Bureaucracies of Displacement: From Immigrants’ Social and Physical Exclusion to Their Judicial Removal

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Immigration laws and policies have created a coercive bureaucracy (Rodriguez and Paredes 2014) that has gained power and legitimacy by implementing strategies that displace immigrants socially, economically, and geographically, internally and externally. However, this bureaucracy targets certain groups of immigrants more than others, so it is useful to attend to this differentiation, which emerges when examined through the lens of race, class, and gender. In this chapter we shed light on the two components of the immigration regime that contribute to displace Latino/a immigrants socially, economically, and spatially, including physical separations. We focus first on the legislative side of the immigration bureaucracy as it increasingly narrows formal paths to admission and expands insecure, temporary legal statuses, both strategies contributing to keeping an increasing number of immigrants on the legal margins. This displacement through law has social and economic consequences for the migrants, their families, and their communities, both within the US and beyond borders. We then turn to discussing the enforcement side of the bureaucracy to highlight the internal displacement of immigrants (through

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detention) and their displacement across borders (through deportation). And in the third section we look at the judicial displacement of immigrants by focusing on the case of those who apply for asylum but whose lives remain suspended in limbo. Although we focus our examination on the US case, we would like to note that bureaucracies of displacement have increased and spread around the world as more immigrant-receiving countries rely on narrowing paths to legal status, detention, and deportation to manage their migration flows. For instance, immigrant detention and apprehension have risen in Australia, New Zealand, and Switzerland (Bosworth et al. 2018; Vogl and Methven 2017), and deportations are now taking place in ‘transit’ countries such as Mexico and Indonesia (Mountz 2015; Vélez Santiago and Fernandez Sanabria 2016) and wealth democracies are actively repelling asylum seekers even before they arrive at their borders to apply for asylum (FitzGerald 2019).

The Legislative Side of the Immigration Bureaucracy

Immigration law dictates which immigrants are allowed into the country, as well as the rights and protections extended to some groups while denied to others. As a result, throughout US history, immigration policies and legislative mechanisms have contributed to the social and economic exclusion of certain immigrant groups and their displacement from institutions and communities. Thus, while some immigrants are admitted to the United States to fulfil certain needs (political, economic), their admission does not guarantee them full membership. This tends to be the case with labour migrants who are formally admitted to fill a labour shortage need but through policies of admission are constrained from fully participating in society (De Genova 2004; Espiritu 2003). This is also the case with certain groups who are admitted because they serve a national security purpose and who tend to be classified as refugees (Menjívar 2000; Pedraza-Bailey 1985). In any case, our point is that formal admission into the country does not translate automatically into inclusion; just like the case of domestic minorities, immigrant groups can be excluded and displaced through law even if they are admitted formally.

Furthermore, historically and contemporaneously, displacement begins before entry, as some groups have not been allowed in and new categories of admission have made entry difficult or impossible for others (see FitzGerald 2019). Race, or a combination of race and law, has always played a pivotal role
in determining who is allowed in and who is not. For instance, the 1882 Chinese Exclusion Act barred Chinese labourers from entering the United States for a period of ten years, and the 1908 Gentlemen’s Agreement sought to bar Japanese labourers from entry by getting Japan to only give passports to non-labourers (Boyd 1971). These two policies followed increases in Chinese and Japanese migration flows entering through Hawaii and California as the US government and railroad companies encouraged these workers to migrate. However, after the railroad was completed and recession loomed over the country, nativist sentiment grew to displace Chinese and Japanese workers, leading to anti-Chinese and anti-Japanese immigration policies (Calavita 2000).

