

“What Were You Thinking?”: Race, Gender, Victimhood, and Criminality in US Immigration Court

Arianna MONTERO-COLBERT, Yasemin TEKGURLER, Natalie Delia DECKARD

Abstract. Existing theory posits US immigration policy to be deeply gendered and racialized in its implementation. Existing within an environment in which the identities of victim and criminal are used to construct potential migrants as worthy additions, or dangerous threats, to the state, immigration judges have the latitude to help or hinder applicants appearing before them in their courts. Asking how immigrant physicality coincides with treatment by the judicial representative, we employ participant observation of court cases in a Southeastern US city. We find that, as the extant research would predict, immigrants’ treatment is fundamentally connected to their gendered and racialized performance of the identity of the “Ideal Migrant.”

Keywords: *race, gender, victimhood, Criminality, US Immigration Court*

Introduction

At the base of the Statue of Liberty, the inscription reads, “Give me your tired, your poor, / your huddled masses yearning to breathe free” (Lazarus, 1883, p. 1). Though many have argued that the choice of poem for this American landmark seems to have aged poorly in the light of the violent refrain to “build the wall” voiced by President Trump and 36% of taxpayers (Newport 2017), in some ways it also seems fitting. Those who reify the national monuments may see an inscription that echoes the ideals of freedom and justice that the United States seeks to protect. Any discordance between migrant treatment and this professed ideology may be found in the identity of the “tired” and “poor.” Who, we may ask, is allowed to be a member of the “huddled masses”? And how do we construct those who should not be included – the modern barbarians at the soon-to-exist gate?

Historically, the call for full citizenship and the rights that citizenship afforded had to be available to selected immigrants, or the settler colonial project of the United States would have never been rhetorically possible. In particular, the entire formation of



the United States depended upon a system that claimed access to new lands and the powers of citizenship afforded to non-native white malehood (Glenn 2015). That is, whiteness was constructed as a tool of native disempowerment and displacement. Without claiming these immigrants as broadly deserving of social inclusion and access to a schema of private property, arguably, the United States would not have had the symbolic power to build a nation.

In keeping with this historicity, there is certainly a sense of inevitability in the contemporary crackdown on border regulation and deportations in the United States, given the numeric predominance of indigenous Americans in the criminalized immigration system (Golash-Boza 2015a, 2015b). The fact that flows of goods and capital are relatively open to the detriment of citizens of nations in the Global South, while the borders are largely closed to labor migration from these same countries implies that the needs of racialized groups are being subordinated to market prerogatives (Deckard 2017, Golash-Boza 2015a). Detention and deportation are tools selectively weaponized against the noncompliant and surplus (Golash-Boza 2015a). As a result of this national agenda, hundreds of thousands of immigrants arrive at immigration courts each morning to plead their case in front of an often unsympathetic judge.

In contrast to the Statue of Liberty, which stands tall in the economic center of the metropole, immigration courts are often hidden in plain sight. In one mid-sized city in the Southeastern United States, immigration court occupies a building with tinted windows, fluorescent lighting, and off-white paneling. The building is in a deep state of disrepair. The deteriorated state of the public building stands in stark contrast with the amount of wealth that enters and exits the building on a daily basis, with the luxury cars that sit in the parking lot, and with the expensive commercial and residential real estate that occupies nearby lots. One thinks, upon approach, that perhaps this is a fitting, if *Kafkaesque*, setting for families hoping, families crying, and families being destroyed.

In this paper, we employ participant observation of the immigration court in this Southeastern city to contribute to larger sociological discussions about migration, indigeneity and the construction of the criminal and the victim. Acknowledging the ways in which racialized phenotype and gender have played historic roles in the United States settler colonial project, we interrogate the ways in which the criminal other is created in the apolitical judicial space. We also build upon the victim as the embodiment of the “tired” and “poor,” and thus particularly welcome as an immigrant into the capitalist vision of the nation-state.

