THE HISTORICAL ORIGINS OF THE WORLD'S LARGEST IMMIGRATION DETENTION SYSTEM

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This morning I am going to focus on key developments in the origination of the U.S. immigration detention system in the 1970s, '80s, and '90s. The origins of our current detention system are located largely in the treatment of Haitian refugees and migrants, their experiences, and subsequent resistance.[1] This is an argument I develop more fully in a book called *Detain and Punish*. I hope to provide you with some of the key legal, political, and historical developments along our path to the current moment.

This might feel rather distressing and disempowering because of the current state of our immigration system, but I hope you hear a story that is also extraordinarily hopeful. History matters—not just to explain where systems of state violence, such as immigration detention, originated but also to document campaigns of resistance to learn from them and to chart alternative paths in the future. This, ultimately, is a story that is about resistance—especially the legal resistance that emerged within much broader campaigns for solidarity with migrants, refugees, and asylum-seekers.

The United States has the largest immigration detention system in the world.[2] It imprisons more than 400,000 people every year, many in privately operated, for-profit prisons and facilities.[3] This is an utterly inhumane system that costs taxpayers billions of dollars every year and has proven to be deadly.[4] Over the last forty years, the United States has become a vast, racialized, carceral state. In this most imprisoned country in the world, immigration detainees are now the largest proportion of federal prisoners.[5] This does not even take into account all of the other detention facilities, like state and county facilities.

So, how did we get here? When did mass incarceration become a centerpiece of U.S. immigration policy? How has immigration imprisonment become a cornerstone of our carceral state? And how, for that matter,

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1. CARL LINDSKOOG, DETAIN AND PUNISH: HAITIAN REFUGEES AND THE RISE OF THE WORLD'S LARGEST IMMIGRATION DETENTION SYSTEM 2–3 (2018).
2. *Id.* at 1.
3. *Id.*
4. *Id.* at 1, 29.
5. *Id.* at 1.

did our world become a place that imprisons and banishes those who dare to cross borders without permission?

The answer I offer to these questions reaches back into the 1970s; however, it is important to note that immigration detention has a much longer history. In the early twentieth century, Chinese immigrants, and other immigrants on the West Coast of the United States, were often detained at the West Coast detention center, Angel Island.[6] Migrants coming across the U.S.–Mexico border were subject to detention by border patrol officials.[7] On the East Coast, of course, European immigrants and others were sometimes detained on Ellis Island.[8] Prior to 1954, it was U.S. policy to detain almost all those seeking to enter the United States until a determination could be made on their admissibility.[9]

The United States chose a different path in 1954 when the government ended its formal policy of detention and replaced it with a policy of parole.[10] Detention ceased to be a formal part of U.S. immigration policy; although, limited detention continued in certain places in the following years.[11] Supreme Court Justice Tom C. Clark declared in 1958: "Physical detention of aliens is now the exception . . . . Certainly this policy reflects humane qualities of an enlightened civilization."[12] For the next twenty years or so, the United States had no formal policy of immigration detention, and the physical detention of aliens remained the exception.[13]

In the 1970s, however, detention started to make its return around the coast of south Florida in the Caribbean.[14] A growing number of people from Haiti began traveling by boat to U.S. shores to seek asylum and flee the political and economic violence of the despotic Duvalier regime.[15] Beginning with the 1972 arrival of the first of a sustained flow of so-called "Haitian boat people," the U.S. government adopted a policy of denying asylum to Haitians.[16] The government justified this by claiming that Haitians were economic migrants, not political refugees, despite the substantial evidence that many of those fleeing Haiti did have a well-founded fear of persecution.[17] In fact, what was really driving the government's decision to deny Haitians asylum was a combination of international interests, such as support for an anti-communist ally just off of American shores,

6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 1–2.
10. *Id.* at 2.
11. *Id.*
12. MARGARET REGAN, DETAINED AND DEPORTED: STORIES OF IMMIGRANT FAMILIES UNDER FIRE at xviii (2015).
13. LINDSKOOG, *supra* note 1, at 2–3.
14. *Id.* at 9.
15. *See id.* at 12–13.
16. *Id.* at 17.
17. *Id.* at 15.

and local and national political interests—chiefly, pressures stemming from racist and xenophobic opposition to Haitian arrival.[18]

To discourage unwanted Haitians from coming to the United States, the U.S. government introduced a series of reinforcing practices that included, among other things, detention in local and state jails and prisons.[19] Immigration and State Department officials hoped that these harsh policies toward Haitians would deter people from Haiti, and elsewhere, from seeking asylum in the United States.