During the past century or so, in an effort to fulfil labour shortages, migration from Mexico to the US was lightly regulated (Massey et al. 2002). It was common for Mexican farmworkers to travel back and forth during agricultural seasons without formal visas to enter the country. With increased labour shortages during wartime, the United States created programmes that formally recruited Mexican nationals as workers, such as the Bracero Program (1942–1964), which institutionalised the flow of seasonal workers from Mexico to the United States, making US agricultural growers dependent on Mexican labour, and labourers dependent on seasonal employment in the United States (Calavita 2010). The 1952 and amendments made in 1965 to the Immigration and Nationality Act (INA) ended the national quota system, in place since 1924, which limited migration from the Eastern Hemisphere to 170,000 total visas and from the Western Hemisphere to 120,000 visas, with no country exceeding 7 per cent of all visas (Chishti et al. 2015). Although the INA opened the legislative door to immigrants from Asia and Latin America, the new limit affected Mexico negatively. Cuts to visas for Western Hemisphere countries and especially for Mexico significantly shifted the nature of migratory flows as the demand for agricultural labour continued and, coupled with an unstable Mexican economy, Mexican workers continued to migrate to the United States. The biggest transformation, however, was that these workers migrate without legal status (Calavita 2010; Massey et al. 2002), which means marginalised lives, especially as the consequences of an undocumented status have increasingly worsened over the years.

The 1965 INA established new entry categories, in particular new family-based and employment-based visas (Enchautegui and Menjívar 2015). However, the formula used to distribute visas worldwide, where no country can exceed 7 per cent of visas in any one year, has created large discrepancies across national groups. We know that there are social, political, economic, and historical forces that shape migratory flows and thus not all countries send the same number of migrants to the United States at the same time.
Allocating visas equally across all countries without regard for structural and social forces in origin countries creates major imbalances in who can travel to the US with a visa. On the one hand, European countries that used to send the bulk of immigrants no longer do so and their visa allocations go unused. On the other hand, for some countries (e.g., China, India, Mexico, and the Philippines) the backlogs for certain family-based visa categories are so long (decades long in some cases) that in practice it is nearly impossible for these immigrants to sponsor the migration of a family member. This gets more complicated when powerful family ties, including extended kin, are meaningful for the immigrants but are not recognised in the immigration bureaucracy (Menjívar et al. 2016). However, immigrants from the largest sending countries who seek to reunite with their families will do so, regardless of whether they receive a visa, meaning they will likely live ‘in the shadows of the law’ (Chavez 1991). Thus, immigration law contributes to the social displacement of immigrants, first, by separating families (and keeping them apart), and, second, by excluding them from basic rights and protections (Enchautegui 2014; Enchautegui and Menjívar 2015).

Two pieces of legislation signed into law in 1996 have contributed to reinforcing the social and economic displacement of undocumented and temporary legal immigrants: the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). These laws have restricted lawfully admitted immigrants who arrived after 1996 from accessing federally funded welfare programmes for their first five years in the United States; undocumented immigrants were banned indefinitely (Hagan et al. 2003; Viladich 2012). Additionally, inadmissible immigrants who use public services can become ineligible for lawful permanent residence and even face deportation if they are unable to repay the services that they use (Hagan et al. 2003, p. 447). The Public Charge rule, which went into effect on 24 February 2020, consider receiving public benefits for more than twelve months grounds for inadmissibility for lawful permanent residence (USCIS 2020a). The Public Charge rule makes an exception for screening, testing, treatment and receiving vaccines for COVID-19 (USCIS 2020b).

