

Crimmigration in Gangland: Race, Crime, and Removal During the Prohibition Era

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Abstract

In 1926, local law enforcement and federal immigration authorities in Chicago pursued a deportation drive ostensibly directed at gang members. However, the operation largely took the form of indiscriminate raids on immigrant neighborhoods of the city. Crimmigration in Gangland describes the largely forgotten 1926 deportation drive in Chicago as a means to augment the origin story for “crimmigration.” Scholars up until now have mostly contended that the convergence of criminal and immigration law occurred in the 1980s as part of the War on Drugs, with crime serving as a proxy for race for policy makers unable to openly argue for racial exclusion of Latino immigrants in the post-civil rights era. Drawing on original archival research, this article traces those roots back much further, to the Prohibition Era of Gangland Chicago, when they arose in nascent form before being supplanted by the different enforcement dynamics of the Great Depression.

A close examination of the deportation drive of 1926 reveals that immigration enforcement at the time contained most of the elements that scholars today have identified when defining crimmigration: a popular preoccupation with “criminal aliens” and attribution of crime problems to them; local/federal collaboration in immigration enforcement; an increase in the criminal grounds for removal; an increase in the criminal prosecution of immigration issues; and an asymmetrical incorporation of criminal procedures into the world of immigration law.

These phenomena developed for some of the same reasons that crimmigration arose in a more monolithic form in the 1980s, and indeed, paved the way for it. The 1920s, like the 1980s, came on the heels of a massive surge in immigration as well as a shift in the demographics of immigration. Yet, both were also periods of relative affluence, during which anti-immigration arguments needed to take a different tenor than the protectionist arguments that prevailed during periods of economic

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insecurity. Like the 1980s, the 1920s also followed on the heels of a “civil rights era”: the reconstruction period following the Civil War.

Arguments that implicated race were couched in scientific terms during this era of scientific racism and eugenics. Adherents of scientific racism pursued a dubious quest to statistically establish that certain racial and ethnic groups, like Sicilians, had a greater propensity for crime. This principle justified not only limited immigration quotas for Southern and Eastern Europeans, but also deportation efforts like the 1926 raids that targeted Italian Americans, whose “whiteness” was in many ways contested at the time.

The 1980s War on Drugs paralleled the Prohibition Era in many ways. One was a return to the focus on crimmigration that developed during the 1920s. Crime served in the 1980s as an effective proxy for race because that linkage had been made so strongly during the earlier period.

I. INTRODUCTION

The country is in the midst of an arguably futile campaign against illegal controlled substances. One of the consequences of that trade is an epidemic of brutal gang violence. In the popular imagination, immigrants are largely responsible for the country’s crime problems. Congress has recently cracked down with tough immigration legislation, yet, there are repeated allegations that the federal government is failing at immigration enforcement. The popular press frequently calls for more federal resources to be directed towards deportation. A variety of policies are adopted to address the problem of “criminal aliens”: Congress enacts additional grounds for criminal removal; a process is established for expeditiously deporting non-citizens in prison; county jails are used to maximize space for immigration detention; and collaboration is established between local law enforcement and federal immigration authorities. One example of the last initiative is a joint federal-local operation in Chicago. Although ostensibly directed at gang members, the operation largely takes the form of an indiscriminate raid on an immigrant neighborhood of the city. Hundreds of immigrants are arrested without a warrant or probable cause to believe they have committed any crime and held for indeterminate lengths of time at local jails pending deportation, although ultimately only a handful end up being deportable.

This scenario may sound contemporary, but it is a description of the deportation raids of 1926 against residents of Chicago’s Little Italy. The controlled substance at issue was, of course, alcohol, and the gangs, the Mafia. This article reconstructs this historical moment through examination of the original

records of the Immigrants Protective League, a pioneering immigrant rights organization in Chicago.¹

The similarities between the 1920s and the present carry over to immigration policy. The 1926 operation involved federal/local collaboration to pursue joint immigration and criminal law enforcement goals against an immigrant community, mass detention, and widespread violations of the norms of due process. These are elements typically identified by scholars as constituting “crimmigration,” defined by Professor César Cuauhtémoc García Hernández as “the intertwining of crime control and migration control.”² Scholars up until now have mostly contended that crimmigration arose in the 1980s.³ Professor García Hernández argues convincingly that the viral expansion of crimmigration came out of the War on Drugs, with crime serving as a proxy for race for policy makers unable to openly argue for racial exclusion in the post-civil rights era.⁴ Recently, Professor Rachel Rosenbloom has placed an important caveat on this origin story, finding that the roots of information flow between local police and immigration authorities stretch back into the era of 1950s vice squads.⁵ This article traces those roots back further, to the Prohibition Era of Gangland Chicago, when they arose in nascent form before being supplanted by the very different enforcement dynamics of the Great Depression.

The 1926 raids arose during an era of prosperity that was nonetheless marked by widespread anxiety about the changing culture and demographics of the country. From the end of the Nineteenth Century through the first decade of the Twentieth Century, there was a vast increase in immigration.⁶ While earlier immigration had primarily come from the British Isles and Western and Northern Europe, immigration from the 1880s on came largely from Southern and Eastern Europe.⁷ In addition to immigration, a host of other sweeping changes occurred during this time period, including urbanization, industrialization, rapid population

¹ IMMIGRANTS’ PROTECTIVE LEAGUE RECORDS [hereinafter “IPL RECORDS”] (on file as a Special Collection at the University of Illinois at Chicago).

² César Cuauhtémoc García Hernández, *Creating Crimmigration*, 2013 BYU. L. REV. 1457, 1467 (2014).

³ Teresa A. Miller, *Citizenship & Severity: Recent Immigration Reforms and the New Penology*, 17 GEO. IMMIGR. L.J. 611, 620–31 (2003); García Hernández, *supra* note 2, at 1460–65; César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346, 1360–82 (2014); Juliet P. Stumpf, *Civil Detention and Other Oxymorons*, 40 QUEEN’S L.J. 55, 68–72 (2014).

⁴ García Hernández, *supra* note 2, at 1460–65.

⁵ Rachel E. Rosenbloom, *Policing Sex, Policing Immigrants: What Crimmigration's Past Can Tell Us About Its Present and Its Future*, 104 CAL. L. REV. 149, 153, 179 (2016).

⁶ SUSAN F. MARTIN, *A NATION OF IMMIGRANTS* 105 (Cambridge University Press et al. eds., 1st ed. 2011).

⁷ *Id.*

growth, and the country's ill-fated experiment with the prohibition of alcohol.⁸ There was also a widespread view in the 1920s that crime was increasing, and in the popular discourse, the wave of new immigrants were blamed for the increase.⁹

This sense was particularly acute in Chicago, where the Mafia was widely believed (without much evidence) to be importing Sicilian gunmen as foot soldiers in the city's gang wars for control of the alcohol black market.¹⁰ Sicilians were frequently described as having either an innate propensity for violence or a cultural predisposition for it.¹¹ The burgeoning pseudoscience of eugenics provided support for these sorts of charges, and for the adoption of national origins quotas in 1921 and again in 1924 that radically restricted immigration by Southern and Eastern Europeans.¹²

The 1921 quotas were designed to slow the increase in Southern and Eastern European immigration by limiting immigration from each country to levels based on the country's ethnic composition in 1910. In 1924, the quotas were amended so as to reflect the country's demographics in 1890, thus even more significantly curtailing Southern and Eastern European immigration.¹³ However, the quotas for new arrivals left in existence the large population of Southern and Eastern European immigrants who arrived between 1890 and 1924.¹⁴ To cull that population, something more than admission quotas was needed.

The 1920s saw a significant increase in deportation, and the first effort to systematize deportation methods.¹⁵ This effort was driven to a large extent by a popular belief that crime was caused by Italian immigrants. Over the following decades, statisticians and social scientists spent considerable effort debunking the widely-held belief that immigration increased crime. But, during the 1920s, that belief was ubiquitous. The country's long history of blaming immigration for crime, the prominence of Italian-American gangs and Mafia leaders like Al Capone, and the burgeoning pseudoscience of eugenics combined to push

⁸ *Id.* at 112–23.

⁹ DANIEL KANSTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* 11 (Harvard University Press et. al. eds., 1st ed. 2010).

¹⁰ Arthur Sears Henning, *Gunmen Scorn Deportation—Few Gang Killers Aliens*, CHI. TRIB., Dec. 18, 1928.

¹¹ S. DOC. No. 61- 748, at 209 (1911).

¹² MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 21–37 (Princeton University Press, et. al. eds. 1st ed. 2003) [hereinafter NGAI, *IMPOSSIBLE SUBJECTS*].

¹³ *Id.*

¹⁴ Francesco Cordasco, *Italian Americans: Historical and Present Perspectives*, 20 THEORY INTO PRACTICE 58, 59 (1981) (“From 1880 until the imposition of restrictive immigration quotas in the mid-1920s, the Italian immigration into the United States swelled into a floodtide.”).

¹⁵ *See infra* Part III.

policymakers to target “criminal aliens” and to develop nascent versions of the enforcement strategies that today comprise crimmigration.¹⁶

Crimmigration in the 1920s was in its early stages and was therefore not the massive deportation machine of today, but it contained most of the elements that scholars have identified as defining the phenomenon: a popular preoccupation with “criminal aliens” and attribution of crime problems to them; local/federal collaboration in immigration enforcement; an increase in the criminal grounds of removal; an increase in the criminal prosecution of immigration issues; and an asymmetrical incorporation of criminal procedures into the world of immigration law.

After the stock market crash in 1929, priorities began to shift—somewhat subtly at first—from deportation of criminal gang members to the removal of non-citizen laborers who were competing for jobs.¹⁷ This policy shift was marked by a rhetorical one: a focus on “alien smugglers” instead of “criminal aliens.”¹⁸ In popular discussions, the smugglers and the smuggled were often conflated, meaning that the same language was used to describe the importation of contraband things, like alcohol, and the movement of people looking for a better life.¹⁹ As deportation priorities shifted, the target of deportation efforts did too, from Sicilians to Mexican nationals.

By the 1930s, what had begun as a modest deportation operation in the 1920s became a massive repatriation campaign targeting Mexican nationals; about one million persons of Mexican origin—including many United States citizens—were repatriated during the 1930s.²⁰ Most of these repatriations did not take the form of formal deportations; instead, local and state governments used a variety of means to encourage or coerce Mexican nationals to leave.²¹ But the federal government did substantially increase deportations too, and these were viewed by Immigration and Naturalization Service (INS) Secretary Doak as a means to protect jobs for United States citizens.²² The effort ended with World War II and the country’s

¹⁶ While the phrase “criminal aliens” has gained greatest traction recently, it was in use during the 1920s. See *Criminal Aliens*, CHI. DAILY TRIB., Dec. 19, 1928.

¹⁷ See *infra* Part IV.C.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ FRANCISCO E. BALDERRAMA & RAYMOND RODRIGUEZ, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930S* 151 (2006).

²¹ UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, *INS RECORDS FOR 1930S MEXICAN REPATRIATIONS* (2014), <https://www.uscis.gov/history-and-genealogy/our-history/historians-mailbox/ins-records-1930s-mexican-repatriations> (reporting that 82,000 Mexican persons were removed from the United States from 1929–1935).

²² KANSTROOM, *supra* note 9, at 215.

renewed labor needs, but the post-war era brought a militarized deportation effort targeting Mexican nationals called “Operation Wetback.”²³

The flagrant abuses of the Mexican repatriation and “Operation Wetback” have deservedly received considerable scholarly treatment, eclipsing the short-lived crimmigration era of the 1920s. As a result, the period has, until now, been neglected by immigration scholars. This article contributes to the crimmigration literature by describing the development of crimmigration in the 1920s and the role that race played in it.

Professor García Hernández has found that crime served as a proxy for race during the 1980s, and it served a related purpose in the 1920s, in an America in which the language of science (and pseudoscience like eugenics) was ascendant.²⁴ Although blatant racism abounded during 1920s America, policy makers during the post-Reconstruction era began to search for seemingly neutral justifications for racist policies. Ostensibly neutral markers, like crime, that could be attributed to racial and ethnic minorities became important factors in policymaking.

