

Stuck in the Middle: Crimmigration and the Asian American Community

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Abstract

“Crimmigration,” coined in 2006 by Professor Juliet Stumpf, refers to the merging of criminal and immigration law in the United States, particularly after 1980. Crimmigration includes both immigration-related punishments for non-American citizens convicted of crimes and immigration enforcement’s growing resemblance to criminal law enforcement. This paper explores the historical development of crimmigration through laws such as the 1996 Antiterrorism and Effective Death Penalty Act and Illegal Immigration Reform and Immigrant Responsibility Act, as well as the massive expansion in ICE detention in recent decades. It argues that Asian Americans have been disproportionately impacted by crimmigration due to their historical marginalization at the intersection of non-citizen status, poverty, and violence. “Stuck in the middle” of the criminalization of immigration and unjust punishment of immigrants with criminal convictions, Asian American communities are uniquely impacted by a crimmigration system that marginalizes those seen as foreign and “other.”

Introduction

a. What is Crimmigration?

In 1978, four-year-old Phoeun You and his family fled the Cambodian genocide with his family, eventually landing in the United States. Growing up in the U.S., he struggled with bullying at school and unprocessed trauma, eventually joining a gang at the age of 13 for a sense of belonging and protection. At 20, You and his family were attacked by a rival gang while he was picking up his nephew from school. With violence as the only means he knew of and had at his disposal for protection, he retaliated and killed someone. Throughout over 25 years of incarceration, You underwent a deep personal transformation, becoming involved with Asian American studies and other self-help and self-advocacy programs. Yet, even after being granted parole in 2021, Phoeun could not walk free because he was not a US citizen. He was transferred to an Immigration and Customs Enforcement (ICE) immigration detention facility and was ultimately deported to Cambodia in August 2022—a country he had not been to for over 40 years.^{1,2}

You's story is far from an isolated instance for Asian American immigrant communities, who have found themselves impacted by a recent development in the American legal system: crimmigration. Coined by Professor Juliet Stumpf in 2006, "crimmigration" refers to the merging of criminal and immigration law.³ Crimmigration not only refers to immigration-related punishments for non-American citizens convicted of crimes, but also policy changes that have transformed American immigration enforcement to mirror criminal law enforcement.⁴

¹ Asian Americans Advancing Justice | Asian Law Caucus, "Phoeun You & His Family: 'The happiest moment of my life will be Phoeun coming home,'" Asian Americans Advancing Justice | Asian Law Caucus, July 19, 2022, <https://www.advancingjustice-alc.org/news-resources/perspectives/hnh-phoeun-you>.

² Gia Vang, "Paroled Immigrant Speaks Out After Being Deported to Cambodia." NBC News, August 25, 2022. <https://www.nbcbayarea.com/news/california/phoeun-you-speaks-out-deported-to-cambodia/2986986/>.

³ Juliet Stumpf, "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 6, no. 2 (December 2006): 376. <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1274&context=aulr>.

⁴ Stumpf, "The Crimmigration Crisis," 381.

Although we live in an era in which the intertwinement of immigration and law enforcement is a given—an era of children in border detention facilities, mass deportations, and ICE raids—the two fields of law have historically been considered separate. In the past, immigrants with a criminal conviction were not allowed to enter the U.S., but entering the country without authorization was not criminalized, and immigrants convicted of crimes were not deported until 1917 (and even then, only in extreme cases).⁵ Prior to the 1980s, the process surrounding whether or not someone could be deported for a criminal offense was highly context-dependent, with a judge considering factors such as one’s efforts towards rehabilitation and the negative impacts of deportation upon their family.⁶ However, since the 1980s, immigration and criminal law have begun to intersect on two main fronts. First, the range of deportable criminal convictions for non-citizens has dramatically increased. Second, immigration offenses that were formerly civil are now handled through quasi-law enforcement procedures and accompanied by criminal penalties and incarceration.

