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## Crossing Borders and Criminalizing Identity: The Disintegrated Subjects of Administrative Sanctions

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Keramet Reiter

Susan Bibler Coutin

This paper draws on in-depth, qualitative interviews that examine individual experiences in two different legal contexts: deportation regimes and supermax prisons. Through putting these contexts and experiences into dialogue, we identify common legal processes of punishment experiences across both contexts. Specifically, the U.S. legal system re-labels immigrants (as deportable noncitizens) and supermax prisoners (as dangerous gang offenders). This re-labeling begins a process of othering, which ends in categorical exclusions for both immigrants and supermax prisoners. As individuals experience this categorical exclusion, they cross multiple borders and boundaries—often against their will—moving from prison to detention center to other countries beyond the U.S. border, and from isolation to prison to “free” society. In both cases, the state action that subjects experience as punishment is civil and, therefore, nominally not punitive. Ultimately, excluded individuals find themselves in a space of legal nonexistence. By examining these common processes and experiences, we argue that a new kind of subject is revealed: a disintegrating subject (as opposed to a juridical or disciplinary subject) whose exclusion reinforces the power of the state.

“It is not crime that alienates an individual from society, but that crime is itself due rather to the fact that one is in society as an alien.” (Foucault 1977: 275–76)

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Please direct all correspondence to Keramet Reiter, Department of Criminology, Law & Society and School of Law, University of California, Irvine, 3373 Social Ecology II, Irvine, CA 92697-7080; email: reiterk@uci.edu

As Foucault's quote suggests, there are deep connections between criminalization and being treated as an alien or noncitizen: both are mechanisms through which individuals are excluded from social membership and its benefits. Through analysis of interviews from two separate projects—one about long-term solitary confinement and the other about deportations to El Salvador—we argue that illegalization and criminalization produce a new form of legal subject, which is neither a juridical subject governed by law, nor a disciplinary subject "responsibilized" by punishment (Foucault 1977; Rose et al. 2006). Instead, the subject is *disintegrated* through the imposition of severe sanctions—like solitary confinement and deportation—without access to the legal protections traditionally accompanying punishment. The two narratives juxtaposed below exemplify the legal production of this increasingly prominent form of subjectivity.

In 2010, one of us—Keramet—met with Max at a bench outside of a Starbucks, 40 days after he had been released from prison. Max,<sup>1</sup> who was 50 years old at the time of this interview, had spent 10 years in California's Pelican Bay State Prison, where he had been in solitary confinement, or "the hole," in the Security Housing Unit (SHU), a supermax. He described his experience:

One of the guys that ... worked there [in the prison] ... He goes, "They're talking about moving you ... [to] the Hole." And I said, "For what?" And he goes, "I don't know. So I see the goon squad coming in." So I just crashed through the classification, and I walked in there, and I said ... "You know what? You're going to lock me up; you have to give me a reason ..."

I'll never forget that day. I said, "Lord, if you're for real, man, I turn my life over to you completely." ... And I went straight to the SHU. I remember ... they go up on a bus, and it took forever to get there ... I'm just looking at trees, birds. And you see it's a beautiful coast out there. Man, I'm looking at it. I'm like—the big old pelicans and I'm trying to get everything I can because I know that it's over—that I already have a life sentence. Then with another life sentence in the Hole ... And I was trying to look at everything—the waves, everything. Then finally, we get to Pelican Bay ... And the best way I can describe the front of the entrance of the SHU is it's like—remember the old *Star Wars* movies? Hans Solo's ship—the big old glass vessel? It's the first thing that came into my mind right then and there....

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<sup>1</sup> All interviewees have been given pseudonyms.

When you're sentenced to indeterminate SHU sentence, you're allowed to appear before the classification unit every 120 days ... There's no touching. You can't touch each other. You spend 23 out of the 24 hours—you can spend all 24 hours if you want in there, but I used to go out to my little yard for an hour to work out ... .

Two years earlier, the other of us—Susan—sat opposite Amilcar in the offices of a non-governmental organization in San Salvador, El Salvador. Amilcar, who was 24 years old at the time of this interview, described how, even though he had been a lawful permanent resident in the United States, he had been deported to El Salvador:

In 2004, late 2003 or 2004, I caught myself a criminal case ... It was a DUI [driving under the influence], and when they searched the vehicle, they found less than 30 grams of marijuana in the car. That was just enough for them to charge me. Even though it was a misdemeanor. I paid my fines, I went to probation. One day, when I went to probation, there was a detainer out for me. A warrant, pretty much. And that's when the probation officer said, "We have a federal warrant for you." When I heard "Federal warrant," I said, "Why is the FBI trying to go after me? I haven't done anything." And she told me, "No, it's Immigration." That's when they took me in. They considered it to be two crimes of moral turpitude, equaling one aggravated felony... .

Then I stood it until a year after, which was July 3<sup>rd</sup>. And then ... the Immigration judge, he gave me the case, then it went to appeals court, because the attorney general, she appealed his ruling... I was called back later to go to court, and then he [the judge] ordered me deported. He told me, "Look, this is not what I want to do." He knew what my intentions were in the beginning. "And this is something that has come from up above. And I just have to follow through." And that's when he ordered me deported. On June 6, 2006... . When you got the deportation letter, "You're inadmissible to the United States at any time." It's not for five years, it's not for three years... .

And we landed here at the airport, and I was like, "Wow, this is nice... ." And you start to get homesick. I miss where I grew up. "Where's this? Where's that?" But little by little, you get used to it. You don't adapt, but you get used to it... I guess I have no plans. Just to get married. This is just part of my sentence. I'm just going it day by day. Just a little bit more freedom. I guess I haven't settled in yet, it hasn't kicked in. That I'm destined to be here for the rest of my life. I

guess it hasn't set in that this is a life sentence. I just don't want to accept it.

Despite the very different situations of these two interviewees—one was a former prisoner in California and another was a deportee in San Salvador—there are striking similarities between their narratives. Both describe bewilderment about the rationale behind the highly punitive conditions they experienced. Max did not know why he was isolated, and Amilcar could not understand how a DUI and simple drug possession—charges to which he had pled guilty—added up to an aggravated felony for immigration purposes. Confinement frustrated their attempts to fight these sanctions: Max could only avail himself of a classification hearing every 120 days, and Amilcar was eventually worn down by being detained throughout the appeal process. Each of them describes a moment of “crossing” from one reality to another. Max speaks of the long bus ride, during which he tried to memorize details of the landscape to which he would no longer have access; Amilcar describes the plane flight that landed him in El Salvador, where he initially was impressed with his surroundings, but then was confused and disoriented. Each also describes being subjected to what they called a “life sentence”—solitary confinement or removal—*despite the fact that neither of these were an official criminal sentence*. In fact, the devastating and life-altering conditions that Max and Amilcar experienced were imposed administratively, by either a prison official or an immigration judge, without the due process protections available to defendants in a criminal court. Furthermore, each of these “sentences” was for an indeterminate period of time, adding to Max's and Amilcar's emotional distress and perceptions of unfairness.

Our interviews with prisoners and deportees such as Max and Amilcar enable us to analyze how individuals are constituted within legal categories (Coutin 2000; Foucault 1977; Merry 1990; Yngvesson 1993) by examining the legal subjects created by expanded uses of isolation and deportation. Subjects, like Max and Amilcar, dispossessed of even the spaces of deprivation, like prison or living without documentation in the United States, usually occupied by marginalized groups, experience a form of social disintegration: ties to others are cut off and prior identities stripped away, often with devastating consequences for individuals' senses of self. Disintegration is spatialized through removal—in the case of prisoners, being confined in a tiny solitary cell, and in the case of immigrants, being expelled beyond U.S. borders. In spite of this bleak process, disintegrated subjects demonstrate a resilience that sometimes allows them to re-cross the borders constraining their humanity.