It may seem odd today to declare that deportation measures focused on Italian Americans had a racial animus. Yet, as Theodore Allen has argued, whiteness is a social construction, historically grounded in class, culture, and country of origin.²⁵ In the nineteenth and early twentieth century, the whiteness of individuals with Italian ancestry was in many ways contested.²⁶

At the same time that the 1911 congressional Dillingham Commission traced the origins of Sicilians and Sardinians to Africa, it contended that Southern Italians were responsible for a disproportionate share of violent crimes and recommended that their admissions be limited.²⁷ Throughout this time period, commentators drew on scientific racism to support their calls for admissions restrictions or bans, and then for more effective deportation measures.²⁸

Crime and race were coupled in the 1920s. That linkage drove the 1920s policies of immigration restriction and racial exclusion. In the spirit of the civil rights movement, 1965 immigration legislation eliminated the racially-based national origins quotas and restrictions.²⁹ As a result, the country entered into a new era of heightened immigration, now largely from Asian and Latin American

²³ See JUAN RAMON GARCÍA, OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954 183–202 (1980).

²⁴ See *infra* Part V.

²⁵ THEODORE ALLEN, THE INVENTION OF THE WHITE RACE (1994).

²⁶ See THOMAS A. GUGLIELMO, WHITE ON ARRIVAL ITALIANS, RACE, COLOR, AND POWER IN CHICAGO, 1890–1945 86 (2003).

²⁷ S. REP. No. 61-662, pt. 5, at 83 (1911).; S. REP. No. 61-747, pt. 1–47 (1911).

²⁸ See, e.g., *Biological Aspects of Immigration: Hearing Before the Comm. on Immigration and Naturalization*, 66th Cong. (1920) (statement of Harry H. Laughlin, Eugenics Research Association).

²⁹ MARTIN, *supra* note 6, at 183.

nations.³⁰ Just as crimmigration emerged in the 1920s in response to an influx of diverse new immigrants, it reappeared in the 1980s. By the time of that reemergence, there was already a long tradition of associating crime and race, allowing for the former to serve as an effective proxy for the latter.

This article proceeds in four parts. The first section describes the deportation drive of 1926; the second outlines the current origin story of crimmigration; the third argues that migration and crime control merged in the 1920s for many of the same reasons identified by scholars for its growth in the 1980s; and the fourth concludes with a discussion of the factors historically linking race, crime, and removal throughout periods of United States history like the 1920s and 1980s.

II. THE DEPORTATION DRIVE OF 1926

Joseph Caruso was a native of Marsala, Sicily.³¹ He became a notary public there, married, and had three children.³² He also became active in the local Socialist party, and in the spring of 1922, fascist militants shot at him while he was making a political speech.³³ Fearing that they would follow up on their warning shot by killing him, he boarded the first merchant ship he could find heading to the United States.³⁴ When he arrived at the New York Harbor, he went ashore in the uniform of one of the officers.³⁵ He made his way to Chicago, where his brother lived, and he took a job keeping books for an Italian firm in the Randolph Market. He also joined the Socialist party in the United States.³⁶

Around 7:00 on the evening of February 22, 1926, Mr. Caruso was working late when police entered looking for a man named Martino.³⁷ Not finding him, they apprehended Mr. Caruso and two others without a warrant. They took him to the County Jail, where he was held for eighteen days until his brother could pay a \$2,500 cash bond—about \$2,000 more than what was typical at the time in Chicago for a deportation case.³⁸ The police reported to the *Tribune* that Giuseppe Caruso “was imported to this country by the Genna brothers when they sent to

³⁰ *Id.* at 184–85.

³¹ *An Italian Taken in the Alien Deportation Raids of February and March 1926*, 1927 I.P.L. SERIES I, BOX 4, FOLDER 50, CASE HISTORIES I, Sept. 1920–Nov. 1933.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ ADENA MILLER RICH, *Chicago's Deportation Drive of 1926*, 1926 I.P.L. SERIES I, BOX 2, FOLDER 21, at 9.

Sicily for a cargo of hired assassins. Caruso became Gennas' secretary, and upon the killing of three of them he transferred his allegiance to Tony Lombardo, the supposed Sicilian leader of the present day."³⁹ They added that he "is also an anarchist."⁴⁰

None of these police assertions appear to have been true.⁴¹ Nonetheless, Mr. Caruso spent nearly three weeks in detention, during which time the jail did not give him a blanket, water ran on the floor, and the window could not be closed. He had to provide his own food.⁴² He became ill but was not allowed to see a doctor.⁴³ When he complained of his treatment, he was put in a punishment cell.⁴⁴ He was eventually put in deportation proceedings based on having entered the United States without having been admitted under the quota for Italian immigrants.⁴⁵ He was forced to take a voluntary departure order.⁴⁶

Mr. Caruso was one of hundreds of individuals who were apprehended in early 1926 as part of a deportation drive billed as a move against Sicilian gangsters in Chicago.⁴⁷ The record of his treatment comes from the case histories of the Immigrants Protective League (IPL), a pioneering immigrant rights organization that conducted a detailed study of the Deportation Drive. His treatment seems to have been typical except for the fact that most of those arrested were not put in deportation proceedings; they were apprehended without warrants, harassed, and

³⁹ *Little Sicily Deserted; Raiders Find Old Haunts of Gunmen Dark*, CHI. DAILY TRIB., Feb. 25, 1926 at 1.

⁴⁰ *Id.*

⁴¹ Additional Information re Joseph Caruso (Jan. 4, 1927), in I.P.L. RECORDS, SERIES III, SUPP. II, BOX SII, FOLDER 54, (Univ. of Ill. at Chi.).

⁴² An Italian Taken in the Alien Deportation Raids of February and March 1926 (Jan. 1927) in I.P.L. RECORDS, SERIES III, BOX 4, FOLDER 50, CASE HISTORIES I, SEPT. 1920–Nov. 1933 (Univ. of Ill. at Chi.).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Additional Information re Joseph Caruso (Jan. 4, 1927), in I.P.L. RECORDS, SERIES III, SUPP. II, BOX SII, FOLDER 54, (Univ. of Ill. at Chi.).

⁴⁶ Today Mr. Caruso would have a paradigmatic case for asylum, although that form of relief did not exist in United States law in 1926. See 8 U.S.C. § 1101(a)(42)(A) (2018) (defining a "refugee" as a person with a well-founded fear of persecution on account of, *inter alia*, political opinion); 8 U.S.C. § 1158(b)(1) (2018) (authorizing a grant of asylum to a "refugee."). Instead of allowing Mr. Caruso to stay in the United States because his life was at risk in Italy, immigration authorities at the time conceded that he could depart voluntarily to a country other than Italy, although he ultimately disappeared, according to the records of the Immigrants' Protective League, which was attempting to assist him with finding a new home in South America. An Italian Taken in the Alien Deportation Raids of February and March 1926 (Jan. 1927), in I.P.L. RECORDS, SERIES III, BOX 4, FOLDER 50, CASE HISTORIES I, SEPT. 1920–Nov. 1933 (Univ. of Ill. at Chi.).

⁴⁷ Adena Miller Rich, Chicago's Deportation Drive of 1926 (1926) in I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, 9 (Univ. of Ill. at Chi.).

then released.⁴⁸ Although the drive was designed to deport Sicilian gang members, Mr. Caruso was not a criminal and was one of only a few Sicilian persons who were ultimately placed in deportation proceedings.⁴⁹ According to a baker who was apprehended and released after an hour, “quiet people who worked every day of their lives were arrested, old men, ‘doctors, lawyers, anyone; but only good people, no criminals, because the police were afraid to take the bad ones.’”⁵⁰

The Deportation Drive was the culmination of years of lobbying by civic institutions in Chicago to clear the city of Sicilian gangsters.⁵¹ The campaign began in 1924, when, just before the election, State’s Attorney Crowe was a guest of honor at a banquet held for him by the Genna gang.⁵² After he denied that he had participated in the dinner, the *Chicago Tribune* published a photo of him and other prominent politicians sitting alongside the Genna crime bosses with Crowe campaign posters in the background.⁵³ The *Chicago Tribune* and Better Government Association of Chicago began a campaign—not against public corruption—but for the deportation of Sicilians.⁵⁴

In February 1926, the press began to report that this effort was about to pay off.⁵⁵ The Immigration Service announced on February 18, 1926, that Chicago would “‘be the center of a wholesale drive to deport aliens.’ It will start the end of this week and after it gets under way, an Assistant Secretary of Labor will come here and take personal charge.”⁵⁶ Supposedly, immigration officials had the names and addresses of fifty persons subject to deportation in Chicago.⁵⁷ Six immigration

⁴⁸ *Id.*

⁴⁹ *Id.* at 10.

⁵⁰ *Id.* at 9. One of the detectives involved in the raids claimed, “It is not that we are getting so many of the real bad ones, but that we are finding out that there is a general exodus of Sicilian gunmen from Chicago. If our men can’t find them, it is a good sign they have jumped town.” *Id.* at 10.

⁵¹ THE NEW REPUBLIC, Mar. 17, 1926.

⁵² *Id.*

⁵³ *Pictures Tell Story of Their Own About Banquet that Figured in Charges Made to U.S. Senate*, CHI. DAILY TRIB., Mar. 1, 1926, at 36.

⁵⁴ THE NEW REPUBLIC, Mar. 17, 1926. The Better Government Association even presented a petition to the Senate asking for “a complete investigation of the whole situation in Chicago with a view to having deported those aliens who are alleged to form the backbone of outlawry in the Nation’s second city.” *United States Asked to Rid Chicago of Reign of Lawlessness—Dawes Delivers Citizen Plea to Senate—Aliens Are Blamed—Official, Accused, Calls Charges Lies—Police Lend Aid to Crime, Petition Says—Mayor Dever Promises Investigation*, WASH. POST, Feb. 28, 1926. By the time the petition was presented, the deportation drive in Chicago had already started.

⁵⁵ Adena Miller Rich, Chicago’s Deportation Drive of 1926, in I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, 3–4 (Univ. of Ill. at Chi.).

⁵⁶ *Id.*

⁵⁷ *Id.*

agents and a Supervising Director of Immigration were sent to assist local police and a Detective Sergeant of the Chicago Police.⁵⁸

On February 22, 1926, seven squads of detectives comprising sixty-five policemen in fifteen patrol wagons, swept into the Little Italy area in Chicago around Halsted and Taylor Street.⁵⁹ Although the deportation drive was supposed to have been planned in conjunction with immigration authorities, the first raid apparently took the Supervising Director of Immigration from Washington by surprise; he was reported to have said, "I was not ready for this work. I had my men out quietly watching different suspects and places, gathering evidence."⁶⁰ Newspapers reported that about 121 persons were apprehended in the first raid.⁶¹

There were additional raids in the South Halsted area on the night of February 24, resulting in about 90 more arrests.⁶² Most of those arrested were of Italian origin, except for a few Greek persons.⁶³ On March 2, 1926, there was a raid on a Mexican neighborhood on the southwest side along Ashland Avenue between 41st and 46th Streets, resulting in about ninety-seven apprehensions of Mexican nationals.⁶⁴ This time, there seemed to have been no pretense of arresting "criminal aliens"; the newspapers reported that most of those arrested "had been employed in railroad section gangs."⁶⁵

Authorities made no effort to justify the apprehensions of Mexican nationals who had no connection to organized crime. Instead, the Mexican nationals were tacked on, as though an afterthought, and without comment, as though they were presumptively criminal. The inclusion of non-criminal Mexican immigrants in a raid targeting non-citizen criminals foreshadowed a buildup in the deportation of Mexican nationals during the 1930s that will be described in Part IV, and which

⁵⁸ *Id.* at 4.

