

**UCLA**

**UCLA Previously Published Works**

**Title**

Biopolitical Citizenship in the Immigration Adjudication Process

**Permalink**

<https://escholarship.org/uc/item/4c35343d>

**Journal**

Social Problems, 61(3)

**ISSN**

0037-7791

**Authors**

Lakhani, Sarah Morando  
Timmermans, Stefan

**Publication Date**

2014-08-01

**DOI**

10.1525/sp.2014.12286

Peer reviewed



UNIVERSITY OF CALIFORNIA PRESS  
JOURNALS + DIGITAL PUBLISHING



---

Biopolitical Citizenship in the Immigration Adjudication Process

Author(s): Sarah Morando Lakhani and Stefan Timmermans

Source: *Social Problems*, Vol. 61, No. 3 (August 2014), pp. 360-379

Published by: [University of California Press](#) on behalf of the [Society for the Study of Social Problems](#)

Stable URL: <http://www.jstor.org/stable/10.1525/sp.2014.12286>

Accessed: 24/11/2014 15:46

---

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).



*University of California Press and Society for the Study of Social Problems are collaborating with JSTOR to digitize, preserve and extend access to Social Problems.*

<http://www.jstor.org>

# Biopolitical Citizenship in the Immigration Adjudication Process

Sarah Morando Lakhani, *American Bar Foundation*

Stefan Timmermans, *University of California, Los Angeles*

*We apply the concept of “biopolitical citizenship” to show how and with what consequences biology and medicine are mobilized as political techniques in the legal immigration procedures of permanent residency acquisition and family reunification. Medical examinations and DNA testing are employed by the U.S. state as objective sorting criteria in the immigration legal process. Based on qualitative examination of immigrants’ and their attorneys’ participation in the legalization process, we demonstrate how these biological screening mechanisms create added uncertainty and problems that disproportionately affect particular people. In this context, aspiring citizens undergo biological evaluations that appear transparent, objective, and democratic. However, because of how evaluations are structured, they actually lower the chances of certain individuals to succeed in their citizenship endeavors. Keywords: biomedicine; biopolitical citizenship; immigration; legalization; stratification.*

In a globalizing world with high population mobility, liberal democratic immigrant-receiving states face the practical problems of admitting newcomers and selecting some for permanent residency (Walzer 1983). In the United States, France, and other countries (Fassin and d’Halluin 2007; Helén and Lemke 2012; Ticktin 2011), a combination of increasingly restrictive immigration control policies (Menjívar and Abrego 2012) and fears of the spread of infectious diseases (Dara et al. 2013) has prompted legislators to resort to biological and medical evidence as a means of sorting aspiring citizens. The underlying idea is that biomedicine does not lie: it offers absolute and transparent bases to grant or deny forms of citizenship. Specifically, DNA fingerprinting is presumed to establish family ties beyond dispute, and medical exams are expected to objectively screen out the unhealthy immigrants from the healthy (Borenstein 2006; Villiers 2010). While biomedicine may not lie, it does not necessarily speak unequivocally, consistently, and fairly. The actual implementation of biomedical techniques within broader health and immigration bureaucracies may skew the selection process by putting certain groups of people at greater risk for residency and citizenship denial for reasons beyond biological criteria. In this article, we explain the social stratification that results from using biomedical criteria in permanent residency and citizenship procedures.

To examine how biomedical criteria affect the sorting of aspiring citizens, we develop the notion of “biopolitical citizenship,” coined by Steven Epstein (2007) as a unifying concept for the various terminology researchers have applied to moments when the “biology of a population has become the grounds for social membership and the basis of staking citizenship claims” (Petryna 2002:5; see also Rose and Novas 2005). The merger of biomedicine with politics reflects increasingly specialized ways of defining, knowing, and governing populations on biological grounds

The authors would like to thank the reviewers and editor Becky Pettit for helpful comments on earlier versions of this article. Sarah Morando Lakhani also wishes to thank the American Bar Foundation, the American Association of University Women, the University of California Institute for Mexico and the United States, the UCLA Institute of American Cultures and the Chicano Studies Research Center, the UCLA Institute for Research on Labor and Employment, the UCLA Graduate Division, and the UCLA Center for the Study of Women for supporting this research. Direct correspondence to: Sarah Morando Lakhani, American Bar Foundation, 750 N. Lake Shore Drive, 4<sup>th</sup> Floor, Chicago, IL 60611-4403. E-mail: smlakhani@abfn.org; stefan@soc.ucla.edu (Stefan Timmermans).

---

*Social Problems*, Vol. 61, Issue 3, pp. 360–379, ISSN 0037-7791, electronic ISSN 1533-8533. © 2014 by Society for the Study of Social Problems, Inc. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press’s Rights and Permissions website at [www.ucpressjournals.com/reprintinfo/asp](http://www.ucpressjournals.com/reprintinfo/asp). DOI: 10.1525/sp.2014.12286.

(Foucault 1978; Rose 2007). The configuration of biomedical tests and medical authorities in legalization procedures gives rise to highly consequential assessments that shape immigrants' lives, the implementation of immigration law, and the notion of citizenship itself (Fassin and Rechtman 2009; Ticktin 2011; Willen 2011).

While we recognize that "citizenship" is also a legal category, we invoke the language of citizenship in this article to refer to the full or partial incorporation of individuals into the national polity through state-derived biopolitical criteria (Epstein 2007). Biopolitical citizenship refers to a mode of *claiming* rights that individuals may undertake vis-à-vis the state and to a mode of *granting* rights that states may undertake vis-à-vis individuals, both based on biomedical criteria. The content and consequences of biopolitical citizenship differ depending on whether it is mobilized by individuals or imposed by the state; a mandatory or optional way of becoming or being a citizen; and facilitative of partial or full citizenship. In addition, biopolitical citizenship varies in the extent to which it bestows rights and responsibilities on included populations.

We argue that when biopolitical citizenship enters the immigration context, the policy logic of sorting aspiring citizens on biomedical criteria produces stratifying effects depending on how biomedicine and politics intersect in adjudicative evaluations and decisions. Immigration policies intend to sort aspiring citizens using inclusion and exclusion criteria. However, integrating biopolitical citizenship criteria into legalization procedures functions to distinguish people not only based on biomedical techniques but also on how these same techniques become implemented within broader health care and migration bureaucracies. These effects of biomedical measures systematically exclude some people from citizenship. In response, immigrants and their advocates may try to counter some of the exclusionary consequences. This article addresses two research questions. When and how does the U.S. state request biological evidence from immigrant petitioners, and vice versa, when and how do immigrants and their lawyers employ biological status in making citizenship claims? What are the consequences of biopolitical citizenship in the U.S. legalization process?

We investigate the stratifying effects of two salient biomedical technologies in the contemporary U.S. legalization process: medical examinations and DNA testing. These technologies differ depending on whether they are mandatory or voluntary and thus lend themselves to different opportunities for biological citizenship mobilization and resistance. They also offer a biological basis for different criteria of legalization: the medical examination relates to the immigrant petitioner's *health*, while DNA testing takes the immigrant's *family* as an object of inquiry.

We aim to bridge literature on international migration and citizenship with inquiries germane to medical sociology and the sociology of science. Our analysis of biopolitical citizenship in U.S. immigration law advances scholarship on sociolegal citizenship by building on conceptualizations of immigration control that center on policy implementation via intermediary mechanisms, institutions, and social actors (Coutin 2000; Fassin and d'Halluin 2005; Gilboy 1991; Lakhani forthcoming; Marrow 2009; Menjivar and Abrego 2012). By analyzing how one group of intermediaries, attorneys, serve as brokers in the context of biomedical screening evaluations, we configure immigration lawyers as "agents and critics of law" (Coutin 2000:104; emphasis added). Immigration lawyers are agents of law in how their brokering work involves interpreting and applying existing legal statutes, regulations, and requirements of the state to immigrants' lives. Lawyers' capacity to facilitate immigrants' legal inclusion resides in their alignment with the U.S. state, as professionals trained in its rules. Yet by strategically laboring to enfranchise those who are not state members, lawyers can also be conceptualized as critics of law (Coutin 2000; Lakhani forthcoming).

Biopolitical citizenship specifically calls attention to the role of biomedical authorities and technologies in initiating, reproducing, and transforming practices of social stratification that produce inclusion and exclusion. The concept goes beyond the traditional medical sociology approach of "medicalization," which sees a gradual expansion of medical definitions and practices to solve social problems (Conrad 2007). Biopolitical citizenship, in contrast, emphasizes the mutual metamorphoses of politics and medicine through their interaction, keeping in mind that biomedicine is

and always has been political (Clarke et al. 2003). Concerns about fairness, democracy, and distribution come sharply into view when existing biomedical technologies are employed not just to screen for health risks but also to confer legal and social legitimacy upon populations (Foucault 1976; Illich 1976; Zola 1972).