The blending of criminal and immigration law poses several consequences for immigrants, their rights, and notions of American identity. Non-citizens are entitled to substantially fewer rights related to criminal trials than citizens⁷ while facing punishments on the same level or even harsher. Considering the heavily non-white and non-European character of immigration to the U.S. since the passage of the Immigration and Nationality Act of 1965, crimmigration has manifested into the disproportionate incarceration and deportation of immigrant communities of color. This rise of crimmigration is not necessarily surprising considering that both criminal and immigration law “regulate the relationship between the state and the individual,” according to Stumpf. She writes, “Both criminal and immigration law are, at

⁵ Stumpf, “The Crimmigration Crisis,” 381.

⁶ Nancy Morawetz. “Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms.” *In Defense of the Alien*, no. 23 (2000): 4, <https://www.jstor.org/stable/23141255>

⁷ Stumpf, “The Crimmigration Crisis,” 392-393

their core, systems of inclusion and exclusion ... Both create insiders and outsiders. Both are designed to create distinct categories of people—innocent versus guilty, admitted versus excluded or, as some say, ‘legal’ versus ‘illegal’”.⁸ Critically examining the history and impact of crimmigration is thus relevant to immigration as a policy issue, but it also raises complex questions about who is considered “American” versus “foreign,” what rights people are entitled to, and what “belonging in America” truly means.

b. Asian American Immigration post-1960

Asian Americans are the fastest growing racial or ethnic group in the U.S., with their population 23 times larger in 2019 than it was in 1960.⁹ This increase was enabled by the 1965 Immigration and Nationality Act, which removed prior national origin immigration quotas that disadvantaged Asian and Latin American immigrants and allowed for family-based immigration.¹⁰ Today, 31% of the immigrant population in the U.S. have relocated from Asia.¹¹

Despite this, many Asian American immigrants are not naturalized citizens. Specifically, 25%, 28%, and 30% of Vietnamese, Laotian, and Cambodian Americans respectively are not naturalized citizens.¹² Notably, over 1.2 million Southeast Asians from Vietnam, Cambodia, and Laos have sought refuge in the United States due to the Vietnam War and subsequent genocide in Southeast Asia since 1975. After immigrating, they struggled with trauma, language barriers, and poverty. Many settled in poor neighborhoods struggling with economic disinvestment,

⁸ Stumpf, “The Crimmigration Crisis,” 380.

⁹ Abby Budiman, “Key facts about Asian Americans, a diverse and growing population,” Pew Research Center, April 21, 2021, <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/>.

¹⁰ Michael Chang, “Is Theory Relevant? Finding the Formalist and Functionalist,” Asamst 141: Law in the Asian American Community (class lecture, UC Berkeley, Berkeley, CA, August 25, 2022).

¹¹ Mary Hanna, “Immigrants from Asia in the United States,” Migration Policy Institute, March 10, 2021, <https://www.migrationpolicy.org/article/immigrants-asia-united-states-2020#:~:text=Today%2C%20people%20born%20on%20the,immigrants%20in%20the%20United%20States..>

¹² Asian Americans Advancing Justice | AAJC, “Inside The Numbers: How Immigration Shapes Asian American and Pacific Islander Communities,” Asian Americans Advancing Justice | AAJC, June 2019, https://www.advancingjustice-aaajc.org/sites/default/files/2019-07/1153_AAJC_Immigration_Final_0.pdf.

underfunded schools, and gang violence.¹³ An entire generation of marginalized and non-citizen Southeast Asian Americans came of age into their late teens and 20s during the 1980s–1990s era of tough-on-crime legislation, and were funneled into a pipeline to incarceration and deportation.

The unique immigrant nature of the Asian American population, as well as the historical marginalization of Asian Americans at the intersection of non-citizen status, poverty, and violence, makes crimmigration a crucial issue for the Asian American community. The development of crimmigration since the 1980s has disparately impacted Asian Americans through laws introducing extensive immigration-related consequences for criminal convictions, as well as regulatory changes affecting immigration enforcement.. Crimmigration not only materially hurts Asian Americans through criminalization, detention, and deportation, but it also excludes them from American civil rights protections.

