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Life Under Detention

Understanding the Consequences of Heightened Immigration

Enforcement on Immigrants, Families, and Communities

A dissertation submitted in partial satisfaction of the  
requirements for the degree Doctor of Philosophy  
in Sociology

by

Mirian Giovanna Martinez-Aranda

2021

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## ABSTRACT OF THE DISSERTATION

### Life Under Detention

Understanding the Consequences of Heightened Immigration  
Enforcement on Immigrants, Families, and Communities

by

Mirian Giovanna Martinez-Aranda

Doctor of Philosophy in Sociology

University of California, Los Angeles, 2021

Professor Stefan Timmermans, Chair

In this article-based dissertation, I present three distinct but interrelated articles to expose the harms that immigration detention inflicts on immigrants, their families, and communities. My dissertation, “Life Under Detention: Understanding the Consequences of Heightened Immigration Enforcement on Immigrants, Families, and Communities,” analyzes 34 months of ethnographic data and 95 qualitative interviews with detainees and their family members to investigate how the legal construction of “illegality” has been weaponized against immigrants in the contemporary United States.

The dissertation’s introduction frames the rise of “cimmigration” and engages with previous literature on the construction of immigrant exclusion and legal violence against immigrants. This chapter also presents the research questions, introduces the theoretical

innovations of the empirical chapters, summarizes the research methodology, and outlines the structure of the dissertation.

Chapter two chronicles the experiences of former detainees and how they were able to acquire (or not acquire) justice through multiple means. I argue that immigrants are routinely denied access to justice within the immigration legal system because they are deprived of fundamental support including legal counsel, language translation, and access to the law library. To win their freedom from detention, immigrants engaged in *precarious legal patchworking*, where they haphazardly cobbled together legal resources and assistance from multiple sources including pro-bono aid, jailhouse lawyers, and other detainees.

In chapter three, published in the journal of *Law & Society Review*, I address the question: How do immigrant families experience the indeterminate confinement of detained loved ones under the intensified threat of deportation? I find that family units endure collateral consequences when they are suspended in a heightened state of liminality due to their loved one's indeterminate detention. A conceptual contribution of this chapter is the development of *collective liminality* to show how being suspended in this state of purgatory harms both detained immigrants and their loved ones.

In chapter four, published in the *Journal of Ethnic and Migration Studies*, I demonstrate how intensive state surveillance creates a condition of "extended punishment" that shapes the daily experiences of immigrants shackled to an electronic monitor (EM). The EM marks its wearer with a criminal stigma, leading that person to become shunned, including by previously supportive members of their co-ethnic community. Under this regime, EMs become tools of legal violence that yield a new axis of stratification among immigrants. Because EMs unequally

allocate autonomy, privacy, and resources, wearers find themselves more vulnerable and constrained than other immigrants.

In chapter five, I conclude by synthesizing the analyses, reflecting on the contributions and implications of the dissertation, and offering directions for future research. Foremost, I am proud to give voice to immigrant detainees and their families whose experiences are important for future scholarship. Overall, my research finds that life in and after detention continues to be shaped by the apparatus of immigration detention. Former detainees suffer the repercussions of trauma and material hardship long after release, and the harms of detention radiate out to many more people than just the detained.

The dissertation of Mirian Giovanna Martinez-Aranda is approved.

Lauren Duquette-Rury

Beatriz Manz

Cecilia Teresa Menjivar

Vilma Ortiz

Stefan Timmermans, Committee Chair

University of California, Los Angeles

2021

## DEDICATION

*A mi papá William Martínez Jonda, que cruzo nueve fronteras a pie para que yo pueda cumplir mis sueños. A mi mamá Angélica Aranda Borda que, sin su lucha constante y fe, yo hubiera perdido todas mis luchas. And to my second mom, Laura Malik, who taught me to see beauty in everyone and whose compassionate heart guided my research.*



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My journey began at UC Berkeley. As an undergraduate, I met Beatriz Manz, or as I call her with *cariño*, *profesora*. She instilled in me a passion for conducting research with the highest standard to help fight injustices. She believed in me when I did not know how to do it for myself. Her mentorship took me this far. I would only hope to be like her someday. Also, during my time at Berkeley, I met the only Peruvian that became my ride-or-died, Elizabeth Kayser De Hajar and my Venezuelan *mosquetera* Alejandra Guanipa. With them, I was able to thrive at UC Berkeley.

At UCLA, I was fortunate to meet fantastic and talented scholars of color. When I was part of the research group directed by Vilma Ortiz, I learned how to conduct rigorous research and, most importantly, how to do it while building community and uplifting each other. Vilma's commitment to her students provided a space where underrepresented students like myself could find direction and support. Deisy Del Real, Rocio Garcia, Susila Gurusami, Celia Lacayo, Casandra Salgado, Ariana Valle, and Sylvia Zamora were always ready to brainstorm, help and ask tough questions about my research. Special thanks to Laura Enriquez, Karina Chavarria,

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My chair, Stefan Timmermans, has been incredibly critical to my scholarly journey and development. Although, my research was not about *death!*--Stefan's favorite subject--he always found ways to challenged my thinking, pushed me to explain in great detail the mechanism behind immigration enforcement and its impact on immigrant communities. His willingness to read, brainstorm, create roadmaps, and provide detailed feedback over hundreds of drafts speaks volumes of his commitment to my success. I am so fortunate to have learned ethnographic methods from one of the bests in the field. I am forever indebted for his support, especially during difficult times.

Lauren Duquette-Rury's keen insight, deep thinking, and challenging questions helped me evolve as a scholar. Lauren was always ready to help with kindness, and her comments always uplifted my work. Cecilia Menjivar always welcomed me and engaged in discussions about my research. She always blew my mind with her suggestion on how to move my research forward. She is a great mentor and was always ready to help and provide the most honest advice.

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Collective Liminality: The Spillover Effects of Immigration Detention on Families. Panel on Immigration Control. Law and Society Association Annual Meeting, Denver, CO. (Cancelled due to COVID-19), 2020

The Aftermath of Immigration Detention. Panel on Communicating Findings to the Community. UC PromISE conference: Irvine, CA. 2019

Waiting in Liminality: The Spillover Effects of Indefinite Detention. Panel on Global Justice, Equity, and Empowerment. Going Global Conference. Los Angeles, CA. 2019

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## CHAPTER ONE

### **Criminalizing Immigrants: The Construction of *Illegality***

#### INTRODUCTION

The criminalization of immigrants has historic roots in the gradual convergence of criminal law with immigration law (Armenta 2017; De Genova 2013; Ngai 2007). Since the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) in 1996, the criminal justice and immigration enforcement systems have merged, instituting a legal environment of “cimmigration” (De Genova 2004; García Hernández 2019; Menjívar et al. 2018). This reveals the socio-political, historical, and legislative frame that has given rise to the current fabricated legal status of “illegality” (De Genova 2002; De Genova and Peutz 2010; Menjívar 2011; Menjívar and Abrego 2012) to which immigrants at the US-Mexico border and inside the United States are subjected daily. The criminalization of immigrants can be traced back to the strong presence of state power and the impact it has in everyday lives (Silliman and Bhattacharjee 2012). In essence, the current immigration system punishes the most vulnerable populations by creating a heightened identity of criminality. Consequently, immigrants, their families, and communities have endured devastating material and social harms as a result of the U.S. state’s tactics of mass-detention, surveillance, and exclusion through “zero tolerance” immigration policies (Meissner et al. 2013). Although these enforcement practices are not new, the intensity with which they are being implemented makes this dissertation timely.

This heightened criminalization also reveals the new direction in which immigration reform is moving. A dramatic increase in the number of immigrants sentenced in federal courts

over the last two decades has been driven largely by enforcement of a specific immigration offense—unlawful entrance into the United States. Between 1992 and 2012, the number of immigrants sentenced in federal courts more than doubled, rising from 36,564 cases to 75,867. Simultaneously, the number of unlawful reentry convictions increased 28-fold, from 690 cases in 1992 to 19,463 in 2012. (Light et al. 2014). During the Trump administration first year in office the number of federal criminal arrests for immigration offenses surged from 58,031 in fiscal 2017 to 108,667 in fiscal 2018 (Gramlich 2019)

This increase in the criminalization of immigrants has made immigration the most prosecuted federal crime. Immigration detention is now the fastest-growing form of incarceration and considered to be a profitable multi-billion-dollar industry (García Hernández 2019; Gómez Cervantes et al. 2017). This lucrative industry serves to temporarily warehouse unauthorized immigrants who are detained at the port of entry to the US as well as authorized residents who are being policed in the interior of the country. Those sent to court are deemed “criminal offenders.”

In addition to classifying individuals under a stigmatizing new label—“criminal aliens”—mass criminalization, detention, and deportation have undermined the legal rights of undocumented immigrants, which places them on the margins of society and makes them vulnerable to exclusion, poverty, repression, and violence; therefore hindering their long-term incorporation into the nation-state (Alba and Nee 2003; Portes et al. 2005; Portes and Zhou 1993). Further, these forms of state violence have torn parents from their children (permanently in many cases, at great cost to the children’s wellbeing) and removed immigrants from the workforce (Dreby 2012; Hernandez 2013). In most cases, immigrants are detained at facilities hundreds of miles away from their families without being given the opportunity to make the

most basic arrangements for the care of their children. While in detention, they are denied access to telephones and the legal materials necessary to locate their children and communicate with family courts to preserve their parental rights (American Immigration Council 2019). To cope with the consequences of criminalization, undocumented immigrants develop strategies that help them mitigate the repression by embodying a state of hyper-vigilance and deploying evasive strategies to avoid deportation (Armenta 2012; Coutin 2003; De Genova 2002).

The criminalization, detention, and deportation of immigrants are tools utilized to impose a new era of immigration enforcement, one that highlights and intensifies the racialized foreignness of the immigrant population detained at the US-Mexico border. Immigrants of color thus experience more contested and truncated incorporation in contrast to European immigrants, whose racial belonging remains unquestioned (Alba and Nee 2003; Portes et al. 2005; Portes and Zhou 1993). Using a racial frame as an analytical lens reveals the institutionalized racism embedded in detention policy that thrives when national security, race, and non-citizenship converge (Hernandez 2013). According to Rosaldo (1999), immigrants of color in the United States are being ascribed a “criminal blemish” (p. 255) that brands this population with the stigma of naturally being outside the law, consequently, making them central figures in detention history. Immigrants are being defined more frequently as threats to society and to national security. Whole new classes of felonies have been created that only apply to immigrants, while detention and deportation have become punishments for minor offenses (Hernandez 2013). Whether it is the war on drugs or the war on immigrants, whether it is supermax prisons, detention facilities or house arrest with electronic monitors, the punitive approach to solving social problems has become the new norm for dealing with racialized groups and poor people of color.

The major premise of this dissertation is that the construction of immigrants of color as “illegal criminal aliens” is used by the state to rationalize their persecution and expulsion. My dissertation asks *how the violent practices of immigration detention impact immigrants and their families’ sense of belonging, identity, and mobility*. I primarily examine three mechanisms of immigration control:

- 1) the state’s legal power to determine whether immigrants are deserving of justice,
- 2) the spillover effects of immigration control on the well-being of immigrant families and communities, and
- 3) the state’s coercive power to punish immigrants through mass surveillance even after they have been released from detention.

To examine these social mechanisms, I draw on interviews with immigrants who have been released from immigration detention and their families. This research is important because it will reveal the direct and collateral consequences that criminalization, detention, and deportation have on documented and undocumented immigrants. The dissertation thereby provides a more nuanced understanding of how “crimmigration” is forcing people to inhabit an increasingly peripheral space in society. Across three empirical chapters, I focus on lack of access to justice and immigrants’ response with “precarious legal patchworking,” the condition of “collective liminality” whereby not only immigrants but also their families experience pervasive threats, and the “extended punishment” of state surveillance to which immigrants are subjected after release from detention, I reveal how immigrants are caught up in this web of vulnerabilities, with hefty economic debt, emotional traumas, broken families, lack of legal aid, and exclusion from co-ethnic networks.

## **LITERATURE REVIEW**

## *Constructing Immigrants' Exclusion*

Throughout its history, the US nation-state has strategically established an array of anti-immigrant policies, often for the purpose of separating and excluding prospective newcomers from the rest of the population (De Genova 2002). Since the Chinese Exclusion Act of 1882, to the inception of the Border Patrol Agency in 1924, to the full absorption of the INS (Immigration and Naturalization Service) into the Department of Homeland Security in 2003, an era of mostly ruthless immigration regulations that sought to punish and control the migration process and settlement had begun (Chavez 2013; De Genova 2013; Ngai 2004). These historical and sociopolitical processes illuminate the construction of the policies that created “illegality” as a label that could be applied to certain individuals to serve the economic and political agenda of the nation-state. Policies that infused immigrant identities with “illegality” also necessarily implied criminality, which the state used and has continued to use to justify swift and severe punishments.

To further explain the inception and developmental trajectory of the construction of “illegality,” Stumpf (2013) observed that contemporary immigration law shares so many attributes with criminal law that the line between them has grown blurred. Scholars on penology such as Miller (2003) have labeled this convergence of laws the “criminalization of immigration law.” In other words, migrants nowadays are targeted and persecuted for minor legal infractions that were considered civil matters before immigration law became intertwined with criminal law. The outcome of this system has created mechanisms that criminalize the migration process, the migrant’s actions, and the migrant’s life.

As the various labels “illegal,” “criminal,” and “alien” have coalesced into a metastasized single legal status (“illegal criminal alien”), the nation-state has taken steps to racialize both the

label and the people to whom it is applied, mostly immigrants of Latin American origin, but other immigrants of color as well. The state then performatively punishes undocumented immigrants as “Other,” as a means to shore up a unified “American” identity. A more visual portrait of the racialization of the migration process does not exist than the spectacle of enforcement presented at the US-Mexico border (De Genova 2002). This spectacle of law avoidance and punishment reifies the legal status of “illegality.” Behdad (1998) indicated that this spectacle exposes the elements of discipline, surveillance, and the production of delinquency. He emphasized the critical role that “illegality” of the undocumented at the US-Mexico border plays for disciplining and “othering” all non-citizens. At the same time, the othering of migrants perpetuates the rigid normative notions of a singular national identity for US citizens. In other words, the spectacle of control and criminalization that is created at the US-Mexico border aids in formulating identity boundaries of belonging and exclusion to the nation-state. These practices have produced an unsafe space and harmful outcomes in the material, emotional, and psychological realms of the immigrants’ lives (Menjívar and Abrego, 2012). Moreover, “illegality” imposes grave consequences upon the immigrants and their families’ daily lives when used as a measuring tool for belonging to the nation-state (De Genova and Peutz 2010; Menjívar 2011; Menjívar and Abrego 2012). Consequently, the nation-state is able to limit individuals’ rights and privileges by delineating who belongs as an accepted member of the nation-state and who is excluded (Bickel 1975).

Once the state has clearly defined group membership in this way, legal and social exclusion become easier to deploy, isolating immigrants and their families from the rest of society. As Stumpf (2013) explained, immigration law serves to separate the individual from the rest of the nation-state through physical exclusion and by the creation of rules that establish

lesser levels of membership to the nation-state. Additionally, Menjivar and Abrego (2012) argued that a major contradiction exists between the inception and the implementation of immigration laws. This contradiction is evident when the law seeks to punish the identity and behavior of undocumented immigrants, while at the same time the immigration law pushes them to spaces outside the law. In other words, implementation of immigration law keeps the migrant accountable for their legal status, but at the same time excludes them from legal protections. For example, De Genova (2002) maintained that “illegality,” as much as citizenship, is a “juridical status” that requires a social relation to the state; therefore making migrant “illegality” primarily a “political identity” (p. 422). In other words, the fabrication of “illegality” would not be possible if not for the symbiotic relations it shares with the economic and political benefits provided to the nation-state and its accepted members. Further, this distinction is used to justify depriving non-members of benefits and rights.

### *Structural & Legal Violence against Immigrants*

Systematically depriving immigrants of benefits and rights is a form of structural violence. Originally coined by Galtung (1969), structural violence is violence that is applied in a systematic manner toward a specific group (Farmer 1996; Bourgois 2001). Structural violence operates as a social machinery of oppression, formed by the implementation of immigration control policies, which operate to criminalize undocumented immigrants. It provides a frame to understand the social, psychological, and economic costs imposed upon immigrants under this regime of criminalization. Immigrants’ agency is severely truncated within this environment. According to Farmer (1996), “Structural violence...tightens the physical noose around their necks, and this garroting determines the way in which resources—food, medicine, even

affection—are allocated and experienced.” Further, structural violence ensnares immigrants in a complicated web that pushes them to employ survival strategies.

When this structural violence is combined with symbolic violence (Bourdieu 1998) of exclusion, it forms what Menjívar and Abrego (2012) term legal violence, which occurs when immigration laws legitimize and normalize harming immigrants within institutional settings. While less visible than other forms of violence, legal violence is deeply damaging to an entire class of people, as it imposes suffering embedded in both social structures and institutional practices (Menjívar and Abrego 2012). Because legal violence is literally codified as “the law,” the harms it inflicts on immigrants appear as neutral and unquestionable (De Genova 2002).

Consequently, the construction of “illegality” has created multiple legal statuses such as documented, undocumented (Calavita 1998; Ngai 2004), and quasi-documented immigrants (Menjívar and Abrego 2012), thus entangling families in webs of mixed legal statuses. Behdad (1998) emphasized the role that the status of “illegality” plays in enforcing discipline and the othering of all non-citizens. Furthermore, Menjívar (2006) posited that the nation-state—by creating the legal status of “illegality”—designs a social hierarchy that uses legality as the basis to assign people to their social positions. This hierarchy also organizes access to rights and resources. For instance, Hao (2007) indicated that immigration laws constrain the movement of certain individuals but allow the admission of others. In essence, immigration laws are put tactically in place to enforce boundaries of control and oppression within the daily lives of immigrants and their families.

The classification of “illegal” increases state surveillance and hyper-criminalizes the migrant population. Laws, in conjunction with enforcement practices, create a vulnerable class of immigrants who are managed and monitored by the threat or risk of deportation (De Genova



2002). Like other forms of stratification, this hierarchy of surveillance “significantly shapes life changes and future prospects” (Menjívar 2006 p.1383). Under surveillance immigrants are relegated to inhabit an invisible space plagued with structural and symbolic violence (Martinez-Aranda 2020; Menjívar 2006). Together, inhumane laws, mass surveillance, and the threat of deportation lead to the progressive exclusion of immigrants from public spaces and societal institutions. Overall, the construction of “illegality” has yielded compounded negative effects, which have heightened restrictions, aggravating the “social predicament” of undocumented migrants (De Genova 2002 p. 434). This “legal status” socially positions immigrants at a vulnerable level of membership, which in turn shapes migrants’ context of existence, their position within social institutions, (Massey 2007; Menjívar 2006) and their path to incorporation in the receiving nation-state (Alba and Nee 2003; Portes et al. 2005; Portes and Zhou 1993).

#### *Theoretical Implications: Legal Violence & Stratification*

My research builds on this literature to make several important theoretical contributions. In Chapter two, I introduce the concept of *precarious legal patchworking* to analyze how immigrants try to access justice. Precarious legal patchworking consists of a combination of formal and informal strategies that immigrants engage in order to protect themselves from deportation, try to win their case in court, and gain their freedom from detention. Here, lack of access to justice functions as a type of legal violence (Menjívar and Abrego 2012). This research contributes a case of patchworking in a new context. Within the carceral space of detention, the desperation is particularly acute and the patchworking more urgent, as people are combating the heightened threat of deportability and frequently operating within the extreme constraints posed by the limbo of the detention facility. Additionally,

immigrants experience stratification in terms of their access to counsel, language interpretation, and other essential legal resources.

In Chapter three, I introduce the concept of *collective liminality*, to illustrate how the harms of detention extend beyond the individual detainee to punish their families and networks too. Collective liminality is a shared condition of constant uncertainty experienced by detainees and their families, caused by the intensified threat of deportation that produces material and emotional hardships. Collective liminality's uniqueness stems from the combination of the indefinite nature of immigration detention and the precarious nature of immigrants' (and family members') legal status. I examine the extent to which the trauma of detention is not a solitary experience, but rather, a collective one, as families struggle against the terror of legal violence and the threat of permanent separation. Here too, immigrants face a hierarchy in terms of access: immigrants whose loved ones have citizenship documents, transportation, and financial resources are more able to visit detention facilities to provide emotional, practical, and legal support.

Finally, in Chapter four, I develop the concept of *extended punishment* to demonstrate how the mass surveillance and control of immigrants does not end with their release from detention. Specifically, I contribute an analysis of how immigration enforcement's worst features of abuse and isolation are distilled to their essence and packaged into a small, portable tracking device: the electronic monitor (EM). When one is attached to an EM, release from detention does not yield freedom. Instead, the eye of the state infiltrates immigrants' everyday lives and social networks. EM is literally a beacon that may summon ICE into immigrants' lives and into their communities. It operates as an electronic leash attached to the deportation machine. EM functions as a tool of legal violence (Menjívar and Abrego 2012), enacted by the state, that lengthens the period of confinement and spreads its effects within a social network. The EM also

functions as a new axis of stratification, as EM-shackled immigrants endure extreme constraints to their mobility and autonomy compared to other immigrants.

## **METHODS**

### *Data Sources and Respondent Characteristics*

This dissertation is based on 34 months of ethnographic fieldwork, in Southern California in the counties of Los Angeles, Orange and San Bernardino between 2015 and 2018. The counties are appropriate sites for two reasons: first, a large number of immigration-related apprehensions are made in these counties (TRAC 2017), and the majority of apprehended immigrants are detained in facilities located within these counties (Human Rights Watch 2017). Second, California has more detentions and deportations than any other state except for Texas (TRAC 2018).

I conducted qualitative, in-depth, semi-structured interviews with former detainees (n=60) and their relatives (n=35). Interviewing both formerly detained immigrants and family members allowed me to present findings from the perspectives of both detained individuals and their loved ones. Respondents were between 18 and 75 years old and were born in many countries. See Appendix A, Table 1 for sample characteristics.

These interviews ranged from 1 hour to 2.5 hours, were conducted in Spanish and English either at a location selected by respondents, usually their homes, coffee shops, or pro-immigrant organizations, and were audio recorded and transcribed. Respondents were assigned pseudonyms to protect their confidentiality. The interview questionnaire for former detainees was open-ended and was framed around major topics of interest: 1) Perceptions of “criminalization” and “illegality,” 2) Lived experiences during the individual’s detention, 3) Perceptions of how anti-immigrant sentiments affect the respondent, 4) Encounters with

immigration enforcement, 5) Encounters with non-immigration enforcement, 6) Reasons for being shackled to electronic monitor, 7) Consequences of “criminalization,” 8) Coping strategies and identities, and 9) Return to society after release from detention. These categories are based on a review of existing research and media reports on immigrant issues.

For the relatives (n=35) of former detainees, the interviews were also open-ended and focused on their experience with the apparatus of immigration detention and the effects of having their loved one detained. The sample of family members consisted mostly of women (F=24, M=11) because when an immigrant is apprehended, their female relatives—wives, mothers, sisters, girlfriends, daughters—frequently step in to provide support and coordination from outside of detention. However, to ensure that men would be included in the sample of relatives, I expanded my interview sample by recruiting respondents at community events and events organized by local pro-immigrant organizations at which I volunteered. The major topics that guided these interviews were: 1) social, emotional, and economic effects produced by their loved one detention, 2) the looming possibility of their loved one’s deportation, 3) their experiences when they visited their relative in detention, and 4) constraints that keep them from helping their family member in detention.

Furthermore, to learn in more depth about the experiences of detainees and their family members, I participated in “go alongs” (Kusenbach 2003), joining respondents as they traveled to salient appointments including court appearances, visits to relatives in detention, and appointments with caseworkers regarding their electronic monitors (EM). I joined seven respondents for their court dates. I accompanied 25 relatives on their drives to visit their detained loved ones in three immigration detention facilities: one for-profit private detention facility and two ICE-contracted local jails. I went along with 15 respondents to their EM check-ins. These

drives became opportunities to record informal conversations (with participants' consent) before and after salient meetings and appointments. Through the "go- along," I documented direct experiences of participants' interactions with the apparatus of detention including immigration courts, detention facility officers, case workers, and community members. These "go-alongs" added texture to the data because respondents were particularly candid as they processed an upcoming appointment or a visit they had just experienced.

I began the interviews asking respondents to narrate a major event that made them become entangled with immigration detention and as the interview progressed, it evolved into more structured questions. For instance, for formerly detainees, I asked them to tell me the story of how they ended up in immigration detention. For the families, I asked them to tell me about the moment their family member was apprehended or transferred to immigration detention. Opening with stories told by the participants was a productive way to reveal the impact of immigration enforcement, as well as the strategies they created in order to navigate their contact with the apparatus of detention.

### *Recruiting Respondents*

Study participants were recruited using snowball sampling technique. To maximize variation, I interview participants from different locations and respondent networks. I restricted the sample to immigrants and their families impacted by immigration detention. I met families when their loved ones were in detention and after they were released, placed under surveillance, or deported. I met some detainees while they were in detention and others after they were released. However, no interview took place with detainees while they were in confinement.

During my fieldwork, I built relationships with one non-profit faith-based organization and three pro-immigrant community groups. The faith-based organization is certified by the

Department of Justice (DOJ) to provide legal aid to low-income and indigent immigrants. Nested within this organization is the “Visitation Program,” the primary program through which I accessed potential respondents. In my volunteer work with the Visitation Program, I facilitated connections between detainees and their families by providing transportation, visiting detention, writing letters, and connecting phone calls that were coming from inside detention.

Through these organizations, I attended community rallies, court appearances, visits with attorneys, ICE check-ins, EM check-ins, and events. I also facilitated and attended events that allowed me to establish and maintain contact with respondents. At the community level, I attended and organized rallies, immigration legal clinics, and Know Your Rights workshops where I met families impacted by detention. I went on two eight-hour detention facility “tours” led by ICE officials, where I asked questions informally. I participated in campaigns and trainings, including the “Accompaniment Program.” This program recruited community members and activists to accompany immigrants to their check-ins in order to advocate for them. Through the “Accompany Program” I visited the Alternative to Detention (ATD) program’s office approximately every other week for nine months. This office manages ICE’s Intensive Supervision Appearance Program (ISAP) where a private corporation subcontracted by ICE monitors activities including check-ins for people with EMs. As I accompanied respondents in the waiting room, I met other respondents, which enabled snowball sampling. Because of my affiliation with pro-immigrant groups, I was also able to rely on key community informants to recruit an initial wave of respondents. I then recruited additional participants from interviewees’ family networks, through snowball sampling.

### *Data Analysis*

I transcribed and coded the interviews, “go-along” recordings, and field notes to detect emergent themes. Using Dedoose, a qualitative analysis program, I applied an open-ended coding process and generated memos based on patterns in field notes and interview transcripts. I searched for noteworthy themes, comparisons, and contrasts. The analytical strategy relied on deductive and inductive coding approaches. Furthermore, I applied a grounded-theory inductive method (Charmaz 2006) to allow for patterns that were not anticipated by previous research, but rather, emerged from the narratives and interviews. The inductive methods created space for respondents’ own meanings and interpretations to move into the foreground. The analyses focus on phenomena that occurred repeatedly. Below, I discuss respondents and encounters that relate to relevant literature and theory, while also illuminating the data’s most prominent themes.

Ethnographic observations and qualitative interviews constitute suitable data sources, given the study’s objective of examining how immigrants and their families endure a pervasive context of legal violence and stratification under the extreme duress and threat of deportability fostered by the apparatus of U.S. immigration detention. The focus on interpretation from the perspective of detainees and their relatives makes ethnography and qualitative interviews the preferred methods. The transparency of the results and straightforward nature of the analysis allow for replicability of findings.

### *Reflexivity*

As a formerly undocumented immigrant myself from Peru, I am aware that my own intersectional identities might influence the research process. Most respondents found affinity with me because we were immigrants and shared somewhat similar experiences when we migrated to the United States. Also, my affiliation with pro-immigrant groups, I was perceived by respondents as someone reliably invested in their well-being. My own positionality as an

immigrant with now-acquired privilege, social capital, and citizenship (Emerson 2001) both facilitated a trustworthy relationship with the participants and also allowed me to advocate for them. However, in my role as interviewer, I became an outsider and insider at the same time, because we had differences in education, in most cases class and legal status became important. Furthermore, there were multiple occasions where my activism became the most salient identity when I engaged with these communities and became part of my participants' lives. Most of my respondents experienced some type of abuse or oppression inside detention and continued to experience it outside. This put extra responsibility on my role as an activist-scholar because I did not turn away from the oppression I witnessed. Therefore, I helped my respondents as much as I could without compromising the objectivity of the research. For instance, I drove my respondents to their check-ins with ICE, wrote letters of support for them when they needed it for court, and on some occasions, I testified in court to help their case. I worked to stop deportations and helped draft legal documents that people needed while in detention.

## **OUTLINE OF THE DISSERTATION**

Chapter two initiates the empirical analysis by examining "Precarious Legal Patchworking: Detained Immigrants' Access to Justice." As immigration enforcement increases, so does the detention of immigrants and the threat of deportation. Alone and frequently without the support of counsel, immigrants face a complex immigration court that is adversarial and can produce dire consequences: family and community exile, loss of employment, and inevitable violence or even death if deported. This chapter chronicles the experiences of former detainees and how they were able to acquire (or not acquire) justice through multiple means. To win their freedom from detention, they engaged in "precarious legal patchworking" where they haphazardly cobbled together legal resources and assistance from multiple sources including pro-



bono aid, jailhouse lawyers, and other detainees. This patchworking strategy speaks to the person's legal empowerment, but it also unveils the fragility of this strategy because it could extend the length of detention or complicate the detainee's case. The lack of access to representation is a form of legal violence, and stratifying access to representation in this way creates an underclass of people who are systematically denied justice.