⁵⁹ Chicago's Deportation Drive of 1926 citing the Herald Examiner (1926), in I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, 4 (Univ. of Ill. at Chi.).

⁶⁰ *Id.*

⁶¹ Chicago's Deportation Drive of 1926 citing the HERALD EXAMINER (1926), in I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, 9 (Univ. of Ill. at Chi.).

⁶² *Id.*; *Little Sicily Deserted: Raiders Find Old Haunts of Gunmen Dark*, CHI. DAILY TRIB., Feb. 25, 1926.

⁶³ Chicago's Deportation Drive of 1926 (1926), in IPL RECORDS, SERIES I, BOX 2, FOLDER 21, 10 (Univ. of Ill. at Chi.).

⁶⁴ *Alien Roundup Nets 97 from New Group*, CHI. DAILY TRIB., March 2, 1926; I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, Adena Miller Rich, Chicago's Deportation Drive of 1926 at 5 (stating that the raids occurred "in three localities of the City, the near West side, in a neighborhood predominately Italian and Greek; a Southwest Side section inhabited by many Mexicans; and in South Chicago, whose population represents people of many nationalities, American as well as foreign-born.").

⁶⁵ *Alien Roundup Nets 97 from New Group*, CHI. DAILY TRIB., Mar. 2, 1926.

has come, in the ensuing decades, to define the focus of crimmigration and immigration enforcement more broadly.

During the raids, the police essentially went door-to-door in the various immigrant neighborhoods they were raiding.⁶⁶ According to an Italian lawyer interviewed about the operation, they raided every single house on the block at Miller and Taylor street, and “[s]everal mothers were taken from their beds, at night with children and driven to the jail, without the police having any writ, without any charges being made, and without any slightest cause for suspicion, or provocation.”⁶⁷ They rounded people up in “restaurants, coffeehouses, barber shops, cigar stores, rooming houses, club headquarters, pool rooms, groceries, soft drink parlors, offices or other places of business.”⁶⁸ They picked people out of their cars and, according to one report, took between twenty-two and thirty men off of street corners.⁶⁹ One man was picked up while calling on a doctor regarding an operation for his hospitalized wife.⁷⁰

Reports consistently indicated that police lacked warrants for most of the arrests and held most individuals without charge; spurious charges of vagrancy were entered against some.⁷¹ According to one person who was apprehended, those who were able to pay \$50 or more were not arrested.⁷² The decision about whether or not to book persons hinged on whether they spoke English; in some cases those who spoke English were not arrested.⁷³ There were no interpreters.⁷⁴ The police remained focused on arresting immigrants and did not touch any illegal alcohol they encountered.⁷⁵

The police initially detained most individuals at one of five nearby police stations and many were eventually transferred to the county jail.⁷⁶ Some were shifted around to three or four different places of detention. Conditions were

⁶⁶ I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 24, Deportation Drive—Interviews Dec. 1926–Jan. 1927 at 20 (Gerard M. Ungare Interview).

⁶⁷ *Id.*

⁶⁸ I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, Adena Miller Rich, Chicago’s Deportation Drive of 1926 at 5.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 8.

⁷⁴ *Id.*

⁷⁵ *Id.* at 5.

⁷⁶ *Id.* at 7 (showing that individuals were mostly detained at police stations “at 47th and Paulina, in the 13th Police District, or at 47th and Halsted, in the 12th District, the Maxwell station, a Chicago Avenue Station, the Harrison St. Station. Many others were taken to the LaSalle St. Detective Bureau; others sooner or later to the County Jail.”).

severely overcrowded, with 60 persons crammed into a room at one jail. Detainees reported that they had to sleep standing up, lying on a cement floor, or on top of each other.⁷⁷ In most cases, there was no heat. Detainees reported there were no blankets, the windows were left open, and water was running on the floor.⁷⁸ There was little or no food.⁷⁹

Bonds ranged from \$1000 to \$5000, which was far in excess of the \$500 bond typical for deportation cases.⁸⁰ The period of detention varied from one hour to one month.⁸¹

It is difficult to say how many persons were arrested during the Deportation Drive. The newspapers at the time reported that a few hundred persons were apprehended, although the IPL was unable to verify those numbers because most were held without booking and the arrest records of those who were booked were dispersed among multiple agencies and police stations.⁸² One man who was arrested “said it seemed as if ‘there were thousands of people there.’”⁸³ An immigration official told the IPL that 700 persons were apprehended during the drive.⁸⁴ Given the indiscriminate method of the arrests, it is likely that both citizens and non-citizens were apprehended.⁸⁵ Measured by the number of persons deported, the Drive can hardly be considered a success; ultimately, only “a small number of Italians” and nineteen Mexican nationals were deported as a result of the Drive.⁸⁶

III. CRIMMIGRATION SCHOLARSHIP

In the late 1990s, there was a growth in immigration scholarship, which previously had been somewhat of a fringe specialization in the legal academy. Some of this new scholarship focused on the increasing “criminalization” of immigration law.⁸⁷ In 2003, Professor Teresa Miller offered up the first

⁷⁷ *Id.* at 7–8.

⁷⁸ *Id.*

⁷⁹ *Id.* at 8.

⁸⁰ *Id.* at 9.

⁸¹ *Id.* at 8.

⁸² *Id.* at 9.

⁸³ *Id.*

⁸⁴ I.P.L. RECORDS, SERIES III, SUPP. II, BOX SII, FOLDER 54, Note from Interview with Chicago Immigrant Inspector Couch.

⁸⁵ Angélica Cházaro, *Challenging the “Criminal Alien” Paradigm*, 63 UCLA L. REV. 594, 642 (2016) (documenting that citizens were apprehended in other similar dragnet-style immigration enforcement actions, such as “Operation Wetback” in the 1950s).

⁸⁶ I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, Adena Miller Rich, Chicago’s Deportation Drive of 1926 at 10.

⁸⁷ See Maria Isabel Medina, *The Criminalization of Immigration Law: Employer Sanctions and Marriage Fraud*, 5 GEO. MASON L. REV. 669 (1997); Bill Ong Hing, *The Immigrant as Criminal:*

comprehensive description of this merger of immigration and criminal law, which she said had occurred in the following ways: (1) an expansion in the criminal grounds of removal; (2) the adoption of a penal approach to immigration enforcement through greater use of detention; (3) increased involvement by local and state police in immigration enforcement; and (4) increased prosecution of immigration violations as federal crimes.⁸⁸

According to Professor Miller, this new regime of criminalized immigration enforcement differed substantially from the norms of the 1960s through the early 1980s.⁸⁹ During that earlier period, she contended, “[t]he grounds for deportation of criminal and illegal aliens were narrower, the use of detention was less frequent, avenues for relief from detention were much broader, judicial review of deportation orders was broader, and far fewer immigration violations were criminally punishable.”⁹⁰ In contrast, she contended that a “confluence of factors” in the early 1980s, “contributed to a fundamental shift in policy toward legal and illegal immigration.”⁹¹ Among these economic and social factors was a popular belief that “immigrants—particularly illegal immigrants—were inextricably linked to the crisis in crime that was transforming American cities.”⁹² In the minds of many, illegal immigration was associated “with a new wave of organized ethnic crime, including Asian gangs, the Russian Mafia and Colombian drug rings.”⁹³ In response, “Congress marshaled for its ‘war’ on illegal immigration many of the same resources it was already deploying in its war on drugs.”⁹⁴

In 2006, Professor Juliet Stumpf coined a popular term for the confluence of immigration and criminal law: crimmigration.⁹⁵ In *The Crimmigration Crisis*, Professor Stumpf discussed the role of membership theory in both criminal and immigration law, and described the crimmigration merger as a consequence of the post-1970s shift to more exclusive notions of national membership, and the

Punishing Dreamers, 9 HASTINGS WOMEN’S L.J. 79, 92 (1998); Daniel Kanstroom, *Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases*, 113 HARV. L. REV. 1889, 1891 (2000); Nora Demleitner, *Immigration Threats and Rewards: Effective Law Enforcement Tools in the “War” on Terrorism?*, 51 EMORY L.J. 1059–60 (2002).

⁸⁸ Teresa A. Miller, *Citizenship & Severity: Recent Immigration Reforms and the New Penology*, 17 GEO. IMMIGR. L.J. 611, 614–16 (2003).

⁸⁹ *Id.* at 622.

⁹⁰ *Id.*

⁹¹ *Id.* at 625.

⁹² *Id.* at 628–29.

⁹³ *Id.* at 629.

⁹⁴ *Id.*

⁹⁵ See Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 376 (2006).

concomitant reliance on harsher ideologies of punishment.⁹⁶ She discussed two possible explanations for this shift: the move away from close-knit, small communities required the state to adopt “punishment that depended less on community ties and more on loss of personal liberty”; or alternatively, that “high rates of crime and unauthorized immigration have led to distrust of the state’s ability to control both crime and immigration,” making harsh enforcement measures attractive from a political standpoint.⁹⁷

In the past decade, there has been an explosion of crimmigration scholarship.⁹⁸ Among this wave of more recent scholarship, Professors Cuauhtémoc García Hernández and Yolanda Vázquez have written about the origins of crimmigration, with both agreeing with Professor Miller that it originated in the 1980s.⁹⁹ But Professors García Hernández and Vázquez have added significantly to Professor Miller’s account by discussing the role of race in the origins of crimmigration.

According to Professor García Hernández, “[w]hen immigration became a national political concern for the first time since the Civil Rights Era, policymakers turned to criminal law and procedure to do what race had done in earlier generations: sort the desirable newcomers from the undesirable.”¹⁰⁰ Crime became a proxy for race in the 1980s for policy makers unable to use explicitly racist criteria for deportation and exclusion in the post-Civil Rights Era. Professor

⁹⁶ *Id.* at 408.

⁹⁷ *Id.* at 413.

⁹⁸ See Stephen H. Legomsky, *The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms*, 64 WASH. & LEE L. REV. 469 (2007); Jennifer Chacón, *Managing Migration Through Crime*, 109 COLUM. L. REV. SIDEBAR 135 (2009); Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U. L. REV. 1281, 1351 (2010); Hiroshi Motomura, *The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Line*, 58 UCLA L. REV. 1819 (2011); Juliet P. Stumpf, *Doing Time: Crimmigration Law and the Perils of Haste*, 58 UCLA L. REV. 1705 (2011); Allegra M. McLeod, *The U.S. Criminal-Immigration Convergence and Its Possible Undoing*, 49 AM. CRIM. L. REV. 105 (2012); SOCIAL CONTROL AND JUSTICE: CRIMMIGRATION IN THE AGE OF FEAR (Maria João Guia et al. eds., 2013); Ingrid V. Eagly, *Criminal Justice for Noncitizens: An Analysis of Variation in Local Enforcement*, 88 N.Y.U. L. REV. 1126 (2013); Mary Fan, *The Case for Crimmigration Reform*, 92 N.C. L. REV. 75 (2013); García Hernández, *supra* note 6; César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346 (2014); Daniel I. Morales, *Crimes of Migration*, 49 WAKE FOREST L. REV. 1257, 1260 (2014); Yolanda Vazquez, *Constructing Crimmigration: Latino Subordination in A “Post-Racial” World*, 76 OHIO ST. L.J. 599 (2015); César Cuauhtémoc García Hernández, *The Life of Crimmigration Law*, 92 DENV. L. REV. 697 (2015); Jayesh Rathod, *Crimmigration Creep: Reframing Executive Action on Immigration*, 55 WASHBURN L.J. 173 (2015); Jennifer Lee Koh, *Crimmigration and the Void for Vagueness Doctrine*, 2016 WIS. L. REV. 1127 (2016); Rosenbloom, *supra* note 6, at 153; Yolanda Vázquez, *Crimmigration: The Missing Piece of Criminal Justice Reform*, 51 U. RICH. L. REV. 1093 (2017).

⁹⁹ García Hernández, *supra* note 2, at 1460–65; García Hernández, *supra* note 4, at 1360–82; Vázquez, *supra* note 98, at 641–44; See also Stumpf, *supra* note 3, at 68–72 (also placing the origins of crimmigration in the 1980s).

