, asylum-seekers faced indefinite detention while their claims were processed (Dow 2005). Current immigration policy categorizes asylum-seekers declaring themselves at ports of entry as "arriving aliens" until their claims are deemed credible by immigration officials. In other words, asylum-seekers are classified as undocumented immigrants and thereby subject to mandatory detention. Once detained, "arriving aliens" are not eligible for release on bond, unlike undocumented migrants apprehended inside the United States. The asylum-seekers' position is particularly difficult because they cannot claim asylum until they are physically in US territory and often cannot obtain valid travel documents from the countries they are fleeing. Part of a global trend preventing and/or preempting asylum claims (Dikec 2009; Hyndman 2005; Hyndman and Mountz 2008), classifying asylum-seekers as *aliens* suspends international protections afforded them and criminalizes undocumented arrival. In this context, categorizing noncitizens has embodied and material effects on noncitizens' pathways into and out of the US detention system (Mountz 2004, Chapter 7).

Geostrategic Discourse

In the context of this regime, administrative discretion and respatializing enforcement capacities, detention operates as a spatial strategy of containment and forced mobility imposed by federal immigration officials on noncitizens (Hyndman 2005). Visually containing noncitizen bodies and the problem of 'illegal immigration,' detention broadcasts state power in action, as discussed in Chapter. Thus, enforcement's spatial practices are critically linked to broader narratives of in/security. Making "explicit claims about the material national security interests of the state across a world map characterized by state competition, threats and dangers," this geostrategic thinking bases its claims in "transcendent national interests and existential security concerns" (Ó Tuathail 2003, 95). In *Bunikyte* in particular, ICE and the federal judge link "security vulnerabilities" to children's "special vulnerability," and "national interests in enforcing immigration law "to "children's best interests," suturing child and national protection together in ways that have little to do with the material well-being of the children detained at Hutto.

A Geopolitics of Vulnerability

To flesh out this geopolitics of vulnerability, I analyze the ways in which federal actors deployed abstract, universalizing, and global discourses of vulnerability, threat, and sovereign right to marginalize the cases of 26 individual noncitizen child plaintiffs. Building on feminist political geography, this chapter conceptualizes immigration law as a site of struggle over space (Chouinard 1994) that "link[s] international representation to the geographies of everyday life" (Dowler and Sharp 2001, 171). Emphasizing the embodiment of state policy-making (Mountz 2003, 2004), feminist political geographers

have argued for new empirical material and new conceptualizations of "the political" (Hyndman 2004b; Marston 2000; Secor 2001; Staeheli et al. 2004). Building on this work, I approach immigration law, particularly litigation, as an active, embodied, and situated set of institutional practices, a "tapestry of lived relations and practices which…express multiple forms of empowerment and exclusion over how spaces can be used and by whom" (Chouinard 1994, 430). As the court transcripts will show, litigation does not produce coherent storylines, nor does immigration law specify enforcement *practices*. As Coleman argues, immigration law is better understood as "an open-ended and at times chaotic economy of discourses and practices" (Coleman 2008b, 1098). As I describe below, the litigation became a struggle over the embodied boundaries of children's legal subjectivity and the spatio-temporal ordering of Hutto itself. *Bunikyte* invites us to critically analyze, first, the ways in which immigration law relies upon geostrategic discourses; second, the ways in which this immigration geopolitics includes specific constructions of children's vulnerability against parents' criminality; and third, how immigration geopolitics authorizes material practices of family detention in and through federal court authority.

CHILD-OBJECTS/SUBJECTS AND MIGRANT-SUBJECTS: LIMITING PLENARY POWER OVER IMMIGRATION

Two previous cases illuminate how children's derivative status *limits* local policing of immigration. In *Plyler v. Doe* (1982), the Supreme Court considered whether "Texas may deny to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens."

Ultimately deciding that Texas did have the right to deny services to undocumented *adult* migrants, the Court argued that "At the least, those who elect to enter our territory *by stealth and in violation of our law* should be prepared to bear the consequences, including, but not limited to, deportation." Children, though, "are not comparably situated. … It is thus difficult to conceive of a rational justification for penalizing these children for their presence within the United States" (*Plyler v. Doe*, 220). Appearing to support children's rights to education, the case presumed a child-object, property of a household, not a child-subject—a legal person—endowed with political agency (Thronson 2002). Lacking the intentionality presumed of adult migrants, and therefore grounds for punishment, children's dependence limited local withdrawal of services. This subordinate legal position is bound, however, to the full responsibilization of parents, to the figure of an "illegal alien" who can be punished. Thus, decisions bearing on noncitizen children elaborate an immigration geopolitics, in and through the opposition between child-objects and criminalized migrant-subjects.

"Unaccompanied minors" present a more substantial challenge to immigration officials, however, since their presence cannot be as easily explained by parental coercion. "Minors," instead of "children," unaccompanied children were detained, processed, and deported through the adult system prior to the *Flores Settlement* (Women's Commission 2002). Engaged in immigration's adversarial legal process, even the most litigiously competent children are often unable to obtain the necessary documentation without adult assistance. Many countries require adults to request birth certificates, so that age itself becomes a barrier to making successful claims. In the asylum system, which limits claims to political and religious persecution, immigration

judges routinely dismissed young people's political activity as warranting persecution. In the words of one judge, "it is almost inconceivable that the Ton Ton Macoutes could be fearful of the conversations of 15-year-old children" (*Civil v. INS*, 140 F.3d 52,55 [1st Cir. 1998] in Thronson 2002, p. 979). Thus, young people faced an immigration system that discriminated against them on the basis of their presumed apolitical nature and the age requirements of the administrative process. The boundary between child- and adulthood is woven into the legal categories of admission and exclusion and has wider impacts on judicial decision-making, dramatically impacting children's location in the detention system.

Seeking to ameliorate the effects of detention on children, advocates settled *Flores v. Meese*, a decade-long lawsuit with the INS that achieved a substantial set of protections for minors navigating the immigration system alone, based on their 'special vulnerability' (see Figure 6.1). As a class action lawsuit, the *Flores* settlement produced a contractual agreement between "all minors in federal immigration custody" and federal immigration authorities. Stipulating INS release preferences, administrative procedures and conditions of custody, *Flores* endowed children with the right to be released to family members and guardians, to challenge INS/ICE detention decisions, and to access a variety of services. In short, the settlement entitled children to a series of relationships, binding children's rights under *Flores* to particular spatial and temporal orders. Like *Plyler*, *Flores* was based on the presumption of innocent child- subjects, and created a more robust legal process for children navigating the immigration system. *Flores* did not, however, reconfigure the admission or exclusion categories through which children's immigration status is ultimately decided, limiting children's entitlements to conditions of

release and confinement. Importantly, *Flores* delineated a difference between the decision about *whom to detain/release* and *where to detain them*. The spatiality of children's legal protections under *Flores* was particularly important in *Bunikyte,* when it became unclear whether *accompanied children* would be granted access to those legal protections.

Table 6.1: *Flores Settlement* Stipulations

Release of children to parent, legal guardian, adult relative, adult individual designated by parent or guardian as capable, licensed program will to accept legal custody, or an adult individual seeking custody;

Provide for physical, mental, and financial well-being;

Ensure child's presence at INS (now ICE) and immigration court proceedings;

Maintain communication with guardians about address changes, transfer of custody, leaving the country, and any dependency proceedings involving the child;

Provide bond hearings in every case and reasons for housing him/her in detention facilities;

Meet minimum standards of care for children that remain in ICE custody:

- proper physical care, suitable living conditions, food, clothing, personal hygiene;
- routine medical care;
- individualized needs assessment;
- appropriate educational services;
- at least one hour of exercise per day, recreation and leisure;
- at least one individual counseling session per week;
- group counseling at least twice per week;
- acculturation and adaptation services;
- orientation upon admission;
- religious services;
- contact visits with family;
- reasonable right to privacy;
- family reunification;
- legal services information;
- appropriate service delivery, sensitive to language culture, age;
- age-appropriate rules;
- no corporal punishment, humiliation, mental abuse, nor punitive interference with daily life.

(Source: Flores v. Meese Stipulated Settlement)

Families as Geopolitical Vulnerabilities

Heterosexual families have traditionally occupied a privileged position in immigration law and enforcement (see Donovan et al. 1999; Elman 2000; Lubheid and Cantu 2005; Simmons 2008 on immigration law's heteronormativity). In admission policy, "family unity" remains a stated goal of immigration law, and family sponsorship remains the primary avenue to gain legal residency in the United States (US Department of Homeland Security 2009). Yet the category of "child" exists in a dependent relation to a "parent," as children's immigration claims are solely derivative of parents' claims (Thronson 2007-8). Sponsorship requires accepting financial responsibility for petitioning family members, making it impossible for citizen children, for example, to sponsor their parents. Immigration law often conflicts with, however, legal regimes elaborated by subnational jurisdictions, especially family, children's, and custody laws premised on the "best interests of the child." Access to public services often requires (or is perceived to require) parental involvement, which has prevented *citizen children of undocumented parents* from receiving those services (Van Hook and Balisteri 2006). In child custody decisions, there are no clear rulings on the relevance of parents' immigration status, resulting in the informal use of a parents' undocumented status to deny custody. In these cases, federal immigration law operates as *de facto* child custody law (Thronson 2007-8). Conversely, granting custody to unauthorized parents can bar children from filing immigration claims, so that custody decisions often have dramatic implications on the immigration status of children (Thronson 2002; and see Ruddick 2007a). Figured as child-objects and persons by different legal regimes, immigration law's hierarchical family hinders children from receiving protections granted them by

other courts (Thronson 2007-8; Bhabha 2009).

While admission categories both limit and privilege certain forms of family unity, *enforcement* practices produce a more complex legal terrain for families migrating or seeking asylum in the US. Families have traditionally been released with Notices to Appear (NTAs) before an immigration judge, but in March of 2001, U.S. Immigration and Naturalization Service (INS) contracted with Berks County, Pennsylvania, to detain families in a recently vacated elderly care facility. Housing 84 people, the Berks County facility opened as an extension of an existing juvenile detention program which was in compliance with the *Flores* agreement (Women's Commissions 2007). The INS claimed to have opened Berks to allow the agency time to establish families' identity, but for asylum-seeking families, this process sometimes dragged on for years (Women's Commission 2007). In 2003, the Office of Detention and Removal Operations (DRO) stated plans to expand its capacity to detain families and other vulnerable populations, citing its reliance on substandard and prison-like facilities as its primary impediment (US Immigration and Customs Enforcement 2003).

Following the attacks of 11 September, 2001, the INS suspended all refugee resettlement and the REAL ID Act (Pub.L. 109-13, 119 Stat. 302) implemented new security screenings and evidenciary requirements for both refugees and asylum-seekers (Cianciarulo 2007). All noncitizens seeking entry—humanitarian or otherwise--to the US were viewed with suspicion, and beginning in 2003, the new Department of Homeland Security scoured immigration enforcement policies for vulnerabilities. In this context, ICE argued that releasing families represented a 'loophole' that enabled adults who would otherwise be subject to mandatory detention to be released from custody:

> By expanding Expedited Removal to cover illegal alien families, DHS is closing down a loophole that has been exploited by human smugglers and helping stop future illegal immigration … This new facility enables us to have deterrence with dignity by allowing families to remain together, while sending the clear message that families entering the United States illegally will be returned home. Because of limited family bed space families caught at the border were often released with 'Notices to Appear.' Smugglers were well aware of this practice and often exploited this loophole to create the image of a family unit. In cases where families were detained, the families, including children, were detained separately. (US Department of Homeland Security 2006b)

Seeking exploitable opportunities for release, DHS came to understand families' special status-- implicitly based on *children's* special status—as a vulnerability in border security. Emphasizing smugglers' criminality over the children being trafficked, ICE evoked the intentionality of illegal immigration, which framed family detention as both a crime prevention strategy and a corrective to family separation (Bhabha 2000). As described in Chapter 5, DHS collapsed smuggling with "future *illegal* immigration," criminalizing family migration in general and obscuring the legal grounds (such as asylum) for families' presence in the United States. In this context, ICE opened the T. Don Hutto Correctional Facility as a "Family Residential Facility" in May of 2006. The expansion multiplied family 'bed-space' six-fold, from 84 to 512 beds, in an effort to hold all families of questionable immigration or asylum status.

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Built by the Corrections Corporation of America (CCA) in 1995, the T. Don Hutto Family Residential Facility operated as a medium-security prison for prisoners from Oregon, a federal pre-trial detention center, and a US Marshalls' detention center. In 2006, Williamson County, Texas, and ICE entered into an Inter-Governmental Service Agreement (IGSA) authorizing the detention of "alien families" at Hutto, and Williamson County subsequently changed its contract with CCA to accommodate the detainees. A common arrangement between the federal government, countries, and private corrections corporations, IGSAs devolve detention operations to counties and corporations (US Immigration and Customs Enforcement 2009b). Were it not for *Flores*, which created a contract between ICE and minors in their custody, there would have been no legal mechanism through which to hold ICE, Williamson County, nor CCA responsible for the conditions at Hutto. As *Flores* is written, Williamson County and CCA were not parties to the settlement, and while their actions were examined in *Bunikyte*, *Flores* bound neither neither party to federal oversight.

When it reopened as a family facility, Hutto retained the double fencing, concertina wire, automatically closing and locking doors, cell blocks, regimented daily schedules, surveillance, discipline, and supervision of its previous life as a prison. CCA staff issued families uniforms, prohibited them from bringing "contraband" (drawings, crayons, toys) into their cells, and offered little medical or mental health care. Muslim women were not allowed to wear their own headscarves, and the facility's schedule often prevented daily prayers. CCA staff performed headcounts two to three times per day, in which families were required to stay in their cells until 2 staff members counted and

recounted every detainee. This amounted to 11-12 hours of confinement per day, preventing outdoor recreation and exercise, not to mention freedom of movement. The cells included a bunk bed, crib (if necessary), and open toilet. Children received one hour of education per day, and many became ill from the food. A cement facility with little natural light, the rooms were cold in the winter and humid in the summer, and toilets frequently backed up. Trained as correctional officers, CCA staff threatened confinement and separation as disciplinary tools, and received no re-training to address the needs of asylum-seekers, migrants, children and families (American Civil Liberties Union 2007a; *Bunikyte v. Chertoff et al*). Were it not for the presence of children, Hutto would have blended seamlessly into the landscape of immigrant detention, populated by 're-purposed' prisons, military barracks and bases (including Guantanamo), county jails, and juvenile correctional facilities (Dow 2005; Fernandes 2007).

Turning now to the text of *Bunikyte*'s litigation, I analyze the ways in which plaintiffs' attorneys, ICE, the federal judge, and the plaintiffs' parents, first, figured children's and families' legal status in different ways. Second, I examine how broader claims about the limits (or lack thereof) of ICE discretion to detain families relied upon these subject formations. Third, I trace how ICE and the judge, in particular, wove geostrategic discourses into their legal arguments, deploying abstract mappings of global threat to justify expanding detention to noncitizen families. Litigation is not only a site of struggle over the "limit case of the liberal subject," as Ruddick (2007a) argues, but shows how struggle over legal subjectivity are simultaneously struggles over political recognition, state sovereignty, and the mechanisms of inclusion and exclusion that found the nation-state.

Children's Rights as Family Rights

In April of 2007, the American Civil Liberties Union, University of Texas Immigration Law Clinic, and private law firm LaBeouf, Lamb, Greene, and MacRae LLP sued the Department of Homeland Security for non-compliance with *Flores,* on behalf of 26 children detained at Hutto. Based on the conditions described above, the lawsuit charged ICE with violating its obligations under *Flores* on 17 counts, and sought "to enforce the *Flores* Settlement on Saule's behalf, to secure her release, and to ensure that she is not separated from her mother and her sister" (*In re Hutto Family Detention Center*, *Bunikyte v. Chertoff et al,* Complaint for Declaratory and Injunctive Relief, 1, 4). In addition to guaranteeing *detained* children "home-like" conditions and social services, *Flores* mandated a preference for both *release* and *family unity*. A pre-settlement Supreme Court ruling stated, "The parties to [*Reno v. Flores*] agree that the [Immigration and Naturalization] Service must assure itself that someone will care for those minors pending resolution of their deportation proceedings. That is easily done when the juvenile's parents have also been detained and the family can be released together" (*Reno v. Flores* 1993). Figuring the plaintiffs as both rights-bearers and relational subjects, the attorneys argued that children's rights included family release. In effect, they sought to create *family* rights in and through the dependent, rights-bearing child.

As the judge pointed out in the initial hearing, ICE could have complied with *Flores* by releasing the children to other family members and keeping parents in detention, a veiled threat that resulted in plaintiffs' filing restraining orders to prevent separation (*Bunikyte et al. v. Chertoff et al.,* Temporary Restraining Order). In response to this legal—and potentially spatial—splicing of the family, the plaintiffs asserted

children's rights to family unity *did not* transfer rights from children to parents:

> Plaintiff does not contend that the Settlement protects adults in ICE custody or compels the release of her mother based on *her* claims under the Settlement, as defendants suggest. Rather, plaintiff seeks to enforce her *own* rights under the Settlement, and argues that her release from custody with her mother is compelled by the Settlement's fundamental imperatives to promote family unity and to house minors in the least restrictive setting. … [H]er individual claims under the Settlement are directly affected by her ability to remain in close proximity to her mother--an outcome that is clearly favored by the general policy favoring release to a parent under *Flores*… (*Bunikyte et al. v. Chertoff et al.* Plaintiff's Reply in Support of her Motion for a Preliminary Injunction Ordering her Immediate Release from Hutto With Her Mother, 2-3)

Children have a right to spaces with parents in them, therefore, but parents have no legal right to the same. This configuration of child-based family rights did not technically endow noncitizen parents with their own rights, but covered families under an umbrella of children's protections, without challenging the legal regimes that confine adults more broadly. The plaintiffs' difficulties in developing even the most generous application of children's rights to families highlights the contradictions between rights afforded the child, who is always already in relation to a series of caregivers, and the suspension of legal protections for their immediate caregivers.

