A Political Analysis of Mental “Disability” in U.S. Immigration Courts

by

Estu Arifianti

A Thesis Presented in Partial Fulfillment
Of the Requirements for the Degree
Master of Science

Approved May 2020 by the
Graduate Supervisory Committee:

Pat Lauderdale, Chair
Annamaria Oliverio Lauderdale
Elizabeth Swadener

ARIZONA STATE UNIVERSITY

August 2020

المنارة للاستشارات

www.manaraa.com

ProQuest Number: 28027450

All rights reserved

INFORMATION TO ALL USERS
The quality of this reproduction is dependent on the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript
and there are missing pages, these will be noted. Also, if material had to be removed,
a note will indicate the deletion.

ProQuest 28027450

Published by ProQuest LLC (2020). Copyright of the Dissertation is held by the Author.

All Rights Reserved.
This work is protected against unauthorized copying under Title 17, United States Code
Microform Edition © ProQuest LLC.

ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 - 1346

المنارة للاستشارات

www.manaraa.com

ABSTRACT

Despite the changing social, legal, and political context in influencing the definition of mental disability, medical scholarship has maintained its position as the primary reference to interpret mental disability in the immigration system. This preliminary study examines the role of medical scholarship in attributing to the exclusion of undesired immigrants through its definition of mental disability. This paper focuses upon immigration cases to determine the patterns that emerge when immigration intersects with mental disability. The data consists of four immigration court cases in 1951-1985, 1986-2005, 2006-2015, which mark the shift of immigration policy in the United States of America (US). The court documents are collected from websites that provide online access to these documents. The examination of the cases focuses on three important criterions: a summary of cases, mental disability circumstances, and judges' considerations. This paper uses the analysis of political deviance in courtroom settings to get an understanding of the shift in the definition of mental disability in the immigration court by tracing economic, political, and social environments that are intertwined and relevant in creating a 'mental disabilitiy' definition. This study suggests that medical scholarship has historically become powerful in shaping mental disability as a form of social control. From historical and case analysis, there have been changes in policies and processes toward immigrants appear to take place in the aftermath of major events—World War II, AIDS epidemic, 9/11 terrorist attack, and now Covid-19 pandemic. Preliminary examination of documented cases suggests future analysis could look at how these major events shape immigration processes and policies that more heavily rely on definitions of mental illness and use competency to stand trial proceedings to indefinitely detain people.

المنارة للاستشارات

www.manaraa.com

DEDICATION

This thesis is dedicated to every person who has raised a prayer for me, delivered words of encouragement, and shared an act of solidarity during this academic journey.

المنارة للاستشارات
www.manaraa.com

ACKNOWLEDGEMENTS

I would like to express my sincere gratitude the following people for their contribution towards my thesis writing process. My thesis committee chair, Dr. Pat Lauderdale, and my committee members: Dr. Annamaria Oliverio Lauderdale and Dr. Elizabeth Swadener, who give their constant support, immense knowledge, meticulous review, and valuable suggestions. I would not have been able to continue writing my thesis if it were not for their guidance and mentorship. Vik Peer and Erin Steffen, who helped me proofread this thesis draft between their busy schedules. I am very grateful for their friendship, excellent advice, and warm encouragement. Lastly, Selena and Joe Keesecker from the Casa Mariposa Detention Visitation Program, who introduced me to the US immigration detention system. I am indebted to opportunities to meet new people across the world at the Eloy Detention Center and learn a lot from them.

المنارة للاستشارات
www.manaraa.com

TABLE OF CONTENTS

CHAPTER	Page
1. INTRODUCTION	1
2. LITERATURE OVERVIEW AND DISCUSSION	5
Deviance and Mental Disability	6
Medical Model of Mental Disability	8
The Intersection of Disability and Immigration	15
3. METHOD AND PROCEDURE	22
4. PRESENTATION AND ANALYSIS OF CASES	25
U.S. v. Flores-Rodriguez, 237 F.2d 405 (2d Cir. 1956)	26
Zadvydas v. Davis, 533 U.S. 678 (2001)	30
Lyttle v. United States, Case No.4:11-cv-152 (CDL)	34
Franco–Gonzales v. Holder., Case No. 10-cv-02211-DMG-DTB	37
Consequences of Current Immigration Policy Related to Mental Disability	42
5. CONCLUSIONS	49
REFERENCES	52

المنارة للاستشارات

www.manaraa.com

Chapter One

INTRODUCTION

Medical scholarship, for the most part, recognizes mental disabilities as abnormal pathology. Many institutions, including immigration courts, have used this definition to exclude specific groups. This exclusion occurs in the process of labeling individuals as "mentally ill." The concept of illness or pathology requires a deviation from accepted social norms. We define people as physically ill when their body-functioning deviates from certain physiological norms, and we define people as mentally ill when their actions or behaviors deviate from certain ethical, political, and social norms during different historical eras (Conrad & Schneider, 1992; Szasz, 1963). For instance, a criminal is considered deviant because he or she breaks the law; a homosexual might be a deviant when most people are defined as heterosexual; and a protester can be defined as deviant if most people are obedient.

Institutions such as courtrooms, use the expertise of psychiatrists to decide if someone should be defined as mentally disabled and to measure the severity of their condition. However, throughout history, mental disability as with other social definitions, is constructed. For instance, the witchcraft phenomenon in the 17th century, lunacy, idiocy, homosexuality, alcoholism, opioid dependency, and children's behavioral differences have all been considered as mental disabilities. These few examples are entangled and influenced by social, political, and economic issues rather than only medical. To this extent, mental disability and deviance go hand in hand. While some mental disabilities are considered deviance, others are not. Lauderdale (1981, 1986, 2011) suggests that "the political character of deviance is most clearly manifested when new categories of deviance are being created or old categories are being transformed." Immigration courts exploit the definition of mental disability to exclude immigrants. Thus, in the study of mental disability where there has been transformation of categories of mental disability, a political analysis of mental disability in the immigration court system is needed.

المنارة للاستشارات
www.manaraa.com

Psychiatrists play an important role in the growing migrant population in the United States (US), as immigration courts often rely on testimony in the assessment of non-citizens' claim of having mental disabilities (Patel & Sreshta, 2017). When an immigration judge is unable to determine mental competency based on incomplete evidence, she/he issues an order of independent examination and psychiatric report. Immigration courts acknowledge the difficulty of competency issues, just as in most other area of law. An immigration judge needs a guideline specifically for cases related with mental disability, although the regulation provides direction for handling cases in which competency is an issue. While immigration courts are civil in nature, they choose to adopt almost every principle in a criminal court proceeding to handle their cases without giving the same rights to defendants in criminal courts. Immigration courts imitate the competency principle in criminal law which strongly emphasizes intention (*mens rea).* However, *mens rea* is clearly an incomplete measurement for competency. Lauderdale's (2011) criticism of law and Merton's emphasis on the role of the intent suggests that intention is socially negotiated, including labeling someone as disabled or sick. The use of *mens rea* in immigration courts is controversial, especially since immigration court ostensibly follows civil procedures. Intent is insufficient without evidence of consequences and independent of the social and political context.

Besides adopting competency principles, immigration courts are also imitating criminal courts by putting non-citizens in detention. During this detention period, non-citizens regarded as mentally disabled become objects of observation and examination by immigration officers, social workers, independent examiners, and psychiatrists. In some places, these professionals help non-citizens to discuss the trauma they might suffer or some personal related issues. A recent study found that the psychological assessment in proceedings help non-citizens, as asylum seekers who have psychiatric evaluation and testimony, attain asylum status (Patel & Sreshta, 2017). However, this study does not analyze the side effect of the psychiatric role in keeping these individuals behind bars due to the exercise of disciplinary power. Disciplinary power, according to Foucault (1977), is a technique of hierarchical observation, normalizing judgment,

المنارة للاستشارات
www.manaraa.com

and examining human behavior by using science which aims to maintain power's order, which in this context is represented in the immigration courts.

Most studies related to mental disability and courts focus on bias within the court system that perpetuates negligence with respect to the dignity of those defined as having mental disabilities and uses outdated tests during the insanity defense (Perlin, 2013). Meanwhile, in immigration courts, richer perspectives are provided by professionals, scholars, and activists concerning the right to legal counsel (ACLU, 2010; Perlin, 2013), the importance of mental health service (Meffert, Musalo, McNiel, & Binder, 2010), the ethics of mental health service delivery in immigration detention (Coffey, 2006), and the important role of psychiatrists in the growing migrant population in the US (Patel & Sreshta, 2017). However, considerably less research exists on how medical knowledge exercises its power to estrange immigrants, for example; by defining immigrants as having mental disabilities through the immigration system and ignoring the many implications resulting from that definition, in particular their exclusion from society.

In the past, the Immigration Act of 1882 automatically prohibited entry of any "lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge" and in 1907 added "imbeciles" and "feeble-minded persons." Physicians at Ellis Island, for example, conducted initial screening for all immigrants at the port of entry, in which an "abnormal appearance" was chalked letter on the back: "L for lameness, K for hernia, G for goiter, X for mental illness" (Baynton, 2001:49). Currently, the US immigration system has some categories of removal, which consists of inadmissibility during entry, criminal offenses, failure to register, security and related ground, public charge, and unlawful voters. Medical physicians play a significant role in examining immigrants after receiving a request from an immigration officer concerning that any arriving immigrant may be medically inadmissible because of public charge. A doctor designated as a civil surgeon will perform the medical examination based on the request of an immigration officer. The "civil surgeon" analyzes if an immigrant has mental disorders based on the Diagnostic and Statistical Manual (DSM) or another source as determined by the CDC. The civil surgeon should explain a medical condition that "details the nature and the extent of the

المنارة للاستشارات
www.manaraa.com

medical condition or the abnormality, the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable" (USCIS Policy Manual, 2020). This explanation involves the likelihood that because of the condition, the individual will require treatment or institutionalization, or that it may interfere with the individual's ability to provide and care for him or herself. Based on this assessment, the immigration officer considers whether the immigrant's physical and mental condition makes him or her deportable because he or she is becoming a public charge at any time in the future (USCIS Public Charge Fact Sheet, 2020).

For cases where the Department of Homeland Security finds reasons to remove immigrants who have been living in the US, DHS issues file a Notice to Appear (NTA). NTA addresses the intention of DHS to remove a specific immigrant and specifies the location and time the immigrant is supposed to appear in court for a hearing. The purpose of the hearing is to present both immigrant and DHS standing for staying and removal. An immigration judge determines one or more of these decisions whether the immigrant: (1) detained until the case is over; (2) deported; and (3) allowed to remain in the US. If the case involves an immigrant with a mental disability, the judge determines the immigrant's competency by gathering relevant information, including requesting a medical examination from a mental health professional. The judge will decide the competency considering the examination by the psychiatrist. Thus, physicians play a significant role in defining mental disability in the immigration system in multiple stages, from the arrival of immigrants to the removal proceedings in immigration courts, which the immigration system uses to remove immigrants.

In light of the current research literature and theories of mental disabilities, this paper seeks to examine certain key immigration court cases by analyzing the following questions: How does the immigration court system in the US define mental disabilities? What factors determine mental disability categories? What expertise is needed to exercise, test, and observe immigrants with mental disabilities in the immigration court system? How did the medical model of disability become hegemonic in shaping mental disability definition in immigration court? If the medical

المنارة للاستشارات
www.manaraa.com

approach becomes more standardized, will its authority on labeling individuals as mentally ill be overused? And, what are the alternatives to understanding the variety of mental conditions of immigrants in immigration courts?

Chapter Two

LITERATURE OVERVIEW AND DISCUSSION

Mental disability is a broadly defined and continually changing social, legal, and political category that has encircled most human behaviors throughout history. Conceptions of mental disability have shifted depending upon the historical context in which it is addressed (Parry, 2013). Mental disability is typically understood as pathology, and the *International Classification of Impairments, Disabilities, and Handicaps* issued by the World Health Organization (WHO) classifies it as a disease, which is a major contributor to the global burden of disease (Chaudhury, Deka, & Chetia, 2006). However, psychiatry, which has a major responsibility in defining mental disability, is much more involved in problems of ethics than medicine, as psychiatry usually concerns itself with the problem of behavior, and not with diseases of the brain (Szasz, 1963). Meanwhile, difficulties in human relations can be given meaning within specific political, economic, and social contexts.

A piece of more comprehensive knowledge about mental disability is attributed to scholars who have dedicated their work to counter the psychiatrists' narrative by investigating the construction of the definition from multiple layers, including those who have experienced living with the label of mental disability. The stories of people who have been treated in inhumane ways because of being defined as mentally disabled become inseparable from history of oppression. People with a mental disability, who are deemed to be a threat, have faced overwhelming societal oppression in American history, along with enslaved Africans, Native Americans (Parry, 2013), Lesbian, Gay, Bisexual, and Transgendered People (Harper & Schneider, 2003). For instance, in 1850, Samuel Cartwright, a medical professional from New Orleans, introduced the term "drapetomania." he believed that the desire for freedom in enslaved Africans in the Southern

المنارة للاستشارات
www.manaraa.com

region of the US was a mental illness because “black” people were born to be enslaved (Myers, 2014). Another example from the *American Journal of Psychiatry* in 1942, reflects the predominant view of psychiatrists of the era suggesting “that kids reaching the age of 5 who showed that they were ‘feebleminded’ should be euthanized so that they could be spared ‘the agony of living’” (Parry, 2013, p.15). Both examples suggest how psychiatrists’ narratives have contributed to the oppression of unfavored groups in society. For centuries, Western society has used narratives based on the medical model to justify the exclusion and oppression towards certain groups.