¹⁰⁰ García Hernández, *supra* note 2, at 1459.

Vázquez discusses the devastating impact of racialized mass removal: “Through the label of the “criminal alien,” the law legitimates the exclusion and exploitation of Latinos, thereby, ensuring their subordination and marginal status.”¹⁰¹

A recent essay by Professor Rachel Rosenbloom complicates the historical narrative put forward by Professors Miller, García Hernández, Stumpf, and Vázquez.¹⁰² Professor Rosenbloom examines records of interactions between police and immigration authorities in the mid-twentieth century, finding that the 1950s marked a key turning point in crimmigration history.¹⁰³ Based in part on this evidence, Professor Rosenbloom “argues that the transformation we have witnessed over the past three decades is best understood not as the merging of two formerly separate enforcement systems but rather as shifts within both the policing and deportation systems that have rendered far more people vulnerable to the intersection of the two.”¹⁰⁴ “Broken-windows” style aggressive policing of minor offenses and immigration enforcement have a symbiotic relationship, she contends, that mutually subject poor communities of color to surveillance and control.¹⁰⁵

Professor Rosenbloom marks the 1950s as a key turning point because prior to that, if local police had any involvement with immigration, their efforts were “generally focused on apprehending individuals suspected of having entered the United States without authorization rather than on facilitating the deportation of those whose criminal acts rendered them deportable.”¹⁰⁶ In addition, although she describes collaboration between local prisons and federal immigration authorities as early as 1903, she contends that federal immigration efforts in prisons were focused on deporting persons perceived to be public charges, rather than on deportation for dangerousness or criminality.¹⁰⁷ By the 1950s, however, there was a systemic effort on the part of the INS to establish information-sharing networks with local law enforcement.¹⁰⁸

IV. CRIMMIGRATION IN THE 1920S

The Deportation Drive of 1926 reveals that crimmigration has earlier roots than those unearthed by Professor Rosenbloom. The primary elements identified

¹⁰¹ Vázquez, *supra* at note 98, at 650.

¹⁰² Rosenbloom, *supra* note 3.

¹⁰³ *Id.* at 173–79.

¹⁰⁴ Rachel E. Rosenbloom, *Policing Sex, Policing Immigrants: What Crimmigration's Past Can Tell Us About Its Present and Its Future*, 104 CAL. L. REV. 149, 153 (2016).

¹⁰⁵ *Id.* at 184–93.

¹⁰⁶ *Id.* at 172.

¹⁰⁷ *Id.* at 171.

¹⁰⁸ *Id.* at 179.

by crimmigration scholars—the popular association of immigrants and criminals, a confluence of immigration and criminal law at both the substantive and procedural levels, and collaboration between immigration and local governmental authorities—existed in at least nascent form in the 1920s.

A. *The “Criminal Alien” Category*

Crimmigration scholars have emphasized the increased propensity of the public, since the 1980s, to identify non-citizens with crime.¹⁰⁹ Yet, the country has a long history with this line of rhetoric, which has ebbed and flowed over time and peaked in the 1920s.

The popular fixation on “criminal aliens” can be traced as far back as the country’s origins. Given Britain’s practice during colonial times of sending convicts to the colonies, Samuel Johnson allegedly quipped that Americans “are a race of convicts and ought to be content with anything we may allow them short of hanging.”¹¹⁰ Benjamin Franklin complained of Britain’s practice of exporting convicts in one of his parliamentary petitions, stating that they “corrupt the morals of the servants and poorer people among whom they are mixed.”¹¹¹

Following the Revolution, the Continental Congress recommended that states ban “the transportation of convicted malefactors from foreign countries into the United States,” and most states passed head taxes or other penalties on convicts landing in their ports.¹¹² In 1841, the *New York Times* complained that “every arrival here from Europe brings to our city many foreigners who have been compelled to fly from their country on account of crimes committed at home.”¹¹³

This theme spread increasingly in the nineteenth century as the anti-immigrant “Know Nothing” movement grew. Know Nothing writers contended that certain immigrant groups, such as the German and Irish, were lawless and dangerous elements in the population.¹¹⁴ The party’s “Native-American Declaration of Principles” claimed that European governments were commuting the sentences of criminals in exchange for them emigrating to the United States, which was “rapidly becoming the lazar house and penal colony of Europe.”¹¹⁵

¹⁰⁹ Miller, *supra* note 3, at 628–29; Stumpf, *supra* note 95, at 419; García Hernández, *supra* note 3, at 1503–07.

¹¹⁰ James Davie Butler *British Convicts Shipped to American Colonies*, 2 AM. HIST. REV. 12, 12 (1896).

¹¹¹ NAT’L COMMISSION ON L. OBSERVANCE & ENFORCEMENT, REP. ON CRIME AND THE FOREIGN BORN 27 (1931) [hereinafter “Report on Crime and the Foreign Born”].

¹¹² *Id.* at 30.

¹¹³ *Id.* at 32–33 (citing 61 NILES’ NAT’L REG., Oct. 2, 1841, at 69).

¹¹⁴ See, e.g., SAMUEL C. BUSEY, IMMIGRATION: ITS EVILS AND CONSEQUENCES (1856).

¹¹⁵ NAT’L COMMISSION ON L. OBSERVANCE & ENFORCEMENT, *supra* note 111, at 33–34.

As a result, there was a congressional inquiry ordered, resulting in a House Report, which in 1856 reiterated the Know Nothing charge that the country “has been converted into a sort of penal colony, to which foreign governments ship their criminals.”¹¹⁶ At that time, according to the report, the foreign born population of Chicago outnumbered the native population: 15,682 to 13,693.¹¹⁷ The report claimed that there was one conviction out of every 1,580 native persons and one out of every 165 foreign born persons, meaning the proportion of native to foreign crime was one to ten.¹¹⁸

Interestingly, the report spent much of its space reaching for constitutional authority for the Federal Government to bar the admission of convicts and paupers.¹¹⁹ It remarkably drew such authority from the constitutional language banning Congress from prohibiting the importation of slaves prior to 1808.¹²⁰ Today the principle that federal authority over immigration is plenary is so deeply rooted that state efforts to regulate immigration are often found to be preempted,¹²¹ but this was clearly not the case in the mid-nineteenth century. The linkage established in the 1856 Congressional Report between constitutional authority for federal restrictions on immigration and slavery is a troubling historical moment that bears remembering.

Congress began to take action concerning criminal aliens after the Civil War. Charles Sumner introduced a Senate resolution of protest concerning criminal aliens in 1866 based on supposed reports of German criminals being pardoned on condition that they emigrate to the United States.¹²² In 1875, Congress passed the first law prohibiting the landing of those convicted of “felonious crimes” and women “imported for the purposes of prostitution,” although no machinery was provided for enforcing its provisions.¹²³

When Congress eventually passed the first federal statute restricting immigration, it included a provision barring the entry of foreigners with criminal convictions.¹²⁴ In 1888, another congressional committee, the Ford Committee, again found that European governments were releasing prisoners provided they go to the United States.¹²⁵ After the report, Congress passed legislation substituting

¹¹⁶ H.R. REP. NO. 34-359, at 1 (1856).

¹¹⁷ *Id.* at 2.

¹¹⁸ *Id.* at 11.

¹¹⁹ *Id.* at 23–25.

¹²⁰ *Id.* (citing U.S. CONST. art. I, § 9).

¹²¹ *See, e.g., Arizona v. United States*, 567 U.S. 387 (2012).

¹²² NAT’L COMMISSION ON L. OBSERVANCE & ENFORCEMENT, *supra* note 111, at 41.

¹²³ Act of Mar. 3, 1875, ch. 141, 18 Stat. 477.

¹²⁴ *Id.* at § 5.

¹²⁵ H.R. REP. NO. 50-3792, at 283–86 (1880).

for “convict” the term “persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude.”¹²⁶

Another congressional report from the Industrial Commission at the end of the nineteenth century concluded that there was a “relatively large proportion of paupers and criminality” among recent immigrants, and stated that the “Italians appear to furnish the largest proportion of criminals.”¹²⁷ Not long thereafter, in 1907, Congress appointed yet another commission to examine the issue of immigration.¹²⁸ In 1911, the Dillingham Commission released its voluminous report, finding that “no adequate means have been adopted for preventing the immigration of criminals, prostitutes, and other morally undesirable aliens.”¹²⁹ It then stated that “the coming of criminals and persons of criminal tendencies constitutes one of the serious social effects of the immigration movement.”¹³⁰ The Commission also placed much of the blame for immigrant criminality on certain immigrant groups, such as Italians.¹³¹ It ultimately recommended that immigration “of each race arriving each year” should be limited to the percentage of the number arriving during an earlier period—a means of curtailing the immigration of groups of more recent entrants, such as Italians.¹³² As a result of the Dillingham Commission, Congress would enact a series of reforms over the coming years, both restricting immigration and creating new mechanisms for the deportation of criminal aliens.¹³³

The popular press during the early twentieth century was full of assertions that immigrants—particularly Southern Italians—were responsible for a disproportionate share of crime. Between 1904 and 1912, the *Chicago Record-Herald* published fifty-three articles about Italians, nearly eighty percent of which dealt with crime of some sort—generally, violent crime.¹³⁴ At the end of 1926, the *Chicago Herald* and *Examiner* stated, “Chicago’s hopes of driving out the alien horde, which plots and perpetrates most of the crimes within her borders, have been largely thwarted by a penurious federal government.”¹³⁵ The *Chicago Tribune*, in particular, carried on a campaign throughout the 1920s for the

¹²⁶ NAT’L COMMISSION ON L. OBSERVANCE & ENFORCEMENT, *supra* note 111, at 50.

¹²⁷ 15 INDUSTRIAL COMMISSION, SPECIAL REPORT ON GENERAL STATISTICS OF IMMIGRATION AND FOREIGN BORN POPULATION 285–91 (1901).

¹²⁸ See U.S. IMMIGRATION COMM’N ABSTRACTS OF REPORTS OF THE IMMIGRATION COMMISSION, S. DOC. NO. 61-747 (3d Sess. 1911).

¹²⁹ *Id.* at 27.

¹³⁰ *Id.*

¹³¹ U.S. IMMIGRATION COMM’N OF 1911, S. DOC. NO. 66, at 83 (3d Sess. 1911).

¹³² See U.S. IMMIGRATION COMM’N ABSTRACTS OF REPORTS OF THE IMMIGRATION COMMISSION, S. DOC. NO. 61-747, at 47 (3d Sess. 1911).

¹³³ See NGAI, *supra* note 12, at 21–37.

¹³⁴ GUGLIELMO, *supra* note 26, at 78.

¹³⁵ *Crime Aided by Penurious Uncle Sam*, CHI. HERALD EXAMINER, Dec. 15, 1926.

deportation of Sicilians.¹³⁶ In 1928, the *Chicago Tribune* wrote, “No one can read the list of names of the dead gangsters without being impressed with their alien character. Most of them are Sicilians, children of a land notorious for its feuds for centuries. They come here with a tradition of banditry and private vengeance.”¹³⁷ Shortly afterward, a *Tribune* editorial suggested that Sicilians should be banned from admission to the United States, as had been done with Chinese nationals.¹³⁸

Throughout the 1920s and 1930s, a fierce debate raged in policy circles concerning whether immigrants were responsible for a disproportionate share of crimes. In 1931, yet another congressional commission, the Wickersham Commission, devoted an entire volume to debunking this widespread notion.¹³⁹ Its conclusion was not accepted without prominent critics, who argued that even if non-native born persons were responsible for less crime, their children were responsible for a disproportionately large share of it.¹⁴⁰ This debate should sound familiar to modern ears; scholars continue to expend considerable effort today debunking the myth of immigrant criminality.¹⁴¹

B. Growth in the Criminal Grounds of Removal

One of the principal ways in which scholars have identified the crimmigration merger occurring is through the addition of more grounds of deportation for criminal offenses to the Immigration and Nationality Act.¹⁴² For example, in 1986, Congress expanded the controlled substances ground of deportability; in 1996, Congress created a ground of deportation for crimes of domestic violence, stalking, and child abuse.¹⁴³ Even more significantly, in 1988, Congress created the “aggravated felony” ground of removal, which originally provided for the mandatory deportation of persons convicted of murder, drug trafficking, and firearms trafficking.¹⁴⁴ Over the following decades, Congress has repeatedly

¹³⁶ THE NEW REPUBLIC, Mar. 17, 1926.

