Carceral Citizenship in an Age of Global Apartheid

Jenna M. Loyd

that he will swim back to Africa now he is drown.
that the shadow of this
Coast Guard
Cutter
of blockade
has nothing to do w/his coconut head & the cost of
his arms folded sleeping in salt?

—Kamau Brathwaite

An estimated 20,000 people have lost their lives in the Mediterranean Sea trying to reach Europe in the past two decades. The Australian Border Crossing Observatory project reports that over 1,487 deaths have been recorded in the seas surrounding Australian territory between 2000 and 2013. In the Caribbean Sea, where, to my knowledge, comprehensive numbers are not being compiled, in the last two months of 2013 alone, two capsized boats led to the deaths of over 45 people. These fatalities in perilous waters must be counted alongside the

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lives lost on land, such as in the Evros River valley between Greece and Turkey and in the deserts stretching between Arizona and Sonora and between Morocco, Algeria, and Libya.

The deaths of people attempting to navigate treacherous spaces between relatively wealthy and powerful regions and less politically powerful places are the clearest evidence of the life and death stakes of global apartheid. Global apartheid is constituted most evidently through migration regulations and practices of border policing, militarization, and interdiction. Yet global apartheid is not solely about assertions of nation-state sovereignty internationally or at national boundaries. Not only does global apartheid rely on the fortification and policing of sovereign territory and on the delegation of this work regionally to third countries, but it also relies on domestic policing and crime policies and their infrastructure of detention facilities, jails, prisons, and the methods for moving people within this network or removing them through deportation. International geopolitical struggles are increasingly intertwined with carceral regimes, linking domestic and foreign space.

In the time since Jonathan Simon published “Refugees in a Carceral Age” over sixteen years ago, the intersection between criminal justice and immigration policies has grown increasingly strong. Despite a growing literature on this intersection, however, the implications that an interlinked machinery of confinement and deportation poses for political theory and organizing are much less explored. I suggest that global apartheid must be understood in relation to the carceral state, which together form a regime of carceral citizenship that is global in scope. The construction of global apartheid, moreover, is tied up with military (and imperial) logics, which are most evident in the fortified land boundaries and patrolled seas between the Global North and Global South. These fortifications have specific geopolitical histories, which are intertwined with specific regional racial formations.

Whereas geopolitics and migration policy tend to be understood as (inter-)national issues, I suggest that racial projects advanced at regional scales—regional racial formations—are important for understanding the uneven development of national policies. To advance this argument, I build on Omi and Winant’s theory of racial formations—“the sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed”—and geographic theories of region. Cheng defines “regional racial formations” as “place-specific processes of racial forma-

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tion, in which locally accepted racial orders and hierarchies complicate and sometimes challenge hegemonic and facile notions of race.”

In the case of the United States, specific histories of conquest, racism, and empire have created transnational regional racial formations. The colonial and ongoing establishment of a sharp boundary between the United States and Mexico, across Native lands, is an example of a transnational regional racial formation in the borderlands. Anglo projects to dominate these spaces and Mexican and Native inhabitants continue to inform contemporary anti-Mexican xenophobia and exclusionary policies elsewhere in the nation and at a range of geographic scales. Further, Mae Ngai traces how anti-Chinese agitation on the part of Anglos in California led to exclusionary legislation at the federal level.

Understandings of more contemporary immigration histories tend to overlook the anti-Black racism driving US interdiction practices in the Caribbean. The use of detention and interdiction as deterrents to Haitian migration in particular, however, established the legal and practical grounds upon which current US immigration detention polices and “territorial denial” strategies deployed along the United States–Mexico boundary took root. US interdiction practices, moreover, created the conditions for other nations to deploy similar exclusionary practices in the international waters near their territories. Examining the anti-Black roots of US border and immigration policy, then, suggests a genealogy of global apartheid tied up in the ricochets of slavery and empire, where US Coast Guard cutters signal not so much safe passage but a contemporary Middle Passage.

