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DETAINED IMMIGRATION COURTS

Ingrid Eagly & Steven Shafer***

This Article traces the modern development and institutional design of detained immigration courts—that is, the courts that tie detention to deportation. Since the early 1980s, judges in detained immigration courts have presided over more than 3.6 million court cases of persons held in immigration custody, almost all men from Latin America, most of whom are charged with only civil violations of the immigration law. Primary sources indicate that detained immigration courts are concentrated outside major urban areas, most commonly in the South, and often housed in structures not traditionally associated with courts, including inside prisons, jails, detention processing centers, makeshift tents, shipping containers, and border patrol stations. Other defining features of these detained courts include case completion goals prioritizing speed, minimal representation by counsel, heavy reliance on video adjudication, constrained public access, and arrest and venue rules that give the government unfettered control over the court that hears the case. Accompanying these developments, judges working inside detained courts have become increasingly separated from the rest of the immigration judge corps and, when compared to their counterparts in the nondetained courts, are more likely to be male, to have served in the military, and to have worked as prosecutors.

* Professor of Law, UCLA School of Law. For helpful comments and conversations about this project, we thank Ahilan Arulanantham, Tom Baker, Liz Bradley, Hannah Cartwright, Jeffrey Chase, Eunice Cho, Jessica Eaglin, Andrew Hammond, David Hausman, Kari Hong, Talia Inlender, David Kerastas, Amy Kimpel, Jayanth Krishnan, Fatma Marouf, Hiroshi Motomura, Lindsay Nash, Ngozi Okidegbe, Sarah Paoletti, Ian Peacock, Shalini Ray, Paul Wickham Schmidt, and participants in academic workshops hosted by the University of Alabama School of Law, Cardozo School of Law, the UCLA Center for the Study of International Migration, Indiana University Mauer School of Law, the University of Pennsylvania Carey Law School, the 2023 Conference on Empirical Legal Studies, the 2022 ABA-AALS-Academy for Justice Workshop, and the University of A Coruña (Spain). We are also grateful to Stephanie Anayah, Kevin Gerson, Rubina Karapetyan, Elyse Meyers, Renee Moulton, Mónica Reyes-Santiago, Skyler Terrebonne, Genevieve Tung, Bryanna Walker, and the editors of the *Virginia Law Review* for their superb research and editorial assistance.

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This Article argues that the largely unregulated design elements of detained immigration courts threaten due process and fundamental fairness by fostering a segregated court system that assigns systematic disadvantage to those who are detained during their case. Recognizing the structure and function of the detained immigration court system has a number of important implications for organizing efforts to reduce reliance on detention, policy proposals for restructuring the immigration courts, and future research on judicial decision-making.

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INTRODUCTION

Immigration judges have long played an important role as arbiters of individual deportation cases. Although immigration judges are entrusted with ensuring fairness and due process in agency adjudication, their caseloads, priorities, and funding have historically been inexorably tied to the government's deportation agenda. This fundamental tension between guarding the integrity of the judicial process and advancing the executive's enforcement priorities has consistently plagued the immigration courts. Nowhere is this tension more apparent than inside detention, where presidential administrations of both parties have focused their deportation efforts.

Over the past four decades, the number of people experiencing detention during their immigration court process has ballooned. In 1983, when the Executive Office for Immigration Review ("EOIR") was established as an agency to house the immigration courts within the Department of Justice ("DOJ"), only 678 people began their deportation cases in detention; by 2019, that number had reached an all-time high of 198,490 persons.[1] Across Republican and Democratic administrations, a range of immigration enforcement policies have solidified the tie between detention and adjudication.[2] Detention has also garnered approval of the U.S. Supreme Court, which has declined thus far to limit the

[1] See infra Figure 3.

[2] See, e.g., Exec. Order No. 13,767, 82 Fed. Reg. 8793, 8795 (Jan. 25, 2017) (ordering detention for "[noncitizens] apprehended for violations of immigration law pending the outcome of their removal proceedings"); Memorandum from Jeh Charles Johnson, Sec'y, U.S. Dep't of Homeland Sec., to Thomas S. Winkowski, Acting Dir., U.S. Immigr. & Customs Enf't, R. Gil Kerlikowske, Comm'r, U.S. Customs & Border Prot., Leon Rodriguez, Dir., U.S. Citizenship & Immigr. Servs., Alan D. Bersin, Acting Assistant Sec'y for Pol'y, Policies for the Apprehension, Detention and Removal of Undocumented Immigrants (Nov. 20, 2014) (directing that immigration detention bed space be utilized to pursue the agency's removal priorities).

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government's power to detain noncitizens in the name of removal.[3] Yet we know little about the trial-level courts that decide the cases of individuals who are detained, and how these courts may differ from their sister courts that hear the cases of individuals who are not detained.[4]

This Article is the first to trace the emergence, growth, and significance of what we call *detained immigration courts*—that is, U.S. immigration courts dedicated to hearing the removal cases of individuals who are in custody.[5] Tracing the history of immigration adjudication, we show how, over time, detained courts and the judges who work inside them have been severed organizationally from the rest of the immigration court system—the nondetained immigration courts that hear the immigration cases of

[3] See, e.g., Johnson v. Arteaga-Martinez, 142 S. Ct. 1827, 1833 (2022) (concluding that § 241 of the Immigration and Nationality Act ("INA") does not allow for a bond hearing for those seeking withholding of removal in immigration court after a prior removal order); Dep't of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959, 1970 (2020) (noting that "[m]andatory detention" under INA § 235(b)(1)(B) applies during a credible fear review proceeding before an immigration judge); Nielsen v. Preap, 139 S. Ct. 954, 970–71 (2019) (holding that INA § 236(c) mandates arrest and detention of any noncitizen with certain predicate offenses, including if the arrest occurs years after release from criminal custody); Jennings v. Rodriguez, 138 S. Ct. 830, 846–47 (2018) (finding no implicit six-month limit to pre-removal detention under the INA).

[4] One of the reasons for this blind spot, as Stephen Yeazell has noted, is that scholars tend to focus their research on appellate courts and the Supreme Court, rather than trial courts. Stephen C. Yeazell, Courting Ignorance: Why We Know So Little About Our Most Important Courts, 143 Daedalus 129, 130 (2014). Our Article thus contributes to the small but growing body of scholarship that investigates these lower-level courts. See, e.g., Alexandra Natapoff, Criminal Municipal Courts, 134 Harv. L. Rev. 964, 965 (2021) (documenting how the lowest tier of criminal courts—municipal courts—have been overlooked in criminal law scholarship); Daniel Wilf-Townsend, Assembly-Line Plaintiffs, 135 Harv. L. Rev. 1704, 1706 (2022) (revealing how the civil dockets of state trial courts have become dominated by massive, repeat filings of large corporations); Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, Racial Capitalism in the Civil Courts, 122 Colum. L. Rev. 1243, 1243 (2022) (examining consumer debt collection actions in civil courts as a case study to show how court practices facilitate racial capitalism); Kathryn A. Sabbeth, Eviction Courts, 18 U. St. Thomas L.J. 359, 360 (2022) (tracing how the structure of eviction courts undermines tenants' rights); Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, The Institutional Mismatch of State Civil Courts, 122 Colum. L. Rev. 1471, 1471 (2022) (arguing that state civil courts function as a type of emergency room for the social needs of litigants); Andrew Hammond, Pleading Poverty in Federal Court, 128 Yale L.J. 1478, 1478 (2019) (studying lower-level district court practices for reviewing *in forma pauperis*).

[5] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546, replaced the former exclusion and deportation proceedings with a unified "removal proceeding." Although removal is by far the most common case type today, judges in detention preside over other case types as well, such as credible fear review proceedings. See infra Section III.A & Appendix, Sections A, E.

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noncitizens who are not imprisoned.[6] Relying on a range of primary sources—including public records,[7] legislative history, agency reports, and court observations[8]—we identify defining features of detained immigration courts that distinguish them from nondetained courts, including courtrooms built inside carceral facilities, lightning-fast case completion goals, court locations concentrated in small and rural cities and in the South, and loosening of jurisdictional boundaries in assigning judges to cases. Since 1983, when the EOIR was established, detained courts have operated as sites of mass adjudication with sky-high deportation rates and little representation by counsel: 93% of detained individuals were deported, and only 16% found lawyers.[9]

Persons who are detained during the adjudication of their immigration court case are held in a growing complex of immigration detention facilities, county jails, and state and federal prisons, many of which are owned and/or operated by private, for-profit contractors.[10] On the border, migrants are sometimes incarcerated in temporary Border Patrol facilities, or—through a controversial Trump-era court program known as the Migrant Protection Protocols ("MPP")—taken in the custody of Border Patrol officers to makeshift tent courts where immigration judges appear from distant locations on a video screen.[11] Unaccompanied children, who

[6] Shoba Sivaprasad Wadhia and Christopher J. Walker have recently explained that the modern immigration court "has two dockets: one for respondents outside of detention and a second for those detained." Shoba Sivaprasad Wadhia & Christopher J. Walker, The Case Against *Chevron* Deference in Immigration Adjudication, 70 Duke L.J. 1197, 1207 (2021). We show how these splintered dockets have actually fostered two separate immigration court systems, each with its own set of judges, courtrooms, and procedures.

[7] We obtained internal memoranda and other documents regarding the operation of the immigration courts through the Freedom of Information Act. Additionally, as described in the Appendix, we analyzed EOIR's administrative database of court records made available on the agency's web page.

[8] Observations included immigration courts and associated detention facilities in Adelanto, California; Chicago, Illinois; Elizabeth, New Jersey; Houston, Texas; Los Angeles, California; Newark, New Jersey; Pearsall, Texas; and San Antonio, Texas.

[9] See infra notes 187, 292 and accompanying text.

[10] For an analysis of the significance of privatized immigration enforcement, including in the detention context, see Jennifer M. Chacón, Privatized Immigration Enforcement, 52 Harv. C.R.-C.L. L. Rev. 1, 2 (2017).

[11] The MPP has been embroiled in litigation since the Biden Administration first attempted to terminate the program in January 2021. See infra note 170. Meanwhile, time spent in inhospitable conditions in Border Patrol facilities has increased under the Biden Administration's expedited asylum policy. Priscilla Alvarez, Adult Migrants Are Held in Border Facilities Too Long Amid Biden Administration Policy Changes, Sources Say, CNN

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we find were also sometimes detained during their entire court proceeding, have been held in shelters, hotels, and even juvenile jails designed for youth who have been adjudicated as delinquent.[12]

Although immigration proceedings are legally characterized as "civil,"[13] the parallels between pretrial detention in immigration court and criminal court are striking.[14] As those familiar with the criminal legal system know well, the use of pretrial detention can turn the court system into one that pressures individuals to waive their rights and plead guilty.[15] Study after study has found that persons who are detained during the criminal process have worse outcomes than those who are released from custody.[16] Research has also documented how pretrial detention not only fails to reduce future crime, but also comes at a high cost to taxpayers and poses broader societal harms, including reduced labor market participation and detrimental impacts on families separated from their loved ones.[17] Moreover, the pains of detention are felt disproportionately

(July 18, 2023, 6:00 AM), https://www.cnn.com/2023/07/18/politics/migrants-border-facilities-biden-policies/index.html [https://perma.cc/L39U-9RTE].

[12] Amnesty Int'l, United States of America, "Why Am I Here?": Children in Immigration Detention 17–21 (June 2003), https://www.amnestyusa.org/wp-content/uploads/2017/09/why_am_i_here.pdf [https://perma.cc/4P9X-UBZP].

[13] Immigr. & Naturalization Serv. v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984) ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country, not to punish an unlawful entry . . . .").

[14] See generally Cecilia Menjívar, Andrea Gómez Cervantes & Daniel Alvord, The Expansion of "Crimmigration," Mass Detention, and Deportation, 12 Socio. Compass 1, 2 (2018) (examining the global expansion of "crimmigration" and how criminalization practices in immigration have expanded in the United States in particular).

[15] Malcolm M. Feeley, The Process is the Punishment: Handling Cases in Lower Criminal Court 33–34 (1979) (demonstrating that the pretrial process informally punishes defendants and pressures guilty pleas); Alexandra Natapoff, Misdemeanors, 85 S. Cal. L. Rev. 1313, 1317 (2012) (showing how the misdemeanor pretrial system results in "vulnerable, underrepresented defendants" pleading guilty, "even in the absence of evidence").

[16] See, e.g., Paul Heaton, Sandra Mayson & Megan Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stan. L. Rev. 711, 717 (2017) (finding that "defendants who are detained on a misdemeanor charge are much more likely than similarly situated releasees to plead guilty and serve jail time"); Megan T. Stevenson, Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes, 34 J.L. Econ. & Org. 511, 511 (2018) (demonstrating that pretrial detention increases the likelihood of conviction, the length of sentence, and court fees owed).

[17] See, e.g., Crystal S. Yang, Toward an Optimal Bail System, 92 N.Y.U. L. Rev. 1399, 1416–29 (2017) (summarizing research on the costs of pretrial detention, including societal and economic impacts); Will Dobbie, Jacob Goldin & Crystal S. Yang, The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, 108 Am. Econ. Rev. 201, 201 (2018) (finding that pretrial detention increases the probability of conviction and lowers labor market participation).

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by communities of color and the poor, who are unable to afford to post bond and are more likely to be labeled a "danger" or "flight risk" by a judge.[18]

For the most part, scholars have explored the topics of immigrant detention and immigration courts separately, without focusing on the connection between the two. On the detention side, the emerging multi-disciplinary field of detention studies has exposed the deplorable conditions in immigration prisons, such as the lack of programming, inferior health care, and abuse by guards.[19] Researchers have also highlighted the ways in which U.S. detention policies are grounded in racialized presumptions about community safety and criminality.[20] Geographers have probed the powerful role of private companies, states, and localities in detention's expansion.[21] Legal scholars have published widely on the constitutionality of mandatory detention provisions that have thus far survived legal challenge before the U.S. Supreme Court.[22]

[18] See, e.g., Marvin D. Free, Jr., Race and Presentencing Decisions in the United States: A Summary and Critique of the Research, 27 Crim. Just. Rev. 203, 206–07 (2002) (concluding that disparities in bail amounts are likely the result of racial discrimination); Ellen A. Donnelly & John M. MacDonald, The Downstream Effects of Bail and Pretrial Detention on Racial Disparities in Incarceration, 108 J. Crim. L. & Criminology 775, 775 (2019) (analyzing how pretrial detention contributes to the Black-white disparity in rate of conviction and sentence length).

[19] See, e.g., Anil Kalhan, Rethinking Immigration Detention, 110 Colum. L. Rev. Sidebar 42, 43 (2010) (outlining the ways that immigrant detention has transformed into a quasi-punitive system); Jamie Longazel, Jake Berman & Benjamin Fleury-Steiner, The Pains of Immigrant Imprisonment, 10 Soc. Compass 989, 990 (2016) (discussing the pain detention inflicts on migrants and their communities); Margaret H. Taylor, Detained Aliens Challenging Conditions of Confinement and the Porous Border of the Plenary Power Doctrine, 22 Hastings Const. L.Q. 1087, 1117–19 (1995) (detailing inadequate conditions at INS detention facilities); Valeria Gomez & Marcy L. Karin, Menstrual Justice in Immigration Detention, 41 Colum. J. Gender & L. 123 (2021) (highlighting the inadequate access to menstrual products inside detention).

[20] See, e.g., David Manuel Hernández, Pursuant to Deportation: Latinos and Immigrant Detention, 6 Latino Stud. 35, 49–53 (2008); Tamara K. Nopper, Why Black Immigrants Matter: Refocusing the Discussion on Racism and Immigration Enforcement, *in* Keeping Out the Other: A Critical Introduction to Immigration Enforcement Today 204, 209–13 (David C. Brotherton & Philip Kretsedemas eds., 2008).

[21] See, e.g., Lauren L. Martin & Matthew L. Mitchelson, Geographies of Detention and Imprisonment: Interrogating Spatial Practices of Confinement, Discipline, Law, and State Power, 3 Geo. Compass 459, 472 (2009).

[22] See, e.g., Geoffrey Heeren, Pulling Teeth: The State of Mandatory Immigration Detention, 45 Harv. C.R.-C.L. L. Rev. 601, 603 (2010); Faiza W. Sayed, Challenging Detention: Why Immigrant Detainees Receive Less Process than "Enemy Combatants" and Why They Deserve More, 111 Colum. L. Rev. 1833, 1835 (2011); Philip L. Torrey,

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A common theme running through these diverse literatures is that migrant detention, despite its "civil" status, functions as a form of punishment and is experienced by migrants and their communities as cruel and inhumane.[23]

A separate body of literature has studied the U.S. immigration courts, yet for the most part has not addressed detained courts as a distinct area of inquiry. For example, without acknowledging detained courts, scholars have critiqued the overburdening of immigration judges and the court backlog,[24] the lack of decisional independence among immigration judges,[25] the politicization of immigration courts,[26] and the insufficiency

Rethinking Immigration's Mandatory Detention Regime: Politics, Profit, and the Meaning of "Custody," 48 U. Mich. J.L. Reform 879, 881 (2015).

[23] See, e.g., Kristina Shull, Detention Empire: Reagan's War on Immigrants and the Seeds of Resistance 3 (2022) ("In practice, detention looks and feels like prison . . . ."); Mark Dow, Designed to Punish: Immigrant Detention and Deportation, 74 Soc. Res. 533, 536 (2007) ("I have seen that immigration detention *punishes* . . . ."); Jessica Ordaz, Migrant Detention Archives: Histories of Pain and Solidarity, 102 S. Cal. Q. 250, 259 (2020) ("[M]igrants describe detention as a place of punishment and pain."); César Cuauhtémoc García Hernández, Immigration Detention as Punishment, 61 UCLA L. Rev. 1346, 1360 (2014) ("The legislative origins of today's immigration detention system show a desire to punish noncitizens . . . .").

[24] See, e.g., Stuart L. Lustig, Kevin Delucchi, Lakshika Tennakoon, Brent Kaul, Dana Leigh Marks & Denise Slavin, Burnout and Stress Among United States Immigration Judges, 13 Bender's Immigr. Bull. 22, 22 (2008) (concluding that immigration judges suffered from secondary traumatic stress and high amounts of burnout); Lindsay M. Harris, The One-Year Bar to Asylum in the Age of the Immigration Court Backlog, 2016 Wis. L. Rev. 1185, 1205 ("In recent years, increasing caseloads have begun to overwhelm courts and judges."); Donald Kerwin & Evin Millet, The US Immigration Courts, Dumping Ground for the Nation's Systemic Immigration Failures: The Causes, Composition, and Politically Difficult Solutions to the Court Backlog, 11 J. on Migration & Hum. Sec. 194, 194 (2023) (attributing the immigration court backlog "to systemic failures in the broader immigration system that negatively affect the immigration courts," including visa backlogs and Congress's failure to reform the immigration law).

[25] See, e.g., Stephen H. Legomsky, Deportation and the War on Independence, 91 Cornell L. Rev. 369, 369–85 (2006) (identifying how independence among immigration judges has been "eviscerat[ed]"); Mary Holper, Taking Liberty Decisions Away from "Imitation" Judges, 80 Md. L. Rev. 1076, 1087–88 (2021) (outlining how the DOJ "reined the judges in" to align with the Attorney General's priorities).

[26] See, e.g., Alison Peck, The Accidental History of the U.S. Immigration Courts: War, Fear, and the Roots of Dysfunction 5–7 (2021) (arguing that the basic structure of the U.S. immigration courts is flawed); Catherine Y. Kim, The President's Immigration Courts, 68 Emory L.J. 1, 22–34 (2018) (demonstrating how the Trump Administration politicized immigration adjudication); Fatma E. Marouf, Executive Overreaching in Immigration Adjudication, 93 Tul. L. Rev. 707, 707 (2019) (outlining how the executive can interfere with the process of adjudicating immigration cases); Amit Jain, Bureaucrats in Robes: Immigration "Judges" and the Trappings of "Courts," 33 Geo. Immigr. L.J. 261, 265 (2019) (characterizing

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of constitutional and procedural protections in removal proceedings.[27] Empirical scholarship on immigration courts has often drawn conclusions by examining judicial decision-making only in cases that do not involve detention,[28] or treated detained and nondetained cases as coexisting in a unitary court system.[29] To the extent scholars have turned their lens on detained courts, such work has focused on one slice of adjudication, such

the immigration courts as a hierarchical bureaucracy that advances executive branch policy); Jayanth K. Krishnan, Judicial Power—Immigration-Style, 73 Admin. L. Rev. 317, 323 (2021) ("Ideology and politics are an inescapable part of the atmosphere in which [immigration judges] hear cases and issue their decisions.").

[27] See, e.g., Stella Burch Elias, "Good Reason to Believe": Widespread Constitutional Violations in the Course of Immigration Enforcement and the Case for Revisiting *Lopez-Mendoza*, 2008 Wis. L. Rev. 1109, 1115; Jennifer M. Chacón, A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights, 59 Duke L.J. 1563, 1563 (2010); Tania N. Valdez, Pleading the Fifth in Immigration Court: A Regulatory Proposal, 98 Wash. U. L. Rev. 1343, 1343–44 (2021) (highlighting the lack of procedural protections in immigration court).

[28] See, e.g., Dylan Farrell-Bryan, Relief or Removal: State Logics of Deservingness and Masculinity for Immigrant Men in Removal Proceedings, 56 L. & Soc'y Rev. 167, 173–74 (2022) (studying a Northeast immigration court that "primarily handles the cases of individuals who are not detained"); David Hausman & Jayashri Srikantiah, Time, Due Process, and Representation: An Empirical and Legal Analysis of Continuances in Immigration Court, 84 Fordham L. Rev. 1823, 1826 (2016) (analyzing the nondetained cases of children and families); Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, Refugee Roulette: Disparities in Asylum Adjudication, 60 Stan. L. Rev. 295, 327 (2007) (taking steps to exclude detained cases from analysis).

[29] See, e.g., Nicholas R. Bednar, The Public Administration of Justice, 44 Cardozo L. Rev. 2139, 2162–63 (2023); Daniel E. Chand, William D. Schreckhise & Marianne L. Bowers, The Dynamics of State and Local Contexts and Immigration Asylum Hearing Decisions, 27 J. Pub. Admin. Rsch. & Theory 182, 191–93, tbls.3, 4 & 5 (2017); Catherine Y. Kim & Amy Semet, An Empirical Study of Political Control Over Immigration Adjudication, 108 Geo. L.J. 579, 588–89 (2020); Emily Ryo & Ian Peacock, Represented but Unequal: The Contingent Effect of Legal Representation in Removal Proceedings, 55 L. & Soc'y Rev. 634, 635 (2021); Banks Miller, Linda Camp Keith & Jennifer S. Holmes, Immigration Judges and U.S. Asylum Policy 10 (2015).

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as bond hearings[30] and representation by counsel,[31] or presented a case study of a single detained immigration court.[32]

Our project seeks to meld together these two important areas of research—on immigrant detention and immigration courts—to place a sustained focus on the understudied realm of the detained immigration court system. To borrow Juliet Stumpf's words, we seek to understand how "[d]etention [d]rives [d]eportation," or perhaps more precisely in our case, the role that detained immigration courts have played in the institutional development of sites and practices that fuel deportation in ways that threaten due process and fundamental fairness.[33] Nancy Hiemstra and Deirdre Conlon have called detention "a cornerstone of border enforcement."[34] We show how the detained immigration courts serve as another foundational component, one in need of further interrogation.

This Article proceeds in four Parts. Part I provides the historical background on how detention came to be merged with the adjudication of deportation and exclusion cases. Part II turns to the modern era of detained adjudication by the EOIR and reveals how the agency has been

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[30] See, e.g., Emily Ryo, Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings, 52 L. & Soc'y Rev. 503, 503 (2018); Denise L. Gilman, To Loose the Bonds: The Deceptive Promise of Freedom from Pretrial Immigration Detention, 92 Ind. L.J. 157, 157 (2016).

[31] See, e.g., Steering Comm. of the N.Y. Immigrant Representation Study Rep., Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings, 33 Cardozo L. Rev. 357, 361 (2011); Aditi Shah, Constitutional and Procedural Pathways to Freedom from Immigration Detention: Increasing Access to Legal Representation, 35 Geo. Immigr. L.J. 181, 181 (2020); Talia Peleg & Ruben Loyo, Transforming Deportation Defense: Lessons Learned from the Nation's First Public Defender Program for Detained Immigrants, 22 CUNY L. Rev. 193, 193 (2018).

[32] See, e.g., Asad L. Asad, Deportation Decisions: Judicial Decision-Making in an American Immigration Court, 63 Am. Behav. Scientist 1221, 1241–44 (2019) (drawing on observations of hearings in the Dallas immigration court); Robert E. Koulish, Systemic Deterrence Against Prospective Asylum Seekers: A Study of the South Texas Immigration District, 19 N.Y.U. Rev. L. & Soc. Change 529, 553 (1992) (observing the Harlingen immigration court); Peter L. Markowitz, Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study, 78 Fordham L. Rev. 541, 553 (2009) (studying the Varick Street court in New York); Christopher Levesque et al., Crimmigrating Narratives: Examining Third-Party Observations of US Detained Immigration Court, 48 L. & Soc. Inquiry 407, 407 (2023) (analyzing data from a court observation project conducted in the Fort Snelling immigration court). All of these detained courts are included in Figure 1, *infra*.

[33] Juliet P. Stumpf, Civil Detention and Other Oxymorons, 40 Queen's L.J. 55, 96 (2014).

[34] Nancy Hiemstra & Deirdre Conlon, Beyond Privatization: Bureaucratization and the Spatialities of Immigration Detention Expansion, 5 Territory, Pol., Governance 252, 254 (2017).

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an integral, yet largely unnoticed, partner in the detention empire, collaborating in the placement of court spaces in remote carceral facilities and the prioritization of segregated urban courtrooms dedicated exclusively to detained cases. Part III provides a geographic and demographic sketch of the modern detained court system: how big is it, where does it operate, and who is swept up in these courts? Part IV digs deeper, identifying the institutional design elements embedded in detained immigration courts that distinguish them from their nondetained counterparts—including their remote geography, adjudication speed, heightened barriers to access by counsel and the public, specialization of the judiciary, and flexible venue rules. We argue that each of these features of the detained courts has the potential to change the decisional environment of incarcerated litigants in ways that may impose systematic structural disadvantage over and above the fact of their detention.

Existing discourse about immigration adjudication has labored under the understanding that the U.S. immigration court is one unified court system. Through study of the evolution and modern structure of immigration adjudication, we seek to convince readers that there are actually two immigration courts in the United States today—one for persons who are detained and the other for persons who are not detained—and that this segregation matters. As we develop in the Conclusion, recognizing that there is a separate immigration court system deeply intertwined with detention informs current conversations about how to restructure the court system and reduce reliance on detention. Additionally, the spotlight that this Article places on the detained immigration courts should illuminate future empirical research on judicial decision-making in immigration.

I. THE MERGER OF DETENTION AND ADJUDICATION

Immigration judges are not, and have never been, judges as generally understood in other American court systems. Unlike federal district court judges, immigration judges do not have life tenure with power derived from Article III of the U.S. Constitution.[35] Nor are immigration judges part of a court created by Congress under Article I of the Constitution, as is the case with the U.S. Tax Court or the U.S. Court of Appeals for

[35] See generally Article III Judges, U.S. Cts., https://www.uscourts.gov/judges-judgeships/about-federal-judges#:~:text=Article%20III%20Judges,confirmed%20by%20the%20U.S.%20Senate [https://perma.cc/VR2M-4Q39] (last visited Mar. 5, 2024) (describing tenure for Article III judges).

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Veterans Claims.[36] Immigration judges also do not operate as administrative law judges within the formal adjudication requirements of the Administrative Procedure Act ("APA").[37] Instead, immigration judges today are career civil service attorneys within the DOJ,[38] under the supervision and control of the Attorney General.[39] As Part I traces, the immigration court's current structure and its relationship to sites of detention has its early roots in a late nineteenth-century corps of immigration inspectors who detained noncitizens while making decisions about whether they could enter or remain in the United States.

A. Immigrant Inspectors and Boards of Special Inquiry, 1891–1951

In 1891 Congress established a Superintendent of Immigration within the Treasury Department and introduced procedures for exclusion cases to be heard at the ports of entry by "inspection officers" given authority to "order temporary removal" of arriving noncitizens and to "detain them until a thorough inspection [was] made."[40] Two years later, Congress further developed the exclusion process to be made by "special inquiries" of a Board of four officers after the initial referral of an inspection officer.[41] The law gave inspection officers express authority to rely on detention by taking into custody anyone not "clearly and beyond doubt entitled to admission"[42] as they waited to have their fate decided by the

[36] See generally Court Role and Structure, U.S. Cts., https://www.uscourts.gov/about-federal-courts/court-role-and-structure [https://perma.cc/B65F-MZ49] (last visited Mar. 5, 2024) (listing Article I courts).

[37] 5 U.S.C. §§ 3105, 5372, 7521; Christopher J. Walker & Melissa F. Wasserman, The New World of Agency Adjudication, 107 Calif. L. Rev. 141, 148–53 (2019) (summarizing the basic requirements of formal adjudication governed by the Administrative Procedure Act).

