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Mapping the Denial of Space:

Latinos and United States Immigration Law

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Mapping the Denial of Space:
Latinos and United States Immigration Law

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Abstract

Mapping the Denial of Space:

Latinos and United States Immigration Law

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Immigration legal spaces such as courtrooms and national borders are constructed by the geopolitical tensions that exist between U.S. nationalism and foreign bodies traversing its territory. Mexican, Guatemalan, Salvadorian, and Hondurans—referred to as Latinos in this research—constitute nearly all of deportation from the United States in recent decades. In addition to these deportation trends, Latinos are also less likely to receive some form of relief from deportation despite increasing violence and political instability in Latin America. Immigration law is federal and therefore is supposed to provide the same standards and protocols for all nationalities in every immigration court. This thesis investigates how the immigration and asylum process is in fact spatialized and biased to regional politics. The connection between rituals, myths, and symbols of nationalism in the judgement of Latinos are also examined. A

third component explores how migrant and refugee bodies are codified in immigration law through their experiences with immigration legal spaces.

This thesis uses a mixed methods approach to understanding the spatial processes involved in the judgement and deportation of Latinos from the United States. GIS is used to validate the uneven geography of immigrant justice and identify specific locations of inequality. Reflected in the geospatial analysis, Texas' courts are places of increased deportations and denials of asylum. Ethnographic observations in San Antonio and Pearsall's courtrooms were conducted to extract qualitative information elucidating the asymmetric use of immigration enforcement. A second field site in Chicago was chosen to compare the impacts of border politics on Latinos in removal hearings. My research finds that immigration legal spaces are constructed through the use of nationalist myths and symbols to control the mobility of Latino bodies. Moreover, deportations are significantly influenced by geopolitics and the spatial relationship of immigration legal spaces.

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Chapter 1: Opening Statement

Outside of a Chicago immigration courtroom there sits over a dozen groups of people—some with families, some with lawyers or social workers, and some by themselves. They are all waiting for their hearing before an immigration judge to determine the outcome of their legal status; can they stay in the United States, and if so with what rights? However, the collection of women and children anxiously awaiting one of the most important decisions of their lives will have a hearing that lasts less than eight minutes. This is what is called a *master Calendar*, the first step after being charged with deportability and given a *notice to appear* in court.

One after the other, I watched the judge dole out hearing dates extending one, two, even three years out. Thirty-two people's lives and futures were assessed and rescheduled in the same mundane bureaucratic manner experienced while waiting to get a driver's license. The consequences of deportation, however, carry toxic anxiety, family separation, economic destabilization, torture, rape, and death as potential outcomes. Moreover, immigration law is classified as civil law and therefore does not require the government to provide legal representation to the *respondent*—the person in deportation process. This is the unequitable assembly line of judgement and exclusion that constitutes the current United States immigration legal system.

The rapid hearings observed in Chicago's immigration court are not unique. The "rocket docket"—named for the swiftness with which *asylum* seekers are heard and tried—expedites the deportation of Latinos. Deportation and asylum denial rates are high across the country, but space and scale impact the severity and implementation of immigration enforcement. Structurally, the laws regulating immigration and asylum—a complex legal status granted to those fleeing various types of persecution— are federal and therefore equally apply to each court

and judge. However, the overwhelming proportion of Latinos (Executive Office of Immigration Review [EOIR], 2016a) within these legal spaces raises several questions about its equitable implementation which are the focus of this thesis: 1) How do the politics of a nationalist and securitized United States manifest spatially to influence legal outcomes for Mexican, Guatemalan, Honduran, and Salvadorians seeking relief from deportation? 2) By what means are rituals, symbols, and myths, related to nationalism, in the courtroom, and other legal places used to legitimize the judgement of Latino migrants and refugees? 3) In what way are migrant and refugee bodies codified in immigration law?

A FEMINIST GEO-JURISPRUDENCE

This research uses a theoretical framework at the intersection of feminist geography, political geography, critical geopolitics, and legal studies that draws on all three disciplines to interrogate the complex and enigmatic workings of immigration law and policy. Hyndman (2001) proposed at the Annual Canadian Association of Geographers meeting that *Feminist Geopolitics* was not a new discipline, or a reinvented form of existing *critical geopolitics*, but an adjusted method of viewing existing theory. Critical geopolitics questions assumptions about scale, territory, nationalism, and power in politics. These scholars (Agnew, 1987; O' Tuathail, 1986; O' Tuathail & Agnew, 1992; Paasi & Prokkola, 2008) have focused on deconstructing the notion of the state in politics as a natural homogenous entity, and argued that it serves more as a means of enacting power over individuals. Their criticisms fall short of truly acknowledging an embodied, feminist conceptualization of scale and individuals in geopolitics, preferring to reference a fraternity of scholars, and focus on heads of state (Agnew, 2003; Dalby, 2008; Dodds, 1996; O' Tuathail, 1996).

Feminist geopoliticians have addressed these issues in several ways that inform my research: they have called for the inclusion of feminism to expose egregious power inequalities inherent in state entities (Dixon & Marston, 2011; Hiemstra & Mountz, 2011; Hyndman, 2010a; Massaro & Williams, 2013; J. Sharp, 2010; J. P. Sharp, 2013); a relational understanding of scale that reads the state as embodied has reconciled power differentials (Dowler & Sharp, 2010; Fluri, 2011; Hyndman, 2012; Pratt & Rosner, 2006; Secor, 2001); and feminist have challenged the designation of men as influential state actors and women as victims of state violence (Fluri, 2011; Hiemstra & Mountz, 2011; Pratt & Rosner, 2006; Secor, 2001; J. P. Sharp, 2000). Furthermore, scholars of feminist geopolitics have emphasized a need for situated geopolitical analysis (Hyndman, 2012; J. P. Sharp, 2000) that rejects theorizing from an all knowing position, which is non-corporeal and separated from time, and space (Haraway, 1988). Lastly, they have campaigned for geopolitical scholarship's application in social justice (Dixon, 2015; Hiemstra & Mountz, 2011; Hyndman, 2001). These insights serve as a powerful framework for analyzing Latinos in the U.S. immigration and refugee system.

Firstly, Latinos face oppressive legislation and heightened securitization aimed at exclusion and removal every day. Feminists "want to point to the hidden and insidious workings of power throughout the structures of everyday life" (Dowler & Sharp, 2010, p. 167), such as those entangled in immigration and asylum geopolitics. Illegal labor has historically proven to be a high gain and low risk enterprise for U.S. employers resulting in steady migration from Latin America (Castles, de Haas, & Miller, 2014; Massey, Durand, & Pren, 2016). Simultaneously, legal immigration reform has stalled by using rhetoric revolving around criminalization and national security and ensured an exploitable class based on citizenship and legal status. Despite signing on to the 1951 convention on refugees and its 1967 protocols, the United States has

manipulated its laws and reconfigured space to circumnavigate its political obligations at the expense of Latino asylum seekers (Gammeltoft-Hansen, 2014). Fervent border enforcement and the denial of legal rights have been decried by many as oppressive and a violation of human rights (Hiemstra, 2012; Hyndman, 2005; Mountz, 2015; Piper, 2006). Furthermore, the unequitable enforcement and judgement of Latino immigrants and asylum seekers under the guise of national security raises questions about how the state constitutes security, and for whom (Coleman, 2009; Dowler & Sharp, 2010; Fluri, 2014; Tyner & Henkin, 2014).

Another critique of critical geopolitics, is that it fails to consider the power residing in mundane and individual sources, but rather favors the nation state as the unit of analysis (Dowler & Sharp, 2010; Hyndman, 2001, 2004; Massaro & Williams, 2013; Secor, 2001). An epistemology rooted in feminist geopolitics, emphasizing the relationship between the global and intimate (Hiemstra, 2012) and embodied nature of law (Martin, Scherr, & City, 2010), is paired with traditional immigration jurisprudence to resolve this problem and inform my research. My thesis "studies up" (Braverman, Blomley, Delaney, & Kedar, 2014; Coleman, 2012b; Harding & Norberg, 2005; Massaro & Williams, 2013) the United States by critically reviewing its immigration laws and policies. I follow by examining the nuanced expression of geopolitics in everyday immigration courtroom practices. Case law is a geopolitical expression constructed through the daily lives of migrants and asylum seekers and resonates throughout the U.S. legal and political systems. In court anything can be put on display, the deepest held secrets of rape and physical brutality are lain bare for questioning and cross examination. These painfully intimate cases can persuade a judge to make a precedent ruling that reverberates transnationally through migrant and asylum seeking communities. Every case is not a landmark decision, but these seemingly routine judgements are in themselves geopolitical.

Further criticism of critical geopolitics arose from the paradox where even when scholars called for the decentering of geopolitical norms (Agnew, 1987, 1994; O' Tuathail, 1994) they inadvertently perpetuated them (Massaro & Williams, 2013; J. P. Sharp, 2000)—preserving masculinist hierarchies of power. Critical geopolitical literature stresses a system where men occupy spaces of power, and women are relegated to the "lesser" private sphere unworthy of academic discussion. Prior scholarship had often excluded these voices, preferring to focus on the "Big Men" (J. P. Sharp, 2000, p. 363) of history. Several feminist scholars (Hiemstra & Mountz, 2011; Hyndman, 2001; Massaro & Williams, 2013; J. P. Sharp, 2000) have challenged this practice and called for a gendered and racialized interpretation of geopolitics. I have also chosen to contribute to feminist scholarship and lend voice to the diverse Latino migrants and asylum seekers responsible for the formation of geopolitics through their acts of migrating, recounting their narratives in court, and asserting their rights, among other actions. It is undeniable that hetero-normative and masculinist institutions have great influence in immigration and asylum geopolitics, but the power to enact change must be equally credited to underrepresented and often overlooked Latino migrants, asylum seekers, attorneys, and the scholars who share their legal spaces.

Feminist scholars (Hyndman, 2012; J. P. Sharp, 2000) have noted the history of critical geopolitics scholars in overlooking their own positions of power in the creation of scientific knowledge. Therefore it is important to situate knowledge (Haraway, 1988), and reject omniscient or objective positions, to avoid western centric or positivist conclusions (Dixon, 2014; Harding, 1986; Hyndman, 2004; J. P. Sharp, 2000). To mitigate my own positions of power as a Latino male researcher, veteran, U.S. citizen, etc. I have followed other scholar's example by including my biographical context throughout my research (England, 1994; Lawson,

1995; Sundberg, 2005). Situating knowledge also alleviates some feminists' apprehension with using quantitative methods (Hodge, 1995; Kwan, 2002b; McLafferty, 2005)—which my research partially relies on.

Quantitative spatial analysis versed in feminist epistemologies is an effective tool for empowering immigration attorneys to better defend Latinos and oppose oppressive policy. Lawson (1995, p. 453) points out that quantitative methods are an effective "strategy for understanding the construction of difference," and particularly useful in studying immigration legal spaces. To answer the call for engaged research, I have provided visual aids and expert testimony to immigration attorneys. There is a lack of legal representation for migrants and asylum seekers, and existing legislation is entrenched with obstacle for entering legally or gaining relief from deportation. Exposing the complexities and inequalities plaguing immigration legal spaces is an important step in advocating change for a more inclusive and compassionate system where human rights are on par with national security. Moreover, it is important to do so while minimizing the perpetuation of masculinist agendas and racial tropes.

AUTO-BIOGRAPHY OF MIXED METHODS IN LEGAL SPACES

The combination of professional and personal experiences are what informed the methods used in my research. A holistic framework for understanding the dynamics of Latinos in legal spaces was found at the intersection of quantitative and qualitative methods. Both were utilized to deconstruct the multi-scalar properties of asylum and immigration geopolitics in relation to Latinos. Statistics and Geographic Information Systems (GIS) proved a powerful tool for analyzing nationwide structural patterns reflecting political agendas, and court ethnographies revealed the intimate details about people who struggle in these unjust systems. A third

component driving the use of mixed methods were my personal encounters and familiarity with legal spaces.

My father and sister are attorneys, and at last count I had eight other members on his side who at some point practiced law. From a young age I was inculcated in the capricious nature of the legal system. My view of immigration law was further supported through my mother and her family's Mexican immigration narrative, along with my upbringing in the eastside of San Jose, California—a predominantly Mexican, Vietnamese, and Filipino community. This nascent autoethnography revealed the importance of narrative and micro-scalar analysis to get at the roots of larger societal structures. As a GIS specialist for the Texas Department of Public Safety's (DPS) Intelligence and Counter Terrorism Division (ICT), I spent several years investigating smuggling, trafficking, and transnational criminal organizations on the US southern border. In this capacity I realized how power-laden spatial analysis, statistics, and their visualization can be, the potential for their use in revealing patterns of violence and oppression.

Many scholars have discussed the epistemological divide that exists in academia between quantitative and qualitative methods (Cresswell, 2014; DeLyser & Sui, 2014; Hodge, 1995; Knigge & Cope, 2006; Lawson, 1995). However, various feminist scholars have demonstrated successful ways to deploy quantitative methods to reveal gendered economic disparities (Lawson, 1995; Pratt & Hanson, 2003), deconstruct disempowering ethnic norms (Pavlovskaya & Bier, 2012), or campaign for improved healthcare (McLafferty, 2002). In the professional world this tension is less pronounced as well, and both methods often work in concert. Northern Kentucky's Health Department (2016) is an example of how GIS, epidemiology, and patient narratives are being used to combat the opioid epidemic and provide public health services. I

provide a brief biographical context to situate my methodological and epistemological journey using quantitative methods in immigration legal spaces (Lawson, 1995).

GIS: The Method of Giving numbers a face

When I initiated this project in 2015 I sought to develop a national picture of removals and asylum– in particular as it related to the increase of women and children. I was working for DPS during the 2014 "immigration crisis," and my responsibilities included sorting through reports and mapping various crimes along the United States and Mexico border. Human lives were obscured in this process, as I am sure were human rights. Prior to working at DPS I served in the military where the wide array of surveillance systems I operated to track disembodied others produced a gaze from nowhere (Haraway, 1988). These experiences have made me hyper aware of the dissociative capabilities of technology and its potential for violence. However, I do not consider these experiences to place me at odds with feminist epistemology; they serve as reminders of the dangers of hyper-masculinist doctrines. Being cognizant and transparent of this fact helps me to prevent positivist and empiricist assumptions about what can be truly known.

For this thesis I used reported removal data from the Department of Homeland Security (DHS) and The Department of Justice's Executive Office for Immigration Review (EOIR). Data on court removal orders was attained from Syracuse University's Transactional Records Access Clearinghouse (TRAC) database. These data were used to analyze the spatial distributions and temporal patterns of Latino removal and asylum decisions in the United States. These data were aggregated by 58 immigration courts into point shapefiles with reliability only until fiscal year (October-September) 2015, because of the length of time it takes to compile the reports. My research benefited from fairly open access to government data, however, the recent shift in

politics—exemplified in the Local Zoning Decisions Protection Act of 2017—foreshadows a growing era of restricted data by the federal government. It is still unclear how this new climate of information opacity and obfuscation will influence my subsequent research and analysis. I compiled information about violence—in general, and towards women and LGBTQ people—in Mexico and Central America using the United Nations Office of Drugs and Crime, and the Graduate Institute in Geneva's Small Arms Survey. These comparative investigations brought to light how Latinos are excluded and denied asylum disproportionately when many should qualify. Mexicans, in particular are over represented in deportation, because the legal system expedites their removal often before the immigrants can gain knowledge of their rights to relief.

Conducting a quantitative analysis of migration and asylum, where many of those being counted have experienced heinous experiences deserving of individual attention, is difficult to accomplish in a sensitive, but meaningful manner. I echo Lawson's (1995) lamentations about the difficulty and inherent objectification of categorizing human behavior for geospatial analysis, despite more than a decade reflecting on an ethical and appropriate approach. Kwan (2002a) proposes inserting reflexivity to GIS analysis to assuage power disparities in academic research. Using England's (1994, p. 244) definition of reflexivity as "self-critical sympathetic introspection and the self- conscious analytical scrutiny of the self as researcher" I employed this technique to mitigate challenging questions, such as how to qualify "high" and "low" deportation rates—essentially making a determination on the number of lives that are acceptable to remove. This was most influential, and at times frustrating, in the visual representation of quantitative data and analysis. After countless iterations I settled on a cartographic design and method that balanced scientific rigor with an interpretation that does not disempower Latinos in immigration legal spaces.

Research in cartography (Brewer & Campbell, 1998) has shown that people most accurately distinguish three symbol sizes in a graduated map and specifically underestimate differences in data when they are represented by circles of varying sizes. Circles introduce further difficulty in determining differences in size and classification (MacEachren, 1995). These two factors compelled me to use three different sizes of squares—determined by QGIS (2016) software and then adapted by eye to improve their distinction—for the symbology in my maps. The most difficult part of this process was determining the associated data to be represented by the size of the squares. The graduated symbols were divided into three quantiles to maximize the fact that people better distinguish between small, medium, and large symbols. After much grounded visualization—a non-linear process of data gathering, analyzing and representation (Knigge & Cope, 2006)—I determined this approach would provide consistency in my analysis. This process was weighed against alternatives that included arbitrary classifications based solely on my judgement, reliance on GIS software to make the decision, or callous statistical standards that only focus on mathematical outliers (beyond three standard deviations).

METHODS FOR SITUATING COURTROOM SPACES

The first time I walked into the San Antonio immigration court I was terrified; I was not scared because I was at risk of being deported… I was just afraid. The night before attending court I wrestled in bed trying to anticipate possible issues and obstacles. I only felt somewhat settled after I entered the front doors, walked through the metal detector, passed the armed security, found my seat, and received the emotionless acceptance of the immigration judge. The discomfort was more than fieldwork jitters, and the question lingered in my mind; why was I so anxious? I am a veteran, so it is unlikely that in a hyper-nationalist state, my citizenship and

loyalty could be questioned. My familiarity with legal space also should have assuaged my fears; my father is an attorney, and as a child I grew up playing in courtrooms after hours. Perhaps my race caused some of my apprehension in this new legal space; I am half Mexican and do have some Arab features—during my deployment to Iraq our interpreters would not believe that I was American. However, these things seemed trivial in relation to the strong feelings this immigration court evoked in me. The authority legal places represent, with all of its symbols and rituals, are constant reminders of the power the state can exert over the body. I often reflect on that visceral reaction and try to comprehend how much more intimidating it must feel to outsiders seeking relief and how much more violent the experience is without the privileges of my position.

To counteract my fears I followed all of the codes of behavior inculcated during childhood and military service to show respect to the court. I wore a suit with all of the proper masculine, white, professional protocols; my tie ended at the center of my buckle, belt was threaded to my left, and gig line straight and aligned. I dawned the ceremonial garb necessary to grant me access to, and mobility through legal space. Feminist scholars (Hyndman, 2010b; Kobayashi, 2001; Mohammad, 2001) have demonstrated how a researcher's identity in the field shape their experience, responses, and consequences. In this fashion I was able to negotiate various aspects of my identity (kinship, service, and researcher) to conduct courtroom ethnography from a position of an accepted outsider.