### Biopolitical Citizenship

Citizenship in its formal connotation reflects a way in which governments legally incorporate categories of people fully as citizens and bestow rights and responsibilities on them. Among the typical responsibilities of citizens are taxation, jury duty, and military service in exchange for political, legal, and social welfare rights. Immigrants may experience forms of social, economic, political, ethnic, religious, and cultural marginalization for reasons independent of their legal standing. Nevertheless, legal status shapes immigrants' socioeconomic life chances, access to public services, political enfranchisement, physical and psychological health and well being, protection from deportation, and possibilities for family reunification (Brubaker 1990; Donato and Armenta 2011; Gonzales and Chavez 2012; Hagan et al. 2003; Massey and Bartley 2005; Massey, Durand, and Malone 2002; Menjívar and Abrego 2012; Willen 2012; Yoshikawa 2011).

In many nation-states, including the United States, Canada, and numerous European countries, formal citizenship is based on place of birth, parental origins, or both. Noncitizen residents may acquire citizenship through a process of naturalization that varies by country but that often includes a mandatory duration of physical residency, knowledge of the country's history and primary language, and a fee (Bloemraad 2006; Hansen and Weil 2001). In the United States, only citizens are endowed with a complete set of civic, political, and social rights, making citizenship status highly valuable notwithstanding that formal entitlement to benefits does not guarantee substantive access to resources (Abrego 2008; Bumiller 1988; Engel and Munger 2003). All legal categories of state membership other than U.S. citizenship entail some material exclusion and formal limitations (Bosniak 2006; Brubaker 1990). Noncitizens are differentiated from each other by their particular legal standing, which determines their position along a continuum extending from undocumented to permanent legal residency status. Immigrants' place along this continuum, which corresponds to a sliding scale of entitlements and privileges, dictates the rights they may assert (Morris 2002).

The social science perspective on citizenship goes beyond a legal standing and a set of rights and responsibilities: it includes active civic and political participation within a territory and a sense of social belonging (Bloemraad, Korteweg, and Yurdakul 2008; Isin and Turner 2007). Drawing on the post-World War II situation in the United Kingdom, T. H. Marshall (1950) proposed that citizenship involves civil, political, and social rights and obligations derived through legal status as well as an identity and assorted practices. Collective identity may in fact influence legal status since state-based rights often follow from collective political action (Milkman 2006; Seif 2008; Tilly 1998). Immigrants complicate the relationship between state-based rights and collective identity. They may reside for long periods as noncitizens within state territories yet share few of the same rights enjoyed by citizens; they may also feel like citizens but lack official citizenship status (Gleeson 2010; Gonzales 2011; Waldinger 2007). Consequently, the relevance of juridical citizenship for immigrants in the United States, Europe, and other contexts has been debated in the academic literature using notions such as global citizenship, supranational citizenship, transnational citizenship, and postnational membership (for a review, see Glick Schiller, Basch, and Blanc-Szanton 1992; Soysal 1994; Varsanyi 2006). Yet observers acknowledge the continued relevance of legal status in these contexts as well (Gonzales and Chavez 2012; Joppke and Morawska 2003; Menjívar 2006; Nicholls 2011; Waldinger and Fitzgerald 2004).

In the wake of rapid discoveries in genomics and medicine, contemporary forms of *biopolitical citizenship* have proliferated. Biopolitical citizenship refers to situations in which biology and health become a basis for citizenship, understood as some form of state membership that denotes legal

and/or social legitimacy if not legal citizenship (Epstein 2007). As with the concept of citizenship, biopolitical citizenship has a more narrow connotation that specifies the legal relationship of individuals to a nation-state (Petryna 2002) and a broader meaning of people politically organizing based on shared biological grounds (Rose and Novas 2005). In these conceptualizations, individuals relate their biological position to their social, lived experiences within the state. They subsequently present their biology to another state actor, an expert (usually a physician or another medical professional), who performs a formal classification of their biology that individuals then appropriate to make demands on the state or that the state uses to grant citizenship rights.

Scholars have noted significant differences between the current manifestations of biopolitical citizenship from the earlier racialized, eugenic form, which was aimed at population control by removing or enhancing the purported inferior (Rose 2007). Damaged biology became a basis for state entitlement and empowerment in the aftermath of the Chernobyl nuclear disaster, when the young Ukrainian state offered financial and health-care benefits to those exposed to radiation (Petryna 2002). Similarly, the U.S. government mandate to include racial minorities, women, and other underrepresented groups in federally funded research constitutes a new mode of incorporating citizens into the national polity and its scientific institutions (Epstein 2007). Vinh-Kim Nguyen (2010) introduced “therapeutic citizenship” to capture the strong sense of rights and responsibilities, political alliances, and demands on the state among people living with HIV-AIDS in South Africa. In all of these instances, biological differentiation is used to claim membership stakes in state institutions and to classify, monitor, and regulate a population, often in deeply contested ways that pitch various stakeholders against each other.

Biopolitical citizenship implies a diversion of biomedical aims. Traditionally, medical screening and testing has been performed in a target population for a diagnostic or preventive health purpose (Armstrong and Eborall 2012). Screening programs have raised questions about the scope of the nation-state as purveyor of population health because of the limited power of the state to compel people to undergo medical assessments and to adhere to medical screening recommendations (Armstrong 1995). With some exceptions (Timmermans and Buchbinder 2013), participation in screening has been voluntary, and in recent decades most states have refrained from quarantining sick populations, preferring instead to rely on education and voluntary treatment regimes. Using medical screening and testing in the immigration legal setting deploys medical procedures as a form of coercive social control with high-stakes consequences (Zola 1972). At the population level, the issue is no longer identification of asymptomatic patients but the protection of a population from disease with mandatory, exclusionary means. For individuals who submit to biomedical evaluations in the immigration legal context, no longer personal health but their ability to build their lives in a geographical area hangs in the balance.

Not all modes of biopolitical citizenship are equivalent. Biopolitical citizenship may be imposed by the state on candidate citizens or asserted by aspiring citizens and their advocates to the state. With socioeconomic and political resources at stake, biopolitical citizenship claims have become targets of social and political activism (Epstein 1996; Klawiter 2009; Martucci 2010; Rodriguez 2006). They may be facilitated by mid-level state actors (e.g., nongovernmental organizations [NGOs]) keen on culling benefits for a particular population of interest (Fassin 2009; Fassin and Rechtman 2009; James 2010; Kim 2011). Didier Fassin and Estelle d’Halluin (2005, 2007) note that medical certifiers affiliated with NGOs in France mobilize asylum seekers’ biology through their physical bodies as evidence of their social experiences, in order to present them as worthy of state support and benefits (Ticktin 2006, 2011). In Ruth Fitzgerald’s (2008:255) understanding of biopolitical citizenship, access to state resources depends on the development of “lay” expertise” and ground-level collective support directed at state members with the power to grant or deny access to resources (Beckett and Hoffman 2005; Bumiller 2009). Nikolas Rose and Carlos Novas (2005:446) argue that biological “citizens” cultivate knowledge about their biological characteristics, and, in solidarity with others of similar “biovalue,” demand access to state services or recognition of their biological condition at a collective level (Heath, Rapp, and Taussig 2004; Nguyen 2010).

Social scientists and legal scholars have investigated how immigrants and their advocates make “legalizing moves” (Coutin 2000) by framing aspects of their identities and personalities, life experiences and social activities, and personal relationships in legal documents to facilitate desired results. Jaeun Kim (2011:761) examined how immigrants and bureaucrats in South Korea invoke various “identity tags”—documents, performance, or biometric information such as fingerprints and blood samples—to establish or deny the authenticity of kinship ties and to confirm or disclaim understandings of personhood, belonging, and entitlement. Miriam Ticktin’s research on French humanitarian immigration policies found that immigrants who “sell [their] suffering” (2006:45) to legal decision makers and mid-level gatekeepers, including doctors, nurses, and social workers, through “exceptional” and “dramatic” (2011:129) accounts of physical violence are often rewarded with legal recognition. The biological language that “citizens” collectively employ vis-à-vis the state affects their corporeal self-understandings and relationships; this “pluralize[s] biological and biomedical truth, introduce[s] doubt and controversy, and relocate[s] science in the fields of experience, politics, and capitalism” (Rose and Novas 2005:447).

Citizenship on a biological basis is inherently intertwined with processes of stratification, as it privileges or includes certain people based on their biological or genetic status and disadvantages or excludes others (Epstein 2007; Petryna 2002; Rose and Novas 2005). A state that uses biological labels to distinguish and disenfranchise undeserving individuals retains considerable power in its invocation of “science as a political technique” (Petryna 2003). States direct stratification on biological grounds by homogenizing lives for subcategories of people (Ong 2003), a process Epstein (2007:135–36) has referred to as “niche standardization.” If a state recognizes the construction of health or biology that individuals produce and claim, it confers “biolegitimacy” on people (Fassin 2009:49), endorsing biological life in political life.