In July 1978, the U.S. government took a big step toward formalizing its detention policy with the institution of the Haitian Program.[20] This was formulated in a series of meetings between the heads of the Immigration and Naturalization Service (INS) and the State Department, which dramatically expanded the government's efforts to exclude Haitians.[21] It required detention for all Haitians and revoked their authorization to work in the United States.[22]

It also introduced an expedited deportation process, increasing the number of hearings from 5 to 15 per day in early 1978, to 100 to 150 per day by September of that same year.[23] All of these cases were scheduled to be heard by no more than five immigration judges.[24] And, while Haitian asylum applicants were entitled to have a lawyer present, the court often scheduled simultaneous hearings involving the same lawyer.[25] Even when attorneys could be present, they were often barred from speaking on behalf of their clients.[26] When asylum speakers were allowed to speak for themselves, inadequate translation, and sometimes no translation service at all, was provided.[27] At the conclusion of these hearings, Haitian asylum-seekers received a form denying them asylum that had been prepared in advance and pre-signed by the INS District Director.[28]

The introduction of this Haitian Program was a devastating blow to Haitians and their allies, but it also generated widespread resistance. More than seventy Haitian refugees in jails in Immokalee and Belle Glade, Florida, launched hunger strikes.[29] This prompted the Haitian Refugee Center and the Rescue Committee for Haitian Refugees to speak out publicly in protest, and perhaps most significantly, opponents of the Haitian Program engaged in legal resistance.[30]

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18. *Id.* at 16–17.
19. *Id.* at 17.
20. *Id.* at 26.
21. *Id.*
22. *Id.* at 27.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* at 29.
30. *Id.*

In May 1979, more than 4,000 Haitian refugees filed a class-action lawsuit against the U.S. government and its Attorney General, Benjamin Civiletti.[31] This lawsuit charged that the Haitian Program violated the refugees' constitutional rights and that the government had unfairly and illegally prejudged Haitians' applications for asylum.[32] After a three-week trial, U.S. District Court Judge James Lawrence King issued his decision in *Haitian Refugee Center v. Civiletti*[33]: "The plaintiffs charge that they faced a transparently discriminatory program designed to deport Haitian nationals and no one else. The uncontroverted evidence proves their claim."[34] King continued:

> The plaintiffs are part of the first substantial flight of black refugees from a repressive regime to this country. All of the plaintiffs are black. In contrast, for example, only a relatively small percent of the Cuban refugees who have fled to this country are black. Prior to the most recent Cuban exodus, all of the Cubans who sought political asylum in individual 8 C.F.R. Sec. 108 hearings were granted asylum routinely. None of the over 4,000 Haitians processed during the INS "program" at issue in this lawsuit were granted asylum. No greater disparity can be imagined.[35]

"The manner in which INS treated the more than 4,000 Haitian plaintiffs violated the Constitution, the immigration statutes, international agreements, INS regulations and INS operating procedures. It must stop[,]" Judge King declared.[36]

The Haitian community and its allies hailed the King ruling as a landmark victory, a conclusion that legal scholars and historians have since affirmed.[37] But they also understood their legal resistance as just one piece of their campaign, carried out in conjunction with other forms of political action that ranged from resistance by those inside jails and prisons, to grassroots activism, to lobbying and advocacy in the halls of Congress.[38] The Haitian community and its allies also soon learned how the U.S. government would attempt to circumvent the legal restrictions that the court placed on them.

