

# FOSTERING LEGAL CYNICISM THROUGH IMMIGRATION DETENTION

EMILY RYO\*

*Every year, tens of thousands of noncitizens in removal proceedings are held and processed through an expanding web of immigration detention facilities across the United States. The use of immigration detention is expected to dramatically increase under the Trump administration's mass deportation policy. I argue that this civil confinement system may serve a critical socio-legal function that has escaped the attention of policymakers, scholars, and the public alike. Using extensive original data on long-term immigrant detainees, I explore how immigration detention might function as a site of legal socialization that helps to promote or reinforce widespread legal cynicism among immigrant detainees. This legal cynicism is characterized by the belief that the legal system is punitive despite its purported administrative function, legal rules are inscrutable by design, and legal outcomes are arbitrary.*

*These findings advance the study of democracy, legitimacy, and the rule of law in a number of ways. First, this Article offers a new way of*

---

\* Associate Professor of Law and Sociology, USC Gould School of Law. I am grateful to Kerry Abrams, Leisy Abrego, Scott Altman, Ingrid Eagly, Ben Graham, Lucas Guttentag, Gillian Hadfield, Dan Ho, Cecilia Menjivar, Daria Roithmayr, Michael Shapiro, Shirin Sinnar, and Leti Volpp, for their insightful comments and suggestions on earlier versions of this Article. I also thank David Grusky, Tomás Jiménez, and Bruce Western for their generous support. This research was supported by grants from the American Sociological Association/National Science Foundation Fund for the Advancement of the Discipline, the Russell Sage Foundation (Award No. 93-16-06), the Stanford Center on Poverty and Inequality, the Stanford Center for Comparative Studies in Race and Ethnicity, the USC Population Research Center, and the USC Gould School of Law. I thank the participants of the Stanford Law School Faculty Workshop, the University of Virginia Law School Faculty Workshop, the Southern California Law and Social Science Workshop, the Mobility and Confinement Conference at Columbia University, and the International Society of Public Law Conference in Berlin, for providing helpful feedback. Direct all correspondence to Emily Ryo, USC Gould School of Law, 699 Exposition Boulevard, Los Angeles, CA 90089; or to [eryo@law.usc.edu](mailto:eryo@law.usc.edu).

*conceptualizing the relationship between the state and individuals subject to immigration enforcement. This reconceptualization recognizes noncitizens not as passive objects of state control, but as moral agents who are capable of normative judgments about the law and legal authorities. Second, this Article provides a fuller and more nuanced perspective on immigration detention's societal impacts, which are likely to be far more wide-reaching and long-lasting than commonly assumed. For example, immigrant detainees, as individuals embedded in domestic and transnational networks, have the potential to widely disseminate deference and trust, or alternatively cynicism and delegitimizing beliefs, about the U.S. legal system and authorities. Together, these contributions underscore the urgency and importance of understanding the socialization function of law and legal systems for noncitizens in an era of increasing cross-border movement and migration control.*

#### TABLE OF CONTENTS

INTRODUCTION .....	1001
I. BACKGROUND .....	1005
A. RISE OF MASS IMMIGRATION DETENTION.....	1005
B. LEGAL PROCESS OF REMOVAL AND DETENTION.....	1008
C. <i>RODRIGUEZ V. ROBBINS</i> .....	1011
II. THEORETICAL FRAMEWORK .....	1012
A. LEGAL SOCIALIZATION .....	1012
B. LEGAL CYNICISM .....	1014
C. LEGAL ATTITUDES OF NONCITIZENS IN DETENTION .....	1016
III. THE CURRENT STUDY .....	1018
A. DATA OVERVIEW .....	1018
1. Baseline Surveys.....	1018
2. Post-Release Interviews.....	1019
B. SAMPLE CHARACTERISTICS .....	1020
IV. ANALYSIS RESULTS .....	1023
A. LEGAL SYSTEM AS PUNITIVE.....	1024
1. Structural Factor: Conditions of Confinement .....	1027
2. Interactional Factor: Treatment by the Guards.....	1031
B. LEGAL RULES AS INSCRUTABLE .....	1034
1. Structural Factor: Barriers to Legal Knowledge.....	1037
2. Interactional Factor: Treatment by ICE Officials.....	1041
C. LEGAL OUTCOMES AS ARBITRARY .....	1042
1. Structural Factor: Base of Informal Knowledge.....	1045
2. Interactional Factor: Treatment by Immigration Judges .....	1047
V. WHY LEGAL CYNICISM MATTERS.....	1048

CONCLUSION..... 1052

## INTRODUCTION

*The law isn't the same for everyone.<sup>1</sup>*

*It's just the luck you have, honestly . . . . [t]he judge you get and how they're feeling that day.<sup>2</sup>*

*It's like the court system doesn't want you to be free to do anything. That way, you can just give up. It seems like that.<sup>3</sup>*

The opening quotes above are representative of the deep sense of legal cynicism I encountered among many immigrant detainees who participated in the current study. What is the nature of this legal cynicism? What are the factors that might shape this type of legal cynicism among immigrant detainees? In addressing these questions in this Article, I illuminate a distinct and fundamental aspect of U.S. immigration detention that has escaped the attention of policymakers, scholars, and the public alike. I argue that given the common use of detention as an immigration enforcement tool in the United States, immigration detention may be operating as a critical site for the legal socialization of a significant and growing segment of noncitizens. By legal socialization, I mean “the process through which individuals acquire attitudes and beliefs about the law, legal authorities, and legal institutions.”<sup>4</sup>

My analysis advances the study of democracy, legitimacy, and the rule of law in a number of ways. First, I present a subject-centered approach that focuses on the legal experiences of noncitizens from *their* perspective. The subject-centered approach requires researchers to place their research subjects' perceptions and experiences at the center of their investigative focus and analysis.<sup>5</sup> Although this approach is critical to achieving a more accurate and complex understanding of individuals whose behavior the law

---

1. Interview with José Z., in L.A., Cal. (May 26, 2014).

2. Interview with Edson, in Anaheim, Cal. (Oct. 19, 2013).

3. Telephone Interview with Daniel (June 27, 2015).

4. Alex R. Piquero et al., *Developmental Trajectories of Legal Socialization Among Serious Adolescent Offenders*, 96 J. CRIM. L. & CRIMINOLOGY 267, 267 (2005).

5. See Emily Ryo, *The Promise of a Subject-Centered Approach to Understanding Immigration Noncompliance*, 5 J. MIGRATION & HUM. SECURITY 285, 286-87 (2017); Min Zhou, *Assimilation and Its Discontents*, in EMERGING TRENDS IN THE SOCIAL AND BEHAVIORAL SCIENCES 13-14 (Robert A. Scott et al. eds., 2015); Min Zhou et al., *Success Attained, Deterred, and Denied: Divergent Pathways to Social Mobility in Los Angeles's New Second Generation*, 620 ANNALS AM. ACAD. POL. & SOC. SCI. 37, 41-44 (2008).

seeks to regulate, it can present daunting challenges to researchers. For example, the subject-centered approach often requires time- and resource-intensive field research, especially if the subject population is hidden from public view or in vulnerable positions. Building on my earlier work on unauthorized migrants, I use a subject-centered approach here to investigate the nature and possible sources of immigrant detainees' legal cynicism.<sup>6</sup> This approach allows us to recognize the detainees not as passive objects of state control, but as moral agents who are capable of normative judgments about the law and legal authorities.

Second, I offer a fuller and more nuanced perspective on immigration detention's societal impacts. These impacts are likely to be far more wide-reaching and long-lasting than commonly assumed. For example, immigrant detainees, as individuals embedded in domestic and transnational networks,<sup>7</sup> have the potential to widely disseminate deference and trust, or alternatively cynicism and delegitimizing beliefs, about the U.S. legal system and authorities—not only within the United States but around the world. As I discuss later in this Article, these types of long-term and diffusive effects may be difficult to measure, but their potential implications for governance and system legitimacy are likely significant.<sup>8</sup> Thus, my findings underscore the need for broadening the scope of inquiry and the relevant time horizons under scrutiny when we investigate the possible effects of U.S. immigration enforcement practices.