Foucault (1971) examines the shift of how Western society viewed mental disability or madness during the 18th century. His work has provided a theory of the development of institutions that impose state-like power such as confinement, outside the authority of the state. The confinement of the mad appeared to have more to do with economic, moral, and socio-political aspects occurring during the period than only as a form of punishment. This confinement was maintained by scientific scholarship, particularly medical scholarship, to develop its ability to produce knowledge by keeping the “mad” in confinement. He suggests that we will never de-institutionalize confinement without addressing issues of control and power in society which establish the definition of abnormality. In his examination on power, Foucault (1971) suggests that in modern society, social control has shifted from brutal confrontations among individuals into a more invisible system designed to transform individuals to conform to norms. Thus, a political analysis of mental disability that focuses on how various political entities construct and deconstruct the definition in society is essential.

Deviance and mental disability

Any action or behavior considered deviant in society is a product of the political process of decision-making. Political processes direct the establishment of rules that impose negative sanctions on some people’s behavior, and honor others (Henry, 2009). Henry (2009) examines how deviance is constructed by molding others’ different behavior or appearance and judging it

المنارة للاستشارات
www.manaraa.com

negatively. He emphasizes the major role of the political process in the social construction of stereotypes and the creation of moral identity. Examining political deviance reveals patterns to determine the intent of the actors and the consequences of their behavior. Thus, we can see how intent and consequences are socially negotiated and contested within the courtroom and beyond, throughout society (Lauderdale, 2010).

Lauderdale (2011) suggests that in the study of deviance, psychological scholarship has preoccupied generations of researchers. He examines the shift to view deviance from a conventionally apolitical approach to a more political one. By investigating various degrees of abstraction within data collected from narratives, natural history, theory, professionalization—and level of analysis of some notable cases and movements, he examines the study of political processes in the construction of deviance. It is crucial to recognize the political character of deviance in order to understand the definitional shifts that are a frequent feature of deviance. For instance, a narrative account of the gay movement for the removal of the medical label attached to homosexuality by the American Psychiatric Association (APA) relates to other notable events. A meeting of a gay activists in 1973 who were leading a new social movement eventually presented their political position to five psychiatrists, which resulted in voting of 21,000 APA members to eliminate homosexuality from the second edition of Diagnostic and Statistical Manual (DSM) as a sexual orientation illness (Drescher, 2015). . Ron Gold became a political deviant as he told the committee, “Stop it, you’re making me sick!”, in a 1973 speech as part of the successful campaign to get the American Psychiatric Association (APA) to remove homosexuality from their Index of Mental Disorders. This vote marked a major civil rights achievement as it removed one of the paramount bases of discrimination against homosexuals labeled as psychopaths. This success was related to the implementation of the vigorous participation that was the key civil rights movement (Lee, 1977), as the numbers of gay rights organizations had multiplied in a decade and homosexual groups were present at more than 200 colleges in mid-seventies (Grace and Hechinger, 1978). This example delineates a shift in the definition of

المنارة للاستشارات
www.manaraa.com

homosexuality as deviance by narrating a sequence of notable events with a specific purpose that generate the change in definition (Lauderdale, 2011

Conrad and Schneider (1991) investigate the shift of viewing deviance from morality as badness, to medicalization, as sickness. Their analyses are framed by an analysis of deviance, medicalization, and social control. They acknowledge the positive side of the shift that includes a more humanitarian response, the lessening of personal responsibility for the condition, the possibility of hope in the therapeutic process, and positive impacts of medicine. However, they also note the negative side to the medicalization of deviance: the domination of issues and definitions by experts, and individual conflict was translated into a collective, structural, and political cause. The flaw of the medical model in viewing disabilities as problems inherent in individuals that need to be fixed only by medical authorities, has maintained the system of oppression. It is important to examine the experiences of those who have been defined as ex-patients or “mad” (Menzies, 2013), within the context of economic, social, and political aspects from which the mental disability is constructed. “Mad” has become one of the new or reconstructed images.

Research on *madness* offers a critical analysis of the oppression, struggle, resistance, and perspective of those who have been defined as mad, to counter the dominant narrative of mental disabilities by the medical model (Castrodale, 2015). As a growing interdisciplinary approach, Mad studies discusses the role of social actors and activists, who engage with the intersection of gender, race, class, sexuality, and disability among those who have experienced or have been defined as having madness (LeFrancois, Beresford, & Russo, 2016). Thus, Mad studies and the study of deviance engage in the reconstruction of the dominant, medical model inspired, mental disability narrative.

Medical model of mental disability

Foucault (1971) lays out the domination of doctors and other experts in writing the history of *madness*, especially in the Western community, from the late 1500s through the 1700s. He

المنارة للاستشارات
www.manaraa.com

begins with the vanishing of leprosy and the emergence of madness as a replacement at the end of the Middle Ages. At that time, leprosy was seen by churches as a test and a punishment from God. A thousand lazar houses built in France, England, and Germany started to empty in the 14th century. Leprosy came to an end, but all these structures remained. In these similar buildings, exclusion reoccurred. If in the past, the leper inhabited them, three centuries after, criminals, poor vagabonds, and unbalanced mind individuals replaced the leper with new meaning and culture: confinement. The so-called madman has a similar role that the leper did in the medieval era. If in the past, situating the leper outside let everyone inside to define themselves as healthy; in the present, placing the so-called madman outside let everyone to define themselves as sane. To this extent, Foucault directs us to understand how society designs what is normal by providing visibility and restraint to those who are labeled abnormal.

Foucault highlights that this estrangement is continuously narrated in the Western literature in 15th century fables and tales. This contradiction is the beginning of a modern conception of madness. He looks to the Renaissance which reproduces different kinds of madness, for example, from Shakespeare's work that portrays how people can become mad because of romantic admiration or desperation. Instead of a major narrative that madness is supernatural, it comes from a human situation. However, it is not the history of madness that Foucault is interested in. Rather, he examines the meanings covering madness and how the shift in those meanings are intertwined with the shift in social and political structures.

The establishment of *Hospital General* in 1656, Foucault said, did not have any function or purpose for the medical concept. This building represented a semi-judicial structure, an administrative entity which constituted power outside the courts. The hospital was an answer to the economic crisis in a society that was entering into a capitalist system, which functioned to contain the unemployed, idle, and criminals. This confinement formed a classical understanding of madness as abnormal because to be normal was to be employable. The mad were confined along with the poor because they were unemployable. Nevertheless, the so-called mad faced a different type of confinement: they were placed in cells with barred windows. The people outside

المنارة للاستشارات

www.manaraa.com

the hospital enjoyed seeing the mad—it was a spectacle. Madness was disclosed rather than hidden.

If those who were confined in a hospital started to scream and sound like animals in their cages, according to Foucault, that was exactly the intention of the confinement. People saw them not as men, but as wild animals to be tamed. Instead of being immoral, Foucault says that the mad were inhuman. At the end of the classical age, there was a shift from the view of seeing the mad as animals or subhuman to deficient people that needed to be cured rather than tamed. People increased their attention to different types of madness and an effort to categorize them. The experts from this separated asylum benefited to learn the psychological issues of madness. With the new form of confinement, the psychiatry discipline began to build its power as a system that constructs and treats human despair by categorizing them based on observed and created diagnoses by medical apparatus. This transformation also replaced the role of judicial authority with medical power. For Foucault, the power to construct reality is connected to the structure of power in a society. Thus, science is responsible for the shift in society to view madness at different historical periods, and the discourses of the product of science around the concept of madness. As science has progressively developed, treated, and medicalized those diagnosed with madness, the more science dehumanizes the so-called “mad” person to an object of study rather than a human subject.

In the US, a few years after Georgia lawmakers approved Governor Wilson Lumpkin’s proposal to provide suitable asylums for most distressed and unfortunate human beings by authorizing a “Lunatic, Idiot, and Epileptic Asylum” in 1837, Georgia Lunatic Asylum, known as Milledgeville, was established. The Milledgeville hospital carried out vast forms of exclusion for people with mental disabilities. When in 1932, Georgia enacted a eugenics law[1], it became a

---

[1] It was the aftermath of the infamous 1927 Supreme Court Buck v. Bell case where Justice Oliver Wendell Holmes Jr declared, “We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world if, instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind… Three generations of imbeciles are enough.”

المنارة للاستشارات
www.manaraa.com

center of the forced sterilization of female patients “who were deemed morally unfit,” (Segrest, 2020) promoted by politicians, physicians, and journalists as scientific and humanitarian. A newspaper photo from the 1940s shows men in suits staring at a 5-year-old boy who is locked in a small metal cage, precisely what Foucault describes during the eighteenth century in Western society (Judd, 2013). By the 1950s, the hospital outgrew its resources, as doctors wielded the psychiatric tolls—lobotomies, insulin shock, electroshock—along with inhumane treatments, as children were confined to small metal cages, adults were forced to take cold showers, were covered with straitjackets, and were forced to use douches (Monroe, 2015). As segregation between blacks and whites in Southern asylums was common, the Milledgeville hospital also practiced different quality of treatment as a resource notes, “a separate, segregated building is added to the campus of the Central State Lunatic Asylum in Milledgeville, Georgia to house black patients.”[2] There is very little literature on the health services provided to and received by black patients in Milledgeville. The very few detailed case histories were provided for black patients from physicians, which in most occurrences the records do not exist. This might reflect the lack of curiosity from the medical apparatus as well as the poverty and low levels of literacy of families who sent the patients (Hughes, 1992).

In 1896, a convention housed by Atlanta University addressed a high mortality rate among black patients in Atlanta. J. W. Gibson and W. H Crogman (1902), in their article "Progress of a Race or the Remarkable Advancement of the American Negro" pointed out an issue,

> “there is not a decent hospital where colored people can be cared for, at the Grady Hospital, which takes about $20,000 of the city’s money annually to run it, is a small wooden annex down by the kitchen, in which may be crowded fifty or sixty beds, and that is all the hospital advantages 40,000 colored citizens have. But, on the other hand, our white friends, with a population of about 70,000, have all the wards and private rooms in the entire brick building at this hospital, together with a very fine hospital here, known as St. Joseph’s Infirmary.” (p. 314) (Rabinowitz, 1974)

[2] Information is retrieved from https://www.museumofdisability.org/disability-and-the-african-american-experience/ on February 19, 2020

المنارة للاستشارات
www.manaraa.com

The violence of the ideology of cure raised by Eli Clare (2017) accounts for important parts of the material differences shaped by asylum institutions in segregating black from white; which also explains how even though institutions were heinous and terrible, white people received ostensibly "better" treatment than black people. Thus, there was a convergence of racism and ableism, within treatments provided by the medical apparatus, underpinning the oppression towards people of color in the US.

In a different form of exclusion, Conrad and Schneider (1992) confirm Foucault's work as a way of seeing the history of medicine as a set of cultural practices and technologies that appeared as part of modern society. *Madness and Civilization* is a mosaic of how madness as a category of abnormal, undesirable, weird, and dangerous behavior, entered to be defined as 'mental illness.' Their major argument that focuses on a process of medical expansion deserved critical attention. Medical power masked as wisdom and knowledge in the name of health gets less resistance and skepticism, and thus is likely to work more effectively (Foucault 1977, 1978).

Conrad and Schneider (1992) analyze how the medical model of disability has been used to form social constructions of deviance in the US. They argue some behaviors that were once defined as immoral, sinful, or criminal have been given medical meaning. By analyzing a series of cases: mental illness, alcoholism, opioid dependency, behavioral issues among children, homosexuality, and crime, Conrad and Schneider capture the movement *from badness to sickness* as the title of their work suggests. Their explanation effectively addresses multiple components that consist of an overview of social problems and of deviance and the concept of sociology of medicine. Their approach allows us to see the creation of deviance as collective and political movements rather than the result of the natural evolution of society or the development of medicine.

Their brief explanation of hyperkinesis, for example, examines what people labeled as having "troublesome" behavior that needs treatment by giving a drug that can reduce that behavior. Hyperkinesis is commonly known as attention deficit hyperactivity disorder (ADHD) and was firstly diagnosed in the late 1950s (p. 141). Along with that diagnosis, the availability of a

المنارة للاستشارات
www.manaraa.com

stimulant drug, Ritalin, which seemed to have an effect of calming troublesome children, was believed as a key in the success of medical diagnosis. The hyperkinesis diagnosis appeared in the Diagnostic and Statistical Manual of Mental Disorder or DSM-II (1968) with an explanation of "usually diminishes in adolescence". By the end of the 1970s, it was common to see hyperkinesis or hyperactivity being diagnosed for children in the US, and Ritalin was the most commonly prescribed medication for them (Conrad & Slodden, 2013, p. 64). A clinical psychologist, Bruce E. Levine (2011), highlights his experience that there are many children whose only problem is not doing homework, but are prescribed with amphetamine-like substances.

Schneider (2015) points to the work of Christoper Lane (2007) in *Shyness: How Normal Behavior Became a Sickness,* which investigates "the consolidation of a group of elite psychiatrists and drug development and marketing in forming a new illness label of social anxiety" (pp. 144-145). These professionals created new normality on how to engage with others. The labels of social phobia and avoidant personality disorder (SAD) emerged in DSM-III, which was later distinguished from general anxiety detailed in DSM-IV. It appears that the strategy of constructing a new illness is the success of drug selling. Conrad and Slodden (2013) argue that the initial plan was to convince physicians and the public that SAD is an illness instead of just a personality trait. Thus, the pharmaceutical industries (which consists of multi-billion international pharmaceutical corporations, lobbyists, proprietary hospitals, and screening laboratories, along with psychiatrists pharmaceutical companies along with psychiatrists) who are in power to legitimize science surrounding abnormalities—have played major role in shaping what is defined as mental illness and what treatment might be provided.