In what would become a pattern of behavior by successive administrations, the Carter Administration—rather than accepting the legal obligation to give Haitian asylum-seekers fair asylum hearings and due process—observed that the *Civiletti* ruling applied only to Haitians in the jurisdiction of the Southern District of Florida.[39] If asylum-seekers could be

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31. *Id.*
32. Haitian Refugee Ctr. v. Civiletti, 503 F. Supp. 442, 451 (S.D. Fla. 1980).
33. 503 F. Supp. 442 (S.D. Fla. 1980).
34. *Id.* at 451.
35. *Id.* (citations omitted).
36. *Id.* at 452.
37. LINDSKOOG, *supra* note 1, at 31.
38. *See id.* at 29–32.
39. *Id.* at 31.

processed outside that district, they would not enjoy the protections afforded by King's ruling.[40] Toward that end, in what would be a precursor to the detention camps at Guantanamo Bay, the Carter Administration pursued the creation of a detention and processing center at Fort Allen, a U.S. Army base in Puerto Rico.[41]

Despite the Carter Administration's Puerto Rico plan, the *Civiletti* ruling appeared to put the brakes on the United States' slide toward reinstituting detention as a formal part of its immigration policy. Other events were transpiring, however, that shattered this illusion.

The *Civiletti* ruling came down at the very moment that there was a mass arrival of migrants from the Caribbean.[42] From April to October of 1980, nearly 125,000 Cubans arrived by boat on U.S. shores.[43] This occurred just as thousands of Haitians were fleeing a deteriorating human rights situation in their country.[44] Approximately 15,000 Haitians and more than 100,000 Cubans arrived during this time span, placing the United States in a position of being a country of mass first asylum for the first time in its modern history.[45] This presented the Carter Administration with a refugee crisis for which it was totally unprepared.

At the height of the refugee crisis, both Cubans and Haitians were detained pending processing.[46] But, as the King ruling suggested, the Cubans were considered bona fide refugees because they were fleeing a communist-ruled country.[47] As such they were mostly processed and released, with the important exception of several hundreds of Cubans that languished in prisons for some years.[48] Haitians, on the other hand, were not classified as having legitimate asylum claims and so they occupied and remained in an ever-growing system of immigration prisons—one of which was the now notorious Krome Avenue Detention Center on the edge of the Florida Everglades.[49]

Ronald Reagan's election to president in 1980 also proved critically important to the development of the United States' immigration detention system. When the Reagan Administration came to power in 1981, the Cuban element of the refugee crisis was subsiding while the Haitian exodus to the United States continued.[50] To halt the continuing arrival of Haitian asylum-seekers on American shores, the Reagan Administration introduced the policy of "interdiction," a practice in which U.S. Coast Guard

40. *Id.*
41. *Id.*
42. *See id.* at 30, 34.
43. *Id.* at 34.
44. *Id.*
45. *Id.*
46. *Id.* at 35–36.
47. *Id.* at 35.
48. *Id.* at 30; *see also* MARK S. HAMM, THE ABANDONED ONES: THE IMPRISONMENT AND UPRISING OF THE MARIEL BOAT PEOPLE 53, 58–59 (1995).
49. LINDSKOOG, *supra* note 1, at 36, 42.
50. *Id.* at 49.

cutters would patrol the waters of the northern Caribbean in order to intercept boats of Haitian asylum-seekers before they could reach the United States.[51] These patrols created a sort of floating wall, protecting American borders from unwanted migrants and preempting their efforts to seek asylum in U.S. courts.[52] Though some would make it past this floating wall, the Reagan Administration had a plan for them as well.

Building upon the Carter Administration's Haitian detention policy, especially the Haitian Program, the Reagan Administration officials began detaining all undocumented Haitians without the possibility of bond in May of 1981.[53] With this launching of mandatory detention for all unauthorized Haitians, the Reagan Administration formally revived the practice of immigration detention that had lain dormant since 1954 and had only recently started to reemerge in the late 1970s under the Carter Administration.[54]

I think it's useful here to pause for a moment to ask: Why was the U.S. government so concerned and intent on stopping the flow of Haitian asylum-seekers—especially because this group constituted less than 2% of all illegal entrants in the United States at this time?[55] The answer, I believe, is that the Haitian detention and interdiction policy was not intended to be only for Haitians. Although it applied initially just to Haitians, it was for all would-be asylum-seekers.[56] According to Naomi Flink Zucker and Norman Zucker, the goal of Haitian detention was not to reduce the number of illegal entries but rather to reduce the number of individuals asking for asylum.[57]