BACKGROUND AND THEORY: REFUGEES, RIGHTS, AND CARCERAL CITIZENSHIP

Hannah Arendt sought to remedy the problem of statelessness for refugees created by the dissolution of European empires in World War I by extending the “right to have rights.” That is, she wanted to extend the civil and political rights, responsibilities, and protections that, ideally, citizens within a democratic state can expect. Members of the United Nations began crafting the rights of refugees that signatory states must protect with the 1951 Convention Relating to the Status of Refugees (following on work that the League of Nations had done). The convention was expanded with a protocol in 1967 that removed geographical restrictions—but remains imperfect. Nation-states continue to enjoy the political legitimacy to exercise the sovereign right

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10 Cheng, The Changs Next Door to the Díazes, 10.
to determine who may enter and stay within their territories and under what conditions. Yet this sovereign right is in question everywhere around the world where people die while trying to move across the chasm dividing the Global North and South. The term “global apartheid” rejects this right, skewering the increasingly militarized divide as racist because, as Joe Nevins writes, “the boundary is one between life and death in that on what side one is born, and works and resides[,] . . . profoundly shapes one’s life circumstances.”

Nicholas De Genova takes up the question of the stateless person or refugee who illustrates the limits of the nation-state and national citizenship. This national scale of citizenship serves to differentiate citizen from alien, domestic from foreign. The territorial form of the nation-state, in turn, locks rights to mobility to the territorial boundaries of the nation-state. Asylum within such a system, geographer Jill Williams writes, “replicates systems of injustice and exclusion, rather than challenging the territorial nature of the nation-state and related spatial frameworks for guaranteeing rights. Asylum, like all legal and social frameworks of belonging, fundamentally relies upon exclusion.”

In practice, the hegemony of nation-state sovereign rights to regulate territorial boundaries means that the state trumps freedom of movement. However, De Genova insists, freedom of movement, as a human condition, “must be radically distinguished from any of the ways that such a liberty may have been stipulated, circumscribed, and domesticated within the orbit of state power (‘national,’ imperial, or otherwise).” He ties freedom of movement to social praxis, an equally ontological “capacity to creatively transform our objective circumstances.” In this way, De Genova moves beyond Arendt’s theorization of the refugee. By focusing on this nexus of movement and work through the figure of the “deportable alien,” he shows that the limit of citizenship is not (only) the stateless person. Rather, the “deportable alien” is included within practices of citizenship through exclusion, “a peculiar sociopolitical relation of juridical non-relationality [that] is the material and practical precondition for her thoroughgoing incorporation [as a worker] within a wider capitalist social formation.”

De Genova writes that the regulation of labor through this division between citizen and alien takes place in “a proliferation of postcolonial metropolitan spaces” that differ from colonial regimes of “fixed or overriding spatial separations of the sort that distinguished the incarceration of whole populations within the militarized borders of colonies, which served to immobilize human energies within the confines of vast de facto prison labor camps.” Thus, it is not only at the boundary of a national territory where friend-enemy relations result in the militarized regulation of mobility, but also domestically, within spaces already differentiated by race, class, and differential citizenship.

Legislation passed in the United States between 1886 and 1924 barring Chinese, Japanese, Indian, and other Asian people from citizenship was part of struggles over “free” and “unfree”

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16 Nevins, Dying to Live, 169.
20 Ibid., 47.
21 Ibid., 54.
labor that consolidated citizenship around whiteness. The construct of the “illegal alien” emerged over this time, and even though immigration laws of the 1920s did not exclude Mexican nationals, the authorization in 1924 for the Border Patrol to police the United States–Mexico borderlands rendered Mexicans the “single largest group of illegal aliens [as legal and political subjects] by the late 1920s.” According to Ngai, “The legal racialization of these ethnic groups’ [Asians’ and Mexicans’] national origin cast them as permanently foreign and unassimilable to the nation.” Thus, “these racial formations produced ‘alien citizens’—Asian Americans and Mexican Americans born in the United States with formal U.S. citizenship but who remained alien to the nation.” Simultaneously, Black people who gained formal citizenship with the Fourteenth Amendment were positioned as the “impossible domestic,” Fred Moten writes, that is, “outside the law, outside of the law’s protection even if open to the law’s assault.”

Today’s US carceral state, or prison-industrial complex, builds on these regional racial formations to produce a citizen-criminal divide whose far-reaching effects are yet to be fully understood. Black and Latino communities (particularly, though not exclusively) live with the burden of a vast system of criminalization, policing, and carceral immobilization. Upward of 2.5 million individuals who are now in cages for the most part are not laboring for the state or capital while in prison, but their labor power and mobility surely are being incapacitated. The power of criminalization does not necessarily strip citizenship to the point of statelessness (as was Arendt’s concern), but it does strip and differentiate rights among citizens. While the Fourteenth Amendment extended citizenship to formerly enslaved people, the free-unfree relationship undergirding chattel slavery and anti-Blackness was reconstructed through legislating proscribed behaviors and deploying coercive state powers. The scope and severity of the US carceral regime rest on this anti-Black racial animus.

