

The Business of Freedom

The Impact of Opportunism on U.S. Immigration Detention for Poppa – the greatest humanitarian I have ever known

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In July 1981, Ronald Reagan proclaimed, “Our nation is a nation of immigrants. More than any other country, our strength comes from our own immigrant heritage and our capacity to welcome those from other lands... We shall... continue to share in the responsibility of welcoming and resettling those who flee oppression.”¹ Yet by the mid-1980s, refugees were deported by the thousand, and immigrant detention was cemented as a mass immigration strategy for the first time in US history.² This strategy has continued uninterrupted, and today immigration detainees represent the fastest growing segment of the jail population in the United States.³ The timing of the policy’s introduction was unexpected: although there was a greater influx of Cubans to the US in the 1980s than previously seen in the 20th century, overall immigration was growing at a constant rate and did not spike until the 1990s. This paper aims to further examine the policy’s origins and to determine why immigrant detention centers were introduced in 1981.⁴ By looking at the causes of the policy’s introduction, its initial implementation, and the transformation in scale of immigrant detention, this study concludes that detention in the 1980s operated more as a strategy for political leverage than as a deliberate means of controlling the flow of immigration. While detention was subsequently expanded through new mechanisms like privatization, the core justification behind it—the pervasive belief that refugees are dangerous and illegitimate—remained the same. This idea was not based on true events or statistics, but was fabricated in order to further political goals.

I will first examine the Mariel Boatlift, an influx of 125,000 Cubans to Florida in 1980. Commonly ac-

knowledged as the catalyst for the introduction of immigrant detention centers, the Mariel Boatlift created national panic over immigration and cast the Mariels as some of the most despised immigrants in American history. Although the Boatlift only lasted seven months, it played a significant role in corroding public opinion about refugees and produced repercussions that lasted throughout the 1980s. The processing centers housing these refugees and the riots resulting from them only further worsened public sentiment.⁵ This negativity subsequently enabled the implementation of universal detention for Haitian refugees, which is the second topic of this paper. Haitians have consistently suffered poor treatment throughout U.S. immigration history. Before 1981, however, they had never been detained comprehensively. The third section of this paper details Haitians’ historic discrimination and how it led them to be the first uniformly detained group in America. Finally, this paper examines the factors enabling detention to grow into its current form.

In this highly politicized sphere, it is important to define our terms. “Immigrant detention,” “refugee,” and “illegitimate” are terms central to this argument. As used in this essay:

- *Immigrant detention* is the apprehension of immigrants upon their entering a country. It is not necessarily performed as a response to illegal activities, and, as I will argue, is often performed for political benefit to the State.⁶
- *Refugees* are a class of immigrants seeking extra-national protection from a “well-founded fear” of persecution.⁷
- *Illegitimacy* in this paper is meant to indicate

1 Ronald Reagan, “Statement on United States Immigration and Refugee Policy,” July 30, 1981, <http://www.presidency.ucsb.edu/ws/?pid=44128>.

2 Earlier immigration ports such as Angel Island and Ellis Island doubled as detention centers, but not on this scale. See Jana K. Lipman, “The Fish Trusts the Water, and It Is in the Water That It Is Cooked: The Caribbean Origins of the Krome Detention Center”, *Radical History Review* 2013, no. 115 (January 1, 2013): 115–41.

3 Miller, Teresa A. “The Impact of Mass Incarceration on Immigration Policy in Invisible Punishment: The Collateral Consequences of Mass Incarceration”, ed. Marc Mauer and Meda Chesney-Lind. New York: 2002, 214.

4 In 1981, immigration detention centers were introduced on a large scale for the first time. However, Ellis Island had detained some immigrants prior to this year. Therefore, this paper does occasionally, for accuracy, refer to the “re-introduction” of detention. This is just a technical detail though—for most applicable purposes the Mariel Boatlift is the beginning of the detention narrative.

5 Mark S. Hamm, *The Abandoned Ones: The Imprisonment and Uprising of the Mariel Boat People* (Boston, Northeastern University Press, 1995): 56.

6 To see more on the shift in the 1980s to using immigration as an immediate response and as a deterrent to illegal immigration, see Faiza W. Sayed, “Challenging Detention: Why Immigrant Detainees Receive Less Process Than ‘Enemy Combatants and Why They Deserve More,” *Columbia Law Review* 111 (2011): 1833–1877.

7 1951 UN Convention Relating to the Status of Refugees, article 1A(2): “[A]ny person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail

the quality of being against socially accepted standards but not in direct contradiction with the law.⁸

It is important to note that these terms have slightly different meanings in contemporary usage.

For example, immigrant detention today generally tends to be rationalized in terms of the suspicion of criminal activity.⁹ However, in the 1980s context of universal detention only for certain groups, the given definition is much more appropriate.

These terms are contentious not only because of their political subject matter, but also due to the lack of existing historical literature about immigrant detention. Although many books touch upon the key events discussed in this paper, especially the Mariel Boatlift, hardly any works touch upon these events in the context of immigrant detention. This absence indicates that historians do not generally see mass immigrations in the 1980s as part of the detention narrative. When they do, such as in Michael Welch's *Detained: Immigration Laws and the Expanding I.N.S. Jail Complex*, they view detention as arising "in light of the arrival of the Mariel Cubans" and thus portray the Mariel Boatlift as an "immigration crisis."¹⁰ This paper disputes the idea that unmanageable immigration levels forced the reintroduction of detention.

There is, however, a well-developed body of scholarship on the criminalization of immigration in the US, the differential treatment of Haitians and Cubans, and Reagan's immigration policies more broadly. Generally, immigration policy in this era is characterized as restrictive and enforcement-minded, and this paper does not challenge that characterization.¹¹ Nicholas Laham's *Ronald Reagan and the Politics of Immigration Reform* effectively portrayed Reagan's overall immigration policy as an economic failure, blaming the policy's poor performance on a lack of information about immigrants. Similarly, Marco Rivera's *Decision and Structure: U.S. Refugee Policy in the Mariel Crisis* details the "overly politicized decision making" and the "restrictive, enforcement-minded approach" to events.¹² Through a closer examination of the events of 1980, this essay will add depth and nuance to our understanding of Reagan's compliance-heavy, inhibitive approach and high-

light how different groups of immigrants were confined in a variety of ways.

The piece of research most pertinent to my project is Brianna Nofil's 2012 bachelor's thesis, "Detained Immigrants, Excludable Rights: The Strange Devolution of U.S. Immigration Authority, 1882-2012."¹³ Nofil's work does discuss many of the same issues as this paper (for example the Mariel Boatlift, Camp Krome, and privatization) but its principal focus is on the role of government and plenary power in driving the development of detention, rather than a more detailed analysis of the events of 1980. While some of these differences can be attributed to scope (Nofil's paper covers the period 1882 to 2012), our projects diverge due to a subtle difference in motivation. Nofil's paper considers the history of immigrant detention as a systemic problem produced by plenary power, whereas I am interested in examining the short-term series of events that led to immigrant detention as we know it today. Although I agree that detention is a systemic problem arising from long-standing ideas and modes of power, I think it is still important to consider the highly contingent nature of its reintroduction and the implications this has for its continuation into the present day.

THE MARIEL BOATLIFT

"Ours is a country of refugees," President Jimmy Carter stated in May 1980, during a speech concerning the US acceptance of Cuban refugees. "We'll continue to provide an open heart and open arms to refugees seeking freedom from Communist domination and from the economic deprivation brought about by Fidel Castro and his government."¹⁴ Between April and September of that year, some 125,000 Cubans took part in this open door policy and made the 100-mile journey from the port of Mariel, Cuba, to Key West, Florida. This mass defection heavily exceeded the original White House prediction of 10,000 Cuban refugees and caused administrative issues.¹⁵ To process refugees in accordance with the Refugee Act of 1980, the Immigration and Naturalization Service (INS) set up two relocation facilities in South Florida that would later become the models for the immigrant detention system. This section aims to analyze not only who

himself of the protection of that country."

