

## Article

# Racial Disparities in Crime-Based Removal Proceedings

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*Whether and to what extent racial minorities experience harsher treatment or face worse outcomes in court are questions of fundamental importance for any justice system. Questions of racial inequality are especially salient in the context of removal proceedings that are triggered by immigrants' criminal history. Many individuals in crime-based removal proceedings are immigrants of color who face a host of legal disadvantages that are tantamount to double penalties for the same crime for which they have already been punished through the criminal justice system. This Article offers, for the first time, systematic empirical analyses of crime-based removal proceedings decided between 1998 and 2023 in U.S. immigration courts. Our analyses produced three key findings. First, our results show that double penalties for immigrants in crime-based removal proceedings are large and*

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*growing. Second, there are significant racial disparities in the rate at which immigrants are released from detention and the rate at which they are ordered removed from the United States. Specifically, Hispanic immigrants with drug-related charges and Black immigrants with domestic violence or firearms charges face significantly worse outcomes than their counterparts. Third, non-white immigrants fare better when their presiding judges are of the same, rather than different, race. For white immigrants, however, they generally fare better than non-white immigrants regardless of the presiding judges' race, and this white favoritism is more pronounced among some non-white judges than white judges. These findings have important implications for scholarship on the continuing salience of race and ethnicity in criminal and civil proceedings despite facially race-neutral laws, as well as policymaking aimed at advancing racial equality in our justice system.*

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## INTRODUCTION

“Noncitizens with criminal convictions, their families, and sometimes even their attorneys, who come before the immigration court often feel like they have entered a carnival ‘house of mirrors,’” wrote Dana Leigh Marks and Denise Noonan Slavin, former immigration judges (IJs).<sup>1</sup> This description underscores the frightening and maze-like nature of immigration court process that immigrants<sup>2</sup> with criminal history experience when the government places them in removal proceedings based on their criminal history (crime-based removal proceedings). The experience is aptly described as entering a house of mirrors because at the heart of these removal proceedings are the crimes for which these immigrants have already been punished through the criminal justice system. Yet these crimes continue to follow them, threatening them with severe consequences that are tantamount to double punishment.

This Article offers the first systematic empirical analysis of crime-based removal proceedings. This analysis is important and timely given that current U.S. immigration law and enforcement policy have become heavily focused on detaining and deporting immigrants with criminal records. In fiscal year 2008, immigrants without past criminal convictions accounted for the majority (69%) of those removed after an arrest by U.S. Immigration and Customs Enforcement (ICE).<sup>3</sup> By contrast, in fiscal year 2020, immigrants with past criminal convictions or pending criminal charges accounted for the majority (64%) of all ICE removals; this percentage is even higher (92%) when we consider only those removals resulting from interior (as opposed to border) arrests.<sup>4</sup>

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1. Dana Leigh Marks & Denise Noonan Slavin, *A View Through the Looking Glass: How Crimes Appear from the Immigration Court Perspective*, 39 FORDHAM URB. L.J. 91, 112 (2011).

2. The term “immigrant” as used in this Article refers to noncitizens, whether they have legal status (for example, a visa holder or a lawful permanent resident) or lack legal status. For different legal categories of noncitizens, see *id.* at 99.

3. *Fiscal Year 2016 ICE Enforcement and Removal Operations Report*, U.S. IMMIGR. & CUSTOMS ENF’T 5 (2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf> [<https://perma.cc/4C7K-ZAHT>].

4. *U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report*, U.S. IMMIGR. & CUSTOMS ENF’T 23 (2020), <https://www.ice.gov/doclib/news/library/reports/annual-report/ero-ReportFY2020.pdf> [<https://perma.cc/UEL7-W3YB>].

To appreciate the consequential nature of crime-based removal proceedings and their significance in the intersecting world of immigration and criminal law, it is helpful to consider the following three salient facts that define the contemporary U.S. immigration deportation regime.<sup>5</sup> First, deportation is a devastating life event with enduring negative consequences for immigrants, their families, and communities.<sup>6</sup> According to the U.S. Supreme Court, deportation of a long-term resident is tantamount to banishment from their home and family, a “punishment of the most drastic kind.”<sup>7</sup> For those fleeing from violence and persecution in their origin countries, deportation may be a death sentence.<sup>8</sup> Second, contacts with the criminal justice system make an immigrant, including lawful permanent residents, dramatically more likely to be detained and deported from the United States. According to one recent estimate, a criminal conviction makes deportation hundreds of times more likely.<sup>9</sup> Third, there is no right to government-appointed counsel in

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5. Prior to 1996, immigration judges made admissibility decisions in “exclusion proceedings” and deportation decisions in “deportation proceedings.” In 1996, Congress consolidated them into “removal proceedings.” See Emily Ryo, *Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings*, 52 LAW & SOC’Y REV. 503, 504 n.1 (2018). This Article uses these terms interchangeably.

6. See DAVID C. BROTHERTON & LUIS BARRIOS, *BANISHED TO THE HOMELAND: DOMINICAN DEPORTEES AND THEIR STORIES OF EXILE* (2011) (finding that Dominican deportees often face high levels of stigma, which pose significant socio-economic and cultural challenges for both deportees and their families after deportation); Jacqueline Hagan et al., *Deporting Social Capital: Implications for Immigrant Communities in the United States*, 3 MIGRATION STUD. 370, 384–88 (2015) (describing the devastating effects of deportation and removal in terms of loss of family, business networks, community trust, social capital, life opportunities for families, and community capital); Jacob S. Rugh & Matthew Hall, *Deporting the American Dream: Immigration Enforcement and Latino Foreclosures*, 3 SOCIO. SCI. 1053, 1067–70 (2016) (finding that deportations directly contribute to housing instability and Latino residential stratification by reducing homeownership, income, and wealth).

7. *Lehmann v. United States ex rel. Carson*, 353 U.S. 685, 691 (1957).

8. See Dana Leigh Marks, *Immigration Judge: Death Penalty Cases in a Traffic Court Setting*, CNN (June 26, 2014), <https://edition.cnn.com/2014/06/26/opinion/immigration-judge-broken-system> [<https://perma.cc/5QWL-BNYJ>] (“Immigration judges compare these [removal proceedings] to death penalty cases because an order of deportation can, in effect, be a death sentence.”).

9. David K. Hausman, *The Unexamined Law of Deportation*, 110 GEO. L.J. 973, 978 (2022).

immigration proceedings,<sup>10</sup> and most immigrants in removal proceedings lack legal representation.<sup>11</sup> Although there is a growing movement in various local jurisdictions to provide low-cost or free legal services to immigrants facing removal, such programs often exclude those with criminal convictions.<sup>12</sup>

The foregoing discussion suggests that immigrants with criminal histories are one of the most stigmatized and vulnerable, yet the least legally protected, groups in our justice system. In addition, many are likely to be long-term U.S. residents with deep social ties to the United States.<sup>13</sup> Different strands of research have started to examine issues affecting this population. For example, scholars from multiple disciplines have studied how immigrants are treated in the criminal justice system.<sup>14</sup> A growing number of scholars have also examined the use of criminal law and the criminal law apparatus as an immigration enforcement tool.<sup>15</sup> Yet, there is a great deal that we still do not

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10. Emily Ryo & Ian Peacock, *Represented but Unequal: The Contingent Effect of Legal Representation in Removal Proceedings*, 55 LAW & SOC'Y REV. 634, 635 (2021).

11. *Id.* at 637 (“Among detained noncitizens in removal proceedings, the representation rate was . . . about 17%.”).

12. Lindsay Nash, *Universal Representation*, 87 FORDHAM L. REV. 503, 504–05 (2018) (describing the conviction-based eligibility restrictions that many “universal representation” programs impose).

13. See Hausman, *supra* note 9, at 975 (“As the law recognizes elsewhere, the human and economic costs of deportation rise with noncitizens’ time in the United States and their ties to the community. Prioritizing deportations by criminality often means deporting people with deep roots in the United States.”).

14. See, e.g., Ingrid V. Eagly, *Criminal Justice for Noncitizens: An Analysis of Variation in Local Enforcement*, 88 N.Y.U. L. REV. 1126, 1134 (2013) (examining how the integration of criminal law with immigration enforcement ensures local officials are consistently aware of immigration status and federal enforcement practices); Michael T. Light et al., *Citizenship and Punishment: The Salience of National Membership in U.S. Criminal Courts*, 79 AM. SOCIO. REV. 825, 841 (2014) (“[N]on-citizens—particularly undocumented immigrants—are far more likely to be incarcerated and sentenced for longer periods than are U.S. citizens.”); Katherine Beckett & Heather Evans, *Crimmigration at the Local Level: Criminal Justice Processes in the Shadow of Deportation*, 49 LAW & SOC'Y REV. 241, 273 (2015) (“There is . . . a significant body of evidence suggesting that the intermingling of the criminal and immigration systems notably disadvantages non-citizens caught up in the criminal justice system in various locales.”).

15. See, e.g., Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 381–92 (2006) (describing the

know about the immigration consequences of a criminal record in immigration court cases and the access-to-justice challenges that immigrants face when they are placed in removal proceedings due to their triggering criminal history.

This Article is the first to ask—and address through systematic empirical analysis of removal proceedings decided between 1998 and 2023—three key questions that are fundamental to understanding the crime-based removal system in the United States. First, what legal disadvantages do immigrants in crime-based removal proceedings face, and have these disadvantages diminished or grown over time? To address this question, we descriptively examine the differences between proceedings with criminal charges and those without criminal charges in terms of the respective groups’ (1) rate of legal representation (“representation rate”), (2) rate at which immigrants are held in immigration detention (“detention rate”), (3) rate of release from detention (“release rate”), and (4) rate at which removal orders are issued (“removal rate”).

Second, are there racial/ethnic<sup>16</sup> disparities in legal outcomes for immigrants in crime-based removal proceedings? To

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growing overlap between immigration and criminal law in substance, enforcement practices, and procedural approaches to prosecution); Cecilia Menjivar & Leisy J. Abrego, *Legal Violence: Immigration Law and the Lives of Central American Immigrants*, 117 AM. J. SOCIO. 1380, 1381 (2012) (examining how Central American immigrants in precarious legal statuses experience “legal violence” at the nexus of immigration and criminal laws); Amada Armenta, *Racializing Crimmigration: Structural Racism, Colorblindness, and the Institutional Production of Immigrant Criminality*, 3 SOCIO. RACE & ETHNICITY 82, 83 (2017) (explaining how local law enforcement agencies contribute to the racialization and criminalization of Latinos, which reinforces Latinos’ vulnerability to deportation); Sarah Tosh, *Drugs, Crime, and Aggravated Felony Deportations: Moral Panic Theory and the Legal Construction of the “Criminal Alien,”* 27 CRITICAL CRIMINOLOGY 329, 335 (2019) (describing how punitive drug laws and a “get-tough-on-crime” approach have reinforced the criminalization of Latino immigrants); Jennifer M. Chacón, *The Criminalization of Immigration* (mapping shifts in immigration and criminal law that have increasingly criminalized immigration), in THE OXFORD RESEARCH ENCYCLOPEDIA OF CRIMINOLOGY & CRIMINAL JUSTICE, Oxford Research Encyclopedias (database updated 2021).

16. For ease of reference, we refer to racial/ethnic disparities as racial disparities throughout the rest of this Article. We recognize that there is a continuing debate about whether Hispanic is more appropriately categorized as an ethnic identity rather than a racial identity, although the increasingly dominant approach is to treat Hispanic as a separate racial category. See Nancy

address this question, we undertake a two-step analysis of our originally compiled removal-proceedings data. We first identify the top five most commonly occurring criminal charge categories in the proceedings data.<sup>17</sup> These top five charges are: (1) *Controlled Substance*, (2) *Controlled Substance Trafficking*, (3) *Domestic Violence, Stalking, or Child Abuse*, (4) *Firearms*, and (5) *Violation of Protective Order*.<sup>18</sup> Then *within* each criminal charge category, we analyze racial disparities in release and removal rates. Our analysis focuses on predicted values from regression models that adjust for a variety of characteristics related to immigrant respondents, proceedings, and judges. The two-step analytical approach that we undertake ensures that we are not comparing the legal outcomes of different groups in a pooled sample that aggregates widely disparate criminal charges that are of varying degrees of seriousness.

Third, does an IJ's race matter in crime-based removal proceedings? More specifically, do immigrants who share the same racial identity as the IJs who preside over their crime-based removal proceeding experience more favorable legal outcomes than those whose racial identities differ? We address this question by examining the release and removal rates of crime-based removal proceedings for which there is racial concordance between immigrant respondents and their judges (as compared to those proceedings that lack such racial concordance). For the reasons discussed earlier, we also conduct this analysis separately for each of the top five most commonly occurring criminal charges in the proceedings data.

To preview our results, we find that immigrants in crime-based removal proceedings (as compared to those in non-crime-based removal proceedings) are substantially less likely to obtain legal representation, more likely to be detained, less likely

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Foner et al., *Introduction: Immigration and Changing Identities*, RUSSELL SAGE FOUND. J. SOC. SCIS., Aug. 2018, at 1, 11 ("In the media, public discourse, some government reporting standards, and everyday language used by Latinos and non-Latinos alike, the view of Latinos as a separate racial group has increasingly come to dominate.").

17. For the reasons detailed in the Data and Methods Appendix (*see* Appendix Part C), we excluded from consideration the following two charge categories: (1) "aggravated felony," and (2) "crimes involving moral turpitude." For how we coded individual charges appearing in the proceedings data into charge categories that we analyze in the current study, *see* Appendix Table E.

18. For details on the coding of charge categories, *see Charge Variables* in the Data and Methods Appendix (Appendix Part B).

to be released from detention, and more likely to be ordered removed.<sup>19</sup> We refer to these disadvantages as “double penalties,” following scholars who have argued that harsh immigration consequences of criminal conviction amount to punishing an individual twice for the same crime.<sup>20</sup> Our analysis shows that these double penalties are large and have grown over time, especially in more recent years, particularly towards the end of the first Trump administration and into the Biden administration.<sup>21</sup>

We also find evidence of significant racial disparities in the rates at which immigrants are released from detention, and the rates at which they are ordered removed.<sup>22</sup> Among those with controlled-substance and controlled-substance trafficking charges, Hispanic immigrants have the lowest rate of release and the highest rate of removal.<sup>23</sup> Among those with domestic-violence and firearm charges, Black immigrants have the lowest rate of release from detention and the highest rate of removal.<sup>24</sup> Finally, we find significant positive effects of racial concordance on release and removal rates for non-white immigrants.<sup>25</sup>

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19. See *infra* Part IV.A.

20. See Emily Ryo, *Fostering Legal Cynicism Through Immigration Detention*, 90 S. CAL. L. REV. 999, 1025 (2017) (“[Immigrant detainees] who had served criminal sentences for convictions that had triggered their removal proceedings described immigration detention as double jeopardy—retribution for the wrongdoing for which they had already paid the price.”); Mark Dow, *Designed to Punish: Immigrant Detention and Deportation*, 74 SOC. RSCH. 533, 544 (2007) (“Detained immigrants awaiting deportation after criminal convictions have often complained that they are being subjected to double jeopardy since they have already served their sentences. But the truth is their treatment does not even rise to that level: double jeopardy implies being tried twice for the same crime. The immigrants have been tried only once—and punished twice.”); Sarah Tosh, *Mandatory Detention for Criminal Convictions: The Reproduction of Racial Inequality Through U.S. Immigration Law*, 44 LAW & POL’Y 70, 88–90 (2022) (describing how immigration courts exacerbate punishment for Latinx and Black immigrants). Other scholars have used a similar term, “double punishment,” to describe how immigrants are punished through the court process during removal proceedings and again when they are removed from the United States. Christopher Levesque et al., *Process as Suffering: How U.S. Immigration Court Process and Culture Prevent Substantive Justice*, 86 ALB. L. REV. 471, 471 (2022–23); Michael T. Light, *Legal Inequality’s Newest Face*, CONTEXTS, Summer 2015, at 32, 37.

21. See *infra* Part IV.A.

22. See *infra* Part IV.B.

23. See *infra* Part IV.B.

24. See *infra* Part IV.B.

25. See *infra* Part IV.C.

Specifically, Asian, Black, and Hispanic immigrants generally experience more favorable outcomes if their presiding judges are of the same race.<sup>26</sup> On the other hand, white immigrants fare better before non-white judges, in part because while all judges decide more favorably when the immigrant respondent is white rather than non-white, some non-white judges appear to evidence a relatively higher degree of white favoritism than white judges.<sup>27</sup>

This Article makes three major contributions. First, by shining a light on what happens to immigrants who become ensnared in the immigration enforcement system as a result of their criminal history, we explore an important set of collateral consequences of contacts with the criminal justice system that has escaped systematic empirical scrutiny. A longstanding scholarship has examined the extent and nature of a variety of deleterious downstream effects of contacts with the criminal justice system on outcomes as varied as employment, occupational licensing, voting, and civic engagement.<sup>28</sup> However, empirical studies that examine immigration-related collateral consequences on noncitizens of their contacts with the criminal justice system are scarce.<sup>29</sup> We argue that filling this knowledge gap is critical for a fuller and more nuanced understanding of expanding powers of the carceral state and the disproportionate impact that such an expansion has on marginalized communities of color.<sup>30</sup>

Second, no study to date has analyzed the centrality of immigrant respondents' race in understanding disparities in legal outcomes in removal proceedings. The influence of extralegal factors on IJs' decision-making has been of enduring interest to scholars.<sup>31</sup> Prior research has found that in immigration court adjudication, demographic profiles and work experiences of IJs

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26. See *infra* Part IV.C.

27. See *infra* Part IV.C.

28. See *infra* Part II.A.

29. A study by Ingrid Eagly and colleagues is a notable exception, which examines how public defense institutions that provide immigration-related legal advising have evolved post-*Padilla v. Kentucky*. Ingrid Eagly et al., *Restructuring Public Defense After Padilla*, 74 STAN. L. REV. 1, 7 (2022). In *Padilla*, the U.S. Supreme Court held that under the Sixth Amendment, appointed counsel in criminal cases must inform their clients of adverse immigration consequences that may result from a guilty plea. *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010).

30. See *infra* Parts II.A, V.B.

31. See *infra* Parts II.B–II.C.

matter, and so do state and local contexts in which immigration courts are located, as well as outside influences and pressures placed on IJs.<sup>32</sup> But this is the first study that investigates whether and to what extent racial identity of immigrant respondents might matter in removal proceedings. Our empirical findings uncovering racial disparities in immigration court outcomes underscore the importance of examining race as a “master status”<sup>33</sup> that might perpetuate inequalities in immigration adjudication. In this way, our empirical findings make a significant new contribution to the growing body of scholarship on immigration courts and access to justice for immigrants.<sup>34</sup>

Third, the current study is the first to provide empirical evidence of racial-concordance effects in immigration proceedings and to propose possible explanations for the phenomenon that requires future investigation. Across many different social contexts, voluminous research documents the role that ingroup bias or ingroup favoritism—the tendency to favor members of one’s own group over those in other groups—plays in shaping human behavior.<sup>35</sup> However, the mechanisms driving this behavior are not well understood. One possible explanation for the racial-concordance effect that we find in this study might be judicial empathy.<sup>36</sup> Prior research on judicial behavior suggests that judicial empathy—the ability to understand and identify with others’ perspectives and situations—may be an important determinant of how judges decide cases.<sup>37</sup> Empathy, in turn, has been conceptualized as a product of personal experiences and interactions that typically vary along racial and gender lines.<sup>38</sup> We draw attention to the importance of studying these kinds of dynamics. More broadly, we call for a better understanding of how judge characteristics interact with respondent characteristics to shape legal outcomes in removal proceedings.

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32. See *infra* Part II.B.

33. The term “master status” was coined by an American sociologist, Everett Hughes, in the 1940s to describe the importance of race as a dominant identity that, in most social situations, will overpower other identities. See Everett Cherrington Hughes, *Dilemmas and Contradictions of Status*, 50 AM. J. SOCIO. 353, 357 (1945).

34. See *infra* Part II.B.

35. See *infra* Part II.C.

36. See *infra* Part II.C.

37. See *infra* Part II.C.

38. See *infra* Part II.C.



The rest of this Article proceeds in four major parts. Part I provides the historical and legal context necessary for understanding how crime-based removal proceedings gained prominence and how they operate. Part II explains what motivates the current study's focus on racial disparities and why examining this dimension of crime-based removal proceedings is important for both research and policy. Part III describes the data on removal proceedings that we originally compiled for the purposes of this study. This Part also explains the analytical strategy that we adopted in analyzing these proceedings data. Part IV presents the results of our empirical analyses and the key findings that address the three questions that we presented earlier. We conclude with a discussion about the policy implications of our findings and directions for future research.

## I. CRIME-BASED REMOVAL PROCEEDINGS

Crime-based removal proceedings are an integral part of a broader phenomenon that scholars call "crimmigration,"<sup>39</sup> which refers to the merger of criminal justice and immigration enforcement systems.<sup>40</sup> We describe key features of crimmigration and discuss historical developments that gave rise to crime-based removal proceedings. Crimmigration has become a broader global

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39. Some scholars have argued that the use of the term, "crimmigration," "may contribute to the normalization of immigrants as 'crimmigrants' [i.e., criminal immigrants] or to their homogenization." Cecilia Menjivar et al., *The Expansion of "Crimmigration," Mass Detention, and Deportation*, SOCIO. COMPASS, Apr. 2018, at 1, 8.

40. Stumpf, *supra* note 15, at 376 ("Immigration law today is clothed with so many attributes of criminal law that the line between them has grown indistinct."). For discussions on various facets of crimmigration, see, for example, Mary Fan, *The Case for Crimmigration Reform*, 92 N.C. L. REV. 75, 75 (2013) ("This Article is about curbing the most problematic excesses of the 'crimmigration complex.'"); Beckett & Evans, *supra* note 14, at 241 ("Implications of these findings for the 'crimmigration' literature and research on the effect of citizenship status on criminal justice outcomes are discussed."); César Cuauhtémoc García Hernández, *Deconstructing Crimmigration*, 52 UC DAVIS L. REV. 197, 197–98 (2018) ("This article tackles crimmigration law's seemingly fixed role in twenty-first century law enforcement practices in the service of displacing crimmigration from its remarkable status."); Juliet P. Stumpf, *Crimmigration and the Legitimacy of Immigration Law*, 65 ARIZ. L. REV. 113, 113 (2023) ("This Article explores the significance of crimmigration for the procedural legitimacy of immigration law.").

phenomenon,<sup>41</sup> but our discussion focuses on its development in the United States. We also describe the contemporary legal framework, law-enforcement policies, and practices that sustain crime-based removal proceedings.

