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“Felons, not Families”: Criminalized illegality, stigma, and membership of deported “criminal aliens”

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Abstract

Since the 1990s, U.S. immigration enforcement has focused on detaining and deporting unauthorized migrants labeled as “criminal aliens,” most of whom (about three-fourths) are Mexican nationals. Yet, little data exist on this population of migrants. Using a transnational lens, and drawing from analysis of government and media, as well as participant observation data collected along the border, this article shows the consequences of the stigmatization and integration of those migrants deported as “criminal aliens,” in both Mexico and the U.S. While the framing of illegality has dominated the literature on unauthorized migrants in the U.S., I argue that the focus on deporting “criminal aliens” marks a shift from “illegalization” to the “criminalization” of immigration enforcement in the U.S. In particular, I highlight how the focus on deporting migrants as “criminal aliens” results in the criminalization of their illegality; that is, Latino non-citizens who are deported become criminalized perpetual outlaws because the label “criminal aliens” is legally permanent, with severe consequences for their identity and membership in both Mexico and the U.S..

Keywords: criminal aliens; crimmigration; deportation; stigma; illegality.

Introduction

On November 20, 2014, President Barack Obama announced a much-anticipated executive order (the Deferred Action for Parents of Americans and Lawful Permanent Residents, or DAPA) to relieve millions of undocumented immigrants already living in the U.S. from deportation. In his speech, however, he made a clear distinction between those who would benefit from DAPA and those who would still be deportable. President Obama stated, “[O]ver the past six years, deportations of criminals are up 80 percent. And that’s why we’re going to keep focusing enforcement resources on actual threats to our security. *Felons, not families. Criminals, not children* [emphasis added]. Gang members, not a mom who’s working hard to provide for her kids. We’ll prioritize, just like law enforcement does every day” (Obama 2014).¹ Obama’s speech revealed the extent to which politicians now seek to draw clear boundaries between “family

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¹ On February 16, 2015, U.S. District Judge Andrew S. Hanen ordered a preliminary injunction on the DAPA, after 26 states sued the federal government, effectively blocking the implementation of the new executive order.



members” and “criminal aliens,” the latter posited as the principal targets of immigration enforcement in the U.S.

Using a transnational lens and ethnographic data collected along the U.S.-Mexico border from 2009-2010, this article reveals the social and legal consequences for the stigmatization and integration of migrants deported as “criminal aliens” in both Mexico and the U.S. I argue that deporting migrants as “criminal aliens” ultimately produces perpetual criminalized outlaws, as these migrants are banned from the U.S. polity and thus become impossible² subjects in both the U.S. and Mexico. Using a transnational lens allows us to see these migrants in movement, as they are removed from the U.S. to Mexico, adapt as deported migrants in Mexico, and envision their future back in the U.S., and for some, as they move back and forth between Mexico and the U.S. as impossible subjects.

Theorizing the Intersections of Illegality and Criminality

Immigrant *illegality* has been defined as the state’s production of immigrants outside of the law (N. DeGenova 2004)—to highlight the way the state produces this category. Mai Ngai, in her seminal work, *Impossible Subjects*, described the process by which immigration restrictions in the U.S., at the turn of the 20th century, produced the “illegal alien,” and how this legal and social production of the illegal alien produced a simultaneous inclusion in the nation as a “social reality and a legal impossibility—a subject barred from citizenship and without rights” (Ngai, 2005:4). Ngai focused on migrants within the U.S.; however, her analysis can be extended to the experiences of “criminal aliens” transnationally; that is, to analyze the social and legal presence of these migrants in the U.S. and Mexico as they become impossible subjects transnationally.

Studies of illegality have shown how undocumented migrants often find themselves simultaneously marked by lawlessness and hyperlegality (Simmons and Mueller, 2014:6)—that is, as outside the perimeters of the law, yet under surveillance (N. P. DeGenova 2002)—a schizophrenic process of inclusion and exclusion (Chavez 2007). Undocumented immigrants are often excluded from the legal right to be in the U.S., the legal right to work or receive services, while simultaneously being included as workers and taxpayers. Coutin, for example, illustrated the contradictions between being undocumented but having to “document” one’s clandestine presence in the U.S. in the hope of someday adjusting one’s legal status (Susan BiblerCoutin 2003).

