

Conflicts of mobility, and the mobility of conflict: Rightlessness, presence, subjectivity, freedom

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Abstract With the ascendancy in the United States of the Homeland Security State, a peculiar 'war against terrorism' has been persistently waged against migrant non-citizens as its special targets. With utter rightlessness increasingly enforced as a defining horizon for migrants, the unprecedented upsurge of protest that took the country by storm in 2006, nonetheless, refigured the agonistic notion of 'immigrants' rights' as a prominent feature of political debate. If the state and capital work assiduously to render migrant labour a tractable object, therefore, the robust defiance of migrant workers (both the undocumented and guestworkers) audaciously reaffirms the primacy of labour as subject. Indeed, migrant workers have asserted their autonomy and prerogative through insubordinate acts calling attention to the mere corporeal fact of their deportable presence. Thus, the insurgent presence of migrant bodies emerges as a palpably corporeal and spatial form of subjectivity, and all the substantive social relationality that it manifests.

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Introduction

Non-citizens in the United States have confronted an ever more dismal horizon of rightlessness during the last several years. Yet, within this climate of heightened adversity the notion of 'immigrants' rights' made a forceful, if agonistic, resurgence. A truly unprecedented upsurge of protest demonstrations swept over the United States in 2006, and suddenly lent an air of normativity to the conceptually unstable and politically beleaguered proposition that non-citizens may be presumed to have some

semblance of civil 'rights'. This remarkable social movement was comprised overwhelmingly of working-class migrants of colour, especially the undocumented, and their children. It is inevitably apprehensible only in relation to the fierce struggle that has been perpetrated *against* migrants – by the state – in the elaboration of a peculiar 'war on terrorism' that has made migrants its special targets. Nonetheless, throughout this period of aggravated anti-immigrant hostility in its various guises, there has also been a persistent and increasingly public campaign for expanded guestworker schemes. Indeed, guestworker proposals have been increasingly insinuated into various formulations of 'legalization' for undocumented migrants.

Even in the current economic crisis – when anti-immigrant lobbies might have presumed the political viability of their customary vilification of migrants as 'foreign' labour displacing 'American' ('native') workers from 'American' jobs – the presidential administration of Barack Obama has re-articulated a commitment to 'comprehensive immigration reform' (Preston, 2009). This phrase has come to signify the coupling of provisions for the 'legalisation' of some undocumented migrants (and their eventual eligibility for US citizenship) with new and more aggressive forms of border enforcement, workplace raids and surveillance, and more severe penalties for employers who hire undocumented workers.

During the legislative debates in 2006 and 2007 concerning 'comprehensive immigration reform', Obama's position was substantially consonant with that of George W. Bush. At the height of the 'immigrants' rights' protests in 2006 (and throughout his ensuing tenure as a US senator and his campaign for the presidency), Obama (like Bush) also explicitly included new and expanded guestworker arrangements as a required component of this 'comprehensive' vision. As president, Obama's appointment of Janet Napolitano as Secretary of Homeland Security is indicative. Napolitano, former governor of the US-Mexico border state of Arizona, has well-established credentials as a supporter of border militarization, expanded local police powers over detention and deportation, and perhaps most significantly, new guestworker schemes. According to this logic, guestworker programmes would purportedly 'replace' the flow of undocumented migrant workers with a 'legal' one, superintended by the state. As Obama has explained, 'Because we live in an age where terrorists are challenging our borders, we simply cannot allow people to pour into the United States undetected, undocumented, and unchecked' (Obama, 2006a).

This article contends that the dominant metaphysics of anti-terrorism ultimately has had labour subordination as one of its decisive conditions of possibility. If the state and capital have worked assiduously to render migrant labour a manageable and tractable *object*, however, the robust defiance and insubordination of migrant workers signalled by the 2006 mobilisations audaciously verified and reasserted precisely the primacy of labour as *subject*. Hence, *subjectivity* must be recognised and theorised as a central if elusive

figure in any attempt to comprehend the politics of immigration, race and citizenship in the United States in the aftermath of the so-called War on Terror and the ascendancy of what I have designated the Homeland Security State (De Genova, 2007).

Articulations of the Unspeakable

During the weeks and days immediately before the events of September 11, 2001, the news in the United States was extensively focused on a highly publicised series of meetings between George W. Bush and Mexican President Vicente Fox devoted to elaborating a framework of US immigration reforms that would entail both some form of 'legalisation' for the undocumented migrants already present in the United States and a new guestworker programme. A rather low-profile pressure group – the Essential Worker Immigration Coalition (EWIC) – had been deeply interested in these talks. The EWIC¹ was organised by the American Meat Institute and other corporate trade associations in industries employing large numbers of migrant workers following a series of targeted policing operations by the (now-defunct) Immigration and Naturalisation Service (INS) against the meatpacking industry in the state of Nebraska in 1999. In November 1999, it began quietly lobbying the US Congress for a new, greatly expanded guestworker programme for the recruitment of specifically *unskilled* 'foreign' labour.² The group had quickly grown to include 53 of the country's most powerful employer associations,³ headed by the US Chamber of Commerce itself, which claims to be 'the world's largest business federation representing more than three million businesses'.⁴ In a press release (6 September 2001), EWIC announced that it was 'very pleased with the progress made ... during this historic summit', and pledged to 'redouble its efforts'.⁵

In the wake of the events of September 11, 2001, Bush and the full panoply of mass-mediated spectacular public discourse summarily came to repeatedly and extravagantly insist to the world that 'everything changed' (De Genova, n.d.). Indeed, with the advent of the so-called 'war against terrorism', there has indisputably been a rigorous material and practical overhaul of the US socio-political order, discursively predicated upon an elaborate scaffolding of distinctly *metaphysical* propositions and inferences about 'terror'. The ascendancy of the Homeland Security State has signalled a momentous new and ongoing process of state formation in the United States. This stages transnational mobility as an invasive menace, and figures 'immigration' in general as an utterly decisive material site where the ostensible War on Terror may be practically and physically realised (De Genova, 2007).