Facts

a. “Double Punishment” for Criminal Convictions

The first notable aspect of crimmigration is the imposition of immigration-related punishments for criminal convictions. This development can be tracked across three major laws: the Anti-Drug Abuse Act of 1988, the Antiterrorism and Effective Death Penalty Act of 1996, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Within the Anti-Drug Abuse Act of 1988, Congress created a category of criminal offenses known as “aggravated felonies” which mandated immigration detention and deportation for non-citizens.¹⁴ Initially, this included murder, drug trafficking, and firearms trafficking.

¹³ Justin Calma, “Forty Years After Resettlement, Thousands of Southeast Asian Refugees Face Deportation” NBC News, November 23, 2015, <https://www.nbcnews.com/news/asian-america/forty-years-after-resettlement-thousands-southeast-asian-refugees-face-deportation-n466376>.

¹⁴ Stumpf, “The Crimmigration Crisis,” 383-384.

However, this category has significantly broadened since then. The Immigration Act of 1990 began this expansion by classifying any violent crime with a sentence of more than five years as an aggravated felony.¹⁵ However, the Antiterrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA), both passed in 1996, made the category nearly unrecognizable. The 1996 laws redefined any crime with a potential sentence of at least one year as an aggravated felony, which would then require detention and deportation. These crimes have consequently expanded to include misdemeanors and violations that are neither aggravated nor a felony.¹⁶ The “one year” criteria is applied regardless of whether a sentence of one year or more is imposed, meaning that someone can be deported for a conviction even if they are ultimately not sentenced to any time in prison.¹⁷ The expansion is also retroactive, meaning that someone can be deported for a decades-old conviction that later became an aggravated felony.¹⁸

Overall, these laws have created a wide range of detainable and deportable convictions, including shoplifting a ten-dollar video game, writing a bad check, or a low-level sale of marijuana.¹⁹ The laws leave very few options for deportation relief or consideration of immigrants’ life circumstances. In effect, this has created a “double punishment” for immigrants like Phoeun You, in which even after the completion of their incarceration, they are transferred to detention centers and consequently deported.²⁰ In the aftermath of these laws, deportation for criminal convictions has skyrocketed. Between 1892–1984, approximately 57,000 people were deported due to criminal activity. In comparison, in 2013 alone, over 216,000 people with

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Morawetz, “Understanding the Impact,” 4-6.

¹⁸ Angie Junck, et al. “Aggravated Felony Fact Sheet,” Immigrant Legal Resource Center, <https://www.ilrc.org/sites/default/files/resources/ijn-aggravated-felony-factsheet.pdf>.

¹⁹ Ibid.

²⁰ Ibid.

criminal convictions were deported, predominantly for non-violent convictions. This is nearly 3.8 times the number of people in a singular year versus a 92-year period.²¹

b. Criminalization of Immigration

Aside from immigration penalties for criminal convictions, immigration itself has also become criminalized. Unauthorized entry into the U.S. is now considered a misdemeanor punishable by up to six months of incarceration, and unauthorized reentry is a felony with a maximum penalty of two years.²² As of 2016, immigration-related prosecutions have made up 43% of all criminal cases in the federal court system (over 68,000 people), and over 20,000 individuals are incarcerated in federal prisons for immigration convictions.²³

Immigration enforcement has also been constructed to mirror and collaborate with criminal law enforcement. In the past, immigration was under the jurisdiction of the Department of Justice, but in 2002, it was transferred to the Department of Homeland Security, indicating the construction of security-based, police-like immigration enforcement. Today, ICE and Border Patrol agents are trained and equipped much like police officers, and operate far within the border.²⁴ The IIRIRA has also allowed local law enforcement to investigate and detain people for suspected immigration violations, “enlist[ing] local police and sheriff’s deputies to act as ICE officers.” Today, many ICE initiatives depend on the cooperation of these local law enforcement officers.²⁵

This apparatus of immigration law enforcement culminates in immigration’s own version of prison: immigration detention. Today, over 400,000 people are detained in over 600 ICE

²¹ César Cuauhtémoc García Hernández, “What is Crimmigration Law?” *Insights on Law and Society* 17 no. 3 (Spring 2017): 1, <http://www.antonioacasella.eu/nume/Crimmigration.law.spring17.pdf>.