In addition, scholars have shown the dire consequences of illegality. Namely, unauthorized migrants, because of their legal status, often are not allowed equal access to rights, institutions, or services (Menjívar 2002; Menjívar and Salcido

² Ngai defines an *impossible subject* as “a person who cannot be and a problem that cannot be solved” (Ngai, 2005:5).

2002; Gleeson 2010; Chavez 2012; Warner 2012). Consequently, the legal status of those unauthorized in the U.S. is so stigmatized that it has been called it an *abject status*, defined as “those in the lowest, most contemptible, and most wretched social status” (Gonzales and Chavez 2012:256). There are diverse experiences of illegality, and scholars have shown that illegality is a racialized (N. DeGenova 2005) and gendered (D. Boehm 2012) process, also shaped by age and generation (Abrego 2011). Yet, few studies have explored the extent to which legal status itself is fragmented, shaping the legal condition and experiences of illegality.

In other words, not all illegalities are the same. For example, Susan Coutin showed how different legal categories (as stateless, detained, or deportable) created divergent experiences among Salvadorian non-citizens in the U.S. (Susan B Coutin 2010). Other scholars, like Menjivar and Abrego, have highlighted how legal liminality constitutes the experiences of those with temporary status in the U.S. (Menjivar 2006, Menjivar and Abrego 2012); Gonzales, Terriquez, and Rusczyk (2014) also showed that the benefits of temporary legal status are mediated by cultural and social capital, while also highlighting that “DACamented” status remains part of the legal limbo described by Menjivar (2006).

In the past 10 years, formal deportations (“removals”) of immigrants have increased dramatically, with a particular focus on deporting “criminal aliens” (Brotherton and Barrios 2011; Kanstroom 2012). The focus on deporting “criminal aliens” highlights the intersection of illegality and criminality. Criminalization has changed the illegalization of migrants in many ways. The most important, perhaps, is in the creation of perpetual illegality (Sarabia 2011). An undocumented migrant who is considered to be “illegal” and outside the parameters of the law (N. DeGenova 2004) can change that legal status with the changes to immigration law. This process was clearly exemplified with the Immigration Reform and Control Act (IRCA), the legalization program of 1986, which adjusted the legal status of about three million migrants in the U.S. (Chisti and Kamasaki 2014). Criminalization, on the other hand, rests on the assumption that these migrants have committed a crime—an act that cannot be undone. Therefore, even if the laws were to change to legalize unauthorized immigrants in the U.S., “criminal aliens” will probably not be eligible to adjust their status (Sarabia 2011). This is the case even though most “crimes” for which migrants are deported as “criminal aliens” are drug- or immigration-related offenses (Rosenblum and Kandel 2012).

Scholars, like Kelly Lyte Hernandez, have documented the long history of ways in which immigration and crime have been linked (Hernandez 2003). But the current iteration of this connection has been termed *crimmigration* (Chacon 2009), as the boundaries between immigration control, crime control, and national security merge; and as the theories, methods, perceptions, and



priorities of the criminal justice system are incorporated into the application of immigration law enforcement (Legomsky 2007). This process began to intensify in 1986 as the Alien Criminal Apprehension Program was established in four cities to promote cooperation between local agencies and the federal program to begin deportation proceedings for detained non-citizens even before conviction (Guttin 2010). This process was further solidified with the 1988 Anti-drug Abuse Act, which created the category of “aggravated felon” for the purposes of immigration law, a category that “made immigrants convicted of murder, drug or firearms trafficking subject to deportation after serving their time” (J. A. Warner, 2005: 62). The category of “aggravated felon” expanded dramatically in the 1990s as Congress debated and passed laws targeting “criminal aliens” (Schuck and Williams 1999). The experiences and membership of these migrants, deported as criminal aliens, have been described as “transnational alienage” for their exclusion both in the host country (e.g., the U.S.) and in their place of birth (e.g., El Salvador), as they are considered “criminal or unassimilable and ... are therefore excluded” (McGuire and Coutin 2013:691).