I analyze extensive original data on long-term immigrant detainees (defined as noncitizens detained by Immigration and Customs Enforcement (“ICE”)) for a continuous period of six months or more) in the Central District

---

6. My earlier research on unauthorized migrants demonstrated the importance of employing the subject-centered approach to understand prospective and current migrants' decisions to disobey U.S. immigration laws. See generally Emily Ryo, *Less Enforcement, More Compliance: Rethinking Unauthorized Migration*, 62 UCLA L. REV. 622 (2015) (hereinafter Ryo, *Less Enforcement, More Compliance*); Emily Ryo, *Deciding to Cross: Norms and Economics of Unauthorized Migration*, 78 AM. SOC. REV. 574 (2013); Emily Ryo, *Through the Back Door: Applying Theories of Legal Compliance to Illegal Immigration During the Chinese Exclusion Era*, 31 LAW & SOC. INQUIRY 109 (2006).

7. See Peggy Levitt & B. Nadya Jaworsky, *Transnational Migration Studies: Past Developments and Future Trends*, 33 ANN. REV. SOC. 129, 130 (2007) (“[M]igrants, to varying degrees, are simultaneously embedded in the multiple sites and layers of the transnational social fields in which they live.”).

8. For example, Shirin Sinnar shows in her recounting of the story of Javaid Iqbal, a post-9/11 detainee in the United States, the persistence of the emotional trauma and social repercussions of detention for Iqbal and his family more than fifteen years after his release from detention and removal to Pakistan. Shirin Sinnar, *The Lost Story of Iqbal*, 105 GEO. L.J. 379, 404–13 (2017) (“Iqbal’s story suggests that the effects of the detentions were not as limited in space or time as readers of the Supreme Court decision might have assumed.”).

of California.<sup>9</sup> The data consist of (1) in-person surveys of 565 long-term detainees (“baseline survey”), and (2) in-depth interviews with 79 of the baseline survey respondents who were released after a bond hearing (“post-release interviews”). The baseline survey largely consisted of closed-ended questionnaire items, whereas the post-release interviews were semi-structured, leading to open-ended discussions. My analyses of these two datasets are broadly informed by: (1) my observations of immigrant detainees’ bond hearings in Los Angeles immigration courts, and (2) tours that I took of immigration detention facilities in Southern California.

Drawing on these data, I explore how immigration detention might function as a site of legal socialization that helps to promote or reinforce widespread legal cynicism among immigrant detainees. This legal cynicism is characterized by the belief that (1) the legal system is *punitive* despite its purported administrative function, (2) legal rules are *inscrutable* by design, and (3) legal outcomes are *arbitrary*. Common across these subtypes of legal cynicism is a deep-seated distrust of our legal system—distrust that is rooted in the realization that the law in action is very different than the law on the books.<sup>10</sup> I investigate the nature of these key subtypes of legal cynicism among immigrant detainees, as well as various structural and interactional factors that might be shaping these beliefs.

Two clarifications are in order. First, my data are cross-sectional and do not allow causal inferences. Thus, my aim here is not deductive hypothesis testing; rather, my goal is to offer an exploratory analysis that establishes the foundation for future research that is theoretically grounded and amenable to causal analysis. Second, my primary objective is not to systematically document the harsh, and at times inhumane or illegal, conditions of detention—a task that lawyers, journalists, and governmental and non-governmental organizations have ably undertaken in recent years.<sup>11</sup> Instead,

---

9. These detainees are members of a class action lawsuit in the Central District of California, *Rodriguez v. Robbins*. See generally *Rodriguez v. Holder (Rodriguez III)*, No. CV 07-03239-TJH, 2013 WL 5229795 (C.D. Cal. Aug. 6, 2013), *aff'd in part and rev'd in part sub nom. Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), *cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016). The lawsuit challenges the legality of detention without individualized custody redetermination hearings. I discuss *Rodriguez* in greater detail later in the Article.

10. For a review of “gap studies” on discrepancies between how law operates in reality versus the perceived or stated objectives of law, see Jon B. Gould & Scott Barclay, *Mind the Gap: The Place of Gap Studies in Sociolegal Scholarship*, 8 ANN. REV. L. & SOC. SCI. 323 (2012).

11. See, e.g., Complaint for Declaratory & Injunctive Relief at 14–42, *Unknown Parties v. Johnson*, 163 F. Supp. 3d 630 (D. Ariz. 2015) (No. CV 15-00250-TUC-DCB); S. POVERTY LAW CTR. ET AL., SHADOW PRISONS: IMMIGRANT DETENTION IN THE SOUTH 8–9 (2016), [https://www.splcenter.org/sites/default/files/leg\\_ijp\\_shadow\\_prisons\\_immigrant\\_detention\\_report.pdf](https://www.splcenter.org/sites/default/files/leg_ijp_shadow_prisons_immigrant_detention_report.pdf); U.S. COMM’N ON CIVIL RIGHTS, WITH LIBERTY AND JUSTICE FOR ALL 29–44, 124–25 (2015),

I focus on the detainees' own interpretations and articulations of their experiences in detention, which shed valuable light on the meaning that they attach to their lived reality.<sup>12</sup>

The remainder of this Article proceeds in four major parts. Part I provides an overview of U.S. immigration detention. I begin by offering a historical look at the rise of mass immigration detention, followed by a discussion of the legal background on immigration detention and removal processes in the United States. I then describe certain basic characteristics of long-term immigration detention—the empirical focus of the current study. Following this historical and legal overview, Part II delineates the major findings in prior research on legal socialization and legal cynicism that inform my empirical analysis. In particular, I draw on the burgeoning research on the socializing or educative effects of the criminal justice system on citizens, and the growing body of literature on noncitizens' legal attitudes.

Part III describes the original data that I analyze in this Article. Drawing on these data, Part IV explores the three key subtypes of legal cynicism that I found prevalent among the detainees. The first subtype of legal cynicism relates to the detainees' belief that the legal system is punitive in practice despite its purported civil function. Promoting this belief might be basic conditions of detention that are indistinguishable from criminal incarceration, and treatment by the guards that continually affirms and reinforces the detainees' stigmatized status. The second subtype of legal cynicism relates to the detainees' belief that the legal rules are made inscrutable by design. This belief is likely shaped by the detainees' experiences with institutional barriers that prevent them from obtaining legal knowledge, and encounters with U.S. Immigration and Customs Enforcement ("ICE") officials whom the detainees report as failing to inform or misinforming them about relevant legal information in order to expedite the removal process. The third subtype of legal cynicism relates to the detainees' belief that legal outcomes are arbitrary. The possible factors underlying this belief are the detainees' informal knowledge networks that invariably promote comparative evaluations of legal outcomes, and experiences with immigration judges that suggest to the detainees that judges do not engage in individualized determinations.

---

[http://www.usccr.gov/pubs/Statutory\\_Enforcement\\_Report2015.pdf](http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf); Molly Hennessy-Fiske & Cindy Carcamo, *Grim Scenes at Immigrant Centers*, L.A. TIMES, June 18, 2014, at A8.

12. See Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323, 327 (2005) ("People's ordinary transactions presume an objective world of facts 'out there,' yet close analysis of the ways people apprehend that world reveals their own collaborative social construction of those social facts.").

Part V considers some of the broader implications of this study and possible directions for future research. I suggest that immigration detention might be operating as an important institutional apparatus for the national dissemination and global exportation of cynicism about the U.S. legal system and legal authorities. In the long run, these diffusion processes may produce an array of unintended consequences among noncitizens and citizens in terms of their legal compliance, and engagement and cooperation with U.S. legal systems and authorities. Given the Trump administration's plans to widely expand the use of immigration detention,<sup>13</sup> it is now more important than ever to investigate the nature of the relationship between experiences of detention, legal cynicism, and behavior.

## I. BACKGROUND

### A. RISE OF MASS IMMIGRATION DETENTION

Over the past twenty-five years, there has been a dramatic growth in governmental investment in immigration enforcement, both at the border and in the interior. In 2013, the funding for the federal government's main immigration enforcement agencies, ICE and the U.S. Customs and Border Protection ("CBP"), and its primary enforcement technology initiative at the time, the U.S. Visitor and Immigration Status Indicator Technology Program ("US-VISIT"), amounted to nearly \$18 billion; this amount constitutes a fifteen-fold increase in immigration enforcement spending since 1986.<sup>14</sup> The U.S. government now spends about 24% more on its immigration enforcement agencies than all other major criminal federal law enforcement agencies combined, including the Federal Bureau of Investigation, Drug Enforcement Administration, Secret Service, U.S. Marshals Service, and Bureau of Alcohol, Tobacco, Firearms and Explosives.<sup>15</sup>

Beginning in the late 1980s, Congress enacted a series of laws, closely tied to the war on drugs, mandating the detention of a certain class of noncitizens convicted of crimes and depriving federal immigration officials of the authority to release these noncitizens on bond pending their removal proceedings.<sup>16</sup> This growing intertwining of the criminal justice system and

---

13. See *infra* text accompanying note 23.

14. See DORIS MEISSNER ET AL., IMMIGRATION ENFORCEMENT IN THE UNITED STATES: THE RISE OF A FORMIDABLE MACHINERY 23 (2013), <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>. The Office of Biometric Identity Management has since replaced the US-VISIT Program. See *Office of Biometric Identity Management*, U.S. DEP'T HOMELAND SECURITY, <https://www.dhs.gov/obim> (last updated Oct. 6, 2016).