The Right to Care

While the plaintiffs were children, the litigation revolved around parents' testimonies of the disintegration of relations of care and psychological examinations of

the detained plaintiffs. Primarily asylum-seeking families, the plaintiffs' complaints included details of their parents' rape, torture, and persecution. Their testimonies bore complex and contradictory tales of breakdowns and refusal, of the embodied effects of carceral detention and of their rejection of that same criminality. Articulated through the spaces of everyday parenthood--bedrooms, bathrooms, kitchens, and schools--parents' testimonies revolved around the interdependencies necessary for the reproduction of ways of life:

> In this jail, Majid and I cannot be good parents. We cannot provide Kevin with the basic things that he needs. We cannot give our sick child inhalers for his asthma or cream for his eczema or food for his health. We cannot give him a pen to write with or any books to read. We cannot teach him about the outside world or let him run around the way young boys should. We are totally helpless as parents and depend on the guards for everything. They control our every movement and activity, from the time we eat to the time we see each other. We cannot even turn off the light at night when we want to go to sleep. (*Bunikyte v. Chertoff* , Declaration of Masomeh Alibegi, 2)

Hutto's disciplinary order disrupted, for these parents, the *energetics of care*--the eating, playing, bathing, and napping--that defined their role as parents. The testimonies allude to a litany of questions from children, and parents' increasing frustration at their inability to satisfy them. These narratives belied, in minute detail, ICE's claims about the "residential" character of the facility, by showing how the normal relations of care and parental authority, which implicitly defines "the home," were disrupted by the power of the guards.

The spatiality of familial care was, therefore, regulated at a bodily and molecular scale. The everyday metabolism of care, through which the plaintiffs' mothers defined their identities as mothers, was undone by the carceral ordering of space, time, and authority within Hutto.

> I can't talk to anyone because I only speak Creole. I have to rely on Sherona to translate from Creole to Spanish and then whoever else is around to translate from Spanish into English if I need to ask for something. I am dependent on my daughter in a way I would not be if were not in jail and it is inappropriate for a mother to have to rely on her daughter this way, it is like making her into the mother and me into the child and she is only thirteen years old. (*Bunikyte v. Chertoff* , Declaration of Delourdes Verdeiu, 3)

These accounts of inverted familial authority illuminate a frustrated motherhood, in which care and authority are mutually constitutive. Thus, these parents understood the restrictions placed on parental authority as destruction of the family itself. Parents' dependency on guards and surveillance practices formed the basis of a counter-narrative of impotent parental authority, articulated through distorted relations of dependency between parents and children, the annihilation of private space, and emotional unease. Mothers reported anxiety, sadness, exhaustion, crying, sleeplessness, and illness, these physical weaknesses being evidence of their impotence as parents. These testimonies narrated a relationality of parent- and childhood, of mutual interdependence, that far exceeded the legal mechanisms through which the case proceeded. It is not simply that these families viewed children's rights as *linked* to the narrations of care, but that they demanded more spatial autonomy than the law could provide, in and through these

relations of care. Monopolizing access to food, clothing, blankets, toys, and books, CCA staff overlaid carceral relations of authority over "the architecture of the family unit" which undermined the relations of (inter)dependence between parents and children. Thus, the normative distribution of rights and responsibilities within families is reconfigured so that CCA operated as an *in loco parentis*, infantilizing parents with respect to their children. Parents' narratives of frustrated care figured, therefore, a range of actors with variegated obligations under immigration law and a wider political economy of deferred responsibility than could be accounted for in the lawsuit's "official" legal argumentation.

ICE Discretionary Power: Displacing Custody

ICE's defense counsel argued, however, that *Flores* did not apply because the children were detained with their parents, and that parents' were their practical guardians while in detention. For ICE, parents' illegal status displaced children's rights, confining children to the status of household property (Thronson 2002). The defense argued, therefore, that the plaintiffs' only case was "abuse of discretion," which the defense then argued was an invalid complaint since Congress has endowed the agency with the authority to detain the parents:

> In fact, you know, while there may be alternatives that the ACLU would like the government to do, it's not in the ACLU's discretion to determine how the government is going to operate its immigration program. It's the Court's decision, of course, of whether or not the government is abusing its discretion, and in this case, I would suggest that the government was not. (ICE attorney Victor Lawrence, *Bunikyte et al. v. Chertoff et al.* Transcript of the Injunction for

Equitable Relief, 236)

ICE's legal approach attempted to displace children's rights to "home-like environments" under *Flores* on the basis of their parents' illegal status. Emphasizing the criminality of the migrant-subject, ICE sought to shift the case to discussion of territorial sovereignty and security, over which ICE had established authority and federal courts did not.

Approaching family detention in the context of enforcement-led immigration policy, ICE emphasized the agency, autonomy, and intentionality of parents, especially parents' *intentional* breaking of immigration law:

> Of course, they'd rather be free, but they did break the law. They did break the law, and they came to the United States illegally, and the government has the right to detain them (ICE attorney Victor Lawrence, *Bunikyte v. Chertoff*, Transcript of the Injunction for Equitable Relief, 23).

> Essentially what this case comes down to, your Honor, are four families who are in the United States illegally, who are unhappy that they're in a detention environment, as the government is absolutely entitled to do given the fact that they did arrive in the United States illegally (ibid., 231).

ICE's argument had three important effects. First, by emphasizing parents' intentionality, the defense erased children's rights under *Flores*, effectively arguing that *Flores* did not apply to children accompanied by undocumented parents. From this perspective, the only way for children to access their entitlements under *Flores* would be to separate them from their parents in ICE custody. (This would have resulted in their transfer to the Office of Refugee Resettlement, who has managed custody for unaccompanied minors since 2003.)

Secondly, therefore, ICE argued that families were legally considered *accompanied adults*. Third, charging parents with custodial responsibility within Hutto transferred responsibility for the care/harm of children from ICE to the parents. Their argument consolidated rights in ICE's executive discretion and responsibility for the rule of law, childhood development, and everyday care in the parents, for whom there are few legal frameworks to challenge ICE's discretion.

ICE's legal arguments emphasized the plenary power over immigration law, a position that relies upon a criminalized (adult) migrant-subject. Emphasizing territorial vulnerability, ICE inscribed responsibility for border security onto each individual migrant crossing the border, regardless of context of their individual migration. The defense's argument thereby mapped a geopolitics of vulnerability that figures the US as the sole victim of violences large and small. Understood exclusively in terms of their illegal entry, the parents faced a legal terrain of all-responsibility-no-rights, and the corellary displacement of children's rights allowed them no agency and *therefore* no rights. This coupling of hyper-vulnerable American territory with the hyper-responsibilization of individual adult migrants prioritized universalized "public interest" over the claims of specific children.

Calculating Irreparable Harm

Where the plaintiffs sought to use children's rights as an umbrella over the entire family, the defense's argument telescoped any family rights into a discussion of parental illegality. The judge was unconvinced, however, by ICE's argument that the agency's discretion to detain annulled the application of *Flores* to the Hutto facility, but worried that the plaintiffs' arguments transferred children's rights to the parents that would

eviscerate their responsibilities for legal border crossing:

> So it is [plaintiffs'] position that as long as an illegal is in this country with a child, the placing of that person in incarceration in jail, where they usually go before I sentence them or before they're deported, they cannot go to jail anymore, they are -- they get a free pass with their child? (Judge Sam Sparks, *Bunikyte v. Chertoff* , Transcript of Injunction for Equitable Relief, 11)

The judge posed an opposition, therefore, between the rights of children (to release and family unity) and ICE's discretion, and by extension the plenary doctrine of immigration. Ultimately, the judge agreed that ICE retained discretion over the detention of parents, despite the *Flores* settlement and *Reno v Flores'* clear preference for releasing families. The judge thereby affirmed children's subordinate position in immigration law and enforcement, reproduced the culpability and criminalization of parents, and voided the possibility of family-based legal claims in enforcement matters.

But even without granting parents rights through their children's claims to the *Flores* agreement, the judge had the authority to release the families. To grant preliminary injunction--in this case the immediate release of the families from Hutto--the plaintiffs needed to meet four criteria: (1) substantial likelihood that Hutto violated *Flores;* (2) substantial threat that the children would suffer irreparable injury if not released from Hutto; (3) the threatened injury to the children outweighed any damage that release would cause ICE; (4) release would not disserve the public interest (*Bunikyte, et al v. Chertoff et al. Order,* 11). Because of the overwhelming evidence from parents' testimonies that Hutto violated the *Flores,* the judge readily agreed that the conditions at Hutto violated *Flores'* stipulations on conditions of confinement. The remaining criteria

demanded, however, a calculus of harm between detained children, ICE and a universalized "public interest" (see also Bhabha 2000). First, the judge refused to undermine ICE's discretion to detain noncitizens in violation of immigration laws. Coming to this conclusion invalidated, he argued, the plaintiffs' claims to irreparable harm because "the detentions themselves were entirely lawful" (*Bunikyte, et al v. Chertoff et al*. Order, 36). That is, "irreparable harm" could only be established by challenging the legality of ICE's discretion, which is the basis for the plenary doctrine in immigration law. Defining law and irreparable harm as mutually exclusive worked, further, to cleanse the federal court of its own responsibility for children's harm, mystifying the violence authorized in and through the law.

Second, agreeing with ICE's defense, the judge minimized the harm to the detained children by emphasizing their small number and normalizing the trauma incurred during migration. He did not dispute the *fact* that detention would harm children, but that detention was *the only harm* done to them in the process of travelling to the US:

> I am not convinced that there is *irreparable injury to the children.* I am convinced that there could be injury psychologically to the children. These children come extremely vulnerable because of the circumstances of their being here, not being where they're secure, not being where they know where they are…. But I don't think there's any doubt that living in the conditions that I've heard today before the changes certainly didn't improve the psychological aspect of a young child or adolescent's life. *Now, oddly enough, it may have been a lot better than they were when they -- before they were captured.* May have been better than it was before they got to this country. But that doesn't excuse the way we act in this country.

(Emphasis added, Judge Sam Sparks, *Bunikyte v. Chertoff*, Transcript of the Injunction for Equitable Relief, 221; 238)

It's going to be expected that these children have had difficulties, and those difficulties contributed, to some degree, to their mental status. How much and the fact that they're still illegally here because of the acts of their parent or parents, you know, I don't know how they could be severely damaged by facilities, but we'll see. (Judge Sam Sparks, *Bunikyte v. Chertoff*, Transcript of the Status Conference, 51)

The harm caused by detention is not irreparable, first, because it is legal and, second, because it cannot be quantified separately from pre-detention trauma. This calculus of harm generalized parents' abuses across a dangerous "elsewhere" beyond US borders, despite the fact that ICE has detained families from over 40 countries. Framing the US as *the* space of law and order, asylum and immigration is both the proof of the American "exceptional excellence" and the source of childhood trauma (Puar 2007). It is precisely this exceptionality that justifies ICE's discretionary power at the border, as these zones of illiberal rule both legitimize and maintain the presumably liberal and democratic space of the United States (Basaran 2008). This dichotomized figuration effectively pathologizes transboundary migration, again displacing responsibility for the effects of detention onto the parents' choice to migrate.

Negotiating a Settlement

After the judge ruled that *Flores* did not establish the right to family release, and that detention could not be proven to cause irreparable harm, the parties settled. Where early

arguments in the case focused on the distribution of entitlements between family members, the settlement negotiations focused on transforming the spatio-temporal ordering at Hutto from "prison-like" to "home-like" conditions. (I explore this dichotomy further in Chapter 8.) The settlement included a litany of changes to the physical infrastructure, relationships between guards and detainees, and access to services (see Figure 6.2). Further, the settlement required ICE to review parole, bond, and release decisions for each family on a monthly basis, so that families would not be detained indefinitely. Compliance with the settlement was evaluated semi-annually by a federal magistrate, until June of 2009. Ironically, the "benefits" afforded to children under the settlement accrued to not just the plaintiffs, but to their parents and to the families detained at Hutto thereafter. Parents could not share children's rights to release under *Flores*, but could, by dint of their spatial co-presence, share their rights to "home-like facilities," so long as they remained segregated from the general population. The right to certain *conditions* diverges from the spatiality of rights to *release*; like oil and water, parents and children's rights can share surfaces, but cannot mix.

CONCLUSION

Contrary to the more complex range of considerations taken up in children's and family law, I have shown that immigration law figures its subjects rather bluntly, as innocent child-objects and criminalized migrant-subjects. Their mobility defines their legal status, as child-objects are presumed to be apolitical, inert, and silent, while migrant-subjects are highly politicized, self-conscious actors willfully choosing to violate legal boundaries. In short, children *are moved*, passively, and adults *move*, actively and

by choice, rendering family groups unintelligible. Ruddick has argued that children's "best interests" enables a ventriloquist politics of representation, in which "the child

Table 6.2: Provisions of *In re Hutto Family Detention Center* Settlement

Schedule: 6:30am earliest wake time; no wake-up time on weekends; flexible showering system.

Education: 5 hours of class/day; computers available; individual assessments for each child; certified teachers; adult English as a Second Language classes available.

Recreation: All family members have open and outdoor recreation available every day; craft activities available in the pods; movie nights and monthly birthdays available; children can have writing utensils in living areas; field trips available; Spanish and English television available.

Living Conditions: 4" mattresses provided; painted walls and murals; room decorations allowed; porcelain toilets to replace stainless steel; rooms unlocked at all times; room searches not conducted arbitrarily.

Clothing: Families wear own clothing; CCA provides clothing if necessary.

Toys: communal toys in each pod; children allowed to keep toys in rooms during the day; facility accepts donated toys.

Privacy: One room in each pod designated for private toilet use; privacy curtains added to cell toilets.

Grooming: Hair products and barber services available; supplies available at commissary.

Food: Menu revised regularly; cafeteria-style menu; salad bars available; meat-based courses available every day; snacks available in refrigerators, vending machines, and at the commissary.

Mental Health Services: Town Hall meetings each week; Individualized needs assessments performed upon admission; children have individual and group sessions available.

Medical & Dental Care: Full-time pediatrician on site; immunization available; more space provided for consultation; Spanish-speaking staff; toothbrushes and over-the-counter medicines provided.

Visitation: Contact visits permitted; designated, private rooms available for meetings with attorneys; hours posted clearly; children not required to accompany parents.

Detainee Movement: Interior doors open; freedom of movement between housing pods and non-restricted areas; parental consent for children's movement; check-ins replace headcounts.

Phone Access: Phone cards reasonably priced; detainees informed that calls are recorded, but not monitored in real time; free telephones for legal services provided.

Mail: Staff does not read mail; families can receive books and clothing.

Staff: casual uniform replaces enforcement uniform.

Orientation: Explains rules, services, grievance procedures; local non-profits permitted to give legal orientation programs; handbook provided to incoming families.

Legal Counsel Access: attorneys can leave phone messages for detainees; message delivered in a timely manner; instructions for reaching pro bono legal representation provided in each pod; attorney-client privilege respected by staff.

Library: legal materials available regularly; free access to library; stocked with sufficient books; facility accepts book donations.

Facility: Razor wire removed; no fence or bars on front entrance; landscaping on grounds; intake doors wooden, unlocked; no signs describing Hutto as 'correctional.'

Record Keeping: Resident files to contain intake forms, disciplinarly reports, records of counseling, commissary records; case records locked.

Work: Detained parents allowed to work for $1/day.

Employment Requirements: Experience/advanced education required for Child Care Professional staff.

(*Source*: *In re Hutto Family Detention Center* Settlement Exhibits A, B, C.)

danced around the issue with a series of partners: parents who defend their liberty to raise children as they see fit; the state, which has an abiding interest in the child as futurity; and an increasingly complex array of representatives" (2007a, 520). As the plaintiffs' attorneys, their parents ICE, and the judge purported to act in the plaintiffs' "best interests," and the children gave few testimonies, *Bunikyte* hardly broke new ground for children's political agency. Intriguingly, however, children's 'best interests' and 'special vulnerability' made the case possible, as the presumed dependence of children required the creation of legal protections. Even while the child-objects figured by *Flores* and *Plyler* were not quite persons, the protections granted them go far beyond what is available to adult "aliens." Children's and adult's legal subjectivity is mutually constitutive, so that each displaces the other while neither achieve recognition as a "person" before the law.

Immigration geopolitics unfolds, then, in and through an asymmetrical distribution of liberal norms of right and responsibility among unaccompanied children, families, and adult migrants. It is not the case, as others have argued, that the *law* is suspended for those in detention, but that immigration law does not afford migrant-subjects a *liberal balance* of rights, obligations, and punishments. As Basaran argues, "Border zones are legal constructions and law is an ordinary means by which the liberal state legitimizes illiberal rule…" (2008, 341). Immigration law *legitimizes* the geopolitical scaling of the plenary doctrine of immigration, and the particular post-9/11 fusion of national security and immigration legitimizes detention as a practice. The illegality of the migrant-subject and illiberal immigration enforcement practices serve as recursive justifications, each leading inexorably to the other. Thus, "border zones are

characterized by legal proliferation rather than being outside the law, by *juridical complicity* rather than executives acting on their own… These are not places without rights, but places with difference--and thereby lesser—rights" (Basaran 2008, 340; 347). Weighing the "best interests" of 26 individual children against "the public interest," "the rule of law," "border security," the judge used the ambiguity of children's rights to create an opening for judicial affirmation of the juridico-political configuration of immigration geopolitics in the United States. *Bunikyte's* resolution did not, therefore, represent a shift in federal court rulings on children in immigration custody, but does illuminate the geopolitical implications of children's legal status, and the ways in which immigration law pits children's vulnerability against criminalized, hyper-responsibilized parents. Understanding these how these legal distinctions are put to work in immigration law and enforcement is critical to understanding how geopolitical narratives create the conditions for policing, detention, and deportation practices in the United States.