Thus, for a significant period following September 11, 2001, any public discussion of 'immigration reform' in the United States became literally

unspeakable. Any suggestion at the level of official legislative and policy debate of a prospective 'legalisation' of the undocumented tended to be deemed frankly preposterous. Borders were perceived to be woefully violable and migrants were widely targeted as the embodiment of nebulous 'foreign' menaces, and came to be easy stand-ins for the figure of 'terrorism', generally (De Genova, 2007). Arab and other Muslim migrants were selectively subjected to arbitrary surveillance, indefinite detentions with no recourse to due process of law, and for some, deportations (Cole, 2003). In addition, approximately 10 000 airport screeners were fired from their jobs and refused rehire on the singular grounds that they were not US citizens, as the federal government took over the screening of travellers' luggage, summarily prohibiting union membership and imposing a citizenship requirement. In the highly publicized Operation Tarmac, the INS raided 106 airports and arrested 4271 migrants – overwhelmingly Latino service workers – deporting hundreds of them (USGAO, 2003). Recall, nonetheless, that by 2002, an estimated 20.3 million migrant workers constituted 14 per cent of the US workforce, of whom an estimated 6.3 million were undocumented (Passel, 2005).

Amidst this spectacular rise in aggravated enforcement against undocumented workers, the immigration authorities abandoned altogether even the nominal enforcement of sanctions against businesses that employed 'illegal' migrant labour. Between 1999 and 2003, workplace enforcement operations were reduced by 95 per cent. One reason cited for the utter retreat from any commitment to enforce this aspect of US immigration law was none other than the exigency of counter-terrorism (Hsu and Lydersen, 2006).

In this new political climate of anti-terrorism, however, EWIC did not quietly but triumphantly vanish, satisfied with the demise in the sorts of employer-focused enforcement that had instigated its formation. Rather, it reformulated its proposals and re-energised its commitment to pursuing a vast guestworker agenda. Guestworker programmes, it contended, would supply a means to track the names and monitor the identities of those who otherwise would 'sneak' across the border. The fantasy of a new and comprehensive regime of perfect visibility and legibility would mean that mundane migrant workers could be brought out 'from the shadows', while 'terrorists' could be identified and pursued. 'September 11 means we have to look at all these issues through the lens of national security', declared John Gay, EWIC co-chair. 'We live in a pool of migrating people, and we have to control people coming across the border' (quoted in Bacon, 2004). Under the sign of what has come to be called Homeland Security, all could sanctimoniously invoke the spectre of 'people [who] pour into the United States undetected, undocumented, and unchecked' (Obama, 2006a). In turn, the fallacy that guestworker programmes could ensure total legibility and perfect surveillance was now to be promoted as a means of controlling the mobility of migrant labour as never before. Thus, in late 2002, EWIC renewed its campaign in Congress for guestworkers, this time

emphasising the alleged 'threat' posed by the undocumented to national security. Claiming that 'authorities know very little' about the millions of undocumented people in the United States, it warned that while most just came to work, 'those few who wish to do us harm find it easier to hide among their great numbers'. In this lurid light, an EWIC letter addressed to US senators (dated 24 February 2003) demanded, 'How can the immigration status quo be tolerated?'⁶

That 'the immigration status quo' was indeed intolerable for many migrants, and especially the undocumented, then became the central concern of what, given the political climate at the time, could have seemed to many like an altogether improbable nationwide mobilisation. The Immigrant Workers Freedom Ride consisted of a modest sum of 18 chartered busloads of protesters (approximately 900 people), originating from 10 cities. It converged in Washington DC on 2 October 2003 for a rally on the lawn of the US Capitol, and highly publicised meetings with members of Congress, and culminated in a final rally of an estimated 125 000 in the Queens borough of New York City, 2 days later. The mobilisation had been called by an organising committee that included major labour unions, civil rights organisations and immigrant advocacy groups. En route to Washington, the Freedom Riders collectively covered more than 20 000 miles and visited more than 100 cities and smaller towns, where countless rallies and more humble community gatherings were held to welcome them, and where they lent support to labour picket lines. The Queens destination was symbolically significant because, with migrants originating from more than 120 countries and speaking 100 languages comprising 36 per cent of its residents, it was the most ethnically diverse county in the United States.⁷

The Immigrant Workers Freedom Ride was modelled on the freedom rides of 1961, in which African Americans and other civil rights protesters physically challenged racial segregation in public transportation facilities in the US South, commonly incurring fierce violence in reaction to their transgressions. The 2003 mobilization honoured the memory of the earlier movement and drew critical force from the analogy of that legacy of struggle against racist discrimination and violence with the contemporary cause of 'immigrants' rights' and 'a road to citizenship' for migrant workers, and for the undocumented in particular. The 2003 Freedom Riders were confronted with the palpable prospect that immigration authorities might detain their buses and deport the numerous undocumented migrant activists and organisers among them. Indeed, two buses from Los Angeles were raided by the Border Patrol in El Paso, Texas, culminating in a 4-hour-long standoff between immigration agents and intransigent riders and their local supporters. The initial raid and then the subsequent detention in jail cells of everyone involved, during which individual interrogations were conducted, were persistently met with spirited protest songs and a well-organised insubordinate silence regarding the specific

immigration or citizenship status of any individual (Engler, 2003; Atkin, 2005, p. 205). Like their civil rights movement precursors, therefore, the migrant activists of the 2003 Freedom Ride manifested their political message and defiantly asserted their subjectivity, first of all and most significantly, with their very bodies. Whereas the African American bodies that were subjected to racist terror and segregationist laws displayed and denounced a subordinate citizenship, the bodies of the migrants who demonstrated in 2003 and risked apprehension and deportation were the physical manifestation of the utter *absence* of citizenship and any semblance of the sorts of civil rights that had historically been travestied for Black people. In the insubordinate act of making themselves visible, calling attention to the mere corporeal fact of their deportable *presence*, the migrant Freedom Riders held themselves up as potential targets for the state's recriminations.