In Chapter three, "Collective Liminality: The Spillover Effects of Indeterminate Detention on Immigrant Families," I address the question: How do immigrant families experience the indeterminate confinement of detained loved ones under the intensified threat of deportation? I find that family units endure collateral consequences when they are suspended in a heightened state of liminality due to their loved one's indeterminate detention. From the moment that an immigrant is processed into detention, they and their families enter a state of liminality that exists between two outcomes: release into the US (temporary or permanent) or deportation to their country of origin. A conceptual contribution of this chapter is the development of *collective liminality* to show how being suspended in this state of purgatory harms both detained immigrants and their loved ones. Although the threat of deportation is ever-present in and harmful to immigrant communities, when a loved one is detained, the threat of deportation intensifies from "if" to "when." No longer avoiding contact with ICE, the family unit must now mobilize to protect the detained relative from impending exile.

In Chapter four, "Extended Punishment: Criminalizing Immigrants Through Surveillance Technology," I demonstrate how intensive state surveillance creates a condition of "extended punishment" that shapes the daily experiences of immigrants shackled to an electronic monitor (EM). The EM marks its wearer with a criminal stigma, leading that person to become shunned, including by previously supportive members of their co-ethnic community. The technology's

governmental surveillance power imposes state monitoring, social ostracization, and a stigmatizing label. Under this regime, EMs become tools of legal violence that yield a new axis of stratification among immigrants. Because EMs unequally allocate autonomy, privacy, and resources, wearers find themselves more vulnerable and constrained than other immigrants.

In Chapter five, I conclude by synthesizing the analyses, reflecting on the contributions and implications of the dissertation, and offering directions for future research. Foremost, I am proud to give voice to immigrant detainees and their families whose experiences are important for future scholarship. In the course of analyzing patterns in their accounts, I developed three theoretical lenses-- precarious legal patchworking, collective liminality, and extended punishment--that make useful contributions to immigration studies. Overall, my research finds that life in and after detention continues to be shaped by the apparatus of immigration detention. Former detainees suffer the repercussions of trauma and material hardship long after release, and the harms of detention radiate out to many more people than just the detained.

## References

- Alba, Richard D., and Victor Nee. 2003. *Remaking the American Mainstream: Assimilation and Contemporary Immigration*. Cambridge, Massachusetts: Harvard University Press.
- Armenta, Amada. 2012. "From sheriff's deputies to immigration officers: screening immigrant status in a Tennessee jail." *Law & Policy* 34(2):191-210.
- Armenta, Amada. 2017. "Racializing Crimmigration: Structural Racism, Colorblindness, and the Institutional Production of Immigrant Criminality." *Sociology of Race and Ethnicity* 3(1):82-95.
- Behdad, Ali. 1998. "Ins and Outs: Producing Delinquency at the Border." *Aztlan: A Journal of Chicano Studies* 23(1):103-13.
- Bickel, Alexander. 1975. *The Morality of Consent*. New Haven: Yale University Press.
- Bourdieu, Pierre. 1998. *Masculine Domination* Stanford, CA: Stanford University Press.
- Bourgois, Philippe. 2001. "The Power of Violence in War and Peace: Post-Cold War Lessons from El Salvador." *Ethnography* 2(2):5-34.
- Calavita, Kitty. 1998. "Immigration, Law, and Marginalization in a Global Economy: Notes from Spain." *Law & Society Review* 2(2):5-34.
- Charmaz, Kathy. 2006. *Constructing grounded theory: A practical guide through qualitative analysis*: sage.

Chavez, Leo. 2013. *The Latino threat: Constructing immigrants, citizens, and the nation*: Stanford University Press.

Council, American Immigration. 2019. "U.S. Citizen Children Impacted by Immigration Enforcement." Washington, DC.

Coutin, Susan Bibler. 2003. "Illegality, borderlands, and the space of nonexistence." *Globalization under construction: Governmentality, law, and identity*:171-202.

De Genova, Nicholas 2002. "Migrant "illegality" and deportability in everyday life." *Annual Review of Anthropology* 31(1):419-47.

De Genova, Nicholas. 2013. "Spectacles of migrant 'illegality': the scene of exclusion, the obscene of inclusion." *Ethnic and Racial Studies* 36(7):1180-98.

De Genova, Nicholas, and Nathalie Peutz. 2010. *The deportation regime: Sovereignty, space, and the freedom of movement*: Duke University Press.

Dreby, Joanna. 2012. "The Burden of Deportation on Children in Mexican Immigrant Families." *Journal of Marriage and Family* 74(4):829-45.

Emerson, Robert M. 2001. "Producing ethnographies: theory, evidence and representation." *Contemporary Field Research* 295.

Farmer, Paul. 1996. "On Suffering and Structural Violence: A View from Below." *Daedalus* 125(1):261-83.

- Galtung, Johan. 1969. "Violence, Peace, and Peace Research." *Journal of Peace Research* 6(3):167-91.
- García Hernández, César Cuauhtémoc. 2019. *Migrating to Prison: America's Obsession with Locking up Immigrants*: The New Press.
- Gómez Cervantes, Andrea, Cecilia Menjivar, and William G Staples. 2017. "'Humane' Immigration Enforcement and Latina Immigrants in the Detention Complex." *Feminist Criminology*:1-24.
- Gramlich, John. 2019. "Far More Immigration Cases are Being Prosecuted Criminally Under Trump Administration." Pew Research Center.
- Hao, Lingxin. 2007. *Color Lines, Country Lines: Race, Immigration, and Wealth Stratification in America*. New York: Russell Sage Foundation.
- Hernandez, David. 2013. "Pursuant to Deportation: Latinos and Immigrant Detention." in *Governing Immigration Through Crime.*, edited by Julie A. Dowling and Jonathan Xavier Inda. Stanford: Stanford University Press.
- Kusenbach, Margarethe. 2003. "Street phenomenology: The go-along as ethnographic research tool." *Ethnography* 4(3):455-85.
- Light, Michael T., Mark Hugo Lopez and Ana Gonzalez-Barrera. 2014. "The Rise of Federal Immigration Crimes: Unlawful Reentry Drives Growth." Pew Research Center.

- Martinez-Aranda, Mirian G. 2020. "Extended Punishment: Criminalising Immigrants Through Surveillance Technology." *Journal of Ethnic and Migration Studies*.
- Massey, Douglas S. 2007. *Categorical Unequal: The American Stratification System*. New York: Russell Sage Foundation
- Menjívar, Cecilia. 2006. "Liminal legality: Salvadoran and Guatemalan immigrants' lives in the United States." *American Journal of Sociology* 111(4):999-1037.
- Menjívar, Cecilia. 2011. "The Power of the Law: Central Americans' Legality and Everyday Life in Phoenix, Arizona." *Latino Studies* 9:377-95.
- Menjívar, Cecilia, Andrea Gómez Cervantes, and Daniel Alvord. 2018. "Two Decades of Constructing Immigrants as Criminals " Pp. 310 in *Routledge Handbook on Immigration and Crime*, edited by Holly Ventura Miller and Anthony Peguero. New York: Routledge.
- Menjívar, Cecilia, and Leisy Abrego. 2012. "Legal Violence: Immigration Law and the Lives of Central American Immigrants 1." *American Journal of Sociology* 117(5):000-00.
- Miller, Teresa A. 2003. "Citizenship & severity: Recent immigration reforms and the new penology."
- Ngai, Mae M. 2004. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton, N.J.: Princeton University Press.
- Ngai, Mae M. 2007. "Birthright citizenship and the alien citizen." *Fordham L. Rev.* 75:2521.

Portes, Alejandro, and Min Zhou. 1993. "The New Second Generation: Segmented Assimilation and its Variants." *The ANNALS of the American Academy of Political and Social Science* (530):74-96.

Portes, Alejandro, Patricia Fernandez-Kelly, and William Haller. 2005. "Segmented Assimilation on the Ground: The New Second Generation in Early Adulthood." *Ethnic and Racial Studies* 28(6):1000-40.

Rosaldo, Renato. 1999. "Cultural Citizenship, Inequality, and Multiculturalism." Pp. 464 in *In Race, Identity, and Citizenship: A Reader*, edited by Louis F. Miron Rodolfo D. Torres, and Jonathan Xavier Inda: Wiley-Blackwell.

Stumpf, Juliet P. 2013. "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power." in *In Governing Immigration Through Crime*, edited by Julie A. Dowling and Jonathan Xavier Inda. Stanford, CA: Stanford University Press.

Transactional Records Access Clearinghouse (TRAC). 2017. "Use of ICE Detainers Obama Vs. Trump."

Transactional Records Access Clearinghouse (TRAC). 2018. "Latest Data: Immigration and Customs Enforcement Removals."

Watch, Human Rights. 2017. "Immigrant Detention Centers in California."

## CHAPTER TWO

### **Precarious Legal Patchworking: Detained Immigrants' Access to Justice**

#### **ABSTRACT**

As immigration enforcement increases, so does the detention of immigrants and the threat of deportation. Alone and frequently without the support of counsel, immigrants face a complex immigration court that is adversarial and can produce dire consequences: family and community exile, loss of employment, and inevitable violence or even death if deported. This chapter chronicles the experiences of former detainees and how they were able to acquire (or not acquire) justice through multiple means. To win their freedom from detention, they engaged in "precarious legal patchworking" where they haphazardly cobbled together legal resources and assistance from multiple sources including pro-bono aid, jailhouse lawyers, and other detainees. This patchworking strategy speaks to the person's legal empowerment, but it also unveils the fragility of this strategy because it could extend the length of detention or complicate the detainee's case. The lack of access to representation is a form of legal violence, and stratifying access to representation in this way creates an underclass of people who are systematically denied justice.



## INTRODUCTION

The Fifth Amendment of the United States Constitution guarantees that “No person shall...be deprived of life, liberty, or property, without due process of law” (U.S. Const. amend. V). This constitutional provision applies to all individuals within US territory, including citizens, documented immigrants, and undocumented immigrants. However, scholars studying the criminal legal system have pointed out that people of color and poor people largely do not have access to these guarantees (Blumstein 2001; Clair 2020; Rosich 2007). Further, certain laws have specifically eroded the protections available to immigrants. In 1996, the Illegal Immigration Reform and Immigration Responsibility Act (IRIRRA) and Antiterrorism and Effective Death Penalty Act (AEDPA) fabricated a new identity for immigrants – “illegality”— infused with criminal overtones, giving rise to a new paradigm of “crimmigration” (De Genova 2004; Garcia Hernandez 2019). These statutes dramatically increased who would be subject to mandatory detention, undermine the right of some immigrants to present their case in court, and intensified the racially discriminatory effects of detention and deportation. As the federal executive branch has implemented measures that extend who is targeted for mass-detention and deportation, resources for defense and legal relief have decreased in capacity (Meckler 2018).

Unlike criminal defendants, immigrants are not guaranteed the right to counsel in immigration court (Eagly and Shafer 2015; Medina 2012; Patler and Golash-Boza 2017; Ryo 2018). This lack of fundamental protections exists because immigration sanctions are considered civil and not criminal in nature. Thus, the right to counsel at the government's expense is not an option, and in some cases, immigrants are even denied the right to appear in court (Eagly and Shafer 2015). Furthermore, deportation proceedings are “adversarial in nature” and highly characterized by the acute power differentials and the unequal access to resources at the legal

representative's disposal (Adams 2010). The prosecutor is usually a Department of Homeland Security (DHS) trial lawyer with training in immigration law, a complex and highly technical body of law, that is considered difficult even for trained lawyers (Ryo 2018). Together, these features create a David-and-Goliath situation, in which the interests of the State are represented by a well-trained and well-prepared attorney while immigrants, including 86 percent of detainees, frequently face the immigration court system without any legal counsel (Berberich and Siule 2018).

The absence of representation is meaningful as socio-legal scholars have shown that immigrants with legal counsel are fifteen times more likely to seek relief from removal and five times more likely to be released from detention than those without (Eagly and Shafer 2015). Immigrants with competent legal representation are able to present their cases with concrete evidence, draft professional legal documents, and compose a strong narrative of their case (Ryo 2018). Attorneys play a valuable role in framing the immigrants' case in the most persuasive and legally relevant terms. According to Eagly and Shafer (2015), "With respect to the efficacy of representation...immigrants who are represented by counsel do fare better at every stage of the court process—that is, their cases are more likely to be terminated, they are more likely to seek relief, and they are more likely to obtain the relief they seek" (p. 9).

As essential as lawyers are through this process, most immigrants are unable to secure legal representation because of the compounded vulnerabilities they face. Some detention facilities have programs that provide legal aid for detainees; however, these programs are chronically under-resourced, and the demand for pro-bono services far exceeds the available supply (Vera Institute of Justice 2020). Barriers to representation are especially acute in remote and rural areas (Eagly and Shafer 2015). Confinement prevents detainees from visiting their

attorneys' offices, if they manage to secure an attorney, their communication mostly occurs through the detention facility's phone which is expensive and monitored by the facility (Civic and Detention Watch Network 2015). Detained immigrants who seek counsel may request additional time to find an attorney prior to their court date. Yet, the majority of these requests are denied and, due to the constraints presented by confinement, even people who receive extensions never find counsel (Eagly and Shafer 2015). Finally, immigration courts use "rocket dockets" to expedite deportation proceedings, which reduces the amount of time detainees have to find and secure counsel (Eagly and Shafer 2015; Medina 2012 p. 461; Ryo 2018). In addition to these systemic barriers to representation, immigrants face additional extreme vulnerabilities: poverty, low educational attainment, language and literacy barriers, lack of familiarity with the US immigration system, and, if they are detained, constrained opportunities to earn income and work on their cases. These systematic and personal challenges further exacerbate detainees' odds of securing legal representation. Without legal representation, detained immigrants are exposed to indefinite exile from their communities and families, economic insecurity, loss of housing, violence and in some instances death, if forced to return to dangerous conditions in their country of origin.

Based on 34 months of ethnographic observations complemented with in-depth interviews with 55 formerly detained immigrants in southern California, my study asks: How do detained immigrants attempt to access and secure justice within the immigration legal system? Specifically, what obstacles impede their access to justice, what strategies do they use to navigate around these obstacles, and what are the consequences of deploying these strategies? First, similar to other scholars, I find that most immigrants in detention face an access to justice crisis (Eagly and Shafer 2015; Patler et al. 2021; Ryo 2018) which means that they have little

access or no access to legal representation. Second, I show that detained immigrants encounter insurmountable obstacles when trying to access legal representation; and third, detainees participate in “precarious legal patchworking” in order to cope with these obstacles. However, these formal and informal strategies, which involve haphazardly piecing together various legal resources in order to avoid deportation and achieve freedom from detention, are flimsy and often do not yield successful results for the detained person.

This chapter adds to the access to justice literature by examining the tenacity, creativity, and adaptability that detainees must employ to ensure that their immigration case is processed fairly within a system that is organized to expel them. Furthermore, it adds to the immigration literature by showing how immigrant networks function within carceral spaces. Finally, this study contributes to the stratification literature by highlighting how the lack of laws that protect immigrants’ due process is a form of legal violence, and lack of access to legal aid creates an underclass of people who are deprived of access to justice.

As immigration detention and deportation continue to increase – in 2019, 86 percent of deported immigrants were detained (U.S. ICE 2019) – it is of the utmost importance that immigrants receive competent legal representation and fair due process within the immigration court system. Without these basic and fundamental protections, they are extremely vulnerable, facing family separation, violence, and possibly death if deported. Furthermore, as more unaccompanied minors began to arrive, they must also be well represented. Given that the immigration context of the 1990’s and 2000’s created an increase in immigration detention and expulsion (Meissner et al. 2013), it is possible that increasingly hostile immigration enforcement and the burgeoning humanitarian crisis at the border will foment even more detention. Thus

immigrants will have to face immigration court alone without free legal representation.

Accordingly, further analysis on how immigrants in detention try to access justice is essential.

## **LITERATURE REVIEW**

### *Marginalized Communities' Access to Justice*

The literature on access to justice demonstrates that people in the US are in a state of crisis when they face a justice problem because the legal system often fails to protect vulnerable individuals and deliver fair outcomes. As socio-legal scholar Rebecca Sandefur (2014) has pointed out, this lack of access to justice is mostly driven by systematic racial and economic inequality. The burden of this justice gap has been disproportionately shouldered by poor people and people of color, who experience an unequal form of justice when interacting with legal systems (Stuart et al. 2015)

In the criminal justice system, extensive literature has shown that access to justice through legal representation in criminal court does not mean equal access to justice but in reality, it means unequal treatment largely driven by the race of the defendant and lack of wealth (Blumstein 2001; Clair 2020; Rosich 2007). For instance, most people facing legal matters in criminal courts are disproportionately people of color, and poor thus are disproportionately disadvantaged and in need of public defenders (Clair 2020). However, public defenders are overworked, have scant resources and large caseloads. These circumstances impede defendants' effective legal representation, thus affecting fair access to justice (Rosich 2007). Thus, not having access to effective legal representation in criminal court plays a crucial role for a defendant's outcomes (Anderson and Heaton 2012).

In civil justice situations, many people who have justiciable issues (e.g., custody battles, disputes with landlords) never set foot in an attorney's office or a courtroom. Sandefur (2014)

argues that these individuals do not recognize their issues as legal problems; they do not attribute the hardship to a failure of the government or legal system. Instead, they view these disputes as personal misfortunes they must cope with on their own. The fraction of people who consult with attorneys on civil justice matters represents only a small part of a larger problem. Most estimates suggest that between seventy and eighty percent of justice problems remain unmet. These unmet civil justice problems produce enormous tolls on everyday people's lives, families, livelihoods, and financial security (Sandefur 2014).

Immigrants who face removal proceedings in the immigration court system suffer from a particularly acute crisis in accessing justice. They face a profoundly life-altering legal matter without the protections of citizenship status. Unlike US-citizen defendants in criminal cases, defendants in immigration court are not automatically given free legal representation (Eagly and Shafer 2015; Patler et al. 2021; Ryo 2018). Most immigrants are poor and cannot afford to secure any legal counsel, let alone effective legal counsel. Due to the lack of access to lawyers, tens of thousands of immigrants go unrepresented each year, including asylum seekers, long-term permanent residents, undocumented parents or spouses of U.S. citizens, and even unaccompanied minors (Berberich and Siulc 2018)

To start, immigrants face a disproportionate disadvantage in seeking *high-quality* legal representation, as the quality of service provided by immigration lawyers varies widely (Miller et.al. 2015). A staggering ninety percent of immigration cases are represented by small and solo law firms. Unfortunately, these firms generally have the lowest level of success attaining case termination and legal relief for their clients, whereas well-resourced law school clinics and prominent nonprofits generally have the highest level of success. (Eagly and Shafer 2015; Ryo 2018). However, these reputable organizations are highly-selective and only take on a small

proportion of cases. Not only does this highlight the dominant role of small and solo practitioners in providing immigration representation, but it also underscores the scarcity of free legal services for low-income immigrants (Vera Institute of Justice 2020).

Second, immigrants face another hurdle in their struggle to access justice when they are detained in geographically isolated locations (Martinez-Aranda 2020; Ryo and Peacock 2019). Immigration detentions are often remote, which seriously constrains the detainees' opportunities to obtain counsel. Geography is a particularly harsh barrier to accessing counsel: both detained and non-detained immigrants were less likely to obtain counsel when their case was decided in an area where few immigration attorneys practice (Ryo and Peacock 2019). The placement of approximately one-third of detained cases in these remote court locations has only further intensified the obstacles faced by detained immigrants in accessing counsel (Eagly and Shafer 2015).

Third, access to justice is restricted within immigration court procedures, including during continuances and bond hearings. For instance, detained immigrants are less likely than non-detained immigrants to be granted additional time to find counsel (Ryo 2018). Moreover, they are less likely to find counsel when given the chance to do so (Eagly and Shafer 2015). This is perverse because detainees will face greater difficulties securing attorneys precisely because their freedom is constrained. This unbalanced approach rooted in lack of counsel representation also impacts bond hearings. Compared to detainees who secure attorneys, unrepresented detainees have significantly lower odds of being granted bond and are less likely to submit documents, to present affirmative arguments for release, and to offer legally relevant arguments (Ryo 2018).

Lastly, access to justice through legal representation is largely dependent on economic status and the strength of social networks. The scarcity of pro bono resources demands that the majority of immigrants who obtain representation must be able to afford an attorney; however, most immigrants are poor and are not able to secure counsel. For instance, Mexican nationals have fewer economic resources on average and are by far the largest immigrant group in removal proceedings, and they are the least likely to be represented in court (Eagly and Shafer 2015). Strong social networks also influence the ability to secure counsel among different immigrant groups. These variations originate from differences in the value placed by different immigrant groups on formal legal representation as well as informal connections that fall short of actual representation, such as from paralegals, *notarios* (Eagly and Shafer 2015) and Department of Justice (DOJ) Accredited Representative (Medina 2012).

#### *Immigrant's Patchworking Strategies*

Given the extreme challenges to obtaining legal representation, immigrants respond with ingenuity. Co-ethnic networks are essential sources of support for people facing removal proceedings. It has been well established in the literature that immigrants within the US context retain access to their communities by participating in co-ethnic economies, especially inside ethnic enclaves (Menjívar 2000; Zhou 2010), and that they rely heavily on their social ties as sources of support (Alba and Nee 2003; Enriquez 2020; Portes and Zhou 1993; Zhou 2010). Also, immigrants utilize their social ties as gatekeepers of vital resources for their well-being and incorporation, such as access to medical care, economic stability, job acquisition, and educational mobility (Chavarria 2017; Enriquez 2011; Menjívar 2002; Vaquera et al. 2017).

However, other scholars have pointed out that when the political climate is hostile toward immigrants, economic scarcity rampant (Gomberg-Muñoz 2012) and communities' resources



low, the safety net that is usually provided by the social ties tends to fractured (Menjívar 2000; Martinez-Aranda 2020). Under these harmful conditions, social ties whom before were considered supportive could turn toxic and become exploitative (Coutin 2003; Del Real 2018; Gomberg-Muñoz 2012; Menjívar 2000; Rosales 2013) and can create a hierarchy between co-ethnics (Martinez-Aranda 2020). Furthermore, scholars have also demonstrated that economic inequality fragments immigrants' networks (Menjívar 2000) and even facilitates exploitation (Rosales 2013). Furthermore, the uneven distribution of legal rights between undocumented and documented people normalizes subtle forms of exploitation that reproduce state legal violence (Menjívar and Abrego 2012) within immigrants' intimate ties (Del Real 2018).

Although immigrants simultaneously find themselves snared in a context of scarcity and exclusion, and weak social ties. They still tap into these networks in order to seek help. In her study of Vietnamese immigrants Kibria (1994) introduces the concept of *patchworking* and describes it as "...the bringing together and sharing of diverse resources" (p. 97: 1994) and indicates that this patchworking strategy alleviates the instability and scarcity of available resources (Kibria 1994) Patchworking, according to Kibria, refers to the combination of various resources such as knowledge, resources, and education. Menjívar (2000) advances this notion and harnesses it to explain how low-income, under resourced, with precarious legal status immigrants bring together their various social ties and resources with close and extended networks to meet specific objectives. Another similar line of scholarship identifies how undocumented immigrant students also practice patchworking in order to pull together scattered resources and successfully forge a path through high school and into college (Enriquez 2011). Both Menjívar (2000) and Enriquez (2011) have observed that patchworking is an inherently haphazard, uneven, and unpredictable process.

When people rely on weak ties, it usually takes more energy to obtain help or access to resources (Menjívar 2000; 2002). Collaboration is typically uneven: each person contributes a different amount and type of support, depending on what they can give. Further, patchworking is precarious because the immigrants may have limited resources to share (Menjívar 2000; 2002). This principle is therefore helpful in understanding the mechanism by which many vulnerable immigrants exchange resources and support, since it is founded on reciprocity. As needs arise, people mobilize to pool resources to find a solution to poverty or insecurity (Menjívar 2002).

Under anti-immigrant contexts, immigrants develop their patchworking strategies that allow them to protect and access necessary resources. For example, research on Latina immigrant's health in rural Kansas, found that legal violence, entrenched in enforcement practices, harms Latina immigrant's physical and mental health by instilling fear and anxiety over detention and deportation of themselves and their family members, it also limits their mobility (Gómez Cervantes and Menjívar 2020). These circumstances make it almost impossible to get formal medical attention due to fear of coming in contact with institutions that can facilitate their removal. Immigration enforcement imposes a looming possibility of expulsion, that is pervasive and constraining (Dreby 2012; Gonzalez 2016; Menjívar and Abrego 2012). To avoid these institutions, Latinas thus rely on their informal networks and engage in patchworking strategies to deal with their health problems (Gómez Cervantes and Menjívar 2020; Menjívar 2000). Building on this logic, immigrants in confinement may employ patchworking strategies shaped by the carceral space that they inhabit. Overall, however, it remains largely unknown how *legal violence* is embedded and how it affects access to justice for immigrants that are in deportation removals. The remainder of this chapter addresses that gap.

### *Precarious Legal Patchworking*

This chapter introduces the concept of *precarious legal patchworking* to analyze how immigrants try to access justice. Precarious legal patchworking consists of a combination of formal and informal strategies that immigrants engage in order to protect themselves from deportation, try to win their case in court, and gain their freedom from detention. They use these patchworking strategies in order to cope with and respond to lack of representation in immigration court during their removal proceedings. Detainees haphazardly piece together various legal resources, often in collaboration with other detainees that can speak the same language or are from the same region. Because these resources create a fragile fabric, people who pursue a patchworking strategy experience delays and extended periods of detention. The strategy is risky. Even if it can delay deportation in some cases, it is not sustainable. precarious legal patchworking appears because immigrants are snared within the legal violence of the state. Immigrants use it to protect themselves from deportation and gain freedom from detention.

To develop the concept of precarious legal patchworking, the following sections focus on how lack of access to justice and carceral spaces interact to push detainees to engage in patchworking strategies in order to stop their deportation and gain their freedom. Securing release from detention does not close an individual's case; rather, they continue to prepare for upcoming proceedings in immigration court. They seek a favorable outcome against long odds and without basic institutional support. Legal violence consists not only of laws that actively punish, but also of failures to protect people and ensure basic rights. When immigrants are denied access to justice, that is a form of state sanctioned violence, to which immigrants are compelled to respond with patchworking strategies.

This study examines how immigrants rely on precarious legal patchworking to cope with the consequences produced by the lack of access to justice. Here, lack of access to justice functions as a type of legal violence (Menjívar and Abrego 2012). Legal violence encompasses the lack of protection within immigration law legitimizes and normalizes harming immigrants within an institutional setting (Menjívar and Abrego 2012). Immigrants' specific strategies have emerged, out of necessity, from within a context of legal violence and political hostility. Within the carceral space, the threat of deportation is heightened, which makes the patchworking more urgent. This study contributes a case of patchworking in a new context: here, the desperation is particularly acute as people are always combating the heightened threat of deportability and frequently operating within the extreme constraints posed by the limbo of the detention facility.

Further, as most studies on immigration courts have focused on court procedures, the perspectives of attorneys, and quantitative analyses, this research adds a crucial new perspective to the discourse: in-depth, qualitative data on the experiences of formerly detained immigrants, and their narratives about how they tap into fragile resources in their attempts to access justice. Sandefur (2014) points out that much of the access to justice literature takes a lawyering-centric approach, that emphasizes, how can law and the courts get this person justice? My research shows that for immigrants facing deportation proceedings, getting a lawyer does not guarantee access to justice. In fact, in some cases, lawyers can even derail the person from accessing justice. My study looks from the perspective of, how can this person get justice? For very good reasons, detained immigrants understand that they cannot trust that the system will deliver a fair outcome. They respond by developing strategies to get justice for themselves, even though on balance, precarious legal patchworking often fails to yield optimal results.

## **METHODS**

## *Data and Methods*

This qualitative study is based on 34 months of ethnographic fieldwork, in Southern California in Los Angeles, San Bernardino and Orange Counties, between 2015 and 2018. I conducted qualitative, in-depth, semi-structured interviews, follow-up interviews, and informal conversations with former detainees as they continued fighting their legal case in immigration court. I interviewed a total of 55 respondents that have been released from immigration detention. I also accompanied seven of my respondents to their court hearings in Los Angeles county. My respondents waited an average of one year between the time they were released from detention and the time they received a notice to appear in court. However, because of court backlog, that time has since expanded to an average of fifty-four months (TRAC 2021). With the seven respondents that I accompanied to their court hearing, I had multiple conversations about their anticipation of and experience in court. Through these data, I reveal that former detainees still suffer from lack of access to justice even when they are free from detention and supposedly have more options to secure legal counsel.

Southern California is an appropriate location for this research. At the beginning of data collection, none of the three counties had a universal program for legal representation, but by the end of 2017, one of the three counties had initiated a pilot program. For example, Los Angeles County partnered with pro-immigrant foundations to create a pilot program called the Justice Fund, which had a 7.9 million dollar budget, with a portion of that going to direct representation (Vera Institute of Justice 2020). However, this pilot was unable to keep pace with the backlog of over 81,000 immigration court cases. Moreover, program requirements excluded many people from participating. Representation was limited to Los Angeles County Residents and people without criminal records.

During my fieldwork, I also built relationships with one nonprofit faith-based organization and three pro-immigrant community groups. Through the pro-immigrant community groups, I attended community rallies, court appearances, visits with attorneys, and events. These organizations and programs strive to give immigrants tools to endure the pervasive anti-immigrant environment and help to access justice. I met former detainees through my involvement with these organizations and by participating in their events. I relied on key community informants to recruit an initial wave of respondents.