As this chapter has shown, the legal distinctions between children and adults are bound up with geopolitical mappings of external danger and internal safety, such that family detention protected both the US and noncitizen children. As Mountz argues (2003, 2004) and I explore in the next chapter, legal categorizations impact noncitizens' pathways into and out of detention, even if, as Coleman (2005) argues, legal and policy discourses do not map cleanly onto the sites of enforcement. For Butler (2009), ICE's and the judge's legal arguments mobilize a narcissistic and uni-directional narrative of victimhood that justifies policies that maximize the physical vulnerability of a litany of others, under the assumption that "our" vulnerability will be minimized. Twinning children's "special vulnerability" with perceived security vulnerabilities in the

immigration enforcement system, this assemblage of institutions and practices displaces physical vulnerability from the US nation-state onto an anonymous population of external others and produces, I argue, a geopolitics of vulnerability. More than a discursive coupling, the plenary doctrine frames immigration as a threat to territorial sovereignty, authorizing wide administrative discretion to exploit the precarity of migrants' legal, political, and physical positions. Understanding emerging detention and enforcement practices requires close attention to the intersections of law, administrative authority, and enforcement practices. It is here that noncitizens continue to contest the legal apartheid between "aliens" and "persons" and the spatial practices of securitized sovereignty.

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CHAPTER 7: DELEGATING DISCRETION: LAW, THE PLENARY DOCTRINE AND SOVEREIGN POWER

"From the point of view of the law, detention may be a mere deprivation of liberty. But the imprisonment that performs this function has always involved a technical project." (Foucault 1995 [1977], 257)

INTRODUCTION

In Chapter 6, I described how Judge Sparks deferred, in the end, to ICE's discretion to detain whomsoever it deemed necessary to achieve compliance with immigration law. Analyzing the Hutto litigation's transcripts, however, I found that legal precedent on *administrative discretion*—executive officials' ability to make judgments beyond regulations and statutues—also protected ICE, a legal regime that applies to *all executive agencies*. For example, attorneys argued over the boundary of ICE Field Office Director Marc Moore's decision-making process. In his deposition, the FOD is allowed to recount the content of his decisions, but, as the ICE attorney claimed, his "pre-decisional" thought process was off-limits to the plaintiffs. The following is one of many discussions of Moore's "deliberative privilege:"

> [Plaintiffs' Counsel 1]: Have you kept women [at Hutto] that were pregnant?
>
> [Moore]: Yes.
>
> [Plaintiffs' Counsel 1]: So do you consider pregnancy not to be a significant factor--
>
> [Defense Counsel]: I'm going to object to the extent we are starting to stray into his deliberative process and making decisions on parole releases.
>
> [Plaintiffs' Counsel 1]: It's in the regulations. I'm asking him how he applies the regulations. He brought those up.
>
> [Defense Counsel]: He considers all --- as he said before, he considers all of these

criteria, but *when you start delving into [how factors are] weight[ed], you're going into the thought process* he has behind the parole decision.

[Plaintiff's Counsel 2]: He testified that he adheres to the regulations. So we are saying he said he adheres to the regulations; he let some pregnant people out. He adheres to the regulations; he doesn't let some pregnant people out. The policy is that, obviously, some pregnancies can be paroled. It is perfectly acceptable and it is *not pre-decisional to ask how he distinguishes between those two.*

[Defense Counsel]: *His thought process behind each of those parole determinations is pre-decisional to that parole decision.*

[Plaintiffs' Counsel 2]: But his adherence to the policy, he has distinguished between the way that he adheres to a policy. We haven't asked him about a specific parole decision. We are asking how he adheres to the policy. *The policy has already been set. He's not making policy. That's not pre-decisional.* It says in the regs, some pregnant woman must be paroled or should be paroled. How is he applying that? That's not pre-decisional. It's in the regs. He says he obeys the regs. Some pregnant people get out, some don't. So what's going on?

[Defense Counsel]: *To the extent it involves a measure of his discretion, it is pre-decisional.* (Emphasis added; *Bunikyte, et al. v. Chertoff, et al.* Deposition of Immigration and Customs Enforcement Field Office Director Marc Moore, 86-88)

"Straying into his deliberative process," the plaintiff's attorneys walked a delicate boundary between the content of ICE's agency-wide policies on release, Field Office Directors' application of these policies to individual cases, and the decision-making process behind both individual and policy decisions. The difference, then, between policy

and execution has a significant impact on the relationship between executive branch and the federal courts. More importantly, the discussion above shows how the everyday work of immigration officials—especially the categorizations, release decisions, and deportation orders—cannot be judicially challenged.

For scholars of executive power, this is an intriguing discussion. The *decision* to banish, to set outside political membership and national space, to exclude from the normal juridical order constitutes, according to Giorgio Agamben and others, sovereign power (Agamben 1998, 2005). Yet, the very decision-making process is, itself, excluded from judicial review. Parole decisions occupy (and constitute) a specific discursive zone between law and policy; ICE is Congressionally authorized to develop, implement, and publish immigration enforcement "regs," but the deliberation process behind the regulations is not *judicially* reviewable. "The *Chevron* deference," (*Chevron U.S.A Inc. v. Natural Resources Defense Council, Inc.* 1984) prevents federal courts from rendering judgment on executive policy-making, protecting executive policy-makers from personal liability. According to principles undergirding administrative law, courts defer to executive agencies because those agencies are accountable to the voting public (via the presidential office), and this accountability forces those agencies to work in the best interests of affected populations (2008). Thus, a Field Office Director's decision-making process about who to detain, why, where, and for how long is exempt from federal court review. The plaintiffs' attorneys in *Bunikyte et al. v. Chertoff et al.* wanted to find out how Moore applied "the regs" to individual cases, and to show that he did not, in fact, evaluate each family's eligibility for release, as required by the *Flores* settlement. Protected by deliberative privilege, however, Moore's thought-process for reaching those

decisions could not serve as evidence, even though his written release decision letters could. The attorneys ultimately showed that the letters shared the same boilerplate language, except for detainees' name and Alien Number, and contained nothing specific to each families' cases to indicate a detailed, individualized review. The *Hutto Settlement* required Moore (and subsequent Field Office Directors) to provide more detailed rationales for approving or prohibiting release.

Interdisciplinary studies of immigration enforcement have explained immigration law's exceptionality as a consequence of the "plenary power doctrine," a provision that sets federal immigration law apart from the constitutional protections governing the criminal justice system, citizen's rights and entitlements, and local immigration initiatives (see Varsanyi 2008).[4] Since the 1899 *Chae Chan Ping*, the Supreme Court has ruled repeatedly that immigration policy is a foreign policy matter, belonging under the purview of Congress and the Executive Branch, and is therefore beyond the Supreme Court's constitutional judgment. Delegating immigration law-making to Congress gives politicians wide latitude to decide how (and whether) immigration law will adhere to constitutional principles adhered to in other legal regimes (Neuman 2005). There is no mandate—and therefore no guarantee—that immigration law share the same principles as other US legal regimes. *Enforcement* policy-making falls therefore outside the purview of Supreme Court intervention, severely restricting any due process or fundamental rights claims noncitizens may have about their detention or deportation proceedings. For most US legal immigration scholars, then, ICE's authority to make and remake immigration enforcement policies derive from the scaling of immigration as a foreign policy matter.

[4] Monica Varsanyi (2005?) shows, however, how municipal governments and *consulares* develop their own forms documentation and, therefore, local forms of citizenship, political membership, and immigration geopolitics.

For them, immigration law's scaling sets it apart from *domestic* public policy, though the physical presence of noncitizens muddles these distinctions in daily life (Coleman 2008b). While the plenary doctrine is the Supreme Court's primary rationale for not intervening in *deportation and release* decisions, however, a range of *administrative laws* protect enforcement *policy-making*--including detention center operations—from judicial oversight, as shown above.

Understood from the perspective of the plenary doctrine alone, immigration enforcement is a matter of admitting suitable noncitizens and excluding those deemed inadmissible at the border. Exclusion becomes considerably more complicated, of course, when applied noncitizens already in US territory. In those cases, residents must be rendered excludable; in De Genova's terms, they must be *illegalized*. In the 1996 laws, Congress to limited noncitizens' access to judicial review of deportation and detention decisions. As legal scholar Gerald Neuman (2005) argues, federal courts now police the legal and constitutional boundaries of administrative discretion over immigration enforcement, but do not rule on the validity of ICE's use of that discretion. Immigration officials retain the authority *not* to pursue deportation, to issue a "stay of deportation," and to develop procedures through which to pursue deportation. ICE leadership regularly issues "prosecutorial memos" and other guidance on when and how to exercise prosecutorial discretion. In other words, there are formal *rules* about how immigration *law* is to be exercised, but administrative discretion protects this rule-making from judicial oversight. These rules are not the same kind of legal instrument as immigration legislation, but neither are they il-, or extra-legal. They may be, however, *extra-constitutional*, and among immigration scholars, extra-constitutionality and illegality

often become collapsed. So while *prosecutorial* discretion was initially used for humanitarian release, *administrative* discretion became a way of closing down appeals and review opportunities for noncitizens in deportation proceedings under IIRIRA (Johnson 2008, Neuman 2005). Thus, immigration agencies have wide authority to achieve compliance with deportation orders, and "the *Chevron* deference," prevents court intervention in the implementation of immigration law.

Focusing on administrative discretion allows me to plot the different points of contact between detainees and ICE officials, to trace migrants' pathways into and out of detention, and to thereby chart a geography of illegalization. As I explain in more detail, a range of border and immigration enforcement agencies classify noncitizens according to where and when they come into contact, and those arrested *within* the US are afforded more due process protections than those arrested at a port of entry or outside US territory. In addition to due process, "illegal aliens" are eligible for bond, while "arriving aliens" can petition for parole. While the distinction seems heuristic, bond and parole require different actions from detainees, so that access to parole and not bond, for example, has dramatic impacts on detainees' ability leave detention centers while their cases are processed. In this chapter, I explore ICE's "deportation power" through the series of *enforcement* decisions in order to outline the kinds of discretionary decisions through which ICE specifies practices of detention and release. I contrast ICE's authority over individual cases (and bodies) with ICE's delegation of detention operations in order to analyze the assemblage of institutions working on noncitizens' bodies between migrants' arrest and release/removal. Moving from bodies to spaces, in short, I seek to unpack the assemblage of legal and policy instruments make detention possible.

APPREHENSION, CATEGORIZATION AND DETENTION

Noncitizens come into contact with ICE in a variety of ways. Public institutions have begun to request proof of legal residency, and failing to produce documentation can result in being reported to ICE. While these policies vary from state to state, and county to county, everyday bureaucratic activities, such as drivers' license renewals, require proof of residency (Shahani and Greene 2009). Departments of Transportation, social services, schools, and streets have become, in some places, sites of surveillance, policing, and potential arrest. Since 2006, ICE has also performed workplace enforcement actions (popularly known as "raids") and late-night visits to noncitizens' homes.[5] In border cities, local law enforcement regularly calls CBP to act as an interpreter in conversations with non-English speaking victims, witnesses, or suspects. Once on the scene, CBP can choose to ask for documentation and take people into custody. Noncitizens may, therefore, be rendered excludable far from the border and long after entry. By linking with local law enforcement and a range of banal state institutions, which have nothing to do with federal law enforcement, ICE has been able to increase the potential points of contact between its agents and noncitizens (Coleman 2009).

During this study, families came to Berks and Hutto in a variety of ways. ICE apprehended some families at ports of entry, particularly those families who requested asylum upon arrival.[6] A Somali mother and child crossed the Mexico-US border, and a local resident advised them *not* to claim asylum; the mother maintained that, no, her

[5] Raids came under fierce criticism, especially as reports surfaced about children left at school or ending up in foster care after their parents were detained at work. The Obama Administration promised to end the raids, but ICE has continued the practice of home raids and workplace actions, albeit under a lower profile.

[6] ICE does not collect aggregated statistics about where families have been apprehended. My data should not be taken as representative of detained families as a whole, but of the diversity of families' interactions with CBP, ICE, and other agencies.

family members received asylum, and she would, too. The local resident called CBP, who detained the mother and child in a temporary facility, separated them for 10 days, then transferred them together to Hutto (explored in more detail below). Another family crossed the Mexico-US border, only to have an acquaintance, who feared harboring them would put her at risk, call CBP. Others were picked up from their homes, and still others apprehended on city streets. ICE detained a Canadian-Iranian family when their flight to Canada made an emergency landing in Puerto Rico, despite the fact that they had never intended to enter the US (Democracy Now 2007). In another instance, ICE detained a boy travelling to the US alone to join his mother. When his mother arrived to pick him up from ICE, they detained her, as well, and transferred them both to Hutto. Noncitizen families entered detention, therefore, in a variety of ways. As I elaborate below, when and where noncitizens come into contact with ICE has significant implications for what happens next.

Categorization and Detention

After "being picked up," or apprehended in ICE's terminology, families faced a series of categorizations and re-categorizations that determine where they will be detained, their opportunities for release, and the likelihood of their deportation. Two factors have significant bearing on noncitizens' detention trajectories: (1) the territorial location of their apprehension and (2) the timing of their contact with CBP or ICE. As one participant explained:

> So you cross the border illegally, you're picked up on the southern border, for example, or the northern border, and you've been in the United States for less than 14 days, and you're detained or arrested within 100 miles of the border, then

you're put in Expedited Removal. If you're stopped at the border, then you're put in Expedited Removal. If you're stopped at the airport, with no documents, with false documents, or you actually ask for asylum at the border, you're arrested and put in Expedited Removal.

And then in order to get out of Expedited Removal, you have to pass the Credible Fear Interview, which shows that you have a reasonable fear of persecution if you're returned. So, so that's how you get into Expedited Removal.

If you overstay your tourist visa…, and you got arrested with your children, you should not end up at Hutto. Because, let's say you came in as a tourist and you never went home and you got picked up in a raid. Or walking down the street with your children. That family is not supposed to go to Hutto, unless Berks is filled. Because that family that entered legally would not qualify to be in Expedited Removal in the first place. (Interview April 2008)

The timing and location of noncitizens' contact with ICE bears directly on noncitizens' access to relief or release. As I have described elsewhere, Expedited Removal (ER) deputizes ICE officers to issue deportation orders to certain noncitizens without those persons seeing an immigration judge and triggers mandatory detention; ICE typically deports ER detainees in under 30 days. This timing applies to families who request asylum at a Port of Entry, as it applies to those apprehended along the southwestern border. ICE classifies the former, however, as "arriving aliens" and the latter as "illegal aliens," and these categories determine their access to bond and parole later in the

immigration process. Families can exit ER's deportation "fast-track" by requesting a Credible Fear Interview (CFI), in which an asylum officer with Citizenship and Immigration Services will determine their fear of persecution. Thus, when and where families come into ICE custody bears directly on their access to the immigration and/or asylum adjudication process, where they are detained and the duration of their detention.

While the Hutto settlement stipulated that non-ER families would go to Berks, because that facility was presumed to be more suitable for long stays, this was not always the case:

> LM: I know part of the settlement, too, was that the people detained [at Hutto] would be those in Expedited Removal Processing, not people with some other ambiguous status that would take longer to decide. Has that pretty much been the case?
>
> Participant: It's only people that are initially placed in Expedited Removal, unless Berks is filled, which is the other facility. So our experience is that most people are initially in Expedited Removal, but I talked to…to two families, uh, that were not in Expedited Removal who were picked up, actually they were picked when they went to, um, get their children who were trying to join them in the United States.
>
> …
>
> LM: So Berks has really become--so now they're basically dividing families by their status. If they're in ER, they go Hutto.

> Participant: Maybe, you know it's unclear to me. What I think it's also--it's geographic…. [Hutto doesn't] get a lot of people…stopped at the airport in New York asking for asylum. So part of that might just be geographic. So if you're in New York, it's closer to take you to Berks, than it is to get you to Hutto. (Interview April 2008)

In practice, families' pathways into and out of detention are not, therefore, entirely predictable on the basis of their "arriving alien," "illegal alien," or ER classification. Placement decisions (Berks, Hutto, or neither) rested with individual ICE officers, and some regional field offices chose to release rather than detain families despite DHS' "catch and remove" policy (Fieldnotes 2009). Even with seemingly clear-cut mandatory detention cases, ICE officers retained much discretion to detain, release, or transfer families within their regional field offices. ICE rule-making guides officers' discretionary decision-making, but does not bar them from taking other actions.

Families have been (and still are) apprehended by a variety of federal law enforcement entities. While border and immigration enforcement officers often work closely together, they work for different agencies, under different mandates, and with different authority over the deportation process. Most families apprehended on the Mexico-US border moved through CBP stations before being transferred to ICE. As described in Chapter 4, CBP runs a number of temporary "staging areas" and temporary detention centers that hold noncitizens for up to 72 hours. Those caught in the interior might pass through a similar temporary detention center in an ICE office or a local jail. As one mother reported:

> I came, I crossed the border from Mexico to the United States... First, I met [a]

> lady. She said, gave us a sweater, me and my son. I said, I want to go. I'm looking for immigration. She said, 'No, don't look for them, just run. If they catch you they will deport you.' I said 'no, no, I need to go,' and then she called them. They came, they took me to a [Border Patrol station], they took a finger print and everything. After 2 days we were at that place, they tell me that they have to separate us—me and my son. They take him to the foster house, and me to the adult detention. Then after 10 days we met. Then they took us to Hutto together. (*America's Family Prison* Interview 2007)

If families face difficulties navigating the legal cartography of their own cases, the picture is seemingly equally obscure on ICE's end. While Field Office Directors are responsible for the case management of detainees in their regions, how families moved from one place to another was not always clear to these officials either:

> [PLAINTIFFS' COUNSEL] Who does [the intake process for Hutto]?
>
> [MOORE] Well, families are encountered by the Border Patrol or a Port of Entry by a C[ustoms] and B[order] P[atrol] or maybe even the Office of Investigations as they do their work. Those individuals – and I don't want to speak on something I don't clearly know. My understanding is that they contact the field office juvenile coordinator for wherever they happen to be. And that the coordinator makes a call, faxes or in some other fashion communicates with whoever is assigned to those duties within the Hutto facility to determine whether that family is suitable for housing there. (*Bunikyte, et al. v. Chertoff, et al.* Deposition of Immigration and Customs Enforcement Field Office Director Marc Moore)

For families, this process is an anxious one, as it is never clear to them which agency is

detaining them, for what purpose, and where. Nancy Hiemstra has tracked this process for Ecuadorean deportees, and shown how many are unclear whether they are in Texas or New Mexico, in a CBP or ICE facility, in prison or in detention (Hiemstra forthcoming). For detained noncitizens, this labyrinth of legal distinctions, intended to differentiate legitimate from illegitimate migrants, is confusing and frightening.