As it is important to see the status of those who are giving a definition of mental disability, Conrad and Bandini's (2015) note on Hollingshead and Redlich's (1958) work, *Social Class and Mental Illness,* provides insight into how society views mental disability prior to 1960. By focusing on diagnosis and treatment upon people with disabilities, this study divided participants into five different social class categories. The study found that patients in the higher social class were more likely to get diagnosed with milder mental disorders and were treated with psychotherapy in

المنارة للاستشارات
www.manaraa.com

private settings. Meanwhile, patients from the lower social class were more likely admitted to asylums and treated with physical constraints. Conrad and Bandini argue that social class has a robust influence on the diagnosis and treatment of mental disability. A recently published study on the intersection between social class and mental illness in Northern Europe during the 20th century (Pietkainen & Kragh, 2019) suggests that social class has been a major factor that has affected mental health in many ways. Both studies highlight constructions of mental disability across the world that are strongly related to social class, are also intertwined with race. Conrad and Bandini (2005) argue that it is more difficult to confirm whether patients from the lower socio-economic background are diagnosed with more severe mental disorders considering the complexity of gender, race, culture and ethnicity covering the issue (p. 448).

More recently, the conversation about behaviors considered as mental disability is strongly tied with the DSM defined in major part by psychiatrists (Conrad & Bandini, Mental Illness as a Form of Deviance, 2015). The first DSM was published with a belief that "mental disorders represented reactions of the personality to psychological, social, and biological factors" (American Psychiatric Association, 2020). However, the creation of DSM as the manual was the result of World War II, as the settings of psychiatrists shifted from public asylums to private practice to treat patients with less severe disorders (Kirk & Kutchins, 1992). In order to provide a standardization of these *less harmful* disorders, a list of criteria was set by the United States Army. The list was followed by the World Health Organization (WHO) which developed the International Classification of Diseases (ICD) that placed mental disorders in a different category of diseases. From its development, we see its important role to define 'deviant' behaviors and to provide a standard to treat them. Nevertheless, this scientific/medical/psychiatric diagnosis has power over other domains such as in legal, educational, and employment fields, which Conrad and Bandini (2015) assert as jumping into vast area of social life to judge what is labelled as deviant in society, including in determining the mental state of those facing legal issues in court system.

المنارة للاستشارات
www.manaraa.com

We understand that labels attached to certain groups hinder the deliveries of rights and perpetuate discrimination based on the label. These labels also situate these groups in ways that make them vulnerable to marginalization and abuse. For instance, people with intellectual disabilities are impeded to exercise civil rights based on criteria of rationality, independence, economic productivity, and morality, as Justice Oliver Wendel Holmes JR declared in *Buck v. Bell* (1927). Carey (2019) explores these four reasons that lead us to question the use of ability as a precursor for the conference of rights. People with intellectual disabilities were described and commonly understood as too incompetent or too irrational to exercise rights, which means they are unable to determine decisions in life. They were viewed as non-laboring dependents who were a burden to their families, to society, and to the state. They also failed to meet society's competence to achieve economic productivity. (Carey, 2019)

Understanding the creation of mental disability throughout time demonstrates that diagnostic categories used in the classification of "mental disability" have never been engaged in the narrative to determine their life. A major issue in the creation of mental disability, according to Foucault, is that when producing science in understanding madness, the mad were placed only as an object of observation. The production of science results in a condition where people a rely on the physicians to make choices for them. The process of creating the category of mental disability is exercised upon immigrants which also needs an explication of its defined term.

The intersection of disability and immigration

In US history, a key triumph of the eugenics movement about the immigration system was the new creation of disability categories at Ellis Island (Dolmage, 2018). Dolmage's research on Ellis Island examines the waystation for millions of people entering the US:

> "not just power structures and travels through proliferating discourses of ability, ethnicity, racialization, and citizenship but also to how this charging and circulation imbricate, and is proscribed by, the space of Ellis Island. That is, we will study how power travels through Ellis Island, but also how Ellis Island, as space and an idea, structures and shapes power." (Dolmage, 2018, p. 9).

المنارة للاستشارات
www.manaraa.com

Dolmage (2018) suggests viewing the construction of disability as being both material and rhetorical by focusing more closely on the power dynamics of the construction process.[3] The social model of disability suggests that the disability is caused by the way society is organized, rather than individuals' traits. He follows Asch (2004) who argues although disability is socially defined, the definition does not mean "the characteristics are not real or do not have *describable* effects on physiological or cognitive functions that persist in many environments" (p. 9-44). Bodies and spaces are unarguably material, yet also rhetorical. Her major idea is to emphasize the fictive and oppressive cultural meaning of disability without devaluing the lived experience of disability. Meanwhile, the postmodern perspective of disability opposes the social model by arguing that the rigid separation of impairment and disability is an illusion. Kafer (2013) previously offers "a hybrid of political/relational model of disability" (p.4) to critically understand power structures in processes of defining disability. By proposing this analysis, she neither objects to nor supports medical intervention; instead, she recognizes that medical apparatuses, diagnoses, and treatments are permeated with biases about normalcy and deviance (p.6). What happened at Ellis Island, therefore, appears to have impacted definitions of immigrants' value based on the imposition of disability and deviance definitions.

By the end of the 1800s at Ellis Island, officers and doctors screened incoming immigrants using a few categories of physical and perceived mental impairment that would mark them out for further inspection and rejection. A term introduced in 1891 to markdown immigrants was "LPC" or "likely to become a public charge." In inspecting LPCs, officers were authorized to use their discretion to determine if an immigrant could work to make a living. There was a demand to expand the LPC label by excluding those who were considered as genetically threatening, signifying support for eugenics. In 1893, three Harvard College graduates organized

[3] His definition of rhetoric is the "circulation and function of power in language." He wants to draw attention to the fictive and oppressive meanings of disability without devaluing the lived stories and experiences of disability (p. 13)

للاستشارات المنارة
www.manaraa.com

The Immigration Restriction League (IRL) which redesigned immigrants as inheriting undesirable genes, in addition to being threats and strains on resources. Dolmage (2018, p. 23) quotes an article “Immigration Restriction and World Eugenics” by IRL co-founder Prescott F. Hall who wrote, “immigration restriction is a species of segregation on a large scale, by which inferior stocks can be prevented from both diluting and supplanting good stocks…the superior races, more self-limiting than the others, with the benefits of more space and nourishment, will tend to still higher levels” (126). Another IRL co-founder, Robert DeCourcy Ward also highlights that a policy for national eugenics, for all nations, means the impediment of the procreation of the unfit alien (24). The rhetoric argued by IRL and other eugenics supporters indicates the designation of deviance by creating investigation methods to identify undesirable features. The terms “moron” and “feebleminded” were created at Ellis Island to classify immigrants, followed by a regime of literacy and IQ testing, emphasizing medical scholarship as a justification for rejecting some groups of people. To perform medical examinations at Ellis Island, medical officers used the *Manual of the Mental Examination of Aliens* issued by the US Public Health Service in 1918.

Arrival to Ellis Island, ushered an entire process that involved disabling immigrants. During transit on ships and at borders, bodies were physically and rhetorically disabled by the immigration process. Undesired “races”, including Black bodies, were transported in ships with poor conditions. Before these ships landed at Ellis Island, entire ocean liners with diverse immigrants were disinfected with chemical agents which were dangerous to human beings. Zolberg (2006) asserts that US immigration policy has always had dual logic: “boldly inclusive” and “brutally exclusive” (432), as immigration is a matter of perceptive public and political concern (23). At Ellis Island, officers and physicians incorporated medical and criminal judgment to identify immigrants for detention and rejection. The categories of physical and mental impairment were created and used to maintain racism, by claiming certain groups as disabled therefore of inferior value. The odds of exclusion were determined by definitions of disability and race constructed at this historical moment and context.

المنارة للاستشارات
www.manaraa.com

As the number of persons held within the US immigration system has increased, the number of detained persons with severe mental illness has grown equivalently (Ochoa, Pleasants, Penn, & Stone, 2010). The categorization of migrant identities perpetuates exclusion towards certain groups and highlights the need to analyze the phenomenon from a political analysis of deviance The lack of access to civil, social, and political rights, and undetermined risk of deportation place immigrants in a "grey area of vulnerability," placing them in the most perilous sectors of the economy or driving them into the recesses of the illegal economy (DeGiorgio, 2010). This argument is maintained by research that suggests that the amputation of access to social services and the labor market generated a spike in criminal conduct (Dolmage, 2018).

Migrant identities have been defined based on economic and political interest. During the immigration-definition process, certain categories of identities are created to exclude certain groups of people. Lauderdale (2011) argues that the designation of the San Francisco Ordinance of 1875 contributed to the creation of opioid users as deviant, and the law was directed against Chinese immigrants. In 1867, a second-major wave of Chinese immigrants arrived in California, mostly for railroad construction. The rapid growth, worker shortages, and high wages resulted in the depression in 1873. Chinese workers became the target of exclusion. Recreational opium smoking that initially did not attract public concern was then prohibited. Previously, labor contractors offered an allowance of one-half pound of opium each month to attract Chinese workers. When their labor was no longer needed, they were defined as deviants and stigmatized for opium smoking. Many Chinese workers were subject to search, detention, and imprisonment; however, it did not satisfy the supporters of the law. In 1881, a meeting of the Federation of Organized Trade and Labor Union introduced an anti-Chinese resolution highlighting "for the use of our best efforts to get rid of this monstrous immigration" as a result of competition between Chinese cigar makers and white members (Taft, 1968). This meeting was followed by lobbying efforts of the enactment of the Chinese Exclusion Act in 1889 by the Congress, restricting any further Chinese immigration into the US and successfully reducing the competition. Taft (1968) highlights the condemnation of the federation in a convention towards the Chinese immigrants

المنارة للاستشارات
www.manaraa.com

"with having been 'detrimental to the general welfare of our country' and the competition against the Japanese immigrant, who was 'a willing worker for wages less than a Chinese worker…and being more favored is a greater menace to our laboring population than Chinese'. The convention declared to "demand the enactment of legislation restricting immigration of that race to the United States." (p. 167-168). According to immigration historians, Chinese Exclusion Act represented a selective phase which was followed by a restrictive phase that remove undesirable individuals, including those with "defects" (Baynton, 2017). The status of deviance of Chinese and Japanese immigrants during this time not only served to exclude certain races on the basis of economic competition fueled by nativist ideology, but also to estrange certain disabilities such as intellectual disability on the basis of labor need.

Weber (2004) examines the disability-related immigration exclusion and links their connection to eugenics ideology during the Industrial era. At the time when the US borders were open to all immigrants, the federal government did not have a strict ruling on the immigration issues; instead states exercised scattered inspection and control. In the late nineteenth century, when industrial expansion needed laborers, the federal government declared its power over immigration by enacting a system of exclusion and inspection that failed immigrants based on disability. Two reasons for rejection were: a fear of disability as a nature and an option to exclude certain groups based on labor policy. Disabled immigrants were viewed as unable to contribute to the industrial development and likely to become dependent on the state. Later at the beginning of the twentieth century, the government issued a law which explicitly excluded "pauper[s]" as well as any "lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge" (Immigration Act, ch. 376, 22 Stat. 214 (1882). In the 21st century, under the Trump administration, the "public charge" rule is still employed and prohibits immigrants from receiving a green card if the government believes they are likely to rely on public assistance. Thus, immigration, disability, and race are influenced by economic and political conditions in US history.

المنارة للاستشارات
www.manaraa.com

The US, through its legal system, including judges, lawyers, psychiatrists, and psychologists, is believed to maintain discrimination against persons with mental disabilities who are deemed as a threat to the community (Parry, 2013). Assumption of dangerousness is part of a long history of unfair treatment against persons with a mental disability, especially when it appears to deal with criminal cases. Until the early 1980s, most defendants with mental disabilities were excused from all criminal charges, hospitalized for treatment, or partially excused, and imprisoned for a reduced period while also receiving treatment. Perlin (2013) believes that the criminal justice system is biased against mentally- disabled defendants as it fails to respect their dignity. He attributes four factors—sanism, paratextuality, heuristic, and "ordinary common sense" (OCS)— to understanding the relationship between mental disability and criminal law, which is characterized by invisible prejudice.

Parry (2013) argues that only a few defendants with mental disabilities are found "not guilty by reason of insanity" (NGRI). Instead, those who are psychotic, seen as cognitively impaired or mentally ill are sent to prison without dispensations of *culpability,* or found "guilty but mentally ill." Regrettably, there is a trend in the last few decades to employ criminal sanctions in immigration policy, in order to tighten conditions of entry and to expand capacities for detention and deportation within the European Union (Parkin, 2013) and the United States (Ochoa, Pleasants, Penn, & Stone, 2010). Pallida's (2011) examination[4] on the racial criminalization of migrants and denomination groups across Europe and the US finds that the escalation of criminalization trends in a specific national context is not related to increases in crime rates among immigrants. Instead, he highlights that during periods of economic difficulty, xenophobia and nativism emerge as opposition to outside influences. Thus, the ferocious criminalization discourses tend to proliferate. This suggestion is hand in hand with Melossi's (2003), Bigo's

[4] "This study is a part of the EU-funded CRIMPREV project. The CRIMPREV (Assessing Deviance, Crime and Prevention in Europe) Project was a European Commission funded research project financed under the EU's 6th Framework Programme. The project aimed to produce a European comparative assessment of: factors of deviant behaviours; processes of criminalisation; perceptions of crime; links between illegal or socially deviant behaviour and organised crime; and public policies of prevention (see www.crimprev.eu)" (Parkin, 2013)

المنارة للاستشارات
www.manaraa.com

(2004), and De Giorgi's (2010) suggestions that criminalization is highly driven by economic, political, and social crisis. Furthermore, Parkin (2013) notes that discourses surrounding criminalization are shaped by media and political institutions. Parkin (2013) gives an example of the term "illegal migrant", which not only misleads, but also imposes a criminal status of individuals whose 'crime' is the lack of providing required documentation (Guild, 2004).

The Department of Homeland Security assumes that mass detention is the key to immigration enforcement (Rabinovitz, 2011). This administrative detention, which does not substitute punishment and does not require conviction of a crime (Leekers and Broeders, 2010), raises a question on the vagueness of the boundary between detention as an administrative or punishment measurement (Parkin, 2013). Immigrants are often confined in facilities designed for criminal offenders because immigration detention facilities are established by the private companies managing prisons. For those who are diagnosed with mental disabilities, the indefinite detention period becomes a major issue that emerges from the immigration proceedings. The need for lawyers, mental health counselors and social workers in working with immigrants defined with mental disabilities appears very reasonable to uphold a semblance of fairness. However, the issue of the indefinite periods of detention imposed on immigrants—in the form of surveillance, treatment protocols, and rehabilitation—is typically overlooked.

