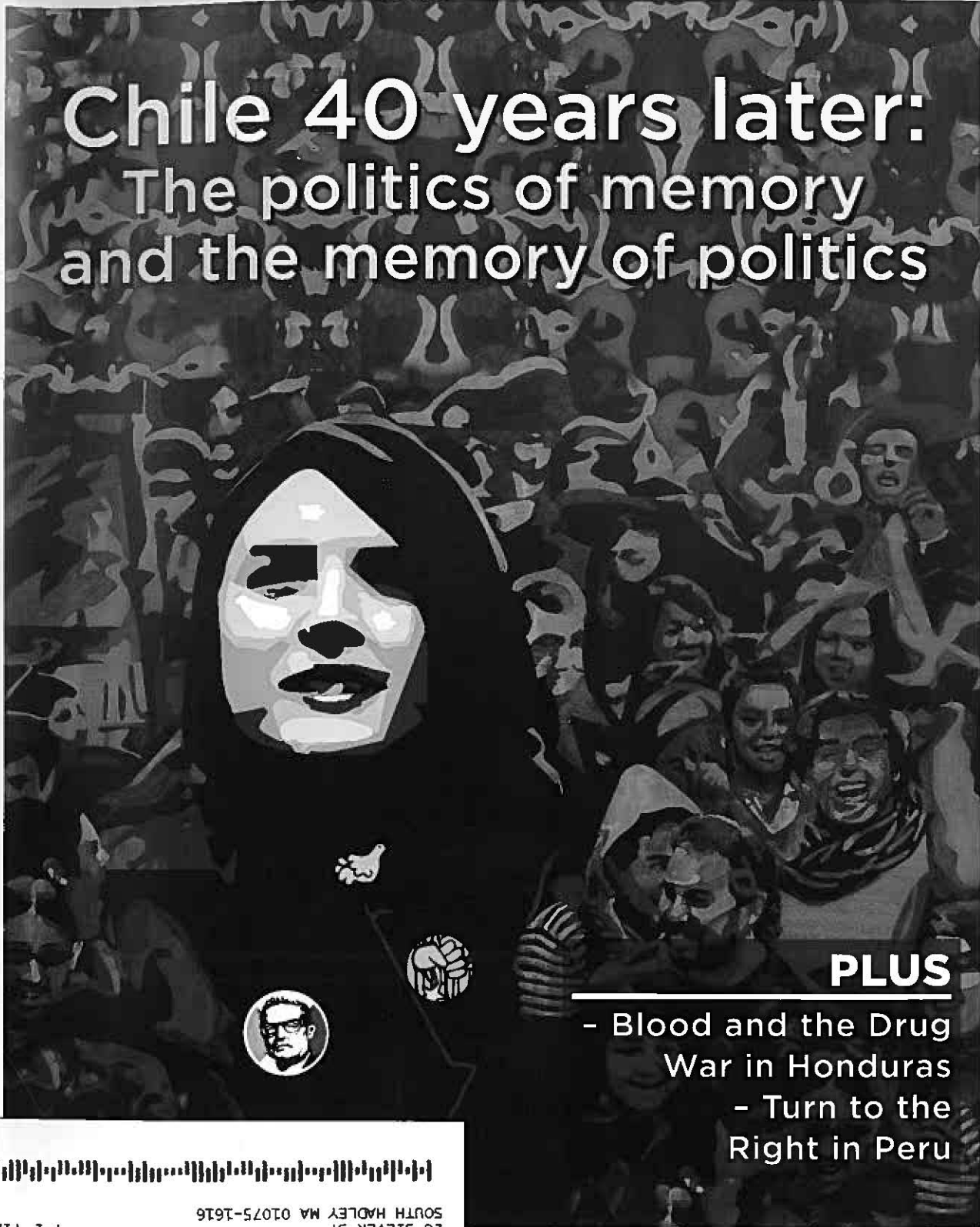


Chile 40 years later: The politics of memory and the memory of politics



PLUS

- Blood and the Drug War in Honduras
- Turn to the Right in Peru



R477
DAVID HERNANDEZ
26 SILVER ST
SOUTH HADLEY MA 01075-1616
WK552

1349
FIA
P-1 P121

FALL 2013, VOL. 46, NO. 3

nacla REPORT on the AMERICAS

CHILE 40 YEARS LATER: THE POLITICS OF MEMORY AND THE MEMORY OF POLITICS

Detained in Obscurity: The U.S. Immigrant Detention Regime

DAVID HERNÁNDEZ

IN MARCH 2013 *THE NEW YORK TIMES* REPORTED THAT hundreds of immigrants detained throughout the United States were being held in solitary confinement, some for several months at a time.¹ This raises some obvious questions: Why would immigrants in civil—that is, noncriminal—deportation proceedings be held in such a punitive form of detention? Under what authority or rationale would immigration authorities justify such a dangerous and excessive form of imprisonment and punishment? And more important, why does the general public know so little about such abuses within the immigrant detention system?

The use of solitary confinement has a long history of abuse and resistance. It recently led to a series of inmate hunger strikes throughout the California prison system, for example, growing to 30,000 participants in summer 2013.² Of course, the scale (4,500 California inmates in solitary confinement) and length of time (lasting decades) in remote, solitary cells in the prison and jail system dwarfs its use in immigrant detention centers, which add up to 1.4% the size of the nation's prison industrial complex (PIC). The enormity of the PIC, which incarcerates 2.4 million inmates, casts a long shadow over dangerous and deadly conditions for immigrant detainees and is one of the many factors obscuring the immigrant detention system from public view. This obscurity presents distinct challenges for immigrant advocates and detainees.

Prison inmates are generally placed in solitary confinement for allegedly endangering other inmates or for suspected, often unproven, gang affiliations. In immigrant detention centers, however, solitary is used for a far more arbitrary set of reasons by federal, local,



Hua Zhen Chen, a 28-year-old housewife from Fujian province, left China after health officials discovered she was pregnant with a second child and threatened her with sterilization. She was convinced that only America would understand her plight, quickly grant her asylum, and allow for her family to follow. Instead, the INS greeted her with nearly 20 months in Virginia jails. PHOTO BY STEVEN RUBIN

David Hernández is an assistant professor of Latina/o Studies at Mount Holyoke College. He is completing a book about immigrant detention in the United States.

and private jailers, including when detainees break rules, talk back, refuse meals, or for the “protection” of LGBTQ or mentally ill immigrants.

