BUREAUCRACIES OF REMOVAL:
THE LABOR AND LOGICS OF US IMMIGRATION COURTS

Dylan Farrell-Bryan

A DISSERTATION

in

Sociology

Presented to the Faculties of the University of Pennsylvania

in

Partial Fulfillment of the Requirements for the

Degree of Doctor of Philosophy

2022

Co-Supervisor of Dissertation

_____

Emilio Parrado

Professor of Sociology

Co-Supervisor of Dissertation

_____

Amada Armenta

Associate Professor of Urban Planning

Graduate Group Chairperson

_____

Wendy Roth, Associate Professor of Sociology

Dissertation Committee

Wendy Roth, Associate Professor of Sociology

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For my dad, Kevin, and my abuela, Kiki.

ACKNOWLEDGMENTS

Very little of the past six years has been straightforward. From beginning my fieldwork at the start of a highly anti-immigrant presidential administration to concluding it during a global pandemic, alongside losing my father, grandmother, and – nearly – my little brother during the past three years, I have a deep sense of my own luck and privilege to be able to complete my PhD this year. I truly would not have been able to do it without the persistent and dedicated support of my mentors and my community.

First, my committee: I am deeply indebted to Amada Armenta, who has been my academic lifeline, coach, and inspiration for the past six years. Your persistent belief in me, in my scholarly potential, and this project, has been a vital source of support both personally and professionally. Your criticism and insight have sharpened how I write and how I think, allowing me to find my way forward always. I am forever grateful. An enormous thank you to Emilio Parrado for your commitment to opening up the black box of the immigration courts, now and going forward as we dive into the next phase of EOIR data analysis. Thank you to Wendy Roth, whose quiet and steadfast support – and critical eye – has been a guide while I completed my fieldwork and started writing. Thank you all.

Beyond these three pillars, a broader community of academics, both at Penn and farther afield, have shepherded me through this work and my time in graduate school: Chenoa Flippen, Dorothy Roberts, Annette Lareau, Juliet Stumpf, Irene Bloemraad, Helen Marrow, Rebecca Hamlin, Emily Ryo, Ingrid Eagly, David Hausman, Sarah Paoletti, Asad Asad, Matthew Clair, Austin Kocher, Jaya Ramji-Nogales, Neda Maghbouleh, Brian Tuohy, Roberto Gonzales and the Penn Migration Initiative. Additionally, my cohort breakfast club: Lauren Harris, Doron Shiffer-Sebba, Tessa Huttonlocher, and my

immigration law writing group: Ian Peacock, Daimeon Shanks, Pauline White-Meeuson have both been instrumental for my accountability and writing progress. All the academic work would not function without the dedicated support of the administrative staff – a resounding thank-you to Audra Rodgers, Marcus Wright, Katee Dougherty, Dawn Ryan, Julia Hawthorne, and Phil Thomas for all your help over the years.

In the field, I owe an enormous thank you to the EOIR staff, including Kelly Nance and all the Baltimore immigration judges for allowing me access and insight into the process of immigration adjudication. Additionally, the Hon. John Gossert and the Round Table of Immigration Judges were key for my understanding of this unique judicial cohort. At OPLA, I am very thankful for the assistance of all the attorneys and managers, in particular Melody Brukiewa for facilitating my interview sampling and to Melanie McDonough for helping with statistics and agency insight. Last but not least, I have been truly inspired and educated by the amazing community of private bar immigration attorneys in the Baltimore-Arlington area. A huge thanks to Liz Keyes for facilitating my interview access, and to all the tireless attorneys who represent immigrants in front of the Baltimore judges every day.

Finally, I'd like to thank my friends and my family, near and far, who have made me laugh, and made me to rest; you have fed me and supported my heart along this journey. I would not be here without you. I truly do this work because I believe in the power of knowledge to dismantle inequity, and only hope that my dissertation, and any future work to come, can serve to support and uplift. Thank you so much for everything.

ABSTRACT

BUREAUCRACIES OF REMOVAL:
THE LABOR AND LOGICS OF US IMMIGRATION COURTS

Dylan Farrell-Bryan

Emilio Parrado

Amada Armenta

With the intensification of immigration enforcement, detention, and deportation in the United States in recent years, an ever-increasing number of immigrants find themselves in immigration court facing removal from the United States. As the site where immigration judges and prosecutors decide who will be deported and who can remain in the United States, the immigration court is an important, yet understudied, institution in the immigration enforcement bureaucracy. Situating this study at the intersection of sociolegal literatures on immigration enforcement, bureaucracies, and decision-making, each chapter of this dissertation focuses on how the judges, prosecutors, and immigration attorneys navigate the labor of removal in immigration court. Drawing on in-depth interviews and ethnographic observations of these court actors, I link their bureaucratic working conditions, as well as varying professional norms, to the process and outcomes of immigration removal hearings. While illuminating the black box of immigration court workings, this project explicitly contributes to research on legal decision-making and the bureaucratic values revealed in the process of adjudicating the important public, civil, and criminal justice issue that is immigration in the United States.

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LIST OF ACRONYMS

ACC	Assistant Chief Counsel
ACIJ	Assistant Chief Immigration Judge
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AG	Attorney General of the United States
AILA	American Immigration Lawyers Association
ALJ	Administrative Law Judge
AWC	Adults with Children
BIA	Board of Immigration Appeals
CBP	Customs and Border Patrol
CC	Chief Counsel
CFR	Code of Federal Regulations
CIJ	Chief Immigration Judge
DCC	Deputy Chief Counsel
DHS	Department of Homeland Security
DOJ	Department of Justice
EAD	Employment Authorization Document
EOIR	Executive Office for Immigration Review
ERO	Enforcement and Removal Operations
EWI	Entry Without Inspection
FLRA	Federal Labor Relations Authority
HIS	Homeland Security Investigations
ICE	Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform & Immigrant Responsibility Act of 1996
IJ	Immigration Judge
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IRCA	Immigration Reform & Control Act of 1986
LPR	Lawful Permanent Resident
NACARA	Nicaraguan Adjustment and Central American Relief Act
NAIJ	National Association of Immigration Judges
NTA	Notice to Appear
OCIJ	Office of Chief Immigration Judge
OPLA	Office of the Principal Legal Advisor
OPPM	Operating Policies and Procedures Memorandum
SIJ	Special Immigrant Juvenile
SIO	Special Inquiry Officer

TA	Trial Attorney
TPS	Temporary Protected Status
TRAC	Transactional Records Access Clearinghouse
USC	U.S. Citizen
USCIS	U.S. Citizenship and Immigration Services
VD	Voluntary Departure

PREFACE

Both legally and politically, the US immigration court is unique in the American legal system. Located outside of the judiciary, the immigration court or Executive Office for Immigration Review (EOIR), is one arm of the federal immigration enforcement apparatus in which immigration judges decide thousands of removal cases each year. During a time of unprecedented intensification in immigration enforcement, detention, and deportation practices in recent years,[1] this court system has seen a sharp rise in the number of immigrants facing removal from the United States.[2] As the site where immigration judges decide who is deported and who can remain in the country, immigration court is an important institution in the immigration enforcement bureaucracy, and yet has received little scholarly attention.

My dissertation examines how immigration court functions on the ground, focusing in particular on the labor, identity, and logics of the individuals who work in this system – the judges, government prosecutors, and the attorneys – whose concerted efforts impact thousands of lives and remap the population of the United States. Whether they work as representatives of the state, or representing noncitizens in removal proceedings, this study aims to understand how these court actors articulate and negotiate their preferences, norms, and constraints within the courtroom. Moreover, how do these preferences, norms, and constraints shape decision-making and the exercise of discretion in granting relief or ordering removal? In the three separate articles of this dissertation, I draw on 110 in-depth

[1] Scholars have primarily identified this shift as due to mid-1990s statutory and policy changes in immigration law that broadened the list of crimes that can initiate removal proceedings, as well as increased cooperation between local and federal immigration enforcement practices.

[2] The immigration court system of the United States operates two parallel dockets for immigrants facing removal, one for detained and one for non-detained respondents.

interviews with these court actors, as well as ten months of ethnographic observations of court proceedings to trace the processes and decision-making that shape the theater – and outcomes – of removal proceedings in the immigration courtroom.

Understanding Immigration Court

In immigration court, removal proceedings begin when the DHS[3] serves an individual with a charging document called a Notice to Appear (NTA), and files it with an immigration court. Once received by the court, the respondent is scheduled for a brief initial hearing called a master calendar hearing, in which the judge makes an initial determination about the validity of the grounds for removal and assesses the plan for the case. This preliminary hearing is usually followed by a longer, in-depth hearing, called an individual merits hearing, lasting around four hours. Here, all the facts of the case are fully questioned and discussed by all court actors over the hours-long proceeding which culminates in a decision by the immigration judge. Broadly, the potential final outcomes of removal proceedings can include being granted relief from removal (relief or case termination), or being removed from the country (voluntary departure,[4] or removal[5]). If the decision is appealed, it will go on to the BIA and possibly, federal court. The steps to this process are seen in Figure 1.

[Figure 1 in appendix]

[3] Either through U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), or U.S. Customs and Border Protection (CBP).

[4] If an immigration judge determines that an immigrant is legally removable, there are several options for "relief," if there is a form of "relief," such as asylum, cancelation of removal, or adjustment of status for which they are eligible. Voluntary departure is technically considered a form of relief.

[5] If an immigrant should miss a court date for any reason, he or she can be deported *in absentia* without a hearing.

The primary actors in the courtroom are the immigration judge[6], the government prosecutor from the Department of Homeland Security, the attorney for the respondent (when the respondent is represented)[7], and the detained or non-detained respondent, who faces charges of removal from the government. Each of the court actors articulates a different, often competing set of preferences, norms, and constraints, the enactment of which shapes the process of the removal proceeding, and ultimately, the legal decision-making of the immigration judge. During the proceeding, both attorneys have the opportunity to frame their case by questioning the respondent and making arguments to the judge. The government attorney, as the prosecutor, argues for the removal of the respondent, drawing on Immigrations and Customs Enforcement (ICE) guidelines for removal and interagency data on country conditions, financial, and crime records. The attorney for the respondent, if present, argues for relief from removal for their client. The respondent in court should act as a credible witness, answering all questions from the attorneys, and providing believable testimony to convince the judge of his or her eligibility and deservingness for relief from removal. The immigration judge considers the arguments, and finally, he or she will make and justify a decision about whether to either grant relief or order removal.

Immigration Court as a Site of Enforcement and Discretion

[6] Immigration judges who adjudicate removal proceedings are often career attorneys, appointed by the US Attorney General (AG) to serve as administrative judges within the Department of Justice (DOJ). As such, they are employed for indefinite terms and not subject to some of the personnel regulations of employees in civil service (Benson and Wheeler 2012).

[7] The respondent is often, but not always, represented by an attorney. Immigration and Nationality Act § 240(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A) (2012) ("[T]he alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings."); Orantes-Hernandez v. Thornburgh, 919 F.2d 549, 554 (9th Cir. 1990) ("[A]liens have a due process right to obtain counsel of their choice at their own expense."

The criminalization of migration, or 'crimmigration,' refers to the growing body of socio-legal scholarship that charts the ongoing convergence of the criminal justice and civil immigration laws, procedures, and cultural norms. Legal scholars have described a pattern of increasingly punitive convergence with immigration law and criminal procedure within the development of law (Chacon 2009; Legomsky 2007; Miller 2005; Stumpf 2006).[8] Within this broader literature, there is a burgeoning sociolegal literature that has focused on the labor of border patrol, policing, and deportation officers as the main locus of immigration enforcement (Armenta 2019; Bohn and Pugatch 2015; Coleman 2012; Dingeman et al. 2017; Vega 2018). This work has revealed a complex system of on-the-ground practices showing how street-level immigration officers justify and legitimate their work (Armenta 2016; Vega 2018), as well as an increasing tendency to criminalize immigrants (Dingeman et al. 2017) that has funneled immigrants into an expanding federal deportation system (Coleman and Kocher 2011). However, despite this growing body of work, there has been less attention paid to the practices of the immigration court bureaucrats, despite the important role immigration courts play in the immigration enforcement apparatus.

While important quantitative sociolegal research focuses on predicting removal outcomes (Eagly and Shafer 2016; Ryo 2016), this dissertation contributes to a small but

[8] Many scholars point to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as the watershed legislation that reshaped the landscape of immigration enforcement and criminalization in the United States. It has led to a series of increasingly punitive measures (Stumpf 2006), with scholars identifying three primary trends: 1) increasingly harsh criminal consequences associated with the violation of migration laws, 2) the use of deportation/removal as a proxy for criminal punishment for noncitizens, and 3) the increasing use of criminal law processes (law enforcement and other mechanisms) in civil proceedings (Chacón 2010). The blurring relationship between criminal punishment and immigration law (Kanstroom 2003) points to a "new penology" or punitive turn in the civil proceedings of immigration law and enforcement (Feeley 2017; Miller 2005; Simon 1998).

growing body of qualitative sociolegal research that examines the street-level processes of the immigration court on the ground, including the understandings and meanings that court officials assign to the labor of enforcement and removal (Abel 2011; Asad 2019; Montero-Colbert, Tekgurler, and Deckard 2019; Oxford 2005; Ricciardelli et al. 2019). Immigration court proceedings involve two central actors that are frequently characterized as discretionary, street-level bureaucrats, the immigration judge and the government prosecutor (Castro 2016). The theory of street-level bureaucracy argues that frontline workers enforce policy while interacting with the individuals who are subject to that policy (Lipsky 1980). These frontline workers have a high degree of discretionary capacity as they make decisions to enforce policy (Asad 2019; Heimer 2008), and thus act either as rule-followers, making routine, perfunctory decisions that align with the institutional laws (Gilboy 1991), or as rule-benders, in which they exercise discretion when encountering cases they view as 'deserving' (Zacka 2017). In their exercise of discretion, Lipsky argues, street-level bureaucrats effectively *make* policy through their discretionary decision-making. As street-level bureaucrats, both immigration judges and DHS attorneys face complex cases that require legal dexterity and provide opportunities to use discretion. In this dissertation, I interrogate the conceptualization of immigration court actors as street-level bureaucrats, examining how the constraints on the immigration court have remapped the experience of discretionary decision-making in removal proceedings for all parties.

Using these broad sociolegal literatures, this project moves beyond the quantitative trend of identifying predictors of removal and considers the on-the-ground processes occurring in the immigration courtroom. Because the power of the state to regulate immigrants and immigration emerges from the routine procedures and preferences of

institutional actors, I examine the immigration courtroom and its actors in the tradition of research "from the bottom up," as the processes are unfolding in real time (Gravelle, Ellermann, and Dauvergne 2013). This includes in-depth interviews with court actors and an observational court ethnography of removal proceedings. While the existing studies have been able to identify the strength and direction of various quantitative predictors of removal, they have been unable to capture fully the interactional, relational dynamics of immigrant selection at work in the theater of the courtroom and how those dynamics vary among the court actors: immigration judges, prosecutors, and attorneys.

Roadmap of Dissertation

Since each chapter in this dissertation has been written for article publication, I detail the different methodological approaches and theoretical contributions in each one. Each article focuses on a different set of actors and questions within the immigration court bureaucracy. After presenting the three separate articles of this dissertation, I end with a brief conclusion that aims to pull out the major themes and future directions of this work. Below is a brief description of each article:

The first article in this dissertation examines the topic of time, waiting, and temporality in the immigration court system, and draws on interviews with immigration attorneys to better understand how they manage time to shield their clients from harm. I focus on legal temporality, or the volatility between time and immigration law, arguing that attorneys strategically exploit time by delaying or expediting their clients' cases within a long-backlogged bureaucracy. Delayed time, in contrast to previous conceptualizations of waiting, is frequently used by practitioners as an opportunity to craft legal legibility in an increasingly restrictive legal enforcement landscape.

The second article focuses on the Immigration and Customs Enforcement attorneys who prosecute noncitizens' removal cases on behalf of the federal government. In this article, I examine how these career bureaucrats legitimize and justify their labor in an increasingly polarized political landscape. Extending the literatures on self-legitimacy and the social psychology of enforcement officers, I argue that a less-understood pathway to self-legitimacy is derived through bureaucratic entrenchment: high internalization of duty to the law and a sense of patriotic moral authority while disputing noncitizens' claims to asylum.

The third and final article addresses the labor of removal from the perspective of the immigration judges, who act as the final arbiters of the noncitizens' courtroom proceedings. While immigration judges are most commonly positioned in the literature as discretionary, independent actors, this article extends our knowledge of these decision-makers by examining the internal, contingent (micro)management structure of the immigration court bureaucracy. I argue that the state's management of immigration judges increases precarity among noncitizens in the immigration court system and suggest that it might operate as a different form of migration control, distinct from macro-level border policy or front-line decision-making of street-level bureaucrats. The article reveals the banal ways that the state controls both adjudicators and noncitizens within a broader trajectory of contemporary punitive immigration policy.

1. LEGAL TEMPORALITY: SHIFTING LAW AND THE LOGICS OF WAITING IN THE IMMIGRATION COURT BUREAUCRACY

Abstract

Current scholarship has explored how time and waiting operate in the bureaucratic state to regulate and control populations. In the bureaucracy of immigration enforcement, time is characterized by extensive delays in entry, detention, and processing of noncitizens' cases, yet little attention has been paid to how time impacts legality and strategy in removal proceedings. Drawing on ethnographic fieldwork and in-depth interviews in the Baltimore immigration court, this article examines the bureaucratic time of the immigration court system, asking: what is the relationship between time and immigration law for removal proceedings, and how do immigration attorneys and noncitizens manage time in the court bureaucracy? I focus on how time and immigration law fluctuate together in what I term *legal temporality,* and the ways it shapes the legal cases of noncitizens awaiting removal hearings. Given the volatility between time and immigration law in the court bureaucracy, cases that are subject to long delays are more likely to move in and out of legal viability under existing law. As such, bureaucratic delays may offer opportunities for attorneys and noncitizens to strengthen their cases, put their affairs in order, or have a more favorable legal landscape for their hearings. Highlighting two divergent logics of waiting, I detail how attorneys and noncitizens adapt to the legal temporality of the bureaucracy by strategically *expediting* or *delaying* immigration court processes in the unstable legal field. I argue that these strategies help to craft legal legibility and shield noncitizens from the temporal regime imposed by the state. By extending our conceptualizations of time and waiting in bureaucracies, this article illustrates how time impacts legality and case strength,

with implications for how we understand the so-called political crisis of the immigration court backlog.

Introduction

While clock-time shapes social life, from daily schedules and efficiency expectations to cultural beliefs that 'time is money,' scholars have actively challenged the assumption that the experience of time (and waiting) is universal. Indeed, scholars have argued that temporality, or how time is socially organized and experienced, differs widely within and across individuals, organizations, cultures, and positionalities (Bluedorn and MJ Waller 2006). In state bureaucracies, time and waiting have been described as key features used to regulate and control populations (Bourdieu 2000). Across a number of bureaucratic contexts, including public hospitals (Lara-Millán 2014), welfare agencies (Auyero 2011), unemployment offices (Nielsen, Danneris, and Monrad 2021), and prisons (Kotova 2018), scholars have described how bureaucratic waiting is often leveraged by internal actors as a form of social control. Extended waiting and delay, scholars argue, produces feelings of powerlessness and vulnerability (Schwartz 1975), and the "subjective effects of dependency and subordination" among marginalized groups (Auyero 2011:8).

Similarly, time in the bureaucracy of immigration enforcement mirrors this temporal reality. In line with existing literature, the state subjects noncitizens to multiple temporal tensions starting as soon as they are entered into the immigration enforcement bureaucracy (Griffiths 2014). Research has shown how the state imposes punitive temporal regimes to either speed up detection and removal, or to slow down entry, detention, and integration processes (Boyce 2020; Conlon 2011; Gill 2009). In immigration court specifically, noncitizens are subject to extensive delays before cases are heard by an immigration judge. Indeed, the number of backlogged cases in immigration court has ballooned in recent years, with 1.7 million cases pending nationally in 2022 (as seen in

Figure 1.1). With these record-high levels of delay, cases can remain on the docket for years; on average, immigration cases take 974 days to be completed nationwide (TRAC 2022).[9]

[Figure 1.1 in appendix]

Politically, the state continues to produce this record-high backlog in real time, while framing the resulting delay as an urgent political crisis. In 2021, vice-president Kamala Harris described the immigration court agency as a "deeply broken system" (Villarreal 2022), even as her own administration added to the growing backlog in court through ongoing enforcement of immigration. Additionally, immigration law is one of the more volatile bodies of law, subject to numerous administrative changes, including executive orders, shifting policy directives, and agency reprioritizations through the Executive branch that reshape the law's implementation. For example, during the four years of the Trump administration alone, nearly 500 administrative changes remapped many aspects of the US immigration system (Bolter, Israel, and Pierce 2022). Some attempts have been made to speed up the process by creating special rules to expedite certain types of cases through the court process (J. R. McHenry 2018), or limit the time to completion (Executive Office for Immigration Review 2020b), although this process has largely been criticized as undermining noncitizens right to due process (Alanko 2021). Overwhelmingly, recent changes to immigration law have worked to limit individual

[9] Nationwide, courts experienced 1,214% increase in pending cases since 1998 (TRAC 2022).

claims by noncitizens, by restricting access to immigration benefits such as asylum, and expanding the list of offenses that lead to removal from the United States (Chacon 2009; Salyer 2018).

Given these features of the immigration court bureaucracy, the longer cases wait in a court backlog, the more likely they are to move in and out of legal viability. In other words, as the laws change over time, a so-called strong case for asylum may become weak, and vice versa. This temporal and legal instability is widely condemned as an urgent problem to be solved, yet limited research has empirically examined how lawyers and noncitizens respond to this temporal reality on the ground. Given that much of the existing scholarship on waiting focuses on time as punishment and control, I focus instead on how advocates manage (and respond to) time as both a strategy and an obstacle. I hypothesize that while the experience of delay may be punishing for some, waiting may also offer opportunities to strengthen cases, put affairs in order, or wait for a more favorable legal landscape for hearings.

In order to explore this, I ask a two-part question: first, what is the relationship between bureaucratic time and law in the immigration court, and second, how do attorneys and noncitizens manage the temporal landscape? I draw on ten months of ethnographic observations of detained and nondetained removal proceedings, and 40 in-depth interviews with immigration attorneys to explore how attorneys and noncitizens strategically adapt to the temporal regime of the state. Introducing a conceptual framework of *legal temporality* to describe the unique relationship between law and time, I show how attorneys and noncitizens manage this temporal uncertainty by strategically *expediting* or *delaying* immigration court processes in this unstable legal field. I argue that these strategies, or

logics of waiting, work to craft legal legibility, manage uncertainty, and shield noncitizens from temporal harm imposed by the state. By extending our conceptualizations of time and waiting in bureaucracies, this article demonstrates how experiences of time vary across legal conditions, with implications for how to think about the so-called 'political crisis' of the immigration court backlog.