#### A. HISTORICAL CONTEXT AND LEGAL FRAMEWORK

The two key substantive features of crimmigration are (1) criminalization of immigration law violations that used to be classified as civil violations, and (2) an expansive array of criminal offenses that trigger immigration detention and deportation.<sup>42</sup> The first substantive feature—increased criminalization of immigration law violations—is responsible for the dramatic rise in the number of cases involving immigration offenses in criminal court dockets across the United States.<sup>43</sup> Between fiscal years 2018 and 2020, prosecution of immigration crimes constituted the largest share of all federal criminal prosecutions, followed by offenses related to drugs, firearms, and fraud/theft/embezzlement.<sup>44</sup> Questions of how these immigration-crime cases

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41. For research on crimmigration and its impact in countries outside of the United States, see Neža Kogovšek Šalamon et al., *Global Crimmigration Trends*, in CAUSES & CONSEQUENCES OF MIGRANT CRIMINALIZATION 3, 13–22 (Neža Kogovšek Šalamon ed., 2020); Gian Luigi Gatta, *Global Trends in “Crimmigration” Policies: From the EU to the USA*, in CONTROLLING IMMIGRATION THROUGH CRIMINAL LAW: EUROPEAN AND COMPARATIVE PERSPECTIVES ON “CRIMMIGRATION” 47, 49–70 (Gian Luigi Gatta et al. eds., 2021).

42. See Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, 50 LAW & SOC’Y REV. 117, 119 (2016) (explaining that crimmigration “is a product of the growing criminalization of immigration violations on the one hand, and the expansion of criminal grounds for removal on the other”).

43. MARK MOTIVANS, BUREAU OF JUST. STAT., NCJ 253116, IMMIGRATION, CITIZENSHIP, AND THE FEDERAL JUSTICE SYSTEM, 1998–2018, at 1, 2 (2021) (“Immigration suspects prosecuted in U.S. district court more than tripled from 1998 to 2018.”).

44. Immigration offenses were the most common federal crimes in 2020, accounting for about forty-one percent of the total caseload. Glenn R. Schmitt & Amanda Russell, *Fiscal Year 2020 Overview of Federal Criminal Cases*, U.S. SENT’G COMM’N 5 (Apr. 2021), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/FY20\\_Overview\\_Federal\\_Criminal\\_Cases.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/FY20_Overview_Federal_Criminal_Cases.pdf) [https://perma.cc/TTG3-VMQ5]. In 2021, drug offenses overtook immigration offenses as the most common federal crime (about thirty-one percent of the total caseload). Glenn R. Schmitt & Lindsey Jeralds, *Fiscal Year 2021 Overview of Federal Criminal Cases*, U.S. SENT’G COMM’N 5 (Apr. 2022), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/FY21\\_Overview\\_Federal\\_Criminal\\_Cases.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/FY21_Overview_Federal_Criminal_Cases.pdf) [https://perma.cc/TR88-3Y9S].

are adjudicated in criminal courts and impact the criminal justice system are beyond the scope of this Article, though there is an emerging body of legal and empirical research that examines these important issues.<sup>45</sup>

The second substantive feature of crimmigration—the large set of criminal offenses that triggers immigration detention and deportation—lies at the heart of crime-based removal proceedings.<sup>46</sup> Scholars have traced this legal development to the late 1980s.<sup>47</sup> The Anti-Drug Abuse Act of 1988<sup>48</sup> established a new category of crimes called “aggravated felonies”—which included murder, drug trafficking, and firearms trafficking—that could trigger immigration detention and deportation.<sup>49</sup> In 1990, Congress broadened the definition of aggravated felonies to include any “crimes of violence” that resulted in a sentence of at least five years regardless of how the relevant law under which the immigrant was convicted defined that crime.<sup>50</sup> Thereafter, Congress reduced the required sentence length of “crime of violence” to one year and added a host of new offenses to the list of

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45. For discussions of these cases by legal scholars, see, for example, Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U. L. REV. 1281 (2010); Stephen Lee, *De Facto Immigration Courts*, 101 CALIF. L. REV. 553 (2013); Chacón, *supra* note 15. For empirical studies of these cases, see Richard D. Hartley & Rob Tillyer, *Defending the Homeland: Judicial Sentencing Practices for Federal Immigration Offenses*, 29 JUST. Q. 76 (2012); Rob Tillyer & Richard Hartley, *The Use and Impact of Fast-Track Departures: Exploring Prosecutorial and Judicial Discretion in Federal Immigration Cases*, 62 CRIME & DELINQ. 1624 (2016); Melanie M. Holland, *Fast-Tracking Justice: An Examination of the Role of Gender in the Application of Federal Early Disposition Decisions and Other Departure Outcomes for Immigration Offenses*, 30 WOMEN & CRIM. JUST. 126 (2020).

46. See, e.g., García Hernández, *supra* note 40, at 210 (“The INA contains dozens of provisions that trigger removal upon a conviction or, in some instances, mere commission of certain crimes.”).

47. See, e.g., *id.* at 199–200 (discussing the rise of crimmigration amidst the “anti-migrant hysteria” in the 1980s); Stumpf, *supra* note 40, at 130 (highlighting the expansion of deportation statutes and criminalization of border crossing in the 1980s).

48. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, sec. 7342, § 101(a), 102 Stat. 4470, 4469–70 (amending 8 U.S.C. § 1101(a)).

49. See Teresa A. Miller, *Citizenship & Severity: Recent Immigration Reforms and the New Penology*, 17 GEO. IMMIGR. L.J. 611, 633–34 (2003) (discussing the expansion of the term, “aggravated felonies,” to target migrants).

50. Immigration Act of 1990, Pub. L. No. 101-649, sec. 501(a)(3), § 101(a), 104 Stat. 4978, 5048 (amending 8 U.S.C. § 1101(a)); see Stumpf, *supra* note 15, at 383 (discussing the expansion of the term, “aggravated felonies”).

aggravated felonies, many of which do not involve violence.<sup>51</sup> Over time, the list of “aggravated felonies” expanded so much that these offenses now do not even need to be “aggravated” nor “felonies” under criminal law; for instance, a conviction for simple battery or shoplifting can be deemed an aggravated felony.<sup>52</sup> Considered together, these changes have had the effect of making it significantly easier for the U.S. government to detain and deport noncitizens.

There are other ways that Congress expanded the crime-based removal system during this period. For example, the other key category of offenses for which an immigrant may be deported is “crimes involving moral turpitude” (CIMT).<sup>53</sup> Prior to 1996, an immigrant was deportable for a single CIMT committed within five years of admission only if one year or more of confinement was *actually* imposed; this was changed in 1996 to only require that a sentence of one year or more *may* be imposed to trigger deportation.<sup>54</sup>

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51. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, sec. 321, § 101(a)(43), 110 Stat. 3009-546, 3009-627 (codified as amended at 8 U.S.C. § 1101(a)(43)(F)–(G) (2000)); see Stumpf, *supra* note 15, at 384 (discussing Congress broadening the definition of “aggravated felony”).

52. See Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 23 DEFENSE ALIEN 1, 5 (2000) (emphasizing that “a misdemeanor or a violation in most states . . . can be deemed an aggravated felony”).

53. Immigration and Nationality Act, Pub. L. No. 82-414, § 241(a)(4), 66 Stat. 163, 204 (1952) (current version at 8 U.S.C. § 1227(a)(2)) (declaring CIMT as grounds for deportation). See generally Craig S. Lerner, “Crimes Involving Moral Turpitude”: *The Constitutional and Persistent Immigration Law Doctrine*, 44 HARV. J.L. & PUB. POL’Y 71, 79–114 (2021) (analyzing the development of CIMT provisions).

54. Immigration and Nationality Act § 241(a)(4) (pre-1996 CIMT deportation); Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, sec. 435, § 241(a)(2)(A)(i)(II), 110 Stat. 1214, 1274 (current version at 8 U.S.C. § 1227(a)(2)(A)(i)(II)) (expanding CIMT deportation in 1996); see Lerner, *supra* note 53, at 75 (discussing the broadening of CIMT as grounds for deportation); see also Miller, *supra* note 49, at 633 (explaining the shift from pre- to post-1996 as “criminal aliens” became more vulnerable to deportation due to the broadening of CIMT).

B. POLICIES AND PRACTICES SUPPORTING CRIME-BASED  
REMOVAL

Crimmigration's heavy reliance on the criminal law apparatus to achieve its immigration-enforcement aims has been central to sustaining the crime-based removal system. For example, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) created a program commonly known as the 287(g) Program, which allows for local law enforcement agencies to enforce federal immigration laws.<sup>55</sup> According to ICE, as of March 2025, seventy-two law enforcement agencies in twenty states have entered into a 287(g) agreement that allows deputized officers to interrogate suspected noncitizens who have been arrested on state or local charges regarding their immigration status.<sup>56</sup> In addition, ICE also has 287(g) agreements with 122 law enforcement agencies in sixteen states for ICE to train, certify, and authorize law-enforcement officers to execute ICE administrative warrants on noncitizens in their agency's jail.<sup>57</sup>

Another key mechanism through which immigration enforcement has conscripted the criminal justice system is the immigration detainer.<sup>58</sup> Immigration detainers allow immigration enforcement agents to ask local law enforcement officers to notify them of an immigrant offender's date of release from jail or prison and to request a hold on them beyond their scheduled release date so that ICE may assume custody for the purposes of placing the immigrant in a removal proceeding.<sup>59</sup> Immigration detainers have been legally challenged on the basis that the continued detention of an immigrant pending transfer to ICE custody violates the Fourth Amendment's protections against

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55. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 div. C, sec. 133, § 1357(g), 110 Stat. at 3009–563 (accepting state services to carry out immigration enforcement). *See generally* Huyen Pham, *287(g) Agreements in the Trump Era*, 75 WASH. & LEE L. REV. 1253 (2018) (discussing the first Trump administration's implementation of 287(g) agreements).

56. *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. IMMIGR. & CUSTOMS ENF'T (last updated Mar. 3, 2025), <https://www.ice.gov/identify-and-arrest/287g> [<https://perma.cc/RHB3-8R4U>].

57. *Id.*

58. *See* HILLEL R. SMITH, CONG. RSCH. SERV., R45915, IMMIGRATION DETENTION: A LEGAL OVERVIEW 51 (2019) (providing an overview of immigration detainers).

59. *See id.* ("An immigration detainer is a document by which ICE . . . requests the [law enforcement officers] to take certain actions that could facilitate removal [of an alien] . . .").

unreasonable government searches and seizures.<sup>60</sup> Despite the several federal court decisions finding key aspects of immigration detainers unconstitutional and in violation of federal statutes, immigration detainers remain in use.<sup>61</sup>

Finally, policies set by the federal executive branch have been pivotal in making crime-based removal the defining feature of the U.S. immigration enforcement regime. Because of the government's limited resources, it cannot enforce the law against every violator. And nothing in immigration statutes and regulations *require* the prioritization of enforcement action against immigrants who are deportable on the basis of a crime. In this context, the exercise of prosecutorial discretion pursuant to enforcement priorities set by the executive branch has played a central role in determining who gets detained and deported.<sup>62</sup> For example, in 2011, the Department of Homeland Security (DHS) announced through what has come to be known as the Morton Memo that its top priorities were the removal of

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60. *E.g.*, *Morales v. Chadbourne*, 793 F.3d 208, 222 (1st Cir. 2015); *Gonzalez v. U.S. Immigr. & Customs Enft.*, 975 F.3d 788, 821 (9th Cir. 2020); *see* SMITH, *supra* note 58, at 57–59 (discussing the applicability of the Fourth Amendment to immigration detainers); HILLEL R. SMITH, CONG. RSCH. SERV., LSB10375, IMMIGRATION DETAINERS: BACKGROUND AND RECENT LEGAL DEVELOPMENTS 1 (2020) (discussing violations of the Fourth Amendment through ICE's immigration detainers); *see also* Christopher N. Lasch, *Enforcing the Limits of the Executive's Authority to Issue Immigration Detainers*, 35 WM. MITCHELL L. REV. 164, 165 (2008) (critiquing immigration detainers); Kate Evans, *Immigration Detainers, Local Discretion, and State Law's Historical Constraints*, 84 BROOK. L. REV. 1085, 1091 (2019) ("Scholars and advocates have successfully explained that federal law fails, on its own, to authorize local enforcement of civil immigration law through immigration detainers.").

61. *See* Gary M. Reich & Michael C. Scott, *County Immigration Enforcement in the Context of Unsettled Federalism: From Obama to Trump*, 55 STATE & LOC. GOV'T REV. 96, 98–100 (2023) (discussing the use of detainers between the Obama administration and the first Trump administration); *ICE Didn't Follow Federal Enforcement Priorities Set by Biden Administration*, AM. IMMIGR. COUNCIL (June 27, 2023), <https://www.americanimmigrationcouncil.org/foia/ice-enforcement-priorities> [<https://perma.cc/HP6Z-397N>] (highlighting that "[d]etainers comprised roughly 30 percent of the enforcement actions" of ICE).

62. *See* Adam B. Cox & Cristina M. Rodríguez, *The President and Immigration Law*, 119 YALE L.J. 458, 464 (2009) (discussing "back-end prosecutorial power"); Marjorie S. Zatz & Nancy Rodríguez, *The Limits of Discretion: Challenges and Dilemmas of Prosecutorial Discretion in Immigration Enforcement*, 39 LAW & SOC. INQUIRY 666, 666–67 (2014) (highlighting the controversial nature of prosecutorial discretion); Shoba Sivaprasad Wadhia, *The History of Prosecutorial Discretion in Immigration Law*, 64 AM. U. L. REV. 1285, 1285 (2015) (explaining "the historical role of prosecutorial discretion in immigration law").

immigrants who threatened national security and those who had committed crimes.<sup>63</sup> In 2014, the agency established a new policy that was largely similar to the Morton Memo but required immigration officers to focus their efforts on immigrants convicted of more serious offenses.<sup>64</sup>

The first Trump administration re-expanded the enforcement priorities to target all removable immigrants.<sup>65</sup> However, the Biden administration sought to generally limit its enforcement actions to a narrower class of immigrants—i.e., immigrants who pose a threat to: (1) national security, (2) public safety, and (3) border security.<sup>66</sup> The second category—“threat to public safety”—generally includes immigrants who have engaged in “serious criminal conduct.”<sup>67</sup> In response, Texas and Louisiana sued the Department of Homeland Security (DHS), arguing that it lacked authority to set these enforcement

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63. Memorandum from John Morton, Dir., U.S. Dep’t of Homeland Sec., to All ICE Employees, Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens 1 (Mar. 2, 2011), <https://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf> [<https://perma.cc/XN9E-UTGL>]. See generally HILLEL R. SMITH, CONG. RSCH. SERV., LSB10578, THE BIDEN ADMINISTRATION’S IMMIGRATION ENFORCEMENT PRIORITIES: BACKGROUND AND LEGAL CONSIDERATIONS 6 (2022) (describing Biden administration’s enforcement focus on threats of national security, border security, and public safety).

64. Memorandum from Jeh Charles Johnson, Sec’y, U.S. Dep’t of Homeland Sec., to Thomas S. Winkowski et al., Acting Dir., U.S. Immigr. & Customs Enf’t et al., Policies for the Apprehension, Detention and Removal of Undocumented Immigrants 3 (Nov. 20, 2014), [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion%281%29.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion%281%29.pdf) [<https://perma.cc/5RYT-G54K>]. See generally SMITH, *supra* note 63, at 2 (noting the limits on the types of criminal offenses prioritized in 2014).

65. Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 30, 2017); Memorandum from John Kelly, Sec’y, U.S. Dep’t of Homeland Sec., to Kevin McAleenan et al., Acting Comm’r, U.S. Customs & Border Prot. et al., Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017) (implementing enforcement against all “removable aliens”); cf. HILLEL R. SMITH, CONG. RSCH. SERV., LSB11023, SUPREME COURT LIMITS STATES’ ABILITY TO CHALLENGE IMMIGRATION ENFORCEMENT POLICIES 2 (2023) (discussing the shift in immigration policy from the first Trump administration to the Biden administration).

66. Memorandum from Alejandro N. Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec., to Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf’t, Guidelines for the Enforcement of Civil Immigration Law 3–4 (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf> [<https://perma.cc/CFK7-BRBU>].

67. *Id.* at 3.

guidelines.<sup>68</sup> On June 23, 2023, the Supreme Court held in *United States v. Texas* that Texas and Louisiana lacked legal standing to bring this challenge, reaffirming the idea that the federal executive branch has broad discretion over whether to remove an individual from the United States.<sup>69</sup>

## II. CENTRALITY OF RACE IN THE JUSTICE SYSTEM

In this Part, we discuss existing research that motivates the current study's empirical focus on racial identities of immigrant respondents and those of IJs. The first body of research focuses on racial disparities in criminal justice process and outcomes, while the second body of research focuses on inequalities in immigration law, enforcement, and adjudication. The third body of research focuses on the importance of considering judges' race alongside the race of criminal defendants or of civil litigants. Taken together, our review of these existing bodies of research indicates that, in contrast to voluminous scholarly attention devoted to analyzing the importance of race and ethnicity (of litigants and judges) in criminal justice processing and outcomes, empirical studies that examine the effect of race and ethnicity (of both the immigrants and IJs) on immigration court process and outcomes are scarce.

### A. CRIMINAL JUSTICE PROCESS AND OUTCOMES

Empirical findings vary in terms of the size and significance of racial/ethnic disparities that exist in the American criminal justice system, depending on the jurisdictions studied and the decision points in criminal justice processing that the researchers have examined.<sup>70</sup> However, the overall weight of the evidence

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68. *United States v. Texas*, 143 S. Ct. 1964, 1968 (2023).

69. *Id.*

70. For recent reviews, see, for example, Robert D. Crutchfield et al., *Racial and Ethnic Disparity and Criminal Justice: How Much Is Too Much?*, 100 J. CRIM. L. & CRIMINOLOGY 903, 908 (2010) (discussing the shortcomings of studies based on aggregate data); Yu Du, *Racial Bias Still Exists in Criminal Justice System? A Review of Recent Empirical Research*, 37 TOURO L. REV. 79, 81–82 (2021) (describing racial disparities in the criminal justice system); Phillip D. Clingan, *A Brief Literature Review of Juvenile Statistics, a Comparative Analysis of Current Racial Differences Within the Criminal Justice System*, 2 INT'L J. SCI. ADVANCES 1030, 1030 (2021) (highlighting that Black youths have the highest juvenile detention rates); Hedwig Lee, *How Does Structural Racism Operate (in) the Contemporary US Criminal Justice System?*, 7 ANN. REV.



from the longstanding body of research is that racial disparities are common and widespread in the criminal justice system.<sup>71</sup> For example, substantial empirical evidence demonstrates that racial minorities—particularly Blacks and Hispanics—experience disproportionately higher rates of police violence, arrest, prosecution, and conviction.<sup>72</sup> Studies also show that these same groups are also generally disadvantaged in judicial processing of criminal cases, as reflected in their relatively higher rates and lengths of pretrial detention, higher bond amounts imposed, higher incarceration rates, and harsher sentences post-conviction.<sup>73</sup> A recent study by Bryan Holmes and Ben Feldmeyer that analyzed federal sentencing data between 1998 to 2019 indicates that at least with respect to incarceration and sentencing decisions, White-Black and White-Hispanic disparities have

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CRIMINOLOGY 233 (2024) (discussing structural racism’s prevalence in the criminal justice system).

71. Lee, *supra* note 70, at 236 (“Racial/ethnic disparities . . . are evident at almost every point in contact in the criminal justice system . . .”).

72. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 95–139 (rev. ed. 2012) (noting the targeting of Black men in the criminal justice system); MICHAEL TONRY, *PUNISHING RACE: A CONTINUING AMERICAN DILEMMA* 77–114 (2011) (arguing that certain policies disproportionately affect Black Americans); Anthony A. Braga et al., *Race, Place, and Effective Policing*, 45 ANN. REV. SOCIO. 535, 535 (2019) (highlighting research on race and policing); Margaret Bull Kovera, *Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions*, 75 J. SOC. ISSUES 1139, 1139 (2019) (discussing racial disparities in “policing, prison populations, and participation in juries”); Gabriel L. Schwartz & Jaquelyn L. Jahn, *Mapping Fatal Police Violence Across U.S. Metropolitan Areas: Overall Rates and Racial/Ethnic Inequities, 2013-2017*, PLOS ONE, June 24, 2020, at 1, 1 (connecting police brutality to diminishing public health).

73. See, e.g., David S. Abrams et al., *Do Judges Vary in Their Treatment of Race?*, 41 J. LEGAL STUD. 347, 347 (2012) (noting that Black men are more than six times as likely to be incarcerated than white men); Ellen A. Donnelly & John M. MacDonald, *The Downstream Effects of Bail and Pretrial Detention on Racial Disparities in Incarceration*, 108 J. CRIM. L. & CRIMINOLOGY 775, 777 (2018) (highlighting that Black citizens represent thirty-five percent of the state and federal prisoners); Marisa Omori & Nick Petersen, *Institutionalizing Inequality in the Courts: Decomposing Racial and Ethnic Disparities in Detention, Conviction, and Sentencing*, 58 CRIMINOLOGY 678, 683–84 (2020) (noting that minorities are less likely to have their charges reduced); Bruce Western et al., *The Cumulative Risk of Jail Incarceration*, PROCS. NAT’L ACAD. SCIENCES., Apr. 20, 2021, at 1, 1 (discussing the mass criminalization of minorities by the police); Joshua Grossman et al., *Racial Bias as a Multi-Stage, Multi-Actor Problem: An Analysis of Pretrial Detention*, 20 J. EMPIRICAL LEGAL STUD. 86, 88 (2023) (analyzing discrimination in the pre-trial process).

persisted over the past couple decades.<sup>74</sup> Another recent study by Erik Girvan and Heather Marek, which analyzed state sentencing between 2005 and 2018 in Oregon, finds that even after controlling for crime severity and criminal history, individuals perceived to be Hispanic were nearly twice as likely to be sentenced to prison as individuals perceived to be white.<sup>75</sup>

Other key findings from this body of research are important to highlight. First, studies show that because racial disparities accumulate over different decision points of criminal case processing (e.g., arrest, pretrial detention, charging, prosecution, trial, and sentencing), these decisions put together can translate into significant disadvantages for racial minorities even when disparities relating to any single decision point might be relatively small.<sup>76</sup> Second, although there are continuing debates about *why* racial disparities might exist in the criminal justice system,<sup>77</sup> a growing number of studies have demonstrated that these disparities cannot be fully explained by racial differences

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74. Bryan Holmes & Ben Feldmeyer, *The Only Thing Constant Is Change: Temporal Analyses of Racial/Ethnic Sentencing Disparities*, 48 AM. J. CRIM. JUST. 1080, 1080 (2023) (finding that Black and Hispanic disadvantages with respect to incarceration rates have been largely time-stable, whereas minority disadvantages in sentence length declined in the early- to mid-2000s before rising again in more recent years).