Through their literal movement across the United States, the Freedom Riders set themselves up as moving targets. In this manner, they took up and prevailed over what Henri Lefebvre has called the 'trial by space', whereby 'whatever is not invested in an appropriated space is stranded, and all that remain are useless signs and significations' (Lefebvre, 1974/1991, pp. 416–417). Re-inscribing the space of the US nation-state, they truly produced a 'differential space' (Lefebvre, 1974/1991, pp. 50, 349, 408), where the predicates of the political were significantly reformulated on their own terms. Thus, the sovereign power of the state was challenged to reassert its presumptive monopoly – through violence, in space – over the disbursement of rights and the possibility of their authorisation, protection or enforcement (Lefebvre, 1974/1991, pp. 279–281). Inasmuch as space is both experienced and produced, first and foremost, through the living human body (Lefebvre, 1974/1991, pp. 170, 294) – 'being at once "subject" and "object"', as Lefebvre clarifies (p. 407, cf. pp. 194–195) – the itinerant assemblage of the Freedom Riders' dissident and deportable bodies did not merely 'express' the protest of unruly subjects who repudiated their own objectification by the state's regime of migrant securitisation. It enacted and performed a crucial dimension of subjectivity itself – its material and practical *corporeality* (p. 61; cf. Blackman *et al*, 2008, p. 18). By asserting their physical and bodily *presence*, these migrants thereby affirmed the ineradicably and incorrigibly insistent character of their very material needs, desires, capacities and dispositions. Thus, the Freedom Riders exposed subjectivity itself as always-already, intrinsically a question of *inter*-subjectivity – a matter of the social relationality of embodied subjects confronting one another in space – and commanded a response to the urgency of their insubordinate presence.

In this sense, the most profound and enduring radicality of the Immigrant Workers Freedom Ride of 2003 derived not from any explicit programme of political demands. In Lefebvre's terms, this movement effectively made 'the reappropriation of the body, in association with the reappropriation of space, in to a non-negotiable part of its agenda' (Lefebvre, 1974/1991, pp. 166–167).

As the objects of an unprecedented and escalating climate of securitisation, migrants had been increasingly depicted as possessing an abject agency that was unsavoury at best, if not plainly dangerous. Their political mobilisation in 2003 entailed the sort of ‘emerging political practices and enduring political problematics’ that Peter Nyers (2003, p. 1072) has insightfully examined as a kind of irruption of abject subjectivity, representing ‘a troubling anomaly to the sovereign order’ (Nyers, 2003, p. 1090). This movement pushed ‘the question of the speaking subject front and centre’ and ‘provoke[d] fundamental questions about politics [and] ... who can be political’ (Nyers, 2003, p. 1089). Such critical ruptures confront (and affront) political regimes premised upon the supposed ‘impossibility’ that officially rightless non-citizens could assume the mantle of quasi-citizenship by articulating political demands and making claims. In so doing, they produce or reconfigure the spaces of the political as such (Nyers, 2003, pp. 1070–1071). Indeed, the migrant Freedom Riders not only moved ‘the question of the speaking subject front and centre’, but also provoked a kind of dialogue that was above all about the question of the *moving* subject – migrant subjectivities manifested through the insubordinate mobility of their bodies. Their sheer corporeality, ostensibly speechless and opaque, mobilised in space, affirmatively proclaimed their material and practical presence as a ‘foreign’ (migrant) ‘population’ *within* the United States. They re-articulated as a matter for public debate the erstwhile (officially) ‘unspeakable’ questions of immigration law and undocumented labour. But furthermore – even apart from the precise content of their words – they enunciated through their actions the urgency of substantial needs and demands that had been previously unspeakable or at least coercively muted by their ‘unauthorised’ status.

The prosaic expression of this organising effort (in anticipation of the larger social movement to follow in 2006) was, in fact, deeply contradictory.⁸ Despite various nationalist contradictions and anti-terrorist concessions, in the grim and stifling atmosphere of the ascendant Homeland Security State, this seemingly diminutive but stalwart effort re-articulated the supposedly unspeakable. If only fleetingly, it put the beleaguered question of ‘immigrants’ rights’ into the forefront of ‘domestic’ US politics at a time when the military occupation of Iraq was still only 6 months old and public debate in the United States was overwhelmingly focused on the ‘foreign’ theatres of its ‘Global War on Terror’. And as was already evident in the electrifying reception this itinerant protest garnered in local communities across the United States, it signalled the beginnings of a much wider social movement.

Three months later, on 7 January 2004, the Bush administration was provoked at last to officially re-open the public immigration debate in the United States. Bush advocated a new scheme for the emphatically ‘temporary’ regularisation of undocumented workers’ ‘illegal’ status and for the expansion of a migrant labour contracting system orchestrated directly by the US state.