²² César Cuauhtémoc García Hernández, “Deconstructing Crimmigration.” *University of California Davis Law Review* 52 no. 197 (2018): 211-213, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3326202.

²³ *Ibid.*

²⁴ Stumpf, “The Crimmigration Crisis,” 388.

²⁵ Hernández, “Deconstructing Crimmigration,” 244.

immigration detention centers as they await the outcome of their case. Another 100,000 people are detained by the US Marshal Service pre-trial for immigration-related crimes.²⁶

Thus, the vast number of immigrants that are policed and detained are often excluded from the picture of mass incarceration. Despite immigration being a civil matter, an entire shadow system of quasi-law enforcement and incarceration has emerged to police migration.

c. Crimmigration and Asian Americans

The Asian American community has been significantly affected by the aforementioned structures of crimmigration, whether it be through immigration detention or deportation. As of 2018, about 5,000 Asian immigrants were detained nationwide at a given point in time.²⁷ Specifically, over 16,000 Southeast Asian Americans have received final orders of removal from the U.S. since 1998, primarily for criminal convictions, as specified in laws such as AEDPA and IIRIRA.²⁸ Refugees are disproportionately affected; the proportion of Asian immigrants detained by ICE in 2018 that were refugees who had lived in the US for over 20 years was 43%, 86%, and 75% for Vietnamese, Lao, and Cambodian Americans, respectively.²⁹ Another particularly affected demographic is South Asian Americans, who represent a growing share of the undocumented population in the U.S. Between 2014 and 2019, 17,000 South Asian immigrants were arrested by immigration enforcement, and over 3,000 were detained by ICE.³⁰

²⁶ Hernandez, “Deconstructing Crimmigration,” 213.

²⁷ Asian Americans Advancing Justice. “U.S. Commission on Civil Rights Public Briefing: ‘Immigration Detention Centers and Treatment of Immigrants.’ Testimony of Asian Americans Advancing Justice,” Asian Americans Advancing Justice, May 13, 2019, <https://www.advancingjustice-aaajc.org/sites/default/files/2019-05/Testimony%20of%20Asian%20Americans%20Advancing%20Justice%20on%20Immigration%20Detention%20Centers%20and%20Treatment%20of%20Immigrants.pdf>.

²⁸ Southeast Asian Resource Action Center, “Southeast Asian American Solidarity Toolkit: A Guide to Resisting Deportations and Detentions from the #ReleaseMN8 Campaign,” Southeast Asian Resource Action Center, 2018, <https://www.searac.org/wp-content/uploads/2018/10/MN8-Toolkit-final-online-version.pdf>.

²⁹ Asian Americans Advancing Justice, “U.S. Commission on Civil Rights Public Briefing.”

³⁰ South Asian Americans Leading Together, “South Asian Migrants in Detention: A Factsheet,” SAALT, August 2019, <https://saalt.org/wp-content/uploads/2019/08/South-Asian-Migrants-in-Detention-A-Factsheet-SAALT.pdf>.

As a result, immigration advocacy and deportation defense campaigns have become major points of focus for Asian American advocacy and legal groups. These often consist of grassroots release and pardon campaigns for immigrants at risk of deportation. These campaigns have built significant community power, and in some cases have succeeded in preventing deportation or receiving a pardon. For example, Ny Nourn, a Cambodian American refugee who was incarcerated due to a murder committed by an abusive partner, was released and eventually pardoned in 2020 with the help of the #FreeNy campaign.³¹ However, in other cases, despite advocates' best efforts, community members are deported to a country they have few ties to—as was the case for Phoeun You. Community groups have also launched legislative campaigns such as the VISION Act, which would have ended cooperation between California's local law enforcement and ICE, but did not pass the legislature in 2022,³² and the New Way Forward Act, which proposed a federal rollback of crimmigration, but was also not passed.³³ While community mobilization persists and remains robust, crimmigration continues to affect Asian American communities and families.