[38] Off. of the Inspector Gen., U.S. Dep't of Just., Recommendations Regarding the Immigration Judge and Board of Immigration Appeals Member Hiring Process 2 (Mar. 2022), https://oig.justice.gov/sites/default/files/reports/22-061.pdf [https://perma.cc/EH94-8SBX] (explaining that immigration judges are "career attorney positions" subject to the Civil Service Reform Act of 1978).

[39] INA § 101(b)(4), 8 U.S.C. § 1101(b)(4) (prescribing that an immigration judge is "an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review"); 8 C.F.R. § 1003.10(a) (2023) ("Immigration judges shall act as the Attorney General's delegates in the cases that come before them.").

[40] Immigration Act of 1891, ch. 551, §§ 7–8, 26 Stat. 1084, 1085–86.

[41] Jerome Heckman, Note, Our Immigration Laws, A Continuing Affront to the Administrative Procedure Act, 41 Geo. L.J. 364, 368–69 (1953).

[42] Immigration Act of March 3, 1893, ch. 206, § 5, 27 Stat. 569, 570 (providing that anyone not "clearly and beyond doubt entitled to admission" must be detained for "special inquiry").

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Board of Special Inquiry.[43] Often the primary inspector who chose to detain the noncitizen for a hearing would later participate in the hearing as a member of the Board.[44] Hearings before the Boards often only lasted a few minutes,[45] were not open to the public, and did not allow individuals to be represented by counsel or to see the evidence against them.[46]

In contrast to the exclusion procedures at ports of entry just described, deportation procedures applying to those already present in the country were not clearly set out in early federal immigration statutes. When the immigration law was codified in 1903, the Immigration Service was moved into the newly created Department of Commerce and Labor, reflecting the belief that much of immigration law "sought to protect American workers and wages."[47] The 1903 law contained no specifications for deportation proceedings,[48] yet court decisions made clear that, at a minimum, due process required bringing hearings for those already present within the country "into harmony with the

[43] Edward A. Clark, Boards of Special Inquiry—Port of New York, 9 Dep't of Just. Immigr. & Nat'y Monthly Rev. 116, 116, 120 (1952) (describing the Boards of Special Inquiry as originally requiring three votes of a four-person Board, a structure later changed to only necessitate two votes of a three-person Board); see also Albert E. Reitzel, The Immigration Laws of the United States—An Outline, 32 Va. L. Rev. 1099, 1132–34 (1946) (reviewing the Board of Special Inquiry procedure).

[44] Marshall E. Dimock, Henry M. Hart & John McIntire, The Immigration and Naturalization Service: Report of the Secretary of Labor's Committee on Administration Procedure 59 (1940).

[45] Lucy E. Salyer, Laws Harsh as Tigers 141–48 (1995).

[46] Clement L. Bouvé, A Treatise on the Laws Governing the Exclusion and Expulsion of Aliens in the United States 291 (1912); Comment, The Federal Administrative Procedure Act: Codification or Reform?, 56 Yale L.J. 670, 700 (1947); Dimock et al., supra note 44, at 54–56. Not until 1946 were the regulations formally amended to provide a right to counsel in hearings before the Boards. Board of Special Inquiry Procedure, 11 Fed. Reg. 14232, 14232 (Dec. 11, 1946). To the extent counsel was allowed to attend hearings prior to this time, it was at the discretion of "executive officers entrusted with the enforcement of the acts," Bouvé, supra, at 291, such as in cases identified by Louis Anthes in New York at the turn of the century. Louis Anthes, Bohemian Justice: The Path of the Law in Immigrant New York, 1870–1940, at 99–117 (Sept. 2000) (Ph.D. dissertation, New York University) (ProQuest).

[47] Origins of the Federal Immigration Service, U.S. Citizenship & Immigr. Servs., https://www.uscis.gov/about-us/our-history/overview-of-agency-history/origins-of-the-federal-immigration-service [https://perma.cc/LTF2-RMWG] (last updated Jan. 5, 2024).

[48] An Act to Regulate the Immigration of Aliens into the United States, ch. 1012, 32 Stat. 1213, 1218–19, 1221 (1903); see also Heckman, supra note 41, at 369–70 ("Noteworthy in all of the legislation preceding the McCarran Act was the fact that Congress had never provided for specific procedures to be followed in deportations."); Will Maslow, Recasting Our Deportation Law: Proposals for Reform, 56 Colum. L. Rev. 309, 310 (1956) (explaining that prior to 1952 the immigration laws "neglected to prescribe the method by which [noncitizens] should be detained, tried, and deported").

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Constitution."[49] In practice, an immigration inspector would preside over a deportation hearing,[50] simultaneously serving as a neutral arbiter and a "prosecuting official" responsible for ensuring "that the case of his office, which often he himself ha[d] prepared, [was] substantiated."[51] The presiding inspector's record of proceeding was then "sent to the central office in Washington for final determination by the Commissioner."[52] Detention was regularly part of the process,[53] with the majority of those going through deportation hearings finding themselves detained in local jails and immigration stations.[54]

In 1933, the Immigration and Naturalization Service ("INS" or "the Service") was created within the Department of Labor to handle all immigration matters.[55] In 1940, President Franklin Roosevelt transferred the INS, along with its role as adjudicator of exclusion and deportation cases, to the DOJ,[56] under the "direction and supervision of the Attorney

[49] Yamataya v. Fisher (The Japanese Immigrant Case), 189 U.S. 86, 101 (1903) ("[N]o person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends."); see also Torrie Hester, "Protection, Not Punishment": Legislative and Judicial Formation of U.S. Deportation Policy, 1882–1904, 30 J. Am. Ethnic Hist. 11, 23–25 (2010) (interpreting *The Japanese Immigrant Case* as requiring a deportation hearing that complies with the Fifth Amendment).

[50] These "presiding inspector[s]" later came to be called "deportation and hearing examiner[s]." Bertram M. Bernard, Role of the Special Inquiry Officer, 10 I. & N. Rep. 15, 15 (Oct. 1961).

[51] Nat'l Comm'n on L. Observance & Enf't, Report on the Enforcement of the Deportation Laws of the United States 87 (1931); Dimock et al., supra note 44, at 75; see also Lindsay Nash, Inventing Deportation Arrests, 121 Mich. L. Rev. 1301, 1352 (2023) (explaining that presiding officers in deportation cases served both "as law enforcement and in a judge-like role as presiding hearing officers" in deportation hearings); Sidney B. Rawitz, From Wong Yang Sung to Black Robes, 65 Interpreter Releases 453, 454 (1988) (describing how, in most deportation cases, "[t]he presiding inspector, an employee under the supervision and control of the District Director, presented the government's evidence, interrogated the alien and all witnesses, and prepared a recommended decision").

[52] Heckman, supra note 41, at 375.

[53] See Immigration Act of 1917, ch. 29, § 19, 39 Stat. 874, 889 (providing deportable noncitizens "shall, upon the warrant of the Secretary of Labor, be taken into custody and deported" without specifying a procedure for a hearing); Act of February 3, 1916, Pub. L. No. 300, § 20, 39 Stat. 873, 890–91 (allowing for release from custody on a $500 bond).

[54] Nat'l Comm'n on L. Observance & Enf't, supra note 51, at 89; see also Jane Perry Clark, Deportation of Aliens from the United States to Europe 389–90 (1931) (documenting that county jails and immigration stations were used as sites of detention).

[55] Exec. Order No. 6,166 § 14 (June 10, 1933), *reprinted in* 5 U.S.C. § 901.

[56] Robert H. Jackson, Att'y Gen., Address Welcoming the Immigration and Naturalization Service to the Department of Justice 3 (June 14, 1940), https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/06-14-1940.pdf [https://perma.cc/7JTP-PFRQ].

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General."[57] President Roosevelt told Congress that this wartime decision to "closely integrate[]" the INS with the law enforcement arm of the federal government was necessary "for the Nation's safety" given the "startling sequence of international events which has occurred."[58] This move from the Department of Labor to the DOJ signaled a broader reconceptualization of immigration as an issue of national security rather than an economic and labor issue.

B. Special Inquiry Officers, 1952–1982

When Congress passed the McCarran-Walter Act to revise and unify the immigration laws in 1952, a new position of "special inquiry officer" was created to handle both exclusion and deportation proceedings.[59] Importantly, despite a 1948 Supreme Court decision suggesting that the APA ought to apply to deportation,[60] Congress did not bring proceedings before special inquiry officers under the protections of the APA.[61] Instead, responding to concerns raised by INS officials that offering full

[57] Reorganization Plan No. V of 1940, 5 Fed. Reg. 2223 (June 14, 1940), *reprinted in* 5 U.S.C. app. at 545 (2006), *and in* 54 Stat. 1238 (1940).

[58] Franklin D. Roosevelt, Message to Congress on Plan V to Implement the Reorganization Act, May 22, 1940, *in* 5 U.S.C. app. at 546 (2006). A similar rationale of ensuring "every possible protection" during wartime was used by President Roosevelt just two years later when he issued an executive order allowing for the shameful internment of more than 120,000 Japanese Americans in concentration camps. Exec. Order No. 9,066, 7 Fed. Reg. 1407 (Feb. 19, 1942).

[59] INA, Pub. L. No. 414, ch. 4, § 236(a), 66 Stat. 163, 200 (1952) (providing that a "special inquiry officer" "shall have authority in any case to determine whether an arriving alien . . . shall be allowed to enter or shall be excluded and deported"); id. § 242(b), 66 Stat. at 209 (a special inquiry officer "shall conduct proceedings under this section to determine the deportability of any alien"); see also Nash, supra note 51, at 1353 (characterizing special inquiry officers as "the functional equivalent of today's immigration judges"); Dory Mitros Durham, Note, The Once and Future Judge: The Rise and Fall (and Rise?) of Independence in U.S. Immigration Courts, 81 Notre Dame L. Rev. 655, 668 (2006) (identifying that special inquiry officers "held the positions that have evolved into the modern immigration judge").

[60] Wong Yang Sung v. McGrath, 339 U.S. 33, 46–47 (1950), *modified*, 339 U.S. 908 (1950) (concluding that the APA's "safeguards" were intended to protect from "the evils from the commingling of functions," which is particularly objectionable "in the deportation proceeding"); see also President's Comm'n on Immigr. & Naturalization, Whom We Shall Welcome 159–60 (1953) (summarizing efforts taken by Congress to exempt immigration proceedings from the APA).

[61] Immediately after the *Wong Yang Sung* decision, Congress passed a rider to the Appropriations Act stating that exclusion and expulsion proceedings could proceed without regard to the protections of the APA. Supplemental Appropriations Act of 1951, 64 Stat. 1044, 1048 (1950).

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trial-like hearings was too costly,[62] Congress retained special inquiry officers as employees under the supervision of the INS with the authority to both investigate and rule on individual cases, albeit not within the same case.[63] Gradually, the agency began to integrate some APA-like standards, including requiring notice of a hearing to initiate proceedings,[64] employing special inquiry officers with legal training,[65] creating a separate prosecutor position of trial attorney within the INS,[66] and allowing special inquiry officers to consider requests for release from detention.[67]

In the first years of their existence, special inquiry officers rarely presided over detained cases, given the decision of Attorney General Herbert Brownell, Jr., together with INS Commissioner General Joseph M. Swing, to exercise the authority found in the new Act to release

[62] Affidavit of Dr. S. Deborah Kang, Associate Professor of History at the University of Virginia at 32–33, United States v. Cadena-Salinas, No. 19-cr-00850 (W.D. Tex. Feb. 15, 2023) (on file with author) (explaining that after the *Wong Yang Sung* decision, INS advocated for an exemption "by reference to the alleged financial burdens created by the hearing requirement of the APA").

[63] Note, The Special Inquiry Officer in Deportation Proceedings, 42 Va. L. Rev. 803, 803–04 (1956) (analyzing how special inquiry officers were authorized "to be both prosecutor and judge"); see also Marcello v. Bonds, 349 U.S. 302, 311 (1955) (rejecting a noncitizen's challenge that his hearing before a special inquiry officer was impermissibly "subject to the supervision and control of officials in the Immigration Service").

[64] Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of the Immigration and Naturalization Service 13 (1957) [hereinafter 1957 INS Report].

[65] Note, supra note 63, at 809 (providing that as of 1956, twenty-seven of forty special inquiry officers were "qualified attorneys" (citing letter from J.M. Swing, Comm'r of Immigr. & Naturalization, to the *Virginia Law Review*, March 27, 1956)).

[66] Kenneth Culp Davis, Administrative Law and Government 259 (1960); see also Charles Gordon, Due Process of Law in Immigration Proceedings, 50 A.B.A. J. 34, 37 (1964) (noting that since 1956 special inquiry officers were "charged only with adjudicating functions" and supervised by regional special inquiry officers); Bertram M. Bernard, Role of the Special Inquiry Officer—Recent Developments, 11 I. & N. Rep. 51, 51 (1963) (explaining that in May 1962, the Service appointed "a corps of Trial Attorneys, lawyers who were specially assigned to represent the Government in proceedings before Special Inquiry Officers and who were removed from any other enforcement function").

[67] Until 1969, district directors and administrative officers had exclusive authority over custody decisions. Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of the Immigration and Naturalization Service 22–23 (1969) (clarifying that under the new regulation, "[t]he consideration of such a request by the special inquiry officer is separate and apart from the deportation hearing or proceeding"); see also Release from Custody by Special Inquiry Officer, 34 Fed. Reg. 7327, 7327 (May 6, 1969) ("The special inquiry officer may exercise the authority . . . to continue or detain a respondent in, or release him from, custody, and to determine whether a respondent shall be released under bond, and the amount thereof, if any.").

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immigrants awaiting their hearings, rather than rely on detention.[68] On November 11, 1954, Brownell announced that migrants arriving at the ports would generally be "permitted to proceed to their ultimate destinations in the United States" to await the special inquiry officer's decision.[69] Ellis Island and other seaport detention facilities were closed.[70]

In January 1955, there were only four persons detained while undergoing exclusion proceedings and seventy-three persons detained in deportation proceedings.[71] Yet the merger of detention and immigration courts did not end. While more the exception than the rule, noncitizens considered "likely to abscond" or a "danger" were still taken into custody.[72] In 1956, approximately one-fourth of court proceedings included warrants of arrest.[73] Additionally, persons from Mexico ordered deported were routinely held in "Service camps" along the border while awaiting return to Mexico,[74] including in McAllen, Chula Vista, El Centro, and El Paso.[75] In 1959, 6,674 individuals in expulsion

[68] See generally INA, Pub. L. No. 414, §§ 212(d)(5), 242(a), 66 Stat. 163, 188, 208–09 (1952) (providing the Attorney General may temporarily parole detained noncitizens into the United States "under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest").

[69] Herbert Brownell, Jr., Att'y Gen. of the U.S., Humanizing the Administration of the Immigration Law 1 (Jan. 26, 1955), https://www.justice.gov/sites/default/files/ag/legacy/2011/09/12/01-26-1955.pdf [https://perma.cc/ZT55-PJC7] [hereinafter Humanizing Immigration Law].

[70] Herbert Brownell, Jr., Att'y Gen. of the U.S., Address Prepared for Delivery at Naturalization Ceremonies at Ebbets Field & Polo Grounds, New York, New York, at 5–6 (Nov. 11, 1954), https://www.justice.gov/sites/default/files/ag/legacy/2011/09/12/11-11-1954.pdf [https://perma.cc/L7LX-HKMW].

[71] Humanizing Immigration Law, supra note 69, at 1–3. See generally César Cuauhtémoc García Hernández, Migrating to Prison: America's Obsession with Locking up Immigrants 46–48 (2019) (documenting this period of low reliance on immigration detention).

[72] See, e.g., Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of Immigration and Naturalization Service 16 (1955) [hereinafter 1955 INS Report] (describing that, while most noncitizens were paroled or placed on bond pending a decision in their case, those "considered likely to abscond or those whose enlargement would be inimical to the public interest" were still detained); 1957 INS Report, supra note 64, at 13 (reporting that "[t]he number who were detained, exclusive of those in staging areas in the Southwest, was 20,472").

[73] Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of the Immigration and Naturalization Service 15 (1956) [hereinafter 1956 INS Report].

[74] 1955 INS Report, supra note 72, at 17 (reporting that 173,000 Mexican nationals were detained pending return to Mexico in fiscal year 1955).

[75] 1956 INS Report, supra note 73, at 16.

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proceedings were taken into custody, as were 20,125 Mexican nationals awaiting deportation.[76]

Following sharp restrictions on Mexican migration imposed by the Immigration and Nationality Act of 1965,[77] the INS prioritized enlarging its own detention capacity by maintaining regional detention centers, which it called Service Processing Centers ("SPCs"),[78] and supplementing that capacity with contracted detention space.[79] Service-operated SPCs were scattered across the Southwest, including in El Paso and Port Isabel, Texas; El Centro, California; and Florence, Arizona.[80] The agency also contracted with local jails, state prisons, and privately run facilities.[81] In 1974, 286,826 persons—almost all Mexicans—experienced detention.[82] Some of those who were detained were awaiting formal deportation hearings, although many recent arrivals did not receive hearings with special inquiry officers due to a swelling reliance on non-judicial "voluntary" departures.[83]

[76] Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of the Immigration and Naturalization Service 9 (1959).

[77] For additional background on the 1965 Act, see Kevin Johnson, The Beginning of the End: The Immigration Act of 1965 and the Emergence of the Modern U.S.-Mexico Border State, *in* The Immigration and Nationality Act of 1965: Legislating a New America 116, 120 (Gabriel J. Chin & Rose Cuison Villazor eds., 2015).

[78] As Jessica Ordaz emphasizes, the term "Service Processing Center" does "not encapsulate the process of criminalization and dehumanization" that occurs in detention. Jessica Ordaz, The Shadow of El Centro: A History of Migrant Incarceration and Solidarity, at xxii (2021).

[79] This model of relying on a combination of Service-operated and contracted facilities was developed by the agency over time. See, e.g., Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of the Immigration and Naturalization Service 23 (1949) (noting that, in addition to seven Service-operated facilities, the INS had 211 detention contracts with county jails and other institutions).

[80] Jennifer Cullison, Valley of Caged Immigrants: Punishment, Protest, and the Rise of the Port Isabel Detention Center, 33 Tabula Rasa 1, 15–18 (2020); Jenna M. Loyd & Alison Mountz, Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States 124–25 (2018).

[81] In 1967, 37,621 persons were admitted to facilities run by the Service, while 56,427 were admitted to non-Service facilities. Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of the Immigration and Naturalization Service 20 (1967).

[82] Appropriations Hearings Before the Subcomm. on the Dep'ts of State, Just., Commerce, the Judiciary & Related Agencies of the H. Comm. on Appropriations, Part 2, 94th Cong. 918, 944 (1975). Ninety-three percent of those who were detained were from Mexico. Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of the Immigration and Naturalization Service 16 (1974).

[83] See generally Martin Waldron, Detention Centers Last U.S. Stop for Thousands of Mexican Aliens, N.Y. Times, July 15, 1974, at 16 (explaining that the INS usually only relied on formal hearings for individuals arrested at the border multiple times).

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As migrants from Haiti and Cuba arrived on the Florida shore seeking refuge in the late 1970s and early 1980s, the United States responded by extending its reliance on detention for Mexican deportation cases to asylum seekers.[84] The arriving Haitians and Cubans "were predominantly single, working-class black men" and the harsh reaction of policymakers "reverberated in an anti-immigrant environment fueled by a combination of racism and economic instability."[85] To support this new detention policy, the INS opened Krome North SPC—a large detention camp inside a former air defense base just outside Miami.[86] The INS also leased federal prison space[87] and erected sprawling "tent cities" outside existing SPCs.[88] Special inquiry officers from the INS, as well as Justice Department lawyers appointed on an emergency basis as temporary judges,[89] traveled to these prisons and detention sites to hold exclusion hearings inside the various facilities.[90]

[84] Administration's Proposals on Immigration and Refugee Policy: Joint Hearing before the Subcomm. on Immigr., Refugees, & Int'l Law of the H. Comm. on the Judiciary, and Subcomm. on Immigr. & Refugee Pol'y of the S. Comm. on the Judiciary, 97th Cong. 11–12 (1981) (testimony of Attorney General William French Smith that he would no longer release asylum seekers placed in exclusion proceedings); Detention and Parole of Inadmissible Aliens, 47 Fed. Reg. 46493, 46494 (Oct. 19, 1982) (concluding that the Refugee Act of 1980 does not "prohibit detention pending adjudication" of an asylum claim and adopting regulation allowing for arriving asylum seekers to be detained).

[85] Smita Ghosh, How Migrant Detention Became American Policy, Wash. Post (July 19, 2019, 6:00 AM), https://www.washingtonpost.com/outlook/2019/07/19/how-migrant-detention-became-american-policy/ [https://perma.cc/4MD7-6U2M].

[86] Carl Lindskoog, Detain and Punish: Haitian Refugees and the Rise of the World's Largest Immigration Detention System 43 (2018).

[87] Memorandum from Robert W. Kastenmeier to Subcomm. on Cts., C.L. & the Admin. of Just. of the H. Comm. on the Judiciary, Detention of Aliens in Bureau of Prisons Facilities Pending Resolution of Immigration Matters (June 21, 1982). For a discussion of the history of the integration between the Bureau of Prisons and immigration enforcement, see Emma Kaufman, Segregation by Citizenship, 132 Harv. L. Rev. 1379, 1394–408 (2019).

[88] Helsinki Watch, Detained, Denied, Deported: Asylum Seekers in the United States 62 (1989) (noting that in 1989 the Service erected a "tent city" with capacity for 5,000 people outside the Port Isabel SPC).

[89] A Move to Deport Illegal Iranians, S.F. Exam'r, Sept. 22, 1980, at A2.

[90] See, e.g., Immigr. & Naturalization Serv., U.S. Dep't of Just., Annual Report of the Immigration and Naturalization Service 10 (1982) (mentioning hearings held by special inquiry officers at the Atlanta Penitentiary); Shull, supra note 23, at 92, 105 (describing the "mass hearings" that were held during the 1980s inside INS detention facilities, including by two San Diego judges who traveled to the detention facility in El Centro, California). See generally Bertram M. Bernard, Role of the Special Inquiry Officer—Recent Developments, 10 I & N Rep. 20 (1961) (likening the special inquiry officer to a "circuit rider" due to the "considerable travel" required of the position).

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C. Immigration Judges and the Executive Office for Immigration Review, 1983–Present

It was at this point—during a push by the INS to increase capacity to adjudicate hearings inside detention—that the EOIR was established in 1983 as a separate agency to house the immigration court within the DOJ. The positioning of special inquiry officers—who by this time were able to call themselves "immigration judges"[91]—within the INS had caused ongoing problems for judicial independence. Immigration judges relied on the INS for hearing facilities and office space inside detention sites, travel authorization, and other essentials.[92] However, many INS District Directors were not supportive of the judicial role, believing that it interfered with the Service's mission by requiring unnecessary and costly hearings in the name of due process.[93]

The 1983 restructuring of the judicial corps as a separate agency within the DOJ partially addressed these issues by giving immigration judges some distance from the Service's enforcement functions.[94] As the INS touted at the time, the change made the court system "administratively more efficient," while allowing for the "independent execution of the immigration hearing process."[95] Yet the new structure still kept EOIR judges under the direct control of the Attorney General,[96] and in positions similar to that of other DOJ attorneys without any tenure rights.[97] Additionally, until the Department of Homeland Security ("DHS") was formed as an independent executive branch agency in 2002,[98] the EOIR

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[91] Immigration Judge, 38 Fed. Reg. 8590 (Apr. 4, 1973) (allowing "immigration judge" and "special inquiry officer" to be "used interchangeably").

[92] Peter J. Levinson, A Specialized Court for Immigration Hearings and Appeals, 56 Notre Dame Law. 644, 646 (1981).

[93] Id. at 646–47.

[94] Board of Immigration Appeals; Immigration Review Function; Editorial Amendments, 48 Fed. Reg. 8038–39 (Feb. 25, 1983); see also 8 C.F.R. § 1003.0(a) (2023) ("Within the Department of Justice, there shall be an Executive Office for Immigration Review (EOIR), headed by a Director who is appointed by the Attorney General."); id. §§ 1003.1, 1003.10.

[95] U.S. Immigr. & Naturalization Serv., INS Reporter: Fall/Winter 1983–1984, at 23 (1984).

[96] Krishnan, supra note 26, at 324.

[97] Immigration Reform and Control Act of 1983: Hearing on H.R. 1510 Before the Subcomm. on Immigr., Refugees, & Int'l L. of the H. Comm. on the Judiciary, 98th Cong. 948, 959 (1983) (statement of Maurice A. Roberts, Ed., Interpreter Releases, Am. Council for Nationalities Serv.).

[98] With the creation of DHS, the authority for detention and removal was transferred to U.S. Immigration and Customs Enforcement ("ICE"). Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, 2192.

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and the INS remained "sister agencies" within the DOJ.[99] Together they collaborated in building the detained court system that exists today.

II. DETAINED COURT MODELS

When the EOIR was formed in 1983, there were only fifty-six immigration judges staffing just twenty-five brick-and-mortar court locations.[100] As of 2022, there were more than six hundred immigration judges scattered across sixty-eight different courts, as well as three "adjudication centers."[101] During these past four decades of growth in the immigration courts, half of all court-ordered removals have occurred while the noncitizen (referred to as a "respondent" in immigration court) was detained.[102] But these detained cases have not been distributed equally across the immigration court system. Instead, a separate court structure emerged dedicated to reviewing the cases of people in detention.

Part II provides a topology of the distinct court forms included under the umbrella of what this Article defines as detained immigration courts. This array of court structures encompasses government buildings in urban centers, rooms inside state and federal prisons and immigrant detention centers, tents at ports of entry, and virtual courts that handle cases exclusively by videoconferencing. Each of these detained court models evolved at different times and come with their own labels and procedures but are joined by numerous commonalities.

A. Urban Immigration Courts

Immigration courts in operation at the time of the EOIR's founding were concentrated in urban locations in major port cities (such as Boston, Chicago, Houston, Los Angeles, New York, and Seattle), including in ports along the U.S. border with Mexico (such as El Paso, Harlingen, and

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[99] Mitros Durham, supra note 59, at 676.

[100] Off. of the Att'y Gen., U.S. Dep't of Just., Annual Report of the Attorney General of the United States 111 (1983).

[101] Off. of the Chief Immigr. J., U.S. Dep't of Just., https://web.archive.org/web/20220702225225/https://www.justice.gov/eoir/office-of-the-chief-immigration-judge [https://perma.cc/LMQ2-WQJF] (capture dated July 2, 2022). We introduce the features of adjudication centers in Section II.E, *infra*.

[102] Relying on EOIR data, we find that from 1983 to 2022, 49% (n = 2,151,368 of 4,391,288) of court-ordered removal orders (including voluntary departure) were issued in detention (among removal, deportation, and exclusion cases at the initial case completion).

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San Diego).[103] These urban courts were often located in spare rooms in downtown buildings that housed other federal government agencies.[104] EOIR judges did not have regal courtrooms like their Article III federal court counterparts, but their courtrooms did have many distinctive formal features, such as a platform for the judge's desk, separate tables for government counsel and the respondent, and pews for public seating.[105]

When people with cases in these early urban EOIR courts were detained, the INS would generally transport them from a nearby detention location, such as a local county jail or federal holding facility, to the courtroom.[106] When detention locations were further away from the regional court building, immigration judges traveled "on detail" to hear cases at the detention site.[107] For example, judges assigned to the San Antonio immigration court drove about 160 miles to the Laredo SPC to

[103] For a full listing of EOIR courts as of 1986, see Privacy Act of 1974; New System of Records; Privacy Act Extract Program, 51 Fed. Reg. 16753, 16754–55 (May 6, 1986) [hereinafter EOIR 1986 Court Listing].

[104] Donna Bryson, Do Aliens Seeking a Home Here Deserve Free Legal Help?, J. Times (Racine, Wis.), Feb. 14, 1986, at 5C (describing the "tired, red brick building with the look of a 19th century grande dame hotel turned 20th century flop house" that housed the immigration court in Washington, D.C., as a "poor and distant cousin" to the federal and state "courts down the street"). Many of these buildings hosting urban immigration courts are now run by the General Services Administration, the agency that manages federal property. U.S. Gov't Accountability Off., GAO-21-104404, COVID-19 Improvements Needed in Guidance and Stakeholder Engagement for Immigration Courts 8 (Aug. 2021), https://www.gao.gov/assets/gao-21-104404.pdf [https://perma.cc/6DNK-NB7S].

[105] Austin Christopher Kocher, Notice to Appear: Immigration Courts and the Legal Production of Illegalized Immigrants 125 (2017) (Ph.D. dissertation, Ohio State University) (ProQuest) (containing a photograph of the San Francisco immigration court taken circa 1960).

[106] Peter H. Schuck, INS Detention and Removal: A "White Paper," 11 Geo. Immigr. L.J. 667, 690–91 (1997); Detention of Aliens in Bureau of Prison Facilities: Hearing Before the Subcomm. on Cts., C.L., & the Admin. of Just. of the H. Comm. on the Judiciary, 97th Cong. 7–9 (1983) (prepared statement of Rudolph W. Giuliani, Assoc. Att'y Gen.).