15. MEISSNER ET AL., *supra* note 14, at 20–22.

16. See César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA

immigration enforcement has been referred to as “crimmigration” law.<sup>17</sup> In 1996, the Antiterrorism and Effective Death Penalty Act<sup>18</sup> and the Illegal Immigration Reform and Immigrant Responsibility Act<sup>19</sup> significantly broadened the use of mandatory detention by widening its net over a larger class of noncitizens. These laws, together with the changes in the enforcement policy described above, have resulted in a significant increase in the number of detained noncitizens. As shown in Figure 1, the total number of individuals who entered ICE detention in any given fiscal year more than doubled from a little over 200,000 in 2001<sup>20</sup> to more than 425,000 in 2014.<sup>21</sup> In February 2017, the Department of Homeland Security (“DHS”) under the Trump administration announced plans to expand its detention capacity to implement enforcement surges.<sup>22</sup> In June 2017, ICE Acting Director Thomas Homan stated that his proposed budget for the fiscal year 2018 included nearly \$4.9 billion to expand the average daily detained

---

L. REV. 1346, 1360–82 (2012); Faiza W. Sayed, *Challenging Detention: Why Immigrant Detainees Receive Less Process than “Enemy Combatants” and Why They Deserve More*, 111 COLUM. L. REV. 1833, 1836–38 (2011).

17. Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 376 (2006). See also Kevin R. Johnson, *Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals*, 66 CASE W. RES. L. REV. 994, 999–1000 (2016).

18. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified as amended in scattered sections of 8, 18, 22, 28, and 42 U.S.C.).

19. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (codified as amended in scattered sections of 8 and 18 U.S.C.).

20. U.S. IMMIGRATION & CUSTOMS ENF’T, ERO FACTS AND STATISTICS 3 (2011), <https://www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf>.

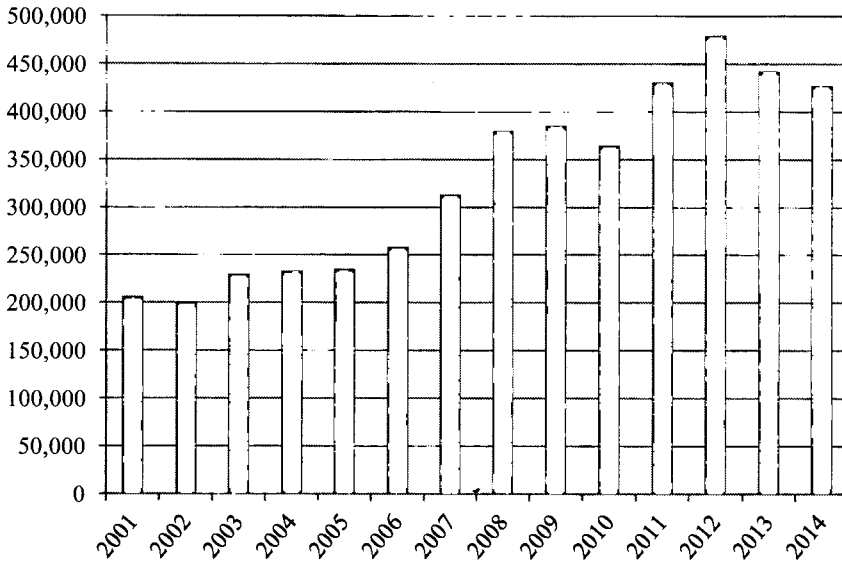
21. BRYAN BAKER & CHRISTOPHER WILLIAMS, U.S. DEP’T HOMELAND SEC., IMMIGRATION ENFORCEMENT ACTIONS: 2014 6 tbl.5 (2016), [https://www.dhs.gov/sites/default/files/publications/Enforcement\\_Actions\\_2014.pdf](https://www.dhs.gov/sites/default/files/publications/Enforcement_Actions_2014.pdf). The DHS published a report in 2016 that discusses a new data collection system implemented sometime in fiscal year 2015. See U.S. DEP’T OF HOMELAND SEC., DHS IMMIGRATION ENFORCEMENT: 2016 1 (2016), <https://www.dhs.gov/sites/default/files/publications/DHS%20Immigration%20Enforcement%202016.pdf>. As it is unclear whether that report’s detention data for fiscal years 2015 and 2016 are comparable to the detention data reported in prior years, I do not include the 2015 and 2016 data in Figure 1.

22. Memorandum from John Kelly, Sec’y of Homeland Sec., to Kevin McAleenan, Acting Comm’r of U.S. Customs & Border Prot. et al., Implementing the President’s Border Security and Immigration Enforcement Improvements Policies (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf).



population by about 30 percent, from 39,610 to 51,379.<sup>23</sup>

FIGURE 1. ICE Detainee Population by Fiscal Year, 2001–2014



Note: See U.S. IMMIGRATION & CUSTOMS ENF'T, *supra* note 20; BAKER & WILLIAMS, *supra* note 21.

Many noncitizens in ICE custody experience lengthy periods of detention, in part due to the large volume and significant backlog of cases in immigration courts.<sup>24</sup> While publicly available data on average lengths of detention is limited, the Transactional Records Access Clearinghouse (“TRAC”)’s Immigration Project estimated that over the course of fiscal year 2013, ICE detained over 10,000 individuals for six months or more, and over 30,000 for three months or longer.<sup>25</sup>

In terms of the conditions of confinement, numerous reports have documented close parallels between immigration detention and criminal

23. *Regarding the Fiscal Year 2018 President’s Budget Request: Hearing Before the Subcomm. on Homeland Sec. of the H. Comm. On Appropriations*, 115th Cong. 3–4 (2017) (statement of Thomas Homan, Acting Dir., ICE), <http://docs.house.gov/meetings/AP/AP15/20170613/106057/HHRG-115-AP15-Wstate-HomanT-20170613.pdf>.

24. As of May 2017, more than 598,000 cases were pending in immigration courts across the United States, which is over 82,000 cases more than the total number of backlogged cases during the previous fiscal year. *Backlog of Pending Cases in Immigration Courts as of May 2017*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, [http://trac.syr.edu/phptools/immigration/court\\_backlog/apprep\\_backlog.php](http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php) (last visited July 9, 2017) (archive version on file with author).

25. *Legal Noncitizens Receive Longest ICE Detention*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (June 3, 2013), <http://trac.syr.edu/immigration/reports/321>.

incarceration.<sup>26</sup> For example, most immigration detention facilities “were originally built, and currently operate, as jails and prisons to confine pre-trial and sentenced felons.”<sup>27</sup> Thus, these facilities’ “design, construction, staffing plans, and population management strategies are based largely upon the principles of command and control.”<sup>28</sup> Yet, immigration detention is not considered to be criminal punishment under the law, as the official purpose of immigration detention is to confine noncitizens for the “*administrative* purpose of holding, processing, and preparing them for removal.”<sup>29</sup>

## B. LEGAL PROCESS OF REMOVAL AND DETENTION

ICE may take a noncitizen into custody after an immigration enforcement apprehension, or immediately following the noncitizen’s release from the custody of state or local law enforcement.<sup>30</sup> Removal proceedings begin when the government files a charging document called a Notice to Appear with the immigration court and serves a copy on the noncitizen.<sup>31</sup>

26. See, e.g., AMNESTY INT’L, *JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA* 29-42 (2009), <https://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf>; HEARTLAND ALL. NAT’L IMMIGRANT JUSTICE CTR. & PHYSICIANS FOR HUMAN RIGHTS, *INVISIBLE IN ISOLATION: THE USE OF SEGREGATION AND SOLITARY CONFINEMENT IN IMMIGRATION DETENTION* 9-12 (2012), [https://s3.amazonaws.com/PHR\\_Reports/Invisible-in-Isolation-Sep2012-detention.pdf](https://s3.amazonaws.com/PHR_Reports/Invisible-in-Isolation-Sep2012-detention.pdf); HUMAN RIGHTS FIRST, *JAILS AND JUMPSUITS, TRANSFORMING THE U.S. IMMIGRATION DETENTION SYSTEM—A TWO-YEAR REVIEW* 7-12 (2011), <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>; INTER-AM. COMM’N ON HUMAN RIGHTS, *REPORT ON IMMIGRATION IN THE UNITED STATES: DETENTION AND DUE PROCESS* 85-120 (2010), <https://www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf>; PHYSICIANS FOR HUMAN RIGHTS, *BURIED ALIVE: SOLITARY CONFINEMENT IN THE US DETENTION SYSTEM* 8-15 (2013), [https://s3.amazonaws.com/PHR\\_Reports/Solitary-Confinement-April-2013-full.pdf](https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf); Nina Rabin, *Unseen Prisoners: Women in Immigration Detention Facilities in Arizona*, 23 *GEO. IMMIGR. L.J.* 695, 713-35 (2009).

