



Reading Between The (Redacted) Lines: Muddling Through Absent Presences In Public Information Requests On U.S. Immigration Detention

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Abstract

In our research on U.S. immigration detention (the Detention Economies project) in the greater New York City area, Freedom of Information Act (FOIA) requests have been a key data source. Throughout the research process our efforts to gather information in order to interrogate detention economies were thwarted. In this paper we consider the slow, bureaucratic machinations of the state, government information office omissions, and redactions in response to FOIA requests, with analytic intent. Drawing on cultural geography's engagements with 'absent presence' we examine the politics revealed by managing access to, and containing the flow of, information in this manner. We argue that through absent presence, the state contains migrants in immigration detention, constrains information and occludes knowledge about the infrastructure, operation, and beneficiaries of this bloated system, while, simultaneously, enlarging and consolidating power. Our discussion highlights some of the continuities as well as significant expansion of geographies of containment, with reference to immigration enforcement, from the Obama to the Trump administration. We also consider the importance of persistence, perseverance, and collective effort—or muddling through—as necessary research tactics for critical migration scholars and geographers amidst the present culture of obfuscation and secrecy that expands the geographies of state containment.

Keywords

Immigration detention, Freedom of Information Act (FOIA), transparency, expanding state power, absent presence

Introduction

“We see most clearly [...] when the management of absence does not work effectively, when it unexpectedly returns or attains a presence that shocks us into a recognition of its significance” (Hetherington, 2004, 170).

This paper comes out of an experience of profound frustration in the course of our research on the United States’ immigration detention system – frustration about information withheld from us by Immigration and Customs Enforcement (ICE) in response to our public records requests in accordance with freedom of information laws. In this article our goal is to look beyond that frustration and, through an account and reflections on the research process, to identify the ‘significance’ of managed absences in public information requests in order to understand geographies of state power and containment in immigration detention. We interrogate the slow tribulations and revelations of using public information requests in critical migration research. We draw on Hetherington’s (2004) evocative discussion of ‘absent presence’ to think through state containment of migrants in detention on one hand and actions, by the state, to contain flows of information about the apparatus and operation of immigration detention, on the other. Our analysis suggests that state actors’ responses to information requests work to extend and coalesce multi-faceted state power, reveal a politics and ethics that reproduce this arrangement, and also highlight the continued significance of attention to absent presence for critical migration and border studies. We begin the paper with a sketch of the U.S. immigration detention system; we then outline our conceptual framework and ongoing research, before turning to an analysis of redactions and their significance for understanding migrant containment and state power.

The United States currently has the largest detention system in the world. In 2019, between 45,000 and 55,000 migrants were routinely held in custody (Dias, 2019; ICE, 2019; TRACa, 2019). Even in the midst of the Covid-19 global pandemic in May, 2020, with calls for the release of migrants from confinement as a matter of public health, ICE reported a population of 25,911 detainees (ICE, 2020). The contemporary immigration detention apparatus began to take shape in the 1980s. Sustained arrival of racially diverse populations of immigrants amidst an economic downturn led to increasingly negative public and political discourse just as the booming private incarceration industry was looking for new markets. In the decades since, new laws have made more and more groups of immigrants—green card holders, long-term residents, asylum seekers, parents and children—vulnerable to mandatory detention (Hiemstra, 2019). The U.S. detention system grew exponentially in the 1990s and 2000s, jumping from a capacity of 8,500 in 1996 (ACLU, 2019) to 34,000 in 2016 (Kassie, 2019; Amnesty International, 2008). President Obama’s administration (2008 - 2016) saw significant expansion in capacity, solidification of detention infrastructure, and enforcement initiatives targeting a wide range of immigrants. After President Donald Trump took office in 2017, he embraced a variety of even more aggressive initiatives to increase U.S. detention capacity, reaching approximately 55,000 in Summer 2019 (Dias, 2019).

The U.S. federal government (as Immigration and Naturalization Services, or INS, until 2001, thereafter through ICE) has relied on a variety of public and private actors to implement and dramatically expand the use of detention. There are currently over 200 facilities in the United States that house

immigrants on behalf of ICE, owned and operated through different combinations of federal government, public and local government, and private entities. While the role of *privatization* of detention facilities in driving detention expansion has been recognized, we have argued that the *commodification* of detained migrants—over and above the privatization of detention facilities—plays a driving role in the continued expansion of U.S. detention capacity (Hiemstra and Conlon, 2016). In the current detention system, detained migrants become sources of revenue and labor for a range of entities and actors. Facility operations are complex and routinely bridge the public/private divide through multiple contracts providing for various aspects of running detention centers. For example, an ICE-owned facility routinely contracts with a private company for their commissary operations. Numerous county jails contract with ICE to detain immigrants, then with private companies for security, commissary, food service, communication, and medical provision. Privately-owned facilities also contract with ICE to house detainees, as well as with numerous additional private companies for other aspects of their operations.

Since 2013, we have been conducting research on “detention economies” in nine facilities housing immigrants for ICE in New York and New Jersey, with the objectives of illuminating the costs of running detention facilities and identifying economic relationships between the various entities involved in facilities’ daily operations. We focus on the contractual relationships between primary facility operators (as outlined in the previous paragraph) and entities that provide services vital to the operation of detention facilities, including cleaning, commissaries, communication, food, medical care, maintenance, security, and transportation (Conlon and Hiemstra, 2014; Hiemstra and Conlon, 2016, 2017). Because information regarding the finances and operation of detention is not generally publicly available, a central methodological strategy of this project depends on laws facilitating public access to government records and documents. In 2013 we filed two requests to ICE via the federal Freedom of Information Act, or FOIA, asking for a range of contracts, subcontracts, and other documents pertaining to facility operation. After 14 months—and repeated emails and phone calls—our FOIA requests were only partially filled, with significant categories of documents missing or information redacted. While we found these omissions exasperating in light of our larger project aims, in this paper we examine the information gathering process and omissions in the documents received with analytic intent. We argue that scrutiny of the barriers presented to gathering information, what is omitted, and the reasons given for the omissions, illustrate how absent presence extends geographies of state containment in immigration detention. Further, our discussion illuminates the necessity of “muddling through” (Belcher and Martin, 2019, 45) in critical migration studies research and as a tactical response amidst a culture of secrecy and an environment where confusion and uncertainty combine to express, expand, and consolidate state power.

