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Introduction

“Open arms for honorable immigrants; open jail doors for smuggled aliens”—that shall be the motto of the immigration department.

—U.S. IMMIGRATION COMMISSIONER HENRY CURRAN,
IN “JAIL FOR ALIENS,” *LAKE SHORE NEWS*
(WOLCOTT, N.Y.), AUGUST 28, 1924

We want an answer to this question and we want it very FAST: when did we lose our goddamn rights to equal protection?

—LETTER FROM MIGRANTS INCARCERATED
AT MANATEE COUNTY JAIL, FLORIDA, 1998

IN NEW YORK’S NORTHERNMOST REACHES, a remote region of the state often called “the North Country,” the county jails had many critics and few admirers. Throughout the 1920s, each new report from the Prison Association of New York lodged the same complaints about local jails’ “glaring deficiencies and abuses”: Jails were dangerously overcrowded (a surprising predicament for the decidedly uncrowded expanses just beneath the Canadian border), they were crumbling structural relics, and they were marred by episodes of bribery and corruption.¹ North Country jails held—at least in theory—local people accused of low-level infractions who did not generate a great deal of public sympathy. Even the Empire State’s most avid reformers mustered little energy for campaigns of improvement, with one criminologist derisively describing the typical jail population as “bums, booze-fighters, [and] suspicious characters.”²

Yet, when the prison commissioners entered Northern New York jails for annual inspections, they heard varying accents and foreign languages ringing

across the halls. Alongside the usual local suspects, inspectors encountered migrants awaiting hearings and deportations—the result of deals inked between counties and the federal immigration service over the previous twenty years.³ Some of the people detained were Chinese laborers, ineligible for entry under the 1882 Chinese Exclusion Act. Following long voyages across the Pacific, Chinese migrants had used Canada as an entry point to the United States, often filing habeas corpus appeals demanding their freedom from New York lockups. Other cells held Canadians, for whom crossing the border for work and pleasure was a regular part of life. Now they found themselves “rotting in American jails,” an alarmed British newspaper opined.⁴ Canadians and Chinese shared the space with Italians and Jews attempting to evade new quota laws that had made legal migration an imposing, if not impossible, task. When Congress passed the 1929 Undesirable Aliens Act, criminalizing unauthorized entry into the United States, it trapped even more migrants in the jam-packed jails stationed along the southern and northern borders.⁵

These jails were sites of coercion and neglect—dozens of detained migrants died in Northern New York’s dangerously overcrowded facilities while waiting for backlogged immigration hearings—but they were also sites where migrants lodged legal claims, plotted escapes, organized with aid groups, and fought for the right to stay in the United States. Migrants’ presence created a predicament for Northern New York officials: On the one hand, jails filled with protesting people from around the globe were a liability. They brought bad press and bureaucratic headaches. On the other hand, migrants brought money. Each detained migrant represented a paycheck from the federal government to the local government, compensation for each night the immigration service “boarded” a person in the county jail. These paychecks had padded county budgets since the turn of the twentieth century and had made these small, peripheral towns integral to the federal work of deportation. While federal stations such as Ellis Island became the quintessential image of immigrant processing in the early twentieth century, it was at county jails that the U.S. government stretched its discretionary authority, held migrants for the longest durations, and forged enduring relationships between federal bureaucracy and local communities.

Nearly a century later, in the spring of 2019, towns in Louisiana would weigh many of the same concerns when considering how imprisoned migrants might

keep county budgets in the black.⁶ Parishes throughout Louisiana had undertaken costly jail expansion projects in the prison-building booms of the 1980s and 1990s. Jackson Parish, for example, had room to hold 1,250 people in its jail, roughly one in thirteen of the parish's residents.⁷ In 2017, bipartisan criminal justice reform efforts in the Louisiana State Legislature successfully reduced sentences and lowered the number of people jailed in the state.⁸ With jail populations declining, local officials worried about how they would pay back construction bonds and retain corrections jobs. Many communities found an answer and an enthusiastic partner in Immigration and Customs Enforcement (ICE), signing contracts to incarcerate thousands of migrants in parish jails in exchange for about \$70 per detained person, per night.