8 Winston Chou, "Seen Like a State: How Illegitimacy Shapes Terrorism Designation," *Social Forces* 94 (2016): 1129-1152.

9 This trend is mainly due to the passing of the Anti-Drug Abuse Act of 1988, which broadened the usage of mandatory detention to noncitizens committing certain crimes; see Faiza W. Sayed, "Challenging Detention," 1837.

10 Michael Welch, *Detained: Immigration Laws and the Expanding I.N.S. Jail Complex* (Philadelphia: Temple University Press, 2002): 95.

11 Mario A. Rivera, *Decision and Structure: U.S. Refugee Policy in the Mariel Crisis*, (Lanham, MD: University Press of America, 1991), 1.

12 Mario A. Rivera, *Decision and Structure: U.S. Refugee Policy in the Mariel Crisis* (Lanham, MD: University Press of America, 1991), 1.

13 Brianna Nofil, "Detained Immigrants, Excludable Rights: The Strange Devolution of U.S. Immigration Authority, 1882-2012" (Bachelor's thesis, Duke University, 2012).

14 "Nation: Open Heart, Open Arms", *Time Magazine*, May 19, 1980, <http://content.time.com/time/magazine/article/0,9171,924093,00.html>.

15 "Cuban Refugees", Department of State Bulletin, June 1980, 68.

was coming into Florida at this time and why, but, more importantly, how the Mariel Boatlift affected the US population on a wider scale. After all, the number of immigrants relative to the size of the population in America was no greater than it had been in the 1950s, when Ellis Island was shut down and the economy was booming.¹⁶ In the 1980s, however, this same level of immigration was seen as unmanageable and a cause of many of the economic problems of the time. This contradiction suggests that public perception was the key factor shaping Mariel Boatlift policy, not, as traditionally believed, economic necessity.

On April 20, 1980, Fidel Castro declared that Cubans wishing to emigrate to the US were free to do so by boat from Mariel.¹⁷ During the months leading up to Castro's announcement, there had been growing political dissatisfaction and hence a marked increase in attempts to leave Cuba. When 10,000 desperate would-be migrants occupied the Peruvian embassy in early April, it was clear that the situation was no longer sustainable.¹⁸ Castro, embarrassed by this blatant international show of unpopularity, attempted to turn the events to his favor by allowing the “Cuban Overseas Community” to come by boat and pick up refugees and family members.¹⁹ Within three days of Castro's announcement, 280 Cuban refugees arrived in Key West, and 68 in Miami.²⁰

US refugee policy, however, was not designed to cater to such a sudden influx of refugees. Earlier in 1980, the Cuban government had been frustrated by the US's inability to prevent certain naval hijackings and had threatened to initiate another mass immigration similar to the 1965 Camarioca Boatlift. This threat triggered the American passage of the Refugee Act of 1980, which raised the annual refugee admissions limit from 17,400 to 50,000 for three years.²¹ But with over 280 refugees arriving in a single day (equivalent to over 100,000 annually), it quickly became clear that these preparations would not be adequate.²² On April 26, a meeting was held among senior representatives of US federal agencies, and it was determined that the boatlift had to be stopped. However, Carter was hesitant to engage Cuba in bilateral negotia-

tions on immigration out of fears that other Cold War-related issues would be discussed. Thus, the administration entered a deadlock, and, by the second week of May, the number of daily arrivals exceeded 3,500.²³

In response to the flood of immigrants, President Carter announced on May 14 a five-point program for halting Cuban emigration.²⁴ As part of this program, Cubans landing in Florida would no longer be considered as refugees but as applicants for asylum, and the 1980 Refugee Act would no longer apply to them.²⁵ Other points of the program included: implementing an airlift and sealift for “qualified” candidates, opening a family registration center in Miami, urging boats to return from Cuba without additional passengers (in partnership with the Coast Guard), and commencing exclusion proceedings against any ‘criminals’ (a designation over which Castro held primary authority) shipped over from Cuba. In short, Carter was no longer simply denying asylum to arriving refugees; he was now preventing undesired refugees from even reaching US shores.

Despite Carter's best attempts, the flow of Cuban refugees continued, and it was not until September 26 that the boatlift was proclaimed to be officially over. Once again, it was Castro who dictated the speed and course of events; only after he ordered “all remaining boats in the port of Mariel, Cuba, to return to the United States without refugees” did the White House make any official statements.²⁶ This 159-day exodus ultimately left a significant stain on Carter's presidency. Castro's control of events made Carter appear inept and unable to prevent unwanted peoples from entering America. In combination with the Iranian hostage crisis and the general Cold War paranoia that still gripped most of the American populace at this time, Carter's perceived mismanagement of the Mariel Boatlift made him particularly unpopular. A Roper Poll in October 1980 showed that 91 percent of people wanted the federal government to “make an all-out effort against illegal entry into the U.S.,” while the Assistant to the President for Intergovernmental Affairs at the time, Jack H. Watson Jr., described the boatlift as “politically...[a] no

16 Alex Larzelere, *The 1980 Cuban Boatlift* (Washington D.C., National Defense University Press, 1988): 142.

17 David Card, “The Impact of the Mariel Boatlift on the Miami Labor Market” (Cambridge: Natural Bureau of Economic Research, 1989): 2.

18 Felix Roberto Masud-Piloto, *With Open Arms: Cuban Migration to the United States* (Totowa, NJ: Rowman & Littlefield, 1988): 79.

19 Larzelere, *Cuban Boatlift*, 121.

20 Larzelere, *Cuban Boatlift*, 143.

21 Maurice A Roberts, “The U.S. and Refugees: The Refugee Act of 1980.” *Issue: A Journal of Opinion* 12 (1982): 5.

22 Maurice A Roberts, “Refugee Act of 1980,” 120.

23 Maurice A Roberts, “Refugee Act of 1980,” 274.

24 Maurice A Roberts, “Refugee Act of 1980,” 276.

25 Maurice A Roberts, “Refugee Act of 1980,” 282.

26 Maurice A Roberts, “Refugee Act of 1980,” 360.

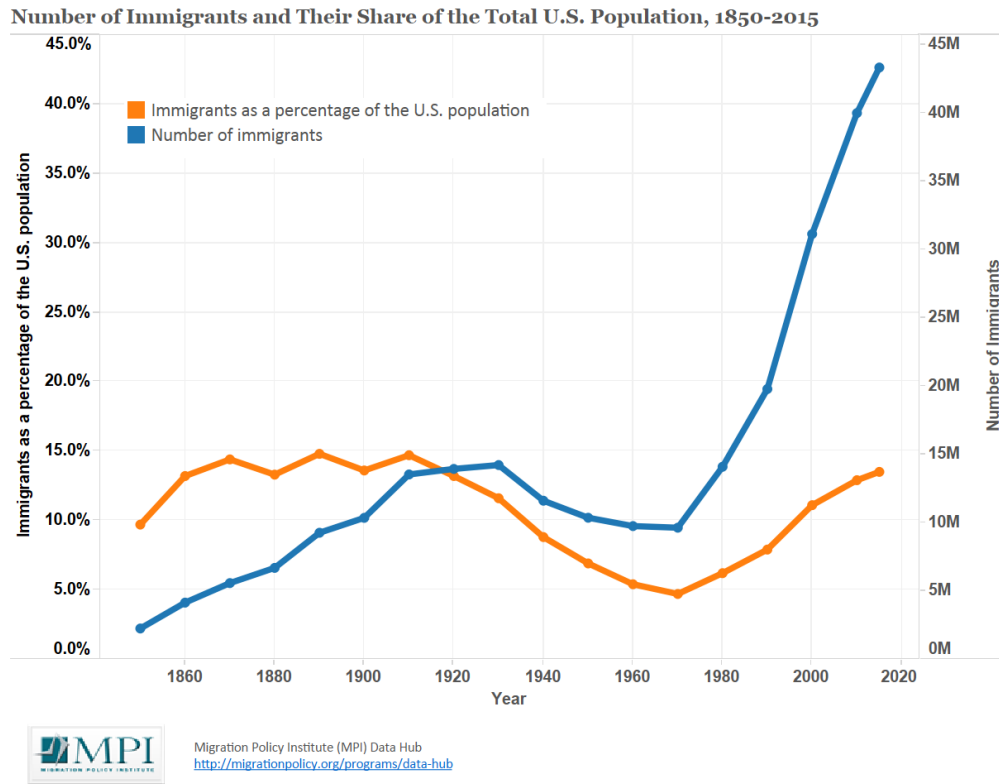


Figure 1: Immigration Trends 1860-2020

Source: Migration Policy Institute (MPI) data from U.S. Census Bureau, 2010-2015 American Community Surveys (ACS), and 1970, 1990, and 2000 Decennial Census

win situation” for the President.²⁷ Altogether, this unpopularity contributed to Carter’s landslide defeat in the 1980 presidential election.