By the time respondents (41 women and 14 men) had their first court appearance, 37 out of 55 had secured some form of legal counsel. Respondents were between 20 and 55 years old. The interviews lasted 1 to 2.5 hours and were conducted in Spanish and English either by phone or at a location selected by respondents, usually their homes, coffee shops, or pro-immigrant organizations. Respondents were assigned pseudonyms to protect their confidentiality. The questions were open-ended and addressed topics including difficulties securing legal counsel while in detention; steps taken when not able to secure legal counsel, experiences with legal aids; resources available in detention to pursue immigration relief in court; and experiences with immigration court system and legal counsel after released from detention. These questions included, for example: Could you tell me why you were not able to find a lawyer? How did you prepare to appear in court without a lawyer? How did you feel when you appeared in court without legal representation? How did you fill out the paperwork to send to court? Now, that you are free, have you been able to find someone to help with your case?

Ethnographic observations and qualitative interviews constitute ideal data sources, given the study's objective of examining how immigrants struggle to access justice within an immigration court system that is designed to expel them. The focus on interpretation from the

perspective of former detainees makes ethnography and qualitative interviews the preferred methods. Furthermore, by using the hybrid “go-along” ethnographic tool (Kusenbach 2003) to complement the observations and interviews, I accompanied participants to their court appearances. Through the “go-along,” I documented direct experiences of participants' interactions with the apparatus of the immigration court system. With respondents' consent, I audio recorded informal conversations that took place before and after their court hearings. These “go-alongs” added texture to the data because respondents were particularly candid as they processed an upcoming stressful situation and what they just experienced in court. The transparency of the results and straightforward nature of the analysis allow for replicability of findings.

I transcribed and coded the interviews, “go-along” recordings, and field notes to detect emergent themes. Using Dedoose, a qualitative analysis program, I applied an open-ended coding process and generated memos based on patterns in field notes and interview transcripts. I searched for noteworthy themes, comparisons, and contrasts. The analytical strategy relied on deductive and inductive coding approaches. The deductive aspects of the analysis involved coding notes and transcripts for the themes of “obstacles to access justice,” “pressure to obtain legal counsel,” “feeling lost with court procedures,” “fear of deportation,” and “patchworking.” Furthermore, I applied a grounded-theory inductive method (Charmaz 2006) to allow for patterns that were not anticipated by previous research, but rather, emerged from the narratives and interviews. The inductive methods created space for respondents' own meanings and interpretations to move to the foreground. This yielded insights about “precarious legal patchwork.” The analysis focuses on phenomena that occurred repeatedly. Below, I discuss

respondents and encounters that relate to relevant literature and theory, while also illuminating the data's most prominent themes.

## FINDINGS

Accessing justice is difficult and sometimes impossible for immigrants. In addition to the obstacles posed by poverty and detention, immigrants face specific barriers when they try to access justice through the immigration court system, particularly language and literacy barriers and the limitations of an overburdened legal aid program. Given the obstacles they face, what do detained immigrants do instead? How do they secure justice for themselves? Immigrants adopt precarious legal patchworking strategies in response to systemic failures. These strategies include tenacity in coping with unworthy lawyers, seeking the assistance of Jailhouse Lawyers, and attempting to represent themselves in immigration court. These strategies are often deployed in tandem and combined to meet shifting circumstances. For example, *pro se* representation (self-representation) and Jailhouse Lawyers go hand-in-hand. The Jailhouse Lawyers can file paperwork and offer advice but cannot represent a detained person in immigration court. Unfortunately, these strategies often fail to yield optimal outcomes. Formal legal representation can be massively helpful, but it is difficult to procure and inextricable from a larger fabric of precarious legal patchworking strategies: haphazardly piecing together various legal resources in order to achieve freedom from detention. Economic insecurity and fragile resources obligate immigrants to combine these strategies with grit and ingenuity. However resourceful and creative the strategies may be, immigrants struggle and still obtain poor outcomes. Even immigrants who secure freedom from detention remain under duress, as they continue to pursue their immigration court cases within a system that holds them in hostile disregard.

### **Barriers to Justice**



## *Language & Literacy Barriers*

Access to adequate language interpretation inside immigrant detention facilities is a fundamental civil right (The White House Executive Order 13166). This law requires both U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to take appropriate measures to offer adequate language access to individuals with limited English proficiency. However, ICE and CBP have consistently failed to meet the needs of immigrants in need of these language services. Within the immigration system, being able to understand and speak in English can be the difference between life and death. Immigrants who speak indigenous languages or languages for which interpreters are hard to find suffer from a lack of language resources during their detention and when navigating their legal case. Immigrants with low or no English proficiency will be “unable to obtain medical attention, raise questions about their legal cases, or express their fear in an asylum hearing or interview” (Shepherd 2020). Given their vulnerability to deportation, immigrants have a strong motivation to understand official information even as it remains the *legal responsibility* of the immigration system to provide access.

Due to these consistent and systemic failures, navigating the detention and immigration court systems requires immigrants to apply a wide variety of literacies. To fully understand their rights and the procedures they must adhere to, an individual would have to possess *all* of the following: (a) the ability to read, write, speak, and comprehend English; (b) a means to translate legal jargon; and (c) basic computer literacy to access relevant websites and to use the law library. Very few detained immigrants have all of these attributes and are thus being denied a core civil right. In response, detained immigrants must rely on each other to fill in gaps in

information. They engage in *precarious legal patchworking* strategies to complete paperwork, file applications, and understand official materials in order to avoid deportation.

Immigrants who do not speak English are vastly disempowered in comprehending forms and communicating with guards and court personnel. This is true even for immigrants who are highly educated and literate in languages other than English. Antonia, an asylum seeker, kindergarten teacher from Ecuador, and mother of a child found herself helpless when trying to understand how to navigate the immigration legal system and detention facility. She explained,

I suffered a lot because I didn't speak English, and I couldn't understand them [ICE officers]. Many times some officers made fun of me because I couldn't communicate. They [ICE officers] could have spoken Spanish when I asked for help, but they didn't want to. But they told me in Spanish [ironic laugh], 'being a professional in your country, and here you can't even [fill out] and file an application', so it was totally frustrating.

Although Antonia had received a formal education in Ecuador, this did not prepare her to navigate a complex immigration court system and detention. Self-advocacy would become far more viable if translated materials and interpreters were made available as required. Instead of receiving guidance, she encountered indifference and even cruelty from some detention staff, which is part of the toxic culture of detention (Martinez-Aranda 2020; Patler et al. 2021). For individuals who are professionals in their country of origin, immigration detention erodes their skills and self-worth. Immigrants with low-levels of education and literacy are even more vulnerable.

Illiteracy is another challenge that immigrants trapped in detention face. When ICE provides information in the detainee's language, such as lists of pro bono attorneys or information about detention policies, they do so under the assumption that immigrant detainees can read their native language. However, research has demonstrated that forty percent of immigrants in the United States lack basic literacy in their native language (Batalova and Fix

2015). Another layer of complexity emerges for the detained immigrant, who is not only lost trying to understand an unfamiliar and unfriendly legal system in a foreign language, but additionally does not comprehend legal concepts that appear in official documents. To decode legal jargon requires professional training or the assistance of someone who knows what these terms mean. Celeste, an immigrant from Honduras, and with only primary education, explains the obstacles she and other immigrants encounter when trying to decipher legal documents and how they try to navigate around this. She said,

Many of the people that I was detained with didn't know how to read or write in English and sometimes even Spanish, I was one of them, so it was very difficult when I received [legal] documents because it was in English and I couldn't understand what it said. Even those who read English had a hard time understanding it [legal language] when they were translating... So we did not have the knowledge to fill out papers, make documents in English, which obviously they [the court] requested that it be in English. Even the requests [in detention] to make a doctor's appointment, or anything else had to be in English. They [ICE Staff] have dictionaries but won't lend them. A few of us have dictionaries, so we work together to try to translate phrases to be able to ask for what was needed. But it was totally difficult, very difficult.

Celeste indicates that it was not only her that could not understand the legal documents she received from the immigration court but that it was an endemic problem across the detention facility. Furthermore, beyond literacy and translation, immigrants lack support in decoding legal jargon, which is of paramount value to the outcome of their cases. Missing or misrepresenting important information could mean deportation. Celeste's account also confirms reports that find language barriers to play an important role when immigrants do not receive medical care and are left to die in detention (Jawetz and Shuchart 2019). Moreover, lack of access to justice requires immigrants like Celeste to defend herself against deportation with an English-to-Spanish dictionary. The fact that she needed to rely on the goodwill of others for her language access needs shows the vulnerability of immigrants trapped in detention.

Immigrants who speak indigenous languages or languages for which interpreters are hard to find face extreme language access challenges. Courts and asylum seekers can readily locate translators for languages like Spanish, Mandarin, Arabic, and Creole (Ramon and Reyes 2020). However, the US immigration system has failed to keep pace with the rising need for translations and interpreters for detainees who speak indigenous languages (Jawetz and Shuchart 2019). In 2018, indigenous Mayan languages such as K'iche and Mam climbed to the top fifteen of immigration court languages needed for immigration proceedings (Ramon and Reyes 2020). For instance, Tomasa is an indigenous Guatemalan immigrant and mother of two children, one of them autistic. She did not attend school in Guatemala and did not speak English. Tomasa spoke K'iche and her Spanish was very limited. Most of the time, Tomasa could not understand the questions of her attorney, judge, and interpreter when she appeared in court. "They never gave me someone to help me [translator] in my language [K'iche]...I understood what she said [the judge] a little because it was in Spanish. I told my lawyer, but because she didn't charge me I couldn't pressure her to give me one [K'iche interpreter]...they said [the court] that they were going to find one but they never did." Despite her discomfort, Tomasa did make one, indirect request for a translator. However, Tomasa did not insist because her lawyer was already providing a free service, and she did not know that under law she had the right to receive these services.

All of these vulnerabilities are further compounded when immigrants' only access to legal knowledge is located in the detention law library. Julia, an immigrant from Mexico and mother of two children, explains how the detention facility provided access to language and legal resources, contingent on the detainee's English literacy and computer literacy. Additionally, these resources are limited in time and quantity, as Julia explains, "They have a very fast English

course on the computer, they give you an hour a day. What I did was write things that I knew I would need and translated them on the computer...They have a law library, with documents to guide us a bit. But the library is small, and you could only find information for simple things.” ICE protocols and programming inside detention operate under the assumption that people have the literacy and technological competency to learn English in one hour-per-day sessions in front of a computer program. However, as already established, immigrants often lack English language proficiency and legal understanding; they also do not have the skills to operate a computer. Therefore, this creates a self-selection process in which immigrants with a little bit more education have access--although limited and irregular--to work on their legal case. Julia describes her friend from Guatemala as follows,

She was illiterate and did not have any kind of computer knowledge so all she could do was to simply let herself be carried away by what others told her to do when she needed to go to court ... You have to go to court, say this or sit down and cry, or do something so that the judge doesn't kick you out [deport], but it is hard for people like her. She didn't understand what was going on.

Unable to access legal knowledge from the law library, her friend turned to other detainees, who coached her to stoke the judge's compassion by showing emotions. Many detainees could potentially assemble proof that their deportation would place them in extreme danger. Yet, without legal counsel, they are ill-equipped to produce viable proof and compelling legal arguments that would succeed in court. Furthermore, Julia's experience highlights that although she was able to utilize the law library's meager resources, other detainees need to rely on advice from peers about how to navigate their legal cases so as to obtain freedom from detention and avoid deportation. Here too, detainees are tenacious and creative in their efforts to access justice through precarious legal patchworking. Deprived of a lawyer, they attempt to conduct their own

legal research. If that proves impossible, they seek the advice of other detainees, and the most coveted advice comes from Jailhouse Lawyers.

### *Overburdened Legal Aid Programs*

At the end of 2017 the Los Angeles county and partners initiated a pilot program and provided \$7.9 million in funding to support legal representation for those unable to afford an attorney in these proceedings (Vera Institute of Justice 2020) the playing field for people lacking representation is far from even because resources (i.e., attorneys, judges, interpreters) are insufficient to meet the need.

Unfortunately, detention facilities provide resources that according to detainees often are functionally useless. For example, Monica, a 22-year-old immigrant from Venezuela, explained that when she was processed into a detention facility in Southern California, “They [ICE officers] gave me a list of possible lawyers. I called all the numbers on the list, but no one wanted to take my case, so this list was of no use to me ... These lawyers said that they didn’t have time, and many others simply didn’t answer.” This court-distributed list of pro bono legal service providers includes many who refuse to take the cases of detainees. Those that do can often only take a few cases (e.g., fewer than ten) at a time. In two years of fieldwork, interacting with hundreds of people, I only heard about two people obtaining counsel through this list. Clearly, the demand for free or low-cost legal counsel vastly outpaces the supply.

The inconsistency of access legal counsel produces intense feelings of frustration for detained immigrants. As Enrique, a 27-year-old Mexican immigrant and father of two girls described, “The court looks at it like, ‘here is some information [list of pro bono services] we provided for you. We did our job and that’s it.’ And they don’t care about nothing else, they don’t care if the numbers are working, or do the people call back.” These feelings of dismissal

are not unfounded, because within this gap in justice the responsibility to secure legal counsel does not fall under the immigration system but the detainee. Enrique articulates that the help provided by the court was just a legal formality but that in reality it did not provide the necessary help that he was hoping for.

Detainees reported that the government-sponsored Legal Orientation Program (LOP) is similarly overburdened. According to detainees, and third party reports the program serves individuals without criminal convictions, tends to prioritize asylum cases, and has residency restrictions in place (Vera Institute of Justice 2020). This regulation excludes many people from participating, including Enrique, who had a DUI conviction, who said, "They [LOP] only help you if you didn't have any conviction and I was like, wow, but almost everyone here has a form of conviction. Almost 90 percent of the people here have some form of conviction." Enrique's confusion and indignation are justified. When he reports on how most of the detained immigrants have "a form of conviction" Enrique cannot see that this is a product of the inner workings of legal violence created by anti-immigrant legislation and interior immigration enforcement feature under IIRIRA. Enrique was detained in 2015 amid the Obama administration phasing out from the Secure Community Program (SCP) and implementing the Priority Enforcement Program (PEP). Immigrants arrested even for misdemeanors and caught up in the criminal justice system, like Enrique, were transferred to ICE's detention because these programs allowed federal, state, and local governments to collaborate and enforce immigration laws (Meissner et al. 2013). However, these programs were a source of great controversy because they were being used to racially profile immigrants and identify immigrants in jails who were deportable under immigration law.

With this infrastructure of crimmigration in place, the Trump administration in 2017 ramped up apprehensions in the country's interior and expanded the definition of who can be deported so broadly as to put at risk of deportation all undocumented immigrants. For instance, immigrants that have been charged with any criminal offense, but where the charge has not been resolved was now considered grounds for detention and deportation (American Immigration Council 2017). Overall, the LOP is a valuable resource for those who qualify to benefit from it; yet, detained immigrants are frequently unable to do so. Previously, people were excluded due to their convictions. Today, most detained immigrants do not have convictions, but they are still unable to use LOP since the program is over-burdened and prioritizes asylum cases. Because legal aid is scarce, access to it is stratified in favor of asylum seekers and individuals without prior criminal convictions. This is the opposite of justice, which would grant all detainees equal access to basic aid.

### **Precarious Legal Patchworking Strategies**

#### *Coping with Untrustworthy Lawyers*

When pro-bono legal programs have limited financial resources that restrict the number of cases they represent in immigration court, detained immigrants are left to find other ways to secure legal counsel, to avoid facing this complex legal system alone. For instance, Birhan, an immigrant from Ethiopia and a former university instructor, was detained for almost two years. Birhan, unable to access counsel through the pro-bono list or the LOP, and with his court date fast approaching, sought a referral from his social network:

I met an Eritrean friend in the detention center. He told me that other detainees told him about a lawyer, he said, 'there is a good guy, a good lawyer and he charges good too, \$2500.' So, we decided to hire him. But the lawyer didn't work on my case properly. He came two times, the first time he came for the Eritrean's guy hearing and talked to me, then the second time he came for my last individual hearing. I just met him like three times, and he was always complaining about the money that I paid him, he said that it



was too little and that he came from Oakland. I didn't know where Oakland was. He told me, 'I came from far away to visit you and the money you gave me was short. After that, he never came back. I called him many times and left messages telling him that my hearing was coming up and he wouldn't pick up the phone.

Birhan's experience highlights the vulnerability and isolation detainees face when trying to access justice. Birhan was in desperate need of a lawyer who would be both ethical and effective. And because he trusted this referral from his peers, he was willing to take the risk of paying this attorney the last of his savings. To gain access to representation, detainees patchwork by turning to their social networks when formal infrastructure fails. Many detainees like Birhan reported that they get referrals of attorneys from other detainees, especially for attorneys who have a reputation for helping their clients get released from detention. However, if a detainee is cheated or abandoned by an attorney, they have little recourse: they lack protections and may not know that they can report attorneys for misconduct. Sadly, many participants reported having a bad experience with an attorney or knowing someone that had a bad experience.

Many immigrants, quite reasonably, decide that hiring lawyers referred by other detainees is either too risky or too expensive. In these situations, immigrants may turn to yet another patchworking strategy: *pro se* representation. For instance, Diego an immigrant from Mexico in his late 50s, states, "I filled out this form for myself. Otherwise, I wouldn't be here because immigration attorneys are crooked and the very few that are honest are too expensive to get. I was detained a long time, and I saw many people get taken advantage by attorneys that took the money and never came back." For detained immigrants, the trust placed in the immigration attorney is important; they want someone who is honest and responsive, rather than predatory and unreachable. In many cases, referrals did not provide a positive outcome because the lawyers turned out to be untrustworthy. Unfortunately, Diego's commitment to representing

himself may ultimately reduce his chances of achieving a favorable outcome in his immigration court case.

### *Crucial but Limited Role of Jailhouse Lawyers*

There is no one better situated to understand the inner workings of a detention facility and immigration court than the Jailhouse Lawyer. Jailhouse Lawyers are detainees who usually have not practiced law in the free world. Yet, because of their confinement, lack of legal representation, and poverty, they were forced to learn immigration law and the regulations of the detention facility. They use this knowledge to advocate for themselves and other detainees. For the most part, Jailhouse lawyers have spent a longer than average time in detention and speak fluent English because they have lived in the U.S., most likely since they were young. Their work focuses on translating documents, creating legal briefs, filling forms, making requests, giving legal advice, and explaining the court process to fellow detainees. They also play an important role when trying to change rules and regulation of the detention facility, they do this by writing grievances, and sometimes these grievances are seen as sources of problems for the facility. Most importantly, they are the last recourse when expulsion seems imminent as they can file last-minute paperwork to stop deportations. Furthermore, they also help with filing grievances against the detention facility staff. However, their purview is limited to legal paperwork and advice as they cannot represent detainees in immigration court in front of a judge. In essence, Jailhouse Lawyers practice immigration law from inside detention.

For instance, Diego was brought to the U.S. as a child and was detained for more than 5 years. He had spent a lot of time in detention because he had a criminal record that sent him to a state prison for more than one year. His criminal conviction made him a candidate for mandatory detention. While detained, he used his time to learn immigration law by reading legal documents

in the law library, working on his own case and, at the same time, helping other detainees. When I met Diego he had been out of detention for a year and was homeless living in the back of his truck. Immigrants in detention that do not have access to formal legal representation rely on the help of people like Diego. As he described his role as a Jailhouse Lawyer, he gestured toward a handmade legal pleading template he had written. It was perfectly formatted, with exact headings, margins, and all 28 lines of required information. He explained,

I have documents that I have created from scratch that have helped people get out of detention. My jefita [term of endearment for mother] told me to help them, and I have helped a lot of people. When I came out of there I had \$180. It was money that I used to get from doing this legal work for people. I used to charge them a little bit because I didn't have any money on my own; otherwise, I would've done it straight up pro bono. I filled out forms, legal briefs, translations...I did this all by hand and then I would pass the documents around...my celly will help and others too...I remember this dude from Oaxaca he didn't even know how to read or write but he copied letter by letter.

This work is time consuming and emotionally draining but extremely helpful for detainees who are unable to hire a formal attorney. Detainees do not have access to legal material in order to prepare their case; however as Diego explains, they found ways to create documents that adhere to the legal requirements of the court. This shows that although they are under duress (i.e., the threat of deportation), detainees deploy ingenuity and resourcefulness out of desperation. Even though Jailhouse Lawyers never present cases in immigration court, they support detainees in filing paperwork and strategizing about their cases. As Jailhouse Lawyers become vital to the ecosystem of the detention, their work is also in demand. Some, including Diego, charge money for their services and others accept food items from the commissary. Other detainees benefit from the work of Jailhouse Lawyers as documents are passed around and shared. Detainees' vulnerabilities and desperation surfaced when their only recourse was to literally copy a document that they did not understand, risking the probability of making a mistake and consequently facing deportation.

Jailhouse Lawyers are essential in protecting detainees from middle-of-the-night deportations. Detainees live under the constant heightened threat of deportation, waiting in terror that they will be taken and deported, in most cases to dangerous situations and often to their death (Martinez-Aranda 2020). For detainees the threat of deportation often comes in the middle of the night, this is when Jailhouse lawyers play a crucial role as they set in motion legal paperwork in order to stop the deportation. Theo, a Mexican immigrant and jailhouse lawyer, was detained for four and half years, and has three children. He says, “I wrote by hand many stays of removal. Sometimes I would have to write them at 4 in the morning, when a person would wake me up all scared because they were about to be deported. So I would get up, get some coffee and write it for them. Then by 9 am they would come back in the dorm and everyone would applaud.” Theo’s case highlights how the scarcity of resources demands ingenuity and effort from Jailhouse Lawyers on behalf of fellow detainees. There are no computers available to type legal documents, so instead Jailhouse Lawyers write legal briefs and other documents by hand. The threat of deportation was real and detainees would ask the jailhouse lawyer to intervene in order to stop their deportation. In this case, the urgency of the situation required the jailhouse lawyer to create and submit the forms in the middle of the night. This shows the importance of having the jailhouse lawyer in the dorm; otherwise the detainee would have been unable to ask them for help and could have gotten deported. Furthermore, the trauma created by the threat of deportation was collective as everyone was aware of which detainees were at risk of expulsion, and showed relief when they saw those under this heightened threat of deportation come back to the dorm.

However, Jailhouse Lawyers, because they are detainees themselves, face constraints and are limited in the assistance they can provide. Yolanda, an immigrant from the Philippines and

mother of two children, was detained for three years. As a Jailhouse Lawyer, she heard many stories of trauma, including the experience of her bunky from Guatemala who had escaped a sexually and physically abusive husband. Desperate to avoid detention, this woman sought Yolanda's help. Yolanda explained,

The judge ordered her deportation and we needed to file forms to put a stop to the deportation order so her case can go to the BIA [Board of Immigration Appeals]...I stayed up all night trying to finish her brief and all I needed to do was to make copies because you need to send the brief to different offices including the BIA. The officer that usually lets me make copies in the law library was not there. There was this other officer that is rude and mean. I asked nicely to make copies, and she told me the machine was broken, but I have seen someone else using it, so I insisted, and she told me to leave and I told her 'no that I had the right to make copies.' She got mad and because I refused, she called other officers and they threw me in solitary...I couldn't make the copies, but my bunky was able to make copies later, and she sent them while I was in solitary.

Jailhouse Lawyers are well situated to empathize with detainees' trauma and to try to explain their stories through legal documents to get them some type of immigration relief. Yet, they encounter obstacles in their work because they hold a weaker social position than the guards, with whom they must negotiate for access to resources (e.g., forms, library materials, copy machine). As shown by Yolanda's experience, the simplest request -- making photocopies --can become a dangerous situation for both the Jailhouse Lawyers and their clients. The system unleashes disciplinary power to punish detainees such as the Jailhouse lawyer because they advocate for detainees' freedoms and empower themselves by acquiring legal knowledge.

*Self-Representation: Often Necessary, Always Risky*

When lawyers fail to fulfil their commitments to detained clients, this can create chaos for the immigrant's case and have great implications for their freedom. When lawyers do not appear in court as scheduled, detained immigrants are forced to represent themselves with little notice or training, against well-prepared prosecutors. Not only is the system complicated with bureaucratic logistics, but specialized legal language is inaccessible to people who do not have

an education in immigration law. Due to lack of representation, immigrants find themselves facing the ICE attorney and Immigration Judge alone. Consequently, negative outcomes, such as being denied bond or being deported, are high probabilities. For instance, Esther, Haitian immigrant in her early 20s was apprehended with a fake Congolese passport at the US-Mexico border. Esther explained,

She [lawyer] missed my court date, and I got denied bond. The first time I appeared in court the government lawyer [prosecutor] brought the fake document, then my lawyer made another appointment date [a continuance], and for the second appointment she didn't appear. When I called she said that she couldn't come. She told me that if I have more money, she could contact me with another lawyer. I told her, "I don't have money." So I prepared myself with the help of a friend and had all my documents and forms ready. But she [Immigration Judge] denied me because I'm a flight risk.

Because Esther's lawyer missed the court date and Esther was compelled to proceed without formal representation, she was denied bond. During the hearing she was unable to defend herself against the accusation of false documentation presented by the ICE attorney. Consequently, she couldn't prove that she was not a flight risk or that she deserved a bond. In effect, Esther's patchworking strategy of defending herself after her lawyer abandoned her extended Esther's detention: she would be held for six additional months before qualifying for another bond hearing.

Self-representation can complicate a person's court case. Without the advice of a competent attorney, immigrants may inadvertently make statements that prosecutors can question and attack. For instance, Tomasa, a Guatemalan immigrant and mother of three children, was seeking asylum in the US to escape extreme domestic violence from her husband. However, she was misunderstood by an ICE officer when she made her initial intake statement, which inaccurately recorded that she had followed her husband into Mexico when he had, in fact, pursued her. Unfortunately, she unwittingly corroborated her intake statement at her first court

appearance because here too, she lacked the support of appropriate legal counsel. A component attorney would have been able to clarify the narrative of violence Tomasa endured. Without a lawyer, Tomasa was denied the opportunity to have the facts of her case presented accurately. Later, she was able to secure an attorney, but a significant portion of their initial work together involved repairing some of the damage wrought when Tomasa was representing herself. Specifically, the attorney had to re-establish Tomasa's credibility and correct contradictory statements that were complicating Tomasa's case.

Immigrants such as Tomasa struggle mightily to obtain legal representation, but once they do, their case outcomes improve dramatically. Tomasa sought the support of a pro-bono attorney for several months, writing to pro-immigrant organizations. She recruited the help of a fellow detainee to prepare a letter in which she expressed her desperation for an attorney as follows, "I'm sending the papers about my interview. I hope I can get your help. I know that God has sent you all because you have been the only person I have spoken about my case before I get deported. No one really cares about my situation. My soul aches because I'm separated from my children." Detainees like Tomasa send their documents to pro-immigrant organizations in hope that they can help them with legal advice or secure a pro-bono attorney. Furthermore, she indicates that she has not been given an opportunity to explain her legal case to a legal aid provider and she expects to be deported. Most detainees indicated that many people were deported without being given the chance to secure legal counsel. One pro-immigrant organization finally managed to match Tomasa with an attorney, even though this was highly unusual and beyond their mission. Further, other detainees volunteered to waive their own opportunity to meet with the organization because they selflessly believed that Tomasa and her children (one of whom has special needs) were in particular danger. These factors expose the

scarcity of basic legal support for detainees; because the need for legal counsel is far greater than the supply, some people sacrifice their chance to receive support so that others might. Once she had secured a competent attorney, Tomasa was able to win release from detention with an uncharacteristically low bond, which the pro-immigrant organization paid. For Tomasa, her attorney provided valuable services: “She came to see me in detention and listened to my story so she could write a paper for the judge...With the judge, she was strong...She helped me with my children too and with finding a place to stay.” Without an attorney, Tomasa would have been unlikely to rectify the initial misunderstandings and would have probably been deported to Guatemala. In contrast, with an appropriate advocate, she won her freedom from detention and was reunited with her children. Having a competent attorney is therefore crucial and increases the likelihood of success in court (Eagly and Shafer 2015; Ryo 2018). Overall, these precarious legal patchworking strategies are less effective than they could be because immigrants are usually deprived of the most helpful “patch” of all: a credentialed and trustworthy lawyer.

## **CONCLUDING DISCUSSION**

Under the context of heightened immigration enforcement, immigrants are criminalized, apprehended, placed in deportation proceedings, and funneled into detention facilities (Martinez-Aranda 2020; Patler and Golash-Boza 2017; Ryo and Peacock 2019). If deported, most immigrants would be separated from their families and face life or death consequences when returned to their country of origin (Golash-Boza 2015; Human Rights Watch 2020). However, despite these severe outcomes, immigrants confined in detention facilities face a complex immigration legal system, usually without legal counsel. Confinement and lack of representation by an attorney truncate the possibility of achieving a just decision for their case in immigration court (Eagly and Shafer 2015; Ryo 2018). The scarcity of legal aid resources places detainees in



a vulnerable legal situation, where they need to make choices and build their case with suboptimal resources. In response, detainees cope by practicing precarious legal patchworking. They utilize their already stressed networks in detention in order to pull together legal advice from jailhouse lawyers, work on their case with the help of a language translation dictionary, and seek advice and support from other detainees as they prepare for court appearances and file legal documents. These informal legal networks do not have the necessary training or capacity to withstand the opposing side, DHS lawyers in court. Thus, detainees appeared in court in an unlevel playfield and with little protection. Overall, the preceding analysis reveals: (1) the immigration legal system's scarcity of resources required to produce justice; and (2) the coping mechanisms implemented by detainees when they are deprived of traditional tools to access justice (i.e., attorney representation, adequate language interpretation).

This study fills two gaps in our understanding of access to justice and patchworking strategies. Socio-legal scholars have conceptualized access to justice as the ability to secure legal representation by an attorney. Also, the right to appear in court and have the right to due process (Bass et al. 2005; Sandefur 2014). However, other scholars have indicated that access to justice needs to move away from a lawyer and court-centric approach (Sandefur 2014). Instead, it needs to open a new way to understand and access justice by creating partnerships between legal systems, local governments, and community stakeholders (Bass et al. 2005). I advance this conversation by shifting away from asking how lawyers can provide more services to people in legal proceedings towards reaching a better understanding of how exclusionary laws (e.g., IIRIRA, AEDPA) have been weaponized to deprive immigrants of legal protections in both detention facilities and immigration court.