27. DORA SCHIRO, U.S. DEP’T OF HOMELAND SEC., *IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS* 4 (2009), <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>. In 2013, ICE contracted with about 244 state or county jails to detain immigrants. NAT’L IMMIGRATION FORUM, *THE MATH OF IMMIGRATION DETENTION: RUNAWAY COSTS FOR IMMIGRATION DETENTION DO NOT ADD UP TO SENSIBLE POLICIES* 4 (2013), <https://immigrationforum.org/wp-content/uploads/2014/10/Math-of-Immigration-Detention-August-2013-FINAL.pdf>.

28. SCHIRO, *supra* note 27.

29. U.S. GOV’T ACCOUNTABILITY OFFICE, *GAO-14-38, IMMIGRATION DETENTION: ADDITIONAL ACTIONS COULD STRENGTHEN DHS EFFORTS TO ADDRESS SEXUAL ABUSE* 8 (2013) (emphasis added).

30. For a helpful discussion on the nature of the cooperation between ICE and criminal law enforcement as it existed under the Obama Administration, see Memorandum from Jeh Charles Johnson, Sec’y of Homeland Sec., to Thomas S. Winkowski, Acting Dir. of U.S. Immigration & Customs Enf’t et al., *Secure Communities* (Nov. 20, 2014), [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf); Juliet P. Stumpf, *D(e)volving Discretion: Lesson from the Life and Times of Secure Communities*, 64 *AM. U. L. REV.* 1259 (2015).

31. 8 U.S.C. § 1229(a) (2012). For a detailed description of each stage of the removal process for detained noncitizens, see Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 *NW. U. L. REV.* 933,

For individuals in removal proceedings who are held under the discretionary detention provisions of the Immigration and Nationality Act (“INA”),<sup>32</sup> the ICE field office director (or the ICE officer to whom the director has delegated his authority) may release the noncitizen on conditional parole or on a bond of at least \$1,500.<sup>33</sup> At this stage, the burden is on the noncitizen to demonstrate to the ICE officer that such release would not pose a danger to the community or a flight risk.<sup>34</sup> After the initial custody determination by ICE, a noncitizen may seek a review of ICE’s decision by the immigration court,<sup>35</sup> which is under the jurisdiction of the Department of Justice (“DOJ”). The decision of the immigration judge may be appealed to the Board of Immigration Appeals (“BIA”),<sup>36</sup> an administrative body also within the DOJ. However, the custody or bond decision by the BIA is final and may not be judicially reviewed.<sup>37</sup>

The INA prescribes a different set of procedures for noncitizens held under the INA’s mandatory detention provisions. Noncitizens subject to mandatory detention typically are ineligible for release or parole pending their removal hearings. Mandatory detainees include, for example, (1) certain classes of “arriving aliens,” including those seeking asylum who have not yet passed their credible fear determination,<sup>38</sup> and (2) noncitizens, including lawful permanent residents, convicted of certain crimes enumerated in the INA (“triggering offenses”).<sup>39</sup> Noncitizens in removal proceedings with triggering offenses are detained by ICE after they have served their criminal sentences, if any.<sup>40</sup> According to one report, about 66%

---

949-58 (2015).

32. 8 U.S.C. § 1226(a).

33. *See id.* § 1226(a)(2).

34. *See* 8 C.F.R. § 236.1(c)(8) (2016). *See also In re Urena*, 25 I. & N. Dec. 140, 141 (B.I.A. 2009).

35. 8 C.F.R. § 236.1(d)(1).

36. *Id.* § 1003.19(f).

37. *See* 8 U.S.C. § 1226(e). While a detainee may not seek a judicial review of the bond decision, he may seek a habeas review to challenge the legality of his detention. *See Sayed*, *supra* note 16, at 1851–52.

38. 8 U.S.C. § 1225(b).

39. These crimes include “crimes involving moral turpitude,” “aggravated felonies,” high speed flight, controlled substance violations, multiple criminal convictions with aggregate sentences of five years or more, drug trafficking, firearms offense, domestic violence, and various other offenses. *See id.* § 1226(c).

40. *See* Farrin R. Anello, *Due Process and Temporal Limits on Mandatory Immigration Detention*, 65 HASTINGS L.J. 363, 366–67 (2014) (“DHS must take individuals into custody ‘when released’ from criminal custody for the underlying offense, usually when they have completed any sentence and would otherwise have been released.”). ICE may also initiate and complete removal proceedings against noncitizens *during* their term of criminal incarceration. *See* WILLIAM A. KANDEL, CONG. RESEARCH SERV., R44627, INTERIOR IMMIGRATION ENFORCEMENT: CRIMINAL ALIEN PROGRAMS 11 (2016), <https://fas.org/sgp/crs/homesec/R44627.pdf> (“The Institutional Hearing and Removal Program (IHRP)

of noncitizens in immigration detention were held under the mandatory detention provisions in 2009.<sup>41</sup>

Noncitizens in removal proceedings may challenge the legal basis of ICE's decision to detain them under the mandatory detention provisions in an informal proceeding known as a *Joseph* hearing presided by immigration judges.<sup>42</sup> At a *Joseph* hearing, the burden is on the noncitizen to show that the government is "substantially unlikely" to prove that he is in fact subject to mandatory detention.<sup>43</sup> The *Joseph* standard is extremely difficult to satisfy; as Judge Wallace Tashima has noted in *Tijani v. Willis*: "The standard not only places the burden on the defendant to prove that he should not be physically detained, it makes that burden all but insurmountable."<sup>44</sup> Individuals deemed properly included in a mandatory detention category are ineligible for release or parole pending their removal proceedings,<sup>45</sup> which often results in prolonged detention given the backlog in immigration court dockets.<sup>46</sup>

In 2012, however, a class action lawsuit brought on behalf of long-term detainees in the Central District of California, *Rodriguez v. Robbins*, changed the legal landscape by requiring a bond hearing before an immigration judge for noncitizens who have been held in detention continuously for 180 days, including certain classes of mandatory detainees.<sup>47</sup> As the data I analyze in

---

coordinates attorneys, immigration judges, and incarcerated aliens to expedite removals by completing removal proceedings prior to the completion of an alien's incarceration.").

41. SCHRIRO, *supra* note 27, at 6. *But see* Denise Gilman, *Realizing Liberty: The Use of International Human Rights Law to Realign Immigration Detention in the United States*, 36 FORDHAM INT'L L.J. 243, 319 n.330 (2013) (concluding that the total number of noncitizens held under mandatory detention might be significantly lower depending on how mandatory detention is defined).

42. *See In re Joseph*, 22 I. & N. Dec. 799, 804-05 (B.I.A. 1999). If the noncitizen does not prevail at the *Joseph* hearing, he may appeal the decision to the BIA or request habeas relief with the federal court of appeals. *See Sayed*, *supra* note 16, at 1850-52.

43. *See In re Joseph*, 22 I. & N. Dec. at 807. For an empirical study documenting the difficulties of satisfying this burden of proof, see Julie Dona, *Making Sense of "Substantially Unlikely": An Empirical Analysis of the Joseph Standard in Mandatory Detention Custody Hearings*, 26 GEO. IMMIGR. L.J. 65, 72-88 (2011).

44. *Tijani v. Willis*, 430 F.3d 1241, 1246 (9th Cir. 2005) (Tashima, J., concurring).