Thus, for decades, immigration policies have systematically excluded certain groups of immigrants from rights and protections, contributing to their social and physical displacement. A panoply of laws consistently reduces opportunities for legalisation and at the same time curtails access to social services and opportunities based on legal status. Such actions have direct and serious consequences for the social and economic incorporation of immigrants; research has demonstrated that legal status affects the jobs and wages
immigrants obtain (Massey and Gentsch 2014); housing options (Hall and Greenman 2013); access to higher education (Abrego 2006; Gonzales 2016) and healthcare (Marrow and Joseph 2015; Philbin et al. 2017); and friendships and family relations (Das Gupta 2014; Dreby 2015; Enriquez 2020; Gomberg-Muñoz 2015). As such, legal status has become an important axis of stratification that intersects with other social positions (Abrego 2014; Cebulko 2018; Gonzales and Burciaga 2018; Menjívar et al. 2016) to produce important social cleavages along legal statuses. Legal status, and the multiplication of temporary statuses, shapes access to goods and services, rights and duties. As such, it pushes certain immigrants to the margins of society and permits discrimination against them, because in contrast to other social markers such as gender, race, or age, it is not against the law to discriminate on the basis of legal status; in fact, the law demands such discriminatory treatment (Menjívar et al. 2016). Latinas/os bear the brunt of such practices in the United States today.

The Enforcement Side of the Immigration Bureaucracy

On the enforcement side of the immigration bureaucracy, the Immigration Reform and Control Act (IRCA) of 1986 contributed to amplifying the militarisation of the Mexico–US border, which started in earnest in the late 1970s with policies to clamp down on drug trafficking. The militarisation of the border has continued to expand over the decades, reaching the hyper-militarisation we see today, with drones, armed vehicles, and agents in military equipment, including uniform and military arms, and the overall institutional arrangement of US Customs and Border Protection (see Slack et al. 2016). The militarisation of the border has even engaged the National Guard, as President Obama and now President Trump have sent this military body to patrol the border, even though apprehensions at the US southern border have steadily decreased since 2008 and in 2017 the US Border Patrol reported the lowest number of apprehensions since 1971 (Border Patrol 2017).

Since their inception, these military tactics mirrored the doctrine of ‘low-intensity conflict’ that the United States implemented to subdue the opposition in Central American civil wars (and in other countries where it has intervened militarily), with the objective of controlling specific civilian populations but resulting in massive human rights violations (Dunn 1996). Such militaristic strategies at the border have contributed to controlling certain
immigrants (e.g., those crossing the US southern border) through physically and geographically displacing them across dangerous terrain as they attempt to enter the United States (Dowling and Inda 2013; Massey et al. 2002). Increased border policing pushed immigrants from traditional pathways to more dangerous topography, such as desserts and rivers (Cornelius 2001; Eschbach et al. 1999; Massey et al. 2002). Utilising a ‘security’ narrative, the United States has poured millions of dollars into the militarisation of the Mexico–US border, increasing the budgets of the Border Patrol at unprecedented rates and expanding surveillance technologies, which has resulted in increased violence that today immigrants and non-immigrant communities experience both at the border and in migration corridors beyond the US border (Menjívar and Abrego 2012). In 2020 the Border Patrol budget was $18.2 billion (DHS 2020), compared to $10,049 million in 2010 (DHS 2020). This militarisation trend has led to an increase in migrants’ deaths at the Mexico–US border (Cornelius 2001; Slack et al. 2016), among other harmful consequences.

Although immigration enforcement falls under federal authority, certain provisions in the IIRIRA 1996 have permitted other levels of government to engage in immigration enforcement. Indeed, with Section 286(g) of IIRIRA, the enforcement of immigration has engaged collaboration from local jurisdictions (Coleman 2012; Menjívar 2014) by providing local police agencies the tools to investigate immigrants’ citizenship status and assist in their detention. In addition, other programmes to enhance cooperation in immigration enforcement among various levels of government have been created, including the Secure Communities Program in 2008, which extends local policing agencies’ economic incentives to share with immigration enforcement the legal status of detained immigrants (Coleman 2012). Thus, the Secure Communities Program incentivised police officers to detain suspected undocumented immigrants, instead of focusing on combatting crime. Scholars and advocacy groups found such programmes, especially the 287(g), to promote racial profiling amongst Latinos/as (Fischer 2013). Thus, the Obama administration phased out the programme in 2012 and replaced it with the Priority Enforcement Program, which supposedly prioritised the detention and apprehension of immigrants who had committed severe crimes. However, most recently, the Trump administration has resurrected these programmes with the goal of enhancing their implementation in all states and regions of the country and has done away with prioritising, placing every undocumented immigrant in the country at risk of detention and deportation (Alvord et al. 2018). These initiatives have significantly enhanced immigration enforcement in the interior of the country (as well as at border, with calls for building
‘the wall’) and bringing back workplace raids, increasing detentions and deportations of mostly Latino immigrants (Menjívar et al. 2018; Provine and Doty 2011), thus displacing them from society and from increasingly scant economic opportunities.