The Immigrant and the Criminal

Identity Construction

Belonging in the liberal democracy is metered by citizenship – famously defined as “the right to have rights” in the nation-state (Somers 2008, Arendt 1951, Deckard and Heslin 2016). But the acquisition and retention of that citizenship is metered by subtler questions of gender and ethnic identity (Kerber 1998, Arendt 1951, Spinner 1995), which map onto existing social expectations for the embodiments of worthiness and deserved inclusion (Ramos-Zayas 2004, Cacho 2012). One can, therefore, understand the legal fight for citizenship as inextricably intertwined with the social fight for inclusion in the national community.

While there may be a sound theoretical framework for sociological studies of racial identity (T. Golash-Boza 2016), the existing literature struggles to precisely define ethnic identity (Deckard and Heslin 2016; Fearon and Laitin 2000). This lack of precision correctly reflects the fluidity of the concept (Nagel 1994, Harris, Carlson and Poata-Smith 2013, Jiménez 2010). Simply, the constituents of particular ethnic identities and their salience to the construction of identity change over time. At various points, language, cuisine, phenotypical characteristics, shared history and the ever-nebulous cultural values have been deemed either central or irrelevant to the establishment of ethnic difference (Verkuyten 2018). Similarly, while gender identity was once considered to be inescapably bound to biological physicality and performance (Butler, *Undoing Gender* 2004, Canaday 2009), the variety of physicalities and performances associated with vastly different gender regimes have made these arguments largely moot.

Reliably, however, identity distinctions exist when openings in the power hierarchy render such differences exploitable (Eifert, Miguel and Posner 2010, Lee 2008, Dunaway 2003). In the case of the settler colonial United States, the historically bi-racial political order in which racialized whites dominated over racialized non-whites (J. Feagin 2000) required both that an ethnic category of White be invented and that it then came to seem natural and obvious (Jacobson 1999, C. I. Harris 1992). Historically, this disjuncture can be seen clearly in immigration legislation and eligibility rules around naturalization – especially at the “margins” of whiteness (Vargas 2014, Treitler 2015). Gaultieri (2009), for example, interrogates the immigration of Syrians into the US, and the community’s struggle to be counted within the boundaries of whiteness in order to gain citizenship eligibility. Citing the ruling decision, Gaultieri argues that:

[r]ather than base his argument in the realities of the Arab immigrant experience, [the ruling judge] preferred to rely on suppositions, and the old imperialist conviction that closeness to Europe meant closeness to "civilization" and membership in the "white race" (2009:49).

For Syrians, with inclusion in Whiteness came inclusion in a common group of "civilized" citizens. Placement within the boundaries of the constructed ethnic identity brought with it some protection from extrajudicial violence, even in the Jim Crow South (Gueltieri 2004). In this case, inclusion also meant exclusion from the unidimensional figure of the *criminalblackman* specifically (Young 2006), and the *other* broadly, able to be killed at any moment with no negative legal or social ramifications (Oliver 2001, Agamben 1998). The prism of criminality used here is instructive: White means non-criminal and legal American, non-White renders criminal, illegal, and killable.

The Criminalized Boundaries of Ethnicity and Gender in Immigration

With the boundaries of Whiteness constructed in the language of ethnicity and culture rather than biology (Bonilla-Silva 2001), carefully policed with the employment of a narrative of criminality (Webster 2008, T. M. Golash-Boza 2015a), and existentially important both to those included and those denied (Agamben 1998), it is perhaps little wonder that those most in danger of being deemed non-White are so likely to espouse a politic akin to White supremacy (Vargas 2014, Twine and Gallagher 2008). The extant literature simultaneously notes that non-White people who exist at the boundaries of Blackness and indigeneity appear to be constructing themselves as – and allowing themselves to be constructed as – "honorary whites", effectively reasserting the positions of Black people (Bonilla-Silva 2002, Kim 2015) and the indigenous (Kim 2015) at the bottom of the racial hierarchy.