Absent Presence and Geographies of Containment Surrounding Immigration Detention

The understanding that absence coincides with presence—not as a binary opposite but as co-constituent—is a distinctive characteristic of the contemporary era (Shields, 1992). Scholarship in geography has drawn from archaeology, architecture and anthropology, among other disciplines, to highlight such absent presences as the body (Longhurst, 1995) and children (Valentine, 2010) in social and cultural geographies. Scholars have examined absent presence in relation to lived experiences and spaces (Scholl et al., 2014), in landscapes of abandonment and decay (Edensor, 2005), and in specific socio-political contexts such as prisons (Moran and Disney, 2019). Work on geographies of absence, specifically, also considers dimensions of absent presence in connection with particular groups such as missing persons (Parr and Fyfe, 2012). Others draw on a rich and generative vocabulary of ‘ghosting’ and ‘haunting’ to develop analyses of absences that are perceived or that have a demonstrable impact on a situation. DeLyser (2014) provides a typology of geographical approaches to absent presence and we refer readers to this for an in-depth review. Critical migration scholars, too, have discussed the ‘haunting’ presence of state power where former military bases have been repurposed to contain migrants in

detention camps (Loyd and Mountz, 2018; Mountz, 2010). Meanwhile, Squire (2015) intervenes in security studies debates linking migration and securitization to argue that migrants and migration are absent presences in security discourse, policy, and practice. Squire suggests that migrants and mobility are implicitly taken as threats to state security, which shapes how migrants are governed.

In this paper, we find Hetherington's (2004) cultural-political discussion of absent presence vis-à-vis practices of consumption and disposal evocative in the context of our research on immigration detention. Briefly, Hetherington intervened in discussions on the sociology of consumption by drawing attention to waste as integral to understanding consumption in totality. He notes that what is thrown out as waste signifies a loss or absence of value. More significantly Hetherington observes that what and how things get discarded is never final, instead when an item is disposed of it is "only ever moved along and is never fully gotten rid of" (p. 162). In other words, what is made absent by being thrown away invokes a presence, in its own right, that inflects social activities and relations. To be clear, in this paper we are not suggesting that the U.S. government's responses to FOIAs signifies waste material, in fact, quite the opposite; we argue that what is removed through redaction—or absented—in these documents demonstrates their importance to the containment of migrants, the expansion of immigration detention, and to the consolidation and reinforcement of state power. Furthermore, Hetherington emphasizes that decisions about disposal are underpinned by political and ethical considerations about the possible return of what has been made absent which, in turn, are connected to concerns for order, social acceptance and status. Here we consider how these ideas resonate with efforts to consolidate power in the geographies of containment that operate in and surrounding immigration detention.

FOIAs: From Dearth to Deluge

Entering the field, gaining entry, having plans stymied for a host of reasons, and managing roadblocks in data collection are common enough occurrences in research, and there is an abundance of scholarship reflecting on these matters when undertaking fieldwork. There is also a growing body of work that examines some of these challenges in the specific hard-to-access context of immigration detention (de Goede et al., 2019; Maillet et al., 2017; Belcher and Martin, 2013). It is worth noting here that in reflecting on our research process, our goal is not merely to add to this scholarship; in laying bare and belaboring our research process, and information gathering more specifically, we want to illustrate how the slow, inconsistent, and fragmented multiplicity of the state works to articulate and consolidate its power. In this, our detailed and deliberate retelling of this process, below, is significant for understanding and challenging state power as critical migration scholars and for critical migration research.

Filing FOIAs

Focusing on detention facilities in New York and New Jersey, the "detention economies" project aims to identify and trace the full range of financial relationships that support the operation of immigration detention facilities—both private and public. Even though the detention system captures vast sums of revenue generated by U.S. taxpayers, facilities within the system are closed to the public, and information about operation and the relationships between different entities involved is not readily available. In fact, such information can be exceedingly difficult to obtain, as we discovered. In addition to interviewing a selection of people with inside knowledge of detention centers including lawyers, advocates, and former detainees, we initially filed two public records requests for documents pertaining to nine detention facilities in the U.S. northeast region. The Freedom of Information Act (FOIA) 5 U.S.C. § 552 establishes the public's right to access government records. In August 2013 we filed FOIA requests with ICE, which is responsible for interior enforcement of immigration policy, including detention, and operates within the U.S. Department of Homeland Security (DHS). The non-profit organization National Immigrant Justice Center (NIJC) provided key assistance based on their own endeavors to obtain

financial information about immigration detention, in the form of advice regarding wording and framing of our requests to maximize response.

One FOIA request, which we refer to as the “facility use agreements request,” was for all documents between ICE (or DHS) and entities that they contract with to detain immigrants in ICE custody. This included: 1) intergovernmental service agreements (IGSAs) between ICE and counties that detain immigrants for ICE, 2) contracts between privately-owned facilities and ICE, called contract detention facility agreements (CDFs), and 3) any agreements between ICE and other federal entities that house or transport immigrant detainees, called Memorandums of Understanding (MOUs). We also requested any extensions or amendments to any of these agreements, so that our request effectively asked for all contracting documents from the initiation of immigration detention at a particular facility, until the time of the request (2013).

A second FOIA request was for documents pertaining to detention facility operation. This included service provider contracts and/or subcontracts for services pertaining to food/catering, commissary, medical services, transportation, communication (telephone, internet, computer, email use), custodial services, laundry, items issued to detainees (such as clothing, shoes, toiletries, bedding, towels, etc.), and personal hygiene for detainees (for example, barber services). In addition, we requested documents that could help us to better understand the day-to-day workings of detention and experiences of both detainees and employees, including commissary lists with prices; commissary records; operational budgets pertaining to all facility operations; collective contract agreements with facility employees; facility program schedules; detainee work assignments, schedules, and instructions; and detainee handbooks for each facility. We refer to this FOIA request as the “facility operation documents request.”