¹³⁷ *Alien Murderers in Chicago*, CHI. DAILY TRIB. Sept. 10, 1928.

¹³⁸ *For an American Policy*, CHI. DAILY TRIB., Nov. 22, 1928, at 12.

¹³⁹ Report on Crime and the Foreign Born, *supra* note 111.

¹⁴⁰ Donald R. Taft, *Does Immigration Increase Crime?*, 12 SOCIAL FORCES 69, 72 (1933).

¹⁴¹ See, e.g., Vázquez, *supra* note 98, at 610–11.

¹⁴² Stumpf, *supra* note 95, at 382; García Hernández, *supra* note 2, at 1468; Hing, *supra* note 87, at 79–80, 85–87; Vázquez, *supra* note 98, at 609.

¹⁴³ See Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1751, 100 Stat. 3207 (replacing the provision authorizing deportation on the basis of a conviction for “illicit possession of or traffic in narcotic drugs or marihuana” with a provision referencing any conviction involving a controlled substance under a state, federal, or foreign country’s law); Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Division C of Pub. L. No. 104-208, § 350(a), 110 Stat. 3009-546, 309-639, § 350(a) (1996) (adding a ground of deportation for domestic violence, stalking, and child abuse).

¹⁴⁴ 8 U.S.C. § 1101(a)(43) (1990).

added crimes to the list of aggravated felonies, so that it now comprises a list of twenty-one sections concerning crimes or categories of crimes, many of which are neither particularly aggravated nor felonies.¹⁴⁵ The question of whether a crime is an aggravated felony is now one that is central to removal defense, since a person convicted of an aggravated felony is ineligible for almost all relief from removal.¹⁴⁶

It is certainly true that the scope of the criminal grounds of removal have expanded dramatically since the 1980s, especially as a result of the growth of the aggravated felony category. However, crime has always been central to exclusion and deportation, and there was a comparable expansion of the criminal grounds of deportation in the period leading up to the Deportation Drive of 1926.

The first federal immigration laws pertained to the exclusion of persons with criminal convictions, not to their deportation for post-entry conduct.¹⁴⁷ However, in 1907, Congress passed a law stating that “any alien woman or girl [found to be a prostitute] . . . within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported.”¹⁴⁸ Although the law was initially intended as a means to prevent the entry of prostitutes into the United States, a 1910 amendment eliminated the three-year period, creating “what amounted to the first true U.S. post-entry social control deportation law since the 1798 Alien Friends Act.”¹⁴⁹

The Dillingham Commission recommended a five-year period of deportability for noncitizens convicted of serious crimes after entry.¹⁵⁰ This reform was adopted in 1917, when Congress imposed a deportation ground for commission of a “crime involving moral turpitude” within five years of entry; those sentenced more than once faced deportation at any time after entry.¹⁵¹ In 1920, Congress added criminal grounds of deportation related to espionage, explosives, and wartime offenses.¹⁵² The first controlled substances deportation ground came in 1922, with passage of a law that mandated the deportation of any noncitizen convicted of offenses related to the importation of opium, cocaine, or derivative substances.¹⁵³

¹⁴⁵ 8 U.S.C. § 1101(a)(43)(A)-(U) (1952).

¹⁴⁶ See DAN KESSELBRENNER & LORY D. ROSENBERG, *IMMIGRATION LAW & CRIMES* § 7:22 (2017).

¹⁴⁷ Act of Aug. 3, 1882, ch. 376, § 2, 22 Stat. 214; 214–215; Act of Mar. 3, 1875, ch. 141, § 5, 18 Stat. 477, 477–478.

¹⁴⁸ KANSTROOM, *supra* note 9, at 125.

¹⁴⁹ *Id.* at 126.

¹⁵⁰ U.S. IMMIGRATION COMM’N OF 1911, *supra* note 131, at 45–48.

¹⁵¹ Act of Feb. 5, 1917, ch. 29, 39 Stat. 874, 889–890.

¹⁵² Act of May 10, 1920, ch. 174, § 1, 41 Stat. 593, 593–594.

¹⁵³ Act of May 26, 1922, ch. 202, 42 Stat. 596, § 2.

Despite these additions, the most substantial ground of deportation in the 1920s was crime involving the moral turpitude provision, which today remains a major, if not the most major, criminal ground of removal.¹⁵⁴ A considerable case law has now developed concerning what crimes meet this vague standard.¹⁵⁵ But there is some evidence that initially it may have been applied more broadly than today; one commentator who studied deportation proceedings in 1930 stated that the moral turpitude category “may include almost any offense with the exception of the violation of the prohibition law.”¹⁵⁶ Thus, by the time of Chicago’s Deportation Drive of 1926, not only were all “[t]he essential pieces of the modern regime of deportation for post entry criminal conduct” in place,¹⁵⁷ they were relatively robust.

C. Criminalization of Immigration Offenses

In addition to the post-1980s increase in criminal grounds of removal, scholars have also argued that another aspect of the crimmigration merger has been the increased treatment of immigration offenses as criminal offenses during the same time period.¹⁵⁸ In the 1980s and 1990s, Congress added a series of new immigration-related crimes and increased the penalties for existing crimes.¹⁵⁹ Even more strikingly, the federal government steadily ramped up its enforcement of illegal entry and reentry cases beginning in the 1990s: in 1993 immigration crimes constituted 5.4% of the federal criminal docket; by 2004 they had come to comprise the single largest type of crime prosecuted in federal courts.¹⁶⁰

However, a comparable increase in the criminal treatment of immigration offenses accompanied the 1917 Immigration Act, which included five new misdemeanor offenses and three new felonies.¹⁶¹ More significantly, Congress made illegal reentry after a prior deportation a felony and illegal entry a misdemeanor in 1929.¹⁶² Of course, the number of prosecutions in the early

¹⁵⁴ See KESSENBRENER & ROSENBERG, *supra* note 146, at § 6:1.

¹⁵⁵ *Id.* at §§ 6:1-6:6.

¹⁵⁶ See I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, Jacob Horak, Deportation Proceedings in Prison 1 (1930).

¹⁵⁷ KANSTROOM, *supra* note 9, at 133.

¹⁵⁸ Stumpf, *supra* note 95, at 382; García Hernández, *supra* note 2, at 1471; Eagly, *supra* note 98, at 1281-82.

¹⁵⁹ García Hernández, *supra* note 2, at 1471-72.

¹⁶⁰ *Id.* at 1472-73.

¹⁶¹ Immigration Act of 1917, ch. 19, 39 Stat. 874, §§ 4 (reentry after deportation or exclusion for violation of provision banning importation of aliens into the United States for prostitution or for any other immoral purpose), 5 (violation of provision banning importation of contract labor), 8 (harboring aliens not lawfully entitled to enter), 10.

¹⁶² Act of March 4, 1929, ch. 690, 45 Stat. 1551, §§ 1-2.

twentieth century is statistically lower than current levels.¹⁶³ However, prosecutions did grow exponentially during that time: in 1917 there were 51 reported immigration cases; in 1932 there were 7,241—comprising eighteen percent of the total and more than for many other categories, including commerce, post office, internal revenue, customs, admiralty, insurance, and land.¹⁶⁴ The dramatic increase in immigration prosecutions during this time period parallels the one described by Professor García Hernández as occurring during the 1990s.¹⁶⁵

Some of the most significant immigration crimes were codified into law from 1917–1929, laying the legal groundwork for the massive increase in prosecution that occurred at the end of the twentieth century. Although prosecutions of immigration offenses did not occur on the same scale as today, there was exponential growth in prosecution of immigration crimes during the period from 1917 to 1932, and immigration crimes were prosecuted more frequently than many other categories of crimes. Thus, just as the essential structure for crime-based deportation was crafted in 1917, the criminalization of immigration offenses also was a product of the period following 1917.

D. *Blurring the Lines of Criminal and Immigration Policing and Procedure*

Courts insist that deportation is not punishment and that the constitutional protections that apply in the criminal context, therefore, do not attach to removal proceedings.¹⁶⁶ Yet, crimmigration scholars have documented several ways in which immigration policing and procedure have recently come to adopt punitive norms.¹⁶⁷ Scholars contend that the increased use of immigration detention and the increasingly prominent role played by local law enforcement agents have made the immigration enforcement system feel and look like the criminal justice system.¹⁶⁸ In a parallel development, the relaxed constitutional protections afforded in immigration proceedings have spilled over into criminal proceedings involving non-citizens.¹⁶⁹

¹⁶³ Compare statistics reported for the 1920s in David S. Clark, *Adjudication to Administration: A Statistical Analysis of Federal District Courts in the Twentieth Century*, 55 S. CAL. L. REV. 65, 116 (1981) (showing a combined 7,241 immigration prosecutions for 1932) with U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, FED. JUSTICE STATISTICS, 2013–2014 (2017), <https://www.bjs.gov/content/pub/pdf/fjs1314.pdf> (showing 81,881 prosecutions for immigration offenses in 2014).

¹⁶⁴ *Id.* at 116.

¹⁶⁵ García Hernández, *supra* note 3, at 1472–73.

¹⁶⁶ See Legomsky, *supra* note 98, at 472.

¹⁶⁷ *Id.* at 489–500.

¹⁶⁸ *Id.* at 489–98.

¹⁶⁹ Chacón, *supra* note 98, at 140–47; García Hernández, *supra* note 2, at 1475–80.

Immigration detention has expanded dramatically since the 1980s, and in all relevant respects resembles criminal custody.¹⁷⁰ Non-citizens awaiting removal are held today in a sprawling network of jails that are not run by the federal government; rather, they overwhelmingly consist of jails owned and run by local governmental entities and private correctional companies with federal contracts.¹⁷¹ Thus, this massive and growing system is not designed specifically for immigrants but mirrors correctional norms, and scholars point to this punitive feature of removal as evidence of the crimmigration merger.¹⁷²

Similarly, scholars point to increased local collaboration with immigration enforcement as a way in which the immigration and criminal systems have coalesced.¹⁷³ In 1996, IIRIRA authorized the deputization of local law enforcement agents to enforce immigration law.¹⁷⁴ The “Secure Communities” program systematizes collaboration between local law enforcement and the federal government through a system of involuntary information sharing between local law enforcement agencies, the Federal Bureau of Investigation (FBI), and the Department of Homeland Security (DHS).¹⁷⁵ Through Secure Communities, the FBI automatically notifies DHS when a local law enforcement agency forwards fingerprint information about an arrestee to the FBI, allowing DHS to quickly learn when a non-citizen has been apprehended by a state or local law enforcement agency.¹⁷⁶ These and other state, local, and federal mechanisms have made

¹⁷⁰ García Hernández, *supra* note 2, at 1413–14.

¹⁷¹ Geoffrey Heeren, *Pulling Teeth: The State of Mandatory Immigration Detention*, 45 HARV. C.R.-C.L. L. REV. 901, 913 (2010).

¹⁷² Miller, *supra* note 3, at 635–37; Stumpf, *supra* note 95, at 391; Legomsky, *supra* note 98, at 489–500; García Hernández, *supra* note 2, at 1480–81.