Bush's immigration reform proposal expressly precluded any prospective eligibility for permanent residence or citizenship. According to Bush's formula, the state would, in effect, operate as a broker of virtually indentured labourers: 'Participants who do not remain employed, who do not follow the rules of the programme or who break a law will not be eligible for continued participation and will be required to return to their home' (Bush, 2004). Continued presence in the United States would be conditioned by their continuous (docile and ever-deportable) employment, and therefore, by their faithful servitude to designated employers.⁹

The real sign of the success of the EWIC campaign to reshape the national debate has been the ubiquity of guestworker schemes in virtually *all* proposals, Republican and Democratic alike – and even those of many immigrant advocacy organisations. Firmly grounded on the metaphysics of anti-terrorism, the accepted wisdom faithfully shared among Bush, Obama, and the majority of the US Congress (especially in the aftermath of the 2006 protests) promotes a managed 'legalisation' of the guestworker variety, and holds that no immigration reform is possible without this sort of heightened surveillance and control over migrant labour. That is to say, no immigration legislation is even conceivable any longer except on the terms that ensure that the most organised and outspoken business lobby gets what it wants. A great lacuna in this vision of enhanced control through 'legalisation' – converting 'illegal' migrants into temporary and excessively supervised guestworkers – is, of course, the utter implausibility of ever cajoling the great majority of undocumented migrant workers already present in the United States to voluntarily subject themselves to such a drastic diminution of their autonomy.

'Unlawful Presence', Insurgent Presence

It may seem paradoxical, amidst this newfound enthusiasm for the 'legalisation' of undocumented migrant labour – even if only by converting 'illegal aliens' into guestworkers – that the ensuing debate came to revolve around what was without question the single most expansively punitive immigration legislation in US history. The Border Protection, Antiterrorism and Illegal Immigration Control Act (passed on 16 December 2005 by the House of Representatives) would have criminalised all of the estimated 11 million undocumented migrants residing in the United States by summarily converting their 'unlawful presence' into a felony and rendering them subject to mandatory detention upon apprehension (Mailman and Yale-Loehr, 2005).

Shortly thereafter, during the spring of 2006, forcefully galvanising widespread public awareness of the US Senate's ongoing deliberations in response to the House bill, truly unprecedented mass protest mobilisations in defence of the 'rights' of 'immigrants', and especially the undocumented, took

the United States by storm. These protests began with half a million marching in Chicago on 10 March, reportedly the largest single demonstration on record in the city's history, only then to be surpassed by the subsequent demonstration there of approximately 750 000 on 1 May. This was followed by at least a million people in Los Angeles on 25 March (also that city's largest demonstration on record), in addition to several smaller protests there during that week. Hundreds of thousands followed in New York City at various rallies in early April, as well as tens of thousands each in numerous other cities. The gathering storm of migrant protest culminated in several million demonstrating nationally on 1 May for the 'Day Without an Immigrant' 1-day general strike and boycott.¹⁰ Thus, undocumented labour, which the legislative debate had sought to render its *object*, audaciously stepped forward again, now on a genuinely massive scale, to effectively reaffirm that migrant workers were truly *subjects* in this struggle. Indeed, they were the subjects in a double and inextricably contradictory sense. They were subjects as labour *for* capital, and thus, the veritable source of value, upon which capital is constitutively dependent. They were also subjects as labour *against* capital, engaged in a mass act of insubordination and an expression of the irreconcilable antagonism that conjoins labour and capital in a mutually constitutive social relation (Bonefeld, 1995; Holloway, 1995). Notably, there were widespread school walk-outs and virtual closures as well, as the children of migrants also emerged as a major force, deftly translating a repudiation of the abjection of their non-citizen parents into an energetic defiance of the racial subjugation of their own abject citizenship.

In spite of the genuine depth of the organising that contributed everywhere to the success of the movement (see, for example, Gonzales, 2009), it is nonetheless undeniable that the 2006 struggles achieved their remarkable force and scope rather abruptly. An acute awareness of the particularly offensive and menacing ramifications of the new legislation, which, after all, had already passed in the House of Representatives, spread rapidly and proved to be an irresistible catalyst. Predictably, the positive demands of the movement often included various formulations of 'legalisation' for the undocumented, but the main focus of all the protests was to simply but resolutely denounce this purportedly anti-terrorist immigration law. The generally defensive tone was echoed by the well-worn and wistful affirmation, *No Human Being Is Illegal*, but there was also ample evidence of slogans which tellingly revealed the more generally beleaguered sensibility that animated much of the struggle, including the agonistic and rather compromised declarations, *We Are Not Criminals*, and *We Are Not Terrorists*. Moreover, it was not uncommon to see placards that, in various renditions, asserted: 'The 9/11 Hijackers Did Not Speak Spanish'.

In such gestures of complicity with the larger nationalist compulsions of US immigration discourse, much like the official rhetoric of the earlier Immigrant

Workers Freedom Ride, the undocumented frequently sought to challenge their own status as the iconic ‘bad immigrant’ by recapitulating its disabling normative logic: although ‘illegal’, they were in fact hard-working, law-abiding, tax-paying ‘good immigrants’ (De Genova, 2005, pp. 85–91). References to the Spanish language of Latinos supplied a divisive racialising subtext. Such slogans implied that there were indeed other (categories of) migrants who represented a genuine menace: the figure of the ‘terrorism suspect’ could now be upheld as the truly ‘bad immigrant’ (De Genova, 2007). In the same spirit of complicity and conformity with the dominant ethos of a reanimated but besieged US nationalism, there was likewise an extraordinarily vociferous and emphatic effort by the more conservative elements in these struggles to insist that protesters should carry US flags. Waving the US flag, they argued, would verify ‘loyalty’ and the assimilationist desire to truly ‘become Americans’. In contrast, the customary profusion of flags representing the migrants’ diverse countries of origin would purportedly have served to merely confirm the worst nativist suspicions of the anti-immigrant lobbies (cf. Pulido, 2007; Baker-Cristales, 2009).¹¹