(Un)Fulfilled Requests

We now share some of the mundane details of our FOIA requests to illustrate how the existing bureaucracy effectively constrained the flow of information about migrant containment, simultaneously establishing state power and control. Simply receiving the filed requests was a protracted process. FOIA law requires a response from the concerned federal agency within twenty business days, excepting “unusual circumstances.”¹ Our requests were finally returned thirteen and fourteen months after we had filed them. The ICE FOIA office was and continues to be severely backlogged with requests (Fassett, 2019), and after communicating with others who were familiar with the FOIA process we had expected a delay. As the months passed, we called and emailed the office repeatedly. After eleven months, we sent an email stating that we would pursue legal action if the requests were not filled. Finally, two months later, after more email exchanges and phone calls with an office supervisor, we received a CD of documents for one request. Another CD pertaining to the second request arrived one more month later, or fourteen months after the initial request was made.

The formatting and organization of the documents we finally received serve as an outstanding example of the materiality of absent presence². Each CD (one per request) contained a massive, unwieldy PDF, one of 788 pages and the other 385 pages. It was apparent that there was no attempt to order the

¹ The government entity charged with filling requests can seek a ten-day extension for more complicated requests, per Title 5 U.S.C. § 552(a)(6)(B).

² Many thanks to an anonymous reviewer for this point.

documents from each facility consistently. The type and depth of documents received were not uniform across facilities, and some facilities ignored parts of our requests entirely. No cataloging of contents was provided, and the PDFs had no metadata retained for easy searching. Each CD came with a cover letter that provided reasons for withholding parts of the documents (the exemptions, explained in detail below) and explained that appeals must be received within 60 days of the date of the letter. However, we received one FOIA over 60 days after the date of the letter, and the other 40 days after the letter date. Even if we did have the full 60 days, given the disarrayed state of the documents we received, combined with our limited time and resources to support research, it would have been untenable to turn around an appeal within the permitted time period. Consequently, our ‘filled’ requests were actually full of irremediable inconsistencies and gaps that conveyed an incoherent state and a sense of confusion, obfuscation, and dismissal.

We are not suggesting that this obfuscation occurred with malicious intent to thwart our attempts to gain information about detention. Instead, the disorder and deficiencies likely have more to do with the inevitability of error in bureaucratic systems, possible frustration at demeaning office grunt-work, or a need to quickly complete an order given by a far-away superior. While the PDFs were created centrally, the documents comprising them were pulled and sent by the various facilities. In our phone calls with the ICE FOIA office, the person overseeing our requests indicated that filling our requests entailed him placing multiple calls to different facilities, and that often those charged with pulling requested documents were not happy about the tasks. Despite a lack of intent, however, the bureaucratic machinations of our FOIA requests serve to impede access and accountability, and, in effect, shield the detention system from full public review (see also Hiemstra and Conlon, 2017).

Eventually we did make our way through the two PDFs, with the invaluable help of a graduate Research Assistant. Additionally, our project has evolved to include public records requests to county (local) governments, through state freedom of information laws: New Jersey’s Open Public Records Access (OPRA) law, and New York’s Freedom of Information Law (FOIL). We have also obtained additional documents acquired by non-governmental organizations and journalists, which reflect similar patterns of withholding and redaction. In our document analysis, we trace financial relationships between different entities involved in detention; assess detainees’ material realities, expenses, and labor; and explicate facility rules governing daily life in detention. We pair this analysis with existing journalistic and watchdog organization reports, interviews with immigrant advocates, participation in a volunteer facility visitation program, and prior research with U.S. deportees in Ecuador (see Hiemstra, 2019). In this article, we focus on the documents that we obtained through our 2013 federal FOIA requests. In the next section, we focus on the information withheld in the FOIA-requested documents, to scrutinize how absented information inflects a presence, and to consider what we can learn from the redactions themselves.

Moving Information (Along): Seeing What FOIA Exemptions Reveal

In our analysis of redactions to the FOIA-requested documents and the explanations provided for those redactions, we argue that through the aggressive use of exemptions, ICE sticks to the letter of the law regarding public access to information, which simultaneously shields entities involved in the provision of detention—including itself—from public scrutiny and accountability. In this process ICE also shores up a position of power vis-à-vis other agents that are involved in detention economies. The letters accompanying each of the (partially) filled FOIA requests stated that “portions” of the contained pages “will be withheld pursuant to Exemptions 4, 6, 7(C) and 7(e) of the FOIA as described below,” then included explanations of those exemptions. The documents pulled and sent from individual detention facilities were compiled and redacted at the central ICE FOIA office. Redacted information is covered with a gray or black box, and the exemption number and letter are stamped vertically on top of the box. In cases of a black box, the exemption number and letter were frequently not legible. The

omissions of information under these exemptions have consequences related to apprehending the financial stakes, depth of private sector influence, operational procedures, and chain of command in detention. Once again, we are not necessarily ascribing intention to the individual actors involved in determining exemptions, but we do contend that power is accumulated in these absences, with important consequences for accountability and transparency, despite and because of a lack of coordination.

Obscuring Costs

In the documents received, nearly all information regarding dollar amounts and rates is redacted. Most of these omissions are marked with (b)(4). This use is evident in Figure A (see next page), of the IGSA between Bergen County, NJ and the US Marshals Service (USMS).³ It is also seen in Figure B, of a page from the contract for Elizabeth detention facility, between DHS and Corrections Corporation of America (CCA, now CoreCivic), in which CCA provides “Operational Estimates” of running a detention facility. Exemption 4, explained the cover letters accompanying the FOIAs, is applied “to protect from disclosure of financial information that has been determined to be privileged and/or confidential.” The letter went on to explain:

FOIA Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public.

The redacting of money amounts on contracts makes it impossible to use these documents to calculate money spent by the federal government on detention at a particular facility, and revenue generated by a particular facility, as well as rate increases from contract to contract through time. The costs of funding the largest detention system in the world are hidden from the federal taxpayer, reduced to a gargantuan figure in an obscure federal budget line. There is no way to estimate how much the government pays—and the contracted entity earns—for administration, medical care, food, safety, and other services. One cannot get a sense, for example, if the administration is unusually bloated, if the company estimates an unrealistically low amount for health services, or if the amount of programming for detainees is increasing or decreasing.