I conducted courtroom ethnographies in San Antonio and Pearsall, Texas as well as Chicago's immigration courts in the spring and summer of 2016 in order to provide a multi-scalar analysis of Latino's contact and experiences with legal spaces. During these observations I was able to witness a range of immigration judge's with varying degrees of experience—some

had only been a judge for several months, and others for several decades. I was presented with the opportunity to be trained to conduct immigration courtroom observations with Dr. Alfonso Gonzales from the University of Texas at Austin. During that time we covered ethnographic procedures for observing the courtroom. Through his connections with the local immigration attorneys and advocates in the Central Texas area, we were able to observe hearings at San Antonio and Pearsall detention center's immigration court. The first training observation was a *merits hearing* petitioning for asylum, and was conducted in conjunction with Dr. Rebecca Torres, and Dr. Alfonso Gonzales. These hearings initiate once a person has been found inadmissible or removable under the law, leaving them with an opportunity to petition for some form of relief. I observed a total of four hearings in Texas, two in San Antonio, and two at Pearsall detention center, accompanied by either Dr. Torres or fellow student Aurora Ibarra. Field work was conducted mainly over the summer of 2016, with the exception of the final merits hearing in San Antonio in fall 2016. Immigration hearings are open to the public, however, a judge can chose to make them private if the respondent requests it, or anonymity is required for the case. Our attendance was facilitated through the various immigration attorney's Dr. Gonzales worked with over previous years. Most judges were ambivalent to our presence, whereas the majority of government attorneys were clearly displeased, and sometimes defiant of our presence.

In order to expand the number of hearings I could observe, and provide a more rounded sample of immigration legal spaces, I also conducted courtroom ethnographies in Chicago's immigration court. This provided geographic and political variability from that of Texas and the border, while maintaining a large percentage of Latino respondents—over half of observed hearings were Latinos. Immigration attorneys had confided that Chicago's court was much more

liberal and farther removed from border politics than courts in Texas. I gained access to the Chicago immigration court through my father who is an attorney in the city. The connection and access was a primary reason for selecting this as a research site. A Federal Judge my father works with, who once served as an immigration judge in Chicago's court, reached out on my behalf to the Chief Immigration Judge for the Midwest. She notified the judges and staff of my visit, and I was given much greater access to the court and judges than I had in Texas, where I was an outsider. I observed hearings over two days. Judges spent the mornings conducting master calendars and used the afternoons for merits hearings. The master calendar is primarily administrative in nature and often lasted only a few minutes. The respondents and attorney—if they are fortunate to have one— provide some basic facts about their case and are then issued a date for a following hearing. Subsequent hearings scheduled could be a merits hearing to petition for relief, a bond hearing to get permission to be released from detention (if applicable), or a continuance (postponement). During the afternoon sessions I observed eight removal hearings conducted via virtual teleconference from detention centers.

A typical observation at the South Texas Detention Complex (Pearsall) involved coordinating—and meeting if possible—with the immigration attorney in order to prepare for the hearing. We were informed by the attorneys we worked with that it was key to arrive substantially early for hearings in detention centers, because security had indiscriminate power to restrict access to outsiders not affiliated with the case. The prohibition of cell phones in the facility made it difficult to contact the immigration attorney if they were already inside when we arrived. This made it vital to get the case information beforehand. Providing the detention complex security with the case (A) number was required, as well as our purpose for being present. Explaining that we were researchers often led to confusion by the security personnel

who clearly only wanted a reasonable statement for bureaucratic accountability. They would write expert witness or family member on the check-in sheet to expedite the performative process of security. Wearing professional attire facilitated the security process, and many times I was mistaken for an attorney or law student, and therefore regarded as harmless. Hearings in Chicago and San Antonio's immigration courts were much less difficult to attend and only required that the immigration judge, and respondent agree to our presence. To facilitate the process, collaborating attorneys would ask permission of their clients beforehand, and sometimes the judge as well.

Attending hearings could prove problematic considering the unpredictable nature of scheduling hearings, and often resulted in changed dates or cancellations. This also proved difficult in following up with cases whose determinations were postponed or interviewing people before and after their hearing. Trying to capture information from courtroom observations was extremely difficult since we could not record anything or gain access to transcripts. We relied on note taking, and decisions constantly had to be made about whether to document people's reactions, describe physical surroundings, or transcribe the dialogue. Photography, while not officially prohibited in certain areas outside the courtroom, was highly suspect by security and therefore limited. Some photographs were taken, and sketches were created to capture spatial organization of the courtroom.

Several informal interviews were conducted with five immigration attorneys and two immigration judges. The disproportionate power dynamics made formal interviewing of immigration judges difficult. When I asked the Chief Immigration Judge in Chicago if I could record formal interviews she informed me that it would take a written request of authorization from the EOIR, and that I would have to provide my questions for scrutiny. She recommended

instead that I wait to speak with judges informally between hearings. These interviews proved very useful despite the lack of structure, and judges were comfortable talking candidly about their experiences. Attorneys also had no problem expressing the frustrations, and challenges of practicing immigration law. Neither group requested anonymity, and court proceedings are publicly accessible by law—the exception being asylum hearings which is at the discretion of the parties involved. However, I chose to obscure the identities of interviewed attorneys and judges, and used pseudonyms for the respondents to prevent any potential backlash.

The spontaneous and prohibitive nature of courtroom ethnography limited the amount of data that could be collected and required note taking as the primary recording method. Although courtroom ethnography are prohibitive in that they reduce the ethnographic tools available, Hyndman points out that "even when cooperation is forthcoming, what we record is not all that took place" (Hyndman, 2010b, p. 264). All the sophisticated recording equipment in existence could not capture the totality of each individual's life or motivations, but these vignettes are a valuable tool in the deconstruction of oppressive judgements.

Chapter 2: Background on Latinos and Immigration Policy

The following chapter provides a legal-historical background of Latinos in U.S. immigration legal spaces. It is meant to provide a geopolitical context explicating the United States' legal reactions to migrants and refugees. This framework is built upon in subsequent chapters to expose present geographic inequalities in removal orders, and court proceedings. Latinos were selected as the unit of analysis, because combined they have accounted for over 90% of removals since 2009 (DHS 2016; DHS 2016). Figure 1 illustrates the configuration of Latino removals by country since 2005.

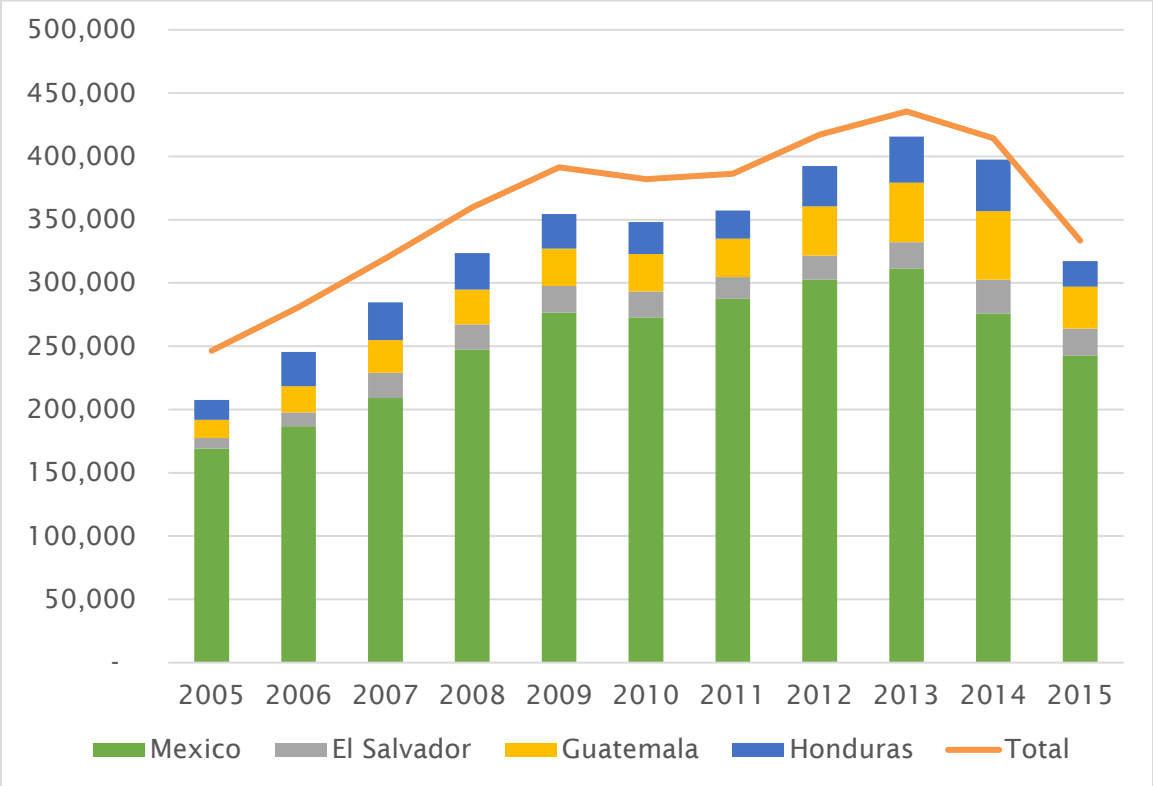

Figure 1: Number of Latinos removed from the United States in comparison to removals of all nationalities. Chart adapted from DHS' Yearbook of Immigration Statistics (2016).

For the sake of clarity, I define Central America as Guatemala, El Salvador, and Honduras—recognizing that the term is temporary and amorphous (Sundberg, 2011). In a similar vein, Mexico and Central America are referred to as Latin America. It is important to understand that while they share similarities, these groups are distinct in their motivations for migrating as well as their experiences with legal spaces. Specifically the relatively recent development of migrating to escape persecution—instituted by the Convention On Refugees (1951), and the Protocol Relating To The Status Of Refugees (1967)—represents another area of divergence for Latino experiences that is not fully understood by scholars or politicians.

Migrants and asylum seekers choose to leave their home or current residence for a variety of reasons: escaping from violence and instability (United Nations High Commissioner for Refugees, 2015), pursuit of a better life and economic situation, participation in a societal norm (Popke & Torres, 2013), and many combinations thereof (Hamilton & Chinchilla, 1991; Jonas & Rodriguez, 2014; O'Connell Davidson, 2013; Stoll, 2010). The declared reason for entering the United States is one of the most important factors when applying for relief from deportation. Life circumstances are used to define Latinos and scrutinize them against the legal and social framework of "desirable" immigrants. A judge's existing knowledge and the immigration attorney's presentation of foreign government's persecutions or impunity, and their geographic influence can be instrumental in the outcome of their case. Immigration judges are empowered by the REAL ID Act (2005) to use their discretion in determining whether the burden of proof has been met based on their perception of the respondent's credibility. The subjectivity of judgement explicitly codified in the act (REAL ID Act, 2005) reveals how similar individual cases do not always result in the same outcome (Conroy, 2009). However, background

knowledge of Mexican and Central American geopolitics is essential in highlighting these instances of arbitrary decision making.

MEXICO: TWO HUNDRED YEARS AND TWO THOUSAND MILES OF LEGAL SPACE

The United States and Mexico share a long contentious history steeped in land disputes, war, and exploitation. The border between the two nations has evolved over the years from an ambiguous imagination to a militarized frontier that exists along California, Arizona, New Mexico, and Texas. For the majority of the United States' first century, the border with Mexico was not an issue; immigration concerns were focused towards Europeans and Asians (Stern, 2004). A borderland was forming in Texas – at the time a part of Mexico – due to Mexican efforts to populate the region with Anglos and secure its hold of the territory (Nevins, 2002). Cultural and racial differences between Anglos and Mestizos divided the two ethnically (Molina, 2015), but it was Mexico's abolition of slavery that started a revolution in 1836 and gained Texas its independence. A decade later the United States would annex Texas to become its 48th state. Tension between Mexico and its former territory heightened, eventually spurring the Mexican American War in 1846, and resulted in the United States' acquisition of the current Western States. The geopolitical border conceptually solidified following the war and clear lines demarcating sovereignty were formed. By today's standards, however, the approximate 2,000 miles separating the United States and Mexico was hardly enforced.

For the first hundred years of the United States' existence, Mexican migration was not a concern; The U.S. borders migrated over Mexicans more frequently than the inverse. Labor demands during the 18th and 19th century were met through the exploitation of slave labor in the U.S. South, and Europeans and Asians working in miserable conditions in Northern cities and on

the railroads. The twentieth century would mark the beginning of a new age of regulated migration that heavily employed legislation and legal powers as means of enforcement. The domain of immigration's legal space would grow over the next century – and still grows today – to encompass a labyrinth of legislation, litigation, and law enforcement aimed at controlling the flows of people into and within its jurisdiction. The bilateral Gentleman's Agreement of 1907 effectively prevented the emigration of Japanese to the United States and created a labor shortage (Legomsky & Rodriguez, 2015, p. 14; Massey, 2016). A series of immigration laws passed from 1917 to 1924 established country caps – often referred to as quotas, despite setting limits not minimums – and barred all Asians from coming to the United States. Border Patrol was also founded in 1924, but at that time focused on apprehending Chinese trying to enter the country illegally under the new laws (Stern, 2004). Wheatley and Rodriguez (2014) point out that while the early Twentieth Century saw an increase in legislation limiting the amount and types of people permitted to enter the United States, Mexicans were largely unaffected by this legislation. Mexicans began emerging as an abundant labor force due to an increase in exclusionary legislation for Asians and Europeans, and their close proximity to the border made it easy to regulate movement.

The Great Depression and subsequent decade sparked the beginning of a popular anti-immigrant discourse that would result in the forceful decrease in Mexican labor. The rhetoric revolved around a narrative that Mexicans were stealing citizen's jobs and playing off of economic insecurities. Scholars calculate that over 400,000 Mexicans were deported between 1929 and 1937, resulting in the Mexican population of the United States diminishing by half from 1930 and 1940 (Massey, 2016; Wheatley & Rodriguez, 2014). Mexican immigration would not increase again until the Second World War when labor deficits forced the United States to

reshape the boundaries of immigration legal spaces. Bilateral negotiations with Mexico in 1942 created the Bracero Program which lasted until 1964. Agro-business and the U.S. government largely ignored provisions set in place in the agreement to protect workers and subjected Braceros to poor living and working conditions. Documented abuses included: “poor food, excessive charges for board, substandard housing, discrimination, physical mistreatment, inappropriate deductions from their wages, and exposure to pesticides and other dangerous chemicals” (Carrasco, 1998, p. 81). The Bracero Program allowed hundreds of thousands of Mexicans to work in the United States, but it also codified Mexicans as a rotating and expendable labor force. This ideology of visitors traversing the geopolitical space further alienated them. Many believed that temporary workers would prevent immigration, but scholars (Dunn, 2009; Massey et al., 2016; Nevins, 2002) point out that the opposite occurred due to the hiring processes of agricultural employers and the exploitability of unauthorized workers.

The pattern of authorized temporary migration and unauthorized labor exploitation continued to grow the Mexican population within the United States until a recession following the Korean War (Legomsky & Rodriguez, 2015; Wheatley & Rodriguez, 2014), and fears from communist infiltration (Massey, 2016; Nevins, 2002) spurred the Eisenhower administration to take action. In the summer of 1954, a second mass deportation effort known as Operation Wetback occurred. By the end of fiscal year 1954, nearly a million Mexicans had been deported from U.S. territory, with another million being apprehended. While the political campaign was praised by anti-immigration supporters, scholars (Jonas & Rodriguez, 2014; Massey, 2016; Wheatley & Rodriguez, 2014) point out that the operation’s efficacy alone is misleading. Deportation numbers had been growing exponentially since 1944 and exceeded half a million

each year starting from 1950 (figure 2). The cumulative enforcement efforts of the decade prior to 1954 far exceeded those during the operation.

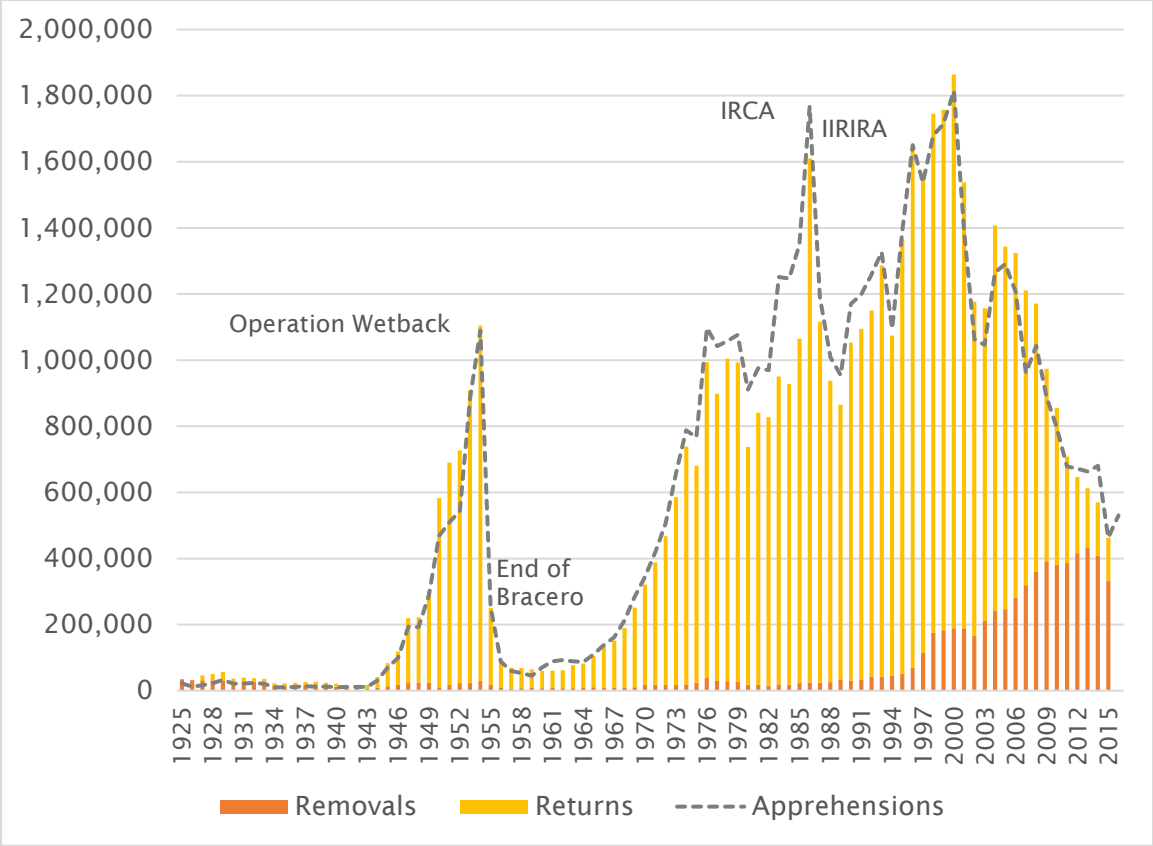

Figure 2: History of total apprehensions, returns and removals by U.S. border enforcement. Chart adapted from INS and DHS' Yearbook of Immigration Statistics (2016; U.S. Immigration and Naturalization Service, 1997).

To offset the pressure from agribusiness, which had grown accustomed to cheap exploitable labor, the Eisenhower administration used its executive powers to increase the number of temporary workers by 378,000 from 1950 to 1956 (Massey, 2016). The root of Operation Wetback, and others like it, derives from a process that is continuously repeated in immigration legal space. Economic uncertainty and national insecurity are used to stoke anti-

immigrant sentiment by media outlets and politicians campaigning in their own self-interests (Coleman, 2012a; Hernandez-Truyol, 1998; Trump, 2015).