When theorizing the specific experiences of migrants deported as “criminal aliens,” Agamben’s concept of the *banned* subject is useful. Agamben explains,

He who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable. (Agamben 1998:23)

Agamben highlights the distinction between bare life and political existence as a difference that rests in differentiating humans—between those who are allowed and those who are not allowed to become full legal subjects (Lemke 2005). It is a process of differentiating those members of society with political existence as members, and those with bare life as outside the political and social fabric. Thus, as immigrants are deported as “criminal aliens,” legally banned from returning legally to the U.S., they are completely banned from the U.S. polity, and in the process of their banishment, their political humanity is also erased.

The crimmigration literature has focused on the legal emergence and consequences of crimmigration, with important studies focusing on the actual experiences and consequences of these policies for immigrants deported as such. While the largest number of immigrants deported as “criminal aliens” are from Mexico, few studies have considered this population. Studies of deported immigrants have examined the experiences of Dominicans (Brotherton and Barrios 2011), Jamaicans, Guatemalans, Dominicans, Brazilians (Golash-Boza 2015), and Salvadorans (McGuire and Coutin 2013). But few studies have considered the experiences of the “exiled diaspora” (Kanstroom 2012) among

Mexicans. The case of Mexican immigrants deported as "criminal aliens" stands in contrast to these other cases not only due to the size of the group but also due to Mexico's closeness to the U.S.—and therefore the immigrants' accessibility to the border and ability to cross back to the U.S.

In this article, I highlight the ways in which migrants defined as "criminal aliens" are banned from the polity, and how this legal definition exposes their bare life and erases their political existence not only in the United States but also in Mexico. Using ethnographic data collected along the U.S.-Mexico border in 2009-2010, I show how the legal definition of "criminal alien" as banned for life from the U.S. shapes the experiences of these migrants transnationally—that is, in the country where they were born and where they are deported to (Mexico), as well as in the country they see as their home and where they aspire to return (the U.S.).

Data and Methods

This article is based on data collected from July 2009 to August 2010 in the border town of Mexicali, Mexico. There are many organizations along the U.S.-Mexico border that provide services to migrants passing through on their way to the U.S. According to Mena et al. (2012), there are 51 civil organizations in Mexico along the U.S.-Mexico border. The Catholic Church has the most extensive network, with 75 organizations including centers, shelters, and medical centers that serve migrants throughout Mexico (Guardiola 2017). I conducted participant observation in a migrant center, the Modulo Fronterizo "Juntos en el Camino" (Border Center "Together on This Path," hereafter *the Modulo*), located along the U.S.-Mexico border in Mexicali, Baja California, Mexico, across from Calexico, California. The Modulo is one of 38 Catholic organizations along the U.S.-Mexico border that serve immigrants. The Modulo receives funds from the Catholic Church, the local Mexicali government, volunteers, and donors to provide services, but is not a non-profit organization.

The Modulo helps different types of deported migrants: migrants who are caught by border patrol while trying to cross into the U.S.; long-term U.S. residents caught by U.S. Immigration and Customs Enforcement (ICE) in the U.S.; and long-term U.S. residents deported directly from U.S. prisons. I typically went daily to the Modulo, from 9 a.m. to 2 p.m., and sometimes on Tuesdays and Thursdays from 8 p.m. until midnight, for a total of more than 1,500 hours of participant observation. The data used in this paper come mostly from the field notes I wrote at the end of each day, as I talked to and interviewed men, mostly during the process of collecting surveys for the Modulo.

My participant observation work at the Modulo also included helping with the daily tasks of its operation, such as cleaning floors, serving food, preparing coffee, and organizing the room. I also helped with conducting surveys and



short interviews (data collected by the volunteers of the Modulo to ask for donations) and prepare reports and compile statistics used to request donations, and helped report rights violations in the U.S. and Mexico; these were given to the local Human Rights Commission in Mexicali.