Abuses in detention are not the collateral or unintended consequences often invoked in immigration debates, but are the products of a deliberately obscure and flexible enforcement power meant to control migration. Essentially, the United States manages a labyrinthine imprisonment system for immigrants that few people understand, much less witness.

Annually, about 400,000 immigrants—90% originating from and being deported to Latin America—pass through the patchwork of 34,000 detainee beds spread across 250 federal detention centers, county and municipal jails, and private for-profit prisons.³ Detention is defined legally as an administrative stage in the deportation process, preventing flight and ensuring that non-citizens attend hearings, as well as imprisoning the immigrant if he or she is deemed to be a danger to society.

Detainees, however, are often held for months or years and suffer indignities and abuses rarely on the public radar. In addition to the punitive use of solitary confinement, recent investigative reporting into the administrative immigrant detention system has revealed disturbing accounts of deaths and suicides in detention, the incarceration of children, and children lost to adoption or foster care due to the prolonged detention and deportation of their parents.⁴

Less dramatic conditions include poor nutrition, limited visitation rights, physical, sexual, and verbal abuse by guards, as well as routine denial of bond and widespread lack of legal counsel. For instance, for every one detainee with a lawyer, eight immigrants, sometimes mentally ill or merely children, navigate complex legal proceedings without counsel. Detention Watch Network, which recently conducted ten detention site reports in eight states, concluded that there was “no facility among the approximately 250 in operation ... where Immigration and Customs Enforcement (ICE) reliably protects those inside from physical and sexual abuse, assures basic medical care, provides adequate nutrition and exercise, and allows sufficient access to the outside world so that immigrants can prepare their legal cases and preserve their families.”⁵

Mired in obscurity, over 100 detainees have died in immigration facilities—both federal and non-federal—in the last decade as a result of cost-saving medical neglect. The denial of basic rights, family separation, and a variety of abuses, some leading to death, are thus central aspects of what Todd Miller terms the “Immigration Control Complex,” which occur at every stage of the



An INS detainee from Mexico talks through a glass partition with his wife at the INS building in Seattle, Washington. The INS is trying to deport him to Mexico, leaving his wife and child behind. The facility is administered by the Correctional Services Corporation, a private company that holds a contract to detain immigrants within the INS building.