¹⁷³ See Jennifer M. Chacón, *Whose Community Shield?: Examining the Removal of the “Criminal Street Gang Member”*, 2007 U. CHI. LEGAL F. 317, 339–43 (describing participation of criminal enforcement officers in immigration proceedings); Anil Kalhan, *The Fourth Amendment and Privacy Implications of Interior Immigration Enforcement*, 41 U.C. DAVIS L. REV. 1137, 1161–63 (2008) (describing increased role of state and local officials in enforcement of immigration laws); Legomsky, *supra* note 98, at 489–500 (describing importation of criminal law enforcement strategies to immigration law); Juliet P. Stumpf, *States of Confusion: The Rise of State and Local Power over Immigration*, 86 N.C.L. REV. 1557, 1595 (2008) (“Several post-September 11, 2001 federal actions have had the effect of drawing state and local police into indirectly enforcing immigration law.”); Michael J. Wishnie, *State and Local Police Enforcement of Immigration Laws*, 6 U. PA. J. CONST. L. 1084, 1084–88 (2004) (discussing entry of civil immigration violations into NCIC database).

¹⁷⁴ See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, *supra* note 142, at § 133 (amending Section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g)).

¹⁷⁵ Motomura, *supra* note 98, at 1850.

¹⁷⁶ See Bill Ong Hing, *Entering the Trump Ice Age: Contextualizing the New Immigration Enforcement Regime*, 5 TEX. A&M L. REV. 253, 290 (2018).

immigration less a species of federal administrative law and more a type of quasi-criminal enforcement.

Many protections available in the criminal context, like the Sixth Amendment right to counsel and to confront witnesses and the Fourth Amendment right to be free from unreasonable searches and seizures, are weaker or nonexistent in the immigration context.¹⁷⁷ Crimmigration scholars have argued that the weaker constitutional norms of immigration practice have filtered into the criminal arena in certain ways, such as through the truncated process available to defendants in illegal entry and reentry cases, the mass plea agreements that have been used in cases involving large scale workplace raids, and through the use of evidence obtained by police in violation of the Fourth Amendment in removal proceedings, where the Fourth Amendment has less sway.¹⁷⁸ Thus, the crimmigration merger has weakened criminal protections even as it has made immigration enforcement practices more punitive.

In the 1920s, the boundaries between criminal and immigration procedure and policing were similarly porous. Indeed, many of the protections that now exist in the criminal context—such as Miranda warnings and the right to counsel—did not exist in the 1920s, meaning that the standard of constitutional protection was similarly low in both spheres. Even those rights that were well-established, like the right to be free of unreasonable searches and seizures, were weakened in cases involving non-citizens. This can be seen clearly from the records of the 1926 Deportation Drive, when hundreds of persons of Italian origin were arrested without a warrant and held without charges for a period that ranged from days to months.¹⁷⁹

There was one way in which the deportation and criminal process was bound together in the 1920s that does not exist today. The 1917 Act permitted a criminal sentencing judge to exempt a non-citizen from deportation based on a criminal conviction through the entry of a “judicial recommendation against deportation” (JRAD).¹⁸⁰ The legislative history surrounding the JRAD reveals that “Congress considered deportation to be part of the penalty for a crime, which should be ameliorated ‘in any case in which the judge who best knew the facts thought the drastic penalty of deportation was unwarranted.’”¹⁸¹ It is unclear how much JRADs

¹⁷⁷ Legomsky, *supra* note 98, at 515–16.

¹⁷⁸ Chacón, *supra* note 98, at 142–45; García Hernández, *supra* note 2, at 1475–76.

¹⁷⁹ I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, Adena Miller Rich, Chicago’s Deportation Drive of 1926 at 8.

¹⁸⁰ Act of Feb. 5, 1917, ch. 29, § 19, 39 Stat. 874.

¹⁸¹ Margaret H. Taylor & Ronald F. Wright, *The Sentencing Judge as Immigration Judge*, 51 EMORY L.J. 1131, 1146 (2002) (*quoting* *Janvier v. United States*, 793 F.2d 449, 453 (2d Cir. 1986)).

were used during the 1920s. In later years, they were not widely utilized, and the JRAD was eliminated in 1990.¹⁸²

The Deportation Drive of 1926 also reveals that immigration enforcement in the 1920s was at least sometimes a joint venture between federal and local government. “[T]he Deportation Drive of 1926 was a cooperative enterprise of representatives from six public offices: that of the Commissioner General of Immigration; of the local Immigration Inspector; the United States Department of Justice; the Chicago Police Department, especially its Detective Bureau; the Sheriff, and the States Attorney of Cook County.”¹⁸³

Federal officials at the time emphasized their need to cooperate, due to a lack of federal resources, with local agencies. In 1929, Secretary of Labor James Davis explained the situation as follows:

[The immigration] service must, to a large extent, depend upon the cooperation of the police and other law enforcement authorities in bringing illegally resident aliens to light and thereby making deportation possible. I have always insisted that our immigration officers shall work with the local authorities to the fullest possible extent, with a view to the deportation of aliens who are unlawfully here and more especially those of the criminal classes.¹⁸⁴

It appears that in the late 1920s and early 1930s, this cooperation was extensive. In 1930, the IPL stated in a report to its Board of Directors that the police had arrested about 400 suspected criminal aliens in “raids for the Immigration Office,” but that “deportation warrants were issued for only five or six, who are now held in the County Jail.”¹⁸⁵ During this time, the police in Chicago served as de facto immigration agents, and the local jail was regularly used to house immigrant detainees.¹⁸⁶

Collaboration also occurred regularly between federal immigration agents and state prison officials. Professor Rosenbloom extensively discusses the early process for deporting prisoners.¹⁸⁷ However, she states that immigration

¹⁸² *Id.* at 1148; Immigration Act of 1990, Pub. L. No. 101-649, § 505(a), 104 Stat. 4978.

¹⁸³ I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, Adena Miller Rich, Chicago’s Deportation Drive of 1926 at 4–5.

¹⁸⁴ Arthur Sears Henning, *Alien Criminal Hard to Catch, Davis Explains*, CHI. TRIB., July 1, 1929. This quote supports Rosenbloom’s conclusion that by the 1930s, there was a “nascent practice of information sharing on a local level directly between police departments and INS investigators.” Rosenbloom, *supra* note 5, at 175.

¹⁸⁵ I.P.L. RECORDS, SERIES III, SUPP. I, BOX 4-SII, FOLDER 54, The June Deportation Drive in Chicago, From Report of Director of the Immigrants’ Protective League to its Board of Directors 7-2-30 at 2.

¹⁸⁶ *See id.*; I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, Adena Miller Rich, Chicago’s Deportation Drive of 1926 at 5–6.

¹⁸⁷ Rosenbloom, *supra* note 5, at 167–71.

enforcement against non-citizen prisoners was spotty and that “[c]ollectively, these early records reveal an agency that approached prison inmates primarily as ‘public charges’ who were unable to support themselves financially.”¹⁸⁸ However, there is evidence that a number of states worked extensively with the federal government in the late 1920s and early 1930s to deport non-citizens in state criminal custody based on their criminal records.¹⁸⁹

According to a report prepared by the IPL concerning the Illinois prison program, the hearings were conducted based on charges that the prisoners had committed crimes involving moral turpitude.¹⁹⁰ The report profiled hearings in Illinois, but an immigration inspector interviewed for the report stated that “there is a very fine cooperation, practically in every state where he has been working, between the prison authorities and the immigration officials.”¹⁹¹

The federal government commenced this institutional hearing program based on a nationwide census of state prisons undertaken from April to June 1929.¹⁹² The Joliet prison helped the government keep its statistics updated by sending monthly reports on non-citizens in its custody to the District Director of Immigration in Chicago.¹⁹³ Based on these reports, an immigration inspector visited the prison monthly to interview non-citizens and to issue warrants of arrest for deportable non-citizens.¹⁹⁴ In many respects, this institutional hearing program paralleled the program in place today for deporting non-citizen prisoners, which began in 1980.¹⁹⁵ However, in one respect it was even more efficient: in October

¹⁸⁸ *Id.* at 171.

¹⁸⁹ Ruben H. Klainer, *Deportation of Aliens*, 15 B.U. L. REV. 663, 688 (1935) (“It had been the practice of the immigration authorities for some time, to issue a warrant of deportation for an alien who had been sentenced to an imprisonment subjecting him to deportation, immediately upon his being paroled. The penal institutions of the various states extended their cooperation, as everybody was anxious to be rid of the criminal element, which in some way gained admission to this country.”); I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21, Jacob Horak, *Criminal Justice and the Foreign Born, Preliminary Report, Summary of the Study of Foreign Born Prisoners in the Illinois State Penitentiaries* (May 1, 1930) (describing a program in place in Illinois to collaborate with the federal government to deport non-citizens in state custody based on crime involving moral turpitude deportation charges); BALDERRAMA & RODRÍGUEZ, *supra* note 20, at 65 (“Mexican prisoners [in the 1930s] were often offered reprieves and could have their jail sentences commuted if they agreed to deportation.” The procedure was used at the Los Angeles County Jail and by other “state and federal prison officials,” including for ninety prisoners at the McNeil Federal Penitentiary in Washington State).

¹⁹⁰ I.P.L. RECORDS, Jacob Horak, *Deportation Proceedings in Prisons*, *supra* note 157 at 1.

¹⁹¹ *Id.* at 2.

¹⁹² *Id.*

¹⁹³ *Id.* at 2–4.

¹⁹⁴ *Id.*

¹⁹⁵ TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (TRAC) AT SYRACUSE UNIVERSITY, *THE IMMIGRATION COURT’S INSTITUTIONAL HEARING PROGRAM: HOW WILL IT BE AFFECTED* (2017), <http://trac.syr.edu/immigration/reports/461/>.

1929, Illinois adopted a policy under which the governor would grant conditional pardons or paroles to convicts certain to be deported; if the non-citizen returned, the original sentence would be imposed.¹⁹⁶

Detention was also a major feature of immigration enforcement in the 1920s. Just as is the case today, immigrants awaiting deportation appear to have been primarily held in local jails that were not owned or administered by the federal government.¹⁹⁷ For the most part, there was probably not the sort of ongoing large-scale detention of non-citizens in local jails that exists today in facilities that have contracts with DHS to house immigrant detainees.¹⁹⁸ Thus, if anything immigrant detainees were even more intermingled with persons in criminal custody than is the case today. Moreover, in the case of larger scale raids like the deportation drives of 1926 or 1930, local jails likely were filled on at least a short-term basis with significant numbers of non-citizens apprehended for deportation.¹⁹⁹ Just as today, some of these persons were held for lengthy periods of time with the cooperation of local authorities.²⁰⁰

Criminal and immigration law and procedure converged during the 1920s in the same ways that they did in the 1980s and beyond. Just as the public in the 1980s was focused on “a new wave of organized ethnic crime, including Asian gangs, the Russian Mafia and Colombian drug rings,”²⁰¹ the public in the 1920s became obsessed with the Sicilian Mafia. In response to this perceived crisis of “criminal aliens,” Congress added new criminal grounds of removal and, in a

¹⁹⁶ *State to Free Alien Convicts, Ship Them Home*, CHI. DAILY TRIB., Oct. 2, 1929, at 3. See also I.P.L. RECORDS, Horak, *supra* note 156, at 5–6. (This practice appears to have been widespread in other states too.) Klainer, *supra* note 189, at 689.

¹⁹⁷ See *Aliens Find a Haven in Cicero with Capone*, CHI. DAILY TRIB., Feb. 26, 1926, at 1. (“Five Sicilians and one Greek were held in the county jail last night as government prisoners, being the first actually sifted out for deportation since the opening of the police-government drive to break alien gangs of gunmen.”); *Comano Taken to New York for U.S. Deportation*, CHI. DAILY TRIB., January 19, 1927 (Comano held at Lake County Jail since Supreme Court decided against him).

¹⁹⁸ Joan Petersilia, *California's Correctional Paradox of Excess and Deprivation*, 37 CRIME & JUST. 207 (2008) (Partly, this was a function of lower numbers of deportations, but also reflected the fact that the United States locked up fewer persons in general during the early twentieth century).