Drawing on data collected at El Modulo through participant observations, as well as the surveys and interviews collected at El Modulo, this article focuses on and discusses the stories of men deported from U.S. prisons in particular, because these examples most especially illustrate the experiences of men deported as “criminal aliens.” Most, if not all, of migrants deported from U.S. prisons are men; in the year I spent at the Modulo, not a single woman was deported from a U.S. prison to Mexicali. This is part of the trend referred to as a “gendered racial removal program” that has mostly targeted Latino men in the U.S. for deportation (Golash-Boza and Hondagneu-Sotelo 2013). Most men released from prison and deported to Mexicali were released from either the Centinela state prison or the Calipatria state prison, both located in Imperial County, California.

While this data is part of a larger project on the experiences of deported migrants along the U.S.-Mexico border, in this article I focus in particular on the experiences of men deported from prison as “criminal aliens.” Data from non-random surveys collected at the Modulo from January to December 2009 of 88 migrants deported from prison reveal that, on average, these migrants were 32.7 years of age (slightly older than migrants not deported from prison, 31.5 years of age) who had been living in the U.S. from one to 47 years, with an average of 15.1 years. Most (68.2%) reported being single or separated, and about a third (31.8%) reported being married; on average, they had 2.3 children. These men spent 2.4 years in prison, on average, ranging from one day to 20 years. Most (53.4%) had served time in prison for drug-related or traffic-related incidents.

Stigmatization and Perpetual Exclusion of “Criminal Aliens” in Mexico and the U.S.

In this section, using data from the participant observations along the U.S.-Mexico border, I show the consequences of being deported as a “criminal alien.” First, I show the stigma men deported as “criminal aliens” faced during the process of deportation, highlighting the way in which identity and labeling play a role in the lives of these migrant men, and revealing how men who are deported from prison are marked physically (by their clothing and tattoos) as well as legally (due to their inability to go back to the U.S.). These markings follow them transnationally into Mexico as “criminal aliens” deported from the United States.

In the last two parts, I show how the membership of the men deported as "criminal aliens" becomes impossible in both Mexico and the U.S. In Mexico, they are legal citizens but not culturally familiar with the setting. In the U.S., they are culturally familiar with the setting but are legal outcasts. After their deportation, given their strong and close ties to the U.S. (familial, economical, and cultural), they have strong aspirations to return to the U.S. unauthorized. Those who are able to return to the U.S. become criminalized perpetual outlaws, with no opportunities to gain full membership even though they see the U.S. as their home. If they return to the U.S. those migrants deported as "criminal aliens" experience perpetual illegality (Sarabia 2012), unable to change their legal status.

The markings of criminality: Deportation from the U.S. as a "criminal alien"

The way deportation of Mexican migrants from the U.S. to Mexico takes place has been negotiated by the two governments in a series of agreements known as memorandums of understanding. Dating back to 1996, these binational agreements have sought to delineate the terms under which deportations take place. Moreover, at the local level, specific agreements have also been signed. In Mexicali, where I conducted participant observation, Mexican migrants deported from the U.S. were typically dropped off at the Mexican Instituto Nacional de Migracion (National Institute of Migration, or INM).

These men, recently deported to Mexico from a U.S. prison as "criminal aliens," were quite visible because they were typically dressed in white T-shirts, light-grey sweatpants, and white tennis shoes. They often carried large brown paper bags filled with their belongings. Once in Mexico, these men were easily identified, as their clothing revealed both their previous status (as prisoners), as well as their current status (as recently deported migrants). Many of these men were also heavily tattooed, and stood out at the border.

In prison, these men were told by their friends and jailmates, "When you are deported, keep walking, don't talk to anyone; look like you know where you are going." This advice reflected the fear many faced once they were deported to a land unknown to them, especially if nobody was waiting for them in Mexico. Sometimes families came and waited for family members being deported from prison. But in most cases, men deported from prison found themselves alone in Mexico. Many had not been to Mexico for 10, 20, or 30 years. For them, Mexico was a strange land, and they were distrustful of it. Most of the men I met had lived most of their adult lives in the U.S. and were socialized largely in the U.S.—most were generation 1.5 or 1.25, rather than first-generation immigrants in the U.S. Rumbaut defined the 1.5 generation as "pre-adolescent, primary-school-age children who have learned (or begun to learn) to read and write in the mother tongue at schools abroad, but whose education is largely completed here [in the U.S.]" and the 1.25 generation as "those who arrive in



their adolescent years (ages 13-17), who may or may not come with their families of origin, either attend secondary schools after arrival or in the older ages may go directly into the workforce" (Rumbaut 2004:1167). Those migrants who arrived to the U.S. as children or adolescents stand in contrast to the first generation, who arrive as adults, as they are able to become fully bilingual and bicultural in the U.S. and are often indistinguishable from their second-generation peers were born in the U.S. The difference is that as immigrants to the U.S., unless they become citizens, these immigrants could potentially be deported.