PHOTO BY STEVEN RUBIN

migration and deportation process. Says Miller, "Death is part of the equation"—fleeing death in one's home country, facing death in the migration or transmigration from or through Mexico, crossing the U.S.-Mexico border when apprehended by the U.S. Border Patrol, and death within immigrant detention facilities as the final stage.⁶

Records of such detainee deaths remain buried in agency reports and private companies' annual reports and files.⁷ The federal government, for example, which generally seeks to limit outside inquiry through the denial or slow response to Freedom of Information Act (FOIA) requests, has only in the last ten years developed a reporting system for in-custody deaths, and private jailers consistently seek to hide their records behind corporate rights and protections. Private prison contractors' exemption from the disclosure of records through FOIA has reinforced this lack of oversight and evasion of accountability. Prison corporations, above all, lobby strenuously to block potential legislation, such as the Private Prison Information Act, which would alter this policy.⁸

The detention regime's most basic spatial, bureaucratic, and legal foundations ensure detention's obscurity, leading to continuing patterns of abuse. Spatial isolation, for example, similar to the use of solitary confinement today, has been a central aspect of immigrant detention. Island detention, for instance—historically at Ellis Island in New York, Angel Island in San Francisco, Terminal Island in Los Angeles, as well as Guantánamo Naval Base in Cuba (for Cuban and Haitian detainees)—endures as a geographic tool for deliberately isolating detainees from families and legal counsel.

In the interior of the country, the detention infrastructure has relied historically on a variety of surrogate partners and third-party jailers, drawing from the private prison industry and nonfederal county and municipal jails, as well as nonfederal hotels, hospitals, steamships, storage sheds, "tomato warehouses" and other ad hoc facilities to detain immigrants.⁹ In 2008, the government even used a "cattle exhibit hall" to detain over 300 migrant workers en masse in Postville, Iowa.

Many inland detention sites, as well, are islands unto themselves, located hundreds of miles from urban centers, making legal support and family visitation

inaccessible. Stewart Detention Center in Lumpkin Georgia, for example, is a 1,725-bed facility located 146 miles from Atlanta. It boasts both the lowest application rate for relief from deportation (3%) as well as the highest deportation rate in the nation (98.5%).¹⁰ Similarly, Oakdale Federal Detention Center, housing over 750 detainees, is over 200 miles from New Orleans and has a relief application rate of only 5%. In other words, geography serves as a barrier to even applying for potential relief from deportation. Louisiana State University law professor Kenneth Mayeaux found that within a fifty-mile radius of Stewart and Oakdale there are one and five lawyers, respectively, who are members of the American Immigration Lawyers Association, capable of providing expert counsel.¹¹

To be sure, the use of federally run facilities offers no

At the core of the detention regime's shadowy bureaucratic and juridical structure is an enforcement system that has little to do with criminal law and procedure. Immigrant detainees do not serve sentences, but are incarcerated administratively pursuant to their involuntary removal from the country.

guarantee of detainee safety, as abuse, medical neglect and deaths occur in all facilities, public or privatized. As such, the detention regime as a whole remains isolated from larger critiques of criminalization and incarceration. This often leads lawyers, detainees, and advocates to argue the "innocence" of certain classes of detainees, underscoring the criminality of other immigrants and undermining critiques of the entire system.