Examining disintegrated subjects bridges carceral and immigration contexts, bringing criminological literature on increased punitiveness into conversation with immigration scholarship on the securitization of immigration policy (Gottschalk 2015; Stumpf 2006), and highlights the individual experiences underlying these larger institutional processes. Scholars of prisons and immigration have called for more work on the subjective experience of both incarceration (Rhodes 2001; Wacquant 2002) and deportation (DeGenova et al. 2014). Indeed, understanding legal processes requires a close examination of lived experience within legal contexts (Auyero 2012; Calavita and Jenness 2014; Engel and Munger 2003; Ewick and Silbey 1998). We focus on individual subjects in two punitive, administrative contexts. In doing so, we build on a growing body of scholarship examining experiences both of incarceration and deportation in the United States and throughout the Western world (e.g., Calavita and Jenness 2014; Coutin 2010; Dreby 2013; Drotbohm and Hasselberg 2014; Hasselberg 2016; Reiter 2014; Schinkel 2014; Sexton 2015).

In exploring disintegrated subjects, we also contribute to scholarship that adapts Foucauldian analyses of subjectification to current social realities. In the 1970s, Foucault theorized that modern carceral tactics seek to habituate and discipline penal subjects into allegedly unresisting, obedient citizens (1977). To explain increases in both rates of incarceration and deportation, scholars have extended Foucault's arguments, examining how the state sorts subjects into categories of risk (Dowling and Inda 2013; Feeley and Simon 1992; Garland 1987; Kanstroom 2007). But the idea of this disciplinary subject, controlled through risk management strategies, fails to fully capture the lived experience of our interviewees. Indeed, as Hasselberg argued in a recent book on deportation in the United Kingdom, the undocumented experienced the threat of removal not as disciplining them into being productive citizens, but rather as both punitive and as a means of "coerc[ing] them to leave" (2016: 94). By attending to the voices of subjects experiencing key forms of exclusion in the United States, we elucidate the forms of subjectification and exclusion occurring through modern governmental policies.

We argue that administrative sanctions with punitive effects are linked to a broader shift in state-subject relations, shifts in which the state's claims to "know" its subjects (claims that are not always subject to legal evaluation) authorize its use of discretion against those deemed threatening. In this process, states not only produce so-called "felons" and "illegals," sorting these groups into risk categories, but also create sub-categories of total exclusibility, like the "worst of the worst" and "the deportable." Through surveillance, everyone, including both the

nonincarcerated and citizens, becomes a *potentially* excludable subject, compelled to distinguish themselves from “criminals” and “illegals.” And of course, these categories have been racialized. For instance, immigration officials might question anyone who appears “foreign” (often assessed based on racial appearance or stereotypes), and police officers might question anyone who appears to be a gang member (again often assessed based on racial appearance or stereotypes). To avoid being questioned, individuals try to “perform” citizenship and law-abidingness through their dress style and mode of comportment (Garcia 2014; Menjívar 2016). Isolation and deportation, therefore, compel individuals throughout society to inhabit and resist the categorizations that justify imposing harsh penalties. This process upends the Foucauldian disciplining effect, assigning some subjects to a status of “un-disciplinable.”

### **The Rise of Administrative Sanctions: Producing Excludable Subjects**

There is an eerie synchronicity in the expansion of the scope and scale of long-term solitary confinement and noncitizen deportations throughout the 1980s and 1990s in the United States. In 1986, Arizona opened the first modern supermax facility (Lynch 2010): a technologically advanced structure, where the fluorescent lights stayed on permanently, with self-contained, modular, windowless cells, designed to keep prisoners locked in a cement box, with no human contact, for at least 23 hours per day, for months, and often years at a time. Prison administrators, not judges, assigned the first prisoners to these harsh conditions, based on in-prison behavior and classification rules. Also in 1986, Congress passed the Immigration Reform and Control Act (IRCA). IRCA increased border patrol funding, contributing to the militarization of the U.S.-Mexico border, and facilitating deportations. The law also imposed the first sanctions on employers who hired undocumented immigrants (Bean et al. 1990). Though easily flouted (Calavita 1990), IRCA’s employer sanctions provisions were a key step in diffusing the enforcement of U.S. immigration law throughout society; key “gatekeepers”—for example, employers, welfare officers, school admissions officials, airlines, banks—now indirectly enforce immigration law, by denying services to individuals who lack appropriate identity documents (Coutin 1993; Lynch 2015), much as prison administrators indirectly punish prisoners via assignment to supermaxes.

The Arizona supermax and IRCA’s employer sanctions were templates for further expansions in the use of solitary confinement and the exclusion of noncitizens. The Arizona supermax became the prototype for supermaxes across the United States; California copied the

Arizona model just three years later, building Pelican Bay State Prison, equipped with 1,056 isolation beds (Reiter 2012). Over the next decade, nearly every state built a supermax facility (Riveland 1999). The same year that the federal government opened a supermax, California voters passed Proposition 187: Save Our State (SOS). Though eventually declared unconstitutional, Proposition 187 sought to require public officials to verify individuals' immigration status, and thus to preclude undocumented immigrants from accessing public services. Like the supermaxes in California and Colorado, Proposition 187 extended the harsh restrictions first codified in IRCA.<sup>2</sup>

Parallel punitive innovations directed at prisoners and immigrants expanded throughout the 1990s. In 1996, Congress passed the Prison Litigation Reform Act (PLRA), the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), and the Anti-Terrorism and Effective Death Penalty Act (AEDPA). PLRA restricted litigation initiated by prisoners (Schlanger 2003). IIRIRA expanded the class of criminal convictions that resulted in immigration consequences, eliminated waivers to challenge removal proceedings, allocated additional enforcement funding, and dramatically restricted already scarce opportunities for legalization for the undocumented.<sup>3</sup> AEDPA exaggerated the effects of both pieces of legislation, implementing newly strict deadlines and rigid limitations on when prisoners may file habeas petitions seeking judicial review of the constitutionality of their imprisonment (or execution) and limiting the procedural rights of immigrants facing deportation, including mandating pre-removal detention.

These exclusionary measures had swift and dramatic effects. Levels of deportation increased exponentially: nearly 18 times as many people were deported from the United States in 2013 (438,421) as in 1986 (24,592) (Department of Homeland Security 2004, 2015, Table 39; Gonzales-Barrera and Krogstad 2014). Data on rates of solitary confinement use are less systematically collected (and vary by state) (Naday et al. 2008), but in the federal prison system alone, between 2008 and 2013, the number of prisoners in solitary confinement increased 17 percent, while the prison

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<sup>2</sup> Scholars have noted that, while the imprisonment and deportation trends are clearly national in scope, many of the innovations began at the local level (Campbell 2011; Gilmore 2007; Lynch 2010; Schoenfeld 2010). Just as the first supermax started in one state (Arizona), some of the earliest immigration policies grew out of state initiatives (like California's Proposition 187).

<sup>3</sup> IIRIRA broadened the definition of "aggravated felonies," expanding a criminal category originally created with the 1998 Anti-Drug Abuse Act, during the war on drugs ramp up. The category initially included murder, federal drug trafficking, and some firearms trafficking, but Congress has expanded the category a number of times in the past three decades (Lynch 2016). The term "aggravated felony" now includes more than thirty relatively minor and non-violent crimes, including filing a false tax return and failing to appear in court (American Immigration Council 2016).

population increased only six percent (Maurer 2013). Over the last 30 years, when solitary confinement use has been tracked, increases in the rates of use across the United States have paralleled—and often surpassed—steep increases in rates of incarceration. The U.S. prison population more than tripled from just over 500,000 in 1986 to almost 1.6 million in 2013 (Carson 2014). Neither the domestic punishment nor the immigrant deportation literature has established any significant relationships between targeted behavior and the increase in sanctions (American Immigration Council 2013: Figure 8; Zimring 2007). Both deportation and solitary confinement represent key aspects of over-criminalization and provide a critical lens for examining the harshest impacts of the broader trend (Reiter 2016a).

### **The Emergence of a Disintegrated Subject**

The processes of categorizing and excluding some gang members, noncitizens, and others who are deemed security threats create a new kind of post-Foucauldian *disintegrated subject*. Foucault contrasted juridical and disciplinary subjects with sovereign subjects as follows:

We have, then, the sovereign and his force, the social body and the administrative apparatus; mark, sign, trace; ceremony, representation, exercise; the vanquished enemy, the juridical subject in the process of requalification, the individual subjected to immediate coercion; the tortured body, the soul with its manipulated representations, the body subjected to training.

