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Mass Incarceration and Social Justice in the United States and Around the World

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Statistically, the U.S. incarcerates more people than other countries around the world. According to the Bureau of Justice Statistics, in 2016, 2.1 million people were incarcerated in the United States in 2016, representing an approximately 300% increase in the number of people incarcerated in the United States since 1980. Paralleling this increase in the prison population in the United States, in recent years, colleges and universities have seen a growth in programs focused on carceral and prison studies. In this article, we focus on four different types of mass incarceration in the United States with a special focus on transnational aspects of mass incarceration.

Incarceration is the use of institutional power to confine individuals as an exercise in state power and authority. People may be incarcerated for reasons that are related to crime, politics, war, genocide, security, border control, and addiction. By looking at incarceration as a human rights issue, we can see the way that mass incarceration, political imprisonment, and detention

around border control are connected as exercises of state power over individuals. These different forms of incarceration constitute what Michel Foucault calls a “carceral continuum, network, and archipelago” that function as a disciplinary network of state and carceral power.

Incarceration is a prism through which we can understand issues relating to borders and migration, human rights, and global politics. This piece focuses on incarceration in the United States in a transnational context. While the U.S. has a history of incarcerating its own population, it has also used incarceration for undocumented immigrants, as a mechanism of control over the border and as a tool of political control in the War on Terror following the 9/11 attack. These uses of incarceration have disproportionately affected people of color and are examples of the way in which the U.S. has used carceral regimes to police and control minority populations.



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Mass Incarceration and Prison Labor in the United States

In the United States, mass incarceration is a racialized issue that emerged out of the history of slavery. In 1865, the United States passed the 13th amendment, which stated that “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” The exception “as a punishment for crime” created a loophole through which the forced labor and violence of slavery could continue to exist legally under another name.

Many prisons in the United States produce goods and commodities through prison labor. Prison labor might include road work, farming, and the manufacture of items such as chairs, brushes, pants, beds, shoes, pillowcases, dresses, underwear, shirts, rugs, mattresses, and furniture.¹ A memorandum from the Department of Justice Bureau of Prisons in 1933 says the following:

“Since the beginning of the English system of punishment by imprisonment the public has believed that prisoners should work, first because they considered ‘hard labor’ as essential if the prison was to be a disciplinary institution to deter and repress crime and secondly they rebelled at supporting malefactors and public enemies in idleness.”²

As Katherine E. Leung explains, this is problematic because prison labor is exempt from labor laws, workers’ protections rights, and “statutes that are designed to combat race discrimination in the private sector, notably Title VII of the Civil Rights Act of 1964.” As a result, “the use of prison labor functionally creates a second-class labor market, largely made up of people of color, which exists outside of Title VII’s protection against disparate impact discrimination in the workplace.”³

Whereas regular workers are protected by rights guaranteed to them as employees, prison laborers are rarely classified as employees and not offered the same protections and rights. Prisoners also do not have the right to a minimum wage, and many prisons do not compensate prison laborers at all.

Alexander Street’s *Mass Incarceration Online* database includes texts that discuss theories of prison labor, government memorandums, codes passed on prison labor during the Great

Depression, statistics, monographs, and much more on the way that prison labor has affected and shaped history.

Documentation on the related topic of forced labor can also be found in ProQuest *History Vault*. The Black Freedom Struggle in the 20th Century module in *History Vault* includes Department of Justice records on debt peonage in southern states from 1901-1945. Records on peonage can also be found in *History Vault*’s collection of NAACP Papers.

Cuban Refugee Camps in the United States

In 1980, Cuba was experiencing housing and job shortages, and many Cubans emigrated to Peru and the United States. Refugees were processed at camps while the U.S. government attempted to find ways to resettle them. These refugee camps were located in Fort Indiantown Gap, Pennsylvania; Fort McCoy, Wisconsin; Camp Santiago, Puerto Rico; and Fort Chaffee, Arkansas. Cuban refugees were detained in these camps, sometimes for over a year, not allowed to leave, and often forced to live under inhumane conditions.