Parish jails housed migrants from Cuba, Haiti, Venezuela, India, Togo, and beyond. Many were asylum seekers, fleeing political violence and persecution, who had crossed the southern border before being sent to remote corners of Louisiana to await adjudication. They included men such as Walter Corrales, who was detained in a room with sixty other migrants in a Concordia Parish jail. Corrales had feared for his survival under the authoritarian Honduras government. Still, he called his time in Louisiana jails the worst days of his life.⁹ Sheriff Cranford Jordan of Winn Parish declared migrants like Corrales a "blessing." Their incarceration was keeping his jail open and his parish financially afloat.¹⁰

Despite decades of precedent for detaining migrants in local carceral facilities, even careful observers were caught off guard by what was occurring in Louisiana's jails. One attorney from the Southern Poverty Law Center said that while advocates knew criminal justice reform might lead rural jails to close and turn into immigration detention centers, they did not anticipate that jails would incarcerate both administratively detained migrants and those accused of criminal offenses in a shared space. Immigration detention in county jails, confessed a Louisiana law professor, "simply wasn't on anyone's radar." Both a century ago and today, county jails were and are foundational to the project of federal immigration law enforcement, but in both cases, they have operated with a staggering absence of oversight or public awareness.

This book demonstrates how a century of political, economic, and ideological exchange between the U.S. immigration bureaucracy and the criminal justice system gave rise to the world's largest system of migrant incarceration. Though court cases at the end of the nineteenth century made immigration regulation the sole prerogative of the federal government, it was the cooperation and resources of American counties and towns that made mass detention and

deportation possible.¹¹ The enduring reliance on local jails shows that federal authorities have never had the capacity to implement restrictive immigration policies. The practice of migrant detention in jails reveals a web of political and financial incentives for local governments to collaborate with the immigration service, even as the Tenth Amendment of the Constitution granted localities leeway to refuse. Since the turn of the twentieth century, immigration agents have negotiated with sheriffs and city councils to determine how many migrants a local jail could detain and what price the federal government would pay. They transferred migrants between counties as they searched for cheaper rates and lower visibility. And they assigned detained persons a market value based on race, gender, and perceived criminality. In turn, federal and local authorities capitalized on the ill-defined rights of noncitizens to experiment with practices that saved money and streamlined the legal process of deportation. What began as temporary housing arrangements gradually gave way to a more expansive role for law enforcement in identifying and apprehending foreign-born people whom they suspected might be deportable. Across a century of intergovernmental collaboration, migrant incarceration remade the political economy of American jails and rewrote the constitutional rights of noncitizens.

A Century of Migrant Jailing

By adopting a broad chronological scope, *The Migrant's Jail* illustrates that immigration enforcement did not merely borrow the infrastructure, legal precedents, and practices of late twentieth-century criminal punishment.¹² Instead, in countless small towns, suburbs, and cities, migrant incarceration actively expanded the power and capacity of local, state, and federal governments to imprison. Migrant incarceration became a remarkably malleable tool for policymakers who sought to harden borders and engineer the nation's population: The physical spaces of detention were continually in flux, but its targets also frequently shifted as Congress prioritized different categories of people for expulsion.

The first four chapters of this book cover roughly the first half of the twentieth century. At the start of the twentieth century, the county jail was one of many components of an emerging migrant detention network—one that drew upon the United States' existing infrastructure for policing the vagrancy and mobility of subjects on society's fringes. Asylums, almshouses, workhouses, and charitable institutions all served as sites of confinement for noncitizens the United

States sought to eliminate.¹³ Jails, however, had a particular utility because they existed in the vast majority of American communities, from the largest cities to the smallest outposts.¹⁴ In the wake of the 1882 Chinese Exclusion Act, the immigration service began actively negotiating with county sheriffs to “board out” Chinese migrants in county jails. The Supreme Court declared in 1896 that migrant detention was “not imprisonment in a legal sense,” yet this administrative incarceration moved thousands of Chinese men, as well as a smaller number of women and children, through a shared carceral infrastructure.¹⁵