By permitting the public only partial view, exemption 4 effectively curtails efforts to develop a full account of costs associated with detaining massive numbers of migrants. It is important to note here that this exemption, laid out to protect the “competitive position of a person,” is used to justify withholding information about financial transactions between a federal government entity and a county government entity. Across different scales of government, detention is understood as a revenue-generating industry, despite not technically operating in the realm of private business. The use of exemption 4 on these documents, then, demonstrates the reality that detainees become primarily sources of income, part of various entities’ bottom line, absented as individual human beings. It is also significant that the financial “competitive position” of the government supplants the right to know of individual people or groups of people. Further, this logic also produces situations where county governments compete against each other as well as against private companies and other government entities, and can

³ The US Marshals Service (USMS) is an agency within the Department of Homeland Security and is the agency named on some of the IGSAs we received.

be denied access to information in this process. This fact was made clear to us when, in the process of clarifying a more recent information request we made to a county sheriff, the officer with whom we spoke wanted to know what we had learned about the rates neighboring counties charged ICE for detention. Thus, in addition to showing how this exemption works to contain knowledge regarding the costs of detention and reinforce the conceptualization of detained migrants as dollar signs, our analysis reveals an incoherent state apparatus where local, 'on the ground' state agents are in the dark while the chain of command operates to funnel and consolidate state power amidst a patina of rational decision making enacted by the federal state.

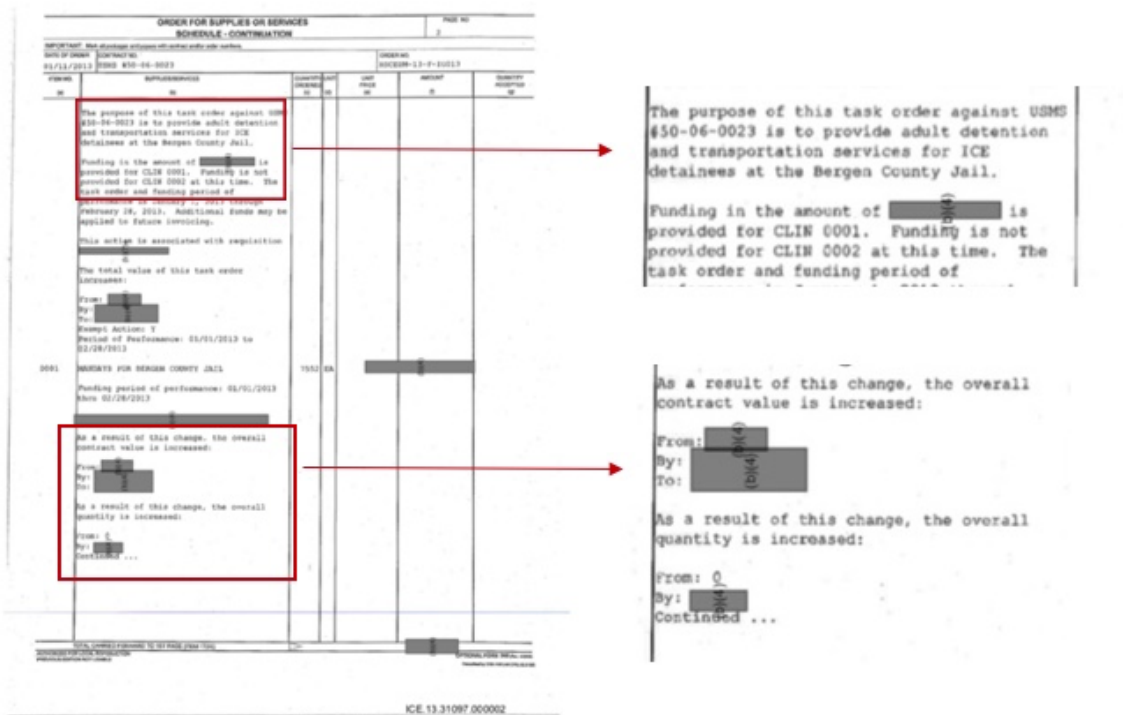


Figure A. Page (and enlargement) from 2013 Bergen County Intergovernmental Service Agreement with Immigration and Customs Enforcement showing use of exemption 4

Attachment #4 - Contract Detention Facility

Offeror's Operational Estimate
Contract Detention Services

Offeror's Operational Estimate: Reflects distribution of proposed amounts to operate a detention facility on an ongoing basis. Excludes start-up and other costs to establish initial operations.

* Note these costs are proposed based on a (b)(6) inmate population.

Program Area	Total Number of Positions	Type of Cost	Annual Amount
Administration and Management		(b)(6) Salaries	(b)(4)
		Benefits	
		Non-Salary	
		Total	
Health Care		(b)(6) Salaries	(b)(4)
		Benefits	
		Non-Salary	
		Total	
Security and Control		(b)(6) Salaries	(b)(4)
		Benefits	
		Non-Salary	
		Total	
Food Service		(b)(6) Salaries	(b)(4)
		Benefits	
		Non-Salary	
		Total	
Safety and Sanitation	4	Salaries	(b)(4)
		Benefits	
		Non-Salary	
		Total	
Services and Programs		(b)(6) Salaries	(b)(4)
		Benefits	
		Non-Salary	
		Total	
Indirect Costs		Salaries	(b)(4)
		Benefits	
		Non-Salary	
		Total	
Summary		(b)(6) Salaries	(b)(4)
		Benefits	
		Non-Salary	
		Total	

ICE.13.31097.000056

Figure B. Page from Elizabeth Detention Facility contract between ICE and Corrections Corporation of America (CCA) – now Core Civic, effective date 2005. Example of Operational Estimate of Contract Detention Services showing use of exemption 4

Ghosting and Haunting People and Procedures

Three additional exemptions, 6, 7(C) and 7(e) were also widely referenced in the documents we received. Collectively these exemptions embroil the flow of information about detention in obscure bureaucratic processes and ‘ghost’ individuals with positions of responsibility for various components of detention. These exemptions, thus, perform bureaucracy and establish the absent presence of people and institutions with the power to allow or deny access to information. This ghosting and haunting effectively shields public and private sector actors and state authorities from accountability.

Exemptions 6 and 7(C) were both cited to justify withholding names, other identifying information, and contact information contained in the documents, for employees as well as detainees.

The FOIA letters explained: “ICE has applied Exemptions 6 and 7(C) to protect from disclosure the telephone numbers and email addresses of ICE personnel and third-party information contained within the documents.” Both of these exemptions are rooted in a logic of protecting personal privacy, as explained in the letters:

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires balancing of the public’s right to disclosure against the individual’s right privacy [sic]. The types of documents and/or information that we have withheld may consist of social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information.