(Foucault 1977: 130–31)

As this quote suggests, the juridical subject is party to a social contract between the state and its legal subjects. If a citizen violates the law, the state then has the power to punish according to the terms of the law. A completed punishment restores the individual to full citizenship status. By contrast, the disciplinary subject is controlled by an administrative apparatus, which inculcates or discourages certain tendencies. The apparatus punishes to produce obedient subjects. The state calibrates training according to individual conditions, seeking to instill habits that lead individuals to govern themselves (Rhodes 2004). Punishment is complete when subjects have internalized social norms and become capable of self-governing.

Our interviewees, however, are not coerced into becoming disciplined subjects. Instead, they are sorted into excludable categories, stripped of rights, and ultimately removed from existing social and governmental structures. Though deportees and the solitarily confined experience exclusionary sanctions as punitive, neither sanction

**Table 1.** Introducing the Disintegrated Subject

	Juridical Subject	Disciplinary Subject	<i>Disintegrated Subject</i>
1. State-subject relationship	Party to social contract	Individual governed by habits	<i>Member of excludable (or potentially excludable) category</i>
2. State's process	Social body punishes	Administrative apparatus punishes	<i>Administrative apparatus ensnares</i>
3. How punishment operates	Punishment is sign	Punishment is trace	<i>Punishment is absent</i>
4. Subject's experience	Representation	Exercise	<i>Exclusion and racialization</i>
5. Mode of change	In process of requalification	Individual subject to coercion	<i>Disintegration</i>
6. Form of justification	Appeal to universal norms, law	Classify, rank, discipline	<i>Categorize, exercise discretion, exclude</i>
7. Authorization	Power to punish	Power to observe, correct	<i>Power to exclude</i>

*Note:* The characteristics of the juridical and disciplinary subject derive from Foucault (1977).

is part of the repertoire of punishments available to courts. Rather, administrators impose the sanctions discretionarily, unlimited by the due process rules or civil rights that are supposed to protect defendants in criminal cases. By legal construction, punishment is absent. The solitarily confined and the deported are excluded even from the environment where other prisoners are “warehoused” (Feeley and Simon 1992), or from the “shadows” where immigrants who live in the United States without documentation reside. They become disintegrated subjects.

Building on the contrasts that Foucault draws between juridical and disciplinary subjects as ideal types, Table 1 offers a preliminary definition of this disintegrated subject.<sup>4</sup>

The concept of the disintegrated subject contributes to literature that has attempted to explain rising over-criminalization. Explanations have focused on risk management strategies (Ashworth and Zedner 2014; Feeley and Simon 1992; Dowling and Inda 2013; Irwin 2005; Motomura 2006: 14); structural conditions (DeGenova 2002; Gilmore 2007); the legal infrastructure, including a “shadow carceral state” that manages populations deemed dangerous (Beckett and Murakawa 2012); and racialization (Chavez 2008; Goodman 2008; Johnson 1996; Perea 1997, Sanchez 1997; Wacquant 2002). Our analysis builds on this work by examining those who are not merely warehoused (Feeley and Simon 1992; Irwin 2005), or treated as suspect (Ashworth and Zedner 2014; Motomura 2006), but who are excluded even from prisons (by being placed in isolation), or even from life as an

<sup>4</sup> Although our interviewees were often permanently excluded, they experienced the process of disintegration as ongoing and incomplete.

undocumented immigrant (through deportation). By focusing on these disintegrated subjects, we are able to theorize the subjectification process that individuals undergo as they are transformed.

Both racialization and rights stripping are critical to understanding this transformation. Although the categories “white” and “non-white” are unstable and “based on the material and economic interests of the labeling audience” (Calavita 2010: 57), assignment to these categories becomes a pathway to exclusion and eventually disintegration. For instance, in the immigration context, the Supreme Court has held that Mexican appearance is a “relevant factor” in traffic stops (*United States v. Brignoni-Ponce* [1975]). And in the criminal context, gang labeling has disproportionate effects on African Americans and Latinos (Muñiz 2015; Reiter 2012). These labeling processes tend to happen within civil or administrative frameworks (Coutin 2005; Reiter and Koenig 2015), through the exercise of “legally hybrid control tools” blending civil and criminal legal authority over marginal populations, augmenting state power while simultaneously limiting procedural protections and minimizing burdens of proof (Beckett and Evans 2015: 242; see also Chacón 2012; Harris 2007; Eagly 2010). Our contribution to this work is to demonstrate that racial labeling and denial of legal protections sets certain individuals apart, even within broader categories of marginalization—prisoners, the undocumented—thus resulting in the undoing of persons and of social relationships, a process that subjects resist.

## Methods and Data

Our analysis is based on two data sources: (1) interviews that one author conducted in California and New York between 2010 and 2013 with 19 former prisoners who had spent one month or more in solitary confinement during their incarceration and (2) interviews that the other author conducted in 2008 with 41 Salvadoran men who grew up in the United States and were deported to El Salvador. Of the 19 former prisoners, 18 were men. They were roughly one-third white, one-third African American, and one-third Latino. They ranged in age from 30 to 62; the average age was 44. They had spent anywhere from one month to 10 years in solitary confinement—on average, just under 3 years—in federal prisons (2) and in state prisons in New York (7) and California (8). The 41 Salvadoran men ranged in age from 22 to 69; the average age was 33. Their average age at the time that they originally immigrated to the United States was 10.6 years old, and they had lived an average of 16.2 years outside of El Salvador prior to deportation. Subjects had spent an average of 5

years living in El Salvador since their most recent deportation. Some had been deported only months prior to the interview; others had lived in El Salvador for years following their most recent deportation; and many had been deported multiple times. Ninety percent had entered the United States without authorization, whereas 10 percent entered legally, either with a tourist visa or with a green card. The majority of the sample nonetheless had obtained some form of temporary or potentially permanent resident rights in the United States.

To reach deportees, Susan collaborated with Salvadoran non-governmental organizations that work on immigrant rights and on gang violence prevention. To identify those formerly in solitary confinement, Keramet collaborated with re-entry organizations and prison education programs. For both projects, interviews were semi-structured, lasted one to four hours, and were audio recorded, transcribed, and coded for themes. We conducted these two projects separately, and are now bringing them together for the purposes of this analysis. Doing so allows us to look both at individual experiences of legal exclusion and at the larger logics that shape both systems simultaneously.

### Disintegration

Both isolation and deportation create categories of exclusion: the “worst of the worst,” or those who are “prioritized” for deportation. Excluded individuals experience disintegration in two senses: (1) they are set apart from others and (2) they describe feeling as if they are falling apart, or dissolving. Disintegration contrasts starkly with the ideal held out for both prisoners and immigrants; the former are expected to *reintegrate* into society following incarceration, and the latter are expected to *integrate* through becoming acclimated to and forming close ties within the United States. Both the prisoner reentry and immigrant integration literatures have defined integration as developing multiple and thick linkages—such as stable employment, civic engagement, educational achievements, family relationships, language skills, volunteer activities, religious involvement, and assets—resulting in productive and pro-social behaviors and relationships (Ashar et al. 2015; Givens 2007; Mauer and Chesney-Lind 2003; Portes and Rumbaut 2001; Zhou 1997). Drawing on this literature, we define disintegration as the breaking off of such linkages. The resulting disconnections are the opposite of disciplining, in the Foucauldian sense.

For our interviewees, disintegration occurs through several steps. The process begins with *ensnarement*: administrators attribute a negative characteristic to an individual, and then magnify

this characteristic so much that it erases other aspects of personhood. “Ensnarement” conveys the way that interviewees found themselves trapped in a web of policies that wrapped ever tighter as they moved. As they are ensnared, individuals are *racialized* and stripped of rights through administrative proceedings, which appear arbitrary, extralegal, and unbounded. For our interviewees, administrative proceedings result in an *exclusionary action*—isolation or removal—which seemingly irrevocably takes subjects out of the activities, social network, and physical environment to which they are accustomed. As with negative labeling, the effects of exclusionary action can magnify over time, as individuals suffer depression, physical deprivation, and material impoverishment. Yet disintegration is usually incomplete, as subjects attempt to *reconstruct the self*, forging or rebuilding ties, creating new, albeit limited activities, and in some cases, re-crossing borders that separate them from society. Disintegration nonetheless leaves scars, psychologically, socially, physically, and legally. We describe each of these processes in turn, elucidating how the shared experiences of our interviewees illustrate the disintegrated subject being produced by hybrid civil-criminal sanctions.