The incorporation of biomedical criteria into the U.S. immigration adjudication process offers a lens to examine the conditions under which biomedicine becomes legally, politically, and socially relevant in the relationship between immigrants and the state. While biomedical techniques are employed by the state as an egalitarian way to inject more transparency into legalization decisions, the way biomedical evaluations are structured fosters uncertainty and stratification that unfairly disadvantage certain petitioners. In part, this is because biomedicine in the immigration legal process is not a fixed entity but part of “living law” (Ehrlich 1913), in this case a set of properties to be mobilized and evaluated in the context of state-imposed legalization procedures that are completed by immigrants with guidance from attorneys. Lawyers, acting as intermediary brokers, help individuals understand the juridicability of their personal complaints, encouraging them to remedy their situations vis-à-vis legal institutions and authorities (Berger 2009; Coutin 2000; Hernández 2010; Lakhani forthcoming). In this study, attorneys served as brokers by advising immigrants when and under what circumstances they should undergo biomedical assessments in the legalization process to promote their incorporation as permanent residents or to facilitate their reunion with family members still abroad. By examining medical examinations and DNA testing in U.S. legalization procedures, we delineate the different sorting logics that these modes of biopolitical citizenship hinge on and their consequences for aspiring citizens.

## Data and Methods

The first author collected three sources of qualitative data. The first includes three years of ethnographic participant observation at a nonprofit organization in Los Angeles, California that provided free legal and social services to low-income city and county residents. The second consists of observations gathered during two years of bimonthly “Network” meetings of a group of Los Angeles nonprofit attorneys who represented immigrants applying for regularization through victim-based, or humanitarian, immigration remedies. The third data source is a collection of 17 in-depth, semistructured interviews with Los Angeles nonprofit attorneys about their case experiences with and perceptions of biomedical procedures in the immigration legal process.



From January 2009 to December 2011, the first author volunteered weekly as a law clerk at Equal Justice of Los Angeles ("Equal Justice" or "EJLA," a pseudonym), assisting immigration lawyers and migrant petitioners as they applied for victim-based forms of legal relief including political asylum (granted to victims of persecution or those who fear persecution in their countries of origin) and U Visa status (granted to victims of crimes that occurred in the United States who collaborate with law enforcement), as well as permanent residency, citizenship, and reunification with family members still abroad. Immigrants soliciting legal status within the context of EJLA were low-income male and female adults and children from countries in Africa, Asia, Latin America, and the Middle East. During the period of ethnographic fieldwork and volunteer work at Equal Justice, which was conducted for a larger project on immigrants' legalization experiences, the first author took detailed field notes about interactions and meetings that involved discussion of medical examinations and DNA testing. In September 2009, the first author was invited to attend Network meetings. Immigration lawyers in the Network, including EJLA attorneys and those from other organizations, convened every other month to discuss and strategize surrounding challenges in their casework, including constraints and inequalities of biomedical screening procedures. In February and March of 2012, the first author conducted 17 interviews with Equal Justice and other immigration attorneys involved in the Network that focused on medical examinations and DNA testing in the legalization process. All interviews were conducted in English and lasted between 30 minutes and 1.5 hours. This research received IRB approval.

Both authors analyzed ethnographic field notes and interview transcripts following the steps of abductive analysis (Timmermans and Tavory 2012). This data analysis approach emphasizes an iterative process of close coding of data in light of existing theories in order to innovate and amend them. In our case, relevant theoretical perspectives were drawn from the fields of science studies, medical sociology, and international migration. Analysis began in June 2011. Once biopolitics emerged as a theoretical theme, the first author collected additional ethnographic data between July and December 2011 by assisting with and observing EJLA immigration cases involving biomedical assessments in order to explore nuances in existing data instances. In-depth interviews with attorneys were also conducted for this purpose in early 2012 and complemented ethnographic data. After this data collection was complete, the authors undertook several iterative cycles of coding, memo writing, and theorizing. The specific focus of the broader study was the legal processing of immigrants' legalization claims and we therefore highlight the role of attorneys (rather than clinicians) in navigating biopolitical citizenship.

### **Biological Contestations and Negotiations in Pursuit of Membership**

The social stratification potential of biopolitical citizenship depends on the specific blend of biomedicine and politics that is achieved in legalization proceedings. Here, we will focus on two salient forms of biopolitical citizenship criteria in the U.S. immigration legal process: the medical exam and DNA testing for family reunification purposes. Both of these evaluations promise scientific objectivity via measurable and falsifiable biomedical criteria. However, using these particular biomedical techniques in immigration legal procedures also implies converting a *modus operandi* for a different purpose and inserting it into a bureaucracy with conflicting political priorities. This blend of biology and politics (Jasanoff 2004) reproduces pernicious social stratification, with individuals already subject to forms of social marginalization becoming even more disenfranchised in the legalization process.

### **The Medical Exam**

Medical examinations in contemporary U.S. immigration proceedings hark back to public health officials' medical certification of aspiring immigrants on "the line" at Ellis Island and



similar stations in the first half of the twentieth century. Screening mandates at the time were narrowly defined in legal regulations, such that immigrants diagnosed with certain conditions were excluded from entry. However, research suggests that public health officials overwhelmed by thousands of immigrants only conducted cursory examinations (Fairchild 2003). Currently, the Immigration and Nationality Act (INA) specifies that persons seeking to enter the United States as permanent residents may be deemed inadmissible to the country by adjudicators at the U.S. Citizenship and Immigration Services (USCIS) based on medical concerns that include having a “communicable disease of public health significance,” failing to present documentation of vaccination, having a physical or mental disorder associated with harmful behavior, or being a drug abuser or addict. Immigrants who are obligated to undergo a medical examination in the country as part of their legalization must submit Form I-693 to USCIS as proof of their health status. Approximately 3,000 physicians designated by USCIS as “civil surgeons” perform the medical examinations (CDC 2012).

Civil surgeons are expected to perform immigration medical examinations according to the Technical Instructions for the Medical Examinations of Aliens in the United States, published by the Centers for Disease Control and Prevention (CDC). USCIS indicates that a medical examination should cover four components: (1) a review of the applicant’s medical history; (2) a review of medical records; (3) a review of systems to determine the presence and severity of Class A and B conditions; and (4) a physical examination, including an evaluation of mental status and relevant diagnostic tests (USCIS 2012). “Class A” conditions include communicable diseases such as active tuberculosis or syphilis, physical or mental disorders associated with harmful behaviors, or drug abuse or addiction. If civil surgeons determine that immigrants have a Class A condition, they are marked as “inadmissible.” Individuals may also be diagnosed with “Class B” conditions, including physical or mental abnormalities, diseases, or disabilities that constitute a substantial departure from normal health or well being. These conditions do not make immigrants inadmissible in and of themselves. Nevertheless, the diagnosis of a “Class B” condition by a civil surgeon may figure into USCIS adjudicators’ discretionary evaluations of applicants’ overall health, making migrants vulnerable to a determination of inadmissibility. After completing a medical examination, the civil surgeon is supposed to give the immigrant applicant the completed Form I-693 in a sealed envelope, which the applicant then submits to USCIS.

USCIS presents the medical exam as an egalitarian and objective way to sort aspiring immigrants. In reality, inequitable forms of sorting have already occurred by the time immigrants undergo these biomedical evaluations. The “fairness” of the assessment is questionable because the immigration medical exam was implemented within the general U.S. health-care system, which is known for unequal access, great expense, and practice variation. Consequently, many of the well-acknowledged predicaments associated with the for-profit U.S. health-care system impact whether and how the immigration medical exam takes place, and its outcome. Such problems transmute into legal status problems in the immigration context.

### *Cost*

USCIS certifies civil surgeons and provides them with suggested exam guidelines but does not infringe on physicians’ autonomy to determine evaluation fees. Civil surgeons set their own prices for the medical exam, and immigration attorneys in this study reported that the price for an exam in Los Angeles typically ranged from \$75 to \$400, to be paid out-of-pocket by the client. This baseline fee did not include added assessments or vaccines civil surgeons deemed necessary to complete their medical assessments. For indigent immigrants trying to support themselves and family members on limited income, such costs can become insurmountable barriers to legalization. In an interview, a lawyer described a client on “the brink of homelessness” who could not spare the \$240 it would cost for her and her three children to undergo medical exams in order to apply for permanent residency. “They’re trying to eat,” the attorney explained. But “the problem is, this is going to hold off the whole citizenship

[process]" for the family, stunting their ability to stabilize their lives over the long term. Because the lawyers in our study worked with low-income clients, attorneys sometimes suggested immigrants visit "cheaper" doctors for their medical exams. They noticed, however, that "cheap" exams were more likely to produce incorrectly filled-out forms. At Equal Justice, we observed lawyers recommend that their clients ask for copies of their completed medical examination forms before leaving the doctor's office. That way, attorneys could double-check for discrepancies before submitting immigrants' sealed biomedical materials to USCIS. But some clinicians balked at such a request, charging the price of a full exam for each copy. Civil surgeons also charged for revisits when they filled out the Form I-693 incorrectly.

Attorneys stated that "shady" financial practices associated with the medical exam were not uncommon. Legal regulations dictate that immigrants who underwent medical exams at U.S. consular offices abroad simply need to update their vaccination status within the first two years of U.S. residency. Instead, many clinicians insist on a complete vaccination record and "charge them again for the whole thing [medical exam]," an Equal Justice lawyer articulated in an interview. As with many health-care interactions, clinicians treated the medical exam as a service they (or more often their office staff) sold. Immigrant patients had limited information to compare quality or cost (Light 2010), particularly when they had limited funds to expend on the evaluation. Consequently, lawyers played upon the competition of service providers. In a Network meeting, after group discussion revealed that a "cheap" doctor several attorneys had been sending immigrants to was charging clients twice for the exam to correct their own administrative errors, lawyers resolved to take their "business" elsewhere if the practice continued.