Exemption 6, when used alone, explained redactions of individuals’ names, as seen in Figure C, which shows the contract between US DHS and the Corrections Corporation of America for the Elizabeth, New Jersey, Detention Facility. Such use allows one to know the address of the DHS office located in South Burlington, Vermont, that consistently appears on detention contracts, but it hides the name of the DHS individual in charge. This use is repeated throughout the documents, with Exemption 6 stamped over the redaction boxes covering the names of directors and contact persons for detention facilities.

ORDER FOR SUPPLIES OR SERVICES PAGE OF PAGES 1 2

IMPORTANT: Mark all packages and papers with contract and/or order numbers

1 DATE OF ORDER 09/13/2005 2 CONTRACT NO. (If any) DCE-50-0010 3 SHIP TO

3 ORDER NO. HSCCB-05-P-00473 4 REQUISITION/REFERENCE NO. (b)(7)(C)

5 ISSUING OFFICE (Address correspondence to) U.S. Dept. Of Homeland Security Immigration and Customs Enforcement 425 I Street, NW Rm 2208 Washington DC 20536 6 NAME OF CONSIGNEE Department of Homeland Security

7 TO 8 STREET ADDRESS 70 Kimball Avenue John W. Clarke Building Attn: (b)(6) 9 CITY South Burlington 10 STATE VT 11 ZIP CODE 05403

12 NAME OF CONTRACTOR CORRECTIONS CORPORATION OF AMERICA 13 COMPANY NAME 14 STREET ADDRESS 10 BIRTON HILLS BLVD STE 100 15 CITY NASHVILLE 16 STATE TN 17 ZIP CODE 372156105

18 ACCOUNTING AND APPROPRIATIONS DATA See Attachment A 19 REQUESTING OFFICE Immigration and Customs Enforcement

20 BUSINESS CLASSIFICATION (Check appropriate box(es)) 21 SMALL 22 OTHER THAN SMALL 23 DISADVANTAGED 24 WOMEN OWNED

25 P.O. POINT 26 DESTINATION 27 GOVERNMENT BLDG 28 DELIVER TO P.O. POINT ON OR BEFORE (Date) 10/13/2005 29 DISCOUNT TERMS (b)(4)

30 INSPECTION DESTINATION 31 ACCEPTANCE DESTINATION

32 SCHEDULE (See volume for Specifications)

ITEM NO.	SUPPLIER OR SERVICES	QUANTITY ORDERED	UNIT	UNIT PRICE	AMOUNT	QUANTITY ACCEPTED
	Tax ID Number: (b)(7)(C) DUNS Number: (b)(7)(C) This delivery order is issued to fund detention services provided at the Corrections Corporation of America (CCA) Facility in Elizabeth, NJ under the terms Continued ...					

33 SHIPPING POINT 34 GROSS SHIPPING WEIGHT 35 INVOICE NO. 36 TOTAL (Gross Weight)

37 NAME 38 MAIL INVOICE TO (b)(4)

39 NAME Department of Homeland Security 40 STREET ADDRESS John W. Clarke Building 70 KIMBALL AVE. (b)(6), (b)(7)(C) 41 CITY SOUTH BURLINGTON 42 STATE VT 43 ZIP CODE 05403 44 GRAND TOTAL (b)(4)

45 UNITED STATES OF AMERICA 46 FILE CONTRACTING/ORDERING OFFICER

NON TRAD 21-102-8883 47 OPTIONAL FORM 307 (2010-2011) 48 FROM www.dhs.gov/oa/101-010-0000

ICE.13.31097.000048

Figure C. Page from Elizabeth Detention Facility (contract between ICE and CCA) showing use of FOIA exemptions 4, 6, 7(C) and 7(e)

Exemption 7(C), cited for redacting individual names, phone numbers, and identification numbers, is explained in the following excerpt from the FOIA letters:

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information.

Exemption 7(C) was usually used together with Exemption 6, as seen in Figure D, in which the name and position title of the facility's Director is redacted, as well as in Figure C. Exemptions 6 and 7(C), then, are used to conceal officials' names, officials' titles, office names and locations, people authorizing, issuing, and receiving financial transactions, and contact information, such as phone numbers for individuals and offices.

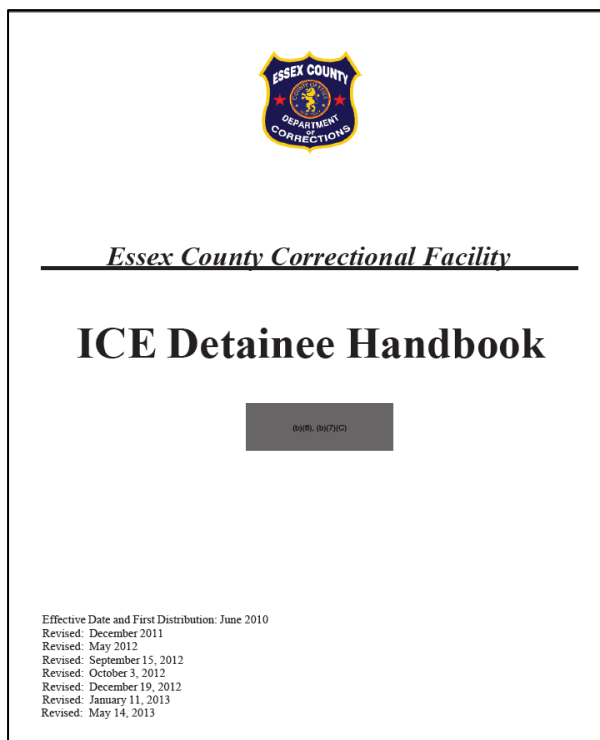


Figure D. ICE Detainee Handbook for Essex County Correctional Facility (May, 2013), cover showing use of FOIA exemptions 6 and 7(C)

Figure E. Page (and enlargement) from Bergen County Intergovernmental Service Agreement with Immigration and Customs Enforcement showing use of exemptions 4, 6, and 7(C)

In these exemptions, power lays protected and largely unchallenged, both ghosted and haunting. As evident in pages from the Bergen IGSA (Figure E) any information more specific than the general location is blacked out. All names, position titles, and contact information is redacted, including the Program Officer, Contracting Officer, and Contract Specialist. The phone numbers redacted are presumably not personal cell phones or employees’ home phones; they are the phone numbers for places of work. It becomes a daunting task to figure out who is in charge, or even what office is in charge, at both facilities and contracted companies. While these redactions are explained as necessary to protect personal privacy, they effectively block access to the detention system, by making it impossible to directly contact individuals in charge, identify specific locations, and make inquiries. Putting names of people in power in black boxes has an aggrandizing effect; it turns those people into nameless, all-powerful, unaccountable, untouchable figures. Consequently, for advocates, family members, researchers, and others who are external to the system but who may request information, facilities become places operated by no one, by ghosts—impossible to identify much less contact—who, nonetheless, are looming shadow figures that haunt information seeking and gathering, and, through their absence, exert control over information and access.