المنارة للاستشارات
www.manaraa.com

Chapter Three

METHOD AND PROCEDURE

This paper creates a method for a preliminary analysis of immigration court cases in order to determine the patterns that emerge when immigration intersects with mental disability. It encompasses three distinct components to present the preliminary analysis from these cases. First, the data consist of four immigration court cases in 1951-1985, 1986-2005, 2006-2015. These periods are selected considering major changes in immigration policy due to political, economic, and social context. Between 1951-1985, the policy was influenced by the aftermath of World War II and the 1951 Refugee Convention—even if President Truman refused to sign the US government on to the convention. The Immigration and Nationality Act of 1965 abolished the quota system but still maintained the numerical restriction principle with favor to include more occupational skilled immigrants, among others. Meanwhile, between 1986-2005, there was pressure to reduce the flow of immigrants coming from Haiti and Cuba, who were viewed as menacing (Hernandez, 2018). The Anti-Drug Abuse Act 1986 was inserted to the Immigration and Nationality Act as a statutory reference to detain individuals suspected of violating immigration law which was followed by the convergence between criminal law and immigration law or "crimmigration" (Stumpf, 2006 & Hernandez, 2014). The excessive use of detention with the lack of rights recognition upon immigrants began during this period. Crimmigration was carried on until 2006-2015 with a call to acknowledge immigrants' rights due process of law, including legal representation for immigrants viewed having lack of competency. Some issues of immigration control and capitalism have also emerged from this period. These court cases are selected because of their involvement in the negotiation of the definition of mental disability as it applied during the legal process. The court documents are collected from ACLU website, AILA website, and CASE Text website which provide online access to these documents. As immigration judges' decisions are not accessible for public, this paper portrays how mental disability is defined in selected cases from higher court decisions that are accessible online.

المنارة للاستشارات
www.manaraa.com

Second, in order to augment understanding of how the US immigration system works for cases related with mental disability, this method leads to gathering and examining a broad range of documents from books, journal articles, and periodical reports that are available in printed and online versions, including policies issued by the U.S. Citizenship and Immigration Services (USCIS) and Immigration and Customs Enforcement (ICE) that are part of the Department of Homeland Security (DHS). The collected information complements initial findings from selected court documents and give a deeper understanding of the proceedings behind the court decision.

Third, relevant cases are analyzed focusing on three important factors: a summary of each case, the status of mental disability, and courts' considerations. Because related documents do not involve the first stage of immigration court decisions, the analysis uses decisions from higher courts and media coverage. Thus, the analysis of legal cases, while not exhaustive, is guided by insight from legal scholars who previously commented on the cases. However, since this preliminary study does not focus only on legal perspective, a political analysis of deviance definitions is conducted to explain the process whereby medical knowledge exercises its power to estrange immigrants using the mental disability label through the immigration court system. To examine how political processes, result in the creation of mental disability, this examination overviews the multiple degrees of abstraction and analysis to see the power dimension of mental disability, as it works in the deviance theory (Lauderdale, 2011).

By looking at political processes, this preliminary examination emphasizes interpretations of each created definition that highlights the alteration according to the purpose of the definer. In order to understand the shift, this collects how the definition of mental disability has been viewed throughout history from literature resources such as books, journal articles, periodical reports, case proceedings, and documents from websites. Keywords such as mental disability, mental illness, and mental retardation are important signifiers in the analysis of the court proceedings. Analysis of political deviance in courtroom settings suggests that an analysis of cases debated in courts is significant in understanding a shift in the definition of political deviance (Parker & Lauderdale, 1980). The shift of the definition is examined through an analysis of the historical

المنارة للاستشارات

www.manaraa.com

aspects, tracing economic, political, and social environments that are intertwined and relevant in creating a ‘mental disabilities’ definition. This flow is striking similar to Lauderdale’s study on political deviance in the courtroom settings (2011) suggesting: (i) the status of those providing the definition, (ii) what is the historical period the debates arose, and (iii) what are conflicting values between the definer and the defined.

المنارة للاستشارات
www.manaraa.com

Chapter Four

PRESENTATION AND ANALYSIS OF CASES

A political analysis of mental disability here examines the construction of mental disability, particularly in the context of US immigration courts. The study of deviance is used to expose how the medical model of disability maintains its power by claiming to the most accurate interpretation of mental and emotional states. The study of deviance is used to interrogate the construction of behavior or phenomenon of normalcy. Since power is used to introduce the definition of deviance, the study of defining a behavioral action as deviant from a political perspective should be considered (Beck & Miner, 2013; Ben-Yehuda, 1985; Henry, 2009; Lauderdale, 1976). And, to understand social definitions from a political perspective, we should examine an alternative approach by which behavior is defined as opposed to normal (Lauderdale, 2011), as "abnormal," and the process through this *pathologizing* occurs.

Lauderdale (2011) investigates how categories are created in the designation of deviance, and what determines the settings in each category. He suggests that the construction of categories and the placement within these categories reflect two processes of social definition: degree of abstraction and levels of analysis, which are the result of political variables. At the degree of abstraction, we must consider (i) the status of those providing the definition, (ii) what is the historical context in which the debates arose, and (iii) what are the conflicting values between the definer and the defined. At the level of analysis, multi-dimensional discourses surrounding the social definition, including personality and organization, should be analyzed and examined.

Analysis of some notable cases and movements is important in the study of political processes in the construction of mental disability. Four cases, *U.S. v. Flores-Rodriguez, 237 F.2d 405 (2d Cir. 1956), Zadvydas v. Davis, 533 U.S. 678 (2001)*, *Lyttle v. U.S., Case No.4:11-cv-152 (CDL, 2012)* and *Franco–Gonzales v. Holder., Case No. 10-cv-02211-DMG-DTB (C.D. Cal, 2013*), are relevant to discuss how mental disability is a significant factor to exclude immigrants through removal proceedings, although mental disability as a specific term is rarely mentioned by

المنارة للاستشارات
www.manaraa.com

judges in their official language within immigration proceedings. *U.S. v. Flores-Rodriguez* uses terms “moral imbecile”, “mentally below par”, “mental abnormality”, “mentally defective”, “constitutional psychopathic inferiority”, and “mentally defective” in the decision. Manwhile, *Zadvydas v. Davis* only uses the term “mental illness” during the proceedings. In *Lyttle v. U.S,* the court mentions the terms “a diminished mental capacity”, “mental disabilities”, “mental disorders”, and “mental illness”, to describe Lyttle’s bipolar and cognitive disabilities. Meanwhile, in *Franco-Gonzales v. Holder,* the immigration court identifies a term “serious mental illness” criteria that was based on one or more diagnoses of psychosis or psychotic disorder, bipolar disorder, schizophrenia or schizoaffective disorder, major depressive disorder with psychotic features, dementia or a neurocognitive disorder, intellectual development disorder. How each term is used and discussed during their proceedings can be viewed below:

U.S. v. Flores-Rodriguez, 237 F.2d 405 (2d Cir. 1956)

Flores-Rodriguez is a citizen of Cuba who was admitted to the US as a 29-day visitor. He went back and forth between Cuba and the US between June and September 1950, using his 29-day visa. He stayed 22 days longer than permitted and was arrested by the New York City Police Department on September 17, 1950 for loitering at a men’s toilet at Duffy Square with the aim of inducing others to commit obscene and indecent acts by moving from one urinal to another. He exposed himself and moved his head in the direction of other people in the toilet. He was arrested for disorderly conduct violation of Section 722(8), New York Penal Law, McK. Consol. Laws, c. 40, which provides:

> "§ 722. Disorderly conduct: "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct * * *
>
> "8. Frequents or loiters about any public place soliciting men for the purpose of committing a crime against nature or other lewdness".

City Magistrate’s Court of New York City found him guilty and sentenced him to 30 days in prison; then, he was returned to Cuba. On November 7, 1952, he applied for permanent

المنارة للاستشارات
www.manaraa.com

admission to the US by stating that he had never been arrested or convicted of any offense. He was admitted to the US as a permanent resident. Two years later, he was arrested because of the violation of Section 722(8), New York Penal Law, but there was no description of what he did in the latter case. He claimed that the US failed to present sufficient evidence to prove him guilty of the crime of perjury by the wrong identity and the false statement of his admissibility into the US.

The US Court of Appeals found him wrong of the falsity of the oath during his application for admissibility. The court considered that the vice-consul should not have issued to exclude him because of his behavior by the 1917 Immigration and Nationality Act section 3 (8 U.S.C.A. § 136, 1946 Ed.):

> "The following classes of aliens shall be excluded from admission into the United States:
>
> "(a) All idiots, imbeciles, feebleminded persons, epileptics, insane persons; persons who have had one or more attacks of insanity at any time previously; persons of constitutional psychopathic inferiority; persons with chronic alcoholism
>
> "(d) Persons not comprehended within any of the classes enumerated in paragraphs a, b, or c, who are found to be and are certified by the examining surgeon as being mentally or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living —
>
> "(e) Persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude: Provided, that nothing in sections 136 or 137 of this title shall exclude, if otherwise admissible, persons convicted, or who admit the commission, or who teach or advocate the commission of an offense purely political —"

The court did not comment on any information to show if he was homosexual in his immigration application, but later, he stated that he was homosexual all his life. The Court considered that this information should had been discovered by a medical officer during his admission to the US in 1952. His behavior of showing “offensive exhibitionistic nature” and his sexual orientation viewed by the Court could lead to a “constitutional psychopathic inferior” certification, as claimed by the government. Even if the court acknowledged the rarely understood term, this perspective was strongly influenced by the medical scholarship in labelling behavior as less than normal. The court also presumed that this behavior portrayed “a life-long and

المنارة للاستشارات
www.manaraa.com

constitutional tendency not to conform to group customs, habitually misbehave so fragrantly that they are continually in trouble with authorities" (p. 4-5). The court further stated respecting the possible inclusion within the removable reason, but on the contrary considered additional removable reasons by citing:

> Under subsection (d), any alien is excludable from admission who is suffering from a mental abnormality of a serious degree, i.e. aliens "mentally defective," that cannot be classified as idiocy, imbecility, feeble-mindedness, epilepsy, insanity, constitutional psychopathic inferiority, or chronic alcoholism. The term "mentally defective," as used in the statute, is a concept embracing more than intellectual capacity or the lack thereof. The statute in subsection (a) specifically provides for the exclusion of those lacking in intellectual capacity. Subsection (d) must have been designed to exclude a different group of would-be immigrants. We think this language was designed to exclude homosexuals with exhibitionistic tendencies and other groups with lewd proclivities similarly repugnant to the mores of our society.

The court insisted that his sexual orientation would create trouble in US society, authority, and social environment; besides that, it would be difficult for him to become a "useful member" of society. Even if the court did not directly use an expert, medical witness to testify or explain the medical examination during proceedings, most of the considerations cited from medical and psychological texts exclude homosexuals during admission to the US. Among these texts were Dorland's American Illustrated Medical Dictionary, The Psychology of Mental Disorders, American Medical Association's Standard Nomenclature of Diseases and Operations. The court decided Flores-Rodriguez's removal was valid, with one concurring decision by Frank, the Circuit Judge.

The concurring judge noted that his colleagues' decision on the "crime or misdemeanor involving moral turpitude" could be a reason for the removal, but not his sexual orientation. He criticized the use of the term "constitutional psychopathic inferiority" from the 1917 Immigration and Nationality Act section 3 (8 U.S.C.A. § 136, 1946 Ed.) by using the interpretation of the 1939 Minnesota Law interpreting nothing about "constitutional psychopathic inferiority". The earlier term of "psychopathic personality" from 1939 addressed a condition one was born with, and homosexuality should have not been included. The "psychopathic personality" was defined as "the existence in any person of such conditions of emotional instability, or impulsiveness of

المنارة للاستشارات
www.manaraa.com

behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons" (State ex rel. Pearson v. Probate Court, 205 Minn. 545, 287 N. W. 297).

The concurring judge doubted the presence of valid, reliable, and convincing data that homosexuality was included in the category during the construction of the term “psychopathic personality.” He also acknowledged the distinctive perspectives of psychiatrists when they classified, diagnosed, and discussed the legal “responsibility” of those accused of certain crimes. However, he did not criticize the fundamental reason for removing immigrants based on the condition one was born with, such as “feeble-minded, insane, epilepsy and mental defect” as ruled in the 1952 Immigration and Nationality Act, (8 U.S.C.A. § 1182). He closed his concurring judgment with questions, “Why should we hope to escape the smiles of psychiatrists if we behave similarly *vis-à-vis* psychiatry? And why should we assume that psychiatrists have successfully overcome the semantic difficulties we and all other humans (except, perhaps, mathematicians) have never surmounted?”

This case portrays how mental disability is defined in an immigration case based upon the interpretations of “constitutional psychopathic inferiority” and “psychopathic personality” in order to address sexual orientation. In 1956, homosexuality was viewed as a sexual deviation according to psychologists and psychiatrists that became references for policymakers in the government and decision-makers in the court to exclude homosexuals as part of society. The assumption that homosexuality was present and defined as a defect since birth, was depicted as creating conflict. The historical context including social and political relationship maintained a heterosexuality-oriented society, where medical scholarship contributed to label “homosexuality” as a medical condition that would lead to unwanted deviant behavior.

