

American Behavioral Scientist

Deportation Decisions: Judicial Decision-Making in an American Immigration Court

Journal:	<i>American Behavioral Scientist</i>
Manuscript ID	ABS-19-0023
Manuscript Type:	Accepted Article
Keywords:	immigration court, judicial decision-making, deportation, Texas
Abstract:	<p>Drawing on ethnographic observations and informal conversations with judges in Dallas Immigration Court, as well as archival documents, this article describes two approaches through which judges in this setting justify their decisions during removal proceedings. The “scripted approach,” used to effect the routine removal of noncitizens in most of the completed cases observed, entails judges’ recitation of well-rehearsed narratives regarding the limited legal rights and remedies available to noncitizens. The “extemporaneous approach” involves judges moving beyond their scripts and deliberating in greater depth about noncitizens’ cases. In doing so, judges’ personal attitudes, biases, and motivations are often revealed as they articulate their desire to circumvent the removal process for noncitizens they view as “deserving” of relief—but for whom only temporary relief from removal is often available given judges’ interpretations of immigration law. Although judges recognize that this temporary relief may allow some noncitizens to remain in the United States indefinitely, incomplete protection from removal can leave noncitizens in a precarious legal status and jeopardize these individuals’ future opportunities for legalization. These findings support a conceptualization of immigration judges as street-level bureaucrats, or frontline workers who interpret the law—sometimes unevenly—in order to enforce government policy while interfacing with the individuals subject to said policy, and amplify the social control capacity of the federal immigration regime.</p>

SCHOLARONE™
Manuscripts

Deportation Decisions

Judicial Decision-Making in an American Immigration Court

Asad L. Asad

Center for the Study of Inequality Department of Sociology
Cornell University Stanford University

Correspondence: Asad L. Asad, Center for the Study of Inequality, Cornell University;
Department of Sociology, Stanford University; E-mail: asad.asad@cornell.edu.

This Version: November 12, 2018
Forthcoming in *American Behavioral Scientist*

ABSTRACT

Drawing on ethnographic observations and informal conversations with judges in Dallas Immigration Court, as well as archival documents, this article describes two approaches through which judges in this setting justify their decisions during removal proceedings. The “scripted approach,” used to effect the routine removal of noncitizens in most of the completed cases observed, entails judges’ recitation of well-rehearsed narratives regarding the limited legal rights and remedies available to noncitizens. The “extemporaneous approach” involves judges moving beyond their scripts and deliberating in greater depth about noncitizens’ cases. In doing so, judges’ personal attitudes, biases, and motivations are often revealed as they articulate their desire to circumvent the removal process for noncitizens they view as “deserving” of relief—but for whom only temporary relief from removal is often available given judges’ interpretations of immigration law. Although judges recognize that this temporary relief may allow some noncitizens to remain in the United States indefinitely, incomplete protection from removal can leave noncitizens in a precarious legal status and jeopardize these individuals’ future opportunities for legalization. These findings support a conceptualization of immigration judges as street-level bureaucrats, or frontline workers who interpret the law—sometimes unevenly—in order to enforce government policy while interfacing with the individuals subject to said policy, and amplify the social control capacity of the federal immigration regime.

KEYWORDS

immigration law; removal or deportation; immigration judges; decision-making; street-level bureaucrats; ethnography

ACKNOWLEDGEMENTS

I acknowledge financial support from the National Science Foundation Graduate Research Fellowship (DGE1144152). I thank the anonymous reviewers, Monica Bell, Matthew Clair, Filiz Garip, Shannon Gleeson, Matthew Hall, Ben Rissing, Emily Ryo, and participants at Cornell University’s Criminalizing Immigrants Conference for helpful comments on previous versions of this article. Students in the “Law and Sociology” course at Yale Law School also provided valuable comments. Any errors are mine.

INTRODUCTION

Removal, or deportation, is a primary component of the contemporary federal immigration regime in the United States. Of the 7.4 million removals logged between 1892 and 2015, half occurred in the decade since 2005.¹ Deportation's recent rise as a tool to regulate noncitizens owes to a series of federal reforms since the late 1980s that have imported practices from criminal law and justice into immigration law and enforcement, a phenomenon known as "crimmigration" (Stumpf 2006). A growing literature has depicted the far-reaching consequences of removal for noncitizens, their U.S.-citizen family members and communities, and the countries to which they are deported (see, e.g., Asad and Clair 2018; Dingeman-Cerda 2017; Hagan et al. 2008; Menjivar et al. 2016).

Almost 300 sitting immigration judges in 58 immigration courts nationwide process about one-third of all removals ordered each year. In fiscal year (FY) 2011, 265 immigration judges decided 220,048 cases; 57 percent concluded with a removal order (Benson and Wheeler 2012: 127). An emerging literature describes the structural and bureaucratic constraints to immigration judges' decision-making that likely contribute to high removal rates, including an unprecedented backlog of complex cases demanding speedy adjudication (Benson and Wheeler 2012; Lustig et al. 2008). These constraints have become more salient during the Trump administration, with immigration judges under pressure to clear a minimum of 700 cases per year.² In research based primarily on administrative and survey data (e.g., Keith et al. 2013; Rottman et al. 2009; Ryo 2016; Schrag et al. 2009), scholars suggest that immigration judges may rely on their own personal attitudes, biases, or motivations—using noncitizens' individual case characteristics as proxies for how "American" (Mendelson 2010) or "dangerous" (Ryo forthcoming-a) they perceive a noncitizen to be, for example—to simplify the decision task. However, little research has examined in real time how judges justify their decisions during removal proceedings.

This article draws on ethnographic observations of and informal conversations with immigration judges in Dallas Immigration Court, as well as archival documents, to describe how judges in this setting justify their decisions. Two approaches emerged through inductive analysis of these data. The "scripted approach" entails judges' recitation of well-rehearsed narratives regarding the limited legal rights and remedies available to most noncitizens. Judges used this scripted approach to explain the routine removal of noncitizens in most of the completed cases I witnessed. When the particulars of a case deviated from the routine, the judges I observed relied on an "extemporaneous approach" in which they moved beyond their scripts and deliberated in greater depth about the cases before them. In doing so, judges' personal attitudes, biases, and motivations were often revealed as they articulated their desire to circumvent the removal process for noncitizens they viewed as "deserving" of relief—but for whom full relief from removal was often unavailable given judges' interpretations of immigration law. These findings support a framework of judicial decision-making in immigration court that conceptualizes judges as street-level bureaucrats, or frontline workers who interpret the law—sometimes unevenly—in order to enforce government policy while interfacing with the individuals subject to said policy.

¹ Source: Department of Homeland Security. 2016. "Table 39: Aliens Removed or Returned: Fiscal Years 1892 to 2015."

² Rose, Joel. 2018. "Justice Department Rolls Out Quotas for Immigration Judges." *National Public Radio*. April 3. <<https://n.pr/2GEZp4Q>>. Accessed online June 15, 2018.

1
2
3
4 This study makes several contributions to research on the federal immigration regime.
5 Methodologically, the ethnography serves as a rare qualitative complement to the growing body
6 of quantitative analyses of immigration court, illuminating some of the hard-to-quantify social
7 processes underlying judicial decision-making in removal proceedings. Empirically, I document
8 how immigration judges, key actors in the deportation process, justify their decisions in one
9 immigration court. Theoretically, conceptualizing immigration judges as street-level bureaucrats
10 foregrounds their role as complex, creative actors situated within structural and bureaucratic
11 contexts that enable or constrain their discretionary authority. Even when judges offer some
12 noncitizens temporary relief from removal, incomplete protection from removal can leave
13 noncitizens in a precarious legal status and jeopardize their future opportunities for legalization.
14 The study thus amplifies the social control capacity of the federal immigration regime.
15
16
17

18 **REMOVING NONCITIZENS FROM THE UNITED STATES**

19 **Expanding Federal Immigration Enforcement, Limiting Judicial Discretion**

20
21
22
23 Deportation emerged as a primary mechanism for regulating “legal” and “illegal” noncitizens
24 alike beginning in the 1980s (Asad 2018; see García Hernández 2014 for a comprehensive
25 review). Policy changes imported tools from criminal law and justice into immigration law and
26 enforcement (Stumpf 2006), limiting judicial discretion and noncitizens’ due process rights along
27 the way (Kanstroom 2007: 122-4; see also Chacón 2010). The Immigration and Nationality Act
28 (INA) of 1988 represents a first step in this convergence by rendering noncitizens convicted of
29 “aggravated felonies”—here, murder and drug or firearms trafficking—deportable. In 1990,
30 amendments to the INA eliminated the long-standing authority of criminal judges to advise
31 against the deportation of a noncitizen convicted of a crime (see Fine 1997).
32
33

34
35 Four years later, Congress authorized the U.S. Attorney General to deport without judicial
36 review any noncitizen convicted of an aggravated felony who was not a lawful permanent
37 resident and who appeared to be ineligible for relief (Kanstroom 2007). In 1996, the Anti-
38 Terrorism and Effective Death Penalty Act broadened the category of aggravated felonies to
39 encompass many nonviolent crimes for which the term of imprisonment is at least one year (see
40 Golash-Boza 2013: 206). This widening deportation dragnet coincided with an intensification of
41 enforcement efforts through the Illegal Immigration Reform and Immigrant Responsibility Act
42 (IIRIRA), which allowed for the removal of noncitizens ever convicted of an aggravated felony,
43 the mandatory detention of certain classes of noncitizens, and the ongoing cooperation between
44 federal immigration authorities and state and local law enforcement. Figure 1 depicts how, in
45 part due to these changes, the number of removals from the country proliferated in the 1990s.
46
47

48 **[Figure 1 about here.]**

49
50
51 Given that these changes facilitated removal absent judicial review, only about one-third of
52 contemporary removals stem from the order of an immigration judge overseeing removal
53 proceedings in immigration court (see American Immigration Council 2014; see also Benson and
54
55
56
57
58
59
60

1
2
3 Wheeler 2012: pp. 9-13 for a helpful summary).³ It is these proceedings—and judges’ decision-
4 making within them—that are the focus of this article.
5

6 **Judicial Decision-Making in U.S. Immigration Courts**

7
8
9 Immigration judges’ role in removal proceedings is outlined in the INA (§ 240). They derive no
10 authority from Article III of the U.S. Constitution that establishes the federal judiciary. Rather,
11 immigration judges are career lawyers whom the U.S. Attorney General has appointed to serve
12 as administrative judges within the Department of Justice. They preside over proceedings
13 between a Department of Homeland Security (DHS) prosecutor, who represents the government,
14 and a noncitizen, who lacks a constitutional right to court-provided counsel (see Ryo
15 forthcoming-b: pp. 4-5). I outline more fully the different stages of removal proceedings below,
16 but, broadly, they include: a judge’s initial determination of whether there are valid grounds for
17 removing a noncitizen; if so, whether the noncitizen will seek relief; and if so, whether the judge
18 will grant relief or order the noncitizen removed (see Ryo 2016: pp. 120-1).
19
20

21
22 Despite judges working under the same federal immigration regime, scholars note variation in
23 removal outcomes between (see Benson and Wheeler 2012: 125-7) and within (e.g., Keith et al.
24 2013; Schrag et al. 2009) court jurisdictions.⁴ For example, 66 percent of completed cases in
25 Dallas Immigration Court, and 71 percent of completed cases in Houston Immigration Court,
26 ended with a removal order in FY2015. The rate in immigration courts in Los Angeles, San
27 Francisco, and San Diego was 24 percent, 29 percent, and 32 percent, respectively.
28

29
30 **[Figure 2 about here.]**

31
32 One potential source of this variation between courts is structural. Although not Article III
33 judges, immigration judges work in courts that fall within one of eleven federal circuit court
34 districts (see Figure 2). Immigration judges are bound by various standards set forth in federal
35 law—including statutes, legal precedent, and court rules—that are particular to each circuit.
36 Considered alongside the nonrandom distribution of noncitizens’ cases (Moinester 2018) and
37 place-based variation in noncitizens’ access to legal resources (Eagly and Shafer 2015),
38 noncitizens in similar legal situations processed through immigration courts in different federal
39 circuits can have dissimilar removal outcomes (Moinester 2018).
40
41

42
43 Another potential source of this variation is organizational. Baum (2010: 1507ff) outlines three
44 features of immigration court that require judges to “adopt cognitive strategies that speed up the
45 process of decision-making,” which may lead to systematic differences in removal outcomes
46 across geographies facing unique pressures. First, given the complexity of U.S. immigration law
47 (Markowitz 2010), many judges hear cases that are “unusually difficult.” Second, judges are
48 under pressure to clear an over 768,000-case backlog in a timely fashion, and they must do so
49

50
51 ³ Before 1996, “exclusion” proceedings were held when the federal government sought to prevent noncitizens from
52 entering the United States; “deportation” proceedings were reserved for those noncitizens who had already entered
53 the country (see Legomsky and Rodriguez 2009). After IIRIRA in 1996, exclusion and deportation proceedings
54 were combined into “removal” proceedings. In this article, I use “removal” and “deportation” interchangeably.