Racial hierarchies are not unique to the United States, and race predicts wealth position and class mobility globally (Gott 2007). Immigration policy regimes that allow for legal migration of particularly educated, skilled, or wealthy nationals particularly will be racialized in their outcomes, with phenotypically White migrants being disproportionately documented in the host country and thus literally less likely to be criminalized as "illegal" (Thobani 2000, Mlambo 2000). Thus, though criminality becomes metered through nominally colorblind language around human capital and migrant desirability, more racialized migrants are rendered, systematically, more criminal (T. M. Golash-Boza 2015a). It is important to note that this criminality is embodied, rather than enacted – non-White migrants are not more likely to act in

any particular way, they are simply more likely to exist in a body that is essentially criminal.

The affectation of criminality is clearer with the appearance of a victim (Elias 1993, Bumiller 1992). The extant literature suggests that gender identity may function to construct a binary between racialized men as criminals and racialized women as victims (Hartry 2012, Golash-Boza and Hondagneu-Sotelo 2013, Cooke 2002, Mishra 2007). In neoliberal regimes of state penalty, the construction of the woman as weak and in need of protection enables the empowerment of an entire government apparatus charged with the revenging of the victim in the aftermath of abuse, using the mechanisms of carcerality (Bumiller 1992, 2009, Bernstein 2010). In the context of late capitalism's biopolitical tool – immigration control – this would suggest the concurrent expulsion of men and the admission of women with the same approximate narrative of threatening criminality. Indeed, all statistics point to a gendered program of removal in the United States (Golash-Boza and Hondagneu-Sotelo 2013), as well as a broadly espoused narrative of anti-trafficking to incorporate women into the body politic (Bernstein 2010, Andrijasevic 2007).

Citizenship Law as Criminal Law

While immigration laws and the strictness of their application have always shifted to reflect the desirability of the bodies migrating (Baines 2004), it is only the most recent chapter of US migration policy that has been managed under the umbrella of criminality rather than labor (Ewing 2012). In response to 9/11, the Bush administration created the twin-headed Department of Homeland Security (DHS) and Immigration Customs and Enforcement (ICE) agency to handle all pursuant migration cases (Bush, 2002). This administrative move cemented the growing connection between immigrants, crime, and terrorism in the public imagination (Stumpf 2006). The recent expansion of 287(g) and other programs that work to increase detection through the engagement of local police forces have effectively completed the criminalization of irregular status by making all encounters with the state potential opportunities for deportation (Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act 2009).

For those undocumented immigrants in the United States who are apprehended by police or border control, there are few pathways to legal citizenship available. One potential route remains the political asylum process, guaranteed in principle by international law (Hamlin 2015). The legal procedures surrounding

asylum evolve to reflect the social and political values of the ruling US capitalist class – with asylum from enemy regimes and socialist countries granted far more often than comparable applications from nationals in nations with US-backed governments (Steinbock 2002, Hamlin 2015). Notably, the current process for asylum must be started when one is physically residing in the United States, and before three years have passed since the time of migration (Bloemraad 2006, Hamlin 2015). Due to language barriers and fear of apprehension, many immigrants unintentionally miss the deadline for legal routes to citizenship (Bloemraad 2006).

Loss of the opportunity to access legal citizenship has broad-reaching consequences (Agamben 1998, Lopez 2008, Hartry 2012, T. M. Golash-Boza 2015a). Without the legal papers necessary to obtain an official state form of identification, migrants lack access to even the most basic affordances like transportation, healthcare, and education (Lopez 2008). Even for those who have illicitly obtained documentation for the purposes of securing employment or school registration, fear of the interconnected record-keeping institutions of the state often inhibits interactions with state institutions (Brayne 2014, Menjívar and Lakhani 2016). Finally, though undocumented immigrants organize collective action campaigns with the goal of living “in the light” and without fear (Gonzales 2008), existing as an undocumented person in a space of carceral governmentality requires a level of system avoidance that affects a reality akin to constant terror.

This de facto terror may only be mitigated through the largesse of the same nation-state that caused it (Beck and Willms 2014). With judicial recognition of a right to asylum, the nation-state may grant temporary residency or permanent inclusion as a citizen with “the right to have rights” (Arendt 1951, Hayes 2018). With a favorable court decision, a person becomes worthy, whole, and American. With an unfavorable one, criminal status is made official and the role of criminal alien is designated with all of the force of law.