Literature Review

Time and Temporality in Bureaucracies

There is a substantial body of literature on the sociological study of temporality, time, and waiting in bureaucracies, particularly on how different actors manage time. Time, scholars argue, represents "a socio-temporal order which regulates the structure and dynamics of social life" (Zerubavel 1982:2). As such, who is experiencing time matters greatly – and time can be used differently, depending on one's subject position in relation to a bureaucracy. Pierre Bourdieu argues that time and waiting are key features of power and domination; "to keep people waiting, delaying without ruining their hope, is an exercise of power over people's time" (2000:228). Within a bureaucracy, more powerful actors might impose a delay to demean the value of subordinates within the institution (Schwartz 1975), an exercise of power that reinforces an unequal hierarchy. Other studies of social inequality have shown how bureaucrats in institutions such as public hospitals (Lara-Millán 2014), welfare agencies (Auyero 2011), unemployment offices (Nielson 2021), and prisons (Kotova 2018) often require marginalized individuals to wait (their turn; or for services) in a manner that is both punitive and commonplace. In such studies of bureaucracies, scholars demonstrate how time and waiting are frequently leveraged as tools

of social control and punishment, producing feelings of powerlessness and vulnerability among the poor and marginalized (Auyero 2011; Schwartz 1975).

In line with this research, recent migration scholarship has similarly pointed to time and waiting as precarious and punishing (Anderson 2007; Griffiths, Rogers, and Bridget 2013). Specifically, time is frequently weaponized against irregular migrants by the state: on one hand, the state uses time to speed up detection, enforcement, and removal (Andersson 2014), while also slowing mobility by delaying border crossing, lengthening detention time, and implementing bureaucratic wait times to otherwise frustrate, exhaust, and criminalize noncitizens seeking safe haven (Boyce 2020; Conlon 2011). Given this, scholars have shown how temporality is useful to understand practices of social control and punishment in a variety of national and incarceration contexts (Griffiths 2014; Mountz 2011; Turnbull 2016), as well as for how migrants themselves conceptualize time for their future trajectories into integration (Allsopp, Chase, and Mitchell 2015; Omar 2022).

However, despite the importance of these findings on how the state often imposes delay to control marginalized populations, few studies focus on how different actors leverage time to protect migrants from state harm. In the empirical case of immigration courts, waiting (in court backlog) has the effect of changing the viability and strength of cases as immigration laws change over time. In turn, immigration lawyers respond to this legal landscape by carefully managing time – attempting to expedite cases or slow them down, in order to both craft legal legibility for their clients and shield them from harm. Considering the unprecedented case backlog in US immigration courts, theories of time and waiting have yet to be meaningfully linked to legal legibility in removal proceedings.

Below, I detail how attorneys craft legal legibility, highlighting areas in which time and waiting merit greater attention.

Crafting Legal Legibility

As legal changes have limited the number of viable claims that can be made to immigration courts (Chacon 2009), individuals must make cases legible to the courts despite the increasingly narrow legal options (Salyer 2018). In the broader literature on legal legibility, the process of making any case legible to the courts often relies on the professional expertise of attorneys as intermediaries (Parsons 1963), who engage with their clients in an interactive process (Katz 1982) in order to "frame" (Gitlin 1980; Goffman 1959) or "script" (Heimer 1999) cases to meet the expectations of legal decision-makers and the existing law (Coutin 2008; Silbey 1981). In this process, attorneys perform the important labor of translating between their clients' experiences and the court's requirements, responding to strict procedural guidelines while advocating in their clients' interests. Scholars have theorized the client-attorney relationship beyond a transactional provision of service to an "interactive process" in which attorneys get to know their clients personal and emotional needs, understand their histories, and craft their legibility through ongoing "negotiations" between the client and the attorney (Katz 1982:23).

In immigration hearings, lawyers work to build narratives in response to the existing law, carefully crafting narratives of gendered deservingness (Bhuyan, Yoon, and Valmadrid 2020), violence (Lakhani 2013), or Americanness (Farrell-Bryan 2022; Galli 2020) to make cases appear more legally legible and sympathetic to the presiding immigration judge. In addition to the narrative framing, scholars have also charted the importance of physical documentation in crafting legible cases in immigration court, from

finding proper proofs (Kim 2011) to showing continuous residence (Allard 2018). These approaches highlight how advocates work within the highly restrictive existing system to eke out benefits for noncitizens seeking safety in the United States.

However, while narrative framing and documenting are important for crafting legible cases for court, few scholars have focused on the role of time and temporality in this process. How do advocates respond to, and strategically incorporate, timing concerns in the process of crafting legal legibility for their clients? As described above, the immigration court system is characterized by timing considerations that force individuals to either wait in a queue for years before a hearing or be rushed quickly through the process without the ability to gather proper evidence or prepare for cases. The experience of timing is thus a crucial, yet understudied, component to the process of making a case legally legible in court. Lawyers' work is increasingly complicated by the fact that they find themselves fashioning clients' claims to align with legal scaffolding that is still being assembled.

To summarize, studies of temporality in bureaucracies have shown that delayed time is frequently characterized as a tool of control and regulation by the state, in which marginalized individuals suffer through the imposition of extended, exhausting, and demoralizing delays. This practice, scholars argue, is used as a tactic of domination, and offers few opportunities for marginalized groups to resist or find agency within bureaucratic temporal regimes. Likewise, based on scholarship that examines how cases are crafted, we understand, in part, how individuals and intermediaries work within the legal bureaucracy to make their cases legible to the court or state. This process involves building narratives of deservingness with sufficient documentation to make myriad,

idiosyncratic experiences of harm and injustice appear legible within the narrowly defined law. However, while we know how legal legibility is crafted through narratives and documentation, we have not yet comprehensively understood the importance of time and waiting as a component of legal legibility. As time is a key feature of the immigration court bureaucracy, this article aims to explain the ways that lawyers respond to and strategically manage time as a strategy and an obstacle. By studying the temporal logics of attorneys in the bureaucracy of the immigration court, this article contributes to the study of migration enforcement and bureaucracies, shining light on the interaction between time and law, and the strategies for managing temporal uncertainty. As the legal field of immigration law is continuously assembled and reassembled, the importance of time in the highly backlogged system is crucial. I offer the conceptual framework of *legal temporality* to help understand and describe the complex relationship between time and law in the immigration court bureaucracy and illuminate the divergent strategies for managing it.

Data and Methods

This article is based on ten months of ethnographic observations of detained and nondetained individual proceedings in the Baltimore immigration court between December 2019 and October 2021,[10] and a novel set of 40 in-depth interviews with immigration attorneys in the Baltimore–DC area. Together, the observations and interviews allow for a rich understanding of how attorneys and their clients conceptualize time and waiting, while providing insights into how timing considerations play out in the setting of immigration court proceedings.

[10] Includes a period of court closure due to COVID-19, during which time interviews were conducted.

The Baltimore immigration court is not particularly unique when compared to other immigration courts in the nation. In 2020, approximately 65 percent of all asylum hearings in the Baltimore immigration court resulted in an order of removal from a judge, a rate that is just below the national average of 70 percent. It is a medium-size court in downtown Baltimore, with seven full-time immigration judges, including one dedicated docket for detained individuals and one for juveniles. Given the enforcement and migration patterns in the US, 75 percent of all cases in the Baltimore immigration court in 2020 were from just four countries (Mexico, Honduras, El Salvador, and Guatemala). The temporal conditions of the Baltimore Immigration Court are just slightly above the national average, with 36,894 pending cases in 2022. On average, Baltimore cases take an average of 1,112 days to be completed (TRAC 2022).

During the study period, my role was that of a court observer. In immigration court, removal proceedings are open to the public, with the exception of some individual asylum hearings on sensitive topics. As a formality, I first introduced myself to the attorneys and judge to get their permission to observe. Although the master and merits hearings are open to the public, by asking permission to observe and introducing myself I was often able to ask informal questions of the judge and attorneys, gaining insight into the case. Because recording devices are not permitted, I wrote jottings by hand during the court hearing. After leaving the courtroom, I expanded my jottings into more expansive narratives of the interactions, conversations, and procedures in court. I produced more than 350 typed single-spaced pages of field notes from my observations in the court.

The interviews, conducted between May 2020 – 2021, were recruited in-person after hearings, email recruitment from local Baltimore-area attorney email lists, and

additional snowball sampling. Interviews were conducted by phone and lasted between one and two hours. With permission, many were recorded and transcribed verbatim. The semi-structured topics cover a variety of themes, including attorneys' personal and employment history, as well as labor structure, challenges, and identity related to the practice of immigration law in the Baltimore court. The attorneys interviewed came from both small and large size private practice and non-profit law firms and represented a range of different removal defense strategies in immigration court. All the attorneys practice primarily in the Baltimore immigration court, but occasionally in other courts as well, including Arlington, York, Philadelphia, and New York.

Using a modified grounded theory and abductive approach to qualitative analysis (Timmermans and Tavory 2012), I repeatedly returned to my notes throughout the interviewing and fieldwork process, developing and refining my questions and subsequent observations in the courtroom. As my fieldwork progressed, I paid increasing attention to how immigration attorneys managed the labor of removal defense, including political and bureaucratic changes that reshaped the work of representing immigrants in court. As I re-read and coded my data, I kept these themes in mind, searching for evidence that confirmed or disconfirmed the emerging categories. I coded my fieldnotes using the qualitative software program Atlas.ti to organize and clarify my findings.

Findings

Legal Temporality in the Court Bureaucracy

The temporal landscape of the immigration court bureaucracy is fundamentally shaped by backlog, speed-ups, and unpredictable interruptions and ruptures – events that fragment the experience of removal proceedings for all parties. As the state both produces

and condemns the backlogged dockets of the immigration court, the conditions of time and waiting matter a great deal for the lawyers representing noncitizens facing removal. Due to the constantly shifting, politically responsive nature of immigration law, time affects removal cases in several ways. First, delayed time (backlog) impacts the strength of legal cases over time. Second, time shapes how lawyers respond to this landscape by strategically using time to either expedite cases or slow them down, as policy, precedent, and presidential administrations change over time. Because the immigration court system is characterized by an intrinsic instability in the relationship between time and immigration law, the logics of waiting operate differently for different types of cases. Lawyers representing cases that are "strong" under existing immigration law, i.e., likely to be granted relief from removal, might hope for a shorter, expedited timeline in order to allow respondents a chance to move on with their lives. However, given the legal narrowing of immigration law, in which fewer and fewer cases have viable options for relief from removal, a bureaucratic delay might also offer "weak" cases an opportunity to outwait the law, strengthen case documentation, or earn more money before an eventual removal order. In the next section, I highlight several examples of how the law fluctuates over time in this bureaucratic temporal landscape, before diving into the substantive findings section.

First, delays can alter the strength of the legal facts; the case of Ana, a young Honduran woman seeking asylum, exemplifies this experience. Ana fled Honduras after experiencing intense abuse at the hands of her ex-partner, a man who was a leader in the 18th Street gang, and she was awaiting her hearing in immigration court in Baltimore. Due to the backlog, Ana's case would not be heard for four years. When I spoke with her attorney, she told me that Ana's abuser had just been arrested, news that was splashed all

over Honduran press. Despite the legal difficulty of securing asylum on the grounds on domestic or gang violence, Ana's attorney said that her case was strongest right now with the news of his arrest and wished she could speed up Ana's hearing. She added that the delay in Ana's case would have a negative effect on the outcome:

> If there's ever going to be anything would help her case, it would be the news of his arrest, and the clear evidence that her ex-partner and abuser was not just a gang member, but a high up one. But that information is going to be stale in the four years it takes to get in front of a judge. This delay is a bad thing for some people who have a strong case. My hope is that she gets married to a US citizen, or just takes the four additional years of American wages [before getting deported], because I can't count on this working out in four years.

Given the delayed, extended experience of 'purgatory' time, Ana's attorney's strategy was to hope for Ana to find another avenue for relief from removal by marrying a US citizen or accepting her deportation in four years, despite it being a strong case.

Second, laws can change during the delayed time. The *Matter of AB* is one example of how significantly immigration law can change over time as individuals wait for their day in court. Widely cited as a highly partisan decision, US Attorney General Jeff Sessions decided *Matter of AB* in 2018, which governed how asylum law considered claims based on domestic- and gang-violence. Before *Matter of AB* was implemented, domestic-violence victims often had a strong chance of winning asylum in the United States. After its implementation, judges no longer had the legal option to grant asylum on those grounds. [11] In describing his experience of working as a respondent-side attorney in the Baltimore immigration court, one immigration attorney described how time matters for his clients:

[11] The decision has been vacated under AG Garland during the first year of the Biden Administration (US DOJ 2021).

> We see constant changes in the law over time as cases wait. For a lot of asylum claims, the rug literally just got pulled out from underneath a lot of these people with domestic violence or gang violence claims. There was a string of cases early on, a lot of domestic violence, or gender-based claims. They were coming fast and furious, and a lot of them were winning – if they were able to get a court date before 2018 when the world changed. That was tough for a lot of those folks, because the day before they had a good case, and then the day after not so much.

In this interview, the attorney shared how the law can shift across time, remapping legal viability from one day to the next. In another example, a longtime immigration attorney described for me how a specific asylum case was reshaped over time:

> Before *Matter of AB*, I had a [domestic violence] case that was a perfect, perfect, perfect case for asylum. We were waiting for her case to be heard, and I was ready. I was like "we're ready to go, we're going to get it, we're going to win." She had a great case, I mean, this lady couldn't document more stuff. And then her judge went on detail [to the border], and her case got pushed back, and it's like, "okay, well..." So, I called the clerk, and I said, "hey, listen, I understand he's on detail, but can you move it to another judge?" I really needed to get her case heard. But then the law changed *and* the clerk's like, "I can't move it to another judge. You just have to wait and see." So, she got pushed back two years. And now we're two years later and because of COVID, I don't even know if she's going to get her case heard. She's scheduled for October, but I don't know if that's going to happen.

This example demonstrates how temporal changes in the immigration bureaucracy can change expectations – not only the judge's detail assignment (a common practice in which immigration judges will spend several weeks adjudicating cases in busier courts, often along the US/Mexico border) but also concurrent changes to immigration case law and the pandemic-related court delay. This was a case in which the attorney had a certain set of legal facts and an expected timeline, and yet the experience of waiting shattered those expectations from a logistical and legal perspective. The waiting in this case has significant consequences – a once "perfect" asylum case wasn't heard and decided in a timely manner, and the case fell out of legal viability due to political and legal changes.

In contrast, when the Biden administration took office in 2021, many immigration attorneys anticipated changes to the decision of *Matter of AB*, hoping that the law would allow victims of domestic and gang violence to seek asylum on those claims. As I observed in court shortly after Biden took office, many attorneys asked the judges to consider the stated political interest in reviewing the regulations as they related to asylum claims based on domestic- and gang-violence. In June 2021, the Biden administration had vacated *Matter of AB* in its entirety, allowing for new asylum claims to be made on the grounds of private actor violence.

Finally, to further exemplify the unstable relationship between time and law, I highlight the case of Nathaly, a Salvadoran woman seeking a Cancellation of Removal in immigration court. In a Cancellation of Removal relief application, noncitizen respondents are required to have 10 years of continuous residence in the United States *before* being placed in removal proceedings. Once removal proceedings are initiated with a Notice to Appear (NTA) from DHS, the 'clock' stops, effectively halting the time noncitizens can accrue towards their relief application eligibility. If, however, the NTA were defective in some way– does not accurately contain the date and time, as was the case for Nathaly – case law previously held that the 10-year clock would not be formally stopped, and a noncitizen respondent could proceed with their petition. Nathaly did proceed and had her individual hearing before an immigration judge in February 2019. After hearing her testimony, the immigration judge indicated that he would likely grant cancellation of removal, convinced that her children would experience extreme and unusual hardship if their mom was deported to El Salvador.

Over time, however, Nathaly's case dropped out of legal viability: due to a DHS delay in completing a routine background check, the judge withheld his decision, and the case was delayed until November 2019. During the unexpected delay, the Board of Immigration Appeals released new case law that "cured" the defective NTA, invalidating the Nathaly's 10 years continuous presence, and making her ineligible for Cancellation of Removal. As her attorney told me:

> The judge ruled that my client did not complete the 10 years of continuous presence in the US that is required for cancellation. We got the decision, and based on that, we were denied. She had nine years and a couple of months. At the time of the hearing, we had this [favorable] law, and since the judge didn't make the decision right away, the new law came which was not in favor to the case of my client.

As these examples show, the legal and temporal uncertainty is incredibly common throughout the immigration court process. The logics of waiting diverge for different types of cases, and court actors use different strategies in the unique temporality of this bureaucracy. For some, the long, backlogged timelines are unbearable, a purgatory that can damage strong cases. For others, waiting is the best opportunity to buy time in a limited legal field. Below, I highlight how attorneys and noncitizens 1) experience and 2) manage the uncertainties of legal temporality by *expediting* or *delaying* their cases and illustrate how and when these strategies come into play.

Logics of Waiting

Expediting

Consistent with existing research on the experience of waiting, the immigration court backlog can be a 'purgatory' for many noncitizens who are waiting to resolve their cases before a judge. As described above, delays can be particularly detrimental for stronger cases. With a lengthy, unexpected, wait before removal proceedings, strong

evidence in a case can become stale and noncitizens can suffer from the anxiety and burden of not being able to resolve their cases and move on with their lives, including reuniting with family or participating in civic life. Lawyers frequently talked about "slam dunk" cases, and the devastation of slow time, being mired in backlog, of not being able to have those hearings resolved quickly.

In response to the palpable toll that delayed time can have, some attorneys attempt to speed up time, manipulating the existing backlog to allow cases to resolve, reunite with family, file for green cards, travel freely, or participate in civic life. One immigration attorney I spoke with, Michael, told me that he frequently files motions to advance his cases, hoping to avoid the negative effects of the backlog on his clients. While the procedural tool of advancing cases is not frequently successful in the court bureaucracy, some immigration attorneys attempt to reshape their clients' timeline within immigration court time using this strategy. Again, the concept of case strength is deeply interwoven with the conceptualizations of time's effect on cases. In Michael's practice, his cases are primarily East African asylum cases, ones that have particularly favorable odds under existing immigration law. As he said to me:

> In my practice it's very rare that I ask for a continuance. I am one of the attorneys who files a lot of motions to advance. Most of my clients from East Africa, they just want to have their asylum approval; they have credible cases, they have strong cases. It's not like from some applicants from Latin America. My clients are confident that they can win their claims, and they get really, really stressed if it's rescheduled and delayed. I have some clients who've been waiting for five, six years, delay, delay, delay. It is devastating if you have a strong case, especially if you have minor kids waiting back home. And a refugee can't... it's just, the pressure is a lot, to get their family here.

Given the particular strength of his cases, as well as the pressures and expectations from his clients to reunite with their families, Michael often attempted to circumvent the backlog

through procedural means. Similarly, another immigration attorney, Gloria, lamented the backlog, saying that her practice was often in limbo with delayed time. She described how she attempted to speed up cases using a motion to advance, as a way to ease the psychological burden to her clients and to the workflow of her firm:

> I try to file motions to advance. Most of my clients don't want five years hanging over their heads, it is a psychological burden on them, and it sucks if we have hundreds of cases that we can't do anything about that are just waiting and sitting. Other attorneys in the firm are waiting until at least in 2025 at this point. We have the evidence, but it's too early to start preparing them for the hearing, so sometimes there's nothing else that we can do until the hearing gets closer. I've also tried to file a motion to advance many of the hearings. I have had several get granted. That's one strategy.

While not frequently granted, many attorneys attempted to advance their cases through the backlogged dockets. In one case that I observed in the Baltimore immigration court, a judge unexpectedly had to leave early for the day. As frequently happens in court, the afternoon cases were going to be rescheduled, either for months or years out from the scheduled date. A longtime immigration attorney, John, was representing a client in one of the afternoon hearings and was already in-person in the courthouse waiting for that judge. When John found out about the judges' schedule, he went to that courtroom directly and asked to be moved up before the judge left for the day. "Rather than risk things changing on me," he said, "I'd like to move ahead, judge. It's a straightforward NACARA case." Straightforward, in this case, indicated that it was both a legally strong case and relatively uncomplicated to adjudicate. The judge considered this request, glanced through the A-file, and agreed that it was a straightforward case. He turned to DHS and asked if they had any opposition to allowing John's client's case to move forward that afternoon and avoid being further delayed due to the scheduling change. With no opposition from DHS, the

case was allowed to proceed, and the respondent received a quick approval on their application.

While detained cases often are processed along faster timelines, immigration attorneys describe waiting as an excruciating experience in incarceration. Incarceration significantly limits the legal avenues (i.e. cases are weaker under the law) available to individuals who are seeking relief from removal. For legally "weak" cases, particularly those of detained noncitizens, who often are without an attorney to advance their cases (or any other avenues for relief), many noncitizens attempt to accelerate their own cases by asking the judge "for an order" of removal without presenting any application for relief. Rather than wait for another hearing in detention, detainees often requested to be deported as a strategy to manage delayed time in incarceration. These noncitizens were likely aware that existing immigration law offered few opportunities for relief to detainees, particularly those with criminal charges. This strategy offered detained noncitizens the opportunity to escape the purgatory of delayed time, reasserting some agency in otherwise confining circumstances. After observing this tactic of speeding up time by asking "for an order," an immigration judge suggested to me that this practice of asking for a quick order of removal would allow the noncitizens to restart their migration journey again after deportation, one way of manipulating bureaucratic time. However, beyond these strategies of reshaping the backlogged or delayed time, noncitizens and their attorneys couldn't do much more than wait, sometimes for years.

Even in many strong cases, however, attorneys and clients were unable to expedite, even though they wished to. In the case of Nico, a young gay teenager, asylum law in the 4th circuit near-guaranteed his chance at winning his asylum case. With his strong case, his

attorney lamented the time delay, saying, “an asylum based on being a gay child is a fairly strong case. For Nico, it is heartbreaking because he is young, and he wants to go to college. Getting his asylum and his permanent residency would help him. But now, he's on a four-year wait. I would speed up his case if I could.” While Nico’s dreams of college were deferred due to the delayed timeline of the court, for detained cases, the desire to expedite case processing was even more pressing. The emotional and legal toll of delayed time can be devastating for all respondents, particularly those who were detained while awaiting their hearing in immigration court. For many, delayed time represents not just purgatory, but hell.