Apart from the variety of competing specific demands and claims articulated by the 2006 marches and rallies, largely focused on ‘legalisation’, there was nevertheless a resounding and consistent manifestation of the migrants’ more elementary defiance with regard to a social and political climate of escalating hostility. This spirit and sensibility were poignantly captured in a slogan (notably, in Spanish) that has been persistent and pervasive: *Aquí Estamos, y No Nos Vamos* [Here we are, and we’re not leaving]. This was sometimes accompanied by a rejoinder: *Y Si Nos Sacan, Nos Regresamos* [... and if they throw us out, we’ll come right back]. Indeed, the theme of *presence* – the profound and inextricable presence of migrants, and especially that of the undocumented, within the US social formation signalled a crucial flashpoint for both sides in the current struggle over ‘immigration’ in the United States. The political campaign to criminalise undocumented status, as elaborated in the proposed law, sought to confront ‘unlawful aliens’ with myriad grounds for detention and incarceration, meeting ‘unlawful presence’ with protracted confinement. For the migrants engaged in this struggle, however, their ‘unauthorised’ presence figured as the definitive social and political ‘objective’ fact. The exuberant affirmation of that fact – its reinscription as sheer insubordinate subjectivity – almost seemed to signify an end in itself.

Confronted with the unanticipated insurgency of ‘immigrants’ rights’ protests and migrants’ bold affirmations of their *presence*, on 15 May 2006, Bush revised his formulation of immigration ‘reform’. He sanctimoniously reaffirmed the criminalisation of undocumented migrants as law-breakers and pledged 6000 National Guard troops for deployment on the US-Mexico border to assist the Border Patrol with logistical support (a militarised force that remained in place until July 2008). While taking great pains to appear to repudiate anything

that might be characterised as an ‘amnesty’ for undocumented workers, Bush, nevertheless, retreated from his previous position and now defended an eventual eligibility for citizenship for those undocumented migrants who had been in the United States for several years and could meet multiple other requirements (Bush, 2006). Notably, those undocumented migrants who could qualify for Bush’s proposed ‘adjustment of status’ would have been subjected to several additional years of heightened vulnerability and continued deportability as they sought to satisfy all of these requirements.

Subsequently, Obama has been similarly emphatic in his endorsement of analogous ‘legalisation’ proposals:

Don’t get caught up in the false rhetoric about amnesty. What we are talking about is an earned pathway to citizenship. Over the course of eleven years, [undocumented migrants] would have to pay a fine, they would have to learn English, they would have to pay back taxes and they would be behind those who applied to be here legally. So, they wouldn’t be rewarded for their illegal behavior but we would recognize that our future as a country involves absorbing these people who are already here so we wouldn’t have an entire class of second-class citizens. (Obama, 2006b)

More recently, as president, Obama has reiterated this position: ‘You’ve got to say to the undocumented workers ... look, you’ve broken the law; you didn’t come here the way you were supposed to. So this is not going to be a free ride. It’s not going to be some instant amnesty’ (Obama, 2009). Indeed, in both Bush’s and Obama’s visions, those ‘legalised’ migrants who would finally be able to ‘naturalise’ as US citizens would ultimately have served a very long and arduous apprenticeship in ‘illegality’ and subsequent subjection to considerable scrutiny, surveillance and discipline as the precondition for their ‘legalization’. Migrants who would not qualify for such ‘legalisation’ schemes would be immediately subject to deportation. At best, they might be invited to merely join the ranks of a prospective new mass of eminently disposable guestworkers. Thus, with Obama as with Bush before him, the insurgent presence of migrant labour has summoned forth elusive promises of ‘legalisation’, but only in a manner that seeks to penalise and discipline migrants, revise and re-inscribe migrant ‘illegality’, and refortify the barriers to citizenship.

The Enforcement Spectacle

The Border Protection, Antiterrorism and Illegal Immigration Control Act ultimately proved to be politically untenable, and no significant federal immigration legislation has been passed subsequently. Nevertheless, the parties to the legislative debate (with the support of then-Senators Barack Obama,

Joe Biden and Hillary Clinton) finally did approve a similarly punitive but dramatically more limited and perfunctory law, the Secure Fence Act of 2006. This law ostensibly provided further fortification of the US-Mexico border with hundreds of miles of physical barriers to be added to the existing 125 miles of fence. This, after all, is the standard fallback position of all US immigration politics: when in doubt, further militarise the US-Mexico border. By the end of 2008, the number of US Border Patrol agents was legally mandated to have doubled since 2001, to a record high of 18 000, and is expected to increase again to 20 000 by the end of 2009. Furthermore, state law making has responded to the Congressional stalemate with a new proliferation of state-level immigration laws. Of 1562 such bills introduced nationally during 2007 alone, 240 were enacted in 46 states. In the first quarter of 2008, another 1100 state-level immigration bills were introduced across 44 states. A new law in the state of Mississippi, for instance, makes it a felony for an undocumented migrant to hold a job. In Oklahoma, it's now a felony to provide an undocumented migrant with shelter (Cave, 2008). Accompanying these legislative tactics has been an unrelenting campaign of locally improvised forms of intensified state-, county- and municipal-level immigration enforcement (cf. Coleman, 2007; Núñez and Heyman, 2007; Varsanyi, 2008). An unprecedented profusion of local police departments, furthermore, are now being directly deployed to enforce immigration violations – a distinctly post-September 11, 2001 phenomenon.¹²

In response to the vibrant upsurge in migrant labour and community organising, and plainly as an intimidation tactic in anticipation of the 1 May rallies, the Department of Homeland Security initiated on 20 April 2006, an 'aggressive' new campaign of raids and deportations to '[reverse] the growing tolerance for ... illegal immigration' (USDHS-ICE, 2006b). The announcement came a few days after what at the time had been the largest workplace enforcement raid operation against undocumented workers in recent memory. Immigration authorities had arrested 1187 employees of a single company across 26 states, as an explicit warning to put 'employers and workers alike ... on notice that *the status quo has changed*' (USDHS-ICE, 2006a; emphasis added). Numerous raids followed across the country, and have continued into the present. Indeed, with the advent of the Homeland Security State, US immigration authorities enunciated a 10-year 'strategic enforcement plan' whose express mission is to promote 'national security by ensuring the departure from the United States of all removable aliens' (USDHS-ICE, 2003, p. ii). In spite of such bombastic gestures, however, as I have argued elsewhere (De Genova, 2002, 2005), it is *deportability*, and not deportation as such, that ensures that *some are deported in order that most may remain* (undeported) – as workers, whose pronounced and protracted legal vulnerability may thus be sustained indefinitely.

