

Reaction to: “Resisting Racialized Immigration Enforcement through Community Bond Funds”

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America’s insistence on dealing with immigration by confining undocumented persons is a contentious issue that invariably carries underlying implications of race, nativism, and economics. Flanagan’s article discusses the historical development of civil confinement and how communities of color are over-policed. It also explores “community nullification,” the process by which community bond funds are used to post bail for immigrants in detention centers as a part of a strategic tactic to push back against the government’s immigration policies.

Flanagan’s discussion of how America’s penal system compulsively imprisons people of color properly sets the backdrop for exploring the similar problem with today’s immigration detention centers, or what Flanagan calls *immcarceration*. The government’s role in criminalizing the common features of immigration – namely, to look for better economic conditions or to flee violent and dangerous environments, resembles the rapid incarceration of persons of color for minor crimes committed in poverty-stricken, violent communities, usually out of necessity and as a reaction to the environment. I think Flanagan could have discussed more of the complexities of immigration. Though they may be common knowledge at this point due to America’s present-day fascination with immigration, the discussion could help the reader truly grasp the extreme consequences of not only forcing violators into immigration facilities, but also the problem of pretrial facility lock-up.

Flanagan notes legal developments in pretrial justice. Despite developments such as the Bail and Reform Act of 1966¹ and the Supreme Court decision in *Bearden v. Georgia*,² more people sit in jail today than ever before. This indicates that there may be other implications that should have been explored.

Community nullification through bail funds is an interesting solution to immigrant detainment. Upon first glance, it is a great idea. Flanagan distinguishes community bail funds from simply raising an individual’s bail funds. Individuals held at immigration facilities during the pretrial stage do not need personal connections to benefit from community bail funds and obtain relief. What stands is a community-organized fight against government proceedings; taking back control of laws affecting individuals in the community. Flanagan clearly explains the communal aspect and

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1. See 18 U.S.C. § 3145, *et seq.* The Bail Reform Act of 1966 required magistrates to release violators of federal law without financial bond unless certain facts of a case required conditions to be set.

2. 461 U.S. 660 (1983). This decision made it a violation of the Fourteenth Amendment’s Due Process Clause and the Equal Protection Clause to imprison a criminal defendant who could not pay his or her fines and fees.

cooperative resistance that goes into bail funds. Still, I feel an opportunity to address how the community would be identified in such a large context was overlooked. Flanagan addresses the logistical concerns given the length of immigration cases and the general minimum bond requirement of \$1,500. However, perhaps just as important is the reality that in America, pockets of communities still care about these issues. I feel the article should have addressed the concern that the number of immigrants locked up, and in need of these funds, may outweigh the concerns of the communities that pushback against pretrial holdings.

The article explores an impressive solution to the increase in racialized immigration enforcement in pretrial proceedings. Flanagan clearly explains the positive change community pushback through bond funds can bring about, while addressing the logistical concerns. Nonetheless, I think the article could have better addressed the complexities of immigration, allowing the reader to really grasp the striking defect of using incarceration as an answer to undocumented persons – and there may not just be one answer. Bond funds are a correct approach, but in such a politically divided climate, I wonder if these affected communities will be capable of mustering up funds to tackle increased *immcarceration* of individuals. That is the question the reader is left with.