Legislation amidst the civil rights era further problematized immigration for Mexicans. The 1965 amendment to the Immigration and Nationality Act (1965) eliminated country bans and replaced them with a global visa cap of 290,000, limiting each nation to 20,000 visas. No exception was made for the western hemisphere – previously spared regulation – and in the process eliminating nearly 500,000 visas for Mexican migrants (Massey, 2016; Wheatley & Rodriguez, 2014). However, the 200,000 plus migrants from Mexico did not stop entering the United States, they merely became unauthorized. The stroke of a pen did little to stop the movement of individuals, but it did transform the identities of a whole class of people from human to alien. The Bracero program – which was allowed to expire in 1964 – had also caused a change in the demographics of Mexican immigrants as the relative stability of the system allowed an increasing number to bring their families – legally or not. Therefore, it was not just adult males who were becoming criminalized, but whole families as well. Labor demands still existed and without any real form of punishing or regulating employers, Mexicans continued to migrate at existing numbers. Massey (2016, p. 168) notes that between 1965 and 1980 migration patterns remained largely unchanged. Consequently, a century of circular migration has established the impression that Mexicans are only economic migrants and unworthy of relief.

The Immigration Reform and Control Act (IRCA) of 1986, on the surface did well by many unauthorized immigrants, but masked increased funding for securitization. IRCA (1986) provided a small window for those residing illegally in the United States prior to 1982 to make an adjustment of status—commonly referred to as amnesty. It made hiring unauthorized labor a criminal offense; substantially increased Border Patrol's budget, and established a temporary

worker program. The program eventually led to the legalization of almost 2.7 million people (Legomsky & Rodriguez, 2015). IRCA (1986), and most of the subsequent immigration laws, are a double edged sword which tout their inclusionary components to further strengthen border and immigration enforcement. The 1990s saw an increase in anti-immigration and Latino sentiments. California's prop 187 required doctors, teachers, and other social services to report individuals out of legal status. The Supreme Court eventually held that states did not have the authority to pass laws enforcing immigration matters, however, the equally damning Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) would pass a few years later.

During this time period the Border Patrol, and enforcement in general, militarized the border and conducted various operations that oppressed citizens and terrorized those out of legal status. Militarized enforcement operations along the southern border resulted in an increase in removals (figure 2), deaths (Eschbach, Hagan, Rodriguez, Hernandez-Leon, & Bailey, 1999), and violations of both civil and human rights (Dunn, 2009; Nevins, 2002). The securitization had been occurring for nearly three decades before the attacks on September 11th, 2001, but the years following that tragedy would petrify the nation in fear and created an absolute belief in securing the border at any cost. The Secure Fence Act (2006) authorized the construction of 700 miles of border fence and other technological surveillance systems (Gonzales, 2013). Additionally, funding for Customs and Border Protection (CBP) has doubled from $5.9 billion in 2003 to 11.9 billion in 2013 (Blau & Mackie, 2016). Furthermore, a component of the REAL ID act (2005) greatly restricted Latino mobility by heightening the standards for securing identification (Price, 2015). At current rates, the United States removes about half a million people every year (DHS 2016). Mexicans still make up the majority of people trapped within immigration legal spaces,

but the population of Unauthorized Mexicans living in the United States is steadily declining corresponding to the 2007 recession (Pew Research Center, 2016). Simultaneously the number of Central Americans immigrating or seeking asylum, especially women and children, continues to rise.

CENTRAL AMERICANS AND THE FRUITS OF THEIR LABOR

A great deal of attention has been paid to Mexico and its relationship with the United States in large part because of its shared geographic and political history. Additionally, the Mexican experience with the immigration legal space is not only similar to that of Guatemalans, El Salvadorians, and Hondurans it is a metaphorical and physical funnel for their experience. Given that Central Americans pass through Mexico's territory and converge on the U.S. southern border, they are perceived as a homogenous ethnic group in many respects. In the United States identity and heritage are conflated to create one racialized group responsible for a weakened economy (Hernandez-Truyol, 1998), crime (Dunn, 2009; Gonzales, 2013), and ethnic pollution (Molina, 2015; Stern, 2004). Although popular and political discourse aggregates all four groups, their contact with the immigration system and geopolitical history with the United States differ in various aspects. Central Americans are an important component to this research, because of their focus in the media and the resulting xenophobic and nationalist response.

Central America's political relationship with the United States over the last century has consisted of U.S. economic exploitation of natural resources, and a proxy control by supporting despots favorable to its interests (Dym & Offen, 2011; Garni & Weyher, 2013; Hamilton & Chinchilla, 1991; Schoonover, 1989). Western fruit companies established plantations throughout the Americas and Caribbean, however, the United Fruit Company would eventually

gain a monopoly in the region. Their involvement, however, brought much instability as well. The vulnerability of mono-cropping bananas resulted in the creation and destruction of plantations due to disease. Workers were left unemployed and disenfranchised once a growing region became contaminated and abandoned (Bucheli, 2008). The actions of the United Fruit Company set the precedent for U.S. economic domination and political control in the Northern Triangle – as well as other parts of Central America and the Caribbean.

Capitalist exploitation and U.S. political intervention—with roots in policies such as the Monroe Doctrine—and its legacy built resentment among Central Americans who had been displaced and later abandoned by their capitalist friendly governments. Socialist ideologies began to circulate in the region during the twentieth century that stoked the United States' fear of communist regimes emerging near its borders. As was common in the Cold War the United States resorted to building proxy armies in foreign states to fight communism or groups purporting socialist ideals. The United States also did not hesitate to send its military for support or direct action and to ensure economic interests (Bucheli, 2008). Civil wars erupted throughout the region resulting in mass murder if not genocide; the effects of the war persist today and are key precursors to the instability in the region (Norma Stoltz Chinchilla & Hamilton, 2000; Schoonover, 1989). The conflicts initially prevented many people from migrating to the United States, but later served as a stimulus for leaving political and economic instability. These migration patterns changed at a time when immigration laws were becoming more draconian and the southern border more militarized. The migrations also had a reciprocal effect and the United States' legal space would start to creep into the region in the guise of dismantling organized crime, and suppressing insurgency.

Circular migration into Mexico for agricultural work had been fairly common in Guatemala, but it was not until the 1960s that significant migration to the United States began (Castles et al., 2014) in response to the economic and geopolitical climate. Guatemala enjoyed a ten year period (1944-1954) of democratically elected presidents—Juan José Arévalo and Jacobo Arbenz Guzmán.—who initiated several reforms reincorporating Maya and women and other policies aimed at equality. The United States' CIA overthrew the governments in fear of communist expansion, and nationalism (Levenson-Estrada, 2014) and subsequently maintained cruel and oppressive regimes. Jonas and Rodriguez (2014) explain that from 1966-1968 the United States directly oversaw the Guatemalan government's military campaign against the leftist Fuerzas Armadas Rebeldes, who opportunistically associated peasant groups fighting for land rights as sympathizers.

The following three decades – until peace accords were signed in 1996 – continue to be ruled by militarized governments who maintained control through brutal oppression. Death squads sympathetic to landowners known as the "Mana Blanca" were imbedded in rural villages throughout Guatemala and served as assassins (Morrison & May, 1994); US trained death squads "disappeared" opposition leaders (Levenson-Estrada, 2014). Most atrociously, the scorched earth policy of Efraín Ríos Montt resulted in a brutal genocide of indigenous Guatemalans (N. S. Chinchilla, 1999). It is estimated that up to 150,000 people were massacred during this violent time (Jonas & Rodriguez, 2014). Guatemalans began migrating to the United States in a time of heightened security—perceived by many in the United States as communist threat—and growing anti-immigrant legislation (Jonas & Rodriguez, 2014).

During the 1970s and 1980s there were few grants of asylum for Guatemalans despite the escalating violence. Jonas and Rodriguez (2014) posit that congress would have terminated

funding for the Reagan administration's counter insurgency operations had there been documented incidences of human rights violations in Guatemala. However, much of the intervention had been conducted through covert CIA operations. During this period the Guatemalan population in the United States jumped from approximately 17,000 documented in the 1970's census (Hamilton & Chinchilla, 1991; Jonas & Rodriguez, 2014) to 1.3 million estimated by the Pew Research Center in 2013 (Lopez, 2015).

Recent Guatemalans seeking to enter the United States are different than their traditional demographics (Castles et al., 2014); in 2014 an unprecedented number of women and children, a large percentage being Guatemalan, presented themselves to U.S. border authorities in search of legal relief. Border authorities involved in the event explained to me that these families had heard rumors that asylum was being granted if you presented yourself to a Border Patrol agent. Many of these families fled abysmal conditions and had been victims of physical and sexual abuse, in addition to impoverished conditions (Amnesty International, 2016; Torzilli et al., 2014; United Nations High Commissioner for Refugees, 2015).

Second to Mexico, El Salvador has received the most attention in politics and the media, because of its geopolitical ties to the United States and gangs. There is a history of United States involvement in El Salvador's violence and militarization that persists even today. Migration from El Salvador was sparse until the 1970s and largely motivated by conflict. As a result nearly a million people were displaced throughout North America (Chávez, 2015), including communities in Washington D.C. and Los Angeles. Civil war erupted in El Salvador in 1979 when the Frente Farabundo Martí de Liberación (FMLN) staged a coup against the reigning government. The civil war lasted until 1992 when the UN helped broker a truce, however by then

75,000 civilians and thousands of combatants had been killed – nearly 2% of the remaining population of a country of 4 million (Chávez, 2015).

War still rages in El Salvador despite the peace treaty signed in 1992; it is not a civil war in the traditional sense, but a U.S. endorsed war on drugs, crime, and gangs (Gonzales, 2013; Swanson & Torres, 2016). The Mara Salvatrucha (MS-13) street gang formed in response to violence from the predominant Latino street gang known as the Mexican Mafia. In 1993 an alliance was formed between the two gangs and the number 13—representing the 13th letter of the alphabet (M)—was appended marking, their affiliation with the Mexican Mafia (Adams & Pizarro, 2009). The militarization of the U.S. border and in a sense legal space in the 1990s resulted in a massive uptick in deportations, especially of MS-13 members. Repatriation resulted in increased recruitment and the formation of other gangs, solidifying the transnational criminal organizations that exist today. The United States invested heavily into El Salvador's military and law enforcement in response to the cyclical gang nexus. Gonzales (2013, p. 103) describes how "military and police aid to El Salvador rose from $707,000 in 1996 to $18,646,533 in 2006, at the height of the war on gangs under the ARENA government." However, sympathy towards civil war conditions in Central America also affected immigration legal spaces slightly in favor of Salvadorians and Guatemalans with the passing of Nicaraguan and Central American Relief Act (NACARA) in 1997—granting some stays of deportation (Norma Stoltz Chinchilla & Hamilton, 2000).

Honduras shares the similar past with El Salvador and Guatemala; another *banana republic* with U.S. backed dictators friendly towards neoliberal policies at the expense of its citizens. Small numbers of Hondurans migrated to port cities like New Orleans in the early twentieth century as a result of the banana trade (Hamilton & Chinchilla, 1991). Honduras in

some ways fared better than its neighbors, because it did not suffer bloody civil wars. Several coups occurred in tandem with other Central American nations that suppressed economic and political stability (Salomon, 2016), however genocide and mass killings were avoided. This may partially explain why Hondurans were not included in NACARA (1997). Relative stability in Honduras made migration from El Salvador to the agricultural fringes of Honduras common. It is estimated that some 300,000 Salvadorians had migrated to Honduras by the 1960s (Hamilton & Chinchilla, 1991), although the trend would change in 1969 when war broke out between the two nations. Relative political stability as of 1980 was disrupted again in 2009 when a militarized government took control, and implemented aggressive and violent tactics to combat crime and the poor (Salomon, 2016).

Honduras' role in North American trade extends beyond agriculture and is an important node in the illicit transportation of drugs, weapons, and contraband. Honduras is an important transfer location between Colombian drug producers and Mexican cartel traffickers (InSight Crime, 2016). The mass deportation of gang member during the 1990s affected Honduras in the same way as El Salvador and has led to high levels of violence and instability. Furthermore, Honduras underwent the same economic reconstruction as the other Central American states, which has left it with an equally dismal economy and contributes to widespread violence.

While the reasons for migration from Latin America are complex, the United States political and popular sentiment have homogenized everyone's experience as poor workers trying to monopolize on the "American Dream." The concept of a legal and "right" way to immigrate to the United States has been ingrained in the U.S. psyche despite the many years where this complex legal mechanism restricting the movement of people was absent. This argument is familiar given the repeated use of legislation to block immigrants like the Chinese Exclusion

Act, Barred Zone Act, and the Johnson-Reed Act (Legomsky & Rodriguez, 2015). However the association with unauthorized entrance and criminality is a relatively new and insidious development that masks a new form of segregation based on legal status (Abrego, 2015). Citizenship has also been affixed to race in a way that makes where one is born on par with who one is born to in terms of establishing social stratification.

Chapter 3: Defining Immigration Legal Spaces

Conceptual uses of *space* and *law* are used differently and with little consensus within legal geography (Delaney, 2014). However, legal studies share an emphasis with feminist geography in regards to social justice, recognition of the embodied nature of law, and the social construction of space (Braverman et al., 2014; Delaney, 2015). I define *legal spaces* as those spatial-temporal organizations of society, and their resistance, through the use of law and enforcement. These processes manifest in physical enforcement and apprehension, corporeal punishment, and courtrooms of judgement. I distinguish *immigration legal spaces* when legal status and citizenship becomes the foci. Furthermore, these legal spaces are not isolated and often overlap and contradict—such as between federal and local law enforcement or state and federal courts.

In application, legal spaces traverse many different social scales; they are defined by the congressional members who draft immigration law, the president responsible for executing it, the border patrol agent "on the line" enforcing policy, and the many people litigating inside of courtrooms. The complexity and obfuscation of immigration and refugee law warrants a summarization in order to understand Latino encounters in legal spaces. The United States immigration system is the product of over two centuries of legal development. However, in the last thirty years it has become especially complex to veil its xenophobic and oppressive political agenda (Abrego, 2015; Coleman, 2012a; Gonzales, 2013).

On a macro scale, legal space is visible in the roles and conflicts between the three branches of government (figure 3). The embattled checks and balances are integral in the continual reformation of legal space's authority, jurisdiction, and control over the body. Constitutionally, and through centuries of litigation, immigration responsibilities of have fallen

under the jurisdiction of the federal government. In theory this centralizes immigration law and policy under one governmental order, assuring equal enforcement throughout the United States; in practice, regional politics are critical in how policy is executed. The following sections will review each branch's function in creating immigration legal spaces and further explain the process of navigating legal immigration and relief from deportation.

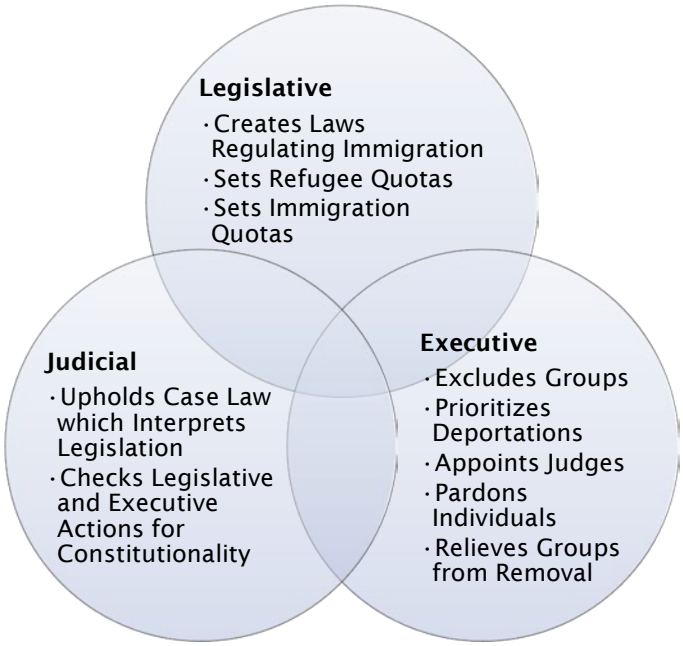

Figure 3: Each branch of the U.S. government's responsbilities in the formation of immigration legal spaces.

LEGISLATION AND THE IRE OF IIRIRA

The legislature has drafted many immigration bills, but the original INA (1965), drafted in 1952, codified disparate immigration statutes under one law. Over time this law has been amended to further serve the state's political objectives. A series of legislation and executive decisions during the 1990s enabled the rapid deportation process and suppression of human

rights that exist today (Coleman & Kocher, 2011; Legomsky & Rodriguez, 2015; Menjívar & Abrego, 2012). IIRIRA (1996) was the cardinal amendment responsible for the draconian laws and policy governing immigration and asylum today.

IIRIRA (1996) introduced 28 new *aggravated felonies* justifying deportation, many of which were previously considered minor and included some misdemeanors (Menjívar & Abrego, 2012; Wheatley, 2011). Additionally, offenses subject to removal became retroactive and affected anyone with a criminal record, regardless of whether they had completed their sentence. IIRIRA (1996) increased the speed and "efficiency" of removals by not only manufacturing aggravated felonies, but also enhancing the legal mechanisms available to facilitate their execution.

This legislation also introduced *expedited removals* (IIRIRA, 1996) that surpasses a hearing if an immigration officer at a port of entry determines the use of fraudulent or improper documentation. Expedited removals empower the immigration officer as the gatekeeper to due process and judicial intervention. This gatekeeper determines what is fraudulent and improper, or who deserves a *credible fear interview* due to *fear of persecution*, the main criteria for being granted asylum. The first door opens to a swift deportation barring re-entry for five years, or a lifetime ban if citizenship was falsely claimed; the second initiates an arduous path towards gaining asylum and full legal status. Nearly half of removals from 2014 to 2016 have been charges of "Immigrant's not in possession of valid entry documents," and "alien[s] present in U.S. who [were] not admitted or paroled" (TRAC, n.d.)—44%, 48%, and 43% respectively.

IIRIRA (1996) also made changes to the terminology in the INA (1965) pertaining to deportation that had substantial impact reconfiguring immigration legal space. Prior to 1996, *exclusion* and *deportability* were distinct categories; the first prevented an *adjustment of status* to

becoming a legal permanent resident, but did not necessarily result in deportation, whereas the second did. This distinction was eliminated in IIRIRA (1996) with the creation of r*emovals,* and made anyone illegally—now a much broader definition—within the United States vulnerable to removal (Legomsky & Rodriguez, 2015).

Congress also vastly increased enforcement powers to ensure the increased orders of removal could be fully exploited. IIRIRA (1996) allows local and state law enforcement to "perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States" (8 U.S.C. §1357, 1996) with permission by the Attorney general. This clause has the power to deputize non-federal law enforcement with unprecedented authority reversing years of litigation maintaining federal control over immigration enforcement. The expansion of immigration enforcement through IIRIRA's (1996) section 287(g) has resulted in racial profiling and the targeting of Latino communities by local law enforcement (Gonzales, 2013; Menjívar & Abrego, 2012; Varsanyi, 2008). The criminalization of all unauthorized people in the United States, and the extension of enforcement powers, vastly increased the number of people subject to removal.