Why exactly was this policy so unpopular? After all, many contend that the United States’ ability to embrace immigrants is one of its defining characteristics.²⁸ It would be reasonable to suspect that the general American population was not concerned with immigrants per se, but simply with the sheer number of people who were arriving. Interestingly, however, the data does not support such a hypothesis.

From 1970 to 1990, there was a clear increase in the number of immigrants to the United States, but this increase occurred mainly in the years prior to the 1980 Mariel Boatlift. Looking at the percentage change in rates of immigrants per 1,000 US residents, we see that although there was no change from 1970 to 1975, there was an increase of 28 percent between 1975 and 1980.²⁹ Examining the years individually, though, we see that the highest rate of immigrants per U.S. resident between 1970

and 1985 was in 1978, with 2.8 immigrants per 1,000 U.S. residents. In this same period, the highest year-on-year increases in immigration rates were in 1978, 1977, and 1980 with increases of 30%, 16% and 15% respectively.³⁰ Arguably, these are only single year increases, which are liable to random year-on-year variations and are not necessarily indicative of wider trends. However, if the Mariel Boatlift was indeed an immigration crisis—as it was portrayed—1980 *should* have been an anomaly. Therefore, the fact that it does not have the highest year-on-year increase nor the highest rate of immigrants in the fifteen-year period indicates that the 1980 growth in immigrant rates was not anomalous. Even if we analyze the three-year rolling averages, we see that the average annual rate of growth between 1976 and 1978 was more than double that between 1978 and 1980.³¹ The 1980 annual increase may have been the third highest at 15.4%, but it was certainly not the highest in the period. In fact, the growth prior to 1980, which had nothing to do with Cuban refugees, was much more rapid. Therefore, while there was undeniably

²⁷ Nicholas Laham, *Ronald Reagan and the Politics of Immigration Reform* (Westport, Conn: Praeger, 2000): 42; Larzelere, “Cuban Boatlift”, 237.

²⁸ For more on mass immigration as the defining characteristic of US history, see Oscar Handlin, *The Uprooted; the Epic Story of the Great Migrations That Made the American People* (Philadelphia, PA: University of Pennsylvania Press, 1951).

²⁹ Calculations derived from figures obtained from the Statistical Abstracts of the United States, 1970-1990.

³⁰ Calculations derived from figures obtained from the Statistical Abstracts of the United States, 1970-1990.

³¹ The rates are 16.4% for 1976-78 and 7.5% for 1978-80.

a relative increase in immigrants in 1980, it was not a sudden, drastic influx, but a continuation of existing trends in the 1970s. Figure 1 shows the linear nature of this rate of change.

While the rate of immigration growth may not have changed drastically from year to year, it is still important to consider the impact of a decade of increasing immigration. Even though there was not a sudden explosion in immigration in the 1980s, immigration to the United States had been on the rise for nearly a decade. It was this long-term growth that may have concerned much of the American population rather than any sharp spike in the number of immigrants into the country during any given year. In the 1980s, the number of immigrants relative to the population did not dramatically change and was as high as it had been in the 1950s (which in turn was not even close to what it had been pre-WWI). Therefore, while immigration was on the rise, it was still below previous levels in terms of percent relative to the US resident population. The government was dealing with levels of immigration less than or equal to those it had previously managed.

Furthermore, the 125,000 Cubans who came over in 1980 constituted less than 1 percent of immigrants living in America that year.³² Cuban refugee admissions were abnormally high, but in the wider context of American immigration, they were nothing more than a drop in the ocean. Suggestions that Cuban refugees were flooding America ignored both the broader trends in immigration rates in the 1970s as well as the relatively small proportion of Cubans in the American immigrant population.

Another possible explanation for the unpopularity of the Mariel Boatlift is that the public was concerned with the purported criminality of the migrants. Due to the political situation, Cuban migrants overwhelmingly belonged to a subset of the Cuban population that was either radically opposed to Castro and had voluntarily left, or Cubans who had previously been imprisoned and were hence forced to leave.³³ Thus, Cubans were mainly expelled for disagreeing with Castro. However, Castro purposely disseminated and exaggerated ideas involving Cuban immigrant criminality in order to challenge the

legitimacy of his political opponents in Cuba. This purported criminality lacked empirical grounds: official INS relocation figures show that less than one percent of the Mariel Cubans who came to the US were found to have “significant criminal histories.”³⁴ To put this into perspective, in that same year, about six percent of U.S. residents committed a major-index crime (such as arson, rape, or homicide). From a more long-term viewpoint, about 97 percent of the Mariel Cubans were law-abiding citizens after resettlement.³⁵

Most Cuban refugees immigrating into the United States in 1980 were political dissidents, not criminals. Although the exact figures are disputed, Larzelere estimates that “71 percent were urban blue-collar workers, craftsmen, machine and transport operators, and laborers”—all generally well-regarded professions.³⁶ Similarly, Portes, Clark, and Manning estimate that 80 percent of Cubans emigrating to Miami did so for political reasons.

While political dissatisfaction motivated many of the refugees, it was certainly not the only reason for leaving. Socioeconomic factors were also instrumental in shaping their decision to migrate. By 1979, the unemployment rate had shot up to 5.4 percent (from a post-revolution low of 1.3 percent in 1959). Castro had introduced a rationing system so strict that only children under 10 years of age could drink milk, and Cuban debt totaled almost 3.3 billion dollars (the highest in the following five-year period).³⁷ This economic situation was further exacerbated by a blue mold epidemic that destroyed almost the entirety of the tobacco and coffee crops of 1979. A quarter of the sugar crop was also destroyed by blight that year—a massive loss considering sugar had accounted for 86% of exports in 1976.³⁸ All three of Cuba’s major exports were thus adversely affected in a single year. For the Cuban plantation-based economy, which was insufficiently diversified, this was particularly threatening to economic stability.³⁹

The economic situation was so poor that ordinary citizens struggled to meet their basic daily needs. Juan F. Diaz, an exile who came to Key West on the Sun Hippie boat, recalls: “I knew that the day I was able to eat an apple, it would represent a day of freedom.”⁴⁰ For this

32 Calculations for the above percentage are based on a total of 14,079,900 immigrants living in America in 1980, per MPI data above.

33 While the public may have agreed with the anti-Castro sentiment, they are still likely to have distrusted all types of ‘radicals’.

34 Hamm, *The Abandoned Ones*, 59.

35 Hamm, *The Abandoned Ones*, 77.

36 Larzelere, *Cuban Boatlift*, 221.

37 Hamm, *The Abandoned Ones*, 45–46; Richard Turits, “Trade, Debt, and the Cuban Economy,” *World Development* 15 (1987): 164.