[107] Ingrid V. Eagly, Remote Adjudication in Immigration, 109 Nw. U. L. Rev. 933, 994 (2015); Institutional Hearing Program: Hearing Before the Subcomm. on Immigr. & Claims of the H. Comm. on the Judiciary, 105th Cong. 40–41 (1997) (prepared statement of Michael J. Creppy, Chief Immigr. J.) [hereinafter 1997 IHP Hearing].

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conduct hearings twice a month.[108] Alternatively, they would hold detained court hearings over the telephone.[109]

In the early 1990s, as enforcement initiatives with local police and state prisons grew,[110] judges in downtown courts began to collaborate with the INS to conduct the hearings of people who were detained by videoconference.[111] By utilizing this emerging technology, judges could remain in their regular courtrooms and be connected electronically to persons detained in prisons and jails. The initial pilot program connected Chicago judges to the Lexington Federal Prison Camp in Kentucky,[112] Baltimore judges to the Wicomico County Jail in Maryland, and Dallas judges to the Big Spring Correctional Center in Texas.[113] Over time, immigration courts increased their use of videoconferencing to hear detained cases, reaching one-third of the EOIR's detained cases in downtown urban courts by 2019.[114] Although these urban detained courts

[108] J. Thomas Davis, Utilization of Videoconferencing in Immigration Court Proceedings 13 (May 1999). The Laredo Service Processing Center opened in 1985. Off. of Det. Oversight, U.S. Dep't of Homeland Sec., Compliance Inspection for the Laredo Processing Center 2 (2015), https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcessingCenterLaredoTxJul14-16-2015.pdf [https://perma.cc/KBP6-6JJG].

[109] See, e.g., Margaret Hammersley, During Immigration Trials, the Defendant May Be Miles Away, Buffalo Evening News, May 31, 1979, at 20 (explaining that sometimes the detained migrant "may actually be on a telephone hundreds of miles away" from where the judge is sitting); Judge Phones in Deportation Hearing, Abilene Rep.-News, Sept. 11, 1980, at 12-B (reporting on a deportation hearing held by a judge in El Paso over telephone for a person detained in Buffalo, New York); Robert J. McCarthy, Lack of Immigration Judges Leads to Backlog, Frustration, Buffalo News, Mar. 14, 1988, at C-4 (featuring a Boston judge who regularly heard detained cases by telephone).

[110] Daniel Wilsher, Immigration Detention: Law, History, Politics 69 (2012); Lindskoog, supra note 86, at 82.

[111] Liz Bradley and Hillary Farber have documented the harms of relying on videoconferencing, particularly in cases where judges weigh applications for international humanitarian protections. See Liz Bradley & Hillary Farber, Virtually Incredible: Rethinking Deference to Demeanor When Assessing Credibility in Asylum Cases Conducted by Video Teleconference, 36 Geo. Immigr. L.J. 515, 526 (2022).

[112] Fed. Bureau of Prisons, U.S. Dep't of Just., State of the Bureau 1992, at 26 (1992).

[113] Legal Assistance Found. of Metro. Chi. & Chi. Appleseed Fund for Just., Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court, app. B (2005) (letter from Michael F. Rahill, Assistant Chief Immigration Judge, to Geoffrey Heeren, Legal Assistance Found. of Metro Chi.).

[114] In the urban detained courts featured in Figure 1, 35% of initial case completions in removal proceedings had at least one video hearing in 2019 (n = 12,159 of 34,654). By comparison, 21% of all other detained initial completions (n = 12,070 of 58,482), and fewer than 2% of nondetained proceedings (n = 2,988 of 186,870), had at least one video hearing.

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still hold in-person hearings,[115] the trend toward reliance on videoconferencing further accelerated during the COVID-19 pandemic.[116]

Figure 1. Urban Immigration Courts with More Than 4,000 Detained Initial Case Completions (2016–2022)

Figure 1 displays the twenty EOIR urban courts, located in twelve different states, which completed more than 4,000 cases of persons in detention between 2016 and 2022.[117] Not included in Figure 1 are an

[115] For example, during the time that we conducted this study, individuals detained in jails and prisons in Massachusetts were brought to court for in-person hearings in Boston. Telephone Interview with Matthew Egler DiFerdinando, HIAS Penn. (July 23, 2021). Similarly, individuals detained in the Santa Ana City Jail were bussed to the detained Los Angeles court at 300 North Los Angeles Street for in-person court hearings. E-mail from Talia Inlender, Deputy Dir. of the Ctr. for Immigr. L. & Pol'y, UCLA School of Law, to Ingrid Eagly (Feb. 4, 2024) (on file with authors).

[116] See Off. of the Inspector Gen., U.S. Dep't of Just., 22-084, Limited-Scope Inspection and Review of Video Teleconference Use for Immigration Hearings 1 (2022), https://oig.justice.gov/sites/default/files/reports/22-084.pdf [https://perma.cc/BYA8-PDPR] (noting that "EOIR took steps [during the pandemic] to increase its use of existing communication options and internal VTC capabilities").

[117] This measurement is based on initial case completions in the detained courts featured in Figure 1, 83% of which were removal and the rest other case types (n = 152,094 of 182,878). Throughout this Article, we define an "initial case completion" as including judge decisions on the merits (i.e., termination, removal, or grant of relief), as well as administrative closures,

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additional eighteen EOIR detained courts co-located in prisons or detention facilities that we map separately in Figure 2. As Figure 1 shows, urban courts handling large numbers of detained cases were concentrated primarily in the Southwest. There was also a notable presence of these courts in the Northeast and in Midwestern cities near the Canadian border. Additionally, reflecting the expanded geographic reach of EOIR's courts, some of these busy detained court locations—namely, Las Vegas, Cleveland, Detroit, Fort Snelling, Laredo, and Annandale (located until 2022 in Arlington, Virginia)—did not exist at the time that the EOIR was first established.[118]

Underscoring the segregation of the detained and nondetained court system, in several large cities—Atlanta, New York, Chicago, Los Angeles, and San Francisco—the EOIR has opened a separate court location exclusively to handle detained cases. For example, the Chicago detained court operated in the basement of the DHS building on Clark Street in downtown Chicago, while the nondetained court was located a half mile away, in an office building on West Van Buren Street.[119] Figure 1 identifies these cities with segregated locations for their detained courts by including a street address in addition to the court's city.

Other detained immigration courts in Figure 1 heard detained and nondetained cases in the same building, but organized detained cases on a separate docket, assigned to select judges within the court.[120] For example, the immigration court in Annandale (formerly in Arlington) had thirty-nine active judges between 2016 and 2022, but 94% of all detained cases were handled by just eight judges. Likewise, the Boston court had

while excluding non-substantive outcomes such as changes of venue and transfers. See infra Appendix, Section A.

[118] Compare Figure 1 to EOIR 1986 Court Listing, supra note 103.

[119] Exec. Off. for Immigr. Rev., U.S. Dep't of Just., EOIR Immigration Court Listing, https://web.archive.org/web/20221014224242/https://www.justice.gov/eoir/eoir-immigration-court-listing [https://perma.cc/6EEV-H3LG] (capture dated Oct. 14, 2022) [hereinafter EOIR 2022 Court Listing]. In 2023, EOIR relocated Chicago's nondetained court to a federal building on Monroe Street. Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Notice, EOIR to Relocate Chicago Immigration Court's Main Location (June 29, 2023), https://www.justice.gov/eoir/page/file/1589031/download [https://perma.cc/LHA5-2Q45].

[120] See generally Off. of the Inspector Gen., supra note 116, at 4–5 (explaining that EOIR has separate nondetained and detained dockets); Off. of Det. & Removal, U.S. Dep't of Homeland Sec., Detention and Deportation Officers' Field Manual § 11.5 (Mar. 27, 2006), 2014 WL 7151851 (referring to EOIR's "[d]etained docket cases" as those involving "aliens who are in custody").

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twenty-seven active judges during this period, but only nine judges completed 92% of Boston's detained cases.[121]

B. Institutional Hearing Program Courts

Following passage of the Immigration Reform and Control Act in 1986, the EOIR began to institutionalize a prison-based detained court program known as the Institutional Hearing Program ("IHP") to hear the immigration cases of people serving prison or jail sentences.[122] The first large-scale IHP court began in 1986 in a courtroom inside the Downstate Correctional Facility in Fishkill, New York.[123] Soon thereafter, the EOIR started holding regular court hearings at the Texas state prison in Huntsville as well as two California prisons near the state's border with Mexico (in Calipatria and Donovan).[124] The EOIR also began a centralized federal IHP program inside a massive 1,000-bed facility built in collaboration with the federal Bureau of Prisons in Oakdale, Louisiana.[125] In 1994, a second joint Bureau of Prisons–INS facility opened in Eloy, Arizona, similarly "designed with courtrooms for EOIR judges and office space for INS and EOIR staff to provide an IHP for the Bureau inmates and deportation proceedings for the INS detainees."[126]

Over time, the IHP program spread out across the country, holding hearings while persons were held in federal and state prison systems as

[121] For the Annandale and Boston analysis, we defined active judges as judges that completed at least 100 cases between 2016 and 2022.

[122] Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 701, 100 Stat. 3359, 3445 (codified as amended at INA § 239(d)(1), 8 U.S.C. § 1229(d)(1)) (requiring that the Attorney General "begin any deportation proceeding as expeditiously as possible after the date of conviction"); see also Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7347(a), 102 Stat. 4181, 4471–72 (codified at INA § 238(a), 8 U.S.C. § 1228(a)) (providing that "the Attorney General shall provide for the availability of special deportation proceedings at certain Federal, State, and local correctional facilities" and endeavor to complete proceedings prior to "release from incarceration").

[123] 1997 IHP Hearing, supra note 107, at 77.

[124] Id. at 59, 83; see also Ingrid Eagly & Steven Shafer, The Institutional Hearing Program: A Study of Prison-Based Immigration Courts in the United States, 54 L. & Soc'y Rev. 788, 798, 805, 819 (2020).

[125] Frances Frank Marcus, Prison for Aliens Opens in Louisiana, N.Y. Times, Apr. 9, 1986, at A14.

[126] 1997 IHP Hearing, supra note 107, at 55 (prepared statement of John L. Clark, Assistant Dir., Cmty. Corr. & Det.).

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well as a few county jails.[127] As of 2022 the EOIR still operated fully staffed IHP courts at the Federal Correctional Institute in Oakdale, as well as the Ulster Correctional Facility in Napanoch, New York.[128] The rest of the IHP cases were generally handled via videoconference connections that linked prisons and jails to judges sitting in detained courts around the country—often to judges assigned to the co-located courts that we discuss next.[129]

C. Courts Co-Located with Immigration Detention Centers

Alongside the EOIR's jail-and-prison-based IHP model, the 1980s witnessed the emergence of a new architecture of detained adjudication: courts operating inside INS facilities.[130] These courts, which were designed to resemble EOIR's urban courts, were part of the planned blueprint of federal detention centers.[131] Co-located courts are often connected to the cell blocks by a custom sallyport, so that persons who are detained enter the court from their block, without exiting the facility.[132] By 1986, the EOIR had installed permanent immigration courts inside six INS-run SPCs: El Paso and Port Isabel, Texas; El Centro, California; Florence, Arizona; Miami, Florida; and Varick Street, New York.[133] Additionally, the EOIR stationed immigration judges at the Houston Contract Detention Facility, which in 1984 was converted from

[127] Between 1983 and 2022, 9% of all people with their initial case completed in detention did so in the IHP while incarcerated on a criminal sentence in a prison or a jail (*n* = 199,272 of 2,307,032).

[128] EOIR 2022 Court Listing, supra note 119. The Ulster court handles cases of persons in prison in the Bedford Hills Correctional Facility in Napanoch, New York.

[129] Eagly & Shafer, supra note 124, at 802, 818, 823 (finding that 56% of IHP hearings were conducted by video or telephone in 2019).

[130] As Keith Bybee has noted, examining the "judiciary's built environment" is often overlooked by scholars, but doing so "calls attention to the ways in which law has been embedded in physical structures and space . . . ." Keith J. Bybee, Judging in Place: Architecture, Design, and the Operation of Courts, 37 L. & Soc. Inquiry 1014, 1015 (2012).

[131] See generally Mark Dow, American Gulag: Inside U.S. Immigration Prisons 48–67, 161–70 (2004) (mentioning immigration courts built inside the Krome detention facility in Miami and the Oakdale federal prison); Loyd & Mountz, supra note 80, at 99–116, 177–78 (describing the immigration courts at Oakdale and the Batavia Service Processing Center).

[132] Telephone Interview with Hannah Cartwright, Exec. Dir. & Att'y, Mariposa Legal (July 30, 2021).

[133] EOIR 1986 Court Listing, supra note 103, at 16755.

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a motel into the first privately owned and operated immigrant detention center in the United States.[134]

The Clinton years were a period of intensified collaboration between the INS and the EOIR—still sister agencies within the DOJ—to multiply the number of detention facilities with co-located courts.[135] New detained courts opened inside SPCs in Elizabeth, New Jersey,[136] and San Pedro, California,[137] a Border Station in Otay Mesa, California,[138] and a privately operated detention facility in Jamaica, New York.[139] Detained courts were also installed in jails operated by county sheriffs under contract with the INS in Lancaster, California; York, Pennsylvania; and Bradenton, Florida.[140] By the last year of President Clinton's second term in office, the number of co-located courts had more than doubled, with eighteen of the EOIR's fifty-one staffed courts situated inside detention facilities or prisons.[141]

Whereas the Clinton Administration grew the co-located detained court model, the George W. Bush, Obama, and Trump Administrations held the total number of co-located courts relatively constant but kept the model vital by expanding the capacity of these courts and supporting the opening of new co-located courts as other detention centers hosting immigration courts closed.[142] For example, when the Lancaster facility shut its doors

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[134] Shane Bauer, American Prison: A Reporter's Undercover Journey into the Business of Punishment 14–15 (2018). Contract detention facilities that did not yet have staffed co-located judge facilities operated in Denver, Los Angeles, Laredo, El Paso, and Las Vegas. See U.S. Immigr. & Naturalization Serv., INS Reporter, Fall/Winter 1985–86, at 1, 11, https://eosfc web01.eosfc-intl.net/CP4810_U95007_Documents/I&N%20Reporter/INRep%201985.pdf [https://perma.cc/T6FX-QNQA].

[135] Implementation of Title III of the Illegal Immigration and Reform and Immigrant Responsibility Act of 1996: Hearing Before the Subcomm. on Immigr. & Claims of the H. Comm. on the Judiciary, 105th Cong. 56 (1997) (statement of Paul W. Schmidt, Chairman, Bd. of Immigr. Appeals) (emphasizing that "greater and greater attention [was being] paid to placing courts at detention centers").

[136] Privacy Act of 1974; Privacy Act Systems of Records, 60 Fed. Reg. 52690 (Sept. 18, 1995).

[137] Privacy Act of 1974; Privacy Act Systems of Records, 64 Fed. Reg. 18051–03 (Mar. 26, 1999) [hereinafter EOIR 1999 Court Listing].

[138] Robert C. Divine, Immigration Practice, Appendix B–1(j), Immigration Courts 997 (1999 ed.).

[139] Id. at 993 (listing a detained immigration court at the Queens Wackenhut Facility).

[140] EOIR 1999 Court Listing, supra note 137.

[141] Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Statistical Year Book 2001, at A1 (2002), https://www.justice.gov/sites/default/files/eoir/legacy/2002/04/16/FY01syb.pdf [https://perma.cc/XUN2-UEB4] (at "Introduction").

[142] EOIR 2022 Court Listing, supra note 119.

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after the lease with the Los Angeles County Sheriff's Department expired in 2012,[143] the EOIR opened a new full-time court at the Adelanto Detention Center, more than an hour's drive away.[144] The Obama and Trump years also reshaped detained adjudication by adding several new co-located courts in the South: the Stewart Detention Center in Lumpkin, Georgia,[145] the South Texas ICE Processing Center in Pearsall, Texas,[146] the LaSalle ICE Processing Center in Jena, Louisiana,[147] and the Montgomery Processing Center in Conroe, Texas.[148]

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[143] EOIR Closes Lancaster, California, Immigration Court, 89 No. 43 Interpreter Releases 2060 (Nov. 5, 2012).

[144] Press Release, Exec. Off. for Immigr. Rev., U.S. Dep't of Just., The Executive Office for Immigration Review to Open Adelanto Immigration Court (May 15, 2013), https://www.justice.gov/eoir/pr/executive-office-immigration-review-open-adelanto-immigration-court [https://perma.cc/8HPC-Y7ZH].

[145] The Stewart Detention Center opened in 2006, and EOIR established an on-site staffed court as of 2010. See Exec. Off. for Immigr. Rev., U.S. Dep't of Just., FY 2010 Statistical Year Book, at O3 (2011), https://www.justice.gov/sites/default/files/eoir/legacy/2011/02/01/fy10syb.pdf [https://perma.cc/A5GA-7X8X]; see also Det. Watch Network, Expose & Close: Stewart Detention Center Georgia 2–3 (2012), https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Stewart.pdf [https://perma.cc/5UWU-H8ZK] ("Until recently, immigration hearings at Stewart took place by video conference with the court in Atlanta. Three immigration judges now work out of four new courtrooms at the [Stewart] facility.").

[146] EOIR Opens Immigration Court in Pearsall, Texas, 87 No. 30 Interpreter Releases 1569 (Aug. 9, 2010).

[147] The LaSalle Detention Facility, also known as the Central Louisiana ICE Processing Center, opened in 2007, complete with a "unique administrative annex of five courtrooms." ICE Enforcement and Removal Operations Jena Takes Care of Business, U.S. Immigr. & Customs Enf't (Oct. 8, 2020), https://www.ice.gov/news/releases/ice-enforcement-and-removal-operations-jena-takes-care-business [https://perma.cc/38AN-WYYN] [hereinafter Jena Takes Care of Business]. However, LaSalle did not become a staffed court location until 2018. EOIR Immigration Court Listing, Exec. Off. for Immigr. Rev., U.S. Dep't of Just., https://web.archive.org/web/20181013190728/https://www.justice.gov/eoir/eoir-immigration-court-listing [https://perma.cc/ZX57-9MX2] (capture dated Oct. 13, 2018).

[148] The Joe Corley Detention Center, also located in Conroe, Texas, opened under President Obama in 2008. Alicia Danze, Rebecca Maria Torres & Caroline Faria, Contesting Invisibility of Immigrant Detention Landscapes in Texas, *in* The Routledge Handbook of Development and Environment 128, 131–32 (Brent McCusker et al. eds., 2022). But EOIR did not establish a fully staffed court location in Conroe until 2018, when an additional 1,000-bed facility (the Montgomery Processing Center) opened. Id. at 132; Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Notice, Executive Office for Immigration Review Opens Conroe Immigration Court (Oct. 15, 2018), https://www.justice.gov/eoir/page/file/1100971/download [https://perma.cc/M5HA-L7H9].

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Figure 2. Detained Immigration Courts Located Inside Prisons and Detention Facilities (2022)

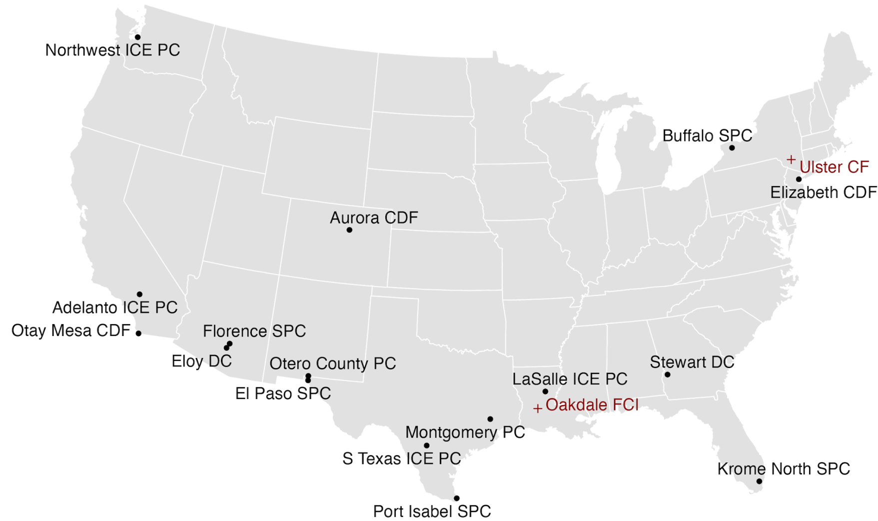

Figure 2 uses dots to mark the sixteen court locations that were co-located with immigration detention centers as of 2022.[149] Cross symbols mark the two courts co-located with prisons holding persons serving prison sentences.[150] Even more than is the case with the urban detained immigration courts featured in Figure 1, the co-located detained courts in

[149] All but one of these sixteen co-located courts (the Ulster Immigration Court in Napanoch, New York) had more than 4,000 initial detained case completions between 2016 and 2022. Five of the courts in Figure 2 were inside ICE SPCs: El Paso SPC, Krome North SPC, Buffalo (Batavia) SPC, Florence SPC, and Port Isabel SPC. Six were part of contract facilities operated by private, for-profit prison companies: Otay Mesa Contract Detention Facility (CoreCivic), Aurora Contract Detention Facility (GEOGroup), Montgomery Processing Center (GEOGroup), Elizabeth Contract Detention Facility (CoreCivic), Northwest ICE Processing Center (GEOGroup), and South Texas ICE Processing Center (GEOGroup). Finally, five were located inside facilities run pursuant to an intergovernmental service agreement with a local jail or governmental agency: LaSalle ICE Processing Center, Stewart Detention Center, Adelanto ICE Processing Center, Eloy Detention Center, and Otero County Processing Center.

[150] These two detained court locations were both opened originally to handle IHP cases. See Marcus, supra note 125 and accompanying text; EOIR 2022 Court Listing, supra note 119 and accompanying text. From 2016 to 2022, Ulster had 1,651 initial case completions, all of which were IHP cases. Oakdale had 13,424, completions, only 257 of which were IHP cases of people held in the Oakdale federal prison, while the rest were non-IHP cases of individuals in civil immigration detention in Louisiana (the Winn Correctional Center and the Pine Prairie Correctional Facility).

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Figure 2 are heavily concentrated near the U.S.-Mexico border. Together, the detained courts included in Figures 1 and 2 decided 94% of all detained initial case completions between 2016 and 2022.[151]

Not marked in Figure 2 are additional "hearing locations" that the EOIR maintains inside correctional facilities that that do not have a court with an immigration judge sitting inside the facility.[152] These satellite hearing locations typically operate by connecting the noncitizens detained in the facility by video to a detained immigration judge located inside one of the courts featured in Figures 1 and 2. For example, in 2022 judges sitting in the court in the LaSalle ICE Processing Center in Jena, Louisiana, heard cases of individuals detained at the LaSalle facility, as well as cases of persons that appeared on video from remote "hearing locations" such as the River County Correctional Facility in Ferriday, Louisiana, and the Aliceville Federal Correctional Institution in Aliceville, Alabama.[153]

D. Port Courts

In 1995, the EOIR launched an entirely new detained court model on the Southern border—the port court.[154] The port court was a partnership between the EOIR and INS that originated out of the DOJ's San Diego border prosecution program called Operation Gatekeeper.[155] As then-INS General Counsel David Martin explained the initiative, port courts were designed to "send[] an unmistakable message" to future migrants about enforcement.[156] Anthony Moscato, the EOIR director at the time,

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[151] 435,634 of 461,096 detained initial case completions.

[152] Under the applicable regulations a "hearing location" is not considered to be a court. See 8 C.F.R. § 1003.9 (2023) ("The term Immigration Court shall refer to the local sites of the OCIJ where proceedings are held before immigration judges and where the records of those proceedings are created and maintained.").

[153] 2022 Hearing Location Lookup Table, FOIA Library, infra note 352; see also infra Appendix, Section B.

[154] Edward J.W. Park & John S.W. Park, Probationary Americans: Contemporary Immigration Policies and the Shaping of Asian American Communities 53 (2005).

[155] Removal of Criminal and Illegal Aliens: Hearing Before the Subcomm. on Immigr. & Claims of the H. Comm. on the Judiciary, 104th Cong. 20 (1997) (statement of Anthony C. Moscato, Dir., Exec. Off. for Immigr. Rev.); U.S. Dep't of Just., Operation Gatekeeper: Next Steps—Talking Points for the Attorney General Meeting with Public Officials and Community Leaders 5–6 (Oct. 14, 1995), https://www.justice.gov/archive/ag/speeches/1995/10-14-1995b.pdf [https://perma.cc/G4G2-ER25].

[156] Removal of Criminal and Illegal Aliens, supra note 155, at 9 (statement of David A. Martin, General Counsel, Immigr. & Naturalization Serv.).

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described the port court's deportations in this way: "They are quick. They are easy. That's one of the reasons we put judges down at the port—to allow for those kinds of turn around."[157] Although most noncitizens with cases pending in the port court were detained in the United States,[158] breaking from prior practices, some were returned to Mexico to await their court hearings.[159]

The first port court operated in "makeshift quarters"[160] inside an INS facility at the Otay Mesa Border Station in California.[161] Immigration judges were rotated through the Otay Mesa detention facility in order to quickly adjudicate the cases of migrants who were stopped at the port of entry.[162] In 1996, in anticipation of the Summer Olympic Games taking place in Atlanta, additional port courts were created at the Miami and

[157] Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1998: Hearings Before the Subcomm. on the Dep'ts of Com., Just., & State of the H. Comm. on Appropriations, Part 6, 105th Cong. 1011, 1111 (1997) [hereinafter 1998 House Appropriations].

[158] Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1997: Hearings Before the Subcomm. on the Dep'ts of Com., Just., and State, the Judiciary, and Related Agencies of the H. Comm. on Appropriations, Part 6, 104th Cong. 1150 (1996).

[159] Removal of Criminal and Illegal Aliens, supra note 155, at 47–48. After the Board of Immigration Appeals found there was no statutory or regulatory authority for returning migrants to Mexico, the practice came to an abrupt end. Id. at 47; Matter of Sanchez-Avila, 21 I. & N. Dec. 444, 464 (B.I.A. 1996) ("There is no explicit statutory or regulatory authority for a practice of returning applicants for admission at land border ports to Mexico or Canada to await their hearings."). Shortly after *Matter of Sanchez-Avila*, Congress amended the Act "to state that an applicant for admission arriving at a land border port-of-entry and subject to a removal hearing . . . may be required to await the hearing in Canada or Mexico." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 444, 445 (Jan. 3, 1997).

[160] U.S. Comm'n on Immigr. Reform, Curbing Unlawful Immigration 133 (1997) (documenting the former classroom space where the Otay Mesa port court initially operated and referring to an agreement to construct a permanent space to house the port court).

[161] Removal of Criminal and Illegal Aliens, supra note 155, at 23. The Otay Mesa court location, which is included in Figure 2, *supra*, was added to the EOIR's listing of immigration courts as of 2000. Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Executive Office for Immigration Review Immigration Court Listing, https://web.archive.org/web/20001208001900/http://www.usdoj.gov/eoir/sibpages/Icadr.htm [https://perma.cc/5ZLZ-E7M9] (capture dated Dec. 8, 2000).

[162] U.S. Comm'n on Immigr. Reform, supra note 160, at 133; Off. of Mgmt. & Budget, Exec. Off. of the President, Budget of the United States Government, Fiscal Year 1998, at 93 (1997), https://fraser.stlouisfed.org/title/budget-united-states-government-54/fiscal-year-1998-19048 [https://perma.cc/FWJ6-3AN5].

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Atlanta International Airports.[163] The following year, the INS reported that 10,500 people had been deported through the port court initiative.[164] Soon thereafter, port courts were replaced by a new expedited removal process that obviated the need to give many arriving migrants a hearing with an immigration judge, a topic we return to in Part III.[165]

The port court model lay dormant for two decades until the Trump Administration saw fit to revive it in 2018 in the form of the MPP, also commonly known as the "Remain in Mexico" program.[166] The MPP required non-Mexican asylum seekers arriving at the Southwest border to await their future court hearings in squalid conditions in Mexico.[167] As Austin Kocher explains, the MPP "physically excluded" migrants from the United States, "even as their legal cases were pending inside the

[163] William Branigin, The Olympic Sport of Entry, Wash. Post, July 12, 1996 (reporting that the airport would "have a temporary 'port court' so that illegal entrants can get a quick hearing before an immigration judge"). See generally Removal of Criminal and Illegal Aliens, supra note 155, at 20–21 (statement of Anthony C. Moscato, Director, Exec. Off. for Immigr. Rev.) (explaining that EOIR instituted "port courts along the southwest border and airport courts in Miami and Atlanta"); see also Park & Park, supra note 154, at 53 (describing "Port Court[s]" during this period as "a kind of one-stop immigration hearing in an airport or some other port of entry").

[164] 1998 House Appropriations, supra note 157, at 1110. Using the EOIR data, we found that the Otay Mesa port court decided 8,672 cases in 1996 and 6,588 in 1997.