Denying basic legal rights to immigrants in deportation proceedings is a form of legal violence. Legal violence here is the absence of federal laws, such as free legal representation to ensure due process that would protect immigrants in immigration court. Furthermore, the lack of legal resources stratifies immigrants – making justice attainable only for some. Specifically, immigrants with greater social and financial capital tend to have better options for securing counsel; immigrants who can read and understand the legal system fare better than illiterate immigrants; immigrants with criminal records are often disqualified from using legal aid resources. Nevertheless, immigrants under this system are at risk of not having an opportunity to have a fair determination of their immigration case. Under these circumstances, immigrants create and deploy a toolkit of precarious legal patchworking strategies to access justice, avoid deportation, and win their freedom in court.

Detained immigrants create and deploy precarious legal patchworking strategies to counteract the lack of legal protection within an environment of a heightened threat of deportation and limited resources. I advance the patchworking literature (Enriquez 2011; Kibria 1994; Menjívar 2000) by examining patchworking in a new, high-stakes context. Similar to Menjívar (2000), I find that detainees, out of necessity, construct fragile patchworks, by haphazardly cobbling together flimsy assets and materials from their under-resourced networks. However, I find that in the context immigration detention, patchworking strategies become both more vital and more precarious when deployed within carceral spaces. Immigrants face extreme constraints in detention, as well as more limited access to networks, while simultaneously managing the heightened threat of deportation. I found that access to legal counsel was stratified by the strength of immigrant networks, such that better-connected people were more likely than isolated ones to secure legal counsel, win freedom from detention, and win their immigration

court cases. This is consistent with prior research that shows how strong, well-resourced networks can be highly beneficial to co-ethnic immigrants (Alba and Nee 2003; Enriquez 2020; Portes and Zhou 1993; Zhou 2010). Unfortunately, in detention, well-resourced networks are harder to tap. Under the heightened threat of deportation, and with lack of access to legal aid and scant resources, immigrants find themselves grasping for legal strategies from networks that are already burdened and facing the same threat of exile, thus producing unequal access to justice.

I find that the lack of legal aid resources conflated with confinement creates an overabundance of obstacles for detainees trying to navigate the legal immigration system without an attorney or an understanding of the law or the court system. The analysis first demonstrates that detainees are routinely deprived of their legal right to adequate translation and interpretation services. Thus, language and literacy barriers impede immigrants' access to justice. These specific obstacles make winning their freedom close to impossible because they do not have the necessary tools to face an adversarial system trying to expel them. Furthermore, an overburdened legal aid system generates a scarcity of support, such that people receive limited or no assistance with their legal cases. The immigration system's design and systemic failures hinder immigrants' rights to justice and freedom.

Left without essential legal protection, immigrants turn to their already-stressed networks to create – out of basically nothing – strategies to help them avoid deportation and gain their freedom from detention. Immigrants create and deploy precarious legal patchworking. These strategies are based on their tenacity and ingenuity and are deployed in tandem and combined to meet an ever-changing, hostile environment. First, detainees must navigate encounters with lawyers who are potentially untrustworthy. Some immigrants do not have non-detained relatives who can serve as intermediaries (e.g., going to the attorney's office, taking phone calls,

following up, gathering paperwork such as police reports or human rights documents on their country of origin). Without supervision and open lines of communication, attorneys frequently accept payment but provide incomplete or unsatisfactory services. When an attorney skips a court appearance or refuses to communicate with a client who has already paid, the detainee is placed in the position of representing themselves in court. Without knowledge of the court's inner workings or legal procedures, detainees who self-represent usually obtain poor results. For instance, they may be denied bond or ordered deported.

Jailhouse lawyers are detainees that can help mitigate the impact that lack of legal aid has on detainee's legal cases. Jailhouse lawyers play a crucial role in stopping deportations and filing legal paperwork that most detainees find impossible to decipher. However, their work is like putting a bandage on a life-threatening wound. Furthermore, their work is limited to the confinements of detention because they cannot represent people in court. They are a lifeline to many in detention, and their time is highly demanded and sought-after. When a jailhouse lawyer is released from detention or deported, detained immigrants are left in a more vulnerable place where their most valuable legal resource is no longer there to provide legal assistance and counsel. Furthermore, jailhouse lawyers can wield their limited legal knowledge to advocate for immigrants inside detention, especially when it comes to detention rules and regulations, and this usually places them under the radar of a punishing immigration system. If immigrants manage to secure counsel, the odds for a successful case increase. However, attorneys face obstacles by making their work challenging and restrict communication between attorney and detainee. Finally, securing counsel does not mean that detainees necessarily win their case, and for many, the search for justice continues.

The success of precarious legal patchworking is generally limited, and immigrants typically must continue pursuing these strategies even after they are released from detention. Immigrants continue to exist in a legal limbo (Menjívar 2006), since release from detention does not mean that they won their immigration cases; it only means that they gained their freedom from the facility. Their legal case often continues for several more years. With more than 1.3 million immigration cases backlog and pending resolution in immigration court immigrants wait an average of fifty-four months for a hearing date in court (TRAC 2021). However, this new fought-for-freedom is fragile and, in some instances, does not last because any mistake such as missing a date in court or a check-in with ICE could send the immigrant back to detention.

## References

- Adams, Matt. 2010. "Advancing the 'Right' to Counsel in Removal Proceedings." *Seattle Journal for Social Justice* 9 (1).
- Alba, Richard D., and Victor Nee. 2003. *Remaking the American Mainstream: Assimilation and Contemporary Immigration*. . Cambridge, Massachusetts: Harvard University Press.
- Anderson, Anderson M. and Paul Heaton. 2012. "How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes." *The Yale Law Journal* (1).
- Bass, Julia H., W.A. Bogart, and Frederick H. Zemans. 2005. *Access to Justice for a New Century: The Way Forward*. Barreau du Haut-Canada: The Law Society of Upper Canada.
- Batalova, Jeanne, and Michael Fix. 2015. "Through An Immigrant Lens: PIAAC Assessment of the Competencies of Adults in the United States." Washington, DC: Migration Policy Institute.
- Berberich, Karen and Nina Siulc. 2018. "Why Does Representation Matter? The Impact of Legal Representation in Immigration Court." New York: Vera Institute of Justice.
- Blumstein, Alfred. 2001. "Race and Criminal Justice." in *American Becoming: Racial Trends and Their Consequences*, edited by William Julius Wilson Neil J. Smelser, and Faith Mitchell. Washington, DC: National Academy Press.

- Charmaz, Kathy. 2006. *Constructing grounded theory: A practical guide through qualitative analysis*: sage.
- Chavarria, Karina. 2017. "Developing Transformative Space for Student Resistance: Latino/a Students' Interruption of Subtractive Schooling Practices." *Association of Mexican American Educators Journal* 11(1):91-105.
- Clair, Matthew. 2020. *Privilege and Punishment: How Race and Class Matter in Criminal Court*: Princeton University Press.
- Council, American Immigration. 2017. "Summary of Executive Order "Enhancing Public Safety in the Interior of The United States"." Washington, DC.
- Coutin, Susan Bibler. 2003. "Illegality, borderlands, and the space of nonexistence." *Globalization under construction: Governmentality, law, and identity*:171-202.
- De Genova, Nicholas. 2004. "The legal production of Mexican/migrant "illegality"." *Latino Studies* 2(2):160-85.
- Del Real, Deisy. 2018. "Toxic Ties: The Reproduction of Legal Violence Within Mixed-status Intimate Partners, Relatives, and Friends." *International Migration Review* 53(2):548-70.
- Dreby, Joanna. 2012. "The Burden of Deportation on Children in Mexican Families." *Journal of Marriage and Family* 74(4):829-45.
- Eagly, Ingrid V. and Steven Shafer. 2015. "A National Study of Access to Counsel in Immigration Court " *University of Pennsylvania Law Review* 164(1):1-91.

- Enforcement, U.S. Immigration and Customs. 2019. "Fiscal Year 2019 Enforcement and Removal Operation Report."
- Enriquez, Laura. 2011. "Because We Feel The Pressure and We Also Feel The Support: Examining the Educational Success of Undocumented Immigrant Latina/o Students." *Harvard Educational Review* 81(3):476-99.
- Enriquez, Laura. 2020. *Of Love and Papers: How Immigration Policy Affects Romance and Family*. Berkeley, CA: University of California Press.
- García Hernández, César Cuauhtémoc. 2019. *Migrating to Prison: America's Obsession with Locking up Immigrants*: The New Press.
- Golash-Boza, Tanya Maria. 2015. *Deported: Immigrant policing, disposable labor and global capitalism*: NYU Press.
- Gomberg-Muñoz, Ruth. 2012. "Inequality in a 'Post-Racial' Era: Race, Immigration, and Criminalization of Low-Wage Labor." *Du Bois Review: Social Science Research on Race* 9(2):339-53.
- Gómez Cervantes, Andrea and Cecilia Menjívar. 2020. "Legal Violence, Health, and Access to Care: Latina Immigrants in Rural and Urban Kansas." *Journal of Health and Social Behavior* 61(3):307-23.
- Gómez Cervantes, Andrea; Cecilia Menjívar. 2020. "Legal Violence, Health, and Access to Care: Latina Immigrants in Rural and Urban Kansas." *Journal of Health and Social Behavior* 61(3):307-23.



- Gonzalez, Roberto G. . 2016. *Lives in Limbo: Undocumented and Coming of Age in America*. Berkeley, CA: University of California Press.
- Jawetz, Tom, and Scott Shuchart. 2019. "Language Access Has Life-or-Death Consequences for Migrants." Center for American Progress.
- Justice, Vera Institute of. 2020. "Los Angeles Justice Fund: Year 2 Evaluation." Los Angeles: California Community Foundation.
- Kibria, Nazli. 1994. "Household Structure and Family Ideologies: The Dynamics of Immigrant Economic Adaptation Among Vietnamese Refugees." *Social Problems* 41(1):81-96.
- Kusenbach, Margarethe. 2003. "Street phenomenology: The go-along as ethnographic research tool." *Ethnography* 4(3):455-85.
- Martinez-Aranda, Mirian G. 2020. "Collective Liminality: The Spillover Effects of Indeterminate Detention on Immigrants Families." *Law & Society Review* 54(4):755-87.
- Martinez-Aranda, Mirian G. 2020. "Extended Punishment: Criminalising Immigrants Through Surveillance Technology." *Journal of Ethnic and Migration Studies*.
- Meckler, Laura. 2018. "New Quotas for Immigration Judges as Trump Administration Seeks Faster Deportations." in *The Wall Street Journal*. New York.
- Medina, M. Isabel. 2012. "Challenges of Facilitating Effective Legal Defense in Deportation Proceedings: Allowing Nonlawyer Practice of Law Through Accredited Representatives in Removals." *South Texas Law Review* 53(3).

- Meissner, Doris; Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron. 2013. "Immigration Enforcement in The United States: The Rise of a Formidable Machinery." in *Report in Brief*. Washington, DC: Migration Policy Institute.
- Menjívar, Cecilia. 2000. *Fragmented ties: Salvadoran immigrant networks in America*: Univ of California Press.
- Menjívar, Cecilia. 2002. "The Ties that Heal: Guatemalan Immigrant Women's Networks and Medical Treatment." *The International Migration Review* 36(2):437-66.
- Menjívar, Cecilia. 2006. "Liminal legality: Salvadoran and Guatemalan immigrants' lives in the United States." *American Journal of Sociology* 111(4):999-1037.
- Menjívar, Cecilia, and Leisy Abrego. 2012. "Legal Violence: Immigration Law and the Lives of Central American Immigrants 1." *American Journal of Sociology* 117(5):000-00.
- Miller, Banks; Linda Camp Keith, Jennifer S. Holmes. 2015. "Leveling the Odds: The Effect of Quality Legal Representation in Cases of Asymmetrical Capability." *Law & Society Review* 49(1):209-39.
- Network, Civic and Detention Watch. 2015. "Abuse in Adelanto: An Investigation Into a California Town's Immigration Jail."
- Patler, Caitlin and Tanya Maria Golash-Boza. 2017. "The Fiscal and Human Costs of Immigrant Detention and Deportation in the United States." *Sociology Compass* 11(11).

Patler, Caitlin; Jackie Gonzalez, Hamid Yazdan Panah. 2021. "Immigrant Detention and Covid-19: A Tragic Call to Action for Federal and State Officials." Pp. 1-6 in *Immigration Initiative at Harvard*.

Portes, Alejandro, and Min Zhou. 1993. "The New Second Generation: Segmented Assimilation and its Variants." *The ANNALS of the American Academy of Political and Social Science* (530):74-96.

Ramon, Cristobal, and Lucas Reyes. 2020. "Language Access in the Immigration System: A Primer." Washington, DC: Bipartisan Policy Center.

Review, Executive Office for Immigration. 2017. "FY 2016 Statistics Yearbook." edited by U.S. Department of Justice.

Rosales, Rocio. 2013. "Stagnant Immigrant Social Networks and Cycles of Exploitation." *Ethnic and Racial Studies* 37(14):2564-79.

Rosich, Katherine J. . 2007. "Race, Ethnicity, and the Criminal Justice Sytem." Washington, DC: American Sociological Association.

Ryo, Emily. 2018. "Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings." *Law & Society Review* 52(2):503-31.

Ryo, Emily, and Ian Peacock. 2019. "Beyond the walls: the importance of community contexts in immigration detention." *American Behavioral Scientist* 63(9):1250-75.

- Sandefur, Rebecca L. . 2014. "Accessing Justice in The Contemporary USA: Findings From The Community Needs and Services Study." Pp. 1-17 in *American Bar Foundation* University of Illinois at Urbana-Champaign.
- Shepherd, Katie. 2020. "Indigenous People Face Persistent Language Access Challenges in Immigration Detention." American Immigration Council.
- Stuart, Forrest; Amada Armenta, and Melissa Osborne. 2015. "Legal Control of Marginal Groups." *Annual Review of Law and Social Science* 11:235-54.
- The, White House. 2000. "Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency."
- TRAC. 2021. "The State of the Immigration Courts: Trump Leaves Biden 1.3 Million Cases Backlog in Immigration Courts." Syracuse University.
- U.S. Const. amend. V.
- Vaquera, Elizabeth, Elizabeth Aranda, and Isabel Sousa-Rodriguez. 2017. "Emotional Challenges of Undocumented Young Adults: Ontological Security, Emotional Capital, and Well-being. ." *Social Problems* 64(2):298-314.
- Watch, Human Rights. 2020. "Deported To Danger: United States Deportation Policies Expose Salvadoran to Death and Abuse."
- Zhou, Min. 2010. *Chinatown: The socioeconomic potential of an urban enclave*: Temple University Press.

## CHAPTER THREE

### **Collective Liminality: The Spillover Effects on Indeterminate Detention on Immigrants Families<sup>1</sup>**

#### **ABSTRACT**

This chapter introduces the concept of collective liminality, a shared condition of heightened threat and uncertainty experienced by immigrant detainees and their families, as they wait, caught between two possible outcomes: their loved one's (temporary or permanent) release into the US or deportation. Drawing on 2 years of ethnographic data collection between 2015 and 2017 that included accompanying families to visitation at three Southern California detention facilities, and in-depth interviews with former detainees and their relatives, I demonstrate the broader "collateral consequences" that immigration detention inflicts on detainees' loved ones. I find that not only does the detained individual experience liminality, but the detention of a loved one places the family in a state of shared liminality, which is experienced at two levels: material and emotional. These hardships materialize even before the detainees' deportation and can persist even after their release back into the US. This research extends scholarship on the impacts of detention on detainees, and on the consequences of deportation for families. The concept of collective liminality highlights how immigration detention functions as a critical tool of immigrant surveillance, punishment, and exclusion.

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<sup>1</sup> This chapter is a modified version of Martinez-Aranda, Mirian G. 2020. "Collective Liminality: The Spillover Effects on Indeterminate Detention on Immigrant Families." *Law & Society Review*, 54(4), 755-787

I thought my wife was going to get deported. My biggest fear was not knowing if she was going to come home. She got transferred closer, and we could finally visit her. My son didn't like leaving the visits; he always wanted to stay. He would ask, "When is mommy coming home?" My wife always said that it was hard because she had to stay there, and we got to go home.

Anthony explains the impact of his wife Silvia's immigration detention on their family. Silvia, an immigrant from the Philippines and mother to three young children, was detained at two different detention facilities—a contracted local jail and a private facility—in Southern California for a total of 3 years.

In the US, rates of immigration detention have steadily grown in recent years (Singer 2019). In 2018, US Immigration and Customs Enforcement (ICE) detained nearly 400,000 immigrants (Singer 2019). This increase in detention has generated economic, emotional, and social harms for both detainees and their relatives. Of the 226,400 deportations in 2019, 85 percent of these removals were of immigrants incarcerated in detention facilities (ERO 2019). Families are thus justified in fearing that their loved one's detention may lead to deportation. Although deported immigrants could potentially attempt to return to the US, such a choice involves risking their lives and exposing themselves to prison time (Cabanillas 2017). Furthermore, attempts to return to the US are dangerous (De Leon 2015), and family reunification may take years. Thus, the fears of deportation and indefinite family separation are realistic. This chapter examines how immigrant families experience the spillover effects of indeterminate detention of their loved ones under the intensified threat of deportation. By indeterminate detention, I mean prolonged detention without a finite release date (Ryo 2017).

Based on in-depth qualitative interviews with fifty-five respondents in twenty immigrant family units and field notes from 2 years of ethnography gathered while accompanying families

on visits to three Southern California detention facilities between 2015 and 2017, this study develops and illustrates a new analytical concept, collective liminality. When an immigrant is detained, the family unit becomes suspended in a heightened state of uncertainty over whether the detention will lead to deportation and produce forced family separation. This heightened state of uncertainty is compounded by both material and emotional hardship. Relatives endure material harms and economic uncertainty (Chaudry 2011; Dreby 2012; Koball et al. 2015; Slack et al. 2015). They experience emotional hardship upon learning of their loved one's detention. Emotional distress is compounded by not knowing how long the detention will last (Golash-Boza 2019; Koball et al. 2015), and fears that their relative will be permanently exiled (Allen et al. 2015; Chaudry 2011; Dreby 2012; Koball et al. 2015; Zayas 2015). Certain structural features of immigration detention amplify and reinforce these harms. Remotely located facilities create geographic barriers that isolate detainees from their families and strain their relationships. Families' interactions with facility employees, ICE agents, and judges heighten their sense of vulnerability, fear, and sometimes humiliation. When detainees and their families cannot afford legal counsel, bonds are denied or set at an unattainable level, extending the length of detention.

The contribution of this research is to expose indeterminate detention's corrosive effects for both detainees and their entire family network: heightened uncertainty, economic harms, and the constant fear of family separation through deportation. Building on work by Ryo and Peacock (2019) and Mountz (2012), who find that social networks can affect a detainee's length of detention, I show how family units are harmed by the institutionally produced liminality of a loved one's detention. At the detention facility, the guards and staff personify the system of detention and reinforce the family members' feelings of powerlessness and uncertainty. The law

as an institution also creates legal categories, such as “illegal” and “criminal alien” (De Genova 2004), which contributes to the condition of collective liminality by making immigrant families vulnerable to abuse and deportation. Also, legal processes, such as mandatory detention (Toma 2017), which requires that noncitizens with certain triggering criminal convictions be detained (as permitted under the 1996 Anti-terrorism and Effective Death Penalty Act and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act) (ACLU 2020) contribute to the collective material and emotional harm.

This study complements current scholarship that focuses on the impacts of detention on detainees (Kelly 2019; Jorgensen 2017; Patler and Golash-Boza 2017; Penn State Law Center for Immigrants Rights Clinic 2017), and on the consequences of deportation for families (Golash-Boza 2019). I build on this research by arguing that damage to families emerges when the looming, ever-present threat of deportation becomes more intense and tangible at the moment a loved one is detained. The concept of collective liminality highlights how immigration detention functions as a critical tool of immigrant surveillance, punishment, and exclusion.

## **LITERATURE REVIEW**

### *Theorizing Liminality and Collateral Consequences*

This study’s theoretical framework brings together research on liminality and collateral consequences of incarceration. Liminality, a classical concept used to examine ritual processes, refers to the condition of individuals who are suspended in a transitional period from one life stage to another (Turner 1967; Van Gennep 1960). Turner (1967) conceptualized these personal moments of transition as positive and transformative. However, migration scholars (Gold 2019; Menjivar 2006; O’Reilly 2018) have raised the concern that the ambiguity inherent in liminality



is often frightening and disempowering for immigrants stuck in “gray areas” that exist between conventional categories of immigration statuses that Menjívar (2006) calls “liminal legality.” This legal limbo is marked by ambiguity, infusing immigrants with characteristics of both legal and “illegal” statuses. Menjívar builds on Coutin’s (2000) concept of “legal nonexistence,” which describes the tenuous position of undocumented Central Americans in the US, as they lack legal recognition. Legal nonexistence enables the erasure of personhood and basic rights, rendering immigrants vulnerable to subjugation, state violence, and deportation.

The burden of legal nonexistence and the looming threat of deportation are omnipresent, shaping and constraining the lives of undocumented immigrants (Dreby 2012; Gonzalez 2016; Martinez et al. 2015; Menjívar and Abrego 2012). Undocumented adults and youth alike come to understand that they will face risks and be denied myriad rights (Enriquez 2020; Gonzalez 2016). Indeed, all members of mixed-status families, regardless of immigration status, inhabit an environment that is permeated with illegality and the threat of deportation (Enriquez 2020; Rodriguez 2016). This threat is always percolating in immigrant communities, and immigrants’ fears are justified in light of the devastating harms unleashed by removal. This “context of illegality” (Enriquez 2020) enables and justifies legal violence. “Legal violence” captures the material, psychological, and social injuries (e.g., the pain of family separation through permanent exile) that immigration laws inflict on undocumented immigrants within institutional settings and by institutional actors (Menjívar and Abrego 2012). Enmeshed in the limbo produced by tenuous legal statuses, immigrants find themselves vulnerable and constrained. Hasselberg (2016) explains, in her study of immigrants in the UK, that this kind of uncertainty is “intrinsically related to waiting” (e.g., for a hearing or appeal) and that long-term waiting is “a further punishment” where “time stands still” (102–3). As useful as these studies have been

in illuminating the ever-present, anticipatory threat of deportation that hangs over immigrant communities, they do not examine how immigration detention affects detained immigrants and their loved ones.

Detained immigrants in the US can be jailed indefinitely (Immigration and Nationality Act 2012, 8 U.S.C. § 1226(a)) without the possibility of a bond hearing for their release, while they litigate their deportation cases (Jennings v. Rodriguez 2018). Indeterminate detention produces a state of intense ambiguity and disorientation while detainees wait to be released to the community or be deported from the country (Griffiths 2013; Hasselberg 2016; Turnbull 2016; Turner 1967). Detainees feel a chronic sense of fear, insecurity, and powerlessness as they live under the terrifying possibility of expulsion (Sutton et al. 2011). O'Reilly (2018) calls this experience of liminality as a permanent state of being “ontological liminality.” Beyond understanding detainees’ experiences of living in liminality, a crucial question remains about how indeterminate detention impacts their loved ones.

Even short detentions produce both individual harms, to detainees, and collective harms, to their loved ones. Ryo and Peacock (2019) explain that “even temporary confinement can inflict deep physical and psychological trauma, and lasting financial hardship, not only on the detainees but also on their family members” (1254). However, the shorter the detention length, the shorter the period of time a detainee and their family network must endure these harms and uncertainties. Ryo and Peacock (2019) found that community contexts matter: for detained immigrants, having access to legal and social support is associated with shorter periods of detention. When detainees are unable to access legal counsel or when they have weak community or family ties in the local area, spatial inequality and the social ecology of the community surrounding the detention facility function to extend the length of detention. During

this time, detained immigrants may be deprived of what Mountz (2012) refers to as an “infrastructure for advocacy” (92). The remote location of many facilities compounds the detainees’ separation from legal resources, relatives, and community networks (Mountz 2012). The present study examines how prolonged detention without a release date can extend the state of liminality and compound the harms experienced by detainees and their families.

In the related mass-incarceration literature, isolation and separation from resources and social supports have been shown to damage incarcerated people and to inflict collateral consequences upon their loved ones (Braman 2004; Mauer et al. 2003). For example, incarceration undermines family cohesion because incarcerated men are liminally positioned: at once members of their families and separated from them (Turney 2015). Turney (2015) extends Turner’s work on liminality by showing that because incarcerated men are “essentially held captive,” their contact with intimate partners is always organized and monitored by a punitive institution, which makes the nature of that contact limited and regulated, to the detriment of that relationship (Turney 2015 p. 501).

These strains on the relational well-being of members of the family network—collateral consequences—are replicated in the context of immigration where families face profound consequences, such as family separation, emotional trauma, and economic instability (Enriquez 2020; Koball et al. 2015). This family spillover effect, a mechanism of “social suffering” (Kleinman et al. 1997) that directs harm towards loved ones, has been documented in the context of deportation. Golash-Boza (2019) finds that families of deported immigrants experience collateral consequences that are similar to those felt by family members of incarcerated people (Comfort 2003; Turney 2015). Deported individuals may have partners and children who depend on them for a myriad of economic, social, and emotional support. Many

immigrants who face deportation are crucial breadwinners for their families, which places their relatives in a state of economic crisis (Chaudry 2011; Dreby 2012; Koball et al. 2015; Slack et al. 2015). Subsequent harms may take several forms: income instability, housing insecurity, food insecurity, diminished physical and mental health, emotional trauma, and lack of parental presence (Allen et al. 2015; Chaudry 2011; Dreby 2012; Koball et al. 2015; Zayas 2015). Following deportation, it becomes challenging to maintain family cohesion, since many families experience permanent separation, unless they reunify through de facto deportation (Boehm 2017; Kanstroom 2012). Relatives may grapple with how to explain to children that their “parent has not abandoned them yet will not be able to come home” (Golash-Boza 2019 p. 1334). Furthermore, families in the US fear for the safety of deported relatives who may now face violence, extortion, kidnapping, or death (Brabeck et al. 2011; Golash-Boza 2015; Human Rights Watch 2020).

While Golash-Boza (2015) emphasizes the social harms wrought by deportation, families are also affected during detention. Immigrants held in ICE detention are not given a release date. Detention can last indefinitely and lead to deportation, which creates substantially greater uncertainty for the detainee and their family. And unlike the families of deportees, for whom the separation is commonly definite and final, the families of detainees are suspended in time between the possibility of reunification and permanent separation.

In this study, I bring together the two bodies of literature on liminality and collateral consequences to develop the new analytical lens of collective liminality. By linking the idea that liminality impacts social networks, I analyze how families of detainees experience their loved one’s detention. The harms of immigration detention likely extend far beyond the detained individual, thus justifying an investigation into how the damages radiate out, affecting

families in marginalized immigrant communities. The threat of deportability—a familiar fear in immigrant communities—might be experienced differently by detainees and families when an individual is detained. Here, I examine the nature and scope of the harms of detention, and specifically, the extent to which the trauma is not a solitary experience, but rather, a collective one, as families struggle against the terror of legal violence and the threat of permanent separation. This research provides insights on/illuminates how family networks realign their priorities and activities when they are forced to cope with the intensified threat of a loved one’s deportation. Simultaneously, and like their detained relatives, families experience the powerlessness of uncertainty about the duration and outcome (release versus deportation) of detention.

#### *Defining Collective Liminality*

*Collective liminality* arises when the harms of being stuck in an in-between status radiate out to affect others in the trapped individual’s network. In the context of this study, collective liminality is a shared condition of constant uncertainty experienced by detainees and their families, caused by the intensified threat of deportation that produces material and emotional hardships. Collective liminality’s uniqueness stems from the combination of the indefinite nature of immigration detention and the precarious nature of immigrants’ (and family members’) legal status. Undocumented immigrants and their families live with the vivid, intrusive fear of being deported by ICE. But upon detention, the threat of deportation shifts from “if” to “when,” from the anticipatory threat of deportation to managing detention to prevent deportation, from avoiding contact with ICE to coping with immigration enforcement head on, constantly, and with extremely high stakes. Once detained, the threat of deportation intensifies, while also altering the specific activities that families must engage in to protect their

loved one. Not only is apprehension a necessary precursor to deportation, it actively constrains the ability to prevent deportation, through restrictions on movement and communication, greater difficulty accessing support from relatives and attorneys (Ryo and Peacock 2019), and fewer options for avoiding deportation. Undocumented family members may feel particularly helpless because they have to continue to avoid ICE while also trying to fight their loved one's deportation (Martinez-Aranda 2020). Thus, collective liminality begins at the moment an immigrant is apprehended and is plunged into a state of desperation and prolonged waiting. The apprehended person's loved ones—spouses, partners, children, parents, siblings, extended family networks and sometimes community members—are simultaneously pulled into this in-between state.

I argue that collective liminality manifests on two different levels: a material level and an emotional level. Both the material and emotional harms are shaped and sharpened by the dual attributes of collective liminality: its temporal indeterminacy and the precarious legal status that stokes the fear of deportation. At the material level, detention creates financial burdens immediately. Then, the indeterminacy of detention drives families into a state of economic precarity. Unable to plan for the future, the family network becomes trapped in a state of collective liminality from a material standpoint. At the emotional level, the detained individual and their relatives experience a reciprocal loss: they are deprived of one another and of crucial everyday intimacies. The family feels the pain of temporal indeterminacy because they cannot count down to a known release date. Moreover, they endure the fear of the ultimate punishment: permanent exile and family separation, enabled by a precarious legal status that can be weaponized to deport loved ones. The framework of collective liminality thus captures the harmful spillover effects experienced by families when a loved one is detained.