75. Erik J. Girvan & Heather Marek, *The Eye of the Beholder: Increased Likelihood of Prison Sentences for People Perceived to Have Hispanic Ethnicity*, 47 LAW & HUM. BEHAV. 182 (2023).

76. Kovera, *supra* note 72, at 1147 (noting that the aggregation of racial disparities across several different decision points in the criminal justice system results in a considerable disadvantage to minority groups); *see also* Donnelly & MacDonald, *supra* note 73, at 778 (“Blacks and Latinos may receive harsher sentences than Whites as a result of disadvantages that accumulate as their case progresses.”); Megan C. Kurlychek & Brian D. Johnson, *Cumulative Disadvantage in the American Criminal Justice System*, 2 ANN. REV. CRIMINOLOGY 291, 292 (2019) (emphasizing the importance of “considering the ways that disadvantages accrete across successive stages of case processing”); Brandon P. Martinez et al., *Time, Money, and Punishment: Institutional Racial-Ethnic Inequalities in Pretrial Detention and Case Outcomes*, 66 CRIME & DELINQ. 837, 838 (2020) (finding that the length of pretrial detention produces cumulative disadvantages in later case outcomes).

77. *See, e.g.*, Kovera, *supra* note 72, at 1152 (discussing different explanations for racial disparities in the criminal justice system and noting that “not all racial disparities are the result of implicit racial bias”); Kevin Lang & Ariella Kahn-Lang Spitzer, *Race Discrimination: An Economic Perspective*, 34 J. ECON. PERSPS. 68, 68 (2020) (“While documenting racial disparities is relatively easy, identifying discrimination as the cause is more challenging.”).

in rates of offending or in severity of offenses.<sup>78</sup> For example, in studies of pretrial detention, the bail amounts offered to white defendants were lower than those offered to Black and Hispanic defendants even after controlling for relevant legal factors that included those associated with risk of dangerousness or flight.<sup>79</sup> Similar findings have emerged with respect to other stages of criminal justice processing, including in sentencing decisions made by judges.<sup>80</sup> These findings have prompted scholars to investigate other explanations, ranging from racially disparate treatment stemming from bias to disparate racial impacts resulting from ostensibly race-neutral laws.<sup>81</sup>

Finally, a related body of research has investigated the extent and nature of a variety of deleterious downstream consequences of contacts with the criminal justice system for individuals, as well as their families and communities.<sup>82</sup> A growing body

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78. Crutchfield et al., *supra* note 70, at 908 (“[S]ome substantial racial disparities exist that cannot be explained by purely legally relevant factors like the severity of the crime and the criminal history of the offender.”).

79. See Kovera, *supra* note 72, at 1145 (discussing racial disparities in bail decisions).

80. See, e.g., Ryan D. King & Michael T. Light, *Have Racial and Ethnic Disparities in Sentencing Declined?*, 48 CRIME & JUST. 365, 368 (2019) (“[Although] racial disparity varies by jurisdiction, type of crime, and judge. . . [A]t this moment in history, the evidence suggests that racial disparities in sentencing exist and are not fully explained by the confluence of race with crime severity or the extensiveness of defendants’ criminal records.”); Girvan & Marek, *supra* note 75, at 191 (“Our results are consistent with those of prior descriptive work suggesting that race/ethnicity may have a statistically and practically significant impact on sentencing decisions, even after analyses account for the effects of legally relevant factors.”).

81. See King & Light, *supra* note 80, at 366 (highlighting different legal and social science scholarship attempts to explain racial disparities in the criminal justice system, including racially neutral laws with disparate racial impacts); Omori & Petersen, *supra* note 73, at 679–80 (stating that both individual-level discrimination and organizational practices can result in producing inequalities based on racial stereotypes).

82. See, e.g., Christopher Uggen et al., *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 281, 281 (2006) (“Convicted felons face both legal and informal barriers to becoming productive citizens at work, responsible citizens in family life, and active citizens in their communities.”); Becky Pettit & Carmen Gutierrez, *Mass Incarceration and Racial Inequality*, 77 AM. J. ECON. & SOCIO. 1153, 1153 (2018) (“[T]he costs of mass incarceration are not simply collateral consequences for individuals but are borne *collectively*, most notably by African Americans living in acutely disadvantaged communities that experience high levels of

of scholarship indicates that the mark of a criminal record has enduring negative collateral consequences long after offenders have paid their criminal fines or completed their prison sentences. Researchers have identified these collateral consequences in wide-ranging domains, such as employment, occupational licensing, voting, and civic engagement.<sup>83</sup> In addition, existing research demonstrates that racial minorities are at a greater risk than other groups of experiencing the negative collateral consequences of criminal punishment.<sup>84</sup> For instance, Angela Behrens and colleagues find that large non-white prison populations increase the odds of a state passing restrictive disenfranchisement laws;<sup>85</sup> these laws, in turn, have a greater

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policing and surveillance.”); Western et al., *supra* note 73, at 1 (“Although duration is usually brief, jail incarceration has been found to adversely affect court outcomes, crime, and socioeconomic life.”); Kristin Turney & Naomi F. Sugie, *Connecting Models of Family Stress to Inequality: Parental Arrest and Family Life*, 83 J. MARRIAGE & FAM. 102, 102 (2021) (concluding that incarceration has negative consequences for marriage and family life including reduced relationship quality and impaired parenting relationships).

83. See, e.g., DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 28–57 (2007) (exploring the difficulty of reentering the labor market after incarceration); JAMES B. JACOBS, THE ETERNAL CRIMINAL RECORD 225–300 (2015) (discussing the labor consequences of a criminal record); AMY E. LERMAN & VESLA M. WEAVER, ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL 92–109 (2014) (assessing the effects of criminal justice on civic and political engagement); David S. Kirk & Sara Wakefield, *Collateral Consequences of Punishment: A Critical Review and Path Forward*, 1 ANN. REV. CRIMINOLOGY 171, 172 (2018) (noting multiple collateral consequences of contact with the criminal justice system on social life, health, families, and communities); Michael R. Menefee, *The Role of Bail and Pretrial Detention in the Reproduction of Racial Inequalities*, SOCIO. COMPASS, May 2018, at 1, 4–6 (identifying several spillover effects of pretrial detention including deleterious effects on employment and recidivism rates).

84. Darren Wheelock, *Collateral Consequences and Racial Inequality: Felon Status Restrictions as a System of Disadvantage*, 21 J. CONTEMP. CRIM. JUST. 82, 82 (2005) (“[B]ecause they are most likely to experience criminal justice sanctions, Black males are at far greater risk of also facing the social disadvantages that accompany criminal punishment.”); Olaoluwa Olusanya & Jeffrey M. Cancino, *Cross-Examining the Race-Neutral Frameworks of Prisoner Re-Entry*, 20 CRITICAL CRIMINOLOGY 345, 345 (2012) (“[B]lack ex-prisoners might be more vulnerable to the collateral consequences of a criminal conviction precisely because of their greater individual-level, accumulated disadvantage.”).

85. Angela Behrens et al., *Ballot Manipulation and the “Menace of Negro Domination”: Racial Threat and Felon Disenfranchisement in the United States, 1850–2002*, 109 AM. J. SOCIO. 559, 559 (2003).

impact on the Black disenfranchisement rate than the white disenfranchisement rate although the laws are facially race-neutral.<sup>86</sup>

#### B. IMMIGRATION LAW, ENFORCEMENT, AND ADJUDICATION

Immigration law has a long history of discrimination and exclusion based on race and ethnicity.<sup>87</sup> At the same time, prominent immigration law scholars and social scientists who study immigration have critiqued the state of contemporary migration studies as de-centering race analysis. Kevin Johnson has argued that mainstream immigration law scholarship has failed to “confront squarely the reality of the influence of race.”<sup>88</sup> Likewise, Mary Romero has argued, “race . . . [has been] a glaring omission in immigration studies in sociology.”<sup>89</sup>

In more recent years, a growing number of immigration scholars have responded to this critique by drawing our attention to the ways that contemporary immigration law and policy continue to subjugate immigrants of color—particularly Latinos—even as these laws and policies have become facially race-neutral or “color-blind.”<sup>90</sup> Drawing on historical analysis and

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86. Holona Leanne Ochs, “Colorblind” Policy in Black and White: Racial Consequences of Disenfranchisement Policy, 34 POL’Y STUD. J. 81, 81 (2006).

87. Anna O. Law & Daniel J. Tichenor, *Race, Ethnicity and American Immigration Policy* (noting race and ethnicity have been grounds for immigrant inclusion and exclusion for over 150 years), in THE OXFORD HANDBOOK TOPICS IN POLITICS (2019) (ebook); Chacón, *supra* note 15 (describing the history of racial exclusion under U.S. immigration law).

88. Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525, 527.

89. Mary Romero, *Crossing the Immigration and Race Border: A Critical Race Theory Approach to Immigration Studies*, 11 CONTEMP. JUST. REV. 23, 26 (2008).

90. Elizabeth Aranda & Elizabeth Vaquera, *Racism, the Immigration Enforcement Regime, and the Implications for Racial Inequality in the Lives of Undocumented Young Adults*, 1 SOCIO. RACE & ETHNICITY 88, 88 (2015) (finding that immigration enforcement practices disproportionately affect Latinos in the United States); Yolanda Vázquez, *Constructing Crimmigration: Latino Subordination in a “Post-Racial” World*, 76 OHIO ST. L.J. 599, 599 (2015) (noting that crimmigration contributes to Latino communities’ economic and political precarity). For a helpful overview of the historical transformation of immigration law from racial exclusions to race-neutral policies in the 1960s, see Karen Manges Douglas et al., *Immigration in the Era of Color-Blind Racism*, 59 AM. BEHAV. SCIENTIST 1429, 1432–47 (2015).

aggregate statistics on deportation by nationality, sociologists Tanya Golash-Boza and Pierrette Hondagneu-Sotelo have described the modern deportation regime in the United States as a “gendered racial removal program” that disproportionately targets working class men from Latin America and the Caribbean.<sup>91</sup> Amada Armenta’s ethnographic study of crimmigration shows that local law enforcement practices that funnel immigrants into the deportation machinery racialize and disproportionately punish Latino immigrants in the United States.<sup>92</sup>

However, little to no empirical research systematically examines racial disparities in the immigration court process and its outcomes. Instead, the scholarly focus in this area of research has been on disparities by national origin. For example, Ingrid Eagly and Steven Shafer’s national study of access to counsel among immigrants in removal proceedings investigates disparities in representation rates by immigrants’ nationality and find that Mexicans are the least likely to be represented by counsel, whereas Chinese are the most likely to be represented by counsel.<sup>93</sup> Emily Ryo’s research on immigration bond hearings also examines disparities by national origin in immigration court. Her study shows that, controlling for a variety of detainee background characteristics and criminal-conviction-related measures, IJs are more likely to find Central Americans as a danger to the public than non-Central Americans.<sup>94</sup> Dylan Farrell-Bryan and Ian Peacock find in their study of removals that, of the thirty nationality groups that comprise ninety percent of removals between 1998 and 2021, immigrants from El Salvador, Honduras, Guatemala, and Mexico were consistently ordered removed at the highest rates.<sup>95</sup> Finally, recent studies show that

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91. Tanya Golash-Boza & Pierrette Hondagneu-Sotelo, *Latino Immigrant Men and the Deportation Crisis: A Gendered Racial Removal Program*, 11 *LATINO STUD.* 271, 284 (2013).

92. AMADA ARMENTA, *PROTECT, SERVE, AND DEPORT: THE RISE OF POLICING AS IMMIGRATION ENFORCEMENT* 129–31 (2017).

93. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 *U. PA. L. REV.* 1, 44 (2015).

94. Emily Ryo, *Predicting Danger in Immigration Courts*, 44 *LAW & SOC. INQUIRY* 227, 245 (2019).

95. Dylan Farrell-Bryan & Ian Peacock, *Who Gets Deported? Immigrant Removal Rates by National Origin and Period, 1998 to 2021*, 8 *SOCIUS* 1, 2 (2022); see also Juan Manuel Pedroza, *Uneven Migration Enforcement*, *CONTEXTS*, Spring 2022, at 60, 60 (noting similar patterns and additionally, a recent spike in Haitian deportations).

crisis events that threaten national security or public health can stigmatize certain nationality groups, which can lead to negative decisions against these groups in immigration court.<sup>96</sup>

#### C. RESEARCH ON THE IMPORTANCE OF JUDGES' RACE

Whether and to what extent immigrant respondents' race predicts their legal outcomes in immigration court is an important question. But so is the question of whether and to what extent IJs' race might predict their judicial decision-making in immigration court. Studies of criminal or civil adjudication that focus on judges' race/ethnicity are instructive in considering this question. There is a growing body of research that explores whether judges of a different race decide cases differently. Empirical findings are somewhat mixed, but studies generally find that non-white judges decide differently than white judges when race is salient to a contested issue in the case.<sup>97</sup> For example, Jill Weinberg and Laura Beth Nielsen show in their study of employment discrimination cases involving race-discrimination claims that white judges are more likely to dismiss those cases on

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96. Abel Brodeur & Taylor Wright, *Terrorism, Immigration and Asylum Approval*, 168 J. ECON. BEHAV. & ORG. 119, 130 (2019) (finding that the 9/11 attacks significantly reduced the asylum grant rates for applicants from Muslim-majority countries, and that this estimated effect was even more pronounced among immigrants who shared the same nationality as the 9/11 attackers); Ian Peacock & Emily Ryo, *A Study of Pandemic and Stigma Effects in Removal Proceedings*, 19 J. EMPIRICAL LEGAL STUD. 560, 581 (2022) (finding that Chinese nationals became more likely to be ordered to be removed during the early pandemic period, and that East and Southeast Asian nationals, the groups perceived to be most closely associated with, or belonging to the same ethnoracial category, as Chinese nationals, also experienced a higher removal rate during the same time period).

97. Jeffrey J. Rachlinski & Andrew J. Wistrich, *Judging the Judiciary by the Numbers: Empirical Research on Judges*, 13 ANN. REV. L. & SOC. SCI. 203, 207–08 (2017) (“[A] judge’s race seems to matter most when race is a central issue in the case.”); Allison P. Harris & Maya Sen, *Bias and Judging*, 22 ANN. REV. POL. SCI. 241, 248–51 (2019) (discussing research on the relationship between judges’ race/ethnicity and judicial decision making); see also David Terpstra et al., *The Influence of the Gender and Race of the Judge and the Type of Discrimination Charge on Court Case Outcomes*, 55 INT’L J.L. & MGMT. 318, 318 (2013) (“[O]utcomes of employment discrimination cases are a function of the interaction of the judges’ gender and race along with the type of discrimination charge (e.g. gender, race, age, or disability discrimination) involved in the case.”).

summary judgment at a higher rate than non-white judges.<sup>98</sup> Similarly, Jonathan Kastellec finds that Black judges are significantly more likely to vote in favor of affirmative action plans than non-Black judges.<sup>99</sup>

Taken together, these empirical findings suggest that judicial decision-making may be shaped by positive ingroup bias (or favoritism), a long-recognized psychological tendency among individuals to favor members of their own group over outgroup members.<sup>100</sup> A direct test of whether judicial ingroup bias influences case outcomes is to go beyond considering judges' race by itself and to investigate the effect of racial concordance between judge's race and that of the criminal defendant or civil litigant. Pat Chew and Robert Kelley address precisely this question in their study of workplace racial harassment cases, and they find evidence in support of insider group preferences whereby judges of one race are more likely to hold for plaintiffs of the same race.<sup>101</sup>

Studies also have found evidence consistent with positive ethnic ingroup bias shaping judicial decision-making.<sup>102</sup> For example, Moses Shayo and Asaf Zussman analyze outcomes in Israeli small claims court and find that a claim is significantly more likely to be accepted if it is assigned to a judge of the same

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98. Jill D. Weinberg & Laura Beth Nielsen, *Examining Empathy: Discrimination, Experience, and Judicial Decisionmaking*, 85 S. CAL. L. REV. 313, 346 (2012).

99. Jonathan P. Kastellec, *Racial Diversity and Judicial Influence on Appellate Courts*, 57 AM. J. POL. SCI. 167, 167 (2013).

100. Lee Epstein & Jack Knight, *How Social Identity and Social Diversity Affect Judging*, 35 LEIDEN J. INT'L L. 897, 899 (2022).

101. Pat K. Chew & Robert E. Kelley, *The Realism of Race in Judicial Decision Making: An Empirical Analysis of Plaintiffs' Race and Judges' Race*, 28 HARV. J. ON RACIAL & ETHNIC JUST. 91, 110 (2012). *But see* Briggs Depew et al., *Judges, Juveniles, and In-Group Bias*, 60 J.L. & ECON. 209, 209 (2017) (finding negative racial ingroup bias in juvenile court cases).

102. *See, e.g.*, Oren Gazal-Ayal & Raanan Sulitzeanu-Kenan, *Let My People Go: Ethnic In-Group Bias in Judicial Decisions—Evidence from a Randomized Natural Experiment*, 7 J. EMPIRICAL LEGAL STUD. 403, 417 (2010) (finding ethnic ingroup bias in detention decisions among Arab and Jewish judges); Donghyun Danny Choi et al., *Ethnic Bias in Judicial Decision Making: Evidence from Criminal Appeals in Kenya*, 116 AM. POL. SCI. REV. 1067, 1067 (2022) (using data from Kenyan criminal appeals to show that judges are more likely to grant coethnic appeals than non-coethnic appeals).



ethnicity as the plaintiff.<sup>103</sup> They also find that this effect is strongly associated with ethnically based terrorist attacks in the vicinity of the court, which likely increased the salience of ethnicity and therefore intensified ethnic identification.<sup>104</sup> Shayo and Zussman conclude that judicial ingroup bias is the most plausible interpretation of these results, but they also consider the possibility that their findings could be driven by litigant behavior (rather than judicial behavior).<sup>105</sup> They write, “one might . . . worry that litigant behavior could affect the judicial decision if litigants are more effective in presenting their case when facing a judge of the same ethnicity, and if this difference is accentuated during periods of ethnic tension.”<sup>106</sup> Thus, they analyze three different types of litigant behavior: the plaintiff’s decision to withdraw the claim, the defendant’s decision to appear in court, and the litigants’ decision to reach a settlement outside of court.<sup>107</sup> Their analysis, however, does not provide much support for this alternative explanation.<sup>108</sup>

\* \* \*

Taken together, research on inequalities in the criminal justice system and the immigration enforcement system suggest that crime-based removal proceedings in immigration courts may be a crucial yet unexamined site for the compounded legal marginalization of racial minorities. However, to our knowledge, no study to date has undertaken an empirical investigation of racial disparities in crime-based removal proceedings. Our empirical analysis significantly advances the emerging research on immigration adjudication by going beyond the existing scholarship’s focus on immigrants’ nationality to investigate whether and to what extent racial identities of immigrants might be related to their legal outcomes in crime-based removal proceedings. In addition, research on racial concordance suggests that

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103. Moses Shayo & Asaf Zussman, *Judicial Ingroup Bias in the Shadow of Terrorism*, 126 Q.J. ECON. 1447, 1448 (2011) (“A claim is between 17% and 20% more likely to be accepted if assigned to a judge of the same ethnicity as the plaintiff.”).

104. *See id.*

105. *Id.* at 1449–50.

106. *Id.* at 1481.

107. *Id.* at 1482.

108. *Id.* (“[T]here is not much evidence to support [the alternative interpretations]. The most plausible interpretation of the results in our view is that they reflect judicial ingroup bias.”).

we need to consider the judges' racial identity alongside the litigants' racial identity in investigating disparities in court outcomes.<sup>109</sup> The current study is the first to undertake this investigation with respect to IJs and their decision-making in immigration proceedings.

### III. THE CURRENT STUDY

We begin with a description of the data and variables that we analyze in this study. We then turn to a description of our analytical strategy. The Data and Methods Appendix contains further details on our coding and analysis decisions.

#### A. DATA

The key dataset that we analyze consists of records of immigration court proceedings that the Executive Office for Immigration Review (EOIR) makes publicly available ("EOIR Data"). The EOIR Data contain a variety of information about the proceedings, including the proceeding date and location, the name of the presiding IJ, whether a legal representative filed a notice of appearance, and the proceeding outcome. The EOIR Data also contain information about the immigrant respondents, including their national origin, preferred language, and whether or not they were detained. The current study focuses on proceedings completed between January 1, 1998 and February 29, 2023.