### *Unnecessary Procedures*

As physicians, civil surgeons have professional autonomy over the services they provide, and clinicians are free to order whatever tests they determine they need to fill out the form. In interviews, several lawyers recalled their reactions of surprise when they realized immigrants had undergone blood tests that legal authorities did not require. Considering the high stakes of legalization decisions and a captive patient population, most patients did not question the need for additional tests.

### *Professional Discretion*

Amendments to the INA in 1990 enhanced the discretionary judgment power of civil surgeons to establish the health status of immigrants. For example, under previous legal guidelines, immigrants who had been diagnosed with mental retardation, insanity, psychopathic personality, sexual deviation, or mental defect were ineligible for admission or for adjustment of status to permanent residency. As amended, the INA no longer lists specific physical or mental conditions (aside from a number of "communicable diseases of public health significance") that automatically exclude immigrants, but instead requires civil surgeons to decide whether immigrants have physical or mental disorders that pose a threat to the property, safety, or welfare of themselves or others (CDC 2012).

Lawyers aimed to position immigrants as best they could for unpredictable interactions with their would-be evaluators. If they discerned "triggers" in clients' verbal statements or documents in their legal files that were indicative or suggestive of a communicable disease, a physical or mental disorder, or substance abuse or addiction, attorneys encouraged immigrants to preemptively seek medical attention and obtain records of their treatment. In an interview, an Equal Justice lawyer described her reaction upon learning that a U Visa client had syphilis during her "prescreening" of the immigrant's health prior to starting the permanent residency application process. As one of the "communicable diseases of public health significance," syphilis could potentially bar the individual from a positive exam outcome and deter residency.

In preparing the client, we were just discussing that they [USCIS] want to make sure you don't have communicable diseases that are going to affect others here in the United States. I gave examples, and [she] said, "Oh, OK, because I have that. I have syphilis" . . . I ended up going on the CDC website, [which] provides guidance to the doctors on how to fill out the forms. Through some research, we started seeing what was inadmissible and what wasn't. I guess there are different stages [of syphilis]. I didn't know anything about this, but I looked into it and from there I had to tell the client, "Well, don't do your medical exam yet. You'll need to go to your doctor. I need to know whether you have Type A or Type B, and that you are under a doctor's care." She had been receiving care and she went to inquire, and then she brought me a diagnosis. In the end, I realized that she had the type that was not the inadmissible version, so from there we were able to file.

### *Unequal Access to Care*

When it came to physical or mental conditions with symptoms that could be "risky" to individuals or those around them and were incurable, there was more uncertainty surrounding how medical examiners would depict conditions in exam forms, and thus how likely individuals were to become residents. An EJLA attorney described a "psychological issue" that could be "difficult" to parlay into residency because it was very dependent on the medical examiner's interpretation of the individual's condition. During an interview, she explained that she was concerned that a client who had been diagnosed with schizophrenia, but controlled with medications, might encounter difficulty when it came time to apply for permanent residency. The immigrant's treating physician stated that she was at no risk for reoccurrence and no risk to herself or others as long as she took her medication. Nonetheless, the lawyer observed, "But the medical professional [civil surgeon] makes whatever determination they make. It's strange that a physician who has been treating her for four years wouldn't be trusted [by USCIS] over this person that she paid \$150 to sit down with her for 20 minutes." While immigrants' primary care physicians may vouch for their health vis-à-vis civil surgeons or through affidavits included in legalization petitions, many recent immigrants are among the millions of Americans without health insurance and do not have regular doctors who could give such assurances (Goldman, Smith, and Sood 2005).

### *Discrepant Medical and Legal Definitions of Drug Use*

The 1990 amendments to the INA also replaced the previous exclusion of "narcotic drug addict" with the expanded category of "drug abuser or addict." Under current regulations, immigrants who have previously engaged or are currently engaged in the nonmedical use of any substance named in Section 202 of the Controlled Substances Act, which includes a wide variety of narcotics and other controlled substances, could be considered drug "abusers" or "addicts" as a matter of law. Although USCIS guidelines to civil surgeons suggest that doctors should use the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders' (DSM) definitions of "substance abuse" ("generally characterized by a pattern of *recurrent* substance use despite adverse consequences and impairment," emphasis ours) and "substance *dependence*" ("generally characterized by compulsive long-term substance use despite significant substance-related physical, psychological, social, occupational, or behavioral problems," emphasis ours) when making immigration-related diagnoses, civil surgeons are simultaneously instructed to record "*any* drug abuse" on the Form I-693 (USCIS 2012; emphasis added). These conflicting imperatives facilitated biomedical outcomes that were detrimental to legalization cases. In an interview, a Network attorney recalled a case in which she felt her client was unfairly labeled a drug addict.

I had a case for a kid with an approved U Visa petition [who] went in for his medical exam. The doctor asked him about drug use. He said, "No, I'm not a drug addict." "Have you ever used drugs?" "Well, yeah. I did coke once when I was 14 and I smoked pot three times." He's 22 now. "Well, you're a drug addict," [the doctor said]. We're still fighting it. [The case] has been pending since 2010.

Having been labeled an “addict” by a medical examiner could forever bar the young man from his chance at permanent residency in the United States.

### *Misplaced Trust*

Bioethicists have been cognizant of the blurring of medical roles in patient care, which can prove damaging to patients. The classic example is known as the “therapeutic misconception,” when patients participate in clinical research that also constitutes their health care and may not understand which part of the care they are receiving advances research and which treatments benefit their health (Kimmelman 2007). A similar blurring of roles occurs when immigrants visit physicians who examine their health status and simultaneously complete paperwork for legal immigration purposes. An Equal Justice attorney articulated this tension in an interview, explaining, “People feel, usually, free and open to talk to their medical doctor about their care, but sometimes the lines get blurred because in this instance, the medical doctor is in fact taking that information and writing to Immigration about it.”

### *Vulnerable Populations*

Whether they “pass” or “fail” the immigration medical exam, submitting to biomedical assessments can be traumatic for individuals for whom the grounds for their legal requests may involve torture, sexual, or other physical victimization, the case for some asylum and U Visa petitioners and status holders. Torture, domestic violence, or other crime victims may also have had suicidal thoughts during or after the time of abuse that can have significant legal ramifications for noncitizens. Civil surgeons are expected to document suicidal ideation if it comes up during medical examinations, which may cause USCIS adjudicators to issue Requests for Evidence (RFE) for additional information about the trauma immigrants endured. Therefore, humanitarian immigration policies designed to protect vulnerable populations may, via their implementation across various institutions, have the effect of haunting immigrants when symptomatic manifestations of their violent experiences become part of their legal records, capable of being used by the state as an exclusionary tool.

### *Cascading Consequences*

Unlike in areas with universal health-care provision such as Canada and Europe, in the United States health care is closely tied to employment and public welfare, which in turn is dependent on an immigrant’s legal status. Consequently, spending extended time in temporary legal statuses (such as U Visa standing) or those that may not expire but confer limited benefits (such as asylum status) may cascade into a wide array of problems (Menjívar and Abrego 2012). Compared to asylees and U Visa holders, legal permanent residents are eligible for a larger range of welfare benefits that foster socioeconomic sustenance and mobility. The obvious appeal of residency notwithstanding, immigrants remain in precarious legal statuses short of residency if they cannot meet application requirements such as the medical exam. In these “liminal” legal positions (Menjívar 2006), immigrants are also subject to expulsion from the country if convicted of criminal offenses (Hagan, Rodriguez, and Castro 2011). Therefore, aside from the economic vulnerability individuals face if unable to pay for medical examinations and adjust to permanent residency, a Network lawyer noted the danger of deportation immigrants had to contend with. Describing a family of asylee clients in this situation, she stated: “God forbid someone commits a crime. They’re going to find themselves deported because they never got to that step.”

Similarly, immigrants with temporary standings like U Visa status face the prospect of becoming undocumented by default if they cannot take the residency “step” before their four-year standing expires (Brown 2011). Unauthorized individuals are completely ineligible for residency and deportable at any moment (De Genova 2002). Instead of being restricted from moving

*forward* along the legal status continuum, immigrants in this position could be forced backwards into the shadows of the law (Chavez 1992) and face ripple effects associated with “learning to be illegal” (Gonzales 2011). For example, forgoing a green card because of financial inability to produce a medical exam could invalidate a work permit acquired through an expired, temporary immigration status, endangering a job that came with health insurance for an entire family.

### ***Red Flags***

For individuals who are able to complete medical examinations and petition USCIS for immigration benefits, the wait for legalization may not end. USCIS adjudicators have the discretion to read individuals’ exam forms and base their case decisions on their interpretation of physicians’ reports. Lawyers maintained that sometimes it is not so much immigrants’ health status but the finished forms themselves that can determine legal outcomes. Attorneys suspected that the language or completion style of exam paperwork, including what is filled in and omitted, can lead USCIS adjudicators to issue RFEs and defer their decisions on immigrants’ petitions. In crafting exam-related RFEs, adjudicators have the opportunity to review applicants’ entire legal cases and add other requests, which can “open a can of worms” that would have otherwise remained “closed.”