Case Law Interpretation and Courtroom as Performance of Legality

The strategic power of knowledge, it may be argued, is the power to transform the uncertainties of history into readable spaces (Certeau 1986). Knowledge is thus conceived as the legitimate and the legible records and analyses of historical events - and certainly involves power in terms of who writes the records (Hetherington 2011, Schram and Pavlovskaya 2017). In the context of the criminal justice system, the white American proverb, “it’s the law,” often touted in response to situations of conflicts between morality and legality, reflects the omnipresent

obsession with the image-objective moral law (Schofield 2018). In this paper, we point to the ways in which the execution of color-blind law that is racialized and gender. Tautologically, if the law were an objective and obvious certainty, there would be no place for the courtroom: the very existence of judges and justices, attorneys and defendants represents that the courts act as a necessary intermediary in the legal interpretation process (Hernandez and Navarro 2018). The law must be applied to cases, and this application often holds great variability (Rugh and Hall 2016).

Further, political persuasions shape legal interpretation. Dworkin (1982) argues that politics do not just affect courtroom etiquette, but also affect judge's perceptions of prior authorial intentions. In case law, this translates to the ability to interpret loosely what it means to continue precedent through citing earlier justices' decisions that favor their interpretation. In this way, judges attempt to hide the role of their political convictions in the language of the law (Asad, *Deportation Decisions: Judicial Decision-Making in an American Immigration Court* 2019). However, there are no politically neutral decisions. To interpret the law is to misattribute clarity over ambiguous definitions of political equality and the role of the courts in administering justice (Dworkin 1982).

According to Stanley Fish (2010), the history of Western thought can be summarized in the debate between the positivists and those who believe that the world is socially constructed and enacted through performance. In the latter vision, perceptions, beliefs, and interactions form the basis of our social institutions. To navigate these social structures requires performance. Thinking of all social interaction as a social stage means that individuals will create a front stage performance of the most idealized representations of ourselves and a back stage where we enact the most genuine aspects of our character external of social pressure, stigma, or judgment (Goffman 1956).

Anthropological performance theorists often conclude that performance represents "making, not faking" (Turner 1979). Under Turner's framework for cultural performance, to act is not to represent fictional or exaggerated accounts, but rather to create our most authentic selves in the process of social delivery. Alternatively, because ruling authorities create the norms of speech, communication, society, and legitimate participation, other performance theorists argue that performance is inherently tied to power. Specifically drawing on the postcolonial African context, Fabian (2007) theorizes one umbrella of performance

as the “shuffle and dance” oppressed peoples use as an adaptive survival technique in the reign of the powerful. In this vein, we can understand the powerful as those who write the scripts required of their subordinates.

When applied to the United States, scripts are institutionalized in the form of public policy and legislative initiatives. This is especially true with regards to penal institutions. Discipline and Punish (1975) is famously cited as highlighting the performative aspect of punishment as spectacle as well as the rationalization of the penal regime (Foucault 1975). Scholars in the Foucauldian tradition have since noted the institutionalization of the rationalized criminal court proceeding, and the performance of innocence and guilt that are demanded in this particular context (De Giorgi 2017, Leader 2018, Scheffer, Hannken-Illjes and Kozin 2010).

Immigration court becomes a theater where the judge uses the language of objective law and the realities of flexible interpretation to carry out national and personal agendas. As the judge is the sole adjudicator in the immigration courtroom, she embodies the sole audience and her interpretation determines credibility authoritatively; there is no need for further clarification or approval beyond her individual assessments (McKinnon 2009). As audience members, judges performatively substantiate their claim to expertise through practices of documentation, list-making, deflating people into numerical case numbers and legal codes, performing distance, referencing rationality, and most saliently, dismissing the possibility of subjectivity in these performances (Smith and Blumberg 1967). Yet, insofar as immigration outcomes are racialized and gendered while immigration law is ostensibly applicable irrespective of ascriptive identity, it is in the application of that law at the point of the judiciary that performance must be disparately received.