### **Ensnarement**

For our subjects, ensnarement in administrative categories began when U.S. authorities targeted individuals for isolation or removal and continued through the process authorizing the exclusionary outcome. Though we emphasize the parallels in prisoners’ and deportees’ experiences, the procedures that each group undergoes are somewhat different.

Prison officials assign prisoners to long-term isolation, either for violating specific in-prison rules (such isolation terms are usually fixed from a few months to a few years), or for being a gang member, or other category of prisoner too dangerous to house in the general prison population (such isolation terms are usually indefinite).<sup>5</sup> Although policies vary widely, every state has some form of long-term isolation. The U.S. Supreme Court has held that prior to placement in long-term isolation, a prisoner must receive a statement of the reasons for placement, have some opportunity to respond to this statement, and have some means for seeking review of the placement decision (*Wilkinson v. Austin* 2005). Prisoners facing long-term isolation, however, have no

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<sup>5</sup> Prisoners might also be placed in solitary confinement for “protective custody,” because of a risk of being assaulted in the general prison population. However, this process is different from the administrative hearings described above and not the subject of the interviews conducted here.

right to a lawyer, to call witnesses, or to present evidence in their defense. In California, for instance, until 2015, most prisoners in long-term isolation had been “validated” as gang members and assigned to indeterminate terms.<sup>6</sup> In many cases, the evidence underlying the validation was confidential, and prisoners were not permitted to see it. Although each validated gang member had a right to a review hearing every six months, presenting any kind of rebuttal without access to either the underlying validation evidence or a trained advocate was nearly impossible.

As well, in the case of immigration, noncitizens can become targets for removal in several ways. Some are apprehended crossing the U.S.-Mexico border or at a port of entry. Others are detained in the interior: in a workplace raid; when questioned by immigration authorities; or increasingly, by police, at a checkpoint or other location. And still others are identified when they enter the criminal justice system. Increasingly, prison and police authorities collaborate with immigration officials through agreements that authorize the police to enforce immigration laws. A recently reinstated program known as Secure Communities, a federal information sharing system, enabled Immigration and Customs Enforcement (ICE) to place a hold on arrested or incarcerated noncitizens in local and state facilities.

Because IIRIRA and AEDPA expanded the range of criminal convictions with immigration consequences, even lawful permanent residents can be subject to removal. Once they have completed any prison or jail time to which they have been sentenced, potential deportees are transferred to ICE custody—held at a detention facility while their removal hearing takes place. In many cases, detention is mandatory, so detainees are not eligible to be released on bond. At removal hearings, which often take place in a detention facility or by videoconference rather than in court, respondents have the right to an attorney at their own expense—a challenge for many, since they are in detention and cannot work. Individuals who are ordered removed may appeal, but often must remain in custody throughout the appeal process. Often, the only way for individuals to extricate themselves from detention is to stop fighting their cases and agree to removal. Noncitizens who fail to attend an immigration hearing can be ordered deported in absentia; once they come to ICE’s attention, the removal order can be executed without any further hearing.

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<sup>6</sup> The validation process required documentation of three “independent source items,” which might include tattoos, notes (in prison lingo “kites”) passed between alleged gang members, or even reading material associated with certain gangs. These gang validation policies were revised pursuant to a settlement reached in September of 2015 in the case of *Ashker v. Brown*.

Such individuals are only in detention briefly, while removal arrangements are made.

While the procedures differ across our two cases, for both prisoners and noncitizens, ensnarement begins with a triggering moment, in which individuals are identified as “the worst of the worst,” “illegal,” or a “criminal alien.” Herbert, for instance, had been ordered deported in absentia after failing to attend a court hearing in 1998. Years later, he was stopped and arrested for outstanding traffic tickets, for which he was assigned to do hours of social work. But the arrest brought him to the attention of immigration officials. He related, “They told me, ‘Wait, you’re going directly.’” There was no additional hearing. Such triggering moments initiate a process in which the subject loses control and is unable to effectively challenge officials’ claims about illegality.

Similarly, Max, the prisoner quoted at the outset of our paper, was identified and placed in the SHU abruptly, based on evidence that he said was fabricated, but which he had little opportunity to challenge:

They had sent me up there saying that I was a gang member, that I was a shot caller, that I was involved in violence ... There was never any documented proof ... You know when you receive a disciplinary report, you get a 115 [“Rules Violation Report” paperwork] saying that you were apprehended doing this or the other—never had one of those.

Wilbur, who had political asylum before being deported to El Salvador, described a similarly abrupt experience, in which he felt helpless to resist the label assigned to him: “I had a felony conviction, for drugs. And from that moment, when I entered prison, they took away all of my papers. Immediately they took away the political asylum.”

After this triggering moment, officials subject prisoners or noncitizens to a hearing that satisfies minimal legal requirements for procedural justice, but that interviewees experienced as unfair, punitive, and in violation of legal norms. For instance, Norberto was struck by the disproportionate severity of being deported to El Salvador after being convicted of three DUIs, which seemed to him to be relatively minor infractions. Victor, another deportee, felt that the removal process violated his constitutional rights:

The first violation of my constitutional rights is that they didn’t give me bail. The only crime for which one can’t get bail is murder. Second, I had done my time for the crime, and now they wanted to deport me. That is double jeopardy. A violation

of the constitution. And then, you are left without an attorney if you can't afford it. That's not constitutional. And then, they take you out of the state where you are! They took me from California to Texas. Different circuits. 9<sup>th</sup> circuit and 5<sup>th</sup> circuit. And how am I going to get an attorney there, if the telephone doesn't work? The attorney says, "Call me at 1-800." But the phones don't take 1-800 calls. Only calling cards. And if you have no money, you can't get a calling card. You're beaten!

Such procedures led interviewees to conclude that the legal system was arbitrary and irrational. Ernie, a former prisoner, described how he was validated as a gang member based on weak evidence: "I was validated on confidential informants, just hearsay, what people say. I don't claim to be an angel, but trust me, this validation thing, they're really onto something because they can lock anybody up." Ernie spoke fondly of an earlier time, before California's main supermax at Pelican Bay (the SHU) existed, when "they didn't put you in the SHU [Security Housing Unit] for 20 years because you had my magazine or you had my book." By contrast, after Ernie had served five years of an indeterminate isolation term, officers searched his cell, found the book *Matching wits with Menza*, and renewed his gang validation for another six years, simply because the book had the name of an alleged gang member scribbled inside the cover. Even though California was reforming such policies, Ernie expressed cynicism about the possibility for change: "I wouldn't count on it," he said. Regarding the surprising lack of legal protections, he commented: "It's hard to understand how they can get away with what they do. And you have no defense. You don't get a lawyer to represent you and discredit what's being said about you."

Both deportees and isolated prisoners, then, expressed frustration with processes that seemed to them to lack substantive fairness—echoing legal scholars' arguments that these increasingly harsh sanctions prioritize constitutional proceduralism over substantive fairness (Stuntz 2006, 2011). But even constitutional proceduralism seemed lacking to our interviewees. Many noted they had not committed murder or controlled gangs, but were detained anyway. They thus implicitly criticized their experiences of "preventive justice" (Ashworth and Zedner 2014). The isolated and deported individuals we interviewed described feeling as if they lacked legal protections—and most definitely were not part of the social contract—from the first moment of being labeled as isolatable or deportable (Beckett and Evans 2015; Chacón 2012; Eagly 2010; Reiter and Koenig 2015).