EXECUTIVE BRANCH: IMMIGRATION JUDGE, JUROR, AND DEPORTER

The executive branch is responsible for enacting the laws created by congress, but the INA (1965) has bestowed it with uncharacteristic judicial responsibilities. Immigration courts, unlike other courts, are not under the control of the judicial branch, but subordinate to the Department of Justice and the president. Many scholars (Legomsky & Rodriguez, 2015; Ramji-Nogales, Schoenholtz, & Schrag, 2009) have called attention to the conflict of interest placing the immigration courts—responsible for determining legal status—subordinate to those

responsible for their removal. This manifests in several ways: The attorney general—appointed by the president and chief law enforcement officer—is responsible for hiring, firing, and determining the number of immigration judges and Board of Immigration Appeals (BIA) members. The latter duty is particularly influential, because the BIA is responsible for hearing challenges to immigration judge's rulings and thereby capable of creating *case law*. These landmark decisions set precedence for future interpretation of the INA (1965) and constitute a body of law on par with legislation (Legomsky & Rodriguez, 2015).

At the highest level, the President is responsible for setting the number of refugees that may be admitted and the geographic distribution of those visas. They can also create executive orders directly influencing outcomes for immigrants and asylum seekers. *Executive Orders* are the mechanism by which the president prioritizes enforcement and removals. They can also be used to ban groups from entering the United States entirely. The executive branch is also responsible for laws and border enforcement that has profound impact on Latino's interactions with borders and immigration courtrooms.

The executive branch's role in shaping the contours of immigration legal space are profound for Latinos. Subordinate to the president and with tremendous influence on immigration legal space is the Attorney General, who serves as chief law enforcement officer. In the 1990s Attorney General John Ashcroft fully utilized his authority to implement sweeping changes that staggered the judicial review process: the BIA was reduced from 23 to 11 members, he removed five members who disagreed with him ideologically, required that 50,000 cases be resolved within six months, and relaxed the diligence required by the BIA to issue decisions (Ramji-Nogales et al., 2009). His Successor Attorney General Alberto Gonzales further politicized the immigration legal spaces when his office hired judges based on political

affiliation. A *Washington Times* (Goldstein & Eggen, 2007) investigation exposed that "At least one-third of the immigration judges appointed by the Justice Department since 2004 have had Republican connections or have been administration insiders, and half lacked experience in immigration law." *The Washington Times'* revelations are supported by the analysis of legal scholars (Legomsky & Rodriguez, 2015; Ramji-Nogales et al., 2009), and Senior Counsel Monica Goodling's testimony before a House Judiciary Committee (The Washington Post, 2007). In her testimony, Monica Goodling admitted that "I may have gone too far in asking political questions of applicants for career positions, and I may have taken inappropriate considerations to account on some occasions."

FEDERAL COURTS: BRANCHING OUT OF IMMIGRATION LEGAL SPACE

Ironically, the judicial branch's role in determining legal status for immigrants and refugees has been significantly impeded by the INA (1965). The judiciary retains its power to contain legislative and executive actions on constitutional and legal grounds, but otherwise has been removed from the daily administration of immigration and asylum duties. Upon an appeal to the federal circuit courts, migrants and asylum seekers enter the immigration legal spaces of the federal judicial branch. These federal courts have unique properties that separate them from the lower levels of immigration courts; for one, they follow clear geographic boundaries based on states, and second they fall under the authority of the Judicial Branch, and therefore transcend executive oversight. These higher courts are highly politicized as well (Ramji-Nogales et al., 2009); the EOIR (2016b) reports that two liberal circuits, the 7th and 9th, have nearly double the reversal rates of conservative circuits in regards to immigration decisions. Therefore asylum

seekers often have to navigate various scales of legal and geographic hurdles – none of which align with each other or constitutional due process.

The INA (1965) prevents the circuit courts from reviewing new evidence and must make their determination on the information presented in the original case. Furthermore, federal courts cannot—except in rare situations—grant asylum; they can only send the case back to the BIA for review. In very rare instances, cases are elevated to the Supreme Court for a determination. These cases are only accepted if the court feels it is necessary to address on a larger societal basis. Their decision usually arrives too late to be of practical use to an individual, however the court holds the ultimate power in determining how the law is interpreted for subsequent case thereafter. All three of these branches are integral to the creation of immigration legal space and how that impacts Latinos.

SHAPING CITIZENSHIP: OBSTACLES FOR LEGAL IMMIGRATION

Entering the United States legally can be accomplished either by gaining a visitor or immigrant visa. The former is for temporary purposes such as vacations or to study; the second class of visas are for those seeking to enter the United States as *legal permanent residence* (LPR). Citizenship can only be attained after several requirements have been met: LPR for five years, comprehension of the English language (reading, writing, speaking), passed a civics and U.S. history test, and "be a person of good moral character, demonstrate[ing] an attachment to the principles and ideals of the U.S. Constitution" (U.S. Citizenship and Immigration Services, n.d.). Needless to say, meeting these requirements can be very difficult and are far from guaranteed.

The combination of categorical preferences and geographic limitations are used to create a complex space that makes legally migrating to the United States difficult for some, and impossible for others. There are three categories of immigrant visas: family sponsored, employee based, and diversity immigrants. All three categories have various subcategories, each ranked by their preference. The number of immigrants admissible each year is not a static `, but a cumbersome equation that ranks individuals based on their skill and nationality. The formulas used to determine the visa limitations, or "quotas", are provided in table 1.

Preference Type	**Numerical Formula**
Family Sponsored	480,000 – (children of LPR's born abroad + immediate relatives of U.S. citizens admitted the previous fiscal year) + unused employment based visas
Employment Based	140,000 + number of unused family visas the previous fiscal year
Diversity	55,000

Table 1: Equation used to determine the number of immigration visas granted to each category in any given year. Adapted from the INA (1965).

The United States has geographic restrictions in addition to the stringent numeric and categorical requirements. Each officially recognized foreign state may receive no more than seven percent of issued visas. There are exceptions to the country limit, but the most utilized is reserved for direct relatives of U.S. citizens—totaling 465,068 visas in fiscal year 2015. Despite this large number, the list of qualifying direct family members is quite narrow in scope: spouses, unmarried children under 21, orphans adopted abroad, orphans to be adopted in the United States by a U.S. citizen, or parents of U.S. citizens (U.S. State Department, 2017). For many Latinos with unprofessional skills the country quotas are backfilled for years, and in some cases decades

(Legomsky & Rodriguez, 2015; United States Department of State, 2016). Those with an urgent need to immigrate have little legal recourse to do so.

In the case of those fleeing persecution based on "race, religion, nationality, or membership in a particular social group" (8 U.S.C. § 1158) there is potential for gaining asylum and legal status in the United States. It is important to note that extreme poverty—even if imposed by the state—does not qualify. The terms refugee and asylum are often used interchangeably in popular media, however, their official distinction is important in understanding how legal spaces are shaped. A *refugee* is someone who has successfully passed the legal gauntlet and gained asylum in one of two ways. *Affirmative asylum* is applied for from the country of origin, involves years of paperwork, and extensive background checks (United States Citizenship and Immigration Services, n.d.). In contrast, *defensive asylum* can be gained by two methods. The first approach is petitioned once an individual is in removal proceedings, either in detention or free on bond. The second form occurs when someone expresses a fear of persecution at a port of entry. Granted that an immigration officer in the latter scenario believes the person's fear of persecution, an asylum officer is then entrusted to determine the validity of the claim through a credible fear interview; those seeking relief who have already been deported must undergo a reasonable fear interview that has a much higher level of scrutiny. In time, and highly variable due to the backlog of cases, an immigration judge will make a determination at a *merits hearing* whether to grant asylum, another form of relief, or maintain the removal order.

Although, section 235 of the INA (1965) implies detention even when credible fear is valid, legal scholars have noted that *parole* is often used to waive detention. Recently this practice has shifted due to the political climate and regional politics. In 2010 there were 15,769 people held in detention, this number increased to 44,270 in 2014 (Human Rights First, 2016).

Moreover, detention rates vary wildly based on geography (Legomsky & Rodriguez, 2015); Texas accounts for 45% of all detentions (Human Rights First, 2016). Immigration legal spaces have created a catch-22 for those attempting to secure asylum in the United States. To gain affirmative asylum, which is the preferred method, individuals and families must remain in dangerous circumstances for an average of two years with no guarantee of being granted asylum. The alternative is to subject oneself to apprehension, possible detention, and face higher standards for gaining defensive asylum, also with no guarantee.

FINDING RELIEF

There are several forms of relief from removal available to some outside of legal status. They can be pursued once a person is apprehended, issued a notice to appear, and placed in *removal proceedings*. The most common forms of relief other than asylum include: appealing under the *Convention Against Torture (CAT)*, *cancellation of removal*, *voluntary departure*, and *Special Immigrant Juvenile Status (SIJS)*. Requirements, Legal protection, and their afforded rights vary between these different categories.

The *Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment* is similar to asylum, but is based on a fear of torture. It was adopted by the United Nations General Assembly in 1984 and prevents any participant from returning an individual to a country where they fear being tortured. Although it is a signatory, the United States did not accept the convention on its face, but ratified the *CAT* to be more narrow (Legomsky & Rodriguez, 2015). Regardless of this fact it is still often used in conjunction with asylum applications during removal hearings since many of the requirements overlap. Both Asylum and

CAT prevent the applicant from ever returning to their country without permanently losing legal status in the United States, even after gaining citizenship.

Cancellation of removals are one of the most desirable forms of relief, because they adjust the status of the individual to that of an LPR. This form of relief is available in two ways: LPRs in removal proceedings are able to seek cancellation of removal if they have not been convicted of an aggravated felony, been admitted legally for five years, and have been present in the United States for seven consecutive years. People out of legal status must have no criminal history, have been present in the United States for 10 consecutive years, and demonstrate good moral character. Non-LPRs are also required to "establish that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence" (8 U.S.C. §1229a).

Voluntary departure allows the person subject to removal to leave the country on their own expense without a formal removal order, so long as they are not being charged with an aggravated felony or on national security grounds. The benefit to voluntary departure is that it does not bar the person from re-entering the United States at a later date, which a formal deportation would. Short time periods ranging from 60 to 120 days are given to leave the United States and the consequences for not leaving are harsher than a deportation. In reality those who are subject to voluntary departure do not likely have recourse for obtaining a visa prior to removal or at a later date.

Chapter 4: Legal Consequences of a Securitized State for Latino Migrants and Asylum Seekers

The United States has a history of hyper nationalism, where sovereignty and the preservation of territorial borders are of prime concern (Massey, 2016; Stern, 2004). State sovereignty is a common ideation in modern geopolitics, but borders and citizenship are more nuanced in definition. In particular after 9/11, but even as early as the Cold War, the United States has placed increasing emphasis on the physical bordering of its territory and the legal bordering of its citizens (Menjívar & Abrego, 2012). Both are targeted at restricting and monitoring the mobility of people through its space, in particular Latinos. Geopolitical securitization founded on nationalist ideals has resulted in the modern security state. Consequentially the United States' territorial boundary and legal framework have been distorted in attempts to orchestrate the mobility and behavior of Latinos (Gonzales, 2013; Menjívar & Abrego, 2012)—and other groups—with violent affect. The following chapter traces the contours of modern U.S. sovereignty through immigration legal space's contortion of its territory at the expense of many Latinos.

The United States' ability to assert its sovereignty at any cost is a common theme in modern geopolitics; in the legal spaces of courtrooms and legislative bodies I observe that this is referred to as the "rule of law." However, I posit that this sanctification of law is a merely a façade for oppressive legislation and enforcement. The assertion of sovereignty is also present in mundane actions, such as those expressed by strangers who learn of my graduate work: The car salesman who tells me his immigrant German wife hates those who come here illegally, because she had to do it the right way—entirely ignorant of the fact that many do not have the opportunity to marry a white U.S. citizen. There are also those close acquaintances of mine—

some of which are Mexican citizens—who tell me they support Latino immigrants, but “que le da rabia a los que comiten crimen” (criminal immigrants enrage her) and, “Good! They should deport criminals, even for DUIs.” These experiences stem from the idea that there is a geopolitical entity that needs protection from those who would violate its territoriality and pollute what they “fought hard” to enjoy. These private encounter are more than off hand remarks made in confidence, they are paramount for the construction of sovereignty (Dowler, 2012).

The United States and Mexico border is presented as “broken” because it cannot prevent the undocumented migration that occurs from Latin America. Those who pass through the boundary are thought of as “illegal” bodies which defy the sovereignty of the state. In the lead up to the anti-immigration legislation IIRIRA (1996), President Clinton issued a memorandum emphasizing the importance of sovereignty:

> It is a fundamental right and duty for a nation to protect the integrity of its borders and its laws. This Administration shall stand firm against illegal immigration and the continued abuse of our immigration laws. By closing the back door to illegal immigration, we will continue to open the front door to legal immigration. My Administration has moved swiftly to reverse the course of a decade of failed immigration policies. Our initiatives have included increasing overall Border personnel by over 50 percent since 1993. We also are strengthening worksite enforcement and work authorization verification to deter employment of illegal aliens. Asylum rules have been reformed to end abuse by those falsely claiming asylum, while offering protection to those in genuine fear of persecution. We are cracking down on smugglers of illegal aliens and reforming criminal alien deportation for quicker removal. And we are the first

> Administration to obtain funding to reimburse States for a share of the costs of incarcerating criminal illegal aliens (Clinton, 1995).

What is important to note in Clinton's speech is the conflation of sovereignty, security, and the need to secure the borders from criminal foreign bodies. This speech was a prelude to the draconian immigration policies that criminalized and deported millions over the next several decades.

CRIMINALIZING LATINO MIGRANTS AND ASYLUM SEEKERS

United States' immigration policy restricts mobility, limits or eliminates legal rights, defers protection from exploitation, and denies fundamental resources. Nationalist legislation like IIRIRA (1996) has created an underclass based on citizenship (Menjívar & Abrego, 2012). In the last forty years this class of "aliens" have not only been de-humanized, but also criminalized. Nationalism has spurred the creation of legislation like IIRIRA (1996) that reifies citizenship as an inherent value metric used to judge Latinos on par with race and class (Bloemraad, Korteweg, & Yurdakul, 2008; Gonzales, 2013; Menjívar & Abrego, 2012). Appealing to everyone's inherent need of safety makes the political agenda acceptable to all despite the countless non-criminals who are swept along with securitization and migration control (Gonzales, 2013). As a result of IIRIRA (1996) many Latinos are placed in a state of illegality for merely existing within the geopolitical territory of the state. Data (TRAC, n.d.) presented in table 2 reveals that a large percentage of Latinos who are deported do not have a prior criminal record, or their only crime was being present without authorization.

Most Serious Crime Convicted	MX	GT	SV	HN
Illegal Entry	17%	10%	9%	12%
Illegal Re-Entry	5%	2%	1%	3%
No Conviction	28%	68%	67%	57%
Total	51%	80%	77%	71%

Table 2: Proportion of deportation of Mexicans (MX), Guatemalans (GT), Salvadorians (SV), and Hondurans (HN) with no criminal record or illegal presence as their most serious crime ever committed. Table created from TRAC (n.d.).

A great deal of posturing and effort has gone into defending the nation-state security model which manifests in the colossal funding for border formation and its security. The budget for Border Patrol and enforcement continues to rise; according to the CBP website, the number of Border Patrol (USBP) agents has grown from nearly 6,000 agents in 1996 to the current staffing of almost 20,000—excluding the many ICE agents who are responsible for apprehending unauthorized people already in the United States (USBP 2016b). The sad irony in the perpetual securitization of the United States is that it comes at a time when Latino migration is in fact decreasing (Blau & Mackie, 2016). The number of Mexican apprehensions—which comprise the overwhelming majority—have been steadily declining over the last decade (figure 4). In contrast Central Americans have increased to almost equal numbers.

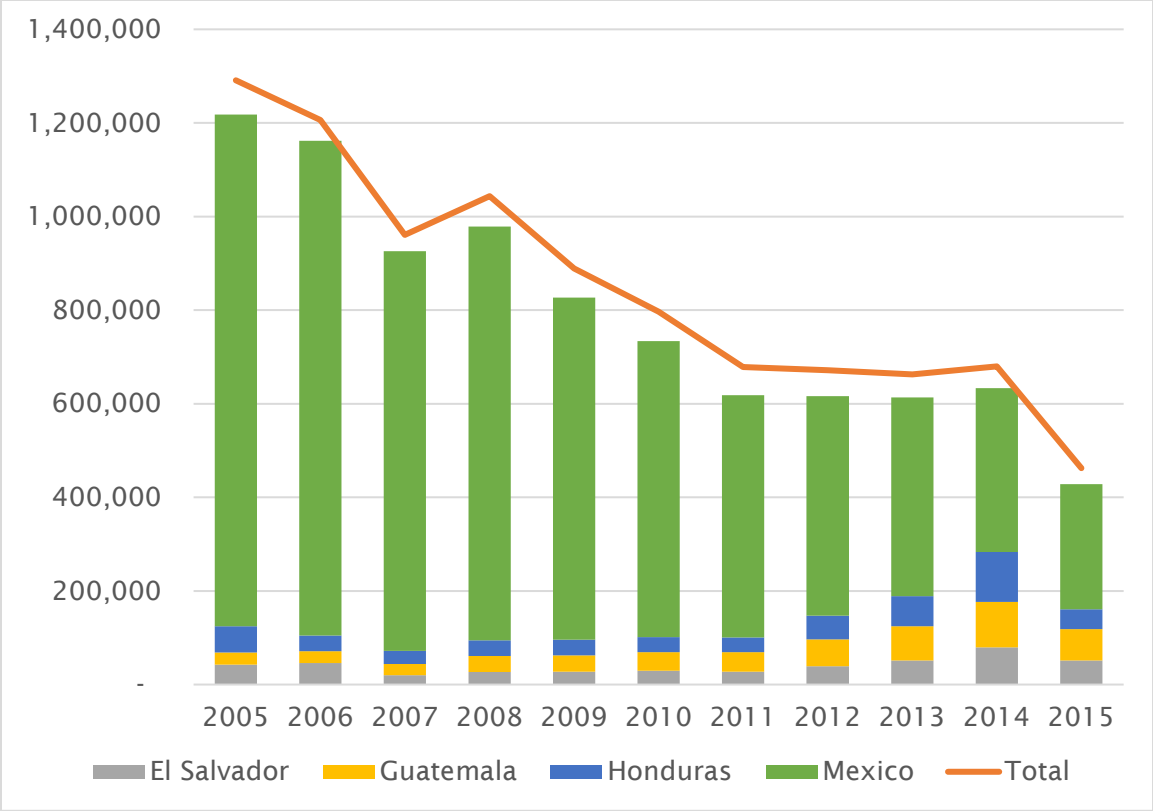

Figure 4: Number of Latinos apprehended in comparison to apprehensions of all nationalities from 2005 to 2015. Chart adapted from DHS' Yearbook of Immigration Statistics (2016).

An increased number of Central Americans arrived at the south Texas border 2014 seeking asylum from violence, gangs, and economic hardship (Swanson, Torres, Thompson, Blue, & Hernandez, 2015; Torzilli et al., 2014; United Nations High Commissioner for Refugees, 2015). A large percentage of these asylum seekers consisted of families and unaccompanied children—averaging over 62,000 and 45,000 a year respectively from 2014 to 2016 (USBP 2016a, USBP 2017). Clamor over this immigration "surge" or "crisis" permeated news and media outlets and attention was drawn to a "broken border" that challenged state sovereignty. However, political posturing—amidst an approaching presidential campaign—increased attention to the border and agitated a hypervigilance for its securitization.