Review and Release

Flores also required, however, INS/ICE to review each child's eligibility for release (not only those whose attorneys request one) and a letter stating ICE's reasons for continued detention. Because children faced greater barriers to fair immigration processes, they often languished in the pre-*Flores* detention system for long periods of time. Prior to the Hutto settlement, bond and parole reviews were particularly complicated because *Flores* required regular review of children's detention decisions and written justification for their detention in secured settings; ICE had no such obligation to parents. As the litigation showed, ICE subordinated children's claims to their parents', treating families like accompanied adults, and neglected *Flores'* requirements to review children's detention decisions regularly. As one mother noted:

> Mohammed, Asia, Bahja and I do not know why we are in jail. We never received any notice of the reasons for why the children are imprisoned here. Mohammed tells me it is not fair for him to be in jail because he's never done anything wrong. (*Bunikyte v. Chertoff,* Declaration of Deka Warsame.)

In cases where the ICE Field Office Director did review families' eligibility for release, he rubber-stamped his decisions without giving individualized reasons for denying bond or parole. These practices reveal, advocates argued, a presumption of detention among

ICE leadership. The settlement ultimately required that the Field Office Director review and communicate individualized release decisions (with which the FOD complied; *Bunikyte v. Chertoff* Final Compliance Report 2009). These technical struggles were particularly important because review and relief decisions cannot be appealed to a higher or external body. In the past, federal courts adjudicated appeals, but Congress limited these appeals to increase "administrative efficiency" and move noncitizens through the deportation process more quickly. Once detained, ICE Field Office Directors and the Deportation Officers assigned to specific facilities can singlehandedly decide a family's fate.

Above, I described how the place and time of a family's apprehension determined their denomination as "illegal" or "arriving aliens" and how this categorization impacted where and how long they are detained. This initial encounter determines families' *eligibility for release* from Hutto and Berks. As Field Office Director Marc Moore explained, Expedited Removal's expansion complicated what used to be fairly clear release policies:

> [Plaintiffs' counsel] And during the time that you have been involved at Hutto have bonds always been set for persons who pass their credible fear [interview]?
>
> [MOORE] Well, I don't know – I can't recall exactly when that Board of Immigration Appeals decision occurred that – I'm speaking from memory because remember that *up until the Secure Border Initiative, almost all expedited removals anywhere were issued at Ports of Entry*. So they were all arriving aliens, so there was really no question. Then as you moved in to between the Ports of Entry, the immigration court -- and actually, I believe the case was brought out of

> San Antonio -- the immigration court did not believe those fell within the terms of an arriving alien. So they rendered a decision that they believe these cases fell within the purview of the Court to set a bond. I think the agency disagreed, and BIA ultimately ruled that the immigration court was correct. (Emphasis added; *Bunikyte, et al. v. Chertoff, et al.* Deposition of Immigration and Customs Enforcement Field Office Director Marc Moore)

Privileging those within US territory over those outside of it (or in the process of passing into it), "illegal aliens" can "bond out" of detention, while "arriving aliens" can only be released on parole. This differentiation affords noncitizens present in US territory more procedural rights than those who have never been admitted, and this territorial hierarchy has long been considered precedent in immigration law (Neuman 2005). Once ER applied to areas *between* and *beyond* Ports of Entry, ICE faced the possibility of bond-eligible ER cases. Prior to the 2004 expansion of ER, placement in ER proceedings effectively eliminated noncitizens' opportunities for release.

The difference between bond and parole is particularly important for asylum-seekers who claim asylum at a port of entry--that is, those who avoid undocumented entry and seek legal entrance under established humanitarian refugee law. Immigration judges determine bond eligibility and set bond amounts in noncitizens' initial hearings. ICE Deportation Officers have the discretion to set parole, however, on the basis of their evaluations of families' "flight risk:"

> [PLAINTIFF'S COUNSEL] And regardless of who actually prepares document, who is the person that considers a successful applicant who passes the CFI? Who is the person that makes this consideration as to whether the person is going to be

released or not?

[MOORE] It would probably be the case officer.

[PLAINTIFF'S COUNSEL] Is that the same as the--

[MOORE] Deportation officer.

[PLAINTIFFS' COUNSEL] --- deportation officer? And do you review these document decisions?

[MOORE] Me, personally, no, ma'am.

[PLAINTIFFS' COUNSEL] And where are those deportation officers located?

[MOORE] They're located at Hutto. They are assigned dockets. Each docket consists of any number of individuals or families, in this case. And it is their day--to-day responsibility to review those cases, act on the information that's changed in those cases and move those cases with the best efficiency through the case system. (*Bunikyte, et al. v. Chertoff, et al.* Deposition of Immigration and Customs Enforcement Field Office Director Marc Moore, pp. 102-105)

Hutto's Deportation Officers apply these evaluations differently, so that families' (and now women's) release on parole often depends on which officer they are assigned (*Bunikyte et al. v. Chertoff et al.* Compliance Review 2, 2008; Fieldnotes June 9, 2010). Both bond and parole require substantial financial deposits, ranging from $1,000 to $14,000 per person, but gaining parole requires that "arriving aliens" find a sponsor to take responsibility for their welfare and court appearances. For families arriving without existing family or community support, raising this kind of money was impossible, marking the gulf between technical and real relief (White 2002). The asylum process takes from six to twelve months, so prohibitively expensive parole amounts guarantee

long detention stays, despite a Deportation Officers' evaluation of a families' low flight risk.

The terminology of "relief," the official term ascribed to detention release and stays of deportation, is revealing, because discretionary relief is not a right, but an administrative decision made by ICE or an Immigration Judge. Because relief is discretionary, it is not bound by the norms of due process set out in the Constitution (*Reno v. AADC* 1999). Federal courts have ruled, on these grounds, that constitutional due process norms do not apply to relief hearings. Because noncitizens cannot appeal discretionary relief decisions on due process grounds, relief decisions are exempt from federal or appellate court review (Neuman 2005). ICE and immigration courts retain, therefore, discretion over noncitizens' pathways through the immigration system. Though distinct, these two forms of discretionary authority resonate and work together to limit the ability of noncitizens to appeal for relief from detention and deportation.

ICE's discretionary authority bore down on families arriving in the US without prior authorization in numerous ways. First, ICE has the discretion to initiate (or not) deportation proceedings against groups identified by Congress in immigration legislation, and the decision to withhold an order of deportation. Second, Immigration Judges have the discretion to grant relief to deportable noncitizens, but not "arriving aliens." With the exception of certain categories of mandatory detention, ICE's authority to detain noncitizens, to transfer them between detention centers, and to release them under various forms of supervision rests in its administrative discretion to execute immigration law. Making families detainable, therefore, required policy changes within the then-new Department of Homeland Security, but did not require new legislation. Just as ICE began

detaining families by way of administrative policy-making, the agency ceased placing families in Expedited Removal, circumvented the mandatory detention requirements of ER, and thereby emptied Hutto of its families in September 2009 (Email Correspondence September 14, 2009). Thus the history of family detention policy reveals much about the ways in which ICE maneuvers between legislative constraints like mandatory detention.

DELEGATED DISCRETION: GOVERNING DETENTION CENTERS

IIRIRA requires ICE to detain particular noncitizens prior to deportation, and charges the agency with ensuring noncitizens' compliance with admission and exclusion laws. As such, the choice, location, and daily operation of detention—the entire detention system—falls within ICE's policy-making prerogative. Yet contracts, previous legal settlements, state licenses, and performance guidelines govern detention center operations. To this point, the chapter has focused on ICE's discretion over families' pathways into and out of Hutto, specifically the ways in which ICE officers' categorizations structure families' legal options. My focus has been, then, on the ways in which ICE officers put immigration law to work, and the ways in which categorization practices are applied to individual cases and noncitizen bodies, i.e. the production of detainability through legal discourse. Actualizing detainability requires, however, spaces of confinement, so here I turn to analyze the governance of detention spaces. I outline how federal and state oversight overlapped with internal ICE inspections, intergovernmental service agreements, and contracts. Paradoxically, multiple legal frameworks intersect, making Hutto hardly an extra-legal space, yet these legal frameworks do not found a basis for rights claims by detainees. Rather, these different

legal regimes work to continually defer liability for detention conditions.

Flores v. Meese (1997) and *In re: Hutto Detention Center* (2007), federal litigation settlements in the Ninth and Fifth Circuits respectively, created binding legal requirements that set family detention apart from adult detention centers. Family detention facilities are different from adult-only facilities (including Hutto in its current role as a female detention center) in that these two settlements require additional oversight. In particular, *Flores* requires that all children's custodial facilities obtain childcare licenses. State licenses are supposed to insert a layer of external oversight and to ensure that ICE facilities operate at a minimally accepted standard of child welfare. This requirement devolves certain oversight responsibilities to states, which are traditionally excluded from immigration policy-making and enforcement (*Plyler v. Doe* 1983; see Varsanyi 2008), but also recognizes that children's rights regimes are state-legislated and litigated and child welfare is state-managed.

Here, Texas and Pennsylvania diverged. Upon discovering that Pennsylvania did not license secured family shelters like Berks, the county asked the state to create a license for their facility, rather than go unlicensed. Texas' Department of Family Protective Services, however, exempted Hutto from its child care license because parents were present. As Judge Sam Sparks noted: "A state license is qualitatively different from a state license exemption. A state license subjects the facility to periodic health and safety evaluations by an outside regulatory body, while a state licensing exemption, by its very nature, removes that layer of oversight" (*Bunikyte v. Chertoff*, Order). Judge Sparks accepted the exemption, on the grounds that his court did not have jurisdiction to mandate state licensing policies. *In re: Hutto Detention Center Settlement* also included

regular, unannounced visits from a federal magistrate, who oversaw compliance with its list of specific requirements until it expired in December 2009. Executed in federal court, these stipulations went beyond the Detention Standards, the Family Residential Standards, and ICE's monitoring practices that leave detained adults with "really nothing…no court-enforceable standards other than a constitutional claim, other than a substantive claim of violations of due process" (Interview April 2008). For Berks and Hutto, then, child-specific rulings imposed direct judicial oversight of detention center conditions, where there has been little for adults. The particularity of family detention—made so by the presence of children—highlights the ways in which children's rights serve as limits to ICE's discretion, but in comparison, reveals the fragility of those protections in the broader context of immigration enforcement.

In line with broader Bush-era directives to privilege the private sector in homeland security operations, the majority of immigration-related detentions are held in contract facilities, both public and private. ICE procurement officers request and award bids, draw up contracts, and monitor facilities, nesting an additional set of institutional relationships within ICE's administrative purview. While prisons are by no means transparent institutions, state-level agencies license, certify and hear complaints about prisons and jails in the criminal justice system. Federal detention centers are, however, overseen by the same agencies that contract them, and because immigration enforcement issues are extra-constitutional, challenging detention conditions, practices, or policies is exceedingly difficult. ICE owns and operates neither Berks nor Hutto, but subcontracts with Berks and Williamson Counties, respectively, through Inter-Governmental Service Agreements (IGSAs). As of September 2009, ICE held noncitizen detainees in seven

dedicated and approximately 240 shared-use county jail facilities contracted through IGSAs (see Chapter 3; US Immigration and Customs Enforcement 2009, 10). Contracting between government entities escapes the competitive bid process required for private sector contracts, and devolves detention center operations to county governments. Here, the differences between Berks and Hutto reveal dynamics at work throughout ICE's detention system (and the criminal justice system, as well). Berks County owns and operates the Berks County Family Shelter Care Center in a facility built by the county, located on county land.

The Corrections Corporation of America, however, built the T. Don Hutto Correctional Facility in 1995, on land the firm purchased from the Catholic Dioceses of Austin. Williamson County sub-contracted with CCA to provide the IGSA-stipulated family detention services. As the ICE Field Office Director explained, "in our IGSAs, our contractual arrangement is with the local government, the entity, state, county or local entity that has the facility. The county or whoever we have that contractual arrangement with, it's their choice who operates that facility for them. And that's the matter for the county in this case and CCA" (*Bunikyte, et al. v. Chertoff, et al.* Deposition of Immigration and Customs Enforcement Field Office Director Marc Moore). The ICE-CCA-Williamson County triumvirate became particularly complex during and after the lawsuit, as the federal court held ICE liable for its noncompliance with *Flores*, ICE held Williamson County liable for completing stipulated changes at Hutto, and Williamson County directed CCA to complete those changes:

> As I mentioned on the phone, I want to make sure that Williamson County understands the current activities occurring at T. Don Hutto Residential Facility

> and changes required under the IGSA. More importantly, *the IGSA is between the County and ICE, and Williamson County, TX is responsible for performance under the terms of the agreement.* As background, Williamson County was issued a change order under the IGSA on 2/16/2007 to make improvements to the facility to bring it more in-line with a non-secure facility required for ICE Residential Facilities. The Contracting Officer's Technical Representative authorized improvements and ICE is in the process of negotiating a final price for these changes with CCA.However, *any changes to the IGSA should be directed by CCA through Williamson County, and then to the ICE Contracting Officer, as that's who the agreement with ICE is with*. … We are in the process of negotiating this change order and *Williamson County must be at the table for these negotiations and changes to the agreement.* (Emphasis added; Email from Anthony Gomez, ICE Deputy Assistant Director, Office of Acquisition Management, Detention and Removal Operations to Hal Hawes, Assistant Williamson County Attorney, April 5, 2007)

In most cases, CCA then sub-contracted with other private firms for painting, bath fixture replacement, fence removal, installing new child-safe doors, social services, and education (Email Correspondence from Damon Hininger, CCA). This created some confusion, as the *functional* relationships between ICE, CCA, and Williamson County did not cohere with the legal hierarchy of contracted responsibilities. Ultimately, Williamson County Commissioners' Court agreed to delegate authority to CCA, allowing ICE and CCA to negotiate Hutto's changes directly (Email Correspondence between Ashley Lewis, ICE Head of Contracting Activity and Gary Mead, Assistant Director of ICE

Detention and Removal Operations, June 8, 2007). This web of sub-contracted authority over detention demonstrates, however, the gulf that can develop between the legal and practical control of detention centers.

The Hutto Settlement required ICE to develop Family Residential Standards (FRS), a 26-part document meant to set a baseline standard for family detention operations (analyzed in Chapter 8). In its form, content, and references, the FRS mimics the Performance-Based National Detention Standards (PBNDS) for adult facilities, which is based on the American Correctional Association (ACA) standards for jails and prisons in the criminal justice system. ICE enforces these standards through periodic audits by the Nakamoto Group, Inc., a private firm specializing in prison oversight. These monitoring reports contain both qualitative descriptions and "box-checking." Unlike the federal magistrate's Compliance Reports filed with Judge Sparks, the FRS and its compliance reports are not *legally* enforceable. That is, they serve as internal ICE reports that rank detention center conditions ICE sets for itself.

Berks is governed by Pennsylvania shelter licensing procedures, non-binding Family Residential Standards, *Flores* stipulations (but not *In re: Hutto*), and Berks County's IGSA with ICE, while Hutto's family detention operations were governed by the Family Residential Standards, the *In re: Hutto Settlement*, a contract between Williamson County and CCA, an IGSA between Williamson County and ICE, and *Flores*. In both facilities, ICE contracts out its authority to detain noncitizens, and in many cases this authority is re-contracted to various service providers. Thus, employees of the State of Pennsylvania and the Corrections Corporation of America have more control over the everyday spatial ordering of family detention facilities. This situation

became particularly salient when CCA fired a guard for having "consensual" sexual relations with a mother held at Hutto in 2007, and Williamson County charged a CCA guard with five counts of sexual assault in 2010. In both cases, ICE's delegated authority over detention created the possibilities for CCA guards to engage in illegal behavior.[7] Administrative and prosecutorial discretion define only the official scope of formally delegated powers, but this devolution of detention creates opportunities for a wider range of nominally "nongovernmental" actors to assume the prestige and authority afforded the state in immigration proceedings. Technically and practically, it becomes difficult to delineate the *limits*, legal and material, of state power over noncitizens in immigration proceedings.

DISCRETION AND THE PLENARY DOCTRINE

Adjudication, services, and enforcement are formally separated in the Immigration and Nationality Act (INA), so that any of these three components may be delegated to different agencies. When the Homeland Security Act (HAS) amended the INA in 2003, it allocated enforcement and administrative services to Secretary of Homeland Security, while adjudication authority was shared by the Secretary and the Attorney General (AG). The Executive Office for Immigration Review (EOIR) and the Bureau of Immigration Appeals (BIA), responsible for adjudicating immigration cases, remain in the Department of Justice under the AG's leadership. Prior to the 2003 reorganization, the INS managed both enforcement and administration, while EOIR and

[7] The Prison Rape Commission considers all sexual relations between detainees/prisoners and guards nonconsensual, due to the severely uneven power relations between guards and prisoners. See National Prison Rape Elimination Commission 2010.

the BIA managed adjudication, as they do now. The HSA reorganized immigration functions in operational terms: ". . . a Federal official to whom a function is transferred . . . may, *for purposes of performing the function, exercise all authorities* under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before [transfer]" (P.L. 107-296, §456 in Viña 2003, 2). The delegation of *enforcement-related activities* dictates the distribution of *immigration-related authority*, while adjudication—the categorization, review, and release decisions above—falls to *both* the AG and DHS Secretary. Discretion over detention spaces and immigration cases are, therefore, separated and distributed over two DHS agencies and the Department of Justice. The relationship between noncitizens' bodies—before, during, and after detention—and the federal government is mediated by these delegated powers, rule-making, and administrative privileges.

Coleman (2008a) has delineated how the *deportation power* applies to citizens already living in the US, and production of immigration enforcement's "postentry landscape." The threat of deportation works to discipline transboundary migrants, De Genova (2002) argues, and produce a docile labor force. The point of immigration enforcement is not, De Genova points out, to actually "deport all deportable aliens," as DRO's Operation Endgame projects, but that "some are deported in order that most may remain (un–deported) as workers, this particular migrant status may thus be rendered 'illegal'" (De Genova 2002, 39). For Coleman (2008a) and Kanstroom (2000b), the US immigration enforcement regime serves post-entry social control functions. This chapter supplements this work by focusing on ICE's under-examined power to *detain* noncitizens

in the services of immigration law.