## METHODS

### *Families and their Detained Relatives*

This qualitative study is based on 2 years of ethnographic fieldwork, in Southern California between 2015 and 2017. I conducted in-depth, qualitative, semi-structured interviews with former detainees and their relatives. I spoke with at least two members from each family unit, enabling me to present findings from the perspectives of both detained individuals and their loved ones. I interviewed a total of fifty-five respondents in twenty different family units. Of these fifty-five respondents, I accompanied twenty-five of them on their drives to visit their detained relative(s) in three immigration detention facilities: one for-profit private detention facility and two ICE-contracted local jails. These drives became an opportunity to “go-along” (Kusenbach 2003) with participants and record our candid conversations before and after salient visits with their loved ones. Through these data, I reveal that the uncertainty and constant threat of deportation affects not only the detainee but also spills over to their relatives.

The data were collected in the counties of Los Angeles, Orange, and San Bernardino. The counties are appropriate sites for two reasons: first, a large number of immigration-related apprehensions are made in these counties (TRAC 2017), and the majority of apprehended immigrants are detained in facilities located within these counties (Human Rights Watch 2017). Second, California has more detentions and deportations than any other state, second only to Texas (TRAC 2018).

During my fieldwork, I also built relationships with one non-profit faith-based organization and three pro-immigrant community groups. The faith-based organization is recognized by the Board of Immigration Appeals, and their mission and work includes practicing immigration law and offering legal representation for low-income and indigent

persons. Nested within this organization is the “Visitation Program,” the primary program through which I accessed potential respondents. In my volunteer work with the Visitation Program, I facilitated connections between detainees and their families by providing transportation, visiting, writing letters, and connecting phone calls that were coming from inside detention. Through the pro-immigrant community groups, I attended community rallies, court appearances, visits with attorneys, and events. These organizations and programs strive to give immigrants tools to endure the pervasive anti-immigrant environment. Because of my affiliation with pro-immigrant groups, I was perceived by respondents as someone reliably invested in their well-being. My own positionality as an immigrant with now-acquired privilege, social capital, and citizenship (Emerson 2001) both facilitated a trustworthy relationship with the participants and also allowed me to advocate for them. I met families through my involvement with these organizations and by participating in their events. I relied on key community informants to recruit an initial wave of respondents. I then recruited additional participants from interviewees’ family networks, through snowball sampling.

During the study period, I conducted semi-structured interviews with thirty-five family members (eleven men and twenty-four women) who had a relative in detention and twenty formerly detained immigrants (eight men and twelve women). The sample of family members consisted mostly of women because when an immigrant is apprehended, their female relatives—wives, mothers, sisters, girlfriends, daughters—frequently step in to provide support and coordination from outside of detention. Just as women comprise the majority of visitors to prisons (Comfort 2003), most of the visitors to the immigration detention facilities observed during this study were women. However, to ensure that men would be included in the sample of relatives, I expanded my interview sample by recruiting respondents at community events, and



events organized by local pro-immigrant organizations at which I volunteered.

Of the twenty formerly detained immigrants, fifteen were released back into the US and five were deported. At the time of sampling, the detainees' outcomes (release into the US versus deportation) were unknown. Ultimately, the sample over-represents released immigrants and underrepresents deported ones. The sample is distinct because my first point of contact was with individuals in the community who had a detained loved one. Deportation is far more likely if a detainee lacks relatives in the US who are poised to take legal action on their behalf, and I was accessing detainees through such relatives. Furthermore, I faced difficulty maintaining contact with deportees, all of whom became unreachable within a few months of removal. However, since the sample included people with both outcomes, my study contributes insight into the lives of both groups. Whereas the data show only a glimpse of the worst and most common outcome (deportation), I offer extensive evidence of the extreme fear and hardship endured even by individuals who manage to secure release into the US, as this category includes those who have won their cases and those who have been released on bond and/or other conditions during the pendency of their removal proceedings. These individuals may possess logistical advantages compared to deported immigrants. These logical advantages may include advocacy of savvy relatives who understand how to coordinate with attorneys and immigrants rights groups, and stronger family ties and greater access to community resources. And yet, these advantages do not guarantee a successful case outcome. For instance, immigrants who secure only temporary release (Ryo 2016) remain in a state of liminality and upheaval. Thus, individuals who secure release back into the US may struggle profoundly within a punitive and violent legal context.

Respondents were between 18 and 75 years old and were born in many countries:

Mexico (sixteen respondents), USA (seven), Honduras (nine), Guatemala (eight), Cuba (four), Ethiopia (three), Colombia (two), El Salvador (two), Philippines (two), and Somalia (two). The interviews lasted 1–2 hours and were conducted in Spanish and English either by phone or at a location selected by respondents, usually their homes, coffee shops, or pro-immigrant organizations. Respondents were assigned pseudonyms to protect their confidentiality. The questions were open-ended and addressed topics including the social, emotional, and economic effects produced by a relative's detention; thoughts and feelings about the possibility that a relative might be deported; and their encounters with the apparatus of detention. These questions included, for example: Could you tell me how you found out your loved one was detained? How are you dealing with your loved one's detention? How do you feel when you go visit him/her? What worries you now that your loved one is in detention, and why?

Ethnographic observations and qualitative interviews constitute suitable data sources, given the study's objective of examining how families experience the spillover effects of indeterminate confinement of detained immigrant relatives. The focus on interpretation from the perspective of detainees and their relatives makes ethnography and qualitative interviews the preferred methods. Furthermore, by using the hybrid "go-along" ethnographic tool (Kusenbach 2003) to complement the observations and interviews, I accompanied participants as they experienced family visitation, release from detention, and community events. Through the "go-along," I documented direct experiences of participants' interactions with the apparatus of detention including facility officers, other staff members, and community members. With respondents' consent, I audiorecorded informal conversations that took place during long drives to and from detention facilities. These "go-alongs" added texture to the data because respondents were particularly candid as they processed what they just experienced when

visiting their loved one in detention. The transparency of the results and straightforward nature of the analysis allow for replicability of findings.

I transcribed and coded the interviews, “go-along” recordings, and field notes to detect emergent themes. Using Dedoose, a qualitative analysis program, I applied an open-ended coding process and generated memos based on patterns in field notes and interview transcripts. I searched for noteworthy themes, comparisons, and contrasts. The analytical strategy relied on deductive and inductive coding approaches. The deductive aspects of the analysis involved coding notes and transcripts for the themes of “fear of deportation,” “uncertainty,” “economic precarity,” and “emotional stressors.” Furthermore, I applied a grounded-theory inductive method (Charmaz 2006) to allow for patterns that were not anticipated by previous research, but rather, emerged from the narratives and interviews. The inductive methods created space for respondents’ own meanings and interpretations to move to the fore-ground. This yielded insights about “collective liminality.” The analysis focuses on phenomena that occurred repeatedly. Below, I discuss respondents and encounters that relate to relevant literature and theory, while also illuminating the data’s most prominent themes.

## **FINDINGS**

### ***Detainee Experiences of Liminality***

Previous literature demonstrates that immigrants face uncertainty and abuse while in detention, which produces anxiety for detainees (Kelly 2019; Penn State Law Center for Immigrants Rights Clinic 2017). The evidence presented here, gathered through interviews and observations, confirms these findings. I show that detainees are suspended in this state of detention, caught between two possible outcomes: release into the US or deportation. This condition of liminality is uniquely harmful because it combines the indefinite nature of

detention with precarious legal status to create the heightened threat of permanent exile. The experience of liminality is multidimensional, beginning when an individual enters a state of shock when they are first apprehended and separated from loved ones, often by great geographical distances. From there, they are emotionally taxed by the indeterminacy of detention and the constant threat of deportation, which combine to produce a profound sense of vulnerability.

The unique indeterminacy of detention places stress on detainees. Since ICE has the authority to indefinitely detain non- citizen immigrants, respondents justifiably fear getting trapped in the system. Ali, a 21-year-old asylum seeker from Somalia says,

Being in detention was torture. I didn't know what was going to happen to me. They wanted to deport me, but there is no Somali government, and I didn't have a passport, so it was always a game for them. Some days, they'd scare me and say, "We are sending you back." "How is that possible?" I said, "I don't have a passport." But then, they would come at night and ask me to roll up my bed and I thought, "they are going to deport me," but I was transferred to Texas."

Ali's statement shows that, without proof that he was a Somalian citizen, ICE cannot deport him. Ali's liminal status is augmented by his lack of documentation as a citizen of any nation. He endured the torment of being transferred haphazardly within the US for 3 years, with no end in sight. Although his goal was to be granted asylum to remain in the US, Ali indicated that two terrifying and more likely possibilities weighed on his mind constantly: he would either be trapped in ICE detention indefinitely or returned to Somalia where he might die in the civil war. A feature of collective liminality that makes detainees' uncertainty more poignant is the anxiety of not knowing when or how the detention will end.

Respondents, made vulnerable by their precarious legal status, acutely experience the constant threat of deportation. Braulia, a 22-year-old attempting to apply for asylum to escape imminent violence she faced in Honduras, feared that she could be deported at any moment.

Her fears are echoed by many and are rooted in the reality that deportation may mean physical danger and even death. She explains, “Everyday I was afraid that they were going to come and take me away... In the middle of the night they would come and take people away and no one knew where they took them...I pleaded with them, I told them that my rapist was going to kill me, but they didn’t listen.” Braulia feels terrorized by seeing other detainees disappear without explanation and endures the mental punishment of wondering whether she will be deported without warning too. According to many respondents, guards will some- times instruct detainees to “roll-up” their belongings and “head to processing” for deportation. Then, just as suddenly, they are told that their stay of removal has been approved, and they are ordered to return to detention. Thus, the looming threat of deportation is deployed as a type of psychic punishment. In this way, the respondents felt that detention staff weaponized uncertainty.

Together, the indeterminacy of detention and the constant threat of deportation compound to produce liminality. Moreover, certain conditions within detention amplify detainees’ sense of extreme vulnerability. Respondents discussed overcrowding, inadequate access to medical treatment, and insufficient amounts of nutritious food, hygiene supplies, telephones, legal services, and library materials. Accordingly, the detainee feels demoralized, out of control, and afraid. Without a clear sense of how they will obtain release, the detainee is trapped in a state of liminality, between uncertain and high-stake outcomes: release into the US or deportation. The harms wrought upon immigrants in this situation spill over to loved ones, producing a state of *collective liminality*.

### ***Experiencing Collective Liminality: Material and Emotional***

Immigration detention produces a liminal state because it is indefinite and leads to uncertain outcomes: release into the US or deportation. Detainees experience a liminal state

while in confinement; however, their liminality does not remain contained within the walls of detention facilities. Instead, the harms and stresses of being trapped in this transitional state radiate out to affect loved ones as well. This spillover effect captures the transformation of an individual liminal state into a collective experience. Detainees' families endure consequences that resemble the collateral damages inflicted on the family networks of criminally incarcerated individuals. Indeed, detainees, like criminally incarcerated individuals, are institutionally confined, and families in both situations often experience the absence of parents, breadwinners, and loved ones; increased precarity related to food and housing insecurity; additional financial burdens (e.g., attorneys, commissary); and emotional trauma.

What distinguishes immigration detention—and what gives collective liminality its unique character—is that all of these hardships are infused with and heightened by the understanding that this taxing condition is temporally indefinite and may produce permanent family separation through deportation. The vulnerability, in turn, yields intensified fear and uncertainty for the entire family unit, as the threat of deportation shifts from “if” to “when.” The families can no longer avoid the looming threat of deportation, as they must now actively manage detention to prevent their loved one’s deportation. Thus, the detention of a loved one places the family in a state of collective liminality, which is experienced at two levels: material and emotional.

#### *Collective Liminality at the Material Level*

When an immigrant family’s main breadwinner is detained by ICE, the family is immediately impacted and placed in a more precarious economic state. Families face dual challenges: a sudden loss of income and new, unexpected expenses. Detention pulls the earner from the labor force and prevents them from providing for their household. Immigrant families,

including children, thus become vulnerable to food and housing insecurity and must stretch budgets and rearrange priorities to survive. Already facing economic precarity, families incur additional expenses such transportation to remotely located detention facilities and legal representation. Material hardship takes on a liminal character as families grapple with the reality that they have no control over how long the condition of detention will last. Temporal liminality, as a feature of collective liminality, makes matters worse for the family, as indeterminate detention produces indefinite attorney fees, indefinite costs associated with traveling to a remotely located detention facility, indefinite loss of income, and indefinite food and housing precarity. Furthermore, families strain under the possibility that indefinite, yet temporary, material losses may become permanent if the loved one is deported. At particular moments when the threat of deportation becomes magnified (e.g., a court date, a hearing before a judge, a deadline to file paperwork), the family's financial costs spike.

### *Sudden Loss of Income*

The detention of one person can quickly produce collective material harms, dragging the family into a state of economic insecurity. Like most of the respondents interviewed for this study, Elsa, a 20-year-old daughter and US citizen, is poor, and this poverty was exacerbated by her father's detention in November 2016. Elsa's father, Roberto, a 50-year-old native from Mexico, had an asylum claim pending in immigration court and was working under an approved permit as a street fruit vendor. Roberto was apprehended during a routine ICE check-in related to his case, and his detention pulled Elsa and her entire family into a condition of collective material liminality. Her mother, a housecleaner, did not earn enough to pay the family's rent. To make ends meet, Elsa explains that she quit community college to work at her father's fruit stand, and her 16-year-old brother applied to McDonald's. They pooled incomes to

cover household expenses for the family, including Elsa's own child and three younger brothers. Because Roberto's detention has no known end date, the family cannot plan around whether or when he will return to the fruit stand and contribute to his family's income again. Elsa's education is suspended indefinitely, and even the minor children in the household are placed in a situation where they must assume some responsibility for ensuring the family's financial survival.

This family is a representative example of a wider phenomenon. Every family in the sample faced some degree of financial distress following a loved one's detention. The most common financial difficulties were related to indefinite periods of lost income (which produced food and housing insecurity), disruptions to childcare, and the necessity of reducing time spent on education to increase work hours—all of which could become permanent if deportation were to occur, and all of which became magnified in moments of heightened threat of deportation (e.g., court hearings).

#### *Visitation Expenses*

In addition to lost income and significant disruptions to the family's everyday finances, the detention of a loved one creates new expenses, including the high costs of visiting geographically remote detention facilities as well as providing financial support for the detained relative. Some scholars have noted that remote locations are chosen by ICE (Martin 2012) to hinder detainees' "infra-structures of advocacy" such as familial, community, and legal support (Mountz 2012). Geographical isolation, in turn, imposes economic burdens that erode family ties while also intensifying the collective fear of permanent family separation through deportation.

Although most families are willing to drive for many hours to see a loved one in



detention, for most, it is financially prohibitive to see them regularly. Lourdes, age 25 and pregnant, explains how she and her mother Mariana experience her brother's detention and why it is difficult to travel to see him. Her brother Genaro, a 19-year-old paraplegic that uses a wheelchair, was taken to a detention facility located more than 340 miles (almost 6 hours one way, not accounting for heavy traffic conditions) from where Lourdes lives with her mother. Lourdes explains, "We don't have money to go visit. I have been sending him money for food, but it is not the same as seeing him and knowing he is ok...A friend [a detainee] told us that he got an infection and was hospitalized." Genaro's detention creates collective material liminality for Lourdes in the sense that he will be financially dependent on her indefinitely. Funds that she and her mother apply to his basic needs compete with efforts to raise money for a visit.

The geographical remoteness of the detention facility imposes both logistical and financial hurdles. Lourdes and Mariana do not know when or if Genaro will come home or if the family will be able to continue sending money, particularly given the new financial costs Lourdes is anticipating as a mother-to-be. During Genaro's 6 months in detention, Lourdes and Mariana never managed to see him. Even when Genaro was released from detention, Lourdes and Mariana could not afford to pick him up from the facility, and the family relied on an act of charity from a Los Angeles-based pastor to bring him home. The remote location of the facility heightens families' vulnerability by imposing economic hardships that undermine family cohesion. Other respondents in the sample succeeded in raising money for a visitation journey, but not everyone who reached the facility was able to see their loved ones since access to detainees is shaped by the facilities' regulations,<sup>1</sup> which may deny families access upon arrival.

### *Legal Expenses*

The detention of a loved one also produces legal expenses. Every family in the study

had difficulties affording legal counsel to represent their relatives. Having access to legal counsel not only helps the detainee and their families navigate the complexities of U.S. immigration laws but also allows the detainee to learn about their rights (Ryo and Peacock 2019). In addition, legal representation increases the likelihood of receiving a bond hearing (Eagly and Shafer 2015) and being granted bond (Ryo 2016; 2018). Families face heightened financial vulnerability as they attempt to raise money for legal representation. If they cannot, their detained relative is at a higher risk of deportation (Ryo and Peacock 2019).

Carolina, a 23-year-old low-income mother and US citizen, explains how she experiences her mother's detention and why it is difficult to travel to see her. Carolina's mother, Noemi, a 43-year-old native from Mexico, was apprehended by ICE at a gas station when she was on her way to work at the restaurant where she has been employed for 23 years. Noemi was taken to a detention facility located more than 160 miles (almost 3 hours one way, not accounting for heavy traffic conditions) from where Carolina lives with her siblings, Robert and Peter (ages 15 and 11), and her 1-year-old son. Carolina describes her desperation especially after her mother suffered a stroke while in detention: "I need to pay for my mom's lawyer. It is a lot of money. I can't stop working; I need to make the payments. If I don't pay, no one is going to help her." To cope with the additional costs, Carolina has been working more than 60 hours per week: a full-time job during the week and a part-time job during the weekend to raise money to pay an immigration attorney to work on her mother's case. Meanwhile, Noemi felt neglected when Carolina would not take Noemi's calls or visit: "I wanted her to come and see me but she would tell me that she didn't have time...How could she not have time?...I didn't know she was behind on the payments for the lawyer." Though difficult, Carolina managed to raise enough money to finance an attorney on her mother's behalf; nevertheless, she paid a high

price: not being able to see her mother for 6 months while she was in detention.

Noemi's detention generates collective material liminality as it creates indefinite economic hardships for her adult daughter who is now responsible for paying the lawyer. Fortunately, because Carolina did fund her mother's legal counsel, Noemi received guidance in navigating the complexities of the immigration system (Ryo and Peacock 2019), which allowed her to be released from detention to continue fighting her deportation case. Overall, having access to capital to cover legal fees can potentially mitigate the imminent threat of a loved one's deportation, whereas lacking capital for these costs can heighten and extend the experience of collective liminality.

Thus, when families cannot successfully acquire legal counsel, the detainee may be denied a bond hearing or receive an exorbitantly high bond. For example, one study of immigration bond hearings in Southern California reported bond amounts ranging from \$10,667 to \$80,500, with an average of \$30,000 (Ryo 2016). High bond or denial of bond can extend detention, prolonging the condition of collective liminality, wherein the family faces an intense period of uncertainty under the constant threat of permanent family separation. Estevan's cousin Maria was detained for 3 years. He could not afford to pay a lawyer or pay Maria's bond. Maria, a mother of three children (two of whom live in Honduras) and with no other family in the US, was given a high bond by the immigration judge, and because Estevan could not come up with the money, this extended Maria's detention. Estevan explains what happened to Maria:

The judge told her to pay \$15,000. She cried and begged the judge to lower the amount. She even told the judge that she was about to lose custody of her daughter, but this didn't move the judge. She asked me if I could come up with the money, and I told her it was impossible. How could I? I work cleaning houses with my wife. We don't make that type of money.

With such a high sum of money, Maria and Estevan knew that she could not be released from

detention, and the pending threat of deportation continued to loom. Unable to raise the bond money or obtain transportation from ICE to attend the court hearing, Maria eventually lost custody of her youngest daughter Sofia.

### *Collective Liminality at an Emotional Level*

The fear that deportation will divide a family indefinitely affects both detainees and their loved ones, producing a state of collective emotional liminality. After facing the initial shock of finding out that a loved one has been apprehended, the family bears the burden of the ever-present possibility that their relative will be permanently exiled. The indeterminacy of detention pro- longs the uncertainty and anxiety, straining family relationships. Relatives struggle to maintain closeness; detainees' absence is felt in the families' everyday lives, and this affects their relational well- being. And although some families are able to maintain some cohesion through visiting their relatives in the detention facility, the apparatus of detention impedes intimacy. Suspended in time, punished and controlled within the apparatus of detention, the family unit experiences collective emotional liminality.

### *Initial Shock*

Following the initial shock of learning that a loved one has been apprehended by ICE, family members cross into collective emotional liminality, a state of uncertainty and fear, where they wait for a resolution suspended in time. They may feel trauma from witnessing ICE apprehend a loved one or guilt if they feel responsible for the apprehension (e.g., they opened the door not knowing it was ICE). They might receive a phone call from a detention facility. Some people hear about an apprehension through informal means, such as news from someone else in their social network. They may discern this indirectly, such as when their loved one does not come home or misses a shift at work. The detention of a loved one pushes the family into

collective emotional liminality, which begins as a state of desperation and confusion: they do not know who to call, how to find their relative, or where to search for help. The person must make sense of this new state before making plans or taking action to manage the detention of their loved one and to prevent deportation.

For example, Josefina, a wife, mother, and hotel worker originally from Mexico, explains how in early 2017 she was dragged into the state of collective liminality. She received a phone call from a man who said her husband, Eduardo, had been arrested and needed to be bailed out immediately or else he would be processed into immigration detention. “I just left work crying, feeling desperate, not knowing what to do. All I could think about was that he was going to get deported. It is the worst call you can receive.” Eduardo had been stopped by police for a broken taillight, and Josefina was racing against time to secure a bail bond for him quickly. Even though Josefina managed to pay his bail bond, she was too late. Eduardo was already placed under an immigration hold, a notification issued by ICE requesting the jail to hold Eduardo, so he could be transferred to ICE detention. In the course of just a few hours, an immigrant’s family can be pulled into collective liminality and cannot extract themselves, even if they react promptly.

### *Fearing the Consequences of Exile*

Immediately after a loved one’s apprehension, an immigrant family’s pervasive concerns about deportation become more acute and tangible. Families share their detained loved one’s fear of deportation and the violence they may face if removed. Camila’s daughter, Nadia, was apprehended by ICE in a traffic stop that turned violent. Camila explained, “I was afraid that they [ICE] were going to do something to her [Nadia]. The way they took her was very violent... For days I didn’t know where she was, and I thought that they already deported her.”

While Nadia's detention was brief, it was particularly intense and frightening because she was being acutely targeted for fast removal. Due to an ICE- imposed communications blackout, Camila feared they would be unable to communicate before ICE managed to deport Nadia. Camila's concerns were shared by Nadia's children, who were in the car with their mother at the time. Camila continued, "My grandkids were traumatized and everyday asked me, 'Grandma, where is my mom? Did they deport my mom?' And I tell them 'no, don't worry. The lawyer is going to help her.'" Camila's fear stems from the fact that Nadia's ex-husband has connections to human trafficking. Although Nadia is not connected to traffickers, if deported, she will be targeted by them and likely tortured or killed (Human Rights Watch 2020). In addition to fearing the violence her daughter would face, Camila must do the difficult emotional work of managing her grandchildren's anxieties about being permanently separated from their mother. The ever-present threat of deportation is not an isolated experience. Instead, it flares out beyond the detainee to produce traumas for the family, creating another aspect of this condition of collective emotional liminality, as relatives feel the pressure of desperately racing against time to prevent a loved one's permanent exile.

In addition, families experience anguish over the possibility that their relative will be deported to an unfamiliar country where they lack social networks. Anthony's wife, Silvia, a green card holder from the Philippines, arrived in the US with her mother at age 12. Anthony explains that Silvia has been detained for more than 3 years. "If they deport her, what are we going to do in the Philippines? We barely know anyone there...I live in fear that at any moment I'm going to get a call telling me that they are deporting her." The constant fear of Silvia's deportation strains the relational well-being of this family unit. Uncertainty about the future traumatizes Anthony and the children. He struggles with the possibility of having his family

not only separated but dissolved. For Anthony, Silvia's deportation would mean choosing between staying in the US as a single parent for their children's well-being or moving the entire family to a foreign country where they have weak networks and few resources. In contrast, Silvia is pragmatic and unequivocal about her preference for Anthony and the children to remain in the US in the event of her deportation. She is steadfast in her commitment to providing her children with access to opportunities within the US, which they, as American citizens, would be able to leverage. "I told Anthony, 'I don't want the kids coming to visit me [in detention]'... They needed to understand that I might not come back; it was easier this way." Nonetheless, this decision could be forced on the family at any time, with short notice, which places them in a perpetual defensive crouch.

### *The Indeterminacy of Detention*

The indeterminacy of detention—not knowing how long a loved one will be confined—is itself a source of anxiety and emotional strife. Nancy, a U.S. Citizen, native of Los Angeles, and mother of three children (Alan 8, Jimena 6, and Mikey 4), was eagerly counting down to her partner Theo's release from prison. With a definite release date, the family could plan for reunification. However, the family's hopes were dashed when Theo, a native from Mexico, was transferred from prison to ICE detention, which made him far more vulnerable to deportation. He contrasted prison with detention, where, without a release date, he felt more helpless and pessimistic. According to Theo,

Detention is torture, man...it's the waiting and not knowing a release date that kills you. If you told me, "You have a year to do," ah, cool, I'll do my year, keep myself busy, do my job, and count my days. But if you don't even know what day you are coming out, you are just living day by day.

At the beginning of a loved one's detention, a family can take actions on behalf of the detained person and support efforts for release. Compared to the generalized fear of deportation felt every

day in immigrant communities (Dreby 2012; Gonzalez 2016; Martinez et al. 2015; Menjívar and Abrego 2012), Nancy's actions shift from "if" to "when" under the intensified threat of deportation once Theo is moved from prison to detention. For example, Nancy married Theo inside the detention facility in an effort to stop the now-acute threat of deportation. On the drive to the detention facility the morning of her wedding, Nancy explained, "This is so out of character for me, to marry him without my parents knowing and in there [detention]. I do it to help him, and for my kids because I want them to have their dad." Detention introduces a threat so dire that Nancy makes a life-altering choice she did not consider previously, while Theo was free or in prison.

Theo has been detained for more than 3 years in a private detention facility. Nancy and the children try to keep a tiny glimmer of hope alive indefinitely and feel the emotional toll of knowing that the hope could be extinguished at any moment. Nancy explains how Theo's indeterminate detention is affecting her family:

Sometimes I feel desperate, because ICE can tell you something good but then, unexpectedly, things get worse. With these ups and downs, I feel anxious. I want this to stop. I want to feel that there is hope. I take it day by day and he [Theo] feels the same. Some days he is desperate, and some days he is fine. There are a lot of emotions: yes, maybe he is coming out! Then, no he is not. We are just waiting for him to come home.

Based on Nancy's statement, it is clear that the uncertain length of Theo's detention is a source of acute anxiety. Nancy also indicated that her experience is analogous to Theo's. Like Theo, Nancy and the rest of the family are "just waiting." The liminality is collective in the sense that they are on the same unpredictable emotional rollercoaster. The emotional toll of indeterminacy is severe. Over time, as appeals for release get denied, the family's hope fades as they have fewer options for blocking their loved one's deportation.

*Uncertainty Is Intensified for Undocumented Relatives*



Relatives that have an unregularized immigration status prevents them from seeing their detained loved ones. Such family members are already suspended in a legally liminal status (Menjívar 2006), which raises additional barriers to contact. While families experience this collective liminality, the uncertainty about permanent family separation is intensified because if they attempt to enter, they risk becoming vulnerable to detention themselves. This was the case for Jimmy, a 37-year-old marketing graduate and native from Colombia. Jimmy migrated to the US with a tourist visa and overstayed. Jimmy's fiancé Rosalia, a family lawyer and also a native from Colombia, was detained for more than 6 months. Jimmy faced a 3-hour drive to visit her; however, he could not enter the detention facility because he lacked proper documentation. A sense of isolation, experienced by the detainee and by loved ones, is reinforced by the inaccessibility of the facility. Rosalia's detention spilled over to affect Jimmy.

It's a very complex situation. Being unable to see her because of my [undocumented] status, and the constant uncertainty of knowing that living inside [detention] is hard. The physical and mental pressure...the mistreatment and inadequate food. Hearing all that [from her] made me feel that I was going crazy. She's going through all that, and I was here free, not being able to help her.

Jimmy's account illustrates how detention harms this couple's relational well-being. Intensified uncertainty results in a state of collective emotional liminality for both Jimmy and his fiancé. Even though Jimmy was willing and able to surmount geographic distance, he could not overcome the barrier posed by his legal status. Going to visit Rosalia would place him in a situation where he would risk his own detention or deportation. Nonetheless, he managed to drive at least twice to the detention facility and park close enough with some binoculars in hope to get a glimpse of Rosalia during her yard time. He explained how waiting for Rosalia made him feel on edge because he was not able to help her. The case of Jimmy and Rosalia illustrates a broader phenomenon: detention collectively punishes detainees and their loved ones who lack

immigration documents, by blocking visitation. In an attempt to navigate around this barrier, Jimmy paid documented friends to visit Rosalia, to check on her because he thought she was suicidal. However, she declined because she felt too humiliated to meet with them: “I didn’t want anyone to see me like this, wearing a uniform and with no dignity, because they even take that away from you.” Under collective liminality, the abusive conditions endured by detainees are particularly unsettling for family members because they are simultaneously grappling with temporal liminality and legal precarity. Not only is detention indefinite, but immigrants and their kin have limited options for legal recourse. Detainees then endure detention alone, isolated from relatives, while family members feel impotent and anguished because they cannot visit or help.

### *Toxic Culture of Detention*

Research has shown extensively that detention facilities have a toxic culture of disregard and cruelty toward detainees (Kelly 2019; Jorgensen 2017; Penn State Law Center for Immigrants Rights Clinic 2017), thus creating suffering and traumas. When loved ones attempt to visit relatives in detention, they too come into direct contact with the facility’s toxic culture. And like detainees, families encounter rules and regulations enacted by staff in ways that often feel arbitrary or disdainful. Visiting relatives wonder whether, when, and for how long they will be able to have contact with their detained loved one. Thus, the culture of disregard spills over to affect families of detainees which, in turn, produces collective emotional liminality.