Because the Reagan Administration was determined not to expand the asylum apparatus, it would need to find a way to discourage asylum-seekers instead—a project it initiated by first targeting Haitians.[58] As Michael J. Churgin observes, Haiti would be the test case in employing detention and interdiction as an experiment in deterrence.[59] And, as Peter Andreas argues, border policing is actually "less about achieving the stated instrumental goal of deterring illegal border cross[ing] and more about politically recrafting the image of the border[.]"[60] This is to symbolically reaffirm the state's sovereignty and legal authority through projecting the appearance of a more secure and orderly border.[61]

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51. *Id.* at 51.
52. *Id.* at 102.
53. *Id.* at 62.
54. *Id.*
55. *Id.* at 67.
56. *Id.*
57. NORMAL L. ZUCKER & NAOMI FLINK ZUCKER, THE GUARDED GATE: THE REALITY OF AMERICAN REFUGEE POLICY 163 (1987).
58. *Id.*
59. Michael J. Churgin, *Mass Exoduses: The Response of the United States*, 30 INT'L MIGRATION REV. 310, 321 (1996).
60. PETER ANDREAS, BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE 85 (2d ed. 2009).
61. *Id.*

The detention of Haitian asylum-seekers was thus a way for the Reagan Administration to reassert its sovereignty in the wake of the refugee crisis of 1980, as well as other global events that had challenged the Administration's authority.[62]

The government's new assault on Haitian asylum-seekers prompted an even more vigorous and wide-ranging campaign of resistance. Once again, legal action represented a key part of this political resistance. On May 20, 1981, detained Haitian refugees petitioned the U.S. District Court in the Southern District of Florida for a writ of habeas corpus as well as an injunction against their final orders of exclusion and the government's detention policy.[63] The case was *Louis v. Nelson*,[64] later classified as *Jean v. Nelson*.[65]

The Haitians and their advocates argued that the detention policy was illegal, in part, because the government failed to comply with the portion of the Administrative Procedures Act (APA) that requires public notification and a period of public comment before implementing a new policy.[66] The plaintiffs also asserted that the detention program was discriminatory and illegal because it applied to Haitians alone.[67]

In June 1982, U.S. District Court Judge Eugene Spellman ruled in favor of the plaintiffs, finding that the government's detention program had indeed violated the APA and was thus null and void.[68] Judge Spellman further ruled that the Haitians had been subjected to a policy that made "detention the rule, not the exception[.]"[69] The court ordered the Reagan Administration to release the 1,800 detainees represented in the lawsuit and to end the Haitian detention program, restoring the parole policy that had been in place before May 20, 1981.[70] Legal and political resistance had worked—or so it seemed.

Much like the Carter Administration before it, the Reagan Administration was not inclined to surrender its detention tool or begin to admit Haitian asylum-seekers. To meet its requirements under the APA, and to nullify the court's ability to block the detention program on the grounds of discrimination, the Reagan Administration publicly announced that it was expanding the policy of mandatory detention from Haitians, specifically, to all inadmissible aliens.[71] In a July 1982 interim rule that announced the expanded detention policy, the government declared: "Aliens who appear

62. LINDSKOOG, *supra* note 1, at 68.
63. Louis v. Nelson, 544 F. Supp. 973, 984 (S.D. Fla. 1982).
64. 544 F. Supp. 973 (S.D. Fla. 1982).
65. 711 F.2d 1455 (11th Cir. 1983).
66. *Louis*, 544 F. Supp. at 984.
67. *Id.*
68. *Id.* at 1003–04.
69. *Id.* at 997.
70. *See id.* at 1003–04.
71. Detention and Parole of Inadmissible Aliens; Interim Rule with Request for Comments, 47 Fed. Reg. 30044 (proposed July 9, 1982) (to be codified at 8 C.F.R. pts. 212, 235).

to be inadmissible and who have false or no documentation, and/or who arrive at places other than designated ports of entry, will be detained . . . ."[72] This interim rule provided the legal basis for the dramatic expansion of the immigration detention system that would soon follow.

The U.N. High Commissioner for Refugees and many other groups protested, arguing that this interim rule violated the Refugee Act of 1980 and the U.N. Protocol Relating to the Status of Refugees.[73] The INS issued its final rule regardless on October 19, 1982, and the policy of blanket detention was thus formalized.[74] This formal expansion of the government's detention policy was the most critical step along the path to our current moment in which the United States uses detention widely in its immigration enforcement.