If the legal exception has been understood as a legal suspension (Agamben 2005), and immigration law as particularly exceptional within the American legal domain (Coleman 2007a), how do we understand the cordoning off of banal, executive decision-making? Is it immigration law's particularity, or does the removal of judicial oversight characterize a broader range of governmental practices? If the latter is true, might immigration law's discretionary elements point towards more pervasive patterns of "exceptional" decision-making throughout federal bureaucracies? Does administrative law's banality undermine the exceptionality of immigration law? What kinds of spatial practices are these categorizations, and these decisions to release or expel? Specifying the authorization of ICE's power to detain has important implications for our understanding of how spatialities of law, sovereign power, and, more broadly, biopolitical governance are interlaced.

The dialogue with which I opened the chapter illustrates the material ramifications of these seemingly arcane legal distinctions. "Deliberative privilege" protects executive decision-making from judicial review, though the product of specific decisions *may be* subjected to review. Immigration law's foreign policy status converges, therefore, with administrative discretion, giving ICE wide berth to determine (1) noncitizens' pathways into and out of detention centers, and (2) the location, form, and ordering of detention centers. In other words, the plenary doctrine shields deportation decisions and relief applications from judicial review, while the *Chevron* deference shields ICE policy-making and enforcement practices from judicial review. Analyses of rescaling nor the respatialization of the border do not completely explain how, where, or

who manages detention and deportation proceedings. It is in the constitutional "juridical void" or "grey area," however, that ICE and DRO officials make daily decisions about who to detain, who to release from detention, where to detain them, how many beds they need, etc. The plenary power doctrine denominates immigration a foreign policy issue, but a host of administrative rule-making, regulations, guidance, and delegation of authority govern the everyday practices of ICE and DRO officers, just as in other Executive Branch agencies. Nor does plenary power inherently prevent oversight of ICE activities, as federal administrative functions *are* subject to judicial oversight in most cases.

Analyzing the intersections of administrative discretion and the plenary doctrine makes three specific contributions to the growing geographical and interdisciplinary literatures on immigration enforcement. First, tracing how the HSA and INA differentiated between immigration adjudication and detention center operations allows me to analyze ICE's authority *detain* noncitizens, independently of its ability to deport them. Most scholarly work on immigration enforcement focuses on surveillance, policing and deportation, the first and final points of contact between noncitizens and state immigration officials. Second, administrative law intersects with—and extends—the discretionary authority enshrined in the plenary doctrine. Focusing on the *power to deport*, geographic research on immigration enforcement has explained immigration enforcement actions through "the plenary doctrine" of immigration. While ICE's discretionary authority works to close detention off from external oversight, on the one hand, and legal contestation, on the other, it is important to conceptualize how ICE's administrative privileges are critical to the materialization of executive power more

broadly. That is, immigration enforcement policy and practice shares much with more mundane agencies. Understood as "efficient decision-making," ICE's administrative privilege resulted from Congress' concerns that the appeals process allowed noncitizens to forestall their deportation for years. The 1996 laws and changes to INS prosecution policies "streamlined" INS decision-making, allowing the agency to deport noncitizens more quickly.

Third, prying apart intersecting legal regimes reveals a more complex legal geography of US noncitizen detention. Immigration detention has often been characterized as a "space of exception," a specific spatio-temporal location in which legal norms are suspended for noncitizens. I argue, however, that the suspension of *constitutional norms* should not be confused with the suspension of "the law." Rather, as Basaran (2008) argues, the selective suspension of constitutional norms for noncitizens constitutes liberal security; in other words, illiberal border zones are required to constitutes zones of liberal, "normal" law. From this perspective, a critique of detention's exceptionalism relies upon a liberal universalism that fails to address the ways in which the Constitution *requires* its own suspension in order to work.

Following Agamben, analyses of detention have focused on the relationship between "the sovereign" and the detained body on opening the depoliticized body up to sovereign power directly. But how do detention centers come to be? Who detains noncitizens, and with what authority? Who makes the decision to open a new detention center? Who decides who should be detained there? Who manages detainees within the det,ention center? Do detention center managers have the same kind of authority as deportation officers or immigration judges? How do we understand the distribution of

"sovereign power" throughout the administrative complex of immigration enforcement? Can we understand these bureaucracies as "petty sovereigns," through whom sovereign power flows (ala Butler 2003)? By rolling back constitutional protections for noncitizens in the US, the '96 laws and their post-9/11 extensions effectively erased the traditionally recognized distinction between noncitizens within and outside the US. Documented permanent residents can find themselves in the same detention center, with little more grounds for relief than arriving aliens, even if ICE grants them bond and releases them from detention. As Neuman argues, "Discretionary elements of deportation policy may serve important purposes, but they also have the potential to reduce the legal status of lawfully admitted aliens to their insecure constitutional status, and to blur the distinction between admitted and not admitted aliens" (2005, 655). Whether living in the US, or arriving for the first time, noncitizens are much like Franz Kafka's peasant, perpetually waiting at law's gate, held there by the promise of lawful entry, materialized in the presence of the gate itself and the gatekeepers incessant vigil (Kafka 1995).

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CHAPTER 8: DOMESTICATING DETENTION: IMAGINING FAMILY SPACES IN US IMMIGRATION ENFORCEMENT PRACTICE

INTRODUCTION

Family unity occupies a privileged and highly politicized role in US immigration policy. Family sponsorship remains the primary mode of state-sanctioned immigration, and "family unity" a dominant discourse in immigration politics more broadly (US Department of Homeland Security 2008; Lubheid 2002). Immigration law's "family unity" is defined by heterosexual marriage and consanguinity, privileging biological relatedness and state-recognized kin ties over extended and "fictive" kin networks. What counts as a family has, however, expanded and contracted over time, at times excluding all but the nuclear family and at other times including extended biological relatives (Inniss 2004). Family sponsorship requires that the sponsor provide proof of financial support, and Citizenship and Immigration Services, the department charged with administrating immigration procedures, subjects families to state surveillance and questioning. So while admissions policies privilege certain forms of "family unity," for noncitizen and mixed-status families, immigration status and kinship intersect in complex and unpredictable ways. For example, noncitizen's homes have also become sites of ICE intervention. Between 2003 and 2009, when "home raids" became a common practice of ICE's Fugitive Operations Team (FOT). Migrant "illegality" transects "family unity" in complex, problematic, and unpredictable ways.

Detention policies have targeted parents traveling with minor children in new ways, as well. In 2005, US Department of Homeland Security expanded its Expedited

Removal Program from ports of entry to all borderlands within 100 miles of the border, and to migrants arrested within 14 days of arrival. "Sympathetic humanitarian cases" previously released from detention (such as families with children, the elderly, seriously ill, and seeking asylum) became subject to mandatory detention, and Immigration and Customs Enforcement's detention system expanded to accommodate new populations. For ICE, the need for family detention arose from a contradiction between mandatory detention and humanitarian release categories, and between parents' and children's legal protections during the immigration enforcement process (as discussed in Chapter 5). For ICE, automatically releasing families represented a "procedural loophole," one that presumably allowed "illegal" workers or smugglers to enter the country. ICE also sought to "deter future illegal family immigration," a more diffuse policy goal (US Department of Homeland Security 2006a). The specter of "rented children" exploits an "American value" at the heart of both social and immigration policy-making. Framed in a period of immigration and border enforcement still defined by the attacks of September 11, sympathetic and vulnerable groups, like children, could provide a means for "the enemy in our midst." Refracted through a highly securitized lens, privileging "the family" became understood as a vulnerability in US border and immigration enforcement.

Since the 1980s, the figure of the "bogus asylum-seeker" framed increasingly penal approaches to asylum processing in the US, Canada, and elsewhere (Mountz 2010; Garcia 2006). Large simultaneous influxes of Cuban and Haitian refugees in the early 1980's, and Central American refugees in throughout the 1980s and 1990s heightened fears that the American way of life was being exploited for *economic migration purposes*. While these arguments presupposed a problematic distinction between economic and

political strife in civil war-torn countries, these discourses worked to reproduce a distinction between economic choice and political necessity. The underlying assumption of human rights law is that political persecution threatened the right to life in ways that shrinking economic opportunities did not. Framing non-political refuge as *choice* also worked to criminalize migrants, as their "choice" to cross the Mexico-US boundary and break US immigration law became the dominant logic of enforcement-led immigration policy in the 1990s. Penalizing migrants responsible for their migration choices resonated with broader discourses heaping harsher punishments on drug offenders, removing voting rights from felons, and withdrawing welfare benefits from single parents who did not marry or become economically productive. Across the field of neoconservative and neoliberal reform, "vulnerable populations" have become understood as threats to "the population and the way of life," as vectors of illegality, risk, racial difference, and cultural dissolution.

A similar logic justified family detention, but in this case, it was the fraudulent *biological* relationship between parent and child that immigration officials find threatening, signaling a deeper interest in immigrant reproduction. Notions of care, biological descent, and conjugal relationships permeate ICE detention and deportation policy-making. These relationships temper enforcement-led immigration policy at times, but, in the home raids described above, domestic cohabitation can serve as a medium of apprehension. Suspicious in terms of both conjugal and descent relations (in anthropological kinship terms), "the immigrant family" becomes an object of state interrogation, surveillance, and intervention. The securitization of "vulnerable populations" reveals tensions between logics of territorial control and population

management. In this chapter, I show how these tensions played out in ICE's proposed family detention center design.

Scholars examining the relationship between sexual citizenship and immigration law, in the US and abroad, focus on the ways in which marriage requirements for family reunification (Simmons 2008), the exclusion of recognized same sex relationships (Elman 2000), and the gendered differentiation of citizenship transfer through marriage (de Hart 2006) privilege not only heteronormative but patriarchal family forms to gain access to legal immigration status, social service benefits, and family unity (see also Binnie 1997; Stychin 2001). Fears of marriage fraud have, however, permeated immigration discourses for decades (Jones 1997), so that the *privileging* of heterosexual nuclear families has, in the context of neoconservative pro-marriage social policy-making, become recast as a *vulnerability* in the immigration system. Similarly, recent preoccupation with "terrorist" and "anchor" babies reveal significant political ambivalence about *who* is having children, and what kinds of citizens those children will become (e.g., Federation for American Immigration Reform 2010).

Much of the sexual citizenship literature begins and ends analysis at the hetero-homo boundary, failing to take seriously the intersectionality of race, gender, class, and sexuality at the border. As Jasbir Puar (2007) notes, however, the expansion of gay rights through rights to private space (e.g. *Lawrence v. Texas* 2003) has unfolded alongside increased state intervention for poor, noncitizen, and non-white families. Welfare reform laws excluded *all documented and undocumented noncitizen families*, and placed steeper responsibilities on citizen families, while immigration law linked criminal and immigration policing in new ways (Fischer 1993; Gedalof 2007; Leiter et al. 2006;

McLaren and Dyck 2004). As Amy Brandzel (2005) argues,

> Gays, homosexuals, and queers are certainly not the only 'deviants,' and gay rights do not take place in a vacuum; they are inextricably linked to negotiations over 'terrorism,' immigration, welfare reform, and abortion rights, to name a few. A properly angled queer lens, then, analyzes how heteronormativity functions through the production and taxonomy of racialized, gendered, sexualized, and classed behaviors and practices (Brandzel 2005, 172).

US citizenship is defined, therefore, by myriad overlapping exclusions, and these registers of exclusion are deployed in different ways across space and time (Lubheid 2002; Somerville 2005).

This chapter asks: what, then, is the state's abiding interest in immigrant families and children? That material form does that interest take? And what are the relations of power undergirding family custody, within and without detention centers? This chapter explores how the noncitizen border-crossing family became a site of intervention, state control, and public contest over the meaning of custody, or the authority to feed, care for, and supervise noncitizen bodies. Here I analyze how ICE's custody of families, and parents' custody of children came into conflict with each other, and how these conflicts revolved around competing norms security, safety, and autonomy. In particular, I trace how the bi-polar "home-like" and "prison-like" formulation was put to work and explore how these struggles over the spatial ordering of "residential facilities" unfolded through orderings of parent-child relationships, private space, state-family relationships, visibility, and mobility. I argue that the regulation of familial relatedness—in and through the spaces of state custody—is critical to the reproduction of certain forms of state power and

citizenship.

To do this, I draw on my analysis of semi-structured interviews, participant observation, and documents collected from governmental and non-governmental sources. While other chapters focused on specific aspects of family detention policy, this chapter traces a textual, but highly politicized conversation between ICE employees, advocates, and attorneys. This exchange unfolded in the press and in closed NGO Working Group meetings between ICE and a select group of Washington-DC-based advocacy organizations. The Bush Administration set itself apart from previous administrations in its refusal to engage with immigrants, advocates, and service providers, and this antagonism bled into mundane interactions between pro bono attorneys and ICE officers. High profile reports, such as the Women's Refugee Commission's *Locking up Family Values* and the Hutto lawsuit, made Berks and Hutto staff wary or inimical to interviews, inquiries, or visits (Women's Commission 2007). In the rare instances where advocates were granted visits, advocates remarked ICE employees were openly hostile to their presence. Throughout this research, I worked with Texas and DC-based organizations on research and media responses to the lawsuit, the Request for Proposals (RFP), family residential standards (FRS), and detention reforms. I provided an analysis of the RFP to the Women's Refugee Commission, and organized academic "experts" to provide comments to ICE on the FRS. I was, therefore, directly involved in producing some of the categories analyzed here, and had occasion to observe and participate in the conversation's unfolding. My participation focused, however, on the pragmatic campaign demands, whose timelines and conceptual demands depart from the analytic work presented in this chapter. This analysis is, therefore, an effort to interrogate the

received categories of this conflictual terrain, and to problematize state's under-examined relationship to reproduction, kinship, and domesticity.

DETAINING FAMILIES

The vast majority of detained families (and now women, at Hutto), pass Credible Fear Interviews (CFIs) and eventually gain asylum. As such, these families are not "illegal immigrants," if we accept, for a moment, immigration law's highly constrained terms. Not only are families usually considered "low flight risk," and therefore ideal candidates for bond or parole, but families usually fall into a number of "vulnerable populations" categories. Deportation Officers and Immigration Judges are supposed to consider these factors and, in the past, have released families based on these criteria. ICE, and the INS before it, retain "prosecutorial discretion" over immigration cases. That is, immigration legislation affords the executive branch the discretion to decide which cases warrant prosecution and which do not. In the past, prosecutorial discretion memos (the medium through which INS/ICE legal guidance is communicated) have stipulated that "vulnerable populations" deserve to be reviewed for release from detention and for a broader range of extenuating circumstances, such as mothers nursing:

> Field agents and officers are not only authorized by law to exercise discretion within the authority of the agency, but are expected to do so in a judicious manner at all stages of the enforcement process. For example, in situations where officers are considering taking a nursing mother into custody, the senior ICE field managers should consider:
>
> • Absent any statutory detention requirement or concerns such as national

> security, threats to public safety or other investigative interests, the nursing mother should be released on an Order of Recognizance or Order of Supervision and the Alternatives to Detention programs should be considered as an additional enforcement tool… (Prosecutorial and Custody Discretion Memo, Julie Meyers, Assistant Secretary of Immigration and Customs Enforcement, November 7, 2007)

These memos prioritize the exclusion of some noncitizen groups, such as "criminal aliens," over those who pose relatively less threat to public safety or public coffers. Families migrating with minor children have traditionally demonstrate "sympathetic humanitarian factors:"

> Deferred action should be considered when the situation involves symphathetic humanitarian circumstances that rise to such as level as to cry for an exercise of prosecutorial discretion. Examples of this include where the alien *has a citizen child* with a serious medical condition or disability or *where the alien or a close family member* is undergoing treatment for a potentially life threatening disease. (Emphasis added' Prosecutorial Discretion Memo, William J. Howard, Principle Legal Advisor, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, October 24, 2005.)

The same memo advises less aggressive prosecution for family members of Armed Forces personnel, confidential informants, and those involved in smuggling investigations. In other words, familial care and service to the state are the most significant circumstances warranting relief from detention and exclusion proceedings. These memos offer guidance only, however, and do not stipulate the discretionary actions

of individual ICE attorneys, and do not confer noncitizens in custody rights; the right to release remains solely with ICE.

In 2007, the American Civil Liberties Union, University of Texas Immigration Law Clinic and a private law firm sued the Department of Homeland Security for holding families in "prison-like" conditions at the T. Don Hutto Detention Center in Taylor, Texas. As described in Chapter 6, the plaintiffs charged that Hutto violated the conditions of *Flores v. Meese*, a 1997 lawsuit that creates certain norms for children's treatment in INS custody. *Flores* requires ICE to hold children in "the least restrictive" conditions available while options for release are evaluated. Where release was impossible, *Flores* required that INS/ICE custody gain a state license for a family shelter. Hutto violated *Flores* on this and nearly every other count, and the case came to revolve around Hutto's architectural design, disciplinary control, and the psychological effects of this spatial ordering on children. The plaintiffs' case turned on proving that Hutto, a former medium-security prison, was a restrictive facility. While the plaintiffs sought to invalidate the legal grounds for family detention through the cases of 26 child plaintiffs, the judge ruled the psychological harm caused by Hutto could not be separated from the psychological trauma of migration. The plaintiffs were largely asylum-seekers fleeing political persecution and domestic abuse. The ruling effectively exploited their status as "vulnerable populations" and victims of abuse to solidify the legal grounds for family detention.