[165] Immigr. & Naturalization Serv., U.S. Dep't of Just., 2001 Statistical Yearbook of the Immigration and Naturalization Service 237 (Feb. 2003), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2001.pdf [https://perma.cc/7NF3-QB26] [hereinafter INS 2001 Statistical Yearbook] (explaining that the "special 'Port Court' processing" in San Diego "put more arriving aliens into proceedings than had been possible before" and "continued until the implementation of expedited removal procedures in April 1997").

[166] Press Release, U.S. Dep't of Homeland Sec., Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration (Dec. 20, 2018), https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration [https://perma.cc/9XRG-HA6J]. For an analysis of how the MPP reshaped U.S. asylum adjudication, see Geoffrey Heeren, Distancing Refugees, 97 Denv. U. L. Rev. 761, 779–96 (2020).

[167] See Media Note, U.S. Dep't of State, U.S.-Mexico Joint Declaration (June 7, 2019), https://2017-2021.state.gov/u-s-mexico-joint-declaration [https://perma.cc/VY3K-BVEY]; Memorandum from Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., to Troy A. Miller, Acting Comm'r, U.S. Customs & Border Prot., Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't, and Tracey L. Renaud, Acting Dir., U.S. Citizenship & Immigr. Serv. 3–4 (June 1, 2021); Press Release, U.S. Dep't of Homeland Sec., Migrant Protection Protocols (Jan. 24, 2019), https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols [https://perma.cc/W26X-S8HY].

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United State[s]."[168] The Biden Administration suspended the MPP in January 2021,[169] but legal challenges to the termination continued.[170]

At first, individuals made to remain in Mexico had their court hearings at existing brick-and-mortar immigration courts in San Diego and El Paso.[171] Soon, however, additional detained courts were opened in makeshift facilities composed of large, interconnected tents and modified shipping containers in Laredo and Brownsville, Texas.[172] Judges did not travel to these tents; instead, the EOIR relied exclusively on video.[173]

When noncitizens in the MPP attended their court hearings in the United States, they remained under the custody and control of DHS. Therefore, their cases were recorded by EOIR judges as detained.[174] EOIR records show that 69,190 MPP cases were initiated in detention since the program began in 2019.

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[168] Austin Kocher, Migrant Protection Protocols and the Death of Asylum, 20 J. Lat. Am. Geography 249, 250 (2021).

[169] Memorandum from David Pekoske, Acting Sec'y, U.S. Dep't of Homeland Sec., to Troy Miller, Senior Off. Performing the Duties of the Comm'r, U.S. Customs & Border Prot., and Tae Johnson, Acting Dir., U.S. Immigr. & Customs Enf't (Jan. 20, 2021), https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf [https://perma.cc/B8J7-XXYG].

[170] In 2022, the Supreme Court cleared the way to end the program. Biden v. Texas, 597 U.S. 785, 813–14 (2022). On remand, the district court lifted the injunction requiring reimplementation of the program. Order, Texas v. Biden, No. 21-cv-00067 (N.D. Tex. Aug. 8, 2022), ECF No. 147. As a result, new enrollments stopped. Press Release, U.S. Dep't of Homeland Sec., Court Ordered Reimplementation of the Migrant Protection Protocols, https://www.dhs.gov/archive/migrant-protection-protocols [https://perma.cc/8NN6-WQSN] (last updated Nov. 1, 2022). However, at the end of 2022, U.S. District Judge Matthew Kacsmaryk of the Northern District of Texas stayed the termination of the MPP pending a final merits determination of whether the agency's termination satisfied the requirements of reasoned decision-making under the APA. Opinion & Order, Texas v. Biden, 646 F. Supp. 3d 753, 761, 764, 781 (N.D. Tex. 2022).

[171] U.S. Dep't of Homeland Sec., Assessment of the Migrant Protection Protocols 3 (2019), https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf [https://perma.cc/L3NE-6KG6] ("The first three locations for MPP implementation—San Diego, Calexico, and El Paso—were chosen because of their close proximity to existing immigration courts.").

[172] Off. of the Inspector Gen., supra note 116, at i.

[173] Id. at 6 (describing how Brownsville and Laredo tent courts were connected "virtually" to judges, with many cases "handled by immigration judges out of the Fort Worth Immigration Adjudication Center").

[174] See Fatma E. Marouf, The Impact of COVID-19 on Immigration Detention, 2 Frontiers Hum. Dynamics 1, 5–6 (2021) ("Even though they are not in a detention center, the regulation at 8 C.F.R. § 235.3(d) states that they are 'considered detained,' and immigration courts normally place MPP cases on the detained docket.").

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E. Immigration Adjudication Centers

In 2004, the EOIR introduced an entirely new type of detained court known as the Headquarters Immigration Court ("HQIC").[175] Located in Falls Church, Virginia, the HQIC was staffed with full-time judges who relied exclusively on video technology to hear detained cases from courts across the country.[176] For example, HQIC judges sitting in Falls Church could be assigned to preside remotely over detained cases within the administrative control of the San Francisco Immigration Court—or any other regional court. Essentially judges in the HQIC sat as virtual visiting judges, filling in where needed to boost local court capacity.[177] The HQIC's unique national reach over detained cases broke down the traditional lines of regional jurisdictional control over removal cases. In 2012, the HQIC was relocated to Arlington, Virginia.[178]

In 2017, the video court model was rebranded and amplified with the introduction of what are known as "immigration adjudication centers."[179] The "number 1 case processing priority" of these adjudication centers, according to internal EOIR documents, was detained cases.[180] The first adjudication center, initially staffed by five immigration judges, filled the empty courtrooms in Falls Church abandoned by the HQIC.[181] By 2022,

[175] Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Fact Sheet: EOIR Headquarters Immigration Court 1 (2004), https://www.justice.gov/sites/default/files/eoir/legacy/2004/08/27/HQICFactSheet.pdf [https://perma.cc/V83B-47QH].

[176] Id. at 1–2 (noting that Charles Adkins-Blanch, formerly EOIR's General Counsel, and David Neal, former Special Counsel to the Director, were assigned to the HQIC); see also Lenni B. Benson & Russell R. Wheeler, Enhancing Quality and Timeliness in Immigration Removal Adjudication 89 (June 7, 2012), https://www.acus.gov/sites/default/files/documents/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf [https://perma.cc/5C85-8DZ5] (describing the HQIC as "where four judges conduct only video hearings in cases that other courts sent to them for resolution").

[177] Jurisdiction and Venue in Removal Proceedings, 72 Fed. Reg. 14494, 14494 (proposed Mar. 22, 2007) (to be codified at 8 C.F.R. pt. 1003) ("The immigration judges assigned to the HQIC conduct hearings through video conference to assist various immigration courts throughout the United States by hearing cases on their dockets. The HQIC provides OCIJ with a flexible tool for responding to short-term resource needs that may arise.").

[178] EOIR Moves Headquarters Immigration Court to New Location, 89 No. 38 Interpreter Releases 1871 (Oct. 1, 2012).

[179] E-mail from MaryBeth Keller, Chief Immigr. J., to Assistant Chief Immigr. JJ. (July 6, 2017, 5:11 PM) (on file with authors).

[180] Off. of the Chief Immigr. J., Falls Church Adjudication Center—18th Floor—Docketing Plan 1 (2017) (on file with authors).

[181] Id.

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the model included five judges in Falls Church, fourteen in Fort Worth, Texas, and fourteen in Richmond, Virginia.[182]

Immigration adjudication centers not only break traditional jurisdictional lines by deploying judges to regional courts via video, but they also dilute other procedural protections. Importantly, these centers are characterized as "permanent duty station[s]," not courts, which the EOIR claims allows them to disregard rules that apply to courts.[183] For example, members of the public—including attorneys, family members, and litigants themselves—are not permitted to enter adjudication centers.[184] Adjudication centers also do not accept court filings and are designed to prioritize transferred cases with individual merits hearings.[185] The Richmond location is also notable because the judges appointed to this adjudication center, unlike other new hires, were classified as supervisors and therefore not eligible for union membership.[186]

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[182] EOIR 2022 Court Listing, supra note 119.

[183] E-mail from MaryBeth Keller, supra note 179.

[184] E-mail from Mary Cheng, Deputy Chief Immigr. J., to Deepali Nadkarni, Assistant Chief Immigr. J. (Nov. 29, 2018, 4:46 PM) (on file with authors); see also Arvind Dilawar, The Trump Administration's Cruelty Haunts Our Virtual Immigration Courts, In These Times, Feb. 1, 2021, https://inthesetimes.com/article/virtual-courts-immigration-asylum-seekers-immigration-court [https://perma.cc/5J58-H86A] (quoting attorney Claudia Valenzuela explaining that "[c]onfusion has arisen around how attorneys or noncitizens can submit documents to the [immigration adjudication centers] and, in some instances, how [attorneys] can appear").

[185] See Government Faces Lawsuit for Failing to Disclose Information on Expansion of Immigration Courts and Immigration Adjudication Centers, Am. Immigr. Council, https://www.americanimmigrationcouncil.org/litigation/government-faces-lawsuit-failing-disclose-information-expansion-immigration-courts [https://perma.cc/V4HJ-6GND] (last visited Mar. 5, 2024) (publishing documents from a Freedom of Information Act request to the EOIR, including one document titled "Intake Guidelines for Immigration Adjudication Centers," which contained guidance that "[o]nly cases set for individual merits hearings should be sent to the IAC").

[186] Statement of the Round Table of Former Immigr. JJ., to H. Judiciary Comm. (Jan. 20, 2022), https://docs.house.gov/meetings/JU/JU01/20220120/114339/HHRG-117-JU01-20220120-SD026.pdf [https://perma.cc/8ZY6-XHWM] (criticizing the newly invented title of "Unit Chief Immigration Judge[]" as not allowing for membership in the immigration judges' union); U.S. Dep't of Just., EOIR Announces 22 New Immigration Judges, Dec. 17, 2021, https://www.justice.gov/media/1190881/dl?inline [https://perma.cc/PEA8-QZ5T] (announcing five "Unit Chief Immigration Judges" in the Richmond adjudication center). A related attack on the immigration judge union occurred in 2019 when the DOJ filed a petition to decertify the union on the ground that all immigration judges are "management officials." See generally U.S. Dep't of Just., Executive Office for Immigration Review, 72 FLRA No. 146, at 733, 736 (2022) (concluding that immigration judges are management officials and excluding them from the bargaining unit).

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III. LOOKING INSIDE DETAINED COURTS

Part II traced how the detained court system evolved during the years since the EOIR was established. These detained courts have proliferated inside detention centers and prisons, at the ports, and in separate court buildings in urban centers. At the same time, the increasing availability of videoconferencing technology has expanded the geographic reach of these detained courts to an elaborate complex of remote detention sites. Part III shifts gears and seeks to understand the size and reach of these detained courts. We know that detained courts are particularly harsh: from 1983 to 2022, 93% of cases decided by detained courts ended in removal,[187] compared to 57% of those decided in nondetained courts.[188] But, how do these detained courts fit into the larger removal system, how have they grown over time, and who has their cases decided in these courts?

A. How Big Is the Detained Court's Docket?

During the period from 1983 to 2022, just over 3.6 million immigration court cases (*n* = 3,663,093) began in detention. Among these cases initiated in detention, 80% were removal proceedings, 16% deportation or exclusion proceedings, and 4% other case types (including asylum only, withholding, and credible or reasonable fear review proceedings).[189]

The solid red line in Figure 3 shows how cases initiated in detention have fluctuated year to year, but generally increased over time. Whereas only 679 cases began in detention in 1983 when the EOIR was created, in 2019 that number reached an all-time high of 198,620 cases. Overall, since 1983, 45% of new cases were initiated inside detention (*n* = 3,663,093), while 55% (as seen in the dashed blue line in Figure 3) were initiated outside it (*n* = 4,504,774). Between 2007 and 2014, during the Bush and Obama years, reliance on detention was especially common: almost two of three (63%) cases began in detention.[190]

[187] 2,151,368 of 2,307,032 initial case completions in detention.
[188] 2,239,920 of 3,902,249 initial case completions outside of detention.
[189] For a description of the different proceeding types in immigration court, see Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Uniform System Docketing Manual, at I1–I6 (Feb. 2021), https://libguides.law.ucla.edu/ld.php?content_id=69166281 [https://perma.cc/DNZ6-Z8N4].
[190] 1,177,325 of 1,869,079 cases initiations occurred in detention from 2007 to 2014.

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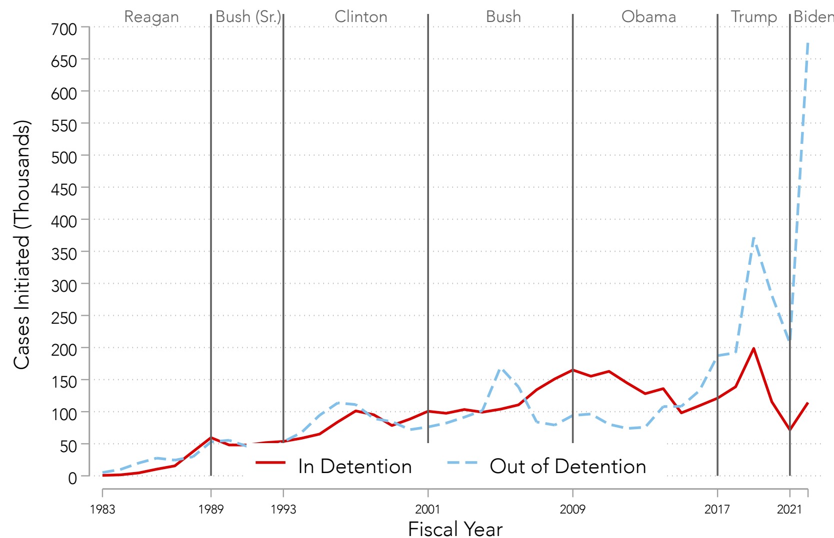
Figure 3. Cases Initiated, by Custody Status (1983–2022)



Not all individuals who were detained at the start of their case in immigration court remained detained for the entirety of the adjudication. Some persons included in the solid line in Figure 3 began their case in detention but were later released from custody by immigration authorities[191] or after a custody review hearing before an immigration judge.[192] When individuals are released from immigration detention prior

[191] See generally INA § 236(a)(1)–(2), 8 U.S.C. § 1226(a)(1)–(2) (providing that after arrest, authorities "may continue to detain" the individual or grant release on bond or conditions of supervision); INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (granting DHS the authority to release certain noncitizens on parole to await their court hearings "on a case-by-case basis for urgent humanitarian reasons or significant public benefit"); Hillel R. Smith, Cong. Rsch. Serv., IF11357, Expedited Removal of Aliens: An Introduction 2 (2022), https://crsreports.congress.gov/product/pdf/IF/IF11357 [https://perma.cc/S3PV-MMYZ] (explaining that "a 1997 court settlement agreement known as the *Flores* Settlement generally limits the period in which an alien minor may be detained by DHS").

[192] Matter of Guerra, 24 I. & N. Dec. 37 (B.I.A. 2006) (setting forth the standard of review in custody redetermination hearings before an immigration judge pursuant to INA § 236); 8 C.F.R. § 1236.1 (2023) (delineating the circumstances under which a respondent in immigration proceedings may seek review of their detention before an immigration judge). For additional analysis of custody review hearings in immigration court, see Stumpf, supra note 33, at 76–77; Catherine Y. Kim & Amy Semet, Presidential Ideology and Immigrant Detention, 69 Duke L.J. 1855, 1865–67 (2020); Emily Ryo, Detained: A Study of Immigration Bond Hearings, 50 L. & Soc'y Rev. 117, 117–20 (2016).

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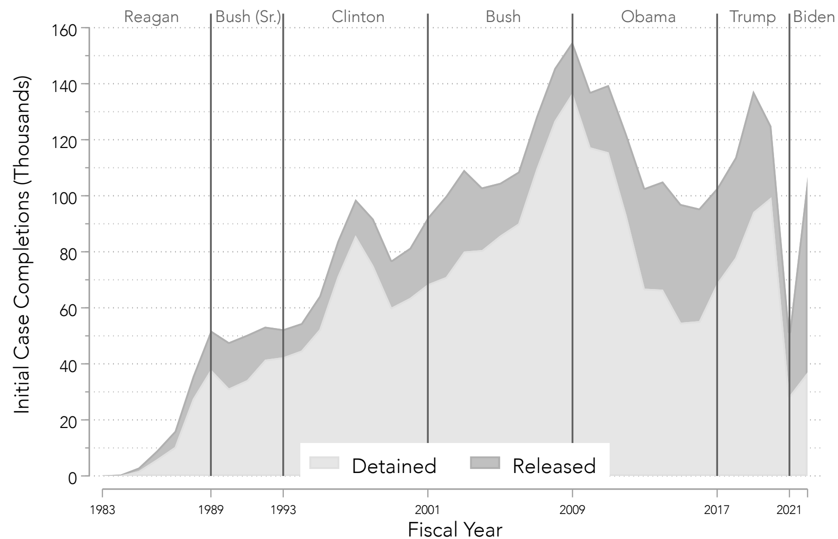
to the completion of their case, their case is transferred from the detained court to a nondetained court.[193]

Figure 4. Cases Initiated in Detention, by Custody Status at Completion (1983–2022)[194]



As seen in Figure 4, among the cases that began in detention, 2,509,268 cases reached an initial case completion while the respondent was still detained (light-shaded area), while the remaining 844,275 cases reaching an initial case completion ended with the respondent released from custody (dark-shaded area). Some persons remained detained because

[193] See generally Cath. Legal Immigr. Network, Inc., A Guide to Obtaining Release from Immigration Detention 67 (July 2021), https://www.cliniclegal.org/sites/default/files/2021-08/A%20Guide%20to%20Obtaining%20Release%20From%20Immigration%20Detention.2021.07.29.pdf [https://perma.cc/X9E8-XSQK] (explaining that upon release "DHS is supposed to 'immediately advise' the immigration court," but this does not always occur and many immigration judges require the respondent to file a motion for a change of venue to the nondetained court).

[194] Additional cases initiated in detention during the period covered in Figure 4 remained pending at the end of fiscal year 2022 and therefore are not included in Figure 4 (n = 29,576 detained, n = 278,181 released).

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they were unable to afford the bond amount,[195] while others accepted an order of removal immediately without seeking release.[196] Still others were subject to mandatory detention, meaning that they were not eligible for release by DHS or a custody review hearing by an immigration judge.[197] While the law on mandatory detention and access to bond hearings has shifted over the time period covered in our study, under the current law noncitizens with certain categories of criminal convictions fall into the mandatory detention category.[198] Similarly, although those seeking asylum at the border may be paroled into the United States by DHS to await an immigration court hearing,[199] they are generally not entitled to a custody review hearing in immigration court.[200]

[195] But see Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017) (finding that due process requires immigration judges conducting bond hearings to consider the person's financial ability to post bond and suitability for release on nonmonetary alternative conditions of supervision).

[196] See infra Section IV.D (discussing the fast adjudication times of many detained courts).

[197] But see German Santos v. Warden Pike Cnty. Corr. Facility, 965 F.3d 203, 206, 213 (3d Cir. 2020) (concluding that a respondent held pursuant to INA § 236(c) for an "unreasonably long time" pending adjudication of a removal case has a due process right to a bond hearing "to gauge whether he still needs to be detained to keep him from fleeing or committing more crimes").

[198] INA § 236(c)(1), 8 U.S.C. § 1226(c)(1) (providing for mandatory detention of individuals subject to removal based on an aggravated felony, a crime of moral turpitude, a controlled substance offense, a firearms offense, or other criminal grounds); see also Demore v. Kim, 538 U.S. 510, 530–31 (2003) (finding mandatory detention pursuant to INA § 236(c) for the "limited period" of removal is "constitutionally permissible").

[199] INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (permitting "any alien applying for admission to the United States" to be "parole[d] into the United States . . . for urgent humanitarian reasons or significant public benefit"); see also 8 C.F.R. § 212.5(b) (2023).

[200] INA § 235(b)(1)(B)(iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (requiring that noncitizens placed in expedited removal "shall be detained pending a final determination of credible fear of persecution"); INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) ("[I]n the case of an alien who is an applicant for admission, . . . the alien shall be detained for a proceeding under section 1229a of this title."). See also Jennings v. Rodriguez, 138 S. Ct. 830, 842 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded . . . [a]nd neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."); Dep't of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959, 1970 (2020) (clarifying that INA § 235(b)(1)(B)(iii)(IV) provides for mandatory detention during a credible fear review proceeding in immigration court); Matter of M-S-, 27 I. & N. Dec. 509, 515 (A.G. 2019) (overruling Matter of X-K-, 23 I. & N. Dec. 731 (B.I.A. 2005), and concluding that noncitizens "originally placed in expedited proceedings," are not entitled to bond hearings when transferred into "full proceedings" in immigration court). For a discussion of ongoing litigation challenging denial of bond hearings for asylum seekers placed in expedited removal and found to have a credible fear of persecution, see Nw. Immigrant Rts. Project, Practice Alert: *Padilla v. ICE* and Delays in

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Figure 4 shows the gradual rise in detained case completions following the passage of the Anti-Drug Abuse Act of 1988, which required the Attorney General to detain noncitizens convicted of so-called "aggravated felonies."[201] Detained cases accelerated again following the terror attacks of September 11, 2001, peaking in the last year of the George W. Bush Administration in 2009. The Obama years, in contrast, witnessed a decline in the number of court cases completed in detention. This downward slide in detained court cases did not, however, mean that fewer immigrants were detained and deported. Rather, as a rising number of Central American migrants arrived at the border, the Obama Administration increased its use of summary forms of removal that relied on detention but did not involve immigration judges.[202]

As also seen in Figure 4, the number of court cases initiated in detention declined during the second half of the Trump Administration, in part due to COVID-19-related lawsuits requiring ICE to reduce the population size inside immigration detention facilities.[203] Declining detention numbers during this period also reflect the Trump Administration's reliance on Title 42,[204] a little-known public health law, to turn back nearly three

Credible Fear Interviews 4 (Jan. 8, 2024), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/padilla_practice_alert_2024.pdf [https://perma.cc/WTS8-CVWU].

[201] Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7343(a)(4), 102 Stat. 4181, 4470 (codified as amended at INA § 236(c), 8 U.S.C. § 1226(c)) ("The Attorney General shall take into custody any alien convicted of an aggravated felony upon completion of the alien's sentence for such conviction.").

[202] See infra Figure 5; see also Jill E. Family, A Broader View of the Immigration Adjudication Problem, 23 Geo. Immigr. L.J. 595, 611–32 (2009) (summarizing the methods, aside from removal hearings, that the government uses to deport noncitizens). These summary forms of removal raise serious concerns for access to counsel and humanitarian protection. See, e.g., Philip G. Schrag, Jaya Ramji-Nogales & Andrew I. Schoenholtz, The New Border Asylum Adjudication System: Speed, Fairness, and the Representation Problem, 66 How. L.J. 571 (2023); Stephen Manning & Kari Hong, Getting It Righted: Access to Counsel in Rapid Removals, 101 Marq. L. Rev. 673, 689–92 (2018).

[203] See, e.g., Roman v. Wolf, No. 20-00768, 2020 WL 1952656 (C.D. Cal. Apr. 23, 2020), *aff'd in part and vacated in part sub nom.*, Hernandez Roman v. Wolf, 829 F. App'x 165 (9th Cir. 2020) (ordering a reduction in custody numbers and other COVID-19 mitigation measures at the Adelanto ICE Processing Center); Fraihat v. U.S. Immigr. & Customs Enf't, 445 F. Supp. 3d 709, 726 (C.D. Cal. 2020), *rev'd and remanded*, 16 F.4th 613, 651 (9th Cir. 2021) (entering a preliminary injunction applying to all detention facilities nationwide requiring custody redetermination hearings and other COVID-19 mitigation measures).

[204] 42 U.S.C. § 265; see also Remarks by President Trump, James S. Brady Press Briefing Room, Mar. 20, 2020, 11:50 AM, https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-c-oronavirus-task-force-press-brief

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million migrants arriving at the U.S.-Mexico border without any access to the immigration courts.[205] Under President Biden, case numbers in detained courts began to creep upward, but as of 2022 had not reached pre-pandemic levels. One reason why detained case numbers may be lower is the Biden Administration's expanded reliance on electronic monitoring in lieu of detention.[206] However, overall detention numbers rose dramatically in 2023,[207] signaling that detained courts will likely see busier dockets in the second half of Biden's term.

ing/ [https://perma.cc/3LU9-PJDS] (unveiling the Title 42 turn-back policy). When the Biden Administration announced that the COVID-19 public health emergency would expire on May 11, 2023, the Supreme Court cancelled oral argument on a pending case set to evaluate whether a group of nineteen states opposed to ending Title 42 could intervene in lawsuit challenging the policy as arbitrary and capricious. Statement of Administration Policy, Off. of Mgmt. & Budget (Jan. 30, 2023), https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf [https://perma.cc/53L6-U8B4]; Arizona v. Mayorkas, 143 S. Ct. 1312, 1313 (2023) (statement of Gorsuch, J.) (explaining that the Court's order remanded the case "with instructions to dismiss the motion as moot").

[205] FY20–FY23 Nationwide Encounters, U.S. Customs & Border Prot., https://www.cbp.gov/document/stats/nationwide-encounters [https://perma.cc/C9MJ-2VAC] (last modified Feb. 13, 2024) (including nationwide data for Title 42 expulsions).

[206] At the end of fiscal year 2023, 194,427 individuals were supervised by various forms of electronic surveillance while going through immigration court proceedings, with the majority enrolled in a program known as SmartLINK that allows for supervision over a cell phone by relying on facial-recognition technology. U.S. Immigr. & Customs Enf't, Detention Management, https://www.ice.gov/detain/detention-management [https://perma.cc/BC5E-U9TM] (download "FY 2023 Detention Statistics") (last visited Mar. 5, 2024). See generally Mary Holper, Immigration E-Carceration: A Faustian Bargain, 59 San Diego L. Rev. 1, 2 (2022) (warning that the rise in electronic monitoring of noncitizens has "trade[d] the physical walls of jail for virtual walls"); Fatma E. Marouf, Alternatives to Immigration Detention, 38 Cardozo L. Rev. 2141, 2170 (2017) (outlining the compelling "financial and humanitarian policy reasons for expanding the use of alternatives to detention").

[207] Transactional Recs. Access Clearinghouse, Detained Immigrant Population Grows to Nearly 40,000, the Highest Point in Nearly Four Years (Nov. 16, 2023), https://trac.syr.edu/whatsnew/email.231116.html [https://perma.cc/ZH3B-ZA57] (reporting nearly 40,000 immigrants held in detention as of November 2023, the highest level since January 2020).

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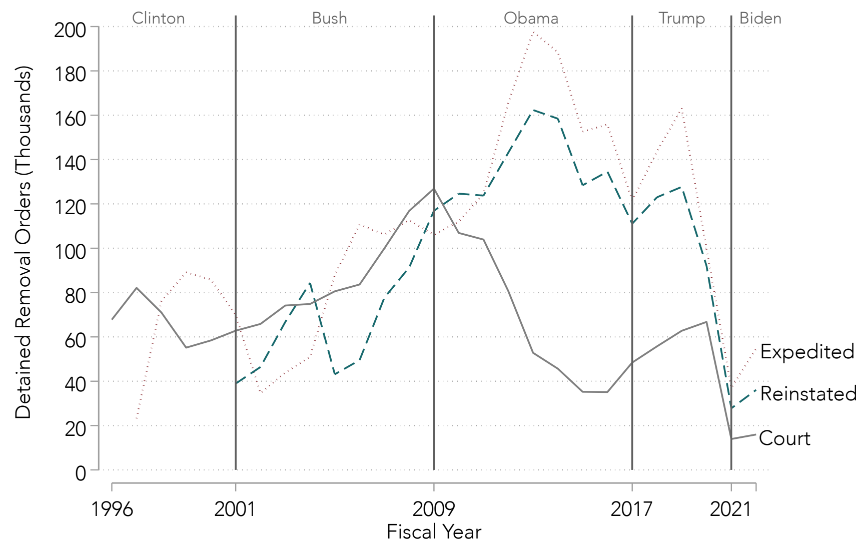
Figure 5. Detained Removal Orders, by Type (1996–2022)[208]



It is important to acknowledge that by centering our attention on judge-issued deportation orders, this Article concentrates on what immigration scholar Eisha Jain rightly describes as "the tip of a much larger enforcement pyramid."[209] As seen in Figure 5, beginning during the Bush Administration, and accelerating under the Obama Administration, formal judicial orders of removal issued in detention (marked with a solid line) were eclipsed by two summary forms of removal introduced by Congress in 1996 that do not involve immigration judges. The high dotted line in Figure 5 tracks the number of expedited removal orders issued each

[208] Data for detained immigration court removals in Figure 5 were calculated based on the authors' analysis of the EOIR data. Data for expedited and reinstated removals were gathered from the INS 2001 Statistical Yearbook, supra note 165, at 235, and the 2010, 2018, 2019, and 2022 fiscal year DHS publication of Immigration Enforcement Actions, https://www.dhs.gov/immigration-statistics/enforcement-actions [https://perma.cc/QDA2-KHHP]. Reinstated removals were not reported by the agency until 2001.