At the core of the detention regime's shadowy bureaucratic and juridical structure is an enforcement system that has little to do with criminal law and procedure. Immigrant detainees do not serve sentences, but are incarcerated administratively pursuant to their involuntary removal from the country. They may be undocumented persons, asylum seekers, temporary visitors in violation of visa regulations, or long-term legal permanent residents who have committed deportable crimes. Children in these categories or U.S. citizen children of detainees can also be taken into custody. As a transitional space of captivity, between apprehension



Facing imminent deportation back to his native Guatemala for a criminal conviction, Ronald Zetino is visited by his young son and family. The Mira Loma jail in Lancaster, California is rare in that it allows visiting families to sit this close to their detained loved ones without being further separated by security glass. PHOTO BY STEVEN RUBIN

and deportation, the detention regime remains hidden and its principal eyewitnesses are punished with deportation. The lack of legal recognition of this punitive impact on detainees and their families is probably the most insidious of detention's characteristics.

The simple fact that detention and deportation are *not* considered punishments for crimes locates detention in the netherworld of administrative procedure, where rights to counsel, bond, viewing evidence, visitation, and other basic procedures and protections are severely compromised. That is, detainees remain apart from accused or convicted criminals in terms of judicial rights at the same time that the majority of detainees are housed in the same dangerous conditions within the general population of the prison industrial complex.¹²

The way we talk about immigrant detention is also a critical factor in its obscurity. In historical analysis, detention is generally treated as a series of isolated incidents, masking the institution's persistent patterns of abuse, and broad, escalating, and nearly unrestrained capacity to detain noncitizens. This historical genealogy is weighty, and contains the precedents that diminish

contemporary legal avenues for relief, generate the construction and escalation of detention capacity, and contribute to enduring mechanisms of criminalization.

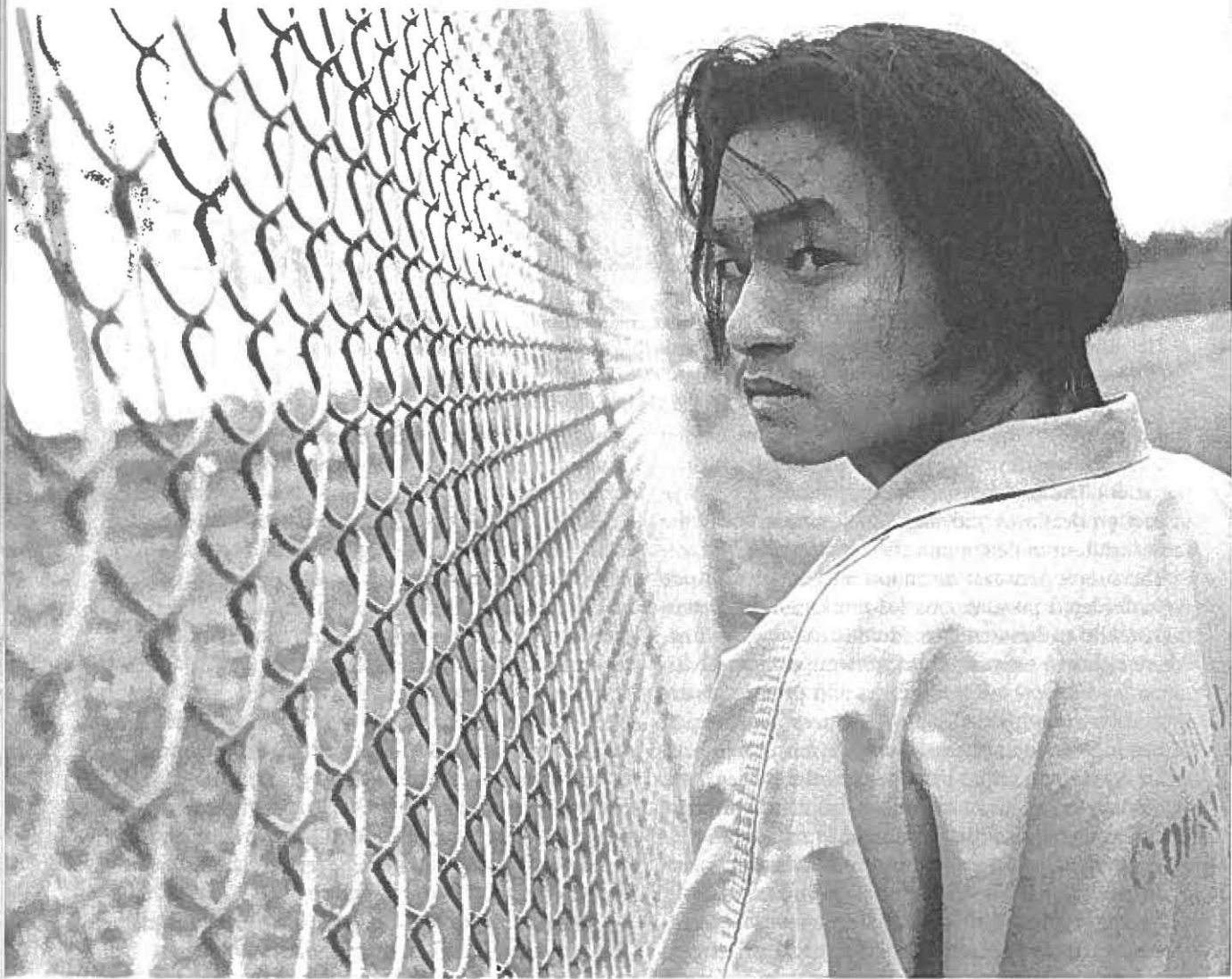
Recent debates over comprehensive immigration reform (CIR) further obscure detention conditions and policies, rarely moving beyond the topics of a pathway to citizenship, increased border militarization, and securing future labor flows. Current proposals vastly increase border enforcement and include 700 miles of additional fencing, a doubling of the Border Patrol to over 40,000 officers, drone and thermal surveillance technologies, and expansion of the E-Verify employment verification and visa entry/exit systems at airports and seaports. These enforcement technologies must be in place as a pre-condition to granting a single green card to undocumented persons already in the United States.¹³