In detention, immigrants are regularly transferred from one facility to another, often in the middle of the night, to another state, without informing relatives or even the detainee’s legal representatives. These transfers pose challenges for families to remain in touch with their detained relatives and undermine efforts at legal representation (Dow 2004) as detention facilities tend to be located in remote locations (Ryo and Peacock 2018). Such isolation is exacerbated because phone calls from those facilities are expensive (e.g., over one dollar a minute at the Kernes facility) (Shepherd 2018). Detention facilities thus contribute powerfully to physically displacing immigrants from their families, communities, and legal channels, while also amplifying feelings of isolation.

The detention and deportation of Latinas/os is further sustained through the privatisation of immigration detention, or what some scholars have called ‘the immigration-industrial complex,’ as it functions in parallel fashion to the ‘prison industrial complex’ (Ackerman and Furman 2013; Doty and Wheatley 2013; Douglas and Saenz 2013; Welch 2000). For instance, the private companies CoreCivic (formerly Corrections Corporation of America [CCA]) and The Geo Group Inc. (GEO) have multi-year, multimillion-dollar contracts with the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) to collaborate in various aspects of immigration enforcement, including detention, apprehension, and surveillance (Gómez Cervantes et al. 2018). Seventy-one per cent of detained immigrants were held in a privately owned or managed institution in 2017 (Tidwell Cullen 2018). The removal of these immigrants, mostly Latino men, from their families and communities has significant short- and long-term effects, as women are left financially (and socially) responsible for their families (Dreby 2015).

Deportations physically remove immigrants from the country, cementing their displacement from US society as bars to readmission (between 3 and 10 years, but up to 20 years in some cases) are activated with a deportation, bars which apply to immigrants who entered without inspection (likely surreptitiously through the border), but not to those who overstay their visas (and more likely to be non-Latino arriving from other parts of the world). Between 2003 and 2018, a total of 4,617,463 immigrants were deported from the United States, the overwhelming majority were from Mexico (65 per cent), Guatemala (11 per cent), Honduras (9 per cent), and El Salvador (6 per cent) (TRAC Immigration 2019). And given that an estimated 4.1 million
US citizen children under the age of eighteen live with at least one undocumented parent, mass deportation contributes to the physical, social, and economic displacement of certain immigrant families, separating them indefinitely (American Immigration Council 2017) and making it hard to survive financially (in the United States or in the countries that deportees are returned to). Between 2011 and 2013 an estimated half a million children were directly affected by the deportation of a parent (American Immigration Council 2017).