38 David Lehmann, “The Cuban Economy in 1978,” *Cambridge Journal of Economics* 3 (1979): 323.

39 Lehmann, “Cuban Economy,” 323.

40 “El Mariel: Boat and Passenger Records”, MiamiHerald.com, <http://pubsys.miamiherald.com/cgi-bin/mariel/memories/0#storylink=cpy>.

reason, even though most refugees classified themselves as ‘political refugees,’ socio-economic factors as well as political ones motivated their decisions to emigrate from Cuba. These causes of emigration were well-known internationally and were likely somewhat to blame for nativist economic fears in the US, to which this essay will now turn.

Generally, it has been assumed that the large influx of Cubans in this period negatively impacted the Miami labor market. However, research from the National Bureau of Economic Research (NBER) has shown “no indication of any short- or longer-term effect of the Mariel immigration on the wages or unemployment rates of non-Cubans in Miami.”⁴¹ While it is true that the unemployment rate in Miami did increase from 5 percent in April 1980 to 7.1 percent in July 1980, state and national rates followed a similar pattern. As a result, this change cannot necessarily be attributed to the boatlift.

Unfortunately, the actual economic effect of Cuban immigration was not known at the time and contemporary perceptions of the situation were quite negative. Even before the Mariel Boatlift, a *New York Times* article published in March 1980 proclaimed that “refugee problems have become a chronic feature of our world.”⁴² With crises occurring across Central America as well, many Americans began to experience “compassion fatigue.”⁴³ The INS was aware of public sentiment and used it to their advantage. Employing a variety of images, inaccurate factual assertions, and symbolic references, the INS portrayed Mariel Cubans as brutish, un-American criminals, transforming them into some of the most “despised immigrants in the history of the United States.”⁴⁴ This reputation has survived even today. In June 2016, an article entitled “A Cuban Crime Story” was published by an organization labeling themselves ‘Observers of Homeland Security’ and described the history of Miami Cocaine Wars: “These Cuban hardened criminals called ‘Mariels’ found themselves at home in the violence-ridden streets of Miami and were a natural fit to serve as enforcers of the Colombian drug cartels in what would come to be known as the Cocaine Wars.”⁴⁵ This portrayal gave the INS the authority to undertake a moral crusade and rapidly expand throughout the 1980s. The expansion manifested in a budget allocation of \$1.6 billion in 1986 (compared

to the mere \$900 million allocated prior to the Freedom Flotilla).⁴⁶

Such successful propaganda meant that by the time Ronald Reagan became president in early 1981, the general public supported an immigration crackdown. Ever the populist, Reagan made a ‘Statement on United States Immigration and Refugee Policy’ six months into his term, announcing that “we must ensure adequate legal authority to establish control over immigration.”⁴⁷ Although this rhetoric proved popular, it did not align with the recommendations of the Cuban-Haitian Task Force, which was established in July 1980. As discussed above, although many more Cubans immigrated to South Florida that year than in the years prior, overall immigration figures had not suddenly inflated, but had continued to follow an upward linear trend. The number of immigrants relative to the size of the population also remained the same as it had been since the 1950s. Even with the influx of refugees in South Florida, the local economy was no worse than the national average, which had declined for reasons other than immigration.⁴⁸ Therefore, this perceived need to clamp down on immigration was not due to the arrival of Mariels in Key West, but to the public fear that these arrivals might lead to social and economic instability. It was an illusion based on the public conception that immigrants were dangerous and illegitimate.

In sum, even though the Mariel Boatlift only directly involved Cuban immigrants, the fears resulting from the Mariel Boatlift worsened public opinion concerning *all* immigrant groups. Through fearmongering, politicians were effectively given a blank check to implement any immigration strategies they deemed necessary (or politically expedient). In this political climate, the extension of processing centers to Haitian refugees and their subsequent detention required little justification.

PROCESSING CENTERS

Processing centers operating during the Mariel Boatlift were much more akin to federal prisons than the administrative establishments they claimed to be. Despite being designed to aid INS officials with processing refugees, their haphazard execution led to the frequent long-term detention of refugees without proper cause or proce-

41 Hamm, *The Abandoned Ones*, 75; Card, “Miami Labor Market,” 4.

42 “Carter Signs Bill on Refugee Entry,” *New York Times*, March 17 1980, <https://www.nytimes.com/1980/03/18/archives/carter-signs-bill-on-refugee-entry.html>.

43 María Cristina García, *Seeking Refuge: Central American Migration to Mexico, the United States, and Canada* (Berkeley, CA: University of California Press, 2006): 86.

44 Hamm, *The Abandoned Ones*, 76.

45 WeSeeHSE, “A Cuban Crime Story,” Homeland Security, June 8, 2016, <https://medium.com/homeland-security/a-cuban-crime-story-e22310b5d6ce>.

46 Hamm, *The Abandoned Ones*, 80.

47 Ronald Reagan, “Statement on United States Immigration and Refugee Policy,” July 30, 1981, <http://www.presidency.ucsb.edu/ws/?pid=44128>.

48 Card, “Miami Labour Market”, 249.

dure. What is more, the centers were subject to little legal oversight. They housed refugees in terrible conditions and had a high rate of transferral to penitentiaries. Such conduct set a standard for how refugees could be treated in America and made the eventual mandatory detainment of Haitians in 1981 seem acceptable. In this section, I will analyze the beginnings of the processing centers, their day-to-day functioning, and how their closure contributed to the re-introduction of detention centers.

In anticipation of the influx of refugees, the 1980 Refugee Act created stricter standards for refugee admission. Although this was beneficial from the point of view of controlling refugee arrivals, the policy hindered the rapid and efficient processing of large numbers of refugee applications. Since as early as February 1980, the CIA was aware that Cuba was considering reopening the port of Camarioca and initiating another mass exodus, as it had in 1965.⁴⁹ During the previous exodus, the US government had been unable to define quotas and had been forced to manage the influx on an impromptu basis, without any real system. The 1980 Refugee Act was thus intended to “provide a permanent and systematic procedure for the admission to this country of special humanitarian concern to the US.”⁵⁰ Although the Refugee Act established a systematic approach for dealing with large influxes of refugees, its allotted quotas were not commensurate with the situation on the ground. In the Cuban case, a yearly quota of 19,500 refugees was fixed, which only covered roughly one-sixth of the eventual total.⁵¹ Furthermore, the Act mandated certain reporting and administrative standards that were impractical given the scale of the exodus. Altogether, the unsuitable quotas and bureaucratic requirements caused a backlog in refugee administration, which was especially pronounced in the case of Haitian refugees.

To deal with this backlog, the Carter administration set up a series of processing centers and emergency shelters. The Orange Bowl stadium in Miami was prepared as a shelter on May 2.⁵² However, it provided less than adequate accommodation to the refugees housed in it. Tents were assembled all over the stadium, making it appear more like a camping ground than a bona fide shelter. The first formal relocation camp was set up shortly

after, at Eglin Air Force Base in Florida, and it was filled within six days. Then, on May 8, Fort Chaffee was opened in Arkansas. It also reached capacity in under a week. Consequently, two more processing centers were set up, one in Pennsylvania and one in Wisconsin. Many of these processing centers were only open for a short time, as the Cuban-Haitian Task Force made the decision to consolidate all the refugees at Fort Chaffee in September, 1980.⁵³

None of the refugees held in these centers had a significant criminal history, though the media portrayed them as felonious individuals (those who committed crimes were not accepted for asylum). Half of Mariels entering the US were put in direct family placement, while the rest were randomly dispersed amongst the processing centers detailed above.⁵⁴ To have been imprisoned for more than fifteen days in Cuba was considered significant to the U.S. officials in their initial screening, even if this was due to a refusal to join the military or to “volunteer” for government projects.⁵⁵ Therefore, even minor offenses would significantly lower one’s chance for asylum.