Our analysis of the immigration medical exam as a technology of biopolitical citizenship reveals the problematic consequences of health assessments performed within a legal and bureaucratic context that carry ramifications for individuals beyond their biological state. In a fragmented, for-profit health-care system dependent upon care providers whose professional status gives them great autonomy with little accountability, immigrants who undergo medical exams for legalization purposes are not evaluated and sorted on medical criteria alone. The result is not a new instance of medicalization of immigration procedures in the sense of an expansion of medical definitions and powers to solve social problems (Conrad 2007). Neither is the medical exam hijacked for political reasons. The concept of biopolitical citizenship highlights that the use of medical procedures in immigration adjudication processes creates a unique set of criteria that are simultaneously medical, bureaucratic, and legal. The medical exam is transformed from a diagnostic or preventive mechanism to a selection device, and the clinician becomes a civil surgeon playing a gatekeeping role in the immigration legal machinery (Foucault 1976; Illich 1976; Zola 1972). Holding the keys to both medical and immigration pathways, civil surgeons exert their professional autonomy to interpret the mandate as they see fit.

In the end, neither the civil surgeon nor the exam matters as much as the I-693, which attains scientific *and* bureaucratic authority as it decontextualizes disease nuances for adjudication purposes. We find many signs of this unique blend of science and bureaucracy in the implementation of the immigration medical exam. Medical definitions of mental health and drug use shift within the immigration context from biomedical risk factors to legal tools of exclusion. A further instance of the biopolitical mode of citizenship acquisition is the lawyer’s proactive coaching of clients to present a picture of health that, while not untruthful, remains administratively compatible. This labor implicitly involves lawyers in the state’s “disciplinary” work *vis-à-vis* immigrants (Foucault 1991, 1993) while simultaneously positioning attorneys as state critics (Coutin 2000). The result is that some aspiring citizens are screened out for being biomedically “unhealthy” according to the state and others for reasons associated with the pervasive access and care barriers in the U.S. health-care system.

### **DNA Testing for Family Reunification**

The importance of biological criteria in the family-based immigration legal process has escalated in recent years, with the increasing use of DNA testing to verify the genetic relationships of legal status holders to petitioning relatives (Aizenman 2006; Swarns 2007). Unlike the mandatory medical exam, genetic testing is not required of immigrants petitioning for legal status via a family

tie (Aytes 2008; Cronin 2000). Testing is technically “voluntary,” but it is only requested when “no other form of credible evidence is available in conjunction with an immigrant visa application” (Bureau of Consular Affairs n.d.). Immigrants who do not perform DNA tests in these situations have an opportunity to explain their noncompliance, but they face almost-certain rejection of their applications. On a *de facto* level, DNA testing easily became obligatory. An Equal Justice attorney explained in an interview that most immigrant clients who were asked to furnish biological proof of their relationships provided it, despite personal or financial hardship involved. “It’s not a decision about ‘Can you do it?’ or ‘Does the client want to do it?’” The decision boiled down to the “nightmare scenario” of “Do you want to get your kids here or not?”

If immigrants’ documentary evidence of family relationships is deemed insufficient and a genetic test recommended, the immigrant petitioner is responsible for initiating the process by selecting a laboratory where their DNA sample will be collected. However, similar to the medical exam, cost affects immigrants’ ability to participate in genetic testing. International DNA testing for one parent-child relationship often costs \$450 or more (Swarns 2007). In addition, DNA testing requires a sophisticated infrastructure of certified laboratories across nation-state borders to process the results. For example, USCIS may require that blood samples are procured in consulates or embassies abroad and analyzed at U.S. laboratories. At each one of these sites, samples may go missing, genetic kits linger, and both the accuracy and expediency of the process can be compromised. DNA is supposed to be fail proof, but in one family a Network attorney worked with, her client’s initial test did not confirm paternity but a follow-up test did. This delayed adjudication of the immigrant’s legal request and his reunification with his daughter. It also likely devastated family relationships.

The major difference between the medical exam and genetic testing as biopolitical citizenship techniques resides in the discretionary nature of the DNA request: genetic testing presumes that documentary evidence demonstrating familial relationships is insufficient or suspect. Yet in some cases we observed, it emerged that social, political, or economic circumstances in immigrants’ countries of origin prevented them from being able to produce required evidentiary documents in support of their family reunification petitions. This was the situation for an asylee from Cameroon who was in the process of petitioning for his wife and son to join him. An EJLA attorney described in an interview that:

The couple was married in a very remote village where there are no forms, no computers, not even mobile phones. This couple got married there in about 1998. Before getting married, they had a son. This case [his wife and son’s family petitions] has been pending . . . for about seven years. There was a problem with the marriage certificate because the registry office [in Cameroon] first was saying that they could not provide a photocopy of their certificate. Then they said that they had one, and that they sent the certification to the [U.S.] Embassy. But the Embassy . . . said that the marriage doesn’t exist. There are no records; they can’t find it. So they [the U.S. Embassy] are doubting the relationship between the father and the child because of the marriage, which they shouldn’t be. It’s totally unfair. He [the asylee] was requested [to do] a DNA test.

The man, who fled Cameroon because protests against the government landed him in prison, where he was tortured, once again found the course of his life negatively affected by political and bureaucratic problems in his home country. Documentary requirements often posed particular hardships for asylum seekers or approved asylees because they may have lost important paperwork in government raids, war, or hasty departures from their countries of origin. And certain countries, rural areas, or places such as refugee camps may not have had any opportunities for “official” registration of events such as births or marriages in the first place.

The increasing certification of relationships with DNA testing suggests, as an Equal Justice lawyer concluded, “that most relationships are fraudulent” and that individuals who choose not to undergo testing as part of family petitions or cannot afford to do so are in fact claiming relationships that are not “real.” But the notion of “fraud” is complicated in defining family relationships. Given the importance accorded the extended family in U.S. immigration laws of the post-1965



period, relying on DNA technology to prove the existence of familial relationships is problematic given that kinship bonds may be forged beyond heteronormative nuclear family units (Carsten 2004; Franklin and McKinnon 2001; Heinemann and Lemke 2013; Howell 2009; Levine 2008; Schneider 1980). Interviews revealed that lawyers were aware some people knowingly claimed biologically unrelated people as blood relatives in reunification petitions. In other cases, such as countries with high maternal mortality, attorneys perceived that the distinction between family and nonfamily was not clear-cut. During an interview, an EJLA lawyer conveyed:

You see babies who don't have parents because the mom died of AIDS when they were six months old, the aunt raised it from birth as her own child, and then she petitioned for it. And they're not related as in mother-child, so that would be considered fraud. But to them, that was their child that they raised since birth.

During case preparation meetings, EJLA lawyers explained to immigrant clients that only their biological children counted for reunification purposes in the U.S. legal context. But in interviews, attorneys described that petitioners sometimes maintained alternate conceptualizations of family nonetheless.

It's very hard to raise someone from a super-extended family that you can't bring in because their relationship isn't close enough under immigration laws. I know of a case where someone said, "Yes, yes, yes" [when I asked if her daughter was related to her by blood]. "You literally gave birth at the hospital?" [the lawyer asked]. "Yes, yes, yes" [the client repeated], but the DNA test showed no. It was her nephew instead of her son. There's this perception out there among clients sometimes [that] if you're in the same [extended] family, you're going to be OK. It [the DNA] will come out the same. And it doesn't, right? So I'm sure she's not the only one who has gotten that [result]. But it creates problems for a client who does that in terms of fraud . . . Your record is your record.

As the lawyer's comments suggest, discrepancies between reported kinship and genetic kinship emerge as documented legal fraud in immigration proceedings, carrying powerful consequences for immigrant petitioners and their families.

While the family petitions of individual immigrants were sometimes perceived as questionable, certain *countries*—such as Eritrea, Ethiopia, Cameroon, and China, according to lawyers—were considered "high fraud countries" by USCIS so that any "official" documentation produced there was suspect anyway. After a 2008 study of African refugees found "high rates of fraud" based on the DNA testing of individuals listing themselves as family members for U.S. immigration benefits, researchers believe African petitioners may be subject to extra scrutiny in family legalization petitions (Esbenshade 2010). An EJLA lawyer characterized the situation in an interview as "punishing the whole lot for the alleged lies of a few, painting with a wide brush everyone from a particular country." Other countries take these suspicions even further. The German Federal Foreign Office published a list of over 40 countries whose documents are not acknowledged by German embassies because they assume that these countries' systems of identity registration lack sound procedures. In doing so, they build explicit ethnic and racial biases into its legitimization procedures (Helén and Lemke 2012).