For migrants apprehended near a major port of entry, such as New York, San Francisco, Seattle, or Philadelphia, the immigration service maintained federal detention space, where migrants would await hearings, recover from illness, or prepare for a return trip.¹⁶ Away from U.S. urban centers—for example, in Upstate New York along a relatively unpatrolled border—the process of deportation was far more fragmented. As Chinese migrants turned to the courts to assert due process rights, immigration officials reimagined jailing as a practice that could streamline removals and discourage lengthy legal battles. When the late nineteenth-century courts gave the immigration service the green light to detain as part of the sovereign power to exclude, the bureaucracy saw potential. Although it was federal agents who typically took migrants into custody, sheriffs and local officials would amplify the messaging and augment the manpower of the immigration service.

The decentralized nature of early migrant detention created both opportunities and challenges for the state. Partnering with localities demanded flexibility and extensive bureaucratic labor from a fledgling federal agency with an expanding mandate: By the 1920s, the immigration service was enforcing quota laws, literacy tests, and anti-trafficking provisions, alongside legislation barring migration from Asia. With each additional immigration restriction, new groups within the nation and at the nation’s gates became vulnerable to detention and deportation. Immigration officials contended with inquiries from sheriffs complaining that neighboring counties received better monetary rates and from embassies wondering why their nationals were behind bars, highlighting the interlocking local, national, and international scales of deportation. However, jails also *granted* the federal government tremendous flexibility. They offered the immigration service a dispersed network of spaces to use, expanding the agency’s reach far beyond ports and borderlands. When crises arose—uprisings, escapes, lawsuits—there was always another jail the immigration service could turn to. Jails could likewise serve as a means of institutional self-preservation, a way to minimize visibility when the agency’s

practices came under scrutiny. From its earliest days, detention was not simply a closed space or a stagnant waiting zone. It was a process by which the state strategically contained and circulated migrants across a growing carceral network, rewarding those who could keep migrants alive and out of sight at the lowest cost.¹⁷

Why did localities choose to work with the immigration service?¹⁸ The most obvious incentive for cooperation was money. As the federal government made detention an arena of economic exchange, it became something localities argued they could not afford to refuse. The case for contracting jail space often cited local unemployment numbers, new services the locality could fund, and the potential for lower tax rates.¹⁹ Sheriffs and other elected officials found ways to personally profit, by pocketing federal money, gifting new jail contracts to associates, and leveraging their federal relationships in campaigns for reelection. Once communities came to rely on the income from detention, and in many cases, expanded their jails to accommodate the federal government, they needed the United States' demand for jail space to persist. This book shows that migrant incarceration (whether public or private) has always been a moneymaking enterprise: Local entities competed for federal revenue long before private prison companies moved into the business of detaining migrants in the 1980s.

However, the long history of migrant incarceration also shows that financial incentives were not the only means of inducing local cooperation. The immigration service could not always afford the rates sheriffs demanded, and aiding in detention was far from a lucrative undertaking for every community. To ensure local cooperation the immigration service constructed unauthorized migration as an existential, racialized threat that demanded the assistance and resources of localities. In the 1920s, when concerned citizens and embassies criticized the policy of detaining migrant families in jails, federal bureaucrats proposed a "campaign of education" aimed at skeptical mayors and police chiefs.²⁰ They stressed the alleged domestic consequences of unauthorized migrants, often in terms of employment, dependency, and crime, reframing immigration law enforcement as a subject of local jurisdiction and relevancy—an issue that should be equally of concern to sheriffs and city councils as it was to Congress.²¹ These efforts further infused myths of immigration's harm into local, as well as national, discourses. Rationales for cooperation linked the courts' visions of immigration law as a matter of foreign policy and national identity with localities' arguments for immigration law as a means of regulating health, welfare, and safety.²² It was a vision that invited, and perhaps demanded, an intergovernmental approach.²³