The “Ideal Migrant”

Whereas some criminal justice proceedings are adversarial and presented for a jury’s deliberation, immigration court is audienced by a single judge. Because an audience will deem credible those performances which match their expectations of what tone and content a performed script ought to possess, immigration judges may evaluate cases based on which defendants’ performances the judge deems favorable. More times than not, the Western script for immigration court defendant performances is informed by the colonial imagination of the ideal immigrant as the grateful, undeserving other (Shuman and Bohmer, 2004). In defining the ideal immigrant archetype, Marciniak (2006) introduces the concept of immigrants as *pharmakon* – a Derridean concept indicating both remedy and poison. In this theory,

in order to reconcile these seemingly contradictory parameters, immigrants successfully depart the liminal state when they submit to a process of ontological conditioning of their bodies into the most productive and least threatening form in the eyes of the state.

This adherence to embodied performances, perhaps unsurprisingly, come to strengthen the underlying logic of immigration legislation. While laws have sought to tighten up what types of behavior constitute migrant criminality and the ways in which this criminality becomes inexorably linked to personhood status (T. M. Golash-Boza 2015b, Douglas and Sáenz 2013, Medina 1997), similar laws have been passed around victimization (McCormick 2011).

Research Question

How do race and gender affect the ways in which discourses of victimhood and criminality are constructed in immigration court? In pursuit of this question, we conducted ethnographic participant observation in the immigration court proceedings of a major city in the US South in 2018. We focused our attention particularly on immigration judges, those assigned the task of adjudicating and audiencing worthiness to the United States regime of citizenship, asking how these judges respond to the embodiment of the applicants appearing in their courts.

Methods & Data

This study is based upon ethnographic participant observation of over 50 hours across ten separate observational periods at an immigration court in a major city in the Southeastern United States. For each day of observation, we entered the courtroom at the beginning of the court's morning session, 8:30am, and observed the process until the end of the morning session. Each morning, the process started with the judge, government counsel, and English-to-Spanish translator introducing themselves to defendants. There were no other translators available in the courtroom, though when requested, translators for other languages were provided via certified phone translation.

The court audienced several types of cases, though most frequently those who were heard by the judge were revolving around claims to Special Immigrant Juvenile Status or political asylum. Before listening to the court caseload for the day, the judge called all "first timers" to be addressed as a group. "First timers" are people whose first time it is entering immigration court and have been summoned by the state to represent themselves on this given day. Because the path to legal citizenship

is only available through years of court appearances and legal paperwork, the judge uses the first-time speech to communicate information that will be broadly useful to all people summoned, to mark their attendance as a sign of respect and discipline to the court, and to assign new court dates in which they should return with further documentation, ideally with a privately-retained lawyer.

With the extant literature as a starting point, we observed in detail the ways in which ideas of justice are reflected within an immigration court. We noted themes of immigrant dehumanization that occurred in the course of normal courtroom operation, especially in the course of creating a two-dimensional criminal/victim dichotomy. We supplemented ethnographic data collection with semi-structured interviews with agents of the space, including police officers, lawyers, immigrants, interpreters and more. These interviews added remarkably little to the evidence drawn from observing people's actions as they occurred.

Because we employed participant observation instead of interview, survey, or secondary data analysis, we did not give defendants the opportunity to self-report details regarding their identity beyond what was presented in the courtroom setting. As such, this study reports solely presentations of gender and racial identity for its analysis. In total, this paper represents a total of $n = 17$ defendants and the differential narratives that the judge employs when hearing their particular cases.

Causal Variables

Race. While courtroom proceedings did reveal the country of origin of each of the defendants, race must be understood as distinct from, and intertwined with, both nationality and ethnicity (Handlin 1957, Arendt 1951, Spinner 1995). Because race is socially constructed, and imbued with meaning in social contexts, the classifications for racial groupings are contentious. For centuries, scholars appeared in relative consensus that the United States operated in a bifurcated society between whites and nonwhites. The frame of reference for nonwhiteness has always been anchored in blackness because of the belief in the "wages of whiteness" and the inherent historical contradiction in recognizing the material resources and social acceptance that was deprived of blacks as equal human beings (J. R. Feagin 2000).