55 ⁴ All tabulations in this paragraph are author’s calculations of Transactional Records Access Clearinghouse (TRAC).
56 2018. “Immigration Court Backlog Tool, Pending Cases and Length of Wait in Immigration Courts.”
57 <<https://bit.ly/2JLMD5E>>.
58
59

1
2
3 with limited assistance from law clerks and other support staff (Marks 2012).⁵ Finally, as
4 administrators under the authority of the U.S. Attorney General, immigration judges are said to
5 make decisions aligned not only with their own preferences but also those of their superiors—or
6 otherwise judges risk removal from the bench (Legomsky 2005). If organizational features such
7 as caseload and judicial norms vary across immigration courts, then these factors may also
8 contribute to variation in removal outcomes.
9

10
11 A third potential source of variation relates to judges' personal attitudes, biases, and motivations.
12 One stream of this research is set in asylum hearings. These studies foreground how judges'
13 personal qualities—such as their gender or prior work experience (Schrag et al. 2009), policy
14 predispositions (Keith et al. 2013), or attitudes toward specific national-origin groups (Rottman
15 et al. 2009)—matter for asylum outcomes. Another research stream is set in bond determination
16 hearings and uses noncitizens' case characteristics to proxy judges' decision-making processes.
17 This scholarship finds that immigration judges are less likely to grant bail to detained noncitizens
18 with criminal records (Ryo 2016), more likely to grant bond to detained noncitizens with
19 attorney representation (Ryo forthcoming-b), and more likely to deem Central Americans and
20 noncitizens without attorney representation as dangerous (Ryo forthcoming-a). Depending on the
21 distribution of judges' personal attitudes, biases, or motivations, these conditions may explain
22 variation not only between but also within immigration courts.
23
24
25

26 Scholars are accumulating evidence of the myriad factors associated with removal outcomes
27 within and across U.S. immigration courts. But more can be learned about how immigration
28 judges justify their decisions. In-depth data on judges' real-time decision-making—including but
29 not limited to asylum and bond hearings—would improve our understanding of the social
30 processes underlying removal outcomes. In addition, theorizing how immigration judges, key
31 actors in the removal process, make decisions alongside the structural, organizational, and
32 personal constraints they may perceive to their decision-making could shed light on how their
33 decisions perpetuate the social control capacity of the federal immigration regime (see Rios et al.
34 2017: 500-501).
35
36
37

38 **Immigration Judges as Street-level Bureaucrats**

39

40 This article conceptualizes immigration judges as street-level bureaucrats, frontline workers who
41 sometimes-unevenly interpret the law in order to enforce government policy while interfacing
42 with the individuals subject to said policy (Lipsky 2010 [1980]; see Campbell 2012 for a
43 review). The concept often conjures images of mid-level, white-collar workers such as teachers
44 or social workers, but Lipsky's (2010 [1980]: p. 19-20) theory also encompasses relatively-
45 empowered, higher-status professionals—including lower-court judges.⁶ Researchers have
46 described street-level bureaucrats as rule-followers and -benders (see Heimer 2001 for a review).
47 As rule-followers, they make routine, mechanistic decisions aligned with the laws governing the
48 institutions of which they are a part (Emerson 1983; Gilboy 1991). As rule-benders, they
49 exercise discretion beyond the formal laws or rules of the institution when encountering
50
51
52

53 ⁵ Source: Ibid. Figure current as of November 2018.

54 ⁶ Indeed, Lipsky (2010 [1980]: p. 20) offers lower-court judges as an example of street-level bureaucrats insofar as
55 they have relative autonomy to exercise discretion but their decisions are subject to superiors' scrutiny. Lipsky also
56 offers administrative law judges as street-level bureaucrats (p. 226).
57
58
59
60

1
2
3 individuals they view as particularly “deserving” of assistance or opportunity (Dilulio 1994;
4 Lempert 1989; Zacka 2017). Scholars have identified bureaucrats’ dual roles as rule-followers or
5 –benders in settings as diverse as pharmacies (Chiarello 2013), hospitals (Lara-Millán 2014), and
6 welfare agencies (Watkins-Hayes 2009).
7

8
9 Conceptualizing immigration judges as street-level bureaucrats foregrounds their role as
10 complex, creative actors situated within structural and bureaucratic contexts that enable and
11 constrain—in an objective, legal sense and in a subjective, perceived sense—their discretionary
12 authority. This conceptualization complements the emerging literature on judicial decision-
13 making in immigration courts by acknowledging the potential for judges’ personal attitudes,
14 biases, and motivations to manifest as they carry out their work. It also extends this work by
15 viewing immigration judges as actors who are enterprising in their decision-making—and who
16 may sometimes exercise discretion in an attempt to circumvent structural and bureaucratic
17 contexts they may view as constraining. As rule-followers or –benders, immigration judges make
18 consequential decisions about whether to remove noncitizens from the country. Even when
19 decisions result in the same outcome, how judges justify their decisions—by legitimating or
20 contesting certain features of the federal immigration regime in open court—may shed light on
21 these actors’ roles in reproducing the social control of noncitizens. In sum, conceptualizing
22 immigration judges as street-level bureaucrats facilitates analysis of the justifications these actors
23 use to alleviate or worsen the conditions of the noncitizens who appear before them.
24
25
26

27 Research on court systems beyond the immigration context suggests how structural and
28 bureaucratic features can condition judicial decision-making (Cohen 2009), and that greater
29 scrutiny of judges’ actions and interpretations can illuminate hidden pathways to social
30 inequality (Stuart et al. 2015; see Lamont et al. 2014 on this broader point). For example, judges
31 in criminal courts make decisions alongside other court officials such as prosecutors and defense
32 attorneys (Eisenstein and Jacob 1977). Individual courts and even courtrooms can develop local
33 organizational cultures, embedded within larger legal and political contexts, that differentially
34 shape court officials’ decisions (Eisenstein and Jacob 1977; Feeley 1979; Hagan and Peterson
35 2013; Johnson 2006). Judges are nevertheless relatively-autonomous actors. They are “strategic”
36 in that their decisions take into account the preferences and actions of other officials (see Epstein
37 and Jacobi 2010). But they also advance their personal interests—even amidst structural and
38 organizational constraints—by framing their decisions as a declaration of what the law is (see
39 Bybee 2012: 72). Recent work reveals how structural attempts to standardize criminal courts—
40 for example, through mandatory minimum sentencing—interact with judges’ legal
41 interpretations to reproduce racially-unequal sentencing outcomes (Clair and Winter 2016: 336).
42
43
44

45
46 My analysis follows this reasoning and examines in real time how immigration judges in Dallas
47 Immigration Court justify their removal decisions. Despite their status as relatively-empowered
48 actors in immigration court, the judges I observed largely described themselves as powerless to
49 intervene on behalf of noncitizens. Yet, they sometimes exercised discretion in an apparent
50 attempt to circumvent the removal process for those noncitizens they deemed as “deserving” of
51 relief. As I outline below, understanding immigration judges as street-level bureaucrats helps to
52 clarify some of the social processes underlying aggregate removal trends.
53

54 55 **STUDYING JUDICIAL DECISION-MAKING IN DALLAS IMMIGRATION COURT**

56
57
58
59
60

Data and Analysis

I rely on ethnographic data and informal conversations with immigration judges collected between June and August 2015 in Dallas Immigration Court, as well as archival materials relating to judges' roles as court administrators, to describe how judges in this setting justify their decisions. As of September 2016, 58 U.S. immigration courts operated. Table 1 compares features of Dallas Immigration Court to those of courts in Texas and nationwide in FY2015. A fraction of the country's 333,341 removals in this year were adjudicated in court (see Figure 1). Among all cases judges completed nationwide, about 41 percent ended in removal, compared with 57 percent in Texas and 66 percent in Dallas. Noncitizens in Dallas Immigration Court are less likely than noncitizens statewide and nationwide to have attorney representation, and they are more likely to be detained. Whether variation in removal patterns reflects judges' personal attitudes, organizational constraints, or the non-random distribution of cases across jurisdictions is unclear.⁷ Different dynamics may be at work in other immigration courts.

[Table 1 about here.]

I spent about 200 hours in Dallas Immigration Court, interacting with five judges, five DHS prosecutors, four courtroom interpreters, and four marshals, as well as dozens of family members and private attorneys of some noncitizens with cases before the court. Dallas had five sitting immigration judges at the time of the study—all male—and I divided time among each roughly equally. The first two days of fieldwork focused on proceedings with one immigration judge. My goal was to become a familiar, reliable presence in the courtroom. I did not write field notes until immediately following court. At the end of the second day of observations, the judge asked about my interest in the court. I began to explain that I was a graduate student at Harvard University at the time, and the judge interrupted excitedly to introduce me to the courtroom's Spanish-language interpreter—an alumna of Harvard College. The judge encouraged me to continue my observations and granted me permission to take notes during the proceedings. My university affiliation would facilitate access to the other four judges' courtrooms as well.

I produced over 150 single-spaced pages of field notes on Dallas Immigration Court. The judges made decisions regarding noncitizens in a range of legal situations, including but not limited to: cases involving unaccompanied minors, the undocumented parents of U.S.-citizen children, and noncitizens detained in two separate facilities. In this article, I focus on noncitizen adults, whose myriad cases the judges processed in similar enough ways to allow for an analysis of commonalities in judges' decision-making. Although DHS regulations precluded formal interviews, informal conversations with judges were documented in field notes (c.f. Gilboy 1991: 576). At the conclusion of each day's proceedings, judges answered my questions regarding the cases processed, including how they arrived at, and what they thought about, their decisions.

[Table 2 about here.]

⁷ For example, some noncitizens may be apprehended in one, and then transferred to another, jurisdiction—either due to a court's bureaucratic constraints or because a noncitizen has requested the transfer. Nationwide, Benson and Wheeler (2012: 15) suggest that fewer than 27 percent of cases in 2011 were transferred to a different court or granted a change of venue.