The moment of deportation was such a dislocating moment that sometimes deported migrants did not even understand what was happening around them. Sometimes these migrants would ask the volunteers at the Modulo, "Where are we?" "Is this Mexico?" "Am I free to go?" "Yes," we would tell them. "You are now in Mexico. You are free now!" Sometimes it took migrants a while to make sense of their new reality as deported migrants in Mexico; they were formal citizens in Mexico, free to go whatever they wanted.

These men, labeled "criminals" in the U.S., a very stigmatizing label, were subjected to stigma in Mexico as well. Even activists who worked to help those deported to Mexico were sometimes reluctant to offer their services to these men. For example, one time I had to close the Modulo because I needed to attend a meeting, and when I went next door to a non-profit organization to ask if some migrants could stay there temporarily, the woman in charge asked, "Are they migrants, or men from prison?" In saying this, she was making a clear distinction between (deserving) migrants and (undeserving criminal) men from prison. The men from prison were often treated as "less deserving" than other migrants because they had committed a "crime." These moral boundaries, however, ignored that these crimes often involved drug- or immigration-related violations and even minor traffic infractions. In 2009, the top three leading crime categories of "criminal aliens removed" were "dangerous drugs," which included the manufacture, distribution, sale, or possession of illegal drugs (29.6%), traffic violations (15.9%), and immigration, such as entry, re-entry, false claims to citizenship, and alien smuggling (15.4%). Thus, 60.9% of all migrants removed as "criminals" had not committed violent crimes (DHS 2009).

The men deported from prisons became vulnerable targets in Mexico because they were often alone and in need of guidance. As deportees, they are vulnerable to violence (D. A. Boehm 2011), and according to a special report by the Mexican Commission on Human Rights (2011), from April to September of 2010, about 11,333 migrants had been kidnapped in Mexico, highlighting that "among those kidnapped are Mexican migrants that are attempting to enter the United States without documents"(CNDH 2011:28). For example, men were sometimes tricked into either giving their personal information or going with

strangers, who kidnapped them to pressure their family members for ransom. For example, when Joaquin, a migrant deported to Mexico from a U.S. prison, called home right after he was deported to Mexico, he was told that someone had recently called his family asking them for USD 5,000. The extortionists had told Joaquin’s family that Joaquin had already crossed back into the U.S., and they were demanding the money to pay for his crossing. While the family paid the extortionists, Joaquin had not crossed. He was still in prison at the time the call was made. When they finally realized what had happened, Joaquin and his family were angry and devastated to know that they had been swindled out of USD 5,000, and Joaquin had only just arrived in Mexico.

A combination of cultural dislocation and structural vulnerability positions those migrants deported as “criminal aliens” as targets of abuse because they are easily identified (due to their quasi-uniforms and tattoos) by predators at the border. Moreover, predators at the border also understand how the experience of deportation can be a moment of dislocation, and take full advantage of this situation. For example, Mauro told us how a taxi driver took his money and drove him around the city, then dropped him off outside the city instead of at the hotel where Mauro needed to go. It is in this moment of deportation—in the context of vulnerability, dislocation, and fear—that these migrants must decide whether they want to establish themselves in Mexico or whether they want to return to the U.S. They must weigh the tragic irony that although they are in a country where they are citizens, they might know very little about Mexico, along with the fact that they are legally banned from returning to the U.S., the place they are most familiar with. In the next section I show the difficulties these men encounter in re-integrating themselves in either Mexico or the U.S. I argue that they become impossible subjects—cultural outsiders but legal citizens in Mexico, and cultural insiders but legal outcasts in the U.S.—a problem that cannot be solved.