Interviewees experienced exclusion as fundamentally dehumanizing, consistent with what scholars have identified as a shift

away from individualized, rehabilitation-oriented treatment towards group-oriented risk management (e.g., Feeley and Simon 1992). Marcus, a deportee who had two minor criminal convictions but was attempting to turn his life around, complained that the decision to deport him was not based on a true assessment of his character: “It’s really sad because they do not have the time to look into your history and to say, ‘Okay, you are a real criminal and you should go back.’” Interviewees like Marcus were particularly struck by what they characterized as officials’ callousness about the inhumane outcomes of their administrative rulings. When Marcus, who was in removal proceedings, told an official that he was married to a U.S. citizen, the official allegedly responded: “We don’t care. That’s not the way we work.” Likewise Francisco, a deportee, recalled that when he was in immigration court, he observed another man’s case: “He said [to the immigration judge], ‘I have all my family here, I have my kids here.’ The judge said, ‘I don’t care. Take them with you.’ And then he was like, ‘How am I gonna feed them?’ He was like, ‘That’s your problem. Take them with you. You’re going back.’” Importantly, these experiences reveal a sorting not just into risk categories, but into *excludable* risk categories.

Interviewees described how officials’ dismissal of their basic human concerns often blurred into abuse—echoing scholars’ criticisms about the lack of adherence to legal procedures within state exercises of discretionary authority (Ashworth and Zedner 2014; Reiter and Koenig 2015). Interviewees remarked on the double standard that guards could insult or beat them with impunity, while they themselves faced highly punitive consequences for even minor infractions. Brandon, who was sent to isolation for a disciplinary violation, pointed out that a guard who had confiscated his personal property was not punished, whereas he was placed in solitary for allegedly assaulting this officer. Prisoners further described how callousness extended into their day-to-day lives in isolation. For instance, Ray remembered being escorted to the lieutenant’s office a few years into his indeterminate stay in solitary. He was scared—“because they don’t pull you out of your cell for nothing, unless they have to.” In the lieutenant’s office, his hands and feet still shackled, he was told to call home—his first phone call in years. His family answered and told him his brother had been killed. Then he was escorted, alone, back to his cell, where he remembered weeping uncontrollably. And Mary, the one female formerly isolated prisoner interviewed, remembered “all the time, just constant insults. Very—I want to say aggressive in that way—aggressively insulting. Not just super-reactive or something, but really aggressive. I just hated them so much. It kinda kept me going, because I just hated them.” The

combination of being sorted *out* while experiencing callous abuse amplified interviewees' experiences of ensnarement.

### Racialization

The exclusionary process is explicitly racialized. First, African Americans and Latinos are disproportionately stripped of the rights otherwise afforded to legal persons (Johnson 1996; Reiter 2012). Second, the “worst of the worst,” the “criminal alien,” or “terrorists” usually represent stereotyped caricatures of dangerousness (Martinez and Lee 2000; Reiter 2014: 581). Existing social hierarchies, especially racially oppressive ones, reinforce the creation of these categories of excludable subjects. For instance, prison policies, especially long-term solitary confinement, seek to control the threat of allegedly dangerous African-American and Latino gang leaders (Reiter 2014), while deportation seeks to control the alleged “Latino threat” (Chavez 2008; Johnson 1996; Perea 1997; Sanchez 1997).

Consistent with the literature on racialization, interviewees highlighted race as an omnipresent factor reinforcing their excludability. For example, Barry, who had been in solitary confinement in California prisons in the late 1980s and early 1990s complained: “[W]hen I hit the prison, no matter what happened, they didn’t—I wasn’t individual anymore, I was a number . . . And I wasn’t just a CDC [California Department of Corrections] number, I was black, so I was counted with the black population. Everything, like I said, was cut up into race.” Race was a determinative factor in Derrick’s categorization as an isolatable gang member. Although he was ethnically Polynesian, he was racially ambiguous to the prison system. He identified with an African-American gang, the Bloods, but he often got confused for a Mexican. He ended up in solitary confinement, mistakenly, because of these very racial categories:

When the riot happened between the Mexicans and black Mexicans attacked all of the black inmates. And some of them . . . were friends and so when it came, we all fought. And the problem was when I went to the Hole [solitary confinement], the way I looked, even though . . . my cellie was black, and he was a Blood, they thought I was a Mexican and all of the Mexicans . . . had gotten SHU [solitary confinement] terms . . . [but] all the blacks got suspended SHU, but they gave me a SHU for forcing violence, and I’m like, “What’s going on?”

Because of his dark skin color, Derrick was mistaken for a Mexican, blamed for being part of the group that started a riot, and sent to solitary confinement at Pelican Bay. It took him three

months to file the paperwork to convince prison administrators of the mistake.

Such race-based categorizations not only get prisoners into trouble, but also create double binds. For instance, Ernie described how, as a white guy in the Pelican Bay SHU, he saw few other white guys and often felt lonesome, especially because prison culture discourages communication across racial categories (Goodman 2008). But Ernie could not request a transfer to a pod of cells with a different racial composition: "I can't stand there at the door and argue with the cop—'hey I'm the only white guy here'—and then you're going to look racist."

Deportees also described how racial categorizations exaggerated their excludability. Some deportees thought that, as Latinos and immigrants, they were unfairly blamed for the events of 9/11. Victor argued: "This president, when he started removing all of the Latinos, although it wasn't just him, it was the government. That is pure discrimination. Racism. They don't want the Latinos to get ahead. Even though it was not the Latinos who caused this problem. The terrorists didn't cross the Mexican border. They crossed the Canadian border. Second, they are from the other side of the world. And we have to pay the price." Other deportees, like Manuel, complained about being subjected to racial abuse by prison guards, who shouted: "Spics! Fucking, Spics! Get out of here!"

For interviewees, the stripping away of legal rights—no attorneys, no rights to appeal, no ability to present rebuttal evidence—blurred with the stripping of their individuality and identity as Americans, non gang-members, anything other than a "criminal" or an "illegal." Deris, who had been deported, described how, when he was trying to fight deportation, he felt both rights-less and alone: "Imagine, you're in a place where no one—if I had had a family member to say, 'Look, this is happening,' and to get an attorney to fight my case.... I told them, 'I want to talk to a judge.' They said, 'You don't have rights.'"

Ensnarement, together with racialization, initiates the process of disintegration. Both are integral to the creation of excludable subjects. During ensnarement, enforcement attention focuses on a single criminal issue or immigration violation—or worse, on a superficial characteristic like race, or a generic status like gang member or noncitizen—to the exclusion of other aspects of individuals' biographies. A gang affiliation results in an indeterminate term in isolation. Three DUIs can result in deportation. Although prisoners and deportees experienced ensnarement as arbitrary, lacking in fundamental procedural protections, and excessively punitive, prison officials and judges treated offenses and statuses as objectively assigned, allowing little room for discretion. Our interviewees experienced not a disciplining, but an undisciplining:

a stripping away of the rights and characteristics of citizenship in preparation for exclusion.

### Exclusion

The process of disintegration continues from ensnarement to removal from the United States or placement in isolation within a prison. Rather than being a single action, removal and isolation are ongoing processes, beginning before an individual actually experiences exclusion and continuing long afterwards (Drotbohm and Hasselberg 2014). Both removal and isolation cut individuals off from their previous social networks, including networks formed in detention facilities or prison. Deportees are able to rejoin relatives in their country of origin, but they are often cut-off from children, siblings, parents, spouses, and partners in the United States. Isolated prisoners are unable to see family members or experience a human touch. The totality of this exclusion ultimately placed interviewees outside of society, where they experienced a disintegration of social ties, existential purpose, and sense of self.

Interviewees described the loss occasioned by exclusion in vivid, multi-faceted terms. Victor, a deportee, spoke sadly of his longing to be with his son in the United States: “And my 12-year-old son, the youngest . . . But he is my baby, *el chiquito*, and I love him.” Individuals who are deported or placed in isolation are unable to avail themselves of simple human needs, such as holding their children, or visiting their parents on their deathbeds. Derrick, who was in isolation, related: “I lost my Mom when I was in here, and I was fortunate, I had got a call from my brother who called the counselor, and the counselor had the guard come escort me down to the office and they informed me that she had passed away. There was nothing I could do.” In the prior section, Ray described learning of his brother’s death, and being left to weep in his cell; Derrick, by contrast, appreciated that he learned of his mother’s death from a counselor. But he experienced a similar sense of helplessness and isolation, unable to be with his family.