Thus, it is not only at the threshold of the citizen–deportable alien where global capitalist labor markets are being regulated but also through the relationship between criminal and citizen. Not only do contemporary US policies regarding imprisonment serve to regulate labor that capital has rendered surplus, but criminalization also serves as a means to rationalize the repressive restructuring of the social welfare state, stripping entitlements from undeserving citizens. The lasting social, political, and health effects of the US carceral state—ranging from temporary and permanent bars from voting and receiving social, housing, and educational services, to separation from family and community, to shortened life-span—fundamentally challenge the conceit of state protection.

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22 Ngai, Impossible Subjects, 7.
23 Ibid., 8.
24 Ibid.
Crime policy is not simply domestic in its territorial jurisdiction or application to citizens. Profiling—whether in the name of national security, crime suppression, or unlawful presence—cuts across the citizen and noncitizen divide, but the consequences of crime policies differentially affect noncitizens. Conviction for any of the list of offenses, which has been expanding since 1988, subjects noncitizens (legal or unauthorized) to deportation. Moreover, programs like Operation Streamline deploy crime policies against people who are not authorized to be present in particular Border Patrol sectors along the United States–Mexico boundary, a process applicable only to noncitizens. Finally, just as a criminal conviction follows people after their reentry from prison, people who have been deported are also frequently framed as the source of their nation’s violence and crime problems.

Dylan Rodríguez argues that the US prison regime is a form of “global statecraft, an arrangement and mobilization of violence that is, from its very inception, already unhinged from the delimiting ‘domestic’ (or ‘national’) sites to which it is presumptively tethered.” That is to say, Rodríguez troubles the production of policing and prisons “as problems of the American local, domestic, and/or national—as if the localities and domesticities of the United States are not already and complexly enmeshed in the societal ensembles and state produced violence of ‘the global.’” One region where a multiply scaled ensemble of US state violence cohered is the Caribbean, where the United States and other nations have a long, complex history of imperial and geopolitical relations. The place of Haiti—the first nation-state in the world established by enslaved subjects in the process of emancipating themselves—in this story is central, and the United States’ relationship with it points to an intertwined, transnational genealogy of mobility and carcerality.

A genealogy of immigration deterrence

In the late-1970s, the US Immigration and Naturalization Service (INS) began operating the Haitian Program, which jailed arriving Haitians who could not post bond and curtailed avenues for requesting asylum. The program was designed by the Department of Justice in consultation with bureaucracies in the United States and Haiti to provide a model of the mass removal of Haitian migrants. In 1983, the INS stopped the program after 700 Haitians were detained for more than 16 months. The program’s legacy continues to influence contemporary migration policies and legal frameworks.

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32 D. Rodríguez, “‘I Would Wish Death on You…’: Race, Gender, and Immigration in the Globality of the U.S. Prison Regime,” in Tadiar, “Borders on Belonging.”
with the Department of State and was aimed at “driving out Haitians already in south Florida and discouraging future refugees from migrating to the United States.” 35 The State Department’s involvement in the Justice Department’s Haitian Program was not incidental. The United States had a long history of neocolonial engagement and military occupation of Haiti (1915–34) and continued to establish relationships favorable to US economic and geopolitical interests. Haiti was a Cold War ally in the Caribbean, and thus, the US government suppressed migration from there, even as it supported the brutal Duvalier family regimes.

The Mariel boatlift of 1980 was pivotal for US migration and refugee policy. During a six-month period, over 125,000 Cuban nationals arrived in Florida and soon were transferred to ad hoc civilian and military facilities throughout the eastern United States for processing as “entrants.” So-called “undesirable Cubans” found themselves confined at the Fort Chaffee military base in Arkansas, where Bill Clinton was then governor. At the same time, some 25,000 Haitian refugees also arrived by boat seeking asylum. They were confined on a former Nike missile base called Krome, outside Miami. In July, a district court ruled on a legal challenge to the Haitian Program brought under Haitian Refugee Center v. Civiletti, finding that it was a “transparently discriminatory program designed to deport Haitian nationals and no one else.” 36 The presiding judge enjoined the government from further deportations without asylum hearings.