CIR proposals more covertly leave untouched the controversial detention and deportation policies instituted in 1996, especially mandatory detention for the vast majority of immigrants in deportation proceedings. The 1996 immigration reforms are credited with

tripling the detention infrastructure in less than a decade. The Senate's 2013 CIR proposal, as well, seeks an expansion of Operation Streamline, which charges immigrants criminally for undocumented entry, also leading to an increase in immigrants in detention. According to Peter Schey, who analyzed the Senate's recent CIR proposal, "About 4 to 5 million immigrants will most likely be left facing an extremely harsh and unforgiving set of laws almost certain to eventually force their detention and deportation (if detected) or more likely leave them in undocumented status for the rest of their lives (if undetected)."¹⁴

The detention elements of CIR, despite the heated debate, are rarely discussed on a national scale. If the 2006

and 2007 bipartisan attempts at CIR are any indication, the expansion of detention enforcement is a veiled component of increased border militarization. The more obscure rules and regulations include expanding the list of deportable crimes for all noncitizens, removing barriers to indefinite detention, and expanding the fast-track deportation process termed "expedited removal." Most detention reforms in the guise of CIR also include criminalizing "gang affiliation" (in lieu of the commission of actual criminal acts) and criminalizing individuals who provide life-saving aid to persons entering the country without inspection. Such reforms are hardly reformative and are certain to expand the system's widening infrastructure and prosecutorial capacity.



"Danny", a Chinese asylum seeker who arrived as a stowaway at age 15. The INS claimed he was an adult and kept him detained at adult facilities at the Colquitt County Jail in Moultrie, Georgia. PHOTO BY STEVEN RUBIN

OBScurity is a deliberate strategy of the detention regime, often with grave results for detainees. The system naturalizes criminality in a system that is technically noncriminal, and thus inoculates the detention regime from parallel critiques of the criminal justice system. Ultimately obscurity, ambiguity, and remoteness make detention a robust and flexible enforcement power controlling immigrants entering or already within the United States. This flexibility permits collusion with other government and corporate agendas, such as managing labor, fighting crime and terrorism, and producing political currency for politicians.

Despite the staggering growth and efficiency of Obama's detention and deportation machine, detainees remain jailed in obscurity, and are popularly described as nameless, faceless "illegals." The increasing size of the detention regime grows bureaucracies, creates profits and revenues for surrogate jailers, and legitimizes the security state. Because detention draws support from politicians on both sides of aisle, it's a

productive tool of enforcement that is elastic, ready to be re-tooled, rearticulated, and re-deployed for new migrant streams.

