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JURISPRUDENCE

ICE Raids Bear a Disturbing Resemblance to the “Pass Raids” of Apartheid

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An anti-apartheid protest takes place on May 27, 1969. Keystone-France/Gamma-Rapho via Getty Images

Undocumented people and their families braced for another round of raids by Immigration and Customs Enforcement officers earlier this month. The reports and images of ICE officers staking out homes and arresting people recall a parallel moment in history in apartheid South Africa, where the authorities regularly swept up black people under the “pass laws,” a system that rigidly regulated the movement of black people from so-called homelands to the white urban centers.

The pass laws represented one of the most inhumane and hated aspects of the South African apartheid system. Under a system of racially based citizenship laws, the apartheid regime mandated that all black South Africans over the age of 16 carry a “pass” in the form of a small reference book—brown for men, blue for women—at all times. Without these passes it

was virtually impossible to find work, obtain housing, register births, or obtain a range of labor rights. Failure to carry it was a crime.

This system of “influx control” entailed the constant policing of homes and other private spaces as well as public places like train stations and places of employment. Uniformed police squads would sweep communities in frequent pass raids and arrest “illegals,” or anyone caught without a pass in a designated white neighborhood. Those caught in the pass raids were forcibly removed to “homelands,” where they would be relegated to lives of starvation and deprivation. A system that clearly demarcated and labeled “others” based on their race and ethnicity, the pass laws wreaked havoc on black families by forcing the separation of spouses from spouses and children from their parents, consequently destabilizing communities.

The pass law raids subordinated the humanity of black individuals caught in the web of constant surveillance. Treated as mere numbers, they were stalked and hounded like prey. Between 1916 and 1984, approximately 17,745,000 black South Africans were arrested or prosecuted under the so-called influx control laws. The officials responsible had lost empathy for those whom they considered “illegals”—and they failed to see their humanity or care about their survival.

I see echoes of apartheid’s pass laws in the United States’ current treatment of asylum-seekers and immigrants from predominantly Latin American countries. In both cases, citizenship laws were used to justify strict control over the movement of nonwhite people. Black South Africans were subjected to a labyrinth of Kafkaesque laws and policies that required continuous employment and continuous residence, which the laws themselves precluded. In the U.S., refugees and undocumented immigrants too are forced to navigate an impossibly complicated legal maze or face deportation—and the rules change constantly.

Fear is the key effect in both systems. The pass laws in South Africa created an ongoing sense of fear and insecurity for black individuals, families, and communities as they endured family separation, hunger, harsh punishment, and untreated disease. The objective was to terrorize and control whole communities by imposing horrific conditions on those who dared to try to establish their humanity through some semblance of personal security. The raids by ICE and the accompanying rhetoric of the Trump administration serve the same purposes, creating the conditions of constant insecurity, anxiety, and fear.

The system of influx control was predicated on the political myth that black South Africans were citizens of “homelands” created by the apartheid government, to which millions of black South Africans were relegated to eke out paltry existences. Since resettled communities were dumped in desolate areas, far from the white centers of South Africa where health and other social

welfare facilities were available, the effect on the health of the communities was devastating. Apart from the physical diseases of cholera, typhoid, and others, the incidence of mental illness was widespread. Women suffered disproportionately from these afflictions, since they had to nurture children, provide for the upkeep of the family, and basically exist as heads of households with the most scant of resources. Similarly, deplorable conditions at the ICE detention centers—dangerous overcrowding, detainees wearing soiled clothing for days or weeks, poor food storage, spoiled food and poor food handling, mold in showers, and unusable toilets—have been reported by the Office of Inspector General. Routine and urgent medical care is lacking, causing illness and sometimes leading to deaths, including the deaths of children.

Some might argue that I am comparing two very different situations—that what made the system of influx control with its pass laws so pernicious was that those removed and resettled were actually South Africans who were deprived of their rights based on their race and ethnicity, and that the U.S. is dealing with individuals who came here illegally. The argument further goes that any government has the right under international law to restrict those who are permitted within its borders. In short, national sovereignty determines movement between borders, rights of residency, and citizenship.

But the distinction does not hold when one looks at the intent and the consequences of immigration enforcement tactics. First, the enforcers are intent on demonizing “the other,” claiming to target “criminals.” Second, the distinction between “legal” and “illegal” is blurred; many of those targeted live in mixed households, where children and spouses are U.S. citizens, and others have called the U.S. their home for decades. This delineation leads to families being torn apart and traumatized, as they were under the pass laws in South Africa.

These raids, past and present, are grounded in a persistent failure to abide by international and democratic law as well as norms that recognize the basic human rights of every individual.

The system of apartheid was universally condemned and declared a crime against humanity by the United Nations in 1973, specifically declaring that all human beings are born free and equal in dignity and rights. The Apartheid Convention was the culmination of the annual condemnation of apartheid at the United Nations as violating a range of human rights laws and policies.

This is not to say that the U.S. is committing apartheid; the American legal system of constitutional protections *is* different from the apartheid South African legal system. Without a constitution and Bill of Rights, the apartheid legal system designated black South Africans as second-class citizens without basic rights, such as the right to vote, freedom of speech and movement, and due process. The laws of apartheid prohibited interracial mixing of all kinds, including in marriage, housing, education, and public facilities. The United States has not only

ratified a range of international human rights documents, but its national norms are supposed to be congruent with international human rights law.

Still, we can learn from the parallels between the shameful history of the pass laws and the U.S. government's current treatment of refugees and immigrants. The pass laws were repealed, and South Africa established a constitutional democracy as the apartheid system ultimately collapsed under international condemnation. This moment in America may meet a similar fate in the history books.