

Disruptive Intersectionality

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My work explores how the narrative of unworthy immigrant identity operates in a spectrum of oppressive outputs: from informally subordinating immigrants to literally imprisoning them, though they have not been formally adjudicated guilty of any crime. I (and other scholars) posit that the immigrant experience represents one of the most insidious examples of a current mechanism of formalized oppression. Building on my previous work, this Article explores how immigrants detained for suspected infractions of the Immigration and Nationality Act (INA) are labeled criminals, thus easing the way for private prison corporations to effectively and explicitly lobby Congress for even tighter laws that imprison more immigrants, including recent efforts targeting migrant women and children.

Part I of the Article sets an important foundation regarding the history and constitutional underpinnings of immigrant detention. Further, Part I provides a snapshot of the current state of immigrant detention with a focus on the recent influx of mothers detained with their children. Part II builds on this foundation and explores the immigration prison industrial complex. With a powerful lobbying presence in Congress, prison corporations have changed the political and legislative process to their benefit. Part III then illuminates the necessary ingredient for this endeavor to be so successful. As a noncitizen with little to no rights and privileges in the United States, the immigrant prisoner is easy for the larger society to ignore. Further, immigrants who are imprisoned are labeled criminals and thus suffer the effects of this marginalizing identity. The effect is especially insidious in this context because the INA provides that immigrants may be imprisoned before any adjudication regarding their “guilt” has been reached. Incarcerated for suspected infractions of the INA—which are civil offenses, not criminal—these immigrants often have no legal counsel and limited due process protections. Further, as a person of color—or perceived to be of color—the immigrant suffers these additional long-term, chronic effects of political subordination. Thus, because immigrants are deemed unworthy of protection due to this powerful intersection of subordinated identities, private monetary interests continue to exploit their continued detention for increased profits while calls for humanitarian protections are largely ignored. It is only because the affected population is a marginalized and historically oppressed group that such efforts can continue—and potentially succeed—unabated. Part IV therefore argues that comprehensive immigration reform measures must account for this reality and embrace measures that disrupt these toxic connections. Because imprisoning people has become lucrative due to the power of oppressing the marginalized, legislative and advocacy measures must work to disrupt the intersections between profitability and oppression. This Part looks to historical examples of when calls for humane treatment of the oppressed brought about disruptive change to system actors benefiting off of oppression. This Article thus concludes that advocates and legislators should follow the same path to end the inhumane and unjust practice of immigrant detention.