With the new blanket detention policy in place, the Reagan Administration increased its efforts to detain refugees and asylum-seekers from Central America who, at this time, were fleeing bloody civil wars and U.S.-backed death squads in places like El Salvador, Guatemala, and Nicaragua.[75] The Reagan Administration quickly began constructing a detention system from scratch because there had been no related policy for some decades.[76] As the number of INS detention facilities grew dramatically throughout the 1980s, so did the agency's overall capacity.[77] And, as the number of Central Americans refugees in detention grew, Salvadorans and Guatemalans joined Haitians in launching some of the key legal challenges against the detention system of the 1980s.[78]

Notably, instances of resistance through hunger strikes and protests, both inside and outside of these new facilities, also increased throughout the 1980s.[79] And, while the Reagan Administration was constructing the U.S. detention regime, it is well known now that the Administration was also building a nonimmigration carceral system.[80] This was primarily through the racially driven War on Drugs and War on the Poor, both of which overlapped substantially with the government's immigration initiatives.[81]

Many of the immigration and nonimmigration prisons that were filling up in the 1980s were privately owned and operated for-profit facilities. This was the beginning of the existence of for-profit prisons in this country and planted the seeds for the private systems and corporations, such as

72. *Id.* at 30045.

73. LINDSKOOG, *supra* note 1, at 87–88.

74. Detention and Parole of Inadmissible Aliens, 47 Fed. Reg. 46493 (proposed Oct. 19, 1982) (to be codified at 8. C.F.R. pts. 212, 235).

75. LINDSKOOG, *supra* note 1, at 70.

76. *Id.* at 65.

77. *Id.* at 80, 82.

78. *Id.* at 89–90.

79. *Id.* at 71–72.

80. *Id.* at 82–84.

81. *Id.* at 85.

CoreCivic and GEO Group, which are now reaping the benefits of the system that took root in the 1980s.[82]

The next struggle over detention and asylum came in the first years of the 1990s.[83] In 1991, another crisis in the Caribbean would, again, force tens of thousands to seek asylum on American shores, opening up a whole new chapter in the history of immigration detention.[84] This chapter is again centered on the treatment of, and subsequent resistance by, Haitian asylum-seekers.

On September 29, 1991, members of the Haitian military staged a coup d'état, forcing democratically elected president Jean-Bertrand Aristide to leave the country.[85] The next targets of the military were the activists and organizations that made up Haiti's Popular Movement, which had uprooted the Duvalier dictatorship in 1986 and had dared to take control of the government in the election of Aristide in 1991.[86] Military and paramilitary forces murdered hundreds, likely thousands, in the first days of the coup.[87] Death squads carried out a campaign of terror. And women, who represented the core of the Popular Movement, were a special target of violence and tyranny.[88]

In the face of all this violence, tens of thousands of new Haitian asylum-seekers fled their country, some of whom launched out on boats in search of American shores again.[89] But the U.S. government, now helmed by the Administration of George H. W. Bush, blocked their escape with U.S. Coast Guard cutters, which were in place thanks to the interdiction policy of the early 1980s.[90] The Bush Administration started detaining these asylum-seekers onboard Coast Guard vessels while the government tried to persuade other Caribbean and Latin American nations to accept the Haitians.[91]

By mid-November, the number of refugees fleeing Haiti had so multiplied that the U.S. government's practice of detaining them at sea was unsustainable.[92] Having failed to persuade Haiti's neighbors to accept a substantial number of refugees, and also remaining unwilling to admit the Haitians to the United States, the Bush Administration decided to return the asylum-seekers directly to Haiti, which was still in the throes of a coup and bathed in violence.[93]

82. *Id.* at 82–83, 86–87.
83. *Id.* at 99.
84. *Id.* at 99, 102.
85. *Id.* at 100.
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.* at 102.
90. *Id.*
91. *Id.* at 102–03.
92. *Id.* at 103.
93. *Id.*

On November 18, 1991, 538 Haitians were forcibly returned to a country that remained in the violent grip of the military—a move that was met with outrage by international observers and human rights advocates.[94] One day after the U.S. government began returning Haitian refugees, attorneys for the Haitian Refugee Center filed a complaint in court and received a temporary restraining order against the repatriation of the Haitians.[95]