45. *See In re Joseph*, 22 I. & N. at 806-07. The Ninth Circuit, however, has held that individuals initially subject to detention under 8 U.S.C. § 1226(c) are entitled to bond hearings if their removal is stayed pending direct judicial review of their removal orders, or their removal cases have been remanded for further administrative proceedings. *See Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 950-52 (9th Cir. 2008). In 2011, the Ninth Circuit further held that individuals who have been detained for six months or longer after entry of a final order of removal under 8 U.S.C. § 1231 are also entitled to a bond hearing. *See Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011).

46. *See Backlog of Pending Cases in Immigration Courts as of May 2017*, *supra* note 24.

47. *Rodriguez v. Robbins (Rodriguez II)*, No. CV 07-03239-TJH, 2012 WL 7653016, at \*5-6 (C.D. Cal. Sept. 13, 2012), *aff'd*, 715 F.3d 1127 (9th Cir. 2013).

this study is drawn from the class members of *Rodriguez*, I now briefly discuss the history and holding of *Rodriguez*.

C. *RODRIGUEZ V. ROBBINS*

In 2007, Alejandro Rodriguez, who had been in ICE custody for more than three years, and similarly situated noncitizens in the Central District of California, filed a class action lawsuit challenging the legality of detention lasting more than six months without individualized bond hearings under the general immigration detention statutes.<sup>48</sup> In 2012, the district court granted a preliminary injunction requiring the government to provide certain class members detained for more than 180 days with a bond hearing before an immigration judge.<sup>49</sup> The district court held that the immigration judge must release these detainees “on reasonable conditions of supervision, including electronic monitoring if necessary, unless the government shows by clear and convincing evidence that continued detention is justified based on his or her danger to the community or risk of flight.”<sup>50</sup> The Ninth Circuit Court of Appeals affirmed the district court’s decision,<sup>51</sup> and in 2013, the district court issued a permanent injunction,<sup>52</sup> which was subsequently affirmed in part by the Ninth Circuit. The case is now before the Supreme Court.<sup>53</sup>

The *Rodriguez* class formally consists of all noncitizens in the Central District of California who:

- (1) are or were detained for longer than six months pursuant to one of the general immigration detention statutes pending completion of removal proceedings, including judicial review, (2) are not and have not been detained pursuant to a national security detention statute, and (3) have not been afforded a hearing to determine whether their detention is justified.<sup>54</sup>

How might *Rodriguez* class members be similar to or different from

---

48. See *Rodriguez v. Hayes (Rodriguez I)*, 578 F.3d 1032 (9th Cir. 2009), amended by 591 F.3d 1105, 1111–13 (9th Cir. 2010). General immigration detention statutes refer to both discretionary and mandatory detention provisions. See *Rodriguez I*, 591 F.3d at 1113–14. See also 8 U.S.C. § 1225(b) (2012) (authorizing detention of aliens seeking admission); 8 U.S.C. § 1226(a) (authorizing detention of aliens pending a determination of removability); 8 U.S.C. § 1226(c) (authorizing detention of certain aliens convicted of specified triggering offenses); 8 U.S.C. § 1231(a) (authorizing detention of aliens ordered removed during and after the removal period).

49. *Rodriguez II*, 2012 WL 7653016, at \*5–6.

50. *Id.* at \*6.

51. *Rodriguez II*, 715 F.3d at 1146.

52. *Rodriguez v. Holder (Rodriguez III)*, No. CV 07-03239-TJH, 2013 WL 52229795, at \*12–14 (C.D. Cal. Aug. 6, 2013), *aff’d in part and rev’d in part sub nom.* *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), *cert. granted sub nom.* *Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016).

53. *Rodriguez III*, 136 S. Ct. at 2489.

54. See *Rodriguez II*, 715 F.3d at 1130 n.1.

other immigrant detainees?<sup>55</sup> All *Rodriguez* class members are contesting their removability and/or seeking legal relief from removal,<sup>56</sup> whereas that is not the case for all short-term detainees. Those who do not contest their removability or seek legal relief from removal experience relatively shorter detention for the simple reason that they are no longer in the country. *Rodriguez* class members may be more likely to have triggering offenses compared to short-term detainees, as some of the former were mandatorily detained due to their statutorily enumerated criminal offenses. Finally, given the substantial liberty interests implicated in long-term detention, *Rodriguez* class members are entitled to certain additional procedural protections that are not afforded to short-term detainees in their bond hearings.<sup>57</sup>

## II. THEORETICAL FRAMEWORK

Every year, tens of thousands of noncitizens are held and processed through an expanding web of immigration detention facilities across the United States. Yet we know very little about how these noncitizens experience immigration detention and navigate the legal system, and how these experiences in turn might be shaping the noncitizens' attitudes and orientation toward the law and legal authorities in the United States. In developing a theoretical framework for my empirical analysis, I draw from three bodies of research: (1) research on legal socialization, (2) research on legal cynicism, and (3) research on legal attitudes of noncitizens in the United States. I offer a brief review of these bodies of research and highlight key findings that provide relevant insights for the current study's exploration of legal socialization and legal cynicism among immigrant detainees.

### A. LEGAL SOCIALIZATION

Legal socialization emerged as a distinct subject of inquiry in the late

---

55. Due to the lack of publicly available data, it is difficult to determine how representative *Rodriguez* class members are of immigrant detainees in the United States who are detained by ICE pending the completion of their removal proceedings.

56. The baseline survey contains a small proportion of respondents (3%) who were no longer contesting their removability and/or seeking legal relief from removal at the time of the survey. These respondents had given up on pursuing their legal claims, or they had become subject to a final order of removal at the time of the survey.

57. These additional protective measures include: (1) requiring the government to provide a written notice of the bond hearings in plain language to the detainees, (2) shifting the burden from the detainee to show by a preponderance of evidence that his detention is not justified to requiring the government to show by a clear and convincing that continued detention is justified, and (3) requiring the bond hearings to be audio recorded. See *Rodriguez III*, 2013 WL 52229795, at \*9, \*12. See also *Singh v. Holder*, 638 F.3d 1196, 1203, 1209 (9th Cir. 2011) (describing additional procedural measures necessary to protect the liberty interest of long-term detainees).

1960s.<sup>58</sup> For the purposes of this Article, I follow Alex Piquero and colleagues in defining legal socialization as “the process through which individuals acquire attitudes and beliefs about the law, legal authorities, and legal institutions.”<sup>59</sup> As June Louin-Tapp has noted, socialization is “[n]ot merely a childhood event, it is a lifelong experience where persons learn and relearn new conduct codes to guide human interaction.”<sup>60</sup> Thus, studies of legal socialization have focused on both adolescents and adults.<sup>61</sup>

There are two main theories of legal socialization.<sup>62</sup> The cognitive development approach, rooted in theories of moral development advanced by Jean Piaget and Lawrence Kohlberg, views individuals as progressing or maturing through a series of legal reasoning stages from simple to more

---

58. See June Louin-Tapp, *The Geography of Legal Socialization: Scientific and Social Markers*, 19 DROIT ET SOCIÉTÉ 329, 330 (1991) (hereinafter Louin-Tapp, *Geography of Legal Socialization*); June Louin Tapp, *Psychology and the Law: An Overture*, 27 ANN. REV. PSYCHOL. 258, 371–72 (1976). For a helpful discussion on the possible distinction between legal socialization and the related concept “legal consciousness,” see Rachel Swaner & Avi Brisman, *Legal Cynicism Among Civically-Engaged Youth*, 16 J. CRIM. JUST. & SECURITY 492, 497 (2014). For research on legal consciousness of unauthorized migrants, see, for example, Leisy J. Abrego, *Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants*, 45 LAW & SOC’Y REV. 337 (2011); Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 LAW & SOC. INQUIRY 561 (2010); Ryo, *Less Enforcement, More Compliance*, *supra* note 6.

59. Piquero et al., *supra* note 4. For other definitions of legal socialization, see Ellen S. Cohn et al., *Legal Attitudes and Legitimacy: Extending the Integrated Legal Socialization Model*, 7 VICTIMS & OFFENDERS 385, 386 (2012) [hereinafter Cohn et al., *Legal Attitudes and Legitimacy*] (“Legal socialization refers to the cognitive-developmental process by which people develop their understanding of laws and rules within society as well as an understanding of the social institutions that create and enforce laws and rules . . . .”); Jeffrey Fagan & Alex R. Piquero, *Rational Choice and Developmental Influences on Recidivism Among Adolescent Felony Offenders*, 4 J. EMPIRICAL LEGAL STUD. 715, 718 (2007) (“Legal socialization is the internalization of law, rules, and agreements among members of society, and the legitimacy of authority to deal fairly with citizens who violate society’s rules.”); Michael D. Reisig et al., *Legal Cynicism, Legitimacy, and Criminal Offending: The Nonconfounding Effect of Low Self-Control*, 38 CRIM. JUST. & BEHAV. 1265, 1266 (2011) (“Legal socialization is the process of internalizing values, forming perceptions, and developing attitudes regarding legal authorities, legal institutions, and the law that results from accumulated social experiences . . . .”); Tom R. Tyler et al., *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men’s Legal Socialization*, 11 J. EMPIRICAL LEGAL STUD. 751, 757 (2014) (“We define legal socialization as the developmental process by which individuals internalize the norms of the law through their direct and vicarious interactions with law and legal actors . . . .”).

