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The Production of Culprits: From Deportability to Detainability in the Aftermath of “Homeland Security”

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ABSTRACT *In the aftermath of the events of September 11, 2001, the virtually instantaneous hegemony of a metaphysics of antiterrorism has radically reconfigured the politics of race, immigration, and citizenship in the United States. In the extended historical moment beginning with the United States’ proclamation of a planetary “War on Terrorism” and encompassing our (global) political present, the US sociopolitical order has been racked by several interlocking crises—convulsively careening between heightened demands on citizenship and the erosion of civil liberties, imperial ambition and nativist parochialism, extravagant domestic law enforcement and global lawlessness. In relation to the parallel but contradictory hegemonic projects of “American” national identity and attachment, on the one hand, and the expansion or refortification of US empire, on the other, the cumulative crisis-as-opportunity for US nationalism that has ensued is replete with unpredictable dilemmas and unresolved possibilities for both citizens and denizens alike. This essay examines significant new deployments of migrant “illegality” as this sociopolitical condition has been significantly reconfigured in the United States in the aftermath of the proclamation of a purported War on Terrorism, and the concomitant implementation of draconian police powers domestically that the author calls the Homeland Security State.*

The Homeland Security State

It has been a staple of a certain species of critical discourse following September 11, 2001 to recognize that “terrorism” has now come to ubiquitously serve the same ideological role of pervasive and imminent external threat to the stability and security of the United States that “communism” previously did during the Cold War. “In terms of public rhetoric, domestic security policies, militarization of foreign policy and culture, curtailment of civil liberties, a pervasive sense of fear and threat”, notes Marilyn Young, “the war on terrorism is the Cold War redux. It takes little historical imagination to see in the permanent war on terrorism a continuation of what was initially imagined as a permanent war on communism” (2004, p. 271). Some conservative commentators can even be found to sanctimoniously endorse precisely such a conceptual framework in normative terms (for example, Diamond, 2002), whereas more historically grounded scholarship has amply

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verified the meaningful continuities and material connections, both from the left (for example, Mamdani, 2002, 2004; Harvey, 2003; Johnson, 2004a, 2004b, 2006; Smith, 2005) and even from the unorthodox right (Ferguson, 2004). During the decade intervening between the demise of the Soviet Union and the events of September 11, 2001, moreover, there was a tellingly symptomatic disaffection among some of the most prominent ideological proponents of the political and military order long premised upon “national security” with the apparent absence of any adequate external menace against which US global power—now awkwardly exposed in its “unipolar” singularity—could project its mission (cf. Robin, 2004). A ragtag collection of transnational phenomena, including drug smuggling, undocumented migration, arms dealing, sex trafficking, and other sorts of “organized crime”, including international terrorism (albeit in its more mundane vernacular manifestations), were increasingly pressed to serve as one or another improbable surrogate (cf. Andreas & Price, 2001).

The post-World War II, Cold War-era National Security State entailed the discursive and institutional hegemony of a notion of US national “defense” as never-again even plausibly restricted to safeguarding the physical security of nation-state borders and the sovereignty of domestic institutions, but rather as infinitely flexible and effectively global, and above all aggressively pro-active, subordinating all imperatives to the putative “containment” of Communism and the external geopolitical “threat” of the Soviet Union. While the top-secret programmatic National Security Council policy paper known as NSC-68 famously decried the Soviet Union as an “[aspirant] to hegemony . . . animated by a new fanatic faith, antithetical to our own” with repercussions that would entail “the fulfillment or destruction not only of this Republic but of civilization itself” (USNSC, 1950, p. I), US President Harry Truman could nonetheless be found to casually declare that the salvation of the human race from “totalitarianism” required that “the whole world adopt the American system” (cited in Ferguson, 2004, p. 80). In short, within the National Security State framework, there was a tenacious blurriness sustained between national “defense” and imperialist aggrandizement. This strategic reorientation palpably implied and often unabashedly avowed the militarization of every dimension of the United States’ relation to the rest of the world, a permanent war preparedness and quest for military dominance during peacetime, including the coordination of foreign policy and military strategy with the economic interests, influence, and resources of “the nation”, as well as the comprehensive ideological integration of foreign and domestic policy values and mandates. There is of course much of this overall framework that predictably remains durably intact and has been extravagantly reaffirmed in the wake of the events of September 11, 2001, albeit with the convenient substitution of “terrorism” as the specter of choice, rather routinely acknowledged by persistently affiliating it rhetorically with the ever-elusive figure of “totalitarianism” as a unifying frame of antagonistic reference.

What I am calling the Homeland Security State indubitably involves an ideological re-tooling operation that has refashioned the National Security State for an imperial era in which US global military power is plainly unchallenged by any other state, and must instead conjure elusive transnational networks of non-state enemies in order to justify what Young has incisively depicted as “permanent war in a unipolar world” (2004, p. 273). Thus, it is not that the National Security State has been supplanted so much as radically renovated. The ascendancy of the Homeland Security State nonetheless signals a momentous and qualitative improvisation, the historical specificity of which therefore commands intense critical scrutiny. This essay seeks to modestly elucidate something of

this new and ongoing process of state formation in the United States with regard to only one of its crucial dimensions and distinguishing features—a specific and extraordinary instance of what Didier Bigo (2002) has more generally identified as “the securitization of immigration” (cf. Huysmans, 2006), which Benjamin Muller (2004) has analogously examined in terms of the securitization of citizenship itself. That the Homeland Security State entails “the most extensive reorganization of the federal government in the past fifty years”, in the words of *The National Strategy for Homeland Security* (USOHS, 2002, p. vii), is merely the material and practical verification of the more decisive strategic reconfiguration which proclaims: “The U.S. government has no greater mission” than “securing the American homeland . . . from terrorist attacks” (p. 1), a new mandate that is confirmed to be “a permanent mission” (p. 4). Thus, alongside *The National Security Strategy of the United States of America* (USNSC, 2002), which predictably conjoins the metaphysical discourse of antiterrorism with a more prosaic prolegomena for reinvigorated global military dominance, the Homeland Security State emphatically addresses “a very specific and uniquely challenging threat—terrorism in the United States” and seeks “to provide a secure foundation for America’s ongoing global engagement” by circumventing “our enemies” from “secretly inserting terrorists into our country to attack our homeland” (USOHS, 2002, p. 5).

The metaphysics of antiterrorism is replete with an acute and beleaguered sensibility about the instability and permeability of nation-state space and borders. This is perhaps nowhere more evident than in the very recourse, unprecedented in dominant US political discourse, to the rhetoric of “homeland”, which has long been a hallmark of diasporic nostalgia and desire, and in effect discursively re-figures US citizens as ineffably alienated from their own “native” entitlement to the comfort of unproblematic belonging. “Although homeland security may strive to cordon off the nation as a domestic space from external foreign threats”, Amy Kaplan persuasively contends, “it is actually about breaking down the boundaries between inside and outside, about seeing the homeland in a state of constant emergency from threats within and without . . . to generate forms of radical insecurity” (2003, p. 90; cf. 2004). The homey domesticity of the Homeland Security State, however, ought not to obfuscate its implications for the wider conduct of US imperial power in the relentless quest to consolidate and sustain global hegemony (cf. Bigo, 2006; Jabri, 2006). Indeed, the *National Strategy for Combating Terrorism* (White House, 2003) responds to “a new global environment” chiefly distinguished by “unprecedented mobility and migration” (p. 7) by endorsing the ideal of “a seamless web of defense across the spectrum of engagement to protect our citizens and interests both at home and abroad” and asserting the consequent necessity of “providing our operating forces . . . foreign and domestic—with a single integrated operating matrix” (p. 25, emphasis added).¹ The invocation of the distinction between “foreign” and “domestic” serves here only to underscore their material, practical, and discursive elision.² In contrast, if the Cold War’s defining immigration legislation—the (McCarran–Walter) Immigration and Nationality Act of 1952—did indeed include new anti-communist ideological requirements for immigration as a matter of “internal security” and notoriously provided for not only the exclusion or deportation of communists but also even the denaturalization of naturalized-citizen “subversives”, it fundamentally served to refortify the epistemic divide between the putative “inside” and “outside” of the national space. Thus, the Cold War’s specter of foreign infiltration never afforded migrants as such a prominence in the nationalist imagination at all comparable to that which presently congeals around Arab

and other Muslims living in the United States, and which has figured “immigration” in general as an utterly decisive site in the ostensible War on Terror.