Containing Codes, Maintaining Status

The use of Exemption 7(e) adds to the challenge of tracing money exchanges and identifying how many entities are involved in the business of detention, as well as the relationships between entities. The FOIA letters explain the use of Exemption 7(e) as follows:

ICE has applied Exemption 7(e) to protect internal agency codes and/or administrative codes.

Exemption 7(e) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I determined that disclosure of law enforcement systems checks could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

In the documents we received, this exemption was principally cited for redacting information related to financial transactions. For example, in Figure E, a page from Bergen County's IGSA, we see that 7(e) is used to justify concealing the county's identifying business number, or the DUNS number (Data Universal Numbering System), which is used to identify business entities. In Figure C of the Elizabeth facility's contract between DHS and CCA, 7(e) is used in the redaction of requisition/reference numbers and tax ID numbers as well as DUNS numbers.

These redactions not only hide information about costs and revenue; they also make it difficult to sketch procedures, trace chains of command, identify responsible individuals, and ascertain how many entities are involved and the relationships between them. Operations and the power embedded in them are made invisible. The control of information effectively shields *all* entities involved as well as business processes from public scrutiny.

In his discussion of the absent presence of waste, Hetherington (2004) observes that decisions about what and how items are disposed of are underpinned by political concerns about status and order. Applying this observation to the redactions in our data, ICE's use of exemption 7(e) suggests that all business entities, operations, and relations fall within the purview of "law enforcement." Not only does this classification work to protect business entities, it also confirms and reinforces a fundamental position of power for ICE, DHS, and the federal state more generally, within the hierarchy of actors involved in the business of detention. In short, in the absenting of information through exemption 7(e), the presence and dominant status of the state is made evident not only to members of the information seeking public but also internally, to all entities seeking financial gains from the U.S. detention system.

To reiterate, we do not claim here that the FOIA offices and individual bureaucrats charged with filling public records requests are acting with some larger aim of protecting the government and entities involved in immigration detention, or publicly asserting the dominance of the state. Instead, we call attention to how the bureaucratic systems in place work to continually shore up state power, independent of individual will or purpose. Most likely, FOIA officers charged with redacting information and stamping exemption reasons do their job liberally, redacting if there is any doubt, in order to avoid reprimand or having to re-do tedious tasks if deemed insufficient by a supervisor. But regardless of lack of intent, individual actions regarding redemptions bolster existing systems of power. It is precisely in these bureaucratic machinations that state power resides. Through the mundane placement of boxes that black out money amounts or routine operational procedures, public attention to the tremendous financial stakes involved in the process of "enforcing immigration laws" is averted. At the same time, in the containment of information through exemptions, power is consolidated for the federal state vis-à-vis all the other entities—from private companies to local government—involved.

Our experience and analysis of redactions is corroborated through examination of other detention documents obtained through FOIA. The National Immigrant Justice Center (NIJC), a legal services and migrant justice advocacy organization, coordinates a FOIA Transparency Project that submits and

litigates on information requests, compiles FOIA-requested documents from an array of sources, and makes them available online to the general public. The Transparency Project comprises hundreds of contracts and facility inspection reports, including documents pertaining to facilities in our study. We reviewed these and found that the redactions they contain follow the same patterns we identified. The responses we received and our experience with FOIA requests generally are not exceptional; in fact, they are the norm.

From this we infer that the process of requesting and receiving documents in combination with redactions renders information gathering an exceedingly slow and cumbersome process. Further, echoing Belcher and Martin (2019), state efforts that limit access to information require that “the researcher must very often commit to muddling through the process of accessing information” (p. 45). As we have shown, this necessitates persistence at every stage of the research process, from initial request, to sorting and organizing the information received, through to data analysis. For us, this process took place over multiple years and entailed triangulating across an array of information sources, as indicated earlier (see section *(Un)fulfilled requests*). The extended wait for our request to simply be filled was over a year (and this can be much longer when litigation is required), making this research strategy challenging for researchers on short-term contracts with changing institutional affiliations. Additionally, we were able to cobble together small amounts of funding, providing partial support for a graduate research assistant, as well as institutional support through credit-bearing research internships with dedicated undergraduate students. Collectively, this ad hoc team’s efforts helped to move information along, to sift and decipher the documents received, and to piece together what FOIA exemptions reveal. We note this belabored process here for two reasons. First, as Belcher and Martin (2019) observe, persistence and interrogation of the FOIA process and any documents received are important because they offer “an opening to understanding how contemporary state practices work” (p. 44) through absence as well as presence; yet, this often relies on the relentless dedication of a group of people over time. Second, and relatedly, in the context of intense competition and shrinking support for research funds and research time, there may be value in critical migration scholars and geographers coming together and muddling through state practices of contained and controlled information flows.

Eroding Transparency, Layering Obfuscation, Consolidating Power

We have argued that mundane bureaucratic practices can conceal government relationships and activities, and, furthermore, despite and because they are not necessarily intentional and coordinated, these practices often work to reinforce state power. In this section, we suggest that under the Trump administration, attempts to obscure information became significantly more deliberate, in ways that create absences that are both more dangerous and easier to identify. When Trump took office in 2017, there was already an established culture of—and bureaucratic practices for—constraining information available to the public about immigration detention. Analysis of the documents we received in 2014 illustrates that the ICE FOIA office routinely limited access to federal government documents and made available the least amount of information possible to meet technically the requirements of FOIA law. As previously noted, others have experienced this culture of concealment for years, and organizations including Syracuse University’s Transactional Records Access Clearinghouse (TRAC) and NIJC have developed projects dedicated to forcing greater government transparency through FOIAs. As we experienced in our project, DHS already frequently violated FOIA laws related to the length of time to respond (as noted previously this is supposed to be 20 business days), exemptions have long been applied liberally, and there is a history of partially fulfilling FOIAs and refusing to fill FOIAs deemed too complicated or onerous. However, the Trump administration intensified this culture dramatically, and introduced new strategies unabashedly aimed at shielding government actions from public knowledge and accountability.