In the face of obscured incarceration, the strategy of advocates, family members, and detainees themselves has been to relate the daily, human effects of detention and deportation. Detainees and detention activists lobby Congress, file lawsuits, and protest publicly. Just recently, three undocumented youth activists from the National Immigrant Youth Alliance (NIYA) infiltrated a detention center in Florida and nine NIYA activists left the United States only to reenter the country and be placed in detention in Arizona.¹⁶ Hoping to both gather information and organize detainees from within, one of the Florida activists stated, "We realized we could be more effective if we just went straight to the source."¹⁷ These extremely risky tactics of infiltration and direct confrontation with the detention and deportation systems are perhaps a harbinger of future activism, and reflect newer and bolder confrontations with the obscurity of the detention regime. **D**

1. Ian Urbina and Catherine Rentz, "Immigrants Held in Solitary Cells, Often for Weeks." *New York Times*. March 23, 2013. <http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html>.
2. Paige St. John, "More than 12,400 California inmates on hunger strike, officials say." *Los Angeles Times*. July 2013. <http://articles.latimes.com/2013/jul/11/local/la-me-ff-prison-strike-20130712>.
3. John Simanski and Lesley M. Sapp, "Immigration Enforcement Actions: 2011," *Annual Report Office of Immigration Statistics, Department of Homeland Security*, (September 2012): 3-5.
4. Todd Miller, "Death and the Immigration Control Complex." *NACLA Border Wars blog*, May 15, 2013. <https://nacla.org/blog/2013/5/15/death-and-immigration-control-complex>; Olga Byrne and Elise Miller, "The Flow of Undocumented Children Through the Immigration System," *Vera Institute of Justice*, March 2012. <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>. See also Sonia Nazario, "Child Immigrants, Alone in Court." *New York Times*. April 11, 2013, A21; Seth Freed Wessler, "Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System," *Applied Research Center*, November 2011.
5. "Expose and Close: Executive Summary," *Detention Watch Network*, <http://detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ExposeClose/Expose-Executive11-15.pdf>.
6. Miller, "Death and the Immigration Control Complex."
7. Andrew Becker, "Rebranding at ICE Meant to Soften Immigration Enforcement Agency's Image." *Washington Post*. June 17, 2010, B03.
8. Christopher Petrella, "Private Prisons Currently Exempt from Freedom of Immigration Act," *Nation of Change*, September 25, 2012. <http://www.nationofchange.org/private-prisons-currently-exempt-freedom-information-act-1348581256>.
9. Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003), 124; Kelly Lytle Hernández, "The Crimes and Consequences of Illegal Immigration: A Cross-Border Examination of Operation Wetback, 1943-1954." *Western Historical Quarterly* 37 (Winter 2006): 441.
10. "Expose and Close: Stewart Detention Center, Georgia." *Detention Watch Network*, <http://detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ExposeClose/Expose-Stewart11-15.pdf>. See also Kenneth A. Mayeaux, "Oakdale is Different: Due Process Concerns for Detained Immigration Court Respondents in Louisiana" (paper presented at Human Rights First's "Dialogues on Detention," Washington, D.C., April 8, 2013.)
11. Mayeux, "Oakdale is Different."
12. "Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance," *Government Accountability Office*, GAO-07-875, July 2007.
13. Ashley Parker, "Senate Vote on Border Gives Push to Immigration Overhaul," *New York Times*, June 25, 2013, A1/A16.
14. Peter Schey, "Analysis of Senate Bill 744's Pathway to Legalization and Citizenship," *Center for Human Rights and Constitutional Law*, June 2013, 2.
15. Cindy Carcamo, "Young Immigrants Stage a Risky Border Protest," *Los Angeles Times*, July 22, 2013. <http://www.latimes.com/news/nationworld/nation/la-na-ff-border-crossers-20130723,0,6236308.story>.
16. Michael May, "Los Infiltradores," *American Prospect*, June 21, 2013. <http://prospect.org/article/los-infiltradores>.