There is now a significantly new tactical emphasis on *targeted* policing and its predictable capacity for generating a spectacle of law enforcement 'results',

however. The US immigration authorities can regularly trumpet their ‘successes’ in sweeps that dredge up hundreds and even upwards of a thousand undocumented migrants, and which simultaneously allow them to conflate the great mass of hum-drum ‘illegal alien’ workers with so-called ‘criminal’ and ‘fugitive aliens’, who have been the officially designated targets of the raids. Those who have evaded deportation orders, for instance, are characterized as ‘criminal fugitives’. Furthermore, the utterly mundane and pervasive practice of working with fraudulent documents quickly came to be persistently depicted as ‘identity theft’ or ‘fraud’, and prosecuted as a criminal (rather than a mere immigration) violation.

Thus, on 12 May 2008, an immigration raid on Agriprocessors, Inc., a meatpacking plant in Iowa – which led to the arrest and detention of 389 migrant workers, culminating in federal criminal convictions for 270 – was distinguished for being ‘the largest criminal enforcement operation ever carried out by immigration authorities at a workplace’ (Preston, 2008a). There have of course been larger workplace raids. What made this one so special was that the prosecutions were strictly focused on federal *criminal* charges (almost entirely for the use of fraudulent Social Security cards or immigration documents), leading not to immediate deportations but rather to prison sentences in federal penitentiaries (to be followed later by deportations). Thus, 297 undocumented migrants, mainly from Guatemala, were marched with hands and feet in shackles in groups of 10 into a make-shift courtroom staged in a dance hall, adorned for the occasion with black curtains, as well as adjacent mobile trailers, on the fair grounds of the National Cattle Congress. The proceedings went from 8.00 am until late at night, over several days, with the undocumented workers, who had been threatened with much harsher penalties, pleading guilty in rapid succession and being summarily sentenced to 5-month prison terms. As one of the convicted migrants, Isaías Pérez Martínez, resolutely and repeatedly replied in response to the efforts of lawyers to explain his putative legal options in the case: ‘I’m illegal, I have no rights. I’m nobody in this country. Just do whatever you want with me’. The US attorney for the district who oversaw the spectacle called the whole affair an ‘astonishing success’ (Preston, 2008d).¹³

This more stringent enforcement regime, unquestionably the most severe crackdown in at least two decades, has nonetheless continued to be distinguished by a remarkably candid, if seemingly paradoxical, strategy to compel more widespread acceptance of the proposed *expansion* of guestworker schemes for the importation of migrant labour. Heightened terror for undocumented migrant workers is offered frankly as the necessary price of a kind of publicity campaign. Former Secretary of Homeland Security, Michael Chertoff, remarked, ‘It would be hard to sustain political support for vigorous work-site enforcement if you don’t give employers an avenue to hire their workers in a way that is legal, because you’re basically saying, “You’ve got

to go out of business”’, (quoted in Hsu and Lydersen, 2006). Chertoff continued, ‘We are not going to be able to satisfy the American people on a legal temporary worker programme until they are convinced that we will have a stick as well as a carrot’. (quoted in Preston, 2008c). Thus, in Chertoff’s view, the vital political support of employers required the enticement of guestworker arrangements (the proverbial ‘carrot’), while the crucial political acquiescence of ‘the American people’ would have to be secured by providing the presumed satisfaction of a spectacle of enforcement (the ‘stick’). Indeed, in their newfound and increasingly vocal enthusiasm for expanded guestworker arrangements as a recipe for ‘legalisation’, employers rallying behind the fig leaf of legality have adopted a peculiarly ironic but revealing rallying cry. In reply to anti-immigrant lobbies, demanding ‘What part of “illegal” don’t you understand?’ an employers’ coalition in the state of Arizona promoted what would have been the first state-level guestworker programme, with the slogan: *What part of legal don’t you understand?* (Preston, 2008c).

The Phantom Presence of the Guestworker

The ratcheting upwards of the punitive recriminations against the undocumented sustains a campaign of terror that might ultimately serve to render many undocumented migrants more compliant with the prospective injunction that they forfeit their autonomy and convert their status to that of guestworkers. Guestworker programmes have never ceased to operate in the United States (although on a relatively restricted scale), and already play an important role for employers in some sectors (see, generally, SPLC, 2007). The phantom figure of the guestworker, however – as the promise of a still more tractable, spatially confined and temporally restricted (virtually indentured) form of servitude – is not without its own subaltern menace of insubordination. This was made dramatically manifest, when on 14 May 2008, a group of Indian guestworkers launched a hunger strike in Washington DC in view of the White House, calling for Congressional hearings on the abuses which they had suffered, and demanding that they not be subjected to deportation for the duration of the Department of Justice’s investigation of their case.