[209] Eisha Jain, The Interior Structure of Immigration Enforcement, 167 U. Pa. L. Rev. 1463, 1473 (2019). Jain builds on Alexandra Natapoff's helpful conception of the criminal legal system as a "penal pyramid." Id. at 1465 n.8 (citing Alexandra Natapoff, The Penal Pyramid, *in* The New Criminal Justice Thinking 79 (Sharon Dolovich & Alexandra Natapoff eds., 2017)); see also Shalini Bhargava Ray, Immigration Law's Arbitrariness Problem, 121 Colum. L. Rev. 2049, 2091 (2021) (identifying that, even within formal enforcement, there are a range of other "discretionary sanctions," meaning that "a sizeable share of the deportable population has received a punishment other than deportation for their status").

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year by DHS officers to summarily exclude certain migrants arriving at ports of entry or apprehended shortly after entry into the United States.[210] Following closely behind in Figure 5's dashed line are reinstated removal orders that law enforcement issued to summarily reactivate an earlier removal order.[211]

Finally, not marked on Figure 5 is the sizable number of noncitizens who, rather than receive a removal order, withdrew their application for admission or were otherwise expelled or turned back without a removal order. For example, although Figure 5 shows that the number of detained removal orders declined during the pandemic, in 2022, Customs and Border Patrol ("CBP") ordered more than one million expulsions under Title 42, greatly reducing the number of noncitizens processed through Title 8 authority.[212] As historical research by Adam Goodman, Deborah Kang, and K-Sue Park has shown, authorities have long relied on similar mechanisms to turn back migrants at the border and encourage those here to "self-deport."[213]

[210] INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). For additional background on the history of expedited removal and how it functions in practice today, see Lindsay Muir Harris, Withholding Protection, 50 Colum. Hum. Rts. L. Rev. 1, 19–41 (2019); Peter Margulies, The Boundaries of Habeas: Due Process, the Suspension Clause, and Judicial Review of Expedited Removal Under the Immigration and Nationality Act, 34 Geo. Immigr. L.J. 405, 413–22 (2020); Nancy Hiemstra, Detain and Deport: The Chaotic U.S. Immigration Enforcement Regime 55–57 (2019).

[211] INA § 241(a)(5), 8 U.S.C. § 1231(a)(5). See generally Jennifer Lee Koh, When Shadow Removals Collide: Searching for Solutions to the Legal Black Holes Created by Expedited Removal and Reinstatement, 96 Wash. U. L. Rev. 337, 356 (2018) ("Any person who was previously removed . . . and subsequently enters without permission, can be reinstated for removal.").

[212] Sean Leong, Off. of Homeland Sec. Stats., Dep't of Homeland Sec., Immigration Enforcement Actions: 2022 Annual Flow Report, at 15 (Nov. 2023), https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_enforcement_actions_fy2022.pdf [https://perma.cc/4TED-MJED].

[213] Adam Goodman, The Deportation Machine: America's Long History of Expelling Immigrants 4 fig.1 (2020) (tracking the number of voluntary returns as compared to formal deportation orders from 1892–2018); S. Deborah Kang, The INS on the Line: Making Immigration Law on the US-Mexico Border, 1917–1954, at 66 (2017) ("The bureau also tried to avoid deportation proceedings altogether by resorting to cheaper removal options such as voluntary departure and repatriation."); K-Sue Park, Self-Deportation Nation, 132 Harv. L. Rev. 1878, 1881 (2019) (unearthing how a range of actors, including states and municipalities, aimed to make life unbearable for immigrants so that they would "self-deport").

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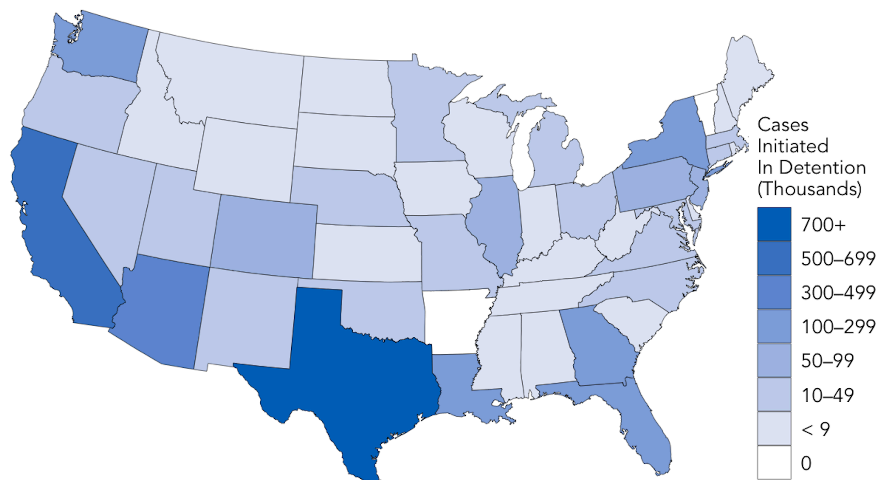
B. Where Are People Detained During Court Proceedings?

Although detained courts are now a dominant feature of immigration adjudication, the sites of detention associated with these courts have not been distributed equally across the United States. The map in Figure 6 displays the states where, between 1983 and 2022, more than 3.6 million people (*n* = 3,663,093) were detained when they began EOIR court proceedings.[214] The darkest blue color highlights Texas, where more than one million people (*n* = 1,036,192) were held when their court case began. No other state comes close to this size of an immigration prison system. Following Texas is California, which detained 640,203 people, concentrated in Southern California detention locations such as El Centro, Lancaster, Otay Mesa, and Adelanto. With 415,381 detained persons, Arizona was the third most active state.

Figure 6. Cases Initiated in Detention, by State of Detention Location (1983–2022)



A lighter shade of blue designates five states—Florida, Louisiana, Georgia, New York, and Washington—each with more than 100,000 new detained cases since 1983. Overall, every state in the nation except

[214] As Section IV.A discusses in more detail, the state where the noncitizen is detained can be different from the state where the judge sits. See also infra Appendix, Section B.

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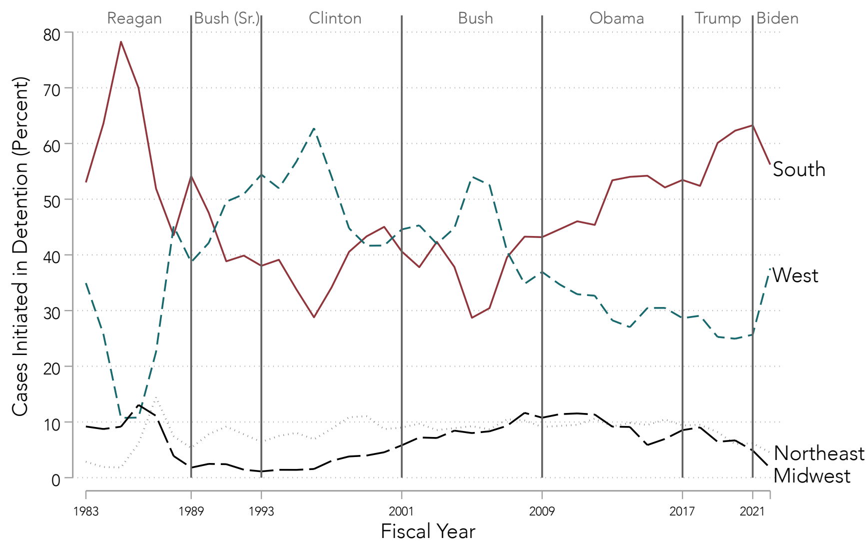
Arkansas and Vermont (marked in white) detained at least one person during their immigration court case. A small number of cases involved persons detained at their case initiation in locations not pictured in Figure 6: in Alaska (n = 764), Guam (n = 2,279), Hawaii (n = 5,179), the Northern Mariana Islands (n = 151), the Virgin Islands (n = 2,515), and Puerto Rico (n = 21,628).

Figure 7. Cases Initiated in Detention, by Detention Location (1983–2022)[215]



The geography of where people were detained during their court cases has also shifted over time. Figure 7 tracks these regional detention location trends, revealing that the South was the dominant site for immigration prisons connected to courts in the EOIR's early years, reaching as high as 78% of all newly initiated detentions in 1985. During

[215] Figure 7 divides the over 3.6 million cases initiated in detention between 1983 and 2022 into four geographic regions defined by the Census Bureau—South, West, Midwest, and Northeast. See U.S. Census Bureau, Census Bureau Regions and Divisions of the United States, https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf [https://perma.cc/N6TY-PJVL] (last visited Mar. 5, 2024). Cases initiated in detention in Guaynabo, Puerto Rico; Saipan, Northern Mariana Islands; and Hagåtña, Guam, were not included in this analysis.

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the Clinton Administration, the South fell behind the West, fueled by federal investment in regional enforcement initiatives such as Operation Gatekeeper (in San Diego, California) and Operation Safeguard (in Tucson, Arizona).[216]

By the start of the Obama Administration, the South had resurfaced as the regional leader in detention, supported by the opening of massive detention centers housing fully staffed immigration courts in Lumpkin, Georgia, and Jena, Louisiana.[217] President Trump continued the push to inaugurate more Southern detention facilities—such as the Adams County Correctional Center in Mississippi and the Catahoula Correctional Center in Louisiana—that were linked by video to immigration judges, rather than having on-site judges.[218] Southern states lent support to these detention efforts by passing subfederal "anti-sanctuary" laws that promote cooperation with federal immigration enforcement.[219] Meanwhile, the West's involvement in detention continued to decline, led by California's waning cooperation with federal immigration enforcement.[220]

Another salient dimension of the geography of detained adjudication is the placement of detained courts—particularly those co-located in prisons, jails, and detention facilities—outside of major cities. Focusing on removal cases completed since 2009, we find that 45% of detained cases (but only 2% of nondetained cases) were decided by courts located in rural locations and small cities.[221] This means that detained cases were

[216] See Joseph Nevins, Operation Gatekeeper and Beyond: The War on "Illegals" and the Remaking of the U.S.-Mexico Boundary 155–56 (2d ed. 2010).

[217] The Stewart Detention Center opened in 2006 and the LaSalle ICE Processing Center opened in 2007. Stewart Detention Center, CoreCivic, https://www.corecivic.com/facilities/stewart-detention-center [https://perma.cc/Y7HY-WX6L] (last visited Mar. 5, 2024); Jena Takes Care of Business, supra note 147.

[218] Noah Lanard, ICE Just Quietly Opened Three New Detention Centers, Flouting Congress' Limits, Mother Jones (July 9, 2019), https://www.motherjones.com/politics/2019/07/ice-just-quietly-opened-three-new-detention-centers-flouting-congress-limits/ [https://perma.cc/9KQ3-CJ7E].

[219] Pratheepan Gulasekaram, Rick Su & Rose Cuison Villazor, Anti-Sanctuary and Immigration Localism, 119 Colum. L. Rev. 837, 839–40 (2019).

[220] As Huyen Pham and Pham Hoang Van have found, during the period from 2005 to 2009 California became one of the most protective climates for immigrants in the nation. Huyen Pham & Pham Hoang Van, Measuring the Climate for Immigrants: A State-by-State Analysis, *in* Strange Neighbors: The Role of States in Immigration Policy 21, 22, 31 (Carissa Byrne Hessick & Gabriel J. Chin eds., 2014).

[221] 417,218 of 929,810 detained removal cases, compared to 38,359 of 1,844,459 nondetained removal cases. See infra Appendix, Table A.1.

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often heard in places far away from urban centers where lawyers, social services, and community-based groups are more plentiful.

Figure 8. Removal Cases Completed, by City Size of Immigration Court Location and Custody Status (2009–2022)[222]

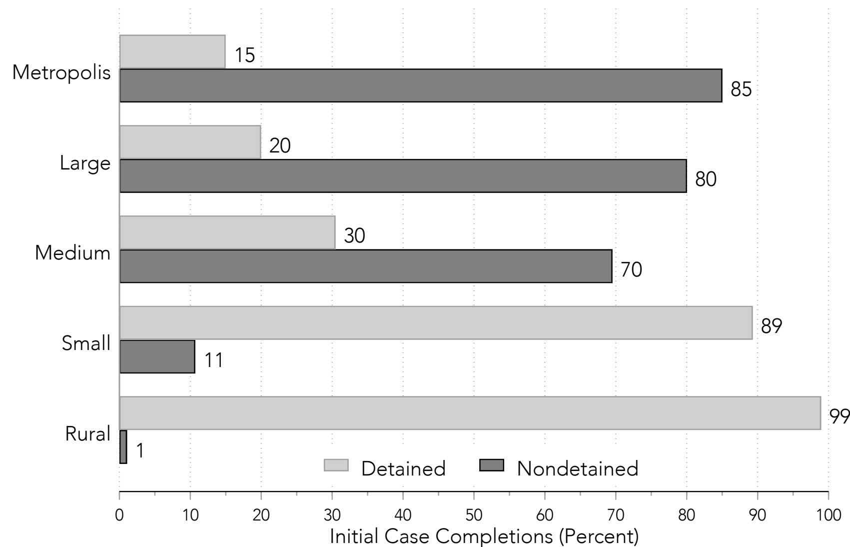

Figure 8 dives deeper into this analysis of court geography, showing that 99% of removals heard in rural areas reached their initial case completion in detention, as did 94% of cases heard in small cities. In contrast, 85% of cases in cities larger than one million inhabitants (metropolis) were not detained during their initial completion, as were 80% of those in cities larger than 600,000 inhabitants (large cities).

C. Who Is Subjected to Detained Adjudication?

Thus far we have described national trends in the geography of detained courts and the detention locations associated with these courts. Next, relying on available fields in the EOIR data, we provide a basic demographic picture of who has been subjected to detained court

[222] Figure 8 analyzes city size of each immigration court location. As described in the Appendix, we define rural location as populations up to 4,999 persons, small city as populations of 5,000 to 50,000, large city as populations of 600,000 to 999,999, and metropolis as populations of 1 million or more. See infra Appendix, Section B.

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proceedings—by nationality, gender, and age. Across all three of these dimensions, we find differences between detained and nondetained courts.

1. Nationality

From 1983 to 2022, almost nine in ten persons (88%) with cases initiated in detention were from Latin America. By comparison, 79% of those with cases initiated outside of detention were from Latin America. Slightly more than seven in ten persons (72%) with cases initiated in detention were from Mexico, Guatemala, El Salvador, or Honduras, whereas only half (53%) of persons with cases initiated outside of detention were from those countries. Finally, only two countries outside of Latin America were represented in the top 90% of detained case initiations: China (1.7%) and India (1.6%). In contrast, seventeen countries outside of Latin America were represented in the top 90% of nondetained case initiations, including China (3.7%), India (1.6%), Russia (0.77%), the Philippines (0.76%), and Pakistan (0.72%).

2. Gender

Although prior work has examined the presence of women in detention,[223] there is a paucity of research on gender in the context of court proceedings.[224] Fortunately, gender information has been regularly recorded by the EOIR since 2019, allowing for analysis.[225] Across

[223] See, e.g., Dora Schriro, U.S. Dep't of Homeland Sec., Immigration Detention Overview and Recommendations 27 (2009), https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf [https://perma.cc/RW5C-KR9G] (reporting that women were 9% of the detained population); Emily Ryo & Ian Peacock, A National Study of Immigration Detention in the United States, 92 S. Cal. L. Rev. 1, 23–24 tbl.1 (2018) (calculating that women were approximately 21% of the detained population in fiscal year 2015); Nina Rabin, Unseen Prisoners: Women in Immigration Detention Facilities in Arizona, 23 Geo. Immigr. L.J. 695, 702 (2009) (finding that "women now account for ten percent of the daily population detained by ICE").

[224] For one exception see Transactional Recs. Access Clearinghouse, The Impact of Nationality, Language, Gender and Age on Asylum Success (Dec. 7, 2021), https://trac.syr.edu/immigration/reports/668/ [https://perma.cc/T5V8-6NAV].

[225] See infra Appendix, Section C. It is important to acknowledge that EOIR's coding system only includes options for male and female, and therefore necessarily misgenders some respondents. Id. This data deficit is particularly concerning given reports of harsh treatment of transgender people in immigration detention and before detained immigration courts. See generally Adam Frankel, "Do You See How Much I'm Suffering Here?": Abuse Against

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removal cases initiated between 2019 and 2022 outside of detention, we find an almost even split between men/boys and women/girls (52% male versus 48% female).[226] Inside detention is where a gendered pattern emerges: women and girls were only 23% of cases initiated in detention, while 77% were men and boys.[227]

The frequency of women's appearance within detained courts also varied by court program. The percentage of females was the highest in the MPP, where 40% of detained case completions were women and girls. By comparison, women were only 9% of case completions in ICE detention and 7% of case completions in the prison-based IHP.

3. Unaccompanied Children

Finally, we investigate the extent to which children unaccompanied by an adult had their cases decided in detention.[228] In the early 2000s, the EOIR began to hold dedicated juvenile dockets in select urban courts.[229] Within the juvenile docket system, courts further separated the cases of

Transgender Women in US Immigration Detention, Hum. Rts. Watch (2016), https://www.hrw.org/report/2016/03/23/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us [https://perma.cc/AS6G-QVR9] (documenting the experiences of transgender women in immigration prisons); Trans National Migration, Reveal News (Apr. 6, 2019), https://revealnews.org/podcast/trans-national-migration/ [https://perma.cc/SM3T-K3K9] (discussing the treatment of transgender women by immigration judges).

[226] 635,622 of 1,321,531 removal cases initiated outside detention for which gender information was available were coded as female.

[227] 76,992 of 334,537 removal cases initiated in detention for which gender information was available were coded as female.

[228] Pursuant to a 1997 consent decree, unaccompanied children who are not released to a parent or sponsor may only be placed in a non-secure custodial setting. Reno v. Flores, 507 U.S. 292, 311 (1993); Smith, supra note 191, at 2. With the passage of the Homeland Security Act in 2002, responsibility for the care of unaccompanied children was transferred from the INS to the Office of Refugee Resettlement, an agency within the Department of Health and Human Services. Laila L. Hlass, States and Status: A Study of Geographical Disparities for Immigrant Youth, 46 Colum. Hum. Rts. L. Rev. 266, 275 (2014). For background on the harsh treatment of children in the immigration system, see Michael A. Olivas, Unaccompanied Refugee Children: Detention, Due Process, and Disgrace, 2 Stan. L. & Pol'y Rev. 159, 159–62 (1990); David B. Thronson, Thinking Small: The Need for Big Changes in Immigration Law's Treatment of Children, 14 U.C. Davis J. Juv. L. & Pol'y 239, 240 (2010); Chiara Galli, Precarious Protections: Unaccompanied Minors Seeking Asylum in the United States 68–99 (2023).

[229] Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Fact Sheet: Unaccompanied Alien Children in Immigration Proceedings (revised Apr. 22, 2008), https://www.justice.gov/sites/default/files/eoir/legacy/2008/04/24/UnaccompaniedAlienChildrenApr08.pdf [https://perma.cc/3KL4-U6EA].

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children who were detained from those of children who were not detained.[230]

For the period from 2007 to 2022, 13,053 unaccompanied children were detained throughout their court case, representing 1% of overall detained initial case completions during this time (*n* = 1,157,646).[231] In contrast, 145,879 unaccompanied minors completed their proceedings outside of detention, accounting for 7% of all nondetained initial completions (*n* = 2,040,427). Approximately three-fourths (72%) of these detained youth were from Guatemala, Honduras, and El Salvador (*n* = 9,425), and 24% were from Mexico (*n* = 3,134).[232] Although almost every urban detained court decided at least one case of an unaccompanied detained child, three-fourths of these cases were heard in eight cities: San Antonio, Harlingen, El Paso, New York, Phoenix, Houston, Chicago, and Annandale.

D. What Charges Do People Face in Detained Courts?

According to Jonathan Xavier Inda, "[t]he targeting of criminal offenders for removal has become one of the central priorities of contemporary immigration enforcement . . . ."[233] The emphasis on crime-based removal has been reinforced by changes in the law, such as the expansion of controlled substance grounds of exclusion and deportation in 1986 and the invention of an "aggravated felony" deportation ground in 1988.[234] Criminal grounds of detention and removal were further expanded in 1996 with the Antiterrorism and Effective Death Penalty Act ("AEDPA") and Illegal Immigration Reform and Immigrant

[230] For example, Seattle divided its juvenile cases onto two dockets, one called "Detained Juveniles at Government Expense" and the other called "Seattle Non-Detained Juveniles." See 2022 Hearing Location Lookup Table, FOIA Library, infra note 352.

[231] See infra Appendix, Section C.

[232] By comparison, more than nine in ten nondetained unaccompanied minors were from these Northern Triangle countries (*n* = 135,241), and only 4% hailed from Mexico (*n* = 5,395).

[233] Jonathan Xavier Inda, Subject to Deportation: IRCA, 'Criminal Aliens', and the Policing of Immigration, 1 Migration Stud. 292, 292 (2013).

[234] See Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1751(a)–(d), 100 Stat. 3207, 3247–48 (codified as amended at INA §§ 212(a)(2), 237(a)(2); 8 U.S.C. §§ 1182(a)(2), 1227(a)(2)) (expanding the controlled substance grounds for exclusion and deportation); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, §§ 7342, 7344, 102 Stat. 4181, 4469–71 (codified as amended at INA § 237(a)(2)(A)(iii); 8 U.S.C. § 1227(a)(2)(A)(iii)) (making conviction of an "aggravated felony" a ground for deportation).

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Responsibility Act ("IIRIRA").[235] Since that time, the government has consistently declared immigrants with criminal convictions to be the highest priority for detention and deportation.[236]

Figure 9 categorizes each detained immigration case based on whether the charge faced in immigration court was "criminal" (meaning based on a criminal conviction, such as an aggravated felony) or "civil" (meaning based on a civil violation of the immigration law, such as entry without inspection). In practice, someone could face a civil charge and still have a criminal conviction on their record, but these general trends of criminal versus civil charges are still useful—and striking. Figure 9 shows that criminal charges in detained immigration courts increased sharply after the first Anti-Drug Abuse Act ("ADAA") went into effect in 1987.[237] However, this trend reversed following the 1996 immigration reforms: cases involving only civil charges have soared, while cases with criminal charges have plummeted.

[235] See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 440(e), 110 Stat. 1214, 1277–78 (codified as amended at INA § 101(a)(43); 8 U.S.C. § 1101(a)(43)) (expanding the categories of "aggravated felonies"); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, §§ 303(a), 321(a), 110 Stat. 3009-546, 3009-585, 3009-627–28 (codified as amended at INA §§ 101(a)(43), 236(c); 8 U.S.C. §§ 1101(a)(43), 1226(c)) (creating mandatory detention grounds for criminal convictions and adding to the list of aggravated felonies).

[236] See generally Ming H. Chen, Administrator-in-Chief: The President and Executive Action in Immigration Law, 69 Admin. L. Rev. 347, 393 (2017) (discussing the Obama Administration's efforts to focus enforcement on "criminal aliens"); David K. Hausman, The Unexamined Law of Deportation, 110 Geo. L.J. 973, 1003–04 (2022) (outlining the government's prioritization of immigrants convicted of crimes for deportation); Angélica Cházaro, Challenging the "Criminal Alien" Paradigm, 63 UCLA L. Rev. 594, 607 (2016) (discussing the Obama Administration's immigration enforcement efforts focused on "felons, not families"); Shalini Bhargava Ray, Abdication Through Enforcement, 96 Ind. L.J. 1325, 1346 (2021) (describing how enforcement discretion has been applied to emphasize immigrants "with serious criminal convictions," while deprioritizing those with "no criminal convictions" and other equities).

[237] See supra note 234.

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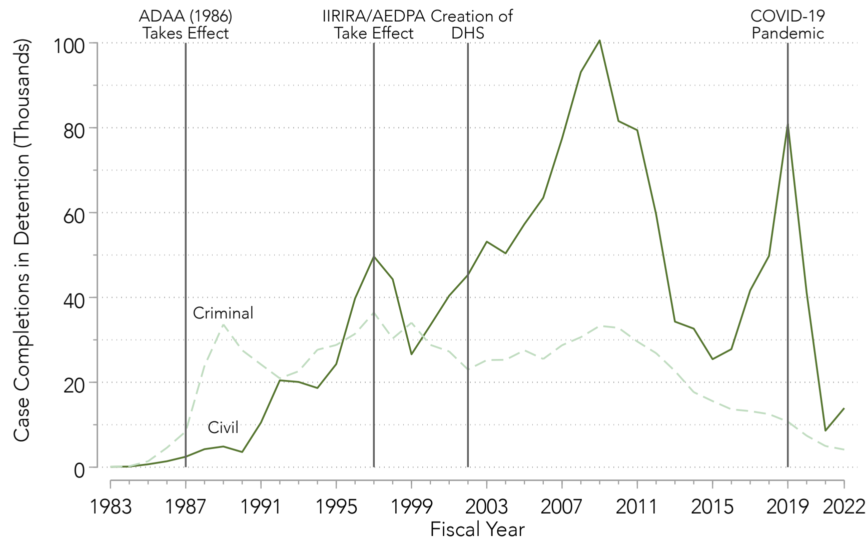
Figure 9. Removal, Deportation, and Exclusion Cases Completed in Detention, by Charge Type (1983–2022)[238]



What might account for the relative decline in criminal charges in detained immigration courts? First, changes in law inform these trends. Since 1994, the immigration law has allowed certain individuals with aggravated felony convictions to be deported without a court hearing.[239] The government has not released comprehensive data on how many of these crime-based removals have taken place in lieu of court proceedings, but available data report 12,758 such orders in 2010,[240] and 9,217 in 2013.[241] In addition to administrative removals, the rise in expedited

[238] Figure 9 includes removal, deportation, and exclusion cases completed in detention since 1983, classified by charge type. See infra Appendix, Section E. Under the immigration law in place prior to April 1, 1997, there were two major proceeding types in immigration court: those seeking entry were placed in exclusion proceedings, while those present on United States soil were placed in deportation proceedings. IIRIRA erased this distinction and created a new unified system called "removal proceedings." Exec. Off. for Immigr. Rev., U.S. Dep't of Just., 7.2—Deportation Proceedings and Exclusion Proceedings, Immigration Court Practice Manual, https://www.justice.gov/eoir/reference-materials/ic/chapter-7/2 [https://perma.cc/H63J-QST5] (last visited Mar. 26, 2024).

[239] See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 130004(b), 108 Stat. 1796, 2027–28 (codified at INA § 238(b), 8 U.S.C. § 1228(b)).

[240] Benson & Wheeler, supra note 176, app. 9 at 136.

[241] Shoba Sivaprasad Wadhia, The Rise of Speed Deportation and the Role of Discretion, 5 Colum. J. Race & L. 1, 3 (2014).

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removal since 1997 has also meant that fewer individuals with criminal convictions reach the immigration courts.[242] Second, shifts in enforcement priorities can shape the charging patterns seen in Figure 9. As Fatma Marouf has shown, when the government shifts resources away from interior enforcement toward border enforcement, more individuals will face civil inadmissibility grounds as they are apprehended while seeking entry.[243] Similarly, interior-enforcement programs inform the types of charges that end up in detained courts. For example, IIRIRA's § 287(g) program, which empowered state and local police to enforce immigration law, has been associated with a rise in enforcement against those with no criminal record.[244] Or consider the Trump Administration's decision to abandon prosecutorial discretion and make "everyone a priority," thus softening the emphasis on crime-based enforcement.[245]

In summary, Part III has traced the gradual expansion of detained immigration courts since the EOIR was established in 1983, fueled largely by the growth of detained courts and detention facilities in the South. These courts tied to detention have swept up mainly Mexican and Central American men, but women and children have also been detained as they proceed through the legal system. Finally, despite the proliferation of criminal grounds for removal, most persons detained throughout their court cases faced only civil removal charges.

IV. STRUCTURAL DISADVANTAGE

By conceptualizing detained immigration courts as a separate court system, this Article invites investigation into how the two immigration

[242] See generally Immigr. & Naturalization Serv., U.S. Dep't of Just., 2000 Statistical Yearbook of the Immigration and Naturalization Service 235 (Sept. 2002), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2000.pdf [https://perma.cc/UW6L-XTQG] (noting that the "distribution" of criminal removal cases changed after 1998 "because of the large number of expedited removal cases").

[243] Fatma Marouf, Regional Immigration Enforcement, 99 Wash. U. L. Rev. 1593, 1618 (2021).

[244] See generally Schriro, supra note 223, at 12 (reporting that by 2008, more than two-thirds of individuals referred to ICE through the § 287(g) program had no criminal record). As of February 2024, 136 agreements between ICE and law enforcement agencies were in effect. Immigr. & Customs Enf't, Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, https://www.ice.gov/identify-and-arrest/287g [https://perma.cc/38LN-F8X5] (last updated Feb. 29, 2024).

[245] Ray, supra note 236, at 1354. As Shalini Ray has argued, when every potentially deportable person is made a priority of immigration enforcement, the president effectively abdicates his supervisory role, producing what Ray calls "abdication through enforcement." Id. at 1329, 1358.