1
2
3
4 Table 2 summarizes the observed cases and outcomes, as well as several observable
5 characteristics of the noncitizens with cases before the court during the fieldwork period.
6 Proceedings ranged from initial master calendars (in which a noncitizen first appears in front of
7 an immigration judge and can be ordered removed) to final individual merit hearings (in which a
8 judge decides whether the noncitizen qualifies for relief). Most of the completed cases during the
9 fieldwork ended in removal. Reflective of the protracted nature of removal proceedings, many
10 cases are “right censored” in that I did not observe a judge’s final decision on the case during the
11 fieldwork period; the majority of observed cases were instead continued for another date. Among
12 the observed noncitizens, most appeared to be male and most were detained. A plurality of the
13 observed noncitizens designated Mexico as their home country. Fewer than half of the observed
14 noncitizens with cases before the court during the fieldwork period had legal counsel, and most
15 used an interpreter to communicate with the court.
16
17
18

19 Archival materials from Dallas Immigration Court, downloaded from the court’s website in the
20 summer of 2015, supplement the ethnographic fieldwork. They include documents from the
21 Executive Office of Immigration Review (EOIR) instructing judges on how to advise noncitizens
22 of their rights at the start of court proceedings and describing evidentiary standards in
23 immigration court, as well as myriad templates for judges to complete during court proceedings.
24 I use the archival materials to better understand judicial decision-making in immigration courts
25 nationwide, to interpret the structural and bureaucratic contexts within which the court operates,
26 and to examine what the law is on the books versus how it is applied on the ground.
27
28
29

30 I analyzed field notes and archival materials by reading them multiple times. After gaining a
31 sense of the structural and bureaucratic contexts within which immigration judges exist, I
32 inductively identified two approaches—scripted and extemporaneous—through which they
33 justified their decisions. I re-read my data with these themes in mind, searching for confirmatory
34 or disconfirming evidence of these categories. When words or sentences attributed to judges
35 appear within quotations, these approximate exact quotations written either in real time or shortly
36 thereafter. When words or sentences in the findings presented below are italicized, these data
37 represent observations about which I wrote field notes several hours after court.
38
39

40 Though the observations reported here would have been publicly available to anyone studying
41 Dallas Immigration Court, I do not identify specific judges. I came to this decision after having
42 analyzed the data: This article finds that judges’ shared interpretation of the federal immigration
43 regime—encompassing “the law” or various aspects of the bureaucratic structure of which they
44 are a part—as a constraint on their discretionary authority is primary in creating conditions that
45 influence deportation decisions. Nevertheless, the distinct personal approaches, biases, or
46 motivations that judges harbor are sometimes used to justify relief for noncitizens seen as
47 “deserving” of relief. Attributions to individual judges would detract from a process-based model
48 of decision-making (see Clair and Winter 2016; Eisenstein and Jacob 1977).
49
50

51 Case

52
53
54 Although the data and analysis focus on Dallas Immigration Court, removal proceedings in
55 immigration courts nationwide share a similar structure. Figure 3 offers a stylized representation
56
57
58
59
60

of removal proceedings. Archival documents outline the importance of this federal structure on judicial decision-making: At every step, immigration judges are to carry out removal proceedings in ways that ostensibly encourage a uniform application of U.S. immigration law.

[Figure 3 about here.]

The DHS initiates an action against a noncitizen the agency suspects is removable. The noncitizen is summoned to immigration court with a “Notice to Appear” (NTA), which delineates the accusations against them as well as the date they are to appear before the court. Once there, an initial master calendar hearing is held. Similar to an arraignment in the criminal court setting, initial master calendar hearings require immigration judges “to dispose of cases on that calendar that are susceptible to summary disposition and to ready the other cases for merits hearing and decision in one session of the individual calendar.”⁸ Initial master calendars are designed to proceed relatively quickly, although as documents from the EOIR reveal, judges are also instructed to take time to learn about the particularities of each case: “It is...a plenary stage...at which, when little or no testimony is taken, the immigration judge has great flexibility to identify issues, make preliminary determinations of possible eligibility for relief, resolve uncontested matters, and schedule further hearings.”⁹ These same documents outline the four key questions judges must answer of each noncitizen during the initial master calendar:

...the inquiry with regard to any case can be simply stated as follows: Is the respondent an alien? If the respondent is an alien, is he or she deportable/removable/inadmissible on the charge or charges set forth in the notice to appear? If the respondent is deportable/removable/inadmissible, is there any provision of law which would allow the respondent to remain in the United States permanently? If there is nothing in the law which would allow the respondent to remain permanently in the United States, is the respondent going to be leaving the United States under order of removal and deportation or will the respondent be granted the privilege of voluntary departure at his or her own expense?

In some situations, a noncitizen has multiple master calendars or is moved to an individual merit hearing when the answers to these questions are not immediately apparent. Individual merit hearings allow more “complicated issues of deportability or removability or involved applications for relief which require a written application” to be adjudicated. Individual merit hearings are scheduled in 30-minute increments, with more time allocated “if there are complicated issues of law or fact” in a particular case. In this context, immigration judges consider evidence not only from the DHS prosecutor but also from the noncitizen—presented either through legal counsel or *pro se*. In Dallas, noncitizens whose cases were completed in FY2015 represented themselves about 63 percent of the time (see Table 1), tasked with providing testimony and evidence to demonstrate their own eligibility for relief.

Evidentiary standards in immigration court are in some ways less strict than those in criminal court. The EOIR reminds judges that, since removal proceedings are administrative, “adherence to judicial rules of evidence” is not ordinarily required “unless deviation would make the proceeding fundamentally unfair.”¹⁰ The evidence need only be lawfully obtained, have probative value, and be relevant to the case insofar as it makes “the existence of any fact that is

⁸ Source: EOIR. nd. “The Master Calendar: Origin and Nature, Then and Now.” On file with the author.

⁹ Ibid.

¹⁰ Source: EOIR. nd. “Evidence Guide.” On file with the author.

1
2
3 of consequence to the determination of the action more probable or less probable than it would
4 be without the evidence.” In both master calendar and individual merit hearings, the DHS
5 submits an I-213, a document that an arresting Customs and Border Protection (CBP) or
6 Immigration and Customs Enforcement (ICE) official completes regarding a noncitizen’s
7 personal, criminal, and immigration record. The DHS was often the only party that presented
8 evidence in support of their case in the removal proceedings observed during the fieldwork.¹¹
9
10

11 At the conclusion of removal proceedings, a judge decides a noncitizen’s case. Several outcomes
12 are possible: (1) removal or deportation; (2) voluntary departure;¹² (3) relief (e.g., asylum) or
13 termination of the case (e.g., because the judge decides the government cannot sustain the
14 charges it filed, the respondent establishes eligibility for naturalization, or the government agrees
15 to the case’s dismissal); or (4) administrative closure, which allows judges or DHS prosecutors
16 to put cases “on hold.” Among all completed cases in Dallas Immigration Court during FY2015,
17 removal was the most common outcome (66 percent), followed by relief or termination (14
18 percent), administrative closure (10 percent), and voluntary departure (8 percent). The DHS
19 and/or the noncitizen may appeal a judge’s decision to the Board of Immigration Appeals
20 (BIA).¹³ Noncitizens may appeal BIA decisions to the federal circuit court that covers the
21 jurisdiction of the immigration court through which they were processed (Figure 2).
22
23
24

25 FINDINGS

26 Deciding to Deport: Immigration Judges as Street-level Bureaucrats

27
28
29 Conceptualizing immigration judges as street-level bureaucrats extends a growing body of
30 research that demonstrates the social control capacity of the federal immigration regime in the
31 United States. It does so by spotlighting how immigration judges may sometimes make routine
32 decisions aligned with their beliefs about the constraint of “the law” and the larger bureaucratic
33 structures of which they are a part. But it also reveals how judges’ personal attitudes, biases, and
34 motivations hypothesized in prior work (e.g., Keith et al. 2013; Rottman et al. 2009; Ryo 2016;
35 Ryo forthcoming-a) can sometimes manifest in their decisions in ways that are flexible and
36 creative—and in ways that are apparently intended to circumvent the removal process.
37
38
39

40 *Scripted Approach: Routine Removals in Dallas Immigration Court*

41
42
43
44 ¹¹ Evidentiary guidelines during removal proceedings are not always straightforward. Immigration judges may not
45 consider evidence presented during a bond determination hearing in a removal proceeding “unless...the evidence is
46 reintroduced and received in the deportation or removal hearing.” In contrast, judges may use evidence presented
47 during bond determination hearings in the context of removal proceedings without reintroduction.

48 ¹² See §240B of the INA. In general, noncitizens are eligible for voluntary departure if they are not found to be
49 deportable for having committed an aggravated felony or engaged in terrorist activities. Additional qualifications
50 include a judge’s determination that a noncitizen has been physically present in the country for a period of at least
51 one year immediately preceding the date the NTA was served; that the noncitizen has been a person of good moral
52 character for at least five years immediately preceding the application for voluntary departure; and that the
53 noncitizen has established by clear and convincing evidence that they have the means and intention to depart the
54 United States. Noncitizens granted a voluntary departure may be offered up to 120 days to depart the country at their
55 own expense. Failure to comply converts the voluntary departure into a removal order.

56 ¹³ If a noncitizen is granted a voluntary departure and appeals the immigration judge’s decision, the voluntary
57 departure becomes a formal removal order until the appeal is adjudicated.
58
59
60

1
2
3 The “scripted approach” to judicial decision-making in Dallas Immigration Court entails judges’
4 recitation of well-rehearsed narratives regarding the limited legal rights and remedies available to
5 noncitizens. This approach often occurred during initial master calendar hearings, where
6 noncitizens who fall into easily-identifiable categories with clear legal outcomes—such as those
7 who are undocumented and a recent entrant to the country, or those convicted of an aggravated
8 felony—are processed. The judges used the scripted approach to justify, in a seemingly-
9 mechanistic fashion, the routine removal of noncitizens in most of the completed cases observed
10 during the fieldwork.
11
12

13
14 The scripts judges follow when first encountering an individual noncitizen provide a template for
15 the large-scale processing of noncitizens’ cases. The judges began each removal proceeding I
16 observed by reciting literal scripts from the EOIR to advise noncitizens of their rights. The
17 judges then considered each case, one-by-one. Some noncitizens were physically present,
18 whereas others were detained (as in Ryo 2016) and attended the hearing via video link (as in
19 Eagly 2014). For each noncitizen appearing before the court for the first time, the judges asked if
20 they would like a continuance to find an attorney. Noncitizens lack a constitutional right to court-
21 appointed counsel during removal proceedings, though they are entitled to legal representation at
22 no expense to the federal government (see Ryo forthcoming-b). Nationwide, 14 percent of
23 detained, 25 percent of never-detained, and 41 percent of released noncitizens had at least one
24 continuance between 2007 and 2012 (Eagly & Shafer 2015: 33). My observations suggest that
25 these low rates of representation may result from noncitizens’ inability to afford a lawyer, rather
26 than judges denying continuances altogether (although both explanations certainly may be true).
27
28