After more than a year of continuous organising by the self-styled Indian Workers Congress, in coordination with the New Orleans Workers’ Center for Racial Justice,¹⁴ on 6 March 2008, over 100 of the 550 skilled metalworkers abandoned their jobs in Texas and Mississippi. They had originally been recruited for fixed-term employment repairing oil rigs in the Gulf Coast region devastated by Hurricane Katrina. Because their work visas bound them to their employer, their desertion rendered them immediately deportable. Instead of instantly vanishing into the anonymous ranks of the undocumented, the guestworkers reported the company to the US Department of Justice on charges

of human trafficking (ABC News, 2008; Preston, 2008b).¹⁵ The Department of Justice responded by insisting that they turn themselves in for deportation as a precondition for the investigation. On 10 March, the workers filed a federal anti-racketeering class action lawsuit against the employer, the recruitment firm, and others whom they accused of trafficking (Nossiter, 2008).¹⁶ From 18 to 27 March 100 workers travelled eight days, largely on foot, from New Orleans to Washington DC, along a route that explicitly invoked the legacy of African American civil rights struggles, to expose and denounce the guestworker programme as a system of forced labour (BBC News, 2008). On 14 May, 20 workers began their 29-day hunger strike with a collective statement aptly titled, 'We Will Not Be Silent'. They proclaimed: 'We know that if we remain silent ... our brothers and nephews and neighbours will be next. We have sacrificed everything we had, so now we are laying down our lives'.¹⁷

Encouraged by an outpouring of solidarity from labour and civil rights organisations, as well as considerable mass media attention and even gestures of support from 18 members of Congress – but also significantly, after five of the strikers had been hospitalised – the hunger strike was suspended on 11 June. In the workers' declaration on that occasion, titled 'We Have Only Begun to Fight', they described their situation in bleak but intransigent terms:

We are paralysed. We live in constant terror of deportation. We cannot work. We cannot see our families. We cannot provide for our families. We are listening to our children grow up over long distance phone calls. We have not been able to attend the funerals of our mothers and fathers in India. Because of the [Department of Justice]'s inaction, our lives are in limbo.

Yet, the workers also celebrated their hunger strike, not implausibly, for having garnered 'more power than any group of H-2B guestworkers in the United States has ever had'.¹⁸ As with the earlier examples of migrant bodies mobilized – and exposed – in struggle, these workers' subjectivity was manifest not only with words but also through their corporeality itself. Marching on foot for eight days across the US South, encamped outdoors amidst the physical spaces of the sovereign power of the US state, depriving themselves of nourishment – the workers' bodies advanced demands more audacious than their words could convey.

The Indian guestworkers' mobile protest produced a differential space with contradiction and conflict as its imprimatur. They laid claim to hitherto unknown or intangible forms of political prerogative and social dignity by transposing their labour-power – their productive power and creative capacity as labour-for-capital – into an insurgent power that was vested in their very bodies, in their life itself (see De Genova, 2010). Thus, precisely when capital has sought to enhance the subordination of migrant labour with recourse to

guestworker schemes, 'legal' guestworkers have assumed their proper place alongside the 'illegal' at the forefront of these struggles.¹⁹ The Indian guestworkers did remain in the agonising legal limbo of protracted deportability, however, as their petitions for 'continued presence' – a deferral of their prospective deportations until the settlement of their claims – were derisively disregarded. Thus, many were left with no other recourse than to seek employment as effectively 'illegal' workers.²⁰ When the presumably tractable guestworkers became unruly, the subordination of their labour required that they should be stripped of their 'legal' status. Here, then, was a precise inversion of the notion that the intolerable 'illegality' of undocumented migrants could be 'remedied' with guestworker contracts, whereby state-supervision would ostensibly 'legalise' the undocumented only in order to more effectively subjugate their 'illegal' autonomy. Illegalisation proved to be the seemingly inescapable 'remedy' for these guestworkers' insubordination.

The Ghost in the Machine: Mobile Subjects

Migrant labour is the irrepressible ghost in the machine of the anti-terrorist security state. The resurgence of the conventional preoccupations with mundane 'illegal alien' workers in the current immigration debate in the United States exposes labour subordination as one of the constitutive if suppressed conditions of possibility for the metaphysics of anti-terrorism. The very title of the House legislation that instigated so much controversy in 2006 explicitly coupled 'Antiterrorism and Illegal Immigration'. But undocumented migrants need not be branded as actual 'terrorists'. Indeed, given that they are absolutely desired and demanded for their labour, to do so would be counter-productive in the extreme. Rather, it is sufficient to mobilise the metaphysics of anti-terrorism to do the crucial work of continually stripping these 'illegal' workers of even the most pathetic vestiges of legal personhood, such that their own quite laborious predicament of rightlessness may be further amplified and disciplined.

Alongside the dramatically escalated campaign of immigration raids and the widening scope of criminalised enforcement against migrant workers, the insistent effort to restructure 'illegal' migration into a more manageable 'legal' guestworker framework has flourished. The two phenomena must therefore be understood to be complementary, rather than paradoxically opposed. The more that the figure of the 'illegal alien' can be conjured as the sign of a crisis of national security, so much the more are guestworker proposals promoted. They are presented as a congenial panacea that satisfies US employers' deeply entrenched historical dependency on, and enduring demand for, the abundant availability of legally vulnerable and ever-disposable (deportable) migrant labour, while simultaneously pandering to the pervasive rhetoric of 'securing' borders. Through the securitisation of migration,

anti-terrorism has increasingly been equated with the regimentation afforded by guestworker schemes, and has supplied a crucial key for securing the agenda of the employers who profit most from the exploitation of migrant labour.