The new nativism of antiterrorism has clearly not made the vast majority of contemporary (non-Muslim) migrant groups into primary objects of the sorts of racial profiling that proliferated since September 11, 2001. Nevertheless, the practical ramifications for *all* migrations and migrant *transnationalism* are already profound—above all evidenced by the complete subsumption (as of 1 March 2003) of the now-defunct Immigration and Naturalization Service (INS) into the new Department of Homeland Security (DHS)—and may very likely be still more dramatic. Subsequently, the ultimately abortive Border Protection, Antiterrorism and Illegal Immigration Control Act (HR 4437, also known as the Sensenbrenner bill), passed 16 December 2005 in the House of Representatives), entailed the single most expansively punitive immigration legislation in US history. This bill would have criminalized all of an estimated 11 million undocumented migrants residing in the United States by summarily converting their “unlawful presence” into a felony (§203) and rendering them subject to mandatory detention upon apprehension (§401), and likewise would have converted any and all immigration violations—however minor, technical or unintentional—into felonies punishable with imprisonment, such that “legal” permanent residents would have been irreversibly rendered as “illegal aliens” for any variety of innocuous incidental infractions (§203). In addition to numerous other draconian provisions, the bill also sought to impose criminal sanctions, with imprisonment as a penalty, on anyone construed to knowingly “assist” (§202) an “unlawful” migrant (whether undocumented or previously “legal” and subsequently criminalized), with definitions so expansive that even immigration lawyers could have plausibly been subject to imprisonment (Mailman & Yale-Loehr, 2005). “It is paradoxical”, remarks Etienne Balibar, in a related but different context, “to target those who in fact live the most insecure lives as being primarily responsible for the growth of insecurity” (Bojadžijev & Saint-Saëns, 2006, p. 24). Paradoxical, indeed, but quite productive nonetheless, as we will see.

In response to this legislative ambush, mass protest mobilizations during the spring of 2006, overwhelmingly comprised of migrants and citizens of color, forcefully established that undocumented migrant working people, although having only the most tenuous claim to “rights”, were not at all prepared to languish in docile subjection. An estimated half a million marched 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 of approximately 750,000 on 1 May), followed by at least a million in Los Angeles on 25 March (in addition to several smaller protests that week), hundreds of thousands in New York City at various rallies in early April, as well as tens of thousands each in numerous other cities, culminating in several millions nationally with the “Day Without an Immigrant” one-day general strike and boycott on 1 May.³ These events took the political establishment by storm and forcefully galvanized widespread public awareness of the US Senate’s then-ongoing deliberations over the House legislation. Ultimately, the law in question proved to be politically untenable. Nevertheless, the parties to the legislative debate finally did approve a similarly punitive but dramatically more limited law, the Secure Fence Act of 2006, ostensibly providing for further fortification of the US–Mexico border with hundreds of miles of new physical barriers to be added to the existing 125 miles of fence. Amidst the controversy over new immigration proposals, but rather less well known, KBR—a company famous for scandals concerning its war profiteering in Iraq

and a subsidiary of Halliburton (the corporation formerly directed by US Vice President Dick Cheney)—was quietly awarded on 24 January 2006 a \$385 million contingency contract that provides for the creation of new detention facilities “in the event of an emergency influx of immigrants into the US, or to support the rapid development of new programs”.⁴ Those prospective “new programs” that might require mass detentions, predictably, are shrouded in an ominous ambiguity. But “detentions”—which is to say, more precisely, *indefinite* imprisonment without formal charges or any semblance of due process of law—have indeed been the hallmark of the Homeland Security State, and non-citizens have overwhelmingly been figured as its special targets. Much, then, revolves around the economy of “illegality” that renders a migrant or other foreign visitor more or less subject to the caprices of the Rule of Law.

Migrant “Illegality” and Deportability

Undocumented migration, in the United States and elsewhere, is pervasively treated not only in policy debates and mass-media representations but also in scholarship as a self-evident “problem”. Migrant “illegality”, however, like citizenship itself, is a juridical status. It signifies a social relation to the state; as such, migrant “illegality” entails the production of a preeminently *political* identity. If we as publicly engaged intellectuals begin not from the epistemological standpoint of the state and its functionaries but rather from the standpoint of the elementary freedom of movement as something like a basic human entitlement, then rather than presupposing that there is something inherently suspect about the human beings who migrate, the real problem comes into considerably sharper focus: that problem, clearly, is the state itself (cf. Harris, 1995, p. 85). Once we recognize the irreducibly political character of all questions concerning undocumented migration, and sharply formulate the problem of the state as a defining horizon for such concerns, then it becomes more immediately apparent that all undocumented migrations are constituted as historically specific products of the intersections of particular migratory movements with the distinct political and legislative histories of particular states and their consequent legal economies of meaning and differentiation. In other words, there is no such thing as undocumented migration (or migrant “illegality”) “in general”. These analytic categories do not constitute a generic, singular, universal, and thus, transhistorical and essentialized object of study or target for policy intervention. Indeed, this is why an interrogation of the historical specificity of the post-September 11, 2001 Homeland Security State, precisely in contradistinction with the US immigration and naturalization regime that immediately preceded it, becomes so imperative. Nonetheless, it is indeed a broadly generalizable characteristic of many, if not most, undocumented migrations that they are preeminently *labor* migrations (De Genova, 2002). Hence, the deep continuities and otherwise more prosaic ramifications of this “new” regime of migrant “illegality” with that upon which it is historically predicated remain to haunt it, and arguably expose labor subordination as one of the constitutive if suppressed conditions of possibility for the metaphysics of antiterrorism.

Within the regime of US immigration and naturalization law, it is noteworthy that the term “immigrant” is reserved only for those so-called “legal” migrants who have been certified as such by the state. Yet it is still more instructive to note that the strictly accurate technical category for undocumented migrants is therefore not “immigrant” at all. The legal category that designates an undocumented migrant in the US is not even the

politically charged, bluntly hostile, but nonetheless ubiquitous category “illegal alien”, but rather, more precisely, “*deportable* alien”. Indeed, it is their distinctive legal vulnerability, their putative “illegality”, that facilitates the subordination of the undocumented as a highly exploitable workforce. But this is above all true because any confrontation with the scrutiny of legal authorities tends to be always-already tempered by the discipline imposed by their ultimate susceptibility for deportation.

US immigration law and its enforcement creates an apparatus for the everyday production of a durable and enduring migrant “illegality”, yet its disciplinary operation has never effectively achieved, and until recently, almost never even pretended to achieve, the presumed goal of mass deportation. On the contrary. It is *deportability*, and not deportation as such, that has historically rendered undocumented migrant labor as a distinctly disposable commodity. Migrant “illegality” is lived through a palpable sense of deportability—which is to say, the possibility of deportation, or in the bureaucratic euphemism of the US immigration regime, the possibility of being “removed” from the space of the state. What has made deportability so decisive for migrant “illegality” and the policing of state borders, ultimately, is that *some are deported in order that most may remain* (un-deported)—as workers, whose particular migrant status may thus be rendered “illegal” and sustained indefinitely (De Genova, 2004, 2005). Nevertheless, with the advent of the Homeland Security State and its characteristic expansiveness, aggressiveness, and general bombast, US immigration authorities in the DHS’s Office of Detention and Removal have enunciated a 10-year “strategic enforcement plan”, called “Endgame”, 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). The avowed commitment to an immediate “operational focus on fugitive apprehension and [eventually] developing full capacity to remove all removable aliens” plainly sustains and vigorously reaffirms the conventional goal of “removal” that has long distinguished the regime of deportability, albeit with a significantly new tactical emphasis on *targeted* policing.⁵ Yet, the political campaign to criminalize undocumented status, as elaborated in the proposed Border Protection, Antiterrorism and Illegal Immigration Control Act, notably sought to enact a crucial shift that would have displaced this regime’s most elementary category—the *deportable alien*—in favor of another, the *unlawful alien*, whose susceptibility for deportation was amply juxtaposed with myriad grounds for detention and incarceration, meeting “unlawful presence” with protracted confinement.⁶

Mexican migrants in particular, as is well known, were pervasively figured as the US nation-state’s iconic “illegal” (or, deportable) “aliens” throughout most of the twentieth century, and largely continue to be so. This was perhaps never more dramatically and unequivocally demonstrated than in the mass deportations and coercive repatriations of Mexican migrants as well as their often US-born (and hence, US-citizen) children during of the 1930s. Immediately following what was in fact a mass *importation* of Mexican/migrant labor driven primarily by a voracious employer demand during the period from 1910 to 1930, when approximately one-tenth of Mexico’s total population had relocated north of the border, with the advent of the Great Depression, Mexican migrants and birthright US citizens of Mexican ancestry alike were systematically excluded from employment and economic relief, which were declared the exclusive preserve of “Americans”, who were presumed to be more “deserving”. These abuses culminated in the forcible mass deportation of at least 415,000 Mexican migrants as well as many of their US-citizen children, and the “voluntary” repatriation of 85,000 more (Hoffman, 1974;

Balderrama & Rodríguez, 1995). Inasmuch as this mass expulsion of Mexicans during the 1930s proceeded with no regard to “legal” residence or US citizenship or even birth in the US—and migrant and citizen alike were deported simply for being “Mexicans”—the more plainly *racist* character of the illegalization and deportability of Mexican labor became starkly manifest. Notably, this was not the only occasion when Mexican deportability was mobilized to such excessive purpose. In 1954–1955, the militarized dragnet and nativist hysteria of Operation Wetback culminated in the expulsion of at least 2.9 million “illegal” Mexican/migrant workers (García, 1980). More important, these examples reveal a still more fundamental and general “revolving-door” pattern of simultaneous deportations coupled with an overall mass *importation*, which has long been the defining feature of Mexican migrant labor (De Genova, 2005).