Dolores, an elderly woman from Guatemala who does not speak English, encountered the toxic culture of the detention facility when she traveled from Los Angeles to try to locate her son Alejandro, who was being held at a detention facility 3 hours away. Dolores recalls that after waiting in line to be processed at check-in, she began speaking Spanish to a facility staff

member, who looked at her with disdain, and in a derisive voice said in English, “I don’t speak Spanish. I don’t understand what you are saying.” Frustrated, Dolores later said, “She [the staff member, Ms. Garcia] was lying, she spoke Spanish or at least understood what I was saying. She just didn’t want to help me.” Ms. Garcia looked through some paper- work cursorily for Alejandro’s name and quickly concluded that he was not at the facility. Fortunately, another visitor with a smartphone helped Dolores locate Alejandro in the Online Detainee Locator System, which indicated that he was indeed at this facility. At this point, Ms. Garcia informed Dolores that Alejandro was not allowed to receive visits that day. After investing significant resources of time and effort to travel to and attempt to navigate the detention facility, Dolores was unable to see her son. Uncertain about whether or when he might be deported, Dolores felt desperate, and yet noted a silver lining: “At least I know Alejandro is here.” The experience was needlessly upsetting because of the facility’s institutional culture of dismissiveness, which intensified Dolores’s anxiety.

Even when a detainee’s deportation seems imminent, the apparatus of detention continues to impede contact among family members, which stokes anxiety and strains relational wellbeing. Families in this situation are denied the opportunities to say final goodbyes, achieve emotional closure, or plan for the future. After years in detention, Theo received a deportation order. Fearing that this would be the last chance for the family to be together, Theo’s relatives—his mother Juanita, his wife Nancy, and his three young children—came to attend his court hearing and visit him in detention. With Theo’s permanent exile looming, the family faced extremely stressful circumstances, which were intensified by torment and humiliation enacted by the facility staff. This family endured both arbitrariness and cruelty. Ordinarily, Theo would have been ineligible to receive visitors on this day, but he had obtained a type of

special written permission informally referred to as a “kite.” Unfortunately, no clear protocols governed whether the kite would be acknowledged. When the family arrived early in the morning, they encountered a staff member who accepted the kite, and the family was placed in a queue for visitation. However, the family waited for several hours, during which time the shift changed, and different staff members arrived on duty. These staff members rejected the kite and verbally abused and demoralized the family when Nancy became agitated at the possibility that the visit would be denied. Nancy said:

They [officers] were punking us. They were being mean. He [Theo] already had an approved kite for three weeks. They feel that they have such authority. “You are like me [a woman of color],” I told them. I got so angry because they were making fun of me. When I told them, “I want to talk to the supervisor,” they said, “She is the supervisor” and laughed. They were cruel. They saw Alan [8-year-old son] crying, but they didn’t care.

Dismayed and increasingly desperate, the family tried to regroup in the waiting room. At this point, Nancy received a cell phone call from Theo, who was concerned that he had not been called for visitation. Inside detention, he had been growing progressively worried about why his loved ones had not yet been processed into the visiting room. Nancy said that Theo was worried that they were taking too long; he thought that they were going to see him right after court. After learning that the family was being denied entry, Theo told Nancy that he was going to try to find his deportation officer and let him know that the front desk was not allowing his family to visit. Both Theo and his family share the fear that he could be deported without the visit that the family had arranged through the kite. The sense of disempowerment and uncertainty radiates out from the detained person to his loved ones, stranding the entire group, on both sides of this administrative wall. Throughout the entire process, the family is stranded in a state of collective emotional liminality. The length of the wait is often unknown and can last hours, which frightens and demoralizes families. They endure extreme uncertainty

produced by the institution, as staff members make inconsistent decisions about how the visit will proceed. The same kite yielded different responses from different staff members. The collective liminality is increased by the arbitrariness of the process, which changes with the whims of the staff on duty.

As detainees and their families remain trapped in a state of collective emotional liminality, awaiting the terrifying possibility of deportation, they feel justifiable anxiety that permanent exile could begin at any moment. They endure a lack of control over their lives, as the detention of a loved one threatens to break the family unit. The emotional liminality is collective as anxieties flow in many directions: detainees worry that their young children will be frightened; relatives are distraught at the thought of a family member being detained in abusive conditions; spouses and partners agonize over whether their relationship can survive; families fear that a loved one, if deported, will be violently murdered abroad (Human Rights Watch 2020). The pervasive sense of vulnerability is rooted in relatives' inability to protect one another from harm.

### **Discussion and Conclusion**

This research analyzes the collateral consequences inflicted when a family unit is suspended in a heightened state of liminality due to their loved one's indeterminate detention. The liminal state experienced by immigrants detained by ICE is not contained but, rather, transcends the physical walls of detention facilities, producing unaccounted harms to their families. From the moment that an immigrant is detained and processed into detention, they and their families enter a state of liminality with two potential outcomes: release into the US or deportation to their country of origin. I develop a new theoretical framework called collective liminality to show how being suspended in this indefinite state of confinement harms both

detained immigrants and their loved ones. Studies have shown how even short periods of incarceration can harm the families of prisoners and detainees (Pelvin 2017; Ryo and Peacock 2019; Turney 2015). Other research shows how deportation hurts families (Golash-Boza 2019).

This study fills two gaps in our understanding of liminality and collateral consequences of confinement: I argue that the liminality of the carceral period itself harms detainees and their families, and that this harm begins prior to deportation, during the liminal period of detention. Detainees and their families may remain in this state for years. The vulnerability of the detainee, the humiliation of interaction with bureaucracy for the family, and the effects of being apart for an indefinite amount of time with an uncertain outcome combine to yield a profound impact on the lives of these families. My study reveals the specific character of collective liminality in this context: the heightened threat of permanent exile through deportation generates material hardship and emotional stress for the family network. Although the threat of deportation is ever-present in and harmful to immigrant communities, when a loved one is detained, the threat of deportation intensifies from “if” to “when.” No longer avoiding contact with ICE, the family unit must now mobilize to protect the detained relative from impending exile. Accordingly, detention serves as a particularly pernicious form of social control.

I find that the threat of a permanent territorial expulsion creates a plethora of consequences for detainees and their families, at both material and emotional levels. The analysis first demonstrates that the detainee experiences liminality. The liminality is, itself, harmful, and those damages become collective the moment they begin impacting loved ones. In particular, the conditions of hardship endured by the detained person—the indeterminacy of detention and a legal status that makes one vulnerable to constant threat of deportation—combine and spill over to create vulnerabilities for relatives. The vulnerability, in turn, yields

ongoing fear and uncertainty for the entire family unit, as it manifests in palpable material and emotional forms. These hardships assume a liminal character as families struggle to come to terms with the temporal indeterminacy of detention. They endure not only expenses, but indefinite expenses; not only pain, but indefinite pain.

The collateral consequences endured by family members are further exacerbated by the apparatus of immigration detention. Immigration detention is embedded within the institutional framework of immigration enforcement practices. Power relations between detainees and detention facility staff inflict psychological damage and erode immigrants' trust in the law and legal authorities (Ryo 2017). As detainees and their families remain suspended in a state of collective liminality, awaiting the terrifying possibility of deportation, they feel justifiable anxiety that permanent exile could become a reality at any moment. Instead of mitigating fear, the unique system of detention reinforces it, by creating geographic distance and imposing transfers (Ryo and Peacock 2018), as well as by increasing family isolation, extending detention when the family cannot afford legal counsel, and perpetuating an institutional culture of disdain and disregard for detainees and their loved ones. Together, these features contribute to a sense of powerlessness that distinguishes collective liminality from deportability. Nonetheless, families try desperately to secure their loved one's freedom against a ticking clock and a series of punitive bureaucratic hurdles. The challenges of being indefinitely suspended within this oppressive environment intensify an already-stressful experience.

This study also shows the value of bringing together disparate literatures on liminality and collateral consequences to advance a fuller understanding of how families of detained immigrants experience detention under the constant threat of permanent exile through deportation. Following Menjívar (2006), I contend that, for immigrants, liminality inflicts

vulnerabilities and amplifies powerlessness, as it creates in-between spaces within which the state can impose dominance and control bodies. My study thus contributes to previous literature on the far-reaching effects of immigration detention. O'Reilly (2018) contends that this environment produces “ontological liminality” for detainees where liminality is lived in spatial and temporal terms. Similarly, Sutton et al. (2011) show that seemingly endless detention harms detainees. I join Golash-Boza (2019), Koball et al. (2015), and Turney (2015) in advancing the argument that carceral spaces, such as immigration detention, strain relationships and harm families. To this discourse, I further add that detainees’ family members are pulled into this liminal space. Like the detained individual, the loved ones must wait under the constant threat of deportation while a process beyond their control unfolds.

Following research on the “collateral consequences” of mass incarceration, which documents how families of prisoners are impacted by the confinement of loved ones (Mauer and Chesney-Lind 2003; Pelvin 2017), I find that the families of detained immigrants endure emotional hardships. Previous research shows that families are harmed by the deportation of loved ones (Golash-Boza 2019; Rojas-Flores et al. 2017). My study contributes evidence that these harms precede deportation and actually begin manifesting during detention. Furthermore, I emphasize how these harms are rooted in the fear and uncertainty produced by liminal waiting. Unlike the families studied by Golash-Boza (2019), who already know the answer to the question of whether deportation will take place, my respondents demonstrate the damages wrought by the ever-present possibility of deportation, as detainees and their families suffer the trauma of wondering “Will deportation happen? When? Today?” As a loved one is held in detention, the family remains trapped in a liminal state as well. Because they are denied closure or resolution to the question of when or whether deportation (or release) will occur, it is



difficult to maintain family cohesion. Many of the immigrants in detention are parents, and their absence has a profound emotional impact on their children. Some children are left in the care of other family members or friends, which affects the children's development. Many begin exhibiting problems at school or enter into depression (Chaudry 2011; Gonzalez and Patler 2020; Hagan et al. 2009; Rojas-Flores et al. 2017). Overall, families find it hard to maintain family cohesion because they face obstacles to visiting their detained family members, who are most likely confined in remote locations.

The collateral consequences are not only emotional; they are also material. As Koball et al. (2015) have demonstrated, when an earner is removed from a family unit and placed in a carceral space, loved ones suffer financial vulnerability. Many detained immigrants are primary breadwinners for their families, so their confinement in detention triggers a state of economic crisis for their relatives, including partners, parents, and children (Chaudry 2011; Hagan et al. 2009). Families may endure food and housing insecurity, as they struggle to make ends meet. In addition, families must raise money to hire legal counsel to represent their loved ones at immigration court hearings. Thus, detention creates indefinite economic hardships and financial stressors for the entire family network.

In this study, the analytical lens of collective liminality illuminates the impact that liminality has on the detainees' family networks. In future research, this lens can be applied to other contexts in migration studies. For example, asylum seekers, most of whom are women and children from Central America, arrive at the US–Mexico border fleeing violence and economic insecurity. Under the 2019 Migrant Protection Protocol (MPP), these asylum seekers must wait for an indefinite period of time as their case is resolved (Department of Homeland Security 2019; Salazar Gonzalez 2019), which compels them to find temporary refuge in an

unfamiliar border town. Thus, the lens of collective liminality can reveal how families affected by the MPP are trapped in a legal, spatial, and temporal limbo, during which time they are exceptionally vulnerable. Their future is uncertain and at the mercy of bureaucratic processes beyond the family's control.

Collective liminality can also apply to the families of missing persons. Sometimes individuals—ensnared in migration-related human trafficking or embarking on dangerous journeys led by coyotes—become missing persons. In *The Land of Open Graves*, anthropologist Jason De Leon (2015) examines the lives and brutal deaths of thousands of undocumented migrants who attempted to cross the Sonoran Desert of Arizona. De Leon uses the phrase “bare life” to describe people who have died these senseless and meaningless deaths. Collective liminality exposes how these lives and deaths do have meaning, and to whom. In particular, the relatives of migrants lost in the Sonoran Desert become trapped in a state of collective liminality, characterized by agonizing uncertainty over whether their loved one is alive and whether they will ever be located. Families feel a desperate and ongoing responsibility to search for and try to help their loved ones. Grassroots groups of paramedics, firefighters, and community members organize search parties to assist families who have lost relatives in the desert. Despite these efforts, the families have little control over whether the missing person will be recovered, and they may be forced to cope with an indefinite period of grief and a lack of closure.

A different avenue for future research should explore the long-term effects of detention on both detainees and family networks, particularly with respect to detention's impact on one's sense of identity and belonging. An examination of an extended marginal legality can lay bare crucial aspects of immigrant life essential for theorizing about immigrant punishment,

surveillance, exclusion, citizenship, and belonging that lie at the core of varied forms of assimilation. My study shows that immigration detention benefits from docile, humiliated bodies that are easier to dominate and control. As families experience the combination of the toxic culture of detention and bureaucratic regulations, they are constantly reminded that they are both vulnerable and marginal. Citizenship affords protections. However, when relatives with citizenship status visit their detained loved ones, their own citizenship is held up for scrutiny. Their citizenship becomes tarnished and fragile as they endure the considerable stigma of being associated with someone who is viewed by the state as “illegal.” Moreover, under the current anti-immigrant climate, people with undocumented loved ones may reasonably fear that their own protections could be altered or revoked. Even absent a legal reclassification, families may feel a heightened sense of marginalization whenever institutions communicate that this status apparently justifies detention, abuse, and exile.

Finally, if institutions communicate these messages persistently and over an extended period of time, detainees and their families may alter their beliefs and behaviors in response. Whereas the present research shows the real-time, short-term damages of being humiliated and harassed within the apparatus of detention as detainees and as visiting loved ones, these punitive interactions likely inflict long-term harms that warrant attention. Immigration detention likely shapes both attitudes and actions, as people come to realize that this institution presumes their criminality and will treat them with disdain and suspicion. The effects of state scrutiny stem from a long tradition of preserving the American racial hierarchy, which bears relevance for critical race and ethnic studies, and for crime and punishment among communities of color. Prior literature establishes that minority groups’ racial identities are constructed as deviant and thus require legal control (Armenta 2017; Browne 2015; Kalhan 2014). As a form of social

control, detention is particularly pernicious because if a loved one is ultimately exiled, the punishment is extended indefinitely, with few options for recourse.

## References

- ACLU. 2020. "Analysis of Immigration Detention Policies." Available at: <https://www.aclu.org/other/analysis-immigration-detention-policies> (accessed 21 September 2020).
- Allen, Brian, Erica M. Cisneros, and Alexandra Tellez. 2015. "The Children Left Behind: The Impact of Parental Deportation on Mental Health." *J. of Child and Family Studies* 24: 386-92.
- Armenta, Amada. 2017. "Racializing Crimmigration: Structural Racism, Colorblindness, and the Institutional Production of Immigrant Criminality." *Sociology of Race and Ethnicity* 3: 82-95.
- Boehm, Deborah A. 2017. "Separated Families: Barriers to Family Reunification After Deportation." *J. on Migration and Human Security* 5: 401-16.
- Brabeck, Kalina M., M. Brinton Lykes, and Rachel Hershberg. 2011. "Framing Immigration to and Deportation from the United States: Guatemalan and Salvadoran Families Make Meaning of Their Experiences." *Community, Work and Family* 14: 275-96.
- Braman, Donald. 2004. *Doing Time on the Outside: Incarceration and Family Life in Urban America*. Ann Arbor, MI: University of Michigan Press.
- Browne, Simone. 2015. *Dark Matters: On the Surveillance of Blackness*. Durham, NC: Duke University Press.
- Cabanillas, Christina M. 2017. "'The Times they Are a-Changin': Sentencing in Illegal Reentry Cases and the November 2016 Amendment to USSG Sec. 2L1. 2 (b)(1)." *US Att'ys Bulletin* 65: 153.

- Charmaz, Kathy. 2006. *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis*. London: Sage.
- Chaudry, Ajay. 2011. "Children in the Aftermath of Immigration Enforcement." *The J. of the History of Childhood and Youth* 4: 137-54.
- Comfort, Megan L. 2003. "In the Tube at San Quentin: The "Secondary Prisonization" of Women Visiting Inmates." *J. of Contemporary Ethnography* 32: 77-107.
- Coutin, Susan. 2000. *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency*. Ann Arbor: University of Michigan Press.
- De Genova, Nicholas. 2004. "The Legal Production of Mexican/Migrant 'Illegality'." *Latino Studies* 2: 160-85.
- Department of Homeland Security. 2019. *Migrant Protection Protocol*. Available at: <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> (accessed 08 February 2020).
- De Leon, Jason. 2015. *The Land of Open Graves: Living and Dying on The Migrant Trail*, Vol. 36. Berkeley: University of California Press.
- Dreby, Joanna. 2012. "The Burden of Deportation on Children in Mexican Families." *J. of Marriage and Family* 74: 829-45.
- Eagly, Ingrid V. and Steven Shafer. 2015. "A National Study of Access to Counsel in Immigration Court." *University of Pennsylvania Law Rev.* 1-91.
- ERO, U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report. 2019, <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>.

- Emerson, Robert M. 2001. "Producing Ethnographies: Theory, Evidence and Representation." *Contemporary Field Research* 295.
- Enriquez, Laura E. 2020. *Of Love and Papers: How Immigration Policy Affects Romance and Family*. Berkeley: University of California Press.
- Golash-Boza, Tanya. 2019. "Punishment Beyond the Deportee: The Collateral Consequences of Deportation." *American Behavioral Scientist* 63: 1331-49.
- Golash-Boza, Tanya Maria. 2015. *Deported: Immigrant Policing, Disposable Labor and Global Capitalism*, Vol. 6. New York: NYU Press.
- Gold, Marina. 2019. "Liminality and the Asylum Process in Switzerland." *Anthropology Today* 35: 16-19.
- Gonzalez, Gabriela and Caitlin Patler, *Sociological Perspectives The Educational Consequences of Parental Immigration Detention 2020*, <http://dx.doi.org/10.1177/0731121420937743>.
- Gonzales, Roberto G. 2016. *Lives in Limbo: Undocumented and Coming of Age in America*. Berkeley: University of California Press.
- Griffiths, Melanie. 2013. "Living with Uncertainty: Indefinite Immigration Detention." *J. of Legal Anthropology* 1: 263-86.
- Hagan, Jacqueline, Brianna Castro, and Nestor Rodriguez. 2009. "The Effects of US Deportation Policies on Immigrant Families and Communities: Cross-Border Perspectives." *NCL Rev.* 88: 1799.
- Hasselberg, Ines. 2016. *Enduring Uncertainty: Deportation, Punishment and Everyday Life*, Vol. 17. New York: Berghahn Books.

- Human Rights Watch. 2017. “Immigrant Detention Centers in California.” Available at: <https://www.hrw.org/video-photos/map/2017/05/12/immigration-detention-centers-california> (accessed 08 February 2020).
- Human Rights Watch. 2020. “Deported To Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse.” Available at: <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and> (accessed 08 February 2020).
- Jorgensen, Christian. 2017. “Immigrant Detention in The United States Violations of International and Human Rights Law.” Available at: <https://silo.tips/download/immigrant-detention-in-the-united-states-violations-of-international-and-human-r> (accessed 23 September 2020).
- Kalhan, Anil. 2014. “Immigration Surveillance.” *Md. L. Rev.* 74: 1.
- Kanstroom, Daniel. 2012. *Aftermath: Deportation Law and The New American Diaspora*. New York: Oxford University Press.
- Kelly, John V. 2019. *Concerns About ICE Detainee Treatment and Care at Four Detention Facilities*. Office of Inspector General. Available at: <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf> (accessed 08 February 2020)
- Kleinman, Arthur, Veena Das, and Margaret Lock. 1997. *Social Suffering*. Berkeley: University of California.
- Koball, Heather, Randy Capps, Krista Perreira, Andrea Campetella, Sarah Hooker, Juan Manuel Pedroza, William Monson, and Sandra Huerta. 2015. “Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents.” Urban Institute and Migration Policy Institute. Available at: <https://www>.



- migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents (accessed 23 September 2020)
- Kusenbach, Margarethe. 2003. "Street Phenomenology: The Go-Along as Ethnographic Research Tool." *Ethnography* 4: 455-85.
- Martin, Lauren L. 2012. "'Catch and Remove': Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice." *Geopolitics* 17: 312-34.
- Martinez-Aranda, Mirian G. 2020. "Extended Punishment: Criminalising Immigrants through Surveillance Technology." *J. of Ethnic and Migration Studies*. 1-18. <https://doi.org/10.1080/1369183X.2020.1822159>.
- Martinez, Omar, Elwin Wu, Theo Sandfort, Brian Dodge, Alex Carballo-Diequez, Rogeiro Pinto, Scott Rhodes, Eva Moya, and Silvia Chavez-Baray. 2015. "Evaluating the Impact of Immigration Policies on Health Status Among Undocumented Immigrants: A Systematic Review." *J. of Immigrant and Minority Health* 17: 947-70.
- Mauer, Marc and Meda Chesney-Lind. 2003. *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. New York: The New Press.
- Menjívar, Cecilia. 2006. "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States." *American J. of sociology* 111: 999-1037.
- Menjívar, Cecilia and Leisy Abrego. 2012. "Legal Violence: Immigration Law and The Life of Central American Immigrants." *American J. of sociology* 117: 1380-421.
- Mountz, Alison. 2012. "Mapping Remote Detention: Dis/Location Through Isolation." In *Beyond Walls and Cages: Prisons, Borders, and Global Crisis*, edited by Jenna Loyd, Matt Mitchelson, and Andrew Burridge, 91-104. Athens: University of Georgia Press.

- O'Reilly, Zoe. 2018. "Living Liminality': Everyday Experiences of Asylum Seekers in The 'Direct Provision' System in Ireland." *Gender, Place and Culture* 25: 821-42.
- Patler, Caitlin and Tanya Maria Golash-Boza. 2017. "The Fiscal and Human Costs of Immigrant Detention and Deportation in the United States." *Sociology Compass* 11 (11): e12536.
- Pelvin, Holly. 2017. "Doing Uncertain Time: Understanding the Experiences of Punishment in Pre-Trial Custody". Ph.D. diss., Department of Criminology, University of Toronto, Canada.
- Penn State Law Center for Immigrants Rights Clinic. 2017. "Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers. Proj. South Atlanta." Available at: <https://www.safealternativestosegregation.org/resource/imprisoned-justice-inside-two-georgia-immigrant-detention-centers/> (accessed 23 September 2020)
- Petersen, Nick. 2020. "Do Detainees Plead Guilty Faster? A Survival Analysis of Pretrial Detention and the Timing of Guilty Pleas." *Criminal Justice Policy Rev.* 31: 1015-35.
- Rodriguez, Cassandra. 2016. "Experiencing Illegality as a Family? Immigration Enforcement, Social Policies, and Discourse Targeting Mexican Mixed Status Families." *Sociology Compass* 10: 706-17.
- Rojas-Flores, Lisseth, Mari L. Clements, J. Hwang Koo, and Judy London. 2017. "Trauma and Psychological Distress in Latino Citizen Children Following Parental Detention and Deportation." *Psychological Trauma: Theory, Research, Practice, and Policy* 9: 352-61.
- Ryo, Emily. 2016. "Detained: A Study of Immigration Bond Hearings." *Law & Society Rev.* 50: 117-53.

- Ryo, Emily. 2017. "Fostering Legal Cynicism through Immigration Detention." *Southern California Law Rev.* 90: 999.
- Ryo, Emily. 2018. "Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings." *Law & Society Rev.* 52: 503-31.
- Ryo, Emily and Ian Peacock. 2018. "A National Study of Immigration Detention in the United States." *Southern California Law Rev.* 92: 1.
- Ryo, Emily and Ian Peacock. 2019. "Beyond the Walls: The Importance of Community Contexts in Immigration Detention." *American Behavioral Scientist* 63: 1250-75.
- Salazar Gonzalez, Carla. 2019. "The Consequences of a Punitive Legal Process for Central American Women Seeking Asylum in the US." Presented at UCLA Research Group, University of California Los Angeles, 16 October.
- Singer, Audrey. 2019. *Immigration: Alternatives to Detention (ATD) Programs*. Washington, DC: Congressional Research Service.
- Slack, Jeremy, Daniel E. Martinez, Scott Whiteford, and Emily Peiffer. 2015. "In Harm's Way: Family Separation, Immigration Enforcement Programs and Security on the US-Mexico Border." *J. on Migration and Human Security* 3: 109-28.
- Sutton, Rebecca and Darshan Vigneswaran. 2011. "A Kafkaesque State: Deportation and Detention in South Africa." *Citizenship Studies* 15: 627-42.
- Toma, Kristine. 2017. "Providing A Solution for Immigrant Detainees Held Under The Mandatory Detention Statute." *J. National Association of Administrative Law Judiciary* 37: 858.

Transactional Records Access Clearinghouse (TRAC), 2017. “Use of ICE Detainers Obama vs. Trump.” Available at: <https://trac.syr.edu/immigration/reports/479/> (accessed 08 February 2020).

Transactional Records Access Clearinghouse (TRAC), 2018. “Latest Data: Immigration and Customs Enforcement Removals.” Available at: <https://trac.syr.edu/phptools/immigration/remove/> (accessed 08 February 2020).

Turnbull, Sarah. 2016. “‘Stuck in The Middle’: Waiting and Uncertainty in Immigration Detention.” *Time and Society* 25: 61-79.

Turner, Victor. 1967. *The Forest of Symbols: Aspects of Ndembu Ritual*. Ithaca: Cornell University Press.

Turney, Kristin. 2015. “Liminal Men: Incarceration and Relationship Dissolution.” *Social Problems* 62: 499-528.

Van Gennep, Arnold. 1960. *The Rites of Passage*. Chicago: University of Chicago Press. Zayas, Luis H. 2015. *Forgotten Citizens: Deportation, Children, and the Making of American Exiles and Orphans*. New York: Oxford University Press.

#### Cases Cited

*Jennings v. Rodriguez*, 583 U. S. (2018)

#### Statutes and Regulations Cited

Immigration and Nationality Act, 8 U.S.C. §§ 1226(a) (2012)

## CHAPTER FOUR

### **Extended Punishment: Criminalizing Immigrants Through Surveillance Technology<sup>2</sup>**

#### **ABSTRACT**

While the social costs of immigrant detention have been well-established, less is known about immigrants who continue to be monitored by Immigration and Customs Enforcement after their release from custody. Some immigrants are enrolled in Alternatives to Detention programs and must wear an electronic monitor (EM). Drawing on 21 months of ethnographic observations, semi-structured interviews, and conversations with immigrants in Los Angeles who have been released from detention with an EM, this chapter examines how EM operates as a surveillance tool that influences the immigrant's relationship with the state, community, and self. Release from detention could conceivably provide an immigrant with the benefits of reintegration into a co-ethnic community. However, under surveillance, the immigrant loses access to co-ethnic social capital, as the state fractures their safety net. Thus, EM operates as a tool of legal violence, creating a new axis of stratification and producing the unequal distribution of autonomy and resources. EM generates a condition of 'extended punishment' that consists of material and social harms that affect immigrants, families, and communities.

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<sup>2</sup> This chapter is a modified version of Martinez-Aranda, Mirian G. 2020. Extended punishment: criminalizing immigrants through surveillance technology. *Journal of Ethnic and Migration Studies*, 1-18.

## INTRODUCTION

The widespread criminalization and mass-incarceration of racial and ethnic minorities in the U.S. also targets immigrants (Stuart et al. 2015). The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) exemplifies this punitive turn. Under IIRIRA, the federal government retroactively expanded the definition of aggravated felony, criminalized civil immigration violations, and streamlined removal proceedings for ‘illegal aliens’ (Juárez et al. 2018). Additionally, IIRIRA converged the criminal justice and immigration enforcement systems, instituting a legal environment of ‘cimmigration’ (Hernández 2019; Stumpf 2006) that is characterized by escalating border militarization, hyper-policing, surveillance, detention, and deportation. Socio-legal scholars have documented the harms of detention, including allegations of psychological, sexual, and physical abuse; exploitative labor practices; and substandard medical care (Ryo and Peacock 2018). Detainees’ relatives also face negative effects from civil and human rights violations, family separation, emotional trauma, and economic instability (Chaudry et al. 2010; Hagan et al. 2010; Patler and Golash-Boza 2017). With limited earnings and uneven access to social services, entire communities with high detention rates are kept resource-poor (Menjívar and Kanstroom 2013).

After enduring detention, some immigrants are enrolled in Alternatives to Detention (ATD) program, such as the Intensive Supervision Appearance Program (ISAP) and released with GPS-enabled electronic ankle monitors (EM). As of July 2019, over 100,000 immigrants were enrolled, 46 percent of whom were monitored by EM (Singer 2019). Post-detention participation within the community could offset some of the harms of detention and lead to a re-integration of the former detainee in the migration networks, boosting an immigrant’s autonomy and access to employment, and providing opportunities to work on one’s legal case. Like Gómez

Cervantes et al. (2017), this study finds that EM is not a ‘humane’ alternative to detention. Beyond Gómez Cervantes et al.’s focus on state practices, I additionally document damage to immigrants’ co-ethnic networks and sense of self.