BORDER MAKING

In 1994 Border Patrol's Operation Gatekeeper in San Diego and Operation Blockade in El Paso were conducted to initiate a new method of border enforcement known as "prevention through deterrence" (Dunn, 2009; Nevins, 2002). The operations refocused Border Patrol resources to large border cities where the majority of people entered without authorization. Fences and surveillance infrastructure were constructed, and agents patrolled the border aimed at preventing migrants from crossing. It was acknowledged that prevention through deterrence would force migrants to avoid the city and move around them through harsher terrain—also recognizing that this may increase deaths (Dunn, 2009). Scholars estimate approximately 1,600 deaths along the border from 1993-1997 (Eschbach et al., 1999). However, the program did not halt illegal entrance to the United States nor did further expansions of the border fence, and increases in surveillance. In response the United States, and other countries, developed innovative methods for controlling the border: outsourcing enforcement, increased internal enforcement, and individual surveillance (Gammeltoft-Hansen, 2014).

Contrary to the idea that borders are hard boundaries of the state's authority, the United States has developed an intricate system that spans across territory and scales (Hiemstra, 2012). Modern geopolitics and technology allow for the expansion of borders beyond the physical territory of the state (Hiemstra, 2012). President Obama negotiated a deal with Mexico's President Nieto Peña known as Plan Frontera Sur (Hernandez, 2015; Swanson, et al., 2015) to enforce the southern border of Mexico to reduce the number of Central Americans reaching the United States. In effect the United States established a proxy border within the territory of another sovereign state using money and political influence. Furthermore, rail transportation industries agreed to increase their speed threefold to deter migrants from riding on top of the cars

(Swanson, Torres, Amy, Blue, & Hernández, 2015)—as well as killing those who fell to their death on the journey. Under the auspices of national security and by coercing foreign states, the borderlands can be extended beyond their legal limits to interdict and contain in foreign territory.

Legislation also allows the border to be turned in on itself; federal regulation grants Border Patrol powers to search at their discretion any vehicle and land—excluding dwellings—for "illegal aliens" within "a reasonable distance from any external boundary of the United States." (8 USC 1357). The ACLU have noted that while there are limitations to their power in this space, it is often treated as a "constitution free zone" (Rickerd, n.d.). Anyone found in this range within 14 days of entering the country are treated as a border apprehension and subject to expedited removal. This "reasonable distance" has been procedurally interpreted as 100 miles from the territorial border. The zone is surprisingly large and encompasses a great many large metropolitans not traditionally viewed as border towns. The following map (figure 5) displays the border zone along with some affected large cities.

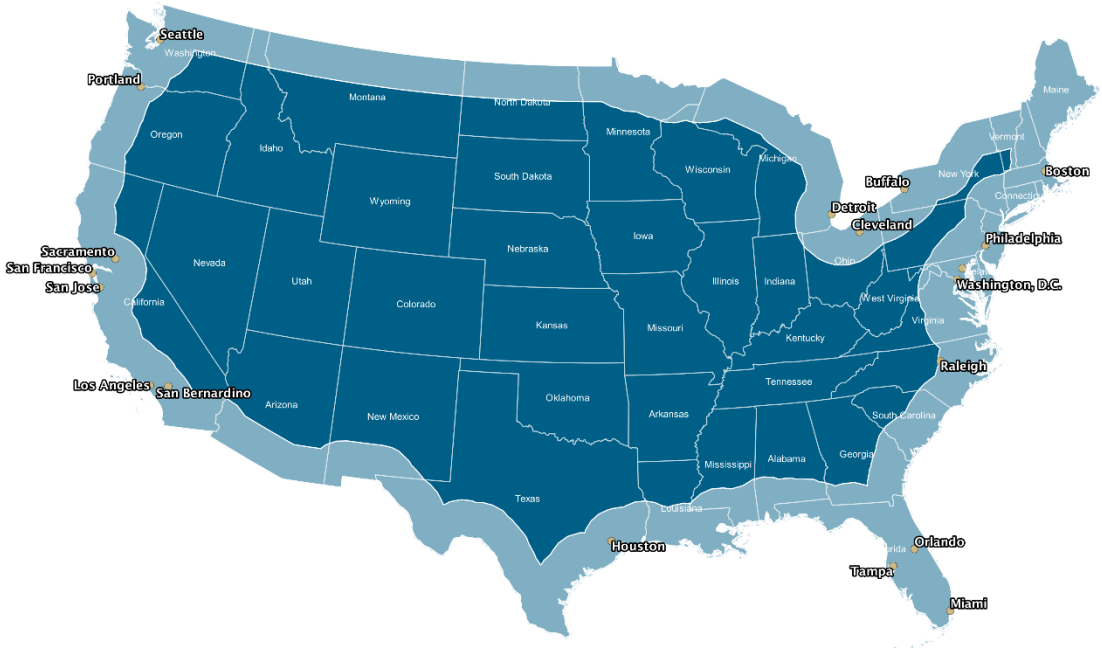

Figure 5: A map depicting the 100 mile border zone and some major metropolitan areas not typically associated with the border. Created using QGIS (2016).

Another mechanism for interior border enforcement has been the deputation of state police to enforce immigration law (Coleman & Kocher, 2011), extending their interior patrol beyond even the 100 mile buffer zone. Criminal databases and biometrics are also used to identify and monitor unauthorized individuals (Amoore, 2006). The Secure Communities program was initiated in 2008 and allows local law enforcement to contribute fingerprints of unauthorized people charged with a crime into their federal database. The program was suspended from late 2014 until Trump's reinstatement of the program in 2017 (U.S. Immigration and Customs Enforcement, n.d.). State and local police can also be granted immigration

enforcement privileges under the section 287(g) of the INA (1965)—creating a constitutional exception to further target unwanted bodies.

While optional and contingent on a memorandum of agreement, the delegation of border enforcement to the states under section 287(g) (8 U.S.C. § 1357) turns the focus of border security inwards. Coleman (2007, p. 619) observes that, "border enforcement activities have been supplemented with an increasingly expansive sphere of enforcement practices which operate through a variety of local actors at sites far removed from US borders, in the interior." Modern migration policies have circumvented centuries of judicial upholding that immigration enforcement is the federal government's responsibility, converting the entire United States into a borderland. This has severe implications for both legal and non-legal residents. The various engendered borders prevent Latinos from entering the United States and funnel those who violate the territorial sovereignty towards lethal spaces or adversarial immigration courts.

Contrary to border strengthening and enforcement, Dunn (2009) observes that increased efforts have only changed the frequency of migration to and from the home country; the increased difficulty in crossing the border has resulted in more migrants permanently settling in the United States. There are an estimated 11.2 million unauthorized people living in the United States compared with 5.7 million estimated in 1995 (Pew Research Center, 2014)—the same time period that has seen unprecedented levels of securitization and enforcement noted by President Clinton earlier.

INEQUALITIES OF IMMIGRATION LEGAL SPACES FOR LATINOS

An immigration attorney from El Paso, succinctly described the immigration legal space for Latinos when he said, "in Mexico human rights are violated by breaking the law and in the

United States human rights are violated by implementing the law" (Anonymous immigration attorney, 2016). Immigration legal spaces have palpable repercussion for Latinos. The state maintains that deportation is not punitive, but an administrative function—coincidentally this legal maneuvering justifies preventing mandatory legal representation (Legomsky & Rodriguez, 2015). However, deportation's consequences are very real and include family separation, trauma, poverty, torture, and death (Hiemstra, 2012; Menjívar & Abrego, 2012; Swanson & Torres, 2016; Wheatley, 2017). A further injustice of deportation is the unequitable distribution of removals depending on nationality.

Some nations with similar geopolitical problems as Latin America—persistent human rights violations, violence, and state impunity—are not experiencing immigration legal space the same way. Mexico and China stand in stark contrast in their current experiences with immigration legal spaces, despite similar migration geopolitical histories. Anti-Chinese immigration has always been strong in the United States, exemplified by exclusionary legislation like the Chinese Exclusion Act or The Barred Zone Act, yet currently China has the highest rate of defensive asylum—averaging 42% of all refugees since 2014; in contrast Mexico's has averaged 4% in that same period (figure 6). Immigration attorney Jason Dzubow (2013) attributes higher asylum rates for Chinese due to U.S. sympathy towards those escaping the one-child policy, as well as China's history of human rights violations. He goes on to explain further that many Mexican's do not know their rights and as a result often fail to meet the one year deadline to apply for affirmative asylum. This forces Mexicans to apply for defensive asylum which has a lesser success rate. However, this points more to a habitual system where Mexicans are provided less resources, including information, to gain relief in the United States.

Violence in Mexico and Central America is extremely high. Homicide rates in Mexico, Guatemala, El Salvador, and Honduras (figure 6) far exceed the world median and violence against women, children, and LGTBQ are also high (Torzilli et al., 2014; United Nations High Commissioner for Refugees, 2015). Furthermore, the rampant disorder, especially for targeted groups, are met with impunity or collaboration by state officials (Amnesty International, 2016; Torzilli et al., 2014; United Nations High Commissioner for Refugees, 2015). Legislatures, and President Trump have manipulated this violence to argue for more border enforcement (State Homeland Security & Government Affairs Committee, 2017; Trump, 2015), while simultaneously failing to recognize the suffering of victims and provide substantial relief.

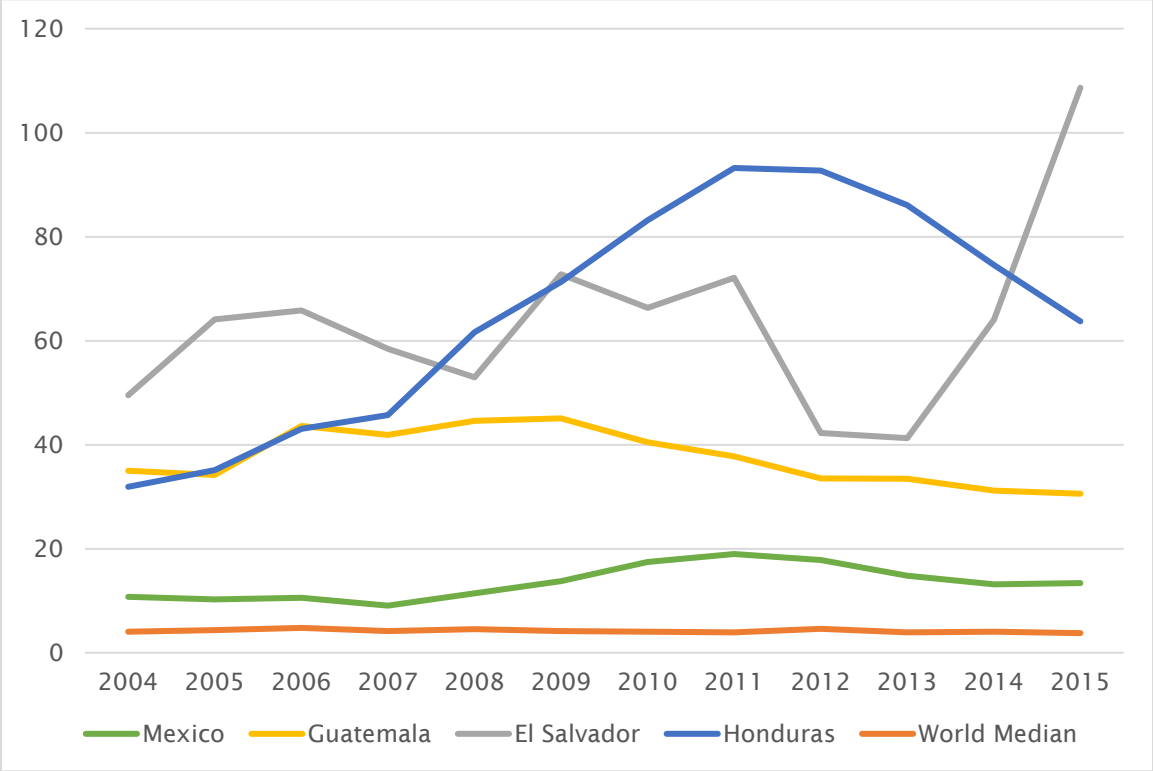

Figure 6: Latin American homicide rates per 100,000 in comparison to the world median. Adapted from the Small Arms Survey's (n.d.) website.

Mexico has over double the rate of homicides than the global average and is undoubtedly much higher considering unreported cartel related deaths (Breslow, 2015). Restructuring of power between Cartel leaders following the vacuum created by Mexican President Felipe Calderon's declaration of war on crime in 2006 led to the increase in violence (Ravelo, 2011; Wright, 2011). The CAT is an argument I posit many Mexicans should qualify for asylum under. In my experience as a combat veteran, forensic investigator, and a gang researcher, the Mexican cartel's capacity for brutality are far and above those of any terrorist organization. Despite this fact, the percent of Mexicans who gain asylum are in the single digits (figures 7 & 8).

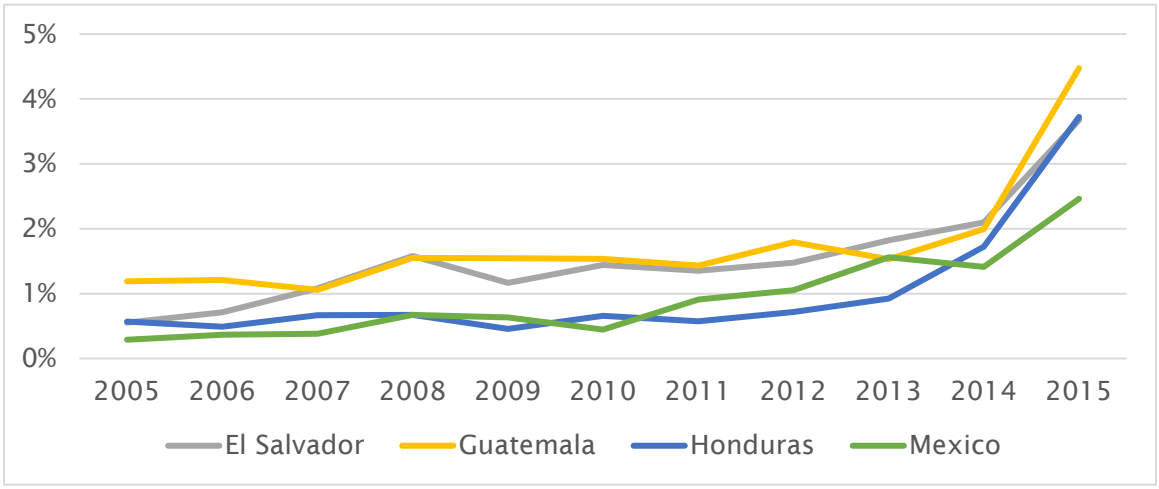

Figure 7: Proportion of total defensive asylum granted to Latinos. DHS Yearbook of Immigration Statistics (2016). n = total grants of asylum.

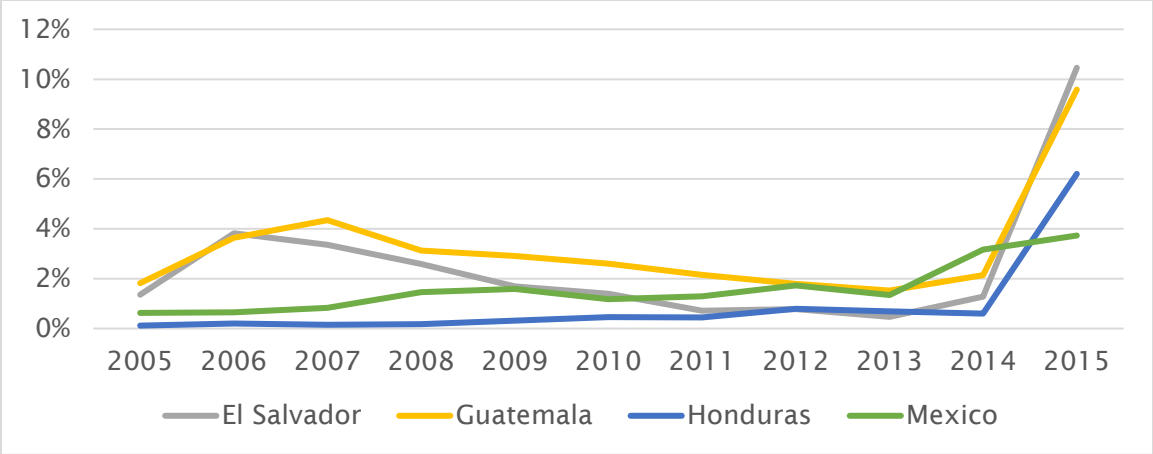

Figure 8: Proportion of total affirmative asylum granted to Latinos. DHS Yearbook of Immigration Statistics (2016). n = total grants of asylum.

Neoliberal economic disruption, natural disasters, and crime proliferate Central America causing instability that entices migration (Garni & Weyher, 2013; Torres & Wicks-Asbun, 2014; Torzilli et al., 2014). There are also distinctions in the causes and effects of violence within each individual country. Honduras' violence stems largely from its debilitated economy, resulting from many years of instability and natural disaster, which have made it vulnerable to transnational gang's exploitation (InSight Crime & Asociación para una Sociedad más Justa, 2016; Moser & McIlwaine, 2006; Ritter, Moore, Kleiman, & Hawdon, 2011). The decrease in violence shown in figure 6 are most likely a result of the Obama Administration's focus on providing funding to rehabilitate economic and youth systems in Honduras instead of meeting them with forceful action (Nazario, 2016; Ritter et al., 2011). In contrast El Salvador has relied on militarized enforcement.

Many youth who fled El Salvador's political instability in the late twentieth century arrived in the United States only to become disenfranchised along with other Latinos, causing some to join gangs (InSight Crime & Asociación para una Sociedad más Justa, 2016; ICT 2015;

State Homeland Security & Government Affairs Committee, 2017). IIRIRA (1996) and the deportation campaign waged in subsequent years exchanged civil war instability in Central America with United States gang violence as gang members were convicted and then returned to countries they hardly knew. Alienated for a second time and without any support network, gang affiliation—Mara Salvatrucha (MS-13) and 18th Street Gang primarily—became their only social network (Coutin, 2010; Gonzales, 2013). In time this pattern created the rampant gang problem that exists in El Salvador, and other Central American countries; it is further exacerbated by United States' continuous deportations, which provide more disenfranchised youths, and U.S. financial and political support for "Super Mano Dura" (Super Heavy Handed) law enforcement policies that recycle violence through state policing (Coutin, 2010; Gonzales, 2013). The BIA determined in The Matter of Acosta (1985) that unfortunately for the many who try to seek asylum in the United States based on "harm arising out of civil strife or anarchy" does not qualify.

Violence aimed at specific groups is of particular importance, because of its ability to qualify for asylum. Fear of persecution based on membership in a particular social group qualifies for asylum, but it is difficult to prove, narrowly defined, and does not include generalized societal violence. The courts have established various restriction to using this qualifier: The membership must be based on a shared immutable characteristic, clear internal and societal definitions of the group, and the groups persecution must be perceived and experienced nation-wide (Legomsky & Rodriguez, 2015, pp. 962–968). This is further exacerbated by the fact that identity is a multi-faceted intersection of experiences (Crenshaw, 1991; Nash, 2008) and not naturally segregated into one legal definition. Examining violence directed at women (figure

9) and LGBTQ people is helpful in understanding the people and structures that together form the varied and complex legal system in place in the United States.