In short, what the history of Mexican migration to the US makes abundantly clear and irrefutable is the crucial relation between migrant “illegality” and labor subordination.⁷ The productivity of immigration law in creating and sustaining distinctive forms of pronounced and protracted legal vulnerability for particular migrants, therefore, is inextricable from the specifically *economic* profitability of migrant deportability, but it is of decisive importance here to emphasize that this is only possible when migrant “illegality” is produced and deployed on a *mass scale*. Again, it is not deportation as such but rather deportability that qualifies undocumented migrant labor as a commodity of choice distinguished by its heightened vulnerability and, ordinarily, its resultant tractability. In the remainder of this essay, however, it will be instructive to redirect our critical scrutiny from the economic profitability of migrant “illegality” and deportability to the specifically *political* profitability of mobilizing “illegality” and deploying deportability, precisely not on a mass scale but rather more selectively, not simply in the banal production of mundane “illegal aliens” but rather in the targeted production of Arab and other Muslims as “*enemy* aliens”.

From “Illegal Aliens” to “Enemy Aliens”

Before we proceed to consider the political production “enemy aliens”, it is crucial to recall, as the reinvigorated immigration debate makes abundantly clear, that more conventionally construed “illegal aliens” have hardly been exonerated of their dubious distinction. After all, the very title of the House legislation explicitly coupled “Antiterrorism and Illegal Immigration”. The revised imperatives of the Homeland Security State have certainly not “redeemed” undocumented migrants, or even US-citizen Latinos, Asians, and other people of color, of the allegations of “foreign”-ness, “illegality”, or “criminality” that were already more or less prominent features of their various racializations in the years immediately prior to September 11, 2001. The escalation in the name of the “War on Terrorism” of immigration raids against undocumented Mexican and other migrant workers—especially those employed in airports and on military bases during the months immediately after September 11, 2001—as well as the heightened policing and militarization of the US–Mexico border, and the dramatic escalation of immigration raids since April 2006 in reaction to the protest mobilizations, have persistently and repeatedly reconfirmed that the pervasive racialized equation of Mexicans in particular (and Latinos, more generally) with the figure of the “illegal alien” has hardly been suspended or diminished. Indeed, the putative War on Terrorism and the resurgence of “national security” concerns has readily supplied a quite

convenient ideological rationale for anti-immigration lobbies to reassert their already well-worn obsessions and to re-energize their longstanding campaigns, all of which were conventionally directed disproportionately against Latinos—from the movement to restrict undocumented migrants' access to driver's licenses,⁸ to the call for a rejection of the Mexican *matrícula consular* as a valid form of identification, to the demand that the US-born children of the undocumented should be denied birthright US citizenship (for example, Camarota, 2001; FAIR, 2002; FILE, 2002; Krikorian, 2002, 2003; Dinerstein, 2003; Martin *et al.*, 2003; cf. Schuck & Smith, 1985; Wood, 1999).

Given many US employers' deeply entrenched historical dependency on the abundant availability of legally vulnerable undocumented migrant labor, however, and in spite of the pervasive rhetoric of "securing" borders, it hardly comes as a surprise that on 7 January 2004, the Bush administration proposed a new scheme for the emphatically "temporary" regularization of undocumented workers' "illegal" status and for the expansion of a Bracero-style migrant labor contracting system orchestrated directly by the US state (Bush, 2004; cf. Calavita, 1992; Papademetriou, 2002). Notably, George W. Bush's original immigration "reform" proposal expressly precluded any prospective eligibility for permanent residence or citizenship, and merely sought to devise a more congenial formula by which to sustain the permanent availability of disposable (and still deportable) migrant labor, but under conditions of dramatically enhanced ("legal") regimentation and control. According to such a formula, the state would, in effect, operate as a broker of virtually indentured laborers whose continued presence in the United States was conditioned by their faithful servitude to designated employers. Confronted with an unanticipated insurgency of immigrants' rights protests, however, on 15 May 2006, Bush revised his formulation of "reform". While declaring that "illegal immigration . . . brings crime to our communities" (and more generally reaffirming the criminalization of undocumented migrants as law-breakers), pledging to deploy 6,000 National Guard troops to the US–Mexico border to assist the Border Patrol, and taking great pains to appear to repudiate anything that might be characterized as an "amnesty" for undocumented workers, Bush nevertheless defended an eventual eligibility for naturalization for some undocumented migrants who have been in the United States for several years and could meet multiple other requirements (Bush, 2006). Notably, those undocumented migrants who could qualify for such a legalization would be subjected to several additional years of heightened vulnerability and continued deportability as they sought to satisfy all of these requirements, while those who do not qualify would be immediately subject to deportation and, at best, might merely be invited to join the ranks of the new mass of eminently disposable guestworkers. Those who could finally naturalize as US citizens, moreover, 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". This sort of subjection, it might be reasonably inferred, is truly what Bush means when he depicts this plan as "a way for those who have broken the law to pay their debt to society, and demonstrate *the character that makes a good citizen*" (2006, emphasis added).

Inasmuch as the figure of the "illegal alien" has long been rendered synonymous with a corrosion of law and order, the porosity of the US–Mexico border, and a supposed crisis of national sovereignty itself, one common and remarkably virulent strain of the post-September 11, 2001 nativism boldly declares *all* undocumented migrants, in effect, to be potential terrorists. One need only consider the title, for example, of Michelle Malkin's

nativist diatribe *Invasion: How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores* (2002), the first chapter of which declares: “When we assess the security of our borders, our immigration laws, and our tourism policies . . . we must ask at every turn: *What would Mohamed do?*” (2002, p. 3). Referring literally to September 11 hijacker Mohamed Atta, but brazenly insinuating the more generic and iconic figure of a racialized Arab/Muslim menace, Malkin contends that “illegal immigration through Canada and Mexico is the passageway of countless terrorist brethren” (p. 8), and that al-Qaeda operatives can readily enter the US from Mexico undetected “alongside hundreds of thousands of undocumented workers” (p. 9). The juxtaposition of “countless terrorist[s]” and “hundreds of thousands of undocumented workers”, of course, operates rhetorically to strategically elide any distinction between “illegal aliens” and “enemy aliens”.

The term “enemy aliens”, as I am using it, is not merely a rhetorical gesture, however. Rather, the category has a precise legal content that has been a convention of US law since the passage of the Enemy Aliens Act of 1798 (Act of 6 July 1798, 1 Stat. 577), which has remained in effect ever since. The Enemy Aliens Act affirms that the US president is authorized during wartime to detain, deport, or otherwise restrict the liberties of any person (over 14 years of age) who is a citizen of a state with which the United States is at war, without any requirement that the individual in question has demonstrated “disloyalty” or engaged in criminal conduct, or has even been alleged to be “suspicious” (Renquist, 1998, p. 209). Following World War II, in the decisions of *Ludecke v. Watkins* (1948), and then again in *Johnson v. Eisentrager* (1950), the US Supreme Court upheld the constitutionality of the Enemy Alien Act, but the “enemy alien” authority has never been formally invoked since (Renquist, 1998, p. 210; Cole, 2003, pp. 12, 237n.23). Furthermore, in a strict sense, the rule applies only in a time of *declared* war and may be directed exclusively toward the citizens of a state with which the United States is at war. Since September 11, 2001, 80,000 male foreign nationals visiting the US from designated countries of origin (of which 24 of 25 were predominantly Arab and/or Muslim) were required to register with authorities and be photographed and fingerprinted (a program launched in December 2002 and discontinued on 1 December 2003); 8,000 Arab or other Muslim migrants or visitors were sought out by the FBI for interviews; and more than 5,000 have been subjected to detentions (culminating in deportations for 515) as a result of the purported “antiterrorism” dragnet (Cole, 2006, p. 17). Neither of the criteria for the application of the “enemy alien” authority, however, pertains to the vast majority of them (who have predominantly been citizens of Arab or other Muslim countries that are ostensibly allies of the US or otherwise “cooperating” with US directives).

In this amorphous “war” on such an ever-elusive, characteristically transnational, definitively stateless, and distinctly moving target—namely, “terrorism”—an official and explicit application of the “enemy alien” rule to virtually anyone would seem highly implausible if not altogether untenable. Indeed, the Bush administration improvised a rather more appropriately ambiguous and elastic category with which to preemptively justify the indefinite detention of some of its terrorism “suspects”—without formal charges and without any semblance of due process of law: they have been labeled “enemy combatants”. The term itself exposes a blatant presumption of guilt. Although the overwhelming majority of the alleged “combatants” are foreign nationals, the distinction among them between aliens and citizens has been notably effaced as they are relegated to an astounding state of exception (cf. Agamben, 1998, 2005).

Perhaps the premier exemplar of the insidious truth that the presumably elementary liberties and legal protections of US citizens can be subverted altogether is José Padilla. Padilla, a US citizen by Puerto Rican colonial birthright, who was initially accused of plotting to carry out a “terrorist” attack with a radioactive “dirty bomb” in the United States as an al-Qaeda operative, is likewise the telltale case confirming that Latinos have acquired no newfound immunity from the new (post-September 11) nativism. Without any of the purportedly sacrosanct due process of law to which his US citizenship is supposed to entitle him, Padilla was apprehended in an airport in Chicago on 8 May 2002 and subsequently was indefinitely imprisoned under military jurisdiction. With a flagrant refusal by the US government to publicly present any formal charges or evidence against him whatsoever, Padilla was stripped of any semblance of juridical personhood, and was effectively “disappeared” (cf. LCHR, 2003a, 2003b, 2003c, 2003d).⁹ A related case involved the military imprisonment of Yasser Esam Hamdi, raised in Saudi Arabia and purportedly apprehended on or near a battlefield in Afghanistan, but whose parents resided in the United States at the time of his birth, and hence a US citizen (cf. Nyers, 2006; Stasiulis & Ross, 2006). Notably, Hamdi’s contentious US citizenship became a flashpoint for legal arguments fundamentally directed at overturning the extension of birthright citizenship to the US-born children of undocumented migrants (for example, FILE, 2002). Still more significant, following the Supreme Court’s ruling on 28 June 2004 in *Hamdi v. Rumsfeld*, overturning the executive authority of the President and the Department of Justice to indefinitely detain him with no due process of law, Hamdi was released from custody only on the conditions that he be transferred to Saudi Arabia, abide by strict travel restrictions, and renounce any claim to his US citizenship (USDoJ, 2004). Much more recently, this Bush Administration improvisation—the unchecked executive authority to designate even US citizens as “unlawful enemy combatants”—was retroactively sanctioned by the US Congress and institutionalized as law by the Military Commissions Act of 2006 (signed 17 October 2006), thus overriding all legal decisions previously challenging this authority.