المنارة للاستشارات
www.manaraa.com

Zadvydas v. Davis, 533 U.S. 678 (2001)

Kestutis Zadvydas is an immigrant who had been ordered to be deported because his criminal record included drug crimes, attempted robbery, attempted burglary, and theft. US immigration officials could not find any country willing to accept him within the statutory 90-day removal period. He was born to Lithuanian parents in a German displaced-person camp, and noty able to claim either country's citizenship. Both German and Lithuania rejected him because he was not a citizen of their countries. He remained under custody after the removal period expired and filed a habeas action under 28 U.S.C. § 2241., which was granted by the district court by the reason of violation of constitution due to the permanent detention. However, The Supreme Court in the Fifth Circuit decided that Zadvydas' detention did not violate the Constitution in a 5-4 decision, explaining:

> "The government points to the statute's word, 'may.' But while 'may' suggests discretion, it does not necessarily suggest unlimited discretion. In that respect the word 'may' is ambiguous. Indeed, if Congress had meant to authorize long-term detention of non-removable aliens, it certainly could have spoken in clearer terms."

The Court then decided that six months was all that was necessary and reasonable to remove immigrants. The judicial branch always determines who can stay and who must leave in immigration proceedings (Feere, 2011). However, the court's dissenting justices noted that the issue should only be answered about "a claimed right of release into this country by an individual who concededly has no legal right to be here." The dissenting justices also considered the decision to determine the length of detention period as judicial intervention into a political process.

Besides giving a certain amount of time, the decision set out a mechanism for the continued detention of deportable immigrants, who are not likely to be removed in the reasonably foreseeable future. These immigrants involve those who have highly contagious diseases that pose a danger to the public, pose foreign policy concern, pose national security and terrorism concern, and are especially dangerous due to a mental condition or personality disorder. The

المنارة للاستشارات
www.manaraa.com

significant part of the case was Zadvydas was never found to have a mental disability according to expert witnesses. However, the court used mental disability as an analogy to justify the long-term detention by associating his behavior to a mental disability which would produce dangerous behavior.

The court acknowledged the proceedings at issue in the case were civil and assumed that they were non-punitive in purpose and effects. The court also acknowledged that there was not any special reason to justify indefinite civil detention of Zadvydas under the Immigration Law. A reason to prevent flight was unreasonable where removal seemed impossible. However, the court used a reason to protect community limited to specially dangerous individuals and subject to strict procedural protections, in which the dangerousness reason must be accompanied by some other special condition “such as mental illness, that helps to create the danger” (p. 680) in this case without giving any context of dangerousness of both Zadvydas’ condition and “mental illness” condition. The court cited *Kansas v. Hendricks, 521 U.S. 346 (1997)* without describing the relation of *Kansas v. Hendricks* with this case. In *Kansas v. Hendricks,* the court held involuntary commitment of individuals who are in a condition of “mental abnormality”, “personality disorder,” or are likely to engage in “predatory acts of sexual violence.” With vague considerations, the court decided that continued detention upon Zadvydas was lawful as Zadvydas failed to present that deportation will prove “impossible.”

Feere (2011) notes some legislation acts in the aftermath of the Zadvydas decision. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (the USA PATRIOT Act) of 2001 was signed into law as a response to the September 11th terrorist attacks. This Act allows the continued detention of any immigrants whose removal is not reasonably foreseeable if the Attorney General has “reasonable grounds to believe” that the immigrant represents a security threat or has been involved in terrorist activities (Feere, 2011).

المنارة للاستشارات
www.manaraa.com

After Zadvydas, ICE enacted a regulation advancing its own interpretation of the decision (Itaya, 2011). ICE adopted the court's six-month presumptive limit detention on some immigrants whose removal could not be impacted, yet also prolonged continued detention for especially dangerous categories of immigrants despite any likelihood that their removal could be impacted. Under the *parens patriae* power, the states are authorized to commit and treat people with mental disability within their border; thus, there has been an emergence of what Itaya (2001) calls as a shadow detention system through immigration. Opposed to other kinds of judicial proceedings, immigration proceedings do not provide mechanisms for detained immigrants to seek restoration of competency. A clear and explicit regulation for an immigration judge to release detained immigrants because of their incompetence is not present, unlike, for instance, ordering termination in criminal proceedings (Itaya, 2001). Moreover, ICE has created a detention framework along with existing civil commitment in the states from the shadow detention system. By using the provision for prolonged detention for "especially dangerous" immigrants, ICE initiated proceedings against Thai in Tuan Thai v. Ascroft (2004) and Tran in Tran v. Mukasey (2008). ICE justified Thai's continued detention by reason of mental health problems and future dangerousness, and similarly with Tran's on the basis of his mental illness and propensity for violence.

The association of "mental disability" and "and dangerousness" in Zadvydas' case is indeed vague. What characteristics make a deviant act or behavior considered dangerous? Perlin's (1998) analysis on the explanation of dangerousness presented by Goldstein & Katz (1960), Rubin (1972), and Diamond (1972) suggest that the practical application of the dangerousness standard is further impeded by the complexity and difficulty of making meaningful predictions of the likelihood of future harmful conduct. A dangerous act is not necessarily a criminal act; "Dangerous conduct involves not only merely violation of social norms enforced by criminal sanctions, but significantly physical or physiological injury to persons or substantial destruction of property" (Perlin, 1998, p. 110). Thus, for Perlin, dangerousness can only be decided by trial judges on a case by case basis; where in the study of deviance, the designation

المنارة للاستشارات
www.manaraa.com

of 'dangerousness' would be decided by judges is examined as a process of negotiation. Who holds more power, whether it is a person, organization or institution will be legitimate to define others' acts as dangerous. In an immigration context, associating mental disability with dangerousness as a basis to indefinitely detain immigrants portrays the medical model as having successful power in shaping the society. This success portrays what Markel & Stern (2002) suggest that the creation and application of categories of medical exclusion surpassed the actual harm present among the newly incoming individuals, reflecting the shift away from acute and short-lived ailments such as typhoid and cholera, to chronic, mental, or moral conditions such as "feeblemindedness, constitutional psychopathic inferiority, or hookworm" (p. 764).

Perlin (1998) asserts from his analysis of empirical studies that it is appropriate for the court to consider the nature of seriousness of the crime committed by individuals and its relationship to his or her present mental condition to assess dangerousness. Rather than relying only on the uncertain prediction of harm that cannot reasonably be expected, an individual's past conduct is more significant evidence to his probable future conduct. For most cases, an individual may be dangerous in only certain settings or in connection with relationships with certain individuals. For instance, a case where an individual is in a very severe circumstance of physical and sexual abuse should be taken into consideration. Once a court determines that an individual who has a mental disability is dangerous to himself or others, the court should design an appropriate order, where the object of the order is to impose what degree of restraint is necessary for an individual "to reduce the risk of harm which he poses to an acceptable level" (Perlin, 1998, p. 111). However, the court should not violate an individual's liberty more than justifiably necessary and should correspond with the opportunity for care and treatment. He suggests that when imposing restraints, the court should assess the less severe than complete institutionalization as considered in *State v. Carter*, 64 N.J. 382, 316 A.2d 449 (N.J. 1974):

> "The court's inquiry as to conditional release must be as broad as possible. Good patients may be bad risks. The disposition must be individualized with the focus on the offender, not the offense he committed, although such offense can serve as an indication of the harm of the patient is capable of inflicting. Perhaps most

المنارة للاستشارات
www.manaraa.com

> important is the establishment of psychiatric out-patient care. The conditions under which the patient will live after release should certainly be conducive to his recovery, or at the very least not aggravate his condition. His family life and friends, the area in which he lives and work that he could obtain, if it would be helpful, are all relevant."

Thus, an individual must be a fit subject for institutionalization treatment, which requires the commitment of the individual to get treated. Besides, the court's order is subject to modification on grounds that the individual has become less harmful than the previous condition and his or her mental disability is getting less severe.

***Lyttle v. United States, Case No.4:11-cv-152 (CDL, 2012*)**

Lyttle v. U.S. is a case about Mark Daniel Lyttle, a US citizen who was born and raised in Rowan County, North Carolina. He suffered from bipolar and cognitive disabilities. In the summer of 2008, when Lyttle was treated at Cherry Hospital North Carolina for psychiatric treatment, he was accused of inappropriately touching a female, which caused him a100-day sentence at Neuse Correctional Institution (NCI) in North Carolina. Because of his disabilities, he was placed in NCI's mental health ward. He was transferred to the North Carolina Department of Corrections in September and interrogated by an ICE agent, D. Faucette, who recognized his disabilities. The agent wrote down incorrect information including address and the national origin of Lyttle and rejected the presence of a witness during his interrogation. A few days later, the agent searched his contact information, which revealed Lyttle was a US citizen with a valid Social Security Number. Ignoring Lyttle's US documents, the agent issued a warrant of arrest used for immigrants and took Lyttle into custody to proceed with a deportation. He was referred to ICE as an undocumented immigrant from Mexico even though he had never been to Mexico, shared no Mexican heritage, and spoke no Spanish. This case received a wide spectrum of media attention as major publishers such as LA Times and USA Today repeatedly highlighted that he was a wrongfully deported US citizen; however, no mention of how his disabilities influenced his deportation and the wrongful act conducted on behalf of the government.

المنارة للاستشارات
www.manaraa.com

Although the legal issue presented in his claim is whether Lyttle, as a US citizen, has any legal remedy to defend his right to be free from banishment, the undiscussed problem is how mental disability is exploited to exercise exclusion in the form of deportation. Some resources used in this analysis include *Lyttle v. The U.S., et al.* – Complaint filed in Georgia, *Lyttle v. The U.S., et al.* – Complaint filed in North Carolina, and The U.S. District Court for the Middle District of Georgia Columbus Division Court Order.

The Middle District of Georgia Columbus Division Court found that the federal agents knew Lyttle had a "diminished mental capacity" (p. 44) and affirmatively claimed citizenship, which these agents failed to attempt to confirm through readily available corroborating information. These agents further "coerced and manipulated" Lyttle to sign an affidavit that wrongly confirmed personal information. The Court found that the immigration judge, Cassidy, at the hearing before Lyttle's removal did not give an opportunity for him to present evidence or challenge the evidence of Mexican citizenship brought against him. Despite his mental disabilities, "the judge did not assess whether Lyttle was competent to proceed unrepresented in his removal proceedings or waive his right to counsel" (The U.S. District Court for the Middle District of Georgia Columbus Division Court Order, p. 15). However, the Court did not respond to the lack of medical records, and only considered the coercive and manipulative acts that caused a U.S. citizen to be wrongly detained and deported.

This case received continuous attention, but not widespread between 2009-2013 from media that highlighted Lyttle's citizenship in their titles such as "U.S. Citizens Mistakenly Snared, Deported by DHS and ICE", "Deporting American Citizens: ICE's Mexican-izing of Mark Lyttle", "Wrongly deported American citizen finally returns — but it wasn't easy", and "The Deportation Machine." Media reports also featured his mental disability in the titles such as such as "Lawsuit: Mentally Ill US citizen wrongly deported", "Mentally Ill Latino, Wrongly Deported", and "ACLU Files Lawsuits After Government Wrongfully Deports U.S. Citizen with Mental Disabilities." Among these media reports, only "The Deportation Machine" by William Finnegan published by *the New Yorker* on April 22, 2013 gave a comprehensive background and investigated the

المنارة للاستشارات
www.manaraa.com

detention facilities where Lyttle's removal proceedings took place. Finnegan (2013) reveals that in 2007, the North Carolina director of prisons, J. Boyd Bennet, signed a contract that required facilities under his authority, including Neuse, to be cooperative with ICE enforcement agents in identifying inmates deemed to be foreign born and non-US citizens. This agreement was an addition to Operation Secure Streets, in 2006, that targeted deportable individuals to fill in the detention facilities. This practice is not new since programs with different names also do "jail status check" since 1988 (Finnegan, 2013).

This research presumes that by taking advantage of Lyttle's mental state, the government, through ICE agents and immigration judges, intentionally debilitated him by "unreasonably and unlawfully detaining, interrogating, and deporting individuals in violation of due process (p. 19)." Further, after he was deported, Lyttle spent more than four months living on the streets and in the shelters and prisons of Mexico, Honduras, Nicaragua, and Guatemala (Rickerd, 2012). Moreover, there are more than three thousand US citizens that ICE has attempted to wrongfully detain and deport in recent years (Bier, 2018). Coleman and Kocher (2011) examine the most significant change in US immigration enforcement, especially to intensify the merge of civil immigration and criminal law enforcement that lead to detention and deportation aftermath the 9/11 attack. Concerning the fact that the majority of migrant detainees are placed in facilities operated by private prison companies, these detainees, according to Puar (2018) are required to maintain capitalist expansion of profit. The entire process has debilitated certain groups of people that are viewed as less important. Those defined with mental illnesses become particularly vulnerable to detention. Viewing the vast number of cases where US citizens with mental illness are wrongfully identified and deported in these past two decades, there is a tendency that it was impacted by 9/11 terrorist attack. The intersectional nature of this case shows how exclusion based on ethnic background can be easily exploited when conflated with the definition and designation of mental disability.

www.manaraa.com

Franco–Gonzales v. Holder., Case No. 10-cv-02211-DMG-DTB (C.D. Cal, 2013)

Another relevant case, *Franco-Gonzales v. Holder* began on March 26, 2010 when Jose Antonio Franco-Gonzales filed a petition in the US District Court for the District of California because the court unlawfully required him to represent himself in his immigration proceeding, neglecting the fact that he was diagnosed as "moderate mentally retarded" by a psychiatrist. Franco-Gonzales was unlawfully detained in immigration detention facilities for nearly five years without a hearing or a lawyer. He amended his complaint on November 21, 2010, using similar claims seeking legal representation and bond hearings on behalf of an entire class of immigrants under confinement in the State of Arizona, California, and Washington. The court responded to the claim and declared that all individuals under DHS custody in those three states, who have been identified by or have been to medical personnel, DHS, or an immigration judge as having a "serious mental disorder or defect" to reopen their cases.