¹⁹⁹ Adena Miller Rich, *Chicago's Deportation Drive of 1926*, I.P.L. RECORDS, SERIES I, BOX 2, FOLDER 21 at 5–6; *The June Deportation Drive in Chicago; from Report of Director of the Immigrants' Protective League to its Board of Directors* I.P.L. RECORDS, SERIES III, SUPP. I, BOX 4-SII, FOLDER 54, 7-2-1930 at 2; Adena Miller Rich, *Memorandum on the United States Deportation Drive of October, November, 1931 in Chicago*, Dec. 12, 1931. (Immigration agents “dumped” those apprehended during raids at the South Chicago Police Station during the 1931 Deportation Raid).

²⁰⁰ Helen Winker, *Need for a Study of Deportation: A Summarized Outline*, I.P.L. RECORDS, SERIES I, BOX10, FOLDER 118, (“Deportation under the Immigration Laws, though not a punishment, nevertheless frequently means long periods of detention, often in jail, before actual deportation takes place.”); See also Rich, *supra* note 199, at 8 (length of detention for persons apprehended in the 1926 deportation drive ranged from days to months).

²⁰¹ Miller, *supra* note 3, at 629.

feature of immigration law that does not exist today, blurred the criminal and immigration process by allowing local sentencing judges to enter JRADs. In 1917 and 1929, Congress also criminalized a series of immigration offenses, including illegal entry and illegal reentry, and federal prosecutors began to prosecute those crimes at an exponentially greater rate such that they came to comprise a substantial portion of the federal docket. Procedural protections for non-citizens in the criminal process and immigration process were similarly weak. There was widespread use of detention during removal and close collaboration between federal and local authorities, including through a systematic effort to deport non-citizens in state criminal custody.

V. RACE, CRIME, AND REMOVAL

In the post-civil rights era, “[i]t is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion, and social contempt.”²⁰² Instead, as Michelle Alexander says, “[w]e use our criminal justice system to label people of color ‘criminals’ and then engage in all the practices we supposedly left behind.”²⁰³ In the 1920s, the country was still engaged in many of the racist practices that the nation disavowed during the Civil Rights Era. Yet, race rhetoric also shifted in the wake of Congress’s abolition of slavery and de jure discrimination. In the late nineteenth and early twentieth century, “scientific racism” emerged “as a ‘modern’ way of talking about social problems in biologizing terms.”²⁰⁴ Eugenacists linked race and crime in a way that justified immigration restrictions and the growth of crimmigration in the 1910s and 1920s. The growth of crimmigration in the 1920s then paved the way for the massive effort to deport and repatriate Mexican nationals during the 1930s, presaging the contemporary structure for crimmigration and its racially discriminatory impact on Latinos. This section will explore the linkage between historical crimmigration and race by looking first at its contemporary incarnation, and then flashing back to how it developed during earlier periods.

A. *Race and Crimmigration in the 1980s*

Crimmigration scholars have postulated that race played an important role in the crimmigration merger of the 1980s. Professor Stumpf explains that, “Both criminal and immigration law are, at their core, systems of inclusion and exclusion. They are similarly designed to determine whether and how to include individuals

²⁰² MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 2 (2010).

²⁰³ *Id.*

²⁰⁴ Frank Dikötter, *Race Culture: Recent Perspectives on the History of Eugenics*, 103 AM. HIST. REV. 467 (1998).

as members of society or exclude them from it.”²⁰⁵ Up until passage of the Hart-Celler Immigration and Nationality Act of 1965, the country’s immigration law relied on per-country quotas that were designed to perpetuate the predominately Northern and Western European demographics of the late nineteenth century. Asian immigrants were explicitly excluded until the 1950s.²⁰⁶ The civil rights era, however, brought new norms of discourse, and the obvious racism of the per-country quotas was replaced with a less transparently racist system of quotas that offered the same number of admissions to every country of the world.²⁰⁷ The uniform quotas, however, had a radically disparate impact on Latin American immigration, particularly from Mexico. By limiting the number of legal migrants from Latin America to the same amount as countries with far fewer prospective migrants, the quotas transformed what had been lawful immigration into illegal immigration.²⁰⁸

As Latin American immigrants became disproportionately “illegal immigrants,” crime came to serve as a proxy for race. “Instead of employing overtly racist means of subjugating entire classes of nonwhite people, policymakers embraced the formal equality of crime control as a depoliticized marker of undesirability.”²⁰⁹ The criminalization of Latin American immigrants and increased emphasis on criminal categories of removal shielded the racially discriminatory impact of the new policies with the façade of structural equality.²¹⁰

Yet, the racially disproportionate effect of these policies is clear: as more immigration crimes came to be prosecuted, Latinos have come to comprise an ever-larger share of federal prosecutions: 37% of all offenders sentenced now in federal court, as compared to 16% in 1992.²¹¹ In a parallel development, Latinos make up over 90% of those in immigration detention, 94% of those removed, and 94% of those removed for criminal violations.²¹²

B. *Race and Crimmigration in the 1920s*

Crime served so effectively as a proxy for race in the 1980s because the groundwork for that association had been laid during earlier eras of United States history. Advocates for immigration restrictions in the 1910s and 1920s drew on a growing eugenics movement to justify their proposed reforms. The influence of

²⁰⁵ Stumpf, *supra* note 95, at 380.

²⁰⁶ See Kanstroom, *supra* note 9, at 109–21; Ngai, *supra* note 12, at 37–50.

²⁰⁷ Ngai, *supra* note 12; *Id.* at 384.

²⁰⁸ *Id.*

²⁰⁹ García Hernández, *supra*, note 2, at 1502–03; See also ALEXANDER, *supra* note 202, at 40, 42.

²¹⁰ Vázquez, *supra* note 98, at 608.

²¹¹ *Id.* at 654.

²¹² *Id.* (citing statistics from 2012).

scientific racism and the eugenics movement was prominently displayed in the work of the Dillingham Commission, which recommended the system of national origins quotas that were subsequently enacted to curtail immigration by southern and eastern Europeans to late nineteenth century levels.²¹³

This recommendation was bolstered by eugenics literature, which postulated that certain “races,” such as Italians, were more prone to crime. The 1911 Dillingham report concluded that “certain kinds of criminality are inherent in the Italian race. In the popular mind, crimes of personal violence, robbery, blackmail, and extortion are peculiar to the people of Italy, and it cannot be denied that the number of such offenses committed among Italians in this country warrants the prevalence of such a belief.”²¹⁴ The Dillingham Commission Reports even included a “Dictionary of Races or Peoples,” which stated that “Sicilians are vivid in imagination, affable, and benevolent, but excitable, superstitious, and revengeful.”²¹⁵ According to the Dictionary, Southern Italians traced their “origin to the Hamitic stock . . . of North Africa” and while “the Hamites are not Negritic or true African, . . . there may be some traces of an infusion of African blood in this stock in certain communities of Sicily and Sardinia, as well as in northern Africa.”²¹⁶

The popular press also racialized Italians, describing them in terms that emphasized the darkness of their features. In an account of the Italian gangster, Antonio Lombardo’s funeral, the Tribune wrote that “Chicago policeman rubbed against dark-skinned mourners seeking the feel of a pistol.”²¹⁷ The popular writer and former newsman, Walter Burns, described various Italian gangsters as “dark,” “swarthy,” looking “not unlike Arabs,” with “a strong dash of Saracenic blood,” with skin “dark enough to suggest night,” and with “black eyes that slanted like a Chinamen’s.”²¹⁸ Many commentators described Italians as “savage,” “simian,” and “bestial.”²¹⁹ Biographer Fred Pasley described Al Capone, for instance, as “Neapolitan by birth and Neanderthal by instinct . . . ‘Gorilla man’—the flat nose; the thick, pendulous lips; the big bullet head, squatting, rather than sitting, on the lumpy neck; the scar on the left cheek, along the protuberant jawbone; and the

²¹³ U.S. IMMIGRATION COMMISSION OF 1911, REPORT 1: 47 (1911), S. DOC. NO. 747, 61st Cong., 3d Sess. (1911).

²¹⁴ S. DOC. NO. 61-748, at 209 (1911).

²¹⁵ *Id.* at 127.

²¹⁶ S. DOC. NO. 61-66, at 82 (1911).

²¹⁷ Guglielmo, *supra* note 26, at 86.

²¹⁸ *Id.* (quoting WALTER BURNS, THE ONE-WAY RIDE 8, 121, 130, 132, 145, 154 (1931)).

²¹⁹ *Id.*

great shaggy black eyebrows—hairy battlements, once seen, not forgotten, lending the harsh swarthy visage a terrifying aspect.”²²⁰

In addition to racializing Italians as non-white, the press and policy makers also repeatedly contended that Southern Italians were more likely than other ethnic groups to commit crimes. The Dillingham Commission obsessively analyzed which nationalities, and to the extent possible, “races” committed the most crimes.²²¹ The Commission analyzed five data sets from various municipal courts, police departments, and penal institutions, and found a supposed predominance of rape, crimes of personal violence, blackmail and extortion, and homicide among Italian individuals.²²² The Commission relied particularly on records from Chicago from 1905–1908, which alone of all cities contained tabular statements of arrests by crime and nationality.²²³ The Commission also noted that Southern Italians constituted the largest number of non-citizen prisoners in the United States.²²⁴

This data led the Dillingham Commission not only to recommend restrictive immigration quotas, but also a five-year period of deportability for non-citizens convicted of serious crimes after entry.²²⁵ This reform was adopted in 1917, when Congress imposed a deportation ground for commission of a crime involving “moral turpitude” within five years of entry.²²⁶ Those sentenced more than once faced deportation at any time after entry.²²⁷ The new criminal deportation grounds worked in tandem with the national origins quotas enacted in 1921 and 1924 to reverse engineer the country’s racial and ethnic makeup. The 1924 quota limited the number of annual immigrants from each country to two percent of the number of individuals from that country who had been living in the United States as of the 1890 census, which was prior to largescale Southern and Eastern European immigration.²²⁸ The new criminal grounds created a mechanism to cull the population of southern and eastern Europeans who had lawfully entered the United States in the decades between the 1890s and the 1920s. The combined effect of the restrictions on entry and the deportation provisions was a legal system for racial and ethnic engineering.

²²⁰ *Id.* (quoting Fred Pasley, *AL CAPONE: THE BIOGRAPHY OF A SELF-MADE MAN*, 11–12 (Kessinger Publishing 2004) (1930)).

²²¹ S. DOC. No. 61-750 (1911).

²²² *Id.* at 16–18.

²²³ *Id.* at 134.

²²⁴ *Id.* at 180.

²²⁵ S. DOC. No. 61-750, at 288–289 (1911).

²²⁶ Law of Feb. 5, 1917, ch. 29, § 23, 39 Stat. 892 (repealed 1952).

²²⁷ *Id.*

²²⁸ *See* Act of May 26, 1924, ch. 190, § 11, 43 Stat. 153 (repealed 1952).

Eugenics provided the intellectual support for this system. In 1920, Dr. Harry H. Laughlin, a representative of “the Eugenics Research Association of Cold Spring Harbor,” testified in United States House of Representatives hearing that it was “high time that the eugenical element [received] due consideration” in the formulation of immigration policy.²²⁹ He claimed that his organization had encountered a family of degenerate paupers and criminals in Indiana called the “Ishmaels.”²³⁰ According to Harry Laughlin, the Ishmael study was instructive as to immigration policy, because “we want to prevent any deterioration of the American people due to the immigration of inferior human stock.”²³¹

It is ironic that the Ishmaels became the poster children of the eugenicist anti-immigration movement, because they were a family with a lengthy American pedigree, including members who had fought in the Revolutionary War.²³² Yet, as Nathaniel Deutsch has noted, they were a useful exemplar for eugenical principles precisely because they were white Americans, and could be offered as support for the racist project of national origins quotas without seeming racist.²³³ At the same time, their name subtly evoked Islam and orientalist notions: “the Ishmaels were transformed into white, Midwestern surrogates for the ‘hordes’ of Jews, Arabs, Chinese, and other ‘Asiatics’ who threatened to turn the United States into a colony of Asia if they were allowed to enter the country.”²³⁴ They became so associated with racial otherness that in the 1970s, Hugo Learning radically reinvented their story to claim that they were an early Black Muslim community.²³⁵

Like the Ishmaels, Italian individuals were portrayed by adherents of scientific racism as inherently predisposed to crime. This meme circulated widely in the media and was influential in policymaking. Between 1904 and 1912, the Chicago Record-Herald published 53 articles about Italians, nearly 80 percent of which dealt with crime of some sort—generally violent crime.²³⁶ At the same

²²⁹ *Biological Aspects of Immigration: Hearing Before the Committee on Immigration and Naturalization*, 66th Cong., at 26 (1920) (statement of Harry H. Laughlin, Eugenics Research Association).