With 11,000 applications to process and overcrowding at Krome, the Reagan administration announced plans to process arriving Haitian asylum seekers at a mothballed military base in Puerto Rico and resumed mass asylum hearings in June 1981. 37 Transfers to the Fort Allen facility in Puerto Rico and to other federal detention, prison, and military facilities throughout the eastern United States began in July 1981. 38 A complex series of legal challenges wended their way through the courts, the end result being that supposedly neutral immigration policies could not be applied in a discriminatory manner and that the INS must issue an explicit change to its detention policy. 39 The Reagan administration’s new policy, issued in 1982, “interpreted statutory language as mandating imprisonment for all refugees that the INS inspectors did not deem clearly authorized to enter.” 40 Ending discrimination against Haitian nationals would not end detention for Haitians but extend the policy of confinement and its harms to other groups.

The Reagan administration also embarked on implementing a two-pronged strategy of deterrence, which would work, “incidentally, to curtail the flow of aliens into administrative and judicial proceedings in the United States.” 41 Detention, discussed more fully below, was one prong of their deterrence strategy. The second prong entailed explicitly, not “incidentally,” extending border policing offshore to create a buffer space, first with the interdiction of boats at

35 Paik, “Carceral Quarantine,” 147. For the Haitian Program, see Zucker, “The Haitians versus the United States,” 156. The Miami district director for the INS stated: “We feel that any relaxation of the rules could produce a flood of economic refugees from all over the Caribbean” (Zucker, “The Haitians versus the United States,” 154).
38 Zucker, “The Haitians versus the United States,” 158.
40 Simon, “Refugees in a Carceral Age,” 583.
41 Zucker, “The Haitians versus the United States,” 159.
sea and later with the establishment of offshore “safe-haven” camps in the Caribbean and agreements with nations in Central and South America to bolster their migration control measures.

President Reagan issued the first of these offshore deterrence policies on September 29, 1981, with Executive Order 12324. It directed the secretary of state to enter into bilateral agreements with foreign governments that would allow US Coast Guard vessels to stop, board, and return foreign vessels.\(^{42}\) (The United States and Haiti had already entered into an agreement a few days before the order was issued.) INS officials soon were conducting “credible-fear” interviews aboard Coast Guard ships in order to determine whether a person should be allowed into the United States to make a formal asylum claim or be returned to Haiti.

Historian Naomi Paik explains that interdiction “violates the international juridical principle of freedom in international waters and the principle of non-return or non-refoulement,” which is a principle of the United Nations Convention Relating to the Status of Refugees.\(^{43}\) US executive and judicial branches, however, have repeatedly rejected such a conclusion. In 1981, a lower court ruled on a legal challenge that was brought by Haitian advocacy groups, finding that “US refugee law applied only to persons within US territory or persons at a border seeking entry.”\(^{44}\) INS head Doris Meissner testified to Congress that non-refoulement provisions did not apply in international waters.\(^{45}\)

Jean Claude Duvalier’s dictatorship ended in 1986, followed by a series of leaders and eventually the election of popular Left president Jean-Bertrand Aristide in 1991. Departures from the island significantly declined, but following the ouster of Aristide by a military coup, large numbers of Haitians again tried to seek sanctuary in the United States. President George H. W. Bush initially indicated that no Haitians should be returned to Haiti, and he sought offers of temporary safe haven from nations in the Caribbean. The Bahamas and Dominican Republic refused, and Honduras, Belize, and Venezuela agreed. The United States kept Haitians who had passed credible-fear interviews onboard Coast Guard cutters or took them to the Guantanamo Bay Naval Base. As legal challenges made their way through US courts, another significant increase in Haitians leaving by boat ensued in May 1992. In the first three weeks of the month, the US Coast Guard interdicted over 10,000 Haitians.\(^{46}\)

Over 12,500 refugees were already confined at Guantanamo when President Bush issued Executive Order 12807 from his vacation home on May 24, 1992.\(^{47}\) The Kennebunkport Order asserted that US obligations to non-refoulement did not extend to persons outside the territory of the United States. The numbers of Haitians attempting to depart dropped with news of the order.\(^{48}\) Advocates for Haitian asylum seekers challenged the Kennebunkport Order in Sale v. Haitian Centers Council, a case that would make its way to the Supreme Court. A circuit court

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\(^{43}\) Paik, “Carceral Quarantine,” 149.