To prepare the EOIR Data for analysis relating to racial disparities in release and removal rates, we took the steps described in detail in the Data and Methods Appendix (see *EOIR Data Sample Restrictions*). The resulting sample sizes that correspond to each of these steps are summarized in Appendix Table A. In brief, we merged several data files containing information on

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109. In research on IJ decision-making, studies have shown that IJ characteristics, such as their gender, political ideology, and work experience, are significant predictors of their judicial decision-making. See, e.g., JAYA RAMJINOGALES ET AL., REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM 1–134 (2009) (exploring outcome disparities in immigration adjudication); BANKS MILLER ET AL., IMMIGRATION JUDGES AND U.S. ASYLUM POLICY 1–105 (2015) (investigating the determinants of IJs' decision-making); Catherine Y. Kim & Amy Semet, *An Empirical Study of Political Control over Immigration Adjudication*, 108 GEO. L.J. 579, 579 (2020) (examining the predictors of removal decisions). However, no study to date has examined how IJs' race, in combination with immigrant respondent's race, might be associated with case outcomes.

cases, proceedings, hearings, judges, legal representation, charges, and juvenile status. We restricted the sample to only removal proceedings. When a given case had multiple proceedings, we retained only the first proceeding in which an IJ made a final decision on the merits.<sup>110</sup>

We also restricted the sample to those proceedings that had valid charge entries. Next, we excluded proceedings in which (1) the IJ decided the proceeding *in absentia*, (2) the immigrant waived their right to a trial and appeal (i.e., “stipulated removal”), and (3) rider cases (i.e., cases that are tied to a family member’s case, making the observations non-independent). Finally, we excluded proceedings pertaining to juveniles and those that were missing or classified as “Other” on the *Immigrant Race* variable.

## B. MEASURES

### 1. Outcome Variables

*Released* indicates whether the immigrant remained detained during the removal proceeding or was released from detention. *Removal* indicates whether an IJ ordered the immigrant removed or granted relief from removal.<sup>111</sup>

### 2. Race Variables

*Immigrant Race* indicates whether the immigrant is Asian, Black, Hispanic, or White. *IJ Race* indicates whether the IJ is Asian, Black, Hispanic, or White. For both variables, Asian refers to non-Hispanic Asian; Black refers to non-Hispanic Black, and White refers to non-Hispanic White.

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110. A number of factors weigh against analyzing the last proceeding, including: (1) the procedural posture of the last proceeding is likely to differ significantly across different cases, and (2) the IJ decision-making in the last proceeding is likely to be impacted by the outcome of the prior proceeding or proceedings. In any case, only about twenty-two percent of cases in our analytic sample (i.e., data resulting from implementing the steps outlined in Appendix Table A) has more than one proceeding, and the median number of proceedings is one.

111. An order of removal does not necessarily mean that the immigrant was physically removed from the United States, as actual removal depends on a number of factors such as the outcome of any appeals taken, the appearance rate of immigrants, and the extent to which an origin country will accept the repatriation of its citizens.

The EOIR Data do not provide information on the race of immigrant respondents. Therefore, we assigned racial categories to immigrants using information from the U.S. Census Data (Census Data). Using the self-reported race and birth country of foreign-born individuals in the Census Data, we identified the modal self-reported racial category for each birth country. We then assigned those racial categories to immigrants in the EOIR Data by matching the Census Data's birth countries to the EOIR Data's nationalities. We conducted both in-sample and out-of-sample checks to assess the accuracy of this modal-category approach and found that it accurately predicted the reported race of observations in the samples about ninety-six to ninety-eight percent of the time. These accuracy checks are described in detail in the Data and Methods Appendix (see *Immigrant Race*).

For *IJ Race*, we obtained information on IJs' self-reported race from the EOIR through a Freedom of Information Act (FOIA) request. Over ninety-nine percent of crime-based removal proceedings in the EOIR Data that we analyzed for racial disparities in release and removal rates<sup>112</sup> contain the self-reported race of IJs. For the remaining proceedings without self-reported information on race (corresponding to twelve unique IJs), we used IJs' surnames to classify their race using an R package called *wru*.<sup>113</sup> We measured the accuracy of *wru*'s predictions by comparing predicted and self-reported race for proceedings that contain both types of information, and we found the overall accuracy rate of *wru*'s predictions to be ninety-four percent.<sup>114</sup>

*Same Race* indicates whether the immigrant and the IJ are of the same race or different race.

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112. See *supra* Part III.A.

113. *wru* generates Bayesian predictions of racial categories (Asian, Black, Hispanic, White, or Other) using surname, first name, middle name, and geolocation. See Kabir Khanna et al., *wru: Who are You? Bayesian Prediction of Racial Category Using Surname, First Name, Middle Name and Geolocation*, GITHUB (last updated May 24, 2024), <https://github.com/kosukeimai/wru> [<https://perma.cc/U7EA-CQDW>]; see also Kosuke Imai & Kabir Khanna, *Improving Ecological Inference by Predicting Individual Ethnicity from Voter Registration Records*, 24 POL. ANALYSIS 263, 264–66 (2016) (explaining the methodology behind *wru*).

114. For the IJs who are missing self-reported race, *wru* predicted Asian, Hispanic, or White. Thus, in calculating the accuracy rate of *wru*'s predictions, we considered the accuracy rate of only those three groups.

### 3. Charge Variables

Each of the following five charge variables indicates whether the proceeding's Notice to Appear (NTA)<sup>115</sup> contained a relevant criminal charge that falls within the following charge categories that we created for the purposes of our analysis: (1) *Controlled Substance*, (2) *Controlled Substance Trafficking*, (3) *Domestic Violence, Stalking, or Child Abuse*, (4) *Firearms*, and (5) *Violation of Protective Order*. *Any Criminal Charge* indicates whether the proceeding's NTA contained any criminal charges. The Data and Methods Appendix provides more details on how we coded these charge categories (see *Charge Variables*).<sup>116</sup>

Each of these charge variables are binary. We also created a count version of each of these charge variables to capture the total number of each charge type on any given proceeding's NTA. These count variables are used as covariates.

### 4. Covariates

*Represented* indicates whether the proceeding had legal representation or lacked legal representation during the proceeding. *Language* indicates the immigrant's primary language, which we coded using the following categories: English, Spanish, Other.<sup>117</sup> *Custody Status* indicates whether the immigrant was detained during their removal proceeding and contains the following categories: Detained, Never Detained, and Released.<sup>118</sup> *Had Hearing* indicates whether a given proceeding had any scheduled hearings. *Current Caseload* refers to the median daily number of individual hearings over which a given IJ presided in the two weeks immediately prior to a given proceeding's completion. *Muslim-Majority Country* indicates whether the immigrant's country of origin is a Muslim-majority country.<sup>119</sup> We

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115. An NTA is the charging document that the government files to initiate the removal proceeding. See 8 C.F.R. §§ 1003.12–.14 (2025). Among other types of information, an NTA lists the charge(s) against the immigrant and the statutory provision(s) they are alleged to have violated. *Id.* § 1003.15(b)(4).

116. We are grateful to Ingrid Eagly for generously sharing her coding of charges in the EOIR Data, which we used as the starting point for our coding.

117. There are about 460 languages found in the EOIR Data.

118. This variable is used as a covariate only in the regression analysis predicting *Removal* as the outcome.

119. We coded the immigrant's country of origin as a Muslim-majority country if more than fifty percent of the country's population is Muslim. See Brian

included *Muslim-Majority Country* as a covariate in light of the existing research that suggests that immigrants from Muslim-majority countries face less favorable outcomes in certain immigration-adjudication contexts.<sup>120</sup>

Each of the following twelve charge variables indicates the total number of charges on any given proceeding's NTA that falls within the following charge categories: (1) *Aggravated Felony*, (2) *Moral Turpitude*, (3) *Human Trafficking*, (4) *Other Criminal Charge*, (5) *National Security*, (6) *Terrorism*, (7) *Public Charge*, (8) *Previously Deported*, (9) *Entry Without Inspection*, (10) *Human Smuggling*, (11) *Other Immigration Charge*, and (12) *Miscellaneous Charge*. *Total Charges* indicates the total number of all criminal and immigration charges. The Data and Methods Appendix provides more details on our coding process that generated these charge categories (see *Charge Variables*).

Finally, our covariates include the count version of each of the five charge variables that we described earlier: *Controlled Substance*, *Controlled Substance Trafficking*, *Domestic Violence*, *Stalking, or Child Abuse*, *Firearms*, and *Violation of Protective Order*.

## 5. Other Variables

*Judge ID* is the unique identifier for the judge presiding over a given proceeding. *Completion Year* is the year in which a given proceeding was completed.

## C. ANALYTICAL STRATEGY

A removal proceeding can have multiple hearings, and a case can have multiple proceedings.<sup>121</sup> We use proceedings as our unit of analysis. This means that our outcomes of interest—

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J. Grim et al., *The Future of the Global Muslim Population*, PEW RSCH. CTR. 156–57 (Jan. 2011), <https://www.pewresearch.org/wp-content/uploads/sites/20/2011/01/FutureGlobalMuslimPopulation-WebPDF-Feb10.pdf> [<https://perma.cc/Q4LT-BEBF>] (listing Muslim-majority countries in a table).

120. See Emily Ryo & Reed Humphrey, *The Importance of Race, Gender, and Religion in Naturalization Adjudication in the United States*, PROC. NAT'L ACAD. SCIS. U.S., Mar. 1, 2022, at 1, 1 (finding that individuals from Muslim-majority countries applying for naturalization are less likely to be approved than applicants from other countries).

121. See Eagly & Shafer, *supra* note 93, at 15–16 (“A single immigration case is divided into what are known as ‘proceedings.’ Each proceeding contains one or more hearings.”).

custody status and order of removal—are measured at the level of individual proceedings. We use the following analytical strategies to address each of our research questions. First, to explore legal disadvantages associated with crime-based removal proceedings, we compare temporal changes (i.e., changes from one completion year to another, as well as changes from one presidential administration to another) in representation rates, detention rates, release rates, and removal rates, respectively, for immigrants in crime-based removal proceedings and those in non-crime-based removal proceedings. We examine the size of disparities between these two groups of proceedings and whether the disparities have remained steady, grown, or diminished over time. We use completion years (as opposed to fiscal years or filing years, for example) in our analysis to avoid comparing proceedings at different stages of their life cycle.

Second, to explore racial disparities in release and removal rates, we begin by examining differences in these rates by immigrant's race. We conduct this analysis separately for each of the top five most commonly occurring criminal charge categories ((1) *Controlled Substance*, (2) *Controlled Substance Trafficking*, (3) *Domestic Violence, Stalking, or Child Abuse*, (4) *Firearms*, and (5) *Violation of Protective Order*). We then use regression models to generate predicted values that adjust for a variety of immigrant characteristics and proceeding characteristics that are listed in Appendix Table B and described previously in Part III.B. We conduct these regression analyses separately for each of the top five most commonly occurring criminal charge categories.

Third, to explore the importance of IJs' race in crime-based removal proceedings, we group removal proceedings by whether or not there is racial concordance between the immigrant's race and the presiding judge's race. We examine these groups' release and removal rates for each of the top five most commonly occurring criminal charge categories. We then use regression models to generate predicted values that adjust for a variety of immigrant characteristics and proceeding characteristics that are listed in Appendix Table B and previously described in Part III.B. We conduct these regression analyses separately for each of the top five most commonly occurring criminal charge categories.

We used linear probability models for the regression analyses presented in Part IV. However, since *Released* and *Removal*

are binary variables, we also conducted a parallel set of logistic regression models. The results of these logistic regression analyses were generally consistent with the results that we present here from the linear probability models. We employed judge fixed effects and completion-year fixed effects in each of our regression models. This means that our models estimate only within-judge (rather than between-judge) and within-year (rather than between-year) variations. In other words, our comparisons essentially are among proceedings decided by the same judge (rather than across different judges), and among proceedings decided during the same completion year (rather than across different years). Although these approaches do not completely eliminate the threat of omitted variables bias,<sup>122</sup> they greatly reduce such a threat. Finally, it is important to emphasize that we cannot, and do not, draw causal inferences from our regression analyses.

#### IV. STUDY FINDINGS

Across each of the outcomes that we examine in this Part, immigrants with criminal charges experienced considerable disadvantages compared to those without criminal charges. In addition, the gap between these two groups across each of the outcomes grew over time, especially during the Biden administration. We discuss these trends in greater detail below.

##### A. DOUBLE PENALTIES FOR IMMIGRANTS WITH CRIMINAL HISTORY

What legal disadvantages do immigrants in crime-based removal proceedings face, and have these disadvantages grown over time? We first examine legal representation rates. Figure 1 shows that immigrants with criminal charges are significantly less likely to have legal representation. As shown in Table 1, during the Clinton administration, only about 24% of immigrants with criminal charges had legal representation (Panel B), compared to 40% of their counterparts without criminal charges (Panel A). Representation rates for both groups of immigrants

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122. Omitted variable bias refers to the bias that affects regression estimates when the regression model omits an independent variable that is a determinant of the dependent variable and correlated with one or more of the included independent variables. See JEFFREY M. WOOLDRIDGE, *INTRODUCTORY ECONOMETRICS* 89–93 (4th ed. 2009).



increased relatively steadily across each subsequent presidential administration, as shown in Table 1.

Of note, the increase in the representation rate for those without criminal charges was dramatic during the second half of the first Trump administration, reaching 62%;<sup>123</sup> by comparison, the representation rate for those with criminal charges showed a general trend of a slight decline from the beginning to the end of first Trump administration. During the Biden administration, about 76% of immigrants without criminal charges had legal representation, whereas only about 46% of those with criminal charges had legal representation.

While the group-specific trends are interesting, it is the *difference* in the two groups' respective representation rates that is informative of the relative legal disadvantage that those in crime-based removal proceedings experience. Figure 1 shows

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123. Our data do not allow us to explain why there was such a dramatic increase in the legal representation rate of immigrants without criminal charges. However, a couple of possibilities are worth considering. First, there was an increase in pro bono legal representation of immigrants during the second half of the first Trump administration, owing in large part to the unprecedented mobilization of the legal community in response to the first Trump administration's implementation of anti-immigrant policies such as the travel ban and the zero-tolerance policy. See, e.g., Hannah Hayes, *Answering the Call: Pro Bono Lawyers Respond to the Immigration Crisis*, PERSPECTIVES, Summer 2018, at 8, 8–9 (describing an increase in immigration-related pro bono legal services in response to executive orders and proposed legislation at the beginning of the first Trump administration); *Despite Efforts to Provide Pro Bono Representation, Growth Is Failing To Meet Exploding Demands*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE (May 12, 2023), <https://trac.syr.edu/reports/716> [<https://perma.cc/23U2-LDWE>] (“By 2015, completed pro bono represented cases had jumped to 1,894 and one year later in 2016 it was over twice that (3,859). It doubled again by 2019 reaching 8,054 cases completed with the help of pro bono attorneys.”). Second, during the COVID-19 pandemic, there was a significant decline in the detention rate and a concomitant increase in the release rate of immigrants without criminal history. See *infra* discussion of Figures 2 and 3. These changes in the federal government's detention and release practices associated with the COVID-19 pandemic likely had a substantial impact on immigrants' ability to obtain counsel, as obtaining legal representation is substantially easier when one is not detained. See Ryo, *supra* note 20, at 1037–39 (drawing on interviews with detainees to show that searching for an attorney while detained is significantly more difficult than searching for one on the outside); Fatma Marouf & Luz Herrera, *Technological Triage of Immigration Cases*, 72 FLA. L. REV. 515, 548–49 (2020) (describing communication challenges for detained individuals including inability to contact legal representatives via phone or email and the location of detention centers in rural areas that make physical visits difficult).

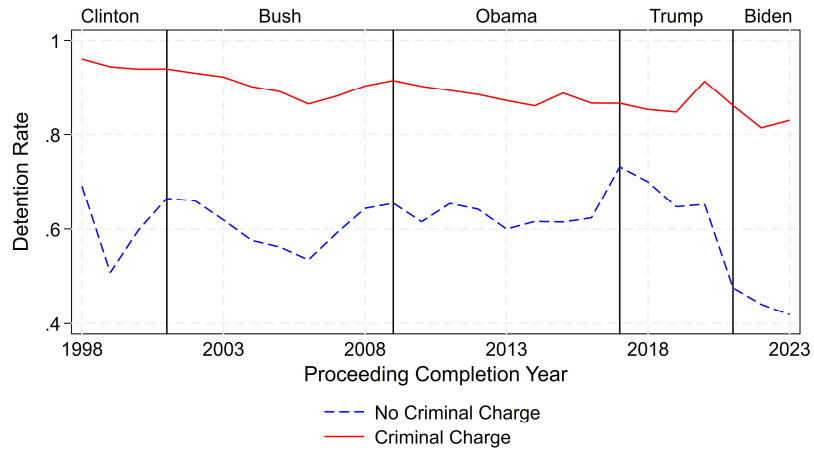
that this difference declined slightly during the Obama administration but has been increasing since then—and dramatically so during the Biden administration. Specifically, Table 1 shows that the gap between the two groups' representation rates was thirteen percentage points during the Obama administration, but it jumped to thirty percentage points during the Biden administration (Panel B-A). That is, during the Biden administration, those with criminal charges were thirty percentage points less likely to have representation than those without criminal charges.

These results pertaining to legal representation rates are important because existing studies show that legal representation is associated with more favorable outcomes for immigrants at every stage of immigration adjudication. For example, research demonstrates that legal representation—particularly representation of high quality—is associated with greater engagement with the legal process for immigrants, higher likelihood of release from detention, and higher chances of successfully fighting removal.<sup>124</sup>

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124. See Eagly & Shafer, *supra* note 93, at 9 (finding that immigrants who were represented by counsel are more likely to seek relief and more likely to obtain relief from removal); U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-72, ASYLUM: VARIATION EXISTS IN OUTCOMES OF APPLICATIONS ACROSS IMMIGRATION COURTS AND JUDGES 29 (2016) (finding that applicants who were represented by legal counsel were more likely to be granted asylum); David Hausman, *The Failure of Immigration Appeals*, 164 U. PA. L. REV. 1177, 1212 (2016) ("[R]eports about immigration courts in New York City and Northern California have highlighted large disparities in deportation rates for detained immigrants with and without lawyers."); Steering Comm. of the N.Y. Immigrant Representation Study Rep., *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, 33 CARDOZO L. REV. 357, 383–85 (2011) (evaluating the effect of representation on outcomes and finding a higher rate of successful outcomes for represented individuals); Banks Miller et al., *Leveling the Odds: The Effect of Quality Legal Representation in Cases of Asymmetrical Capability*, 49 LAW & SOC'Y REV. 209, 213 (2015) (noting the benefits of competent legal counsel in immigration proceedings); Ryo, *supra* note 42, at 144 (finding that represented detainees were significantly more likely to be granted bond); Ryo, *supra* note 5, at 522 (finding that represented detainees were significantly more likely to be granted bond and to have higher levels of courtroom advocacy, such as submitting documents and presenting affirmative arguments for release).

**Figure 1. Representation Rate by Criminal Charge and Presidential Administration<sup>125</sup>**



**Table 1. Representation Rate by Criminal Charge and Presidential Administration**

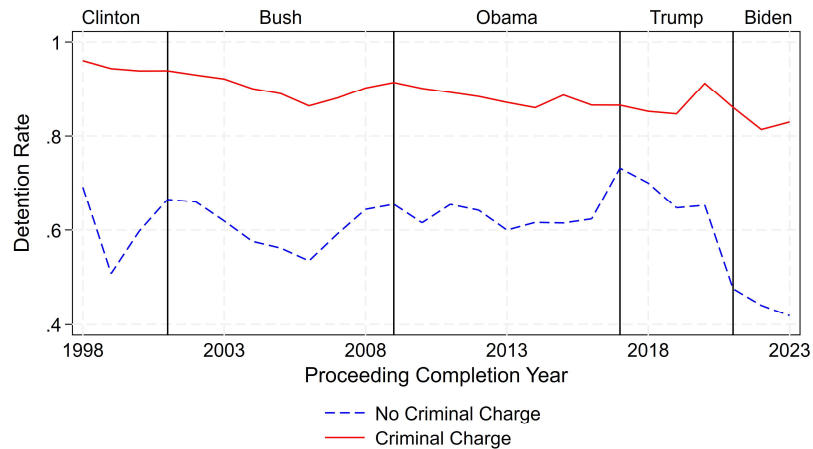
Presidential Administration	No Criminal Charge (A)	Criminal Charge (B)	Difference (B-A)
Clinton	0.40	0.24	-0.16
Bush	0.46	0.30	-0.16
Obama	0.52	0.39	-0.13
Trump	0.62	0.45	-0.17
Biden	0.76	0.46	-0.30

Turning to detention rates, a number of trends from Figure 2 and Table 2 are worth highlighting. First, the detention rate for those in non-crime-based removal proceedings fluctuated considerably from year to year within, and across, presidential administrations. As shown in Table 2, the overall detention rate for those in non-crime-based removal proceedings ranged from 60% during the Clinton administration, to 68% during the first Trump administration, but down to 45% during the Biden

125. N = 2,723,012.

administration. Second, across all presidential administrations, the vast majority of those in crime-based removal proceedings were detained, ranging from 95% during the Clinton administration, to 83% during the Biden administration.

**Figure 2. Detention Rate by Criminal Charge and Presidential Administration<sup>126</sup>**



**Table 2. Detention Rate by Criminal Charge and Presidential Administration**

Presidential Administration	No Criminal Charge (A)	Criminal Charge (B)	Difference (B-A)
Clinton	0.60	0.95	0.35
Bush	0.61	0.90	0.29
Obama	0.63	0.89	0.26
Trump	0.68	0.87	0.19
Biden	0.45	0.83	0.38

Third, the gap in detention rates between those in non-crime-based and crime-based removal proceedings diminished from the Clinton administration to the first Trump administration. However, this gap ballooned to thirty-eight percentage

126. N = 2,723,012.

points during the Biden administration, as shown in Table 2. In other words, those with criminal charges were thirty-eight percentage points more likely to be detained than those without criminal charges. This dramatic increase in the gap between the two groups during the Biden administration is largely attributable to the precipitous decline in the detention rate for those without criminal charges that began during the first Trump administration as a result of the COVID-19 pandemic<sup>127</sup> and continued into the Biden administration.