These alleged “enemy *citizens*” notwithstanding, most of the purported “enemy combatants” have been foreign nationals, usually apprehended in the vicinity of actual theatres of warfare during the US war against Afghanistan, and are distinguished for their indefinite incarcerations at the US’s Guantánamo Naval Base in Cuba. Meaningful and evocative analogies notwithstanding, it is important nonetheless to note that the term “enemy combatant” has *not* been applied indiscriminately to *all* so-called “terrorism suspects”. While a more detailed consideration of the historical circumstances, sociopolitical condition, and legal predicament of these alleged “enemy *combatants*” is beyond the scope of the present essay (and, in any case, has otherwise received considerable attention; Ratner & Ray, 2004; Rose, 2004; Willis, 2006; cf. Yee & Molloy, 2005; Begg, 2006), they provide an absolutely necessary and indispensable conceptual counterpoint to the approximately 5,000 Arab and other Muslim non-citizens—*de facto* “enemy *aliens*”—who have been detained as a consequence of the post-September 11 immigration regime. Indeed, it is these detentions *within* the United States (and, in at least 515 instances, the consequent deportations) that have truly been the centerpiece of the Homeland Security State, as such—the “domestic” face of the US war machinery.

The most extravagant and deservedly most infamous deployment of the “enemy alien” authority in US history was the mass internment in concentration camps of the Japanese during World War II. As a result of President Franklin D. Roosevelt’s Executive Order

9066, on the ostensible grounds of “military necessity”, approximately 110,000 persons of Japanese ancestry were summarily and forcibly evacuated from the West Coast region of the US and often thereby effectively dispossessed of virtually all of their property, to be imprisoned in camps scattered in the country’s interior for much of the duration of the war. Notably, the absolute majority—roughly 70,000—were US citizens by birthright (see, generally, Rostow, 1945; Bosworth, 1967; Robinson, 2001; Yamamoto *et al.*, 2001; Serrano & Minami, 2003). Their migrant parents were “resident aliens”, ineligible, on explicitly racial grounds, to naturalize as US citizens. The vast majority of the Japanese non-citizens, however, had been settled in the US since prior to 1907 when Japanese labor migration had been prohibited by diplomatic accord. Much like the racialized mass deportations of Mexicans during the prior decade, Japanese internment dispensed with any substantive distinction between migrant non-citizens and their US-born citizen children. The state indiscriminately extended the suspicion of “enemy aliens” to all persons racialized as “Japanese”. The fundamentally racist character of the policy toward the Japanese, furthermore, is amply underscored by the strikingly divergent fortunes of persons of German and Italian ancestry who were never subjected to such indiscriminate mass incarceration. In marked contrast with the experience of Mexican labor migrants’ forcible repatriation, however, rather than mass expulsion the Japanese were subjected to mass containment. The glaring contrast, here, between the absolute disposability of “illegal aliens” and the commodity of their labor-power, on the one hand, and the treatment of “enemy aliens”, on the other—in short, the profound disparity between deportability and confinement—is instructive.

The imprisonment without charges of US citizens (as well as “legal” migrant non-citizens) of Japanese origin or descent as presumptively disloyal “aliens” during World War II provides a poignant analogue to the contemporary elision of Arab ancestry or Muslim heritage with “foreign”-ness and the concomitant presumption of their disloyalty and potential culpability as “terrorists” during the present so-called War on Terrorism (cf. Saito, 2001; Mark *et al.*, 2002). Although much of post-World War II public opinion assessed the Japanese evacuation and detention to have been a grave injustice, three major Supreme Court decisions during the final year of the war had upheld the legitimacy of the government’s “military necessity” and “national security” rationales. Very much more recently, however, William Renquist, the then-presiding Chief Justice of the Supreme Court (now deceased), published an eerily precocious book on the subject of “civil liberties in wartime”, which remarkably appeared in print three years *prior* to September 11, 2001. Renquist revisits those World War II-era decisions in order to justify anew the admittedly discriminatory internment of Japanese non-citizens on the explicit grounds of the “enemy alien” authority (1998, pp. 203–211).¹⁰ Subsequently, and perhaps predictably in her capacity as one of the most guileless nativists of the contemporary moment, Michelle Malkin has published another book entitled *In Defense of Internment: The Case for “Racial Profiling” in World War II and the War on Terror* (2004).¹¹ Recall, however, that there had never been any formal charges against the interned Japanese individuals, but rather only the mobilization of a very palpable overarching racial hostility conjoined to rather diffuse suspicions of “disloyalty” based on national origins or ancestry.

In the aftermath of September 11, 2001, similarly, the policy of “preventive” detentions, directed almost singularly against Arab or other Muslim non-citizen men, has frequently involved arrests with no charges whatsoever and the denial of bond, even in the utter absence of any evidence that the detainees posed any danger or flight risk. Not

uncommonly, they have been detained under maximum-security conditions and even 23-hour lockdown, almost always with a communications blackout (at least initially), prohibiting all contact with legal counsel, the rest of the outside world, and even one another. Typically, they have had only extremely restricted possibilities for consultations with lawyers or visitations with loved ones, thereafter. Reports of verbal and physical abuse and other types of discriminatory or otherwise punitive treatment by detention authorities have likewise been commonplace. Thus, if nothing else, the Homeland Security detentions have effected the selective enforcement against Arab and other Muslims of a generalized presumption of their guilt as “terrorists” (cf. Human Rights Watch, 2002; Cole, 2003). In effect, Arab and other Muslims have been reduced to the sociopolitical status of “enemy aliens” (even if that precise legal designation has been judiciously avoided).

“Preemptive” War, “Preventative” Detention

The Homeland Security State’s predilection for these indefinite and usually secretive detentions for the purposes of “terrorism” investigations can reasonably be considered a domestic complement to the Bush administration’s avowed doctrine of “preemptive war” (see USNSC, 2002, pp. 13–16). Indeed, former Attorney General of the US Department of Justice, John Ashcroft, repeatedly took decisive measures to modify rules and procedures in order to expand the government’s “emergency” powers to arrest and detain non-citizens. Thus, immigration authorities are no longer required to file charges against any foreign national within any specified time frame, allowing non-citizens to be apprehended and detained indefinitely (Cole, 2003, p. 31). Furthermore, the Military Commissions Act of 2006 has subsequently stripped US courts of jurisdiction to hear or consider *habeas corpus* appeals challenging the lawfulness or conditions of detention in US custody of *anyone* designated an “enemy combatant”.¹² In addition, beginning under Ashcroft, immigration judges have been ordered that, in “special interest” cases, “the courtroom must be closed . . . no visitors, no family, no press”. (The “special interest” classification has become the standard official euphemism for cases involving “terrorism” investigations; notably, the term was left entirely undefined in the directive.) The restriction even went on to prohibit any public confirmation of whether or not the case was being listed on the court’s docket, enforcing an even more absolute secrecy for any immigration proceedings involving “terrorism” allegations or inquiries (Chief Immigration Judge Michael Creppy’s order, quoted in Mark *et al.*, 2002, p. 11). Moreover, immigration officials have been empowered to override any court order for the release of a non-citizen detainee, merely by registering their intent to appeal the unfavorable custody decision, without any requirement that they present substantial evidence in support of the appeal (Cole, 2003, pp. 32–33). Furthermore, then-Attorney General Ashcroft announced in July 2002 that the Homeland Security State would begin vigorous enforcement (inevitably on a selective basis) of a rule that was virtually unknown and previously never enforced, but which was an already standing requirement on the books: this rule requires all migrants and other non-citizens to report every instance of change of address to immigration authorities. This became the ultimate pretext by which the vast majority of all non-citizens in the United States could be found to be in technical violation of immigration law and thus, strictly speaking, “out of status” (Cole, 2003, pp. 31–32). This policy change with regard to *enforcement* practices contributed to an unprecedented expansion of the

plausible grounds for migrant “illegality”, and prefigured subsequent legislative efforts to render procedural technicalities sufficient grounds for illegalizing otherwise “legal” migrants.¹³ For Arab and other Muslims from designated countries, moreover, this new mandate was notably coupled with a new more implicitly criminalizing requirement: the regular and repeated documentation of their photographs and fingerprints (Cole, 2003, p. 50).