Stymied by this lawsuit and the court order, the Bush Administration attempted to resolve its Haitian problem another way. Instead of mass detention onboard U.S. Coast Guard vessels, the Haitians were transferred and detained at the nearby U.S. Naval Base of Guantanamo Bay, Cuba.[96]

Like other prior expansions of the detention scheme, the establishment of the Haitian refugee camp at Guantanamo Bay was the government's response to legal resistance by the refugees and their advocates as well as an attempt by U.S. officials to circumvent their legal obligations to asylum-seekers.[97] The Naval Base at Guantanamo Bay was the ideal space to implement what some had long called for: an extraterritorial detention facility that could act as a buffer between the United States and those nearby nations that were sending unwanted migrants to U.S. shores.

According to an attorney for the Haitian refugees, Michael Ratner, the U.S. government also regarded Guantanamo as an attractive location because it allowed the government to claim that not only were refugees barred from applying for protection or political asylum until they actually set foot in the United States but also that the U.S. Constitution afforded no protections for foreign nationals outside the country—that is, in Guantanamo.[98]

The detention facilities at Guantanamo attracted worldwide attention and controversy in the years following the terrorist attacks of September 11, 2001, when the George W. Bush Administration began using the Naval Base in Guantanamo Bay to hold alleged enemy combatants captured in Afghanistan, Iraq, and elsewhere during the far-reaching and ever-expanding "War on Terror."[99] It was this extraterritorial nature of the U.S. global network of black sites and prison sites (including Guantanamo) that enabled the use of enhanced interrogation methods, which are illegal within the borders of the United States, to continue.[100] But it is important to realize that even before Guantanamo became a controversial, extraterritorial

94. *Id.* at 103–04.
95. *Id.* at 105.
96. *Id.* at 105–06.
97. *Id.* at 106.
98. *Id.*
99. *Id.*
100. *Id.*

prison in the War on Terror, it was used a decade earlier to detain Haitian refugees.[101]

The ongoing human rights catastrophe in Haiti and the elder Bush Administration's refusal to provide a safe haven for refugees despite the persisting violence prompted the largest yet movement of Haitian solidarity.[102] This movement was international in scale and became very powerful.[103] Legal challenges arising from this movement also proved decisive.[104] The most significant challenges centered on a group of Haitian refugees imprisoned in what was called Camp Bulkeley, a space that held HIV-positive Haitians that, despite already having been ruled as having a credible and well-founded fear of political persecution, were blocked from entering the United States on the basis of their HIV status.[105]

To protest their confinement, the Haitian refugees staged a dramatic demonstration and hunger strike.[106] Activists on the outside, including the famed African-American dancer and activist Katherine Dunham, joined in solidarity hunger strikes.[107] The detainees' action was met with brutal repression by the camp commander, which ultimately backfired and drew substantial media attention to the plight of the refugees at Camp Bulkeley.[108]

A team led by Yale Law School faculty and students brought a legal challenge to the detentions at Camp Bulkeley that paralleled the resistance that was being carried out within the confines of Guantanamo.[109] This case, *Haitian Centers Council v. Sale*,[110] resulted in another victory.[111] The federal court ruling declared that Camp Bulkeley was "nothing more than an HIV prison camp[.]"[112] "The Haitians' plight is a tragedy of immense proportion and their continued detainment is totally unacceptable to this court."[113] The court ordered the government to close this HIV prison camp and to release the Haitian refugees to go "anywhere but Haiti[.]"[114] The Haitian refugees of Guantanamo were freed.[115]

It seemed that the multifaceted campaign of resistance had worked. Guantanamo was closed.[116] But the government, which had pledged to appeal the ruling, proposed a settlement to the Haitians' legal team in which

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101. *Id.*
102. *Id.* at 114–17.
103. *Id.* at 116–17.
104. *Id.* at 117.
105. *Id.* at 115.
106. *Id.* at 119.
107. *Id.* at 120.
108. *Id.* at 119–20.
109. Haitian Ctrs. Council, Inc. v. Sale, 823 F. Supp. 1028, 1032–34 (E.D.N.Y. 1993).
110. 823 F. Supp. 1028 (E.D.N.Y. 1993).
111. *See id.* at 1049–50.
112. *Id.* at 1038.
113. *Id.* at 1045.
114. *Id.* at 1050.
115. *See id.*
116. LINDSKOOG, *supra* note 1, at 121.