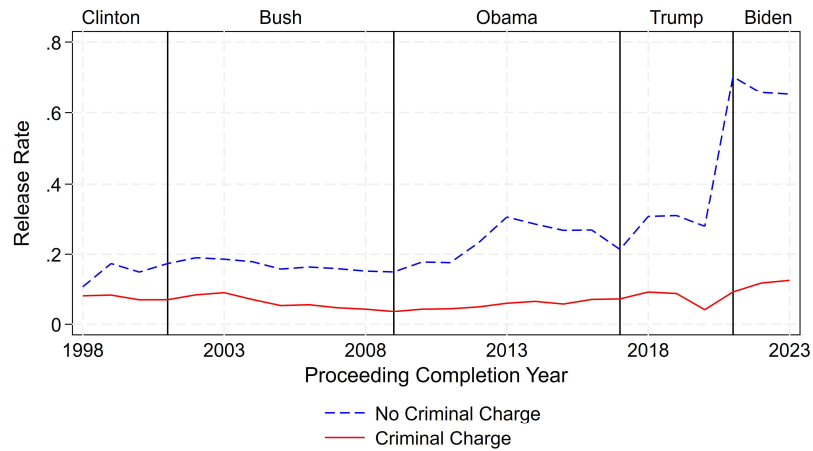
Next, we examine the release rates of immigrants who were detained. Figure 3 shows that immigrant detainees without criminal charges were released at an increasingly higher rate across Clinton, Bush, and Obama administrations. Then towards the end of the first Trump administration, their release rate spiked dramatically (largely as a result of the COVID-19 pandemic<sup>128</sup>) and remained relatively high into the Biden administration. As a result, Table 3 shows a remarkable change from the first Trump administration to the Biden administration in terms of the gap in release rates between those with criminal charges versus those without criminal charges. Specifically, during the first Trump administration, immigrant detainees with criminal charges were twenty percentage points less likely to be released from detention than those without criminal charges. However, during the Biden administration, that gap grew to be fifty-seven percentage points, as shown in Table 3. Notably, this growing gap is attributable to the dramatic jump in the release rate of those without criminal charges, which began during the COVID-19 pandemic and stayed high during the Biden administration; in comparison, the increase in the release rate for those with criminal history during the COVID-19 pandemic was very small.

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127. See Fatma E. Marouf, *The Impact of COVID-19 on Immigration Detention*, FRONTIERS HUM. DYNAMICS, Apr. 2021, at 1, 4–5 (discussing the decline in detained population in the immediate aftermath of the pandemic).

128. See OFF. OF INSPECTOR GEN., OIG-20-42, EARLY EXPERIENCES WITH COVID-19 AT ICE DETENTION FACILITIES 8 (2020) [hereinafter OIG REPORT] (“Ultimately, the combination of judicial releases, releases related to COVID-19, the adjustment in ICE’s enforcement posture, and continued repatriations has resulted in a large decrease in ICE’s detention population . . .”).

**Figure 3. Release Rate by Criminal Charge and Presidential Administration<sup>129</sup>**



**Table 3. Release Rate by Criminal Charge and Presidential Administration**

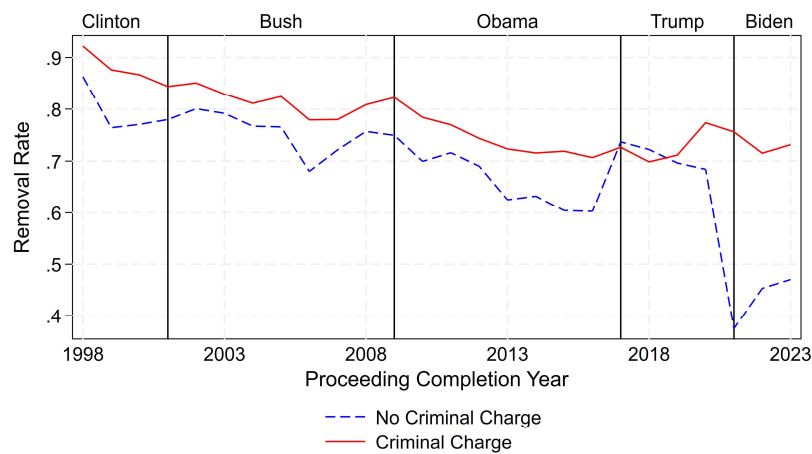
Presidential Administration	No Criminal Charge (A)	Criminal Charge (B)	Difference (B-A)
Clinton	0.14	0.08	-0.06
Bush	0.17	0.07	-0.10
Obama	0.22	0.05	-0.17
Trump	0.28	0.08	-0.20
Biden	0.68	0.11	-0.57

Finally, how likely is a removal order for immigrants with criminal charges compared to those without criminal charges? Figure 4 shows a general decline in the removal rates of both groups until the end of the Obama administration. Towards the end of the Obama administration, the removal rate for those without criminal charges spiked and stayed relatively high throughout the first Trump administration before taking a dramatic dip at the end of the first Trump administration due in

129. N = 1,852,461.

large part to the COVID-19 pandemic.<sup>130</sup> During the Biden administration, the removal rate for those without criminal charges began to increase, but it remained much lower than those with criminal charges. As a result, the difference in the removal rates for the two groups widened to thirty percentage points during the Biden administration.

**Figure 4. Removal Rate by Criminal Charge and Presidential Administration<sup>131</sup>**



**Table 4. Removal Rate by Criminal Charge and Presidential Administration**

Presidential Administration	No Criminal Charge (A)	Criminal Charge (B)	Difference (B-A)
Clinton	0.80	0.89	0.09
Bush	0.76	0.82	0.06
Obama	0.68	0.76	0.08
Trump	0.71	0.72	0.01
Biden	0.43	0.73	0.30

130. Cf. OIG REPORT, *supra* note 128, at 8 (“ICE stated that it would ‘exercise discretion to delay enforcement actions until after the crisis or use alternatives to detention, as appropriate.’”).

131. N = 2,723,012.

In comparing the trends in removal rates across Republican and Democratic presidential administrations, it is noteworthy that the gap in removal rates between those with criminal charges and without criminal charges is consistently larger during Democratic administrations than Republican administrations. This finding is consistent with research that shows that immigration-enforcement priorities set by presidential administrations have consequences.<sup>132</sup> Beginning with the Clinton administration, Democratic administrations have sought to limit enforcement action against immigrants without criminal history in order to target immigrants with criminal records.<sup>133</sup> This kind of a prioritization may shape IJ decision-making in such a way that, during Democratic administrations, immigrants with criminal charges end up constituting a larger share of immigrants ordered removed. This is in contrast to Republican administrations—particularly the Trump administration—which have disfavored prioritization in pursuit of more nonselective enforcement action against all removable immigrants.<sup>134</sup> That kind of indiscriminate enforcement policy may help to explain why the removal rate for those without criminal charges was practically in line with the removal rate for those with criminal charges during the first half of the Trump administration.

#### B. RACIAL DISPARITIES IN CRIME-BASED REMOVAL PROCEEDINGS

In this section, we examine disparities in release and removal rates by immigrants' race. Descriptive statistics on the variables used in our analyses are provided in Appendix Table C, and sample sizes for analyses involving disparities by

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132. See Jaclyn Kelley-Widmer, *Unseen Policies: Trump's Little-Known Immigration Rules as Executive Power Grab*, 35 GEO. IMMIGR. L.J. 801, 830 (2021) (noting that enforcement priorities "have a powerful impact on the day-to-day life of immigrant communities nationwide").

133. Patrisia Macías-Rojas, *Liberal Policies, Punitive Effects: The Politics of Enforcement Discretion on the US-Mexico Border*, 46 LAW & SOC. INQUIRY 69 (2021) (describing changes in enforcement priorities of presidential administrations and examining their effects); SMITH, *supra* note 63, at 3–4 (providing background on the Biden administration's enforcement priorities including prioritizing the removal of individuals that threaten national security, public safety, or border security).

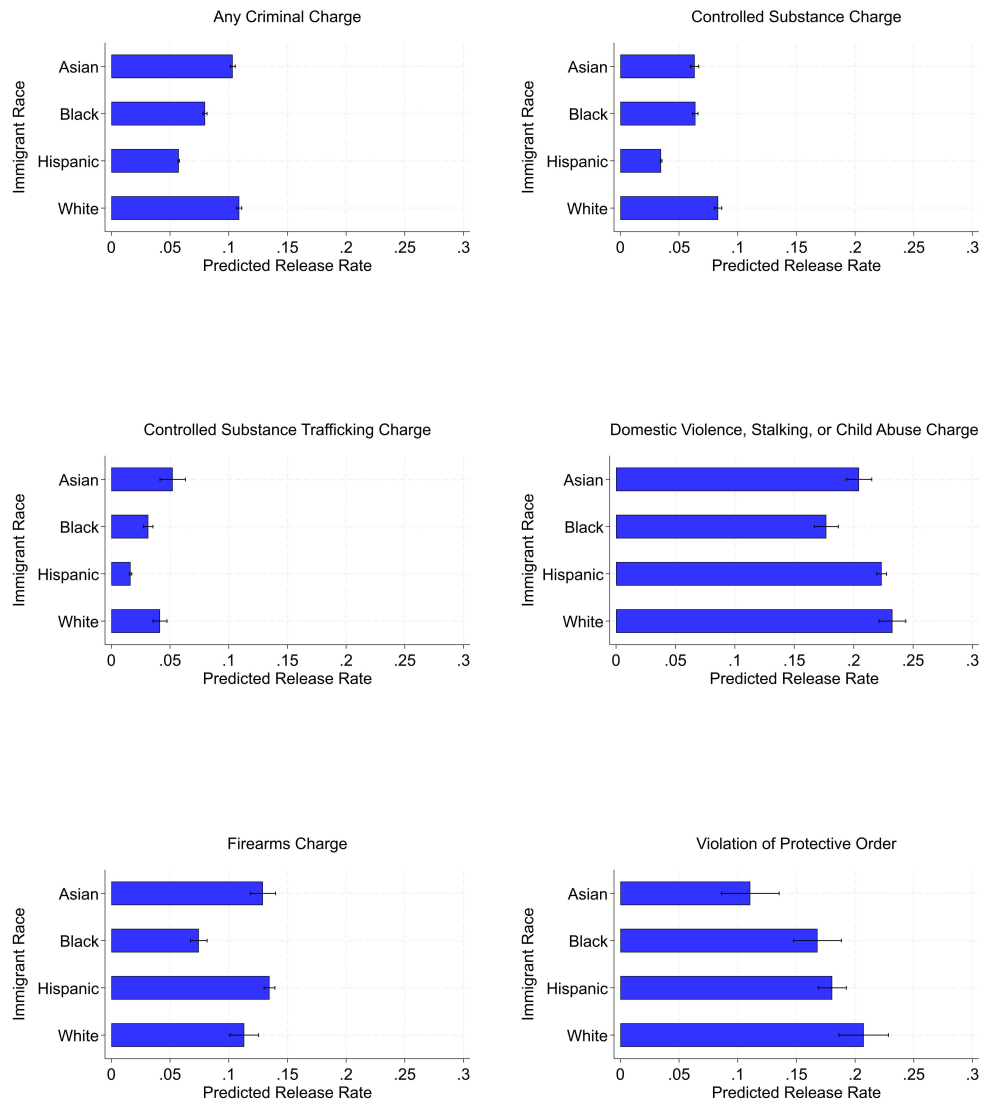
134. SHOBA SIVAPRASAD WADHIA, *BANNED: IMMIGRATION ENFORCEMENT IN THE TIME OF TRUMP* 43 (2019) (noting that "everyone [was] a priority" during the first Trump administration).



immigrants' race and individual charge categories (Figures 5–8) are provided in Appendix Table D. We begin by presenting the results from our analysis that examines release and removal rates for all crime-based removal proceedings (see the top left panel of each figure below labeled, “Any Criminal Charge”). However, given that this aggregate analysis combines many disparate types of criminal charges, the primary focus of our discussion is on the results pertaining to separate individual charge categories. The results that we present below are from the full set of regression models that we described earlier, which means that the results shown are adjusted predicted rates. The horizontal bars in Figures 5 through 9 represent ninety-five percent confidence intervals.

#### 1. Release Rates by Immigrants' Race

A number of patterns are notable in Figure 5, which shows the results of our analysis that examines disparities in release rates by immigrants' race. Overall, Hispanic and Black immigrants have the lowest release rate with respect to all but one type of criminal charge category. Specifically, Hispanic immigrants have the lowest release rate in the *Controlled Substance* and *Controlled Substance Trafficking* categories. For example, as compared to white immigrants in the *Controlled Substance* category, whose release rate is 8%, the release rate for their Hispanic counterparts is 3%. As compared to Asian immigrants in the *Controlled Substance Trafficking* category, whose release rate is 5%, the release rate for their Hispanic counterparts is 2%.

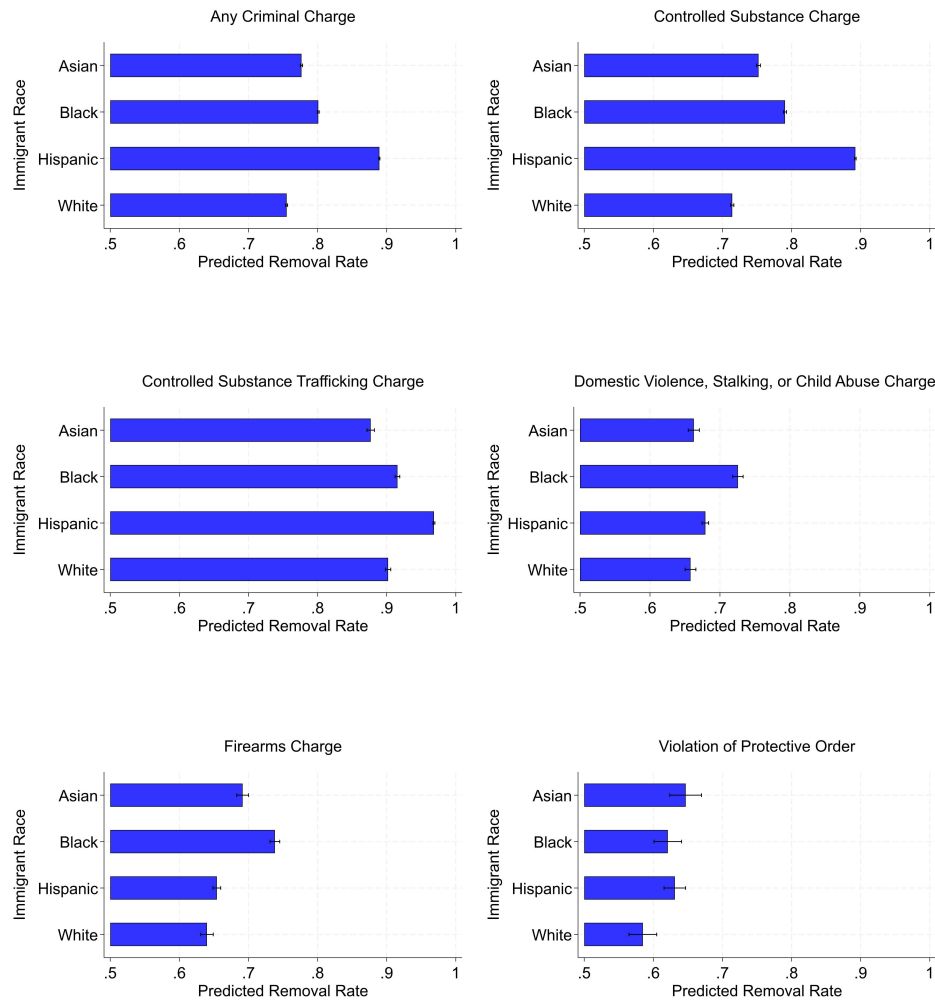
**Figure 5. Release Rates by Immigrants' Race**

On the other hand, Black immigrants have the lowest release rate among those in the *Domestic Violence, Stalking, and Child Abuse* and *Firearms* categories. For example, as compared to white immigrants in the *Domestic Violence, Stalking, and Child Abuse* category, whose release rate is 23%, the release rate for their Black counterparts is 18%. As compared to Asian immigrants in the *Firearms* category, whose release rate is 13%, the release rate for their Black counterparts is 7%. It is also worth noting that Black immigrants consistently have lower rates of release than white immigrants across each of the specific charge categories.

Finally, the top left panel in Figure 5 shows that among all immigrants with any type of a criminal charge, Asian immigrants have the second highest release rate after white immigrants. However, no clear and consistent patterns exist for Asian immigrants across the specific criminal charge categories. One notable result is that Asian immigrants have a significantly lower release rate than any other immigrant group when it comes to the *Violation of Protective Order* category.

## 2. Removal Rates by Immigrants' Race

Figure 6 shows the results of our analysis that examines disparities in removal rates by immigrants' race. White advantage is pronounced and consistent across most of the specific charge categories. With the exception of the *Controlled Substance Trafficking* category, white immigrants have the lowest removal rate across each of the criminal charge categories. On the other hand, similar to the pattern that we found with respective release rates, Black and Hispanic immigrants are generally at a relative disadvantage in terms of removal rates. Specifically, Hispanic immigrants have the highest removal rate in the *Controlled Substance* and *Controlled Substance Trafficking* categories. Black immigrants have the highest removal rate in the *Domestic Violence, Stalking, and Child Abuse* and *Firearms* categories. Also similar to the pattern that we found in our analysis of release rates, Asian immigrants have the highest rate of removal in the *Violation of Protective Order* category.

**Figure 6. Removal Rates by Immigrants' Race**

### C. IMPORTANCE OF RACIAL CONCORDANCE

Finally, we examined whether racial concordance between immigrants and their presiding judges is associated with disparities in outcomes in crime-based removal proceedings. Recall that racial concordance refers to same race immigrant-IJ pairings. The first subsection below investigates disparities in

release rates by immigrants' race and racial concordance. The second subsection investigates disparities in removal rates by immigrants' race and racial concordance. In these two subsections, we begin by presenting the results of our analysis that considers disparities in release or removal outcomes for all criminal charges combined. As before, however, the primary focus of our discussion is on the results of our analysis that separately considers each of the top five most commonly occurring criminal charge categories. The third subsection examines disparities in release and removal rates for white and non-white immigrants by IJ's race.

With the exception of Table 5 (which reports observed release and removal rates by judges' race), the results that we present below are from the full set of regression models that we described earlier, which means that the results shown are adjusted predicted rates.

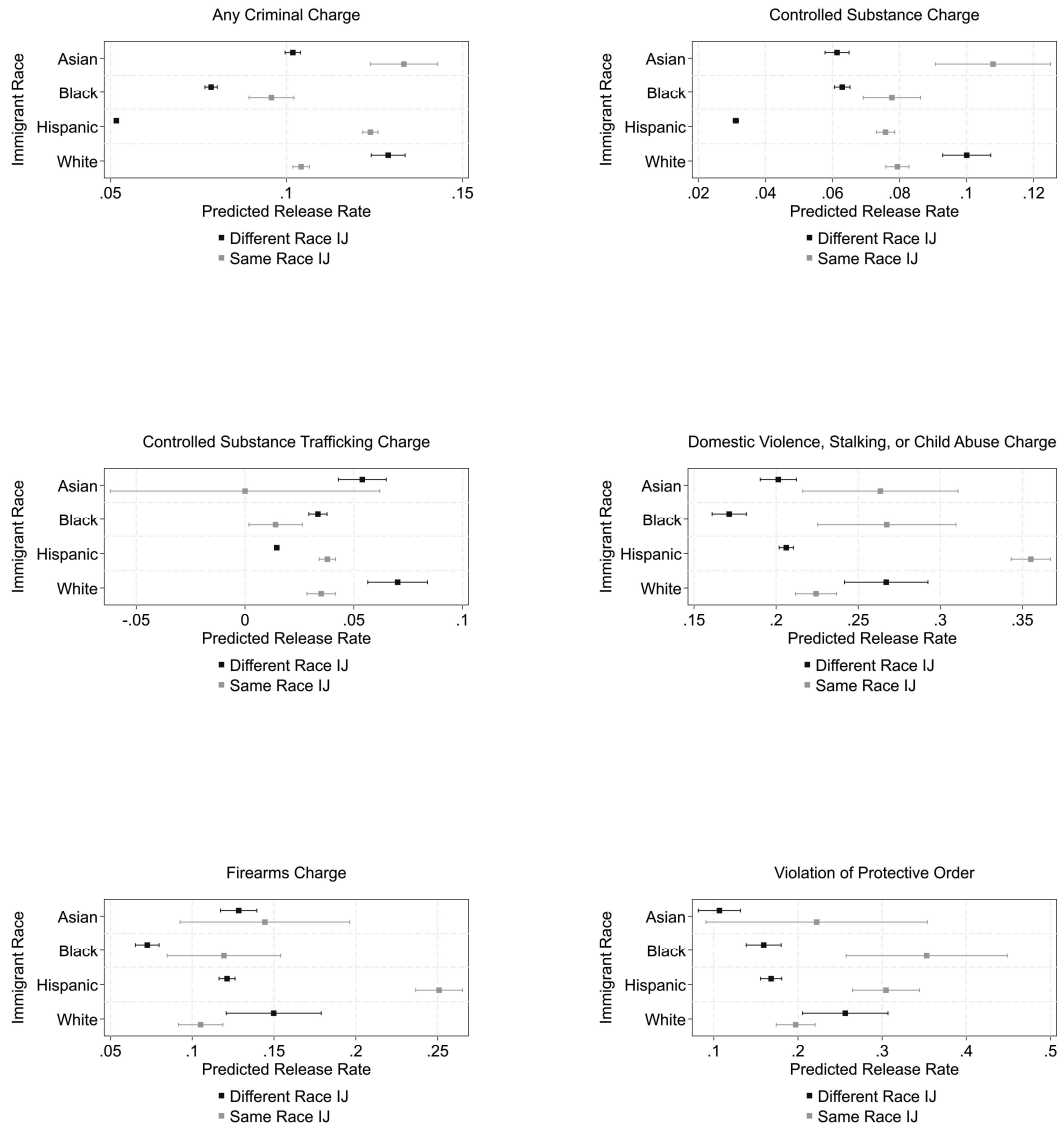
#### 1. Release Rates by Immigrants' Race and Racial Concordance

Figure 7 shows release rates of different racial groups of immigrants by racial concordance. The general pattern shown in the top left panel, which examines the disparities across all criminal charges combined, is consistently mirrored in most of the other panels that separately consider individual top criminal charge categories. With the exception of the *Controlled Substance Trafficking* category,<sup>135</sup> the general pattern is as follows: For Asian, Black, and Hispanic immigrants, their release rates are significantly higher when there is racial concordance. However, for white immigrants, the results are the opposite: White immigrants have relatively higher rates of release when their presiding judges are of different race—i.e., non-white judges—as compared to when their presiding judges are white. In the next subsection, we discuss our efforts to further investigate this unexpected result.