60. Louin-Tapp, *Geography of Legal Socialization*, *supra* note 58, at 331.

61. Some scholars have argued that legal socialization may be particularly salient among the youth because adolescence is a formative period of cognitive and social development. See, e.g., Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 SOC. JUST. RES. 217, 217–19 (2005); Piquero et al., *supra* note 4, at 267–70.

62. Ellen Cohn and Susan White have argued that these two theories should not be treated as mutually exclusive, but as emphasizing different factors that may have significant interactive effects. Ellen S. Cohn & Susan O. White, *Cognitive Development Versus Social Learning Approaches to Studying Legal Socialization*, 7 BASIC & APPLIED SOC. PSYCHOL. 195, 195–96 (1986).

complex.<sup>63</sup> In contrast, the social learning approach focuses on situational cues and incentives found in social environments to which individuals learn to respond.<sup>64</sup> Broadly conceived, the former approach emphasizes internal attributes of individuals, whereas the latter approach focuses on environmental elements and situational factors. In recent years, an increasing number of studies on legal socialization have focused on the nature of individuals' experiences with legal authority to explain individuals' rule violating behavior and legal noncompliance.<sup>65</sup>

Particularly relevant to the current study is literature that theorizes and empirically documents the ways in which the criminal justice system serves a political socialization function for citizens. For example, Vesla Weaver and Amy Lerman investigate "how and in what ways encounters with the criminal justice system influence citizens' political attitudes and behaviors."<sup>66</sup> Their empirical analysis shows that contacts with the criminal justice system lead to a significant "civic penalty," including decreased rates of voting, involvement in civic groups, and trust in the government.<sup>67</sup> Innovating on the idea that contacts with the criminal justice system serve an important "civic education" function, Benjamin Justice and Tracey Meares develop a theory of how the criminal justice system provides an "education in anticitizenry."<sup>68</sup> Specifically, Justice and Meares apply the curriculum theory to demonstrate how the three primary processes of the criminal justice system—jury service, incarceration, and policing—teach a growing underclass of Americans the "hidden curriculum" of exclusion and disenfranchisement.<sup>69</sup>

## B. LEGAL CYNICISM

Two common attitudinal outcomes of legal socialization that scholars

---

63. For a review, see ELLEN S. COHN & SUSAN O. WHITE, *LEGAL SOCIALIZATION: A STUDY OF NORMS AND RULES* 29–40 (1990).

64. *Id.* at 40–47.

65. See, e.g., Rick Trinkner & Ellen S. Cohn, *Putting the "Social" Back in Legal Socialization: Procedural Justice, Legitimacy, and Cynicism in Legal and Nonlegal Authorities*, 38 *LAW & HUM. BEHAV.* 602, 615–16 (2014); Cohn et al., *Legal Attitudes and Legitimacy*, *supra* note 59, at 397–400; Tyler et al., *supra* note 59, at 774–76.

66. Vesla M. Weaver & Amy E. Lerman, *Political Consequences of the Carceral State*, 104 *AM. POL. SCI. REV.* 817, 817 (2010). See also AMY E. LERMAN & VESLA M. WEAVER, *ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL* (2014).

67. Weaver & Lerman, *supra* note 66, at 823–29.

68. Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 *ANNALS AM. ACAD. POL. & SOC. SCI.* 159, 161 (2014).

69. *Id.* at 166–73.



have examined are legitimacy perceptions and legal cynicism.<sup>70</sup> While some scholars have described legitimacy and legal cynicism as “dimensions” or “components” of legal socialization,<sup>71</sup> I conceptualize legitimacy and legal cynicism as outcomes that result from the process of legal socialization. Although legitimacy has been defined in varying ways,<sup>72</sup> one of the most well-established and common conceptualizations of legitimacy is people’s perceived obligation to obey the law and/or the decisions of a legal authority.<sup>73</sup> I examine elsewhere the long-term detainees’ perceived obligation to obey the law and legal authorities.<sup>74</sup>

Legal cynicism—the focus of this study—also has been defined in varying ways. Robert Sampson and Dawn Bartusch, for example, define legal cynicism as a component of anomie, “a state of normlessness in which the rules of the dominant society . . . are no longer binding in a community.”<sup>75</sup> David Kirk and Andrew Papachristos, on the other hand, define legal cynicism as “a cultural orientation in which the law and the agents of its enforcement . . . are viewed as illegitimate, unresponsive, and ill equipped to ensure public safety.”<sup>76</sup> Broadly considered, these definitions share the core idea that legal cynicism relates to fundamental distrust “in the basic intention of the laws” and legal authorities.<sup>77</sup>

What are the antecedents of legal cynicism? Recent studies have focused on the influence of two key factors: (1) neighborhood or social contexts, and (2) experiences and interactions with legal actors, including judges, lawyers, police, and correctional officers.<sup>78</sup> I refer to the first set of

70. Reisig et al., *supra* note 59.

71. See, e.g., Piquero et al., *supra* note 4, at 271–72.

72. See, e.g., Anthony Bottoms & Justice Tankebe, *Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice*, 102 J. CRIM. L. & CRIMINOLOGY 119, 124–26 (2012); Devon Johnson et al., *Public Perceptions of the Legitimacy of the Law and Legal Authorities: Evidence from the Caribbean*, 48 LAW & SOC’Y REV. 947, 949–53 (2014); Justice Tankebe, *Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy*, 51 CRIMINOLOGY 103–124 (2013).

73. TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 3–15 (1990).

74. See generally Emily Ryo, *Legal Attitudes of Immigrant Detainees*, 51 LAW & SOC’Y REV. 99 (2017).

75. Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 LAW & SOC’Y REV. 777, 782 (1998).

76. David S. Kirk & Andrew V. Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 AM. J. SOC. 1190, 1191 (2011). See also David S. Kirk & Mauri Matsuda, *Legal Cynicism, Collective Efficacy, and the Ecology of Arrest*, 49 CRIMINOLOGY 443, 443 (2011).

77. See TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* 108 (2002).

78. See, e.g., David S. Kirk, *Prisoner Reentry and the Reproduction of Legal Cynicism*, 63 SOC. PROBLEMS 222, 224–27 (2016); Fagan & Tyler, *supra* note 61, at 219; Kirk & Papachristos, *supra* note 76, at 1198.

factors as structural factors, and the second set of factors as interactional factors. With respect to structural factors, Sampson and Bartusch find that neighborhoods of concentrated disadvantage display elevated levels of legal cynicism. They conclude: "Perhaps we should not be surprised that those most exposed to the numbing reality of pervasive segregation and economic subjugation become cynical about human nature and legal systems of justice."<sup>79</sup> With respect to interactional factors, researchers have investigated both personal and vicarious experiences with legal authorities. As Jeffrey Fagan and Tom Tyler have noted, people "can learn both from their experience as participants in, and observers of, the law-in-action."<sup>80</sup>

In this study, I conceptualize structural factors as institutional features of immigration detention. For example, a basic institutional feature of immigration detention is that although it is legally classified as civil and not criminal confinement, the conditions of confinement are usually indistinguishable from those of criminal incarceration. Like criminal incarceration, immigration detention requires "a large number of like-situated individuals [who are] cut off from the wider society for an appreciable period of time [to] lead an enclosed, formally administered round of life."<sup>81</sup> By contrast, interactional factors refer to the ways in which legal authorities within the legal system (such as immigration judges, ICE officials, and detention facility guards) interact with and treat immigrant detainees.