The *de facto* requirement to offer scientific proof of family relationships for reunification put lawyers in the bind of telling their clients that the state demanded proof of paternity or maternity. Worse, the scientific proof against immigration legal fraud may have the effect of tearing apart the family unit it is supposed to verify and uphold. The biopolitical request for DNA often arises at a late stage of family separation, intersecting with difficult emotional dynamics that further complicate the collaboration necessary to obtain genetic samples. The first author had the opportunity to work on a family reunification case for a Cambodian asylee and his four children that been pending for ten years because the file had been lost several times and sent to the wrong office for processing. Once the children's petitions were actually approved by USCIS in 2011, DNA testing requests by Consular officers in Phnom Penh who doubted the paternal relationship (after interviewing the children before issuing visas for travel into the United States) created further barriers



to family reunification, with the family members growing increasingly desperate. Ultimately the father stopped working on his children's petitions before submitting a response to the U.S. Consulate. Over the long period of physical separation, he explained during a meeting that his family relationships had crumbled, and the children, who had since become adults, were resentful that their father was unable to bring the family together.

I want my kids to come to the United States, but they are so big now. When I left [Cambodia], they were little children, but now they are adults. My wife and I were so lonely here without them that we had two other kids. My kids [in Cambodia] think we don't want them anymore. We do, but they have separate lives now, boyfriends and girlfriends, jobs. They don't want to talk to me . . . Why pay for the [DNA] tests if they won't come? My wife and I don't have the money.

Faced with the prospect of coming up with \$1200 for genetic testing without knowing whether his children would cooperate or relocate to the United States after such an extended period apart, the father decided to abandon his family petitions.

In theory, DNA technologies should not produce inequities in immigration procedures because genetic fingerprinting offers the most reliable and accurate means of establishing the biological ties that matter to the state. The objectivity of DNA testing hinges on the ability to reduce complex family relationships to genetic markers. But this same decontextualization ignores culturally meaningful family configurations in which kin is not born but made. Because DNA matches are elevated as the gold standard for family relationship verification, any discrepancy becomes documented fraud. While DNA trumps narrative and documentary evidence and is considered self-sufficient, its use and credibility nevertheless depends on how it is embedded in a bureaucratic context (Lynch et al. 2008). In the U.S. immigration bureaucracy, suspicions of fraud surface most often for people from *some* countries. Thus, the institutionalization of DNA testing in the U.S. legalization process disproportionately affects certain people, such that an evaluation touted as objective and thus "fair" becomes biased in its consequences.

## Conclusion

In the social sciences, biopolitical citizenship draws attention to the specific blend of politics and biomedical techniques that shape the relationship between a state and its citizens. The concept highlights how aspiring and full citizens organize on biomedical grounds for state rights and how the state shapes populations into biological citizens. The resulting citizenship configurations are irreducible to either biomedical parameters or policy directives alone but inevitably constitute a biomedical-political fusion. The actual implementation of the techniques and their configuration in broader state structures matters for the consequences they have on citizenship rights.

Within immigration legalization processes, the use of biomedical criteria has shifted over the past century. At the turn of the twentieth century, the goal was to protect the U.S. population from infectious disease, but insatiable demand for labor made the medical exam largely a formality for many European immigrants (Fairchild 2003). In light of the most recent politicization of immigration policies (Calavita 1996; Menjívar and Abrego 2012), the contemporary aim of using biomedical criteria is to restrict undesirable immigration. Biomedical selection criteria are touted as fair, transparent, democratic, and above all objective. This biomedical objectivity privileges expert judgments and standardized bureaucratic criteria over narrative, self-reported evidence (Porter 1995). Aspiring citizens expose part of their biology to the state in order to achieve a change in legal status. The state, in turn, relies upon medical experts to extract a desired biological truth. Attorneys attempt to improve their clients' chances of legalization by prepping them about issues they may encounter and suggesting they take preventative steps to avoid exclusion. They also look for alternative venues for biomedical

assessments to be performed. Further downstream in the citizenship process, state agents interpret immigrants' biomedical information with significant discretionary power. The consequence is that certain people are more susceptible than others to exclusion not only on biological grounds, but also on assorted bureaucratic vulnerabilities.

The resulting stratification does not depend on biomedical criteria alone but on how these criteria are instituted within everyday clinical and laboratory practices and macro-level political and bureaucratic systems. In DNA testing, the relevant context of biopolitics involves every element that affects the existence of documentary evidence across the globe, while the medical exam is firmly ensconced in the access, cost, and quality of care problems of the U.S. health system. Biomedical screening and testing always come with false positives and false negatives as a result of a balance between a test's sensitivity and selectivity based on technoscientific parameters. There is, however, also a bureaucratic equivalent to the more technological measures of false positives and negatives. In the medical exam context, the discrepancy between CDC or DSM criteria and commonsense and clinical understandings of drug abuse systematically produce such "false positives." "False negatives" may also occur when questions are skipped or asked perfunctorily. With DNA testing, "false positives" happen when biological ties no longer match cultural understandings of family ties. The actual number of "false positives" goes beyond assessment to turning biomedical criteria and results into bureaucratic rationales. People fail to be screened or tested because they cannot pay for the evaluations or because the burden of fraudulent paternity or maternity is too heavy to bear. People fail to obtain desired results because professional discretion turns against them or because forms are not filled out correctly.

Different biomedical techniques enforce different institutional norms. DNA technologies define the family of interest as a nuclear, heterosexual set of relationships tied by genetic commonalities. Nonbiological extended family ties not only do not count, but their discovery translates into documented legal fraud. This creates a disjuncture between the constrained family unit sanctioned in immigration proceedings, and the multiple, heterogeneous family configurations available to individuals in social life. During a medical exam, even the slightest mention of past drug use becomes a "preexisting condition" that voids citizenship. The focus on drug-free and mentally healthy populations as a state concern in legalization procedures also stands in sharp contrast to immigrants' restricted health-care access prior to citizenship and to the lack of a right to health in the contemporary United States more broadly. Biopolitical citizenship policies are much more restrictive than policies for U.S. citizens and constitute a double standard for aspiring citizens.

Some current observers of biopolitics have drawn a bright line between the punitive, state-imposed racial eugenics and nativism of the past, and the more participatory, activist-driven implementation of biomedical techniques at a transnational level in the present (Novas and Rose 2000). But the incorporation of biomedical techniques into current U.S. legalization processes demonstrates that contemporary bio-medicalization works both across nation-state borders *and* reinforces them; it is therefore a multisited phenomenon. However, determining citizenship with biomedical techniques echoes some of the insidious ethnic exclusion of the past. This is perhaps the clearest in Germany, where more than 40 countries are singled out as fraud-rampant states, or in Finland, where state requests for analysis of immigrants' DNA target Somali applicants almost exclusively (Helén and Lemke 2012). In the United States, DNA requests are more likely to arise for applicants from some countries than others. The result is a systematic insertion of ethnic bias into citizenship proceedings.

In the context of the immigration literature, we demonstrated that mid-level actors mediate the content and consequences of biopolitical citizenship in addition to lay individuals and the state. The deployment of biomedical technologies as political gatekeeping devices in the legalization process triggers strategic responses by skilled attorney intermediaries (Berger 2009; Coutin 2000; Villalón 2010). By priming immigrant clients about how to navigate medical exams and genetic testing, lawyers shape the actual forms biopolitical citizenship takes on the ground. Before immigrants undergo medical exams for residency purposes, lawyers advise them to shield

particular forms of their biology and to reveal others at opportune moments. While preparing family petitions, attorneys seek documentary proof of immigrants' kinship ties to help them avoid requests for DNA evidence. When these efforts fall short, lawyers prepare petitioners by being explicit about the kinds of relationships that count to the U.S. state to ensure immigrants do not commit acts of fraud that will shatter reunification hopes and haunt their legal lives forever. In this anticipatory filtering work, lawyers are neither complete "agents of law" who execute immigration laws and associated bureaucratic mandates, nor are they total "critics of law" whose labor aims to subvert biomedical technologies (Coutin 2000:104). Instead, attorneys' endeavors reflect efforts to locate maneuvering space for their clients prior to undergoing biased sorting mechanisms that have the potential to determine their destinies in the United States

Biopolitical citizenship highlights how health logics that are universal, fair, and objective in principle chafe against the priorities of restrictive immigration policies. Thus, an immigrant who qualifies for U Visa standing based on domestic violence may be disqualified for permanent residency because of mental trauma caused by the original abuse. And the quest for genetic proof of family ties to facilitate legalization may further sever ties already frayed by long periods of separation. While combining conflicting health and immigration policy prerogatives could theoretically promote greater inclusion and empowerment of immigrants, the intermingling of inequalities in each bureaucracy ultimately has the effect of further excluding at least some aspiring citizens. Therefore, while biopolitical sorting is introduced as a biomedical fix for recalcitrant political and bureaucratic problems, the mechanism actually creates added stratifications of haves and have-nots. Biopolitical citizenship means sorting aspiring immigrants on biomedical grounds along bureaucratic, financial, legal, and political axes.