Of course, the idea that there was a black-white racial binary in the United States did not speak to the fact that there were only African Americans and Anglo Americans in the country, but rather that the state, public policy and the culture of our society as a whole only recognized and spoke to the two distinct racial experiences: White and non-White. Nonetheless, skin color persists as one of the

strongest predictors of the social perception of race and accordingly, of discriminatory treatment. The brown paper bag test is frequently referenced as a particularly discriminatory social practice in which inclusion or exclusion was decided by the lightness or darkness of one's skin hue as compared to a paper bag (Kerr, *The Paper Bag Principle: Of the Myth and the Motion of Colorism* 2005). Colorist practices such as the brown paper bag test are rooted in racist beliefs that the blurring of the racial boundaries that signal blackness inherently signal positive social progress. While the brown paper bag test is objectionable both for its obvious colorist philosophy of application, as well as for its centering of blackness on a lightened color continuum, we acknowledge that it still holds power as a symbol of the institutional and social division of prominent national discourses of race (Kerr 2005, 2006).

For the purposes of this study, we divided people into the six skin tones present in the Fitzpatrick skin tone scale (Fitzpatrick 1988) with 1-3 on the scale representing "light skin" and 4-6 representing "dark skin," and defendants categorized accordingly. While doing so, we acknowledge that there was no reason to believe defendants had African ancestry – the presumption upon which the Fitzpatrick scale is based. Rather, given information about nation of origin, defendants were likely descended from the indigenous people of the Americas and racialized as *Indios* in their native countries. The race coding in this study, then, become a measure of racialized indigeneity versus White presentation. Existing literature suggests that a migrant's relationship to indigeneity in Mexico and Central America is an important predictor of documentation status in the United States (Asad and Hwang 2019).

Gender. Similarly, gender was understood as the use of pronouns and the degree to which the defendant's presentation conformed to generalized standards of feminine and masculine performativity in dress, grooming and affect (Butler 1988, 2004). While these are imperfect measures, there was little to no visible deviation among the sampled participants in their gender performativity, which was uniform enough to perhaps represent an additional form of requisite compliance to court expectations for what this study refers to as the "ideal migrant."

Dependent Variables

Victimhood

Patricia Connell (1997) suggests that the status of victimhood is accorded to those representing proximity to the expected social norms and physical presentation of white womanhood. Certainly, the question of who can be victimized is gendered and



racialized – with women and White people seen as victims even when they demonstrably aggress (Baumer, Messner and Felson 2000, Steffensmeier, Ulmer and Kramer 1999). Unlike the helplessness and constrained agency paradigm under which victimhood is assigned to acceptance to white womanhood, another avenue for attributed victimhood is the assignation of desirability and thus the implicit willingness to help recruit those who meet our expectations of mothering and domestic labor (Glenn, Chang and Forcey 2016).

Asylum application. The most apparent indicator of provisional victim status is the beginning of an unprompted dialogue about the potentiality of abuse. Typically, in the immigration courtroom, this is represented through asking questions which would lead one to be eligible for an asylum application without the defendant actually presenting any information which would make the application relevant or necessary.

Protective paternalism. Paternalistic discourse such as, when a defendant talks about a male family member, asking “Did he hurt you?” reinvents the judge as a guardian figure. When the judge positions themselves as a guardian, this inherently positions the defendant as a victim because it removes the opportunity for the defendant in question to have been at fault and instead places them as the subject of some potential harm.

Actionable advice. According to standard legal procedure the judge represents a neutral adjudicator rather than an active and helpful participant in the outcome of the defendants. Any attempts to make actionable and specific suggestions for best courses of action is therefore one form of reimagining the characters in the courtroom. When the judge selectively reimagines their role to be partial to the interest of the defendant, this involves using phrases that offer unofficial, unsolicited legal counsel. This happens independent of whether the defendant has an attorney representing them or not.