Until the *Matter of M-A-M* issuance, there were not any clear policies or procedures within DHS concerning the release of incarcerated immigrants with mental disabilities. From *Franco-Gonzales v. Holder,* uncertainty among immigrants with mental disabilities under immigration custody is explained. Franco-Gonzales is a native and citizen of Mexico who is the son of two lawful permanent residents of the US, and he was in the process of obtaining legal status. He did not learn to speak until seven years old, does not know his own age, has trouble recognizing numbers and counting, and has been diagnosed with moderate mental retardation according to a psychological report by Dr. Robert Pattinson on December 11, 2000 (p. 30-31). In April 2005, he was transferred from criminal to immigration custody after he pled guilty to a charge of assault with a non-firearm weapon. During this process, he was not represented by legal counsel. On May 23, a psychiatrist, Dr. Claude T.H. Friedman observed and evaluated him after an order from an immigration judge. The psychiatrist after his evaluation determined that Franco "had no clue as to what type of court Your Honor presided over, what the possible outcomes might be, or how to defend himself at a trial. Diagnostically, he was defined with a Severe Cognitive Disturbance, probably life-long, secondary to a developmental disability. In view of this, it is impossible for him

المنارة للاستشارات
www.manaraa.com

to stand trial" (p. 33). On June 6, 2005, the judge ordered administrative closure of his removal proceedings by citing his incompetence. However, he remained incarcerated for four and a half years. During that entire period, there was no hearing to determine his detention until December 29, 2009 when the government rescheduled the removal of proceedings.

In 2013, US District Court Judge Dolly M. Gee granted final approval of the settlement, allowing immigrants with a "serious mental disorder" to request reopening their cases. She also ordered the US Immigration and Customs Enforcement (ICE), the Attorney General, and the Executive Office for Immigration Review (EOIR) to provide legal representation to immigrants with mental disabilities who cannot represent themselves in hearings. In the decision, defendants claimed that *Matter of M-A-M* provides safeguards to ensure that immigration judges are provided with relevant information indicative of a detained immigrant's mental 'impairment.' A progressive view from Judge Gee (p. 35) considers:

> "The majority of these "safeguards," however, are left to the Immigration Judge's discretion, and none guarantee that the incompetent alien may participate in his proceedings as fully as an individual who is not disabled (noting that Immigration Judges "have discretion to determine which safeguards are appropriate"). Moreover, while both the regulations and M-A-M- allow for "representation" by a family member or close friend to "assist the respondent and provide the court with information," Defendants offer no safeguard that such individuals are qualified to provide this type of assistance for a mentally incompetent person"

This decision was acknowledged as a huge victory among civil rights organizations who litigated this case. Among them were ACLU, Public Council, Sullivan & Cromwell, LLP, Mental Health Advocacy Services, and the Northwest Immigrants' Rights Project. The judge considered safeguards enlisted under the *Matter of M-A-M,* as insufficient to ensure the proceeding runs as smoothly as if a competent immigrant stands before the immigration court. In other words, an important highlight of the judge's consideration was the recognition to have full participation for any individual standing before the court regardless of the different mental condition that the individual might have. To ensure that everyone can fully participate, certain safeguards must be taken, rather than leaving the decision to implement safeguards with the judge's discretion only.

المنارة للاستشارات
www.manaraa.com

The main issue of *Franco-Gonzales v. Holder* is to assess competency. In opposition to other types of judicial proceedings, there are no standard mechanisms to seek restoration of competency in immigration court under the Department of Homeland Security (Sherman-Stokes, 2017). Although there is a convergence between criminal and immigration law, there is no explicit authority to release mentally disabled immigrants from detention facilities or to dismiss proceedings. There are abundant cases of unrepresented immigrants who are deemed 'not competent to stand trial' in immigration detention, unable to pursue relief from removal or to be released from detention. *Matter of M-A-M,* a regulation issued by the Board of Immigration Appeals (BIA), sets the standard for mental competency in immigration removal proceedings. In the *Matter M-A-M*, there are specific instructions[5] for how immigration judges determine competency when they suspect an immigrant standing before them is not competent to proceed. The judge will need to consider whether there is a good reason that the immigrant lacks sufficient competency—indicia of incompetency. The test to determine if an immigrant is competent to participate in immigration proceedings is whether she or he has a rational understanding of the nature and object of proceedings, can ask advice of an attorney if there is one, and has a reasonable opportunity to examine and present evidence and cross-examine witnesses. From the judicial inquiry exercised by judges, there are three possible outcomes: (1) Individual is competent where the court can proceed without any additional safeguards; (2) Individual is incompetent where the judge decides administrative closure, and; (3) Insufficient evidence to decide if individual is competent.

If judges detect indicators of incompetency, they are recommended to ask simple questions about the proceedings, allow the parties to gather and submit relevant evidence of the incompetency, ask for a psychological evaluation, and grant a change of setting so that the defendant can receive medical care. Where the judge finds that the immigrant "lacks sufficient competency to proceed", then they should prescribe appropriate safeguards that are enlisted in

[5] These instructions are part of Matter of M-A-M, Respondent Decided May 4, 2011 by the US Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals, Cite as 25 I&N Dec. 474 (BIA 2011)

المنارة للاستشارات
www.manaraa.com

the *Matter of M-A-M*. Examples of these safeguards include, but are not limited to, participation of a guardian in the proceedings, managing to facilitate the immigrant's ability to obtain legal representation and medical treatment, and waiving the immigrant's appearance in court.

According to these guidelines to provide enhanced procedural protections to unrepresented individuals who are not competent to stand trial issued by EOIR, the judge should consider two categories of mental disorder that consist of (1) past or current evidence of interventions related to mental disorder including outpatient mental health treatment, psychiatric hospitalization, self-injury or suicidal attempt, and under mental health treatment; (2) current manifestations of behavior suggesting mental disorders including poor memory, poor focus, disorganized thinking, paranoid, overestimating own ability, seeing or hearing things not present, serious depression or anxiety, poor intellectual functioning, irrational behavior or speech, and lack of responsiveness. From the list, mental disability in the immigration proceedings is only connected with the corresponding diagnosis from the DSM-V. However, the judge is not required to have special qualifications in understanding the condition because the judge can request a qualified mental health examiner if necessary. Qualifications of the mental health examiner require a license to practice medicine or psychology, specific training, completed EOIR training, and proof of minimum of 100 hours in conducting forensic examinations. Even though not an obligation, the medical examiner is encouraged to conduct examinations based on the standardized assessment tools which are primarily designed by the American Board of Psychiatry and Neurology or the American Board of Forensic Psychology. The judge makes a decision based on the medical examination.

This case acknowledges the broad scope of the immigration judge's authority in determining and making decisions about whether, when, and how to close cases of immigrants perceived not competent. According to the Immigration and Nationality Act of 1952, the Immigration and Naturalization Service (INS) was an agency under the Department of Justice (DOJ) that had duties to enforce, implement, and adjudicate claims under the immigration laws. Its employees had special tasks to review and decide removal of cases that later in 1973 were

المنارة للاستشارات

www.manaraa.com

entrusted to immigration judges. However, their independence as judges has been criticized as they are supervised and dependent on INS for the facilities, support staff, supplies, and primary resources (Innovation Law Lab & Southern Poverty Law Center, 2019). This situation raised tensions between the enforcement and adjudicative function within INS, as immigration judges reported that INS officials interfered with the proceedings. One immigration judge wrote in a statement, "fair and impartial hearings are not possible when one of the parties in each case controls the court system" mentioning that "the strong desire [of enforcement] personnel to influence the judges directly or indirectly is repugnantly clear" (Levinson, 1981, p. 645-647). That criticism later was responded by creating the EOIR in 1983 to ensure judicial independence and remove prosecutorial bias that remained unchanged because EOIR is under the control of the Attorney General—the highest law enforcement officer—who manages the Department of Justice. The criticism involves judges' impartiality to prescribe appropriate safeguards that are enlisted in the *Matter of M-A-M*.

However, both the *Matter of M-A-M* and *Franco-Gonzalez v. Holder's* decisions do not clearly clarify the question of removal from detention for a reason of not competent to stand trial. . Neither immigration policy nor legal policy limit the time a person can be detained during administrative closure before the case is decided. Psychiatrists' opinions that are accepted can give clarity, further enabling the government through immigration judges to exclude Franco-Gonzales in a lengthy detention without certainty. Meanwhile, in Lyttle's case, the immigration judge neglected Lyttle's mental disabilities, kept him in detention, and did not assess if Lyttle was competent to proceed unrepresented in his removal proceedings. Even outside obligatory detention circumstances, immigrants with mental disabilities are unnecessarily detained (ACLU and HRW, 2011). "ICE sometimes apprehends and detains non-citizens who have been found incapacitated to stand trial in New York criminal court and ordered committed to a psychiatric care facility," explained Dr. Homer Venters from NYU Bellevue Hospital. It is ICE's full discretion and decision to continue to detain not-competent immigrants or to send them to a psychiatric facility. This involuntary commitment or forced hospitalization has been criticized by Foucault

المنارة للاستشارات
www.manaraa.com

(1965, 1977), as confinement of a noncriminal and considered to be a method of controlling the socially undesirable. Foucault (1980) argued that involuntary confinement of the mentally disabled productively advanced the state's power in the pseudo name of privileged scientific truth. He argues that "by designating the mad person, provided the possibility of a profit to those who constitute the profit from marginalization" (Foucault, 1973, p. 113).

Both analyses of *Lyttle v. U.S., Case No.4:11-cv-152 (CDL, 2012) and Franco–Gonzales v. Holder., Case No. CV 10-cv-02211-DMG-DTB (C.D. Cal, 2013)* are unable to gather the interpretation debate of mental disability in courtroom settings because in both cases, mental disability is strictly defined as disorder without room for interpretation. Unlike the debate of mental disability in criminal court, in immigration court settings, a contestation to define mental disability is not visibly discussed. Immigration judges view the mental disability categorization as disorders from EOIR's guidelines without further interpretation. Also, in both cases, even if the immigration judges acknowledged the mental condition of both Franco-Gonzales and Lyttle, these judges did not take necessary measures to ensure protection. This negligence caused both cases to be challenged to a higher court. From both cases presented, it is difficult to decipher the psychiatric treatment received by Franco-Gonzales and Lyttle because there is no documentation in existence that can explain their treatment. Unlike *U.S. v Flores Rodriguez* (1953) where judges defined and interpreted mental disability from accepted terms in the law, both *Franco–Gonzales v. Holder* and *Lyttle v. U.S* confer how mental disability is less likely debated in courts, relying on medical categories in defining mental disability and competency to stand trial. However, from current cases in immigration court, we can understand the consequence of current immigration policy working on cases with mental disabilities, especially in the massive use of private detention centers as a means for creating profit (Robinson & Santos, 2014).

Consequences of current immigration policy related to mental disability

Since 2016, official statements and policies suggest that the current administration views the US national identity in racial terms and privileges the nation's white identity (Srikantiah &

المنارة للاستشارات
www.manaraa.com

Sinnar, 2019). President Trump mocked that Haitian immigrants “all have AIDS” and Nigerian immigrants would never “go back to their huts” once they come to the US (Shear & Davis, 2017). He claimed Middle Eastern immigrants as “terrorists" on some occasions such as when he delivered a speech on “immigration, terrorism, and national security” in the summer of 2016 in response to a mass shooting at a gay nightclub in Orlando (Gilsinan, 2018). Also, he criticized Europe as a “shame,” and Europeans “are losing their culture” as a result of immigration (Allen, 2018). His racist and elitist statements addressing the threat of non-white immigrants highlight the interest of white nationalists in restricting immigration, which has been embedded in US history. This process is strengthened by the US Supreme Court, which allows for a ruling to reject immigrants who may rely on public assistance. The ruling requires immigration officials to assess certain aspects such as age, health, and assets in order to justify denial of their particular immigrant legal status (Owen, 2020). While the White House press secretary praised the court decision as a victory for American taxpayers, civil rights and immigrant rights advocates emphasize the further marginalization of immigrant communities by creating socioeconomic castes in the immigration system.

Escalated immigration enforcement policies during the Trump administration are rooted in a long-established immigration policy in US history. Immigrants have been perceived as ‘the other’ throughout the history of the US (Epps & Furman, 2016). Since the late 19th century and into the 20th century, immigrants have been viewed as physical and societal ills through the advancement of medical diagnosis and care (Markel & Stern, 2002). Markel and Stern (2002) examine three periods of immigration history: the late 19th century, 1924 to 1965, and 1965 to 2002 when the study was published. From their examination, they find intertwined health perspectives which have defined immigrants from a in US society: (1) the public perception of the threat from infected immigrants is greater than actual hazard; (2) the US society is more likely to view diseases among immigrants already settled as an imported circumstance; and (3) the use of medical model is used by policymakers to estrange immigrants. The US authorities most likely create a new definition that highlights illness, contagion and mental disorder if anti-

www.manaraa.com

immigration supporters find a category that fails to reject the ‘most objectionable.’ The extensive use of negative medicalized labels contributes to bio-medical metaphors in threatening the nation’s health. Markel (1997) investigates how politicians in the 1890s banned immigration by attributing epidemics to Eastern European Jewish immigrants. By focusing upon the institution of quarantine, he portrays how society responded to what they viewed as a hazard of contagious diseases while also raises a question, “how did racist or anti-immigrant views become embedded in the resultant (the National Quarantine Act of 1893) policy?” (Katzman, 1999, p. 3). In short, immigration policy has never been separated from white nationalism, including a strong influence from eugenics.

Eugenics shaped ableist domination on immigration policy as lawmakers gradually changed the language of the public charge exclusion to be more severe and tied it more closely to physical and mental disability (Weber, 2004). This language began to estrange any person who is “unable to take care of himself or herself without becoming a public charge,” into those who are “likely to become a public charge,” then shifted into those who are “mentally and physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living.”[6] In most situations, the fear of having mentally disabled individuals as part of society surpassed the dread of the economic burden. Weber (2004) quotes Williams’s (1912) suggestion that the worries of degeneracy were portrayed by the Ellis Island Commissioner Declaration in 1912:

> “The fact that mentally defective immigrants may become a burden on the taxpayer is a relatively unimportant consideration. What is vitally important is that such persons contribute largely to the criminal classes and that they may leave feeble minded descendants and so start vicious strains leading to misery and loss in future generations and influencing unfavorably the character and lives of hundreds of persons.”