Delaying, or Buying Time

In addition to the strategy of expediting, this study finds evidence of a different temporal strategy being used by the immigration attorneys to manage time in immigration court. Given the increasingly limited scope of asylum and other removal defense law, attorneys with weaker cases may attempt to “work the backlog,” by taking advantage of the existing bureaucratic delays and strategically using continuances. By working the backlog, lawyers might be able to craft more compelling narratives for clients, gather more evidence to support their petitions in court, or may benefit from legal changes that make their cases have a higher chance of being granted relief from removal. Alternatively, noncitizens can spend the additional delayed time earning money in the United States before an eventual removal order. Despite the extensive scholarship describing bureaucratic delay as punishment, this temporal strategy shows how attorneys can leverage bureaucratic temporality to protect their clients, responding to and managing a delay that can be unexpectedly advantageous for some noncitizens.

In immigration court, attorneys frequently requested continuances from the judge and the DHS attorney, hoping to build a stronger case for their clients, or outwait the unfavorable legal context. Attorneys often use the procedural process of requesting a continuance for additional "attorney prep" in order to manage the timeline for their clients. In the cases of *pro se* respondents, or those without legal representation, immigration judges will frequently grant continuances to allow respondents to find an attorney, effectively buying them more time before their hearing. These legal procedures are temporary measures that build on the existing backlog to extend the experience of bureaucratic time even further. One immigration attorney described how delaying time through continuances was a benefit to her clients, saying:

> If a case gets continued, it's often a benefit, so then they can plan accordingly, they have more time to do this or that. There's such a low probability of winning an asylum case. When a case is continued, my clients can take a deep breath, because they don't have a deportation order. They don't have to extend extra funds for appeal right now, because the case won't be heard for maybe three years. It influences their day-to-day and how they make decisions. With a continuance, we might be able to get more evidence that maybe we wanted to get before. There are those kinds of benefits when we have delays. In most cases it's not an issue, and my clients would prefer to wait.

Another added: "probably 30 or 40% of my cases I couldn't care less if it ever goes to trial. If it's some long shot asylum claim, or there's criminal issues, you explain to the client upfront, "look, this is playing the long game here, basically. We're just working the backlog." Immigration law has been strict to asylum cases in recent years, particularly those from Central America, and many Central American asylum seekers have limited avenues for relief in the United States. Despite this context, another immigration attorney, Steve, described how his Central American clients experienced the backlog – not as

stressful, but as a gift. With more time before deportation, his clients could earn money in the United States to send back to their families. In these cases, delayed time was a windfall:

> There's a huge backlog, but it's not stressful, it's just the opposite. If the respondent can get a work permit, they can stay here and work. A lot of these cases are not winners, and they know it. You can explain to these cases, you're going to lose on these facts. The ability to file for asylum, albeit a loser, get a work permit, have these cases strung out for five to seven years, it's like they hit the lottery. A respondent can make $30,000, $40,000 a year to send home to their family, as opposed to maybe $1700 or $2000 a year in Guatemala or El Salvador. So, when they get these cases continued, it's like Christmas. It just buys them time; the brokenness of the system allows them to buy time.

In referencing the 'brokenness of the system,' Steve alludes to the pervasive, years-long delay in immigration court process as something broken – the system is not functioning as it was intended. Indeed, there has been widespread criticism of the immigration court backlog from both right- and left-wing political advocates. However, for attorneys and noncitizens caught in this experience of extended time, many identify as a silver lining the possibility of legal changes that might make a case more favorable for asylum, or other forms of relief in court. In describing his experience of waiting, another attorney said:

> We don't mind waiting, especially not here in the 4th Circuit. If we wait, sometimes we get a great decision from the 4th Circuit, and the judges are able to hear the case from a new perspective. A big example of that is imputed anti-gang political opinion. When the 4th Circuit recognized imputed political opinion as a cognizable asylum claim under a political opinion [Alvarez Lagos v Barr in 2019] the precedential case transformed our ability to argue asylum cases before the court. Now, a case where somebody who had been extorted, who had been threatened or forced to join a gang and fled, might have a viable asylum claim. It opened the doors to individual claims like that, where nine time[s] out of ten that wouldn't have qualified before. Had we had cases that we had heard quickly, like those we had for those family unit cases, that closes off that possibility. We don't mind the backlog.

Despite the fact that many noncitizens and attorneys seem to find a benefit in extended time, often adopting a strategy of 'playing the long game' in order to take advantage of

an existing bureaucratic temporal structure, not all experiences of the backlog are welcome. In particular, noncitizens with legally accordant cases are often stymied by long delays, as described below. Additionally, one overlooked aspect of 'playing the long game' is that during the process of waiting for a hearing date, noncitizens must continue to pay to renew their work permits, a timely and expensive bureaucratic process. As one attorney described: "I have one family who waited five years for their hearing, and when we went to court, their case was continued another three years. That means they have to keep paying more than $400 for a work permit every six months. That can be a real burden, it's lot of money." For cases that are delayed, pending on the backlog, or continued, noncitizens are mired in bureaucratic time, forced to continue supplying revenue to a bureaucracy that may eventually deport them.

Discussion

The significant backlog in the immigration court is framed as an urgent political crisis to be solved. Considerable resources have gone into reengineering case processing, hearing priorities, and the functioning of the immigration court on the ground. One primary assumption embedded in this "political crisis" is the idea that waiting is foundationally seen as a problem; both politicians and advocates have long argued that bureaucratic delay limits access to due process for noncitizens, wastes court resources, and does not sufficiently (expediently) address the so-called threat of unauthorized migration in the United States.

Existing scholarship on bureaucratic waiting has largely echoed these assumptions, arguing that the experience of bureaucratic delay (both for citizens and noncitizens) is

punishing, exhausting, and demoralizing (Atkinson 2018; Auyero 2011; Griffiths 2014). However, while much of this research has focused on individual noncitizens' experiences of temporality, there has been little focus on how lawyers respond to delayed time as an obstacle or an opportunity. Given the unique relationship between law and time in the context of removal proceedings in the United States, there is reason to believe that time operates differently for different types of removal proceedings. This study aims to interrogate the prevailing assumptions about time and temporality in this context.

In this article, I have asked a two-part question: first, what is the relationship between bureaucratic time and legal viability in the immigration court, and second, how do attorneys manage this temporal landscape? I draw on ten months of ethnographic observations of detained and nondetained removal proceedings, and 40 in-depth interviews with immigration attorneys to explore how attorneys and noncitizens experience and strategically adapt to the temporal regime of the state. I offer the conceptual framework of *legal temporality* to better understand the landscape in which attorneys and noncitizens must navigate the logics of waiting. I find that attorneys and noncitizens often attempt to strategically *expedite* or *delay* proceedings, illuminating how delays imposed by the state are not always a form of punishment but can often be a benefit for individuals whose cases don't align with the limited legal categories of immigration law. Given the pervasive instability in time and law, waiting is sometimes the best option for noncitizens whose alternative is deportation.

Empirically and theoretically, this research provides a more robust picture of how temporality operates with regards to legal status (detention, case strength, citizenship). By considering how attorneys respond to and manage the bureaucratic backlog, this article

illustrates how experiences of time vary across case strength, legal and detention status. As such, the experience of waiting is more nuanced than previously thought. Bureaucratic delay does exclude those with stronger cases from timely consideration, but a delay (either by default or as a legal strategy) offers an important opportunity for noncitizens to earn more money before an eventual removal order, strengthen their cases with additional documentation, or await a more favorable legal landscape to hear their cases. Attorneys strategically exploit this delay in order to shield their clients from the temporal harm imposed by the state.

Additionally, by extending our conceptualizations of time and waiting in bureaucracies, this article has implications for how to think about the so-called political crisis of the immigration court backlog. Since many noncitizens experience the bureaucratic delay as either a reprieve from an inevitable order of removal, or an opportunity to await more favorable legal conditions, we might look to the punitive and unstable nature of immigration law as the political crisis, rather than the bureaucratic delay that is continuously added to by the state itself through political reorganization, and micromanagement of the court functioning. The possibility of a truly politically independent immigration court offers a starting point to consider what equity might look like across different case, and legal contexts. Ahead of this agency overhaul, future scholarship might consider how time operates for noncitizens in bureaucracies that are separate from political concerns.

2. BUREAUCRATIC ENTRENCHMENT: NARRATIVES OF LEGITIMACY IN A POLITICALLY CONTESTED OCCUPATION

Abstract

In an increasingly polarized political landscape, how do workers in a politically "contested" occupation justify and legitimize their work in response to political polarization? Drawing on 40 in-depth interviews with Immigration and Customs Enforcement (ICE) attorneys who prosecute immigrant removal cases on behalf of the government, this article examines their narrative strategies to self-legitimacy. Self-legitimacy is a crucial, yet understudied, component of the literature on how enforcement officers think about their work. While existing literature suggests that self-legitimacy is derived in response to public support or an internal belief in one's own deservingness to hold power, this article offers a third pathway, *bureaucratic entrenchment*, in which these prosecutors draw on a highly internalized sense of duty to their role and nation to make sense of their work in the face of heightened public protest and changing administrative priorities. Specifically, I find that ICE attorneys legitimize their work using several different narrative strategies: 1) a strongly internalized a sense of duty to existing law ('just following the law,' 'the law is neutral,' 'public servant'), 2) establishing their moral authority as patriotic "white knights" protecting the nation from threats ('doing the right thing,' 'making the country safer,' 'unsung heroes,'), and 3) persistent allegations of fraud and criminality to diminish immigrants' humanity and claims of persecution for asylum ('fraud,' 'criminals'). In deploying these narratives of self-legitimacy, ICE prosecutors attempt to resolve perceived conflicts between their legally mandated job and ethical and reputational criticisms they

experience. These findings provide an important first step in better understanding the occupational effects of political polarization for law enforcement agents more broadly.

We have frequent protests outside our building. We had one of the Occupy movements, people living in tents outside our building for days. I came into work one morning and "Fuck ICE" was spray painted on the wall of our building. It's a federal courthouse, mind you, we are not the only tenants. And it's just like, this is where I work. The negative press has really taken a toll on us [over the last five years]. We've just been completely vilified.

Current ICE attorney

Introduction

The immigration court system, administered by the Executive Office for Immigration Review (EOIR), oversees the legal proceedings of individual noncitizens who face removal from the United States. While an immigration judge ultimately decides the outcome of removal proceedings, these cases are prosecuted on behalf of the federal government by an attorney employed by the Office of the Principal Legal Advisor (OPLA), a sub-office of Immigration and Customs Enforcement (ICE). As with other prosecutorial roles in the US legal system, the prosecutor is employed to zealously defend the interests of the government under existing law. As such, the role of ICE attorneys is to present the strongest case on behalf of the government; in the extreme, this is to actively litigate for the deportation of noncitizens from the United States.

Hyper-visible in recent years, Immigration and Customs Enforcement has experienced multiple partisan challenges to its legitimacy from the public. Similar to other law enforcement agencies, the federal agency has come under fire as the target of political protests against immigrant deportation, with widespread calls to 'defund and abolish ICE.' Indeed, national polling by Pew Research Center in 2018 found that ICE was one of the least popular government agencies, albeit along a sharply partisan divide.[12] While the left

[12] The movement gained mainstream traction in mid-2018, with thousands of protests taking place over several months (Johnson 2021). The poll found that 72% of Democrats hold unfavorable view of the

has broadly denounced the actions of ICE, the agency has strong support from the majority of Republican voters and has seen a more than $200 million increase in overall funding under the centrist Biden administration in 2022 (Reichlin-Melnick 2022). As the agency is highly politicized – one side calling for efforts to 'defund and abolish,' and the other calling for increased funding and resources for the agency – this article centers the government prosecutors whose labor is at the center of these ongoing reputational and occupational tensions. In their role as prosecutorial bureaucrats, these attorneys work as representatives of the state and perform a legally mandated job, yet little is known about how they manage the tensions that arise from the politically contested work of immigration law enforcement.

Within the immigration enforcement apparatus, ICE attorneys represent a unique occupational position, compared with other enforcement agents who also represent the state. Highly-educated and well-paid, these attorneys are often longtime federal bureaucrats who have a significant amount of discretion and influence in the courtroom as prosecutors (Wadhia 2009a). As such, these prosecutors may not have the full power of the judge to banish or legalize claimants, but their role as an extension of the state is not without its own power to actively litigate for the removal of immigrant respondents. Additionally, these attorneys are demographically dissimilar from the field agents for ICE and border patrol, who are predominantly male and Latino (Vega 2018). Recent agency statistics show that these ICE attorneys are predominantly White, female, and largely identify as Democrat/liberal or independent (Office of the Principal Legal Advisor 2022). Given this empirical case and drawing on the literatures of legitimacy and the social psychology of

agency, while 70% of Republicans were found to have a favorable opinion of the agency (Pew Research Center 2019).

enforcement agents, this study focuses how these prosecutors make sense of and justify their work in the face of political contestation.[13]

The study of legitimacy has long been concerned with how the public perceives the legitimacy of powerholders such as governments, leaders, and law enforcement agents (Tyler 2003). However, equally important to the framework of legitimacy is how powerholders themselves understand the work they do, and derive their internalized sense of self-legitimacy (Bottoms and Tankebe 2012). A small, but growing, body of work has begun to illuminate how other types of immigration enforcement agents think about their work, from front-line police officers (Armenta 2017), border patrol (Cortez 2020b; Vega 2018), to detention officers (Puthoopparambil, Ahlberg, and Bjerneld 2015). From this important research, we know that field agents find a sense of self-legitimacy from narratives of moral authority, co-ethnic compassion (Vega 2018), or from a dispassionate approach to enforcing the law (Bosworth 2019), yet the empirical case of ICE's prosecutors has not yet been studied in-depth.

To investigate this, I examine the self-legitimation narratives of ICE attorneys who litigate immigrant removal cases on behalf of the federal government. Drawing on 40 in-depth interviews with ICE attorneys, I identify three primary, co-constitutive narratives of self-legitimacy, including: 1) a strongly internalized sense of role and duty to existing law, 2) a moral authority as patriotic "white knights" protecting the nation from threats, and 3)

[13] Due to the heightened nature of the political polarization in this occupational field, I contend that the work of immigration law enforcement as a form of contested labor. In response to recent calls to investigate the "villains" of policy rather than the "victims," and the "actions of those who benefit from the social construction and political manufacture of immigration crises when none really exist" (Massey 2015:279; Johnson, Dowd, and Ridgeway 2006; Prasad 2018; Vega 2018)).

persistent allegations of immigration fraud, diminishing noncitizens' humanity and claims of persecution (for asylum). Taken together, these three occupational narratives that make up what I term *bureaucratic entrenchment,* revealing a concerted effort – and source of self-legitimacy – that ICE prosecutors use to manage tensions in relation to their occupational role. Bureaucratic entrenchment, I argue, reflects a pathway to self-legitimacy that involves both an unthinking internalization of duty (Arendt 1964) and political entrenchment (Levinson and Sachs 2015) in anti-immigrant ideology to insulate against criticism of the current restrictionist immigration landscape. This approach appears to provide a salient avenue for relieving some of the tensions of these prosecutors' occupational self-concept. These findings provide an important first step in better understanding a new pathway to self-legitimacy, with significant implications for how law enforcement agencies' respond to political polarization and criticism.

Literature Review

Legitimacy and Enforcement

In its broadest conceptualization, legitimacy signifies that a legal authority (politician, law enforcement agent, bureaucrat) acts in accordance with the norms and values of a group (Max Weber 1978; Zelditch 2001). In studies of law enforcement, legitimacy has typically been studied as how the public perceives the actions of these authorities (Tyler 2006).[14] However, Bottoms and Tankebe (2012) instead argue that legitimacy arises from negotiation *between* the public and those who hold power, such as prosecutors and police officers (Offit 2019). In this negotiation, powerholders make a claim

[14] Scholars find that the public is more like to support (Tyler 2006), follow (Reisig, Tankebe, & Meško 2014), and cooperate (Tyler and Fagan 2008) with the law if they perceive the legal authority to be more legitimate.

to regulate the moral social order, which is either affirmed or denied by the public. As such, this negotiation requires both the public's 'audience legitimacy,' [15] *as well as* the equally important legitimacy derived from officers' own views on their role, or self-legitimacy.

Several nascent theories have been put forth to explain sources of officers' sense of self-legitimacy: public support, or internal deservingness. According to Bottoms and Tankebe (2012), officers have a fundamental need to believe that they have the legitimate right to hold power, and self-legitimacy is thus a key pillar of their occupational identity (Bradford and Quinton 2014). On one hand, self-legitimacy is thought to derive largely from a sense that the public supports officers' work (Tankebe and Meško 2015). Scholars have shown that a significant aspect of self-legitimacy among officers is the belief that their enforcement occurs within a just legal system, and that officers are carrying out the neutral application of existing laws (Bradford and Quinton 2014; Jackson et al. 2013). In the face of public opposition to law enforcement, or negative media portrayals, officers are said to report a diminished internal sense of legitimacy and moral authority (Nix and Wolfe 2015; Trinkner, Tyler, and Goff 2016)

In contrast, scholars have also identified some officers' self-legitimacy as originating from an internal sense of authority, or deservingness to hold power (Barker 2001). In this formulation, the powerholder justifies their authority through a self-assessment that they are uniquely qualified to hold power and authority, even without validation from the public. Bradford and Quinton argue that "police may gain legitimacy from the idea that they are different and apart from others in society… police have a legal

[15] For a broader discussion of audience legitimacy and procedural justice also see (Gau 2014; Sunshine and Tyler 2003).

duty, and a right, to enforce the law 'without fear or favor' irrespective of public approval" (2014:1028). For officers in an enforcement system, these two forms of self-legitimacy construct the work of formal social control as both morally and legally appropriate. Given the importance of these nascent self-legitimacy pathways, this article aims to link self-legitimacy pathways with what is known about how law enforcement agents and bureaucrats think about and understand their occupational roles (Tankebe 2010). Given the uneven moral and political opposition that state agents face, the social psychological narratives that they use to justify their labor are an understudied, yet crucial, component of understanding how they legitimize their work.

Social Psychology of Immigration Enforcement Agents

While there is some initial knowledge about how self-legitimacy is constructed, a closer analysis of the social psychology of other immigration enforcement agents representing the state helps illuminate the self-legitimacy pathways of ICE prosecutors. With a widening gap between political directives and public opposition (Ellermann 2005), there has been an uptick in the number of studies focusing on how immigration agents make sense of the work they undertake, locating their labor within the institutions for which they work (Dowling and Inda 2013). As front-line immigration agents grapple with the dissonance of outside criticism and internal mandates to enforce restrictionist immigration policy (Bosworth and Kellezi 2017; Ellermann 2009), research outlines several different social psychological approaches that immigration agents, whether on the border, overseeing detention centers, or making arrests, use to bridge the legitimacy gap.

First, immigration enforcement agents frequently articulate narratives of rational, emotional neutrality in which they construct their activities as emotionless, objective, and

rational (Bosworth 2019; Ugelvik 2016). The process of affect repression is one tool to ensure the smooth functioning of an emotionally difficult job (Harkin 2015; Waddington 1998). In the case of staff members inside an immigrant detention center, scholars show that officers take an emotionally neutral or withdrawn stance to do their jobs (Bosworth 2019). Similar findings were shown for front-line police officers who see their role as objective administrators who are responsible solely for identifying and processing immigrants for removal, but not responsible for the subsequent removal of those very immigrants (Armenta 2019). In contrast, some scholars argue that some immigration agents lean into an affective stance to manage the contested work of immigration policy implementation. This can range from a perspective of compassion (Vega 2018), guilt at processing minor arrests as removals, or pride at identifying 'criminal aliens' (Macias-Rojas 2016).

Second, some immigration field agents employ distancing strategies, from economic explanations (Cortez 2020b) to extensive paperwork (Borrelli and Lindberg 2019) that attempt to make sense of and legitimize the violence of deportation. Others attempt to transfer the legitimacy gained from removing socially 'undesirable' individuals, such as terrorists and criminals, to offset their work removing socially 'deserving' individuals, such as political activists, or individuals who were brought to the US as children by their parents (Bigo 2002). Still others take a more wholesale approach to criminalization (Bosworth and Kaufman 2013; Ugelvik 2016) characterizing all the immigrants they work with as criminal and dangerous (Bosworth and Turnbull 2015; Hiemstra 2014) or disputing their morality as criminal and uncertain (Correa 2011; Godsey 2019).

Given this important work on the self-legitimacy strategies of front-line field agents and detention center staff, this article interrogates if and how these approaches to legitimacy operate in the empirical case of immigration prosecutors. While we have a growing knowledge about how field enforcement agents think about the work they do, less is known about the self-legitimacy strategies of prosecutorial bureaucrats who wield coercive force as a function of their prestigious occupations. Therefore, by examining how enforcement attorneys construct self-legitimacy in removal litigation, we gain a better understanding of the narrative response of career bureaucrats to political contestation.

The Case: Office of the Principal Legal Advisor

The Office of the Principal Legal Advisor (OPLA) is the legal program for Immigration and Customs Enforcement (ICE), a sub-agency of the Department of Homeland Security (DHS), which assumed many of the immigration functions of the former Immigration and Naturalization Service (INS) after the passage of the Homeland Security Act in 2002. Through OPLA, more than 1,250 ICE attorneys litigate all removal proceedings before the Executive Office for Immigration Review (EOIR). OPLA has 25 field offices around the country, with numerous sub-offices; each field office is led by a Chief Counsel who directs the DHS' legal representation before the local immigration courts and the Board of Immigration Appeals. A Deputy Chief Counsel often manages the team of Assistant Chief Counsels (ACCs), who litigate cases in immigration court. OPLA also provides legal assistance to the local Enforcement and Removal Operations (ERO) field offices and Homeland Security Investigations (HSI). On the ground, OPLA attorneys (ACCs) are assigned to a judge each day, rather than being assigned to a particular case. In this way, cases are effectively randomly assigned to ICE's trial attorneys in court.