PRISON VS. HOME

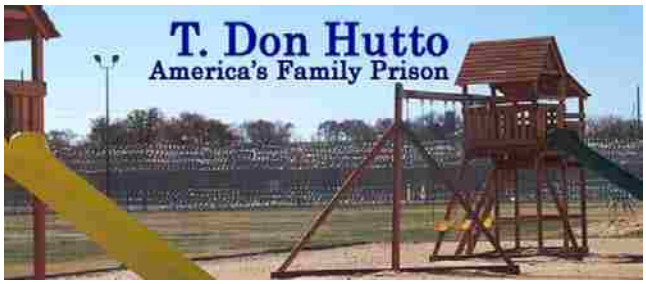
The Hutto lawsuit dominated media attention, and Flores' categories of "least

restrictive" facilities and "presumption of release" for children influenced local activism and policy advocacy around family detention. Within this milieu, critiques of Berks' and Hutto's physical conditions settled along a polarized axis of "prison-like" and "home-like" environments, articulated through children's freedom, parental authority, and autonomy**.** Throughout the lawsuit and the subsequent years of public contest of family detention at Hutto, critics contrasted the facility's "look and feel," disciplinary ordering, and carceral architectural design with normatively imagined, but rarely described "home-like facilities" (ACLU 2007a,b,c; Women's Commission 2007). Advocates primarily criticized Hutto for what it lacked, and "home-like facilities" served as an undescribed, abstractly desirable negative space that was irreconcilable with prison spaces *in its very essence*. It was inconceivable to most to imagine a possibility for home-like custody overlain with carceral spatial ordering. When the lawsuit was successful, and ICE, CCA, and Williamson County made changes at Hutto, the facility's built purpose served as evidence of its lasting inadequacy. Thus, critiques of Hutto rested on a spatial essentialism that marked clear poles between home-like and prison-like spaces.

The image of "children in prison," in particular, formed a rather spectacular backdrop against which a range of arguments unfolded. For example, Free the Children organizers stated: "ICE, the Immigration and Customs Enforcement arrests innocent children and their mothers and turns them over to a private 'for profit' prison which, as of today, receives some $20,000 per child...per month...to keep an innocent child in an 8' x 12' prison cell" (Moses 2007). Yet, focusing on children created certain frictions between advocacy and activist organizations. The Texans United for Families coalition, for example, was disturbed by the ways in which "children in prison" demarcated an age-

based exceptionalism, and implied that adult immigrants were, first, criminals and, second, justifiably detained. Prison's sharp edges, automatically closing doors, barbed wire, and uniformed guards clashed with normative imaginings of safe childhood spaces, even while these imagined "home-like" spaces remained implicit.

Figure 8.1: America's Family Prison (Film) Blog Banner



(*Source:* Gossage and Keber 2007; tdonhutto.blogspot.com)

In addition, some worried that focusing on "children in prison" weakened arguments against family detention policy as a whole, and the Berks facility in particular (Porter et al., n.d.). Because Berks is a former nursing home, not a former prison, criticisms of family detention became discursively attached to Hutto's prison-like architecture. For example, in its 2007 report, the Women's Refugee Commission's repeatedly asserted that "both facilities place families in settings modeled on the criminal justice system" (Women's Commission 2007, 2). In media coverage of the *Bunikyte et al v. Chertoff et al*, however, Berks' compliance with *Flores* and its nonpenal architectural design provided a seemingly innocuous counterexample to Hutto. Even while advocates fought to position *release* as the preferable alternative, Berks' less penal exterior and residential purpose seemed to set it aside as a suitable alternative.

For others, ICE's intervention in family life undermined the "architecture of the family unit," particularly parents' ability to comfort and protect their children.

> Participant: I think one of the things to keep in mind also about the facility also is that parents are deprived of their parental authority. I think that must be, you know I'm not a psychologist, but I think that's probably distressing for a child. Somebody else is making the decisions at Hutto. And it's not the parents.
>
> LM: Did a lot of the parents express that that was a problem?
>
> Participant: Yeah, they did. Yeah, and the inability to -to protect, to be able to remedy the situation, where children turn to their parents as their protectors and as the people that are going to protect them, and they [the parents] weren't able to do that. (Interview April 2008)

Parental authority was, in addition, linked to families' constrained mobility within and beyond Berks and Hutto, as parents at Berks still relied upon facility staff for the provision of basic care. At Hutto, one mother resorted to hiding blankets in her pillowcases, and lying to CCA employees about not having enough, to keep her children warm at night (Gossage and Keber 2007). Critiques of children's (lack of) freedom and parental (lack of) authority crystallized, therefore, around the problem of autonomy. Constrained mobility within Berks and Hutto, families' inability to leave the detention center, and their inability to choose how, when, and in what way to carry out daily activities epitomized the "unhomeliness" of family detention facilities:

> It's still, you know, it is a former prison. You know, because the children aren't free to walk out the door. They're not going to public school. Their parents are not making decisions daily about how they want to spend their day, what time they want to eat. I mean so, it goes back to the fact that it is still detention. It is still detention of children. (Interview April 2008)

Even while Hutto's early conditions represented the starkest physical constraints, as headcounts confined families to their cells for up to 11 hours per day. Not only was personal mobility constrained, at first to living areas, and later to residential areas, but detained families did not have a choices about how they organized their day.

ICE, for its part, appeared to draw its detention policies from adult detention and corrections fields. In 2008, the agency released "Family Residential Standards," (FRS hereafter) as required in the *Hutto Settlement*. Consisting of 26 standards, each section cites an intertextual field of state and federal laws, ICE policies, and supporting documents. The majority of the standards cite American Corrections Association (ACA) standards for jails and prisons and detention standards for adult facilities. Stipulating protocols for contraband, physical constraints, disciplinary procedures, escape attempts, security, and other components associated with "prison-like" facilities, the FRS indicated, to advocates, that despite the *Hutto Settlement*, ICE intended to retain a carceral model for family detention:

> The standards that ICE has drafted are fundamentally misguided and inappropriate, as they are an adaptation of standards from the American Correctional Association (ACA) for the incarceration of adult criminals. *The parents and small children ICE holds in immigration detention are in civil administrative detention related to their immigration proceedings. As ICE has previously recognized, they are not criminals serving penal sentences.* (Emphasis added, ICE NGO Working Group, Letter to ICE Re: NGO Response to Family Residential Standards 2009)

The reliance on correctional expertise rather than more appropriate experts, such as child

advocates, social workers, psychologists, and counselors was a key problem for advocates. Seeking to offer a new paradigm of custody, advocates critiqued ICE's penal disciplinary regime through norms of child welfare:

> Even if it's good that the families have better conditions, it's still a prison-like environment which is inappropriate for a family. Congress has told ICE to implement more humane, less-costly alternatives to family detention. ICE should be implementing *home-like alternatives to detention* that allow children and their families to *lead normal lives*, [we're] not talking about more Hutto-like detention centers. (Emphasis added; Fieldnotes 4-23-08)

> …[Th]e only acceptable place for a family is in a *non-penal, homelike residence* that is bound by standards based upon *child-welfare/family service principles*, not guided by standards appropriate only for adult prisons. The standards developed by ICE should reflect this strong preference against detention of families. For those few families who may not be immediately released and who may remain in ICE custody for any period of time, we encourage ICE to rely upon policies, procedures and guidance for shelters, hospitals, children's homes or other civil facilities. While these sources will need to be modified to address the needs of families in ICE custody, they would provide a more appropriate framework to adequately address the physical, social, emotional, educational and recreational needs of accompanied children and their parents. Using these policies as a reference, families should be housed in residential shelters that replicate homelike environments. (Emphasis added; ICE NGO Working Group, Letter to ICE Re:

NGO Response to Family Residential Standards 2009)

"Normal family life" would serve to, advocates presumed, *decriminalize* detained families, and to flesh out the "home-like spaces" ICE failed to produce. Basing arguments implicitly on *children's* inherent un-criminality, these strategies emphasized the family as a site of care, child development, and reproduction. They work from both family and child policy, which are developed at subnational, state jurisdictions, and children's human rights frameworks, which require signatories to offer a "thicker" set of institutional entitlements than offered in (adult-focused) human rights frameworks. The struggle over family detention reveals a deeper tension, therefore, between disciplinary regimes of incarceration and social welfare. Here, children's welfare, a key site for the normalization of child behavior, became a vehicle through which to challenge "the severity revolution" (Miller 2002-2003) in the corrections and immigration enforcement fields.

While this strategy appealed (begrudgingly and a bit cynically) to neoconservative "family values," the majority of Hutto's families were single, asylum-seeking mothers. As the judge's comments in the Hutto lawsuit demonstrate, this appeal is far more fragile than advocates may have expected, as Hutto's families were poor, of color, and fleeing domestic and geopolitical violence. Seeking to appeal to a heteronormative citizenship for strategic purposes, these discourses also recall previous exclusions of women "likely to become a public charge," namely unmarried and pregnant women (Lubheid 2002). So while some activists sought to "free the children," this freedom was couched within hegemonic social policy terms that relied on norms of child behavior and development. In the current moment, as feminist scholars have pointed out, US family policies are more

likely to justify state intervention in poor and immigrant households than to protect them from state intervention.

As ICE and CCA brought Hutto's physical plant into compliance with the settlement, focus shifted from critiques of detention management, that implied that family detention was excusable under certain conditions, to a broader critique of family detention *policy* and its connections with the private prison industry, the criminalization of immigration, and human rights discourses. Anti-family detention activism and advocacy was, therefore, hardly a settled discursive field, as individuals and groups reacted to new developments in immigration enforcement, pursued a diversity of issues via anti-detention organizing, and worked with new national and international groups. These discourses settled around a constellation of nodal points: children's innocence and dependence, prison-like spaces, home-like spaces, and familial exceptionality. How, then, were "home-like facilities" imagined? How were the embodied and spatial relationships between parents, children, and ICE ordered and enclosed in opposition to detention centers?

IMAGINING "HOME-LIKE SPACES"

Early anti-family detention advocacy promoted the use of "alternatives to detention" over detention in carceral facilities, as these typically allowed noncitizen adults to stay at home. ICE ran (and has since expanded) two versions of its Intensive Supervision Appearance Program (ISAP): phone or in-person reporting and electronic monitoring with an ankle bracelet. The former required noncitizens to call ICE at regular intervals and/or to be home to receive calls or visits from ICE officers. Electronic

monitoring required noncitizens to wear a thick plastic band (often called an "ankle bracelet" by newsmedia) that recorded their movements outside of a certain range of their homes. If permitted to work, the band notified ICE of curfew infractions. The ankle bands required daily charging, and were heavy enough to cut into a person's ankle, causing distress for pregnant women in particular. Between curfews and charging the device, participants in both ISAP programs complained that these alternatives restricted their everyday mobility, extending detention rather than offering a serious alternative to it. According to critical participants, ISAP's mobility restrictions transformed the home into a detention center, opened their families to disruptions and surveillance from ICE, stigmatized noncitizens in their neighborhoods, and isolated them from others in the same situation (Fieldnotes September 2008). ISAP came to be seen as an alternative form of detention, as its spatial control mimicked detention and moved its panopticism to the private sphere. In addition, advocates began to notice that these "alternatives" were not used to decrease the detained population, but were used to surveil asylum-seekers, for example, who would previously have avoided *any* ICE supervision. Thus, some advocates accused ICE of using these strategies of spatial control as an *extension* of the detention system and a way of bringing more, not fewer, noncitizens into ICE custody. Still others accepted ISAP as an improvement on detention, but sought to employ it only for those subject to mandatory detention, rather than detaining new groups.

As anti-detention advocates rejected existing "alternatives to detention," ICE began to demand that advocates provide concrete models for their vision of alternatives (Fieldnotes May 6, 2009). In addition, the change in administration brought new staff to ICE, including those more sympathetic to critiques of detention. Two models dominated

advocates' proposals: a service provision model and a shelter model. In 1996, the INS contracted with the VERA Institute of Justice to pilot an "Appearance Assistance Program," (AAP) which provided low-flight-risk noncitizens in INS custody with access to legal counsel, social workers, and other services (VERA Institute of Justice 1998). The pilot program's goal was to increase immigration court appearances for noncitizens released from detention and to test the efficacy of different levels of supervision. Program officers screened noncitizens for "strong community ties," a permanent address, and threat to public safety. Under "intensive supervision," AAP participants reported regularly to AAP field officers and worked with "community sponsors" who communicated with both the AAP field officer and the noncitizen in question. Under "regular supervision," noncitizens receive an orientation, reminders about court dates, and access to resources to fight their case. In this model, AAP officers monitored and supervised noncitizens in addition to providing legal services, assisting with court appearances, and resolving case issues with INS. Where noncitizens failed to appear for a court date or notify VERA case workers of an address change, AAP officers reported their non-compliance to INS. Here, a contracted NGO both supports and mediates noncitizens' relationship to immigration enforcement agencies.

The shelter model focuses on housing provision, and builds on experiences of shelters housing undocumented noncitizens. Where the AAP required "strong community ties," lack of housing or contacts is common among newly arriving migrants and prevents them from being released where they would otherwise be considered low risk. A few shelters serving immigrant populations around the US work informally with ICE to provide housing to those without family or friend networks to sponsor them. The

shelters usually have relationships with local social service agencies, pro bono attorneys, and work placement services. In the case of Casa Marianella, held up as an exemplar by Austin-based advocates, the shelter itself provided housing alone, and provided phone numbers for local services. The shelter organizers repeatedly stated, "we are not a detention center" (Interview 2008). Besides a curfew, the shelter does not restrict residents' comings and goings or supervise them beyond the facilities' ground rules. In this model, the shelter serves as a verifiable address for detainees seeking release, and connects noncitizens to network of organizations. But shelter organizers were adamant about remaining neutral with respect to their residents' immigration cases and citizenship status. Those released to shelters like Casa Marianella gained freedom of movement and autonomy over daily decision-making, but the shelter itself refused to mediate noncitizens' relationship to ICE.

In either case, advocates sought to buffer noncitizens' relationships to ICE with non-governmental and social service organizations, to mediate what was almost universally understood to be violent state power. Differences emerged, however, over the extent to which NGOs should do ICE's work for them (including the development of alternatives). Shelters worried that cooperating with ICE beyond their current role would rupture trust relationships with residents. NGOs worried that taking ICE funding for alternative custody programs would tarnish their reputations and prevent them from doing other work with immigrant communities. And for those that questioned the validity of national borders or the right of the federal government to police and detain noncitizens, these programs only served to make noncitizens more open to ICE intervention. These differences over ICE-NGO-noncitizen relationships reveal diverse

on-the-ground theories of state power and the state's proper relationship to noncitizens' bodies and homes amongst advocates.

RE-DESIGNING FAMILY DETENTION

As advocates offered a range of models and alternative institutions for family custody, ICE continued to hone its family detention policies. The 2007 *Hutto Settlement* and the cost of refitting Hutto's physical infrastructure and institutional culture revealed shortcomings in the agency's strategy. Internal memos listed Hutto's non-compliance with *Flores* before and during the lawsuit (contradicting ICE's own legal strategy), and the federal magistrate's final reports revealed resistance to the paradigm shift from medium-security prison to family residential center. In the spring of 2008, ICE issued a Request for Proposals (RFP) from the private sector for three new family detention centers. ICE and other state agencies issue RFPs for a wide range of governmental tasks, and any federal procurements must be open to a competitive bidding process. RFPs are published on the Federal Business Opportunities website (www.fbo.gov) Contracts between federal and county entities are not, however, subject to this process, allowing counties to serve as intermediaries for private companies seeking federal contracts. ICE's contract at Hutto is, for example, between ICE and Williamson County, Texas, and the county subcontracts to the Corrections Corporation of America. RFPs are required, however, for federal-private relationships, and are the primary mechanism by which specific federal functions are privatized. They are also one medium through which advocates, activists, and journalists discover detention plans, as ICE does not publicize detention expansions until after procurement awards are made. RFPs are not open to

public comment or input, and because proposals are considered intellectual property, proposals are not open to public scrutiny. The privatization of detention unfolds, therefore, through legal instruments meant to protect private property and profitability, but not public access to information.

While the RFP signaled an expansion of the family detention program, I examine it here because it reveals much about ICE's response to critiques of Hutto's "prison-like" spatial order and its obligations under *Flores* and the *Hutto* settlements. In particular, the RFP included a Family Residential Facility Design Standards manual (FRFDS) with visual schematics of an urban single-building unit and a rural campus, illustrations of the movement of detainees, visitors, and staff into, within, and out of the facility, and the spatial organization of different various detention center tasks. (The development of the FRFDS was, itself, subcontracted to a private firm that exists exclusively on federal corrections-related contracts.) The RFP also included a "Monitoring Tool" by which the contractors would be audited for compliance with the Family Residential Standards described above, and ICE responses to contractor questions. Altogether the RFP's component parts reveal how ICE re-imagined family detention spaces to address the Hutto settlement, increased attention to family detention policy, and activists' critiques. Here I focus on the FRFDS, in particular, as it illustrates the ways in which ICE conceived of a spatial order that balanced security, surveillance, and population management.