“Bare life” in Mexico: Formal citizens but cultural outsiders

Once deported to Mexico, these immigrants are formal citizens, but such citizenship is largely symbolic, due to barriers they face when trying to access services. In addition, their lack of cultural familiarity in Mexico makes them feel like outsiders in their own homeland. Men deported from U.S. prisons encounter a “bare life” in Mexico; that is, they are abandoned by the law. Even though they are deported to Mexico, where they are technically legal citizens, once deported, with no documentation from either country, it is very difficult for these men to actually prove their Mexican citizenship. For example, the official national identification card in Mexico—known as the IFE because it is issued by the Instituto Federal Electoral (IFE)—is essential to prove legal citizenship. Yet, in order to get their IFE, Mexicans have to show their official



birth certificate, proof of address, and another Mexican ID. If they are unable to get a Mexican ID, they need to show up with two witnesses, one of who must live at the same address as the migrant. Finally, it takes about a month to complete the process to obtain this official Mexican ID. Thus, from the moment of deportation to the moment when they get the IFE, migrants in general and men from prison in particular are in legal limbo because they cannot prove their legal status in Mexico. While by *de jure* Mexicans do not need to prove their citizenship to travel in Mexico, by *de facto*, migrants are harassed to show proof of citizenship with an IFE. Thus, police officers stop migrants and ask for a form of identification. Because the migrants are unable to show an ID, police officers either ask for money (a bribe) or take them to jail (to get more money), a form of kidnapping. A report about abuses against migrants along the U.S.-Mexico border argued that “among state agents, municipal police officers have become leaders in abuses perpetrated against migrants in the Tijuana, Baja California, border, which go from physical and verbal abuse to robbery of personal item and even extortion” (Angel et al. 2013:42).

Another concrete and immediate consequence of not having the IFE is that if family members want to send them money, men from prison are not able to receive it themselves because they do not have an official Mexican ID, the IFE. Money-transferring companies in Mexico (such as Money Gram or Western Union) only accept the official IFE to issue money sent by family members in the U.S. Thus, men from prison often rely on others who have an official IFE to obtain the money sent by their family in the U.S., and this can have terrible consequences.

All migrants in Mexico are vulnerable. As an alarming report concluded, given the patters of reports of kidnappings, “all the migrants transiting through Mexico are potential victims of kidnapping” (CMW 2011:10). Men deported from prison are even more vulnerable because they are easily identifiable, lack knowledge of Mexico, and often find themselves along without family or friends. For example, Jorge, after living in the U.S. for 11 years, since the age of 14, was in prison for four years, and was deported after finishing his sentence. U.S. officials offered him the option to complete his sentence in Mexico, but a friend told him that if he were to do that, he would get a bad record in both the U.S. and Mexico. Jorge decided to finish his sentence in the U.S. His head was shaven, and right above the hairline was a crown tattoo with two-inch-high words reading “soy como soy” (“I am who I am”); his hands and arms were heavily tattooed as well. He came into the Modulo to try to call family members in Salinas, California, but was unable to get into contact with them. He left the office for a while. When he came back, Jorge told the staff that he was leaving with another man. We asked who this person was and Jorge replied that the man had offered to take him to his friend’s house. We expressed concern, and Aurora, the person in charge of the Modulo, went outside to find

out more information about the man offering to help Jorge. Once Aurora returned, she told Jorge that it was dangerous to go with anyone because sometimes migrants were kidnapped. Aurora explained that she could not tell Jorge what to do, but that the man outside seemed very suspicious. Soon after, the man offering to help Jorge left, and Jorge remained in the Modulo, trying to call his family again. Shocked and a bit shaken by what had been potentially avoided, we all believed that Jorge had escaped kidnapping. Eventually, Jorge was able to contact his family, who sent him money, and Aurora was able to take him to the bus station to buy his ticket to travel to Southern Mexico. Jorge was lucky to have avoided a potentially dangerous situation. Yet not all are so lucky.