As an agency, ICE has come under intense public scrutiny in recent years, due to the aggressive detention and deportation enforcement priorities exercised under the Obama and Trump administrations, as well as heightened public awareness of the agency's tactics through grassroots organizing with the 'Abolish ICE' movement. ICE is routinely the subject of complaints, protests, and lawsuits alleging violations of immigrants' due process rights, concerns about enforcement priorities, and widespread outrage and doxing campaigns over perceived agency directives to separate and detain migrant families. As a result, the agency has the widest partisan divide in approval ratings by Democrats (28% view as favorable) and Republicans (77% view as favorable) (Budiman 2020). Today, the agency is undergoing significant procedural shifts with the Biden administration in office and develops new enforcement priorities, guidelines, and regulations for the implementation of immigration policy in the United States. Together, these ongoing procedural and policy issues pose serious challenges to the legitimacy of the agency, as well as the self-legitimacy of government attorneys tasked with enforcing the immigration law and policy.

ICE attorneys, while belonging to a range of political backgrounds, all occupy a relatively stable, middle-to upper income class position. Demographically, ICE workforce statistics report that OPLA attorneys are predominantly female, and white.[16] In contrast to ICE field agents, all ICE/OPLA attorneys are licensed attorneys with a juris doctor (JD) degree, or higher. Hiring occurs after extensive background checks; assistant chief counsels are

[16] ICE statistics show that the OPLA workforce is 63 percent White, 13 percent Hispanic/Latino, 13 percent Black, and 10 percent Asian, <3% American Indian/Other), and across all racial categories, about 58 percent female (OPLA 2022).

usually hired at the GS-14 pay grade, and on average make $100,000-$147,000 per year. Of those I spoke to, many came to government work soon after law school, some after completing a law school internship with the Department of Homeland Security or the Department of Justice. Others came to work for the Department of Homeland Security via private practice, military, or Border Patrol.

Within a hierarchical management and oversight structure, ICE attorneys have the opportunity to use their professional and personal discretion (to varying degrees) to navigate agency priorities to pursue removal in front of an immigration judge. In court, they have the opportunity to reserve or waive appeal. They also have limited relationships with other immigration field agents – they advise Enforcement and Removal Operations (ERO) and Customs and Border Patrol (CBP) on legal matters, litigate OPLA cases. In their daily work, ICE attorneys are tasked with reviewing and litigating the removal cases that they are pursuing. Interviewees report typically spending 4 to 5 days a week, from 8am to 5pm, in court representing the federal government in front of an immigration judge. In my sample, I spoke to attorneys at all levels, from headquarters to trial attorneys (described in greater detail below). As the trial attorneys have the most day-to-day experience litigating cases in immigration court on behalf of the government, and most positions at OPLA have experience working as line attorneys, I focus primarily on this experience and the narratives that emerge from this occupational position.

Data and Methods

This article is based on 40 in-depth, semi-structured interviews with attorneys in the Office of the Principal Legal Advisor (OPLA). I conducted these interviews between July 2020 – July 2021. I primarily gained access by contacting the Office of Partnership

and Engagement (OPE) for Immigrations and Customs Enforcement, which facilitated two rounds of interview recruitment to a nationwide sample of OPLA attorney at multiple levels within the organizational hierarchy. While I initially snowball sampled out of that network, I was subsequently informed by OPLA management that I was not authorized to continue snowball sampling among current ICE/OPLA employees. Additionally, several of my interview respondents were former ICE/OPLA attorneys, and at the time of interview had moved on to other jobs with the federal government or in the private sector. These strategies yielded a sample of 40 interviewees that includes the front-line trial attorneys who litigate cases in immigration court, supervisory middle management attorneys, and attorneys with upper management and headquarters. I spoke to individuals in many of the existing field offices and sub-offices. As Table 2.1 shows, the interview sample is 60 percent female, 70 percent White, 40 percent identified as Democrats, 42.5 percent had worked in the agency for longer than 10 years, and 55 percent previously held positions as prosecutors in other legal fields.

[Table 2.1 in appendix]

Interviews were conducted by phone, due to geographic and pandemic-related restrictions. They lasted between 1-2 hours, and most were audio recorded and transcribed. Each interview included a discussion of the attorney's pathway into working for ICE, their professional identity and experience of litigating immigration cases in immigration court, workplace conditions in the local OPLA office and immigration court, their experience of macro conditions affecting immigration case processing (i.e., case volume/backlog, shifting docket and enforcement priorities, administration turnover), and their reflections on the agency mission, morale, and politicization of ICE in the public perception.

Given the contested nature of this occupation, my positionality is an important piece of understanding these narratives. As a younger, female, politically liberal academic and outsider, my positionality may indeed have shaped how these attorneys were constructing their narratives of self-legitimacy in ways that may be different to those they construct for colleagues. However, I had a sense of rapport and openness from nearly all my interviewees during our conversations. While many interviewees were somewhat guarded, even paranoid, at the start of the interview, most warmed up quickly and frequently expressed considerable enthusiasm at being able to tell "their side of the story." The interview gave them the opportunity to narrate their occupational tensions frequently overlooked in the media, giving voice to myriad occupational frustrations or individual safety concerns. Indeed, many expressed deep concern for the political backlash the agency is facing, stating that as a result, they no longer participate on social media, share images of their children publicly, or even reveal their occupation to neighbors and friends for fear of criticism, rejection, and safety or doxing concerns. Despite my own personal, political, and ethical objections to the practice of immigration enforcement and removal, in my role as a researcher I aimed to listen and report on the work of these bureaucratic prosecutors as accurately and neutrally as possible.

Data Analysis

The OPLA attorney narratives I document here emerged from three separate rounds of analytical coding using Atlas.ti. During interviewing, one of the most frequently occurring themes involved an unprompted justification or explanation of their role in the process of immigrant removal, often by way of explaining their work within the larger federal bureaucracy. As described above, ICE attorneys experience multiple challenges to

their legitimacy — from the social and political critiques in the public sphere to shifting bureaucratic enforcement priorities that have quickly remapped contours of the work. Both types of challenges were present in the self-legitimizing narratives deployed by ICE attorneys, although the shifting bureaucratic challenges became increasingly salient in later interviews as the Biden administration unrolled significantly altered directives on enforcement the final months of data collection (May and June 2021). Responding to these political and social challenges to their occupational legitimacy, ICE attorneys centered their narratives on an internalized responsibility to the law, while politically entrenching in an ideology that constructed immigrants as both fraudsters and active threats to the nation. Given these patterns, I focused on how ICE attorneys experience the heightened politicization of the agency both bureaucratically and in the public perception, and how they were personally reconciling these issues. A significant limitation of these narratives is that I don't have any additional insight into how they conceptualize immigrants, political ideology, or occupational identity in other areas – over time, to colleagues or family, at the voting booth. However, these narratives do represent how they made sense of and justified the occupational field to me, an outsider to the agency. These attorneys, frequently, are career bureaucrats who worked for the federal government long before the Trump and Biden administrations, and the contemporary heightened political divide. These narratives, then, are informed by an institutional commitment that helps explain why bureaucratic entrenchment into an internalized role and ideology operates most effectively in the search for self-legitimacy.

Findings

In this article, I identify the three primary narratives that ICE attorneys use to justify and legitimize their labor, including: 1) a strongly internalized a sense of duty to existing law, 2) a moral authority as patriotic "white knights" protecting the nation from threats, and 3) persistent allegations of immigration fraud, diminishing noncitizens' humanity and claims of persecution for asylum. Taken together, these three occupational narratives make up what I term *bureaucratic entrenchment,* revealing a concerted effort, and source of self-legitimacy, that ICE prosecutors use to manage tensions in relation to their occupational role.

Just Following the Law: Internalizing Bureaucratic Duty

The first narrative used by ICE attorneys to respond to the occupational and reputational challenges they face is that they are simply 'following the law.' This strategy involves emphasizing the legally mandated role they are employed to do, and articulating removal litigation as a 'neutral' legal process. In this narrative, which was deployed by the majority of interviewees, ICE agents highlight their role as 'civil servants' or "government bureaucrats" who are just following the law to achieve 'justice.' In response to the implication (in the public perception) that ICE attorneys are actively seeking removal orders for immigrants, one attorney, who had been working with the agency for more than 10 years, responded by asserting the counter-narrative that their role is simply to execute the laws "as they are written" and "achieve justice:"

> We're not here to give removal orders, I want to make that clear. We're here to faithfully execute the laws and do what's in the best interest of justice. That's what we're here to do. That's our main goal. We're not here to give removal orders, that's not our job. Our job is to faithfully execute the laws and do what's in the best interest of justice. In doing so, we were able to efficiently process thousands and thousands of cases. I mean, immigration is highly political, but it really has no role in what

> we do other than when we're given different policy to follow and that's it. So, for the most part, we follow the law, and we supplement it with policy (DHS7).

In this description, the ICE attorney denies that his job or removal is political while also conceding that the field of immigration is highly political, as the real-time policy directives under the previous Administration were to "pursue removal in all cases." This self-legitimacy narrative requires the assumption that the law, as written, is "justice" which allows these removal prosecutors to ethically maintain a commitment to this role, internalizing the bureaucratic duty to follow the law. Most commonly, this narrative emerged in response to a discussion of the ongoing challenges to the agency, namely the heightened politicization and organizational instability of the agency both in the public perception as well as in the shifting administration priorities on immigration enforcement. To legitimize their labor and justify their involvement in the project of immigrant removal, many ICE prosecutors highlighted how little control they had over the policy directives they face (Arendt 1964). One long-time ICE attorney highlighted the political and social challenges she perceives, and underscored how, as an ICE employee is simply following the law to 'do what I'm told':

> We're civil servants who just go to do a job. As most of us who do this job, we don't have any say whatsoever on what the people in Washington decide. The president, the secretary, the director, all of the political positions, I have zero way of directing any of that. I do what I'm told. And I think that people forget that… I know many of my colleagues, nobody tells anybody what we do, because we're afraid of, frankly, being attacked, physically attacked. I mean, also verbally attacked, yes. But I also don't want someone to come take a swing at me because they don't like President Trump for president, or Biden did something. I think one [misconception] of it is not realizing that most people, and I'm not talking about just attorneys, but even [CBP] agents, that we're civil servants, that we don't make the laws, we don't make the policies. The way our system works, its civil service system works is by following legal orders from above. Same as any business. If the CEO says to do something, you do it or you'll be fired. (DHS36)

This was repeated by many attorneys, who often infused the narrative with an individualized assertion that they themselves attempted to act with 'professionalism,' or 'respect and kindness' in court. This is a tacit acknowledgement that the immigration system is perceived of as unprofessional and unfair in the public perception and is an attempt to counteract that ethical concern with personal acts of respect and kindness. In this case, the narrative strategies enable ICE attorneys to reframe their labor to distance themselves from the impact of immigrant removal. This was exemplified in one attorney's description of the bureaucracy:

> We all consider ourselves faithful bureaucratic servants trying our best to execute the will of whoever happens to be sitting in the chair at the time. Just because we're doing the job doesn't necessarily mean we sign on with the messenger. I think that that somehow got lost in the past couple years. I know, it sucks. It sucks being enemy number one in the public perception. It sucks that I can't tell people where I work, but I have to come up with some vague answer to any questions they ask, because I'm very proud of the work we do here and I'm very proud of the people I work with. I do think that we do really exceptional legal work here, so it's very frustrating, but it's the world we live in right now. We do what the person in the big chair in the White House tells us to do. We're government bureaucrats. This is what we're supposed to do...We took an oath to the constitution and, so long as we're not violating the constitution, it's our job to be receptive to the orders coming from the White House. That's how a chain of command works. That's how a government works. I also have a military background, so that probably also explains why I have this point of view. It's not personal for us. We're going in, we have a job to do, we want to be professionals, we are all professionals. We're professionally presenting our client. It's not because I think your client is a bad person. It's because I don't think the law grants them relief. I didn't write the law. I get it. I get that it's a sad case, but that is a case that needs to be taken to Congress, not vilifying the people that are charged with enforcing the law that Congress wrote. (DHS31)

At the individual level, attorneys attempted to resolve the reputational challenges individually by emphasizing their own commitment to values of respect and kindness, while still highlighting how limited their discretion was within the process of immigration law implementation and enforcement. In the face of heightened politicization and

widespread critiques of the agency, the narrative of 'just following the law' allows ICE attorneys to gain distance from the practical implications of their enforcement work and uncritically protect the status quo of their employment.

Other attorneys were less concerned with the narrative of professionalism but maintained the narrative of distancing and following the law. In the following narrative, this attorney vehemently and candidly articulates the importance of following the law:

> You have sympathetic mom and two kids who come here because El Salvador is a crap hole or at least big sections of it are. And whether you believe whatever story she's trying to sell, "my baby daddy beat me up or the gangs were extorting me or both." Then the question goes back to what we were talking about a few minutes ago, you either believe in open borders or you don't. Under the current law, those kinds of cases aren't good enough for asylum or at least they shouldn't be. So, you're faced with, again, once we get past the ethics of it, in the sense that my client [the government] has the case. Then if you are going to do your job, you have to divest yourself from your thoughts and feelings about immigration law or whatever or then you couldn't do your job. Because if every time a sympathetic mom and her two kids comes before you in immigration court, if your knee-jerk reaction is 'okay, they've got a standard issue, baby daddy beat me case and they ran to the United States.' And she's very sympathetic, she's got a hard-locked story. What are you going to do? Just roll over and say, "Judge, yeah, she's a very sympathetic person?" But it's a DV case. And under the current case law, that's a loser. Can we go home now? And issue removal order. If you don't do that, you're not acting as an attorney. And therefore, you should get disbarred, in my not so humble opinion. (DHS3)

As a counter example to the to the distancing narrative of 'just following the law,' attorneys also described how, at an individual level, they may even push back, or overstep, existing law. In these following passages, I highlight how some attorneys don't rely on a distancing, law-following narrative but instead highlight their own emotional closeness to certain cases, even describing how their own decision-making is guided by the question "would I want this person as my neighbor?" In this example, the attorney even states that she has her own personally held metrics of when and how to pursue removal, even if the legally defined characteristic (aggravated felony conviction) isn't present:

> You just sort of look at: would I want this person as my neighbor? Basically. You know? Would I want this person as my neighbor? The guy who's driving under the influence and has been arrested twice, I don't want you as my neighbor. I don't care if that's not an aggravated felony. I don't want you here. You're not an asset to the United States. You could kill a bus full of nuns. You know? Or the guy who was arrested twice for beating his wife in front of his children, but they got over it. … He took a [domestic violence] program and then the next time around, he took an anger management program. And then maybe the third time he took an alcohol program. I don't want you here. You're hurting that mom. You're damaging the psychological profiles of the children by continually abusing her, having that kind of house. Not the kind of person that I want in the United States, even though you don't have any aggravated felony convictions. You know? (DHS12)

In this example, the ICE attorney not only highlights their own personal and emotional investment in the case but also challenges the adherence to legal standards that dictate the outcome of removal cases. By stating "you're not the kind of person that I want in the United States, even though you don't have any aggravated felony convictions," this attorney adopts an approach that operates directly in contrast to the legitimacy narrative of "just following the law." However, she attempts to legitimate her position by deferring to the United States, claiming that "you're not an asset to the United States," which follows with the previously described deference to the law. This type of rogue, moralistic enforcement approach occurred less frequently, often when the attorneys did not perceive the law to sufficiently address their moralistic concerns. In contrast, deviation from the 'just following the law' legitimacy narrative can also take the form of being a bit more lenient toward the respondent in the prosecution process:

> If I put on my "real person" hat, this person should stay in this country. This person is just amazing, they are working three jobs raising five kids and sending them to school and being strong and actually contributing to the American culture and economy, right? By working all those jobs and supporting the economy from the bottom level, or some person would be making tortillas by hand, and who wouldn't want tortillas made by hand? You're great, you should be in America. But then if I put on my "lawyer" hat, the law is the law. If I don't stand by the law, then who will? I feel very torn when I have to put my lawyer hat in court and argue to the

> judge. But in [this court], the judges hear my tone and they know I'm not going to appeal, so then they'll find some way to allow, grant asylum. And we'll just quietly put that away, even though it's not legally sufficient, the person gets to stay and I think that's the right thing by that case. But I just feel bad, being a bad lawyer, not having stood up a hundred percent for the law (DHS33).

In these previous examples, attorneys find self-legitimacy in this contested work through a highly internalized sense of their bureaucratic role and duty. Although some attorneys did articulate a desire to overstep the legal standards, most bureaucrats deferred to the rule of law. This deferential narrative allows ICE attorneys to assert a perception of legitimacy to their own individual employment and uncritically reinforce the overarching mission of the agency.

My Job is to Protect People: Establishing Moral Authority Through Patriotic Protection

The second narrative employed by ICE attorneys in their quest for occupational self-legitimacy is a strategy in which they emphasize their moral authority and the "good" they are doing, by 'removing criminals from the US,' 'protecting US citizens' or, in a few cases, asserting that ICE detention is in fact 'providing for' immigrant respondents. In this narrative, ICE attorneys rely on narrative strategy that includes a variation of 'we are doing the right thing' and 'making the country safer.' In these narratives, ICE attorneys first emphasize their legitimacy through a blend of unchallenged patriotism and what they see as 'doing what is best for the United States.' Occasionally, this involved a narrative of what Vega (2018) termed 'caring compassion' toward immigrants, in which an ICE attorney legitimized immigration enforcement as net benefit to immigrants. Together, these threads wove together a self-legitimacy strategy of patriotic protection that emphasizes the morality of immigration enforcement agents and the agency that employs them. As one attorney stated:

> I think there is a really big misconception about the detention facilities and how horrendous the conditions are and how the detainees have no rights, and that could not be more far from the truth. They get excellent healthcare. They get certain programs for learning trades and education. They have access to so many resources to help with their cases. …People don't realize how much these detainees are getting on the inside all they focused on is the fact that they are detained. Many individuals this is the first time they've ever seen a doctor in their lives, because they come from a country where it's not available to them, or the first time they had an oral hygiene examination and they're being completely taken care of by the US government. That is a huge misconception in my mind. (DHS30)

While this narrative contrasts starkly with widespread news coverage and ongoing lawsuits about the conditions of immigrant detention facilities awaiting removal hearings, this ICE attorney used this legitimizing narrative to justify the agency's work and attempt to reestablish the moral authority of the agency mandate. Despite a few instances of this type of paternalistic, protective self-legitimation strategy, ICE attorneys more frequently relied on narratives of nationalistic, anti-immigrant threat ideologies to justify their labor. This includes protecting the United States from "foreign threats" and keeping American citizens safe. In many examples, ICE attorneys attempted to establish their own self-legitimacy by othering immigrants facing removal, saying: "my job is to protect people, protect the United States, and protect the people who need protecting. My job is to keep *those people* from being my neighbor or your neighbor." (DHS12). In this statement, the attorney highlights her moral authority by emphasizing her role as a protector. In another example, an attorney articulated how he saw the goal of the agency and the attorneys from a narrative of patriotic protection – assuring the security of the nation – in which immigrants, regardless of criminal background, are cast as threats to the nation:

> The primary goal of our attorneys is protecting our community, protecting our country from the harms that could come our way, or that are already here. And our commitment to the security of our nation is unwavering. And I've seen it throughout our organization... The amount of work that they put in to make sure that somebody

> who's not a citizen of this country, who's been convicted of a heinous crime against a child, is removed and is no longer a threat to our community. We see threats. We are motivated to make sure those threats don't actually make it into the country, and to protect folks from harm, because we see those threats. We've continued to see that throughout the years, that there's a lot of folks who want to come here, who don't subscribe or believe overall what the US is all about... And no matter how much root beer you give them, they're not going to buy what we stand for. And they intend on doing some harm. (DHS7)

However, most often this narrative hinged on conceptualizations of immigrants as criminal threats, mirroring the political rhetoric in recent years. Another attorney described the satisfaction he derived in removing criminals from the United States, legitimizing his work through his sense of satisfaction at saying "you're going back to your country":

> I have a story about a child molester, and I really took great satisfaction in removing him, saying: "No, you're going back to your country. You're not going to come do bad things to our children anymore. You're going to stay in your country." So that sort of thing, keeping the bad guys out, in a very simple aspect, I really take satisfaction in that. Guys who have done criminal acts, criminal behaviors, drug dealers, human rights abusers, like I said, crimes of violence again children, against people, human trafficking, that sort of thing. There are just some really awful things that people do to each other; I like it when bad people get their just desserts. I like it when you're like, "No, no, you've done bad stuff. You don't get to play. Sorry." (DHS39)

Despite evidence that the majority of cases in immigration court are for individuals without criminal convictions (Transactional Records Access Clearinghouse 2022), ICE attorneys frequently underscored the criminal aspect of immigration cases, justifying their work through the perceived importance of removing "criminals" from the United States.

> I'm going to hold you accountable for our laws and the laws that you broke, and you're not just going to stay in the United States. You have to leave and go elsewhere. You don't get to enjoy the privileges and benefits of living in the United States." The bad people don't stay here, they don't get to avail themselves of the greatness that this country has to offer. We're very much tasked with ensuring that the people who are allowed to come to the US are people who lawmakers have decided should be here, like asylum seekers… is that really in the best interest of the United States to have people who have a rap sheet two miles long? Somebody

> who's molested a child, but I don't think that's in the best interest of the United States to keep them here. (DHS36)

Frequently, as seen above in the statement "they don't get to avail themselves of the greatness that this country has to offer," this narrative is infused with an implicit protective patriotism and explicit nationalistic sentiment. In many ways, these individual-level strategies of legitimating their work, of infusing their daily law enforcement tasks with meaning, take on the same rhetorical justifications used by the agency overall, often as protectors of the country, to remove criminal threats. In the following example, the attorney highlighted that he saw individuals with sexual offense convictions as important removal priorities and offered the assumption that "most people would agree" that these individuals ought to be removed from the country:

> Yeah, I mean, for me, I always try to keep, it maybe sounds kind of silly, but I really do try to think of what is the right thing for the United States? …The cases I was talking about before, where you've got convicted sex offenders. I mean, if there was any case that I sort of cut my teeth on and made my name on, it was sexual offense cases. And those are the ones that I devoted a lot of my attention to. Those are the ones that I can point to as being, I think, most people would agree with those, if there's any case that are important, those are the cases that are important. And I try to use that as sort of my guidepost. (DHS9)

In this legitimizing strategy, there is a near-complete conflation between removability and the dehumanizing narrative of criminal behavior. Without acknowledging the socially and politically constructed nature of removability charges (indeed, the list of aggravated felonies for which one is inadmissible, and automatically barred from seeking most forms of relief has grown exponentially in recent years (Chacon 2009), ICE attorneys establish their own legal and moral authority within their occupational mandates.