29
30 The judges in the study often offered the noncitizens before them at least one continuance to
31 secure attorney representation before proceeding with their case. But the judges often balked
32 at—and denied—requests for subsequent continuances. Given growing political pressure to clear
33 an increasing backlog of cases,¹⁴ judges interpreted more than one continuance as either
34 unnecessarily prolonging some noncitizens’ detention or as a tactic for non-detained noncitizens
35 to delay their removal indefinitely. For example, although a non-detained Honduran national I
36 observed reported to one judge that he had used his first continuance to hire an attorney, he
37 needed time to gather the funds required to pay the lawyer. The judge pressed the noncitizen for
38 proof of contact in the form of the attorney’s business card, which the noncitizen had available.
39 Seemingly satisfied, the judge agreed to a second continuance of almost two months but warned
40 sternly: “If you don’t have an attorney by then, we will proceed without one.”
41
42

43
44 When the question of attorney representation is settled—in most cases, with noncitizens
45 unrepresented in Dallas Immigration Court (see Tables 1 and 2)—the judges proceeded with
46 their scripts, seeking to categorize the noncitizens before them into legally-relevant categories.
47 Reviewing the Notice to Appear and the submitted I-213 for each noncitizen, the majority of
48 whom are undocumented, each noncitizen was asked the same set of questions, with only the
49 details differing: “Are you a citizen of the United States? Are you a citizen of [country of
50 origin]? Did you arrive to the United States through [place of entry] on [date]? Did you enter
51 [legally/illegally] on said date? Is [country of origin] the country you want to go home to?”
52
53
54
55

56 ¹⁴ Rose (2018).
57
58
59
60

1
2
3 These initial question-and-response exchanges seldom lasted longer than ten minutes during the
4 proceedings I observed. Rather than reflecting any time pressure the judges communicated, the
5 speed of this part of the hearing reflects the bureaucratic reality that, when a noncitizen first
6 appears in immigration court, “There’s just no opportunity for extenuating circumstances to be
7 taken into account,” as one DHS prosecutor told me. If the information before the judge suggests
8 that a noncitizen is removable—for example, when a noncitizen is undocumented and a recent
9 entrant to the country, or if they have been convicted of an aggravated felony—no relief is
10 available under current U.S. immigration law. I witnessed a detained Honduran native convicted
11 of an aggravated felony under the INA—cocaine possession—ordered deported. As the judge
12 prepared to move to the next case on the docket, the noncitizen implored the judge in his Texas-
13 accented English to consider his family ties: “I don’t have nobody there [in Honduras]. I’ve been
14 here for 15 years. My family doesn’t even know I’m here [in removal proceedings].” The judge
15 replied soberly, “I’m very sorry about that. But there’s nothing I can do. Best of luck to you.”
16
17
18

19 In the scripted approach, immigration judges’ beliefs about noncitizens’ preferred case outcomes
20 help the judges to justify their decisions—even as they recognize that their decisions can appear
21 mechanistic. Although judges process cases individually, each case forms part of a “stream of
22 cases” that the judges handle (c.f. Emerson 1993: 426). This case stream provides a context for
23 how the immigration judges I observed thought about the stakes of their removal decisions.
24
25

26 For example, four of the five judges described how they believed many noncitizens saw removal
27 as a preferable outcome; instead of investing time and financial resources in an attorney while a
28 judge adjudicated their case, noncitizens could invest time in attempting to re-enter the United
29 States once deported. One prosecutor likened removal to a “get out of jail free” card, believing
30 that anyone ordered deported would likely attempt to reenter the country shortly following their
31 removal. One judge portrayed this phenomenon to me as “the elephant in the room that we never
32 talk about,” recounting a story about “Deportation Day” in his previous immigration court:
33
34

35 *Sometimes we fly them into Mexico City [if they’re from Mexico]. But that’s too expensive to do for*
36 *everyone, so more often than not, we bus them to the border. When I was a judge in [another immigration*
37 *court], we sent deportees to Laredo, which was pretty far away from the immigration court. We called it*
38 *Deportation Day or “Tuesday Taco Run” because this was when, after all the deportees got dropped off at*
39 *the border, the CBP agents would put on their civilian clothing and go into Mexico to buy tequila, beer,*
40 *tacos, and other cheap stuff best purchased in Mexico. When they went back stateside, a lot of the agents*
41 *would run into some of the deportees they had just sent back home but who had already reentered the U.S.*
42 *They would tell our agents, who couldn’t do anything at that point, “Welcome to the U.S.” It’s just an*
43 *anecdote but I’ve heard it several times from different people, so I believe it to be true.*
44

45 Emerging from the ongoing processing of cases, court officials’ beliefs that some noncitizens
46 preferred an immediate order of removal to a protracted case adjudication is supported by the
47 burgeoning research on this topic (see Hagan et al. 2008; Martínez et al. 2018). Instances of this
48 apparent preference among noncitizens appeared to emerge during the fieldwork period. In one
49 case, the DHS alleged that an unrepresented Mexican national had entered the country
50 undocumented. The noncitizen objected that he had in fact overstayed his tourist visa. “If they’re
51 wrong [about your entering undocumented],” the judge advised, “then you can’t be deported for
52 that reason.” The noncitizen nevertheless declined a continuance to search for his original visa
53 and asked to be deported. The judge warned the noncitizen that removal could “negatively affect
54
55
56
57
58
59
60

1
2
3 your chances of being able to reenter the country for a period of ten years;”¹⁵ the noncitizen
4 acknowledged the possibility, and the judge ordered him removed. In another case, one judge
5 determined that an undocumented immigrant from Mexico was eligible to have his removal
6 canceled and to apply for lawful permanent residence. The *pro se* noncitizen declined the
7 opportunity, nodding in awareness that he would not be eligible to apply for this relief again.
8
9

10 In both the preceding cases, though attorney representation may have made the noncitizens more
11 likely to seek and, be granted, relief (Eagly and Shafer 2015; see also Miller et al. 2014; Ryo
12 forthcoming-a; Ryo forthcoming-b),¹⁶ the judges justified their removal orders as a larger
13 “strategy” on the part of some of the noncitizens before them. As one judge summarized:
14
15

16 *This strategy is most common among people from Mexico and Central America. For these people, it's*
17 *better to be deported and come right back than be held up in jail. You know, these people have families*
18 *depending on them. So, they ask themselves, “What’s the point of applying for relief if I’m going to spend*
19 *three or four months held up in jail and be unable to support my family with no guaranteed outcome?”*
20

21 By following their scripts during initial master calendars, judges in Dallas Immigration Court
22 processed the routine removals of noncitizens who fell into easily-identifiable categories with
23 clear legal outcomes and who sometimes declined further investigation into their cases.
24

25 *Extemporaneous Approach: Deporting the “Deserving” from Dallas Immigration Court*

26

27 The “extemporaneous approach” to decision-making in immigration court entails judges’
28 consideration of the circumstances surrounding noncitizens’ cases—particularly when
29 noncitizens’ removability or eligibility for relief is not immediately apparent. This approach
30 often occurred during subsequent master calendar or individual merit hearings. Through
31 examination of noncitizens’ extenuating circumstances, such as their ties to U.S. citizens or the
32 context surrounding the commission of certain unlawful acts, judges move beyond their scripts
33 and deliberate in greater depth about the cases before them. In the process, judges’ personal
34 attitudes, biases, and motivations are often revealed—with their resulting decisions sometimes-
35 unintentionally perpetuating the social control capacity of the federal immigration regime by
36 leaving noncitizens in a precarious legal status that can jeopardize these individuals’ future
37 opportunities for legalization.
38
39
40

41 Greater judicial scrutiny of noncitizens’ cases sometimes illustrates how current U.S.
42 immigration law offers limited relief to noncitizens once apprehended or detained—no matter
43 how “deserving” a judge believes them to be. One judge found a 26-year-old undocumented
44 noncitizen from Mexico, convicted of driving while intoxicated, burglary, and evading arrest, to
45 be removable—though not mandatorily so under the INA. The Deferred Action for Childhood
46 Arrivals Program was one source of relief the judge thought might be available, but the
47 noncitizen was ineligible because he never graduated from high school; the noncitizen reported
48
49
50

51 ¹⁵ A noncitizen with a removal order cannot reenter the United States legally for a period of ten years; if a noncitizen
52 disobeys this order and reenters the country without authorization and is caught, in addition to serving a sentence in
53 federal prison, they may be barred for 20 years or even indefinitely from applying for a visa or green card.

54 ¹⁶ This is not to suggest that immigration attorneys guarantee favorable outcomes. Indeed, I witnessed a number of
55 instances in which apparently-unscrupulous immigration attorneys had charged their clients upwards of \$5000 for
56 simple legal filings but failed to complete any of the tasks for which they were hired.
57
58
59
60

1
2
3 having dropped out to provide financially for his undocumented mother and U.S.-born brother.
4 The judge could not identify any other form of relief for the *pro se* undocumented noncitizen.¹⁷
5 “There’s just no relief available to you,” the judge concluded with apparent sympathy. “Not even
6 if I get a lawyer?” the noncitizen replied in unaccented English. “I don’t think so—you’re not
7 eligible for anything.” The DHS prosecutor agreed: “The criminal issues are not stopping you.
8 You just don’t have any qualifying relatives [who can sponsor your legalization].” “Your honor,
9 I don’t have anybody there [in Mexico] and I’d be risking my life crossing the border,” the
10 undocumented noncitizen pleaded before being ordered removed. “Sir, I’m sorry,” the judge
11 replied. “If there were relief available, I’d offer it to you.”
12
13

14
15 The judges in Dallas Immigration Court seemed aware of the limited pathways to relief available
16 under current U.S. immigration law. In multiple cases, they expressed frustration when
17 encountering noncitizens who were removable but who might have been able to avoid
18 deportation under different circumstances. For example, a long-time lawful permanent resident
19 from Mexico—arrested but not convicted of a number of low-level drug offenses in June 2009—
20 sought to have his removal canceled and to naturalize via his U.S.-citizen wife. The noncitizen
21 would first have to be pardoned for his criminal charges. But he fell four months shy of one of
22 the requirements—five years of lawful admission after receiving his green card—to qualify.¹⁸
23 The judge continued to search for alternate forms of relief, inquiring as to whether the
24 noncitizen’s U.S.-born stepfather had ever legally adopted him. “This may be your only hope,”
25 the judge told the noncitizen. “If you were adopted by a U.S. citizen before the age of 16, and
26 became a lawful permanent resident by 18, you become a citizen automatically. That means I
27 wouldn’t have any authority over you. I only have authority over noncitizens.”
28
29

30
31 Though a petition was still on file with family court, the family’s lawyer never finalized the
32 adoption. The judge looked at me in exasperation, urging, “If you ever become a lawyer, make
33 sure you’re a good one.” With no other relief available, the judge addressed the noncitizen:
34 “Why didn’t you naturalize?” “My mistake,” he replied. “Yes, your mistake. [...] You wouldn’t
35 be here if you had naturalized. I’m not condoning your criminal activity, but you wouldn’t have
36 these immigration problems at least.” The judge ordered the noncitizen, who was escorted out of
37 the courtroom in shackles with two marshals, removed. The judge turned to me once they left
38 and reflected: “It’s unfortunate that he had to be deported because he probably doesn’t know
39 anyone in Mexico since he came to the U.S. at such a young age.” The judge took this as “a
40 lesson for the broader immigrant community that they should naturalize if they are eligible.”
41
42

43
44 Against the backdrop of the limited relief available to many of the noncitizens before them, the
45 judges in the study sometimes worked in an apparent attempt to circumvent the removal process
46 for those they viewed as “deserving” of reprieve. One way they did so is through the legal
47 mechanism of administrative closure, which allows immigration judges to remove a case from
48 their calendar and delay a proceeding that could remove a noncitizen from the country. For
49

50
51 ¹⁷ Created in 2012, DACA is a discretionary status that grants a driver’s license, work authorization, and reprieve
52 from removal for eligible undocumented immigrants.