ProQuest Alexander Street’s *Border and Migration Studies Online* database contains memorandums, letters, and other government documents that cover Cuban migration to the United States. A memorandum on the “Rights of Aliens Who Arrive on US Shores” circulated by the Department of Health and Human Services explains that an “alien . . . has a right to establish his eligibility for admission in exclusion proceedings before an immigration judge pursuant to the provisions of sections 235 and 236 of the Immigration and Nationality Act (INA). . . . INC may incarcerate or detain aliens prior to and during these proceedings.”⁴

Because the legality of incarcerating undocumented immigrants *indefinitely* had been recently challenged, the Cuban/Haitian Task Force focused efforts on resettling migrants with sponsorship around the country. However, over a year after Cuban refugees began arriving on U.S. shores, over 4,000 people were still detained at Fort Chaffee.⁵ In a news story reported by United Press International, Cubans rioted at the Fort Indiantown Gap Resettlement Camp, yelling “you better get us out of here or we’re going to burn this place down.”⁶

1. Bennett, James V. *Letter from James V. Bennett to Linton M. Collins, Re: Prison Labor Statistics, July 10, 1934*. Records of the National Recovery Administration, 1927 - Ca. 1939 (RG9). Records Relating to Prison Labor, 1934 - 1935 (PI 44 334), United States. National Archives and Records Administration. Federal Records, 1934. Mass Incarceration Online database. Alexander Street. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4182415.
2. Bates, Sanford. *Memorandum from the Director to the Solicitor General, Re: State of Alabama v. State of Arizona Et Al., December 22, 1933*. Records of the National Recovery Administration, 1927 - Ca. 1939 (RG9). Records Relating to Prison Labor, 1934 - 1935 (PI 44 334), United States. National Archives and Records Administration. Federal Records, 1933. Mass Incarceration Online database. Alexander Street. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4179779.
3. Leung, Katherine E. “Prison Labor as a Lawful Form of Race Discrimination.” *Harvard Civil Rights-Civil Liberties Law Review* 53 (2018): 685. Mass Incarceration Online database. Alexander Street. <https://harvardcrl.org/wp-content/uploads/sites/10/2018/11/Leung.pdf>
4. Zecca, Mark. Memorandum from Mark Zecca to Syl Ligsukis re: Rights of Aliens Who Arrive on US Shores, January 14, 1980. Immigration during the Carter Administration: Records of the Cuban-Haitian Task Force (RG220), Jimmy Carter Presidential Library and Museum, 14 January 1980. Border and Migration Studies Online database. Alexander Street. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4040475?source=playlist#page/1/mode/1
5. Forbush, Wilford. *Memorandum from Wilford J. Forbush to the Secretary, re: Meeting with Governor White on Fort Chaffee - Briefing Memorandum, February 20, 1981*. Immigration during the Carter Administration: Records of the Cuban-Haitian Task Force (RG220), Jimmy Carter Presidential Library and Museum, 1981. Border and Migration Studies Online database. Alexander Street. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4052120.
6. News Story by Bob Grotevant re: Rioting by Cuban Refugees at Indiantown Gap Resettlement Camp, UPI, May 8, 1980. Immigration during the Carter Administration: Records of the Cuban-Haitian Task Force (RG220), Jimmy Carter Presidential Library and Museum, 1980. Border and Migration Studies Online database. Alexander Street. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4051480.

A letter from the Joint Committee of Cuban Organizations in Exile in Puerto Rico to President James Carter urges a call to action on the mistreatment of minors in American refugee camps for Cubans in 1980. The letter directs the President's attention to "the infamous situation faced by the minors, without parents, based on the Cuban refugee camps who are being mistreated and raped in front of the passive complicity of those responsible for their protection."⁷

The committee frames the issue specifically as a human rights violation: "Mr. President, your open heart policy is in contradiction with the treatment being received by the Cuban refugees expelled from their country who are being scorned and prostituted while incarcerated in concentration camps subject to violations to their dignity and human rights." By framing these violations in terms of *human rights*, the committee emphasized that not only was the treatment of the Cuban refugees illegal, but also *inhumane*.