Asylum is Four Hours of Unmitigated Perjury: Disputing Respondents' Claims and Humanity

Another legitimizing narrative frequently deployed by ICE attorneys was to allege the fraudulence of noncitizens' claims or assert their criminality, as an attempt to dispute the respondents' humanity and moral standing. This narrative of legitimacy implicitly served to justify the labor of the attorneys, by emphasizing the "undeserving" nature of the claims in immigration court. The first way in which ICE attorneys dispute the respondents' claims was through alleging that most immigrant respondent claims were fraudulent, and therefore illegitimate and unlawful. Nearly every ICE attorney referenced the presence of fraud in immigration cases, describing it as one of the most significant challenges in this work: "fraud is rampant within immigration, and for every 10 legitimate claims, you'll get 100 people pretending to be that person. It's a way to stay in the country" (DHS6). From an even more cynical perspective, another ICE attorney told me that "if you want to describe an asylum hearing, it's pretty much four hours of unmitigated perjury." (DHS37). Others describe fraud in more vivid detail, elaborating on what they perceive to be unlawful manipulations of existing immigration law to garner favorable outcomes:

> We had a situation probably five years ago, where a judge had a case of a Jamaican [man] who claimed that he was homosexual and claimed that he had been beaten in Jamaica by people that hated homosexuals. So, we looked at it and we did the best research that we could find. And sure enough, it's not a good environment in Jamaica for homosexuals. It's probably not at the level of persecution, but there is some discrimination that happens there with homosexuals. About a week or two later, the judge granted relief, ordered the respondent released, and the person went on with his life. Probably about a month after that, we started seeing that of the detained Jamaicans, there were now five homosexual Jamaicans. Three or four of them were married to women, but they were identifying as homosexual. How do you prove somebody is homosexual or not homosexual? Well, you go forward another month, literally every Jamaican in the detention facility was now homosexual. We were fighting it and then weirdly enough, a letter gets sent to the judge that was from somebody there that says, "Judge, you're an idiot. None of these guys are gay." (DHS9)

In this example, the ICE attorney highlights a pattern he perceives in which respondents will fraudulently shift their claims to align with successful petitions in immigration court. In this example, his office is diligently "fighting" such claims, creating a sense of legitimacy to the work he and the agency are undertaking. Another attorney described the experience of seeing claims embellished, describing what she sees as her work in "tearing people's credibility apart" while claiming that adverse credibility determinations from immigration judges have risen in recent years:

> I feel that when people talk about immigration, we talk like 'it's this poor person who's being persecuted abroad and all of this.' And that's not as common as what people think. There are many cases where we tear apart people's credibility and I've gotten many people, unfortunately, to admit on the stand, "yeah I made it all up. I'm here to work. I want to make money." Or they take something that truly did happen to them, but then they embellish it so much that it's this is a total hypothetical, but the person's father beat them when they were seven and they're now 27 and nothing has happened since then…People think every single person coming here faces a terrible story and meets all the requirements for asylum and that's not the truth. The vast majority of them don't meet that. And I'm not saying that I don't sympathize with people in Central America where they don't have a lot of money, they're really coming here and make more money. I get it. Unfortunately, our laws and our government have said that's not sufficient. And what happens is they start making stuff up. The number of adverse credibility determinations that we've gotten has grown exponentially in the last 10 years. (DHS36)

In this narrative, this ICE attorney reestablishes her own legitimacy by first justifying the work – the times when respondents have admitted to making up or embellishing their claims in court, second by deferring to the immigration law which narrowly defines asylum eligibility and has increased adverse credibility determinations, and third, reestablishing her own morality by stating that she can "sympathize" with people in Central America. This entrenchment into the bureaucratic rule of law is a salient way for this attorney to claim that his work is both morally appropriate and legally just.

Within the broader narrative in which ICE attorneys dispute the claims of immigrant respondents, ICE attorneys established their legitimacy by identifying respondents as criminal and undeserving. Similar to the narratives of fraud, ICE attorneys relied on narratives of criminality to discredit respondents, arguing that the immigrant respondents seeking relief from removal are not "innocent" or deserving of relief. Such a claim allows ICE attorneys to morally justify their own labor and that of the agency:

> I think the misconception is the people coming in are completely innocent and just want a better life for their families, and that they're asylum seekers. I'd say the vast majority do not qualify for asylum. Being extorted by criminals, that's a criminal offense: you were criminalized in your home country, it doesn't mean you were persecuted because of your race, religion, national origin, political opinion and so forth. I think people are really misled on what is asylum. These aren't asylum seekers, they're economic migrants. When they get here, they all talk and they know how to get around the system. Their kids, of course, they receive the free schooling, they get free healthcare, they know not to put their husband's income on the thing, so they qualify for more relief. They don't pay taxes, they all get paid under the table. And they know how to work the system. Then when they go to commit crimes, you see this over and over in all the jurisdictions I worked, they will give them more lenient sentences than United States citizens so we cannot remove them. Instead of convicting them of a felony offense they will give them 364 days in jail [so we can remove them], they'll drop down their conviction to some sort of disorderly conduct instead of aggravated assault with a deadly weapon so we can't remove them. The judges really go out of their way to help them. So, we're not totally dealing with innocent people all the time, I think that's a big misconception of the public and they just don't get the full facts of their criminal stuff and things of that nature. (DHS40)

By seeing immigrant respondents as fraudulent and criminals, ICE attorneys normatively justify the labor of removal in which they are participating, legitimizing their own work, and implicitly bolstering the agency's mandate. Similarly, another attorney described this legitimation strategy through an assertive criminalization of immigrant respondents:

> I don't think people see or know is that we have so many cases that are serious criminals. Can't we all agree that the child rapists should be removed from the United States, because we do a lot of that. Same for the terrorists, can we agree that the terrorist shouldn't stay? So, it's just frustrating because I think people don't know

> that our cases aren't just these sympathetic, and I have sympathy for people too. I'm not, like, not human. So, there are cases that nobody really wants to focus on or feel good about, but then there's a lot of cases that we do feel really good about. I don't think people know that we do all this other stuff. In immigration court, I had many cases come across my desk with people that were murderers, had tried to commit gang hits, were drug traffickers, had five, six, seven-time instances of spousal abuse. When you can use the tools at your disposal to make sure individuals that are violent and dangerous are taken off the streets and removed from the country, that's typically something that I think folks feel good about. (DHS35)

While the legitimizing strategy of disputing respondents' claims and morality was used by many attorneys, I highlight here a contrasting legitimizing narrative in which several attorneys emphasized the human aspect of these court claims by highlighting limitations of immigration law itself. By pointing to the limitations of the law and policy, some ICE agents humanized the respondents in court, while still deferring to the law. One attorney said:

> You could deserve all the relief in the world, but if it's not provided for under the law, there is nothing I can do about it. Despite, again, what sometimes people think. And so, to me, actually those are the hardest cases, where you see just truly sympathetic cases, and there's no relief, and there's nothing you can do about it. (DHS11)

In this narrative of self-legitimacy, ICE attorneys attempt to establish their own legitimacy by pointing to what they perceive as legitimate and justifiable reasons to pursue deportation in immigration cases. By focusing on instances of fraud and criminality, ICE attorneys dispute the morality and sufficiency of the respondents' claims in court, thereby reestablishing the need for their own occupational labor as bureaucrats following the law.

Discussion

In a time of heightened polarization of immigration policy in the United States, this article examines the self-legitimacy narratives of ICE attorneys who litigate immigrant removal cases on behalf of the federal government. In it, I ask: how do enforcement

bureaucrats make sense of their labor when faced with uneven public support? Drawing on 40 in-depth interviews with ICE attorneys, I identify three primary, co-constitutive narratives of self-legitimacy, including: 1) a strongly internalized a sense of role and duty to existing law, 2) a moral authority as patriotic "white knights" protecting the nation from threats, and 3) persistent allegations of immigration fraud, diminishing noncitizens' humanity and claims of persecution (for asylum). Taken together, these three occupational narratives that make up what I term *bureaucratic entrenchment,* revealing the social psychology – and source of self-legitimacy – that ICE prosecutors use to manage tensions in relation to their occupational role. By extending the literatures on legitimacy and the social psychology of enforcement officers, bureaucratic entrenchment offers a new pathway of self-legitimacy that involves a high degree of role internalization (Arendt 1964) and political entrenchment (Levinson and Sachs 2015) in anti-immigrant ideology to insulate against criticism of the current restrictionist immigration landscape. By constructing individual-level narratives about their political and legal neutrality, establishing their own moral superiority as heroic and patriotic protectors of the United States, and doubling down on disputing the claims of the immigrants facing removal, this approach offers a clear avenue for relieving some of the tensions of these prosecutors' occupational self-concept.

These findings provide an important first step in better understanding a new pathway to self-legitimacy, with significant implications for how law enforcement agencies' respond to political polarization and criticism. In deploying these narratives of self-legitimacy, this case shows that in addition to traditional pathways to self-legitimacy through public support and individually held beliefs in one's own superiority to exercise

power, actors in politically contested occupations may entrench politically, as a means of justifying their continued labor. As ICE attorneys attempt to resolve conflicts between the perceived ethical and reputational concerns they experience through their work, it is a third pathway, that of political entrenchment in nationalistic, protectionist sentiment, rather than responsiveness to public protest, that appears to provide the clearest avenue for self-legitimacy and management of one's occupational self-image. These findings provide an important first step in better understanding the occupational effects of political polarization for law enforcement agents.

These findings suggest that one possible consequence of intensified political polarization is that agents working in these fields may find it necessary to become bureaucratically entrenched to see their work as legitimate. In this case, entrenchment operates through distancing themselves from the impact of their deportation, valorizing their own efforts, and dehumanizing the individuals they are deporting. Moreover, rather than demonstrating a positive responsiveness to public protest and shifting administration priorities, the most salient self-legitimation narratives among ICE attorneys – irrespective of geographical location, length of time in the agency, seniority, gender, age, or political affiliation – were narratives that reinforced a distanced disregard for such protest/change, a strong nationalistic protector-savior mentality toward US citizens, and persistently alleging immigrant criminality and fraud, despite widespread data to the contrary. By overwhelmingly identifying immigrants as criminals and fraudsters and positioning themselves as heroes, ICE attorneys can uncritically continue the work of removal, even under conditions of public protest and delegitimizing political shifts.

Future research might investigate how narratives about self-legitimacy and stigma-management operate for other politically dirty workers, particularly in cases where the salience of political polarization has increased dramatically in recent years, such as for front-line police officers. While the case of ICE attorneys provides an important lens into the functioning of immigration law enforcement, it would be important to analyze if similar patterns of political entrenchment hold for both street-level police forces and criminal prosecutors. How do social movements such as 'all lives matter' and 'back the blue' reflect similar strains of political entrenchment, and to what degree do these self-legitimacy narratives vary at different educational and occupational prestige levels? Importantly, these narratives extend our knowledge of how self-legitimacy and social psychology operate hand-in-hand in conditions of politically contested work. These findings suggest that, in addition to existing pathways to self-legitimacy (Ashforth and Kreiner 1999), entrenchment in existing bureaucratic roles provide an important avenue to insulate against public criticism and build internal and organizational self-legitimacy. These self-legitimacy narratives of ICE attorneys, then, reflect a pathway that involves relying on patriotic ideologies and anti-immigrant narratives to bolster one's own occupational value.

3. JUDGES AS SUBJECTS OF THE IMMIGRATION STATE: MICROMANAGEMENT, PRECARITY, AND THE LABOR OF REMOVAL

Abstract

The state plays a key role in managing migration, and immigration judges in the Executive Office for Immigration Review (EOIR) are central actors in this process. While immigration judges are independent decision-makers under the statute, they occupy a unique position in the U.S. legal system as employees of the Department of Justice and extensions of the state in immigration enforcement apparatus. This tension is apparent when the Executive branch imposes politicized directives into the functioning of the immigration court; EOIR management has imposed several changes into the working conditions of immigration judges, including 1) shifting political priorities for case processing and 2) increasing the speed at which judges must complete cases through performance metrics. Drawing on 30 in-depth interviews conducted with current and former immigration judges, this article charts how these changes impact the labor of adjudication, finding that judges experience significant tensions in this work, including increased bureaucratic inefficiency, reduced independence and docket control, and limited preparation time for immigrant respondents appearing before them in court. As these managerial changes occur from the top down, I offer the *micromanagement of migration* as a conceptual link between street- and state-level migration control, complicating previous conceptualizations of judicial independence and decision-making. I argue that the state's management of immigration judges increases precarity among noncitizens in the

immigration court system, and operates as a different form of migration control, distinct from macro-level border policy or front-line decision-making of street-level bureaucrats. Due to the contingent nature of judicial independence within the court bureaucracy within the Executive branch, the micromanagement of immigration judges reveals the banal ways that the state controls both adjudicators and noncitizens within a broader trajectory of contemporary punitive immigration policy.

Under the law, immigration judges have the authority to use their discretion. Yet, there are efforts on the part of the administration to reduce the ability of the judges – through performance metrics, through disciplinary action, through complaint procedures, through removing cases from their docket if the administration isn't happy with what the result is going to be, through keeping them from being able to speak and communicate and inhibiting their ability to train the next generation of lawyers through participating on substantive panels. If you curtail judges' ability to do all of this, you are violating not only their independence, but you are rendering ineffective what the judges are authorized by law to do, which is ensure that due process is provided to all the parties that appear before the judge.

Immigration Judge and NAIJ Union Member

Introduction

Despite being highly polarized, how immigration law is implemented is critical – each decision by an immigration judge has enormous consequences for the lives of noncitizens, while the collective decision-making of immigration judges reshapes the composition of the U.S. population. Immigration judges are tasked with the challenging role of maintaining the nation's symbolic and physical borders and providing legal protection to noncitizens fleeing persecution, all from a highly irregular position within the American adversarial legal tradition.[17] Deciding thousands of immigrant removal cases every year, immigration judges "exercise their independent judgement and discretion" (8 C.F.R. § 1003.10 n.d.), and yet are employed by and answer to the U.S. Attorney General in the Department of Justice. This unique tension in judicial independence has been widely criticized by immigration court advocates (Roundtable of Former Immigration Judges 2020), and subject to numerous calls to shift the practice of immigration adjudication into

[17] Unlike United States District and Supreme Court judges, who maintain the highest degree of judicial independence, the authority of an immigration judge is not derived from Article I or III of the Constitution and the Judicial Branch. Instead, immigration judges are quasi-Administrative Law judges whose authority is delegated through the Attorney General and the Executive Branch.

the judiciary (NAIJ 2022). However, less is known about how immigration judges experience this tension day-to-day. By focusing on the hard-to-reach population of immigration judges, this study makes both empirical and theoretical contributions to sociological literature on state migration control and street-level bureaucracy.

Within a long trajectory of research examining how states manage migration, scholars have focused on the ways that states engage in macro-level strategies, including remote border control (Zolberg 1997) and other tools of repulsion (FitzGerald 2020) and restriction (Massey and Pren 2012). At the same time, as the field of immigration control has increasingly shifted to local-level enforcement (Armenta and Alvarez 2017; Coleman 2007), scholars have looked to the street-level implementation of immigration law and policy, with a focus on the uneven ways that state and non-state actors reshape migration control on the ground as street-level bureaucrats (Asad 2019; Shiff 2021). While there has been some examination of the structural constraints shaping the labor of migration control (Cortez 2020a), few scholars have looked at the labor and working conditions of immigration judges within the bureaucracy (Stuart L Lustig et al. 2008). Instead, the topic of judicial working conditions has gained traction in popular and public forums, from congressional hearings on judicial independence (U.S. House of Representatives Judiciary Committee 2022) to news reports of judge burnout and resignations (Alvarez 2019).

Given the unique occupational position of immigration judges within this legal-bureaucratic structure, I ask: first, how do immigration judges experience their labor within this management system, and second, what are the consequences of the management of their labor to the process of removal adjudication? To answer this question, I rely on 30 in-depth interviews with current and former immigration judges that focus on their

experiences of the labor of removal, the EOIR management structure, their employment history, and affective experiences of this work. Using these labor narratives, I show that immigration judges are subject to managerial directives that reshape the process of immigration adjudication. I identify three primary managerial tactics that immigration judges experience most saliently, including: 1) shifting priorities, 2) increasing speed, and 3) isolation, all of which have significant implications for the decisional outcomes of removal proceedings in immigration court.

This work process is illustrated by what I term the *micromanagement of migration,* a concept that links the research on street-level bureaucracy and how states manage migration. Due to the dependent position of the court bureaucracy within the Executive branch, the micromanagement of immigration judges reveals the banal ways that the state disadvantages both adjudicators and noncitizens within a broader trajectory of contemporary punitive immigration policy. The theoretical aim of this paper extends beyond a description of judicial working conditions. I use the case of judicial working conditions to analyze how labor management operates as a different form of migration control, distinct from macro-level border policy or front-line decision-making of street-level bureaucrats. By analyzing the changing nature of judicial work as a managerial tactic of control, this study contributes to literatures on state- and street-level processes of migration control, while clarifying the process of immigration adjudication more broadly. My findings also have implications for the study of labor and management, adding to existing discussions of the micromanagement of white collar-workers.

Background: History of Immigration Adjudication

The practice of federal immigration adjudication has roots dating back to the early nineteenth century with a two-tiered system for hearing immigration cases, in which cases under the Chinese Exclusion Act were heard in federal courts, while all other nationality groups were heard through non-judicial administrative proceedings (Hester 2017). Following *United States v. Wong You* (1912), these cases were merged and eventually all heard by the newly created Immigration and Nationality Service (INS) in the Justice Department that enforced racialized immigration exclusions (Ngai 2004). At that time, INS immigration enforcement was conducted by "hearing officers" with mixed duties of presiding over cases they were also enforcing (Rawitz 1988). Despite a 1950 holding from the Supreme Court requiring separation between enforcement and adjudication under the Administrative Procedure Act (APA), Congress passed the Immigration and Nationality Act (INA) in 1952, superseding the APA and largely preserving the role of INS officers as dual enforcers and adjudicators, referred to as 'special inquiry officers' (SIOs). This practice slowly began shifting in the 1960s, when non-SIOs began taking on the tasks of presenting evidence and cross-examining witnesses, and SIOs focused solely on adjudicating immigration cases for the INS.

Since the 1980s, there have been numerous modest reforms to the structure of immigration enforcement and adjudication, despite an increasingly punitive turn in substantive immigration policy. In 1983, the Department of Justice (DOJ) created the Executive Office for Immigration Review (EOIR), separating immigration adjudicators from INS and placing them under the direction of the Attorney General in the Executive Branch. In 1996, Congress amended the INA to use the term "immigration judge" for adjudicators, while simultaneously introducing a new phase of immigration restriction

through the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The IIRIRA broadly reshaped immigration adjudication, expanding the categories for deportable offenses, restricting opportunities for relief from removal, and limiting judicial review for immigration judges (Wadhia 2009b). After the 9/11 attacks, the Department of Homeland Security (DHS) was created in 2003 to bolster enforcement operations; today, DHS serves as the sole prosecutor for immigration cases on behalf of the federal government, while EOIR continues to adjudicate from within the Department of Justice. In EOIR courtrooms around the country, immigration judges determine the removability and applications for relief for the noncitizen. If there is a relief application filed, the judge will determine whether to grant it, or order the removal of the noncitizen.

Contemporary Structure of Immigration Courts

In the United States, the bureaucratic supervisory system for immigration judges differs significantly from traditional judges and adjudicators in other agencies. Judges are employed in the Executive Office for Immigration Review, located in the Department of Justice in the Executive branch. In the approximately 60 courts and hearing locations around the country, immigration judges are directly managed by an Assistant Chief Immigration Judge (ACIJ), often referred to as a "manager" by the judges. Many courts have an on-site ACIJ, while some smaller courts have an off-site, remote ACIJ who manages all the hearing locations in the area of responsibility. ACIJs supervise the daily work of the judges and respond to complaints and issues within the area of responsibility. The ACIJs are in turn supervised by two Deputy Chief Immigration Judges and one Principal Deputy Chief Immigration Judge, who both report to a Chief Immigration Judge. The Chief Immigration Judge reports to the Deputy Director and Director of EOIR, who

reports to the Deputy Attorney General and Attorney General. This structure is represented in Figure 3.1.

[Figure 3.1 in appendix]

All immigration judges are career attorneys with a juris doctor (JD) degree or higher, and occupy a stable, upper income class position earning between $120,000 – $182,000 per year, according to federal employment statistics (EOIR 2020). However, despite the name 'judge' and the black judicial robes, immigration judges are neither hired nor afforded the same protections as Administrative Law Judges (ALJs) (Jain 2018). Unlike traditional ALJ hiring, immigration judge candidates are instead recommended through EOIR to the Office of the Deputy Attorney General, and then appointed to the position by the U.S. Attorney General. This hiring process has been criticized for being highly partisan and was subject to a congressional investigation under the second Bush administration. During the investigation, it was found that both the White House and the Department of Justice had "treated the hiring of immigration judges like other political appointments," favoring political party members for appointment and reshaping the political leanings of the judge pool. Once hired by DOJ, immigration judges are subject to a probationary period of two years during which time they can be removed or terminated without a cause or review. New judges have limited opportunities for training and have been subject to ongoing performance metrics since 2006, including the highly controversial 2018 quantitative performance metrics mandating 700 annual case completions. Judges can be reassigned or rated down by the agency for low productivity and job performance, a workplace precarity that traditional ALJs don't experience.

The National Association of Immigration Judges (NAIJ) has served as the representative of the judges' collective bargaining unit since 1979 (NAIJ 2022). In 2019, the DOJ under then-President Trump petitioned the Federal Labor Relations Authority (FLRA) to decertify the NAIJ, which was granted in 2020. This decertification effort was later reversed by the Biden DOJ in December 2021. However, in late January 2022, the FLRA rejected a request from both EOIR and NAIJ to throw out its controversial November 2020 decision that decertified the union. In response, NAIJ president and New York immigration judge Mimi Tsankov said "This is a poorly reasoned decision and overrules the will of the parties. It is rooted in the majority FLRA board members' anti-union bent and reflects a deep desire to silence immigration judges" (AFL-CIO 2022). Among the chief concerns for IJs, NAIJ highlights issues related to due process, judicial independence, limited funding and resources, and a skyrocketing backlog of cases on the docket. Additionally, judges report high levels of stress, burnout, and turnover (Stuart L. Lustig et al. 2008), and are currently barred from speaking to the press or public in any capacity (Atkins 2020). There have been widespread calls for an Article I immigration court, which would protect the independent decision-making of immigration judges by moving them into the judiciary and out of the executive branch (National Association of Immigration Judges 2020).