Postwar migrant detention solidified federal dependence on local jails and spurred the development of other carceral spaces: from internment camps to skyscraper detention sites to privately run migrant detention centers. The immigration service spent much of the 1940s collaborating with fellow government agencies to facilitate the wartime incarceration of “enemy aliens,” a project that borrowed the labor, infrastructure, and legal precedents of the U.S. deportation regime. After the war ended, efforts shifted to investigating and imprisoning noncitizens with communist affiliations, many of whom faced months and years of detention as they pursued extensive legal battles against their deportation orders. In the aftermath of World War II, accusations that the United States was operating migrant gulags or concentration camps proliferated in American towns hosting detention sites, as well as in the international press—a damning association as the United States proclaimed itself a beacon of democracy and human rights in the postwar world. Concerns about geopolitical optics, alongside ongoing discontent about the expense of incarceration, brought a first round of liberal reform to migrant jailing.

When changes came to the detention system, they affected migrants unevenly.²⁴ In the 1950s, the immigration service piloted a policy of “supervisory parole” rather than outright imprisonment, a shift that predominantly freed European migrants from jails and detention centers. At the same time that the nation lauded its own progressiveness in reducing the incarceration of noncitizens, the federal government was building new detention sites and forging new contracts for the capture of Mexican migrants and “war brides” arriving from Asia. This infrastructure laid the foundation for an even more expansive detention system in the 1970s and 1980s, when refugees began arriving in large numbers from the Caribbean and Central America—groups that challenged the United States’ vision of its asylum system as a pathway to citizenship for European, anti-communist dissidents.²⁵ Buoyed by racist conceptions of the “criminal alien,” policymakers lobbied for more detention laws and more detention beds as part of a national war on crime. These initiatives conveyed to the American public that nonwhite migrants, including refugees, were a threat requiring the same strategies of surveillance and control the state deployed against citizens of color.

By the latter decades of the twentieth century, a diverse set of American communities began taking migration control into their own hands, marking what some scholars have described as a new era of immigration federalism.²⁶ A resurgent nativist movement followed the 1965 passage of the Hart-Celler Act, a landmark law that opened pathways for legal migration from Asia, Latin

America, and Africa while closing doors for migrants from Mexico. With public outrage on their side, states and localities made greater demands of the federal immigration service—rather than courting localities, the immigration service now had to rein in its overenthusiastic local partners.²⁷ When noncitizens were convicted of crimes, towns such as Miami Beach flooded the immigration service with bills for increased incarceration costs, arguing that all crime committed by unauthorized migrants was a failure of federal immigration policy.²⁸ When towns such as Moline, Illinois, observed growing Mexican communities, they deployed local police into bars and workplaces to enforce immigration law themselves.²⁹ And as the number of migrants susceptible to Reagan-era “mandatory detention” policies grew, communities invested unprecedented municipal money into becoming featured players in the jail bed economy.

Towns and cities throughout the United States recognized detained migrants as a racialized source of financial capital; working with the immigration service became a way to bankroll carceral expansion without requiring the approval (or even the tax dollars) of voters. Municipalities built and enlarged jails on speculation, confident that the immigration service would fill them. They then reinvested proceeds from migrant incarceration into local law enforcement, expanding police forces and corrections departments as jails grew. This intertwined system of carceral growth had stark consequences for both citizens and noncitizens facing incarceration, a group disproportionately composed of poor people of color. Using incarceration as a tool of border control provided a facade of tough, punitive state response to unauthorized migration—one that belied the uneven, slipshod reality of how the federal government policed borders.