The subjectivity of migrant labour is quite material and practical, indeed corporeal. It remains an unsettling presence that persistently disrupts the larger stakes of securing the regime of capital accumulation. This subversive potential is characteristic of the social force of all labour, ever indeterminate in its centrality – as subject – *within* while yet *against* capital. Yet, the question of the subjectivity of labour is especially acute in the socio-political predicaments of migrant workers, particularly at the apparently opposite extremes of (guestworker) ‘legality’ and undocumented ‘illegality’. Here the workplace politics of labour subordination are inextricable from the economies of immigration law and the social relation of migrants to the state. Migrants are putatively the most disempowered denizens of the US legal economy, and it is little surprise that many have placed their hopes in ‘legalisation’. Yet, it is their distinct status as legally vulnerable labour-power that renders them indispensable to capital. Whether by means of ‘illegalisation’ or ‘legalisation’, state power works to render migrant labour into a manageable object for capital. Migrant labour’s sheer subjective (productive and creative) force within the processes of capital accumulation nevertheless precedes and exceeds any of the powers mobilised to contain and subordinate it. Hence, migrant workers – as subjects – remain an incorrigible constituent power within capital and the constituted ‘sovereign’ power of the state. Indeed, it is in their very life, the vitality of their bodies and minds as living labour, that migrant workers have been rediscovering a *power* that defies all the conceits, delusions and duplicities of any regime of legality, ‘rights’ and rightlessness.

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Notes

- 1 See the EWIC website, www.ewic.org.
- 2 See EWIC's first Letter to Congress (3 November 1999), www.ewic.org/index.php?option=com_content&task=view&id=66&Itemid=9.
- 3 For a complete list of EWIC's member associations, see: www.ewic.org//index.php?option=com_content&task=view&id=48.
- 4 See the US Chamber of commerce self-description at www.uschamber.com/about/default.
- 5 See EWIC Press release (6 September 2001), http://ewic.org/index.php?option=com_content&task=view&id=83&Itemid=41.
- 6 See EWIC letter to Congress (24 February 2003), www.ewic.org/index.php?option=com_content&task=view&id=60&Itemid=9.
- 7 These figures were publicized on the Immigrant Workers Freedom Ride Coalition website, www.iwfr.org/ny.asp.
- 8 See the expanded justifications for each of the principal slogans on the Immigrant Workers Freedom Ride Coalition website, www.iwfr.org/about.asp.
- 9 Bush's formulation was in fact consonant with existing regulations for guestworkers (Southern Poverty Law Center, 2007).
- 10 See the database available at www.wilsoncenter.org/migrantparticipation.
- 11 More controversial but similarly compromised by US nationalist prerogatives was the release on 28 April 2006 of 'Nuestro Himno' ['Our Anthem'], a Spanish-language rendition of 'The Star-Spangled Banner,' the US national anthem. Distributed to Spanish-language radio stations on the eve of the 1 May demonstrations, the song was intended to serve as an anthem of solidarity for the movement, and was quickly disparaged as verifying an anti-assimilationist repudiation of genuine 'Americanness.' Anti-immigrant columnist Michelle Malkin decried it as 'the Illegal Alien Anthem.'
- 12 The legal basis for many of these rescalings of jurisdiction over the enforcement of immigration law originates in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; see Coleman (2007) and Varsanyi (2008).
- 13 A professional legal interpreter, Erik Camayd-Freixas, revealed that many of the Agriprocessors workers who were convicted could not have knowingly committed the crimes in their pleas. 'Most of the clients we interviewed,' he explained, 'did not even know what a Social Security card was or what purpose it served.' He reported that many of the migrants could not distinguish between a Social Security card and a residence visa, (a.k.a. 'green card'). They said they had purchased fake documents from smugglers, or had obtained them directly from supervisors at the Agriprocessors plant. Most did not know that the original cards could belong to US citizens or 'legal' residents. See Camayd-Freixas (2008, 2009) and Preston (2008d).

Subsequently, on 4 May 2009, in the *Flores-Figueroa v. United States* decision, the US Supreme Court ruled unanimously that the federal law concerning 'identity theft' could no longer be used to routinely prosecute undocumented workers who have used false Social Security numbers to secure employment. The decision concerned precisely whether or not the mere use of the identification numbers satisfies the stipulation that the use of another person's identity had been done 'knowingly.'

- 14 See <http://nolaworkerscenter.wordpress.com/about/>.
- 15 See also the nine-article series by the *Hindustan Times*, www.hindustantimes.com/Search/Search.aspx?q=signal%20international.
- 16 For incisive critiques of the discourse of 'human trafficking,' see Andrijasevic (2003) and Aradau (2008).
- 17 See www.neworleansworkerjustice.org/hunger_strike_statement_final_draft.doc.
- 18 See www.neworleansworkerjustice.org/hunger_strike_statement_final_draft.doc.
- 19 Notably, during the last days of the Bush administration, authorities pushed through changes to the H-2A (agricultural) guestworker programme, with virtually no public debate or oversight, which drastically decrease real wages and further diminish any nominal worker protections for approximately 75 000, who are currently employed through the programme. See Leticia Miranda, 'Last-Minute Lawmaking,' *ColorLines* No. 50 (May/June 2009); <http://colorlines.com/article.php?ID=528>.
- 20 On 28 October 2008, 23 of the Indian workers were targeted by immigration authorities in a sting operation at a construction site in North Dakota. They were apprehended and jailed on federal felony charges for social security fraud owing to possession of counterfeit documents. Upon arrest, they were repeatedly denied access to their legal counsel. (See the press release of the New Orleans Workers' Center for Racial Justice www.nowcrj.org/press-releases/ice-raid-targets-snares-human-trafficking-victims-102908/, and *Immigration News Briefs*, Vol. 11, No. 26 [2 November 2008], <http://immigrationnewsbriefs.blogspot.com/2008/11/inb-11208-youth-march-in-san-francisco.html>.)

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