Immigration Judges as Street-Level Bureaucrats

As Weber has argued, the modern state holds a monopoly on the use of legitimate coercion within a given territory (1978), including the restriction of migration across the borders of sovereign states (Joppke 1999; Torpey 1999). Nation-states, with the capacity to deny entry and residence to certain noncitizens have historically attempted to control

their borders through a system of 'remote border control,' the transnational system of visas and passenger screening that has been in operation since the nineteenth century (Zolberg 1997). In managing immigration in the United States, the state leverages its monopolistic coercive capacity most notably through the practices of detention and deportation, which have become the primary mechanisms for the state to regulate noncitizens in recent decades (García Hernández 2015; Stumpf 2006). In recent years, the process of migration control has expanded to include a vast interior system of immigration enforcement agents, both federal and non-federal employees, who work to apprehend, detain, and remove noncitizens.

In this concentrated phase of interior immigration enforcement, there has been an uptick in research that analyzes how immigration agents do their work, locating their labor within the federal agencies for which they work (Wissink and Oorschot 2020). This process has also been described in the European context, in which the nation-state has called in local level officers and street-level bureaucrats to monitor immigration (Ellermann 2009; Guiraudon and Lahav 2000). This work has revealed a complex system of on-the-ground practices showing how street-level immigration officers implement the state's immigration law and policy (Armenta 2012; Vega 2018). In studying the front lines of border patrol (Cortez 2020; Vega 2018), policing (Armenta 2017), detention centers (Bosworth 2019), asylum offices (Shiff 2021), scholars have alternately conceptualized front-line immigration agents as either extensions of the state or as street-level bureaucrats (Lipsky 2010), the semi-autonomous workers whose uneven micro-level decision-making reshapes

policy-in-action.[18] On one hand, immigration enforcement agents act as extensions of the state: objective administrators who are responsible for identifying and processing immigrants for removal at the direction of federal agencies, while on the other hand immigration agents take a more uneven approach to applying the law.

Building on these findings, I look to the complex position of immigration judges: in occupational identity and by statute, immigration judges are independent decision-makers, yet they are also employees of the federal immigration state, subject to sanction and dismissal. Overwhelmingly, scholars have previously described immigration judges as 'street-level bureaucrats' due to their discretionary capacity in making immigration-related decisions (Ramji-Nogales, Schoenholtz, and Schrag 2007). Scholars have argued that judges, with the authority to banish or legalize claimants, have enormous power to "make policy" in the courtroom. In a growing body of work that interrogates the role of bias in the decision-making of immigration judges, scholars have shown that judges' personal characteristics significantly impact on decision-making, finding that the chance of winning asylum is strongly impacted by the immigration judges' gender, political orientation (Kim and Semet 2020), prior work experience (Ramji-Nogales et al. 2007), attitudes towards immigrant groups (Rottman, Fariss, and Poe 2009), and values relating to family or Americanization (Farrell-Bryan 2022; Marouf 2011).

However, despite such findings, there has been altogether less attention on the structural context in which immigration judges make their decisions. Indeed, the structural

[18] These frontline workers have a high degree of discretionary capacity as they make decisions to enforce policy (Asad 2019; Heimer 2008), and thus exercise discretion when encountering cases they view as 'deserving' (Zacka 2017). In their exercise of discretion, Lipsky argues, street-level bureaucrats effectively *make* policy through their discretionary decision-making.

context shows how immigration judges differ from other immigration enforcement field agents. A few studies of judicial decision-making have broadened their scope beyond the judicial characteristics to examine the logistical or managerial structure of judicial decision-making. In a newly emerging literature on the organizational constraints that immigration judges face, scholars have pointed to the complexity of immigration law (Markowitz 2019), high stress from an enormous case backlog (Benson and Wheeler 2012; Stuart L Lustig et al. 2008) and the unique hierarchy of the courts within the Department of Justice, to illustrate some of the reasons judicial decision-making outcomes differ so widely (Jain 2018; S. H Legomsky 2007). Drawing on the theory of street-level bureaucracy, Asad's study (2019) of judicial decision-making in immigration court suggests that, when under bureaucratic and administrative pressure, judges often rely on heuristic, patterned logics to make decisions in court.

Given this nascent research, and in response to calls to focus research efforts on the internal processes of the immigration bureaucracy (Heyman 2012), this study examines the experiences of judges on the ground, their working conditions, and experiences of management. As initial work has examined the logistical constraints facing the immigration court, I extend this empirical work to theorize at how immigration judges are positioned both as representatives of the immigration state and subjects of it. I interrogate the conceptualization of immigration court actors as discretionary, street-level bureaucrats. I find that immigration judges experience specific managerial directives in their case processing and workflow that shape both court outcomes as well as their experience of this labor. These managerial tools include changing docket priorities and unpredictable speed-ups that lead to perceived inefficiency, limited independence, and reduce the availability

of due process for noncitizens. By focusing on the internal work processes of this bureaucracy, this study complicates our understanding of judges as primarily discretionary decision-makers. I posit that immigration judges occupy a different occupational location than other street-level immigration agents due to their unique position as both independent decision-makers and state employees. I argue that their labor management operates as a different form of migration control, distinct from macro-level border policy or front-line decision-making of street-level bureaucrats.

Extending the scholarship on the bureaucratic implementation of immigration policy, this study makes both empirical and theoretical contributions to the emergent literature on immigration control. I contribute the concept of *micromanagement of migration* to describe how the state manages migration through reorganizing and constraining the working conditions of its judges. By describing the micromanagement of immigration judges, this case sheds light both on the management structure and working conditions of the immigration courts, as well as the process through which banal managerial changes can effectuate an anti-immigrant political agenda. Ultimately, this research suggests we might reconceptualize immigration judges from autonomous decision-makers to federal employees whose labor furthers the anti-immigrant social control capacity of the state. As judicial labor in the immigration court system in the United States reflects neither fully street-level bureaucracy and state-level migration control policy, the study of immigration judges (and the labor of removal) offers a unique window into a third way to understand the state's migration control capacity.

Data and Methods

This article is based on a novel set of 30 in-depth interviews with current (13) and former (17) immigration judges, supplemented by archival materials from the National Association of Immigration Judges (NAIJ) and the Department of Justice (DOJ) and nine months of ethnographic observations of judicial decision-making in a northeast immigration court. The judge interviews, conducted between April 2020 and August 2021, reflect more than 15 different hearing locations, and were recruited through the NAIJ and additional snowball sampling. Interviews were conducted by phone and lasted between one and two hours. With permission, many were recorded and transcribed verbatim. The semi-structured topics cover a variety of themes, including the employment history, working conditions, decision-making and discretion, and political and workplace identity of each immigration judge.

Immigration judges are a notoriously hard-to-reach population, with ongoing federal limitations on the ability of immigration judges to speak to the public or the press.[19] In this sample, interviewees were current and former immigration judges from ten different immigration courts around the United States, spanning the seven previous U.S. presidential administrations. The judge perspectives represent the full history of the agency, from its separation from Immigration and Naturalization Services (INS) in 1982 through the present day. The mean length of time on the bench for interview respondents was 16 years and a range of 2-30 years. About 44 percent of interviewed judges were women and 56 percent

[19] As I describe below, this is a January 2020 policy that prohibits the executive branch judges from, according to the association, "seeking to speak or write publicly in their personal capacities, no matter the topic, audience or venue" (Executive Office for Immigration Review 2020a).

were men. They come from a range of racial and ethnic backgrounds, as well as previous employment in private practice and government.

Because immigration judges are formally barred from speaking to the public, one significant limitation to these data is that the interviews are primarily drawn from immigration judges who felt professionally safe enough to speak to me. This included judges who did not fear any pushback from management, or were protected by union membership or leadership, or had recently resigned or retired. I experienced several recruitment attempts with immigration judges who only agreed to speak to me informally or declined to complete an interview altogether out of fear of reprisal from management. These data then are not representative but reflect a more cautious perspective on the management structure of this work, illustrating a narrower experience of the labor of removal.

Using a modified inductive and abductive approach to qualitative analysis (Timmermans and Tavory 2012), I repeatedly returned to my notes throughout the interviewing and fieldwork process, developing and refining my questions and subsequent observations in the courtroom. As my fieldwork progressed, I paid increasing attention to how immigration judges experienced the labor of removal, including several mandated changes to the labor structure and independence of judicial decision-making. As I re-read and coded my data, I kept these themes in mind, searching for evidence that confirmed or disconfirmed the emerging categories. I coded my fieldnotes using the qualitative software, Atlas.ti to organize and clarify my findings.

Findings

I find that several management directives shape the process and experience of immigration adjudication for judges and noncitizens. Within the organizational structure of EOIR, immigration judges are subject to changing conditions that are often at odds with the independent authority and discretion afforded to them by statute. By identifying seemingly banal administrative changes in judicial working conditions, this article illustrates the structural constraints faced by immigration decision-makers, and how the micromanagement of labor has a significant impact on the outcome of immigration proceedings. I draw on judge narratives to identify two primary tactics of judicial micromanagement: shifting priorities and increasing speed. While these tools of managerial control may perhaps appear minor or innocuous – merely the routine adjustments of shifting bureaucratic imperatives – I highlight in the following sections how judges experience the consequences of these directives on the ground, primarily through an inefficient work-flow process, limited independence, and reduced due process afforded to immigrant respondents. While all judges expressed concern at these managerial tactics, judges who had more experience on the bench or were closer to retirement age expressed feeling less pressure (and micromanagement) in their work and decision-making.

Managing the Decision-Makers

Within the structure of the immigration court, there are several procedural changes that have remapped the experience of adjudication for all parties. Specifically, immigration judges, under the direct management of the U.S. Attorney General, have received directives that 1) impose external priorities, which dictate the removal cases the administration would like to be heard first, and 2) increase the speed of adjudication, which limits the time that cases can remain on the court docket. Together, these two seemingly banal procedural

shifts have significant consequences for the process and outcomes of immigration adjudication.

By illuminating these procedural changes to how immigration judges must adjudicate cases, this article complicates our understanding of immigration judges as street-level bureaucrats. In describing judges' experiences with court policy-in-action, I show how immigration judges perceive their decision-making and independence to be curtailed by management. Specifically, this article finds that immigration judges experience heightened bureaucratic inefficiency, compromised judicial independence, and reduced due process rights afforded to noncitizens as a direct result of managerial directives. I argue that immigration judges, often thought of as independent decision-makers, are also subjects of the federal immigration state, and are subject to discipline and control from management. Further, I argue that these managerial changes produce significant inequality in the bureaucracy of migration control for the noncitizens. By externally managing the timing and scope of judges' decisions, the administration effectively limits access to legal representation and preparation for noncitizens in immigration court. As such, this article both sheds light on how scholars conceptualize judicial independence and has significant implications for the independence of the immigration court system and access to fair hearings. In the subsequent paragraphs, I first define the two managerial tactics of shifting priorities and increasing speed, and next I draw on the perspectives of judges to better understand the costs on the ground of these managerial directives.

Shifting Priorities and Increasing Speed in Adjudication

One of the primary practices of judicial management is the use of 'shifting priorities' in immigration adjudication, ostensibly to reduce backlogged cases or tackle

certain politically expedient immigration interests (American Immigration Lawyers Association 2018). In this approach, the Attorney General issues new directive guidance to immigration judges on how to order their cases in court. Updated priority guidance is implemented by management, from the Office of the Chief Immigration Judge to the Assistance Chief Immigration Judges in each hearing location. These new directives are often in response to external, political immigration concerns (e.g., border surges), rather than in accordance with the internal functioning of each judges' docket. In immigration court, judges frequently hear multiple cases a day, and are often scheduled several years into the future; yet with new prioritizations, judges must re-calendar all their previous cases to reflect updated priorities. Rearranging dockets requires a significant amount of bureaucratic effort, communication, and organization.

Another practice frequently used by management is the practice of increasing the rate at which immigration judges adjudicate cases. This practice is related to the practice of docket prioritization but deals specifically with the time frame in which cases are expected to be heard and decided by immigration judges (Hausman and Srikantiah 2015). The practice of 'increasing speed' is exemplified in the introduction of strict quantitative performance metrics[20] in 2018 but has been a key feature of managerial control for decades. Increasing speed refers to guidance from the Attorney General that defines the time frame in which a case can be heard, whether and how frequently judges can grant continuances

[20] In 2017, U.S. Attorney General Sessions introduced quantitative performance metrics to guide the adjudication of immigration cases. They included a 7-point set of evaluation criteria, including a requirement to complete 700 cases per year, and 95 percent of cases should be heard on the initial scheduled individual merits hearing date (Office of the Attorney General 2017). While these metrics have been temporarily paused under the Biden administration, there is currently a plan to implement new judicial performance metrics in the near future.

in cases, and how many cases a judge needs to decide during the calendar year. While all judges experienced this managerial tactic, older and more experienced judges were more able to circumvent these directives, while newer, less experienced judges felt more vulnerable to the pressure of increasing speeds, as I detail below. Overall, judges primarily found the pressure of increasing speed to be overwhelming and difficult.

The Costs of Management

The management of judges and judicial working conditions, I argue, is one way that the state retains control over the process of immigration enforcement. Rather than allowing immigration judges to be independent decision-makers in removal proceedings, the existing structure of the immigration adjudication system positions judges as subjects of the immigration enforcement apparatus, vulnerable to the directives, control, and discipline by management. As the state imposes the directives of reprioritization and speed, interviews with former and sitting immigration judges reveal the costs of micromanaging this workforce.

Bureaucratic Inefficiency

First, judges described the practice of shifting priorities as a key feature of adjudication in which they had very little control over which cases they were allowed to process. While ostensibly imposed by management to prioritize politically important cases to process, the practice of shifting priorities more frequently produced a deeply felt sense of bureaucratic inefficiency. Judges portrayed this process as frequent, arbitrary, and nonsensical: "all the other cases have to be shuffled. The whole docket must be upturned and shuffled to make room, so we can get to those prioritized cases. It's very destructive and counterproductive." Specifically, they lamented the shifting administrative priorities

as an inefficient condition of work. One such priority shift was a specialized docket priority to expedite the "family unit"[21] cases in immigration court, described below. In this following example, the judge describes how this management technique disrupts organizational calendaring efforts on the part of judges:

> Every administration has tried to manipulate the dockets in a way to try to address the backlog, but every time they do that it just blows up, because the people that know how best to manage their docket are the judges, not management. The family docket was a perfect example. In many ways, these divided dockets completely backfire as we found out during the Obama Administration rocket dockets. There was this push to expedite family units and complete children's cases and then it ultimately backfired because the dockets exploded, and judges kept resetting cases. It's simple math when you have the pace of NTAs that we we're facing. Eventually judges couldn't even schedule the cases that were supposed to be expedited within the expedited time frame because there just wasn't space in the calendar.

As described above, dockets quickly become unwieldly when judges face external pressures to reorganize their dockets to suit the needs of outside, politically motivated managers. This tactic was extremely common; as another judge described, new priorities could reshuffle the dockets every few months, saying "every six months you get a list of cases that were over a certain age, or had some other characteristic, and you rearrange your whole schedule to make sure those cases are on calendar and others are bumped. There was this constant sense of 'aimless docket reshuffling.' We spent an awful lot of judge time, staff time, and resources shuffling cases around on the calendar." Another judge described

[21] In 2014, the Obama Administration introduced a dedicated docket to prioritize the cases of adults with children, termed the "AWC," or colloquially, the "rocket" docket. In 2018 Trump administration, this practice was expedited with the benchmark of processing "Family Unit" cases within less than one year (J. McHenry 2018) for the courts in Atlanta, Baltimore, Chicago, Denver, Houston, Los Angeles, Miami, New Orleans, New York City, and San Francisco. The dedicated docket has continued under the Biden administration with the goal of reaching a decision on family cases within 300 days for Denver, Detroit, El Paso, Los Angeles, Miami, Newark, New York City, San Diego, San Francisco, and Seattle courts. This practice has been heavily criticized by immigration advocates.

that the process would not only expend judge and staff resources on reorganizing the cases, but also contributed to the growing backlog of cases:

> Nobody ever finished one priority before [the administration] started to turn to another one. That is how you started to build backlog. As the priorities changed you were encouraged to move the new priority up and push everything else back, which of course resulted in chaos. There was never a consistent enough and long-term enough set of priorities or goals that was effective because it would change with the administration or somebody would come to Congress and testify in front of a committee that some awful thing was happening, these cases weren't getting taken care of, and suddenly boom, the one-headed monster would turn its head towards that set of cases. It felt to me like it was this one-headed monster, and it would suddenly pivot and focus on a new feeding place.

By not allowing judges to manage their own dockets, this practice limits the control individual judges have over the processing and flow in their own courtrooms. As priorities are set by the president's administration, constantly changing priorities put judges and the courts at the mercy of politicized concerns. One longtime judge described how this process was disorienting to work in, produced a backlogged and inefficient bureaucratic process, and removed any control that the judges had over their own dockets:

> I prefer to have a hand in resetting my own docket. And I think most of the judges did. When there was that huge surge at the border towards the end of the Obama administration, there's just no way that we could keep up with the numbers, because so many new cases were coming in. It made for a disorienting work environment. We basically had to just move stuff *en masse* from where it was to the end of the calendar. Sometimes they didn't even reset it, they just parked it someplace. The prioritization, I think, makes the court less productive because we're spending so much of our time rescheduling shit that we're not spending as much time getting the stuff done.

In direct contrast to the widespread characterization in the literature that immigration judges are highly independent and autonomous decision-makers, this practice of reprioritizations and speed highlight how little control individual judges have over their own dockets. While the administration can decide how and when they want to expedite

certain hearings, judges have very little input into how this approach will impact the load on the dockets or is feasible in their court. Frequently, reprioritizations and speed-ups resulted in heightened inefficiency in court, judicial strain, and backlog. One effect was that judges frequently felt burdened by this practice, resulting and burnout and resignations. After experiencing the effects of the speed-ups, one judge told me, she decided to resign, saying: "there's just no way that I can do it, I just can't handle this pressure of all of these cases that have been front-loaded, that I'm responsible for in the next couple of months."

Compromised Judicial Independence

In addition to the heightened bureaucratic inefficiency, speed-ups and reprioritizations by management have the compounding cost of undercutting judicial independence in decision-making. As one judge described for me, the effect of speeding up cases was that she had very little time to think about nuances in the law when adjudicating cases because she was constantly fearful that she would lose her job for not processing cases quickly enough. She described the pressure she felt when managers urged her to speed up cases:

> From the standpoint of my managers, they want my cases to be heard quickly. I have to look at the dashboard on my computer and see how quickly the cases must be heard in order to be meeting my goals, my numbers. We have extraordinary pressure on one side: the agency tells us you've got to continue to provide due process, of course, however, we have performance measures that say you've got to decide the case after the individual hearing. If you grant a continuance following an individual hearing, you can be fired, essentially. You can be fired for that. You could be subject to discipline. I try to stay vigilant and only think about what each individual case requires, but it's often at odds with my own personal desire to actually keep my job and not risk it by granting a continuance. That is what the stakes are for the judges that are currently presiding over cases.

In this example, the judge highlights the profoundly contradictory experience of trying to ensure due process rights for the noncitizens with cases in court, and the workplace

pressure to keep up with the caseloads. On top of that challenge, she described how her job is also on the line. This, I argue, is a stark example of one of the limitations to conceptualizing judges as street-level bureaucrats. Another judge echoed this sentiment, by describing the challenge of having to consider how managerial oversight interferes with their judicial independence:

> That's where it really was the beginning of the end for judges having the ability to control their docket because now you have the inappropriate consideration of: am I going to be *rated down* because I grant someone a continuance? It never should be in the judge's personal interest whether or not something like that is granted or denied, but convolutedly now it is.

By increasing speed, judges feel squeezed between the dual mandates of trying to provide due process and completing cases as expediently as possible. The process of increasing speed is often at odds with values of judicial independence and due process. For many judges, the current management directives put their jobs at risk as they attempt to respond to the pressures of providing due process and completing cases efficiently. Another judge elaborated on this point, adding that the condition of increasing speed goes against due process afforded to respondents in court, no matter the backlog and political pressures:

> The answer can never be, "well there's a backlog, so I have to do your case faster, sir." The answer must be your case gets a full and complete review that's compliant with due process. It ignores that there's a backlog. So, this is this tension that the courts are dealing with, and that's what the judges are faced with, this tension, I guess if I was going to call it one thing, it's a tension between trying to meet the pressures of that due process and the Constitution require, with the pressure that the administration has been imposing on the judges to hear cases faster.

These examples of the managerial directives, in which judges must navigate between their discretionary, independent decision-making and managerial expectations to meet external work evaluations, to not be rated down, affected most judges in this sample. However, in

contrast to the previous complaints, one judge described how his personal circumstances allowed him to avoid some of the workplace pressure:

> I don't feel a great deal of pressure. One, because they shouldn't be managing a judge. The law says I have independent decision-making authority and so let me do that. Two, because of my background, I just don't care. You fire me? Great. I'll triple my pay in a matter of a month. I'll find a new job. Maybe I'm just deluding myself in this climate, but for a variety of reasons – primarily, my wife, who works full-time as an attorney in a corporate law job, I don't feel like, I'm not worried about keeping my job. If they fire me because I'm doing what's the right thing to do, that's fine, fine if they fire me. I feel that gives me more freedom than other judges who don't have that safety net, in a way. It feels like I have a safety net. Immigration is what I've been doing for four years, and for the 20 years before that, I did lots of other things. I'm good at it and I can do other things. If I can't, then my wife will support me.

This shows how it is only though certain external factors (financial stability, union membership, or age and experience), judges can avoid some of the working condition pressure of this workplace. As one judge added:

> I'm more confident because I've been an active union member for so many years. I'm confident I could push back if a manager tried to underrate me and say that I failed in this metric and therefore I have unsatisfactory performance metrics. I'm more confident in my ability to fight that rating.

With the added context that the judges' union is actively being dismantled by political interests, the ability of judges to push back against this state pressure and diminished workplace conditions is increasingly in jeopardy. Rather than being independent adjudicators engaged in the emotionally and legally difficult work of adjudicating the removal proceedings of noncitizens, these working conditions and political context in which judges operate highlights how their position is one of dependence and micromanagement, in turn producing intense precarity for noncitizen respondents in removal proceedings.