Latino/a, but also Muslim, immigrants have felt most directly the costs of the bureaucracy of enforcement (Menjívar and Kanstroom 2014; Rivera 2014) in various forms of displacement. Through mechanisms that permit formal discrimination in institutions, primarily against Latino immigrants, and the ‘war on terror’ that targets Muslim immigrants, both groups face systematic exclusion and social displacement, reproduced in different areas of life and sustained by immigration policies (Bosworth et al. 2018; Maghbouleh 2017; Rivera 2014). Immigration enforcement does not occur in a vacuum; institutionalised racism is at the core of policing and control strategies (Bosworth et al. 2018). For instance, 89 per cent of the detained population come from Mexico, Guatemala, El Salvador, and Honduras, and 79 per cent are men (Ryo and Peacock 2018); over 90 per cent of all deportees are men of Mexican or Central American origin, making Latinos and their communities the preeminent targets of the enforcement bureaucracy (TRAC Immigration 2019). And only days after the USA PATRIOT Act of 2001 was signed in the aftermath of the 9/11 attacks, hundreds of Muslims and Arab immigrants in the United States were held in detention for extensive periods of time without charges (see Akram and Johnson 2002; Sinnar 2003). The racialised mechanisms of exclusion are perhaps most noticeable in the 2017 Executive Orders (EOs), accompanied by various anti-immigrant initiatives (Alvord et al. 2018; Menjívar et al. 2018). The EOs have expanded the mechanisms that facilitate the mass detention and deportation of Latina/o immigrants, while attempting to negate Muslim immigrant entry to the United States and deny Mexican and Central American asylum seekers even the chance to present their cases to US authorities. These EOs have further facilitated the systematic targeting and marginalisation of Latinos (Alvord et al. 2018; Menjívar et al. 2018) and the construction of Muslims as a threat to the nation, which justifies their exclusion. It is Latinos/as, however, who are overwhelmingly detained and deported, experiencing internal displacement similar to what is experienced in African American communities, as approximately one-third of their male members are displaced from their communities through incarceration (Alexander 2012; Comfort 2007).
Immigration enforcement (e.g., apprehension, detention, and deportation) is perhaps the most violent form of displacement and exclusion that immigrants and their families experience. When immigrants who have lived for years in the United States—for example, about one-third of undocumented immigrants have lived in the United States for ten years or longer (see Passel and Cohn 2016)—are apprehended and detained, they are indefinitely separated from families and communities. Given the time these immigrants have spent in the United States, they likely live in ‘mixed-status’ families, that is, they have children and/or spouses who are US born or have more secure legal statuses. Thus, such separations have significant short- and long-term consequences for the displaced immigrant but also for their family members, including the US born. These effects are immediate, such as emotional distress, financial insecurity, family reconfiguration, depression, and anxiety (see Brabeck et al. 2015; Brabeck and Xu 2010), but also long term, as some of these effects endure and may even be irreversible. Thus, the exclusion that the enforcement side of the immigration bureaucracy makes possible contributes to displace immigrants geographically, physically, socially, and economically, immediately and in the future.

Judicial Displacement

Starting in 2014, media and political attention has focused on Central American ‘unaccompanied undocumented minors’ and families who, traveling from Honduras, El Salvador, and Guatemala, upon reaching the Mexico–US border turn themselves in to Border Patrol agents and ask for asylum. These migrants are fleeing gender-based and gang violence, as well as severe poverty and deep inequality resulting from neoliberal, US-guided policies, and exorbitant international debt (McMichael 2000; UNHCR 2015).

Since 2000, the Trafficking Victims Protection Act requires immigration enforcement to screen unaccompanied youth as ‘potential victims of human trafficking’ and promotes access to immigration lawyers for court proceedings1 (Menjívar and Perreira 2017). Additionally, per requirements to file for asylum, immigrants conduct a ‘credible fear’ interview where immigration officers assess whether immigrants’ claims to asylum are ‘credible.’ In 2016 alone, DHS officials conducted 46,961 ‘credible fear’ interviews with Central American asylum seekers, 36,324 of which were considered ‘credible’ (DHS 2016). While the majority of asylum-seeking youth and women migrate to the United States because they have relatives there to receive them, these asylum seekers are placed in immigration detention facilities run by the DHS.
and private corporations. The court backlog in fiscal year 2020 reached over 1 million (TRAC 2020), which translates into long waits in detention or alternative to detention programmes and living in uncertainty (see also Gómez Cervantes et al. 2018).