### C. LEGAL ATTITUDES OF NONCITIZENS IN DETENTION

Compared to the large body of research on legal socialization and legal cynicism of citizens, the comparable body of research on noncitizens is nascent, primarily focused on noncitizen interactions with the police. For example, David Kirk and colleagues have analyzed the impact of noncitizens' procedural justice perceptions on their legal cynicism and willingness to cooperate with the police.<sup>82</sup> Cecilia Menjivar and Cynthia

---

79. Sampson & Bartusch, *supra* note 75, at 801.

80. See Fagan & Tyler, *supra* note 61, at 220. Much of this body of research has focused on the effects of perceived procedural justice on individuals' perceptions of legitimacy of legal authority. These studies on procedural justice show that "[w]hen experiences with legal actors are perceived as fair, just, and proportionate, these experiences reinforce the legitimacy of the law." Tyler et al., *supra* note 59, at 757. On the other hand, "when punishment is delivered unfairly, unjustly, and/or disproportionately, it leads to cynicism about the law." *Id.*

81. ERVING GOFFMAN, *ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES* xiii (1961).

82. David S. Kirk et al., *The Paradox of Law Enforcement in Immigrant Communities: Does Tough Immigration Enforcement Undermine Public Safety?*, 641 ANNALS AM. ACAD. POL. & SOC. SCI. 79, 89.

Bejarano have studied the impact of noncitizens' experiences with the legal system in their countries of origin on their attitudes toward U.S. police authorities.<sup>83</sup> In contrast, my prior empirical studies have focused on the relationship between noncitizens' attitudes toward immigration law and immigration authorities, and the noncitizens' decisions/intentions to engage in unauthorized migration.<sup>84</sup> The current study builds on this body of research, and the research on legal socialization and legal cynicism, to examine, for the first time, the nature and origins of legal cynicism among immigrant detainees.

In noninstitutional, everyday contexts, most individuals' interactions with the law and legal authorities are typically indirect, infrequent, or fleeting.<sup>85</sup> But as Tyler and colleagues have pointed out, "[e]ven legally trivial and inconsequential interactions in which a person is not detained or arrested . . . can have a strong influence on people's views about the legitimacy of the police. So, too, can vicarious experiences: witnessing other people's interactions with the law and legal authorities."<sup>86</sup> Thus, Tyler and colleagues have argued, "we should treat each encounter between citizens and the police (as well as courts and other legal actors) as a socializing experience—a teachable moment—that builds or undermines legitimacy."<sup>87</sup>

In contrast to the legal experiences of most individuals in noninstitutional settings, the detainees' interactions with legal authorities in immigration detention are direct, frequent, and unfold over a sustained period of time. As Catharine MacKinnon has observed about women inmates in prison: "They are surrounded, defined, debased, and confined by the law. Their everyday lives are taken over by it. It swallows them up: their liberties, their children, their bodies, their community ties . . . . To be in prison is what it is for women to live their everyday lives entirely inside the law."<sup>88</sup> The foregoing discussion suggests that immigration detention likely functions as a powerful social institution ripe with ongoing and highly salient

---

96 (2012).

83. Cecilia Menjivar & Cynthia L. Bejarano, *Latino Immigrants' Perceptions of Crime and Police Authorities in the United States: A Case Study from the Phoenix Metropolitan Area*, 27 *ETHNIC & RACIAL STUD.* 120, 139-42 (2004).

84. See sources cited *supra* note 6.

85. See PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* 15 (1998) ("[F]or most of us the law generally sits on a distant horizon of our lives, remote and often irrelevant to the matters before us.").

86. Tyler et al., *supra* note 59, at 757-58.

87. *Id.* at 758.

88. Catharine A. MacKinnon, *Reflections on Law in the Everyday Life of Women*, in *LAW IN EVERYDAY LIFE* 109, 110 (Austin Sarat & Thomas R. Kearns eds., 1993).

opportunities for legal socialization.

### III. THE CURRENT STUDY

In this section, I briefly describe the data and basic sample characteristics of the detainees in the current study.

#### A. DATA OVERVIEW

I analyze two major sets of data on long-term immigrant detainees who are class members of *Rodriguez*. The quantitative data consists of baseline surveys of individuals detained by ICE for a minimum period of six months continuously, pending the completion of their removal proceedings before an immigration judge. The qualitative data consists of in-depth interviews with a subset of baseline survey respondents who were released from detention subsequent to participating in the baseline survey. Caitlin Patler collaborated in the data collection. I describe each of these datasets in greater detail below. But before doing so, I briefly discuss two sets of field research that allowed me to conduct a contextualized analysis of the immigrant detainees' experiences in detention and their interactions with legal authorities.

First, between 2013 and 2014, I conducted courtroom observations of immigration bond hearings, and I led a research team in collecting systematic courtroom observational data on forty immigration bond hearings in five courtrooms in the Central District of California.<sup>89</sup> Second, I participated in tours of immigration detention facilities in Southern California.<sup>90</sup> During these tours, I visited various parts of the facilities that are not open to the visiting public, such as intake areas, dining halls, kitchens, recreational areas, medical units, isolation units, and living areas. I was also able to speak with ICE officials and facility representatives throughout these tours. I do not directly analyze these data in the current study; however, both the courtroom observations and the facility tours provided me with key insights about the detention process that closely guided my research strategy and analysis decisions presented below.

#### 1. Baseline Surveys

Between May 2013 and March 2014, in-person baseline surveys were

---

89. These bond hearings pertain to *Rodriguez* class members who did not participate in the baseline survey. The research team used a structured coding instrument to collect basic information about the hearings and to transcribe key portions of the hearings.

90. Between 2014 and 2015, I toured Adelanto, Theo Lacy, and Otay Mesa.

conducted with 565 detainees at four detention facilities: the James A. Musick Facility (“Musick”), the Theo Lacy Facility (“Theo Lacy”), the Santa Ana City Jail (“Santa Ana”), and the Adelanto Detention Facility (“Adelanto”). Approximately 23% of the respondents were held at Musick; 21% at Theo Lacy; 13% at Santa Ana; and 43% at Adelanto. Musick and Theo Lacy are county jails operated by the Orange County Sheriff’s Department. Santa Ana is a city jail operated by the Santa Ana Police Department. Adelanto is an immigration detention facility operated by the Geo Group, a for-profit prison company. ICE has contracted with each of these facilities to confine immigrant detainees pending their removal proceedings.<sup>91</sup>

All survey respondents were eighteen years of age or older, as juveniles are not covered by the injunction in *Rodriguez*. The surveys were administered orally and in person in English or Spanish, depending on the respondent’s preference. The surveys lasted about sixty minutes on average. Class members of *Rodriguez* were provided detailed information about the survey, and only those who consented to participate were surveyed. More than 92% of the detainees to whom the interviewers provided information about the survey completed the survey. There were no significant differences in refusal rates by gender or country of origin.<sup>92</sup>

The baseline survey data contains extensive information on the detainees’ demographic background, legal and criminal history, pre-detention employment, household situation, family relationships, detention experiences, health status, attitudes toward legal authority, and information about their bond hearings. Given that the survey took place in detention facilities, the sample over-represents class members who were denied bond, or those who were granted bond but had not posted it at the time of the survey.

## 2. Post-Release Interviews

During the baseline surveys, the interviewers asked each respondent

---

91. See *Ice Detention Facilities as of April 2017*, HEARTLAND ALLIANCE NAT’L IMMIGRANT JUST. CTR., <http://www.immigrantjustice.org/ice-detention-facilities-april-2017> (last visited Aug. 10, 2017) (archive version on file with author). On February 23, 2017, ICE issued a ninety-day notice to terminate its contract with Santa Ana. Jessica Kwong, *Santa Ana Considers Reinstating Jail Contract*, ORANGE COUNTY REG. (Mar. 7, 2017, 8:00 AM), <http://www.ocregister.com/2017/03/07/santa-ana-considers-reinstating-ice-jail-contract>. The contract expired on May 24, 2017. Jessica Kwong, *Remaining ICE Detainees at Santa Ana Jail Transferred out Monday*, ORANGE COUNTY REG. (May 9, 2017, 1:59 PM), <http://www.ocregister.com/2017/05/09/remaining-ice-detainees-at-santa-ana-jail-transferred-out-monday>.

92. Hereinafter, “significant” refers to statistical significance.

whether he or she wanted to be re-interviewed upon release; interested respondents provided their contact information. Between July 2013 and June 2015, we interviewed seventy-nine respondents from the baseline survey (14% of the baseline survey sample) who were released on bond or under supervision conditions pending the completion of their removal proceedings. All post-release interviews took place sometime during the respondent's first year of release. The distribution of the post-release respondents across the four detention facilities did not vary significantly from the corresponding relative distribution of the respondents in the baseline survey.