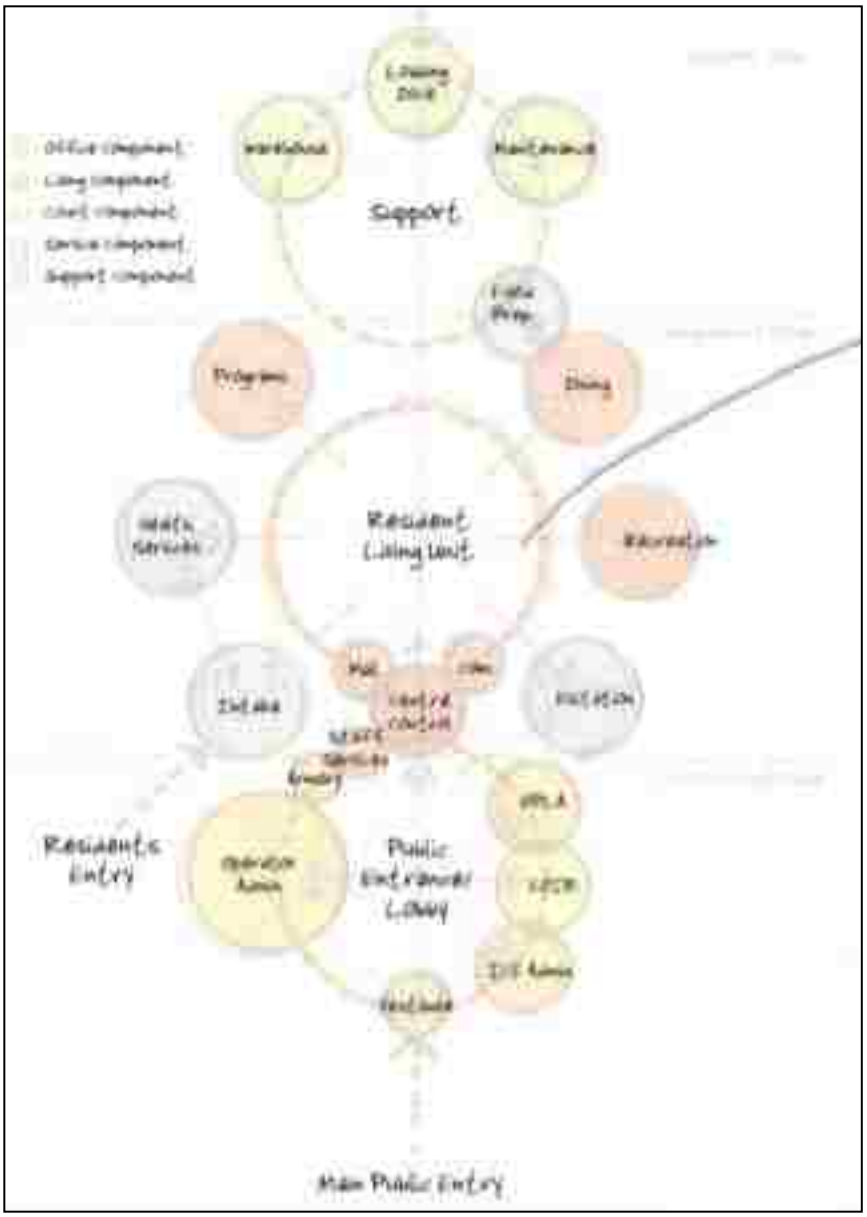
Figure 8.2: Rural Campus Master Plan

(*Source:* US Immigration and Customs Enforcement *Family Residential Facility Design Standards* 2008b)

Figure 8.3: Single-building (Urban) Campus Master Plan

(*Source:* US Immigration and Customs Enforcement *Family Residential Facility Design Standards* 2008b)

Figure 8.4: Building-As-A-Whole Relationship Diagram



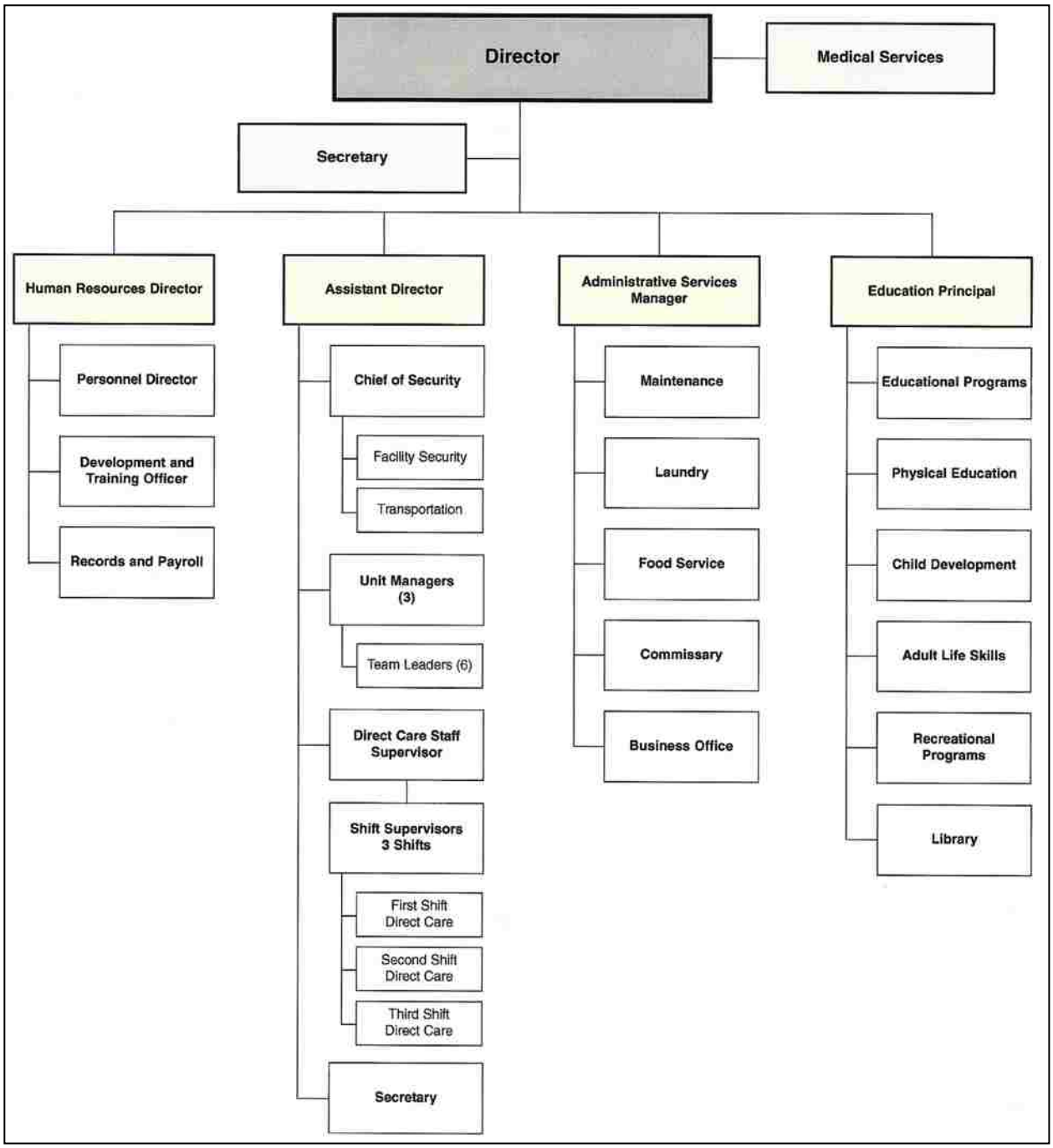
(*Source:* US Immigration and Customs Enforcement *Family Residential Facility Design Standards* 2008b)

The bulk of the FRFDS is spent outlining the spatial arrangement of operational components: Office, Living, Court, Service, and Support. The spatial arrangement of the component zones reflects, for ICE, the relations of authority within the facility, as well. ICE staff, who oversee conditions, health and operational staff, and government agency personnel, are located towards the front of the facility. Visitors are confined to the public

lobby and monitored visitation room, which is located near the front door. Moving downward and rightward on the Organizational Chart (Figure 8.5), one also moves farther back into the facility, as detainee services and upkeep are located towards the back of the facility. Each of these Operational Components have slightly different security requirements, depending on the extent to which detainees interact with external visitors, staff, dangerous materials, or tools. Central Control sits between the public lobby, for example, and the living unit, while the Support Zone (maintenance, deliveries, and supplies) is closed off to detainees altogether, but is functionally connected to the kitchen. For both the rural and the urban plans, the FRFDS stipulates secured (fenced and patroled) premises, but within this secured boundary, semi-secure and non-secure zones are organized to enable families' mobility within living areas, to facilitate surveillance and "positive behavior management," and to mediate the relationship between detained family populations and the non-detained population. As ICE grants detainees greater freedom of, high staff-detainee ratios maintain behavior management, and divide families into "manageable groups of no more than 50 residences per living unit and 25 residents per pod." Zones of relative mobility are nested within zones of semi-security and security, while preserving the contractor's (theoretical) surveillance and monitoring of the detained population.

The FRFDS includes a dedicated section on design criteria, requiring that "the design should consider the use of architectural roofing to give a residential family housing appearance, either through sloped roofing, roofing break lines and facility

Figure 8.5: Generic Organizational Chart for Family Residential Facility



(*Source:* US Immigration and Customs Enforcement *Family Residential Facility Design Standards* 2008)

exterior design" and that "roof design shall be conducive to a residential feeling" (US Immigration and Customs Enforcement 2008b, 4.2, 4.3). Generally, the facility "should take on a more residential appearance, less institutional or correctional…to give a

residential family housing appearance," and the public.lobby should display "a non-institutional appearance and welcoming/non-intimidating interior environment" (ibid., 4.3). The rest of the design requirements concerned detainees' movement through the intake process, and the division of the space into manageable units, the provision of living areas, and the regulation of access to entrances. For ICE, then, "security" is defined by detainees' personal mobility, spatial segregation, and relationship to authority. Secure, semi-secure, and non-secure spaces are defined by the contractor's direct control over detainees' bodies, activities, movement, and location. "Residential feel" becomes a matter of roofing angle, a performance to the public with no direct relevance to detainees' experiences of detention.

While families move freely within their living areas, these zones of relative mobility are sequestered from the facility's entrances, so that family residential facilities' surveillance and mobility constraints are designed into the facility rather than visually and aesthetically salient. In the Campus Plan, for example, "structures can be dispersed on the site to *allow for visual observation* as well as *to provide open green spaces*" (US Immigration and Customs Enforcement 2008b, 4.2). The "residential aesthetic" became a means of "designing in" surveillance, balancing security with the appearance of free movement within the facility. ICE's concern for security is particularly salient in the "Monitoring Tool" distributed to potential contractors. The FRFDS' authors combined spatial partitioning and categorization, aesthetic design, and surveillance as nested zones of security clearance. The plans allocate Visitors, contracted staff, ICE, and residents task-specific spaces, so that detainees may circulate with little direct intervention in the innermost spaces. Enclosing detainee-denominated space is a buffer zone government

officials with different levels of security clearance. The building is, in turn, enclosed by a patrolled perimeter and a fence. The Family Residential Standards contain—and the RFP required—specific escape scenario plans (which were withheld from my FOIA requests "for security purposes").

As a response to criticism and legal challenges launched at Hutto, the RFP tempers the carceral model initially used at Hutto by "designing in" surveillance, mobility management, and "residential feel." The problem of family detention revolved around, for ICE, security, surveillance, and enclosure, where advocates had worked for remote supervision—at most—and a buffer zone of non-governmental representatives, at best. The privacy, autonomy, and time management that defined families' and advocates conceptions of "child" and "family-appropriate" spaces were mediated, in ICE's version, by a "hard perimeter" of fencing, and highly surveilled pathway into and out of the detention center. Defined as accompanied minor children, families are alternatively understood as limits to federal intervention or special populations requiring dedicated facilities.

CONCLUSION

For ICE and the range of organizations criticizing family detention practices, the *protection of spatial enclosure* defined the different imaginings of family custody. Few advocates or activists were willing to proscribe what a "proper" or "ideal" family looked like, but were more interested in securing spaces in which families retained autonomy over daily social reproduction. For example, advocates sought to ensure that families resided in places where they *felt* safe and secure, and this required privacy from

surveillance and monitoring built into prison architecture. ICE, on the other hand, sought to nest spaces of open mobility within rigid authoritative hierarchies, which were spatialized in the fencing of the facility, the control of visitation, and the arrangement of administrative offices. That is, the struggle over prison-like and home-like spaces revolved around competing axes of autonomy/parental authority/privacy and security/surveillance/residential aesthetic. The spatial ordering of Berks and Hutto were critical to the problematization of family detention as a policy, focusing ICE's attention on the aesthetic presentation of "family residential facilities" and the balance of mobility and security within them.

"The immigrant family" is a site of struggle over mobility rights, human rights, inclusion and exclusion, belonging, and citizenship. While the procreative and consanguinity of US immigration policy produces clear lines of demarcation between "deserving" heterosexual immigrants and "undeserving" sexual deviants, the heteronormativity of US immigration policy operates within a more complex matrix of exclusion than the hetero/homo dichotomy can capture. Efforts to protect "vulnerable populations," like families, often rely upon and reproduce the heteronormativity of immigration law in ways that undercut more fundamental critiques of American citizenship and the exclusions on which it has relied. In the same way that queer theorists call upon same-sex marriage proponents to remain conscious of the boundaries required for such claims, immigrant rights advocacy need to consider how our discourses redeploy mechanisms of exclusion. A more productive analytic frame would consider how states continue to "govern through the family" (Donzelot 1979). In the case of immigration enforcement, consanguinity, marriage, care, and reproduction become sites of anxiety,

intervention, and securitization. As debates over family detention demonstrate, ICE mediates territorial presence and political membership in and through its interventions in home, private, and family spaces. Kinship and sexual regimes are, therefore, important modalities through which ICE performs its control over borders, territoriality and citizenship. Debates over family detention spaces are, therefore, proxy struggles over the futurity of the state, and the conditions of possibility for making life.

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CHAPTER 9: CONCLUSION

INTRODUCTION

In researching and writing this dissertation, my objectives have been (1) to delineate and critique the textual, legal, and embodied practices that produce "immigrant families" as detainable subjects; (2) to analyze the discursive suturing of children's and family law to immigration detention to the private corrections industry to border security; (3) to conceptualize detention in relation to a broader topography of border enforcement; and (4) to critical engage with contemporary anti-detention and pro-immigrant movements in the US. In this final chapter, I draw together the empirical contributions, analysis, and theories explored in the chapters above, and distill the points of intersection between them. As imprisonment becomes the social policy of choice over education, rehabilitation, or welfare, and as detention becomes to domestic and wars on terror/drugs/crime, these new institutional alignments are reconfiguring the relationship between law, space, and life.

THE CURRENT STATE OF FAMILY DETENTION POLICY

As of this writing, ICE detains noncitizen families at the Berks County Family Shelter Care Center in Pennsylvania. Hutto's last families were released in September 2009. Even before Assistant Secretary for Immigration and Customs Enforcement John Morton issued new prosecutorial guidance that deprioritized detention for families and caretakers, ICE instructed its field officers to classify apprehended families as "illegal" instead of "arriving families." This categorizational change allowed ICE and arriving

families to circumvent IIRIRA's mandatory detention clause, in the absence of legislative changes to admission and enforcement policies. Barack Obama's presidential campaign promised immigration reform, and 2009 and 2010 saw immigration rights rallies, lobby days, and a massive "Reform Immigration for American" campaign. The "comprehensive immigration reform" agenda traded away, however, border militarization for a "path to citizenship," a move that angered pro-immigrant coalitions in border states, who would receive the bulk of these "border security" efforts. To demonstrate its commitment to *enforcement*, ICE deported over 400,000 noncitizens in FY2010, outstripping the Bush administration's immigration crackdowns (Vedantam 2010). The Secure Communities program, which allows local law enforcement to check immigration status of anyone coming through its jails, now operates in every Texas county and will be in place in every US jurisdiction by 2013 (Associated Press 2010). In addition, the Democratic Congress passed the $600 million 2010 Southern Border Security Act in August of 2010 in the hopes of bartering with Republicans for a comprehensive overhaul. In December 2010, however, Republicans successfully prevented a vote on the Development, Relief, and Education for Alien Minors (DREAM) Act, widely considered the most palatable of immigration reform initiatives. The current "post-entry landscape" is, unfortunately, one of expanding illegalization, detainability, and deportability for noncitizens.

In the absence of Congressional action on immigration reform, family detention policy continues to evolve under ICE's discretionary authority. Berks continues to undergo regular audits from the state of Pennsylvania and ICE's subcontracted overseers, and its contract stipulates compliance with the Family Residential Standards. Family detention is no longer central to ICE discussions of immigration enforcement and border

security, as the Obama Administration's emphasis has shifted towards "civil detention." Hutto continues to hold around 500 noncitizen women, and current members of the Hutto Visitation Program in Austin, Texas, report detention stays of 1 month to years. In a number of cases, women have refused to sign their own deportation orders, leaving them caught between "Final Order of Removal" and repatriation without opportunities to appeal for release. Because detained noncitizens' civil rights are limited, possibilities for contesting detention and immigration policies remain limited. This has not stopped, however, multiple hunger strikes, "noncompliance," or civil disobedience outside detention centers (Bernstein 2010; del Bosque 2010). Rehabilitated from its "prison-like" past, Hutto now stands as ICE's "model civil detention facility." The *In re: Hutto Detention Center* Settlement served, in the end, to improve "conditions of confinement" for "low security" noncitizens. In short, family detention "civilized" the prison, reformed its penal character, and rehabilitated its spatial ordering. Family detention policy follows therefore the contours of a broader terrain of sovereign and governmental power, as the powers to categorize and banish remain intimately bound.

THE ETHICS OF PRECARITY

Within both real and imagined family detention centers, at the territorial boundary and within it, ICE polices the juridical boundaries of the US nation-state. In Chapter 4, I argued that border construction projects and detention centers work as a series of connected, but distinct spatial strategies that form a *border assemblage*. The walls, lights, cameras, patrol vehicles, interview rooms, staging areas and detention centers produce the *conditions of possibility* for noncitizen's banishment, both symbolically and

materially. Thus, while IIRIRA expanded detainability, brick-and-mortar capacity was required to raise deportation rates. The T. Don Hutto Detention Center, transformed from medium-security prison to family detention center to "model civil detention facility" exemplifies the ways in which infrastructure lends symbolic and textual constructions a certain durability. But as Chapter 5 showed, detention's disciplinarity is not defined by the prison's spatial ordering. Rather, detention is itself an assemblage of spatial strategies and knowledge practices—deterrence, isolation, criminalization, and forced mobility—that produce both subjects and populations. In the context of risk-based security ontologies and preemptive politics, detention works, in part, by displacing vulnerability from the US onto a population of transnational *potential* migrants. The geostrategic imaginaries of threatening outside/safe inside permeated the Hutto litigation, as I showed in Chapter 6, allowing the judge to argue that family detention worked in both children's and the public's best interests.

Distributed through individualized legal decisions and reverberating through networks of care, detained families' traumas were borne both individually and collectively. The domestic and political violence fled by Berks' and Hutto's parents does not dissolve upon approval of their asylum claim, but endures in both memory and for those left behind. For DHS, achieving security requires a hardening of territorial borders and the externalization of insecurity. So while transboundary migrants and US security professionals think and act in starkly different terms, they do work upon each other. Spectacularly banal, detention's disciplinarity works through a heterogeneous assemblage of spatial practices. As Sexton and Lee write, the prison "participates in a reconfiguration and redeployment of repressive state powers, displacing while retaining spectacles of

corporal punishment and public execution" (Sexton and Lee 2006, 1008). Detention's disciplinarity does not reverberate seamlessly between registers, does not scale up or down in a coherent fashion, nor produce singular subjects. Rather, as Mountz argues, detention's panopticism "straddle[s] scales, including transnational individual, family, and community, each asserting the possibility that 'the local' and 'the global' or separate yet intimately intertwined" (Mountz 2010, 156). Emerging alongside the "society of control" described by Deleuze (1988) and Rose (1999), the prison has been emptied out, released from its moral function, and redeployed as risk containment. Diffused throughout state and non-state institutions, public spaces, and transactional databases, the prison's panopticism is a generalized "diagram of power," and its gaze works far beyond the prison walls. Yet the detention center has become a central component of border security in the US and elsewhere, repositioning spatial confinement within a wider set of modulated disciplinary technologies.