\(^{44}\) Frenzen, “US Migrant Interdiction,” 379.

\(^{45}\) Ibid.

\(^{46}\) Ibid., 380–82.

\(^{47}\) Paik, “Carceral Quarantine,” 150.

ruling found that the refoulement was illegal under US law (section 243(h)(1) of the Immigration and Nationality Act), but the Bush administration quickly won a stay of this ruling.49

Election-year politics was part of the policy-making context. Winning Florida—where contenders Pat Buchanan and former Ku Klux Klan leader David Duke were deploying anti-immigrant speech—was imperative for Bush’s reelection bid. Bush issued a paternalistic statement effectively conveying the message that government policies dissuaded migration: “I don’t want to have a policy that acts as a magnet to risk these people’s lives.”50 While migration was not a major focus of Democratic challenger Bill Clinton’s campaign, condemning Bush administration practices would score him political points from some Democratic voters.51 As Clinton stated at the time: “I am appalled by the decision of the Bush Administration to pick up fleeing Haitians on the high seas and forcibly return them to Haiti before considering their claim to political asylum…. This process must not stand. It is a blow to the principle of first asylum and to America’s moral authority in defending the rights of refugees around the world.”52

The legal team in the Sale v. Haitian Centers Council case based part of its legal strategy on the hope that the Clinton administration would change government policy.53 Indeed, Clinton suggested as much soon after his victory when he stated: “I think that the blanket [policy of] sending them back to Haiti under the circumstances which have prevailed for the last year was an error and so I will modify that process.”54 This would not be the case. The Clinton administration continued to carry out “warmed-over” Bush administration policy, in the opinion of longtime refugee advocate Bill Frelick.55 This included rationalizing interdiction in humanitarian terms. “Of course, it isn’t,” Frelick writes. “The United States ‘rescues’ boats that are not in distress and detains their occupants, even against their will.”56 The treacherous conditions that many endured at sea underscored for advocates the dangers facing the migrants if they remained in Haiti. But as Paik writes, when the US Supreme Court ruled on Sale v. HCC, it invoked the hazards of the sea journey “to justify repatriating refugees to their persecutors. It claimed that ‘the safety of Haitians is best assured by their remaining in their country.’”57

The Supreme Court ruled on Sale v. HCC following Clinton’s inauguration. Harold Koh, a lead attorney for the case, called the Court’s decision a “profound disappointment” that continued a “disturbing pattern of reflexive deference to presidential powers in foreign affairs and hostility toward both aliens and international law.”58 The Court not only upheld executive claims that US international and domestic obligations to refugee rights did not extend beyond the land borders of the United States but also reasoned that the English translation of refoulement means “rejection” not “return.” Justice Blackmun, the lone dissenter, retorted that these twists

54 Ibid.
56 Ibid., 687.
57 Paik, “Carceral Quarantine,” 151.
58 Koh, “Reflections,” 1, 2.
of reasoning meant that “the word ‘return’ does not mean return … [that] the opposite of ‘within the United States’ is not outside the United States.” The legal geography of US obligations was ruled to not extend to international waters even as the Court upheld a Bush era legal opinion issued by the Department of Justice indicating that migrants interdicted in US territorial waters also were not entitled to protections against return.

Perhaps more disturbing is the fact that the case had been brought on already-narrow legal grounds, claiming not the right to asylum but the right to not be returned. According to refugee advocate Bill Frelick:

The draconian measures taken by the United States have changed the parameters of what is considered acceptable. We have become minimalist in our demands, not because we are any less committed to advocating for a range of rights and benefits for refugees and asylum seekers, but because the violations committed by our government deny even minimum standards of refugee protection that we had thought were no longer open to question.

The Sale v. HCC decision, thus, provided the political and legal basis for the US government to continue a regional strategy, including extraterritorial and third-country safe-haven policies, for preventing the arrival of asylum seekers on sovereign territory. The United States could ostensibly abide by principles of non-refoulement largely by setting its own legal geographic terms.