Finding the Forgotten Jail

At the center of migrant incarceration’s rise and endurance is the county jail. A flourishing field of scholarship on immigration detention has concentrated on moments when migrant incarceration became more centralized and the federal government took on a greater role: In particular, scholars have offered rich examinations of the buildup of federal detention facilities since the 1980s, illustrating how Cold War tensions, a globalized war on drugs, and a late twentieth-century bipartisan embrace of mass imprisonment drove migrant incarceration.³⁰ This book shifts our periodization and our focus via a national account of how migrants and officials negotiated detention from the turn of

the twentieth century to the present. This approach exposes the roots of the heterogeneous landscape of private, federal, and local detention sites that migrants navigate today. It explains how local officials' decisions and discretion shaped and constrained the much-noted and oft-criticized discretionary power of immigration bureaucrats.³¹ And it shows the remarkable persistence of county jails and intergovernmental agreements as the cornerstone of migration control. As federal sites such as El Centro in Southern California and the Krome Service Processing Center in Miami became the most visible, contentious examples of detention in the second half of the twentieth century, the immigration service continued to quietly contract with hundreds of jails around the country. Migrants in these jails experienced different forms of violence and faced different obstacles in demanding accountability. Their stories, too, are central to the history of mass incarceration.

Jails differ from other carceral institutions in the U.S. criminal justice system—namely, prisons—in two key ways. First, they are locally operated. Jails are typically administered by a sheriff or department of corrections, and municipal politics heavily influence jails' funding, conditions, and population. Second, jails hold various categories of detained persons. They detain people awaiting trial, who may or may not be released from jail with payment of bail, alongside people convicted of crimes (usually misdemeanors, with sentences of a year or less); people awaiting transfers to prison; and, as this book emphasizes, people accused of violating federal law, whom localities detain at the behest of the federal government.³² Jails, historically and presently, have very high turnover rates compared with prisons. In 2021, people were admitted to U.S. jails almost seven million times—some for hours, others for months—compared with about 421,000 admissions to state and federal prisons.³³ Because of the disparities in local budgets and priorities, the conditions of jails vary tremendously. A jail could be a retrofitted barn in a rural community designed to hold a dozen people, or it could be an urban multibuilding complex employing hundreds and incarcerating even more.³⁴ The immigration service contracted with both.

From Progressive-era calls for their abolition to lawsuits in the 1970s and 1980s that publicized unconstitutional conditions, jails were continually under fire in the twentieth-century United States. Their inadequacy was a rare point of consensus among policymakers, penologists, and activists. The immigration service regularly pointed to the deficiencies of jails as a rationale for building more migrant detention facilities of its own. As historian Melanie Newport's work on Chicago's Cook County Jail has shown, pushes for reform

counterintuitively produced carceral expansion—the drive to build a “better” jail meant more funding for jailing.³⁵ This pattern was similarly visible in immigration detention. The failures of jail reform and the success of jailed people in securing legal interventions created demand for alternative spaces of migrant incarceration, often under the guise of humanitarian concern or paternalism. When localities’ enthusiasm for cooperation waned, policymakers advocated for creative new avenues of carceral expansion, pioneering some of the nation’s first federal jails, private detention facilities, and federal migrant detention centers, as well as repurposing warehouses, military bases, office buildings, and motels into sites of incarceration. We, too, want to remove migrants from violent, dangerous jails, federal officials said. Give us more money and resources to do so.

These local spaces, where the fates of migrants were still unsettled, became the center of legal and political battles about the nation’s ability to exclude and deport, as well as the nation’s ethical obligation to outsiders. Migrants’ captivity and migrants’ activism provoked local debates and critiques about what it meant to incarcerate people who, in many cases, had not been accused of a crime.³⁶ Long before detention dominated national headlines, questions about its morality proliferated in host communities: Was migrant detention a form of punishment? Was it Christian? Was it the right kind of business for local leaders to pursue?