This lack of social connections and the rejection associated with isolation or removal has devastating emotional and mental health consequences, akin to civil death (Agamben 1998, 2013). For deportees, civil death can be experienced as exile from the country to which they immigrated and social exclusion in the country to which they are deported. For those in solitary, civil death can be experienced as exile not only from society but from the prison community, too. In contrast to Agamben’s notion of “bare life,” however, exclusion is not a state of exception that

suspends the law in order to uphold the law. Rather, it results from discretion, a form of state power that resists legal constraints.<sup>7</sup> Norberto, who was deported, described the emotional impact of deportation, “I came emotionally broken. I had no desire to keep living.” Edgar, another deportee, commented, “I felt alone, abandoned, destroyed.” Likewise, Kevin, a prisoner who had been in solitary confinement, described the mental health challenges provoked by the removal of social stimulation in isolation:

I’ve seen smart, articulate, intelligent, very extremely intelligent people lose their minds in solitary confinement. It’s a scary thing to be left alone with only your thoughts. For 23 hours a day ... A lot of inmates take psych meds in order to cope with it, and for me that was always a sign of weakness, psychotropics, and I would see what they would do to people that were on them for extended amounts of time. It was scary. I think that was scarier than just me being locked inside a box for a year or two years or whatever.

Both isolation and deportation were ultimately counterproductive: removing individuals from families and jobs and producing serious mental health problems (see, e.g., Haney and Lynch 1997). Strategies designed to mitigate risk actually exacerbated it, rendering prisoners less manageable as they experienced mental deterioration and creating an underclass of immigrants considering returning, without authorization, to their U.S. families.

Furthermore, deportees and isolated prisoners described not only experiencing depression and mental instability, but a more fundamental deconstruction of the self into something less than human, or worse, “nothing,” as one prisoner put it. Kevin, quoted above, described being in solitary confinement in California: “I equate it with being a caged animal, and then somebody poking you with a stick.” Kevin’s statement highlights the dehumanization that we described above. Brandon said that “[I]n the SHU program, I think you know what you’ve got coming. Nothing. You’re close to nothing, so you don’t expect much.” Likewise, Edgar described the dehumanizing process of being deported to El Salvador. He said that individuals return to “their” country in handcuffs, without possessions, again echoing the idea of becoming nothing. In a sense, those who are isolated or removed are not able to exist anywhere. Victor, a deportee, described the impossibility of his

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<sup>7</sup> Of course, the state’s discretionary power can be challenged, as occurred in *U.S. v. Texas* (579 U. S. \_\_\_, 2016), in which 26 states sued to stop President Obama’s use of deferred action to provide certain undocumented immigrants very limited immigration relief.

circumstances, “I don’t have a country over there [in the United States], I come over here [to El Salvador], I’m not even accepted, right? And it was like, I was hating everything. I actually wanted to kill myself. I thought suicide.”

Once isolated or deported, individuals are exposed to the violence and material harm about which officials expressed a lack of concern during administrative proceedings. Violence, in turn, exacerbates the subjects’ sense of being completely outside of society. Victor, a deportee, described the challenges that he encountered in El Salvador:

I got here with no money, nowhere to go. The United States doesn’t care what happens. And to me, even prisoners get \$200 gate money [upon release]. And that’s in their own home! But here, you’re going into a country, like in my situation, I didn’t even know where I’m going. And no, ‘Here man, try to find yourself a place to sleep while you get a job.’ Then I get here and I ask around. ‘Well how old are you?’ ‘45.’ ‘You missed the train. The latest they hire here is 37 or 38 years old. You don’t have a job and you ain’t getting a job. Unless you have family that own a company or a business.’ And I don’t have none of that. So basically, it’s like, ‘Here. Go survive.’

Victor’s comments indicate that disintegrating subjects are set apart even from prisoners or the undocumented; in fact, he considered the treatment of prisoners, a deeply marginalized and disadvantaged group, significantly better than the treatment of deportees (see also Aliverti 2012). Cesar, a deportee, was terrified that because of his tattoos, he would be targeted for gang violence in El Salvador. Deris, another deportee, actually had this experience:

I went to where my mother lived [in El Salvador], and there was someone there in Soyapango from a rival gang, when I walked in. Poom! He asked me where I was from. I said I wasn’t a gang member. “Take off your shirt!” “Why am I going to take it off? I’ve just been deported, and that’s what I was wearing.” “Take it off, you’re a gang member!” If a police patrol hadn’t arrived just then, he would have killed me.

Likewise, many prisoners described their persistent fear that, even in isolation, locked in their cells 23 hours per day, they would be left alone in a hallway to fight with another prisoner. Kevin described how prison guards in the 1980s and early 1990s “would actually literally pit known gang members against each other in the SHU yard, and then shoot ‘em down like dogs.” He

explained: “This is the kind of thing—this is the environment that the public creates by proxy, not even that they’re aware of it, because they give so much authority to these individuals, without anybody overseeing them except for the wardens of the institutions, that they start to have god syndrome.” Other prisoners described similar experiences with violence, even in isolation; Derrick said he was constantly afraid that his cell door would open at the same time as the cell door of some rival gang members, and he would be forced to fight:

You were always ready for that worse scenario to happen . . . So you always have that in the back of your mind all the time that that could happen coming out. Or that could happen while you’re sitting there sleeping in your bed. Anytime—by then anyway, you’ll just wake up anyway once you hear that electric sliding. You’ll just kind of pop up anyway.

Keramet: Is it more anxiety there than on the mainline? Because I mean in theory it could happen on the mainline too, right? Someone could be after you.

Derrick: Yeah, but only if you do something. The SHU, you don’t have to—you’re already dead.

As Derrick and others navigated these risks, they experienced both a social death, cut off from community networks (Guenther 2013; Patterson 1985; Reiter and Koenig 2015), and also a sensation of physical death, trapped in a space of nonexistence (Coutin 2005).

Some subjects described frustration not just with their own experiences, but with the pervasive injustices enacted against others. While Mary was serving a three-month term in isolation for a disciplinary violation (organizing prisoners to express their grievances about unsafe work conditions and inadequate provision of self-care products), she observed the arbitrary injustice of allegedly placing prisoners in isolation for their own protection:

And there was a pregnant woman who was taken to SHU at VSP [Valley State Prison], and they said it was because they were concerned for her safety, but it wasn’t due to herself, and she didn’t want to be there. They said they had no suitable room for her. . . . [I] also saw one person the second time I was in SHU at VSP who was disabled and was put into SHU, because they said they had no suitable place for her.

For Deris, Derrick, Mary, and those Mary observed, isolation and deportation were embodied processes—physically uncomfortable and existentially scary.

Prisoners' and deportees' experiences of exclusion were magnified by their uncertainty about the duration of the exclusion. As Andersson (2014) has noted, uncertainty is part of the biopolitics of power, which leaves individuals waiting to be sorted into groups eligible (or ineligible) for social benefits. As detailed by Javier Auyero in a study of the waiting room in an Argentine welfare office, being forced to wait an indefinite time for an uncertain outcome is a form of subordination experienced by the poor (2012; see also Gustafson 2011). For Kevin, a prisoner quoted above, one of the most difficult aspects of the SHU was its temporal indeterminacy:

You're already out of your environment, which is scary enough, knowing that you may not ever come out of that box, or not knowing is even worse than knowing that you're gonna be doing—at least if you know that you have a certain amount of time to do in the SHU, it's something that you can look forward to. If you're never gonna get out of the SHU, then at least it's something that you can come to terms with, within yourself. But the fact of not knowing is actually something ... It's the worst thing ever.

Likewise, deportees wondered how long they would be subjected to removal and whether they would ever be able to return to the United States. Recall Amilcar's struggle to accept that deportation might be a "life sentence."

For interviewees, the severing of social ties, compromised physical and mental well-being, and indeterminacy all compounded their sense of total exclusion. Nonetheless, interviewees struggled to maintain a sense of self and to re-build their social and political networks, resisting their categorical exclusions into spaces of nonexistence.