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courts diverge. Part IV takes on this task by identifying design aspects of the detained courts that are not present in the nondetained courts: increased government control over court assignment, a separate corps of judges that is decidedly more male and likely to have military or prosecutorial experience, limited access to counsel, sped-up case timelines, remote geography, and depressed public access to courts. Together these distinctive features of the detained courts operate to create a segregated court system that threatens due process and fundamental fairness. We begin by discussing how the government exerts de facto control over the court that hears detained immigration cases.

A. Transfer and Venue

Technically, DHS always has the authority to determine which regional immigration court will handle an immigrant's case.[246] In practice, however, cases pending in the nondetained courts generally proceed in the immigration court closest to where the noncitizen resides.[247] In contrast, for noncitizens who are detained, DHS's unchecked authority to determine which regional detained court will handle the court case means that DHS can control the selection of court by choosing the detention location linked by the EOIR to that particular hearing location.

DHS's unbridled power to arrest and "arrange for [an] appropriate place[] of detention,"[248] has resulted in the frequent transfer of persons to

[246] Robert C. Divine, Immigration Practice 232 (1994) ("INS has the discretion to file an exclusion or deportation case anywhere in the U.S.—often nearest the INS agent who may testify—regardless of where the alien lives. It is up to the alien to move to change venue.").

[247] Although many noncitizens live near the available urban nondetained courts, in some instances the closest court is a considerable distance away. For example, individuals residing in Alabama, where there is no nondetained court, must appear in the New Orleans immigration court. Valeria Gomez, Geography as Due Process in Immigration Court, 2023 Wis. L. Rev. 1, 22.

[248] INA § 241(g)(1), 8 U.S.C. § 1231(g)(1). Federal courts have interpreted this provision to mean that the Attorney General has the power to transfer noncitizens from one detention location to another. César Cuauhtémoc García Hernández, Due Process and Immigrant Detainee Prison Transfers: Moving LPRs to Isolated Prisons Violates Their Right to Counsel, 21 Berkeley La Raza L.J. 17, 22 (2011) (citing Avramenkov v. I.N.S., 99 F. Supp. 2d 210, 213 (D. Conn. 2000)). But see Adrienne Pon, Note, Identifying Limits to Immigration Detention Transfers and Venue, 71 Stan. L. Rev. 747, 753 (2019) (questioning the "precise source" of authority for the government's claim that "it has complete control over *where* to detain" noncitizens).

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detention facilities, often far away from the location of initial arrest.[249] According to one study, between 1998 and 2010, 40% of detained persons were transferred between detention facilities at least once. The average distance of transfer was 370 miles.[250] These transfers are typically justified as allowing authorities to shift noncitizens to facilities with sufficient bed space.[251] But research has shown that transfers can also be used in ways that are retaliatory and punish migrants who secure counsel or protest detention conditions.[252]

Transfers in immigration detention are not only common, but they can also occur before the charging document, known as the Notice to Appear ("NTA"), is filed in immigration court.[253] And, unlike in the criminal

[249] As the Office of the Inspector General for DHS has confirmed, ICE often "transfer[s] a detainee from the jurisdiction where the detainee was arrested to a detention facility outside of that jurisdiction," and then initiates proceedings in the receiving jurisdiction. Off. of Inspector Gen., U.S. Dep't of Homeland Sec., OIG-10-13, Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers 2 (2009), https://www.hsdl.org/?view&did=31578 [https://perma.cc/C3SS-CM3C].

[250] Hum. Rts. Watch, A Costly Move: Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States 1 (2011), https://www.hrw.org/sites/default/files/reports/us0611webwcover_0.pdf [https://perma.cc/W7KE-8UTH].

[251] See, e.g., Nat'l Rsch. Council, Budgeting for Immigration Enforcement: A Path to Better Performance 67 (Steve Redburn, Peter Reuter & Malay Majmundar eds., 2011) ("Because of the availability of detention space in El Paso, immigration judges are hearing the cases of detainees who have been brought in from other parts of the country, including from California and New York."); U.S. Dep't of Homeland Sec., Fact Sheet: ICE Accomplishments in Fiscal Year 2006, at 2 (Oct. 30, 2006), https://www.hsdl.org/?view&did=476044 [https://perma.cc/8ZXE-K97G] (explaining that ICE "monitor[s] detained dockets across the county in order to shift cases from field offices with limited detention space to those with available detention space").

[252] Freedom for Immigrants, Trafficked & Tortured: Mapping ICE Transfers (2023), https://www.freedomforimmigrants.org/trafficked-and-tortured-report [https://perma.cc/6YZ8-YYJW] (documenting how ICE has engaged in transfers as a form of retaliation in order to "sever ties, communications, and collaborations"); Shull, supra note 23, at 155, 175 (providing the historical example of the transfer of Haitians in the 1980s as "a form of punishment intended to separate Haitians from legal aid" and to silence those "identified as agitators or 'troublemakers'").

[253] Removal proceedings formally commence when DHS files the charging document with the immigration court. 8 C.F.R. § 1003.14(a) (2023). See generally Kit Johnson, *Pereira v. Sessions*: A Jurisdictional Surprise for Immigration Courts, 3 Colum. Hum. Rts. L. Rev. 1, 3 (2018) (explaining the jurisdiction vesting rules); Hum. Rts. Watch, Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States 2 (2009), https://www.hrw.org/sites/default/files/reports/us1209webwcover_0.pdf [https://perma.cc/3Y63-L9HU] (detailing how transfers between detention locations are subject to few, if any, checks, and are rapidly increasing).

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system,[254] there is no statutory time limit for filing the NTA to initiate court proceedings after arrest.[255] The end result is that law enforcement may effectively designate any detention facility—and its associated immigration court—to exercise jurisdiction over a detained person.[256]

By waiting to file the NTA with the immigration court until the individual is in the receiving jurisdiction, the federal circuit law of the chosen receiving jurisdiction will apply.[257] Thus, detained court selection

[254] For example, in the federal criminal system, an arrestee must be brought "without unnecessary delay before a magistrate judge" for an initial appearance after arrest. Fed. R. Crim. P. 5(a)(1).

[255] Pon, supra note 248, at 754 ("In practice, however, there is no formal deadline, and ICE can wait days—even weeks—before filing the NTA with an immigration court, giving ICE time to transfer detainees."). But see Vazquez Perez v. Decker, No. 18-cv-10683, 2020 WL 7028637, at *18 (S.D.N.Y. Nov. 30, 2020) (concluding that "the Due Process Clause of the Fifth Amendment requires that initial master calendar hearings for any [noncitizen arrested by ICE's New York Field Office] held within 10 days" following arrest); Cancino Castellar v. McAleenan, 388 F. Supp. 3d 1218, 1238, 1244 (S.D. Cal. 2019) (rejecting defendants' motion to dismiss due process and APA claims challenging delays in presenting individuals detained in Southern California to immigration judges).

[256] In contrast to the immigration system, jurisdiction in the state criminal system generally lies with the local court where the crime occurred. See Charles Doyle, Cong. Rsch. Serv., RL33223, Venue: A Legal Analysis of Where a Federal Crime May Be Tried 1 (2018), https://sgp.fas.org/crs/misc/RL33223.pdf [https://perma.cc/2V6G-UR6Q]. Similarly, as Peter Markowitz and Lindsay Nash have shown, civil court systems generally require "that plaintiffs bring civil actions in the district where a defendant resides, is present, or in an area related to the underlying dispute." Peter L. Markowitz & Lindsay C. Nash, Constitutional Venue, 66 Fla. L. Rev. 1153, 1183 (2014). As Emma Kaufman has documented, transfers of persons to different correctional facilities do take place in the criminal system, but generally after conviction. Emma Kaufman, The Prisoner Trade, 133 Harv. L. Rev. 1815, 1818–20, 1843 (2020).

[257] Matter of Garcia, 28 I. & N. Dec. 693, 703 (B.I.A. 2023) (finding that "jurisdiction presumptively vests at the Immigration Court where the charging document is filed" and "may only be changed where an Immigration Judge grants a motion to change venue"); accord Sarr v. Garland, 50 F.4th 326, 331 (2d Cir. 2022) (finding that when the NTA was filed with the detained court in Jena, Louisiana, venue was proper in the U.S. Court of Appeals for the Fifth Circuit even though a judge sitting in New York decided the case); Bazile v. Garland, 76 F.4th 5, 14 (1st Cir. 2023) (finding that when the NTA was filed with the detained court in Boston, venue was proper in the U.S. Court of Appeals for the First Circuit even though a judge sitting in the Fort Worth immigration adjudication center decided the case). As the BIA noted in *Matter of Garcia*, however, "due to the administrative realities of Immigration Court practice, and the volume of cases before the Immigration Courts," sometimes the charging document is filed in a jurisdiction different from where proceedings commence, causing continued uncertainty in the applicable circuit law. Matter of Garcia, 28 I. & N. Dec. at 703. For a summary of competing approaches to what circuit law should apply prior to *Matter of Garcia*, see Ben Winograd, Anam Rahman & Michael Vastine, *Matter of Garcia*, 28 I & N Dec. 693 (BIA 2023): The Good, The Bad, and The Unresolved, at 447–49 (2023) (on file with author).

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may be used strategically by the government to control not just court selection, but also the circuit law that applies to detained cases.[258] Because federal circuits vary widely in their interpretations of the immigration law, choice of circuit law can be outcome determinative.[259] For example, in the wake of former Attorney General Jeff Session's decision in *Matter of A-B-*, circuit courts of appeals differed in their interpretation, with the U.S. Court of Appeals for the Ninth Circuit finding it did not change the existing particular social group analysis in asylum cases, while the U.S. Courts of Appeals for the Second, Fifth, and Eleventh Circuits "adopted a heightened review standard for particular social group cases, especially those based on domestic violence, family membership, or gang membership."[260] Empirical work by Patrick Kennedy has shown that judges sitting in circuits interpreting the *Matter of A-B-* decision more strictly experienced a greater drop in asylum grant rates.[261]

Relying on the EOIR data, we find that different detained court locations—each with its own mix of judges and varying circuit precedent—are associated with different case outcomes. For example, Texas detained immigration courts released 49% of respondents and New Jersey released 44%, whereas only 8% were released in Oklahoma and 15% in Georgia.[262] The different detained courts have also had disparate levels of asylum filings: from lows of 3% of respondents seeking asylum in El Paso and Harlingen and 4% in Ulster, to highs of 46% of respondents

Notably, the U.S. Court of Appeals for the Fourth Circuit has held that venue lies in the physical location where the judge sat (a Falls Church immigration adjudication center) rather than where the respondent appeared for the hearing (a Louisiana correctional facility) or where the charging document was filed. Herrera Alcala v. Garland, 39 F.4th 233, 241–42 (4th Cir. 2022).

[258] INA § 242(b)(2), 8 U.S.C. § 1252(b)(2) (providing that a petition for review "shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings"); Matter of Garcia, 28 I. & N. Dec. at 698–702 (explaining that the circuit's law applies on review before the circuit court of appeals, as well as at level of the immigration court and BIA); see also Am. Immigr. Laws. Ass'n & CAIR Coalition, Representing Detained Clients in the Virtual Legal Landscape 12 (2023) (arguing that "in the detained context, *Matter of Garcia* gives the government an unfair advantage in choosing applicable law").

[259] Sabrina Balgamwalla, ICE Transfers and the Detention Archipelago, 31 J.L. & Pol'y 1, 4 (2022) (explaining that ICE transfers pose challenges, in part because different federal jurisdictions "take radically different approaches to the interpretation of immigration law").

[260] Patrick Kennedy, Diffusion of Soft Immigration Law: Evidence from Asylum Adjudication in the Wake of *Matter of A-B-*, 83 Mont. L. Rev. 41, 42 (2022).

[261] Id. at 64–66, 66 tbl.4.

[262] See infra Appendix, Figure A.1 (measuring release rates by state in the pre-pandemic period of 2009 to 2018).

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in Otay Mesa and 49% in Imperial.[263] Similarly, grant rates in asylum cases varied markedly by court location: ranging from lows of 2% in Atlanta and 0% in Harlingen to highs of 39% in Chicago and 31% in San Antonio.[264] Location was also associated with different rates of removal in the detained courts: from 56% in San Diego, to 65% in San Antonio and 98% in Oakdale.[265] Such wide fluctuations no doubt reflect variation in a range of factors—including contrasting approaches by judges and ICE officers in distinct court communities[266]—what Stephen Manning and Juliet Stumpf call the "immigration adjudication ecosystem."[267]

B. Judicial Specialization

Specialization among judges is often thought to be prudent in administrative contexts like immigration where there is a complex statutory scheme, a need for efficiency in deciding large numbers of cases, and a desire for national uniformity in decision-making.[268] At the same time, scholars agree that too much specialization can come with drawbacks, such as dangerous accumulation of bias and adoption of substandard practices that depart from mainstream courts.[269] While immigration courts are certainly a specialized type of court, the emergence of detained courts as a separate institutional form raises the specter of hyperspecialization within the corps of immigration judges. As Edward Cheng warned in his influential study of specialization within the federal courts of appeals, if federal judges were to siphon off all criminal law appeals to judges with a former prosecutor background, "[r]egardless of one's political leanings, this lopsided situation is almost unquestionably undesirable."[270]

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[263] Id., Table A.4 (measuring initial case completions between 2016 and 2022).

[264] Id.

[265] Id.

[266] Asad, supra note 32, at 1224–27.

[267] Stephen Manning & Juliet Stumpf, Big Immigration Law, 52 U.C. Davis L. Rev. 407, 413 (2018).

[268] Richard L. Revesz, Specialized Courts and the Administrative Lawmaking System, 138 U. Pa. L. Rev. 1111, 1116–17 (1990); Rochelle Cooper Dreyfuss, Specialized Adjudication, 1990 BYU L. Rev. 377, 378.

[269] Rochelle Cooper Dreyfuss, The Federal Circuit: A Case Study in Specialized Courts, 64 N.Y.U. L. Rev. 1, 3 (1989).

[270] Edward K. Cheng, The Myth of the Generalist Judge, 61 Stan. L. Rev. 519, 560 (2008).

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Table 1. Judge Characteristics, by Respondent Custody Status (2013–2022)

	Respondent Custody Status	
Immigration Judge Characteristic	Detained	Nondetained
Male	69%	56%
DHS Attorney	62%	51%
Local, State, or DOJ Prosecutor	45%	36%
Military Service	23%	15%
Nonprofit / Public Defender	13%	15%
Law School (Top 40)	15%	27%
Law School (Outside Top 100)	48%	40%
Total n (Initial Case Completions)	*441,632*	*1,446,350*

Note—All differences significant at $p < .01$ (two-tailed difference of proportions test).

Analyzing initial case completions in removal cases over the ten years between 2013 and 2022, we find a troubling sorting in the background of judges across the detained and nondetained courts.[271] As summarized in Table 1, persons who were detained were more likely than those who were not detained to have their case decided by a male judge (69% versus 56%), as well as by a judge with military experience (23% versus 15%), prior service as a DHS attorney (62% versus 51%), and prior experience as a criminal prosecutor for a locality, state, or the DOJ (45% versus 36%). Detained persons were also less likely to have a judge who attended a top-forty law school (15% versus 27%).[272] While it is beyond the scope of this Article to evaluate how judicial background informs decision-making, other scholars have found judges with the characteristics we find associated with detained judges—such as male judges and those with DHS experience—were more likely to order deportation and less likely to grant relief such as asylum.[273]

[271] Part D of the Appendix describes the steps we took to identify active judges during the relevant time period and gather biographical background information on each judge.

[272] For a discussion of the important criticism of the *U.S. News & World Report* rankings that led many law schools to no longer participate in the ranking process, see Elie Mystal, Is the *U.S. News* Ranking System Finally Starting to Crumble?, Nation (Nov. 18, 2022).

[273] For example, Ramji-Nogales et al., supra note 28, at 342–43, found that female immigration judges granted asylum in 53.8% of cases, compared to a rate of only 37.3% for male judges. The same study also found that judges with work experience in the military, INS, DHS, or the government were less likely to grant asylum cases. For more discussion, see Ryo & Peacock, supra note 29, at 634 (finding that female judges were more likely than male

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Various aspects of the hiring and assignment process may contribute to the divergence between detained and nondetained judge backgrounds identified in Table 1. Importantly, the EOIR's merit-based hiring system[274] generally requires job candidates to apply to the specific court location where a job opening exists.[275] Candidates with prior experience in sites of detention (such as trial attorneys for DHS) may be more likely to apply to detained court assignments, while candidates without such experience may find detained court locations undesirable and choose not to apply. Additionally, detained courts in remote locations likely have smaller applicant pools.[276] Political influence over later promotions and assignments of judges could further contribute to the differences we identify.[277] For example, the Attorney General retains the authority to

judges to grant relief in cases of represented litigants); Chand et al., supra note 29, at 189 ("Female judges tend to have grant rates roughly six percentage points higher than their male colleagues when taking into account the judges' other individual level characteristics."); Mica Rosenberg, Reade Levinson & Ryan McNeill, They Fled Danger at Home to Make a High-Stakes Bet on U.S. Immigration Courts, Reuters (Oct. 17, 2017, 1:00 PM), https://www.reuters.com/investigates/special-report/usa-immigration-asylum/ [https://perma.cc/T6YL-SSW7] (concluding that judges with prior experience as ICE prosecutors were 23% more likely to order deportation).

[274] Memorandum from Michael E. Horowitz, Inspector Gen., to Lisa O. Monaco, Deputy Att'y Gen. & David L. Neal, Dir., Exec. Off. for Immigr. Rev., U.S. Dep't of Just., 1–2 (Mar. 30, 2022), https://oig.justice.gov/sites/default/files/reports/22-061.pdf [https://perma.cc/A5SS-XX54] (explaining that, pursuant to the Civil Service Reform Act of 1978, immigration judge "positions are nonpolitical, career positions subject to merit system principles").

[275] See, e.g., Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Make a Difference: Apply for an Immigration Judge Position, https://www.justice.gov/eoir/Adjudicators [https://perma.cc/GWY8-KL8D] (last updated Dec. 1, 2023) ("Apply only for locations that you are serious about and where you will actually accept an offer. Do not apply for every location that is open, thinking it will help you get an interview and that you will be able to select only the location you really want later. . . . If you are insincere about the locations you indicated, you may get selected for a location you do not want."); Memorandum from James R. McHenry III, Dir., Exec. Off. for Immigr. Rev., to Att'y Gen., Tab A, at 4 (Feb. 19, 2019), https://www.justice.gov/eoir/page/file/1280781/download [https://perma.cc/F3UH-VFCA] ("Before reviewing applications, EOIR will post a general vacancy announcement seeking applications for [Immigration Judge] or Appellate Immigration Judge positions, noting the cities in which positions are available and directing applicants to identify the cities where they would be willing to serve.").

[276] Scholars have highlighted that specialized courts may have a harder time attracting lawyers to serve, especially when the position is isolated, handles high volumes of matters, and involves repetitive judicial tasks. Dreyfuss, supra note 268, at 381.

[277] Although politicized hiring for the career position of immigration judges is prohibited, over the years there have been allegations of judge hiring that bypasses the normal selection process and otherwise gives more selection control to political appointees. See, e.g., Off. of Pro. Resp. & Off. of the Inspector Gen., U.S. Dep't of Just., An Investigation of Allegations

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transfer judges from one court to another "as necessary to fulfill the Department's mission."[278] In the past, this power has been used to deploy select judges to detained courts to strategically expedite case processing.[279]

Another way to observe the increasing segregation of the immigration judge corps is by examining judge assignments between 2013 and 2022. Of the 772 active judges during this ten-year period, 12% ($n = 90$) handled almost exclusively cases in detained courts, whereas 55% ($n = 425$) handled almost exclusively cases in nondetained courts.[280] In other words, almost seven out of ten judges practiced nearly exclusively in a detained or nondetained court. This splintering of immigration judges between the detained and nondetained courts makes a material difference in their daily work. For example, detained judges handled a smaller proportion of removal cases with relief claims such as asylum (20% versus 39%),[281] and were less likely to schedule trial-like hearings (29% versus 45%).[282] As a result, detained judges were less frequently called on to hear testimony, weigh credibility, or decide complex legal issues. The isolation of detained judges can also mean that there is less of an audience to bear witness to improper judicial behavior.[283] And, as we address next, the fact

of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General (July 2008), https://oig.justice.gov/sites/default/files/legacy/special/s0807/final.pdf [https://perma.cc/6A3U-86N7].

[278] Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 Fed. Reg. 54878, 54893 (Aug. 26, 2002).

[279] Julia Preston, Lost in Court: A Visit to Trump's Immigration Bedlam, The Marshall Project (Jan. 19, 2018, 6:00 AM), https://www.themarshallproject.org/2018/01/19/lost-in-court [https://perma.cc/Z6WX-SH8S] (describing how under President Trump immigration judges were dispatched to detention centers on the border to "speed up immigration court decisions on those cases and facilitate swift deportations").

[280] The remaining judges split their time between detained and nondetained courts. For instance, especially during the pandemic when the number of detained cases declined precipitously, some judges were reassigned from a detained to a nondetained court.

[281] Among initial case completions in removal proceedings between 2013 and 2022 (excluding those in the MPP), 88,091 of 441,632 detained respondents had an application for asylum, withholding of removal, or protection under the convention against torture on file, compared to 559,986 of 1,446,350 for nondetained respondents.

[282] Among initial case completions in removal proceedings between 2013 and 2022 (excluding those in the MPP), 129,502 of 441,632 detained respondents had an individual hearing scheduled, compared to 651,566 of 1,446,350 for nondetained respondents.

[283] See, e.g., Eagly, supra note 107, at 997 (observing a detained immigration judge in Huntsville, Texas laughing and calling immigrants in the IHP program appearing before him "my little prisoners"); Letter from S. Poverty L. Ctr. & Hum. Rts. First to Juan P. Osuna, Dir.,

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that the lion's share of detained cases proceeds without counsel to challenge the government's position accentuates these dynamics and could lead detained judges to grow to devalue the cases of detained litigants.[284]

C. Access to Counsel

There is no right to counsel at the government's expense in removal proceedings.[285] Instead, immigrants must either hire their own attorney or find a pro bono attorney,[286] but doing so is particularly challenging from inside detention. Persons who are detained are often held far away from urban centers where lawyers are concentrated, contributing to a lack of available pro bono counsel.[287] Nonprofit lawyers report that they must drive for hours to visit clients held in remote detention sites and that they

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Exec. Off. for Immigr. Rev., U.S. Dep't of Just. (Aug. 25, 2016), https://www.splcenter.org/sites/default/files/2016-8-25_stewart_detention_center-eoir_letter_0.pdf [https://perma.cc/4KRB-7JSC] (reporting a detained immigration judge at the Stewart Detention Center told unrepresented respondents from Central American countries that they "will not receive relief").

[284] Important new research on family law judges has found that judges "perceived the cases of parties with legal counsel to be more meritorious than the cases of parties without legal counsel," even when other relevant factors in the case were controlled. Kathryn M. Kroeper, Victor D. Quintanilla, Michael Frisby, Nedim Yel, Amy G. Applegate, Steven J. Sherman & Mary C. Murphy, Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases, 26 Psych., Pub. Pol'y & L. 198, 202–03 (2020).

[285] INA § 240(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A). For more on the historical background leading to the categorization of deportation as civil, and thus not entitled to appointed counsel, see Shaun Ossei-Owusu, Civil vs. Criminal Legal Aid, 94 S. Cal. L. Rev. 1561, 1597–1601 (2021).

[286] One important exception is the National Qualified Representative Program, which provides appointed counsel for detained noncitizens with serious intellectual and mental health disabilities. See Amelia Wilson, Franco I Loved: Reconciling the Two Halves of the Nation's Only Government-Funded Public Defender Program for Immigrants, 97 Wash. L. Rev. Online 21, 23 (2022). From 2013 through January 2020, the National Qualified Representative Program represented 2,000 detained immigrants. Mike Corradini, Nat'l Qualified Representative Program, Vera Inst. of Just., https://www.vera.org/projects/national-qualified-representative-program [https://perma.cc/JX4M-ZCLP] (last visited Mar. 5, 2024).

[287] See supra notes 152, 153 and accompanying text (describing the proliferation of "hearing locations" and immigration courts in remote locations). See also Aditi Shah & Eunice Hyunhye Cho, No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers, ACLU 10–11 (2022), https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers [https://perma.cc/56GD-T7LJ] (finding that "ICE has exacerbated the access-to-counsel crisis by placing immigrant detention facilities in geographically isolated locations").

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are often denied access to the detention facilities once they arrive.[288] Immigration prisons can also lack adequate telephones, mail service, or attorney meeting space, making it difficult to contact potential counsel.[289] Expedited case scheduling, a topic we explore in more detail below, further limits access to counsel by giving an unrealistically short time period for litigants to find a lawyer.[290] The range of logistical difficulties associated with client communication and accelerated case timelines can even deter qualified immigration counsel from taking on detained cases.[291]

As a result of these and other challenges, a key distinguishing factor between detained and nondetained courts is access to counsel. From 1983 to 2022, only 16% of immigrants in detained courts found counsel, compared to 53% of those with cases in nondetained courts.[292] In more recent years, as funding for pro bono representation has improved,[293] legal representation in detained courts increased somewhat, but serious deficits remained. Between 2009 and 2022, only 23% of those who completed

[288] Brief for Retired Immigration Judges and Former Members of the Board of Immigration Appeals as Amici Curiae at 9–10, Matumona v. Barr, 945 F.3d 1294 (10th Cir. 2019).

[289] See, e.g., Shah & Cho, supra note 287, at 16–27 (detailing a range of impediments to legal representation created by detention facility rules and structures, including insufficient or nonexistent in-person legal visitation, ineffective mail service, lack of access to e-mail, and inadequate and expensive telephone service); U.S. Gov't Accountability Off., GAO-07-875, Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance 5, 30–32 (2007), https://www.gao.gov/assets/gao-07-875.pdf [https://perma.cc/ZA2H-KRZA] (documenting a pervasive "pattern of noncompliance" with the pro bono telephone system at detention centers); S. Poverty L. Ctr. v. U.S. Dep't of Homeland Sec., No. 18-cv-00760, 2020 WL 3265533, at *34–35 (D.D.C. June 17, 2020) (granting preliminary relief requiring four detention facilities to offer improved remote visitation technology).

[290] See, e.g., Hausman & Srikantiah, supra note 28, at 1825–26 (showing how accelerated deportation proceedings have "prevented many immigrants from finding lawyers").

[291] See, e.g., First Amended Complaint for Injunctive & Declaratory Relief at 58–60, Ams. for Immigrant Just. v. U.S. Dep't of Homeland Sec., No. 22-cv-03118 (D.D.C. Nov. 18, 2022) (detailing how obstacles such as restrictions on confidential meeting space, telephone, video, fax, and mail, as well as the long distances to travel to proceedings, have greatly increased the time and expense involved in taking on detained immigration court cases).

[292] Between 1983 and 2022, 373,175 of 2,307,032 detained initial case completions had counsel, compared to 2,078,808 of 3,902,249 nondetained initial case completions.

[293] Advancing Universal Representation Initiative, Vera Inst. of Just., https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative [https://perma.cc/ZNB4-WQ4J] (last visited Mar. 5, 2024) (mapping the growth of publicly funded deportation defense programs).

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their case in detention found lawyers, compared to 61% of nondetained respondents.[294]

Representation rates were even lower in certain detained court models introduced in Part II. For instance, due to heightened challenges faced by lawyers trying to represent individuals made to wait in Mexico,[295] virtually nobody in the MPP secured counsel (only 3%).[296] In the IHP prison courts, only 13% obtained counsel.[297] Finally, representation rates also varied by regional court location, with attorneys involved in as few as 17% of cases in Florence and San Diego, and 23% of cases in Dallas.[298] These dismal rates of representation matter: virtually all detained respondents appearing alone before an immigration judge were ordered removed (96%).[299]

D. Adjudication Speed

Accelerated case completion times are another aspect of the structural disadvantage built into the detained courts. To facilitate the institutional priority of speed, the EOIR has for some time created and maintained case goals that require the completion of detained cases at a far faster pace than nondetained cases.[300] For example, in 1997, immigration judges were told to render decisions on detained cases within the lightning-fast schedule of twenty-four hours to seven days.[301] In 1999, the goal shifted to adjudicating 95% of detained cases with no application for relief within

[294] Between 2009 and 2022, 209,721 of 929,810 detained respondents had counsel at their initial case completion, compared to 1,129,607 of 1,844,459 nondetained respondents.

[295] For a discussion of some of these barriers to counsel in the MPP, see Catherine L. Crooke, US Asylum Lawyering and Temporal Violence, 00 L. & Soc. Inquiry 1, 23–24 (2023).

[296] In the MPP, 1,069 of 39,992 detained respondents had counsel at their initial case completion between 2019 and 2022.

[297] In the IHP, 5,237 of 40,859 detained respondents had counsel at their initial case completion between 2009 and 2022.

[298] See infra Appendix, Table A.4 (measuring representation at initial case completion between 2016 and 2022).