The question of which outsiders the United States had an obligation to was inseparable from ideas of who was too poor, too radical, too sick, and above all, too racially different to be a citizen. Detention was most politically popular when it involved eliminating people deemed racially unassimilable or unfit for citizenship—people whom many Americans imagined might *belong* in jail. Migrant incarceration built on long lineages of how the United States policed the mobility of poor and nonwhite people, relying on both administrative police power and local vigilantism: from the recapture of fugitive slaves, to the removal and containment of Indigenous people, to the jailing of marginalized groups under local and federal vagrancy laws.³⁷ All of these, too, had been intergovernmental projects that familiarized Americans with the immobilization of people denied full political and constitutional rights.³⁸ The jail became a space that amplified and refracted Americans’ existing ideas about guilt, criminality, and race. Some detainees—notably Chinese, Mexican, and Afro-Caribbean migrants—became guilty by their association with jails, which confirmed Americans’ suspicions about these groups’ illegality and lawlessness. At other times, as when European migrants were detained, the jail could represent the excesses of extreme immigration law enforcement,

prompting political soul-searching and efforts for relief. Through its many incarnations, the expansion of migrant incarceration relied on its power as a tool of coercion; federal officials hoped that the threat of an indefinite jail stay would pressure migrants to abandon legal appeals and would deter unwanted migrants from coming to the United States in the first place.

By paying close attention to legal decisions affecting American jails, this book emphasizes the interconnected experiences of citizens and noncitizens in carceral institutions. Though they are often conceptualized as two parallel systems of incarceration, the developments and politics of American penal policy had major reverberations for migrants in civil detention. Lawsuits that brought jails under court orders, legislation that established new types of carceral institutions, and highly publicized prison uprisings all affected how the state approached migrant incarceration, in part because migrants were *already* in shared local institutions. Still, migrants and their advocates often relied on rhetoric that positioned administrative detainees as more deserving of constitutional protections and less deserving of jail time than people who had been accused or convicted of criminal charges—a group disproportionately made up of Black Americans. Jailing migrants was egregious, advocates claimed throughout the twentieth century, because it treated a migrant like a “common criminal.” This reasoning positioned individuals imprisoned for criminal charges as the “real” threat, more deserving of the horrific conditions of human warehousing. Though observers often attempted to draw lines of merit and culpability between those targeted for administrative and criminal offenses, people of all citizenship statuses would suffer under a system that prioritized control and suppressed dissent.

Resistance, Federalism, and the Law

Despite the best efforts of law enforcement and policymakers to create a system of incarceration that would serve their own interests, few groups influenced the trajectory of detention more than migrants themselves. Through individual and collective resistance, migrants challenged the state’s power to detain, as well as the relationship between the federal government and localities. An archive that centers on institutional power still offers ways to witness how migrants pushed back against the capriciousness of jailing and removal.³⁹ The material evidence of migrants’ lived experience is scattered among the records of bureaucrats and lawyers. It takes many forms: a butter knife carved into a key by an Italian attempting to break out of a detention cell, letters from Chinese migrants offering to expose their smugglers’ secrets in exchange for

freedom from jail, political speeches drawing parallels between Jim Crow and migrant incarceration, funeral programs for an asylum seeker who died in a Florida jail and another for a migrant child who drowned in a Coast Guard apprehension at sea. Archives contain thousands of affidavits from detained people, testimonies that attempt to make experiences of persecution legible to the legal apparatus of the United States.⁴⁰

These sources are complemented by migrants' letters and petitions, writing that excoriated the contradictions between professed American ideals and the system of incarceration without trial they encountered. "Do you Americans like when people suffer? Does God give Americans power to do evil things?" wrote a Haitian migrant interdicted at sea.⁴¹ A Cuban in Louisiana described his incarceration as a form of state-sponsored disappearance: "[Since] Oct. 2, 1995, I have been kidnapped by the [immigration] service in parish jails."⁴² Another letter by a group of asylum seekers held in Florida framed the United States' actions as the latest in a long list of hypocrisies: "The U.S. is going to China, Cuba, and several other countries telling them about civil rights violations; the Indians was run off their land by the U.S. Put on the reservation. Now [the immigration service] have [migrants] hiding here in the Manatee County Jail."⁴³ Migrants' protests and critiques of state power led officials to think of the jail as a tool to thwart resistance: Transferring migrants between jails was an effort to separate them from the solidarity they found in one another. The practice also produced a disparate and scattered archive, one easy to overlook in federal immigration records alone.