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135. For the *Controlled Substance Trafficking* category, Asian and Black immigrants, along with white immigrants, have relatively higher rates of release when their presiding judges are of different race.

**Figure 7. Release Rates by Immigrants' Race and Racial Concordance**



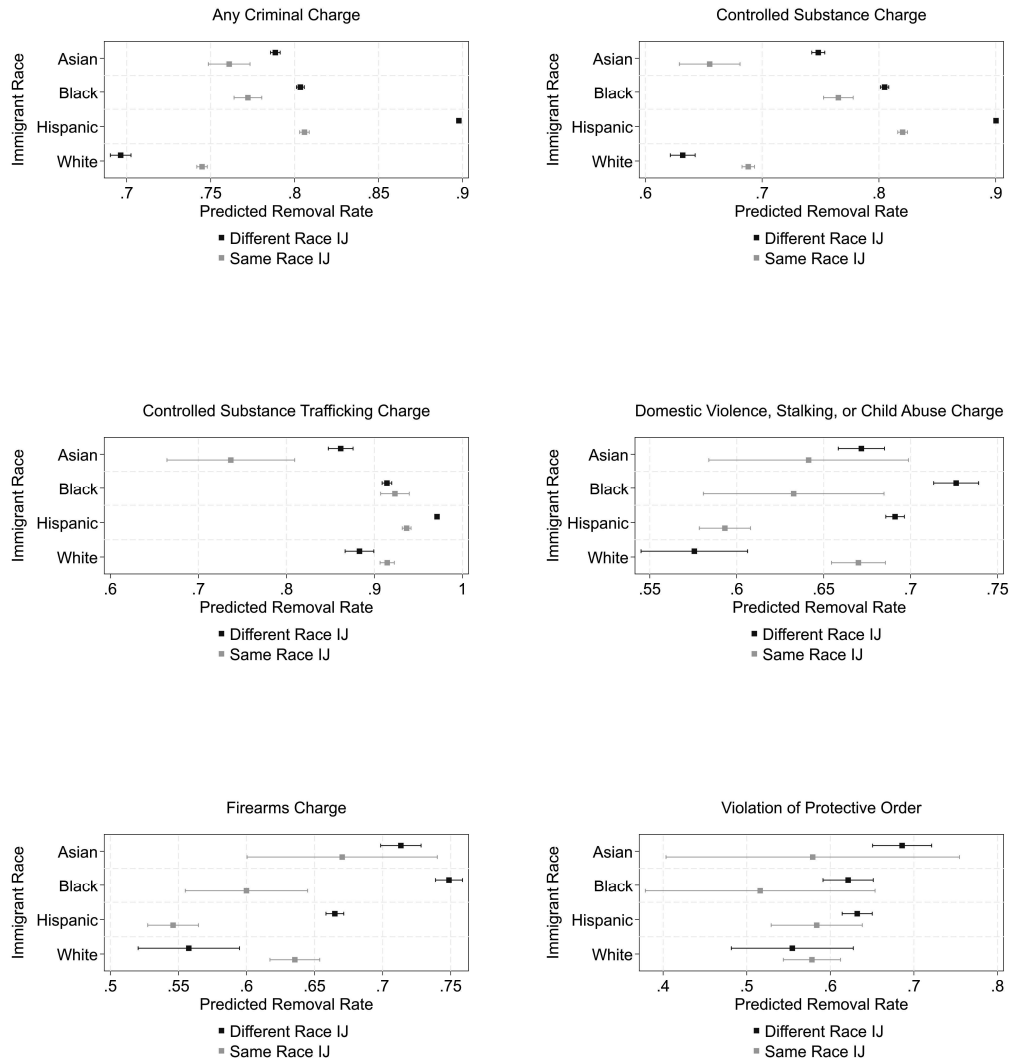
## 2. Removal Rates by Immigrants' Race and Racial Concordance

Turning to removal rates, Figure 8 shows removal rates of different racial groups of immigrants by racial concordance. The results shown in Figure 8 are largely consistent with the results that we presented in Figure 7. Specifically, Figure 8 shows that with the exception of the *Controlled Substance Trafficking* category,<sup>136</sup> Asian, Black, and Hispanic immigrants who appear before judges of the same race are less likely to be ordered removed than those who appear before judges of different race. Similar to the results presented in Figure 7, Figure 8 shows that white immigrants are an exception: White immigrants have relatively lower rates of removal when their presiding judges are of different race—i.e., non-white judges—as compared to when their presiding judges are white. In the next subsection, we further investigate this unexpected result with respect to white immigrants.

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136. For the *Controlled Substance Trafficking* category, both white and Black immigrants have relatively high rates of release when their presiding judges are of different race.

**Figure 8. Removal Rates by Immigrants' Race and Racial Concordance**



Although our analysis shows that racial concordance plays an important role in IJs' decision-making in both release and removal decisions, we do not, and cannot, draw any firm conclusions about whether this effect is due to changes in IJs' behavior



or immigrants' behavior, or both. For example, it is possible that judges in racially concordant proceedings might provide immigrants a higher number of continuances to find legal representation, and/or immigrants in racially concordant proceedings might seek more continuances to find legal representation. The existing data do not allow us to disentangle which of these two dynamics might predominate and which are causally prior.<sup>137</sup>

### 3. White Immigrants and Judges' Race

To further investigate why white immigrants appear to fare better in terms of both release and removal rates when they are before non-white judges, we considered a number of possible explanations. First, it is possible that non-white judges as a group are more favorably disposed toward immigrants than white judges and may be generally more likely to release immigrant detainees than white judges. Conversely, non-white judges may be generally less likely to order immigrants removed than white judges.

The results shown in Table 5 provide partial support for that hypothesis. Table 5 shows that Asian and Hispanic judges do have higher overall release rates (12% and 13%, respectively) than white judges (6%), though the same is not true of Black judges (5%). Conversely, Asian and Hispanic judges have lower overall removal rates (83% and 78%, respectively) than white judges (87%), though the same is not true of Black judges (87%).

**Table 5. Release & Removal Rates by Judges' Race<sup>138</sup>**

Judge's Race	Release Rate	Removal Rate
Asian	0.12	0.83
Black	0.05	0.87
Hispanic	0.13	0.78
White	0.06	0.87

137. In addition to empirically investigating these types of possibilities through quantitative analysis, qualitative data collection and analyses are needed to explore other more subtle and complex interactional dynamics between IJs and immigrant respondents that might be driving the racial-concordance effects.

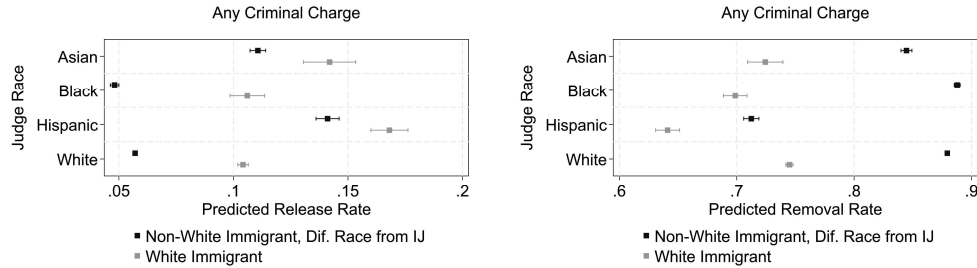
138. N = 534,564 for the Release Rate analysis; N = 528,240 for the Removal Rate analysis.

The second possible explanation for why white immigrants appear to fare better before non-white judges is that all judges are generally more lenient toward white immigrants, but that this tendency is stronger among non-white judges. To assess this possibility, we examined release and removal rates by judges' race and whether the proceedings involved white immigrants or non-white immigrants. More specifically, the basic aim of this analysis was to assess whether and to what extent the legal outcomes of white and non-white immigrants differed depending on the race of the presiding judge.

In this analysis, we excluded the same race non-white pairings (i.e., Asian immigrant-Asian judge, Black immigrant-Black judge, and Hispanic immigrant-Hispanic judge pairings), as our goal is to generate estimates that are free of the positive racial-concordance effect that we previously observed among same race non-white pairings. Because the sample sizes for some of the immigrant-judge pairings in some of the individual top criminal charge categories are too small to generate reliable estimates, we limited our investigation to the aggregate sample that combines all criminal charges. Accordingly, the results must be interpreted with caution.

In brief, Figure 9 suggests that judges of all racial groups evidence white favoritism—the tendency to decide more favorably for white immigrants than non-white immigrants—with respect to both release and removal decisions. In addition, Figure 9 shows that white favoritism is more pronounced for some non-white judges than white judges. Specifically, Figure 9 shows that white favoritism is relatively stronger for Black judges, as evidenced by the larger gap in release rates between white and non-white immigrants appearing before Black judges, as compared to the same gap for white judges (see left panel in Figure 9). Figure 9 also shows that the gap in removal rates between white and non-white immigrants is larger among Black judges than white judges (see right panel in Figure 9).

**Figure 9. Release and Removal Rates by Judges' Race and Immigrants' Race<sup>139</sup>**



In sum, although our results must be interpreted with caution, they offer helpful starting points for thinking about why racial concordance does not operate in the same way for white immigrants in crime-based removal proceedings. Another possibility that we do not explore here, which is ripe for future investigation, relates to the legal representatives who appear before IJs, and racial identities of those legal representatives. For example, a fuller understanding of the role of racial concordance may require investigating the extent to which white legal representative might confer greater advantage to their clients than non-white legal representatives.

## V. POLICY IMPLICATIONS AND FUTURE DIRECTIONS

Whether and to what extent racial minorities experience harsher treatment or face worse outcomes in court are questions of fundamental importance for any justice system. Questions of racial inequality are especially salient in the context of removal proceedings that are triggered by immigrants' criminal history. Many of these individuals in crime-based removal proceedings are immigrants of color who likely have deep social ties in the United States.<sup>140</sup> Yet, they face a host of legal disadvantages that are tantamount to double penalties for the same crime for which

139. N = 494,920 for the Release Rate analysis; N = 487,523 for the Removal Rate analysis.

140. See Hausman, *supra* note 9, at 974 ("[T]he limited existing evidence on deportees' ties to the United States suggests that prioritization by criminality leads the government to target people with deep roots in this country.").

they have already been punished through the criminal justice system.

Our empirical investigation produced three key findings about these double penalties and racial disparities that exist in crime-based removal proceedings. First, we find that double penalties for immigrants in crime-based removal proceedings are large and have grown over time, particularly towards the end of the first Trump administration and into the Biden administration.<sup>141</sup> Second, there are significant racial disparities in the rate at which immigrants in crime-based removal proceedings are released from detention, and the rate at which they are ordered removed from the United States.<sup>142</sup> Specifically, Hispanic immigrants with drug-related charges, and Black immigrants with domestic-violence or firearms charges, face significantly worse outcomes than their counterparts.<sup>143</sup> Third, non-white immigrants fare better when their presiding judges are of the same race.<sup>144</sup> White immigrants, however, generally fare better than non-white immigrants regardless of judges' race, and this white favoritism is more pronounced among some non-white judges.<sup>145</sup>

The policy implications of these study findings are wide ranging, and we highlight the key ones below. We also discuss limitations of the current study and important lines of inquiry that emerge from our analysis that should guide future research in this area.

#### A. RETHINKING DOUBLE PENALTIES

Our findings prompt important questions about whether and to what extent the large and growing double penalties imposed on immigrants with criminal history is justified. First, our results that highlight the specific nature and magnitude of legal disadvantages that immigrants with criminal history face in the removal process provide an important empirical context for assessing the current debate about our crime-based deportation system. Some observers and policymakers have argued that immigrants with criminal records deserve to face harsher immigration consequences, and that prioritizing their removal from the

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141. *See supra* Part IV.A.

142. *See supra* Part IV.B.

143. *See supra* Part IV.B.

144. *See supra* Part IV.C.

145. *See supra* Part IV.C.

United States serves crime-control and public-safety goals.<sup>146</sup> Scholars, however, have critiqued these arguments on various grounds. Alina Das, for example, has argued that the crime-based deportation system is a legacy of long history of racial animus and racial oppression.<sup>147</sup> Most recently, David Hausman has argued that prioritization of deportation by criminality is indefensible on both practical and normative grounds.<sup>148</sup>

As David Hausman has explained, the crime-control rationale for the policy of prioritizing deportation based on criminality lacks basis because none of the traditional goals of criminal punishment—retribution, deterrence, incapacitation, rehabilitation—are served through this policy.<sup>149</sup> On the other hand, the costs associated with prioritizing enforcement by criminality are high. Enforcement policy that prioritizes criminality disproportionately targets immigrants who have deep roots and social ties in the United States, given that length of stay in the United States and acculturation are positively associated with crime-related outcomes.<sup>150</sup> And the costs of deportation—both to

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146. See Hausman, *supra* note 9, at 996–1004 (discussing common arguments advanced in support of crime-based deportation and finding them unpersuasive); Rebecca Sharpless, “Immigrants Are Not Criminals”: Respectability, Immigration Reform, and Hyperincarceration, 53 HOUS. L. REV. 691, 699–701 (2016) (describing how some immigration reformers believe that individuals convicted of severe violent crimes should be deported); Sophia DenUyl, Note, *The Particular Harms of the “Good Immigrant” Versus “Bad Immigrant” Construction on Black Immigrants in the United States*, 36 GEO. IMMIGR. L.J. 755, 765–68 (2022) (“Even if some reformers believe that people should not be deported for petty crimes, few see any issue with deporting immigrants who are seen as ‘the worst of the worst,’ even if they are lawfully present in the United States, and even if they have already served their time in the criminal penal system.”); CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, WELCOME THE WRETCHED: IN DEFENSE OF THE “CRIMINAL ALIEN” 103–04 (2024) (describing and critiquing common arguments advanced in support of deporting “criminal aliens”).

147. Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 UC DAVIS L. REV. 171, 176 (2018) (“[The] interconnected, symbiotic relationship between racism, criminalization, and deportation pervades the earliest origins of the crime-based deportation grounds that many people take for granted as legitimate parts of our immigration system today.”).

148. See Hausman, *supra* note 9, at 975–78.

149. *Id.* at 999–1003.

150. See *id.* at 974 (“[T]he limited existing evidence on deportees’ ties to the United States suggests that prioritization by criminality leads the government to target people with deep roots in this country.”); see also Jeffrey D. Morenoff

immigrants and to those who share ties with them in the United States—increase as the strength of those ties increases.<sup>151</sup> Thus, according to Hausman, “just as a statute of limitations eventually requires finality in the decision not to prosecute, length of time and ties to the United States should eventually lead to finality in the decision not to deport.”<sup>152</sup>

Second, we argue that even if some type of double penalties for the same crime could be justified for some individuals on the basis of their immigration status, the large and growing gap in legal representation rates between crime-based removal proceedings and non-crime-based removal proceedings remains highly problematic. The legal representation gap that we observe is likely due to a number of special hurdles that immigrants with criminal history face, including (1) their economic precarity stemming from financial burdens associated with criminal convictions or incarceration,<sup>153</sup> (2) their heightened fear and mistrust of legal authorities that often result from contacts with the criminal justice system, which in turn can lead immigrants with criminal history to avoid seeking legal help,<sup>154</sup> (3) access and communication challenges that detention facilities present

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& Avraham Astor, *Immigration Assimilation and Crime: Generational Differences in Youth Violence in Chicago* (finding that “longer spells of residence in the United States are associated with significantly higher odds of many types of violent behavior” among youth who immigrated to the United States), in *IM-MIGRATION AND CRIME: RACE, ETHNICITY, AND VIOLENCE* 36, 54 (Ramiro Martinez Jr. & Abel Valenzuela Jr. eds., 2006); Lorna L. Alvarez-Rivera et al., *Latino Immigrant Acculturation and Crime*, 39 *AM. J. CRIM. JUST.* 315, 315 (2014) (“[A]cculturation is consistently and positively associated with . . . [various] crime-related outcomes . . . .”); Egbert Zavala et al., *Explaining the Cultural Retention–Delinquency Relationship Using Differential Support and Coercion Theory: A Study of Native-Born and Immigrant Latino Youth*, 101 *SOC. SCI. Q.* 623, 623–24 (2020) (finding that cultural retention, the converse of acculturation, is negatively associated with delinquency).

151. Hausman, *supra* note 9, at 976.

152. *Id.* at 1008.

153. See Kristin Turney & Sara Wakefield, *Criminal Justice Contact and Inequality*, *RUSSELL SAGE FOUND. J. SOC. SCIS.*, Feb. 2019, at 1, 10 (“The majority of individuals who experience conviction or incarceration experience monetary sanctions in the form of fines, fees, and other legal debt.”).

154. See Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 *IOWA L. REV.* 1263, 1288 (2016) (showing that “negative past experiences with, and perceptions of, the criminal justice system” play a crucial role in decision-making about seeking help for civil justice problems).

for immigrants and legal service providers,<sup>155</sup> and (4) policies of some publicly-funded representation programs to exclude from coverage immigrants with criminal history.<sup>156</sup>

Each of these hurdles is structural in nature and is attributable, in large part, to actions that the government has taken or has failed to take that uniquely disadvantage immigrants in crime-based removal proceedings. From that standpoint, ensuring fair process and equal access to justice require that, at a minimum, the government takes steps to close the representation gap between crime-based and non-crime-based removal proceedings. Two considerations are worth highlighting in that regard. First, a growing number of state and local programs have emerged in recent years to provide public funding for legal services to immigrants in removal proceedings.<sup>157</sup> These programs can provide valuable opportunities for federal-local collaboration in the provision of legal services to immigrants in crime-based removal proceedings. Second, bar-certified attorneys are not the only legal representatives who can render legal services for immigrants in removal proceedings. Immigration regulations allow for representation by law students, law graduates not admitted to the bar, and “accredited representatives” from qualified non-profit religious, charitable, social service, or similar organizations.<sup>158</sup> Expanding the base of non-lawyer practitioners should be an important part of broader efforts to increase the supply of legal service providers with expertise in crimmigration law.<sup>159</sup>

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155. See Emily Ryo & Reed Humphrey, *Beyond Legal Deserts: Access to Counsel for Immigrants Facing Removal*, 101 N.C. L. REV. 787, 793 (2023) (discussing impediments to communication and in-person contacts that immigrant detainees face).

156. See Nash, *supra* note 12, at 526–27 (discussing the eligibility carveout based on prior criminal history).

157. See generally *Public Funding for Immigration Legal Services*, NAT’L IMMIGR. F. (Apr. 12, 2021), <https://immigrationforum.org/article/public-funding-for-immigration-legal-services> [<https://perma.cc/M59A-GDQP>] (providing an overview of recent efforts to improve support for immigrants across the United States).

158. 8 C.F.R. § 1292.1 (2025).

159. See, e.g., John Thompson, *A One-Year, Specialist’s Law Degree to Increase and Improve Representation Among Immigration Respondents*, 30 GEO. IMMIGR. L.J. 455, 467–68 (2016) (arguing for a one-year specialist degree in immigration law to incentivize more attorneys to enter immigration practice); Jean C. Han, *The Good Notario: Exploring Limited Licensure for Non-Attorney Immigration Practitioners*, 64 VILL. L. REV. 165, 190–91 (2019) (recommending

## B. UNDERSTANDING RACIAL DISPARITIES

Our findings underscore the need for deeper investigations that build on the current study to develop a more nuanced understanding of racial disparities that exist in immigration adjudication. These investigations require the government to establish improved and more purposeful data-collection protocols, and equally importantly, to adopt data-release practices that advance transparency. More reliable and disaggregated records on individual characteristics<sup>160</sup> and criminal charges are necessary to support additional analysis on the nature and extent of disparities that exist in immigration court outcomes. For example, as we discussed earlier, the administrative records currently released by the EOIR do not contain sufficiently detailed information to analyze these important criminal charges: aggravated felony and crimes of moral turpitude. Essential to analyzing these broad categories is information about the underlying criminal offenses that constitute these charges so that researchers can account for the heterogeneity of those underlying offenses. Other key missing pieces of information that are necessary to support more advanced future investigations include the year of conviction, sentence length, and the state in which the conviction was obtained.

In addition, our study findings should motivate systematic theory-driven empirical research on *why* racial disparities exist in immigration adjudication. Important points of inquiry as they relate to this question are whether and to what extent (1) negative racial stereotypes play a role in IJ decision-making, (2) negative racial stereotypes are tied to specific offense types, and (3) negative racial stereotypes differ across native versus immigrant groups (e.g., native-born Blacks versus Black immigrants, native-born Hispanics versus Hispanic immigrants). Research

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a program that would license *notarios* to allow them to practice immigration law on a limited basis).

160. Immigration enforcement and adjudication agencies should develop more consistent, robust, and transparent ways of documenting not only basic demographic characteristics of immigrants such as their race, gender, legal status, and marital status, but also other detailed information such as their kinship ties to U.S. residents and citizens, number of children, occupation, education, and income.



suggests that “stereotypical imagery often is offense specific,”<sup>161</sup> and that racial stereotypes of native-born racial minorities might not apply in the same way to immigrant racial minorities in a straight-forward way.<sup>162</sup> Moreover, scholars have theorized that because individuals with “multiple subordinate-group identities” (e.g., Black immigrant) “do not fit the prototypes of their respective identity groups” (e.g., Black immigrant), the social advantages and disadvantages they are likely to experience are more complex than those with single subordinate-group identities.<sup>163</sup> As we discuss below, each of these dynamics might help to explain our study results relating to the patterns of racial disparities that we found in proceeding outcomes related to drug-related (*Controlled Substance* and *Controlled Substance Trafficking*) and violence-related charges (*Domestic Violence*, *Stalking*, and *Child Abuse* and *Firearms*).

Recall that our analysis showed that Hispanic immigrants with drug-related charges are less likely to be released from immigration detention and more likely to be ordered removed than other racial groups.<sup>164</sup> In the criminal justice context, researchers have documented disproportionate impacts of the War on Drugs on Blacks and Hispanics, particularly young males of both groups. For example, a large volume of empirical scholarship demonstrates that Black and Hispanic drug offenders are more likely to be arrested and prosecuted, as well as receive harsher sentences, than white drug offenders.<sup>165</sup> Thus, “it appears that

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161. Besiki L. Kutateladze et al., *Cumulative Disadvantage: Examining Racial and Ethnic Disparity in Prosecution and Sentencing*, 52 CRIMINOLOGY 514, 520 (2014).