By the 1980s, at change in immigration policy under the Reagan administration divided scholars into two different views: excluding more and more immigrants through “crimmigration”

[6] (Act of Feb. 20, 1907, ch. 113, 3, 34 Stat. 899 (1907))

www.manaraa.com

and including more and more immigrants through the removal of many bases for denying admissibility. Among scholars who argue immigration policy has excluded more groups of people are moral entrepreneurs such as Daniel Kantsroom, Juliet Stumpf, Teresa Miller, Michael Welch, Cesar Garcia Hernandez, Rachel E. Rosenbloom, and Mary Romero. One of the outstanding issues in immigration policy is the convergence between immigration law and criminal law, commonly known as "crimmigration", as a mechanism of social control (Welch, 1996; Miller, 2005).

In the aftermath of the terrorist attacks on September 11th, 2001, the convergence of immigration law and criminal law is viewed as a more effective mechanism to socially control non-US citizens and their communities. Social control efforts merged both criminals and immigrants through the integration of deportation with the criminal justice system (Miller, 2005). The social construction of immigrant aliens emerged as a viable definition (Kantsroom, 2000). This convergence initially began during the Reagan administration in the 1980s. This administration displays a significant shift in US immigration policy to respond to the arrival of the Mariel Cubans and the Haitian boat people. Prior to the 1980s, Immigration and Naturalization Services (INS) [7] seemed only to detain those who posed a security risk, (Marks & Levy, 1994). However, the new policy issued in the f1980s stated that, "all aliens arriving without proper travel documents are detained pending a determination of their status, unless they are considered eligible for parole for 'emergent reasons' or reasons 'strictly in the public interest'" (Marks and Levy 1994: 2; see 8 C.F.R. S 212.5 (a) [1993]). This confinement, long a feature of conventional criminal punishment but rarely used to regulate migration, has become common in the immigration system and has converged criminal law and immigration law (Hernandez, 2015).

[7] The United States Immigration and Naturalization Service (INS) was an agency of the U.S. Department of Labor from 1933 to 1940 and the U.S. Department of Justice from 1940 to 2003. Following the September 11 terrorist attack, this agency ceased to exist under that name on March 1, 2003, when most of its functions were transferred to three new entities – U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) – within the newly created Department of Homeland Security.

المنارة للاستشارات
www.manaraa.com

In the 21st century, legislation focuses on the civil consequences of deportation for lawful permanent and unauthorized residents convicted of a specified felony and misdemeanor crimes (Miller, 2005; Kantsroom, 2005) and expands the classification of border crossers as criminal (Warner, 2005). The expansion also involves the construction of "aggravated felonies" that set the deportation penalty for those labeled immigrant aliens who committed crimes in the past. Regarding the lack of transparency in the Office of Immigration Statistics, it is not clear if immigrants are being deported for: "(1) past crimes while residing crime-free; (2) upon release from incarceration for the past crimes; or (3) for the felony crime of repeated border crossing as opposed to the types of street crime the public has reacted to with moral panic" (Warner, p.57-58).

Juliet Stumpf's (2006) influential scholarship on the merger of criminal law and immigration law, points out that the boundary between criminal law and immigration law becomes indistinct, and it is troubling. Both are designed to categorize those who are innocent versus guilty, included versus excluded, or legal versus illegal. This merger of systems is viewed to separate a specific group of people from the rest of US society through physical exclusion and the creation of rules that establish lesser levels of citizenship. Any crimes committed by immigrants have impacted the operation of immigration law since its inception. The intertwined nature of criminal and immigration law underlines choices about who is or becomes a member of US society.

Immigration law reforms have made detention and deportation a penalty for many criminal defendants (Welch, 1996; Miller, 2002, 2005; Stumpf, 2006; Rabinovitz, 2011). The vast amount of criminal convictions, including some minor misdemeanors, carry harsh immigration consequences for non-US citizens, including lawful permanent residents, such as green card holders, asylum seekers and refugees, people on temporary visas, and people without current status. Immigrants such as tourists and business travelers who have overstayed visas or students working beyond allowed hours, which previously had been subjected to civil immigration proceedings, were newly subjected to criminal sanctions in addition to deportation. Failure of a

المنارة للاستشارات
www.manaraa.com

criminal defense lawyer to advise their clients accurately about deportation consequences was often unrecognizable because immigration consequences were outside the field of required attorney advice. After the case of *Padilla v. Kentucky* was reviewed, the public started to recognize that the effects of a plea or conviction on someone's immigration status cannot be neglected in criminal proceedings. Since 2010, there is a constitutional obligation for all criminal defense lawyers to advise non-US citizen clients about the immigration consequences of a conviction and a guilty plea amidst practical challenges to deliver that advice.[8] As a result, law enforcement officers have increasingly used incarceration in immigration proceedings.

Scholars have studied the role of the immigration detention system in the growth and the expansion of immigration detention facilities (Ackerman, 2005; Douglas & Saenz, 2013; M. B. Flynn, 2016). Understanding how immigration detention works from its organizational system and actors is significant in understanding the emergence of power within detention. In the US, private, for-profit corporations such as CoreCivic—formerly Correction Corporation America (CCA), Geo Group—formerly Wackenhut, and G4s are among key actors in managing immigration detention as they accounted for 62 percent of facilities housing immigrant detainees (Flynn, 2016). These corporations, along with the government, have formed an "immigration detention complex", which Douglas & Saenz (2013) suggest has become a trend for increasing profit but neglecting fundamental human rights. They investigate the establishment of this complex had grown significantly since 2006 when the DHS changed the policy from "catch and release" to "catch and detain." Their examination on the historical occurrences indicate that during economic downturns and uncertainty, immigrants make easy scapegoats, condemned for a host of societal pathology.

Among psychologists who criticize that phenomenon are Delia Zaens, Priscila Diaz, and Virginia Kwan (Diaz, Zaens, and Kwan, 2011). They stated: "there is a pattern in US history in which presence of economic competition is associated with greater negativity toward certain groups, even when immigration is not relevant… Similarly, antiimmigrant sentiment and extreme

[8] *See* Padilla v. Kentucky, 559 U.S. 356, 366 (2010).

المنارة للاستشارات
www.manaraa.com

immigration policy may arise from the desire to blame outsiders for poor economic conditions" (Diaz, Zaens, and Kwan, 2011: 302). Douglas & Saenz (2013) see this condemnation as similar to the occurrence in 1980s where low-income women were blamed for not taking personal responsibility for their own economic welfare.

Looking back on *Lyttle v. U.S.,* we see the justification to remove Lyttle to Mexico emerged when an ICE agent decided to hide the fact that Lyttle is a US citizen, exploiting his mental disability. Behind the story of the case, it was revealed that in 2007, there was an agreement between the government, ICE, with the for-profit prison management to target inmates deemed to be foreign born and non-US citizens to fill up the detention facilities. While there is a trend that suggests the 2006 policy shift was attributable to significant arrests and detentions for immigrants who committed crimes (Bruno, 2012), other trends which show a growing relationship between detention and the use of mental disability remain invisible within immigration systems. Some extensive studies suggest that a vast number of inmates in prisons suffer from serious mental illnesses that are not treated because of this invisibility (Tovino, 2016; Von Werthern M, Robjant K, Chui Z et al, 2018; and Barber-Rioja and Garcia-Mansilla, 2019).

المنارة للاستشارات
www.manaraa.com

Chapter Five

CONCLUSIONS

Historical research explains the entanglement between mental disability and immigration, as mental disability has functioned historically to justify inequality for perceived mentally disabled immigrants. Baynton (2001:33) suggests, “when categories of citizenship were questioned, challenged, and disrupted, disability was called on to clarify and define who deserved, and who was deservedly excluded from, citizenship.” Examining historical documents and policies from the late 19th century and early 20th century, it is apparent that medical scholarship has historically become powerful in shaping mental disability as a form of social control, an exclusionary reason towards immigrants through the eugenics movement, medical gaze and examination, immigration policies, and hospitalization.

A critical, historical examination helps to explain how mental disability is defined, constructed, and debated through political processes that became a main characteristic of the political analysis of mental disability. The introduction of the term “public charge” in the 1882 Immigration Act excluded immigrants with mental disability during a period of fear about the presence of disability, which was also a period of the rise of eugenics. This “public charge” rule is still present with a broader interpretation to ban immigrants from receiving a green card if the government believes they are likely to rely on public assistance.

This research encounters substantial debate in *U.S. v. Flores-Rodriguez* where judges had a different view to interpret “constitutional psychopathic inferior” that became one of the legitimate reasons to remove immigrants. Medical scholarship had formed its hegemony in immigration policy through its scientific expertise that influenced policymakers in the government and decision-makers in court to determine the reason of exclusion for individuals with certain behaviors. Homosexuality was determined in the term “constitutional psychopathic inferior” in that a person defined as homosexual would create trouble in US society, authority, and social environment. Even when courts did not directly use medical expertise to witness, testify, or

المنارة للاستشارات
www.manaraa.com

explain a medical examination during proceedings, medical and psychological works of literature and statements which mostly excluded homosexuals were cited in the decision.

This research suggests that the court uses mental disability as an analogy to justify the long-term detention by associating mental disability as dangerous behavior even if in *Zadvydas v. Davis,* there was not any circumstance where mental disability occurred. The association of mental illness and dangerousness without giving explanation and clarity—only citing a former case, shows the arbitrariness of detention in the form of involuntary commitment, which mostly affected immigrants with mental disability.

The findings here suggest that there is a significant role for the immigration judge and a mental health examiner to determine competency that is mainly assessed during the proceedings and to decide what steps should be taken for the immigrant. Case analysis of *Lyttle v. The U.S., et al* finds that mental disability is used by immigration officials to exclude individuals to maintain the interest of the state, despite the limitation of analysis in the definition of mental disability due to the court's negligence of Lyttle's condition. Meanwhile, from the analysis of *Franco-Gonzales v. Holder,* this study finds the unclear and harmful procedures that violate the rights of immigrants with mental disability during the proceedings. In addition, the issue of uncertain length of detention on the basis of mental disability, which is associated with dangerousness, is initially proposed by medical scientists.

The extensive use of detention as a result of the current "crimmigration" policy is strongly tied with special interests. Corporations who manage detention facilities, along with the government, have formed an "immigration detention complex" that maximizes the presence of immigrants to gain profits. While examining the trend of mentally disabled immigrants in immigration detention complex is beyond the scope of this analysis of cases, the examination finds that lengthy and indefinite detention towards these immigrants helps the immigration detention complex maintain and expand its authority.

المنارة للاستشارات
www.manaraa.com

Based on this preliminary examination of documented cases, it appears that future research on immigration and mental illness could focus greater attention on explicating how judges would determine their decision based on some considerations, which would be significant to enlighten the heavily contested definition of mental disability. The study should uncover the views of mental disability that most likely are hidden and invisible in the courtroom because of the taken-for-granted definition given from a medical perspective. From historical and case analysis, there have been changes in policies and processes toward immigrants appear to take place in the aftermath of major events—World War II, AIDS epidemic, 9/11 terrorist attack, and now Covid-19 pandemic. Future analysis could look at how these major events shape immigration processes and policies that more heavily rely on definitions of mental illness and use competency to stand trial proceedings to indefinitely detain people. In addition, a more comprehensive study on the intersection between immigration law and criminal law or “crimmigration” law in dealing with mental disability in the US would be helpful for future research.

المنارة للاستشارات
www.manaraa.com

REFERENCES

ACLU, American Civil Liberty Union. (2010). *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System.* New York: Human Rights Watch.

Allen, C. (2018, July 13). Trump's claim that Europe is 'losing its culture' is racism – and it must be challenged. *The Conversation*, pp. Retrieved from https://theconversation.com/trumps-claim-that-europe-is-losing-its-culture-is-racism-and-it-must-be-challenged-99962.

American Psychiatric Association. (2020). *DSM: History of the Manual.* Retrieved from https://www.psychiatry.org/psychiatrists/practice/dsm/history-of-the-dsm.

Asch, A. (2004). Critical Race Theory, Feminism, and Disability. *Gendering DIsability*, 9-44.

Barber-Rioja, Virginia., & Garcia-Mansilla, Alexandra. (2019). Special considerations when conducting forensic psychological evaluations for immigration court. *Journal of Clinical Psychology*. 75. 10.1002/jclp.22863.

Barnes, C., Mercer, G., & Shakespeare, a. T. (1999). *Exploring disability: A sociological introduction.* MA: Blackwell.

Baynton, Douglas C. (2011). Disability and the Justification of Inequality in American History *The New Disability History: American Perspective,* 33-57, online access from: https://washingtonpeacecenter.org/wp-content/uploads/2014/03/https__rs1.uua_.org_documents_bayntondouglas_justification_inequality.pdf

Baynton, Douglas C. (2016). *Defectives in the Land: Disability and Immigration in the Age of Eugenics.* Chicago: Chicago University Press

Beck, C. J., & Miner, E. (2013). Who gets designated a terrorist and why? *Social Forces, 91 (3), 837-872*.

Ben-Yehuda, N. (1985). *Deviance and Moral Boundaries: Witchcraft, the Occult, Deviance Sciences and Scientist.* Chicago: Chicago University Press.

Bruno, Andorra. (2012) *Immigration-Related Worksite Enforcement: Performance Measure.* Washington, D.C: Congressional Research Service.

Carey, A. C. (2019). *On the Margins of Citizenship: Intellectual Disability and Civil Rights in Twentieth Century America.* Philadelphia: Temple.

Castrodale, M. A. (2015). Mad matters: a critical reader in Canadian mad studies. *Scandinavian Journal of Disability Research, 17(3)*, 284-246, DOI: http://doi.org/10.1080/15017419.2014.895415.