EM works as a neo-Foucauldian surveillance technology invading the everyday life of marginalized groups (Garland 2001; Staples and Decker 2008). Vulnerable immigrants manage both the humiliation of wearing EM and the burden of being constantly watched by the state, conditions that generate anxiety and take a toll on individuals’ well-being. Whereas Foucault’s (1977) classic theory states that panoptic surveillance disciplines people into conformity, Bigo (2006) coined the term ‘ban-opticon’ to describe surveillance that seeks to proactively remove members of groups whose future behavior might be considered threatening (Bigo 2006; Franko 2020). I argue that immigrants under EM surveillance simultaneously endure panoptic and ban-optic supervision. Panoptic surveillance techniques (EM) enforce discipline while also monitoring for deviations. EM devices routinely malfunction, triggering ‘violations’ that can then be used to justify ban-optic removal practices (deportation). Under this regime, EMs become tools of legal violence (Menjívar and Abrego 2012) that yield a new axis of stratification among immigrants. Because EM unequally allocates autonomy, privacy, and resources, wearers find themselves more vulnerable and constrained than other immigrants.

Based on 21 months of ethnographic observations complemented with in-depth interviews with 30 immigrants released from detention with an EM, my study asks: How does EM operate as a surveillance tool that shapes immigrants’ relationship with the state, their integration in their co-ethnic community, and their sense of self? I find that intensive state surveillance creates a condition of ‘extended punishment’ that shapes the daily experiences of shackled immigrants. EM marks its wearer with a criminal stigma, leading that person to become

shunned, including by previously supportive members of their co-ethnic community. The technology's governmental surveillance power imposes state monitoring, social ostracization, and a stigmatizing label. This study extends the 'crimmigration' literature (Hernández 2019; Stumpf 2006) by analyzing a key technique of repressive government surveillance that constructs immigrants as 'undocumented criminal aliens'. The term 'crimmigration' has been criticized for detracting from the criminalization of minority populations (Chacón 2012) and naturalizing the association between immigration and crime (Abrego et al. 2017; Melossi 2015). However, the term still captures the widespread, policy driven conflation of criminal and civil immigration law.

To cope with vulnerabilities produced by surveillance, immigrants may turn to co-ethnic networks for resources, according to segmented assimilation scholars (Portes and Zhou 1993; Zhou 2010). However, this assumption does not always hold, and other research reveals that economic inequality fragments immigrants' networks (Menjívar 2000) and even facilitates exploitation (Cranford 2005; Rosales 2013). Furthermore, the uneven distribution of legal rights between undocumented and documented people normalizes subtle forms of exploitation that reproduce state legal violence (Menjívar and Abrego 2012) within immigrants' intimate ties (Del Real 2018). By focusing on social mechanisms – malfunctioning technology, exclusion from co-ethnic supports, a stigmatizing label – that generate extended punishment within the spaces of government, community, and self, I argue that post-detention EM surveillance erodes immigrants' main source of support: their social ties. EM-wearers are ostracized because the device makes others vulnerable to surveillance and deportation. State agencies use malfunctioning technologies to construct immigrants as 'non-compliant', an orientation that



blames immigrants, while off-loading responsibility from the state onto individuals and communities, thereby contributing to the criminalization of immigrants.

## **LITERATURE REVIEW**

### *Theorizing Surveillance*

Racial and ethnic minorities, including members of immigrant communities, have been subject to widespread criminalization and incarceration. Research overwhelmingly suggests that associating racial groups with criminality reifies racial markers as justification for policing (Armenta 2017; Kalhan 2014), institutional racism (Armenta 2017), and the expansion of social control over these populations (Gómez Cervantes et al. 2017; Menjívar et al. 2018).

As criminal threat and immigrant status are conflated, anti-immigrant rhetoric and legislation fabricate the status of immigrant ‘illegality’, (Armenta 2017; De Genova and Peutz 2010; Hernández 2019; Stumpf 2006), which maintains the US racial hierarchy (Menjívar and Kanstroom 2013; Ngai 2006). The emergent ‘crimmigration’ system is an instrument to sharpen discipline and punishment, as individuals who were previously ‘undocumented’ are now considered ‘criminal aliens’ by the state. Immigrants are thus subject to both monitoring and exclusion on the grounds that their future behavior might pose security risks (Bigo 2006). Indeed, immigrants have been persecuted for minor legal infractions that were once considered civil matters (Armenta 2017). In response, immigrants develop strategies of self-preservation, such as staying indoors, avoiding public spaces that might make them visible to law enforcement (Talavera et al. 2010).

Immigration enforcement control within the US exacts a high human cost through policing and surveillance (Armenta 2017; Golash-Boza 2015; Golash-Boza and Hondagneu-Sotelo 2013), by making apprehension and deportation a constant threat (Armenta 2017; De

Genova and Peutz 2010; Golash-Boza 2015). These pervasive psychological threats affect both the individual's sense of self (Willen 2007) and their community's relationship to the state. As detentions have skyrocketed, immigrants, their families, and their communities experience detrimental socioeconomic effects and mental health challenges (Hagan et al. 2010). Detention disrupts family ties, aggravating already-high stress levels in families and communities (Hagan et al. 2010). Additionally, children who have experienced relatives' detention or deportation are more susceptible to anxiety, stress, and depression (Chaudry et al. 2010).

When the state determines that incarceration is unwarranted, individuals may be released under ATD, which frequently features invasive EM surveillance. Foucault's (1977) panoptical theory asserts that the state deploys individualized control technologies to impose discipline. The panopticon induces in the individual a sense of permanent visibility and vulnerability, ensuring the functioning of power (Foucault 1977). Recent scholars have focused on how modern technologies enable the invisibility of the surveillance and active involvement of individuals in their own monitoring (Staples and Decker 2008). EM is Foucauldian in the sense that it is panoptic: it transcends geography; it surveils the wearer continuously; monitored immigrants alter their behavior to avoid punishment. EM not only increases conformity to state demands, it encourages 'potentially deportable immigrants [to internalize] the perception that their immigration status is constantly being monitored' (Kalhan 2014, 61).

However, in the context of immigration enforcement, the question arises as to whether the objective of the state is to discipline immigrants into conformity or to remove them. The state's primary goal is often deportation instead of reintegration (Kaufman 2013; as cited in Franko 2020). Didier Bigo (2006) describes this aim as 'ban-opticism', which prioritises territorial exclusion and 'moves the attention from ... the control of the soul to the control of

cross-border movement' (Franko 2020 p. 93). Within this framework, my contribution is that surveillance technologies such as EM emerge as disciplinary tools that simultaneously control bodies (panoptic) and threaten to exile them (ban-optic). I argue that this dual-purpose surveillance imposes a new axis of stratification upon immigrants' mixed-status social networks. Burdened by stereotypes of criminality and constrained by the imminent threat of deportation due to device malfunction, EM-wearers in these networks have less freedom of movement compared to other immigrants.

Techno-utopian perspectives emphasize the benefits of monitored release over incarceration, but members of communities of color do not necessarily experience the benefits (Hucklesby 2013; May et al. 2014). EM increases their chances of being re-incarcerated (Kilgore 2013). Compared to whites, minorities are more likely to perceive the alternatives to detention as restrictive (May et al. 2014; Nellis 2013). People on monitored release also experience financial costs related to the technology, including set-up fees and maintenance fees. Furthermore, EM impedes their ability to maintain secure employment (Hucklesby 2013).

Few studies have investigated whether immigrants suffer similar setbacks when monitored with an EM (Gómez Cervantes et al. 2017). Compared to other vulnerable populations, immigrants could be expected to fare better, by drawing on strong co-ethnic community ties. But under what conditions does the assumption of co-ethnic assistance hold true? Some previous scholarship has identified co-ethnic networks as sources of support (Alba and Nee 2003; Enriquez 2020; Portes and Zhou 1993; Zhou 2010). Immigrants have retained access to their communities by participating in co-ethnic economies, especially inside ethnic enclaves (Menjívar 2000; Zhou 2010). However, other scholars have identified that when the political climate is hostile, economic opportunities are scarce (Gomberg-Muñoz 2012) and

communities' resources scant, immigrants' relationships can fragment (Menjívar 2000) and become exploitative (Coutin 2003; Del Real 2018; Gomberg-Muñoz 2012; Menjívar 2000; Rosales 2013). My study reveals how EM, as a tool of legal violence (Menjívar and Abrego 2012), strains ties among immigrants because it stratifies autonomy, restricting the mobility of EM-wearers relative to immigrants who have greater economic and legal resources or who have been spared this form of electronic surveillance.

Building on these literatures, I analyze how EM limits the potential benefits of release from detention, as evidenced by Foucauldian insights and research on tech-enabled surveillance of communities of color. Given heightened immigration enforcement, EM may encourage stigmatization of immigrants as 'non-compliant criminal aliens'. It is important and urgent to investigate how the state transfers responsibility and risk onto marginalized immigrant communities. This research contributes a critical analysis of how networks respond to this surveillance tool. To the extent that monitored immigrants may face diminished freedom of movement and access to community resources, this research aims to understand how these individuals might endure extreme material, social, and emotional hardships, as the state fractures their safety net while further stratifying ethnic communities.

#### *EM as a Tool of Extended Punishment*

This chapter introduces the concept of *extended punishment* to examine how immigration enforcement's worst features of abuse and isolation are distilled to their essence and packaged into a small, portable tracking device. Confinement is no longer geographically and temporally specific: EM extends punishment such that shackled immigrants carry the surveillance of detention with them wherever they go. When one is attached to an EM, release from detention does not yield freedom. Instead, the eye of the state, infiltrates immigrants' everyday lives and

social networks. EM is literally a beacon that may summon ICE into immigrant's lives and into their communities. It operates as an electronic leash attached to the deportation machine. EM functions as a tool of legal violence (Menjívar and Abrego 2012), enacted by the state, that lengthens the period of confinement and spreads its effects within a social network. Extended Punishment is manifested in the material and social harms produced by EM and the consequences for immigrants, families, and communities. I investigate the extent to which the increased reliance of immigration enforcement on electronic monitoring of immigrants released from detention impacts their relationship with the state, their relationship with their co-ethnic community, and their sense of self.

## **METHODS**

### *Context and Methods: Immigrants Under Surveillance*

September 11, 2001 marked a shift in the state's approach from service to surveillance (Finnie et al. 2012). In 1997, supervision without EM emphasized assistance for participants, including legal counsel, language interpretation, transportation for hearings, medical care, and housing assistance (Finnie et al. 2012). In 2004, ICE awarded the Intensive Supervision Appearance Program (ISAP) contract to the private company Behavioral Interventions (BI) Incorporated and introduced EM. Limited detention capacity and an increasing detainee population spurred the decision to emphasize post-release supervision (Finnie et al. 2012). ISAP functions as a flight mitigation program by using technology and case management to increase compliance with release conditions, court appearances, and final orders of removal (Singer 2019). Now in its third iteration, ISAP operates nationwide under a single contractor in over 100 locations (Singer 2019). In 2010, GEO Group Inc., the nation's largest private prison company, acquired BI Inc. and now operates ISAP (Finnie et al. 2012). Although the state does not manage

ISAP, it has designated BI Inc. to enact social control on its behalf, as part of an emerging ‘immigration industrial complex’ described by Gómez Cervantes et al. (2017) as ‘the interwoven network of social control that is created by law, the justice system, and private corporations’ (1). ICE has championed EM as an alternative to detention that is both ‘humane’ and cost-effective. Whereas ICE spends an average of over \$200 per day to detain an individual, the cost of EM per day is as low as \$4.16 (Singer 2019). At the time I conducted this research, EMs technology was not prevalent in immigrant communities. However, as of 2018 EMs have increased dramatically, in 2018, Congress funded ATDs at \$180 million, an increase of \$66 million from 2017 (Singer 2019), and the extent of news coverage about this phenomenon grew as well. Thus, the period of data collection was on the cusp of this massive change in the use of EMs on immigrants released from detention. Currently, immigrant communities understand that EM does not signify criminality, but they still are aware of its power to attract the state (ICE).

This qualitative study draws its findings from 21 months of ethnographic observations and semi-structured interviews, follow-up interviews, and informal conversations with 30 immigrants monitored by an EM. As a participant observer, I collected data in the Los Angeles metro area between June 2015 and March 2017, during which time I built relationships with pro-immigrant community organizations and gathered fieldnotes as I accompanied participants to their check-ins at the ATD offices. Los Angeles is an appropriate site for two reasons: first, in 2014 it had one of the highest numbers of individuals enrolled in ATD program at 2498 participants (USICE 2014); and second, it is an old destination for immigrants and is home to strong community networks (Logan et al. 2002).

To establish and maintain contact with respondents, I facilitated and attended events at pro-immigrant community organizations. Through one organization’s ‘Accompaniment

Program’, I met families impacted by detention and joined them for their ATD check-ins approximately two times per week for nine months. My own positionality as an immigrant with now-acquired privilege, social capital, and citizenship (Emerson 2001) both facilitated a trustworthy relationship with the participants, and also allowed me to advocate for them. To the extent that my data collection process called for occasions of advocacy, this allowed me to collect richer data on participants, whose lives consist of far more than EM. Without a strong rapport, the interviews would have been rendered impossible. ATD offices are not neutral political spaces, so as ethnographic sites, navigating as a ‘free agent’ participant observer, interacting collegially with case workers, officers, and other agents of the state would have likely sewn distrust from and provoked anxiety within the people I wanted to speak with most: the immigrants themselves.

I relied on key community informants to recruit an initial wave of respondents. I then recruited additional participants from interviewees’ networks, through snowball sampling. I interviewed 5 men and 25 women. The sample consisted mostly of women because women immigrants – perceived by the state as less threatening than men – are more likely to be released back into the community. In contrast, immigrant men are more likely to be detained, incarcerated, and/or deported, reflecting the gendered character of punishment orchestrated by the state (Golash-Boza and Hondagneu-Sotelo 2013). However, to ensure that men would be included too, I expanded my sample by recruiting respondents at community events. Respondents were between 20 and 55 years old and varied in nativity: 16 Central Americans, 7 Mexicans, 2 South Americans, 2 Cubans, 1 Ethiopian, 1 Russian and 1 Filipino. Although this study was not designed to investigate differences across nationalities, EM was experienced as stigmatizing and burdensome across all groups.

The interviews lasted 1–2 h and were conducted in Spanish and English at a location selected by respondents, usually at their homes, coffee shops, or pro-immigrant organizations. The questions were open-ended and addressed topics including perceptions and consequences of ‘criminalization’ and ‘illegality’, encounters with immigration enforcement, the effects of EM, and return to society following release. Interviews were digitally recorded, transcribed, and Spanish interviews were translated into English. Respondents were assigned pseudonyms to protect their confidentiality.

Ethnographic observations and qualitative interviews constitute ideal data sources, given the study’s objective of highlighting how—from the immigrant’s perspective—EM, as a tool of technological surveillance, imposes a stigma that profoundly affects their interactions with state officials, their ties with co-ethnics, and their individual mental health. Furthermore, by using the hybrid ‘go-along’ ethnographic tool (Kusenbach 2003), I was able to document participants’ interactions with ICE representatives, caseworkers, relatives, and community members as they navigated EM surveillance. The transparency of the results and straightforward nature of the analysis allow for replicability of findings.

Using Dedoose, a qualitative analysis program, I applied an open-ended coding process and generated memos based on emergent patterns in fieldnotes and interview transcripts. The analytical strategy relied on deductive and inductive coding approaches. Deductive aspects of the analysis involved coding notes and transcripts for themes of ‘punishment’, ‘criminality’, ‘illegality’, and ‘surveillance’. I noted instances where theories from the surveillance and crimmigration literatures appeared in the data. Further, I applied a grounded-theory inductive method (Charmaz 2006) to allow for patterns that were unanticipated by previous research, but rather, emerged from the data. Inductive methods created space for respondents’ own meanings



and interpretations to move to the foreground. This yielded insights about ‘extended punishment’. The analysis focuses on phenomena that occurred repeatedly. Below, I discuss accounts that relate to relevant literature and theory, while also illuminating the data’s most prominent themes.

## FINDINGS

### *Signal to the state*

Immigrants with an EM remain subject to tight state supervision. The state initially shackles immigrants because it sees them as noncompliant ‘illegal criminal aliens’. I show that EMs malfunction frequently, and these ‘violations’ verify the state’s assumptions of immigrants’ criminality. Accordingly, the state holds immigrants responsible for EM malfunctions that are beyond their control, and then uses those malfunctions to punish the wearer further, with the simultaneous application of panoptic (Foucault 1977) and ban-optic (Bigo 2006; Franko 2020) surveillance. Panoptic surveillance demands docility and compliance and takes the form of extended EM contracts and re-detention. Ban-optic surveillance threatens to remove the ‘noncompliant’ person via deportation. Thus, I argue that technological flaws are weaponized against this population, as EM establishes a punitive, hyper-regulated relationship between ICE and the wearer, producing ‘extended punishment’ mediated by a technology of fear.

Immigrants report that ‘agreeing’ to wear an EM (participation in their own surveillance) is a prerequisite for release. An ICE Director explained his reasoning for shackling immigrants as follows, ‘Otherwise they skip court. The low bond costs the same as getting smuggled across, so they can choose to lose that money and not show up’. Because the state anticipates ‘noncompliance’, immigrants are not given a choice but are pressured to wear EM, which they often accept because they want to be released from detention. For example, Anielka, a Cuban

immigrant and mother of a toddler, described her ISAP enrolment as follows: ‘They didn’t even ask me if I wanted it. The officer told me, “If you want to get out, you have to wear this [EM]”’. Immigrants like Anielka are required to sign documents that misrepresent their enrolment as voluntary. The alternative ‘choice’ is to remain in detention. Further, the state requires participants to opt in, a contradiction in terms.

When immigrants first learn of their release from detention with an EM, they respond with a complex mixture of joy, relief, and disbelief. They equate release with freedom. For example, Birhan, an Ethiopian immigrant and a former college instructor in Addis Ababa, says, “The day I got out, I didn’t even believe when they opened the gate for me. [Joyous laugh] They told me that I was free. I cried! I didn’t care that they put a bracelet on, all I could think about was that I was getting out of detention.” Birhan indicates that at the moment of his release, he did not consider EM a problem, a naive assumption that all respondents shared. However, the initial optimism of being released subsides when people realize the burdens and harms EM creates. Danny, an environmental activist from Honduras, exemplifies this realization, ‘This grillete [EM] is a mirage that, at first glance, wouldn’t bring you any problems, but it’s the same thing. I can’t move; I can’t go places’. EM creates an illusion of freedom, until the wearer realizes that they are nearly as confined as they were in detention. While respondents universally prefer EM surveillance to detention, EM surveillance is more fraught and frightening than they anticipated. For this reason, many interviewees regard EM as an extension of detention.

ICE claims to provide an extensive orientation about ISAP and EM. It consists of watching an ‘informational’ video about rules and regulations. But as Maria, a Honduran immigrant and mother of three children, explains, ‘The video says how to connect this thing to electricity and when it turns green or red. It doesn’t have any other information... it just keeps

repeating itself'. As Maria reports, the video fails to warn wearers about device malfunctions—'violations'—and the consequences they trigger. Perversely, these malfunctions are not caused by the wearer. Rather, the technology itself is faulty, and yet, the wearer is unfairly held accountable for these 'violations'. State agents can then use the 'violations' to justify blame, scrutiny, and additional punishments.

Many respondents shared this frustration and reported that their devices constantly malfunctioned. Nora from Mexico said, 'Last night, this thing [EM] would not stop chillando [emitting warnings]. I couldn't sleep, and it kept all my children awake'. Teresa, from Guatemala, had a violation because she did not notice that her battery had died. She said, 'They yelled at me, asking me where I was because I didn't show up in their machine [computer]'. According to BI Inc., a fully-charged battery lasts at least 24 h, but respondents reported that battery life can be shorter or longer for no apparent reason, and the electronic signal gets lost unpredictably. These accounts make clear that wearers are sanctioned for 'violations' that are actually caused by malfunctioning technology.

EM gathers data and quickly recognizes patterns of activity, and any deviations (including unremarkable ones such as taking a different route to work) can potentially invite caseworker scrutiny. Thus, constant and intrusive monitoring creates an asymmetrical power relationship that benefits the state while sanctioning the wearer. However, 'noncompliance' can be traced to flaws in the state surveillance apparatus. For example, Maria's caseworker, Ruben, interrogated her about why her EM was not working. 'Last Friday you weren't showing up on my screen. What happened? You disappeared'. Maria explained she was showering when the monitor began beeping and then died, so she called him immediately and left a message. Ruben responded, 'It's good you called, so I know you didn't disappear. If they [ICE] call me, then I

can say you called me, but if this continues, we'll have issues because disappearing is a violation'. Such irregularities often lead the immigrant to involuntarily violate program rules. Immigrants understand what is at stake: 'violations' can extend the period of surveillance, or worse, can justify deportation. This interaction demonstrates the extent to which the disciplinary power of the state permeates participants' personal lives and coerces them, through technology malfunction, to be obedient bodies under panoptic state surveillance (Foucault 1977) or risk ban-optic removal (Bigo 2006; Franko 2020). ISAP typically makes immigrants liable to comply with extensive regulations without taking responsibility for the device malfunctions.

Immigrants strive to comply with the state's directives and render themselves docile in desperate attempts to avoid expulsion and shield loved ones from detection. Monitored immigrants experience the power of the state as simultaneously panoptic and ban-optic. While under EM supervision and in detention, immigrants are subject to the panopticon, which disciplines their bodies into obedience. Immigrants commit to high levels of compliance because they fear deportation. But official orientation materials do nothing to prepare wearers for EM malfunctions or the consequences of these 'violations'. As wearers accumulate 'violations', agents of the state choose whether to extend surveillance or to remove 'noncompliant' individuals. Seventy percent of this study's respondents saw their EM contracts extended by periods that ranged from an additional month to an additional year. Further, EM-related 'violations' can be weaponized to justify a shift from monitoring to expulsion at any moment.

### *Signal to the community*

Conditional release with an EM also extends punishment within immigrants' social networks because placement under ISAP harms their safety net. Often, immigrants can turn to co-ethnic networks for resources and community support (Alba and Nee 2003; Enriquez 2020;

Portes and Zhou 1993; Zhou 2010). Research reveals the complexity of these relationships, which are beneficial in certain instances but detrimental in others (Coutin 2003; Del Real 2018; Gomberg-Muñoz 2012; Menjívar 2000; Rosales 2013). Immigrants navigate these ties against a backdrop of hostile anti-immigrant governmental policies and scant economic opportunities (Gomberg-Muñoz 2012; Menjívar 2000). I argue that EM has the power to destroy formerly healthy relationships with relatives, friends, and employers. Because EM is a beacon of surveillance that attracts ICE and endangers co-ethnics, wearers are excluded from their community, leading to isolation and social harms. Immigrants become hyper-visible, mobile panopticons when EM physically marks them. Consequently, EM, as a tool of legal violence (Menjívar and Abrego 2012), creates a new axis of stratification that places wearers at a disadvantage compared to other immigrants. Even though my sample is diverse and community-level networks may operate differently across racial and ethnic groups, the groups in this study are similar in that co-ethnics tend to regard EM as a criminal stigma, provoking shame for the wearer.

Although immigrants commit fewer serious crimes (Sampson 2008), they feel deeply stigmatized by EM. Birhan described a gathering with his extended family at which guests looked askance at his EM. He said, ‘They were all looking at me and asking my cousin if I had problems with the law. They wanted to know if I was a criminal’. EM exacts costs as wearers endure the stigma of criminality even from members of their co-ethnic community.

Even long-time community members are not immune to the stigma of the monitor. They face questions, resistance, and wariness even from people who previously trusted them. For instance, when Nadia saw an old friend at the supermarket, he remarked that he had not seen her around lately. She showed him EM and described his surprise: ‘He said, “What did you do?” I

say, “I didn’t do anything, I behave good”. But yes, people think that because you have a shackle, they think, “She has a criminal record”. EM is a highly-visible stigma that co-ethnics associate with ‘criminality’. This divides monitored immigrants from members of their co-ethnic community, leading to social exclusion.

As a tool of legal violence (Menjívar and Abrego 2012), EM’s ability to stratify immigrant networks is so powerful that it can strain previously secure, reliable family ties. By restricting the shackled individual’s movement, it creates an axis along which freedom is stratified, yielding a hierarchy among immigrants with EM-wearers at the bottom. Upon release from detention, Rosa felt relieved when her uncle Oscar offered her a place to stay. They live in an apartment complex in a predominantly Latino neighborhood. Furthermore, Oscar’s wife is undocumented. Rosa soon realized that ISAP’s weekly, unannounced, in-home visits were triggering anxiety throughout the complex. Rosa’s EM threatened to curtail Oscar’s wife’s freedom, which is greater than Rosa’s although both women are undocumented. Rosa explained she was having trouble with her uncle, “Oscar wants me to leave, and I don’t have any other place to go. He is worried that la migra is going to come and find his wife. I don’t know what to do because I don’t have anywhere else to go.” Whereas some scholars have found that co-ethnic networks provide resources (Menjívar 2000; Portes and Zhou 1993; Zhou 2010), and others find that these ties can become toxic or exploitative (Del Real 2018; Rosales 2013), Rosa’s experience shows the unique effects of EM on immigrants’ access to support from co-ethnics. Specifically, EM is such an instrument of state terror and violence, penetrating immigrants’ everyday lives, that it prompts Rosa’s relatives to banish her from the household for the sake of their own safety and self-preservation, leaving her more isolated and vulnerable than before.

Rosa's account demonstrates that while immigrants are under ISAP supervision, they become a liability to their own household and their co-ethnic community. EM surveillance exposes an individual's relatives, friends, and associates to state monitoring. When ICE agents enter a home, for example, everyone in the residence becomes vulnerable to scrutiny. They may become a direct target of ICE because their location is monitored in real-time and any 'mistake' that ISAP's caseworkers report can trigger ICE agents to arrive. Agents make collateral arrests, since relatives and housemates are also undocumented. These real and reasonable concerns often lead members of the community to distance themselves from co-ethnic immigrants who are monitored with EMs.

Immigrants, especially undocumented immigrants, utilize their co-ethnic networks for the critical survival strategy of securing jobs (Menjívar 2000; Zhou 2010). Immigrants marked by an EM cannot successfully access these opportunities because they are a liability to other undocumented workers, who must avoid ICE. When Pedro, a Mexican national, recounted his attempt to get hired at a carwash where his cousin worked: "When I met the owner, to my bad luck, this thing [EM] went off and he didn't hire me. Later, my cousin told me it was because of the shackle, since most of the people there [carwash] didn't have papers." These fears are not unfounded: EM collects data on the wearers' location, places everyone around the wearer at risk of detection. To preserve his business and the safety of his undocumented workers, the carwash owner denied Pedro this job. Here, EM, organized an axis of stratification that transformed Pedro into a bearer of state violence and placed him at a disadvantage even compared to other undocumented immigrants. His banishment from employment, in turn, produces greater economic uncertainty.

Although co-ethnic networks are complex, with ties ranging from supportive to toxic, EM deprives immigrants of support from their family and community. The surveillance technology constitutes a risk that is newly perceived – by previously helpful friends, relatives, and employers – as too dangerous. Only after being obligated to wear EM did immigrants witness their networks retract and their access to community resources dissolve. Exiled within their own community, these respondents became isolated from supportive networks because of EM's capabilities to attract ICE. Not only is the wearer's movement more constrained, even compared to other undocumented immigrants, the wearer is shunned for being an active liability to their networks. This restricted autonomy, combined with social exclusion, represents a new form of stratification. Further, the freedoms that might be associated with release from detention – finding a job, living with loved ones – are confounded by EM. Ultimately, because EM triggers legal violence (Menjívar and Abrego 2012), the device places others at risk of apprehension. It transforms individuals into carriers of the state's surveillance apparatus and creates a stigma of 'criminality', excluding immigrants from public spaces and societal institutions, again aggravating their punishment.

### *Signal to self*

Against a backdrop of anti-immigrant policies and violent deportation tactics (De Genova and Peutz 2010; Menjívar and Kanstroom 2013; Menjívar et al. 2018), individual immigrants bear the brunt of a humiliating label: 'noncompliant criminal alien'. In this section, I examine three manifestations of immigrants' experiences with the extended punishment produced by EMs: first, individuals show evidence of mental health stressors when EM reifies a dissonant and stigmatized identity; second, they challenge the label of criminality ascribed to them in order to maintain their self-respect; and third, some engage in survival tactics to preserve themselves



against ICE surveillance, such as absconding or considering the removal of EM. While the first and second reactions to EM relate to an individual's self-respect, the third reaction relates to an individual's survival in the face of perceived imminent threat. Immigrants who try to comply with ISAP regulations realize that the surveillance system is designed to create noncompliance and to trigger ongoing intimidation and punishment. This, in turn, reinforces feelings of fear and vulnerability. During immigration enforcement crackdowns, some immigrants may choose to skip check-ins with ICE and ISAP or remove their EM. Thus, the fear of detention and deportation coerces individuals to become noncompliant. This section emphasizes the toll that EM imposes on the minds and bodies of individual immigrants.

Bearing the brunt of a visible criminal stigma is emotionally taxing. For example, when Karen, a Salvadoran mother of three children, wore shorts to her neighborhood liquor store, bystanders stared at her. A group of customers ogled her ankle and began murmuring. She explained, 'I'm tired of people looking at me like that...I feel discriminated against because I carried this thing [EM]. My self-esteem is low; I feel desperate'. She struggles to maintain self-respect in the face of others' apparent judgement.

Basic dignity becomes nearly impossible to sustain when an immigrant is brutalized by the state's legal violence (Menjívar and Abrego 2012), as was the case for Nadia. She was driving her children and siblings to school when ICE agents intercepted her car, broke her window, and dragged Nadia out. The children screamed and pleaded for the officers to stop. Nadia and some of the children were handcuffed on the ground. Her teenage daughter captured the arrest on video. When Nadia watched the video online, she felt humiliated as she read comments such as, 'Only a criminal gets arrested like that'. Following this episode, she had

frequent nightmares that ICE would return to seize her. Living in perpetual fear alters how immigrants inhabit the world and understand their place in it.