The ultimate authority of US immigration officials to detain any non-citizen is supposed to be constrained by the individual’s liability for deportation, his or her actionable deportability. Thus, under ordinary circumstances, previously, whenever the prospect of deportation was uncontested and “deportable aliens” opted for what is called “voluntary departure”, the goal of “removal” was achieved without the expense and delay of legal proceedings. Under these circumstances, previously, immigration authorities would be summarily divested of any legitimate justification for continued detention. After September 11, 2001, however, immigration authorities instituted a new policy that denied the standard option of voluntary departure to those detained in connection with “terrorism” suspicions. Now, even if a detainee agrees to be deported, the state may refuse to release him until after the Federal Bureau of Investigations (FBI) has completed its usually very protracted inquiries and exonerates him of any plausible charges of criminal conduct, to say nothing of actual “terrorist” activity (Cole, 2003, p. 33). Finally, the “USA-PATRIOT” Act (P.L. 107-56, 115 Stat. 272) of 2001, a 342-page omnibus bill rushed into law within six weeks of September 11 (and subsequently renewed with only minimal revisions), further authorized the continued detention even of non-citizens who had prevailed in court and won favorable decisions *against* their deportation in removal proceedings. In such a case, insofar as the migrant in question has been granted a suspension of deportation orders, s/he has literally been pardoned of any immigration violation and effectively determined to be a “legal” resident, thereby negating any plausibly valid grounds for detention by immigration authorities. But the PATRIOT Act subordinated a migrant’s “legal” residence in the United States to the police powers of the Department of Justice, upholding indefinite detention “until the Attorney General determines that the noncitizen is no longer a noncitizen who may be certified [as a suspected terrorist]” (p. 66; cf. USA PATRIOT Act §412). Thus, whether a migrant has been judged by an immigration court to be definitely deportable or definitely not-deportable, within the adjusted framework of the Homeland Security State, the non-citizen remains subject to indefinite detention. As immigration and civil liberties lawyer and legal scholar David Cole has suggested, in the case of the September 11 detainees, “the government’s real goal is not to remove, but to detain” (2003, p. 33).

Here, it bears repeating, emphatically—the Homeland Security State’s real goal is *not to deport but to detain*. As I have already suggested with regard to undocumented labor migration, the effective goal of immigration law enforcement has never been deportation as such, but rather deportability, for the purposes of creating and sustaining the “illegality” effect for migrant workers who come to be relegated to a protracted condition of heightened legal vulnerability. The real effect of US immigration law enforcement, historically, in the context of what I have elsewhere characterized as the legal production of migrant “illegality” (De Genova, 2005, pp. 213–249), was never to evacuate the space of the nation-state of “illegal aliens”, but rather the contrary—to maintain an overall importation of their labor, deporting some so that most would remain, un-deported, as highly disposable (deportable) workers. Under the radically altered conditions that prevail

in the aftermath of September 11, with the advent of a Homeland Security State apparently committed to perpetrating a *domestic* War on Terrorism, how then have the spatialized (and inevitably racialized) politics of migrant “illegality” and deportability been reconfigured? In earlier scenarios, immigration law enforcement was preeminently enacted as a spectacle of frontier policing (overwhelmingly directed against Mexicans in particular). In what I have called the Border Spectacle (De Genova, 2005, pp. 242–249), a beleaguered Border Patrol customarily performed its unrelenting duty in the futile effort to hold back what public discourse and political debate incessantly depicted as a “flood” or “invasion” of “illegal aliens” poised to “steal” the jobs of “American” workers. This border spectacle thereby serves to confirm that there really is such an uncontrollable and debilitating “invasion” after all, enhancing and intensifying the fetishized appearance of “illegality” as a sociopolitical “fact”. And it plainly continues to do so. As we have seen, however, the “Endgame” of immigration authorities now officially invokes an inexorable and comprehensive deportation dragnet as its most cherished ideal, and has made a performative emphasis on targeted enforcement, especially relying upon raiding operations in order to generate larger-scale publicity-worthy arrests. Even if the bewilderingly unrealistic project of “removing all removable aliens” will finally prove to have been an inevitable failure, this implausible goal may merely supply the agonistic rationale for a still more robust expansion of the machinery of the Homeland Security State. If it is likewise true that detention has become increasingly commonplace for more mundane “illegal aliens” (as well as those classed as “aggravated felons”) as a result of more targeted apprehension campaigns, their particular susceptibility to detention is nonetheless apprehensible as simply an intensified penalty for their “illegal” status, a derivative of their more elementary deportability. Their prospective deportations remain an almost certain outcome, as these detentions continue to be employed in the service of deportation as their ultimate purpose. Yet, the antiterrorism regime also needs—much more vitally—to generate and intensify the fetish of a “terrorist” menace as a “fact” of the contemporary sociopolitical moment. Thus, immigration law enforcement is deployed selectively, “preventively”, indeed “preemptively” in the production of pretexts for surveillance and detention. In a sociopolitical context such as prevails in the United States, where the state has long enjoyed an extraordinarily high degree of presumptive legitimacy and, even worse, where the democratic fetish of “the rule of law” has been profoundly conjoined to authoritarian discourses of “law and order”, selectively targeted *indefinite* and *protracted* detentions against an identifiable minority uphold and sustain racialized suspicion, and confirm that minority’s more general susceptibility for detention—their *detainability*.

The detentions (and other discriminatory practices facilitated by the Homeland Security State), almost singularly targeting Arab and other Muslim men with no legally defensible probable cause, have been condemned by those concerned with the protection of civil liberties as a policy of racial or “ethnic” profiling for the purposes of selective law enforcement (Human Rights Watch, 2002; cf. Saito, 2001; Cainkar, 2002, 2003, 2004, 2005; Volpp, 2002; Cole, 2003; Maira, 2004). Furthermore, these detentions have not yielded even one bona fide case of criminal conduct, and no one detained has ever been charged with anything vaguely resembling culpability for “terrorist” activity (Cole, 2006). Thus, one predictable liberal criticism has been that this inefficient policy may very probably compromise and actually undermine security (for example, Cole, 2003, pp. 183–197) and quite simply is appallingly “counterproductive” (for example, Mark *et al.*, 2002,

pp. 11–14). But liberal complaints aside, the theoretical task at hand is all the more urgently to ask the critical question: what are the real *effects* of these revised immigration law enforcement policies? Without engaging in the unwitting apologetics of presumptively characterizing the consequences as “unintended” or “unanticipated”, and without busying ourselves with conspiratorial guessing games about good or bad “intentions”, the challenge of critical inquiry and meaningful sociopolitical analysis commands that we ask: what indeed do these policies *produce*?

The detention dragnet that imprisoned thousands of law-abiding migrants initially relied upon a mandatory “Special Registration” program (later discontinued on 1 December 2003), reserved almost exclusively for Arab and other Muslim non-citizen men, based on a list of designated countries of origin. In other words, most detainees were originally imprisoned because they dutifully presented themselves for government scrutiny in compliance with Homeland Security mandates. This Special Registration program was indisputably a form of de facto racial targeting and scapegoating—that much is fairly obvious. Yet there is a less transparent but still more important conclusion that is impossible to deny: the Homeland Security State is an apparatus that *produces the specter of “guilt”* which presumptively hovers over the migrants’ mere detainability. In practice, as we may infer from the PATRIOT Act’s language, detainability becomes the predicament of any “noncitizen who *may be* certified” as a *suspected* terrorist—not even who *may be* determined to truly be a terrorist, but rather who might yet be designated to be a mere *suspect*. Detainability, then, is contingent upon nothing more than *susceptibility to suspicion*, and consequently, actual detention *appears* to confirm *susceptibility to culpability*. The expansive technicalities of immigration law and the selective scrutiny of any conceivable minor violation, the mobilization of migrant “illegality” as mundane delinquency, has supplied innumerable pretexts for continued “preventive” incarceration. This manipulation of pretexts for the purposes of detention, then, appears to corroborate the original presumption of potential “terrorist” culpability, and subjects the detained non-citizen to further scrutiny in a compulsive quest to uncover truly “criminal” illegalities. Thus, the enforcement spectacle generated by these selective detentions involves a staging of presumptive “guilt” that, in effect, *produces culprits*.

The “Terrorism” Effect

Antiterrorism’s requisite phantom menace of elusive “evildoers”, ultimately, commands a *material* enemy. “Suspects” must be transformed into veritable culprits. Thus, the Homeland Security State dredges up a host of Arab and other Muslim migrants who almost universally, if they can be charged with anything at all, are merely “out of status”. That is, they are only culpable of minor violations of what are often procedural technicalities of immigration law. Since there is no requirement that they be held on any formal charges, however, suspicion alone ensures detainability, and is sufficient cause for preliminary detention. The slightest infraction nevertheless serves as an adequately durable pretext for their prolonged detention. The distinctly secretive spectacle of their protracted detentions then sustains and enhances what I will call the “terrorism” effect. It renders them collectively to be de facto “enemy aliens” and still more important, at least by implication, it substantiates the allegation of a palpable and immanent threat of terrorism in the US “homeland”. Whereas border enforcement conventionally provides a highly *visible* spectacle of “illegal alien” “invasion”, Homeland Security’s tedious, unrelenting, and

above all secretive enforcement of inconspicuous technicalities produces the rather more mysterious, indeed terrifying, spectacle of an *invisible* infiltration of “sleepers” (the War on Terrorism’s “secret agents”)—and serves to justify increasingly invisible government. Thus, the manipulation of petty immigration “illegalities” and the mobilization of migrant detainability ultimately serves to verify the War on Terrorism’s interminable official state of emergency (Bush, 2001a), whereby, inasmuch as “the emergency becomes the rule . . . the very distinction between peace and war (and between foreign and civil war) becomes impossible” (Agamben, 2005, p. 22). Insofar as these practices produce “enemy alien” culprits, they simultaneously produce the Homeland Security State’s most precious and necessary political resource, and advance what may likewise be its most politically valuable end—namely, heightened insecurity. Producing culprits produces insecurity—this indeed appears to be the goal of Homeland Security.