Conditions in the processing centers were deplorable and would have been considered illegal if US citizens had been subjected to them. In Edwidge Danticat’s non-fictional account *Brother, I’m Dying*, she details the conditions in Camp Krome, where her uncle was kept. They were sometimes beaten, identified by the vessels they had come on rather than by name, and given “food that rather than nourish them, punished them, gave them diarrhea and made them vomit.”⁵⁶ Similarly, Raul Quevedo, reflecting on his journey to Fort Chaffee, remarked “I was shocked when the cop responded to my tales of crimes against Castro by giving me a ticket to hell, Fort Chaffee, where I spent the most confusing and miserable eight months of my life.”⁵⁷

Many riots broke out because of these conditions, which led the administration to shut down the centers as quickly as possible, for fear of bad publicity. The Fort Chaffee Incident, which began on May 26 1980, is a well-known example of such protests. What started as a peaceful protest with two hundred Cubans merely walking out of an unlocked gate at the camp developed into a full-blown rampage by June 6. Mariels burned five wood-

49 Larzelere, “Cuban Boatlift,” 119.

50 *Refugee Act of 1980*, Public Law 96-212, *U.S. Statutes at Large* 94 (1980): 1.

51 Masud-Piloto, *With Open Arms*, 84.

52 Jana K. Lipman, “The Fish Trusts the Water, and It Is in the Water That It Is Cooked,” 120.

53 Brianna Nofil, “Detained Immigrants, Excludable Rights: The Strange Devolution of US Immigration Authority, 1882-2012,” 69.

54 U.S. Department of State, “A Report of the Cuban-Haitian Task Force”, Cuban-Haitian Task Force, December 1, 1980, 75.

55 Rivera, “Decision and Structure,” 133.

56 Edwidge Danticat, *Brother, I’m Dying* (New York: Alfred A. Knopf, 2007): 212.

57 Masud-Piloto, *With Open Arms*, 101.

en army buildings and stormed the front gates of a nearby military base.⁵⁸ One Cuban refugee died from injuries obtained during the Fort Chaffee Incident, while another forty Cuban refugees and fifteen Arkansas State troopers were seriously wounded.⁵⁹

President Carter's short-term response to this incident played on the well-propagandized narrative of Mariels as dangerous criminals. Instead of acknowledging poor camp conditions, the Carter Administration used this incident as an excuse to further discuss the supposedly destructive nature of the Mariels. Jody Powell, the White House Press Secretary at the time, stated on June 7 that "some hardened criminals exported to the United States by Fidel Castro" were responsible for the incident.⁶⁰ Security measures inside all the camps were heightened and 3,700 troopers were sent to stand guard outside Fort Chaffee and Fort Indiatown Gap.⁶¹ From a long-term perspective though, this incident actually caused the government to lower their relocation standards for Mariel refugees in order to target those most likely to be felons. Full medical examinations were dispensed with and only those with a criminal history were now questioned.⁶² This policy change refocused and intensified state violence upon a smaller group of immigrants.

The processing, detention and deportation of Cubans was also an increasingly expensive affair and one which the federal government did not want to commit to indefinitely. Even before the Eglin Air Force Base was set up, President Carter authorized \$10 million to house, feed, and care for the refugees.⁶³ The expense of detaining some 1,769 suspected felons—in no way a small fee—was initially borne entirely by the federal government.

Altogether, the bad publicity, lowered relocation standards, and cost of detainment meant that by October 1980, most Mariels contained in relocation camps had been released. However, the releases did not extend to all Mariels, and in 1997, seventeen years after their arrival, more than a thousand Mariels were still behind bars.⁶⁴ The 1987 Cuban Review Plan reevaluated the potential of the 1,300 remaining Mariels housed at the Atlanta federal penitentiary for placement in halfway houses or with community sponsors.⁶⁵ This was a slow process, though,

and it took many months before all the 880 detainees who were ultimately approved were released. Furthermore, because only 68% of the Atlanta detainees were released, many Mariels were still left in limbo.

Processing centers had, from the start, been notorious for the poor treatment and indefinite detainment of refugees. However, when refugees who were considered politically threatening began to arrive from Haiti, their treatment dramatically worsened. Detention became mandatory for all Haitians, regardless of their criminal status or their capacity to enhance public life. Therefore, while the Mariel Boatlift provided the justification for detention, processing centers provided the infrastructure and made the detention process more acceptable to the general public. They also effectively dehumanized the immigrant, paving the way for the extension of detention networks with poor living conditions and unconstitutional bureaucratic processes.

THE DISCRIMINATORY TREATMENT OF HAITIANS

Haitians have had a history of poor treatment by the American government. Throughout the twentieth century, they were consistently refused entry into the United States and, if admitted into the country, were denied basic human rights. This treatment reached newly inhumane levels in the 1980s. In 1971, Jean-Claude Duvalier assumed power of Haiti, continuing the extremely violent and repressive regime that his father had established in 1957. Under his leadership, a turbulent political situation emerged that lasted for most of the second half of the twentieth century. This turbulence culminated in an attempted coup in 1978 which, combined with the worsening economic situation, made living in Haiti almost unbearable for victims of the regime by the early 1980s. Still, the United States refused to allow Haitian political refugees to enter the country for most of the 1980s.

Given the treatment of Mariels described previously, this may seem unsurprising. After all, public opinion towards most immigrant groups at this time was negative; it was not exclusively Haitians who were being discriminated against. However, Haitians were the only group to be denied asylum *without exception* in 1980. More-

58 Hamm, *The Abandoned Ones*, 56.

59 Hamm, *The Abandoned Ones*, 56.

60 Hamm, *The Abandoned Ones*, 56.

61 Hamm, *The Abandoned Ones*, 56.

62 Hamm, *The Abandoned Ones*, 56.

63 Larzelere, *Cuban Boatlift*, 377.

64 Welch, *Detained*, 97.

65 Hamm, *The Abandoned Ones*, 101.

over, Haitians were the first group of asylum seekers to be systematically detained in America.⁶⁶ As Donald Payne, a representative for the President of the National Council of Churches, proclaimed: “There are few more shameful episodes in our immigration history than the treatment given Haitians in 1981 and 1982.”⁶⁷

The mandatory detention of Haitians implemented in 1981 must be considered in light of the much larger numbers of other immigrants arriving in the 1980s. Less than 50,000 Haitians attempted entry over the whole decade, far fewer than most other Caribbean groups. In fact, over twice as many Cubans arrived in 1980 as did Haitians in that entire decade.⁶⁸ With Cubans arriving in numbers so significantly larger than Haitians, the exceedingly harsh treatment dealt to Haitians is both striking and surprising. This section examines the treatment of Haitian refugees, how it contrasted to the Cuban experience, and the reasons for such differing treatments.

Whereas Cuban refugees had always been admitted to America and were often aided by the US government, Haitians had a long history of being refused entry into the United States.⁶⁹ In September 1963, 23 Haitian refugees arrived to the United States and applied for political asylum. Every single application was denied, and every single Haitian was deported.⁷⁰ This was not a one-off incident, but a consistent pattern throughout the twentieth century. Seventeen years after the episode in 1963, 4,000 Haitians requested political asylum and were once again uniformly denied.⁷¹ Even after an aborted election ending in blood-bath in Haiti in 1987, the INS still refused to grant asylum to any Haitians.⁷²

Cubans had better admission rates than not only Haitians, but many other Caribbean nations as well (in 1981, only 2 out of 5,570 Salvadorans who applied for asylum were granted it).⁷³ Despite this discrimination against Caribbean applicants, they were not barred from entering America. Haitians were the only group to be interdicted at sea and returned home.⁷⁴ Thus, a sort of hierarchy emerged wherein Cubans were allowed into the

country, Caribbeans were discouraged, and Haitians were completely banned. Although many background factors contributed to the emergence of this hierarchy, most of the difference in treatment had to do with political ideology. In the 1980s, the Cold War had a considerable impact on international relations. The fact that Cuba was the closest Communist state geographically to America meant that accepting Cuban refugees had particular rhetorical appeal: the more Cuban refugees that America accepted, the more they could evidence the supposed immoral and oppressive nature of Communism.⁷⁵ On the other hand, acceptance of refugees from non-Communist countries not directly opposed to America did not make for such effective propaganda. In countries such as Haiti where America funded the regime, the admission of refugees could actually lead to a loss in moral authority.