162. Ariela Schachter, *Intersecting Boundaries: Comparing Stereotypes of Native- and Foreign-Born Members of Ethnoracial Groups*, 100 SOC. FORCES 506, 506 (2021).

163. Valerie Purdie-Vaughns & Richard P. Eibach, *Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate-Group Identities*, 59 SEX ROLES 377, 377 (2008).

164. See *supra* Part IV.B.

165. See, e.g., Stephen Demuth & Darrell Steffensmeier, *Ethnicity Effects on Sentence Outcomes in Large Urban Courts: Comparisons Among White, Black, and Hispanic Defendants*, 85 SOC. SCI. Q. 994 (2004) (examining differences in sentences imposed on offenders); Pauline K. Brennan & Cassia Spohn, *Race/Ethnicity and Sentencing Outcomes Among Drug Offenders in North Carolina*, 24 J. CONTEMP. CRIM. JUST. 371, 371 (2008) (finding that white offenders received less severe punishment than Blacks and Hispanics); Theodore R. Curry & Guadalupe Corral-Camacho, *Sentencing Young Minority Males for Drug*

minority males are penalized for belonging to the ‘dangerous class,’ representing greater perceived threat to elites and receiving more negative attributions through judicial focal concerns.”<sup>166</sup>

In light of the foregoing discussion, one question that arises for the current study is why Hispanic immigrants (rather than, or in addition to, Black immigrants), appear to be the group that most consistently faces the greatest level of disadvantage in proceedings with drug-related charges.<sup>167</sup> One possibility might be that with respect to IJs’ perceptions of immigrants in crime-based removal proceedings, the association between crime, drugs, and Hispanic immigrants remains strong and highly salient, whereas the same association is attenuated when it comes to Black immigrants. As sociologist Sarah Tosh has noted:

Domestically, the policing and enforcement of the War on Drugs focused disproportionately on poor Black and Latino communities . . . while internationally, attention to the interdiction of drugs from Mexico and Latin America increased . . . . Hence, both major fronts of the highly publicized US War on Drugs helped to further solidify assumed connections between crime, drugs and Latino immigrants.<sup>168</sup>

The other key finding that resulted from our analysis of racial disparities relates to immigrants charged with domestic violence and firearms charges; Black immigrants with these charges faced the greatest disadvantage with respect to both release and removal rates.<sup>169</sup> This result is consistent with research that shows that Blacks and Hispanics are subject to

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*Offenses: Testing for Conditional Effects Between Race/Ethnicity, Gender and Age During the US War on Drugs*, 10 PUNISHMENT & SOC’Y 253, 253 (2008) (“[Y]oung minority males will pay a penalty cost at sentencing . . . .”); Doris Marie Provine, *Race and Inequality in the War on Drugs*, 7 ANN. REV. L. & SOC. SCI. 41 (2011) (providing an overview of the history of the War on Drugs); Patricia Warren et al., *The Imprisonment Penalty for Young Black and Hispanic Males: A Crime-Specific Analysis*, 49 J. RSCH. CRIME & DELINQ. 56, 56 (2012) (“Black and Hispanic rates of incarceration are six to eight times that of White offenders . . . .”); Thomas Lyons et al., *Racial Disproportionality in the Criminal Justice System for Drug Offenses: A State Legislative Response to the Problem*, 3 RACE & JUST. 83 (2013) (discussing the disproportionate incarceration rates amongst minorities in Illinois); David W. Koch et al., *Coloring the War on Drugs: Arrest Disparities in Black, Brown, and White*, 8 RACE & SOC. PROBS. 313 (2016) (examining racial disparities in arrests for drug offending).

166. Curry & Corral-Camacho, *supra* note 165, at 270.

167. See *supra* Part IV.B.

168. Tosh, *supra* note 15, at 335.

169. See *supra* Part IV.B.

harsher law-enforcement practices and less favorable court outcomes when it comes to violent offenses.<sup>170</sup> Empirical evidence also suggests that negative racial stereotypes of Blacks and Hispanics as violent and dangerous likely play an important role in generating these racial disparities.<sup>171</sup> That Black immigrants with violence-related charges are singularly disadvantaged in proceeding outcomes, whereas the same is not true of Hispanic immigrants, indicates that the nature and degree to which Hispanics are stereotyped as violent and dangerous might be different compared to Blacks in the context of removal proceedings.

Identifying the mechanisms that generate racial disparities is imperative in developing data-driven solutions to achieving racial equality in immigration adjudication. For instance, insofar as the source of disparities is IJs' reliance on racial stereotypes or activation of certain types of racial bias, the steps taken to ameliorate racial disparities in this area must seek to counter those stereotypes and biases. These steps might include, for example, development of targeted anti-bias training for judges and the provisions of expanded resources to create decisional environments (such as those characterized by less time pressure and more complete case information) that reduce the risk of reliance

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170. See, e.g., Stephen Demuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees*, 41 CRIMINOLOGY 873, 873 (2003) ("Hispanic defendants are more likely to be detained than white and black defendants."); Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 JUST. Q. 170, 170 (2005) ("[W]hen there is disparity in the treatment of Black and Latino defendants with similar legal characteristics, Latinos always receive the less beneficial decisions."); Kutateladze et al., *supra* note 161, at 514 ("Black and Latino defendants were more likely than White defendants to be detained, to receive a custodial plea offer, and to be incarcerated—and they received especially punitive outcomes for person offenses—but were more likely to benefit from case dismissals."); Jeffrey Fagan, *No Runs, Few Hits, and Many Errors: Street Stops, Bias, and Proactive Policing*, 68 UCLA L. REV. 1584, 1584 (2022) ("We find consistent evidence of disparities in police response to Black, Hispanic, and Black Hispanic civilians . . .").

171. See, e.g., Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 876 (2004) ("Not only is the association between Blacks and crime strong . . . it also appears to be automatic."); Schlesinger, *supra* note 170, at 170 (highlighting that the study's findings are consistent with the theory that "stereotypes influence criminal processing"); Robert M. Entman, & Kimberly A. Gross, *Race to Judgment: Stereotyping Media and Criminal Defendants*, 71 LAW & CONTEMP. PROBS. 93, 97–98 (2008) (discussing the negative impact of media coverage that portrays Blacks and Latinos as criminal and violent).

on mental shortcuts and categorical thinking.<sup>172</sup> On the other hand, to the extent that the source of disparities is structural—for example, unequal access to legal resources, language assistance, or information networks—policy solutions should include community-based and court-based programs that address those specific structural barriers.<sup>173</sup>

A number of other important possible explanations merit attention. The current study focuses on interactions between the immigrant's race and the presiding IJ's race.<sup>174</sup> This focus makes sense given that IJs are the ultimate decision-makers in the two court outcomes that we examine. However, it is possible, and likely, that some of the observed disparities might reflect different treatment that immigrants receive from other legal actors during the immigration court process. For example, if government attorneys who initiate and prosecute removal proceedings are selective in how they make their charging decisions or how they decide to pursue their cases once the removal proceedings are initiated, and if those decisions are racially biased in a systematic way, then those decisions will play a significant role in shaping racial disparities that we observe in immigration court outcomes. The foregoing discussion highlights the need for a broadened focus on legal actors beyond judges.

The second possible explanation for the racial disparities that the current study has uncovered requires us to look outside the immigration court system. All immigrants in crime-based removal proceedings have had interactions with the criminal justice system before entering the immigration court system. Thus, it is possible that some of the disparities that we found here are, in part, a reflection of disparities that were generated by criminal justice processing. For example, if prosecutors are more generous with white defendants in offering plea deals that reduce the seriousness of charges, or if criminal court judges are more lenient in their sentencing of white defendants, we might observe racial disparities in immigration court outcomes simply

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172. For research on the influence of heuristics and categorical thinking in judicial decision-making, see Fatma E. Marouf, *Implicit Bias and Immigration Courts*, 45 NEW ENG. L. REV. 417 (2011); Anjum Gupta, *Dead Silent: Heuristics, Silent Motives, and Asylum*, 48 COLUM. HUM. RTS. L. REV. 1, 3–4 (2016); Rachlinski & Wistrich, *supra* note 97, at 204.

173. See Ryo & Humphrey, *supra* note 155, at 827 (emphasizing the need for a systems-based approach to solve the representation crisis).

174. See *supra* Part IV.C.

due to biases associated with actions taken by prosecutors and criminal court judges. This possibility underscores the importance of recognizing that racial disparities across multiple social domains or institutions have mutually reinforcing effects that generate a cumulative disadvantage that is greater than the sum of its individual parts.<sup>175</sup>

### CONCLUSION

U.S. immigration law and enforcement policies have a long history of overt racism and discriminatory treatment that resulted in exclusion and subjugation of racial minorities (or those who have been deemed non-white).<sup>176</sup> As Enid Trucios-Haynes has observed, “[i]mmigration law and policy historically has used race as a proxy for determining membership in U.S. society, reinforcing this hierarchy of race.”<sup>177</sup> That immigration laws and policies now have become ostensibly color-blind or facially neutral means that understanding the continuing salience of race and ethnicity in immigration law and enforcement may be a relatively more challenging task. Nonetheless, developing such an understanding remains an urgent task given that racially

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175. See Barbara Reskin, *The Race Discrimination System*, 38 ANN. REV. SOCIO. 17, 17 (2012) (“[W]e must recognize that these domains are reciprocally related and comprise an integrated system.”); Kurlychek & Johnson, *supra* note 76, at 292 (arguing that case processing decisions in the criminal justice system are “mutually dependent and interrelated,” leading to “disadvantages [that] accrete across successive stages of case processing”).

176. See generally, e.g., LUCY E. SALYER, *LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* (1995) (analyzing U.S. immigration law throughout the early twentieth century with a focus on the exclusion of Chinese immigrants); MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 91–166 (2004) (discussing the origins of the “illegal alien” and how it has shaped American law and society); IAN HANEY-LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 78–162 (2006) (exploring the role that legal institutions and practices have played in the social construction of race); Kitty Calavita, *Immigration Law, Race, and Identity*, 3 ANN. REV. L. & SOC. SCI. 1, 1 (2007) (“African American racialization has been a central component of immigrant exclusion and . . . immigrant racialization has paradoxically hardened images of blackness.”); Cybelle Fox & Irene Bloemraad, *Beyond “White by Law”: Explaining the Gulf in Citizenship Acquisition Between Mexican and European Immigrants, 1930*, 94 SOC. FORCES 181, 181 (2015) (discussing the “importance of [geographical] region and non-white social status in influencing naturalization”).

177. Enid Trucios-Haynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76 OR. L. REV. 369, 373 (1997).

disparate consequences of law enforcement and court outcomes constitute one of the most serious issues confronting our justice system today.

## DATA AND METHODS APPENDIX

## A. EOIR DATA SAMPLE RESTRICTIONS

We used the following collection of data tables that were available on the EOIR website in February 2023: (1) A\_TblCase.csv (“Case Table”), (2) B\_TblProceeding.csv (“Proceedings Table”), (3) tbl\_schedule.csv (“Hearings Table”), (4) tbl\_Lead\_Rider.csv (“Lead Rider Table”), (5) A\_TblCaseIdentifier.csv (“Case ID Table”), (6) tbl\_CustodyHistory.csv (“Custody History Table”), (7) tbl\_RepsAssigned.csv (“Reps Assigned Table”), (8) B\_TblProceedingCharges.csv (“Charges Table”), and (9) tbl\_JuvenileHistory.csv (“Juvenile History Table”). Below, we describe steps that we took to prepare the data for our analysis relating to racial disparities in release and removal rates. The resulting sample sizes that correspond to each of the steps described below are summarized in Appendix Table A.

First, we merged the Case Table and the Proceeding Table using IDNCASE, which is a unique case identifier. We excluded cases from the Case Table with no match in the Proceedings Table and invalid or missing IDNCASE entries. Second, we excluded all proceedings for which CASE\_TYPE from the Proceedings Table did not equal “RMV” (denoting removal). Third, we excluded proceedings that did not reach final merits decisions. We treated the following categories under DEC\_CODE from the Proceedings Table as merits decisions: T (“Termination”), X (“Removal”), R (“Relief Granted”), V (“Voluntary Departure”), and Q (“Final Grant of EOIR 42B/SUSP,” which refers to cancellation of removal for nonpermanent residents). We also excluded proceedings completed before January 1, 1998 and after February 29, 2023 by using COMP\_DATE from the Proceedings Table. This step allowed us to include only those proceedings that were completed after the implementation of IIRIRA.

Fourth, we retained only the first proceeding with a merits decision for each case. As a given case may have more than one proceeding, we retained whichever proceeding had the earliest COMP\_DATE. When a given case had multiple proceedings with identical COMP\_DATE, we relied on information from the Hearings Table (ADJ\_DATE and INPUT\_DATE). Fifth, we retained only those proceedings that had a match in the Charges Table. Sixth, we excluded stipulated removal proceedings, *in absentia* proceedings, and rider cases. We identified stipulated removal

proceedings using CASE\_ID from Case ID Table, which equals “SR” when a noncitizen signs a stipulated order of removal. We identified *in absentia* proceedings using ABSENTIA from the Proceedings Table. We identified rider cases using IDNRIDER-CASE from the Lead Rider Table and matching with IDNCASE. Seventh, we excluded removal proceedings that were designated as juveniles in the Juvenile History Table using IDNJUVENILE. Eighth, we excluded removal proceedings with immigrant respondents who were missing or classified as “Other” on the *Immigrant Race* variable.

For our analysis pertaining to racial disparities in release rates, we included only those removal proceedings in which the immigrant had been detained or released (CUSTODY values “R” and “D”).

For our analysis pertaining to racial disparities in removal rates, we included only those removal proceedings for which an IJ had rendered a final merits decision of “Relief Granted,” “Removed,” or “Final Grant-42B” (DEC\_CODE values R, X, and Q, respectively). We excluded from this analysis removal proceedings that resulted in T (“Termination”) and V (“Voluntary Departure”). We excluded these categories because neither of these two outcomes can be fairly characterized as IJs’ decisions on the merits. Termination results when an IJ, at the request or motion by either party, dismisses a proceeding because of a legal deficiency in the NTA (i.e., the charging document).<sup>178</sup> Voluntary departure is granted at the discretion of the IJ when an eligible immigrant seeks to leave the United States voluntarily at their own expense in order to avoid the negative legal consequences of a removal order.<sup>179</sup>

On the other hand, for our analysis pertaining to legal disadvantages that immigrants in crime-based removal proceedings face, we broadened our sample to include proceedings that

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178. Am. Immigr. Council & Penn State Dickinson Sch. of L., *Notices to Appear: Legal Challenges and Strategies*, AM. IMMIGR. COUNCIL 11–16 (Feb. 27, 2019), [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/notices\\_to\\_appear\\_practice\\_advisory.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/notices_to_appear_practice_advisory.pdf) [https://perma.cc/EM7B-BVTE].

179. *Voluntary Departure: When the Consequences of Failing to Depart Should and Should Not Apply*, AM. IMMIGR. COUNCIL 1 (Dec. 21, 2017), [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/voluntary\\_departure\\_when\\_the\\_consequences\\_of\\_failing\\_to\\_depart\\_should\\_and\\_should\\_not\\_apply.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/voluntary_departure_when_the_consequences_of_failing_to_depart_should_and_should_not_apply.pdf) [https://perma.cc/46JR-5PMU].



resulted in termination and voluntary departure in our definition of *Removal*. We included termination as a form of relief granted, and voluntary departure as a form of removal order. We relied on this broad measure for this analysis to document outcomes for the widest possible range of cases.

#### B. CODING OF VARIABLES IN EOIR DATA

*Removal* is coded from DEC\_CODE in the Proceedings Table. *Removed* = 1 when DEC\_CODE = X (ordered removed) and *Removed* = 0 when DEC\_CODE = R or Q (granted relief from removal).

*Released* is coded from CUSTODY in the Proceedings Table. *Released* = 1 when CUSTODY = R (released) and *Released* = 0 when CUSTODY = D (detained).

*Represented* is coded using information from the following two tables: Reps Assigned Table and the Hearings Table. We first used E\_28\_DATE from the Reps Assigned Table. E\_28\_DATE indicates the filing date of the EOIR-28 form that legal representatives are required to file with the court when representing a client. We classified a proceeding as having legal representation if the E\_28\_DATE preceded the proceeding's COMP\_DATE. If the E\_28\_DATE was later than the proceeding's COMP\_DATE, we looked at the Hearings Table for evidence of representation during the proceeding using the EOIRATTORNEYID variable.

*Immigrant Race* is coded based on immigrant's nationality, as indicated by NAT from the Proceedings Table. When NAT was missing in the Proceedings Table, we filled in the values using NAT from the Case Table. We assigned racial categories using information from the Census Data, which contain both the self-reported race and birth country of over four million foreign-born individuals residing in the United States.<sup>180</sup> For each birth country in the Census Data, we identified the modal self-reported racial category. We then matched the birth countries from the Census Data to the nationalities found in the EOIR Data.

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180. We used 2000 Decennial Census 1% sample (Census Data), 2006–10 American Community Survey (ACS Data), and 2015–19 ACS Data. See Steven Ruggles et al., *IPUMS USA: Version 13.0*, IPUMS (2023), <https://doi.org/10.18128/D010.V13.0> [<https://perma.cc/63XA-SKLH>] (consolidating census and ACS data from 1790 to present). In calculating the modal race categories, we used the detailed birthplace variable (BPLD) from these data.

We conducted both in-sample and out-of-sample checks to assess the accuracy of our modal-category approach. For the in-sample check, we used the modal-category approach to assign race to foreign-born individuals in the Census Data. Under this approach, the assigned race and self-reported race matched 96% of the time. The following are the accuracy rates of individual racial categories: 97% for Asians, 91% for Blacks, 99% for Hispanics, and 93% for whites.

For the out-of-sample check, we used data that we obtained through a FOIA request from ICE on all immigrants who were detained by ICE during fiscal year 2020 (ICE Detention Data). The ICE Detention Data contain 445,284 detention stints, 223,542 (50%) of which have valid entries on race and ethnicity. Using the modal-race approach, the assigned race and reported race matched 98% of the time. The following are the accuracy rates of individual racial categories: 94% for Asians, 96% for Blacks, 99% for Hispanics, and 68% for whites.

*Charge Variables* are coded from the Charges Table and an associated file that contains charge descriptions. Using the specific Immigration and Nationality Act section codes and charge descriptions provided in the Charges Table and the associated file containing charge descriptions, we generated seventeen categories of charges that we use in our analysis. Appendix Table E shows the individual charges found in the EOIR Data that underlie each of seventeen categories.

*Language* is coded based on LANG from the Proceedings Table.

*Custody Status* is coded based on CUSTODY from the Proceedings Table. When CUSTODY was missing in the Proceedings Table, we filled in the values using CUSTODY from the Case Table. If both the Proceedings Table and Case Table were missing information on CUSTODY, we filled in the values using CUSTODY from the Custody History Table.

*Had Hearing* is coded based on whether a proceeding appears in the Hearings Table.

*Current Caseload* is coded using information from the Hearings Table. First, we created a database containing information on all days between the very first day in which a given *Judge ID* appeared in the Hearings Table (using ADJ\_DATE) and the very last day that the same *Judge ID* appeared in the Hearings Table. This database of *Judge ID* and day combinations included all

days (including weekends and holidays) between a given judge's very first and very last observed hearing. Second, for every day and *Judge ID* combination, we counted the median number of individual hearings over which each judge had presided during the two weeks preceding a given proceeding. We count a given hearing as an individual hearing if *CAL\_TYPE* = "I" ("Individual") or if *SCHEDULE\_TYPE* = "IA" ("Individual Asylum"), "ID" ("Individual Detainee"), or "II" ("Individual") for the hearing.

#### C. AGGRAVATED FELONY AND CRIMES INVOLVING MORAL TURPITUDE

Two of the most common criminal charges against immigrants in crime-based removal proceedings are aggravated felony and crimes involving moral turpitude (CIMT). We choose not to analyze these charges in our main analysis for three primary reasons. First, conceptually these two charges are much broader than the top five charge categories used in our main analysis. By this, we mean that a great deal of heterogeneity exists in the underlying offenses that trigger these two types of charges. An "aggravated felony" charge applies to offenses as diverse as murder and failure to appear in court.<sup>181</sup> A CIMT likewise could refer to murder, but also could refer to animal fighting or bigamy.<sup>182</sup> Given the variation in severity of the underlying offenses, and the possibility that the severity of the underlying offenses may be non-randomly distributed by race, insights derived from analyzing these charges as they appear in the EOIR Data are considerably limited.

Second, data limitations hamper our ability to empirically tease apart the heterogeneity inherent in these broad charges. If we were able to infer from the data the nature of the offense that triggered an aggravated felony charge, for example, we might be able to control for the different underlying offenses that triggered an aggravated felony charge, or at least disaggregate proceedings with aggravated felony charges into more conceptually similar groups. Unfortunately, the EOIR Data do not allow for such an analysis. For all completed proceedings with an

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181. See *Aggravated Felonies: An Overview*, AM. IMMIGR. COUNCIL 1 (2021), <https://www.americanimmigrationcouncil.org/research/aggravated-felonies-overview> [<https://perma.cc/5CYX-A3V5>].

182. See generally Lerner, *supra* note 53 (describing the origins of CIMT provisions and their generally imprecise nature).

aggravated felony charge, 60% contain no other criminal charges. Likewise, for all completed proceedings with a charge of CIMT, 80% contain no other criminal charges. These results suggest either (1) that EOIR's practice of recording charges does not require them to report the underlying offense resulting in an aggravated felony charge or a CIMT charge, or (2) that if EOIR's practice does indeed require such a reporting, that information is missing for the vast majority of proceedings. In either case, the existing EOIR Data do not allow us to disentangle the heterogeneity of these two types of charges.

Third, we have analyzed aggravated felony and CIMT charges using the same analytical method that we used to analyze the top five charge categories, and we found results that are generally consistent with the results from our main analysis. To be sure, any result pertaining to aggravated felony and CIMT charges could constitute a distinct and important finding in its own right. But, considering space constraints and the need to interpret those results with caution in light of the conceptual and empirical limitations that we highlighted above, we did not include those results here.