Another example of dislocation was Rodolfo, a 23-year-old-man born in San Luis Potosi, Mexico, who was living in the San Fernando Valley of Los Angeles, California. He had spent 15 months in the Calipatria state prison for stealing a car. He had been a legal permanent resident in the U.S. but had lost his status after 22 years. All of his family was in the U.S., and he did not even speak Spanish fluently. He would pause a lot to think about what to say when Aurora, the director at the help center, asked him questions. Aurora asked if he was taking a long time to respond because he was lying, but another migrant in the center told Aurora that Rodolfo was taking so long because he did not understand what she was asking—his first language was English. Having spent most of his life in the U.S., with close family members there, and in a culturally familiar space, the desire to go back to the U.S. was strong, even though Rodolfo, as most men deported from prison, was legally banned from ever entering the U.S. again.

Deportation marks a moment of fear and paralysis for these migrants, many of whom have spent most of their lives in the U.S. Culturally they identify with the U.S., but legally they are Mexican citizens. But at the moment of deportation, and long after, they must endure “bare life” in Mexico as long as they are not able to prove their legal status in Mexico and as cultural outsiders. Thus, with little in Mexico—including economic opportunities as well as social networks, cultural competency, and social attachments—their ties to family in the U.S. create a strong pull for them return there.

“Bare life” in the U.S.: Cultural insiders but legal outlaws

Many men with criminal backgrounds are deported from and then return to the U.S., as the men in my study reported. Increasingly the U.S. Department of Homeland Security (DHS) is focusing on deporting “criminals” who come back to the U.S. For example, during 2010, “criminal aliens” were detained in operations carried out by ICE throughout the U.S.—39 in San Diego, 32 in Houston, 30 in Atlanta, 78 in Denver, 13 in Idaho, and 54 in New York—those migrants with criminal records who previously had been deported, but had



returned to the U.S. were deported once again. John Morton, ICE director, stated, “ICE will continue to target, arrest and remove those who come to this country to pursue a life of crime rather than the American dream” (ICE 2010:2). Thus, it has become more politically convenient to focus on the deportation of men labeled as “criminal aliens” by contrasting them with deserving, hard-working migrants, painting the “criminal aliens” with a broad stroke of criminality as undeserving. Once in the U.S., men deported as “criminals” face deportability and live bare lives—forever banned from becoming full legal subjects, and thus becoming impossible subjects.

Most men deported from U.S. prisons have been living in the U.S. for a long time; they have family, friends, and children there. Many do not speak Spanish fluently, and most have little knowledge of Mexico. Their homes, families, and lives are in the U.S. Thus, most of these men express a desire to go back to the U.S. In Mexico, these men were not familiar with the culture or the context, and often did not even know anyone to whom they could turn for support.

The strong ties these men maintain in the U.S. (familial, economic, and cultural) make them want to—and attempt to—return to the United States unauthorized. For example, Alvaro, a 44-year-old man from Sonora, Mexico, had been living in the U.S. for 20 years. He was stopped by the police in Santa Barbara, California, detained for driving without a license, and deported soon after. His wife of 20 years and two daughters were waiting for him at home in the U.S. Alvaro said, “My wife cries and tells me to keep trying [to cross], and I have been 20 years with her, so I cannot abandon her! She needs my support—my moral support most of all.” He had been trying to cross by himself, five times in Tijuana and now, in his sixth failed attempt, through Mexicali. Yet, if he were to get caught again trying to cross into the U.S. unauthorized, he would get more jail time and would be deported again as a “criminal alien.” Thus, he is caught in the perpetual revolving door of criminality.

In the cases where men deported from prison succeed in going back to the U.S., they became criminalized perpetual outlaws because, regardless of their actions, lifestyle, or conduct, they are unable to change their status—unable to become legal residents or citizens in the U.S. Thus, their outlaw status makes them vulnerable to other deportations. For example, Sebastian had lived in the U.S. since he was 14 years old. He had married a U.S. citizen, become a legal permanent resident, and could have applied to become a U.S. citizen in 1998, but did not think it was necessary. In 2002, Sebastian lost his legal residency status because he was caught selling drugs, and was deported to Mexico. He went back to the U.S., but was arrested again in 2006 for possession of a firearm. He spent 45 days in prison and was deported again, but again returned to the U.S. In 2008, he drove a car on a bus-only lane in Los Angeles, was stopped by the police, was sent to jail for three years (for violation of parole),

and was deported once again to Mexico. His wife and three children were in Los Angeles, California, and he was planning to go back to the U.S. to be with them. Sebastian felt like he carried a "burden" when he was in the U.S., and wished to move to Mexico with his whole family, but he knew his family wouldn't want to move with him. If he wanted to be with his family, he had to go to the U.S..