El Salvador exemplifies America’s treatment of many non-Communist nations and reveals the general impunity enjoyed by the Cold War American state. The United States had provided six billion dollars in economic and military aid to El Salvador and supported a regime that killed thousands of civilians and committed indescribable atrocities, leaving thousands homeless. The 1981 El Mozote massacre is one of many such atrocities: 936 Salvadorian civilians were killed, over half of whom were under the age of 14.⁷⁶ Yet less than three percent of Salvadoran asylum requests were approved in 1984. In comparison, in the same year, the approval rate for Iranians was 60 percent, 40 percent for Afghans fleeing the Soviet invasion, and 32 percent for Poles.⁷⁷ The administration was not only unwilling to admit partial responsibility for the destruction of many Caribbean countries, but was also unwilling to accept innocent civilians attempting to flee the countries they had helped destabilize. After all, doing so would imply the United States’ support of regimes diametrically opposed to its founding. The universal rejection of Haitians was not based on ill-founded fear of political persecution. In June 1980, a report was produced by the Lawyers Committee for International Human Rights

66 Gilburt Loescher and John Scanlan, “Human Rights, U.S. Foreign Policy, and Haitian Refugees,” *Journal of Interamerican Studies and World Affairs* 26 (1984): 313-56.

67 Hearing Before the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary House of Representatives, Ninety-Eighth Congress Second Session on H.R. 4853 Cuban/Haitian Adjustment, 58.

68 Malissia Lennox, “Refugees, Racism, and Reparations: A Critique of the United States’ Haitian Immigration Policy,” *Stanford Law Review* 45 (1993): 704.

69 Consider, for example, the 1965 Camarioca boatlift, in which U.S. commercial aircraft flew refugees in.

70 Cheryl Little, “InterGroup Coalitions and Immigration Politics: The Haitian Experience in Florida,” *University of Miami Law Review* 53 (1998): 717.

71 Little, “InterGroup Coalitions and Immigration Politics,” 718.

72 Little, “InterGroup Coalitions and Immigration Politics,” 717.

73 Loescher and Scanlan, “Human Rights, U.S. Foreign Policy, and Haitian Refugees,” 345.

74 Loescher and Scanlan, “Human Rights, U.S. Foreign Policy, and Haitian Refugees,” 345.

75 This is directly acknowledged in the Refugee Act of 1979: Hearings before the Subcommittee, <https://archive.org/details/refugeeactof197900unit>.

76 Garcia, *Seeking Refuge*, 24-26.

77 Susan Gzech, “Central Americans and Asylum Policy in the Reagan Era,”

<http://www.migrationpolicy.org/article/central-americans-and-asylum-policy-reagan-era>.

to the Organization of American States on human rights conditions in Haiti. The Committee concluded that “the current situation in Haiti reveals a consistent pattern of gross violations of basic human rights.”⁷⁸ These violations included frequent detention without trial, denial of basic rights of due process, and President Duvalier’s suspension of clauses of the constitution protecting individual rights. The 1980 Refugee Act defined a refugee as “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...”⁷⁹ With these aggressive violations of human rights corroborated by the international community at large, it is clear that almost every Haitian had a “well-founded fear of persecution” and met the necessary criteria to be considered a refugee. Nevertheless, not a single Haitian was found deserving of political asylum.

This blanket refusal accorded with official federal policy. Known as the ‘Haitian Program,’ US government agencies such as the INS intentionally and systematically denied Haitian claims for asylum as quickly as possible.⁸⁰ Some agencies claimed this was due to the ‘flood’ of Haitians to South Florida in 1980, which supposedly caused a buildup of 7,000 Haitian applications and prevented new requests from being processed. In reality though, this backlog had been steadily growing during the prior decade, as the INS continually neglected Haitian asylum requests motivated by human right violations. Far more Cubans than Haitians arrived in South Florida in 1980, yet the INS still proved capable of processing the Cuban applications. Some officials, such as Alan C. Nelson, an INS Commissioner, completely denied the existence of the program: “...I can say as a matter of fact, there has not been discrimination against the Haitians as a matter of leg-

islative policy.”⁸¹ Interestingly, Nelson did not claim that there was not discrimination against the Haitians, simply that it was not codified.

Official policy mandated different administrative classifications for Cubans and Haitians. Although Duvalier’s regime was unquestionably repressive, Haitians were always admitted as “economic” refugees and never considered to be “political” refugees. Undeniably, Haiti was and remains an impoverished nation. In 1985, “90% of the population averaged less than \$180 a day, far below the absolute poverty limit” and the average Haitian suffered a daily calorie deficit of 20%.⁸² However, this poverty was intertwined with the political situation, and many Haitians fled for both political and economic reasons. Therefore, separate refugee groupings were not founded on genuine discrepancies, but were instead established to downplay the plight of Haitians and to enable their further mistreatment.

The blackness of Haitian immigrants led to their singularly harsh discrimination. As noted by Norman Hill, the President of the A. Philip Randolph Institute: “The Haitian refugee boat people are the first numerically significant group of black refugees ever to seek safety on our shores.”⁸³ In this period, we see an obvious difference in rates of rejection for asylum between Caribbean refugees.⁸⁴ Although the rates were not particularly favorable for any American group, Haitians were the only subset to be refused in their entirety. This suggests that being black may have led to far worse discrimination than simply being non-white; of immigrants arriving in the U.S. in 1980, only 2.3% of Cubans were considered black compared to 96.6% of Haitians.⁸⁵ Furthermore, in *Jean v. Nelson*, it was shown that there was a less than two in ten billion chance that so many Haitians would be detained and denied parole under immigration standards applied in a racially neutral fashion.⁸⁶

The Reagan administration was aware of the need for a passive population and stable investment climate in Haiti in order to advance neo-liberal policies and treat-

78 “Violations of Human Rights in Haiti: A Report of the Lawyers Committee for International Human Rights to the Organization of American States,” 43.

79 The Refugee Act, 8 U.S.C. 1101(a)(42) (1988).

80 Little, “InterGroup Coalitions and Immigration Politics,” 718.

81 Hearing Before the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary House of Representatives, Ninety-Eighth Congress Second Session on H.R. 4853 Cuban/Haitian Adjustment, 11.

82 M.S. Hooper, National Coalition for Haitian Refugees, and Americas Watch Committee, *Duvalierism Since Duvalier* (New York: National Coalition for Haitian Refugees, 1986): 9.

83 Lennox, “Refugees, Racism, and Reparations,” 68.

84 Loescher and Scanlan, “Human Rights, U.S. Foreign Policy, and Haitian Refugees,” 345.

85 U.S. Bureau of the Census, Detailed Population Characteristics, United States Summary, Series PC80-1-D1-A, Washington, D.C.: U.S. Government Printing Office, March 1984. Table 255. U.S. Bureau of the Census, Detailed Population Characteristics, Florida, Series PC80-DO1 1, Washington, D.C.: U.S. Government Printing Office, October 1983. Table 196.