## References

- Abrego, Leisy J. 2008. "Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California." *Law & Social Inquiry* 33:709–34.
- Aizenman, N. C. 2006. "DNA Testing a Mixed Bag for Immigrants." *The Washington Post*, October 25. Retrieved May 6, 2014 ([www.washingtonpost.com/wp-dyn/content/article/2006/10/24/AR2006102401448.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/10/24/AR2006102401448.html)).
- Armstrong, David. 1995. "The Rise of Surveillance Medicine." *Sociology of Health and Illness* 17:393–404.
- Armstrong, Natalie and Helen Eborall, eds. 2012. *The Sociology of Medical Screening: Critical Perspectives, New Directions*. West-Sussex, UK: Wiley-Blackwell.
- Aytes, Michael L. 2008. "Genetic Relationship Testing; Suggesting DNA Tests; Revisions to the Adjudicators Field Manual (AFM) Chapter 21 (AFM Update AD07-25)," edited by USCIS. Washington, DC: U.S. Department of Homeland Security.
- Beckett, Katherine and Bruce Hoffman. 2005. "Challenging Medicine: Law, Resistance, and the Cultural Politics of Childbirth." *Law & Society Review* 39:125–70.
- Berger, Susan. 2009. "The Production of the 'Battered Immigrant' in Public Policy and Domestic Violence Advocacy." *Journal of Interpersonal Violence* 23:153–70.
- Bloemraad, Irene. 2006. *Becoming a Citizen: Incorporating Immigrants and Refugees in the United States and Canada*. Berkeley: University of California Press.
- Bloemraad, Irene, Anna Korteweg, and Gokce Yurdakul. 2008. "Citizenship and Immigration: Multiculturalism, Assimilation, and Challenges to the Nation-State." *Annual Review of Sociology* 34:153–79.
- Borenstein, Jason. 2006. "DNA in the Legal System: The Benefits are Clear, The Problems Aren't Always." *Cardozo Public Law, Policy and Ethics Journal* 3:847–67.
- Bosniak, Linda. 2006. *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton, NJ: Princeton University Press.
- Brown, Hana E. 2011. "Refugees, Rights, and Race: How Legal Status Shapes Liberian Immigrants' Relationship with the State." *Social Problems* 58:144–63.
- Brubaker, Rogers. 1990. "Immigration, Citizenship, and the Nation-State in France and Germany: A Comparative Historical Analysis." *International Sociology* 5:379–407.

- Bumiller, Kristin. 1988. *The Civil Rights Society: The Social Construction of Victims*. Baltimore, MD: Johns Hopkins University Press.
- . 2009. "The Genetization of Autism: From New Reproductive Technologies to the Conception of Genetic Normalcy." *Signs* 34:875–99.
- Bureau of Consular Affairs. n.d. "DNA Relationship Testing Procedures." U.S. Department of State, Washington, D.C. Retrieved May 2, 2014 (<http://travel.state.gov/content/visas/english/immigrate/types/family/dna-test-procedures.html>).
- Calavita, Kitty. 1996. "The New Politics of Immigration: 'Balanced-Budget Conservatism' and the Symbolism of Proposition 187." *Social Problems* 43:284–305.
- Carsten, Janet. 2004. *After Kinship*. Cambridge, UK: Cambridge University Press.
- Centers for Disease Control and Prevention (CDC). 2012. "Medical Examination of Immigrants and Refugees." Vol. 2012. CDC, Atlanta, GA.
- Chavez, Leo R. 1992. *Shadowed Lives: Undocumented Immigrants in American Society*. Singapore: Wadsworth Thomson Learning.
- Clarke, Adele E., Janet K. Shim, Laura Mamo, Jennifer R. Fosket, and Jennifer R. Fishman. 2003. "Biomedicalization: Technoscientific Transformations of Health, Illness, and U.S. Biomedicine." *American Sociological Review* 68:161–94.
- Conrad, Peter. 2007. *The Medicalization of Society: On the Transformation of Human Conditions into Treatable Disorders*. Baltimore, MD: Johns Hopkins University Press.
- Coutin, Susan Bibler. 2000. *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency*. Ann Arbor: University of Michigan Press.
- Cronin, Michael D. 2000. "Memorandum to all Regional Directors, all District Directors, all Officers in Charge, all Service Center Directors, FLETC, and Artesia," edited by Immigration and Naturalization Service. Washington, DC: U.S. Department of Justice, Interpreter Releases.
- Dara, Masoud, Brian D. Gushulak, Drew L. Posey, Jean-Pierre Zellweger, and Giovanni B. Migliori. 2013. "The History and Evolution of Immigration Medical Screening for Tuberculosis." *Expert Review of Anti-Infective Therapy* 11:137–46.
- De Genova, Nicholas P. 2002. "Migrant 'Illegality' and Deportability in Everyday Life." *Annual Review of Anthropology* 31:419–47.
- Donato, Katharine and Amada Armenta. 2011. "What We Know About Unauthorized Migration." *Annual Review of Sociology* 37:529–43.
- Ehrlich, Eugen. 1913. *Fundamental Principles of the Sociology of Law*. New Brunswick, NJ: Transaction Publishers.
- Engel, David M. and Frank W. Munger. 2003. *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*. Chicago: University of Chicago Press.
- Epstein, Steven. 1996. *Impure Science: AIDS, Activism, and the Politics of Knowledge*. Berkeley: University of California Press.
- . 2007. *Inclusion: The Politics of Difference in Medical Research*. Chicago: University of Chicago Press.
- Esbenshade, Jill. 2010. "An Assessment of DNA Testing for African Refugees." Immigration Policy Center, American Immigration Council, Washington, DC.
- Fairchild, Amy L. 2003. *Science at the Borders: Immigrant Medical Inspection and the Shaping of the Modern Industrial Labor Force*. Baltimore, MD: Johns Hopkins University Press.
- Fassin, Didier. 2009. "Another Politics of Life is Possible." *Theory, Culture and Society* 26:44–60.
- Fassin, Didier and Estelle d'Halluin. 2005. "The Truth from the Body: Medical Certificates as Ultimate Evidence for Asylum Seekers." *American Anthropologist* 107(4):597–608.
- . 2007. "Critical Evidence: The Politics of Trauma in French Asylum Policies." *Ethos* 35:300–29.
- Fassin, Didier and Richard Rechtman. 2009. *The Empire of Trauma: An Inquiry into the Condition of Victimhood*. Princeton, NJ: Princeton University Press.
- Fitzgerald, Ruth. 2008. "Biological Citizenship at the Periphery: Parenting Children with Genetic Disorders." *New Genetics and Society* 27:251–66.
- Foucault, Michel. 1976. *The Birth of the Clinic: An Archaeology of Medical Perception*. Translated by A. M. Sheridan. London, UK: Tavistock.
- . 1978. *The History of Sexuality: An Introduction*. Translated by R. Hurley. New York: Vintage Books.
- . 1991. "On Governmentality." Pp. 87–104 in *The Foucault Effect*, edited by G. Burchell, C. Gordon, and P. Miller. Chicago: University of Chicago Press.
- . 1993. "About the Beginning of the Hermeneutics of the Self (Transcription of Two Lectures in Dartmouth on Nov. 17 and 24, 1980), ed. by Mark Blasius." *Political Theory* 21:198–227.