53 ¹⁸ Under the “stop time” rule, a noncitizen cannot gain any immigration benefits after committing a “crime of moral
54 turpitude” within five years of their last admission to the United States, and if the offense carries a potential sentence
55 of one year. See 8 USC § 1227. The Board of Immigration Appeals (1988) defines a crime of moral turpitude as a
56 behavior “that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of
57 morality and the duties owed between man and man, either one’s fellow man or society in general.”
58
59

1
2
3 example, one undocumented Mexican national reappeared in court following a months-long
4 continuance without an attorney. He explained to the judge that attorney representation was cost
5 prohibitive for his family, narrating how he works full-time to pay for his terminally-ill wife's
6 medical treatment as well as to care for their three U.S.-citizen children. The DHS prosecutor
7 concluded that the noncitizen's criminal record did not make him an enforcement priority, and
8 the prosecutor agreed to the judge's suggestion to close the case. "The government is making
9 you a generous offer," the judge remarked. The judge explained, however, that administrative
10 closure leaves the noncitizen in a precarious legal situation: "This doesn't give you legal status,
11 work authorization, or a green card. Do you understand? It just means the government will not
12 try to remove you right now." The noncitizen walked out of the courtroom, crying but visibly
13 relieved. Given the May 2018 decision to ban administrative closure in immigration courts, it is
14 uncertain at the time of this writing whether some of the more than 200,000 cases
15 administratively closed between October 2011 and September 2017 will be reopened—and
16 whether the noncitizens who have benefited from an administrative closure will be removed.¹⁹
17
18
19

20
21 Another apparent attempt at circumventing the removal process is through the legal mechanism
22 of voluntary departure. Although eligibility requirements for voluntary departure are defined
23 statutorily (see Footnote 12), some requirements are subject to a judge's interpretation—such as
24 the perceived likelihood that a noncitizen will comply with the voluntary departure order. In one
25 case, a non-detained male from El Salvador appeared *pro se* and admitted to having entered the
26 United States unlawfully. He explained to the judge that his father died when he was six, and that
27 he had immigrated to provide for his family. "So, you came here to improve your economic
28 condition?" the judge clarified. The noncitizen responded: "I came here to study, learn English,
29 and to do better in life." When asked whether there was a reason he could not return to El
30 Salvador—ostensibly the judge's attempt to determine whether the noncitizen qualifies for relief,
31 perhaps in the form of asylum—the noncitizen explained that he would "like an opportunity to
32 stay [in the United States] because I don't have resources to study in El Salvador."
33
34

35
36 The judge listened intently to the noncitizen's statement before explaining how, despite his
37 personal belief that the noncitizen is "noble," U.S. immigration law offers limited recourse for
38 individuals in the noncitizen's situation:
39

40 I know you want to stay here, and I think it's very noble you want to help your family, but you have no
41 reason to fear going home. There's no relief available to you. I don't get to choose to allow people to stay
42 here because I want to. The law doesn't let me allow you to stay here.
43

44 The judge granted the noncitizen a voluntary departure, giving him four months to leave the
45 country. The noncitizen walked freely out of the courtroom. Although not explicitly stated, the
46 judge may have offered the noncitizen a voluntary departure as a way of enforcing the law while
47 tacitly providing an opportunity for the "noble" noncitizen to remain in the country.
48

49
50 Judges' attempts at circumventing the removal process for "deserving" noncitizens are more
51 explicit in other cases in the fieldwork period. For example, one Honduran national reported
52 entering the United States undocumented with her four-year-old son in search of medical
53

54
55 ¹⁹ Benner, Katie. 2018. "Justice Dept. Restricts a Common Tactic of Immigration Judges." *New York Times*. May
56 17. < <https://nyti.ms/2k5nmVg>>. Accessed online July 5, 2018.
57
58
59

1
2
3 treatment for his convulsive syndrome. The woman appeared *pro se* and the judge guided her
4 through a series of questions before determining that no relief was available for her to remain in
5 the country: “Regrettably, based on what you’ve told me, you don’t qualify for any relief the
6 Court is aware of. You basically came here to get a job and help your son. While that’s noble as
7 a human being, it doesn’t fall within statutory guidelines of the law.” The judge granted the
8 noncitizen a voluntary departure, encouraging her to turn in her paperwork to the U.S. consulate
9 in Honduras so as to not forgo the possibility of reaping immigration benefits in the future.
10
11

12 When the noncitizen exited the courtroom, the judge turned to me and conceded that he did not
13 believe the noncitizen would leave the United States voluntarily—despite the legal requirement
14 that he factor this belief into his decision-making process before granting a voluntary departure:
15

16
17 She’s not likely to comply because she’s here to get medical treatment for her son. So she’ll probably just
18 stay in the U.S. and won’t get picked up again because she doesn’t look like the type to commit crimes.
19 She’s well dressed, pretty, and has good manners. She may very well be able to live here just fine.
20

21 In this way, the judges in the study sometimes viewed voluntary departure and administrative
22 closure as positive forms of “legal limbo” (see Menjívar 2006) they can offer “deserving”
23 noncitizens while also abiding within the constraints of the federal immigration regime.
24

25 Although judges sometimes appeared to offer voluntary departure to eligible noncitizens they
26 deemed “deserving” under the assumption they might remain in the United States indefinitely,
27 the consequences of noncitizens’ non-compliance with voluntary departure can be negative and
28 long-lasting. On the one hand, a voluntary departure converts into a removal order, preventing
29 noncompliant noncitizens from accessing visas and other immigration benefits for a period of at
30 least ten years. On the other hand, a record of non-compliance with immigration officials’
31 decisions can compromise evaluations of noncitizens as moral, law-abiding individuals (Asad
32 2018)—an important quality in a federal immigration regime that valorizes noncitizens’ “good
33 moral character.”²⁰
34
35
36

37 The case of a *pro se* Mexican national I observed exemplifies the compounding effects of
38 immigration officials’ attempts at discretion for noncitizens’ future legalization opportunities.
39 One undocumented Mexican national sought a voluntary departure so that he might adjust his
40 legal status in Mexico via his U.S.-citizen wife. But the judge had reason to believe that the
41 noncitizen would not comply: DHS records revealed that CBP agents had previously returned the
42 undocumented noncitizen to Mexico when he was caught entering the United States in 2009. But
43 the noncitizen successfully entered shortly thereafter—a common pattern among Mexican
44 migrants in an era of heightened border security (see Donato et al. 2008). With at least one
45 voluntary return documented in the noncitizen’s legal record,²¹ the judge interpreted the
46 noncitizen’s repeated clandestine border-crossings as evidence that the noncitizen “doesn’t
47 respect immigration law.” The judge thus concluded that the noncitizen would not comply with
48 the voluntary departure since he “didn’t take advantage of voluntary return by not returning [to
49
50
51

52
53 ²⁰ The INA defines good moral character as “character which measures up to the standards of average citizens of the
54 community in which the applicant resides.” See 8 CFR 316.10(a)(2).

55 ²¹ CBP processes voluntary returns at a port of entry, usually for noncriminal cases. Individuals granted a voluntary
56 return waive their rights to a formal hearing and agree to pay removal expenses. Statutorily, voluntary returns do not
57 entail consequences for individuals seeking future lawful admission to the United States.
58
59
60

1
2
3 the United States].” The judge denied voluntary departure “as a matter of discretion” and ordered
4 the noncitizen removed to Mexico, making him ineligible for immigration benefits for a period
5 of ten years—despite his potential current eligibility for relief via his U.S.-citizen wife.
6

7
8 This is not to say that immigration judges in Dallas always used voluntary departure as a form of
9 discretionary relief for statutorily-eligible—and “deserving”—noncitizens. There were also
10 instances in which the judges used voluntary departure in an apparently punitive manner,
11 particularly for noncitizens they viewed as “deserving” but who visibly frustrated the judges for
12 their seeming lack of willingness to take advantage of the opportunities the judges offered. For
13 example, one Salvadoran national who appeared via video link from his detention center had
14 been granted a continuance when he could not submit his cancellation of removal petition and
15 application for lawful permanent residence at his prior hearing. When he next appeared in court,
16 the *pro se* noncitizen still had not submitted the petitions, explaining that he had difficulty
17 gathering the required documents to complete the paperwork while detained. He requested
18 another continuance, but the DHS prosecutor objected as “a matter of discretion.” The judge
19 sustained the objection, concluding that the noncitizen “abandoned his right to turn in his
20 application to the court” after missing two submission deadlines. Despite the noncitizen’s current
21 eligibility and plea for more time to submit his legalization materials, the judge offered the
22 noncitizen a voluntary departure so that he could “come back to the U.S. legally in the future.”
23
24
25

26
27 By deviating from their scripts during subsequent master calendars or individual merit hearings,
28 and deeming some noncitizens as “deserving” of reprieve, judges in Dallas Immigration Court
29 perpetuate the social control capacity of the federal immigration regime. But what distinguishes a
30 “deserving” from “undeserving” noncitizen? Some analyses point to immigration judges’
31 reliance on noncitizens’ individual or case characteristics, such as whether noncitizens have
32 U.S.-citizen children (Mendelson 2010) or a felonious or violent criminal record (Ryo
33 forthcoming-a). Observations in Dallas Immigration Court suggest that judges also make moral
34 judgments about hard-to-quantify factors. As in other court contexts (see Clair and Winter 2016:
35 336), how immigration judges evaluate the “deservingness” of noncitizens depends on a
36 collective process involving multiple actors—judges, prosecutors, attorneys, and/or clients. One
37 actor’s decisions can enable or constrain the range of choices available to other actors, with
38 potentially-harmful effects on the outcomes of the noncitizens with cases before the judge.
39
40

41
42 The case of one noncitizen from El Salvador, who appeared in court from a detention facility
43 several hours from Dallas to submit applications for cancellation of removal and legal permanent
44 residence, illustrates this mutually-constitutive dynamic. The Salvadoran national had retained an
45 attorney, a timid man who arrived to court early to ask the DHS prosecutor whether she would
46 object to a continuance of the case to ensure that the noncitizen’s application materials had been
47 properly completed. The prosecutor nodded that she would object, adding that it was also
48 unlikely the judge would grant another continuance since the noncitizen had been in detention
49 for over six months (see Ryo 2016: 121-122). The immigration lawyer’s worries about the
50 completeness of his client’s application materials were borne out almost immediately after the
51 judge entered the courtroom and began considering the applications. The prosecutor objected to
52 the materials’ uncertified Spanish-to-English translations, which the judge sustained.
53
54
55
56
57
58
59
60

1
2
3 The attorneys in the courtroom took turns questioning the noncitizen. The noncitizen's lawyer,
4 visibly shaken from the prosecutor's objections, went first. His questioning revealed how the
5 noncitizen had been arrested at the hospital following a car accident for suspicion of driving
6 while intoxicated. Through his lawyer, the noncitizen argued that his six-year-old, U.S.-citizen
7 daughter would suffer if her father were removed because he would have to take her with him to
8 a country she had never known.²² The DHS prosecutor then cross-examined the noncitizen, first
9 asking questions that established that the noncitizen's child was healthy and doing well in
10 school. The prosecutor then pointed to apparent inconsistencies on the noncitizen's application
11 materials; for example, the noncitizen filed taxes as "head of household" in some years and
12 "jointly" with his wife in others. The DHS prosecutor further noted how various sections of the
13 cancellation and legalization petitions were incomplete. The noncitizen interjected to declare that
14 he had given his attorney the information necessary to complete the application. "Why didn't
15 you do it," the judge asked. The noncitizen, who relied entirely on an interpreter to communicate
16 with the judge, replied solemnly in Spanish, "I thought my attorney did it."
17
18
19