After Clinton took office, some 310 Haitian refugees—all of whom had passed credible-fear interviews and most of whom were HIV positive—remained confined at Guantanamo. A court ordered the refugees to be released, an order with which the government complied on the same day as the Sale v. HCC ruling was issued. In June 1994, as the Clinton administration was moving forward with plans to reinstate Aristide, the United States also resumed onboard screening of refugees. Panama, Honduras, and other Caribbean countries agreed to provide temporary shelter, and by July 1994, over 16,000 Haitians had been offered safe haven at Guantanamo. The United States began to construct safe-haven camps in Antigua, Dominica, St. Lucia, Suriname, and the Turks and Caicos. Safe haven would amount to confinement and virtually no chance of making an asylum claim in the United States.

As the Haitian refugee crisis continued, Fidel Castro announced that he would allow Cubans to leave the country in July 1994. Some 30,000 Cuban asylum seekers departed by boat expecting to reach US shores. In a dramatic turnabout from its longstanding reception of Cuban refugees, the United States announced that it would interdict these boats and confine Cuban asylum seekers at Guantanamo. By August 1994, 23,000 Cubans were held at Guantanamo, as were over 16,000 Haitians. Another 9,000 Cubans were confined on a US military base in Panama. In August 1994, the United States and Cuba signed an agreement providing for the return of Cubans who did not meet credible-fear standards, following the precedent set with Haiti a decade earlier.

59 Ibid., 15.
60 Frenzen, “US Migrant Interdiction,” 386.
64 Ibid., 154.
65 Ibid., 155.
CARCERAL MIGRATION POLICY

Preventing asylum seekers from reaching US sovereign territory required offshore and onshore confinement. Indeed, onshore imprisonment explicitly was established as part of a strategy to deter the arrival of asylum seekers. In July 1981, President Reagan’s attorney general, William French Smith, bluntly expressed the policy objective: “Detention of aliens seeking asylum was necessary to discourage people like the Haitians from setting sail in the first place.” During and soon after the 1980 immigration crisis, the United States confined Haitians and “undesirable” Cubans at INS detention facilities, military bases, and federal prisons. Into the 1980s, as the United States continued to pursue its interdiction practices offshore and to detain asylum seekers onshore, the INS began contracting with local jails for space and building its own long-term detention facilities.

Haitian asylum seekers were confined not only to Krome and the few other INS facilities that existed in the 1980s but were also routinely transferred to jails in Florida, Louisiana, Texas, and elsewhere. Legal and community advocates for Haitian asylum seekers mobilized to stop the arbitrary transfers, citing the inaccessibility of the jails to Creole translators and attorneys and the facilities’ poor living conditions. Affidavits collected by the Florida Immigrant Advocacy Center between 1989 and 1991 reveal a pattern of treatment that Haitian asylum seekers experienced with their transfers between Krome and jails in Louisiana or Texas: brutal treatment by guards, lack of food, and mixing with convicted criminals. I draw on the affidavit of B.P., a man who had fled Haiti by boat because, as he explained, his “life was cheap” due to his political commitments:

I am an honest man, and have never done anything wrong, but I have been in different cages since last winter. Here at Krome, they started the bad treatment right away. They would make us run to the cafeteria to eat, and then they’d give us five minutes and make us run back. If you’d eaten anything at all, you’d want to throw it up. Now, after I came back from Texas, it’s worse: they don’t even give you that long.

B.P. goes on to describe how he was transferred to a jail in Webb, Texas:

They had a list of people they were sending to Texas, and I wasn’t on it. So I was shocked when they pulled me wet and naked from the shower and ordered me to get dressed. They said, “You’re going to Texas.” I started to cry. Someone offered me some food. I was so upset I threw it down. That’s when they chained me up and nearly broke my arms. I got sent to Texas like that—chained. The guards at Webb were surprised to find we weren’t some sort of big crooks.

The Texans were OK, except they were crooked. You’d want a dollar changed, they’d take 25¢ out of it, and they wanted three bucks for a pack of cigarettes. If they didn’t do it themselves, they looked the other way when other guards or jailbirds did it.