### **Reconstituting the Self**

Even though disintegration is emotionally and materially devastating, prisoners in solitary confinement and noncitizens who have been removed reconstruct forms of sociality within spaces of exclusion. In this sense, they are much like other prisoners, who are surprisingly persistent in filing and pursuing grievances in spite of their marginalized, stigmatized status (Calavita and Jenness 2014), or other undocumented immigrants, who find ways of sharing identity documents (Horton 2015). Examining the coping mechanisms used by deportees and those in isolation further elucidates both the disintegration that prisoners and deportees are resisting and the sociolegal mechanisms of categorization and exclusion that produce the disintegration in the first place.

The resources available to prisoners and deportees differ dramatically. Prisoners in solitary confinement, by definition, have very limited contact with others. Deportees, in contrast, are at liberty to move about in their countries of origin, and are therefore able to connect with family members still living there, friends they knew from the past, and new acquaintances. Deportees are also in a different country, literally removed from the U.S. national context where, in many cases, they were raised. Prisoners do not experience this transfer to a different country, but in prison and particularly in isolation, they are in something of another world. Still, there are striking similarities in the strategies prisoners and deportees deploy to overcome disintegration.

For both prisoners in solitary confinement and deportees in El Salvador, reconstituting the self consists of building community, even with the limited resources available in exclusionary spaces. Prisoners and deportees re-asserted their identities, and thereby their existence, through developing creative forms of sociality. For instance, Ernie, who described being the only white guy in an isolation pod of eight cells for years, said that, despite their racial differences, his pod coalesced into a community over time: “Everybody shares books, magazines. If you don’t have money, people pitch in. We buy deodorant, toothpaste, and try to help one another.” Brandon also described how prisoners shared books—when they could convince a friendly guard to pass a book from cell to cell. And prisoners cultivated talents that would be useful to other prisoners. Brandon explained:

My talent was sewing. I got me a sewing needle and thread, and I learned how to sew.

Keramet: What did you sew?

Brandon: I was making a long sleeve T-shirt from shirts that got cut off right here, and I’d sew another sleeve on, making it a long sleeve. I was tapering, and altering, hemming pants and putting permanent creases in them. I was making caps, gloves—

Keramet: And there’s a SHU uniform, right? Was there at the time?

Brandon: The jumpsuit.

Keramet: And so you were tailoring the jumpsuit?

Brandon: Yeah, because these guys have a tendency to put rubber bands on their cuff right here so their pants don’t be slapping around while they’re on SHU. So what I’d do, I’d just taper the pants off to make them smaller.

Keramet: Would it be—did everybody want the same kind of modifications?

Brandon: Yeah, usually cuffs, with the small cuffs. So you know I charge them \$1, \$2. Give me your jumpsuits, and I hook 'em up for you, because remember, I got time on my hands. So I started making dashiki's and I was for real. And the guy that showed me how to do it, he said, "Man, you sew better than me. Damn, bro."

Brandon explained how he made thread by pulling strands from existing clothes, and sometimes he was permitted to have a needle. Even in the extremely restrictive conditions of solitary confinement, he taught himself new skills, and shared these skills with other prisoners on his pod. Prisoners in isolation also described the importance of writing letters to family members and friends on the outside, who allowed them to feel connected and imagine another world.

Likewise, for deportees, overcoming disintegration requires creating new forms of sociality, whether through employment, faith communities, family or friendship networks, recreating aspects of their formers lives, or even returning to the United States illicitly. Reynaldo found deportation devastating, until he was able to find a job at a call center based in San Salvador. He recounted, "I straightened out my life. I had my boss, who supplied me with a lot of help. Had it not been for him, I'd probably be six feet under." Jorge, another deportee, got married after being deported. His wife helped him to change his dress style so that he would not be taken for a gang member, and he was able to learn carpentry then obtain a job at a call center. Jorge credited his stability to his wife, saying that she made the difference. Deris was welcomed back to El Salvador by his mother, who said: "The best thing that could have happened in my life is for you to have come!" In addition to the support of his mother, Deris found resources through an organization, Homies Unidos, dedicated to working with deported gang members (Zilberg 2011). Other deportees created new forms of sociality by: speaking English at work or with family members, holding barbecues and celebrating U.S. holidays, and hanging out with coworkers who had also been deported. In these ways, they were able to pretend, at least part of the time, that they were still in the United States, as shown in the following excerpt of an interview with a deportee named Roberto:

Susan: So do you, as much as possible, try to make it here like you're still there?

Roberto: Mm-hmm. As much as I can. For example, at the house, it's totally 100% English. My sister-in-law, she was raised in Kentucky too. Her husband, he was raised in L.A. So her family and me, when we get together, we speak nothing but English. The baby? We don't talk to him nothing but English. I mean, he'll learn Spanish from his Grandma. So, I try to make it as much as I can. At work [at a call center], that's why I love being at work. Then my dad, when we talk on the phone, it's English. I just talk Spanish with my Grandma. And sometimes, I don't know if you remember, there's a lot of helicopters at night. Tch-tch-tch-tch. [Sound of helicopter.] So right here, sometimes when one passes by, I just close my eyes and I feel the breeze at night. I could picture I'm [there]. I miss the whole thing a lot.

Other deportees go even further, attempting to return to the United States without status. Lorenzo resorted to this option, more than once. After being deported in 2000, he returned to the United States, where he lived for two years until he was apprehended for driving without a license. He was deported a second time, and then in 2004, he once again returned to the United States, but was apprehended in Texas. Instead of simply being deported, he was prosecuted for reentry and sentenced to four years in a federal prison. In 2008, at the time of our interview, he had been deported a third time, and was once again contemplating returning to his wife and children in the United States. He explained:

But I'm scared. Because if I get busted crossing, I'm going back to the BOP [Bureau of Prisons]. For reentry again. This time, I'm gonna get double time. 8 years. So I really don't know what to do. I'm so confused. I need time. I miss my family so much! I'm really hurt!! For some time, I was drinking a lot here in Salvador, because I was so hurt and confused. 'I don't understand why this happened to me! Why? Why? Why?

Lorenzo's multiple deportations, coupled with time in federal prison, and his accusatory question, "Why? Why? Why?" show the limitations that inmates and deportees face in attempting to recreate the selves that they were prior to disintegration. Even if they are successful in rebuilding, the deportation or isolation practices that tore them apart can be re-initiated at any moment.

As with Lorenzo's repeated re-entry attempts, the things that prisoners in solitary confinement do to keep themselves sane often exacerbate or prolong their harsh conditions of confinement. As Kevin explained:

Well, I mean, when you—and I’m not saying that they’re conditions of the SHU actually—they’re harsh on the psyche, to say the very least. It’s extremely hard. And I think that it creates a sense of—you don’t have any control of anything. So in order for you to feel like you have control, you actually start to create situations where—splashing police officers with feces and urine, you know what I mean, you start to really become savage, almost. And it’s not because that’s how these people were to begin with, because nobody’s inherently born into this world with those kinds of thoughts, those kinds of tendencies, and those kinds of actions. It just doesn’t happen. These are things that are done out of frustration . . . like—the abuse that the staff actually take out on the individuals, so they lash out in the only way that they can because they have no other means of expression.

Even prisoners who survived isolation, or who were eventually released and returned to their communities, described the effects of isolation as lingering. Kevin said, “Like, I still live with it on a day-to-day basis. I’m never—somebody—one of my co-workers asked me the other day, how do you deal with your past and what you’re doing right now? And I say, there’s no difference. I don’t differentiate. My past is still my present. I live with that every day.” And Max said, “I literally had to train myself, re-train myself, how to speak, how to conduct myself, how to smile. You understand? And how to greet people. And that was the most difficult thing I ever had to do. But! I was successful at doing it.”

Most of the subjects we interviewed did, eventually, find ways to resist total exclusion. Sometimes they rebuilt new social ties, in isolation or in El Salvador. Other times, they took actions to challenge exclusionary policies: re-crossing the U.S. border, or splashing prison guards with feces and urine. The desperation of these acts reveals both the extent of subjects’ exclusion and their eagerness to experience re-inclusion, even into punitive institutions, undocumented status, or violence at the hands of prison guards.