One predictable response to allegations of Japanese “disloyalty” during and after World War II, especially among many US-born “Japanese American” citizens, was to adopt various strategies aimed at the restitution of their political credibility and civil standing as “good Americans” in spite of their supposedly “alien” racial character; many felt compelled to pledge their allegiance and perform their patriotism. An analogous dynamic is evident today as many spokespersons for Arab and other Muslim organizations and communities in the US rise to their own self-defense—agonistically trying to confirm that they really are not “terrorists” by affirming their commitments to US nationalism (cf. Puar & Rai, 2002).¹⁴ But in another important respect, again, it is crucial to discern the marked contrast and not only the obvious similarity with Japanese internment. Almost the entirety of the Japanese migrant and “Japanese American” population in the United States—more than 100,000 people—were herded into concentration camps as “enemy aliens” during World War II on the racialized grounds of guilt by association with what was a quite conventional enemy, namely, another state. Today, with US imperial military power unhindered by any other state and, in effect, unchallenged as a global hegemony—except, of course, by the impossibility of ever truly subjugating popular insurgencies against colonial occupation—the US’s bombastic proclamation of a war without limits, without borders, without definition, and virtually without end against something as amorphous as “terrorism” has mandated a rather more *selective* production of “enemy aliens”.

In the United States today, there are at least 6.5 million Muslims and 1.2 million persons of Arab ancestry. The Homeland Security State’s detentions of approximately 5,000 foreign nationals, on the racialized basis of their Arab or other Muslim national origins or ancestry, who are very probably universally innocent of any substantial crimes, to say nothing of “terrorism”, is indisputably an immense and deplorable outrage. But both numerically and proportionately, it is dramatically different than the scale of the mass deportations of Mexicans, and—the more appropriate comparison—it is a very far cry indeed even from the mass persecution of the West Coast Japanese. This does not diminish the insidiousness of mass imprisonment without charges, but it calls attention to the politics of the detention policy’s very deliberate and calculated *selectivity*. Cornered between an enormous state-sponsored mobilization of racialized suspicion and a simultaneous official repudiation of racial profiling or generically anti-Muslim bias, many Arab and other Muslims in the United States today are thus enlisted into the service of the hegemonic ideological script that has doggedly and dogmatically insisted that the War on Terrorism really does *not* indiscriminately target Muslims but rather more carefully sorts

and ranks them as either “with us or . . . with the terrorists” (Bush, 2001b), differentiating them as either “good Muslims” or “bad” ones (Mamdani, 2002, 2004).

It is detainability rather than deportability that is most decisive for the purposes of an immigration regime premised upon the metaphysics of antiterrorism, but this of course does *not* mean that there have been no deportations. What is most significant about the “special interest” detainees who are ultimately deported, however, is precisely that their deportations are inadvertently the ultimate certification of their actual *innocence* of any and all allegations of “terrorism”. Their deportations confirm nothing so much as the fact that the US state has determined that they are genuinely no longer even vaguely *suspected* of “terrorism”. As suggested earlier, the Bush administration’s crucial improvisation of a category of “enemy combatants” provides the necessary analytical counterpoint with which to appreciate this important aspect of the “enemy alien” detainees’ ultimate susceptibility for deportation. Those who have been designated “enemy combatants” may in fact be innocent of any genuine involvement in terrorism, but in general they are labeled “enemy combatants” because they were either captured by the US military or its junior partners in the vicinity of a foreign theatre of warfare, or are otherwise linked (admittedly on the basis only of secret “evidence” or “intelligence”) with organized activity that has been categorized as “terrorist”. Without belaboring the United States’ flagrant violations of international law and the utter abrogation of many of the alleged combatants’ elementary human rights (if we suppose provisionally that these terms signify anything of consequence whatsoever), what seemed undeniably clear, literally for years, was that there was no foreseeable prospect for their release. This predicament of utterly indefinite detention (and hence, the special zone of indistinction that prevails for these detainees’ plight; Agamben, 1998; cf. 2005, p. 3) was only modestly alleviated by the US Supreme Court’s ruling on 28 June 2004 in *Rasul v. Bush*, which affirmed judiciary discretion over the *habeas corpus* petitions of Guantánamo (non-citizen) detainees, and thereby required a restitution of some minimal legal proceedings. Prior to this legal reprimand, however, in the case of the “enemy combatants”, something akin to “deportation”—which is to say, *release* from detention—was plainly out of the question, and indefinite incarceration (and interrogation, and torture) remained the defining horizon of their perfectly abject condition. Stripped of any presumable rights and bereft of all legal personhood, the US’s “enemy combatant” detainees epitomized the figure evoked by Hannah Arendt of stateless refugees who are effectively reduced to “the scum of the earth” ([1951] 1968, pp. 267–302).

Abject Horizons . . . or, the Revolt of the Denizens?¹⁵

The “scum of the earth”, I would contend, is precisely the sociopolitical condition that the imperialist metaphysics of antiterrorism reserves as the ultimately dehumanized status assigned to the figure of “the terrorist”. Within the hegemonic discourse of the War on Terrorism, the so-called “terrorists” are *designated* to be effectively stateless—the (transnational) enemies of “civilization” itself, *disqualified* from inclusion in a global human community purportedly distinguished by a universal allegiance to “democracy” and “human rights”, and thus, in effect, are reduced to sub-human beings. Outlaws and outcasts—indeed, atavistic “savages” or “barbarians”—and, finally, imprisoned, precisely in their naked human-ness, they are rendered undeserving of the most elementary of

human entitlements (cf. Arendt, [1951] 1968, pp. 297–300; Agamben, 1998, pp. 126–135). The dismal plight of the “enemy combatants”, therefore, underscores the fact that as long as “enemy alien” detainees (and undocumented migrants, more generally) remain ultimately deportable, they have still not been reduced to the condition of utter statelessness and abject rightslessness that the United States—in its imperialist capacity as an effectively global sovereignty—reserves for “the terrorists” (cf. Arendt, [1951] 1968, p. 283).

As long as migrants remain deportable and can conceivably be deported *somewhere*, in short, they still retain some residual degree of legal personhood and juridical standing in relation to some state or another. (Here, one is reminded of the cruel and revealing irony underscored by Arendt that common criminals in fact had more legal rights and recognition than stateless refugees [(1951) 1968, p. 286].) There is always, of course, an incongruity between these deportable migrants’ substantive social personhood and their very real social location—above all, as labor—within the space of the United States (in its more parochial capacity as a mere nation-state), where they happen to have no secure juridical standing, on the one hand, and the abstract legal personhood inscribed in their passports or birth certificates, on the other. This is the contradiction at the heart of migrant “illegality”, after all (Coutin, 2000). But while this “illegality” may entail a significant contradiction within the politics of nation-state space, it nevertheless has remained under ordinary circumstances a more or less viable way of life and transnational mode of being within the global space of capital. For countless millions of undocumented migrant workers in the United States and elsewhere, deportability has long tended to be the means for mediating the politics of space across these mutually constituted spatial scales of national states and global capital.

In the aftermath of antiterrorism and the Homeland Security State, the very notion of national security has nonetheless been elevated to the status of a kind of metaphysical redemption in a putatively limitless war against nefarious transnational networks of “evildoers”. Thus, the fateful equation of “illegal aliens” with nation-state borders perceived to be deplorably “out of control” is indeed made to conjure the phantasmatic hallucination of a nation prostrate before the predations of “terrorist” interlopers of nightmarish proportions. In an antiterrorism regime that has assiduously and selectively relegated its suspected internal enemies—namely, Arab and other Muslim migrant men utterly innocent of anything remotely resembling “terrorism”—to the abject condition of rightslessness in indefinite detentions, undocumented migrants need not be generically branded as actual “terrorists”. Indeed, given that the latter are absolutely desired and demanded for their labor, to do so would be counterproductive in the extreme. Rather, it is sufficient to mobilize the metaphysics of antiterrorism to do the crucial work of continually and more exquisitely stripping these “illegal” workers of even the most pathetic vestiges of legal personhood, such that their own quite laborious predicament of rightslessness may be further amplified and disciplined. This is precisely what is presently at stake for immigration politics in the United States.