Criminality

The state selectively targets undocumented migrants for removal to instill fear in others and to manage noncompliant workers. Because criminality is an inherent status as a result of the body and the experience of migration, criminal discourse can be deployed selectively and discriminatorily to villainize migrants at hand. Similarly, the illegal body makes it impossible to file complaints about wage theft or other forms of workplace abuse. For the purposes of this paper, narratives of criminality

are those which place the defendant as particularly morally blameworthy. In light of the fact that all immigration court proceedings begin with a restatement of the details of their criminal border crossing or overstaying of their legal documentation, these instances were removed from the record in favor of more subtle and individual narrations of criminality.

Suggestion of fraud. The main role for the defendant is to enact a credible performance for the audience of the immigration judge. Under this consideration, the preeminent narrative of criminality that enters the parameter of the courtroom is implications that the defendant is actively engaging in fraudulent reporting. This can come in the form of doubting the credibility of the story the defendant is supplying, questioning the defendant's tone, or exacting and repetitive investigations of the account presented.

Fatalism and unworthiness. While the judges frequently engaged in formal pleasantries and platitudes towards all defendants in the success of their cases, in particular circumstances, judges were not sympathetic towards the plight of the defendants. Instead, the judges deployed discourse about the objectivity of the law and the fact that the defendant would be undeserving of the resources the court provided, or otherwise wasting time.

Assignation of blame. Criminality is evaluated through moral blameworthiness. When the judge uses words that imply wrongdoing, the judge insinuates that the defendant is guilty and should be held culpable. Oftentimes, the incidents of blame do not in fact correspond with the severity of the offenses represented, but rather, occur independently.

Analysis and Findings

Here we present tabulations and qualitative findings of defendants and their ascriptive characteristics. In our observations, thirteen of the seventeen sampled defendants coded positively for selective deployment of victimhood or criminality discourse. Notably, just one defendant coded positively for both measures of victimhood and criminality. Table 1, below, presents the relationship between courtroom discourse deployed by immigration court judges and the gender of defendants.



Table 1: Courtroom discourse by gender

	Victimhood	Criminality	Total
Woman	5 (71%)	2 (29%)	7
Man	2 (29%)	5 (71%)	7
	7 (50%)	7 (50%)	14

From the data in Table 1, we can observe a strong correlation between the narratives applied to performances of men and women in the courtroom. As predicted, women coded especially positively for measures of victimhood. This rate is paralleled in the measures of criminality assigned to men. Relatedly, Table 2 presents correlations between courtroom discourse deployed by immigration judges as opposed to the skin color of defendants.

Table 2: Courtroom discourse by color

	Victimhood	Criminality	Total
Light skin	6 (86%)	1 (14%)	7
Dark skin	1 (14%)	6 (86%)	7
	7 (50%)	7 (50%)	14

In this measure, we can observe that people with light skin represented 86% of the people that were spoken to in the language of victimhood. This correlation is even stronger than that of gender.

Considering other factors correlated with wealth, such as the presence of legal counsel, the professionalism of defendant's dress did not ultimately prove useful in further exploring this question. This study also incorporated the deployment of other forms of worthiness evaluations. These evaluations included the extent in which family and maternal/paternal status were brought into the conversation, and whether they were represented in positive or negative lights. Similarly, for younger defendants, discourse about present and potential future academic status, progress, and success were measured and shown to have no mitigating influence on the deployment of discourses of criminality and victimhood when measures of race and gender were controlled against.

The majority of the defendants were treated in the manner the extant literature would predict, and according to their racial and gender presentation. For example, Rodrigo, who had no prior criminal record, and answered calmly in

response to any questions the judge asked of him was met with contentious accusations. At times, the judge accused him of being fraudulent in the courtroom, despite the availability of evidence to support his story and the ease with which external audience members could follow his story. Undoubtedly, Rodrigo's status as a dark-skinned man made his classification as a criminal body easier, and thus facilitated the dialogue that followed.