[299] From 2009 to 2022, 96% of pro se detained respondents were ordered removed (n = 689,010 of 720,089), compared to 73% of pro se nondetained respondents (n = 522,468 of 714,852).

[300] Emily R. Summers, Prioritizing Failure: Using the "Rocket Docket" Phenomenon to Describe Adult Detention, 102 Iowa L. Rev. 851, 854 (2017).

[301] 1998 House Appropriations, supra note 157, at 1051.

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thirty days.[302] In 2016 and 2017, the agency was instructed by the House Committee on Appropriations to achieve a median length of no longer than sixty days for all detained cases, while the benchmark median length for nondetained cases was set at a year.[303]

An extreme example of a hasty court process was the EOIR's 1990s invention of courts designed to ensure that "virtually all" immigrants would "concede removability" at their first hearing.[304] As a Senate subcommittee found in 1995, by having INS target mainly Mexican nationals who agreed to not contest their deportation, "a single immigration judge [could] easily adjudicate large numbers of cases in a short period of time."[305] In one example, the EOIR collaborated with CBP to establish an "Immigration Quick Court"[306] inside Border Patrol stations in Tucson.[307] EOIR judges received charging documents in the morning and deported everyone in the afternoon after a mass advisal of rights.[308] As law professor Peter Schuck found in a 1997 study, "quick deportation" hearings were also regularly held at the San Diego immigration court.[309] Our analysis of the Tucson and San Diego programs reveals that they primarily targeted Mexican immigrants (95%), and removed 99% of individuals who came before them, almost always in a single hearing.[310]

[302] Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 2000: Hearings Before the Subcomm. on the Dep'ts of Com., Just. & State, the Judiciary & Related Agencies of the H. Comm. on Appropriations, Part 2, 106th Cong. 115 (1999).

[303] Memorandum from James R. McHenry III, Dir., Exec. Office for Immigr. Rev., to the Off. of the Chief Immigr. J. et al., Case Priorities and Immigration Court Performance Measures 3 (Jan. 17, 2018), https://libguides.law.ucla.edu/ld.php?content_id=39231331 [https://perma.cc/5FK8-XR5M]; see also Memorandum from MaryBeth Keller, Chief Immigr. J., Exec. Off. for Immigr. Rev., to All Immigr. JJ. et al., Case Processing Priorities 1 (Jan. 31, 2017), https://libguides.law.ucla.edu/ld.php?content_id=38074110 [https://perma.cc/UQP6-GTAH] (explaining that detained cases remain a priority of the agency).

[304] Schuck, supra note 106, at 691.

[305] S. Rep. No. 104-48, at 1, 19 (1995).

[306] Assoc. Chief, Off. of Border Patrol, Universal Border Enforcement Options 2 (2010), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/cvd_cbp_5-17-13.pdf [https://perma.cc/QR8D-TXDU].

[307] Lauren Gambino, The Busiest Border Patrol Sector, NEWS21 (Aug. 2010), asu.news21.com/2010/08/the-busiest-border-patrol-sector/index.html [https://perma.cc/S84G-TSGS].

[308] National Research Council, supra note 251, at 68. These quick courts are an extreme example of the "scripted approach" to judicial decision-making in immigration court identified by Asad, in which judges recite "well-rehearsed narratives regarding the limited legal rights and remedies available to noncitizens." Asad, supra note 32, at 1221.

[309] Schuck, supra note 106, at 691.

[310] See infra Appendix, Table A.3.

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Another procedure that has contributed to the speed of the detained courts is stipulated removal, a mechanism adopted in 1996 to dispense with hearings in immigration court.[311] Once a stipulated removal agreement is signed, the judge can order removal without holding a court hearing. Reliance on stipulated removal raises due process concerns, especially because such stipulations are handled entirely by ICE officers who could be incentivized to do away with court procedures.[312] Despite the real concerns triggered by encouraging waivers of rights in detention, we find that stipulated removals have been used almost exclusively in detained courts. Since 2004, one in five detained removal orders were stipulated (19%), compared with less than one percent of removal orders outside of detention (0.2%).[313]

Overall, there are stark differences in the time taken by immigration judges to adjudicate cases in detained and nondetained courts. Between 1983 and 2022, detained cases were completed in a median of only one day,[314] whereas nondetained cases lasted a median of 232 days. In recent years, despite a rise in the proportion of detained persons seeking asylum, the general pattern of speedy decision-making in detained cases continued. For example, in 2022, the median time to decide detained cases rose to 31 days, still far faster than the 876-day median for nondetained cases that year.

As Lenni Benson has cautioned, expedited procedures raise "concerns about the adequacy and accuracy of the agency determinations."[315] Short-fuse timelines can also "put untenable pressure on attorneys' ability to

[311] INA § 240(d), 8 U.S.C. § 1229a(d); 8 C.F.R. § 1003.25(b) (2023).

[312] Jennifer Lee Koh, Waiving Due Process (Goodbye): Stipulated Orders of Removal and the Crisis in Immigration Adjudication, 91 N.C. L. Rev. 475, 502–04 (2013).

[313] Among non-IHP removal cases (detained n = 204,352 of 1,100,360; nondetained n = 2,221 of 1,131,615). Prior to 2004, stipulated removals were not recorded by EOIR judges, so it is not possible to determine how frequently they were used.

[314] Cases measured as completed in one day are cases that began and ended at the first hearing. See infra Appendix, Section E. It is important to emphasize that this measurement of case completion time does not include the entire detention time, which starts at the point of arrest and can continue until after any appeal is exhausted and removal takes place. Recent cases have highlighted delays as long as a few months between arrest and initial appearance, Vazquez Perez v. Decker, No. 18-cv-10683, 2020 WL 7028637, at *3 (S.D.N.Y. Nov. 30, 2020), and appeals that drag on for years, German Santos v. Warden Pike Cnty. Corr. Facility, 965 F.3d 203, 207 (3d Cir. 2020).

[315] Lenni B. Benson, Immigration Adjudication: The Missing "Rule of Law," 5 J. on Migration & Hum. Sec. 331, 332 (2017); see also Summers, supra note 300, at 854 (arguing that sped-up dockets can "alter detainees' procedural rights, and ultimately, the outcome of their case").

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thoroughly prepare," preventing attorneys from presenting an effective case or even discouraging them from taking on the case in the first place.[316] The outcomes of cases decided quickly certainly support these warnings. Since 1983, cases decided in detention in fewer than thirty days had a removal rate of 97%. In contrast, for those detained cases decided in thirty days or more, the removal rate was 80%—a full 17 percentage points lower.[317]

E. Geography

This Article has documented the remoteness of detained immigration courts across two dimensions. First, when compared to nondetained courts, detained courts are more frequently located in rural areas and small cities.[318] The pull away from urban geographies is most apparent among co-located courts found inside prisons, jails, and detention facilities.[319] The remote geography of these detained courts can reduce access to legal and social services and cut off ties to family support. This is particularly true when persons are transferred to facilities and courts far away from urban jurisdictions where they have access to community support and nonprofit programs.[320]

A second relevant dimension of the geography of detained immigration courts is the distance that often exists between where the judge sits and where the immigrant is detained. With the prevalence of videoconferencing in the detained courts, often the court that hears the case is quite far from the detention center where the immigrant is held. For instance, in 2022, people detained at the South Louisiana Detention Center in Basile, Louisiana, appeared over video before EOIR judges

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[316] Lisa Graybill & Charanya Krishnaswami, Immigration Detention in the Rocky Mountain West: Can Emerging Models of Reform Solve Our Regional Problem?, 92 Denv. U. L. Rev. 791, 810 (2015); see also Hausman & Srikantiah, supra note 28, at 1825–26 (showing how accelerated deportation proceedings have "prevented many immigrants from finding lawyers").

[317] In contrast, the removal rate was 70% for nondetained cases decided in under thirty days and 53% for nondetained cases decided in thirty days or more.

[318] See supra Figures 1, 2 & 8.

[319] See supra Figure 2.

[320] See generally Lindsay Nash, Universal Representation, 87 Fordham L. Rev. 503, 510–15 (2018) (describing the growth in "universal representation" programs to provide appointed counsel to those unable to afford an attorney in immigration court).

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1,857 miles away in Guaynabo, Puerto Rico,[321] while people detained in the Adams County Correctional Center in Natchez, Mississippi, had their cases heard by judges 1,300 miles away in New York City.[322] Immigration adjudication centers have further intensified this complex geography of the detained courts: Judges in the Richmond, Virginia, adjudication center were busy adjudicating cases of individuals detained over 300 miles away in the Moshannon Valley Processing Center in Philipsburg, Pennsylvania, while judges in the Falls Church, Virginia, adjudication center decided cases of persons over 1,100 miles away in the Jackson Parish Correctional Center in Jonesboro, Louisiana.[323] The overall result is that even if the detained judge is sitting in an urban location, video adjudication has enabled the proliferation of remote detention center "hearing locations" that separate detained persons from urban communities and social supports.

F. Public Access

As Judith Resnik and Dennis Curtis identify, public hearings are central to democratic adjudication.[324] In keeping with this core value, applicable DOJ regulations require immigration courts to be open to the public.[325] Yet, many of the detained court models introduced in this Article—inside prisons, jails, detention facilities, border patrol stations, airports, and makeshift tents on the border—raise serious concerns related to the lack of public access.

When courts are connected to detention sites, facility rules govern not only access to the facility but also access to the court. Members of the public attending these co-located courts must comply with the prison's many restrictions, such as dress code regulations, limitations on electronic devices, and heightened identification and security screenings.[326] In some instances where video is used, the detention facility will bar the public entirely from entering the co-located court location, advising the public

[321] Decl. of L.P.C. at 2–7, Mons v. McAleenan, No. 19-cv-01593 (D.D.C. 2020), https://www.splcenter.org/sites/default/files/declaration_of_lpc_final_redacted.pdf [https://perma.cc/9GCS-MRND].

[322] 2022 Hearing Location Lookup Table, FOIA Library, infra note 352.

[323] See infra Appendix, Section B & Table A.2.

[324] Judith Resnik & Dennis Curtis, Representing Justice: Invention, Controversy, and Rights in the City-States and Democratic Courtrooms 14–15 (2011).

[325] 8 C.F.R. § 1003.27 (2023).

[326] See, e.g., U.S. Dep't of Just., Visitor Guidelines (2013), https://www.justice.gov/sites/default/files/eoir/legacy/2013/09/30/DressCode.pdf [https://perma.cc/B253-ZPCL].

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to instead attend in the location where the judge sits. And immigration adjudication centers have gone so far as to completely bar access to the judge's location.

Tent courts associated with the MPP present similar public access issues. When the tent courts were first opened in Laredo and Brownsville, the DOJ barred access to all except attorneys and asylum seekers.[327] Later, the EOIR granted public access to the remote location where the judge was sitting, but not to the tent court.[328] When MPP cases were assigned to remote judges in adjudication centers, there was no meaningful right of public access because there was no longer a brick-and-mortar location where the public could attend.[329] A chief concern here is that the lack of access by the public means that rights abuses can go unnoticed and unchecked.

In sum, Part IV has uncovered institutional features that distinguish the EOIR's detained courts from their nondetained counterparts. Such features include the government's power to choose the court that hears the case, procedures that foster speedy completion of cases, and impediments to access by counsel and the public. Together, these shortcomings systematically disadvantage those who have their cases heard in detained immigration courts.

CONCLUSION

The United States has a long history of detaining migrants in connection with their immigration court proceedings. Since the time of the Chinese Exclusion Act, the U.S. Supreme Court has upheld reliance on immigration detention against constitutional challenge on the rationale that detention is a necessary and accepted component of deportation. In the seminal 1896 case of *Wong Wing v. United States*, the Court reasoned:

[327] See Am. Immigr. Laws. Ass'n., Policy Brief: Public Access to Tent Courts Now Allowed, but Meaningful Access Still Absent, AILA Doc. No. 20011061 (Jan. 10, 2020), https://www.aila.org/aila-files/97CC411C-57DF-498E-9FD9-B4812C0F01E9/20011061.pdf?1697589976 [https://perma.cc/CGG6-2GM7].

[328] Adolfo Flores, Immigration "Tent Courts" Aren't Allowing Full Access to the Public, Attorneys Say, BuzzFeed News (Jan. 13, 2020, 4:23 PM), https://www.buzzfeednews.com/article/adolfoflores/immigration-tent-courts-arent-allowing-full-public-access [https://perma.cc/E6ND-3MW5].

[329] N.Y. State Bar Ass'n, Report on the Independence of the Immigration Courts 15 (Jan. 2021), https://nysba.org/app/uploads/2020/02/Immigration-Rep-report-with-cover.pdf [https://perma.cc/HWM3-TBPX] ("Coupled with the obstacles to access tent court themselves, DHS's closure of IACs to the public essentially seals off the immigration adjudication process from public view for those subject to MPP.").

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"We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid . . . . Detention . . . is not imprisonment in a legal sense."[330] This construction of detention—as merely "part of the means necessary" for deportation—has endured. As Doris Meisner told Congress in her role as Commissioner of the INS under Clinton: "[D]etention is the most reliable handmaiden of removal."[331] However, as this Article has shown, detention has been used not merely to execute removal orders. Rather, over time it has become deeply intertwined with the court system through its power to *produce* removal orders. Although the courts are thought of as neutral arbiters of the merits of each individual case, in the detained courts, detention is virtually synonymous with deportation.[332]

Detained courts have received little academic scrutiny, yet their numbers have swelled, with forty-eight detained courts now scattered across the country.[333] Detained courts have issued half of all court-ordered deportations since the establishment of the EOIR in 1983.[334] Moreover, detained courts have disproportionately decided the cases of Mexican and Central American immigrants, the vast majority of whom are men.[335]

The history traced in this Article reveals how the foundational structures and procedures that form today's detained courts were developed during a time when the immigration courts were part of the very agency that served as the police and prosecutor on deportation cases.[336] These Service roots have left a lasting mark on the modern detained courts, most notably in their frequent placement inside the carceral structures built to support the INS's mission to detain and exclude.[337] Perhaps not surprisingly, judges within detained courts are more likely to have themselves worked for DHS or the legacy INS.[338]

This Article has shown how detained courts are structurally inclined to deport, rather than neutrally adjudicate. Rocket-fast case timetables, low

[330] Wong Wing v. United States, 163 U.S. 228, 235 (1896).
[331] 1998 House Appropriations, supra note 157, at 1112.
[332] See supra note 187 and accompanying text.
[333] See supra Figures 1 & 2 (documenting the locations of detained immigration courts as of 2022).
[334] See supra note 102.
[335] See supra Section III.C and accompanying text.
[336] See supra Part I.
[337] See supra Figure 2 and accompanying text.
[338] See supra Table 1.

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rates of representation by counsel, and growing reliance on Southern detention centers in remote locations all contribute to the disadvantage that detained migrants face in court. As the Trump Administration rushed to implement its zero-tolerance enforcement policies, the EOIR participated in the rebirth of the Clinton-era port courts (in the form of the MPP) and the Obama-era video-based Headquarters Court (in the form of immigration adjudication centers). Meanwhile, the EOIR has kept these various detained court forms shrouded in secrecy, including by barring the public from attending court hearings.[339] The nation's largest urban courts—in Atlanta, New York, Chicago, Los Angeles, and San Francisco—have taken the step of establishing a separate court location to hear exclusively detained cases.[340]

This Article's identification of immigration's two-court structure should not only change how these courts are understood and discussed but also should inform future research and policy priorities. As mentioned in the Introduction, prior studies on immigration courts have often treated the immigration courts as a unitary system, without accounting for the institutional schism between detained and nondetained courts.[341] This Article's reconceptualizing of the immigration courts as two separate courts should encourage researchers to treat detained courts as their own area of inquiry. Consider, for example, the important finding replicated in numerous studies that female immigration judges are, on average, less likely to order deportation.[342] This Article has shown, however, that female judges are less likely to serve as detained judges, and that detained courts are more likely to order deportation than nondetained courts.[343] Future research should explore whether similar findings on the generosity of female judges emerge when separately considering female judges' decision-making within detained and nondetained courts. Relatedly, appreciating the separate structure of the detained and nondetained courts may also spur research on the relevance of institutional environment to judge decision-making. Could hearing primarily the cases of immigrants in prison garb and shackles,[344] often over a video screen, have a biasing

[339] See supra Section IV.F.
[340] See supra Figure 1 and accompanying text.
[341] See supra notes 24–29 and accompanying text.
[342] See supra note 273.
[343] See supra Table 1, note 187, and accompanying text.
[344] The blanket shackling of civil immigration detainees with handcuffs and leg irons has occurred in both co-located and urban detained immigration courts, which has been challenged

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effect on the rulings of judges serving in detained immigration courts? Put differently, is the decisional environment in which a judge practices associated with different case outcomes?

Beyond shaping future research, this Article should help to identify policy issues that matter in reforming the immigration courts. In recent years, policymakers have coalesced around a singular proposal: the establishment of an Article I immigration court.[345] A reworked court structure could play some role in addressing the heightened susceptibility of detained courts to law enforcement objectives and political pressure.[346] However, simply restructuring the court system would not respond to the concerns raised in this Article that are unique to detained courts. Meaningful systemic reform should specifically address the unregulated proliferation of detained court locations, rules, and practices described in this Article.

More broadly, by focusing on detained courts, this Article places those concerned with restructuring the immigration courts in conversation with the mounting efforts of organizers and community members to end reliance on detention.[347] In the context of criminal courts, Matthew Clair

in court. Fatma E. Marouf, The Unconstitutional Use of Restraints in Removal Proceedings, 67 Baylor L. Rev. 214, 217 (2015).

[345] See, e.g., Time for an Independent Immigration Court, Am. Bar Ass'n (Feb. 27, 2022), https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/feb-22-wl/article-i-courts-0222wl/ [https://perma.cc/7XKW-S25J]; Am. Immigr. Laws. Ass'n., It's Time for Immigration Court Reform, YouTube (Jan. 31, 2020), https://www.youtube.com/watch?v=8fkt-g4XG_A [https://perma.cc/UU5X-J445]; Dana Leigh Marks, Opinion, I'm an Immigration Judge. Here's How We Can Fix Our Courts, Wash. Post (Apr. 12, 2019, 3:31 PM), https://www.washingtonpost.com/opinions/im-an-immigration-judge-heres-how-we-can-fix-our-courts/2019/04/12/76afe914-5d3e-11e9-a00e-050dc7b82693_story.html [https://perma.cc/EST9-D83F]. In 2022, a bill was introduced in Congress to restructure the EOIR as an Article I court. The Real Courts, Rule of Law Act of 2022, H.R. 6577, 117th Cong., 1–3 (as passed by S. Comm. on Immigr. and Citizenship of the S. Comm. on the Judiciary, Jan. 20, 2022). As Alison Peck has pointed out, to maintain compliance with the Appointments Clause of the Constitution, an Article I reformulation would require the appellate body of immigration judges "to be subject to presidential appointment." Alison Peck, 21–10 Immigr. Briefings 1 (Oct. 2021) (citing United States v. Arthrex, Inc., 141 S. Ct. 1970, 1982 (2021)).

[346] But see Aaron L. Nielson, Christopher J. Walker & Melissa F. Wasserman, Saving Agency Adjudication, 103 Tex. L. Rev. (forthcoming 2025) (critiquing the Article I immigration court model as having "significant unintended consequences").

[347] See, e.g., Policy Advocacy, Freedom for Immigrants, https://www.freedomforimmigrants.org/policy-advocacy [https://perma.cc/LQ35-QWG8] (last visited Mar. 5, 2024); Ending Immigration Detention, Immigr. Just. Campaign, https://immigrationjustice.us/advocacy/advocacy-issues/ending-immigration-detention/ [https://perma.cc/ADZ5-MTEW] (last visited

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and Amanda Woog have recently argued that those seeking to end mass incarceration should recognize how criminal courts are "a particularly important institutional component of the prison industrial complex."[348] Clair and Woog's analysis has similar applicability to the immigration system where, as we show on a national scale, the detained courts are the crucial link between detention and deportation—and one deserving of greater attention within efforts to shrink detention. Some initiatives that acknowledge this link between the detained courts and detention are already underway. In Chicago, a faith-based network conducts a court-watch program inside the detained court to show solidarity with immigrants, document abuses within the court system, and seek transformative change.[349] The immigrant rights group Freedom for Immigrants has established a National Bail Fund to support immigrants in securing release from detention.[350] And, following the closure of New York-area detention facilities, organizing efforts have turned to ensuring that persons are released from custody rather than simply transferred to alternative detention sites linked to detained courts far away from urban areas, loved ones, and community support.[351] This Article's work

Mar. 5, 2024); Silky Shah, The Immigrant Justice Movement Should Embrace Abolition, Forge (Mar. 4, 2021), https://forgeorganizing.org/article/immigrant-justice-movement-should-embrace-abolition [https://perma.cc/65VD-WNXJ]; Nayna Gupta, Jesse Franzblau, Mark Feldman, Mark Fleming, Heidi Altman, Kawren Zwick, & Tara Tidwell Cullen, White Paper: Roadmap to Dismantle the U.S. Immigration Detention System, Nat'l Immigr. Just. Ctr. (July 28, 2021), https://immigrantjustice.org/research-items/white-paper-roadmap-dismantle-us-immigration-detention-system [https://perma.cc/3BPB-QN4E]. Numerous scholars have also proposed ways that the federal government could reduce the scale of migrant detention. Jennifer Lee Koh, Downsizing the Deportation State, 16 Harv. L. & Pol'y Rev. 85, 103–09 (2021); Laila Hlass, Lawyering from a Deportation Abolition Ethic, 110 Calif. L. Rev. 1597, 1607, 1653–54 (2022); Angélica Cházaro, Due Process Deportation, 98 N.Y.U. L. Rev. 407, 480–82 (2023); César Cuauhtémoc García Hernández, Abolishing Immigration Prisons, 97 B.U. L. Rev. 245, 245–46 (2017); Kari E. Hong, 10 Reasons Why Congress Should Defund ICE's Deportation Force, 43 Harbinger 40, 41 (2018–19).

[348] Matthew Clair & Amanda Woog, Courts and the Abolition Movement, 110 Calif. L. Rev. 1, 6 (2022).

[349] Immigration Court Watch Program, Chi. Religious Leadership Network on Latin Am. (Dec. 15, 2016), https://crln.org/immigration-court-watch-program/ [https://perma.cc/Q9MW-6AS3].

[350] National Immigration Detention Bond Fund, Freedom for Immigrants, https://www.freedomforimmigrants.org/national-bond-fund [https://perma.cc/JY5S-7YKN] (last visited Mar. 5, 2024).

[351] See generally Karina Solano, Antonio Gutierrez & Julia Davis, Ending Immigration Detention in Illinois: Challenges and Lessons from the Implementation of the Illinois Way Forward Act, N.Y.U. L. Rev. F. (June 15, 2023) (discussing the "Release Not Transfers" campaign in Illinois).

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illuminating the inner workings of the detained court system underscores the urgency of these efforts.

In conclusion, this project has moved beyond examining detention and courts as separate entities and instead interrogated the link that joins them. Our investigation has identified how the detained immigration court has eschewed key defining aspects of the American court system, such as localized venue, time for deliberation, and public court access. Moreover, these largely ignored courts apply to precisely the most vulnerable people in the immigration system: those with the least access to counsel and the greatest odds stacked in favor of their deportation. The glaring deficits of the detained courts demand attention from policymakers, engagement from community members and organizers, and further research from scholars.

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APPENDIX

The data analyzed in this article were collected by the EOIR, the division of the DOJ responsible for administering the nation's immigration court system.[352] The EOIR stores these records in the Court Access System for EOIR ("CASE"), a data management system "that provides the EOIR with case tracking and management information" about every immigration case.[353] CASE contains a range of information: when hearings are held, whether individuals are represented by counsel, and "biographical data about each [noncitizen] in removal proceedings, . . . their country of origin, the charges of removability issued against them, any forms of relief sought, and decisions rendered."[354]

Before beginning the analysis, we reviewed the EOIR data for completeness and accuracy. In conducting this analysis, we relied on our knowledge of the immigration court process, discussions with practitioners, and observations of detained immigration courts.[355] We also studied the EOIR's data-coding lookup tables,[356] data-management training materials,[357] and court-operating policies and procedures.[358] As

[352] The EOIR data analyzed in this article were downloaded on December 27, 2022, and included all publicly available court data through December 1, 2022. See FOIA Library, Exec. Off. for Immigr. Rev., U.S. Dep't of Just., https://www.justice.gov/eoir/foia-library-0 (on file with authors).

[353] Decl. of Benjamin B. McDowell ¶¶ 1, 2 [Defendants' Exhibit 7, No. 58 pt. 2, May 5, 2016], J.E.F.M. v. Lynch, 837 F.3d 1026 (9th Cir. 2016) (No. 15-35738). Prior to 2006, EOIR stored immigration case data in an earlier system, the Automated Nationwide System for Immigration Review. Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Privacy Impact Assessment for Case Access System for EOIR (Sept. 14, 2006), https://www.justice.gov/sites/default/files/opcl/docs/eoir_pia.pdf [https://perma.cc/YBT4-7348].

[354] Declaration of Benjamin B. McDowell, supra note 353, at ¶ 2.

[355] See supra note 8.

[356] FOIA Library, supra note 352 (lookup table folder).

[357] See, e.g., Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Case Data Entry Course Lesson Plan Version 1.3, at 5–7 (2010), https://libguides.law.ucla.edu/ld.php?content_id=38118606 [https://perma.cc/4M3H-ULPC]; Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Uniform Docketing System Manual, at i–vi (2018), https://libguides.law.ucla.edu/ld.php?content_id=48208564 [https://perma.cc/KR2W-JQP2] [hereinafter 2018 Uniform Docketing Manual]; Memorandum from James R. McHenry III, Dir., Exec. Off. for Immigr. Rev., to All of EOIR, Definitions and Use of Adjournment, Call-up, and Case Identification Codes (Feb. 13, 2020), https://libguides.law.ucla.edu/ld.php?content_id=56135004 [https://perma.cc/95ZR-CGQG].

[358] See, e.g., Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Immigration Court Practice Manual (2020), https://libguides.law.ucla.edu/ld.php?content_id=69072581 [https://perma.cc/RU43-4HT4].

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part of our review we replicated reported numbers for detained case adjudication published in the EOIR's statistical yearbooks[359] and reported to Congress by the agency.[360] Finally, we examined the reliability of certain data fields by examining the consistency of their usage across time.

A. Case Initiation and Case Completion Samples

We began our analysis with 11,173,577 EOIR "proceedings"—with input dates spanning from November 11, 1950, through November 30, 2022—comprising 8,476,943 individual court "cases."[361] Although most immigration court cases ended after one proceeding, some cases contained multiple proceedings.[362] For example, a case may be transferred to a different immigration court, thereby closing the first proceeding and beginning a new one in the destination court. Given our interest in detained adjudication, we next created two samples for analysis based on custody status and stage of the case.

Detained Case Initiation Sample. The first sample, which we call the Detained Case Initiation Sample, included all court cases initiated in detention.[363] Overall, our Detained Case Initiation Sample contained

[359] See, e.g., Statistics Yearbooks, Exec. Off. for Immigr. Rev., U.S. Dep't of Just., https://www.justice.gov/eoir/statistical-year-book [https://perma.cc/34HH-BYLG] (last updated Aug. 30, 2019).

[360] See, e.g., 1998 House Appropriations, supra note 157, at 1110.

[361] A "proceeding" refers to a single hearing or set of hearings that end with an immigration judge decision. A single "case" can have multiple proceedings of the same case type (e.g., credible fear review or removal) and is associated with subsequent case history (e.g., appeals). See generally David K. Hausman, Daniel E. Ho, Mark S. Krass & Anne McDonough, Executive Control of Agency Adjudication: Capacity, Selection, and Precedential Rulemaking, 39 J.L. Econ. & Org. 682, 689 n.20 (2023) (explaining the difference between "cases" and "proceedings" in the EOIR data).

[362] Of the 8,476,943 individual court cases identified, 78% (*n* = 6,591,867) had only one proceeding.

[363] Cases initiated in detention included all cases coded as detained or released at the first completion in the case (e.g., change of venue or removal) or, if no completion had yet occurred, then at the first pending proceeding in a case. The EOIR data classified each case with one of three case-level codes for custody status in the associated lookup table (tblLookupCustodyStatus). A detained respondent was coded as "D." Respondents who were initially detained but later released—on bond or some alternative type of condition—were coded as "R." Finally, if there was no record of the respondent being detained, the case was coded as "N." Proceedings missing custody status were rare, accounting for only 370 of the 8,168,237 cases initiated between fiscal years 1983 and 2022. Such proceedings were necessarily excluded from our analyses that relied on custody status.

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3,663,093 cases initiated between fiscal years 1983 and 2022.[364] Among these cases initiated in detention, 80% were removal, 16% deportation or exclusion, and 4% other case types (including asylum only, withholding, and credible or reasonable fear review proceedings).

Detained Initial Case Completion Sample. The second sample included all cases that reached an initial case completion[365] while the individual was detained,[366] between fiscal years 1983 and 2022.[367] Overall, our Detained Initial Case Completion Sample contained 2,509,268 cases completed during our study period (1983–2022).[368] Among these cases initially completed in detention, 77% were removal, 20% deportation or exclusion, and 3% other case types.