The detainability of the Homeland Security State’s “enemy aliens”, in contrast, far exceeds the precarious uncertainties of the more mundane deportability of routinely undocumented migrants. Indeed, detainability as such, in its excruciating indeterminacy, becomes a zone of indistinction (Agamben, 1998) where the very meanings of “legality” and “illegality” seem to crumble—always, notably, at the expense of any erstwhile presumable stability or security naively attributed to “legality”. Detainability signals for

“terrorism” *suspects* a perilous state of exception in which indefinite imprisonment without charges or legal recourse is always an already immanent prospect—a state of emergency, moreover, that threatens always to collapse into the condition of perfect abjection reserved for alleged “terrorists”—the War on Terrorism’s dehumanized “scum of the earth”—persons without even the “right to have rights” (Arendt, [1951] 1968, pp. 296–298). Recall, furthermore, despite the Supreme Court’s modest exercises of judicial restraint over the most exuberant excesses of executive “wartime” prerogative, that even US *citizens* remain in no sense immune from being designated “enemy combatants”, and subjected to the attendant conditions of detainability, disappearance, torture, and juridical and social death. Recall, in short, that none of what I have described has been fundamentally suspended or radically subverted. To the contrary, as evidenced by the passage of the Military Commissions Act, much of it has largely been reinforced and codified. In conclusion, then, if it is clear that our (global) political present ought to be a source of deep distress, it seems imperative to make explicit and still more emphatic that it is also one of profound opportunity not only for the state but also for us, its beleaguered subjects.

Beyond Bush’s plummeting popularity and the ever-widening disenchantment with the occupation of Iraq, a whole panoply of things have been falling—beginning of course with the hideous thunderous collapse, in all their manifold monumentality, of the gargantuan towers of World Trade, and tragically, not yet ending with the relentless and ruthless shattering of the heavens into an innumerable and anonymous multitude of terrifying incendiary bombs delivered with utterly banal disregard for the life and limb of their civilian targets in Afghanistan and Iraq (and more recently, Lebanon as well). Also precipitously fallen are the fig-leaves of multilateralism, the “world community” of the United Nations, and international law, leaving only the proverbial law of the jungle. Add now to this cumulative disaster the “collateral damage” of fallen (foot-)soldiers and rolling decapitated heads. Amidst these disparate fragments of “one single catastrophe which keeps piling wreckage upon wreckage”, growing ever-skyward, to invoke Walter Benjamin ([1940] 1968, pp. 257–258), we would perceive a mere “chain of events” only at a peril from which not only we ourselves but “even the dead will not be safe” ([1940] 1968, p. 255). But precisely for this reason we can scarcely afford to *not* comprehend our political present as a state of emergency, a *crisis* indeed, that is both literally and figuratively exploding with “all the dead generations [that weigh] like a nightmare on the brain of the living” (Marx, [1852] 1963, p. 15), and also disgracefully bleeding like an unthinkable but perversely *living* delusion of “civilization” and “progress” into the eternal (un)rest of all the dead ancestors in their shallow mass grave.

This is a crisis that signals and ferociously unleashes the latest round of *creative* destruction, and therefore unforgivingly summons us to account for what exactly we are prepared to create. This, quite plainly, is our emergency, and this, very frankly, is likewise our opportunity. As eloquently established by the mass mobilizations for “immigrants’ rights” in the United States during the spring of 2006 (which forcefully reinstated 1 May as International Workers’ Day), even the most ostensibly disenfranchised migrants need not look to the state like beggars in search of “legal” entitlements, as they finally have only those “rights” that they dare to take and are prepared to fight to defend. Against all the depredations against their ostensible “rights” as “immigrants” that may be concocted by nativist politicians and perpetrated by the state’s immigration system as well as its self-appointed border vigilantes, the productive power and creative capacities of migrant

working people, finally, are the only genuine source of their potential political prerogative and social dignity. Precisely during an era when the abjection of non-citizens has become scandalously routine and the insecurity of citizens has been rendered a political resource of onerous gravity, the gathering revolt of the denizens may yet signal a stringent clarification of our universal political predicament—as always-already susceptible to suspicion, always-already potentially culprits.

Coda: Devious Emancipations, Imaginary Sovereignties, and our Universal Political Predicament

The securitization of migration that has been a centerpiece of the Homeland Security State, as I alluded much earlier, is inextricable from a concomitant securitization of citizenship itself. It is a commonplace of any reasonable assessment of the history of alienage to recognize, in David Cole's words, that "the line between citizen and noncitizen is a fragile one, and government officials, while quick to cite the distinction when introducing new measures of surveillance and control, are also quick to elide the distinction as they grow accustomed to the powers they exercise over foreign nationals" (2003, pp. 8–9). While this may be the predictable charter for a more robust liberal commitment to the defense and expansion of civil liberties, the force of the foregoing discussion would suggest that it may behoove us to retain more than a little doubt about citizenship itself as a viable framework for our most vital emancipatory energies. If Arendt's poignant interrogation of "the perplexities of the rights of man" indubitably continues to yield some critical insight into these themes, one need not fall under the elegant incantation of her memorably conservative conclusions about the implacable necessity of the nation-state ([1951] 1968, pp. 299–302). For as Arendt herself recognizes, the "barbed-wire labyrinth" (p. 292) that befalls the stateless arises precisely as an effect of the "completely organized humanity" (p. 297) instituted by territorially defined national states. Barry Hindess has instructively characterized the global inter-state system as a dispersed regime for governing the larger human population, of which citizenship is a central component (2000, p. 1495; cf. Walters, 2002; Nyers, 2006). If it is undeniable that "citizenship can be seen", in Hindess's felicitous phrase, "as a conspiracy against the rest of the world" (p. 1488), a final concern of my argument involves the ways that the *global* relation of the political—by which coercion is separated and abstracted from the immediate processes of production and capital accumulation, and is instantiated as a virtually comprehensive regime of territorially defined ("national") state powers (Holloway, 1994)—likewise relies upon citizenship as the premier instrumentality for the particular subjection and historically specific subjugation of those whom states "contain" within their juridical and spatial confines. By investing our hopes for freedom in struggles over citizenship as such, "the risk is", then, as Giorgio Agamben suggests in a different context, "... that one produce a new subject"—against the very ways that states actively produce and regiment divisions and inequality—"... but one subjected to the State", one always-already beholden to and captive within the state's assiduous efforts to both decimate and disable some political identities while recomposing and reordering others (Vacarme, 2004, p. 116; cf. Nyers, 2004). In light of the myriad and diverse travesties of the Homeland Security State, it seems urgent that critical social and political inquiry relinquish any residual allegiance to state power as such, and thereby reinvest itself in an unrelenting interrogation of the liberal

conceits and complacencies that adhere to the very notion of citizenship as the presumptive framework for our practices of freedom.

The originary source for these theoretical considerations can be located in Marx's classic (if enduringly problematic) reflections "On the Jewish Question" ([1843] 1978). If Marx's essay proved egregiously inadequate to the avowed task of theorizing "the Jewish Question"—and all that it implied for subsequent theoretical work on the problem of racial oppression—this early text is nonetheless unquestionably the most prominent and explicit commentary in Marx's corpus on the question of citizenship, as such.¹⁶ By presuming to emancipate oneself, merely, "*politically*"—which is to say, narrowly, as the citizen of a state—Marx contends, one "emancipates himself [sic] in a *devious way*, through an intermediary . . ." (p. 32, emphasis in original). Marx follows, notably, with the somewhat elusive and problematic qualification, "however *necessary* this intermediary may be" (p. 32, emphasis in original). The contradictory status of this positing of "necessity" is further amplified by an analogy with religion, with which Marx proceeds to illustrate the point: "Just as Christ is the intermediary to whom man attributes all his own divinity and all his religious *bonds*, so the state is the intermediary to which man confides all his non-divinity and all his *human freedom*" (p. 32, emphasis in original). Further, Marx continues:

The political state, in relation to civil society, is just as spiritual as is heaven in relation to earth. It stands in the same opposition to civil society, and overcomes it in the same manner as religion overcomes the narrowness of the profane world; i.e. it has to acknowledge it again, re-establish it, and allow itself to be dominated by it. (p. 34)

By means of these terse but poignant Feuerbachian gestures, Marx's position becomes sufficiently clear: citizenship is a form of estrangement, and what presents itself as emancipation through the juridical forms of the (bourgeois) state may be understood instead to be active alienation. As citizen, Marx continues, one is figured as "the imaginary member of an imaginary sovereignty . . . infused with an unreal universality" (p. 34). This indeed is "the *sophistry of the political state* itself" (p. 34).

The devious investment of the stakes of human emancipation in the illusory (merely political) form of citizenship, moreover, by means of its endorsement of the "necessity" of the political state, likewise becomes an at-best unwitting affirmation of the "necessity" of civil (bourgeois) society, above and against which the state itself is posited (p. 35). While Marx admits that the expressly *political* emancipation signified by citizenship does indeed represent an important historical achievement, "a great progress", it is no more than the final and emphatically inadequate form of human emancipation possible "*within* the framework of the prevailing social order" (p. 35, emphasis in original). Furthermore, what is critical for Marx is that (merely) political emancipation amounts to nothing more nor less than the division and "*decomposition*" of human (prospectively communal, or "species") beings into fractured individualities, irreducibly *particular* in their "private" attributes and conditions (whether as Christian or Jew, or as bourgeois or day-laborer), and comparably atomized and abstracted in their "public" guise as *citizens* of that unreal universality, the state (pp. 35–36, emphasis in original; cf. pp. 34, 39). Thus, Marx concludes, (bourgeois) "political democracy"—and hence, also democratic citizenship—enact the sovereignty of "unsocial man, man just as he is in his fortuitous existence, man as he has been

corrupted, lost to himself, alienated, subjected to the rule of inhuman conditions and elements, by the whole organization of our society” (p. 39). Indeed, in his remarks on the texts of the “Declaration of the Rights of Man and of the Citizen”, Marx underscores the irony that citizenship becomes “a mere *means* for preserving these so-called rights of man” (p. 43), which he demonstrates to be “the rights of a *member of civil society*, that is, of egoistic man, of man separated from other men and from the community . . . of man regarded as an isolated monad, withdrawn into himself” (p. 42). Citizenship, then, is a distinctly *political* technology for the fragmentation and alienation of human productive powers and creative capacities.