- Franklin, Sarah and Susan McKinnon. 2001. *Relative Values: Reconfiguring Kinship Studies*. Durham, NC: Duke University Press.
- Gilboy, Janet A. 1991. "Deciding Who Gets In: Decision Making by Immigration Inspectors." *Law & Society Review* 25:571–99.
- Gleeson, Shannon. 2010. "Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making." *Law & Social Inquiry* 35:561–602.
- Glick Schiller, Nina, Linda Basch, and Cristina Blanc-Szanton. 1992. *Towards a Transnational Perspective on Migration: Race, Class, Ethnicity, and Nationalism Reconsidered*. New York: New York Academy of Sciences.
- Goldman, Dana P., James P. Smith, and Neeraj Sood. 2005. "Legal Status and Health Insurance among Immigrants." *Health Affairs* 24:1640–53.
- Gonzales, Roberto G. 2011. "Learning to Be Illegal: Undocumented Youth and Shifting Legal Contexts in the Transition to Adulthood." *American Sociological Review* 76:602–19.
- Gonzales, Roberto G. and Leo R. Chavez. 2012. "'Awakening to a Nightmare': Abjectivity and Illegality in the Lives of Undocumented 1.5-generation Latino Immigrants in the United States." *Current Anthropology* 53:255–81.
- Hagan, Jacqueline, Nestor Rodriguez, and Brianna Castro. 2011. "Social Effects of Mass Deportations by the United States Government, 2000–10." *Ethnic and Racial Studies* 34:1374–91.
- Hagan, Jacqueline, Nestor Rodriguez, Randy Capps, and Nika Kabira. 2003. "The Effects of Recent Welfare and Immigration Reform on Immigrants' Access to Health Care." *International Migration Review* 37:444–63.
- Hansen, Randall and Patrick Weil. 2001. "Towards a European Nationality: Citizenship, Immigration, and Nationality Law in the EU." Houndsmills, UK: Palgrave.
- Heath, Deborah, Rayna Rapp, and Karen-Sue Taussig. 2004. "Genetic Citizenship." Pp. 152–67 in *A Companion to the Anthropology of Politics*, edited by D. Nugent and J. Vincent. Malden, MA: Blackwell.
- Heinemann, Torsten and Thomas Lemke. 2013. "Suspect Families: DNA Kinship Testing in German Immigration Policy." *Sociology* 47(4):810–26.
- Helén, Ilpo and Thomas Lemke. 2012. "Biological Citizenship Across the Borders." Presented at the annual meeting of the the Society for Social Studies of Science/European Association for the Study of Science and Technology, October 17–20, Copenhagen, Denmark.
- Hernández, Diana. 2010. "I'm Gonna Call My Lawyer! Shifting Legal Consciousness at the Intersection of Inequality." *Studies in Law, Politics and Society* 51:95–121.
- Howell, Signe. 2009. "Adoption of the Unrelated Child: Some Challenges to the Anthropological Study of Kinship." *Annual Review of Anthropology* 38:149–66.
- Illich, Ivan. 1976. *Medical Nemeses*. London, UK: Random House.
- Isin, Engin F. and Bryan Turner. 2007. "Investigating Citizenship: An Agenda for Citizenship Studies." *Citizenship Studies* 11:5–17.
- James, Erica Caple. 2010. *Democratic Insecurities: Violence, Trauma, and Intervention in Haiti*. Berkeley: University of California Press.
- Jasanoff, Sheila. 2004. *States of Knowledge: The Co-Production of Science and the Social Order*. London, UK: Taylor & Francis.
- Joppke, Christian and Ewa Morawska. 2003. *Towards Assimilation and Citizenship: Immigrants in Liberal Nation-States*. New York: Palgrave.
- Kim, Jaeeun. 2011. "Establishing Identity: Documents, Performance, and Biometric Information in Immigration Proceedings." *Law & Social Inquiry* 36:760–86.
- Kimmelman, Jonathan. 2007. "The Therapeutic Misconception at 25: Treatment, Research and Confusion." *Hastings Center Report* 37:36–42.
- Klawiter, Maren. 2009. *The Biopolitics of Breast Cancer*. Minneapolis: University of Minnesota Press.
- Lakhani, Sarah Morando. Forthcoming. "From Problems of Living to Problems of Law: The Legal Translation and Documentation of Immigrant Abuse and Helpfulness." *Law & Social Inquiry*.
- Levine, Nancy E. 2008. "Alternative Kinship, Marriage, and Reproduction." *Annual Review of Anthropology* 37:375–89.
- Light, Donald W. 2010. "Health Care Professions, Markets, and Countervailing Powers." Pp. 270–89 in *Handbook of Medical Sociology*, edited by C. E. Bird, P. Conrad, A. M. Fremont, and S. Timmermans. Nashville, TN: Vanderbilt University Press.
- Lynch, Michael, Simon Cole, Ruth McNally, and Kathleen Jordan. 2008. *Truth Machine: The Contentious History of DNA Fingerprinting*. Chicago: University of Chicago Press.



- Marrow, Helen. 2009. "Immigrant Bureaucratic Incorporation: The Dual Roles of Professional Missions and Government Policies." *American Sociological Review* 74:756–76.
- Marshall, T. H. 1950. *Citizenship and Social Class and Other Essays*. Cambridge, UK: Cambridge University Press.
- Martucci, Jessica. 2010. "Negotiating Exclusion: MSM, Identity, and Blood Policy in the Age of AIDS." *Social Studies of Science* 40:215–41.
- Massey, Douglas S., Jorge Durand, and Nolan J. Malone. 2002. *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*. New York: Russell Sage Foundation.
- Massey, Douglas and Katherine Bartley. 2005. "The Changing Legal Status Distribution of Immigrants: A Caution." *International Migration Review* 39:469–84.
- Menjívar, Cecilia. 2006. "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States." *American Journal of Sociology* 111:999–1037.
- Menjívar, Cecilia and Leisy J. Abrego. 2012. "Legal Violence: Immigration Law and the Lives of Central American Immigrants." *American Journal of Sociology* 117:1380–1421.
- Milkman, Ruth. 2006. *L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement*. New York: Russell Sage Foundation.
- Morris, Lydia. 2002. *Managing Migration: Civic Stratification and Migrants' Rights*. London, UK: Routledge.
- Nguyen, Vinh-Kim. 2010. *The Republic of Therapy: Triage and Sovereignty in West Africa's Time of AIDS*. Durham, NC: Duke University Press.
- Nicholls, Walter J. 2011. "Fragmenting Citizenship: Dynamics of Cooperation and Conflict in France's Immigrant Rights Movements." *Ethnic and Racial Studies* 36:611–31.
- Novas, Carlos and Nikolas Rose. 2000. "Genetic Risk and the Birth of the Somatic Individual." *Economy and Society* 29:485–513.
- Ong, Aihwa. 2003. *Buddha is Hiding: Refugees, Citizenship, The New America*. Berkeley: University of California Press.
- Petryna, Adriana. 2002. *Life Exposed: Biological Citizens after Chernobyl*. Princeton, NJ: Princeton University Press.
- . 2003. "Science and Citizenship under Postsocialism." *Social Research* 70(2):551–78.
- Porter, Theodore. 1995. *Trust in Numbers: Objectivity in Science and Public Life*. Princeton, NJ: Princeton University Press.
- Rodriguez, Julia. 2006. "Inoculating Science Against Barbarism? State Medicine and Immigrant Policy in Turn-of-the-Century Argentina." *Science in Context* 26:357–80.
- Rose, Nikolas. 2007. *The Politics of Life Itself: Biomedicine, Power, and Subjectivity in the Twenty-First Century*. Princeton, NJ: Princeton University Press.
- Rose, Nikolas and Carlos Novas. 2005. "Biological Citizenship." Pp. 439–63 in *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*, edited by A. Ong and S. J. Collier. Oxford, UK: Blackwell.
- Schneider, David M. 1980. *American Kinship: A Cultural Account*. Chicago: University of Chicago Press.
- Seif, Hinda. 2008. "Wearing Union T-Shirts: Undocumented Women Farm Workers and Gendered Circuits of Political Power." *Latin American Perspectives* 35:78–103.
- Soysal, Yasemin Nuhoglu. 1994. *Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago: University of Chicago Press.
- Swarns, Rachel L. 2007. "DNA Tests Offer Immigrants Hope or Despair." *The New York Times*, April 10. Retrieved May 6, 2014 ([www.nytimes.com/2007/04/10/us/10dna.html?pagewanted=all](http://www.nytimes.com/2007/04/10/us/10dna.html?pagewanted=all)).
- Ticktin, Miriam. 2006. "Where Ethics and Politics Meet: The Violence of Humanitarianism in France." *American Ethnologist* 33:33–49.
- . 2011. *Casualties of Care: Immigration and the Politics of Humanitarianism in France*. Berkeley: University of California Press.
- Tilly, Charles. 1998. "Where do Rights Come From?" Pp. 55–72 in *Democracy, Revolution, and History*, edited by T. Skocpol, G. Ross, T. Smith, and J. Eisenberg. Ithaca, NY: Cornell University Press.
- Timmermans, Stefan and Iddo Tavory. 2012. "Theory Construction in Qualitative Research: From Grounded Theory to Abductive Analysis." *Sociological Theory* 30:167–86.
- Timmermans, Stefan and Mara Buchbinder. 2013. *Saving Babies? The Consequences of Newborn Genetic Screening*. Chicago: University of Chicago Press.
- U.S. Citizenship and Immigration Services (USCIS). 2012. "Immigration Medical Exams & Form I-693." Washington, DC: U.S. Citizenship and Immigration Services.
- Varsanyi, Monica W. 2006. "Interrogating 'Urban Citizenship' vis-à-vis Undocumented Migration." *Citizenship Studies* 10:229–49.
- Villalón, Roberta. 2010. *Violence Against Latina Immigrants: Citizenship, Inequality, and Community*. New York: New York University Press.

- Villiers, Janice D. 2010. "Brave New World: The Use and Potential Misuse of DNA Technology in Immigration Law." *Boston College Third World Law Journal* 30:239–71.
- Waldinger, Roger. 2007. "Transforming Foreigners into Americans." Pp. 137–48 in *The New Americans: A Guide to Immigration Since 1965*, edited by M. C. Waters, R. Ueda, and H. B. Marrow. Cambridge, MA: Harvard University Press.
- Waldinger, Roger and David Fitzgerald. 2004. "Transnationalism in Question." *American Journal of Sociology* 109:1177–95.
- Walzer, Michael. 1983. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.
- Willen, Sarah S. 2011. "How is Health Related 'Deservingness' Reckoned? Perspectives from Unauthorized Im/migrants in Tel Aviv." *Social Science & Medicine* 74:812–21.
- . 2012. "Migration, 'Illegality,' and Health: Mapping Embodied Vulnerability and Debating Health Related Deservingness." *Social Science & Medicine* 74:805–11.
- Yoshikawa, Hirokazu. 2011. *Immigrants Raising Citizens: Undocumented Parents and Their Young Children*. New York: Russell Sage Foundation.
- Zola, Irving Kenneth. 1972. "Medicine as an Institution of Social Control." *Sociological Review* 20:487–504.