One of the ways that migrants attempted to secure their freedom and undercut the legitimacy of detention was through the courts. This book examines both routine, individual petitions, requesting habeas corpus or reprieve through bail, and more complex legal challenges to jail conditions and the immigration agency's power to incarcerate. Incarcerated or detained noncitizens "sit at the intersection of two powerful lines of deference," writes legal scholar Emma Kaufman.⁴⁴ In cases involving the immigration status of foreign nationals, courts have historically deferred to the political branches, which have near-complete sovereign authority in dictating entry and exclusion. And in cases involving prisons and jails, courts have routinely deferred to policies curbing the constitutional rights of incarcerated people. Despite a series of more liberal rulings for prisoners' rights in the 1970s, the 1980s saw a judicial retreat from rights recognition in favor of arguments that stressed the peculiarity of carceral institutions and recognized the broad power of prison officials to restrict rights in the name of "legitimate penological interests."⁴⁵ Together,

these two lines of deference have vested extraordinary power in sheriffs and other jail workers tasked with policing the day-to-day lives of people with few rights and only the narrowest paths to judicial recourse.

The plenary power doctrine, crystallized by the courts at the turn of the twentieth century, dictates that the executive and legislative branches are responsible for immigration policy decisions and that courts should only rarely, if ever, entertain challenges to decisions about who is admitted or expelled. *Plenary power*, a term similarly invoked in Indian affairs and in cases involving the political status of U.S. territories, indicates complete and *absolute* authority. The power over immigration was affirmed in the 1889 case of *Chae Chan Ping v. United States*, in which the Supreme Court ruled that the government could exclude a noncitizen on whatever grounds it deemed necessary.⁴⁶ “Jurisdiction over its own territory . . . is an incident of every independent nation. It is a part of its independence,” the Court declared, describing migration control as a by-product of foreign affairs and immigration as an act of “foreign aggression and encroachment.” Individual constitutional rights became secondary; Congress held the power to discriminate against arriving migrants on the basis of race, gender, political affiliation, or any other category it deemed relevant.⁴⁷ To say that the nation could not deny foreigners was to compromise nationhood itself.

Plenary power also bore a corollary notion: that federal authority over immigration was indivisible and that states and counties had no independent role in immigration law’s development and administration.⁴⁸ This doctrine upheld the nineteenth-century U.S. immigration regime, which was characterized by the creation and energetic enforcement of immigration laws by state and local officials.⁴⁹ Though the courts dictated that localities could not produce or execute immigration policy, there was much more ambiguity about how the federal government might delegate power to localities. The history of migrant incarceration shows how federalism could be used to both serve and undercut the interests of migrants: Reliance on localities enabled unprecedented, large-scale deportations in some moments and incapacitated the immigration service in others.⁵⁰ These intergovernmental relationships were perpetually in flux. It was not uncommon for communities to embrace a role in the deportation state one year and denounce it the next. And unwillingness to cooperate was not always progressive: Localities pushed back against the immigration service’s requests for reasons that had little to do with concern for migrants’ rights.⁵¹ Local refusals to detain could be strategies to negotiate more money, reactions to poor media coverage, or efforts to refocus jail space on “local” crime.

Local actors did not control the core aspects of immigration—decisions about the admission and removal of noncitizens—yet they held significant power in shaping the enforcement of immigration law. *The Migrant's Jail* shows how the vast, virtually unchecked plenary power of Congress and the president to create immigration policy devolved to empower a broad range of bureaucrats, contractors, and local officials. The distinctive standing of immigration law gave rise to a bureaucracy that operated with stunning autonomy: It was insulated from judicial intervention; it resisted oversight and administrative norms at every juncture; and it used subcontracting, transfers, and intergovernmental agreements to further distance itself from accountability.⁵² Against imposing odds, migrants returned to court again and again, often securing victories on procedural grounds. Even when they did not win, their legal cases were critical in bringing detention into public consciousness and creating a paper trail of abuses of power.