20
21 Following the conclusion of questioning, the courtroom awaited the judge's oral decision. The
22 judge's explanation of his decision reveals the moral judgments inherent in U.S. immigration law
23 (e.g., Andrews 2017) that can lead judges to distinguish "deserving" from "undeserving"
24 noncitizens: He found that the respondent was not a credible witness because of the
25 inconsistencies between his testimony and the submitted application. Given this reported lack of
26 credibility, the judge concluded that he could not take the noncitizen's word that he has lived in
27 the country for at least ten years—a requirement for the relief for which he had applied. The
28 judge further concluded that the noncitizen did not demonstrate good moral character because he
29 filed his tax forms improperly in an alleged attempt to receive a higher tax break. With one
30 driving while intoxicated charge pending, the judge viewed the noncitizen's "serious criminal
31 record" as further evidence against his good moral character. The judge further noted that the
32 noncitizen failed to demonstrate that his daughter would suffer "exceptional" hardship through
33 her father's removal. The judge denied both petitions, rejected a request for voluntary departure
34 because he did not believe the noncitizen would comply, and ordered the noncitizen removed.
35
36
37

38 **DISCUSSION AND CONCLUSION**

39

40 Through ethnographic observations of and informal conversations with judges in Dallas
41 Immigration Court, as well as archival materials, this article describes two approaches through
42 which judges in this setting justify their decisions. In the "scripted approach," the judges
43 followed well-rehearsed narratives to recite the limited legal rights and remedies available to
44 noncitizens. In the "extemporaneous approach," judges moved beyond their scripts to deliberate
45 in greater depth about noncitizens' cases. In the process, judges' personal attitudes, biases, and
46 motivations were often revealed, articulating their desire to circumvent the removal process for
47 noncitizens they viewed as "deserving"—but who otherwise lacked full relief from removal
48
49
50

51 ²² Undocumented noncitizens who have lived in the United States for at least ten years may be eligible for lawful
52 permanent residence, particularly if their removal would cause "extreme hardship" to a U.S.-citizen or lawful
53 permanent resident spouse or child. Though not clearly defined in statute, USCIS outlines five categories of factors
54 and considerations for extreme hardship: family ties and impact; social and cultural impact; economic impact; health
55 conditions and care; and country conditions. See: USCIS Policy Manual, Vol. 9, Ch. 5. "Extreme Hardship
56 Considerations and Factors." <<https://bit.ly/2emZcpa>>. Accessed online July 5, 2018.
57
58
59
60

1
2
3 given judges' interpretations of immigration law. These findings lend themselves to a framework
4 of judicial decision-making in immigration court that conceptualizes judges as street-level
5 bureaucrats, frontline workers who can interpret and apply the law unevenly. I argue, however,
6 that even judges' relatively-rare attempts to circumvent removal for noncitizens they deemed to
7 be deserving can amplify the social control capacity of the federal immigration regime.
8
9

10 Additional work is needed to further systematize immigration judges' roles as street-level
11 bureaucrats. Ethnographic observations of, and informal conversations with, judges provide
12 important insights into real-time decision-making; archival documents help to contextualize the
13 structural and organizational conditions governing these decisions. In-depth interviews with
14 immigration judges, within and across courts and federal jurisdictions, could refine or extend the
15 findings offered here by allowing for a fuller exploration of the processes and contexts judges
16 believe impact their decisions. Longer-term fieldwork could also be useful. Since the conclusion
17 of the current study's fieldwork, and as of July 2018, one Dallas Immigration Court judge has
18 transferred to another jurisdiction and two female judges have joined the formerly all-male court.
19 Research suggests judges' individual characteristics—such as gender—matter for court culture
20 and norms (e.g., Schrag et al. 2009: 47-48; see also Keith et al. 2013). Sustained observations
21 may help to illustrate how dynamism in structural and organizational conditions underlies
22 removal outcomes. Future work should also pay attention to the decisions of judges on the Board
23 of Immigration Appeals and in a number of federal circuit courts that hear appeals to Board
24 decisions. The judges at these venues are thought to have greater discretion than lower-court
25 immigration judges (Baum 2010), and how their decision-making manifests requires scrutiny.
26
27
28

29 Although the fieldwork on which this study is based preceded the 2016 U.S. presidential
30 election, there is reason to expect that the dynamics identified here will only become magnified.
31 First, the backlog of cases facing immigration judges has grown from more than 456,000 in
32 FY2015 to more than 768,000 cases as of November 2018.²³ About 15 percent of pending cases
33 are set in Texas, and about 3 percent are set in Dallas. Second, the Executive Branch has placed
34 added scrutiny on immigration judges to clear this backlog. U.S. Attorney General Jeff Sessions
35 has directed immigration judges to clear at least 700 cases per year, and have fewer than 15
36 percent of their decisions overturned on appeal, or risk their place on the court.²⁴ Finally, and
37 coupled with research suggesting that immigration judges rely on cues to assess how "American"
38 (Mendelson 2010) or "dangerous" (Ryo forthcoming-a) the noncitizens before them are,
39 immigration judges may rely on these or additional cues to further identify noncitizens they view
40 as "deserving" of relief—even when full relief from removal might not be available.
41
42
43

44 Conceptualizing immigration judges as street-level bureaucrats re-centers the primacy of the law
45 as a real or perceived constraint on these actors' decision-making—without interpreting the law
46 as deterministic. An emerging literature based on administrative or survey data uncovers
47 important associations between immigration judges' personal characteristics, or noncitizens' case
48 characteristics, and removal outcomes (e.g., Keith et al. 2013; Rottman et al. 2009; Ryo 2016;
49 Schrag et al. 2009). Administrative categories such as "removal" or "voluntary departure" have
50 legal meaning in that they imply that a noncitizen must leave the United States and dictate what
51 immigration benefits are available to them. As the current study reveals, however, these
52
53

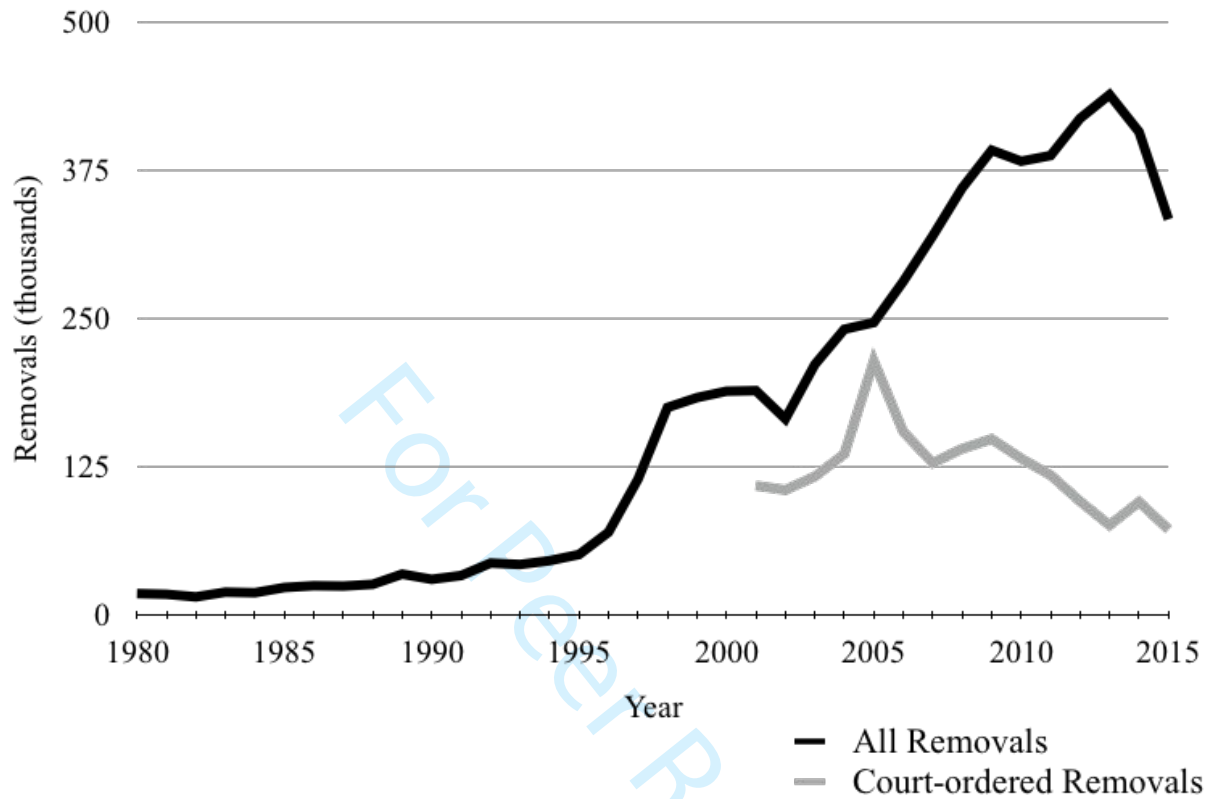
54
55 ²³ Source: TRAC (2018).

56 ²⁴ Rose (2018).
57
58
59
60

1
2
3 categories also have hard-to-quantify social meanings: Like other judges (c.f. Bybee 2012: 81),
4 immigration judges are embedded within contexts that they believe facilitate or limit their
5 decisions. Ethnography permits analysis of judges' real-time decisions, and informal
6 conversations with judges provide insights into the justifications these actors give for
7 propagating or contesting the federal immigration regime when confronted with different
8 noncitizens' cases. Combined with insights from administrative data, these multiple methods
9 help to illuminate the often-hidden factors that reproduce the federal immigration regime.
10
11