These men, regardless of their circumstances, are effectively kept from adjusting their status, because legally, "aggravated felons are barred for life" from returning legally to the U.S. (Schuck and Williams 1999:396). Their illegality, turned into criminality, is permanent. For example, in 1997, Emilio had been stopped while in a car with his cousin, who was selling drugs; both were deported. After Emilio went back to the U.S., he tried to adjust his status through one of his daughters—he has five U.S.-born children—but the application was not approved. The day I met Emilio, he had left his home in the morning on his way to work, picked up a friend, and immediately noticed a van following him. He drove to get some coffee and lost the van for a while. But later, at his workplace, ICE detained him and deported him. When Emilio was detained, ICE officers told him that he did not have the right to talk to a judge or lawyer because he had been deported previously. He had not been to Mexico in thirteen years. What concerned him most was that during the deportation process the agents had warned him that if he gets caught again undocumented in the U.S., he could be sentenced to two to 20 years in prison, and be ordered to pay a fine of up to \$250,000. He showed me the letter of deportation. Another migrant next to him told him, "It is not true, they have caught me like five times, and nothing has happened to me." Emilio looked at both of us and said, "I am not sure if this is true, but it makes me fearful, nonetheless." His wife and five children are in the U.S., waiting for him.

Most of those migrants deported as "criminal aliens," like Emilio, desired to go back to the U.S. to be with their families. When they arrived in the U.S., however, they became criminalized perpetual outlaws, impossible subjects banned from the U.S.—the place they considered to be their home. The proximity between the U.S. and Mexico offers these migrants a unique opportunity, namely, a clandestine return to the U.S. But when, and if, they return to the U.S. they end up living transnational lives as criminalized perpetual outlaws (Sarabia 2011)—on a revolving door of criminalization in the U.S., deportation to Mexico, clandestine return, and further criminalization in the U.S.—they are impossible subjects. Legally banned from returning to the U.S. for life, they are a problem that cannot be resolved (Ngai, 2005:5).

Banned from the Homeland

Sommers (2008) described "membership alone [as] the minimalist definition of citizenship... It is only this primary right of inclusion and membership that



makes possible the mutual acknowledgement of the other as morally equal, and thus worthy of equal social and political recognition” (6). Yet, men banned from entering the U.S, who nonetheless decide to live there, are not legally considered members at all. They stand in limbo due to their precarious status, banned from political membership. Unlike other undocumented migrants who have a hope (even if remote) of adjusting their status sometime in the future, men deported from prison and banned for life from entering the U.S. have no hope of ever adjusting their legal status. These men, labeled by the U.S. government as “criminal aliens,” are excluded from the U.S. at a fundamental level due to their lack of documentation. The U.S. is indeed their homeland, because they know no other place as home. Yet, citizenship is simply “unreachable” for this particular population. This legal status, as banned, will not change, unless immigration laws change or amnesties are offered to this particular population. In fact, their presence in the U.S. become a crime itself, punishable with prison time and deportation.

Using a transnational lens, I showed how illegality and criminality shape the lives of migrants both in the U.S. and in Mexico for those deported as “criminal aliens,” and argued that the state’s production of this class of banned individuals reveals the complete exclusion of migrants who are banned for life from the fabric of U.S. society, and thus producing impossible subjects transnationally.

Men deported as “criminal aliens” stand as cultural members of the U.S. due to their long-term residence. In fact, they might have more in common with U.S.-born people of color in the U.S., who have faced the consequences of discrimination, racism, and exclusion, than with recent immigrants who are not yet fully integrated into the fabric of society. Legally constructed as “criminalized aliens,” these men face two forms of exclusion—internal exclusion in the form of racialized discrimination, and external exclusion in the form of border enforcement as banned immigrants—becoming impossible subjects and banned from becoming full legal subjects transnationally in both the U.S. and Mexico.

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