José, another dark-skinned man in the Charlotte immigration courtroom, faced a similar fate. At several points, the judge begrudgingly continued reviewing José's case. At points, mentioning that he was wasting her time by even presenting his evidence, and in several other occasions, leaving no room for excuses or explanation other than his obvious wrongdoing. The question "what were you thinking?" was pointedly lodged against José when he tried to explain what led him to cross the border.

In the realm of victimhood, the defendants were also received predictably. Amanda's application was treated with extra care, and her options were carefully reviewed before the rest of the patient court. At no point were accusations of her unworthiness to the judge's time posed. Similarly, Brenda and Ana were offered asylum applications and given advice about how to proceed for the best possible reception in the next stage of the process. Mariana was given contact information for a lawyer who may be able to help her frame a case around a situation of possible neglect.

Mariana, Brenda, Ana, and Amanda all shared two things in common: they were light-skinned women. It appears as though, not only were dark-skinned women not able to access a framework of victimhood to the same extent as light-skinned women, at times, criminal discourse was even afforded to them. When Jasmine plead her case for asylum in front of the judge, the judge did not have the question of Jasmine's protection in her mind. Rather, the judge continually utilized references to the different cultural standards in the United States, and Jasmine's failure to meet those standards in her performance and in her application.

Finally, Milton was the only defendant who coded as being targeted with both criminal and victim discourse. As a dark-skinned man, though the conversation began with allegations and investigations of his possible past wrongdoing, through his hour in the courtroom, he eventually was able to perform his way into a framework of viability. In his performance, he was able to effectively parse his role and previous character assignation, despite the claims lodged against him. Future

research might be interested in Rodrigo's case of navigating the courtrooms from the perspective of an undesirable body, and which performances allowed for the shift from criminal discourse to victim status.

Discussion & Conclusion

Existing research in identity and migration posits that the acquisition and retention of citizenship is metered by subtler questions of gender and ethnic identity (Kerber 1998, Arendt 1951, Spinner 1995), which map onto existing social expectations for the embodiments of worthiness and deserved inclusion (Ramos-Zayas 2004, Cacho 2012). The findings of this research confirm these theories. In the immigration court used as a case study, the presentation and performance of gender and racialized ethnicity predicted treatment by the judicial representative – working to ultimately make migration possible, or deportation all but inevitable.

The extant literature suggests that gender identity may function to construct a binary between racialized men as criminals and racialized women as victims (Hartry 2012, Golash-Boza and Hondagneu-Sotelo 2013, Cooke 2002, Mishra 2007). Identity distinctions exist when openings in the power hierarchy render such differences exploitable (Eifert, Miguel and Posner 2010, Lee 2008, Dunaway 2003). Indeed, we have argued that feminized identities are understood to signal powerlessness and victim status, an argument ultimately confirmed by the data we present. Similarly, we have argued that phenotypical distance from Whiteness signals a threat to existing power structures, narrated as criminality. Again, our findings suggest this to be the case. Acknowledging that immigration policy regimes that allow for legal migration of particularly educated, skilled, or wealthy nationals particularly will be racialized in their outcomes (Thobani 2000, Mlambo 2000), with White migrant less likely to be “illegal,” we continued to see more racialized migrants rendered, systematically, more criminal (T. M. Golash-Boza 2015a).

We noted that immigration court becomes a theater where the judge uses the language of objective law and the realities of flexible interpretation to carry out national and personal agendas. Insofar as immigration outcomes are racialized and gendered while immigration law is ostensibly applicable irrespective of ascriptive identity, it is in the application of that law at the point of the judiciary that performance must be disparately received. This research found that the performance of the “Ideal Migrant” is received disparately at the point of the

judiciary – and these disparities are indeed anchored in gendered and ethnic identities.

The ramifications of this empirical confirmation of existing theories for liberal democracies are disheartening. The idea that a breakdown in seemingly egalitarian systems of law is at the very point at which these laws are interpreted is a stunning indictment of the construct of equal citizenship as central to the nation-state.

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