69 Ibid.
B.P.’s description of being chained while being transferred between facilities demonstrates the punitive function of confinement and the blurred line between criminal and noncitizen status, despite legal distinctions between administrative detention and imprisonment. Commonsense understandings of criminality, confinement, and race informed treatment of unwanted asylum seekers, discursively rendering them confineable and punishable. The fact of confinement, in turn, effectively becomes the mark of criminality, regardless of criminal conviction. This discursive and practical equation between confinement and criminality precedes, then, criminalization as a legal process. Law professor Teresa Miller writes:

The imposition of criminal sanctions for conduct that previously amounted to civil violations—in other words, the creation of new categories of criminal offenses—was not the inevitable consequence of compassion fatigue. However, the legislative will to criminalize certain kinds of immigration-related conduct correlates closely to a crisis of legitimacy that immigration policy experienced after 1975—acutely so after the 1980 Mariel Boatlift—as well as the popularity of “tough on crime” measures already well underway in the same legislative arena.  

B.P. rejects being treated like a “some sort of big crook” and redeploy the category against fellow “jailbirds,” guards, and, by extension, all Texans. In one register, B.P.’s claim of innocence hinges on an exceptional status he figures for himself as an “honest man” who nonetheless finds himself “in different cages.” This attempt at “repudiating criminality and recuperating social value,” Lisa Cacho writes, tends to “reproduce the problems we mean to solve.” Yet it also seems that B.P.’s attempt to set himself apart from criminality falters. He points to the system being crooked all the way from Miami (INS) to Texas, thereby suggesting that the continuity of dehumanizing treatment across INS detention and jail space attaches to and follows Black bodies and national status. While imprisoned in Texas, B.P. explains:

I got fed better than some people, but it wasn’t good. They had some kind of potatoes, smashed up and fried, with ketchup. With that, I had beans. Sometimes there were eggs, but they always stank. And the guards said they couldn’t change the food, because there were orders from Miami that the Haitians were to be treated that way. For the same reason, we couldn’t see our relatives, either.

When I got back [to Krome], I found that things were as bad as before: running through the food line, having to stand in bad weather, everything. They took us all out by section this morning just for spite, because it was cold. And they tell us we will never get out unless our parents are citizens. You know, they never even let us go to the bathroom when we need to—they just keep us standing through head counts, over and over, for spite.  

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70 Miller, “Citizenship and Severity,” 627.
72 Affidavit no. 47 (B.P.)
These experiences led B.P. to conclude: “Maybe they will kill me in Haiti. The government doesn’t forget anything there. But this is worse. This is no country for black people. I will never come back, no matter what.”

B.P. was not the only person who recorded this conclusion in their deposition. Indeed, a group of Haitian refugees confined in Louisiana wrote a letter of protest not so much disputing their confinement in a penal space but how this remote space would contribute to their abandonment: “Because this prison is a prison where they can forget about you.” The US policy of detention as a deterrent, then, rests on the carceral state’s efforts to erase memories of refugees’ presence in the United States, colluding with the Haitian government’s refusal to forget dissidents. That is, the conditions of social death produced by the carceral state abet the political violence that led refugees to flee in the first place, yet both the US and Haitian state’s practices of violence are displaced onto the figure of the criminal. Criminalization, thereby, shrinks the terms of asylum seeking.

**CONCLUSION**

Teasing out the geographies of global apartheid entails a multi-sited and multi-scalar genealogy that is attentive to specific regional racial formations and geopolitical moments. Remembering this Caribbean history of imprisonment and deterrence is important because it speaks to the fundamental, if widely forgotten, dimension of anti-Blackness within US border and immigration policy. Regional racial formations and conservative political forces in the Southwest built on a different, if interrelated, set of racial antagonisms than in Florida to shape deterrence as a national policy. This Caribbean history also speaks to the capacity of regional racial projects to become part of national and international policy in apparently race-neutral terms. Guy Goodwin-Gill, a prominent international law professor, called President Reagan’s Executive Order 12324, on the “Interdiction of Illegal Aliens,” “the model, perhaps, for all that has followed.” At the time, Goodwin-Gill was working for the United Nations High Commission for Refugees, and he recalls being “struck by the incongruity, the inconsistency, between this measure and the resolute stand taken by the United States on the protection of Indochinese refugees in South East Asia, for whom first asylum, non-discrimination and at least temporary admission were considered the essential minimum.”

Following Rodríguez’s genealogical approach suggests not only delineating the interconnection between the prison regime and global apartheid but also tracing the sites where the prison and border erupt to contain the effects of US imperial activity. The reliance on imprisonment explicitly to deter Haitian asylum seekers built on the existing national racial formation and chain of associations linking Blackness, poverty, and criminality to a carceral solution. This has become all the more important with the material expansion of the immigration detention system (to the capacity to deport over 400,000 people annually) and discursive tightening between criminality and illegality.