#### D. ROBUSTNESS CHECKS

We implemented a number of alternative model specifications to test the robustness of our results. We describe these specifications below. Because many of the robustness checks that we performed reduced the sample of proceedings considerably, we focused our checks for Figures 5 through 8 on the analyses that use the *Any Criminal Charge* variable, which allowed us to maintain the largest possible sample.

In general, no single finding or set of findings consistently deviated from our main results in a way that casts doubt on our overall conclusions. Where the substance of results varies slightly, we believe they vary not because of measurement error in *Immigrant Race* or other variables. Rather, we believe results vary because the mechanisms by which racial disparities emerge are complex and, potentially, contingent insofar as they are driven by different processes under different conditions. One area for future study, accordingly, would be to tease out competing explanations and the conditions under which they hold.

## 1. Immigrant Race

Many of our key findings rely on *Immigrant Race*. As we described previously, we created *Immigrant Race* using modal race categories from the U.S. Census Data based on immigrants' birth countries. This approach had a high level of accuracy in a series of out-of-sample checks, but we conducted additional analyses to address two potential issues relating to this variable.

First, certain nationalities comprise the vast majority of a given racial category in our data. Most Hispanic immigrants, for example, come from one of four countries: Mexico, Guatemala, Honduras, or El Salvador. This raises the concern that race-related findings may actually be masking nationality or region effects. To test this possibility, we did the following:

- (a) We re-estimated the models in our main analysis using a subset of the data that had a higher level of balance by nationality. For the entire data set, we found that the median country had 170 crime-based proceedings. Thus, we created the subset by randomly sampling up to 170 proceedings per country. This made our results less sensitive to the influence of individual countries with a very high number of proceedings in the data.
- (b) We re-estimated the models in our main analysis by reweighing the effect of proceedings to be inversely proportional to the total number of proceedings completed for a given nationality. This approach allowed us to decrease the influence of countries with a high number of proceedings and increase the influence of countries with a low number of proceedings.

Second, the modal-race category for a given country may be less of a good fit if the country has high levels of racial diversity and/or has a sizeable racial minority. For example, if an immigrant from Country A has a 50% chance of identifying as Hispanic but a 49% chance of identifying as Black, then a considerable number of Black immigrants from Country A will be misclassified as Hispanic. Moreover, it is possible that countries with a large racial minority, such as Country A, have an outsized influence on our results and we may mistake the effect of the minority group for the modal-category group. Country A, for example, could be an important driver of a finding that Hispanic

immigrants get removed at higher rates than Asian and white immigrants. But Country A's contribution to this finding could itself be driven by the fact that Country A has a high rate of Black immigrants who may have the highest rate of removal and have been incorrectly classified as Hispanic. To test these possibilities, we did the following:

- (c) We re-estimated the models in our main analysis by including only those countries with relatively high levels of racial homogeneity. We used three different thresholds for what constituted "high" levels of racial homogeneity: Countries for which 70, 80, and 90% or more of all immigrants to the United States report the same race in the U.S. Census Data.
- (d) We re-estimated the models in our main analysis by including continuous measures of the relative share of each racial group among all immigrants to the United States from a given country according to U.S. Census Data. This approach allowed us to adjust for different racial compositions among countries that otherwise have the same modal race value and address the possibility that a country with a modal race value of Hispanic, for example, may still have a sizeable Black (or other racial group) population.
- (e) We re-estimated the models in our main analysis by including weights to reweigh proceedings to be proportional to the racial homogeneity of immigrants from a given country to the United States according to U.S. Census Data. Thus, countries with high levels of racial homogeneity would have increased weight in models, while countries with low levels of racial homogeneity would have decreased weight.

## 2. Other Checks

- (a) The main results in our study rely on linear probability models (LPMs). While LPMs offer distinct advantages, they also suffer from limitations documented

elsewhere.<sup>183</sup> We re-estimated our models using logistic regression to test for the sensitivity of results to this choice of functional form.

- (b) Geography represents a potential confounder of our results. Criminal statutes and binding caselaw vary across states and federal courts of appeal. This is potentially an issue for our analysis insofar as racial groups in removal proceedings are neither randomly nor equally distributed across these jurisdictions. Our main analysis uses judge fixed effects and judges are largely nested in the same jurisdictions. This means that our models essentially control for the effect of jurisdiction-specific factors that do not vary over time. However, to address more directly the issue of variations in applicable laws across jurisdictions, we also re-estimated the models in our main analysis using fixed effects for the federal court of appeals under whose precedent a given proceeding was decided.
- (c) Removal proceedings can last many months or even years. Sometimes this means that more than one judge can end up presiding over the hearings for a given proceeding. This means that the race of a judge at the completion of a given proceeding may not have been the same throughout the entire proceeding. To address the possibility that this potentially biases our results, we re-estimated the models in our main analysis by including only those proceedings for which the judge never changed across all hearings.
- (d) Judges in our data vary in the total number of proceedings over which they have presided, partly as a function of their time on the bench and the speed with which they decide proceedings. This introduces the possibility that judges with high volumes of completed proceedings may have an outsized influence on our results. To address

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183. See, e.g., Paul D. Allison et al., *Better Predicted Probabilities from Linear Probability Models: With Applications to Multiple Imputation*, STATA 9 (July 2020), [https://www.stata.com/meeting/us20/slides/us20\\_Allison.pdf](https://www.stata.com/meeting/us20/slides/us20_Allison.pdf) [<https://perma.cc/HLA6-9WMC>] (discussing the limitations with LPMs as well as possible solutions).

this possibility, we re-estimated the models in our main analysis by including weights to reweigh proceedings to be inversely proportional to the total number of proceedings completed for a given judge.

- (e) In conducting our main analysis, we did not consider whether criminal charges had been sustained. Although there might be good reasons to analyze only those proceedings that have sustained charges, there are significant drawbacks to doing so. First, focusing on sustained charges would significantly reduce the size of our analytic sample. As the relationships we explore here involve the intersection of many variables, having an adequate sample is key to our analysis. Second, the EOIR Data do not indicate when any given charge might have been sustained. This means that we cannot know whether the charge was sustained prior to or following an immigrant's release from detention, which complicates our analysis of release from detention as an outcome of interest. Nonetheless, to address the possibility that our main results are biased by not considering the status of the charges, we re-estimated our models using a sample consisting only of proceedings in which charges had been sustained.
- (f) For our main analysis, we treated proceedings that lacked records in both the Reps Assigned Table and the Hearings Table as lacking legal representation (i.e., *Represented* = 0). To consider the possibility that some of these proceedings did in fact have legal representation, we re-estimated the models in our main analysis after excluding these proceedings.
- (g) Some of our main analysis examines the effect of *IJ Race* on release and removal rates. For the vast majority of judges (and proceedings), *IJ Race* captures judges' own self-reported race. For a very small number of judges without self-reported race, we predicted their race using surnames.<sup>184</sup> Given the possibility that our use of the surname method could bias our results, we re-estimated

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184. See *supra* Part III.B.2 (discussing race variables).



the models in our main analysis by including only judges with self-reported values for *IJ Race*.

APPENDIX TABLE A. Sample Restrictions

1. Proceedings with valid entries	8,729,982
2. Only removal proceedings	7,227,142
3. Proceedings with final merits decisions	4,569,236
4. Proceedings with unambiguous first merits proceeding post IIRIRA	4,502,963
5. Proceedings with non-missing charge information	4,494,875
6. Proceedings not classified as stipulated removal, rider, or decided <i>in absentia</i>	3,995,442
7. Proceedings not classified as juvenile proceedings	2,734,280
8. Proceedings excluding respondents with missing or "other" race	2,723,012

**APPENDIX TABLE B. Variables Used in the  
Racial-Disparities Analyses**

Variable	Description	Coding
<b>Outcome Variables</b>		
Released	Outcome with respect to immigration detention.	1 = Released 0 = Detained
Removal	Outcome in a removal proceeding.	1 = Ordered removed 0 = Relief granted
<b>Race Variables</b>		
Immigrant Race	Immigrant's race.	1 = Asian 2 = Black 3 = Hispanic 4 = White
IJ Race	Immigration judge's race.	1 = Asian 2 = Black 3 = Hispanic 4 = White
Same Race	Immigration judge and immigrant are of same race.	1 = Yes; 0 = No
<b>Charge Variables</b>		
Controlled Substance (Binary)	Proceeding had a criminal charge involving controlled substance.	1 = Yes; 0 = No
Controlled Substance Trafficking (Binary)	Proceeding had a criminal charge involving controlled substance trafficking.	1 = Yes; 0 = No
Domestic Violence, Stalking, or Child Abuse (Binary)	Proceeding had a criminal charge involving domestic violence, stalking, or child abuse.	1 = Yes; 0 = No

Firearms (Binary)	Proceeding had a criminal charge involving firearms.	1 = Yes; 0 = No
Violation of Protective Order (Binary)	Proceeding had a criminal charge involving violation of a protective order.	1 = Yes; 0 = No
Any Criminal Charge	Proceeding had at least one criminal charge.	1 = Yes; 0 = No
<b>Covariates</b>		
Represented	Proceeding had legal representation.	1 = Yes; 0 = No
Language	Immigrant's primary language.	1 = Spanish 2 = English 3 = Other
Custody Status	Immigrant's custody status.	1 = Detained 2 = Never Detained 3 = Released
Had Hearing	Immigrant had at least one hearing on record before merits decision on the case.	1 = Yes; 0 = No
Current Caseload	Median number of individual hearings per day over which a given IJ presided during the two weeks prior to a given day.	Count of median hearings per day in the past two weeks
Muslim-Majority Country	Immigrant's country of origin is a Muslim-majority country.	1 = Yes; 0 = No
Controlled Substance (Count)	Total number of criminal charges involving controlled substance.	Count of charges

Controlled Substance Trafficking (Count)	Total number of criminal charges involving controlled substance trafficking.	Count of charges
Domestic Violence, Stalking, or Child Abuse (Count)	Total number of crimi- nal charges involving domestic violence, stalk- ing, or child abuse.	Count of charges
Firearms (Count)	Total number of criminal charges involving firearms.	Count of charges
Violation of Protec- tive Order (Count)	Total number of criminal charges involving violation of protective order.	Count of charges
Aggravated Felony (Count)	Total number of crimi- nal charges involving an aggravated felony.	Count of charges
Moral Turpitude (Count)	Total number of criminal charges involving a crime of moral turpitude.	Count of charges
Human Trafficking (Count)	Total number of crimi- nal charges involving human trafficking.	Count of charges
Other Criminal Charge (Count)	Total number of other criminal charges.	Count of charges
National Security (Count)	Total number of charges involving national security.	Count of charges
Terrorism (Count)	Total number of charges involving terrorism.	Count of charges
Public Charge (Count)	Total number of immigration charges involving public charge.	Count of charges
Previously Deported (Count)	Total number of immigration charges involving previous deportation.	Count of charges

Entry Without Inspection (Count)	Total number of immigration charges involving entry without inspection.	Count of charges
Human Smuggling (Count)	Total number of immigration charges involving human smuggling.	Count of charges
Other Immigration Charge (Count)	Total number of other immigration charges.	Count of charges
Miscellaneous Charge (Count)	Total number of other charges.	Count of charges
Total Charges (Count)	Total number of all criminal and immigration charges.	Count of charges
<b>Other Variables</b>		
Judge ID	Unique identifier for the judge presiding over a proceeding.	Indicator for each judge in the sample
Completion Year	Year in which the proceeding was completed.	Years

**APPENDIX TABLE C. Descriptive Statistics for  
Variables Used in the Racial-Disparities Analyses**

Variable	Release Sample	Removal Sample
<b>Race Variables</b>		
Immigrant Race		
Asian	0.064	0.066
Black	0.101	0.102
Hispanic	0.769	0.764
White	0.065	0.068
IJ Race		
Asian	0.030	0.030
Black	0.094	0.095
Hispanic	0.079	0.084
White	0.797	0.791
Same Race	0.128	0.132
<b>Charge Variables</b>		
Controlled		
Substance (Binary)	0.415	0.422
Controlled		
Substance Traffick- ing (Binary)	0.095	0.100
Domestic Violence, Stalking, or Child Abuse (Binary)	0.052	0.051
Firearms (Binary)	0.036	0.037
Violation of Protective Order (Binary)	0.008	0.007
Any Criminal Charge (Binary)	1.000	1.000
<b>Covariates</b>		
Represented	0.286	0.300
Language		
Spanish	0.625	0.623
English	0.325	0.324
Other	0.051	0.053
Custody Status		
Detained	0.933	0.879

Never Detained	--	0.075
Released	0.067	0.045
Had Hearing	0.999	0.999
Current Caseload	1.613	1.602
Muslim-Majority		
Country	0.035	0.034
Controlled Sub-		
stance (Count)	0.418	0.426
Controlled Sub-		
stance Trafficking		
(Count)	0.096	0.100
Domestic Violence,		
Stalking, or Child		
Abuse (Count)	0.053	0.051
Firearms (Count)	0.036	0.037
Violation of Protec-		
tive Order (Count)	0.008	0.007
Aggravated Felony		
(Count)	0.445	0.432
Moral Turpitude		
(Count)	0.350	0.353
Human Trafficking		
(Count)	0.000	0.000
Other Criminal		
Charge (Count)	0.014	0.015
National Security		
(Count)	0.000	0.000
Terrorism (Count)	0.000	0.000
Public Charge		
(Count)	0.000	0.000
Previously		
Deported (Count)	0.012	0.012
Entry Without		
Inspection (Count)	0.297	0.283
Human Smuggling		
(Count)	0.003	0.004
Other Immigration		
Charge (Count)	0.107	0.108
Miscellaneous		
Charge (Count)	0.001	0.001



Total Charges		
(Count)	1.840	1.829
N	534,564	528,240

Notes: For categorical variables, this table reports the proportion of proceedings belonging to a given category. For continuous variables, this table reports their means.

**APPENDIX TABLE D. Sample Sizes for Figures 5-8**

Criminal Charge Category	Figure 5	Figure 6	Figure 7	Figure 8
Any Criminal Charge	555,493	548,697	555,477	548,684
Controlled Substance	232,020	233,170	232,016	233,166
Controlled Substance Trafficking	54,887	56,669	54,887	56,667
Domestic Violence, Stalking or Child Abuse	28,656	27,409	28,656	27,409
Firearms	19,835	20,171	19,834	20,170
Violation of Protective Order	4,141	3,780	4,141	3,780

**APPENDIX TABLE E. Classification of Charges  
in EOIR Data**

Charge Category	Charge Description from the Charges Table
Aggravated Felony	Convicted of Aggravated Felony
Controlled Substance	Controlled Substance Conviction; Controlled Substance Violation; Convicted of a marijuana violation; Narcotic/drug addict or drug abuser
Controlled Substance Trafficking	Controlled substance traffickers; Drug Traffickers; Spouse or Child Obtaining any Benefit from Illicit Activity by an inadmissible Alien
Domestic Violence, Stalking, or Child Abuse	Crimes of Domestic Violence, Stalking, Child Abuse, child neglect, or child abandonment
Entry Without Inspection	Alien in U.S. without Admission or Paroled; Aliens unlawfully present after previous immigration violations; In General; Entered without inspection
Firearms	Convicted of Certain Firearm Offenses
Human Smuggling	Smugglers; Smuggling (of aliens by another alien)
Human Trafficking	Beneficiaries of Trafficking; Significant Traffickers in Persons; Trafficking
Miscellaneous Charge	Aliens over 16 years of age, physically capable of reading, who cannot read and understand some language or dialect; Certain employment-based immigrants; Change of Address; Communicable Disease Of Public Health Significance; Drug

	<p>abuser or addict; Drug Abuser or Drug Addict; Failure to meet certification requirement for Health Care Workers; Failure to meet labor certification requirements; Failure to meet licensing requirements for medical doctors; Family sponsored immigrants; Former Citizens who renounced citizenship to avoid paying taxes. Classes of Deportable Aliens under Sec. 237 (a); Guardian required to accompany excluded alien; Guardian required to accompany helpless applicant; Health &amp; Related Grounds; Immoral Sexual Acts; International Child Abduction; Labor; Labor Certification; Labor Certification and Licensing Requirements under section 212 (a) (5); Miscellaneous Grounds under section 212 (a) (10); Physical or Mental Disorder; Physical or Mental Disorder and a History of Behavior; Practicing Polygamists; Unlawful Voters; Vaccinations</p>
Moral Turpitude	<p>Convicted of a crime involving moral turpitude; Convicted of a crime involving moral turpitude within five years after the date of admission; Convicted of two or more crimes involving moral turpitude; Crimes involving moral turpitude</p>
National Security	<p>Alien who is suspected of potentially engaging in activities that would be subversive to the national security; Any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the U.S. by force, violence or other unlawful means; Any activity opposing, controlling, overthrowing the U.S. Government by Violence or other unlawful means; Any activity to violate and law relating to Espionage/Sabotage; Any alien who has engaged, is engaged, or at anytime after admission engages in Espionage, Sabotage, or tries to violate or evade any law prohibiting the export from the U.S. of goods, Technology or Other Sensitive Information; Any alien who has fallen in distress and</p>

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	has been removed pursuant to this or any other act; Any alien who poses serious adverse foreign policy consequences for the U.S.; Any other criminal activity which endangers public safety or national security; Any other unlawful activity; Commission of Acts of Torture or Extrajudicial Killings; Export of Goods, Technology, or Sensitive Information; Foreign Policy Considerations.; Membership in Totalitarian Party; Nazi Affiliation; Participation in Genocide; Participation in Nazi Persecution, Genocide or Commission of any Act of Torture or Extrajudicial Killing; Recipient of Military-Type Training; Security and Related Grounds; Security and Related Grounds. Any activity to violate any law relating to espionage or sabotage
Other Criminal Charge	A Violation of Sec. 215/278 of this Act; A Violation of the Military Selective Service Act; Alien who has been a knowing aider, abettor, assister, conspirator or colluder with others in an offense relating to money laundering; Alien who is engaged or seeks to enter the U.S. to engage in Money Laundering; Any alien convicted under Sec. 266 of this Act of Sec. 36(c) of the Alien Registration Act; Any conviction relating to Espionage, Sabotage, Treason or Sedition for which a term of 5 or more years of imprisonment may be imposed; Any offense under Sec. 871/960 of Title 18 U.S.C.; Certain aliens involved in serious criminal activity who have asserted immunity from prosecution; Conviction relation to High Speed Flight from an immigrant checkpoint; Criminal and Related Grounds; Engage in Other Unlawful Commercialized Vice; Failure to Register as a Sex Offender; Import of prostitutes; Multiple Criminal Convictions; Prostitution and Commercialized Vice; Prostitution and Commercialized Vice; Violation of, Attempt or Conspiracy to Violate the Foreign Agents Registration Act; Violation of, Attempt or Conspiracy to

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	Violate, section 1546 of title 18, U.S. code (relating to fraud and misuse of visas, permits and other entry documents)
Other Immigration Charge	Adjustment of Status; Alien accompanying another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy, whose protection or guardianship is required by the alien ordered excluded and deported; Alien Permanently Ineligible for Citizenship; Alien refused or failed to fulfill marriage agreement; Alien who has aided or abetted any other alien to enter or try to enter the United States in violation of law; Any Alien present in violation of the act; Any alien with a Final Order for Document Fraud in violation of Sec. 247C, is deportable; Document Requirements for immigrants; Document Requirements for non-immigrants; Documentation Requirements under section 212 (a)(7); Draft Evaders; False claim to U.S. citizenship; Falsely claiming citizenship; Fraud or willful misrepresentation to procure a visa, documentation or admission into the U.S.; Illegal entrants and Immigration Violators under section 212 (a) (6); Immigrant whose visa was improperly issued at the time of admission; Inadmissible Aliens; Ineligible for Citizenship under section 212 (a)(8); Marriage Fraud; No valid immigrant visa; Non-immigrant not in Possession of a passport valid for at least 6 months from the date the Initial Admission expires; Non-immigrant not in Possession of Valid non-immigrant Visa or Border Crossing Card at the time of application for admission; Non-immigrant status violators. Any alien who was admitted as a non-immigrant and failed to maintain that status.; Stowaways; Student Visa Abusers; Subject of Civil Penalty for Document Fraud; Subject of Civil Penalty. Any alien who is the subject of a final order for violation of section 274(c);

	Termination of Conditional Permanent Residence; Unlawful Voters; Violators of Conditions of Entry according to section 212(g); Visa issued without compliance; Willful misrepresentation and fraud on visa
Previously Deported	Alien departed the U.S. with Order of Removal and seeks readmission within 10 years of the date of such departure or removal, or within 20 years of a second or subsequent removal; Alien previously deported; Alien unlawfully present in the U.S. for 1 year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the U.S., is inadmissible; Alien unlawfully present in the U.S. for an aggregate period of more than one year; Alien unlawfully present in the U.S. for more than 180 days but less than 1 year, voluntarily departed the U.S. prior to proceedings commencement and seeks admission within 3 years of the alien's departure or removal date; Any alien who has been removed at Government expense in lieu of deportation pursuant to section 242(b); Applicants previously removed or unlawfully present under section 212 (a)(9); Arriving Alien who has been ordered removed under section 240 or any other provision of law; Arriving Alien who seeks admission within 5 years of a removal order or within 20 years of a second or subsequent removal; Certain aliens previously removed. Any alien who has been arrested and deported; Failure to Attend a Removal Proceeding; Other Aliens Previously Removed; Previously arrested and deported or fallen into distress and removed; Previously deported within a year; Removal that Occurred before, on, or after 4/1/97
Public Charge	Any alien who is likely to become a public charge; Likely to become Public Charge; Public Charge; Public Charge under section 212(a)(4)

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Terrorism	Engaged in Terrorist Activities; Likely to Engage in any Terrorist Activity; Member of Foreign Terrorist Organization IAW Sec. 219; Representative of Foreign Terrorist Organization; Show intention to cause death, serious bodily harm or incited terrorist activity; Use of alien's position of prominence within any country to endorse or espouse terrorist activity; Terrorist Activities
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Violation of Protective Order	Violators of Protective Orders
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Notes: Charge descriptions are taken verbatim from the EOIR Data. For each charge, the EOIR Data provide both a charge description and statutory section under the Immigration and Nationality Act. We relied on the latter when we encountered possible conflicts between the two sets of information. Therefore, similar or same charge descriptions may appear under different Charge Categories in this table.