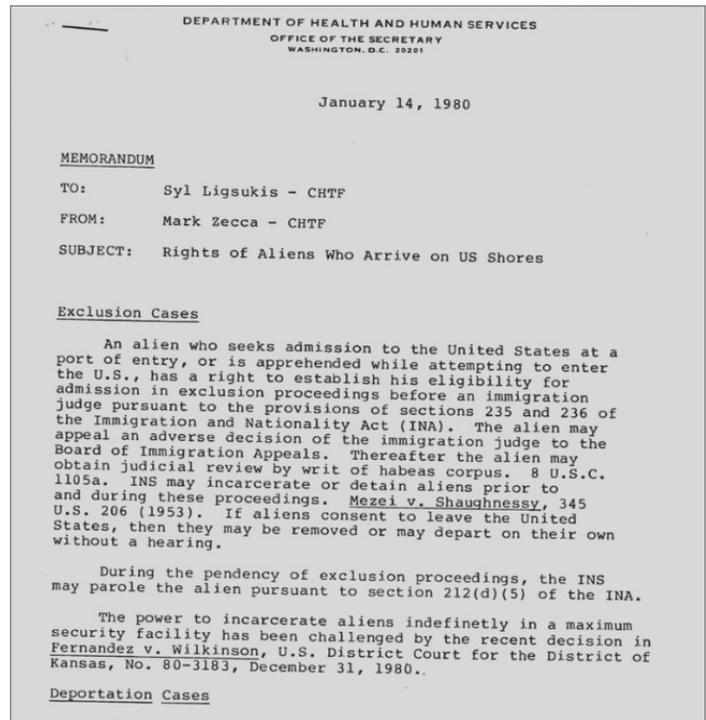
This practice of incarcerating immigrants, especially immigrants of color, effectively criminalizes and punishes undocumented immigrants seeking asylum. Detaining asylum seekers remains a contemporary issue in the U.S., particularly at the U.S./Mexico border where families of asylum seekers are separated and children are held in cages.⁸

Political Prisoners in Indonesia

In 1975, The House of Representatives Committee on International Relations and Subcommittee on International Organizations convened to hear testimonies from political prisoners from Indonesia. Although the arrests varied, political prisoners were detained for engaging in activities related to communism, Marxism, Leninism, and Maoism. Many were held for years without being charged for any crime, and many experienced abuse and torture. These arrests constitute an act of state power, as an attempt to suppress political opposition to Indonesia's Suharto regime (1966-1998).

The issue came before the House of Representatives because the year prior, Congress had passed a provision to the Foreign Assistance Act which "recommended to the President that he substantially reduce or terminate security assistance to any country which engages in a consistent pattern of gross violations of human rights."⁹ However, the Executive Branch had been reluctant to comply with this new provision, prompting Congress to hold hearings from political prisoners who had been detained in countries that had received U.S. aid. By viewing the detainment of political prisoners without charge or trial as a *human right*, rather than simply a nationally determined right, the situation in Indonesia became a global political issue.

Donald Fraser, chairman of the subcommittee, opened the subcommittee hearing: "Today the subcommittee begins a series



of hearings on the human rights situation in Indonesia. Special attention will be focused on the tragic situation regarding the more than 30,000 political prisoners who have been detained for more than 10 years. Most of these prisoners have not been formally charged with any offense."¹⁰

Carmel Budiardjo was a political prisoner in Indonesia "who spent 3 years in detention without trial or charge . . . from the 3rd of September 1968 until the 9th of November 1971." When asked about the torture she witnessed, Budiardjo responded:

"In some camps I was surrounded by people who had suffered severely at the hands of their interrogators and witnessed many horrendous incidents. The methods employed are variable and include electric shock, whipping, cigarette burns, dragging people behind moving vehicles and prolonged confinement to windowless cells that are only 3 feet wide and 5 feet long. These are things I saw myself when I was in detention."¹¹

Under the Suharto regime, Indonesia had the highest number of political prisoners in the world— estimated at over 200,000— in over 350 jails and concentration camps. As Angela Y. Davis has written, "the prison's purpose is not so much to transform, but to concentrate and eliminate politically dissident and racialized populations."¹² This use of the prison is something we see continued at Guantanamo Bay in the U.S.

7. Letter from Francisco Perez-Vich to Jimmy Carter Re: Mistreatment of Cuban Youth in Refugee Camps, September 10, 1980. Immigration during the Carter Administration: Records of the Cuban-Haitian Task Force (RG220), Jimmy Carter Presidential Library and Museum, 10 September 1980. Retrieved from Proquest Alexander Street Border and Migration Studies Online database. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4049289

8. Warikoo, Niraj. "Rep. Lawrence: I Saw Kids in Cages." Detroit Free Press, Jun 24 2018, ProQuest Historical Newspapers.

9. *Human Rights in Indonesia and the Philippines*. District of Columbia: United States. Government Printing Office, 1975. Human Rights Studies Online database. Alexander Street. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C4384172

10. *ibid.*

11. *ibid.*

12. Angela Y. Davis, *The Angela Y. Davis Reader*. ed. Joy James. Malden, Massachusetts: Blackwell Publishers, 1998. Pg. 98.