²³⁰ NATHANIEL DEUTSCH, *INVENTING AMERICA’S “WORST” FAMILY: EUGENICS, ISLAM, AND THE FALL AND RISE OF THE TRIBE OF ISHMÆL* 8 (Univ. of California Press, 2009). The Ishmaels actually had first been encountered and written about by a Wisconsin minister who moved to Indiana in the 1870s, Rev. Oscar McCulloch.

²³¹ *Biological Aspects of Immigration: Hearing Before the Committee on Immigration and Naturalization*, 66th Cong., at 4 (1920) (statement of Harry H. Laughlin, Eugenics Research Association).

²³² Deutsch, *supra* note 230, at 4.

²³³ *Id.*

²³⁴ *Id.* at 8.

²³⁵ *Id.* at 161.

²³⁶ GUGGLIELMO, *supra* note 26, at 86.

time, the Chicago media lobbied for more deportations of Sicilians, and in 1928, a Tribune editorial even called for a ban on Sicilian immigration.²³⁷ The deportation drive of 1926 and the nascent crimmigration system of the late 1920s was a product of this convergence of ideas about race, crime, and otherness that constituted scientific racism.

C. The Aftermath of the 1920s Crimmigration Era

After the stock market crash of 1929, immigration policies began to shift. Initially, there was a continued emphasis on the removal of criminal aliens. A June 1930 deportation drive in Chicago closely resembled the 1926 drive according to an IPL report documenting the raids:

On June third, 1930, following the occurrence of certain murders in Chicago, the local papers, especially the Chicago Tribune, featured stories of the seizing of 'alien' suspects carrying in close proximity, statements about the 'war on gang killers.' The attempt to connect the foreign born with crime was deliberate. It was said that 200 aliens had been arrested, among them '32 Sicilians,' and that of those held, 'more than half had not taken out their citizenship papers.' They were all lumped together as 'undesirables' for whom it was said deportation would be pressed.²³⁸

According to interviews with police officers conducted by the IPL, closer to 400 persons were picked up than the 200 reported in the newspapers, and most of them were citizens.²³⁹ Charges were not filed against most, and only five or six were ultimately placed in deportation proceedings.²⁴⁰ Thus, the goals, method, and outcome of the 1930 raids closely mirrored those of the Deportation Drive of 1926.

The following year, however, saw a new series of raids that made no pretense at targeting violent criminals. Rather, the raids were part of a "nation-wide campaign to stop the smuggling of aliens."²⁴¹ Five hundred persons of Chinese descent were stopped and questioned in Chinatown, and forty-two held "for search and examination."²⁴² Immigration officials then apprehended 112 persons from a predominately Mexican neighborhood and "dumped" them at the South Chicago

²³⁷ *For an American Policy*, CHI. DAILY TRIB., Nov. 22, 1928, at 12.

²³⁸ REPORT FROM IMMIGRANTS' PROTECTIVE LEAGUE TO ITS BOARD OF DIRECTORS (July 2, 1930) (confidential).

²³⁹ *Id.* at 2.

²⁴⁰ *Id.* at 2.

²⁴¹ I.P.L. RECORDS, DEPORTATION DRIVE OF OCTOBER, NOVEMBER, 1931.

²⁴² *Id.*

Police Station.²⁴³ Raids followed in the stockyards, in other Mexican neighborhoods, and in hotel kitchens downtown.²⁴⁴ Many of those arrested had entered the United States without lawful inspection, and were ordered deported.²⁴⁵ However, one Salvadoran man who was arrested at a downtown hotel was held in jail for seven days despite having had his passport to prove that he entered lawfully.²⁴⁶ The Wickersham Commission found that the immigration raids in the early 1930s were marked by widespread rights violations.²⁴⁷

The focus on “smuggling” tied into the earlier emphasis on organized crime related to prohibition. Yet, the crime at issue was not the importation and concealment of alcohol or firearms, but providing assistance to immigrants who were entering in contravention of the country’s discriminatory immigration policies. Moreover, the smugglers and smuggled were conflated in the discourse of the day.²⁴⁸ Indeed, the 1931 anti-smuggling initiative seems to have resulted in far more deportations than smuggling indictments, suggesting that the purpose behind the effort was not crime control but immigration enforcement in order to regulate the depressed labor market.²⁴⁹

Secretary of Labor William Doak unabashedly promoted deportation as a good way to create jobs for unemployed Americans.²⁵⁰ As the economy continued to sour, immigration authorities shifted gears entirely from a focus on criminal aliens to an effort to deport non-citizens, particularly Mexican nationals, to create jobs.²⁵¹ Yet, in pursuing this goal, the government retained the methods developed during the 1920s crimmigration era, including collaboration with county sheriffs and municipal police, police-style enforcement, and detention.²⁵² Raids in San Fernando and Pacoima, California in February 1931 closely resembled the Chicago Deportation Drive of 1926: “Immigration agents, without benefit of search warrants, went door to door demanding that Mexican residents produce verification of legal residency. Those unable to do so were summarily arrested and taken to jail.”²⁵³ The same month, immigration agents from throughout California and even Arizona gathered in Los Angeles and worked with the Chief of Police

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 2.

²⁴⁶ *Id.* at 2–3.

²⁴⁷ See NAT’L COMM’N ON LAW OBSERVANCE AND ENFORCEMENT, PRELIMINARY REPORT ON THE ENFORCEMENT OF DEPORTATION LAWS OF THE UNITED STATES 133–34 (1931).

²⁴⁸ NGAI, *supra* note 12, at 62.

²⁴⁹ I.P.L. RECORDS SERIES III, SUPP. II, BOX 4-SII, FOLDER 54, Deportation Drive of October, November, 1931 2 (seventeen indictments for smuggling, around 200 deportations).

²⁵⁰ KANSTROOM, *supra* note 9, at 215.

²⁵¹ BALDERRAMA & RODRÍGUEZ, *supra* note 20, at 67.

²⁵² *Id.* at 71.

²⁵³ *Id.*

and County Sheriff to develop a coordinated plan to carry out a raid on the La Placita Park.²⁵⁴ Police and immigration agents hemmed in 400 persons on a sunny afternoon, detaining about 36 individuals who were unable to produce documentation of lawful residency.²⁵⁵ By the standards of the day, the ramped-up deportation efforts of the early 1930s were very significant. In the first nine months of 1931, more people were deported than entered the United States.²⁵⁶ After 1934, the number of Mexican nationals being deported fell by fifty percent.²⁵⁷ Ultimately, only about 50,000 persons were deported in the early 1930s,²⁵⁸ a number that pales compared to the 409,849 deportations reported in 2012—the highpoint of United States deportations.²⁵⁹ However, the statistics concerning formal deportations in the 1930s understate the environment of harsh enforcement, since they do not account for the large number of removals that occurred through informal means. A vast number of Mexican individuals left the United States semi-voluntarily during this period as a result of repatriation campaigns by city, county, or state governments, abetted by local charitable organizations, to coerce or encourage non-citizens to leave.²⁶⁰ It is impossible to know for sure how many persons were repatriated; estimates vary from hundreds of thousands to more than two million.²⁶¹

The heightened immigration enforcement during this time period essentially built upon the structure developed during the crimmigration era of the 1920s. Immigration authorities leveraged state and local resources to accomplish more arrests, detentions, deportations, and repatriations than would have been possible were immigration control exclusively a federal prerogative. Authorities did not focus, as they had in the earlier era, on criminal aliens. They had moved from a system focused on immigrant criminals to one that essentially treated all Mexican immigrants as criminals. In the 1930s, immigration enforcement applied police-style methods adapted for a population of supposed foreign criminals in the service of labor market regulation.

Congress considered a series of bills during the 1930s that would have taken the country even further down the road towards gestapo style immigration

²⁵⁴ *Id.* at 73.

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 75.

²⁵⁷ *Id.* at 82.

²⁵⁸ *Id.*

²⁵⁹ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, FISCAL YEAR 2016 ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT 2 (2017), <https://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf>.

²⁶⁰ BALDERRAMA & RODRIGUEZ, *supra* note 20, at 120.

²⁶¹ *Id.* at 150–51.

enforcement. House Bill 4768, for example, would have established concentration camps for non-citizens ordered deported who were not out of the country within 60 days.²⁶² House Bill 5921 would have provided that any non-citizen convicted of a crime involving moral turpitude and sentenced to a year or more in jail could be deported upon completion of the jail term, when paroled, or even if pardoned.²⁶³ That bill gave broad discretionary powers to immigration officials to issue warrants of arrest and to detain suspected deportable aliens.²⁶⁴

The move from targeting supposed non-citizen gang members during the 1920s to a system of mass deportation of Mexican Americans should sound familiar. The shift from the 1920s crimmigration era to the largescale deportation of Mexican laborers during the 1930s parallels the legal and cultural evolution that crimmigration scholars have described as occurring from the 1980s to the present.²⁶⁵ Professor Yolanda Vázquez has described the transformation during that time of unauthorized migrants from “‘illegal alien’—a race-neutral term already linked with criminal behavior and racialized as Latino” to “criminal alien.”²⁶⁶ The 1910s–1930s represents an inverse image of this change: the country moved from a focus on deporting criminal offenders to treating all deportees as criminals.

VI. CONCLUSION

The crimmigration system that arose in the 1980s in many ways resembled the 1920s deportation drives and the convergence of criminal and immigration law that occurred during that time period. There are also significant parallels between the broader social context of the two periods. Both the 1920s and the 1980s followed on the heels of a period of liberal immigration by a diverse and different pool of new immigrants.²⁶⁷ Clearly, race played a role in the construction of crimmigration during both periods.

Crimmigration has operated since the 1980s as a means to deport Latinos from the United States on a massive scale that rivals the discriminatory impact of earlier, more obviously racist immigration policies like the national origins quotas. It comprises a set of policies that not only deport non-citizens for crimes, but mark

²⁶² Klainer, *supra* note 189, at 722.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ See García Hernández, *supra* note 3, at 1414 (describing the construction of a massive system of immigration detention based on legal and cultural shifts stemming from the 1980s War on Drugs).

²⁶⁶ Vázquez, *supra* note 98, at 628.

²⁶⁷ MARTIN, *supra* note 6, at 105, 191.

them as criminal by virtue of their immigration actions, and that rest, for their justification, on a sweeping paradigm of immigrant criminality.

The notion of immigrant criminality runs deep in United States history. In the circular logic of membership, outsiders are criminals, and criminals are outsiders. Whiteness has long come with a presumption of non-criminality, although the nineteenth and early twentieth century discourse concerning the Ishmaels and Sicilians teaches that whiteness is constructed and can be qualified by culture, class, and national origin.

This article traces the roots of crimmigration to the 1920s, but they may run deeper still. The country has vilified and imposed draconian measures on immigrants throughout its history, so that there are likely earlier crimmigration stories than this one. The 1920s story is nonetheless an important one to tell, because it is revealing of how and why the current system operates. In particular, crimmigration in the 1920s was precipitated by a eugenics movement that ranked immigrants into racial and criminal categories. It is, therefore, possible to trace the present-day policies that parallel those of the 1920s to the scientific racism of that period. The ghost of eugenics lingers on in immigration enforcement.