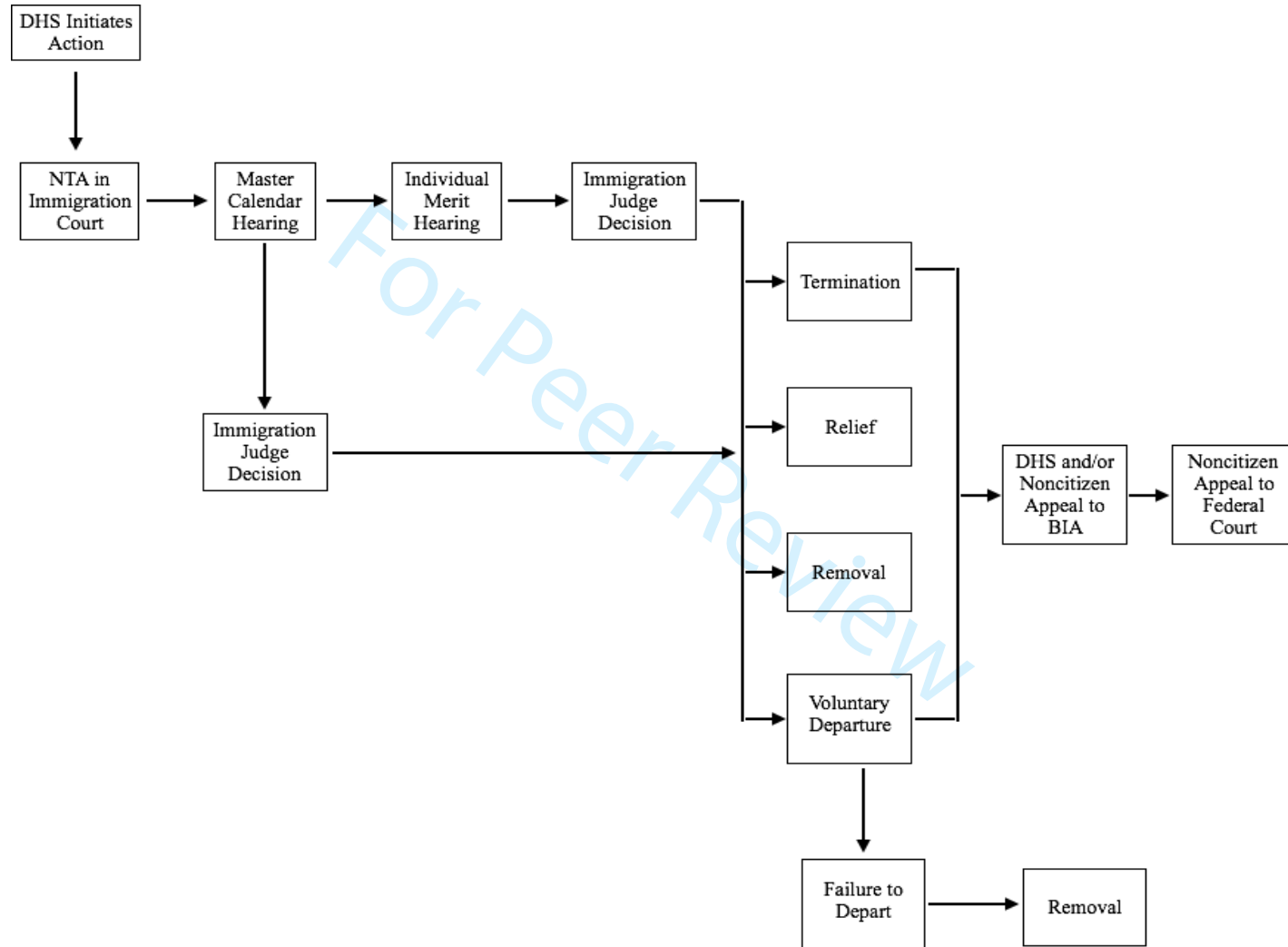
12 In offering a framework of immigration judges as street-level bureaucrats, this article also
13 demonstrates the value of studying the viewpoints of agents of the law—not only those of its
14 targets. Ranging from Minutemen who patrol the Mexico-U.S. border (Shapira 2017 [2013]) to
15 police agencies who cooperate with federal immigration officers (Armenta 2017), these actors
16 contribute to social exclusion (Rios et al. 2017). Objective dimensions of exclusion encoded into
17 immigration law are one part of this dynamic; the beliefs and actions of those who interpret and
18 implement the law are another. In the context of Dallas Immigration Court, objective (e.g., a
19 noncitizen's criminal record) and subjective factors (e.g., interpretations of who "deserves" to be
20 deported) both shape removal outcomes. Conceptualizing immigration judges as street-level
21 bureaucrats enables analysis of how structural and organizational contexts govern these actors'
22 behavior while also revealing how judges' attitudes, biases, and motivations can operate to the
23 detriment of the noncitizens before them. Studies of noncitizens' fears of removal illustrate how
24 changes to the federal immigration regime since the mid-1980s have both expanded the
25 conditions for deportation while also complicating noncitizens' ability to secure or maintain legal
26 status (Asad 2018; see National Academies of Sciences 2015 for a review). Federal immigration
27 officials' perspectives should likewise be viewed as conditional on these macro-level contexts,
28 with judges representing one set of actors whose perspectives on who does—and does not—
29 "deserve" to be deported potentially aggregating to exacerbate removal rates.
30
31
32
33

34 Finally, this conceptualization amplifies the social control capacity of the federal immigration
35 regime by revealing how even its agents' well-intentioned attempts at offering noncitizens relief
36 can perpetuate removal outcomes. The finite forms of relief available to most noncitizens under
37 U.S. immigration law sometimes visibly frustrated the judges I observed. In some cases, the
38 judges offered forms of "relief," such as voluntary departure, to statutorily-eligible noncitizens in
39 an apparent attempt to circumvent removal. As a legal matter, this form of relief would
40 ostensibly allow a noncitizen to one day return to the United States with documentation. As a
41 practical matter, however, the judges admitted that some noncitizens who accepted a voluntary
42 departure were not likely to comply with it—particularly since many had families whose
43 livelihoods depended on their durable presence in the United States. The current study suggests
44 that the interaction between the structural and organizational realities of immigration court and
45 judicial discretion can further exacerbate the subordination of noncitizens: In not complying with
46 a voluntary departure, noncitizens are more likely to land in federal prison, to be viewed as
47 "immoral" individuals who lack "good moral character" for not having complied with U.S.
48 immigration law, and to be denied any opportunities for legalization that might become available
49 for a period of at least ten years. If similar attempts at circumventing the removal process
50 manifest in other immigration court jurisdictions, then a growing population of noncitizens may
51 lack recourse for legalization going forward. The study thus amplifies the social control capacity
52 of the federal immigration regime once a noncitizen has been apprehended or detained.
53
54
55
56
57
58
59
60

Figure 1. All Removals and Court-ordered Removals of Noncitizens from the U.S., 1980-2015

Source: Data on all removals from the United States are from Department of Homeland Security. 2016. "Table 39: Aliens Removed or Returned: Fiscal Years 1892 to 2015." Data on court-ordered removals from the United States are from TRAC. 2018. "Details on Deportation Proceedings in Immigration Court." <https://bit.ly/2GW5I0h>.

Figure 2. Stylization of U.S. Immigration Court Proceedings



Source: Author's adaptation from Executive for Immigration Review materials.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Figure 3. Federal Circuit Court Districts in the United States

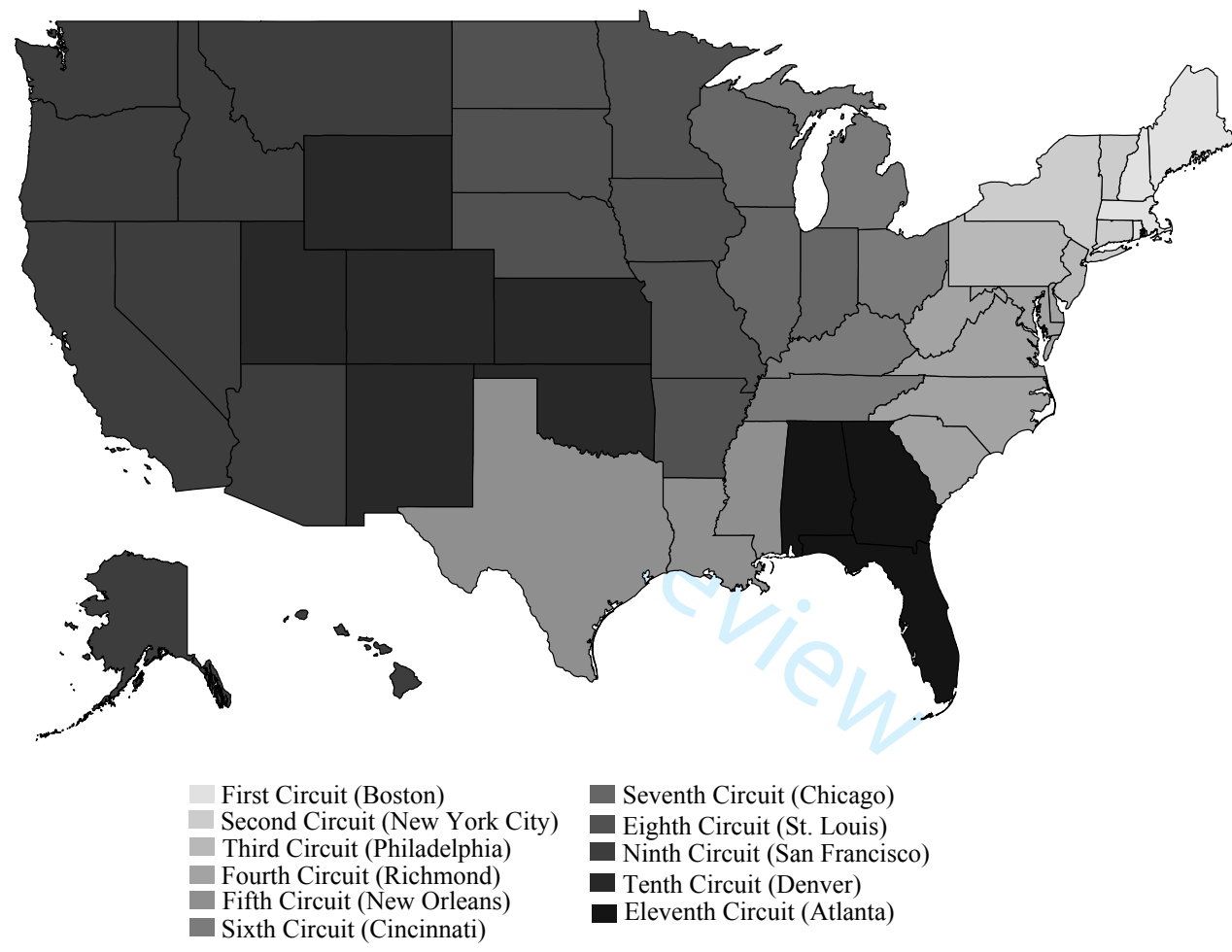


Table 1. Comparison of Matters Completed by Immigration Judges in Dallas Immigration Court, Texas Immigration Courts, and Nationwide Immigration Courts, FY2015

	Dallas	Texas	Nationwide
Number of Judges (N)	5	31	247
Completed Cases (N)	9,492	35,833	199,382
Concluded with Removal Order (%)	65.8	56.5	41.2
Concluded with Voluntary Departure (%)	7.53	5.18	5.26
Concluded with Terminations (%)	10.9	9.32	14.3
Concluded with Relief Granted (%)	2.25	4.72	10.1
Concluded with Administrative/Other Closure (%)	9.84	14.2	24.5
Conducted with Attorney Representation (%)	35.6	43.9	63.3
Conducted as Detained Proceedings (%)	47.4	35.8	21.5
Average Days to Completion	435	236	816

Source: Author's tabulations of TRAC. 2018. "Immigration Court Backlog Tool, Pending Cases and Length of Wait in Immigration Courts." <https://bit.ly/2JLMD5E>.

Notes: Number of judges in Dallas accurate as of June 2015. Number of judges in Texas and nationwide accurate as of June 2015. Completed cases represent Fiscal Year 2015. Data on cases conducted with attorney representation and as detained proceedings in Dallas are author's tabulations of TRAC (2018), based on "current status" of case.

Table 2. Summary of Cases, Outcomes, and Noncitizens Observed in Dallas Immigration Court
($N_{\text{Cases}} = 283$; $N_{\text{Outcomes}} = 283$; $N_{\text{Noncitizens}} = 263$)

	%
Cases Observed, by Type ($N = 283$) ^a	
Master Calendar	84.5
Individual Merit Hearing	8.5
Bond Hearing	7.1
Observed Outcomes ($N = 283$)	
Ordered Removed	32.2
Voluntary Departure	5.3
Termination/Closure	6.4
Bond	2.8
Continuance	53.4
Observable Characteristics of Noncitizens ($N = 263$) ^b	
Male	75.7
Detained	75.3
National Origin ^c	
Mexican	38.4
Other	62.6
Represented by Attorney	44.9
Used Courtroom Interpreter	76.0

Source: Author's tabulations of ethnographic field notes.