Analysis

a. Denial of Constitutional Rights for Immigrants

The first problematic implication of crimmigration is how it affects immigrants' constitutional rights. Noncitizens undergoing immigration proceedings are entitled to

³¹ Anna Moore, "Ny Nourn: the woman convicted of murder and pardoned – who now fights for other battered women." *The Guardian*, June 2, 2021, <https://www.theguardian.com/society/2021/jun/02/ny-nourn-the-woman-convicted-of-and-pardoned-who-now-fights-for-other-battered-women>.

³² Don Thompson, "Effort to Block Prison-to-ICE Transfers in California Fails in Final Hours of Legislative Session." KQED, September 1, 2022, <https://www.kqed.org/news/11924388/effort-to-block-prison-to-ice-transfers-in-california-fails-in-final-hours-of-legislative-session>.

³³ National Immigrant Justice Center, "A Path Toward An Immigration System Based In Dignity And Racial Justice," National Immigrant Justice Center, <https://immigrantjustice.org/issues/new-way-forward-act>.

substantially fewer 4th, 5th, 6th, and 14th Amendment rights than a citizen in a criminal trial; they have no right to government-appointed legal counsel, no protection against self-incrimination, and no right to be insulated from past offenses in immigration proceedings.³⁴ Thus, despite the encroachment of criminal law enforcement into the realm of immigration and the life-altering stakes of immigration cases, these cases are resolved much differently from criminal cases. Two-thirds of immigrants facing removal proceedings do so without any legal representation³⁵ and, ultimately, most people who are deported for an aggravated felony have their deportation authorized by a government clerk rather than by a judge and hearing, like how a citizen's criminal case would be overseen.³⁶

Another denial of human and civil rights for immigrants is immigration detention. To begin, immigration detention can be much more broadly legally justified compared to criminal incarceration. People can be detained indefinitely if they are not explicitly allowed to enter the country, are pending removal or deportation proceedings, or have a final order of removal.³⁷ Pre-trial detention for a criminal trial also requires some determination of risk or danger, but immigrants can be detained without any such assessment.³⁸ Beyond that, immigration detention facilities are often located in remote locations, far from family and legal assistance. In fact, 30% of immigrants in detention are detained more than 100 miles away from the nearest legal aid, and in detention facilities in non-urban areas, the rate of legal representation for immigrants is 10%. The impact of this geographic isolation is large, as a detained person is twice as likely to win their case when they have a lawyer.³⁹

³⁴ Stumpf, "The Crimmigration Crisis," 393.

³⁵ Hernandez, "Deconstructing Crimmigration," 229.

³⁶ Junck, "Aggravated Felony Fact Sheet."

³⁷ Stumpf, "The Crimmigration Crisis," 393-394.

³⁸ Hernandez, "Deconstructing Crimmigration," 221.

³⁹ Asian Americans Advancing Justice, "U.S. Commission on Civil Rights Public Briefing."