Guantanamo Bay

The Guantanamo Bay detention camp was established in 2002 on the coast of Guantanamo Bay in Cuba by President George W. Bush's administration during the War on Terror, an international campaign launched after the September 11th attacks. Although its stated purpose was to detain people who had committed war crimes, it has primarily been used to hold enemy combatants. However, many of its policies were misused, as "many immigrants were detained following 9/11 even though the FBI had no evidence that they were connected to terrorism."¹³

In 2003, Jeff Bingaman, a Democratic Senator from New Mexico who held office from 1983-2013, voiced opposition to Guantanamo Bay and its lack of due process for prisoners, as well as the Bush administration's attempts to circumvent Freedom of Information requests for information on who was being detained there. The Congressional Record, available in ProQuest Alexander Street's *Human Rights Studies Online* database, records Bingaman's position against Guantanamo Bay:

"[W]e in America firmly believe that what distinguishes our country in the history of the world is our commitment to individual liberty and freedom. At the bedrock of a free society is the obligation that the Government takes on to afford individuals certain legal protections, the most basic of which is the freedom from incarceration unless the Government can prove that you have committed a crime."¹⁴

Like the political prisoners detained in Indonesia, detainees were being held without being charged for any crimes— a situation that in 1975, the U.S. had had firm opinions about, at least as it regarded other countries.

Bingaman's statement reflects the belief that some rights transcend nation-state boundaries and citizenship and that "regardless of where he or she is apprehended, and regardless of the Government's preconceptions about his or her guilt, that person should be entitled to some reasonable standard of due process. Secrecy and disregard for the rule of law are not the ideals upon which a free and open society are based." The detainees at Guantanamo Bay were held without being charged for any crimes and without the opportunity for legal aid or protections. Bingaman frames these rights not as specific only to American citizens, but to anyone, anywhere.

Because of the nature of its location and creation, the Bush administration attempted to use two key loopholes to circumvent the rights of detainees. Bingaman describes the situation:

"The Bush administration takes the position that they are not prisoners of war and, therefore, do not enjoy the protections of the Geneva Convention. Our Federal courts take the position that these individuals are in Guantanamo, not within territory controlled by the United States, and therefore the courts have no authority to ensure that basic rights are protected."¹⁵

Because of the site's location in Cuba rather than the U.S., and because those held there were termed "enemy combatants" rather than as prisoners of war, the Bush administration initially argued that Guantanamo Bay fell outside U.S. legal jurisdiction and that detainees were not protected by the Geneva Conventions, although this would later be overturned in court.

More opposition would continue to build against Guantanamo Bay, especially as later reports documented the use of torture on detainees, such as the 2006 findings by the Center for Constitutional Rights,¹⁶ which is also available in Alexander Street's *Human Rights Studies Online* database.

Other Resources

The examples provided here are just a small sampling of the many topics that can be studied using Alexander Street's *Mass Incarceration and Prison Studies* database as well as the other databases in Alexander Street's *Global Issues Library*.

In addition to these Alexander Street databases, other topics related to mass incarceration can be studied in other ProQuest databases. ProQuest *History Vault* includes records of the War Relocation Authority on Japanese American Incarceration during World War II. This collection includes incarceration camp newsletters, WRA staff bulletins and administrative records, reports on important incidences, and general reports made at the closing of each camp. The records are expansive, providing an excellent portrait of incarceration camp management while also documenting the lives and experiences of the Japanese American incarcerates.

History Vault also includes several collections documenting discrimination in the criminal justice system, police-community relations, and police brutality. These records can be found in the NAACP Papers, Black Freedom Struggle in the 20th Century: Federal Government Records, and African American Police League Records.

13. Bingaman, Jeff. *Congressional Record, Senator Bingaman Speaking On Administrative Detentions At Guantanamo Bay And Right To Due Process, July 14, 2003*. District of Columbia: United States. Government Printing Office, 2003. Human Rights Studies Online database. Alexander Street. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C2701931

14. *ibid.*

15. *ibid.*

16. *Report On Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners At Guantanamo Bay, July 2006*. New York: Center for Constitutional Rights, 2006. 1-10. Human Rights Studies Online database. Alexander Street. https://search.alexanderstreet.com/view/work/bibliographic_entity%7Cbibliographic_details%7C2677107#page/1/mode/1/chapter/bibliographic_entity%7Cdocument%7C2677108



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