86 Lennox, “Refugees, Racism, and Reparations,” 715.

ed Haitians accordingly.⁸⁷ This was true both in terms of U.S. foreign policy towards Haiti (where the US provided organizations such the National Governing Council with almost \$400,000 worth of riot equipment to prevent popular uprising⁸⁸) and U.S. domestic treatment of Haitian refugees. At Krome, the age of potential detainees without birth certificates or papers was determined by examination of their teeth. As described by Danticat, this was an “agonizing reminder of slavery auction blocks, where mouths were pried open to determine worth and state of health.”⁸⁹ Haitians were also the only group that President Reagan authorized the Coast Guard to interdict at sea before reaching U.S. soil.⁹⁰ While US officials may have discriminated against Haitians due to their skin color, the introduction of interdiction at sea for Haitians arguably originated more out of fear of the potential organizing power of Haitians than racial bigotry. The impact of the 1905 Haitian Revolution, which established Haiti as the first Black Republic, may have influenced this intense fear of Haitian organization. Nevertheless, if US officials did not want black refugees in their country, they could have just deported them as soon as they arrived. However, the implementation of interdiction implies that the administration was not even willing to risk Haitians reaching US soil. After interception, this fear was once again replaced by racial exclusion; of the 22,940 Haitians intercepted at sea between 1981 and 1990, only eleven were considered qualified to apply for asylum.⁹¹

Despite official denials of anti-Haitian discrimination, the landmark *Haitian Refugee Center v. Civiletti* case confirmed the existence of the Haitian Program and deemed it unconstitutional. The case did not target any single decision or immigration judge, but rather the institution of “a program ‘to achieve expedited mass deportation of Haitian nationals’ irrespective of the merits of an individual Haitian’s asylum application and without regard to the constitutional, treaty, statutory, and administrative rights of the plaintiff class.”⁹² As stated in the introduction of this case, these five thousand Haitians were fleeing “the most repressive government in the Americas.” Thus, it was not merely a few undeserving applicants that were being denied asylum, but a whole class of people requiring protection.

Such transparent discrimination reveals US hos-

tility towards immigrants, and especially refugees, at this time. America had suffered a recession in the late 1970s and was still recovering in the early 1980s. The uncertainty of this fragile economy did not reduce the number of immigrants hoping to relocate to the US. Nativists, who thought of immigrants as unskilled and welfare-abusing burdens, worried that this continued immigration would serve to completely destabilize an already faltering economy. For this reason, public opinion became very dismissive of potential newcomers and political popularity became contingent on strict immigration control.

In sum, immigrants were not viewed favorably by the American public and American legislators in 1980 for myriad reasons, including public fear of negative economic effects due to immigration, official unwillingness to admit support of persecutory regimes, and a constantly evolving immigration landscape. However, up until 1981, none of these reasons were enough to cause the re-introduction of detention. In May, the previously established policy of detaining only those who posed a security threat was fundamentally altered. From that point on, it was decided that all Haitians would be detained at Camp Krome on a mandatory basis.

Timing is always a factor in determining causation in history and the introduction of mandatory detention for Haitians is no exception to this rule. The fact that it was only Haitians who were singled out for this treatment might reasonably be related to their unique status as black immigrants and the exceptionally harsh discrimination that provoked. However, this fact was not new and had not led to the re-introduction of detainment before. Therefore, the re-institution of detainment centers at this specific moment evidently had other, more time-sensitive motivations.

The most notable change in circumstances in 1981 was the release of Mariel Cubans. Although the Mariel Boatlift had technically ended in October 1980, there were still thousands of Mariels awaiting hearings. Similarly, while most of the centers were closed down by October 1980, there were still 19,000 refugees consolidated at Fort Chaffee, which was not shut down until January 1982.⁹³ May 1981 was the first time since the beginning of the Mariel Boatlift that the administration had a break from the immigration influx. At this point, new Cubans

87 Christopher I. Clement, “Returning Aristide: The Contradictions of US Foreign Policy in Haiti,” *Race & Class* 39 (1997): 24.

88 Clement, Christopher I. “Returning Aristide”, 25.

89 Danticat, *Brother, I’m Dying*, 212.

90 High Seas Interdiction of Illegal Aliens, Proclamation No. 4865, 3 C.F.R. 50 (1981).

91 Lennox, “Refugees, Racism, and Reparations,” 704.

92 *Haitian Refugee Ctr. v. Civiletti*, (s.d.fl. 1980), 503 F. Supp. 442, 457 (S.D. Fla. 1980).

93 Ronald Copeland, “The Cuban Boatlift of 1980: Strategies in Federal Crisis Management,” (*Annals, AAPSS* 467, May 1983), 139.

were no longer coming to the United States and the majority of Cuban refugees had been processed, , allowing the last center to be shut down six months later.

The Mariel Boatlift permanently altered the immigration landscape for the worse. National consensus was unanimously negative against Cuban immigrants, depicting Mariels as disease-carrying, violent, uneducated criminals. This depiction was eventually extended to immigrants as a whole. With the release of Mariels from detention, the public no longer had a target on which to concentrate its immigration fears, and Reagan no longer had any evidence that he was cracking down on immigration. Many saw the release as an explicit relaxation of policy, and historians to this day comment on the impact of this softening: “Unfortunately, the people of the United States had to pay a heavy price for the release of the Cuban criminals; society had to suffer the consequences of the crimes of the Mariels before they could be arrested and reincarcerated.”⁹⁴ Whether or not these crimes actually occurred, they were to seem to have occurred, and the release of Mariels was seen as a loosening of immigration policy. The Haitians therefore provided a new target for Reagan to demonstrate he could still be tough on immigration.

Although Haitians became a new political scapegoat for Reagan, basic administrative details also influenced the nature of their detention. These included: the cost of processing immigrants rather than immediately putting them in detention, the need to minimize visibility and bad publicity, and the fact that centers for detention were already in place and running.

The introduction of mandatory detention for Haitians in May 1981 was multifaceted. The need for a passive Haitian population, the non-Communist structure of the Haitian government, and the fact that most Haitian refugees were black were all features that contributed to their detention. However, these features had existed for many years and had never previously led to their detention. The fact that Haitians arrived after a mass influx of Cubans who had received terrible publicity and heightened xenophobia in the American population was therefore significant. Additionally, the administrative advantages of compulsory detention were obvious and, based on earlier

complaints expressed by the federal government concerning the financing of the Mariel Boatlift, heavily influenced the decision to enforce detention for all Haitians. With all Haitians systematically detained with or without criminal offense, it was only a matter of time before detention became standard procedure for all immigrant populations. Furthermore, the public stopped questioning the use of detention as a means of immigration control. The public acceptance of detention allowed its expansion and meant that financial concerns, rather than the welfare of the immigrant, became the dominant driver of immigration policy.

IMMIGRATION POLICY AFTER DETENTION

In 2012, the United States detained an average of 33,000 individuals daily, a nearly three-fold increase from the daily amount detained in 1996.⁹⁵ The Obama administration deported 395,000 immigrants in 2009 alone and detained and deported more undocumented immigrants than any other administration in US history.⁹⁶ Immigrant detention may have begun in 1981, but it was only in 1986, with the passage of the Immigration Reform and Control Act (known as IRCA), that detention began to take on the mass proportions seen today. This section will explain the transition from the relatively small-scale detention program implemented in 1981 to the mass confinement currently affecting hundreds of thousands of individuals. I will also discuss the role of IRCA in this transition.

Since 1981, the U.S. detention network has grown exponentially. The US now detains approximately 400,000 people each year in over 200 county jails and for-profit prisons.⁹⁷ As of 2001, more than 20,000 detainees were undocumented immigrants and as such they were subject to the criminalization process.⁹⁸ This undoubtedly has something to do with the rapid growth of the nation’s foreign-born population, which grew from 4.7 percent in 1970 to 13.1 percent in 2013.⁹⁹ However, while the nation’s foreign-born population nearly tripled in this forty-year period, the detainee population has increased by 550 times.¹⁰⁰ The growth in detention far surpasses the growth in the foreign-born population and would not seem to mimic true needs for detention.

94 Larzelere, “Cuban Boatlift,” 383.

95 Furman, Epps, and Lamphear, *Detaining the Immigrant Other: Global and Transnational Issues*, (New York, NY: Oxford University Press, 2016), 5.

96 Furman, Epps, and Lamphear, *Detaining the Immigrant Other*, 6.

97 “Immigration Detention Map & Statistics | Endisolation.”, <http://www.endisolation.org/resources/immigration-detention/>.