The Migrant's Jail tells a national story about local institutions. The United States currently has 2,850 county jails, most of which have existed in some form for more than a century—to make any generalizations about these disparate spaces is treacherous business.⁵³ In writing this book, I have strived for regional coverage, to show that detention was a process taking place across the nation. I place particular emphasis on localities where migrant jailing moved from a local issue to a point of national reckoning. Often this occurred in unexpected places such as Malone, New York, and Galveston, Texas, in the beginning of the twentieth century and Immokalee, Florida; York, Pennsylvania; and Avoyelles Parish, Louisiana, at the end. These communities differ in virtually every way, from demographics to geography, politics to population—yet each of them chose to work closely with the immigration service to expel the people the nation had deemed dangerous, undesirable, or otherwise “illegal.”

In 2023, ICE detained an average of 28,289 migrants per night, down from a pre-COVID peak of 49,403 migrants per night in 2019. (Figure 1.) Even this reduced number is roughly twelve times as many people as the agency detained fifty years ago. Detention is the backbone of the U.S. border enforcement regime, relying not just on private prison companies and federal detention centers but on the hundreds of city and county jails that contract with the immigration service.⁵⁴ The cruelties and injustices are manifold. But they are not new.

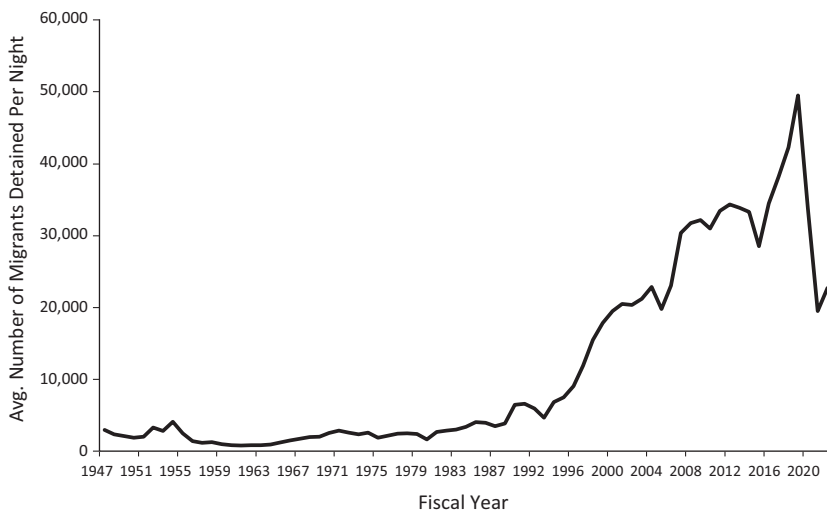


FIGURE 1. Graph of average daily population in immigration custody, 1947–2022. *Source:* Compiled from U.S. Department of Justice appropriations hearings, U.S. Department of Homeland Security appropriations hearings, and Immigration and Naturalization Service annual reports.

“Here, almost daily, Federal officers call for aliens,” a local writer observed in Upstate New York in 1927. “They are handcuffed. They are led through the main streets of this village to be photographed. Yet [the] spotlight that plays around Ellis Island is not trained upon small county jails.”⁵⁵ It has been nearly one hundred years since this journalist encountered migrants from Asia, Europe, and Latin America detained, out of sight and out of mind, in the rural jails along the Canadian border. Today, debates over federalism have come to the forefront in fights about sanctuary cities, migrant busing, and how local law enforcement works (or refuses to work) with ICE. The questions raised by these fights are the same ones that migrants and their advocates confronted, shivering in a converted barn against the New York winter. Who is responsible for detaining migrants? What is the relationship between a seemingly unaccountable federal immigration enforcement bureaucracy and a local municipality? Does a locality have to cooperate when the federal immigration service requests, or in some cases, *demands*, its assistance? And most importantly: How can a self-proclaimed nation of immigrants also be a place that imprisons tens of thousands of immigrants, exiles, and refugees?

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