Another judge added that his work no longer reflects careful adjudication, but that managerial changes have shifted the working conditions to those of a rubber-stamping removal officer, with little discretion or creativity:

> The unremitting pressure that [judges] are under has transformed the job much more towards an assembly line, rather than a thoughtful consideration. You don't have time to contemplate slowly. The level of meddling, the level of trying to constrain the discretion of judges, the level of trying to reduce us to mere rubber-stamping adjudicators, rather than lawyers, creative lawyers and judges who can have those unique approaches to a case, which may be beyond the creative realm of the management people and without the agenda.

With an assembly-line approach to the adjudication of legal cases, it is of even greater importance to consider the impact and cost to noncitizens with cases in court.

Reduced Due Process for Respondents

Importantly, this study indicates that judicial management not only reshapes the working conditions and independence of immigration judges but produces significant inequality for the noncitizen respondents in immigration court as well. While exact quantitative changes to the outcomes of immigration court proceedings (as a result of managerial changes) is outside the scope of this paper, judges provided important insight into how such changes remap the processes noncitizens experience as a result of speed up and reprioritizations in court. As described above, judges suggest that the managerial tactics of external prioritization and speed-ups contribute to case processing that favors denials, reducing the creative, thoughtful approach granted to judges by the statute. One judge described how if cases are rushed to completion, respondents are less able to access the resources to succeed in court, and are not afforded full due process rights:

> Those are the tools. The encroachment into judicial decision-making is that there are some decisions which look like they are administrative – like how the docket is

> organized – end up affecting the substance of the case. If you tell me to put the family unit cases at the front of the line, newly arrived like they did in 2014 under the Obama administration, and again in 2017 under the Trump administration, they ended up not only hurting the people who didn't have time to get lawyers, to get their bearings, to gather evidence, to be prepared, to present a strong case, there were people who have just been traumatized. People suffer post-traumatic stress from the journey through Mexico, even if they weren't physically assaulted in their home country, but they feared the worst pain.

More simply put, another judge added, "one way of doing that has been to speed things through the courts so that people don't have time to prepare, people don't have time to find lawyers, people don't have time for remedies to ripen the way they used to normally do that." Not only do the managerial processes reshape the logistics of removal proceedings (e.g. finding a lawyer, accumulating documents), but there is a lasting emotional impact as well. Another judge said to me:

> [The management changes] impact the respondent. This constant delay and speed up is very charged emotionally for an individual. Trust me, we all understand this. We [judges] are fettered and limited to the level of control that we can exercise to remedy the problem. Can you imagine the harm and concern that individuals face waiting to have their day in court? I often get motions from respondents who are undergoing trauma, psychological and emotional trauma, just waiting to have their day in court. It is overwhelming, just overwhelming. Judges are mindful of these needs of individuals and yet we are in a system and a process that, these systemic failures and systematic encroachment, do not allow us to remedy it. They just do not.

This judge indicated that she was aware of, but unable to address, what she saw as harsh treatment of respondents, and found that the state was negatively harming immigrants by manipulating the working conditions of immigration judges. This perception indicates that the seemingly banal shifts in how judges are managed and how courts are directed to process their cases, have serious consequences for the substance and outcome of immigration cases.

> The prioritizing of cases to meet a political agenda, such as "we are protecting our border," undermines the ability for us to proceed in the most just and fair fashion by not allowing the cases that we felt were ready and well-prepared to go first. And not letting those other [individuals] take the time they needed to get their bearings and find a permanent place to live and get their ties to the community established, so they find a pro bono lawyer. If we allowed them that time, they're able to find out what their options are, so that when they come to court, they are much more coherent from our Western point of view. That's the way in which these administrative decisions have undermined the ability of a judge to control his or her docket in the most efficient and effective way.

While immigration judges do have some independence granted by the statute, their independence is curtailed in specific ways by their dependent position with the bureaucracy. These findings extend our knowledge about immigration decision-making and bureaucratic functioning, shedding light on the banal ways that the state disadvantages both adjudicators and noncitizens within a broader trajectory of contemporary punitive immigration policy. This is important because it shows how the state can introduce ostensibly neutral management directives to its bureaucrats, yet reshape the process, experience, and outcome of immigration adjudication in practice. These findings have implications not just for better understanding the organizational structure of immigration enforcement and judicial independence, but for the fair administration of justice within U.S. immigration courts. Despite the stated goals of the administration to tackle certain political immigration issues, judges perceive this managerial directive to be a needless micromanaging tactic that disrupts their work and unfairly disadvantages the respondents in court. Indeed, during the last four years the backlogged cases on the court's dockets have grown exponentially, to more than 1.5 million pending cases in 2022 (TRAC 2022).

Discussion

Drawing on 30 in-depth interviews with current and former immigration judges, this article has presented the case of immigration judge management and introduced the concept of the micromanagement of migration in order to highlight the underexamined link between the state's immigration enforcement efforts, judicial labor management, and immigrant precarity and control. Judicial decision-making and the labor of street-level bureaucrats are increasingly well-studied facets of the immigration enforcement apparatus; yet, by focusing on the ways that judicial decision-making is managed through banal bureaucratic changes, this article illustrates how the state increases migrant precarity by more tightly managing the labor process of its immigration judges. This study reveals how immigration judges are also subjects of the immigration state, while simultaneously working to represent it. Requiring judges to continually reorganize their case processing according to politicized interests and reducing the amount of time in which cases can be heard produces a bureaucratic setting that is inefficient, rushed, and reduces the opportunities for noncitizens to prepare their cases for court. Once we position immigration judges as subjects of state control within the bureaucracy of immigration court, we can see how court outcomes are determined not only by judicial demographics (Ramji-Nogales 2007), but also by a nearly invisible system of procedural managerial directives that remap the outcome of removal hearings. Using the concept of the micromanagement of migration illustrates the meso-level migration control that occurs through bureaucratic management meriting additional attention.

The case of immigration judge management has critical policy implications for how we conceptualize the independence of the immigration court, as well as the importance of the judges' union. Within the immigration enforcement system, the right to a court hearing

in a removal case is crucial. However, if that bureaucratic system operates solely under the direction of the Executive branch, the independence of this judicial system remains at the political whim of the changing political landscape. Numerous immigration advocates, judges, and scholars have called for a massive overhaul of the immigration court system that would relocate it into the judiciary as an Article III court, rather than an administrative agency within the executive branch. This study underscores the tensions that arise when managerial directives are in conflict with the mechanisms through which judges retain docket control, sufficient time for decision-making, and assure the due process rights of the noncitizens in court. Within this system, the judges' union is vital to securing these working conditions that allow judges to maintain discretionary independence.

In this study, I draw on the voices of current and former immigration judges to illustrate the lived costs to adjudicating under politicized managerial directives. This perspective allows for a greater understanding of the on-the-ground functioning of the immigration court, and the lived consequences of managerial policy decisions. However, while this approach produces new insights, it is not without its limitations. This analysis focuses on the experiences of judges within the court bureaucracy, yet the reliance on interviews with judges overlooks the perspectives of managers and noncitizens who are similarly invoked in this discussion. We need additional research on noncitizen respondents about the impact of procedural court changes, as well as agency-level analysis about policy decision-making into how such procedural changes go into effect. Among other things, these studies might assess why higher-level bureaucrats impose politicized managerial directives, while judges chafe at the policy changes.

By focusing on the judges as subjects of the immigration state, this article suggests, but doesn't fully examine the ways that the immigration enforcement apparatus systematically disadvantages noncitizens seeking relief from removal. Legal, procedural, and logistical conditions put noncitizens at a disadvantage when it comes to advocating for their rights to a fair hearing. Moving forward, future research might investigate how such systematic changes have quantitatively changed the outcomes of immigration court proceedings for noncitizens.

CONCLUSION

With the aim of better understanding how the US immigration courts function on the ground, this dissertation has looked at the constraints, logics, and strategies for court actors involved in the labor of removal. Drawing on the different perspectives of immigration attorneys, prosecutors, and immigration judges, the three articles of this dissertation examine how the work of this immigration enforcement apparatus is managed through these bureaucrats.

In the first article, I have asked a two-part question: first, what is the relationship between bureaucratic time and legal viability in the immigration court, and second, how do attorneys manage this temporal landscape? I offer the conceptual framework of *legal temporality* to better understand the landscape in which attorneys and noncitizens must navigate the logics of waiting. I find that attorneys and noncitizens often attempt to strategically *expedite* or *delay* proceedings, illuminating how delays imposed by the state are not always a form of punishment but can often be a benefit for individuals whose cases don't align with the limited legal categories of immigration law. Given the pervasive instability in time and law, waiting is sometimes the best option for noncitizens whose alternative is deportation.

In the second article, I ask: how do enforcement bureaucrats make sense of their labor when faced with uneven public support? Drawing on 40 in-depth interviews with ICE attorneys, I identify three primary, co-constitutive narratives of self-legitimacy, including: 1) a strongly internalized a sense of role and duty to existing law, 2) a moral authority as patriotic "white knights" protecting the nation from threats, and 3) persistent allegations of immigration fraud, diminishing noncitizens' humanity and claims of persecution (for

asylum). Taken together, these three occupational narratives that make up what I term bureaucratic entrenchment, revealing the social psychology – and source of self-legitimacy – that ICE prosecutors use to manage tensions in relation to their occupational role.

Finally, I examine judges' working conditions within the immigration court, finding that the management of immigration judges is linked with the state's immigration enforcement efforts and immigrant precarity and control. Requiring judges to continually reorganize their case processing according to politicized interests and reducing the amount of time in which cases can be heard produces a bureaucratic setting that is inefficient, rushed, and reduces the opportunities for noncitizens to prepare their cases for court. Using the concept of the micromanagement of migration illustrates the meso-level migration control that occurs through bureaucratic management meriting additional attention.

Limitations and Future Research

Despite the broad scope of these three articles, which delve into the working conditions of court bureaucrats and representatives, there are several significant limitations to this work that I acknowledge here. First and foremost, the experiences of immigrant respondents are largely absent from this accounting. In many ways, this mirrors what I saw in court observations – proceedings occur rapidly, in English, and with advanced legal jargon that is inaccessible to most non-lawyers – in many ways, the individuals whose lives were being decided in these courtrooms were somewhat secondary to the negotiation on the floor between these bureaucrats and attorneys. Yet, the outcome of the process has important social implications for the lives of immigrants and their families. In this dissertation work, the choice to focus on the labor and constraints within the bureaucracy is deliberate. While there are many studies that have helped us understand the embedded

inequality and resistance in immigrants' experience of immigration enforcement, of comparable importance is how immigration enforcement operates from the perspective of court bureaucrats. In response to recent calls to investigate the "villains" of policy rather than the "victims," and the "self-interested actions of those who benefit from the social construction and political manufacture of immigration crises when none really exist" (Massey 2015:279; Johnson, Dowd, and Ridgeway 2006; Prasad 2018; Vega 2018)), this dissertation is concerned with how agents who represent the state in this politically contested field manage, think about, experience this labor of removal – and what insights it can provide to improve it.

Secondly, the insights of this research don't yet fully allow us to see beyond this case, or understand these trends operate in the broader enforcement legal system. For example, while the ICE attorneys I spoke to share their logics and narratives of legitimacy, I don't have insight into how these narratives extended into their broader professional or personal life, or how they might shift in other contexts. Further, while immigration judges lamented the managerial changes and the impacts to removal decision-making, I am unable to test how and whether these managerial changes produced significant differences in the court outcomes for noncitizens across the country in quantitative terms. As such, more research, including additional observations, interviews with respondents and managers, and quantitative analyses would be important to continue with this line of inquiry.

As such, future research would be well-positioned to examine these trends in greater breadth and depth, generalizing across immigration courts or diving more deeply into the observational data in a single court. Empirically, there is plenty of opportunity to expand this project. Although just a fraction of the data produced for this written

dissertation project was used in the analysis for these articles, I have extensive observational data that would provide ample material to further elaborate the perspectives and strategies used within the court. Additionally, linking these findings with the quantitative outcomes from immigration court would provide richness and well-informed data science that would improve this court system.

Given the broad themes contained here – of labor, strategy, and identity – the three dissertation articles here are a first step toward illuminating the black box of the immigration court functioning on the ground. Every year, thousands of individuals must navigate this complex bureaucracy in search of safety and security in the United States, and this dissertation aims to understand what that process looks like. In addition, this legal process is central to the construction of a fair and well-functioning legal system for regulating immigration. Aside from a handful of studies and reports, the workings of US immigration courts have remained relatively unexamined. This study of the bureaucracy of removal provides several important additions, including immigration attorneys' strategies related to time and temporality, legitimacy and identity narratives of ICE attorneys, and the management constraints faced by immigration judges, all of which contribute to our knowledge of this legal and bureaucratic system, with the broader aim of supporting the lives and outcomes of the immigrants whose lives are caught in this system.

REFERENCES

8 C.F.R. § 1003.10. n.d. *Immigration Judges*.

Abel, Laura. 2011. "Language Access in Immigration Courts."

Alanko, J. Nicole. 2021. "In-and-Out Justice: How the Acceleration through Immigration Court Violates Due Process ." *University of Pennsylvania Journal of Law and Social Change* 24(1).

Allard, Silas W. 2018. "Global and Local Challenges to Refugee Protection." *International Journal of Legal Information* 46(1):45–52.

Allsopp, Jennifer, Elaine Chase, and Mary Mitchell. 2015. "The Tactics of Time and Status: Young People's Experiences of Building Futures While Subject to Immigration Control in Britain." *Journal of Refugee Studies* 28(2):163–82.

Alvarez, Priscilla. 2019. "Immigration Judges Quit in Response to Administration Policies | CNN Politics." *CNN*.

American Immigration Lawyers Association. 2018. "AILA - EOIR Issues Guidance Implementing Immigration Judge Performance Metrics." Retrieved October 22, 2019 (https://www.aila.org/infonet/eoir-memo-immigration-judge-performance-metrics).

Anderson, Bridget. 2007. "A Very Private Business: Exploring the Demand for Migrant Domestic Workers." *European Journal of Women's Studies* 14(3):247–64.

Andersson, Ruben. 2014. "Time and the Migrant Other: European Border Controls and the Temporal Economics of Illegality." *American Anthropologist* 116(4):795–809.

Arendt, Hannah. 1964. *Eichmann in Jerusalem: A Report on the Banality of Evil*. Penguin Classics.

Armenta, Amada. 2012. “From Sheriff’s Deputies to Immigration Officers: Screening Immigrant Status in a Tennessee Jail.” *Law and Policy* 34(2):191–210.

Armenta, Amada. 2016. “Between Public Service and Social Control: Policing Dilemmas in the Era of Immigration Enforcement.” *Social Problems* 63(1):111–26.

Armenta, Amada. 2017. *Protect, Serve, and Deport: The Rise of Policing as Immigration Enforcement*. University of California Press.

Armenta, Amada. 2019. *Protect, Serve, and Deport*. University of California Press.

Armenta, Amada and Isabela Alvarez. 2017. “Policing Immigrants or Policing Immigration? Understanding Local Law Enforcement Participation in Immigration Control.” *Sociology Compass* 11(2):e12453.

Asad, Asad L. 2019. “Deportation Decisions: Judicial Decision-Making in an American Immigration Court.” *American Behavioral Scientist* 63(9):1221–49.

Atkins, Dorothy. 2020. “Immigration Judges Ask 4th Circ. To Block Muzzling Policy.” *Law 360*.

Atkinson, Will. 2018. “Time for Bourdieu: Insights and Oversights.” *Time & Society* 28(3):951–70.

Auyero, Javier. 2011. “PATIENTS OF THE STATE: An Ethnographic Account of Poor People’s Waiting.” *Latin American Research Review* 46(1):5–29.

Barker, R. 2001. *Legitimating Identities: The Self-Presentations of Rulers and Subjects*. Cambridge University Press.

Benson, Lenni B. and Russell R. Wheeler. 2012. “Enhancing Quality and Timeliness in Immigration Removal Adjudication.”

Bhuyan, Rupaleem, Kate Yoon, and Lorraine Valmadrid. 2020. “Family Reunification as

an Earned Right: A Framing Analysis of Migrant Workers' Pathways to Neoliberal Multicultural Citizenship in Canada." *New Political Science* 42(4):558–77.

Bigo, Didier. 2002. "Security and Immigration: Toward a Critique of the Governmentality of Unease." *Alternatives* 27(SUPPL. 1):63–92.

Bluedorn, AC and MJ Waller. 2006. "The Stewardship of the Temporal Commons." *Research in Organizational Behavior*.

Bohn, Sarah and Todd Pugatch. 2015. "U.S. Border Enforcement and Mexican Immigrant Location Choice." *Demography* 52(5):1543–70.

Bolter, Jessica, Emma Israel, and Sarah Pierce. 2022. *Four Years of Profound Change: Immigration Policy during the Trump Presidency*.

Borrelli, LM and A. Lindberg. 2019. "Paperwork Performances: Legitimating State Violence in the Swedish Deportation Regime." *Journal of Legal Anthropology*.

Bosworth, Mary. 2019. "Affect and Authority in Immigration Detention." *Punishment and Society* 21(5):542–59.

Bosworth, Mary and Emma Kaufman. 2013. "Gender and Punishment."

Bosworth, Mary and Blerina Kellezi. 2017. "Doing Research in Immigration Removal Centres: Ethics, Emotions and Impact." *Criminology and Criminal Justice* 17(2):121–37.

Bosworth, Mary and Sarah Turnbull. 2015. "Immigration, Detention, and the Expansion of Penal Power in the United Kingdom." *Extreme Punishment* 50–67.

Bottoms, A. and J Tankebe. 2012. "Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice." *The Journal of Criminal Law and Criminology* .

Bourdieu, Pierre. 2000. *Pascalian Meditations*. Stanford University Press.

Boyce, Geoffrey A. 2020. “Immigration, Policing, and the Politics of Time.” *Geography Compass* 14(8):e12496.

Bradford, B. and P. Quinton. 2014. “Self-Legitimacy, Police Culture and Support for Democratic Policing in an English Constabulary.” *British Journal of Criminology*.

Budiman, Abby. 2020. “Key Findings about U.S. Immigrants.” *Pew Research Center* . Retrieved September 10, 2021 (https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/).

Castro, Brianna. 2016. *Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases*. Vol. 39.

Chacon, Jennifer M. 2009. “Managing Migration through Crime.” *Columbia Law Review Sidebar* 109.

Chacón, Jennifer M. 2010. “A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights.” *Duke Law Journal* 59(8):1563–1633.

Chacón, Jennifer M. 2012. “Managing Migration Through Crime.” *SSRN Electronic Journal* 109.

Coleman, Mathew. 2007. “Immigration Geopolitics beyond the Mexico-US Border.” *Antipode* 39(1):54–76.

Coleman, Mathew. 2012. “The ‘Local’ Migration State: The Site-Specific Devolution of Immigration Enforcement in the U.S. South.” *Law and Policy* 34(2):159–90.

Coleman, Mathew and Austin Kocher. 2011. “Detention, Deportation, Devolution and Immigrant Incapacitation in the US, Post 9/11.” *Geographical Journal* 177(3):228–37.

Conlon, Deirdre. 2011. “Waiting: Feminist Perspectives on the Spacings/Timings of Migrant (Im)Mobility.” *Https://Doi.Org/10.1080/0966369X.2011.566320* 18(3):353–60.

Correa, Jennifer. 2011. “Unheard Voices at the Texas-Mexico Border Wall: Fragmentation, Citizenship, and Opposition in a War on Terror.” *University of Missouri-Columbia ProQuest Dissertations*.

Cortez, David. 2020a. “Latinxs in La Migra: Why They Join and Why It Matters:” *Political Research Quarterly* 74(3):688–702.

Cortez, David. 2020b. “Latinxs in La Migra: Why They Join and Why It Matters.” *Political Research Quarterly*.

Coutin, Susan Bibler. 2008. “Suspension of Deportation Hearings and Measures of ‘Americanness.’” *Journal of Latin American Anthropology* 8(2):58–94.

Dingeman, Katie, Yekaterina Arzhayev, Cristy Ayala, Erika Bermudez, Lauren Padama, and Liliana Tena-Chávez. 2017. “Neglected, Protected, Ejected: Latin American Women Caught by Crimmigration.” *Feminist Criminology* 12(3):293–314.

Dowling, Julie A. and Jonathan Xavier. Inda. 2013. *Governing Immigration through Crime : A Reader*. Stanford Social Sciences, an imprint of Stanford University Press.

Eagly, Ingrid and Steven Shafer. 2016. “Access to Counsel in Immigration Court.” *American Immigration Council* (September):1–21.

Ellermann, Antje. 2005. “Coercive Capacity and the Politics of Implementation: Deportation in Germany and the United States.” *Comparative Political Studies* 38(10):1219–44.

Ellermann, Antje. 2009. *States Against Migrants* . Cambridge University Press.

Executive Office for Immigration Review. 2020a. “EOIR Revised Speaking Engagement Policy.” Retrieved February 10, 2022 (https://knightcolumbia.org/documents/f038648bd0).

Executive Office for Immigration Review. 2020b. *Procedures for Asylum and Withholding of Removal*.

Farrell-Bryan, Dylan. 2022. “Relief or Removal: State Logics of Deservingness and Masculinity for Immigrant Men in Removal.” 56(2):1–21.

Feeley, Malcolm. 2017. *Perspectives on Plea Bargaining*. Russell Sage.

FitzGerald, David Scott. 2020. “Remote Control of Migration: Theorising Territoriality, Shared Coercion, and Deterrence.” *Journal of Ethnic and Migration Studies* 46(1):4–22.

Galli, Chiara. 2020. “Humanitarian Capital: How Lawyers Help Immigrants Use Suffering to Claim Membership in the Nation-State.” *Journal of Ethnic and Migration Studies* 46(11):2181–98.

García Hernández, César Cuauhtémoc. 2015. *Crimmigration Law*. American Bar Foundation.

Gau, Jacinta M. 2014. “Procedural Justice and Police Legitimacy: A Test of Measurement and Structure.” *American Journal of Criminal Justice*.

Gilboy, Janet A. 1991. “Deciding Who Gets In: Decisionmaking by Immigration Inspectors.” *Law & Society Review* 25(3):571.

Gill, Nick. 2009. “Presentational State Power: Temporal and Spatial Influences over Asylum Sector Decisionmakers.” *Transactions of the Institute of British Geographers* 34(2):215–33.

Gitlin, T. 1980. “Making News: A Study in the Construction of Reality.”

Godsey, Mark. 2019. *Blind Injustice: A Former Prosecutor Exposes the Psychology and Politics of Wrongful Convictions*. University of California Press.

Goffman, Erving. 1959. *The Presentation of Self in Everyday Life*. Garden City: Doubleday.