Notes:

^a Tabulations do not include observed cases that involved minors or cases where a noncitizen did not appear at the hearing. In the latter case, judges automatically ordered "no shows" removed.

^b Observed bond hearings often occurred immediately following a noncitizen's master calendar hearing. To avoid double-counting noncitizens' observable demographics, I exclude bond hearings and focus on noncitizens in master calendar and individual merit hearings.

^c Nationalities of noncitizens observed in immigration court other than Mexicans include Salvadorans, Hondurans, Panamanians, Bolivians, Chinese, Nepalese, Burmese, Peruvian, Cuban, Turkish, and Eritrean, among others.

References

- Andrews, Abigail L. 2017. "Moralizing Regulation: The Implications of Policing "Good" Versus "Bad" Immigrants." *Ethnic and racial studies*:1-19.
- Appeals, Board of Immigration. 1988. "Matter of Danesh." *Board of Immigration Appeals Decision #3068*.
- Armenta, Amada. 2017. "Protect, Serve, and Deport: The Rise of Policing as Immigration Enforcement."
- Asad, Asad L. 2018. "On the Radar: System Embeddedness and Latin American Immigrants' Perceived Risk of Deportation." *SocArXiv* doi: 10.31235/osf.io/dcgfw.
- Asad, Asad L and Matthew Clair. 2018. "Racialized Legal Status as a Social Determinant of Health." *Social Science & Medicine* 199:19-28.
- Baum, Lawrence. 2010. "Fortieth Annual Administrative Law Symposium: Judicial Specialization and the Adjudication of Immigration Cases." *Duke Law Journal*:1501-61.
- Benson, Lenni B and Russell R Wheeler. 2012. "Enhancing Quality and Timeliness in Immigration Removal Adjudication." in *Washington, DC: Administrative Conference of the US*.
- Bybee, Keith J. 2012. "Paying Attention to What Judges Say: New Directions in the Study of Judicial Decision Making." *Annual Review of Law and Social Science* 8:69-84.
- Campbell, Andrea Louise. 2012. "Policy Makes Mass Politics." *Annual Review of Political Science* 15:333-51.
- Chacón, Jennifer M. 2010. "A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights." *Duke Law Journal*:1563-633.
- Chiarello, Elizabeth. 2013. "How Organizational Context Affects Bioethical Decision-Making: Pharmacists' Management of Gatekeeping Processes in Retail and Hospital Settings." *Social Science & Medicine* 98:319-29.
- Clair, Matthew and Alix S Winter. 2016. "How Judges Think About Racial Disparities: Situational Decision-Making in the Criminal Justice System." *Criminology* 54(2):332-59.
- Cohen, Jonathan M. 2009. *Inside Appellate Courts: The Impact of Court Organization on Judicial Decision Making in the United States Courts of Appeals*: University of Michigan Press.
- Council, American Immigration. 2014. "Removal without Recourse: The Growth of Summary Deportations from the United States." Vol. Washington, D.C.: American Immigration Council.
- Dilulio, John D. 1994. "Principled Agents: The Cultural Bases of Behavior in a Federal Government Bureaucracy." *Journal of Public Administration Research and Theory* 4(3):277-318.
- Dingeman-Cerda, Katie. 2017. "Segmented Re/Integration: Divergent Post-Deportation Trajectories in El Salvador." *Social problems*.
- Donato, Katharine M, Brandon Wagner and Evelyn Patterson. 2008. "The Cat and Mouse Game at the Mexico-Us Border: Gendered Patterns and Recent Shifts." *International Migration Review* 42(2):330-59.
- Eagly, Ingrid V. 2014. "Remote Adjudication in Immigration." *Nw. UL Rev.* 109:933.
- Eagly, Ingrid V and Steven Shafer. 2015. "A National Study of Access to Counsel in Immigration Court." *U. Pa. L. Rev.* 164:1.

- 1
2
3 Eisenstein, James and Herbert Jacob. 1977. *Felony Justice: An Organizational Analysis of*
4 *Criminal Courts*: Little, Brown Boston.
- 5 Emerson, Robert M. 1983. "Holistic Effects in Social Control Decision-Making." *Law and*
6 *Society Review*:425-55.
- 7
8 Epstein, Lee and Tonja Jacobi. 2010. "The Strategic Analysis of Judicial Decisions." *Annual*
9 *Review of Law and Social Science* 6:341-58.
- 10 Feeley, Malcolm M. 1979. *The Process Is the Punishment: Handling Cases in a Lower Criminal*
11 *Court*: Russell Sage Foundation.
- 12 Fine, Lisa R. 1997. "Preventing Miscarriages of Justice: Reinstating the Use of Judicial
13 Recommendations against Deportation." *Geo. Immigr. LJ* 12:491.
- 14 García Hernández, César Cuauhtémoc. 2014. "Immigration Detention as Punishment." *Immigr.*
15 *& Nat'lity L. Rev.* 35:385.
- 16 Gilboy, Janet A. 1991. "Deciding Who Gets In: Decisionmaking by Immigration Inspectors."
17 *Law and Society Review*:571-99.
- 18
19 Golash-Boza, Tanya. 2013. "From Legal to 'Illegal': The Deportation of Legal Permanent
20 Residents Form the United States." Pp. 203-22 in *Constructing Immigrant 'Illegality':*
21 *Critiques, Experiences, and Responses*, edited by C. Menjivar and D. Kanstroom.
22 Cambridge: Cambridge University Press.
- 23 Hagan, Jacqueline, Karl Eschbach and Nestor Rodriguez. 2008. "Us Deportation Policy, Family
24 Separation, and Circular Migration." *International Migration Review* 42(1):64-88.
- 25 Hagan, John and Ruth D Peterson. 2013. "Changing Conceptions of Race: Toward an Account of
26 Anomalous Findings of Sentencing Research." Pp. 69-86 in *Race, Crime, and Justice*:
27 Routledge.
- 28 Heimer, Carol A. 2001. "Cases and Biographies: An Essay on Routinization and the Nature of
29 Comparison." *Annual Review of Sociology* 27(1):47-76.
- 30
31 Johnson, Brian D. 2006. "The Multilevel Context of Criminal Sentencing: Integrating Judge-and
32 County-Level Influences." *Criminology* 44(2):259-98.
- 33
34 Kanstroom, Daniel. 2007. *Deportation Nation: Outsiders in American History*: Harvard
35 University Press.
- 36
37 Keith, Linda Camp, Jennifer S Holmes and Banks P Miller. 2013. "Explaining the Divergence in
38 Asylum Grant Rates among Immigration Judges: An Attitudinal and Cognitive
39 Approach." *Law & Policy* 35(4):261-89.
- 40
41 Koh, Jennifer Lee. 2012. "Waiving Due Process (Goodbye): Stipulated Orders of Removal and
42 the Crisis in Immigration Adjudication." *NCL Rev.* 91:475.
- 43
44 Lamont, Michèle, Stefan Beljean and Matthew Clair. 2014. "What Is Missing? Cultural
45 Processes and Causal Pathways to Inequality." *Socio-Economic Review* 12(3):573-608.
- 46
47 Lara-Millán, Armando. 2014. "Public Emergency Room Overcrowding in the Era of Mass
48 Imprisonment." *American Sociological Review* 79(5):866-87.
- 49
50 Legomsky, Stephen H. 2005. "Deportation and the War on Independence." *Cornell L. Rev.*
51 91:369.
- 52
53 Lempert, Richard. 1989. "Discretion in a Behavioral Perspective: The Case of a Public Housing
54 Eviction Board."
- 55
56
57
58
59
60 Lipsky, Michael. 2010 [1980]. *Street-Level Bureaucracy: Dilemmas of the Individual in Public*
Service: Russell Sage Foundation.

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
- Lustig, Stuart L, Sarah Kureshi, Kevin L Delucchi, Vincent Iacopino and Samantha C Morse. 2008. "Asylum Grant Rates Following Medical Evaluations of Maltreatment among Political Asylum Applicants in the United States." *Journal of immigrant and minority health* 10(1):7-15.
- Markowitz, Peter L. 2010. "Deportation Is Different." *U. Pa. J. Const. L.* 13:1299.
- Marks, Dana Leigh. 2012. "Still a Legal Cinderella-Why the Immigration Courts Remain an Ill Treated Stepchild Today." *Fed. Law.* 59:25.
- Martínez, Daniel E, Jeremy Slack and Ricardo D Martínez-Schuldt. 2018. "Repeat Migration in the Age of the "Unauthorized Permanent Resident" a Quantitative Assessment of Migration Intentions Postdeportation." *International Migration Review*:0197918318767921.
- Mendelson, Margot K. 2010. "Constructing America: Mythmaking in Us Immigration Courts." *The Yale law journal*:1012-58.
- Menjívar, Cecilia. 2006. "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States." *American journal of sociology* 111(4):999-1037.
- Menjívar, Cecilia, Leisy J Abrego and Leah C Schmalzbauer. 2016. "Immigrant Families." John Wiley & Sons.
- Miller, Banks, Linda Camp Keith and Jennifer S Holmes. 2014. *Immigration Judges and Us Asylum Policy*: University of Pennsylvania Press.
- Moinester, Margot. 2018. "Beyond the Border and into the Heartland: Spatial Patterning of Us Immigration Detention." *Demography*:1-47.
- National Academies of Sciences, Engineering, and Medicine. 2015. "The Integration of Immigrants into American Society." Vol. *Panel on the Integration of Immigrants into American Society*. Cambridge, MA: National Academies of Sciences, Engineering, and Medicine.
- Rios, Victor M, Nikita Carney and Jasmine Kelekay. 2017. "Ethnographies of Race, Crime, and Justice: Toward a Sociological Double-Consciousness." *Annual Review of Sociology* 43:493-513.
- Rottman, Andy J, Christopher J Fariss and Steven C Poe. 2009. "The Path to Asylum in the Us and the Determinants for Who Gets in and Why." *International Migration Review* 43(1):3-34.
- Ryo, Emily. 2016. "Detained: A Study of Immigration Bond Hearings." *Law & Society Review* 50(1):117-53.
- Ryo, Emily. forthcoming-a. "Predicting Danger in Immigration Courts." *Law & social inquiry*.
- Ryo, Emily. forthcoming-b. "Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings." *Law & Society Review*.
- Schrag, Philip G, Andrew I Schoenholtz and Jaya Ramji-Nogales. 2009. *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*: NYU Press.
- Shapira, Harel. 2017 [2013]. *Waiting for José: The Minutemen's Pursuit of America*: Princeton University Press.
- Stuart, Forrest, Amada Armenta and Melissa Osborne. 2015. "Legal Control of Marginal Groups." *Annual Review of Law and Social Science* 11(1).
- Stumpf, Juliet P. 2006. "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power." *American University Law Review* 56:367.
- Watkins-Hayes, Celeste. 2009. *The New Welfare Bureaucrats: Entanglements of Race, Class, and Policy Reform*: University of Chicago Press.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60

Zacka, Bernardo. 2017. *When the State Meets the Street: Public Service and Moral Agency*:
Harvard University Press.

For Peer Review