For noncitizens entering the US and other countries of the global north without proper documentation, detention has become a condition of both admission and exclusion, a "long tunnel" towards uncertain destinations (Mountz 2010); for noncitizens residing in increasingly securitized global north countries, detention and deportability work as a form of social control (Coleman 2008a; de Genova 2002; Kanstroom 2000b). In the context of this assemblage of spatial strategies and legal machinations, what is the law and what does it mean to suspend it? Is immigration law "extra-legal law," as Mathew Coleman (2007a) argues? Throughout this dissertation, I have maintained that law is a site of struggle over space and political recognition, and have outlined the ways in which different legal regimes overlap, resonate, and come into conflict with each other.

As Chapter 6 described, the Hutto lawsuit concluded with a specific distribution of liberal rights and obligations between parents and children. The hyper-responsible migrant-subject and the innocent child-object are not *extra-legal* subjects; they are inscribed in and through the law. Rather, these legal subjects are produced through *illiberal* legal norms. Hutto and Berks are not extra-legal *spaces*, either. A series of different legal instruments delegate the various elements of detention and deportation to county, federal, and private institutions. The contract discussed in Chapter 7 is not, however, a social contract between citizen and state, but a neoliberal contract devolving state functions to the private sector.

This arrangement reveals a certain neoliberalization of border policing itself, through which the state becomes the source and the guarantor of capitalist accumulation. Others have noted a neoliberalization of citizenship, a differentiation of mobility rights distributed according to economic productivity (Ong 1999, 2006). Warehousing bodies and profiting from "bedspace" amounts to, for Gordon (2006) and Sexton and Lee (2006) and other prison abolitionists, a reinscription of racialized exclusion at the heart of "liberal" governance. The transgressions of the war prison and the detention center find their source in the US prison system, where torture and arbitrary power are "the norm." Rather angrily, these authors point to the (white) privilege underlying dominant narratives of detention's exceptionality. If, as Benjamin argues, "the tradition of the oppressed teaches us that the 'state of emergency' in which we live is not the exception but the rule," then scholars' indignation at law's suspension reveals a deep naivete about for what, exactly, the law is used (Benjamin 2003 [1940], 392). Focusing on the material infrastructure of detention, its political and economic relationships, belies dominant free-

trade-versus-security narratives and reveals, instead, a relationship of convenience between border and economic security.

For Tugba Basaran (2008), illiberal border zones *constitute* liberal, normal, law. "Included through exclusion," noncitizens in detention and deportation proceedings create the conditions of possibility for liberal peace. As Achille Mbembe argues, biopolitical security relies upon a certain necropolitics, here revealed in the DHS' displacement of vulnerability onto noncitizen families (Mbembe 2003). As detention functions are devolved and outsourced, detained and imprisoned bodies become a sort of raw material, capitalizable and exchangeable commodities caught up in circuits of forced mobility. In our current moment, federal outsourcing devolves necropolitical functions to private entities, and these governmental arrangements suture detention to a range of non-state relationships. We face, therefore, a geopolitical and geoeconomic milieu in which a diverse array of actors have vested interests in the continued normalization—if not expansion—of the material, political, and legal production of exclusion. As legalistic and human rights-based arguments continue to dominate immigrant rights organizing and challenges to US wartime detention practices, the historical, metaphysical, and material limits of US liberalism and law must be taken seriously.

"At stake," Judith Butler writes, "are communities that are not quite constituted as such, subjects who are living but not yet regarded as lives" (Butler 2009, 32). These non-lives are not natural, unqualified, nor "bare life" but "bound and constrained by power relations in a situation of forcible exposure" (ibid., 29). Amplifying precarity for detained noncitizens, presuming that this diminishes vulnerability, detention-as-deterrence operates as what Lauren Berlant calls "slow death:" "… the physical wearing out of a

population and a deterioration of people in that population…. The phenomenon of mass physical attenuation under global/national regimes of capitalist structural subordination and governmentality" (Berlant 2007, 754). This points to, she argues, "something important about the space of slow death that shapes our particular biopolitical phase; mainly, people do live in it, just not very well" (ibid.). While we have seen a rise in deaths along the border, immigration policing, detention, and deportation has also simply made life harder for noncitizens in the United States, and as Nancy Hiemstra has shown, at home (Hiemstra forthcoming). This has important implications for the revitalization of sovereign power. If sovereign power is, according to Foucault (2003), the ability to "take life and let live," what if we need not die, physiologically, in order to be killed? If detention works on networks, it is to wear thin the relationships on which life depends, to make life in the United States not worth living. These tactics *exploit* the interdependency inherent and necessary to human life, using the recognition of our relationality against us.

In her recent book *Frames of War*, Butler attempts to think ethics beyond liberal norms by rethinking what it means to be human:

> We have to ask about the conditions under which it becomes possible to apprehend a life or set of lives as precarious, and those that make it possible, or indeed impossible. …If we are to make broader social and political claims about rights of protection and entitlements to persistence and flourishing, we will have to be supported by *a new bodily ontology, one that implies the rethinking of precariousness, vulnerability, injurability, interdependency, exposure, bodily persistence, desire, work, and the claims of language and social belonging.* (emphasis added; Butler 2009, 2)

Analyzing the structures of dehumanization, through which we might understand life without recognizing its worth as a rights-bearing subject, Butler recenters politics on collective humanness, rather than identity, nationality, citizenship, and so forth. From this perspective, she argues, U.S. geopolitics produces precarity, has used the inherent interdependency of life against particular groups. For Butler, precarity's universality provides onotological grounds on which to build a coalitional politics around the struggle to thrive. Intriguingly, her approach resonates with the political ontology of circulation, connection, and contingency. But rather than entering into political groupings to *avoid* chaotic states of natures (following Hobbes) and to order the distribution of property (following Locke), building a political ethic around precarity works through struggles over the material conditions of being human: housing, healthcare, sustenance, space for the performance of different lifeways, and political inclusion. Butler's is a normative experiment, an effort to address embodied and categorical difference as an ontological universal. More to the point, she seeks to reinscribe liberalism's universal individualism around precarity and interdependence, to recast the political around a feminist and queer ethic of care. As a political ontology, precarity reorients possibilities for recognizing "enduring ties" of queer relatedness, the relationality of parenthood (through birth or adoption), transnational families (heterosexual and otherwise), and our own relationships to strangers. In effect, Butler seeks to reconstruct a leftist agenda not around the antagonisms of class, gender, racial or other identity positions, but around a biopolitical universal: we will die with out each other—not because of each other—and this is why we belong to each other. Refocusing politics from inclusion/exclusion to precarity privileges relational subjects, interdependence, and a biopolitics of mutual aid.

FUTURE DIRECTIONS

Beyond family detention, “the family” remains central to immigration geopolitics, as admission, relief, and risk categories privilege consanguinity over other forms of belonging. Spectacular public debates over immigrants' birthright citizenship, "anchor" or "terrorist babies," healthcare, and "bogus" asylum claims polarize immigration politics, yet family, gender and the home remain important metaphors for nation and territory (McClintock 1993; Stevens 1999; Walby 1996; Yuval-Davis and Anthias 1989). In many countries, family unification remains a dominant avenue for *legal entry*, but as this dissertation makes plain, *exclusion practices*--immigration policing, detention, and deportation--privilege familial relatedness and private space as *sites of state intervention* rather than pathways to political membership. As described above, detention and deportation practices revolve around legal and spatial conceptions of *the home and the family* in previously unexamined ways. This dissertation has focused on the legal and material infrastructures of detainability, but what comes into view when we focus on care practices, home spaces, and social reproduction? How do we understand the state’s enduring interest in immigrant reproduction, both biological and social? Analyzing immigration and border enforcement practices from this perspective brought deterrence’s reverberating impacts (Chapter 5), parents’ relational rights claims (Chapter 6), and family detention’s spatial ordering (Chapter 8) into sharper view.

Unpacking the state’s interest in foreign familiarity requires that working across sites and state programs and ask different kinds of questions about immigration enforcement. What is the state’s enduring interest in immigrant reproduction, family

unity, and care networks? How do these relationships, spaces, and circulations come to be apprehended—understood and confined—by immigration and security professionals? How does the US regulate political membership in and through care, consanguinity, and "family unity"? And how does "the family" regulate political membership for citizens and noncitizens alike? Heeding Butler (2002, 2009), Puar (2007), and Brandzel (2005), asking these questions elicits common political and theoretical ground between disenfranchised felons, queer communities, and noncitizens, allowing us to explore the topographies and topologies of exclusion. In future research, I plan to expand my empirical focus from family detention to a series of flashpoints that distill key contradictions between immigration, family, reproduction, and privacy regimes.

Home Raids

Since 2005, US Immigration and Customs Enforcement Fugitive Operations Teams have performed "home raids," sweeping up "collateral" residents unable to prove legal status. Noncitizens detained in their homes can appeal to the Constitution's Fourth Amendment protections from illegal search and seizure to avoid detention and deportation. Thus, private homes endow noncitizens with constitutional protections unavailable to those caught up in workplace raids, traffic stops, or profiling in public places. Intriguingly, the protection of private space has also served as the basis for constitutional challenges to anti-sodomy laws. As critics of gay marriage have pointed out, sexual citizenship has become the price of assimilation to the nuclear, single-family home-owner ideal. In addition, to analyzing the ways in which the legal geographies of public and private space intersect with immigration enforcement, this project will allow me to trace the co-constitutive character of il/liberalism and il/legality.

Family Custody

Family courts and social service agencies have ruled that parents' undocumented status constitutes a risk to their children and justifies removing custody rights (Thronson 2007-8). For example, the Mississippi Department of Human Services deemed an indigenous Mexican woman unfit to mother her newborn, pathologizing immigration status as a *threat* to family life. As described above, there are no clear rulings on the relevance of parents' immigration status to child custody rulings, and parents' undocumented status has been cited as grounds to deny custody. In these cases, federal immigration law operates as *de facto* child custody law (Thronson 2007-8). Conversely, granting custody to unauthorized parents can bar children from filing immigration claims, so that custody decisions often have dramatic implications for children's immigration status. This project would allow me to expand my analysis of parents', children's, and families' legal status, and to explore how theories of state and family custody cohere and conflict. Focusing on the bodily inscription of legal categories, this research serves as an important counterpart to my analysis of public and private space.

Borderland Births

US immigration officials have challenged birth certificates of American citizens birthed by midwives. These challenges target specific (Mexican-American) populations in and through their reproductive practices. For undocumented migrants more used to consulting *curaderas* than doctors, home births are a common reproductive practice. Hospitals issue birth certificates on site, however, so that home-birthed citizens do not gain *documented* citizenship at the moment of birth. In addition, border midwives are not necessarily certified by state or national midwifery associations. These cases demonstrate

not only how immigration enforcement is raced and classed, but how medical certification can become a medium of illegalization. This project explores the biopolitics of citizenship at its most intimate and provides a unique perspective on the imbrication of medical knowledge, intimacy, and citizenship.

Private Contracting

My dissertation research raised important questions about the role of non-state actors in immigration enforcement, and I am developing a project will explore these relationships in more detail. As described in Chapter 3, ICE contracts with private firms and non-governmental organizations to provide key immigration enforcement services, e.g. detention, family shelters, and security services. Under intellectual property law, this "immigration industrial complex" (Golash-Boza 2009) is exempt from public information laws and prison boards' oversight. Focusing on non-state corrections and security organizations, this project will ask how borders, citizenship, and migration are managed by new sets of actors in the context of globalized, privatized service-provision. The Corrections Corporation of America, for example, owns and operates detention centers internationally, and U.S. security and military personnel frequently offer consultation to foreign governments and global corporations on “mobility management” issues. In addition, non-profit NGOs provide immigration services, share strategies and expertise across borders, and participate in the implementation of rights-based immigration regimes. This project will (1) question the boundaries of the state in the context of transnational service-provision; (2) contribute to research on the political economy of the security industry; and (3) allow me to build a novel conceptual framework for grappling with neoliberal governance, capital, and state power. This research will be a

collaborative, multi-year project that will contribute to geographical and interdisciplinary research on international governance, immigration, and security.

CONCLUSION

Expanding on themes explored in this dissertation, my future research will trace the logics that make family custody, homes, births, and privacy objects of both special legal protection and exceptional state intervention. Others have analyzed enforcement's psychological, economic, and social impacts and border policies, inspection technologies, and governmental logics, but these studies focus on either individual or state behavior. In contrast, my future research will analyze how subnational actors—social service agencies, courts, and contractors—mobilize immigration status beyond the border. Moving from family detention this series of flashpoints, my work illuminates the contradictions between foreign and social policy and the centrality of reproduction to immigration geopolitics.

APPENDIX A: LIST OF ACRONYMS

AAP	Appearance Assistance Program
BP	Border Patrol
CBP	Customs and Border Patrol
CCA	Corrections Corporation of America
CFI	Credible Fear Interview
CIS	Citizenship and Immigration Services
DHS	Department of Homeland Security
ER	Expedited Removal
EOIR	Executive Office for Immigration Review
FRFDS	Family Residential Facility Design Standards
FRS	Family Residential Standards
FOIA	Freedom of Information Act
HSA	Homeland Security Act
ICE	Immigration and Customs Enforcement
IGSA	Intergovernmental Service Agreement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
IRCA	Immigration Reform and Control Act
INS	Immigration and Naturalization Services
INA	Immigration and Nationality Act
ISAP	Intensive Supervision Appearance Program
RFP	Request for Proposals
SBI	Secure Border Initiative

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VITA

LAUREN LEIGH MARTIN

DATE OF BIRTH: September 27, 1979

PLACE OF BIRTH: Houston, Texas

EDUCATION

BA, Philosophy, Grinnell College, Grinnell, IA. (2001).

AWARDS AND HONORS

Association of American Geographers Graduate Student Affinity Group Student Paper Competition, Second Place. (2010)

Dissertation Year Fellowship. The Graduate School, University of Kentucky, (2009-2010)

National Science Foundation, Geography and Regional Science. $9,504. Project: "Doctoral Dissertation Research: Immigrant Family Detention: The Family, Law, Security, and Space in U.S. Immigration Policy and Practice." BCS 0825843. Funded from August 1, 2008 to January 31, 2010. (*Competitive.*)

Dissertation Enhancement Award, University of Kentucky. (2008).

Presidential Fellowship, The Graduate School, University of Kentucky. (2007-8).

Daniel Reedy Achievement Award, The Graduate School, University of Kentucky. (2004-2006).

PUBLICATIONS

Lauren Martin. 2010. "Bombs, Bodies, and Biopolitics: Securitizing the Subject at the Airport Security Checkpoint." *Social & Cultural Geography*, 11(1): 17-34.

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Lauren Martin. 2009. "*Terrorist Assemblages: Homonationalism in Queer Times*. Jasbir K. Puar. Durham: Duke University Press, 2007. xxviii and 335pp., $24.95 paperback (ISBN 978-0-8223-4114-7)." Accepted by *Annals of the Association of American Geographers*.

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Confinement: Interrogating Spatial Practices of Confinement, Discipline, Law, and State Power." *Geography Compass*, 3(2): 459-477. (Invited article.)

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Oliver Belcher, Lauren Martin, Anna Secor, Stephanie Simon, Tommy Wilson. 2008. "Everywhere and Nowhere: The Exception and the Topological Challenge to Geography." *Antipode*, 40 (5): 499-503.

Laura Gomez Tovar, Lauren Martin, Manuel Angel Gomez Cruz, Tad Mutersbaugh. 2005. "Certified Organic Agriculture in Mexico: Market Connections & Certification Practices in Large and Small Producers," *Journal of Rural Studies*, 29(4): 461-474.

Lauren Martin. 2007. "Interrogating 'Experience': Phenomenology, Architecture, and Erudition. disClosure interviews Mark Jarzombek." *disClosure: A Journal of Social Theory*, 16: 91-99.

Lauren Martin. 2007. "Book Review: Butler, Judith. 2004. *Precarious Life: the Powers of Mourning and Violence*. Verso, New York, NY." *disClosure: A Journal of Social Theory*, 16: 143-145.

PROFESSIONAL EXPERIENCE

Teaching Positions

Instructor, Department of Geography, University of Kentucky.

Cities of the World, Spring 2011.

Instructor, Latin American Studies Program, University of Kentucky.

Introduction to Latin American Studies. Fall 2006, Spring 2007.

Teaching Assistant, Department of Geography, University of Kentucky.

Lands and Peoples of the non-Western World. Fall 2005, Fall 2010.

Research Assistant, with Dr. Tad Mutersbaugh on an NSF-funded project on Mexican fair trade coffee certification. Department of Geography, University of Kentucky. Fall 2004-Summer 2005.

Other Experience

Scholar-in Residence, Grassroots Leadership, Inc. 2008-2010.

Consulting Geographer/Dramaturg, "We Give Up," Directed by Maureen Towey, Baryshnikov Arts Center, New York City, New York. 2008-2009.

Conference Organization

Session Organizer, "Finding the Family in Geographical Research I, II." April 14-18, 2010, at the Annual Association of American Geographers Conference, Washington, D.C.

Session Organizer, "Geographies of Closed Doors I, II: Interrogating Security Research and Methodology." March 27, 2009. Annual Association of American Geographers Conference, Las Vegas, NV.

Session Organizer, "Geographies of Detention and Confinement I, II, III." April 16, 2008. Annual Association of American Geographers Conference, Boston, MA.

Session Organizer, "Geographies of Detention and Confinement: Challenges of Fieldwork." April 16, 2008. Annual Association of American Geographers Conference, Boston, MA.

Session Organizer, "Reassessing Sovereignty I, II." April 19, 2007, Annual Association of American Geographers Conference, San Francisco, CA.

Lauren Martin

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