Finally, immigration detention facilities are rife with poor conditions. At least 188 people have died in ICE custody between 2003 and 2019, often due to inadequate physical and mental healthcare access.⁴⁰ South Asian and Sikh migrants have also been forced to cut their hair, forgo their turbans, and eat non-vegan and non-vegetarian meals, violating their religious beliefs. Those trying to fight for humane conditions are often met with retaliation, such as solitary confinement or force-feeding in response to hunger strikes.⁴¹ Individuals incarcerated in prisons can hypothetically challenge poor conditions under the 8th Amendment's prohibition of "cruel and unusual punishment." Yet, as immigration is a civil matter and detention cannot technically include treatment that would be considered "punishment" (since no conviction has occurred), detained immigrants' avenue for recourse against poor conditions lies in the due process clause in the 5th and 14th Amendment.⁴² Despite this supposed higher level of protection, in practice, the courts have held immigrants seeking relief for detention conditions to the 8th Amendment standard,⁴³ known as "deliberate indifference." This standard requires a plaintiff to prove that the conditions of confinement were dangerous *and* that facility officials knew of and intentionally disregarded this risk to safety.⁴⁴ It is extremely difficult to provide proof that facility officials are acting with "a state of mind" in which they both know of and ignore dangerous conditions for people in detention.⁴⁵ Thus, people in immigration detention are often left in extremely vulnerable conditions with very limited avenues for legal recourse.

Despite the similarities between immigration and criminal law enforcement, the law denies thousands of people's constitutional rights, including rights to counsel and protections

⁴⁰ Lisa Seville Riordan, "22 immigrants died in ICE detention centers during the past 2 years," NBC News, January 6, 2019, <https://www.nbcnews.com/politics/immigration/22-immigrants-died-ice-detention-centers-during-past-2-years-n954781>.

⁴¹ Asian Americans Advancing Justice, "U.S. Commission on Civil Rights Public Briefing."

⁴² Nechelle Nicholas, "Cruel and Unusual Punishment: The Eighth Amendment and ICE Detainees in the COVID-19 Crisis." *Pace Law Review* 42, no. 1 (December 2021): 228, <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=2052&context=plr>.

⁴³ Nicholas, "Cruel and Unusual," 243.

⁴⁴ Hernandez, "Deconstructing Crimmigration," 227.

⁴⁵ Nicholas, "Cruel and Unusual," 236.

against cruel detainment conditions, simply because of their non-citizenship. This constitutes an abject failure of justice and human rights for immigrants.

b. Disparate Impacts of Crimmigration on Asian Americans

In *Yick Wo v. Hopkins* (1886), the Supreme Court ruled that a San Francisco law requiring permits for laundry businesses was discriminatory; even though there was no “smoking gun” of intentional discrimination apparent, “disparate impact” was evident as Chinese residents owned 89% of the city’s laundry businesses but did not receive a single permit.⁴⁶ This created a landmark standard for discrimination cases that can clearly be applied to the disparate impact of crimmigration on Asian Americans.

To understand this disparate impact, it is first crucial to understand how American military involvement in Southeast Asia interacted with crimmigration policies to impact Southeast Asian Americans. A major factor contributing to the flow of Southeast Asian refugees to the U.S. was American military intervention and bombings in the region during the Vietnam War.⁴⁷ Southeast Asian American youth had to navigate poverty, a language barrier that ostracized them and prevented them from succeeding in school, and rates of PTSD and other mental illness as high as 75%, all without comprehensive support from the government.⁴⁸ As a result, many turned to gangs as a means of belonging and protection because they had nothing else to hold onto, which commonly led to criminal convictions.⁴⁹ U.S. foreign policy and crimmigration laws ultimately created an intervention to migration, to prison to deportation pipeline, and brought about the overrepresentation of Southeast Asians in the criminal justice system.

⁴⁶ Michael Chang, "The Construction of Whiteness and the Black/White Paradigm," *Asamst 141: Law in the Asian American Community* (class lecture, UC Berkeley, Berkeley, CA, September 8, 2022).

⁴⁷ Bill Ong Hing, “Deporting Cambodian Refugees: Justice Denied?” *Crime and Delinquency* 51, no. 2 (2005): 269. <https://journals.sagepub.com/doi/10.1177/0011128704273468>

⁴⁸ Hing, “Deporting Cambodian Refugees,” 274-276.

⁴⁹ *Ibid.*

Overall, the number of Asian Americans and Pacific Islanders incarcerated in the US increased by 250% from 1990–2000. From 2000–2010, the incarceration rate for AAPIs quadrupled, with Southeast Asians and Pacific Islanders arrested and incarcerated at higher rates than AAPIs as a whole.⁵⁰ Today, Southeast Asians are three to four times as likely to be deported for a prior criminal conviction than any other racial group.⁵¹ Effectively, non-citizen Asian Americans are punished more harshly than others for the same conviction by further terms of imprisonment via detention, as well as deportation.