Gravelle, Matthew, Antje Ellermann, and Catherine Dauvergne. 2013. “Studying Migration Governance from the Bottom-Up.” Pp. 59–77 in *The Social, Political and Historical Contours of Deportation*. Springer New York.

Griffiths, Melanie B. E. 2014. “Out of Time: The Temporal Uncertainties of Refused Asylum Seekers and Immigration Detainees.” *Http://Dx.Doi.Org.Proxy.Library.Upenn.Edu/10.1080/1369183X.2014.907737* 40(12):1991–2009.

Griffiths, Melanie, Ali Rogers, and Anderson Bridget. 2013. “[PDF] Migration , Time and Temporalities : Review and Prospect | Semantic Scholar.” *Compas*.

Guiraudon, V. and G. Lahav. 2000. “A Reappraisal of the State Sovereignty Debate: The Case of Migration Control.” *Comparative Political Studies* 33(2):163–95.

Harkin, Diarmaid. 2015. “Police Legitimacy, Ideology and Qualitative Methods: A Critique of Procedural Justice Theory.” *Criminology and Criminal Justice* 15(5):594–612.

Hausman, David and Jayashri Srikantiah. 2015. “Time, Due Process, and Representation: An Empirical and Legal Analysis of Continuances in Immigration Court.” *Fordham Law Review* 84.

Heimer, Carol A. 1999. “Competing Institutions: Law, Medicine, and Family in Neonatal

Intensive Care." *Law & Society Review* 33(1):17.

Heimer, Carol A. 2008. *Expertise and Flexibility in Medicine and Law*.

Hester, Torrie. 2017. *Deportation*. University of Pennsylvania Press.

Heyman, Josiah. 2012. " Deepening the Anthropology of BureaucracyView Article." *Anthropological Quarterly* 85(4):1269–77.

Hiemstra, Nancy. 2014. "Performing Homeland Security within the US Immigrant Detention System." *Environment and Planning D: Society and Space* 32(4):571–88.

Jackson, Jonathan, Aziz Huq, Ben Bradford, and Tom Tyler. 2013. "Monopolizing Force? Police Legitimacy and Public Attitudes toward the Acceptability of Violence." *Psychology, Public Policy, and Law* 19(4):479–97.

Jain, Amit. 2018. "Bureaucrats in Robes: Immigration Judges and the Trappings of Courts." *Georgetown Immigration Law Journal* 33.

Johnson, Cathryn, Timothy J. Dowd, and Cecilia L. Ridgeway. 2006. "Legitimacy as a Social Process." *Source: Annual Review of Sociology* 32:53–78.

Johnson, Kevin R. 2021. "Bringing Racial Justice to Immigration Law ." *Northwestern University Law Review* .

Joppke, Christian. 1999. *Immigration and the Nation-State*. Oxford University Press.

Kanstroom, Daniel. 2003. "Criminalizing the Undocumented: Ironic Boundaries of the Post-September 11th 'Pale of Law.'" *NCJ Int'l L. & Com. Reg.* 29(4):639.

Katz, Jack. 1982. *Poor People's Lawyers in Transition*. Rutgers University Press.

Kim, Catherine Y. and Amy Semet. 2020. "An Empirical Study of Political Control Over Immigration Adjudication Forthcomiing Georgetown Law Journal ,." 70–130.

Kim, Jaeeun. 2011. "Establishing Identity: Documents, Performance, and Biometric

Information in Immigration Proceedings." *Law and Social Inquiry* 36(3):760–86.

Kotova, Anna. 2018. "'Time … Lost Time': Exploring How Partners of Long-Term Prisoners Experience the Temporal Pains of Imprisonment:" *Time & Society* 28(2):478–98.

Lakhani, Sarah Morando. 2013. "Producing Immigrant Victims' 'Right' to Legal Status and the Management of Legal Uncertainty." *Law and Social Inquiry* 38(2):442–73.

Lara-Millán, Armando. 2014. "Public Emergency Room Overcrowding in the Era of Mass Imprisonment:" *American Sociological Review* 79(5):866–87.

Legomsky, S. H. 2007. "New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms, The." *Immigr. & Nat'lity L. Rev.* 28:679.

Legomsky, Stephen H. 2007. "The New Path of Immigration Law: Asymmetric Incorporation of Criminaljustice Norms." *Washington and Lee Law Review* 64:469–530.

Levinson, Daryl and Benjamin I. Sachs. 2015. "Political Entrenchment and Public Law." *Yale Law Journal* 125.

Lipsky, Michael. 1980. *Street-Level Bureaucracy | RSF*.

Lipsky, Michael. 2010. *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. Russell Sage Foundation.

Lustig, Stuart L, Kevin Delucchi, Lakshika Tennakoon, Brent Kaul, Hon Dana, Leigh Marks, and Hon Denise Slavin. 2008. "Burnout and Stress Among United States Immigration Judges." *Bender's Immigration Bulletin* .

Lustig, Stuart L., Niranjan Karnik, Kevin Delucchi, Lakshika Tennakoon, Brent Kaul, Dana Leigh Marks, and Denise Slavin. 2008. "Inside the Judge' Chambers:

Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey." *Georgetown Immigration Law Journal* 23:57–83.

Macias-Rojas, Patrisia. 2016. *From Deportation to Prison*. New York University Press.

Markowitz, Peter L. 2019. "Abolish ICE - and Then What." *Yale Law Journal Forum* 129.

Marouf, Fatma E. 2011. "Implicit Bias and Immigration Courts." *New England Law Review* 45:417–48.

Massey, Douglas S. and Karen A. Pren. 2012. "Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America." *Population and Development Review* 38(1):1–29.

Massey, DS. 2015. "A Missing Element in Migration Theories." *Migration Letters*.

McHenry, James. 2018. "Case Priorities and Immigration Court Performance Measures." *US DOJ Memo*.

McHenry, James R. 2018. *Tracking and Expedition of "Family Unit" Cases* .

Miller, Teresa. 2005. "Blurring the Boundaries between Immigration and Crime Control after September 11th." *Boston College Third World Law Journal* 25(1):81–123.

Montero-Colbert, Arianna, Yasemin Tekgurler, and Natalie Delia Deckard. 2019. *"What Were You Thinking?": Race, Gender, Victimhood, and Criminality in US Immigration Court*. Vol. 13.

Mountz, Alison. 2011. "The Enforcement Archipelago: Detention, Haunting, and Asylum on Islands." *Political Geography* 30(3):118–28.

NAIJ. 2022. "National Association of Immigration Judges." *Naij-Usa*. Retrieved February 11, 2022 (https://www.naij-usa.org/about).

National Association of Immigration Judges. 2020.“Statement of Judge A. Ashley Tabaddor, President National Association of Immigration Judges.”

Ngai, Mae M. 2004. *Impossible Subjects: Illegal Aliens and the Making of Modern America*.

Nielsen, Louise Overby, Sophie Danneris, and Merete Monrad. 2021. “Waiting and Temporal Control: The Temporal Experience of Long-Term Unemployment:” *Time & Society* 30(2):176–97.

Nix, Justin and Scott E. Wolfe. 2015. “The Impact of Negative Publicity on Police Self-Legitimacy.” *Justice Quarterly* 34(1):84–108.

Office of the Attorney General. 2017. “Immigration Judge Performance Metrics.”

Office of the Principal Legal Advisor. 2022. “OPLA and ICE Workforce Statistics.”

Offit, Anna. 2019. “Prosecuting in the Shadow of the Jury .” *Northwestern University Law Review* 113(5).

Omar, Laila. 2022. “Foreclosed Futures and Entangled Timelines: Conceptualization of the ‘Future’ among Syrian Newcomer Mothers in Canada.” *Journal of Ethnic and Migration Studies*.

Oxford, Connie G. 2005. *Protectors and Victims in the Gender Regime of Asylum*.

Parsons, Talcott. 1963. “On the Concept of Political Power.” *Proceedings of the American Philosophical Society* 107(3):232–62.

Pew Research Center. 2019. *Public Expresses Favorable Views of a Number of Federal Agencies*.

Prasad, Monica. 2018. “Problem-Solving Sociology:” *American Sociological Association Featured Essays* 47(4):393–98.

Puthoopparambil, Soorej J., Beth M. Ahlberg, and Magdalena Bjerneld. 2015. "'It Is a Thin Line to Walk on': Challenges of Staff Working at Swedish Immigration Detention Centres." *International Journal of Qualitative Studies on Health and Well-Being* 10.

Ramji-Nogales, Jaya, Andrew I. Schoenholtz, and Philip G. Schrag. 2007. "Refugee Roulette: Disparities in Asylum Adjudication." *Stanford Law Review* 60(2):295–411.

Rawitz, Sidney. 1988. "From Wong Yang Sung to Black Robes." *Interpreter Releases*.

Reichlin-Melnick, Aaron. 2022. "Biden Released His Budget for 2023 – What Does It Mean for Immigration Issues? ." *Immigration Impact* .

Ricciardelli, Lauren, Larry Nackerud, Katherine Cochrane, India Sims, Latifa Crawford, and Demetria Taylor. 2019. "A Snapshot of Immigration Court at Stewart Detention Center." *Critical Social Work* 20(1).

Rottman, Andy J., Christopher J. Fariss, and Steven C. Poe. 2009. "The Path to Asylum in the US and the Determinants for Who Gets in and Why." *International Migration Review* 43(1):3–34.

Roundtable of Former Immigration Judges. 2020."Statement of the Round Table of Former Immigration Judges Submitted to the House Judiciary Subcommittee on Immigration and Citizenship Hearing on "Courts in Crisis: The State of Judicial Independence and Due Process ."

Ryo, Emily. 2016. "Detained: A Study of Immigration Bond Hearings." *Law and Society Review* 50(1):117–53.

Salyer, J. C. 2018. *Court of Injustice: Law without Recognition in U.S. Immigration*.

Stanford University Press.

Schwartz, Barry. 1975. “Waiting, Exchange, and Power: The Distribution of Time in Social Systems.” *American Journal of Sociology* 79(4):841–70.

Shiff, Talia. 2021. “A Sociology of Discordance: Negotiating Schemas of Deservingness and Codified Law in U.S. Asylum Status Determinations.” *American Journal of Sociology* 127(2):337–75.

Silbey, Susan. 1981. “Making Sense of the Lower Courts.” *The Justice System Journal* 6(1).

Simon, J. 1998. “Refugees in a Carceral Age: The Rebirth of Immigration Prisons in the United States.” *Public Culture* 10(3):577–607.

Stumpf, Juliet P. 2006. “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power.” *Am. U. L. Rev.* 56(367):1689–99.

Sunshine, Jason and Tom R. Tyler. 2003. “The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing.” *Law & Society Review* 37(3):513–48.

Tankebe, J. 2010. “Identifying the Correlates of Police Organizational Commitment in Ghana.” *Police Quarterly* 13(1):73–91.

Tankebe, Justice and Gorazd Meško. 2015. “Police Self-Legitimacy, Use of Force, and pro-Organizational Behavior in Slovenia.” *Trust and Legitimacy in Criminal Justice: European Perspectives* 261–77.

Timmermans, Stefan and Iddo Tavory. 2012. “Theory Construction in Qualitative Research: From Grounded Theory to Abductive Analysis.” *Sociological Theory* 30(3):167–86.

Torpey, John. 1999. *The Invention of the Passport* . Vol. 16. Cambridge University Press.

TRAC. 2022. "Immigration Court Backlog Tool: Pending Cases and Length of Wait in Immigration Courts." Retrieved October 22, 2019 (https://trac.syr.edu/phptools/immigration/court_backlog/).

Transactional Records Access Clearinghouse. 2022. "New Deportation Proceedings Filed in Immigration Court." *TRAC Immigration*. Retrieved May 30, 2022 (https://trac.syr.edu/phptools/immigration/ntanew/).

Trinkner, Rick, Tom Tyler, and Phillip Atiba Goff. 2016. "Justice from within: The Relations between a Procedurally Just Organizational Climate and Police Organizational Efficiency, Endorsement of Democratic Policing, and Officer Well-Being." *Psychology, Public Policy, and Law* 22(2).

Turnbull, Sarah. 2016. "'Stuck in the Middle': Waiting and Uncertainty in Immigration Detention." *Time & Society* 25(1):61–79.

Tyler, Tom and Jeffrey Fagan. 2008. "Legitimacy and Cooperation: Why Do People Help the Police Fight Crime." *Ohio State Journal of Criminal Law* 6(231).

Tyler, Tom R. 2003. "Procedural Justice, Legitimacy, and the Effective Rule of Law." *Crime and Justice* 30:283–357.

Tyler, Tom R. 2006. "Psychological Perspectives on Legitimacy and Legitimation." *Annual Review of Psychology* 57:375–400.

U.S. House of Representatives Judiciary Committee. 2022."For the Rule of Law, An Independent Immigration Court ."

Ugelvik, Thomas. 2016. "Techniques of Legitimation: The Narrative Construction of Legitimacy among Immigration Detention Officers." *Crime, Media, Culture*

12(2):215–32.

US DOJ. 2021. *Matter of A-B-, 28 I&N Dec. 307 (A.G. 2021)*.

Vega, Irene I. 2018. "Empathy, Morality, and Criminality: The Legitimation Narratives of U.S. Border Patrol Agents." *Journal of Ethnic and Migration Studies* 44(15):2544–61.

Villarreal, Alexandra. 2022. "US Immigration Courts Struggle amid Understaffing and Backlog of Cases | US Immigration | The Guardian." *The Guardian*.

Waddington, P. A. J. 1998. *Policing Citizens: Police, Power and the State*. London u.a.: Routledge.

Wadhia, Shoba Sivaprasad. 2009a. "The Role of Prosecutorial Discretion in Immigration Law." *Connecticut Public Interest Law Journal* 9.

Wadhia, Shoba Sivaprasad. 2009b. "The Role of Prosecutorial Discretion in Immigration Law." *Connecticut Public Interest Law Journal* 9.

Weber, M. 1978. *Economy and Society: An Outline of Interpretive Sociology*.

Weber, Max. 1978. *Economy and Society: An Outline of Interpretive Sociology*. University of California Press.

Wissink, Lieke and Irene van Oorschot. 2020. "Affective Bureaucratic Relations: File Practices in a European Deportation Unit and Criminal Court:" *Https://Doi.Org/10.1177/2399654420977475* 39(5):1049–65.

Zacka, B. 2017. *When the State Meets the Street: Public Service and Moral Agency*.

Zambrano Leal, Armando. 2012. *Sociedad de Control y Profesión Docente. Las Imposturas de Un Discurso y La Exigencia de Una Nueva Realidad*. Vol. 56.

Zelditch, M. 2001. *Theories of Legitimacy*. edited by J. T. Jost & B. Major. Cambridge

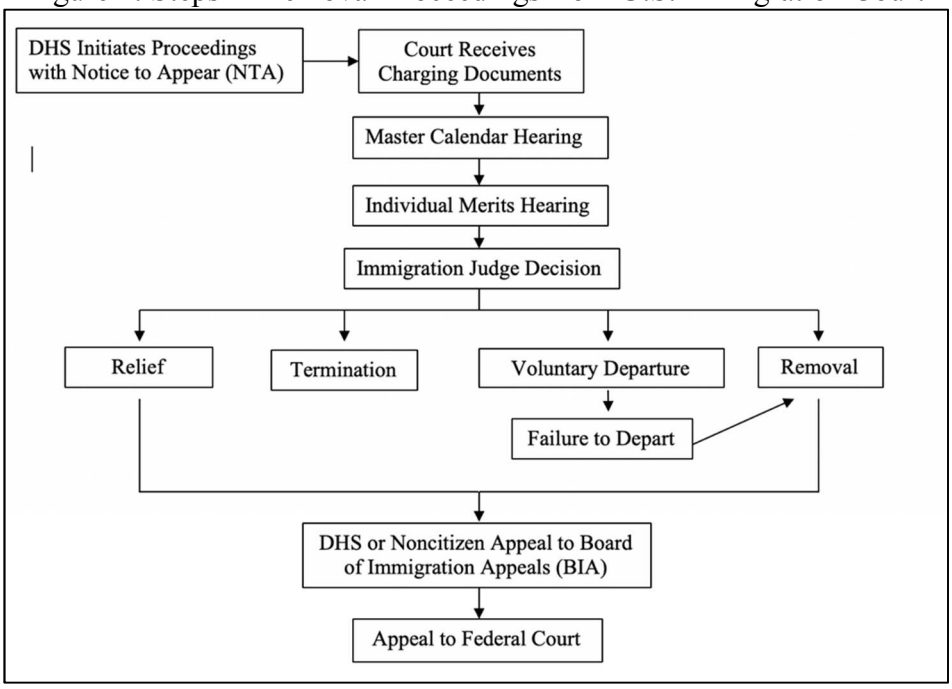
University Press .

Zerubavel, Eviatar. 1982. “The Standardization of Time: A Sociohistorical Perspective.” *American Journal of Sociology* 88(1):1–23.

Zolberg, Aristide R. 1997. *Modes of Incorporation: Toward a Comparative Framework*. Palgrave Macmillan.

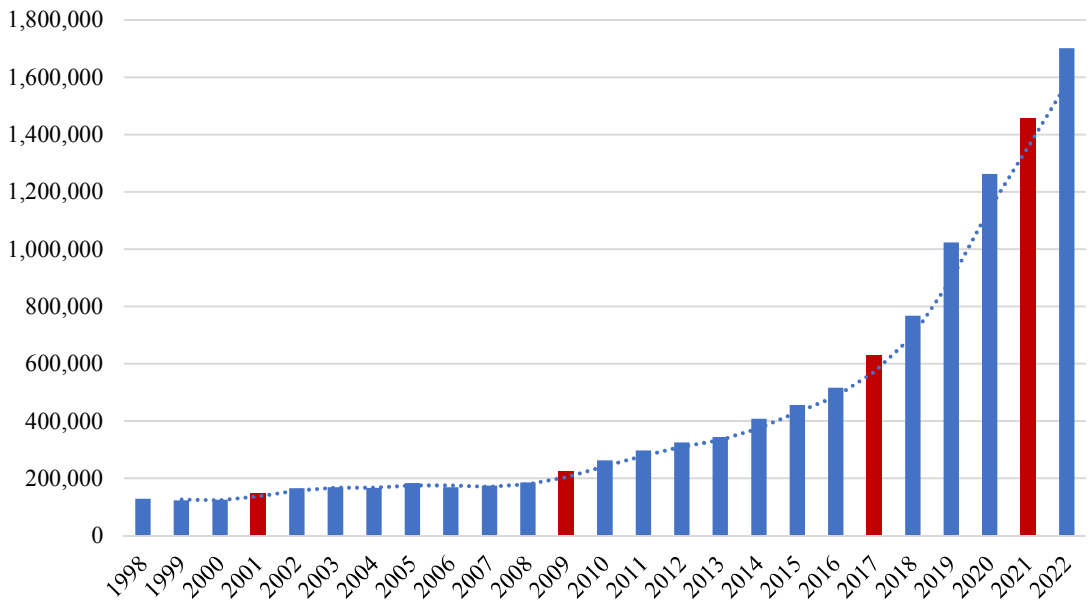
APPENDIX

Figure 1: Steps in Removal Proceedings from U.S. Immigration Court



Source: Author’s adaptation of agency documents
from the Executive Office of Immigration Review (EOIR)

Figure 1.1: Total Pending Cases in US Immigration Courts, 1998 - 2022

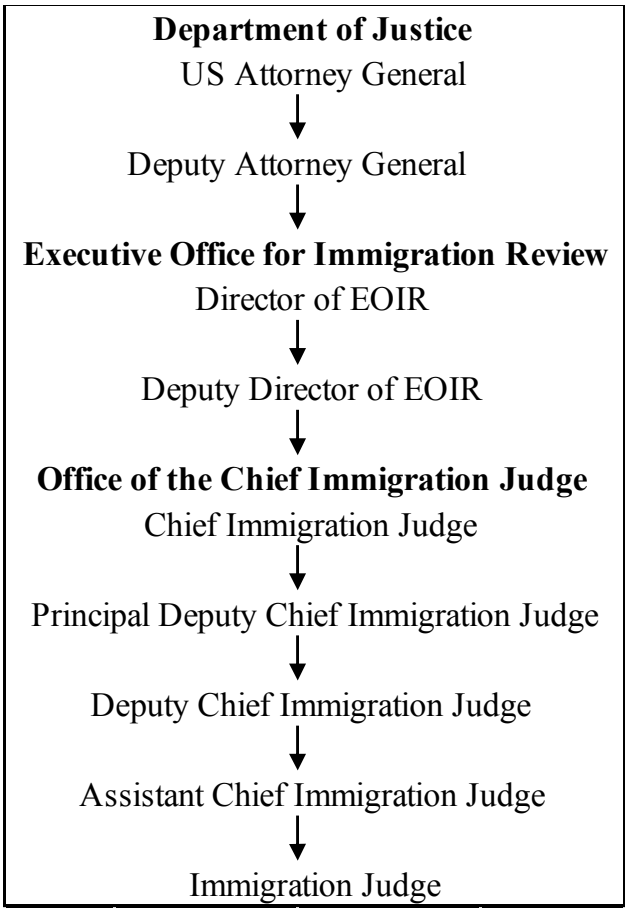


Data for graph reflects the total pending cases for the Executive Office for Immigration Review and is derived from the Transactional Records Access Clearinghouse (TRAC) (2022). *Note*: Red-shaded bars reflect the start of each new presidential administration.

Table 2.1: ICE Attorney Sample Characteristics (N=40)		%
Gender		
	Male	40
	Female	60
Race/Ethnicity		
	White	62.5
	Latino/Hispanic	7.5
	Asian	10
	Black	2.5
	Middle Eastern	5
	Mixed/Other	7.5
Average Years with ICE		
	1-5	30
	6-10	20
	10+	42.5
	No response	7.5
Previous Employment		

	Former Prosecutor (ICE/INS/CBP, State)	55
	Other Position with Federal Government	10
	Private Practice/Academic	12.5
	First Job/No previous job	22.5
Political Affiliation		
	Conservative	7.5
	Republican	5
	Center/Independent	22.5
	Democrat	40
	Liberal/Left	10
	None/Prefer Not to Answer	15
Age (Years)		32-58
Mean Age (Years)		42.5
Married	Single	10
	Married/Partnered	60
	No response	25
Languages Spoken		
	English Only	40
	Multilingual	50
	No response	10

Figure 3.1: Hierarchy of the Executive Office for Immigration Review



Note: Author's depiction based on EOIR documents and source materials.