## **Conclusion**

By tracing the parallel processes of ensnarement, racialization, disintegration, and reconstitution experienced by both isolated prisoners and deported noncitizens, we have endeavored to describe how individuals experience the newly hybrid civil-criminal sanctions described by crimmigration scholars (e.g., Stumpf 2006). This detailed qualitative analysis reveals how punitive this new system is, and it also facilitates a re-examination of

**Table 2.** Examples of Disintegrated Subjects

Disintegrated Subject	Solitarily Confined	Deported
1. Member of excludable category	Criminal	Immigrant
2. Administrative apparatus ensnares	Administrative hearing	Inspection, detention, removal hearing
3. Exclusion and racialization	Gang labeling	Racial profiling
4. Punishment is absent	Solitary not legally considered punishment	Deportation not legally considered punishment
5. Disintegration	Isolation	Removal
6. Categorize, exercise discretion, exclude	Classification assignment	Executive Office of Immigration Review determination
7. Power to exclude	Power to isolate	Power to deport

how these new sanctions operate, helping to define the kind of power being exercised, and the kinds of subjects being created.

We have argued here that disintegrated subjects contrast with juridical and disciplinary subjects in key ways. Unlike juridical subjects of social contracts or disciplinary subjects internalizing state norms, the disintegrated subjects interviewed for our research found themselves becoming members of excludable categories, denied rights or individualized treatment, and subject to exclusion at the state's discretion. Though experienced as punitive and harsh, this exclusion is not technically considered punishment by the state. Instead of being restored to the social contract or disciplined in ways that produce desired behaviors, disintegrated subjects are placed beyond the boundaries of society, where their behaviors are ignored—until they find a way to re-cross social boundaries, that is. Table 2, above, provides a summary of how the solitarily confined and the deported represent examples of this new kind of disintegrated subject. By providing this table, we do not mean to typologize two categories of disintegrated subjects, but rather to flesh out the characteristics of these subjects in order to facilitate future research into further examples and more robust theorizations of this form of subjectification.

Delineating the nature of disintegrated subjects makes three contributions to understanding state-subject relations in a time of heightened punitiveness. First, we identify the ways that the increased use of administrative (or hybrid criminal-civil) sanctions expands the power of the state. Because they are discretionary and not deemed to be punitive, administrative sanctions are not subjected to the same legal constraints and oversights as sanctions imposed through criminal procedures. Examining this form of discretionary power is especially important as the number of legal contexts in which administrative sanctions and categorical exclusions are imposed is increasing. Over the last decade, protestors, prisoners, immigrants, gang members, the homeless, transgender people, and welfare recipients have found themselves subject to

administrative penalties that impose devastating impacts, with few avenues for resistance or appeal (Beckett and Murakawa 2012; Gustafson 2011; Gottschalk 2015; Mauer and Chesney-Lind 2003; Muñiz 2015; Passavant 2015; Spade 2011). We hope that future research will examine the production of disintegrated subjects within these and other categories of potential excludability.

Second, attending to the disintegrated subjects created through exclusionary sanctions reveals how the extreme experiences of isolation and removal redefine less extreme practices as benefits (mere incarceration rather than solitary confinement, or living in the United States as an undocumented immigrant rather than being removed) that can be granted by a “generous” state. Thus, as deportations skyrocketed and under pressure from advocates, the Obama administration used deferred action to enable immigrants who arrived in the United States as children to remain in the country with work authorization. “Deferred Action for Childhood Arrivals” or “DACA” recipients acquired lawful presence without lawful status. In contrast to those who are actually deported, DACA recipients became beneficiaries of the state’s “administrative grace” (see *Matter of Compean* 2009).

Likewise, the Supreme Court held in *Wilkinson v. Austin* in 2006 that individuals who are “merely” incarcerated—in language reminiscent of the novel *1984*—enjoy a “liberty interest” in not being further isolated, or in not being placed in solitary confinement. Because of this interest, the Court required that individuals receive certain minimal due process protections prior to being placed in solitary confinement. Those facing solitary confinement, like those facing deportation, become beneficiaries of the administrative grace of some procedural protections of their liberty interest in mere incarceration.

Lynch notes another example of administrative grace in the context of federal plea bargaining negotiations: “the withholding of an 851 [a sentencing enhancement that doubles the mandatory minimum sentences for eligible defendants with prior criminal histories] was framed [by prosecutors] as a gift to the defendant, who then had to agree to worse plea conditions than would be the norm for a similar defendant who was not 851-eligible” (2016: 123). The contrasts created through administrative sanctions thus enable the state to appear humane, even as it disintegrates some of its subjects.

Third, we speculate that, with the rise of the administrative state, citizens and the nonincarcerated also become potentially disintegrable subjects. This happens in part because the boundaries that the state places around those deemed “the worst of the worst” are porous and unclear. So U.S. citizens have been mistakenly deported, and young people who are not gang members have

nonetheless ended up in long-term solitary confinement.<sup>8</sup> Moreover, the processes that label some subjects as isolatable gang members and others as deportable aliens produce administrative systems affecting even those not in isolation, or those not being deported. For instance, the employer sanctions provisions of the 1986 Immigration Reform and Control Act redefined employment as something that could only be legal if authorized by the state. As a result, all employees, including native-born U.S. citizens hired post-1986, must complete an “I-9 Employment Eligibility Verification” form establishing that their legal status does not preclude them from working. Likewise, young men of color who are in the wrong neighborhood at the wrong time, or the wrong prison yard at the wrong time, might be subject to gang injunctions and gang labels, regardless of their actual gang membership or lack thereof (Muñiz 2015). Everyone in such locations of potential excludability, then, must establish his or her nonexcludability.

Disintegration, in both examples, is closely tied to “tenuous racialized citizenship.”<sup>9</sup> People of color in the United States, despite being formal citizens, experience second-class citizenship, in the form of police harassment, suspicion, and discrimination (e.g., Menjívar 2016; Muñiz 2015). Criminalization and illegalization exaggerate this experience, predominantly affecting people of color, and stripping convicts and noncitizens of rights to privacy, to work, to vote, and to serve on juries (e.g., McLennan 2011).

The breadth of this potential criminalization and illegalization may help to explain the link between punitiveness and nativism, because the non-incarcerated and citizens may fear being excluded so much that they work to distinguish themselves from criminals and the undocumented. This work can include denigrating “felons” and “illegals,” as occurs all too often through private fears and in public debates. As a result, the disintegrated subject that lies at the center of these new hybrid civil-criminal laws, trapped in the space of non-existence (Coutin 2000), may be none other than the citizen who used to think that they had rights.

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<sup>8</sup> According to a recent analysis, as many as 4,000 citizens per year have been mistakenly detained and/or deported as aliens (Stevens 2011: 608). For an analysis of a case of a prisoner who was mistakenly labeled a gang member and how common this phenomenon is likely to be (further describing Ernie’s story, mentioned above), see Reiter 2016b: 182–94.

<sup>9</sup> We thank one of our anonymous reviewers for suggesting this term.

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**Keramet Reiter** is Assistant Professor in the Department of Criminology, Law & Society and School of Law at the University of California, Irvine. Her research focuses on prisons, prisoners' rights, and the impact of prison and punishment policy on individuals, communities, and legal systems. She is the author of *23/7: Pelican Bay Prison and the Rise of Long-Term Solitary Confinement* (Yale University Press, 2016) and the co-editor of the anthology *Extreme Punishment: Comparative Studies in Detention, Incarceration, and Solitary Confinement* (Palgrave, 2015).

**Susan Bibler Coutin** is Professor in the Department of Criminology, Law & Society and Department of Anthropology at the University of California, Irvine. Her research has examined political and legal advocacy regarding immigration from Central America to the United States. She is the author of *Exiled Home: Transnational Salvodran Youth in the Aftermath of Violence* (Duke 2016); *Nations of Emigrants: Shifting Boundaries of Citizenship in El Salvador and the United States* (Cornell University Press, 2007); *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency* (U. Michigan Press, 2000); and *The Culture of Protest: Religious Activism and the U.S. Sanctuary Movement* (Westview 1993).