Under Trump, the federal government adopted a notably more resistant stance to releasing information pertaining to immigration (and in general) under FOIA law. For example, in a 2019 report, TRAC detailed “gross irregularities” in data released by the Executive Office for Immigration Review (EOIR), which oversees the immigration courts (TRAC, 2019a). Noting that TRAC previously found error with EOIR data releases in 2016, the 2019 report noted a sharp degradation in the quality of the data, accompanied by an “unwillingness to fully correct their mistakes” (n.p.). The report identified four critical gaps in EOIR’s procedures contributing to the furnishing of inadequate data: 1) unintentional data removal, 2) intentional data removal, 3) garbled data releases, and 4) possible data deletion in master database (n.p.). ICE, located within the Department of Homeland Security (DHS), experienced a growing backlog of FOIA requests and litigation regarding FOIA as the public clamored for transparency around the Trump administration’s practices (Mehta, 2018). For example, DHS ended fiscal year 2018 with a backlog of 53,971 requests (Salzberg 2019). Part of this backlog is simply volume; DHS receives more FOIA requests than any other department in the federal government (395,791 in fiscal year 2018), with 90 per cent of those going to three agencies dealing with border and immigration enforcement, including ICE.⁴ Under Trump, however, ICE also appeared to more aggressively deny requests and withhold significant portions of documents released (Salzberg, 2019). According to DHS’s 2018 Annual Report, ICE continues to use exemptions 6 and 7(c), which we saw in our 2014 requests: “ICE used these extensively, even among the immigration-focused components, applying some exemptions to upwards of 80 percent of all requests it received” (Salzberg, 2019, n.p.). A 2019 Supreme Court decision (*Food Marketing Institute v. Argus Leader Media*, 18-481 U.S., June 2019)⁵ appears to open up an even broader use of Exemption 4, which protects “trade secrets and commercial or financial information obtained from a person that is privileged or confidential.” In our 2014 FOIAs, as explained above, this exemption was used to justify the redaction of nearly all dollar amounts on contracts. The 2019 U.S. Supreme Court decision overturned over four decades of precedent requiring that use of Exemption 4 entailed demonstrating release of requested information would bring about “competitive harm.” While exactly how this shift will play out is still unclear, it suggests that “competitive harm” may be used much more broadly, paving the way for even more extensive withholding of financial and commercial information, with little reasoning required except that it is “confidential” (Hutt II, Barnett, and Lee, 2019). In this way, various branches of the state including federal agencies and the judiciary reinforce and consolidate power while protecting the absent presence of agents and entities operating the U.S. detention system.

Additionally, ICE simply refused to fill some FOIAs, apparently “driven by a general opposition to transparency,” as the Government Accountability Project (2017, n.p.) writes. For example, in 2017 ICE stopped routinely releasing—as had been the practice—data regarding immigration detainer requests to local police: why immigrants were wanted by ICE, and if they were deported. Such information is useful for many reasons, including to assess if ICE was following legal guidelines for detainers (TRAC, 2017). Also in 2017, ICE refused to fill FOIAs requesting information about “Operation Mega,” a planned massive-scale immigration raid that did not end up taking place (Tegethoff, 2017). In 2018 and 2019, the Project on Government Oversight made eight FOIA requests to ICE for records related to “surveillance capabilities, detention methods and possible civil rights violations,” and in all eight cases ICE did not respond as required by FOIA law, either not responding at all or responding in an incomplete manner (Telford 2019).

⁴ Additionally, a 35-day government shutdown (December 22, 2018 to January 25, 2019) during the Trump administration contributed significantly to both FOIA backlogs and the time to fill FOIA requests.

⁵ See https://www.supremecourt.gov/opinions/18pdf/18-481_5426.pdf

There were additional anti-transparency actions pertaining specifically to immigration detention and enforcement under Trump, beyond the handling of FOIA requests. In 2017, ICE submitted a request to the National Archives and Records Administration for permission to destroy data recording information on sexual assaults, solitary confinement, and deaths in detention, claiming—ironically—protection of *victims*' privacy (May, 2017). Also in 2017, detention facilities across the country suddenly started to refuse observer and volunteer visitation. Christina Fiahlo, Co-Director of Freedom for Immigrants, a national detention visitation network and immigrant rights advocacy organization, said, "We are deeply concerned that President Trump is trying to hide what is happening in immigration detention facilities by curtailing access to them" (Freedom for Immigrants, 2017). ICE also terminated a detention hotline for detainees after it was publicized in the TV show *Orange is the New Black*, cutting off a valuable way for detainees to report abuses and seek support and resources (Oliveira, 2019). Also, significant pieces of data about immigration enforcement simply disappeared from DHS websites. For example, before Trump, the U.S. Coast Guard website included tables with multi-year data about numbers of migrant interdictions and country of origin. This information was removed entirely early in 2017. The response to one organization's FOIA to regain access provided block numbers per year, instead of the country-by-country breakdown previously supplied (Frenzen, 2017). The absence of this information prohibits correlating possible "push" factors in country of origin, and it contributes to the narrative of "hordes" of immigrants descending on the United States purportedly for nefarious individual gain. All of these actions point to the consequential absence, destruction, and erasure of information related to immigration enforcement, and they demonstrate a layering of both unintentional and intentional strategies of obfuscation.