As of this writing, the law distinguishes between youth asylum seekers coming from countries that border the United States and those coming from countries that do not share a contiguous US border; the former are returned immediately, while the latter remain and are processed through the system. Thus, if DHS determines the youth to be ‘unaccompanied’ and come from a non-adjacent country, they are placed with Health and Human Services, Office of Refugee Resettlement (ORR); however, if the youth are Mexican, they can be removed immediately (Menjívar and Perreira 2017). The majority of the apprehended youth (mostly Central Americans) are then placed in shelters, while others go to ‘transition homes’ or foster care (Menjívar and Perreira 2017). Thus, immigrant youth are displaced throughout the country even though most of these ‘unaccompanied minors’ do not travel alone and have relatives in the United States. They are placed in detention facilities and separated from their traveling companions, oftentimes close family members or friends (Shepherd 2018; Thompson et al. 2019).

Central American immigrants fleeing violence face the consequences of displacement in acute fashion. In 2018, the Trump administration purposefully separated children, as young as three years old and in one case a four-months-old baby, from their parents in efforts to supposedly deter Central American immigrants from arriving in the United States to seek asylum (Burnett 2018). As a result of Trump administration’s policy changes starting in 2017 throughout 2018, DHS separated approximately 2654 children, most from Central America, from their parents as they entered the US–Mexico border and turned themselves in to Border Patrol requesting protection (ACLU 2019). Children were displaced to 121 different detention facilities or ‘care’ centres in 17 states across the United States with a median detention length of 154 days, while some children were in detention up to a year (ACLU 2019). While the majority of children have been reunited with their parents, many children continue to be held in detention facilities, violating laws against the indefinite detention of minors. Some parents were deported to their countries of origin while their children were detained, other parents were deemed ‘unfit’ to care for their children although they have no criminal record, and other parents remain in immigration custody, continuing the separations (ACLU 2019). Additionally, partners, siblings, and friends
are oftentimes separated during the asylum processing. The actual volume of family separation at the border, however, is unknown given the lack of information that DHS shares publicly and their lack of accurate data collection-practices (see ACLU 2019).

Displacement is also visible in the 2019 ‘Asylum Ban 2.0’ which bars any person from asylum eligibility if they have transited through another country without applying for asylum in transit countries (DHS 2019). In the rule co-sponsored by the Department of Homeland Security and Department of Justice, migrants who are seeking asylum at the Mexico–US border are sent to countries that have entered into agreements with the United States including Mexico, Guatemala, Honduras, and El Salvador to await their asylum hearings. However, these countries are the same unsafe places that migrants are fleeing in the first place. In 2020 over 57,000 asylum seekers, over 80 per cent who have been victims of violence, awaited their asylum court hearings in make-shift camps in Mexican cities that have long histories of cartel violence along the US southern border (Agren 2020). Thus, immigration policies displace people seeking refuge from violence, sending them to dangerous and life-threatening spaces.

**Discussion/Conclusion**

The three components of the immigration bureaucracy outlined in this chapter create various forms of exclusion and social, economic, physical, and geographical displacement of immigrants in the interior of the country and beyond its borders. (1) The legislative side includes laws and policies that create (reduce and eliminate) categories of admission that regulate immigration flows and restrict rights and protections to some immigrant groups while denying these to others. (2) The enforcement side criminalises Latinos/as and Muslims while promoting their surveillance and incarceration and physically displaces these immigrants to detention facilities, as well as geographically, to their origin countries through deportation. And (3) the judicial component separates immigrants from their families and communities through the asylum-seeking processes as well as through forceful removal and deportation proceedings. Such forms of bureaucratic displacement affect the individuals who apply for visas, or who are detained or deported, but also their families, in the immediate future but also long term. And although we focus on the US case, our examination is relevant to other immigrant-receiving countries today as they closely follow the US model in managing immigrant populations.
Note

1. Since 2014, several attempts have been introduced in the legislation to speed up the processing of unaccompanied youth and deny their claims to asylum, thus, also speeding their deportation. See S.2666 in 2014, or H.R.495 in 2017 (Protection of Children Act 2017; Protect Children and Families Through the Rule of Law Act 2014).

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