Crimmigration has led to the banishment of countless Asian Americans from the only country they have ever called home, with damage reverberating out to the families left behind. After Phoeun You was deported, he explained to the press the hurt he felt and the struggles he anticipated, not just because of challenges that formerly incarcerated people generally face, but also due to his inability to speak the language and lack of connection to Cambodia. Despite being free from prison, he described that in a new country and separated from his community, “Freedom doesn’t feel like freedom to me.”⁵² One 2018 report detailed the negative effects of crimmigration on Southeast Asian families, including financial harm, the effects on children left without a parental figure, and trauma inflicted upon significant others.⁵³ Linda Chang, whose husband was a Laotian refugee detained after completing his prison sentence, spoke of how her husband’s looming deportation would impact their children. Chang said, “They would not know what to do, how to live, if daddy's not here.”⁵⁴

⁵⁰ Raymond Magsaysay, “Asian Americans and Pacific Islanders and the Prison Industrial Complex.” *Michigan Journal of Race and Law* 26, no. 443 (February 2021): 453-454,

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1377&context=mjrl>.

⁵¹ Gisela Perez Kusakawa, “A New Way Forward: ‘It’s Time To End Immigrant Criminalization,’” Asian Americans Advancing Justice, December 19, 2019,

<https://medium.com/advancing-justice-aaajc/a-new-way-forward-its-time-to-end-immigrant-criminalization-895845f9b544>.

⁵² Vang, “Paroled Immigrant.”

⁵³ Jaclyn Dean, “Dreams Detained, in Her Own Words.” Southeast Asian Resource Action Center, September 2018,

https://www.searac.org/wp-content/uploads/2018/09/dreams_detained_in_her_words_report-2.pdf.

⁵⁴ Dean, “Dreams Detained,” 15.

Clearly, while laws like AEDPA and IIRIRA may not have been explicitly written as discriminatory, the historical circumstances and marginalization of Asian American immigrants have led them to disproportionate harm at the hands of criminal convictions and crimmigration.

Conclusion

This paper has detailed the historical development of crimmigration through laws (such as AEDPA and IIRIRA) and regulatory changes in immigration enforcement, as well as how Asian Americans have been disparately impacted. Stuck in the middle of increased criminalization of immigration and immigration-related penalties for criminal convictions, and equipped with far fewer constitutional rights to defend themselves, Asian Americans have been victimized and “double punished” by a legal regime that marginalizes populations that are seen as foreign.

While this reality is undoubtedly entrenched in our legal system, it can and should be changed—it was built, and therefore can be dismantled. Proposals such as the VISION Act and the New Way Forward Act provide avenues for such change. Existing Asian American organizations have successfully freed people and supported impacted families. These collectively serve as the most important base for continuing to build resilience and resistance.

Finally, while this paper decries the double punishment and detention of Asian American immigrants, it does not simply endorse the alternative that immigrants “should not be treated like criminals.” The structures and circumstances that have funneled vulnerable Asian American immigrants into the criminal justice and immigration enforcement systems demonstrate the extent to which structural inequality dictates which communities are policed and punished. This reinforces the need to also radically rethink how “criminals” *should* be treated. Stumpf writes,

“Both criminal and immigration law embody choices about who should be members of society: individuals whose characteristics or actions make them worthy of inclusion in the national community.”⁵⁵ Looking ahead, creating a strict separation between those who are denied freedom due to a criminal conviction and those who are denied freedom for crossing a national line draws yet another divisive, unproductive border. Instead, the path forward requires examining the ways in which the struggles of Asian Americans and people of all races affected by injustices in our legal system are connected.

⁵⁵ Stumpf, “The Crimmigration Crisis,” 397.

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