Conclusion

In this paper our analysis shows that coinciding with harsh immigration enforcement policies, geographies of containment are also materialized by constraining information access and flows. Absence, absent presence, and eroding transparency are ways of managing information but, as Hetherington suggests, "the management of absence does not work effectively, [...] it unexpectedly returns or attains a presence that shocks us into a recognition of its significance" (2004, 170). Whether through intentional or unintentional actions, the withholding of information and the use of redactions and exemptions undermine efforts to understand and resist systems of immigrant detention. The effect is to extend, reinforce, and consolidate facets of state power. Further, we have shown that absent presences extend across presidential administrations, and so too does manipulation of information in terms of both access and content. As such, attention to absent presence transcends particular political ideologies and reinforces the need for critical scholars to attend to the enduring significance of absent presences. We have also emphasized how 'muddling through' as part of the research process has been key to moving beyond some of the frustrations associated with using public information requests, littered with redactions as they may be, in research. To conclude, we offer some considerations and possible directions for those who, like us, confront bureaucratic hurdles, redactions, omissions, and occlusion in doing research on geographies of state containment.

First, ensuring that government information is available to the public and pursuit of accurate information must be relentless. This necessitates planning, time commitments, and developing robust networks of scholars, advocates, and activists. Even amid the Trump administration's routine disregard for the rule of law, offices of the U.S. government continued to be underpinned by a need for political and ethical legitimacy. The Department of Homeland Security acknowledged that its FOIA division and program performs "an immensely valuable service, providing records that promote transparency [that] directly impact and assist the public" (DHS, 2020, 3). These government programs and associated laws around the right to request and access government documents must be protected and expanded. The Office of Government Accountability plays a role here. On immigration matters, organizations like NIJC

and TRAC do critically important work gaining access to government information and further expanding transparency by also making said documents available for public use. Both routinely file FOIAs for information regarding immigration detention, and they must often rely on litigation to obtain information to which they are entitled under federal law. Important strides toward transparency can be made through refusing to accept the withholding of information. While the 2019 Supreme Court ruling about Exemption 4 may be a setback, there have also been some successes. For example, in October 2017, the Supreme Court ruled against private prison companies CCA and GEO Group, rejecting their attempt to block release of contracts and other information pertaining to their operation of detention facilities (Center for Constitutional Rights, 2017). Of course, litigation requires significant financial and appropriate support resources, which are likely not available for a wide range of FOIA filers. One strategy, then, is to channel resources to such organizations. While academics and activist groups are unlikely to have the financial resources that litigation requires, building networks and pooling skills—such as research expertise—and resources together in reflexive, co-produced, mutually beneficial ways is important. There are already numerous examples of such initiatives (see Conlon and Gill, 2015; Gill, 2016; Loyd, Mitchelson, and Burrige, 2013), and we suggest there is scope to develop a meta-network that strengthens and builds alliances and shares resources *across* academic researchers and universities *and* among those operating in advocacy, activism, and accountability organizations, including news media organizations.⁶

Second, and largely through our own experience of ‘muddling through’ in this project, we have learned the importance of persisting, persevering and reading between the lines, so to speak, or beyond the black boxes of redaction. We thus concur with Belcher and Martin (2019, p.44) who observe that muddling through “is both a pragmatic and strategic opportunity, as well as a field of analysis in itself.” As noted earlier, we encountered bureaucratic hurdles and protracted delays before we received a single file with which to work. Then, the disorganized array of documents we eventually did receive necessitated ‘hands-on’ dedication by an ensemble of people whose labor was procured by cobbling together small smatterings of institutional resources. The efforts of this ad hoc research team, combined, resulted in multiple rounds of sorting, sifting, and poring over the data. This somewhat unplanned perseverance was productive; it enabled us to look carefully for accidental disclosures, such as a random dollar amount apparently missed by a redactor as they worked their way through hundreds of pages.

Muddling through also exposes the subjective and embodied nature of state power.⁷ Our project involved extensive data collection and a creative comparative approach to analysis in an effort to obtain and verify information. Not only did this entail triangulation of different data types (these included government documents, interviews, and observation), it also involved requesting the same documents through multiple sources. As noted earlier, we placed county-level information requests (OPRA in New Jersey, FOIL in New York) pertaining to immigration detention in addition to our federal level FOIA requests. Through this strategy, in some instances we obtained several copies of the same documents. In multiple locations, information withheld on federally-obtained documents was not withheld on county-obtained documents. Laws and policies are carried out by individuals; such differences in redactions remind us that state power and the bureaucracies behind it are not monolithic or impenetrable. By

⁶ As TRAC documents, the number of information requests filed by news media organizations has been increasing (TRAC 2021), perhaps creating new opportunities for collaboration between academics, journalists, and other organizations.

⁷ Thanks to an anonymous reviewer for this point.

comparing documents we were able to fill in missing pieces of information as well as to consider why the federal government agency chose to withhold the information that they did. We therefore suggest that muddling through and triangulating multiple sources as well as types of data affords opportunities to look for, and at, absences as having strategic significance for understanding relations between local and federal government, and to understanding the complex geographies of state containment more broadly. Further, we urge researchers to also attend to absence as presence. Dwelling on and in absented information in its own right, attending to how absences are managed and recorded, considering information that is absent as relational and political presence, sheds important light on mundane geographies of containment, and where power may be stronger or weaker.

Finally, and perhaps paradoxically, the blatant and open vitriol of the Trump administration's approach created new opportunities for creating cracks in information barriers around immigration enforcement. While Obama presided over a significant expansion in detention and deportation, the public was largely unaware of what was going on. Trump operated under a different logic; his boisterous proclamations and cruelty intentionally played to a racist, xenophobic political base. One outcome—as it relates to fighting detention and deportation—is that many more people became aware of, upset by, and motivated to demand more transparency and accountability. There was a surge in journalistic and public attention to detention and deportation, in ways that did not happen during the Obama years, despite many of these policies being in place to some degree. Social justice organizations and groups that had been working to expose immigration enforcement operations and consequences for many years experienced surges in membership and support from the public (Stack, 2017). More organizations joined efforts to expose and thwart DHS attempts to obfuscate and evade transparency around immigration enforcement, and more inter-organizational efforts emerged among groups that did not previously work together. For example, in response to visitation denials, Freedom for Immigrants (previously CIVIC) led a group of 400 entities in filing a complaint with ICE (YubaNet, 2017). While the Trump administration's approach exacted ever more disturbing and dystopian state violence, we saw increased awareness and questioning of immigration enforcement policies including immigration detention. As we write, the Biden Presidency takes shape but regardless of this or future administrations' public actions, we propose that it is critically important to continue to upend stealthy expressions of state power, by attending to absent presences, reading between the lines of information attained and not attained, and searching for unevenness in bureaucratic machinations.

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