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73 Ibid.


Detention’s roots in empire are also important to recall: detention as a tool of deterrence built on the “humane deterrence” policy that Thailand implemented in 1981 to constrain refugee movements from Laos. This policy amounted to sending asylum seekers to “austerity” camps that did not provide a path to resettlement in a third country. Thus, even as the United States extended refugee status to some survivors of its war in Southeast Asia, it also used detention within a different regional geopolitical context to deter the arrival of unwanted refugees from Haiti and Cuba. Yến Lê Espiritu writes that the refugee status of Vietnamese refugees has “continued to serve as a stage for the (re)production of American identities and for the shoring up of militarism” in ways that “naturalize and buttress the self-appointed US role as rescuer.”

This imperial ideology of rescue promises the “gift of freedom” to Vietnamese subjects who are determined as needing care. Bush and Clinton deployed this rhetoric of care and rescue to refugees at sea in the Caribbean in ways that similarly erased violent US military and geoeconomic policies. Yet what differed is that this rhetoric of rescue rubbed up against the constant disavowal of Haitians as rescuable (that is to say, assimilable in terms of patriarchal subjection) and against a discursive shift from depicting Cuban refugees as freedom fighters to depicting them as unwanted, unruly, criminal subjects.

Refugee rights advocate Bill Frelick has noted that, even as the United States was pursuing its interdiction policy in the Caribbean, Italy and Hong Kong were also forcibly repatriating asylum seekers attempting to arrive by sea. “These developments on the international front might have occurred with or without the United States precedent,” Frelick concludes; however, the “United States is now in no moral position to protest the treatment of refugees and asylum seekers by other governments, even when the United States thinks it is wrong.” Since then, Italy and other European nations have systematically patrolled the seas to prevent unauthorized arrivals from Africa, the Middle East, and Asia, and in 2001, Australia deployed its Pacific Solution to prevent boat arrivals with refugees largely from Afghanistan, Pakistan, and Sri Lanka. Given that US wars and drone attacks in Afghanistan, Iraq, and Pakistan are at least partly responsible for refugee movements, we might also register Australian and European border control efforts as at least partially entwined with US imperial maneuvers.

The blurring of the categories of criminal and noncitizen complicates how we might think about undoing sites and practices of global apartheid. This essay on the production of carceral citizenship and its global expanse has traced an alternative history of contemporary US immigration prisons and highlights the imperative of understanding immigration policy in terms of multiple regional racial formations. In a globally carceral era, one of the most important tools for

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79 Frelick, “Haitian Boat Interdiction,” 691.

ending how prisons and deportation separate families and communities is to link together what many regard as separate issues. Both anti-prison and immigrant justice organizers have identified the diaspora that is created by imprisonment and deportation. This mutually informed thinking suggests that, for anti-prison advocates, the question of the kinds of policies and practices that support reentry from prison needs to be reframed to expansively include stopping deportations and supporting legislation that allows people who have been deported to return to their loved ones and communities. As for the immigrant justice and antidetention movements, organizers are in a position to challenge anti-Black terms of criminalization, and the detention system itself, by refusing to invoke terms of innocence. This is not easy, given the insistent effort undertaken by the state to reproduce its sites and objects of war (drugs, crime, terror, etc.). Nor is it impossible, as the testimony by B.P. illustrates when he concluded that systemic anti-Blackness in the United States colluded with antidemocratic forces in Haiti.

The entwining of domestic and foreign policy and space is most evident in the spaces of local jails confining asylum seekers and government boats patrolling the seas. The eighteenth-century figure of the British slave ship *Brookes*, which continues to inform contemporary abolitionist analyses, might be extended to include the US Coast Guard Cutters, Australian navy ships, and Frontex and European vessels patrolling their territorial waters. Indeed, Edwidge Danticat, Kamau Brathwaite, and other writers have drawn such a connection between the Middle Passage and Coast Guard patrols now blocking passage across the Caribbean. Direct-action blockades of deportation buses and flights and grassroots campaigns to prevent deportations are the latest iteration of this long abolitionist history. A

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81 Deloughrey, “Heavy Waters.”