More precisely, citizenship is a specifically statist technology for conducting the *struggle* that is endemic to, and indeed constitutive of, the capital–labor relation, toward the distinctly *political* ends of achieving the subordination of labor (in the most expansive sense of the term). As such, citizenship, I am arguing, is a crucial form for operationalizing the more general separation and abstraction of *the political* from the immediate processes of exploitation, which manifests itself ubiquitously in the reification of “the” state as a greater or lesser monopoly of “legitimate” coercive violence, exercised spatially over a delimited territory. While the state is never the exclusive form for these always unpredictable, agonistic, and ever-unresolved relations of struggle—which comprise precisely the *politics* of the capital–labor relation and entail the full panoply of contests over the objectification and fetishization of human productive powers as alien forces of domination—the state tends nonetheless to be the hegemonic manifestation of this relation of the political (Holloway, 1994). Citizenship is the perpetration of that abstraction through its mediation, rendering the political relation palpably individual and intimate, serving as its distinctly devious intermediary.

From this standpoint, it is certainly the case that the state entails a heterogeneous and relatively fluid assemblage of strategies and tactics devoted to the subordination—and subjection—of the autonomy and restlessness of diverse manifestations of human freedom and self-constitution, which are always ontologically prior, albeit dialectically co-constituted. Hence, the antagonism inherent in this relation of struggle implies a continuous process of composition, decomposition, and recomposition. The parameters of citizenship itself have surely been likewise always susceptible to dramatic revision (cf. Hall & Held, 1989; Isin, 2002; Nyers, 2003, 2004). Nevertheless, to the extent that citizenship is finally institutionalized and upheld through the fixing of those parameters, it must be recognized as always instantiating the moment of reification and fetishization. Citizenship then emerges as a kind of archaeological record of social struggles as they get tentatively resolved, politically, apparently as “gains” or “victories” but in ways that are intrinsically disabling of insurgent energies. Precisely inasmuch as citizenship fixes movement and struggle into “rights”, these energies thereby come to be contained within the state, delimited and further delimitable by law, and thus become advantageous for the further subjection of restless and creative human powers as alienated and domesticated ones.

This, then, is our universal political predicament. Our citizenship manifests the ever-tenuous and besieged limit within which our practices of freedom become encircled and asphyxiated, and a condition of possibility for our always imminent abjection within the orbit of the state’s spurious sovereignty. Within the global regime of capital accumulation, the more flagrant abjection of the world of denizens only shows, to the more properly domesticated citizens, the image of their own future.

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Notes

- ¹ For an imaginative consideration of the implications of the Homeland Security regime for the relation between mobility and citizenship, see Packer (2006).
- ² The “absolute indetermination, and absolute indiscernibility between internal and external politics” is a theme addressed in more broadly theoretical terms by Agamben (Vacarme, 2004, p. 124), as well as Hardt and Negri (2000, 2004).
- ³ For a compilation of estimated totals for virtually all documented demonstrations, based upon the relatively more conservative reports of the official news media, which nonetheless arrives at a total participation ranging from 3.5 million to more than five million for all known events during the spring of 2006, see the database available at <http://www.wilsoncenter.org/migrantparticipation>.
- ⁴ This language originally appeared in a KBR press release, available at http://www.halliburton.com/default/main/halliburton/eng/news/source_files/news.jsp?newsurl=/default/main/halliburton/eng/news/source_files/press_release/2006/kbrnws_012406.html. The basic details of the contract itself are likewise verified by the company's Final Prospectus for 2006 (p. 55), available at <http://www.kbr.com>.
- ⁵ In addition to the initial targeting of undocumented workers employed at airports and military installations, the Immigration and Customs Enforcement bureau (ICE) of the Department of Homeland Security has executed this explicit strategy of “fugitive apprehension” (most recently through Operation Return to Sender) through well-publicized raids primarily targeting undocumented migrants with final orders of deportation or previous deportations, but coupling these always with the more menacing figure of “criminal aliens” with pending arrest warrants, alongside any other random undocumented migrant who may be swept up in the course of a raid. In April 2006, in the midst of the immigrants' rights mobilizations, the Identity & Benefits Fraud Unit (established in September 2003) created 10 local task forces to perpetrate a campaign of workplace raids targeting undocumented workers for the use of fraudulent documents, which it has publicly depicted as “identity theft” for alarmist effect. The Compliance Enforcement Unit (established in June 2003) is charged with the targeted detection and prioritized apprehension of visa overstayers and other immigration status violators who allegedly “pose national security or public safety threats”. Other targeted campaigns have included Operation Community Shield, devised to expedite the deportation of non-citizen alleged street gang members as “criminal aliens”, and the Secure Border Initiative, intended to expedite the deportation specifically of non-Mexicans apprehended at the US–Mexico border. For broader discussions of targeted policing as a distinctly neoliberal form of governmentality, see Valverde (2003); Valverde & Mopas (2004); cf. Henman (2004).
- ⁶ If the recent move to frankly criminalize “unlawful presence” was indeed unprecedented, migrant “illegality” has nonetheless always been a preeminently *spatialized* social condition, which pertains above all to the continued *presence* of the undocumented *within* the space of the state and its regime of territoriality. Thus, “illegality” is posited, commonly enough, in juxtaposition with the hegemonic production of “national” identities. In the United States, such social productions of *spatialized* difference involve a politics of citizenship that ineffably seems to get transposed into a spatial politics

of “national” sovereignty, “national” identity, “national” culture, and so forth. For reasons that are beyond the immediate scope of this article, these productions of *spatialized* (“national”) difference tend to become inseparable from concomitant productions of *racialized* differences similarly articulated in terms of “identity” and “culture” (see De Genova & Ramos-Zayas, 2003; De Genova, 2005).

- ⁷ For an extended discussion of the scholarship examining the relation between undocumented migration and labor subordination, see De Genova (2002).
- ⁸ The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief (signed into law 11 May 2005) enacted what had formerly been the “REAL ID” Act, which included in its extensive anti-immigrant provisions that driver’s licenses and state ID cards will only be admissible by the federal government if applicants have proven that they are either US citizens or lawfully present in the United States.
- ⁹ Once the case appeared to be destined for an eventual Supreme Court decision (following a preliminary deferral on procedural grounds on 28 June 2004), Padilla was finally indicted on 17 November 2005, in what was tantamount to a preemptive move intended to remove from further legal scrutiny the US President’s presumptive authority to designate “enemy combatants” and detain them indefinitely. Notably, Padilla was finally charged with participation in a vague jihadist conspiracy, with no mention whatsoever of any evidence concerning a “dirty bomb” or even affiliation with al-Qaeda.
- ¹⁰ Notably, however, Renquist does insist on the distinction between Japanese non-citizens and their US-born (hence, US-citizen) children.
- ¹¹ That Malkin herself is the daughter of Filipino migrants only adds perversity to her shrill endorsement of racial profiling for Asian Americans.
- ¹² Furthermore, this law would apply retroactively, and thus could result in more than 200 pending appeals filed on behalf of Guantánamo detainees being thrown out of court.
- ¹³ Failure to report a change of address to the Department of Homeland Security within 10 days was precisely the sort of technical infraction that would have subjected a “legal” permanent resident to imprisonment under the provisions of the proposed Border Protection, Antiterrorism and Illegal Immigration Control Act (HR 4437).
- ¹⁴ Analogously, the recent compulsion among many immigrants’ rights protestors to declare, “We are not terrorists”, to demonstrably wave US flags as a performative disavowal of “foreign” loyalties or identifications, and to assert that the alleged September 11 hijackers “did not speak Spanish”, presents a comparably vexing parallel with the agonistic practices of some Chinese and Korean Americans during World War II affirming that they were indeed “not Japanese”.
- ¹⁵ I deploy the term *denizen* here to encompass the full range and extent of heterogeneous categories of non-citizen, in noteworthy contradistinction to Tomas Hammar’s usage of the term to refer to “a new status group”, whose members are neither naturalized citizens nor “regular and plain foreign citizens anymore”, with more or less secure residence status and a variety of rights and entitlements to social access and benefits (1990, pp. 12–13).
- ¹⁶ Marx’s essay is notoriously vexed by a plainly extravagant rhetorical recourse to a particularly vehement popular anti-Semitism, even as Marx directly refutes and challenges the more predictably anti-Semitic and uncritically Christian conceits of Bruno Bauer, with whom he is engaged in polemic. While it is indisputably vital to politically confront and engage precisely this aspect of Marx’s essay—above all, in terms of what its outright failings may reveal about precisely the theoretical problem posed by the *relation* of race and citizenship—a fuller examination will have to be considered beyond the scope of the present article. For instructive critiques, see Fischman (1989), Gilman (1984), and Greenblatt (1978).

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