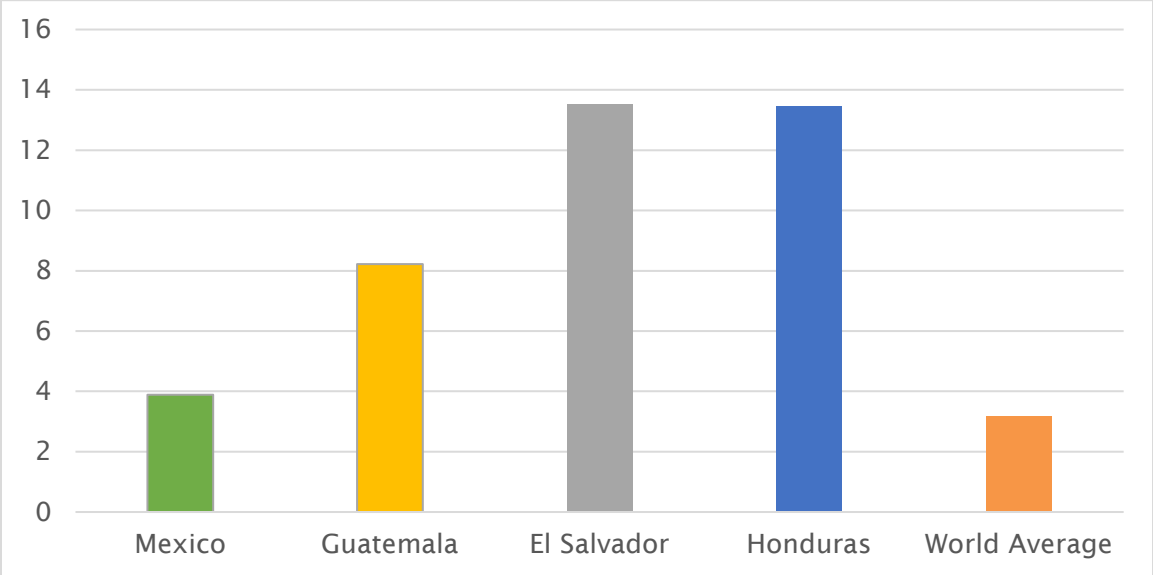

Figure 9: Average (2010–2015) female homicide rates per 100,000 in Latin America compared to the world median. Chart adapted from Small Arms Survey (n.d.) website.

The U.N. High Commission for Refugees (UNHCR) (2015) conducted a report that interviewed 160 women in the United States who had fled Mexico and Central America. They found that 40% of the women interviewed had experiences some sort of violence that they did not report to the authorities, because women are afraid of reprisal, traumatized, or are concerned about stigmatization (UNHCR 2015). The U.N. Human Development Report (2016) supports similar findings—in addition to a worldwide epidemic of violence against women (figures 9 and 10). Additionally, scholars and activists believe that the number of women who are abused is actually much higher than reported (Amnesty International, 2016; UNHCR 2015). Governmental corruption and collusion with gangs has rendered the police and security forces useless in

preventing violence against women, children, and LGBTQ people (Negete, 2016; Swanson & Torres, 2016; Torzilli et al., 2014; UNHCR 2015).

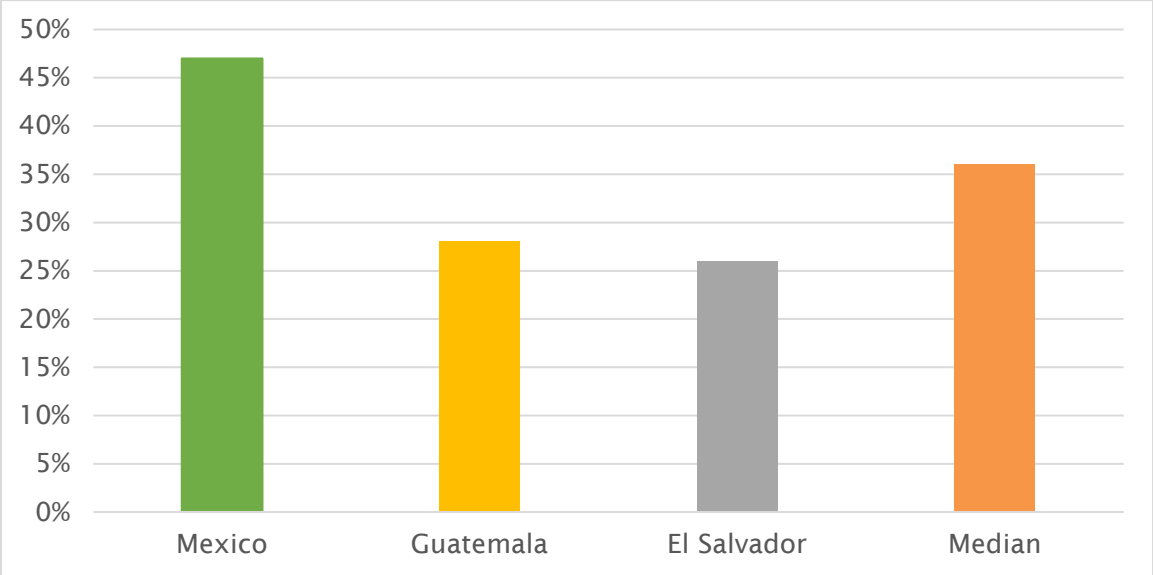

Figure 10: Percentage of Latinas who have experienced intimate or non-intimate partner violence. Adapted from the United Nations Human Development Report (United Nations Development Programme, 2016)

GEOGRAPHIC DISTRIBUTION OF INEQUALITY WITHIN THE UNITED STATES

Latino engagements with immigration legal spaces are not only experienced inter-nationally, but also intra-nationally. The geography of immigration courts—both physically and socially—affects outcomes for Mexican and Central Americans. Each court has jurisdiction over prisons and detention centers in their general geographical area and individuals are served their notice to appear as a function of where they are detained. There are anomalies in this system and people can be transferred from detention centers or to other courts, and hearings via video teleconference are common. At times courts will have jurisdiction in other states, further distorting the organization of legal spaces and introducing regional politics. The magnitude of

Mexican and Central American removals from the United States and their geographic distributions are illustrated in figures 11 and 12. Demographics, regional politics, and the agency of immigration judges are some compelling explanations for variation.

Shared characteristic in Latino populations suggest a connection to increased levels of removal orders. Wong (2012) determined there is a positive correlation between state demographics and their law enforcement's participation with the 287(g) (8 U.S.C. §1357) program. His findings revealed that counties with a rapid increase in Latino populations were more likely to engage in immigration enforcement, but not those with existing large populations (Wong, 2012). Specifically Tennessee, Georgia, Florida, Virginia, and the Carolinas had the most counties requesting to participate in immigration enforcement. This Corresponds to the high levels of removals despite low Latino populations for those areas in figures 11 and 12—with the exception of Florida and Virginia who have more courts and judges in their area. Hyper enforcement through 287(g) (8 U.S.C. §1357), which Wong (2012) also shows is not related to incidents of crime, inundates smaller immigration courts with less resources. Immigration judges potentially become desensitized to claims for asylum and other forms of relief when they repeatedly hear similar arguments from certain nationalities. They may interpret this as being insincere and manufactured by smugglers (Jubany, 2017). Government attorneys are also able to build their experience deconstructing a respondent's defense the more they are exposed to similar arguments.

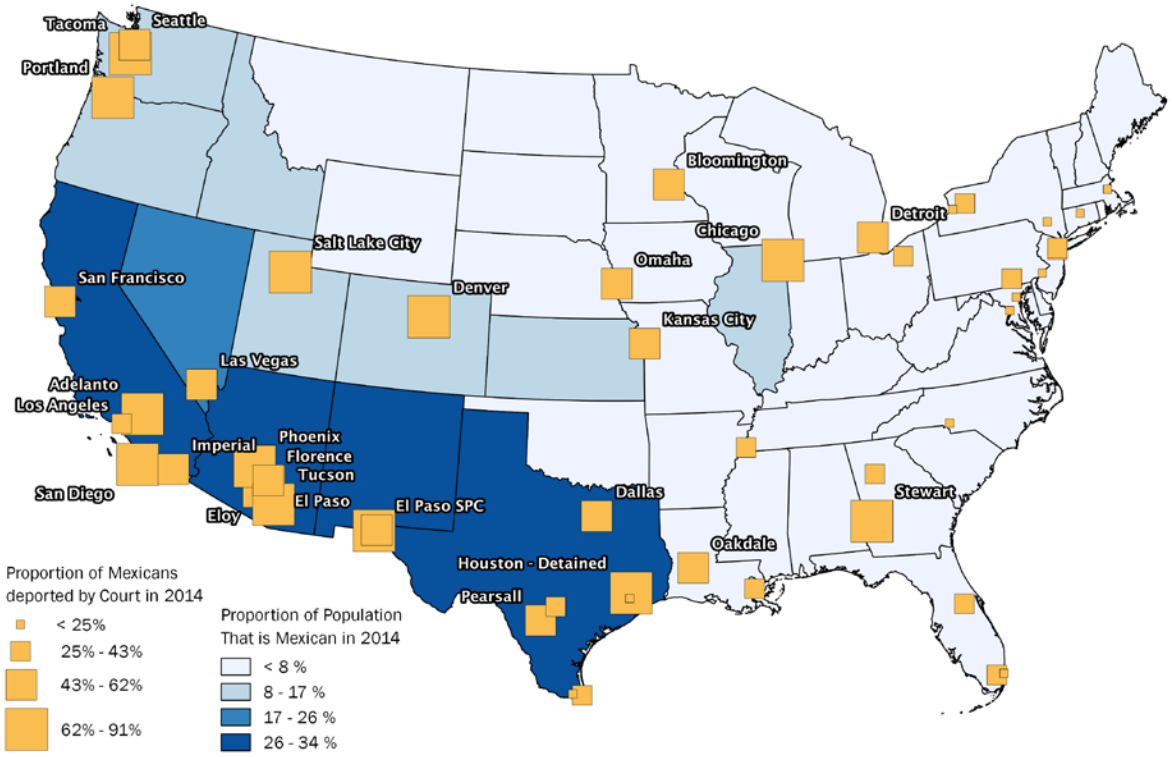

Figure 11: Proportion of deportations (removals and voluntary departures) in 2014 who are Mexican citizens by immigration court. The proportion of each state's Mexican population for 2014 is provided for context. The map was created using QGIS (2016) and data derived from TRAC (n.d.) and the Pew Research Center (Stepler & Brown, 2016).

There is a distinct geographic delineation in the proportion of deportations (removals and voluntary departures) between Mexicans and Central Americans. This is partly explained by the demographics of the states in which immigration courts are located. Mexicans in general are deported at higher rates across the United States, but are magnified along the border where they represent more than a quarter of the population. Furthermore, Texas, Arizona, and California are where Mexicans have traditionally faced intense resistance and xenophobia—as discussed in

chapters two and five. Elevated deportation rates along the border (figure 11) is indicative of the prevalence of voluntary departures used by Latinos apprehended there (ACLU, 2014).

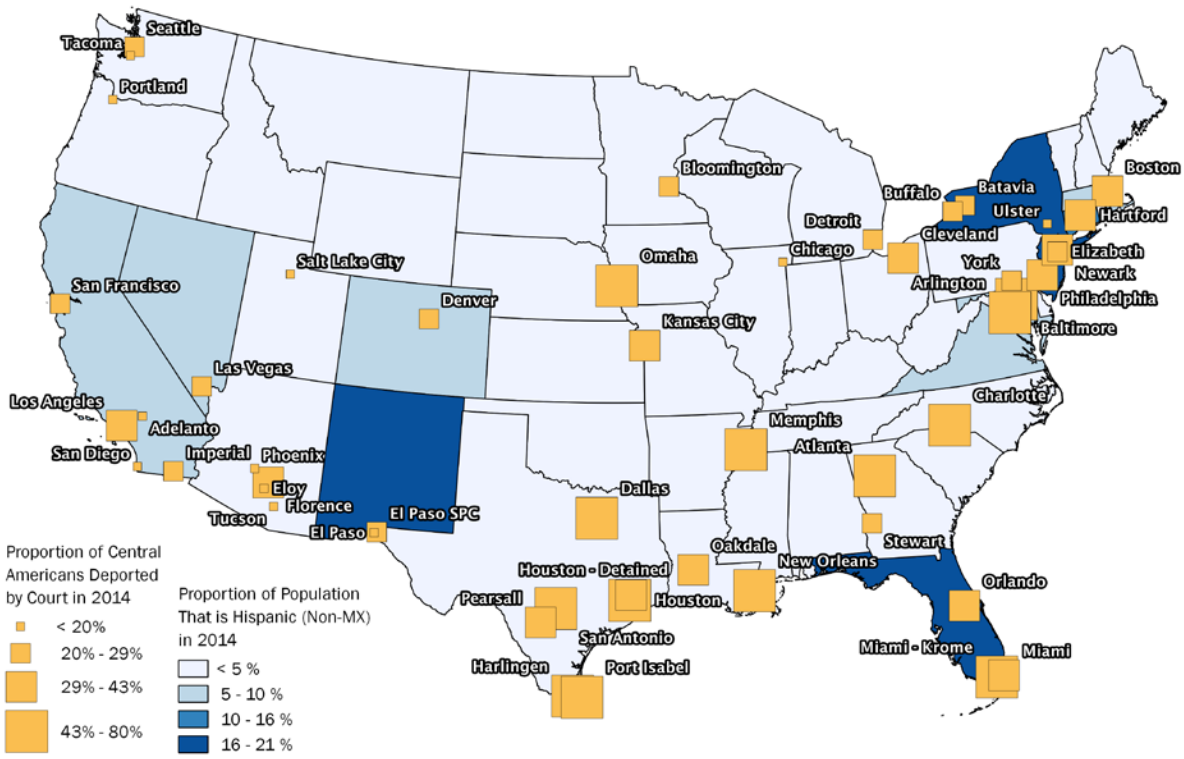

Figure 12: Proportion of deportations (removals and voluntary departures) in 2014 who are Central Americans by immigration court. The proportion of each state's hispanic population—data includes other non-Mexican nationalities in addition to Central Americans—for 2014 is provided for context. The map was created using QGIS (2016) and data derived from TRAC (n.d.) and the Pew Research Center (Stepler & Brown, 2016).

Deportations of Central American are higher in the Eastern and Southeastern United States and to some degree reflect the demographics and historical migration patterns of those regions (Norma Stoltz Chinchilla & Hamilton, 2000; State Homeland Security & Government

Affairs Committee, 2017). Houston is a large hub for Central American migration (Jonas & Rodriguez, 2014), but the high rates of deportation in the other sections of Texas are partially attributed (figure 12) to the increased number of people seeking asylum as of 2014. There are hardly any immigration courts throughout the United States that approve more than 40% of asylum cases and none of which are in Texas (TRAC, n.d.).

Politics play a significant role in the outcome of removal hearings on a macro-scale. Chapter three discussed the vulnerability that the immigration judicial body has to political influence in the employment process of immigration judges. While biases and judicial discretion play a part in all forms of law, the REAL ID (2005) Act emboldens immigration judges to exercise their discretion and play an active role in litigation, intensifying the importance of their political leanings. Therefore the attorney general and those responsible for assigning immigration judges to their respective courts are architects of immigration legal spaces. These manipulations of immigration legal spaces to facilitate the removal of Latinos migrants and asylum seekers are a "paramount technique for refortifying political, racial, and class-based boundaries" (De Genova, 2010, p. 4).

Also discussed in chapter three are how the immigration courts are highly susceptible to enforcement politics, because they are subordinate to the executive branch. Wong's (2012, p. 752) study revealed that "republican majority counties are as high as 5.8 times more likely to pursue formal cooperation with ICE under the 287(g) Program than Democrat majority counties." Increased enforcement produces slower courts, more experienced government attorneys, and less favorable conditions for gaining relief. Political pressure from the republican party to deal with the "surge" of migrants and asylum seekers in Texas has resulted in the temporary assignment of immigration judges from the Northeast to deal with "surge" cases

(Fertig, 2017). The high rates of removals for Central Americans in the Northeast (figure 12) can be explained by the politics of national security and a perceived threat from transnational gangs. New York and New Jersey have a great deal of MS-13 activity and as a result these two states have become the epicenters for political campaigns to deport gang members (State Homeland Security & Government Affairs Committee, 2017). Increased MS-13 activity, amplified by their exceptional brutality, has heightened fear and negatively influenced regional sentiment towards Latinos, fueling further cries for stronger immigration enforcement.

The individual beliefs and agency of each immigration judge cannot be discounted in the investigation of these regional trends. In any given court, and despite any political influence, judges use their knowledge and opinion of the facts and respondent to make decisions. A propensity for relief or removal can occur in liberal as well as conservative courts and in defiance of general trends. The breakdown of each immigration judge's asylum denials between 2011 and 2016 in Chicago and San Antonio's immigration court are provided in figures 13 and 14.

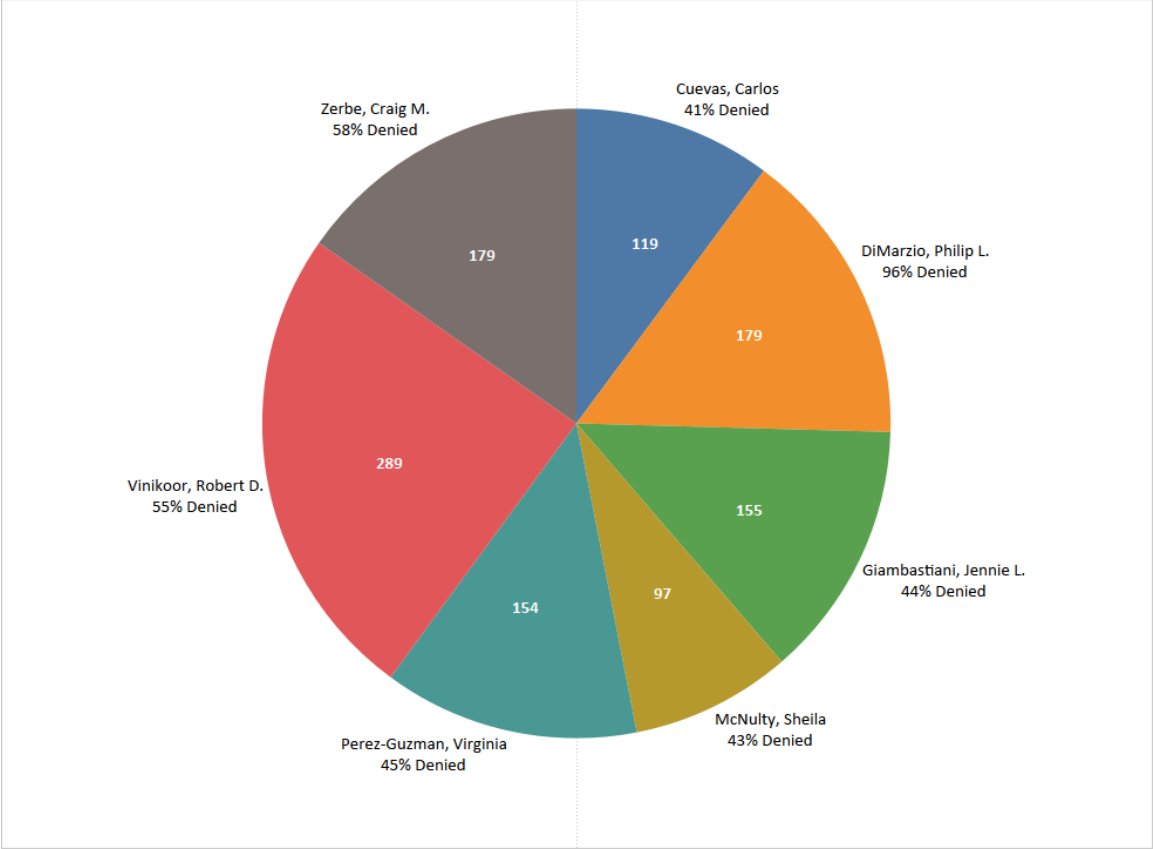

Figure 13: Chicago immigration court's asylum denial rates by individual immigration judge (fiscal year 2011-2016). Adapted from TRAC (n.d.).