the government agreed to drop its appeal and reimburse the more than $600,000 that the plaintiffs had spent in litigating the case—if the Haitians' attorneys would agree to join the government in asking the district court judge to vacate his final order in the case.[117] The Haitians' legal team eventually agreed, and the judge ultimately vacated his final order.[118]

Why does this matter? Because the court's ruling was annulled, the Haitian detainees' legal victory ceased to have any value as legal precedent.[119] No obstacles blocked the government's use of Guantanamo as a future detention site for not only Haitians but, eventually, other prisoners as well—especially, tragically, in the post-9/11 period.[120] This saga of Haitian detention in Guantanamo Bay is one of the key moments in the 1990s that dramatically expanded the U.S. detention system.

At the beginning of this third decade of the twenty-first century, migration detention has now become a global phenomenon.[121] As the United States has continued to expand its detention, the world has followed its lead.[122] Part of this phenomenon is a growing global practice of extraterritorial detention that seeks to contain unwanted migrants before they can even reach the boundaries of their destination country.[123] This practice is modeled on what the United States pioneered first in interdiction and then in the extraterritorial detention of Guantanamo Bay.[124] The "Australian Solution," in particular, which involves holding migrants off the coast before they can reach Australia, is very clearly based on the Guantanamo model of detention.[125]

Despite this expanding phenomenon, there is also continued resistance in the twenty-first century. Recent years have witnessed a new generation of activists, like those working with detainees at the Northwest Detention Center in Washington to carry out hunger strikes and protests.[126] Activists in cities across the nation are conducting direct action to pressure large corporations to divest their holdings in private prison companies, and scholars (like our own César García Hernández) are giving us new intellectual resources to wage this struggle.[127]

César's new book provides one such abolitionist vision where he invites us to imagine a future in which migration prisons do not exist. Realizing this vision will require a continued critical engagement with the idea and possibility of human rights, especially in the face of state sovereignty.

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117. *Id.* at 122.
118. *Id.*
119. *Id.*
120. *Id.* at 121–22.
121. *Id.* at 149.
122. *Id.* at 149–50.
123. *Id.* at 150.
124. *Id.*
125. *Id.*
126. *Id.* at 153–54.
127. *Id.* at 154.

And those who came before us also recognize the value of human rights in protecting people in a world on the move. I close my own book with a statement from a U.N. High Commissioner for Refugees, issued in 1986, which called upon the world to recognize that, "next to life itself, liberty of the person and freedom of movement are among the most precious of human rights."[128]

Even further back, Frederick Douglass (formerly enslaved abolitionist, women's rights advocate, and, apparently, immigrant rights advocate) insisted 151 years ago that Asian immigrants should be welcome and given the right of citizenship.[129] "There are such things in the world as human rights[,]" Douglass said in 1869.[130] "They rest upon no conventional foundation, but are external, universal, and indestructible. Among these, is the right of locomotion; the right of migration; the right which belongs to no particular race but belongs alike to all and to all alike."[131]

As we examine the past to better understand the present, let us remember that the law has been, and remains, a crucial terrain of struggle. For history reminds us that while the law has often been a weapon to carry out violence against migrants (and so many other people), it has also been a tool to defend the powerless and to resist detention, exclusion, deportation, and other forms of state violence. Learning the historical origins of our current immigration detention system, but also recognizing the fierce and relentless legal and political struggles that are a part of this history, can tell us not only why our carceral state exists today but also how to create an alternative world of freedom.

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128. *Id.* at 156 (quoting Guy S. Goodwin-Gill, *International Law and the Detention of Refugees and Asylum Seekers*, 20 INT'L MIGRATION REV. 193, 195 (1986)).

129. *(1869) Frederick Douglass Describes the "Composite Nation"*, BLACKPAST (Jan. 28, 2007), https://www.blackpast.org/african-american-history/1869-frederick-douglass-describes-composite-nation/.

130. *Id.*

131. *Id.*