And yet, immigrants resist the meaning of EM, which frames them as ‘criminals’, a label that produces profound cognitive dissonance, in addition to deep shame. When Nadia showed me her EM, she broke into tears and said, ‘When they put it on, I felt humiliated because this is what they put on criminals, and I’m not a criminal’. Burdened with the stigma of the monitor, Nadia’s sense of herself – as someone who poses no threat to society – is violated under repressive anti-immigrant state monitoring. EM even constrained activities such as Nadia’s ability to work and to attend parent-teacher conferences. EM obligates the wearer to accept the consequences attached to the state’s label of ‘criminal alien’, even as the individual attempts to preserve their self-respect by rejecting this label as inaccurate.

In addition to fighting to maintain self-respect despite the ‘criminal’ label, immigrants sometimes engage in survival tactics to protect themselves from ICE surveillance by contemplating absconding or removing EM. When reports of raids surfaced in Los Angeles, Maria, the Honduran mother, considered skipping her upcoming ISAP check-in. She was afraid to attend because ICE recently apprehended her friend: “I might just cut this thing [EM] and throw it away – go to another state. I’m desperate. Now, things are just getting worse with this devil [Trump], but if I go, what am I going to do with Sofia [Maria’s six-year-old daughter]?” Maria’s account confirms the vulnerability EM-wearers experience. Although Maria has complied with the requirements of her conditional release, she reported feeling coerced to take drastic steps to avoid apprehension for the sake of self-preservation. When the state frames monitored individuals as noncompliant and risky, this may encourage behavior that helps the immigrant survive by avoiding detection and deportation.

When EM-wearers feel that the state is threatening to re-detain or expel them, they may decide to become noncompliant (i.e., miss their appointment or remove EM). This choice makes them ‘fugitives’ in the eyes of the state. As news of recent raids circulated, EM-wearers grew hesitant to attend their check-ins. Outside the ATD office, Fatima, in her mid 30’s, grew nervous when she answered her ringing cell phone. She said, ‘My husband says don’t go in. Our compadre told him that they [ICE] are taking people from here...he is coming to pick me up’. Fatima mentioned that all her children and family were here in the US, and she cannot be sent back to El Salvador. For immigrants that have been in the US for a long time, the threat of deportation creates the deep fear of family separation. A few minutes later, a truck pulled up, and Fatima left. Immigrants like Fatima face a difficult choice, absconding and/or removing EM. She considers this choice within a heightened anti-immigrant political context; Trump’s executive orders were producing rapid, extreme policy changes (i.e., Muslim ban, zero-tolerance, refugee restrictions, expansion of ICE detention). Her previous strategy for self-preservation had been to comply with the terms of her release, but she now felt endangered and changed course. Fatima does not see herself as a criminal but rather as someone who is attempting self-preservation when threatened with the possibility of ban-optic removal (i.e., deportation).

Some immigrants, such as Maria, comply with ISAP despite their fear, because they know that the monitor records their current location, and they want to protect their associates. Others, such as Fatima, coerced by the threat of family separation through deportation, decide to abscond and risk the possibility of ICE agents apprehending them. EM is quite literally a technology of fear, that either scares the wearer into compliance or provokes so much terror that the wearer feels that the only safe choice is to abscond. Fatima’s decision will drive her deeper

into the shadows, heightening her vulnerability as a ‘criminal alien’ and her exclusion from public places and societal institutions.

The threat of surveillance is as traumatic and constraining as actually being watched constantly (Foucault 1977). EM imposes the disciplinary power of the state by creating a consciousness of permanent visibility. The mere possibility that ICE could be around instilled fear and shaped actions just as completely as if they had actually been present, as shown by Fatima’s decision to skip her check-in. Together, these examples suggest that immigrants experience the state’s stigmatizing labels as distressing and confusing. Individuals are required to assume the liability, inconvenience, and trauma of being identified as a ‘risk’. In response, they refuse the state’s efforts to construct them as ‘non-compliant criminal aliens’ by questioning the label, absconding, and—as a last resort for self-preservation—removing EM. In every case, individual immigrants reject the state’s characterization of them and, in this sense, EM does not succeed in supplanting or usurping the immigrant’s identity or sense of self. However, they remain burdened by the real consequences of bearing this label and the visual stigma of EM.

## **CONCLUDING DISCUSSION**

### *Extending Punishment Through Surveillance*

Under the emerging ‘crimmigration’ system (Hernández 2019; Stumpf 2006), immigrant vulnerabilities to criminalization do not stem from federal immigration policy alone. State institutions have extended immigration control’s disciplinary power into co-ethnic communities and the lives of the legally liminal (Coutin 2003; Golash-Boza and Hondagneu-Sotelo 2013; Menjívar and Abrego 2012). I argue that a new system of visual stigmatizing (EM) reinforces immigrants’ subordinate status. I consider how punitive practices continue to shape immigrants’ everyday lives even after release from detention, creating a condition of extended punishment. I

have mapped the distinctive consequences of extended punishment that EM surveillance produces for the individual's engagement with state, community, and self.

Anti-immigrant laws and extended punishment function together to generate and reify ideas about immigrant illegality, reinforcing the construction of immigrant criminality (De Genova and Peutz 2010; Menjívar and Kanstroom 2013; Menjívar et al. 2018). I demonstrate how the 'criminal alien' identity works in tandem with EM to produce this condition of extended punishment. The state presumes an immigrant's criminality, providing the initial justification for surveillance via EM and yielding a sense of entrapment for the shackled individual.

Technologically unreliable, EMs malfunction (i.e., battery dies, loss of signal, disconnection) frequently, and these 'violations' operate to affirm immigrants' criminality in the eyes of the state. EM imposes two distinct forms of surveillance upon immigrants' lives. Panoptic surveillance (Foucault 1977) demands docility and compliance and takes the form of extended time with EM and the possibility of re-detention. Ban-optic surveillance (Bigo 2006; Franko 2020) threatens to remove the noncompliant person via deportation. Immigrants shackled to EM realize that enrolment under ISAP is a punitive, hyper-regulated extension of the punishment they endured in detention, as the state weaponizes technological flaws against them. I contribute an analysis of how ICE and ISAP use faulty technology to actively construct immigrants as 'non-compliant', an orientation that blames immigrants, while simultaneously off-loading the risk and responsibility from the state onto individuals and communities, thereby punishing many more persons.

This highly visible stigma is embodied against the person's will and travels with them everywhere, disrupting their lives and endangering members of the co-ethnic community. EM operates as a tool of legal violence (Menjívar and Abrego 2012) that creates a new axis of

stratification and inequality within the immigrant population, as it restricts the wearer's autonomy and access to resources, making them more vulnerable than other immigrants, including undocumented immigrants without EM. My study adds to previous literature on the far-reaching effects of the 'criminal alien' label, which curtails the 'illegal' individual's access to public education, housing, welfare benefits, college admission, financial aid, health care, and stable work (Gomberg-Muñoz 2012; Menjívar and Abrego 2012). I show how EM creates obstacles to social re-entry for formerly detained immigrants. I argue that EM itself destroys the potential 'humane' benefits of release from detention, punishing the wearer by restricting access to numerous resources and necessities including employment, housing, and the co-ethnic safety net. The stigma of EM emerges relationally. The device extends punishment by damaging the wearer's reputation, as it prompts other immigrants to perceive them as someone who attracts danger to the community.

Accordingly, EM-wearers are shunned by their communities, which strains relationships among immigrants and intensifies stratification by restricting access to co-ethnic resources. I offer a theoretical contribution to immigration studies by arguing that 'extended punishment' erodes the collective efficacy of co-ethnic communities. Although co-ethnic networks are complex, with ties ranging from supportive (Alba and Nee 2003; Enriquez 2020; Portes and Zhou 1993; Zhou 2010) to strained and toxic (Coutin 2003; Del Real 2018; Gomberg-Muñoz 2012; Menjívar 2000; Rosales 2013), I show that EM deprives immigrants of support from their family and community, by fracturing previously healthy co-ethnic networks. In the present study, ICE surveillance threatens immigrants' access to co-ethnic social capital. The network, which initially was willing to help until learning about EM, responds by excluding the person from the community safety net, including resources they could previously access, such as shelter and jobs.

Consequent isolation from the community obligates EM-wearers to cope with the harms of stigma. This takes a palpable toll on their emotional health and sense of self. Individuals experience feelings of confinement, humiliation, and helplessness. EM-wearers show evidence of mental health stressors (Dreby 2015; Gómez Cervantes et al. 2017) as they reject and challenge the state's characterization of them as 'criminal'. Ultimately, the state fails to supplant the immigrant's sense of self but succeeds in imposing the burden of stigma. Under these conditions, immigrants struggle to maintain self-respect and sometimes face threats so extreme that they feel coerced into noncompliant survival tactics (Menjívar 2011; Talavera et al. 2010) such as absconding or considering the removal of the EM for the sake of self-preservation. The surveillance apparatus imposes state disciplinary power by creating a consciousness of permanent visibility (Foucault 1977). Thus, ICE does not have to be physically present to instill fear and shape behavior (Talavera et al. 2010; Willen 2007). Terrorized by the state and isolated from the community, EM-shackled immigrants face the extreme vulnerability of extended punishment.

My work builds on scholarship that shows how EM functions as a neo-Foucauldian surveillance technology constraining the everyday lives of marginalized groups (Garland 2001; Staples and Decker 2008). The effects of state surveillance stem from a long tradition of preserving the American racial hierarchy, which bears relevance for critical race and ethnic studies, and for crime and punishment among communities of color. Prior literature establishes that minority groups' racial identities are constructed as deviant and thus require monitoring by technology-enabled law enforcement (Armenta 2017; Gómez Cervantes et al. 2017; Kalhan 2014; Menjívar et al. 2018).

However, under regimes of electronic surveillance, immigrants may fare as badly or worse than other marginalized communities, given that supervision is coupled with the ever-present threat of ban-optic removal by deportation. As entire communities perpetually fear potential ICE raids (Menjívar and Abrego 2012), any added surveillance makes them even more vulnerable (Gómez Cervantes et al. 2017). Although it is easy to overlook the damage to the fabric of society that this technology of surveillance produces, it is even more important to recognize that the discipline of the state is taking new forms. Although the forms are subtle because of their ‘hidden’ and misleading existence, they are creating new damages to ethnic communities.



## References

- Abrego, Leisy, Mat Coleman, Daniel E. Martínez, Cecilia Menjívar , and Jeremy Slack . 2017. “Making Immigrants into Criminals: Legal Processes of Criminalization in the Post-IIRIRA Era.” *Journal on Migration and Human Security* 5 (3): 694–715.
- Alba, Richard D., and Victor Nee. 2003. *Remaking the American Mainstream: Assimilation and Contemporary Immigration*. Cambridge, Massachusetts: Harvard University Press.
- Armenta, Amada. 2017. “Racializing Crimmigration: Structural Racism, Colorblindness, and the Institutional Production of Immigrant Criminality.” *Sociology of Race and Ethnicity* 3 (1): 82–95.
- Bigo, Didier. 2006. “Security, Exception, Ban and Surveillance.” In *Theorizing Surveillance: The Panopticon and Beyond*, edited by D. Lyon, 60–82. Abingdon, UK: Routledge.
- Chacón, Jennifer M. 2012. “Overcriminalizing Immigration.” *Journal of Criminal Law and Criminology* 102: 613.
- Charmaz, Kathy. 2006. *Constructing Grounded Theory*. London: Sage.
- Chaudry, Ajay, Randy Capps, Juan Manuel Pedroza, Rosa Maria Castaneda, Robert Santos, and Molly M. Scott. 2010. *Facing Our Future: Children in the Aftermath of Immigration Enforcement*. Washington, DC: Urban Institute.  
<http://www.urban.org/research/publication/facing-our-future>.
- Coutin, Susan Bibler. 2003. “Illegality, Borderlands, and the Space of Nonexistence.” In *Globalization under Construction: Governmentality, Law, and Identity*, edited by R. Warren
- Perry and B. Maurer, 171–202. Minneapolis, MN: University of Minnesota Press.

- Cranford, Cynthia J. 2005. "Networks of Exploitation: Immigrant Labor and the Restructuring of the Los Angeles Janitorial Industry." *Social Problems* 52 (3): 379–397.
- De Genova, Nicholas, and Nathalie Peutz. 2010. *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Durham, NC: Duke University Press.
- Del Real, Deisy. 2018. "Toxic Ties: The Reproduction of Legal Violence Within Mixed-status Intimate Partners, Relatives, and Friends." *International Migration Review* 53 (2): 548–570.
- Dreby, Joanna. 2015. *Everyday Illegal: When Policies Undermine Immigrant Families*. Oakland, CA: University of California Press.
- Emerson, Robert M. 2001. *Contemporary Field Research: Perspectives and Formulations*. Prospect Heights, IL: Waveland Press.
- Enriquez, Laura. 2020. *Of Love and Papers: How Immigration Policy Affects Romance and Family*. Berkeley, CA: University of California Press.
- Finnie, Nicole D., Roman Guzik, and Jennifer J. Pinales. 2012. *Freed but not Free: A Report Examining the Current Use of Alternatives to Detention*. Newark, NJ : Rutgers School of Law-Newark. <https://www.afsc.org/sites/default/files/documents/Freed-but-not-Free.pdf>.
- Foucault, Michel. 1977. *Discipline & Punish: The Birth of the Prison*. New York: Vintage.
- Franko, Katja. 2020. *Globalization and Crime*. London, UK: SAGE.
- Garland, David. 2001. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press.
- Golash-Boza, Tanya. 2015. *Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America*. New York: Routledge.

- Golash-Boza, Tanya, and Pierrette Hondagneu-Sotelo. 2013. "Latino Immigrant Men and the Deportation Crisis: A Gendered Racial Removal Program." *Latino Studies* 11 (3): 271–292.
- Gomberg-Muñoz, Ruth. 2012. "Inequality in a 'Post-Racial' Era: Race, Immigration, and Criminalization of Low-Wage Labor." *Du Bois Review: Social Science Research on Race* 9 (2): 339–353.
- Gómez Cervantes, Andrea, Cecilia Menjívar, and William G. Staples. 2017. "'Humane' Immigration Enforcement and Latina Immigrants in the Detention Complex." *Feminist Criminology* 12 (3): 269–292.
- Hagan, Jacqueline, Brianna Castro, and Nestor Rodriguez. 2010. "The Effects of U.S. Deportation Policies on Immigrant Families and Communities: Cross-Border Perspectives." *North Carolina Law Review* 88 (5): 1799–1824.
- Hernández, García Cuauhtémoc César. 2019. *Migrating to Prison: America's Obsession with Locking up Immigrants*. New York: The New Press.
- Hucklesby, Anthea. 2013. "Insiders' Views: Offenders' and Staff's Experiences of Electronically Monitored Curfews." In *Electronically Monitored Punishment: International and Critical Perspectives*, edited by M. Nellis, K. Beyens, and D. Kaminski, 228–246. New York: Routledge.
- Juárez, Melina, Bárbara Gómez-Aguñaga, and Sonia P. Bettez. 2018. "Twenty Years after IIRIRA: The Rise of Immigration Detention and Its Effects on Latinx Communities Across the Nation." *Journal on Migration and Human Security* 6 (1): 74–96.
- Kalhan, Anil. 2014. "Immigration Surveillance." *Maryland Law Review* 74 (1): 1–86.

- Kilgore, James. 2013. "Progress or More of the Same? Electronic Monitoring and Parole in the Age of Mass Incarceration." *Critical Criminology* 21 (1): 123–139.
- Kusenbach, Margarethe. 2003. "Street Phenomenology: The Go-Along as Ethnographic Research Tool." *Ethnography* 4 (3): 455–485.
- Logan, John R., Wenquan Zhang, and Richard D. Alba. 2002. "Immigrant Enclaves and Ethnic Communities in New York and Los Angeles." *American Sociological Review* 67, 299–322.
- May, David P., Bryan K. Payne, and Peter B. Wood. 2014. "The 'Pains' of Electronic Monitoring: A Slap on the Wrist or Just as Bad as Prison?" *Criminal Justice Studies* 27 (2): 133–148.
- Melossi, Dario. 2015. *Crime, Punishment and Migration*. London, UK: Sage.
- Menjívar, Cecilia. 2000. *Fragmented Ties: Salvadoran Immigrant Networks in America*. Oakland, CA: University of California Press.
- Menjívar, Cecilia. 2011. "The Power of the Law: Central Americans' Legality and Everyday Life in Phoenix, Arizona." *Latino Studies* 9 (4): 377–395.
- Menjívar, Cecilia, and Leisy Abrego. 2012. "Legal Violence: Immigration Law and the Lives of Central American Immigrants." *American Journal of Sociology* 117 (5): 1380–1421.
- Menjívar, Cecilia, Andrea Gómez Cervantes, and Daniel Alvord. 2018. "The Expansion of 'Crimmigration,' Mass Detention, and Deportation." *Social Compass* 12: 1–15.
- Menjívar, Cecilia, and Daniel Kanstroom. 2013. *Constructing Immigrant Illegality: Critiques, Experiences, and Responses*. Cambridge: Cambridge University Press.

- Nellis, Mike. 2013. "Surveillance, Stigma and Spatial Constraint." In *Electronically Monitored Punishment: International and Critical Perspectives*, edited by M. Nellis, K. Beyens, and D. Kaminski, 193–210. London and New York: Routledge.
- Ngai, Mae M. 2006. "Birthright Citizenship and the Alien Citizen." *Fordham Law Review* 75: 2521–2530.
- Patler, Caitlin, and Tanya Golash-Boza. 2017. "The Fiscal and Human Costs of Immigrant Detention and Deportation in The United States." *Sociology Compass* 11 (11): e12536.
- Portes, Alejandro, and Min Zhou. 1993. "The New Second Generation: Segmented Assimilation and its Variants." *The ANNALS of the American Academy of Political and Social Science* 530: 74–96.
- Rosales, Rocio. 2013. "Stagnant Immigrant Social Networks and Cycles of Exploitation." *Ethnic and Racial Studies* 37 (14): 2564–2579.
- Ryo, Emily, and Ian Peacock. 2018. *The Landscape of Immigration Detention in the United States*. Washington, DC: American Immigration Council.  
<https://www.americanimmigrationcouncil.org/research/landscape-immigration-detention-united-states>.
- Sampson, Robert J. 2008. "Rethinking Crime and Immigration." *Contexts* 7 (1): 28–33.
- Singer, Audrey. 2019. *Immigration: Alternative to Detention (ATD) Programs*. Washington, DC: Congressional Research Service. <https://fas.org/sgp/crs/homsec/R45804.pdf>.
- Staples, William G., and Stephanie K. Decker. 2008. "Technologies of the Body, Technologies of the Self: House Arrest as Neo-liberal Governance." In *Surveillance and Governance: Crime Control and Beyond*, edited by M. Deflem and J. T. Ulmer, 131–149. Somerville, MA: Emerald Group Publishing Limited.

- Stuart, Forrest, Amada Armenta, and Melissa Osborne. 2015. "Legal Control of Marginal Groups." *The Annual Review of Law and Social Science* 11: 235–254.
- Stumpf, Juliet P. 2006. "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power." *American University Law Review* 56 (2): 367–419.
- Talavera, Victor, Guillermina G. Núñez-Mchiri, and Josiah Heyman. 2010. "Deportation in the US-Mexico Borderlands." In *the Deportation Regime: Sovereignty, Space, and the Freedom of Movement*, edited by N. De Genova and N. Peutz, 166–195. London: Duke University Press.
- USICE. 2014. "ICE Detention Management Detention Contracts: Amendment 3." <https://govtribe.com/opportunity/federal-contract-opportunity/intensive-supervision-appearance-program-isap-iii-hscecr14r00001#> .
- Willen, Sarah S. 2007. "Toward a Critical Phenomenology of "Illegality": State Power, Criminalization, and Objectivity Among Undocumented Migrant Workers in Tel Aviv, Israel." *International Migration* 45 (3): 8–38.
- Zhou, Min. 2010. *Chinatown: The Socioeconomic Potential of an Urban Enclave*. Philadelphia, PA: Temple University Press.

## CHAPTER FIVE

### Conclusion: Beyond Reform

The guiding premise of this dissertation has been to understand how the state constructs immigrants of color as "illegal criminal aliens" to justify their persecution, detention, surveillance, and deportation. In particular, this anti-immigrant paradigm has been used effectively to deny immigrants basic human rights. Most immigrants snared within the apparatus of immigration detention are deprived of essential tools to face an adversarial legal system that is trying to expel them. Consequently, immigrants often find themselves cheated out of justice. When in confinement, detainees experience the heightened threat of deportation. This threat is not contained within the walls of the detention facility, but it spills over to harm the families that await their loved one's return. Punishment and control, which are the main characteristics of immigration detention, are distilled and packaged into an electronic monitor (EM). These electronic leashes are shackled to immigrants that managed to be released from immigration detention into the U.S. Immigrants carry the visual stigma which produces mistrust and isolation from their community.

Drawing on 34 months of ethnographic fieldwork and 95 in-depth, semi-structured interviews with former detainees (n=60) and their families (n=35) in Southern California, I argue that the construction of immigrants of color as "illegal criminal aliens" is used by the state to rationalize immigrants' persecution and expulsion. This research is important because it reveals the direct and collateral consequences that criminalization, detention, and deportation have on documented and undocumented immigrants. The dissertation thereby provides a more nuanced understanding of how "crimmigration" is forcing people to inhabit an even more peripheral space in society. Across three empirical chapters--on lack of access to justice and immigrants'

response with “precarious legal patchworking,” the condition of “collective liminality” whereby not only immigrants but also their families experience pervasive threats, and the “extended punishment” of state surveillance to which immigrants are subjected after release from detention- -I reveal how immigrants are caught up in this web of vulnerabilities, with hefty economic debt, emotional traumas, broken families, lack of legal aid, and exclusion from co-ethnic networks.

## **SUMMARY OF FINDINGS**

Chapter two initiates the empirical analysis by examining “Precarious Legal Patchworking: Detained Immigrants’ Access to Justice.” As immigration enforcement increases, so does the detention of immigrants and the threat of deportation. Alone and frequently without the support of counsel, immigrants face a complex immigration court that is adversarial and can produce dire consequences: family and community exile, loss of employment, and inevitable violence or even death if deported. This chapter chronicles the experiences of former detainees and how they were able to acquire (or not acquire) justice through multiple means. To win their freedom from detention, they engaged in “precarious legal patchworking” where they haphazardly cobbled together legal resources and assistance from multiple sources including pro-bono aid, jailhouse lawyers, and other detainees. This patchworking strategy speaks to the person's legal empowerment, but it also unveils the fragility of this strategy because it could extend the length of detention or complicate the detainee’s case. The lack of access to representation is a form of legal violence, and stratifying access to representation in this way creates an underclass of people who are systematically denied justice.

In Chapter three, “Collective Liminality: The Spillover Effects of Indeterminate Detention on Immigrant Families,” I address the question: How do immigrant families experience the indeterminate confinement of detained loved ones under the intensified threat of



deportation? I find that family units endure collateral consequences when they are suspended in a heightened state of liminality due to their loved one's indeterminate detention. From the moment that an immigrant is processed into detention, they and their families enter a state of liminality that exists between two outcomes: release into the US (temporary or permanent) or deportation to their country of origin. A conceptual contribution of this chapter is the development of *collective liminality* to show how being suspended in this state of purgatory harms both detained immigrants and their loved ones. Although the threat of deportation is ever-present in and harmful to immigrant communities, when a loved one is detained, the threat of deportation intensifies from "if" to "when." No longer avoiding contact with ICE, the family unit must now mobilize to protect the detained relative from impending exile.

In Chapter four, "Extended Punishment: Criminalizing Immigrants Through Surveillance Technology," I demonstrate how intensive state surveillance creates a condition of "extended punishment" that shapes the daily experiences of immigrants shackled to an electronic monitor (EM). The EM marks its wearer with a criminal stigma, leading that person to become shunned, including by previously supportive members of their co-ethnic community. The technology's governmental surveillance power imposes state monitoring, social ostracization, and a stigmatizing label. Under this regime, EMs become tools of legal violence that yield a new axis of stratification among immigrants. Because EMs unequally allocate autonomy, privacy, and resources, wearers find themselves more vulnerable and constrained than other immigrants.

## **FUTURE DIRECTIONS**

By studying how the U.S. immigration detention has produced unprecedented harm not just for detainees but also for their non-detained relatives, I have revealed how detainees experience a liminal state while in confinement. However, their liminality does not remain

contained within the walls of detention facilities. Instead, the harms and stresses of being trapped in this transitional state radiate out to affect loved ones as well (Martinez-Aranda 2020).

Furthermore, detention produces economic harm, a constant fear of family separation through deportation, and a suspended state of uncertainty (Koball et al. 2015; Martinez-Aranda 2020; Patler and Golash-Boza 2017).

The future direction of this dissertation will seek to examine how being suspended in a state of uncertainty, produced by the detention of a loved one who faces permanent exile, affects US-citizens family members' sense of identity and belonging. To show this, I will draw from a new analytical lens, collective liminality, developed in Chapter three of this dissertation, to expose how uncertainty about the future constitutes a source of harm that affects not only the detainee but also spills over to their relatives. Chapter four shows that the apparatus of detention benefits from docile, humiliated bodies that are easier to dominate and control. As relatives with U.S. citizenship experience the combination of the toxic culture of detention and bureaucratic regulations, they are constantly reminded that they are both vulnerable and marginal. Citizenship affords protections. However, their citizenship becomes tarnished and fragile as they endure the considerable stigma of being associated with someone who is viewed by the state as "illegal." Moreover, under the current anti-immigrant climate, people with undocumented loved ones may reasonably fear that their protections could be altered or revoked. I am particularly interested in 1) whether US-citizen family members of detained immigrants question their citizenship status and 2) how the interaction with the apparatus of detention shapes US-citizens' sense of belonging to the nation-state. This empirical addition will extend beyond the scope of the dissertation, by bridging parallel literature on immigration control, race in social control bureaucracies, and immigrant incorporation. This future project will allow me to put detainees' experiences and their

US-citizens relatives in conversation with one another. This would illuminate a multi-dimensional account of the symbolic boundaries and impacts that emerge when families with different immigration status and citizenship interact with the state's coercive power. In this way, it would have important implications beyond the case of U.S. immigration enforcement and is broadly concerned with the substantive impacts of detention in immigrant lives and communities.

## **IMPLICATIONS**

My evidence indicates that certain specific reforms would benefit immigrants tremendously as they navigate the system of U.S. immigration detention. In Chapter two, it becomes clear that immigrants would have far greater access to justice if immigration courts would simply ensure that detainees have interpreters and attorneys. In Chapter three, immigrants would be spared the damages of collective liminality if detention facilities would treat detainees and their loved ones more humanely by reducing waiting times, implementing more transparent procedures, and reducing barriers to visitation. Finally, in Chapter four, immigrants should be allowed to reintegrate back to their communities without carrying surveillance technology that shames them and obstructs their access to employment, housing and the support of co-ethnic networks.

However, chipping away with minor reforms fails to address the underlying problem: that the immigration system abuses immigrants by design. Immigration detention did not develop in response to crime or dangers posed by immigrants. Rather, this system has emerged from a series of policy choices encouraged “by political and corporate interests to extract profit from and suppress the power of marginalized communities and peoples” (Freedom for Immigrants). Therefore, a de-carceral approach is urgently called for. Abolishing detention would resolve all

of the above hardships and more. Further, such a change would be neither impossible nor unprecedented. Many countries around the world treat immigration violations as a civil matter and uphold laws to ensure the human rights and wellbeing of immigrants. Prior to the “cimmigration” regime implemented in the 1990s, the United States similarly regarded immigration law as a civil concern.

And yet, even as abolition is necessary, it will also be a struggle as it requires taking on the White supremacy and colonialism embedded in and reproduced by the apparatus of detention. In other words, the system is not broken, and that is the problem. Accordingly, it is essential to fight for the abolition of immigration detention as an oppressive apparatus that functions to uphold capitalism and racism. “Abolitionist movements not only assert that abolition is desirable, but that it is also possible, even likely in the long term (and the sooner the better)” (Freedom for Immigrants).

## References

- Koball, Heather, Randy Capps, Krista Perreira, Andrea Campetella, Sarah Hooker, Juan Manuel Pedroza, William Monson, and Sandra Huerta. 2015. "Health and social service needs of US-citizen children with detained or deported immigrant parents." *Washington, DC: Urban Institute and Migration Policy Institute.*
- Martinez-Aranda, Mirian G. 2020. "Collective Liminality: The Spillover Effects of Indeterminate Detention on Immigrants Families." *Law & Society Review* 54(4):755-87.
- Patler, Caitlin and Tanya Maria Golash-Boza. 2017. "The Fiscal and Human Costs of Immigrant Detention and Deportation in the United States." *Sociology Compass* 11(11).
- Immigrants, Freedom for. "Why Freedom for Immigrants Believes in Abolishing Immigration Detention."

## APPENDIX A

**Table 1. Descriptive statistics of respondents**

	<b>Former Detainees</b>		<b>Relatives</b>	
	<b>(N=60)</b>		<b>(N=35)</b>	
	<b>N</b>	<b>(%)</b>	<b>N</b>	<b>(%)</b>
<b>Sex</b>				
Female	42	(70)	24	(69)
Male	18	(30)	11	(31)
<b>Nativity</b>				
Mexico	17	(28)	12	(34)
El Salvador	9	(15)	1	(3)
Guatemala	9	(15)	4	(11)
Honduras	8	(13)	4	(11)
Colombia	4	(7)	1	(3)
Philippines	3	(5)	1	(3)
Cuba	2	(3)	2	(6)
Nicaragua	2	(3)	0	(0)
Ecuador	1	(2)	0	(0)
Ethiopia	1	(2)	2	(6)
Haiti	1	(2)	0	(0)
Russia	1	(2)	0	(0)
Somalia	1	(2)	1	(3)
Venezuela	1	(2)	0	(0)
USA	0	(0)	7	(20)
<b>Age Range</b>	20-55		18-75	
<b>Legal Representation</b>				
Yes	35	(58)		
No	20	(33)		
Unknown	5	(8)		