98 Welch, *Detained*, 105.

99 Street et al., “Chapter 5: U.S. Foreign-Born Population Trends.” *Pew Research Center’s Hispanic Trends Project*, September 28, 2015, <http://www.pewhispanic.org/2015/09/28/chapter-5-u-s-foreign-born-population-trends/>.

100 “HAITIANS AT 2 DETENTION SITES REFUSING TO EAT AND TO TALK.” *The New York Times*, December 25, 1981, <http://www.nytimes.com/1981/12/25/us/haitians-at-2-detention-sites-refusing-to-eat-and-to-talk.html>.

The increase in the number of detainees is compounded by a growth in the average length of detention. In 1981, the average stay in an INS detention facility was less than four days. By 1990, it had increased to 23 days and by 1992, the average was 54 days.¹⁰¹ It is important to note that nearly all these averages are dragged down by the large number of one-day detentions, where refugees to be expelled are detained for one day prior to their expulsion. One-day stays occur frequently but are not true detentions, and therefore their frequent occurrence superficially lowers the average. Nevertheless, the fact remains that by 1992, the average detainee suffered two months of detainment without committing a single crime. Today, increasing numbers of detainees combined with increasing detention stays mean that there are more immigrants being detained than ever before, and they are staying in progressively poorer conditions. As the problem grows, our methods of coping are weakening.

Aside from increasing detention figures, it is important to remember that there are also 4,400 INS detainees still being detained indefinitely, due to a lack of diplomatic ties between the US and the original countries of these detainees.¹⁰² Indefinite detention is treated almost identically to indeterminate sentencing, with one exception—in the case of indefinite detention, no crime has been committed.¹⁰³ These instances of detention are simply a result of administrative inefficiency.

Indefinite detention for immigrants may be deplorable, but it is not surprising given the inhumane origins of detention. The re-introduction of immigrant detention required a national conceptualization of detainees as less-than-human. The continuation of detention into the present day is no different; it is simply that the target of this policy have come to include many more communities. Previously, Cubans and Haitians were explicitly dehumanized. However, the influx of these particular groups was bound to stop at some point—making group-specific

justification unsustainable for long-term detention projects. In this specific scenario, the detention of Haitians and Cubans had become unviable after the Mariel Boatlift was resolved.

The dehumanization of refugees was central to the continuation of detention, but it was privatization that really enabled its expansion. The first private company to receive a federal contract from the INS was the Corrections Corporation of America in 1983.¹⁰⁴ With this contract, a private detention center was set up in Houston in 1984. The CCA obtained two more contracts in 1985 and by 1990, it was making over \$50 million annually.¹⁰⁵ Although the growth of privatization may have been slow (it was only during the late 90s that the CCA began to make really significant profit, breaking \$400 million in 1997¹⁰⁶) its decisive impact on the expansion of detention had to do with how it changed what immigrant detention represented. Through privatization, what had previously been purely a means of immigrant control and deterrence, was now also a means of profit. As of 2009, privatized detention centers comprised 12 of the U.S. Immigration and Customs Enforcement’s 17 largest facilities and accounted for 40% of CCA’s \$1.7 billion revenue.¹⁰⁷

The passage of the Immigration and Reform Control Act in November 1986 gave legal expediency to this profit-seeking enterprise. Although IRCA granted amnesty to 2.7 million illegal aliens, it was actually designed as a method to deter further illegal immigration to the United States.¹⁰⁸ To this end, employer-sanctions (which range from fines to prison terms¹⁰⁹) were imposed, amnesty qualification standards were intensified (illegal aliens now had to demonstrate that they could be financially self-sufficient and live independent of the welfare system)¹¹⁰ and aliens granted amnesty were virtually ineligible for all entitlement programs for five years. The widened scope for punitive action against aliens made their detainment and deportation easier. It also led to a “widespread discrimi-

101 Welch, *Detained*, 107.

102 Welch, *Detained*, 94.

103 For more on indeterminate sentencing, see Alan Dershowitz’s 1974 article: “The indeterminate sentence is not a unitary concept of precise definition. It is a continuum of devices designed to tailor punishment, particularly the duration of confinement, to the rehabilitative needs and special dangers of the particular criminal (or more realistically, the category of criminals). A sentence is more or less indeterminate to the extent that the amount of time actually to be served is decided not by the judge at the time sentence is imposed, but rather by an administrative board while the sentence is being served.” Alan M. Dershowitz, “Indeterminate confinement: Letting the therapy fit the harm.” *University of Pennsylvania Law Review* 123 (1974): 297-339, 298.

104 Philip Mattera and Mafruz Khan, *Corrections Corporation of America: A Critical Look at its First Twenty Years*, (Washington DC: Institute on Taxation and Economic Policy, 2003): 12.

105 Philip Mattera and Mafruz Khan, *Corrections Corporation of America*, 15.

106 Philip Mattera and Mafruz Khan, *Corrections Corporation of America*, 15.

107 Nofil, “Detained Immigrants, Excludable Rights”, 106-7.

108 Laham, *Ronald Reagan and the Politics of Immigration Reform*, 125.

109 Bansak, Cynthia, and Steven Raphael, “Immigration Reform and the Earnings of Latino Workers: Do Employer Sanctions Cause Discrimination?” *ILR Review* 54 (2001): 276.

110 Laham, *Ronald Reagan and the Politics of Immigration Reform*, 169.

nation” against undocumented immigrants in the hiring process.¹¹¹

CONCLUSION

In the orthodox narrative, immigrant detention is viewed as an unfortunate evil arising in response to crisis. This paper has disputed such ideas and aimed to determine what really accounted for the re-introduction of immigrant detention centers in 1981.

I examined the Mariel Boatlift and established that even though there was a large influx of Cubans, it was not large relative to immigration occurring nationally, nor did it produce negative economic effects (either in the long or short term). Nevertheless, due to false stereotypes of Mariels propagated by Castro and the INS, it provoked general public hysteria concerning immigration and a perceived ‘immigration crisis.’ These fears caused Mariels to be detained in purpose-built ‘processing centers’ for extended periods (up to seventeen years for some). As noted in the second section, these processing centers were mostly shut down by October 1980 as a result of poor publicity and the high operating costs paid by the federal government. However, their widespread publicization, even in this short time span, these centers had a large impact on both public opinion and congress. Consequently, by 1981, both the mentality and the infrastructure were already in place for the implementation of mandatory detention for other ‘alien’ groups. Haitians were the next to go under scrutiny due to a combination of long-standing discrimination and administrative convenience.

Significantly, none of the governmental actions outlined above were implemented as a direct response to influxes of immigration. Rather, these policies were executed because of the political and economic advantages they offered to the Carter and Reagan administrations. However, this was not the reasoning given for action. Instead, the administration purposely misrepresented Mariels as dangerous criminals who needed to be treated with caution. With this justification, what was first implemented as a temporary measure purported to alleviate an immigration ‘crisis’ became a permanent strategy for the next forty years (and counting).

The further expansion of the immigrant detention network in the 1990s and 2000s was due to privatization and the expansion of federal power through policy. Although there was a spike in immigration levels in 1990, the growth in the detention network was far greater than what would have been necessary to deal with this spike.

To this day, the amount of people detained still does not reflect actual detention requirements.

To conclude, in twentieth-century America, immigrants have been continuously and systematically subjected to inhumane treatment as a matter of official policy. This has led to superfluous detention rates as well as the incarceration of innocent individuals. The practice of detaining immigrants continues to expand today, but its implementation is no less driven by opportunism than it was in 1981. By understanding the true motivation behind this policy, the American public can critically judge its legitimacy and consider whether we will continue to tolerate a policy predicated on the notion that refugees are dangerous and illegitimate.

111 Laham, *Ronald Reagan and the Politics of Immigration Reform*, 140.