Chicago's pie chart (figure 13) shows that some judges had a higher percentage of denials, but that the court's totals were distributed fairly evenly. Judge DiMarzio denied 96% of his cases, but he only accounted for a fraction of Chicago's asylum denials. This could be a result of personal biases, or potentially even the types of cases he is responsible for hearing. If the majority of his cases are unrepresented and in detention—using virtual teleconferencing—then the odds for a successful defense are sparse. However, these data represent five years' worth of decisions and therefore raises questions about their reasons for denial. Unfortunately, I was

unable to observe any of Judge DiMarzio's proceedings and cannot speak to the specifics of his decisions.

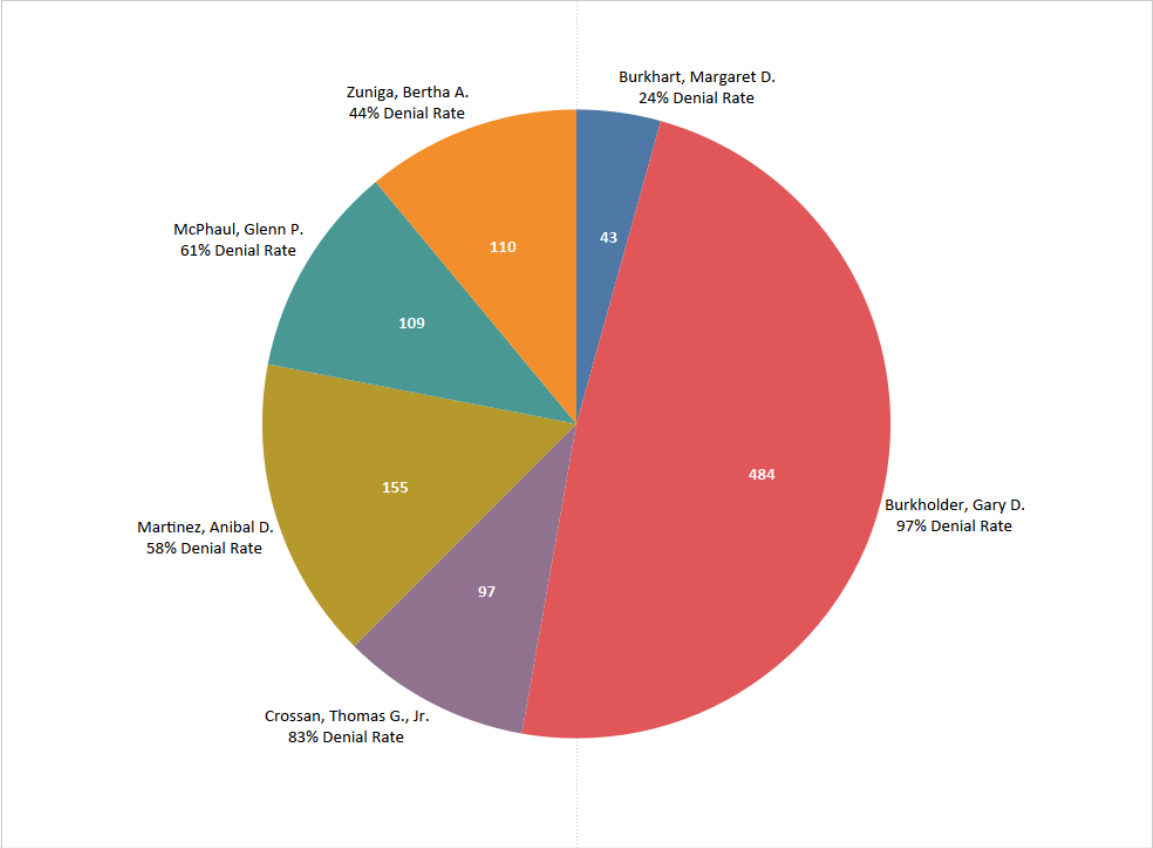

Figure 14: San Antonio immigration court's asylum denial rates by individual immigration judge (fiscal year 2011-2016). Adapted from TRAC (n.d.).

San Antonio is an example of how some immigration courts are extremely disproportionate in their removal outcomes (figure 14). Judge Burkholder—now retired—denied asylum 97% of the time and also accounted for half of the court's total denials. In comparison, judge Burkhart only denied asylum at a rate of 24% and accounted for the smallest number of denials. This disparity is so well known among immigration attorneys that their names have become a mnemonic for how they are likely to rule; judge Burkhart "has a heart", and judge Burkholder "withholds" relief. Although I was unable to observe Judge Burkholder's

proceedings, our key informants shared a low opinion of him and believed he had been pushed into retirement, because of his record. It is difficult to determine the underlying reasons behind these ruling differences, however, it is apparent that vagaries exist in the judicial processing of people who are seeking sanctuary within the United States.

Many local factors influence the variation in removal rates across the country, but existing literature has focused on national trends (Ramji-Nogales et al., 2009; Swanson & Torres, 2016; TRAC, 2015). These studies are important, because they identify the rampant and ubiquitous inequalities plaguing the U.S. immigration system, but site specific research is also necessary to isolate egregious abuses and further campaign for justice. The next chapter addresses this issue by providing results from ethnographic research conducted at San Antonio, Pearsall, and Chicago's immigration courts.

Chapter 5: Paper Dolls – Finding Asylum and Disposable Bodies

What does the intimate courtroom environment reveal about the embodied geopolitics of immigration legal spaces? The following chapter seeks to interrogate immigration legal spaces from a different vantage point occurring in intimate courtroom settings. Courtroom ethnography—consisting of observations and interviews—was used to augment the geospatial analysis in chapter four. This approach explores both the intimate and global of immigration and refugee law and demonstrates how they intertwine in legal spaces. This chapter explores the many ways that the courtroom and its social interactions reproduce legal spaces. An overview will first be provided of the persisting myths about Latino migrants and asylum seekers, which are perpetuated by politicians in order to control their mobility. Second, the spatial layout and performative nature of courtroom spaces will be reviewed in order to understand their role in the United States' exercise of power over Latinos. Finally, this research will examine the manner in which Latino lives are embodied in case law, which contest and enforce nationalist beliefs about migrants and refugees.

SETTING THE STAGE: MYTHS AND DISEMPOWERMENT

Myths are one of the driving mechanisms for anti-immigration policy and border enforcement. Latinos are often portrayed as an invading force and embodied threat to nationalism and security. Some common myths have persisted over the years, often varying in intensity and location relative to the geopolitics of the time. Latinos have frequently been portrayed as criminals and bandits (Dunn, 2009; Massey, 2014; Nevins, 2002); recently the criminal myth has been exacerbated by the United States' Global War on Terrorism, which has linked Latinos with terrorism (Coleman, 2009). Economically Latinos have simultaneously been

represented as burdens to social services, and unfair competitors in the labor market (Mountz & Hiemstra, 2014). A fairly recent myth—after the Convention on Refugees—is that of the fake refugee intent on taking advantage of the hospitality of prosperous states (Jubany, 2017; Mountz, 2010). These myths not only reconfigure immigration legal spaces in mundane utterances in private conversations or throughout popular media, but they also legitimize arguments against and judgements on Latinos in courtroom settings.

Fears of violence and immorality from Latinos are sensationalized through outlaw and bandido figures spanning history from Poncho Villa and Chapo Guzman. These symbols of lawlessness, which proliferate popular culture and political rhetoric, strengthen the Latino criminal narrative. The National Hispanic Media Coalition (Barreto, Manzano, & Segura, 2012, p. 5) conducted a study on the portrayal of Latinos in the media; of those polled about, "71% see Latinos in criminal or gang member roles very often or sometimes." Movies, television shows, and music portray the borderlands as lawless and dangerous to traverse (Ruiz, 2012). The barrage of negative images not only play into the imaginary of citizens, but also affect politicians responsible for creating immigration and refugee policy.

Fear and suspicion are used to transform Latin bodies into the "criminal" and "alien" in order to make their exploitation invisible to the public (Mountz, 2015). Stories and hyperbole are used by politicians and policy makers to foment fear and anti-immigrant sentiments in order to validate border enforcement and migration control. In one example of such practices, security contracting firm Colgen reported to the Texas Department of Agriculture that "living and conducting business in a Texas border county is tantamount to living in a war zone in which civil authorities, law enforcement agencies as well as citizens are under attack around the clock" (McCaffret & Scales, 2011, p. 10). This geopolitical assertion is overstated and inaccurate—

personal experiences in warzones, and several years working with Law Enforcement on the United States and Mexico border support my conclusion. However, politicians effectively use these fear tactics for border securitization and alienation of Latinos. Donald Trump accused Mexicans of "bringing drugs, they are bringing crime, their rapists" (C-Span, 2015) during his presidential campaign. Despite receiving substantial criticism for his comment, his views on immigration and the construction of a border wall earned him many votes towards winning the presidency.

The direct reaction to the myths surrounding Latinos and the borderland over the last thirty years has had dramatic geopolitical impacts for immigration legal spaces and the bodies who traverse them. For instance the number of Border Patrol agents has risen from 4,260 in 1994 to over 20,000 in 2016 (GAO, 1996; CBP 2017) and 800 miles of border wall have been erected around urban areas—with political action in motion to finish the other 1200 miles. In an additional show of force, the military has been deployed along the border for long term surveillance and enforcement at least three times (Dunn, 2009; Mountz, Wright, Miyares, & Bailey, 2002). The constant militarization of the border, combined with exaggerating any actual incidences of crime, creates a cycle of cause and effect. While there is indeed a criminal element to the borderlands it is exacerbated by overreaction and zealous reactionary enforcement policies. Limited instances of violence occurring across the vast 2,000 mile long borderland are extrapolated by politicians, the media, and popular culture to reify immigration legal spaces.

The attacks on September 11th, 2001 created a perfect storm for the militarization of the border and violent enforcement using immigration law (Menjívar & Abrego, 2012). In 2003 the newly created Immigration and Customs Enforcement (ICE) agency proposed a plan known as *Operation Endgame* (ICE 2003) that would remove every "illegal alien" within 10 years. It cited

that this objective fit within the "National Strategy for Homeland Security" aimed at preventing terrorist attacks. Although the operation failed to deport every unauthorized person it echoed a desperation for security that exists post 9/11. By drawing on the fear of terrorism, politicians were able to associate existing anxiety from unauthorized populations thereby equating the "illegal alien" with the terrorist (Gonzales, 2013). Another consequence was the need for absolute control over legal status under the auspices of national security. The hypersensitivity to fear from terrorism, and criminal elements, creates a powerful crisis narrative that allows the shifting and transformation of territorial sovereignty to place Latinos outside the protection of legal space (Mountz & Hiemstra, 2014).

The perceived economic burden unauthorized people pose on the United States is another persistent myth used to marginalize Latinos (Legomsky & Rodriguez, 2015). Former governor Pete Wilson fomented Californian's angst about a struggling economy in early 90s that resulted in the passing of proposition 187, also known as "save our state." The legislation required doctors, teachers, and other civil servants to report and deny any unauthorized person they encountered professionally. Proposition 187 re-appropriated medical, educational, and other social service institutions into immigration legal spaces—the law was eventually reversed on the grounds that states cannot enforce immigration issues (Nevins, 2002). The perceived economic instability caused by Latinos was grossly exaggerated and driven by emotionally charged rhetoric. A comprehensive report released by the National Academy of Science shows that the average Latinos' wage has hovered at about two thirds of U.S. born workers since 1970 and continues to decrease in relation (Blau & Mackie, 2016). The report also revealed that even though immigration may initially displace a segment of workers in the job market, ultimately U.S. citizens are better off with immigration.

The fake refugee is a myth that is particularly strong in today's society, especially given the rise in numbers of asylum seekers worldwide. Several scholars (Anderson, Hollaus, Lindsay, & Williamson, 2014; Gibson, 2012; Jubany, 2017) have identified a culture of disbelief that permeates those responsible for screening and determining asylum. Jubany (2017) pushes the idea further and observes that government officials assume false stories and fraudulent documents are often adopted from smugglers to deceive the system, which thereby criminalizes asylum seekers by association.

The bureaucratic system uses the previously discussed myths to foster disbelief in the claims of applicants—absolving government officials of their responsibility. The result is a skepticism which leads to the belief that the prime motivation for seeking refuge are opportunistic and aimed at exploiting resources. During one observed merits hearing, the government attorney commented that the only true statement the respondent had made was his desire to come to this country to work. His comments not only demonstrate an inculcation of disbelief, but also draws on the economic threat myth to exert power over Latinos. This particular asylum hearing involved a Mexican melon field worker (melonero) whose coworkers and relative had been killed by "delinquentes," vernacular for cartels and their associates; the head of one of those killed had been thrown into the field as a message to the others. Interestingly, the government attorney did not deny high levels of violence in the area, but bolstered it by claiming that similar stories appeared every day in Mexican newspapers. His tactic was aimed at undermining the respondent's claims of fear of persecution by insinuating that he was not the target, but merely present amongst the generalized violence that exists in Mexico. It was the presence, however, of a desire to work that negated the respondent's worthiness of relief; if he had the will to work, he was clearly not broken enough to "deserve"

asylum. The definition of refugee in the INA (1965) requires that fear of persecution be the primary reason for seeking asylum. The government attorney's reaction to the respondent's desire to work exemplifies the geopolitical impact myths have over Latinos in immigration legal spaces.

THE CURTAIN FALLS: THE COURTROOM AS PERFORMANCE

> "Everything in a courtroom breathes symbolism. A symbolism of power, hierarchy, asymmetry and authority" (Fărcaşiu, 2013, p. 6)

The courtroom is a performance and the courthouse is its stage; it is the foci for mundane and embodied geopolitics of immigration legal spaces. The exterior of every courthouse has a different feel depending on its location. Both San Antonio and Chicago's immigration courts are located in office buildings that blend in with their respective surroundings. Each court occupies one or several floors of these buildings with little advertisement. Their purpose, however, becomes clear once the elevator doors open. Security cordons, guards, and metal detectors immediately await. The guards are private contractors costumed in all of the regalia and equipment of a paramilitary force, but lack the discipline and professionalism. Court hearings are generally open to the public, however their intimidating presence prevents many from entering this legal space. In one of our courtroom observations, a 24 year old Salvadorian women's family waited in the car for the duration of her asylum merits hearing; it lasted eight hours and the temperature in San Antonio was in the nineties. Their loyalty and desire to support Ana at her merits hearing motivated them to share that space with her, if even from the parking lot.

However, their fear prevented them from crossing the threshold of power and authority that the courthouse commands.

The foreboding presence of deportation in regular immigration court is minor in comparison to the courthouse in Pearsall Detention Complex. Located off of Interstate 35 in a remote part of Texas just south of San Antonio, the detention complex is a series of cube like buildings with high cement walls and chain link fencing enclosing the top. Once inside there are a series of lockers for cell phones and other visitor belongings, afterwards a security station awaits. A contract security guard runs a desk adjacent to a metal detector with another guard observing. Several GEO Group security contractors and other personnel bustle about the waiting room just past the metal detectors. Accessing Pearsall's courtrooms presented an additional step than those of non-detention centers. A guard was required to escort us through a large steal door and into a man-trap—a secured area between two doors where only one door can be open at a time in order to control movement through space. Beyond the mantrap was a short, but sterile, bright hallway. Alongside the wall there appeared to be about three doors, each leading into a separate courtroom.

The spatial organization of every immigration court is intentionally laid out to enforce power relations (figure 15). The courtroom is divided by a fine wooden gate; performers are on one side and the audience is on the other. The physical layout clearly identifies stage positions for all its actors. Those not involved in its performance are segregated by an elaborate wooden gate with a swinging door. Mohammad (2001, p. 101) defines this frontier as "marking an inside from an outside, a boundary that is seen to circumscribe identity, social position and belonging and as such marks those who do not belong and hence are excluded." As such, each seat and desk symbolize their occupant's power and role within the courtroom (Yong, 1985). The judge

sits higher than all and in the center of the room to emphasize their supremacy, a position further emphasized by their personal chamber through which only they enter and exit the courtroom.

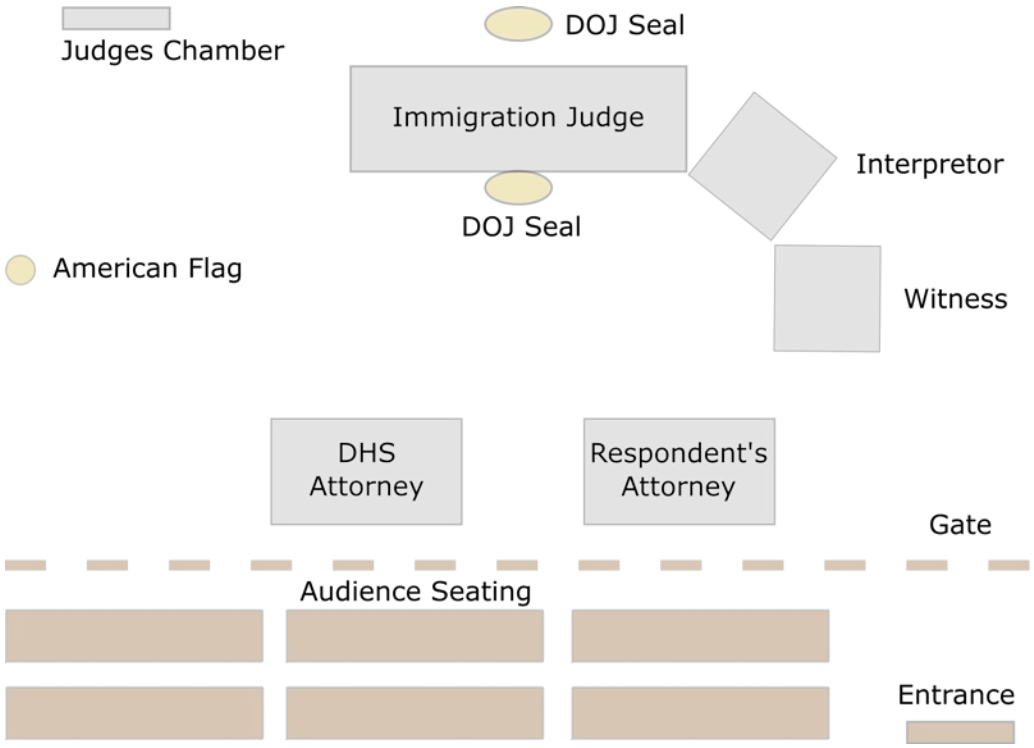

Figure 15: Basic layout and components of an immigration courtroom. Reconstructed from observation notes.