Chaudhury, P. K., Deka, K., & Chetia, D. (2006). Disability associated with mental disorders. *Indian Journal of Psychiatry Vol. 48*, 95-191.

Coleman, Mathew., & Kocher, Austin. (2011). Detention, deportation, devolution, and immigrant incapacitation in the US, post 9/11. *The Geographical Journal,* Vol. 177, No. 3, September 2011, pp. 228-237.

المنارة للاستشارات

www.manaraa.com

Coffey, G. (2006). 'Locked Up Without Guilt or Sin': The Ethics of Mental Health Service Delivery in Immigration Detention. *Psychiatry, Psychology, and Law 13(1)*, 67-90.

Conrad, P., & Bandini, J. (2015). Mental Illness as a Form of Deviance. In E. Goode, *The Handbook of Deviance* (pp. 447-462). Sussex: Wiley Blackwell.

Conrad, P., & Schneider, J. W. (1992). *Deviance and Medicalization, from Badness to Sickness.* Philadelphia: Temple University Press.

DeGiorgio, A. (2010). Immigration Control, post-Fordism, and less eligibility: A Materialist critique of the criminalization of immigration across Europe. *Punishment and Society*, 12(2), 146-167.

Demleitner, N. (2004). Misguided Prevention: The War on Terrorism as a War on Immigrant Offenders and Immigration Violators. *Crim L. Bull*, 550.

Dolmage, J. T. (2018). *Disabled Upon Arrival: Eugenics, Immigration, and the Construction of Race and Disability.* Columbus: The Ohio State University Press.

Drescher, J. (2015). Out of DSM: Depathologizing Homosexuality. *Behavioral Science*, 5(4):565-575.

Eagly, I. V. (2019). Prosecuting Immigration. *Northwestern University Law Review & NULR Online 104*, 1281.

Epps, D., & Furman, R. (2016). The 'alien other': A culture of dehumanizing immigrants in the United States. *Social Work and Society, International Online Journal*.

Feere, J. (2011). *Reining in Zadvydas v. Davis.* Center for Immigration Studies.

Finkelstein, V. (1980). *Attitudes and Disabled People.* New York: World Rehabilitation Fund.

Foucault, M. (1971). *Madness and Civilization: A History of Insanity in the Age of Reason.* New York: Pantheon.

Foucault, M. (1977). *Discipline and Punish: the Birth of Prison.* New York: Vintage Books.

Foucault, M. (1978). *The History of Sexuality. Volume I: An Introduction.* New York: Pantheon Books.

Francis, L., & Silvers, A. (Oct 2016). Perspective on the Meaning of "Disability". *AMA Journal of Ethics*, 1025-1033.

Grace and Hechinger, Fred M. (1978). Homosexuality on Campus. *The New York Times.* March 12, 1978. Retrieved from https://www.nytimes.com/1978/03/12/archives/homosexuality-on-campus-homosexuals-continued-from-page-17.html

Gilsinan, K. (2018, December 11). Trump Keeps Invoking Terrorism to Get His Border Wall. *The Atlantic*, pp. Retrieved from https://www.theatlantic.com/international/archive/2018/12/trump-incorrectly-links-immigration-terrorism/576358/.

Harper, G. W., & Schneider, M. (June 2003). Oppression and Discrimination Among Lesbian, Gay, Bisexual, and Transgendered People and Communities: A Challenge for Community Psychology. *American Journal of Community Psychology*, Vol. 31, Nos. 3/4.

Henry, S. (2009). *Social Deviance.* London: Polity Press.

المنارة للاستشارات

www.manaraa.com

Hernandez, C. (2015). Deconstructing Crimmigration. *UC Davis Law Review's Volume 51 Symposium "Immigration Law & Resistance: Ensuring a Nation of Immigrants."* (pp. 197-253). Davis: crimmigration.com.

Hughes, J. S. (1992). Labeling and Treating Black Mental Illness in Alabama, 1861-1910. *The Journal of Southern History*, Vol. 58, No. 3, p. 446-447.

Itaya, C. A. (2011). Shadow Detention: The Federal Government's Parallel System for Detaining Mentally Ill Aliens. *Georgetown Immigration Law Journal No. 26 Fall*, 95-120.

Judd, A. (2013, Jan 20). Asylum's dark pas relived as cycle ends. *AJC*.

Kafer, A. (2013). *Feminist Queer Crip.* Indiana: Indiana University Press.

Kanstroom, D. (2000). Deportation, Social Control and Punishment: Some Thoughts about Why Hard Laws Make Bad Cases. *Harvard Law Review*, 1889-1935.

Katzman, S. (May 1, 1999). Katzman on Markel, 'Quarantine! East European Jewish Immigrants and the New York City Epidemics of 1892'. *Humanities & Social Sciences Online*, 3.

Kirk, S. A., & Kutchins, H. (1992). *The Selling of DSM: the Rhetoric of Science in Psychiatry.* NJ: Transaction.

Kubrin, C. E., Zatz., M. S., & Ramiro Martinez, J. (2012). *Punishing Immigrants: Policy, Politics, and Injustice.* New York: New York University Press.

Lauderdale, P. (1976). Deviance and moral boundaries. *American Sociology Review, 41 (5)*, 660-676.

Lauderdale, P. (2010). Political deviance. In C. Byrant, *Political deviance* (pp. 39-59). London: Routledge.

Lauderdale, P. (2011). *A Political Analysis of Deviance 3rd Edition.* Ontario: De Sitter Publication.

Lauderdale, P. (2011). A Power and Approach to the Definition of Deviance. In P. Lauderdale, *A Political Analysis of Deviance* (pp. 3-5). Ontario: de Sitter Publication.

Lauderdale, P. (2015). Political Deviance. In E. Goode, *The Handbook of Deviance* (pp. 521-536). Sussex: Wiley Blackwell.

Lee, J. A. (1977). Going public: A Study in the sociology of homosexual liberation. *Journal of Homosexuality*, 3: 49-79.

LeFrancois, Brenda A., Beresford, Peter., & Russo, Jasna. (2016). Editorial: Destination Mad Studies. *Intersectionalities: A Global Journal pf Social Work Analysis, Research, Polity, and Practice, Vol. 5 No. 3.* Retrieved from: https://www.researchgate.net/publication/313361665_Editorial_Destination_Mad_Studies

Legomsky, S. H. (2007). The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms. *Washington & Lee Law Review, 64*, 469.

Majcher, I. (2013, September 30). Crimmigration in the European Union Through the Lens of Immigration Detention. *Global Detention Project Working Paper No. 6.,* p. Available at SSRN: https://ssrn.com/abstract=2340566.

المنارة للاستشارات
www.manaraa.com

Markel, H., & Stern, A. M. (2002). The Foreignness of Germs: The Persistent Association of Immigrants and Disease in American Society. *The Milbank Quarterly: A Multidisciplinary Journal of Population Health and Health Policy*, 80(4): 757-788.

Marks, S., & Levy, J. (1994). Detention of Refugees: Problems in Implementation of the Asylum Pre-Screening Officer Program. New York: Lawyers Committee for Human Rights.

Marouf, F. (2019). Invoking Federal Common Law Defenses in Immigration Cases. *UCLA Law Review 66*, 142.

Meffert, S. M., Musalo, K., McNiel, D. E., & Binder, R. L. (2010). The Role of Mental Health Professionals in Political Asylum Processing. *J Am Acad Psychiatry Law 38*, 479-89.

Menzies, R. L. (2013). Mad matters: A critical reader in Canadian mad studies. In R. M. B. A. LeFrançois, *Introducing mad studies* (pp. 1-22). Toronto: ON: Canadian Scholars' Press.

Miller, T. A. (2002). The Impact of Mass Incarceration on Immigration Policy. In M. M. Chesney-Lind, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (pp. 214, 226, 232).

Miller, T. A. (2005). Blurring the boundaries between immigration and crime control after September 11th. *Boston College Third World Law Journal Vol 25*, 1-43.

Monroe, D. (2015, Feb 18). Asylum: Inside Central State Hospital, the world's largest mental institution. *Atlanta Magazine*.

Moore, James E. (1970). *Mental Illness Exclusions in United States Immigration Procedure,* 3 Case W. Res. J. Int'l. Available at: https://scholarlycommons.law.case.edu/jil/vol3/iss1/5

Myers, B. (2014). *"Drapetomania": Rebellion, Defiance and Free Black Insanity in the Antebellum United States.* Los Angeles: UCLA.

Ochoa, K. C., Pleasants, G. L., Penn, J. V., & Stone, D. C. (2010). Disparities in Justice and Care: Persons with Severe Mental Illness in the US Immigration Detention. *The Journal of the American Academy of Psychiatry and the Law*, 38 (3) 392-399.

Oliver, M. (1990). *The Politics of Disablement.* London: Palgrave Macmillan.

Owen, Q. (2020, January 27). Supreme Court allows rule to turn away immigrants who may need public assistance. *ABC news*, pp. Retrieved from https://abcnews.go.com/Politics/supreme-court-trump-admin-expand-wealth-assessments-immigrants/story?id=68568341.

Parkin, J. (October 2013). The Criminalisation of Migration in Europe: A State-of-the-Art of the Academic Literature and Research. *LIBERTY and SECURITY in Europe*, No. 61.

Parry, J. W. (2013). *Mental Disability, Violence, and Future Dangerousness: Myths Behind the Presumption of Guilt.* Lanham, Maryland: Rowman & Littlefield Publishers, Inc.

Patel, N. A., & Sreshta, N. (2017). The Role of Psychiatrists in the Growing Migrant and Refugee Crises. *The American Journal of Psychiatry Residents' Journal 12:7*, 6-8.

Perlin, M. L. (2013). *A Prescription for Dignity: Rethinking Criminal Justice and Mental Disability Law.* New York: Routledge.

Perlin, M. L. (1998). *Mental Disability Law: Civil and Criminal.* Carolina Academic Press

المنارة للاستشارات
www.manaraa.com

Pietkainen, P., & Kragh, J. V. (2019). *Social Class and Mental Illness in Northern Europe.* Routledge.

Pirelli, G., Gottdiener, W. H., & Zapf, P. A. (2011). A Meta-analytic review of competency to stand trial research. *Psychology, Public Policy, and Law 17, No. 1*, 1-53.

Pope, K. (2011). Resources for Therapists Who Are Threatened, Attacked, or Stalked by Patients. In K. P. Vasquez, *Ethics in Psychotherapy and Counseling: A Practical Guide, 4th Edition.* NJ: Wiley.

Rabinovitz, J. (2011, 10 20). Ending the Laws That Fuel Mass Detention and Deportation. *ACLU Updates*, pp. Retrieved from https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/ending-laws-fuel-mass-detention-and.

Rabinowitz, H. N. (1974). From Exclusion to Segregation: Health and Welfare for Southern Blacks, 1865 - 1890. *The University of Chicago Journals*, 346-347.

Reaume, G. (2006). Mad People's History. *Radical History Review 94*, 170-82.

Robinson, William & Santos, Zuan. (2014). Global Capitalism, Immigrant Labor, and the Struggle for Justice. *Class, Race and Corporate Power Vol. 2 Issue 3,* Article 1

Rosenbloom, R. E. (2018). Beyond Severity: A New View of Crimmigration. *Lewis & Clark Law Review Vol. 22*.

Rusche, G., & Kirchheimer, O. (1939). *Punishment and Social Structure.* New York: Routledge.

Segrest, Mab. (2020). History Shows That When Prejudice Overrides Science, Public Health Is at Risk. *Time.* April 16, 2020. Retrieved from: https://time.com/5822816/race-public-health-history/

Shear, M. D., & Davis, J. H. (2017, Dec 23). Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda. *The New York Times*, pp. Retrieved from https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html.

Snyder, P. A. (2000). *The Wall Around the West: State Borders and Immigration Controls in North America and Europe.* Rowman & Littlefield Publishers.

Srikantiah, J., & Sinnar, S. (2019). White Nationalism as Immigration Policy. *Stanford Law Review*, Vol. 71.

Stumpf, J. (2006). The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power. *American University Law Review 56, no. 2*, 367-419.

Stumpf, J. (2006). The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power. *American University Law Review Vol 56:2*, 368-418.

Szasz, T. S. (1963). *Law, Liberty, and Psychiatry: An Inquiry into the Social Uses of Mental Health Practices.* New York: The Macmillan Company.

Taft, P. (1968). *Labor Politics American Style: The California State Federation of Labor.* Massachusetts: Harvard University Press.

Tovino, Stacey A. (2016). The Grapes of Wrath: on the Health of Immigration Detainees. *57 B.C. Law Review.* 167.

المنارة للاستشارات

www.manaraa.com

Von Werthern M, Robjant K, Chui Z et al. (2018). The impact of immigration detention on mental health: a systematic review. *BMC Psychiatry.*18:382.

Warner, J. A. (2005). The Social Construction of the Criminal Alien in Immigration Law, Enforcement Practice and Statistical Enumeration: Consequences for Immigrant Stereotyping. *Journal of Social and Ecological Boundaries*, 56-80.

Weber, M. C. (2004). Opening the Golden Door: Disability and the Law of Immigration. *The Journal of Gender, Race & Justice*, 323.

Welch, M. (1996). The Immigration Crisis: Detention as an Emerging Mechanism of Social Control. *Social Justice*, Vol. 23, No. 3(65), Immigration: A Civil Rights Issue for the Americas in the 21st Century, pp. 169-184.

Welch, M. (March 2012). The Sonics of Crimmigration in Australia: Wall of Noise and Quiet Manoeuvring. *The British Journal of Criminology, Vol 52, Issue 2*, 324-344.

Wilson, D. (2016). Marginalizing migrants: illegality, racialization, and vulnerability. In E. (. Goode, *The handbook of deviance* (pp. 504-520). Oxford: Wiley-Blackwell.

المنارة للاستشارات

www.manaraa.com