Analyses Limiting Case Type and Case Outcome. For Figures 1, 2, 3, 4, 6, and 7, we included all case types, including those with zero-bond outcomes.[369] Where appropriate for the analysis, we limited our review to

[364] The federal government's fiscal year begins on October 1 and ends on September 30 of the following year. To classify the fiscal year of a case initiation, we relied on the start date of the earliest relevant proceeding in the case. We operationalized this case initiation date based on the earliest date used to describe the case, i.e., the date the case was created at the court (input date), the earliest scheduled hearing date (if available), or the completion date (if earlier than the other dates in the proceeding or case).

[365] We define initial case completion as the first substantive completion in a case. Substantive completions include on-the-merits decisions (such as removal or a grant of relief), as well as administrative closure, but exclude transfers and changes of venue.

[366] To identify cases that were initially completed in detention, we included only cases where the initial completion was reached in a proceeding classified by the EOIR as detained. Custody status was missing in only 368 of 6,445,209 initial case completions across for detained, released, and never detained. Such proceedings were excluded from our analyses that rely on custody status.

[367] To classify the fiscal year that a case was completed, we relied on the fiscal year of the first immigration judge completion in a case, meaning the date that the judge reached the first decision in the case (e.g., relief, administrative closure), excluding changes of venue and transfers. In cases with multiple completed proceedings, we choose the proceeding with the earliest completion date or, if multiple proceedings were completed on the same day but with different outcomes, we used the proceeding that began first, i.e., the proceeding with the earliest input date or earliest scheduled hearing date.

[368] Only 64,236 cases (2.6%) in the Detained Initial Case Completion Sample were ever a lead or a rider in a consolidated case. See Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Lead and Rider Enhancements Reference Guide 1 (Dec. 13, 2010), https://libguides.law.ucla.edu/ld.php?content_id=38118600 [https://perma.cc/7ZR4-C2TS].

[369] In our Detained Case Initiation Sample, zero-bond cases accounted for less 2% of the sample total (n = 65,671). Zero-bond cases are unique in the EOIR data as they are not described by the EOIR as a distinct case type, but rather as a case outcome (i.e., "ZERO BOND") for specific case types (e.g., removal, deportation, etc.). Zero-bond cases occur when the case ends in a bond redetermination hearing held before an NTA is filed with the

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certain case types and excluded zero-bond outcomes. Figures 5 and 9—as well as Appendix Tables A.2 and A.3—include only deportation, exclusion, and removal case types, and exclude zero-bond outcomes. Finally, Figure 8 and Table 1—as well as Appendix Figure A.1 and Appendix Tables A.1 and A.4—include only removal cases and exclude zero-bond outcomes.

B. Court Type and Location

Geocoding of Immigration Courts. To create the map of immigration court locations in Figures 1 and 2, we generated the latitude and longitude of the address for each EOIR court location.[370] To determine the location of each court, we relied on the court addresses included in the base city lookup table (tblLookupBaseCity). We also consulted the EOIR's public court listing and other sources to ensure that the address on the lookup table was correct.[371]

State of Detention Location. To identify the state where persons in court proceedings were detained (Figures 6 and 7, Table A.1), we coded each case based on the location where the hearing was scheduled from the perspective of the immigrant in detention. For example, we assigned the cases of immigrants held at the Richwood Correctional Center in Monroe, Louisiana to Louisiana, even though their cases were assigned to judges in Batavia, New York.

Although the location of detention was generally accurately recorded in the hearing location lookup table (tblLookupHloc), in some instances the lookup table incorrectly designated the hearing location as located in the city and state where the judge sat, rather than where the detention facility or prison was located. For example, the December 2022 hearing location lookup table incorrectly listed the Lackawanna County Prison (a hearing location in a former immigration detention facility in Scranton, Pennsylvania) as associated with the address of the immigration court in

immigration court. These cases are informally called "zero bond" because the charging date is recorded as 00/00/00. Exec. Off. for Immigr. Rev., U.S. Dep't of Just., CASE Training Manual, Version 4.0, ch. 3, at 3–8 (2004), https://libguides.law.ucla.edu/ld.php?content_id=38118633 [https://perma.cc/ZW6S-XHLJ].

[370] See GPS Coordinates Converter, https://www.gps-coordinates.net/gps-coordinates-converter [https://perma.cc/Y5CX-BQND] (last visited Mar. 5, 2024).

[371] EOIR 2022 Court Listing, supra note 119. In situations where the EOIR had separate court locations within the same base city (e.g., San Francisco), we treated each court separately, matching the court location with the related information in the hearing location lookup table (tblLookupHloc) and information available on the EOIR's web page.

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Baltimore, Maryland.[372] We solved this problem by correctly classifying the state of the detention location—and where the immigrant attended the hearing—as Pennsylvania.

City Size. For our city size analysis, we relied on U.S. Census Bureau data to record the population of each city where an immigration court was located.[373] We then created five city-size categories: (1) Rural Areas (population up to 4,999); (2) Small Cities (populations 5,000 to 49,999); (3) Medium Cities (populations 50,000 to 599,000); (4) Large Cities (populations 600,000 to 999,999); (5) Metropolis (population 1 million or more).[374] Using the Initial Case Completion Sample from 2009 to 2022, Table A.1 provides a breakdown of the percentage of removal cases completed by city size.

Table A.1. Initial Case Completions, by City Size and Custody Status (2009–2022)

		City Size (%)				
Custody	Initial Comp. (*n*)	Metro.	Large	Med.	Small	Rural
Detained	929,810	14.8%	10.5%	29.8%	33.4%	11.5%
Nondetained	1,844,459	42.4%	21.3%	34.3%	2.0%	0.1%

Immigration Adjudication Centers. We identified cases decided by judges assigned to immigration adjudication centers by relying on judicial appointment notices to these locations, the EOIR's historical court listings, and the EOIR's CASE data. Table A.2 includes the number of detained initial case completions presided over by judges serving in the three adjudication centers.

[372] 2022 Hearing Location Lookup Table, FOIA Library, supra note 352.

[373] See Population Div., U.S. Census Bureau, Annual Estimates of the Resident Population for Incorporated Places in the United States: April 1, 2020 to July 1, 2021 (2022), https://www2.census.gov/programs-surveys/popest/tables/2020-2021/cities/totals/SUB-IP-EST2021-POP.xlsx [https://perma.cc/48K6-5WF3]. We assigned Fort Snelling, a former military fortification located next to the Minneapolis airport, the population of Minneapolis.

[374] Our categories divide the United States Census Bureau's definition of "Urbanized Area" (cities with populations of 50,000 or more) into three subsets: Medium, Large, and Metropolis.

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Table A.2. Detained Initial Case Completions, by Immigration Adjudication Center Location (2018–2022)

Location	Completions	Top Detained Hearing Locations Serviced
Falls Church, Virginia	*n* = 1,740	Jackson Parish Corr. Center, Jonesboro, Louisiana (35%, *n* = 610) Stewart Detention Center, Lumpkin, Georgia (19%, *n* = 325) Oakdale Detention Center, Oakdale, Louisiana (11%, *n* = 191) York County Prison, York, Pennsylvania (7%, *n* = 127) Winn Correctional Center, Winnfield, Louisiana (4%, *n* = 69) Essex County Jail, Essex, New Jersey (4%, *n* = 63)
Fort Worth, Texas	*n* = 7,532	MPP Brownsville Gateway International Bridge, Brownsville, Texas (17%, *n* = 1,245) Houston SPC, Houston, Texas (16%, *n* = 1,206) MPP Court, El Paso, Texas (10%, *n* = 762) Prairieland Detention Center, Alvarado, Texas (6%, *n* = 478) Bluebonnet Detention Center, Anson, Texas (5%, *n* = 398) Polk County Detention Facility, Livingston, Texas (5%, *n* = 378) Texas DOC–Huntsville, Huntsville, Texas (4%, *n* = 365)
Richmond, Virginia	*n* = 892	Moshannon Valley Processing Center, Philipsburg, Pennsylvania (79%, *n* = 701) Boston Detained, Boston, Massachusetts (7%, *n* = 65)

Institutional Hearing Program. Under the IHP, the EOIR routinely completes removal proceedings prior to the end of a noncitizen's prison or jail sentence.[375] To identify which proceedings took place as part of the IHP, we relied on a proceeding-level identifier "IHP" in the proceeding data table (B_TblProceeding).[376]

[375] Eagly & Shafer, supra note 124, at 788–89.

[376] This identifier specifies whether the respondent was held at an "S" (state prison), "F" (federal prison), or "M" (municipal jail) during the relevant proceeding.

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Port Courts. To analyze port courts, we used the case identifier data table (A_TblCaseIdentifier), which included case-level indicator codes that were further defined in the related look-up table (tblLookUpCaseIdentifier).[377]

C. Respondent Characteristics

National Origin. The EOIR data contained information on the nationality of each respondent in the "nat" code in the proceedings data table (B_TblProceeding).[378] Individuals who were stateless or had no known nationality comprised just 1% of the Detained Case Initiation Sample and the Detained Case Completion Sample.

Gender. To analyze gender, we gathered information from the gender field in the case data table (A_TblCase), classifying cases as either "F" for female, or "M" for male. Between 2019 and 2022, gender information was recorded in 80% of removal cases initiated in detention and 84% of initial case completions in detention.[379] We were able to validate the gender coding on detained cases by confirming that it was consistent with detained female dockets organized by the courts.[380]

[377] The following codes flagged courts used at ports of entry: "P1" (Port Court 1 - Otay Mesa), "P2" (Port Court 2 - Otay Mesa), "AC" (Miami Airport Court), "E1" (JFK Airport - Inspections), "H3" (Port Isabel Service Processing Center), and "MP" (Migrant Protection Protocol).

[378] In a small number of proceedings where nationality was missing, we used the nationality listed for a different proceeding in the case, if available. If the case only had one proceeding or no nationality available at the proceeding level, we used a case-level nationality code ("nat") from the case data table (A_TblCase).

[379] For cases initiated in detention, gender information was available in 334,537 of 419,935 cases initiated; for those completed in detention, gender information was available in 151,856 of 181,814. For removal cases initiated outside of detention between 2019 and 2022, 86% had gender information (n = 1,321,531 of 1,531,335); for those never-detained cases completed outside of detention 80% had gender information (n = 501,227 of 623,164).

[380] These all-female detained dockets were held at the following federal prisons: FCI Aliceville in Aliceville, Alabama; FCI Dublin in Dublin, California; FCI Danbury in Hartford, Connecticut; and FCI Waseca in Waseca, Minnesota. They also included three state prisons participating in the IHP: the Bedford Hills Correctional Facility for Women in Bedford Hills, New York; the Broward Correctional Institution in Fort Lauderdale, Florida; and the Arizona State Prison Complex (Perryville) in Goodyear, Arizona; as well as one county facility, the Otero County Prison. Three detention facilities in Texas held all-women's dockets: the Houston Contract Detention Facility, as well as the Montgomery Processing Center and Joe Corley Detention Facility, both in Conroe, Texas. Other women's detained dockets were scattered across other ICE detention centers such as the South Louisiana ICE Processing Center and the Adelanto ICE Processing Center.

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Unaccompanied Children. In order to identify unaccompanied children in detained proceedings,[381] we began by compiling a list of detained children's dockets conducted by EOIR judges.[382] We confirmed that these dockets were dedicated to children by (1) researching if the city in question had a juvenile docket during the years in question;[383] (2) checking the mean and median age of individuals whose cases were heard at these locations;[384] and (3) looking for the presence of juvenile identification codes.[385]

By relying on the children's dockets, we identified 17,368 proceedings involving detained children initiated in immigration courts between 2004 and 2022.[386] This sample was, however, incomplete because not all court locations that heard children's cases had a designated children's docket.

[381] An unaccompanied child is defined in immigration law as someone under the age of eighteen who has no parent or legal guardian in the United States available to provide care and physical custody. Memorandum from David L. Neal, Chief Immigr. J., Exec. Off. for Immigr. Rev., to All Immigr. JJ. et al., Operating Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children, 3 (May 22, 2007), https://libguides.law.ucla.edu/ld.php?content_id=38074066 [https://perma.cc/9MCV-W3Y7].

[382] These detained children's dockets included EPJ (El Paso Juvenile), HJV (Harlingen Juvenile), PHJ (Phoenix Juvenile), SDJ (San Diego Detained Juvenile), and SJD (San Antonio Juvenile Detained).

[383] The first children's docket was created in Phoenix in 2000. Testimony of Michael Creppy, Chief Immigr. J., Exec. Off. for Immigr. Rev., Before U.S. Senate Comm. on the Judiciary, Subcomm. on Immigr. (Feb. 28, 2002), https://www.govinfo.gov/content/pkg/CHRG-107shrg85520/html/CHRG-107shrg85520.htm [https://perma.cc/GNB2-ZPL8].

[384] A "juvenile" is defined as someone under the age of eighteen. 8 C.F.R. § 1236.3 (2023). The capacity to track date of birth in the EOIR data was not created until after 2002. Testimony of Michael Creppy, supra note 383. We found that date of birth was not regularly coded for children in detained proceedings until 2015, dropping from 50% missing in 2013 to just under 6% in 2015.

[385] Juvenile codes have been relied on in prior studies to identify children in immigration court data. See, e.g., Nina Siulc, Zhifen Cheng, Arnold Son & Olga Byrne, Legal Orientation Program: Evaluation and Performance and Outcome Measure Report, Phase II, Vera Inst. of Just., at 79 (2008), https://www.vera.org/downloads/publications/LOP_evalution_updated_5-20-08.pdf [https://perma.cc/DH2A-XAEU] (classifying juveniles with case identification codes J, J1, UJ, ND, and U). For additional background on some of the complexities in in seeking relief in immigration court for vulnerable children, see Elizabeth Keyes, Evolving Contours of Immigration Federalism: The Case of Migrant Children, 19 Harv. Latino L. Rev. 33, 34 (2015).

[386] See generally Transactional Recs. Access Clearinghouse, One-Third of New Immigration Court Cases Are Children (2022), https://trac.syr.edu/immigration/reports/681/ [https://perma.cc/PV4C-3MD8] [hereinafter TRAC Report on Children] (using a similar method of examining "special hearing locations that are devoted to holding hearings for unaccompanied juveniles" to analyze unaccompanied juvenile cases).

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Therefore, to capture additional unaccompanied children's cases beyond those handled on specialized children's dockets, we relied on the juvenile history data table (tbl_JuvenileHistory) to identify an additional 16,024 proceedings of detained unaccompanied juveniles initiated prior to 2018.[387]

As of fiscal year 2018, however, we were unable to rely on the juvenile codes. In 2017, the EOIR switched to using an "AJ" code for Accompanied Juvenile, a "UJ" code for Unaccompanied Juvenile, and a problematic "NA" code for Not Applicable. As research by the Transactional Records Access Clearinghouse has uncovered, a majority of EOIR records began to include the Not Applicable code and the agency did not clarify the meaning of this designation.[388] Therefore, for the period 2018 to 2022, we looked to the case priority code of "UC" (unaccompanied children) from the Case History data table (tbl_CasePriorityHistory) to add 2,620 proceedings for detained unaccompanied minors not previously captured for this period.[389]

Focusing on proceedings initiated between fiscal years 2004 and 2022,[390] we were left with a total of 35,441 unaccompanied juvenile proceedings initiated in detention.[391] Narrowing that sample to initial case completions between 2007 and 2022, and eliminating persons who reached the age of eighteen prior to the completion of their case, yielded 13,053 children detained at an initial case completion, representing 1.1% of the overall detained initial case completions during this time (n = 1,157,646).

[387] The use of case identification codes to mark unaccompanied juvenile cases in the EOIR's record keeping was mandated as of 2002. See Testimony of Michael Creppy, supra note 383. We added cases coded as "UJ" (unaccompanied juvenile) or "J2" (unaccompanied juvenile, asylum). See Memorandum from Brian M. O'Leary, Chief Immigr. J., to All Immigr. JJ. et al., New Case Completion Goals FY 2010 (July 14, 2010), https://libguides.law.ucla.edu/ld.php?content_id=70225387 [https://perma.cc/XR5R-K59G] (including J2 and UJ coding).

[388] Transactional Recs. Access Clearinghouse, Immigration Court's Data on Minors Facing Deportation Is Too Faulty to Be Trusted (2021), https://trac.syr.edu/immigration/reports/669/ [https://perma.cc/Y7S9-AUKP].

[389] As researchers at TRAC have found, case priority codes were established during the Obama Administration but abandoned during the Trump Administration. TRAC Report on Children, supra note 386.

[390] We excluded from this calculation 533 detained proceedings for which age at the NTA was known, reliable, and greater than 18 years.

[391] For the 23,158 detained children's proceedings for which we have age data, we found a median age of approximately 16.5 years and mean of 15.6 years (SD = 3 years) at the time the case was initiated.

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For comparative purposes, we identified 145,879 unaccompanied minors who had an initial case completion from 2007 to 2022 out of detention.[392] Unlike our detained sample, we did not rely on an analysis of juvenile dockets in operationalizing nondetained unaccompanied minors. Like our detained sample, however, we focused on juvenile history and case history codes, namely, those respondents with a "UJ" (unaccompanied juvenile) or "J2" (unaccompanied juvenile, asylum) code in the juvenile history data table (tbl_JuvenileHistory) prior to 2018, as well those with a "UC" (unaccompanied children) code in the Case History data table (tbl_CasePriorityHistory).

D. Judge Characteristics

EOIR records the judge assigned to each case and maintains a lookup table (tblLookupJudge) with the full names of EOIR judges. We first narrowed the list to judges who oversaw initial case completions among removal proceedings between 2013 and 2022.[393] We next excluded entries not associated with a specific judge, such as "visiting judge" or "detail judge." From the resulting sample of 858 judges, we focused on 722 active judges, defined as those who were above the bottom tenth percentile in completed cases.

We then gathered basic biographical information about these 722 immigration judges from EOIR's published hiring announcements.[394] In the limited cases where an agency biography was not available, we found the relevant information through state bar web pages as well as Martindale attorney profiles and other internet sources. We coded each judge's gender based on pronouns used in the biography. We also recorded prior work experience in the following categories: (1) attorney for DHS (or the former INS); (2) prosecutor for a city, county, state, or the DOJ (including time within DOJ's Office of Immigration Litigation or on detail from another agency as a Special Assistant United States Attorney); (3) military (including service as an attorney in the Judge Advocate General's Corps); and (4) a nonprofit organization (such as legal aid) or a public

[392] We excluded from this calculation 1,186 nondetained proceedings for which age at the NTA was known, reliable, and greater than 18 years. For the 131,640 nondetained children's proceedings for which we have age data, we found a median age of approximately 16.1 years and a mean of 14.9 years (SD = 3.4 years) at the time the case was initiated.

[393] For this analysis, we excluded cases that were part of the MPP.

[394] These biographies are available on the DOJ's web page and also archived for researchers by TRAC and the American Immigration Lawyers Association.

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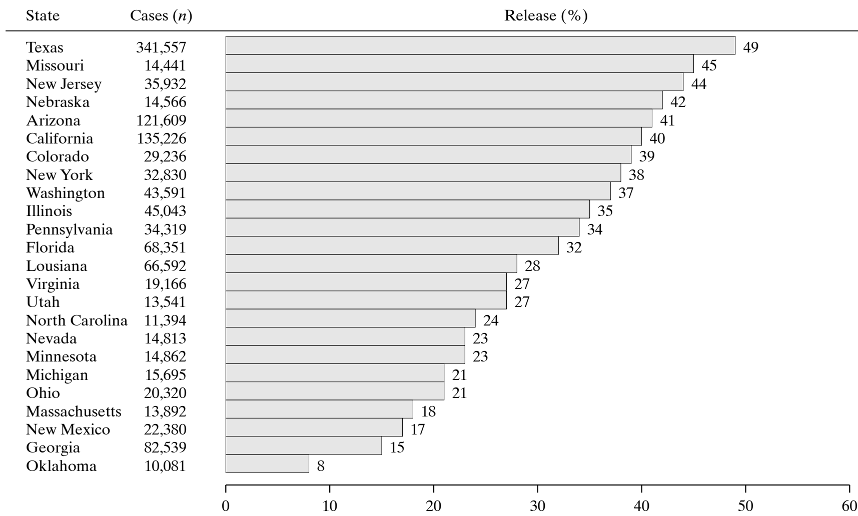
defender office. Finally, we coded the law school attended by the judges for their J.D. degree based on whether it was (1) ranked among the top forty U.S. law schools under the 2023 *U.S. News and World Report* rankings[395] or (2) fell outside the top one hundred ranked law schools.[396]

E. Case Characteristics and Outcomes

Release from Detention. Figure A.1 measures the percent of cases initiated in detention that ended while the respondent was released, organized by the state of the detention location.[397]

Figure A.1. Release Rate in Removal Cases Initiated in Detention, by State of Detention Location (2009–2018)



[395] 2023–2024 Best Law Schools, U.S. News & World Rep., https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings [https://perma.cc/KM7Y-4LTM] (last visited Mar. 5, 2024).

[396] See ABA-Approved Law Schools by Year, Am. Bar Ass'n, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/by_year_approved/ [https://perma.cc/W2AV-RXNN] (last visited Mar. 5, 2024).

[397] To eliminate COVID-19-related detention releases from the analysis, Figure A.1 ends in 2018.

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Criminal or Civil Charges. The EOIR data record all charges contained in the NTA,[398] formally called the Order to Show Cause.[399] For Figure 9, we classified charges as either "civil" (e.g., entry without inspection) or "criminal (e.g., a crime involving moral turpitude). Where the respondent had both civil and criminal removal charges, we classified the case as criminal.

Applications for Relief. Types of relief applications present in the data included asylum, withholding under the Convention Against Torture, asylum withholding, cancellation of removal (lawful permanent residents), cancellation of removal (nonpermanent residents), adjustment of status, and Section 212(c) relief. We did not consider an application for voluntary departure to be an application for relief.[400]

Asylum Applications. In analyzing asylum applications and grant rates, we measured whether an application for asylum was ever listed in the application data table (tblLookUp_Appln) and whether the immigration judge granted that application (including grants stipulated by the parties in writing or in court).[401]

Initial Case Completion Outcomes. We relied on fields ("case_type," "dec_type," and "dec_code") contained in the proceeding data table (B_TblProceeding) to create a proceeding-level outcome as defined in the court decision lookup table (tblLookupCourtDecision).[402] For removal, exclusion, and deportation case types, we analyzed five different possible outcomes at the time of the initial case completion: (1) case termination,

[398] Siulc et al., supra note 385, at 84 ("Charges on the notice to appear issued by ICE and recorded in the EOIR data are attached to each proceeding.").

[399] The Order to Show Cause, which today is known as the Notice to Appear, was introduced in 1956 as a mechanism to set forth the charges in the case that provide the basis for deportation. Kocher, supra note 105, at 119.

[400] INA § 240B, 8 U.S.C. § 1229c. The EOIR has also treated voluntary departure as a type of removal, rather than a form of relief, in past statistical yearbooks. See, e.g., Exec. Off. for Immigr. Rev., U.S. Dep't of Just., FY 2010 Statistical Year Book, Q1 (2011), https://www.justice.gov/sites/default/files/eoir/legacy/2011/02/01/fy10syb.pdf [https://perma.cc/FQ92-H4Y2]; Exec. Off. for Immigr. Rev., U.S. Dep't of Just., Statistics Yearbook Fiscal Year 2016, C2 (2017), https://www.justice.gov/eoir/page/file/fysb16/download [https://perma.cc/H74W-82CB].

[401] The asylum analysis in Table A.4 does not include whether an application for withholding of removal or Convention Against Torture protection were filed.

[402] For example, the "removal" outcome for removal proceedings is defined by the "RMV" case_type, "C" dec_type, and "R" dec_code.

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(2) grant of relief, (3) voluntary departure, (4) removal, deportation, and exclusion, or (5) administrative closure.[403]

Removal. When analyzing removal, we classified voluntary departure as removal. Stipulated removals are also a form of removal, which we identified by relying on the "SR" code found in the case identifier data table (A_TblCaseIdentifier).[404]

Representation by Counsel. We counted an individual as represented by counsel if a Notice of Entry of Appearance form (EOIR-28) was filed with the court prior to the initial case completion. If the EOIR-28 was filed after the date of the initial case completion, we still counted the case as represented by counsel so long as an attorney appeared in at least one hearing within the relevant proceeding.

Case Completion Length. We measured case length from the first hearing in the case (generally a master calendar hearing) to the date of the last hearing.[405] Our "quick court" analysis contained in Table A.3 features detained courts completing cases in only one hearing.

[403] We excluded proceedings ending in change of venue or transfer from what we categorized as an initial case completion. We also excluded so-called "zero-bond" outcomes. See supra note 369. In contrast, we included cases ending in administrative closure, a docketing tool used by immigration judges to put cases on hold by removing them from their active dockets.

[404] Memorandum from Michael J. Creppy, Chief Immigr. J., Exec. Off. for Immigr. Rev., to Deputy Chief Immigr. JJ. et al., Operating Policies and Procedures Memorandum (OPPM) 05–07: Definitions and Use of Adjournment, Call-up and Case Identification Codes (June 16, 2005), https://libguides.law.ucla.edu/ld.php?content_id=69072591 [https://perma.cc/6CGD-AZQT] (containing EOIR's "case identification codes").

[405] In cases where no hearing date was available, the input date and the completion date of the initial case completion were used to calculate case duration.

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Table A.3. Case and Respondent Characteristics at Initial Case Completion, by Quick Court

Location (Years Active)	Initial Comp. (*n*)	One Hearing	Removal	Counsel	Seek Relief	Mexican
Tucson (1994–2012)	32,701	100%	100%	0%	0%	95%
San Diego (1992–2000)	47,346	93%	99%	1%	1%	95%
Fort Snelling (2004–2009)	6,782	90%	99%	5%	5%	79%
Salt Lake City (2006–2010)	7,860	89%	99%	6%	2%	89%
Boise (1998–2006)	2,007	100%	100%	0%	0%	97%

Outcomes by Detained Court Location. Table A.4 organizes rates of representation by counsel, asylum applications and grants, and removal among the detained court locations featured in Figure 1 and Figure 2 of this Article. MPP cases were excluded from the analysis. Cases completed in Arlington are reported under the new court location, Annandale. Cases concluded at the York County Prison Court, which closed in July 2021, are included under the Baltimore court location, and cases concluded at the Houston Contract Detention Center, which ceased hosting a court in October 2018, are included under the Montgomery Processing Center in Conroe.

Table A.4. Representation, Asylum Applications and Grants, and Removal Rates in Detained Removal Cases, by Detained Court Location (2016–2022)

			Asylum		
Location	Initial Comp. (*n*)	Counsel	Apply	Grant	Removal
Adelanto ICE PC	9,187	30%	39%	19%	86%
Annandale	5,355	53%	30%	20%	82%
Atlanta (Ted Turner Dr)	7,749	35%	10%	2%	95%
Aurora CDF	5,887	33%	26%	23%	86%
Baltimore	9,412	40%	25%	13%	85%
Boston	4,409	49%	20%	14%	87%
Buffalo SPC	3,884	59%	35%	13%	89%

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Location	Initial Comp. (*n*)	Counsel	Asylum		Removal
			Apply	Grant	
Chicago (Clark St)	8,489	40%	20%	39%	83%
Cleveland	4,825	37%	18%	10%	92%
Dallas	19,322	23%	8%	11%	93%
Detroit	4,635	43%	13%	10%	91%
El Paso	997	31%	3%	4%	76%
El Paso SPC	6,621	32%	15%	10%	92%
Elizabeth CDF	6,642	54%	31%	25%	81%
Eloy DC	10,132	25%	25%	21%	89%
Florence SPC	5,173	17%	20%	10%	92%
Fort Snelling	5,316	51%	37%	20%	83%
Harlingen	699	71%	3%	0%	87%
Imperial	1,902	35%	49%	28%	81%
Krome North SPC	17,974	40%	24%	4%	89%
Laredo	2,486	41%	36%	12%	92%
Las Vegas	5,092	25%	16%	7%	94%
LaSalle ICE PC	13,477	31%	17%	4%	96%
Los Angeles (N L.A. St)	5,371	32%	34%	14%	90%
Montgomery PC	22,175	30%	16%	9%	92%
New York (Varick St)	5,036	84%	33%	12%	83%
Northwest ICE PC	10,485	34%	32%	21%	88%
Oakdale FCI	8,794	37%	21%	10%	96%
Otay Mesa CDF	3,210	40%	46%	25%	80%
Otero County PC	7,589	34%	32%	23%	90%
Port Isabel SPC	6,865	37%	34%	7%	89%
S Texas ICE PC	8,856	40%	23%	17%	88%
San Antonio	1,550	67%	34%	31%	65%
San Diego	2,215	17%	15%	16%	56%
San Francisco (Sansome St)	4,142	32%	24%	10%	93%
Stewart DC	23,448	28%	13%	6%	97%
Tucson	3,391	20%	20%	12%	92%
Ulster CF	1,650	58%	4%	0%	88%