To the left of the judge is the interpreter's seat. In my observations the interpreter served as a semi-present intermediary. They were afforded varying degrees of respect by the judges based on rapport and ability. They were also able to transgress legal space by communicating directly with, and at times attempting to ease, the respondents. Beyond the scope of this thesis, but discussed by Berk-Seligson (2002), I observed that interpreters wield a great deal of power over a hearing's outcome, which will be discussed further below. The Government attorney sits opposing the judge on their right, and the respondent and their attorney sit to his left at a separate table. The position of these two tables emphasize the combative nature of immigration hearings,

and their subservience to the court (judge). To the far right side of the room is the witness stand, only a meter and a half away from the respondent's table. This seat occupies the space most visible throughout the courtroom and functions to channel the judgement of the court and observers. The witness stand symbolizes the power of the court to extract truth and justice. In Ana's hearing the immigration judge asked the government attorney if she cared whether the Ana sat at the table or the witness stand. The government attorney insisted that Ana take the stand even though she was no more than one and a half meters away and in no better view at the witness stand. The government attorney exercised her power to reconfigure legal space in order to create a distance between Ana and her attorney, thereby isolating her during questioning. All of these carefully calculated spatial arrangements have an important function in legitimizing the state's judgement and power over Latinos.

LEGAL CEREMONIES

Legal scholars (Fărcaşiu, 2013; French, 2009; Gathings & Parrotta, 2013; Yong, 1985) have identified the ceremonial characteristics of the courtroom and its proceedings. Trials are an elaborate performance steeped in ceremony (Braverman, 2011). Swearing in is a symbolic reminder to tell the truth at the cost of livelihood. During Ana's asylum merits hearing the immigration judge continuously harped on the necessity to tell the truth; he warned in a stern and threatening manner that she would not like his answer if she did not tell the truth. The patriarchal power held over the witness stand is compelling. An imposing official looms over respondent's responses while the risk of deportation weighs in the balance. The immense pressure of every single spoken word while in that chair brings to light the full force of the state's power.

Throughout various hearings respondents stumbled or could not answer simple questions—such as their grandchildren's names. My fluency in Spanish allowed me to determine when these misunderstandings were the result of the translator's capabilities and style, but many times it could be attributed to the respondent's anxiety. Translators are not equally proficient in their respective language, especially when specialized terminology is used. Berk-Seligson's (2002, pp. 59–60) research on courtroom interpreters identifies that they "are not always as effective as persons are led to believe." This became apparent during the Orozco family's asylum hearing in San Antonio; several key words were translated in a very literal sense which minimized their importance. During the hearing the Spanish words "armas," and "delinquentes" were translated either entirely incorrect or out of context. The word "armas" in Spanish is a homonym for arms (anatomical), or weapons. The interpreter continuously translated this word as "big arms," significantly less intimidating than its other meaning. The respondent was describing the violent acts and threats of "delinquentes," vernacular for cartel affiliates, armed with weapons. Fear of persecution from big armed men is less persuasive than a group of cartel members armed with weapons. Alternatively some interpreters are very good at understanding the nuances of both the court and respondents, which can work in favor of the respondent.

Ordinarily, the courtroom performance begins long before the actors amass in their respective positions. Immigration and DHS attorneys read over case files and investigate missing information through outside sources. Interviews are conducted not only with the respondent, but also with potential witnesses. In best case scenarios, immigration attorneys rehearse their questions with the respondent prior to trial in order to minimize confusion once on the stand and under the spotlight. The answers are rehearsed based on the statements in the files to which both attorneys and the court have access. Despite this preparation, sometimes the intimidation of the

courtroom and harshness of confinement can damage their credibility and argument for relief. Talia is a 36 year old mother of three and a legal resident who immigrated to the United States from Mexico when she was a child. When we met her she was in detention in Pearsall Texas. Talia's immigration attorney recounted her frustration when Talia was unable to follow or answer simple questioning during her cancellation of removal hearing. The judge had asked if she would respond in Spanish—since an interpreter had been requested—to which she answered "yes, your honor". Amused, the judge responded "that's in English," and asked Talia again. After responding again in English the judge directly instructed her to respond in Spanish and she did from then on. Situations such as these are not all that uncommon, and Talia's immigration attorney explained that many of her clients in detention centers are tired when they arrive at the hearing and "fall apart" during questioning.

HEARING RITUAL

Litigation is an orchestrated sequence of events similar to scenes in a play, where the events are already known, only in court the outcome remains to be revealed. The judicial process places individuals in a liminal status between "alien" and legal resident, criminal and secure. In this state they are both subject to the law's force while denied its protection. Immigration hearings are adversarial; Immigration attorneys defend the petitioner's right to relief—if they have an attorney—and a government attorney is assigned to attack their credibility and disprove their worth. The victor is determined by the immigration judge who scrutinizes truthfulness, sincerity, and relevance to the law. A defense attorney is not obligatory, because unauthorized bodies rest outside of legal space and its constitutional protections. This is of significance and weighs heavily in the success of an application for relief. A study (TRAC, 2015) of

predominantly Mexican and Central Americans “women with children” cases found that 97% of those without legal representation were ordered deported in contrast to 67% of those with legal aid.

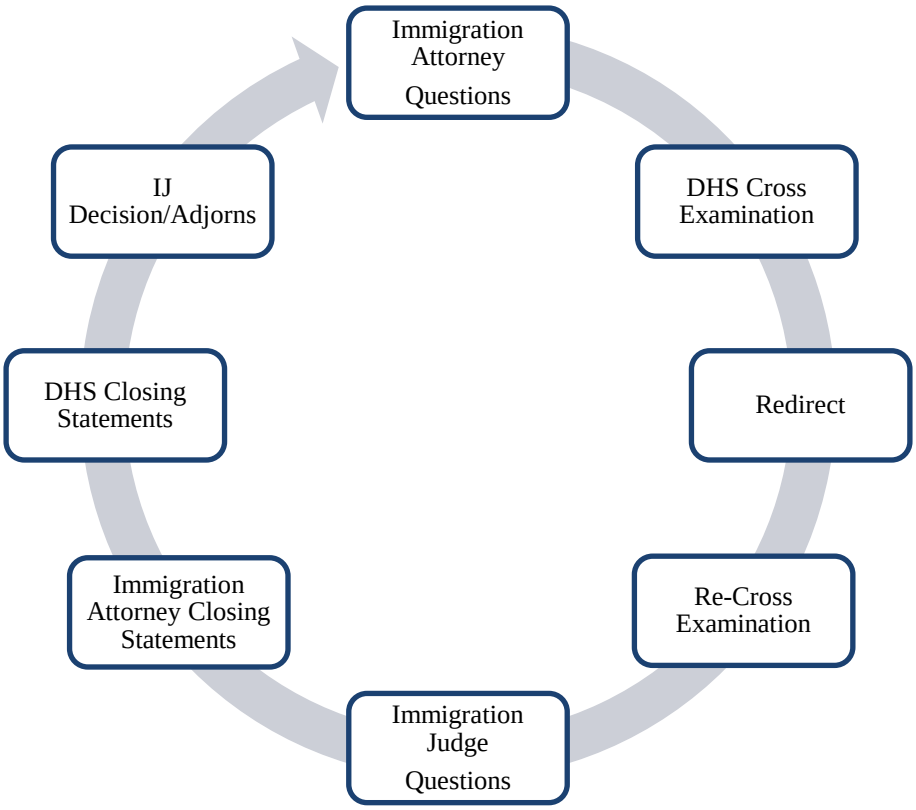

Figure 16: Removal hearing’s witness questioning protocol and organization. Created from observation notes.

Figure 16 depicts the general progression of an immigration hearing. Each hearing begins with the administrative aspects of the case; discrepancies in paperwork, charges, and scheduling are resolved by the judge who enters last minute items into the record. Some judges were less formal in their rituals: refusing to recite their actions for the record, instructing people to not stand when they entered the room, or interrupting attorneys to expedite proceedings. Experience

seemed to affect these behaviors the most. Junior judges were more likely to comply with all protocols, whereas senior judges seemed disinterested in ceremony.

The immigration attorney begins by asking the respondent questions regarding the case; the government attorney follows with cross-examination, and it is at this juncture where the character of the respondent and strength of the application are deconstructed; redirect and re-cross examination are available to both parties if they wish to address contentious issues raised during their counterpart's questioning, but new questions are not allowed. If either attorney steps outside the boundaries of the legal duel objections may be raised against their questioning.

Immigration court diverges from most other litigation by allowing the judge to ask the witness their own questions. This grants the immigration judge a great deal of power in determining the outcome of the hearing. In one instance a judge utilized this time to further scrutinize Leti—a single mother who fled her abusive partner in El Salvador—on the testimony of her repeated abuse and rape. Leti had been accused by her partner and stigmatized by her community for being lesbian. She denied being homosexual and explained that assumptions had been made about her, because of how she dressed and for playing on a predominantly lesbian soccer team. Nonetheless, her partner felt a moral imperative to "feminize" her through physical and sexual violence. The following are excerpts of the immigration judge's (IJ) questioning of Leti (R) (Responses are general translations with direct quotes in quotation marks).

IJ: Were you injured from the rape?

R: Yes.

IJ: How badly?

R: "Kept bleeding after he did what he did."

IJ: On November 21st, how were you injured?

R: The same, bruises and bleeding.

IJ: The next attack on the 25th?

R: He beat and raped me again, but for the first time he left marks on my face.

IJ: How long did it take to heal?

R: I still had bruises the two months I was in Mexico.

The immigration judge did not rule on Leti's case that day, but stated she wanted to review the information. The judge raised "grave" concerns about Leti's credibility, because she believed such severe rapes would have required medical attention. There was also contestation to the dates Leti provided about when she last had sex with her former partner and gave birth to her son. The government attorney also raised the inconsistency in dates, but had not focused on the brutality of her attacks—he had been the least confrontational of the government attorneys observed in other hearings. The ability of the immigration judge to ask questions is problematic; in Leti's case it introduced a second party arguing against her case to stay in the United States, an issue exacerbated by the immigration attorney's lack of power to challenge the judge's questioning.

The final series in this adversarial performance are the closing statements of both attorneys. This is the opportunity for attorneys to make persuasive arguments in favor or opposition to the respondent's claim. These are often the most theatrical moments of the hearing. In one instance a government attorney upset by the quantity of documents in the Orozco family's petition for asylum ended his arguments by shouting "eight-hundred pages of smoke your honor!" as he slammed the massive brief on the table. Immigration attorneys also use this time to evoke emotions in the hope that it will sway the case in their favor. Ana's attorney confided in us after the hearing that she intentionally questioned Ana about her abuse in a manner that would

make her cry. Feeling great remorse, she told us that she felt it was necessary to strengthen her credibility, because the hearing appeared to be going poorly. The courtroom is an intimate legal space rooted in ritual and ceremony where actors play out gendered roles of victims and villains (Gathings & Parrotta, 2013). Simultaneously, attire, demeanor, physical characteristics are all being judged for their conformity to racial and gendered norms. There is no room for nuance or interpretation in these roles, because of the narrow confines and definitions used in immigration legal spaces. Is Ana traumatized enough to have been the victim of rape and abuse? Does Leti look like a lesbian? The consequences of such an elaborate performance of power is often to the disadvantage of Latinos and results in devastating outcomes. Additionally, if asylum seekers do not credibly perform the role of the victim they may lose the case and face deportation.

CASE BY CASE: JUDGING HUMAN WORTH

Every immigration case file is a manifestation of a human being. Facts and opinions are collected and composed to create cases for bodies to be authorized by legal spaces or to be expelled from the United States' territory. The majority of bodies are filed under preexisting legal categories in leather bound books and electronic files to be forgotten to the state after judgement. However, gradual resistance and litigation occasionally aggregate the experience of those individuals to form new laws for their protection. A judge's novel interpretation of law creates a precedence for higher courts to rule in favor and in essence create new laws. Case law is one of the few methods of resistance and expressions of agency that Latinos and refugees have to combat draconian immigration policy. These personified case laws are increasingly important in the defense of Latinos and other marginalized groups as fewer options for relief from deportation remain in an ever increasing security state.

The geopolitics of immigration legal spaces are evident in the lives of every migrant and asylum seeker. Seemingly trivial actions, such as resisting societal ideas about femininity, are in reality manifestations of geopolitics. Adjudication is a highly contested social process that creates legal spaces and these spaces are constructed with the simple details about a person's life. This is especially true in determining asylum. In The BIA's ruling in the Matter of Acosta (1985) determined that a "particular social group"—the catch all category for gaining asylum—needed to be based on an immutable characteristic. The case involve a Salvadorian driver and manager of a taxi cooperative known as COTAXI who had been the target of extortion and violence from guerrillas in San Salvador based on his position in COTAXI. This decision ensured the state's role in identity creation and the embodiment of asylum. The ruling granted the state power to define identities and their legitimacy for relief. This compels immigration attorneys to isolate those parts of a respondent's identity that match the image of a "good" refugee when creating a defense.

In 2014 a Guatemalan woman demonstrated the power of an individual to make geopolitical impact and expand the immigration legal space to include a whole new particular social group: "married women in Guatemala who are unable to leave their relationship" (Matter of A.R.C.G., 2014). This pivotal case law originated from a petition for asylum based on a prolonged abusive relationship with her partner. The lynchpin in this case, which separated it from other domestic abuse related cases, was the impunity of state. Ana and Leti both explained in their hearings that the state viewed domestic abuse as a family problem to be resolved in the home. Their families—while not in agreement— normalized these gender inequalities. As a result of the legal victory many more Central American women qualify for asylum, and the catalyst for this geopolitical shift was the rejection of femininity that required male domination.

The cost of victory comes at a steep price and the woman in Matter of A.R.C.G (2014)—who is anonymous—underwent a great deal of trauma and pain in order to be scrutinized by the state to satisfy national and patriarchal ideations of saving vulnerable women (Fluri, 2011). Case laws are not analytical decisions made while drafting legislation; they are the embodiment of pain and suffering. These traumas are endured not just once, but also again during the immigration court performance so that others may gain legal status.

Chapter 6: Closing Statements

This research has covered a range of information regarding the history, structure, and impacts of immigration legal spaces for Latinos using a feminist geopolitical framework. In doing so I have interjected my autobiography to temper my own position of power deriving from years of involvement with these systems. Some objectives for this approach included exposing the draconian nature of the current U.S. immigration system and to contribute to geopolitical literature that emphasizes the importance of embodied scales. The ultimate goal of my research is to provide scholarship that aids in the campaign for human rights and deconstructs blind faith in a nationalist and securitized state, or at the very least to document these injustices for posterity.

Coincidentally, my project formed amidst an exponentially increasing hostility towards Latinos, migrants, refugees, and the many combinations thereof. The future holds many questions as to how Trump's administration will manifest spatially to influence legal outcomes for Mexican, Guatemalan, Honduran, and Salvadorians seeking relief from deportation. President Trump has stoked a culture of hyper-masculinity, misogyny, racism, and nationalism; recent poll analysis shows that black, hispanic, and women voters greatly opposed Trump. White voters with little or no college were greatly in his favor compared to the same racial segment with degrees (Tyson & Maniam, 2016). It remains to be seen how deeply these prejudicial sentiments will penetrate immigration legal spaces and their consequences for Latinos, but his executive orders so far foreshadow a tumultuous four years ahead.

President Trump issued Executive Order (EO) Border Security and Immigration Enforcement Improvements (Kelly, 2017a) and EO Enhancing Public Safety in the Interior of the United States (Kelly, 2017b) that signal a trajectory towards increasing inequality for migrants

and asylum seekers. Although it is outside the purview of the president to change the INA (1965), he can redirect resources to shift enforcement priorities. The Obama administration made minor, but symbolic changes towards immigration reform in favor of focusing on removing those out of legal status, which narrowed the scope of the INA's (1965) ability to target Latinos. Trump's executive orders eliminated those priorities and directed the DHS to fully enforce its statutes. Some integral changes to the legislation include indiscriminate prosecution of unauthorized people, mandating the prosecution of everyone captured in immigration legal spaces, heightened funding for border enforcement and expansion, and maximizing detention.

Congress has also been infiltrated by extreme nationalism and the fervent urgency for securitization. Legislation is currently being voted on, with considerable support, aimed at further weaponizing immigration legal spaces. Kate's Law (2017), named after 32 year old U.S. citizen Kathryn Steinle who was murdered by Juan Francisco Lopez-Sanchez who had been deported five times, will increase penalties for those who have been previously deported. As the law stands currently—passed only in the House of Representatives—those apprehended with prior a removal order would be subject to as much as two years imprisonment. Penalties increase dramatically if the person has previous convictions; three misdemeanors could result in a 10 year prison sentence and penalties escalate to 25 years depending on the extent of their criminal record (Kate's Law, 2017). Deportations for those who have been previously removed or ordered removed accounted for 27% of all outcomes in 2016 (TRAC, n.d.). A great deal of Latinos may subsequently have to defend themselves not only against removal, but also incarceration before removal.

The rhetoric revolving around this law is a manifestation of the various ways immigration legal spaces are manufactured using nationalist myths and symbols to target Latinos. The use of

myths to vilify Latino migrants and asylum seekers is ubiquitous in politics and an overtly recognized, yet still effective tactic. Representative Nadler—a democrat from New York—opposing the bill, succinctly explained Trump and Congress's manipulation of myths to further their political agendas: "First you demonize immigrants, then you dehumanize them, and then you label them all as criminals, all of which helps you build public support for removing them from the country" (2017). Kate's law (2017) represents how the tragic slaying of Kathryn Steinle has transcended the corporeal violence inflicted on her and has been re-appropriated by the state as a mechanism for enacting legal violence on Latinos. Support for accomplishing these tasks are wrapped in U.S. nationalist ideas about the protection of women and the need to defend the homeland.

My thesis assumed a broad approach to investigating the socially constructed spaces of immigration and asylum law intended for further inquiry in a doctoral program. However, the social construction of immigration legal spaces requires a more detailed examination. Additional and more comprehensive courtroom ethnographies would amplify the potency of data collected about respondent's experiences in immigration legal spaces. For example, following a migrant or asylum seeker's life course through the process of initial contact with immigration attorneys to their repatriation or integration into the United States would provide more dynamic narratives for analysis. Unfortunately, a research project such as this would require an intensive investment of time and resources considering the asylum process extends over years. However, conducting interviews with those who have been through the process and developing their life histories is a potential approach for future research.

The spatial analysis undertaken in my research was broad, often at the national or state level. This approach was beneficial in identifying areas to focus my research, such as San Antonio

and Pearsall. It was also an effective tool for highlighting power disparities within the immigration legal system across the United States. Moving forward, I would like to conduct more complex analysis of quantitative legal data in relation to demographics and regional politics to reveal patterns of oppression with finer detail. Testing correlations between the political affiliations of immigration judges and their patterns of ruling against certain variable can potentially expose gender, racial, and other discriminatory biases. As a society we have become accustomed to the marginalization of millions of people based on a socially constructed idea about legal status and citizenship; 2015 was the first time in 44 years we deported less than half of a million people, but that number has started to rise again (figure 2). Continued research into immigration legal spaces is crucial in these controversial times to prevent, and ideally end, the dehumanization, criminalization, and violent expulsion of the many people fleeing violence.

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