The interviews lasted on average about 120 minutes. Each respondent received a \$40 incentive in the form of a store gift card at the time of the interview. We conducted these interviews using a semi-structured interview instrument that produced both quantitative and qualitative data. With the consent of the respondents, the interviews were audio-recorded and transcribed for analysis. I analyzed the transcriptions using ATLAS.ti, qualitative analysis software for systematically coding textual data for identification of major themes, and their patterns and interrelationships.

The post-release interviews focused on various aspects of the respondents' detention experiences, the initial transition to life outside detention, and their experiences with the law and legal actors. For example, the post-release interviews captured information about the respondents' daily life inside detention, bond hearings, release and supervision conditions, immigration case background, effect of release on immigration case preparations, contacts with the criminal justice system, attitudes toward legal authority, sources of financial support/employment, family and community life, and health status.

## B. SAMPLE CHARACTERISTICS

Before discussing the analysis results, I highlight certain basic background characteristics of the respondents in the baseline and post-release samples. None of the characteristics captured in Table 1 differed significantly between the baseline and post-release samples at  $p < 0.05$ .<sup>93</sup> As shown in Table 1,<sup>94</sup> the top four countries of origin represented in the baseline and post-release samples were Mexico, El Salvador, Guatemala,

---

93. The  $p$ -value is the probability of obtaining a result as large as what is observed in the data if the null hypothesis (of no difference or no relationship) were true. A  $p$ -value  $< 0.05$  typically indicates strong evidence against the null hypothesis, allowing researchers to reject the null hypothesis.

94. Table 1 presents univariate and bivariate test results after deleting cases with missing values on the variables analyzed.

and Honduras. The countries represented in the “Other” category are diverse, ranging from Yemen to the Philippines, for example. Table 1 includes an index variable called the “Origin Rule of Law.” Following David Kirk and colleagues,<sup>95</sup> I constructed this index using the World Bank’s World Governance Indicators (“WGI”).<sup>96</sup> The standard normal units for the indicators range from approximately -2.5 to 2.5, with higher values corresponding to better outcomes. The rule of law indicator captures “perceptions of the extent to which agents [individuals and organizations] have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.”<sup>97</sup>

---

95. Kirk et al., *supra* note 82, at 88.

96. See *World Governance Indicators*, WORLD BANK, [www.govindicators.org](http://www.govindicators.org) (last visited Aug. 10, 2017).

97. Daniel Kaufmann et al., *The Worldwide Governance Indicators: Methodology and Analytical Issues* (World Bank Policy Research, Working Paper No. 5430, 2010), <http://ssrn.com/abstract=1682130>.

TABLE 1. Background Characteristics of Detainees in the Study

<i>Variables</i>	<i>Baseline Sample (N=514)</i>		<i>Post-Release Sample (N=75)</i>	
	<i>Mean</i>	<i>SD (Min, Max)</i>	<i>Mean</i>	<i>SD (Min, Max)</i>
<b>Country of Origin</b>				
<i>Mexico</i>	0.50	(0, 1)	0.53	(0, 1)
<i>El Salvador</i>	0.20	(0, 1)	0.17	(0, 1)
<i>Guatemala</i>	0.12	(0, 1)	0.09	(0, 1)
<i>Honduras</i>	0.04	(0, 1)	0.04	(0, 1)
<i>Other</i>	0.13	(0, 1)	0.16	(0, 1)
Origin Rule of Law	-0.61	0.31 (-1.79, 1.68)	-0.59	0.31 (-1.07, 1.41)
Male	0.92	(0, 1)	0.87	(0, 1)
Age (years)	37	9.28 (19, 69)	38	9.51 (20, 69)
Hispanic or Latino/a	0.89	(0, 1)	0.84	(0, 1)
High Sch. Degree or More	0.44	(0, 1)	0.47	(0, 1)
<b>Current Legal Status</b>				
<i>Lawful Perm. Res.</i>	0.26	(0, 1)	0.15	(0, 1)
<i>Undocumented</i>	0.71	(0, 1)	0.83	(0, 1)
<i>Other Legal Status</i>	0.03	(0, 1)	0.03	(0, 1)
Length of Stay in U.S. (years)	20	8.89 (0, 62)	19	8.61 (0, 41)
Speaks English Very Well/Pretty Well	0.54	(0, 1)	0.53	(0, 1)
Has a U.S. Citizen/LPR Child or Spouse	0.69	(0, 1)	0.71	(0, 1)
Employed Pre-Detention	0.90	(0, 1)	0.91	(0, 1)
Number of Felony Convictions	0.39	0.80 (0, 7)	0.23	0.58 (0, 3)
Number of Misdemeanor Convictions	2.51	1.97 (0, 12)	2.23	2.12 (0, 12)
Length of Detention (days)	271	153 (100, 1,689)	282	214 (162, 1,689)

*Note:* Data are from the Baseline Survey and Post-Release Interviews. Reference category for the variable "Speaks English Very Well/Pretty Well" is "Speaks English Just a Little/Not at All."



As Table 1 indicates, the majority of the baseline and post-release samples are male and Hispanic. The average ages are 37 (baseline sample) and 38 (post-release sample), respectively. Less than half of the respondents have a high school degree or more. The majority of respondents are undocumented. A number of measures, however, indicate that the respondents have deep social and economic ties to the United States. The respondents have been in the United States for a relatively long period of time (averaging 20 and 19 years, respectively), and the majority of respondents speak English “very well or pretty well.” Approximately 70% of respondents have U.S. citizen/lawful permanent resident (“LPR”) spouses or children, and about 90% have been employed during the six-month period preceding their immigration detention.

Table 1 also provides the number of past felony and misdemeanor convictions for the respondents in each of the samples. The two most common convictions among respondents with a prior criminal history (not shown in Table 1) were drug related (45% and 46% in baseline and post-release samples, respectively) and traffic-related (44% and 48% in baseline and post-release samples, respectively).<sup>98</sup> The average length of detention is 271 days (baseline sample) and 282 days (post-release sample), respectively.

#### IV. ANALYSIS RESULTS

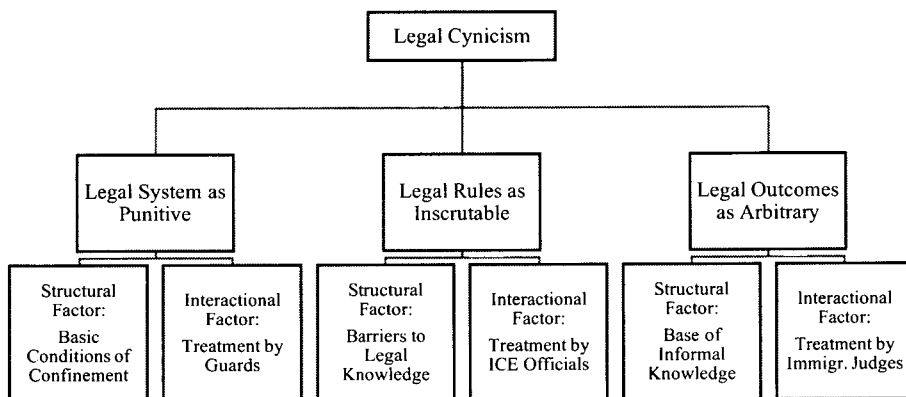
I organize the presentation of my analysis results into three major parts, each corresponding to the major subtypes of legal cynicism I found prevalent among the detainees. Figure 2 provides a schematic diagram of my key findings. For each subtype of legal cynicism, I first analyze its basic nature, and then examine the possible structural and interactional factors that might be shaping it. Two caveats are in order. First, the three subtypes of legal cynicism and their underlying factors likely overlap and interact. For analytical clarity, however, I analyze them separately here. Second, my discussion of the structural and interactional factors is not intended to be comprehensive; rather, my goal is to highlight some of the key factors that emerged from the data. I refer to the detainees only by their first names,<sup>99</sup> and the judges by their code names (e.g., “Judge A,” “Judge B”) to protect their individual identities. When the detainees discuss specific detention facilities, I refer to them by their code names (e.g., “Facility A,” “Facility B”) to further protect the individual identities of the detainees.

---

98. Some respondents may have more than one type of conviction.

99. In cases in which any two or more detainees share the same first name, I include an initial after the first name to distinguish the speakers.

FIGURE 2. Overview of Key Findings on Immigrant Detainees' Legal Cynicism



#### A. LEGAL SYSTEM AS PUNITIVE

I begin by examining the detainees' belief that the immigration system is punitive.<sup>100</sup> Central to this belief is the perceived gap between immigration detention on the books as civil or administrative confinement, and immigration detention in action as penal confinement. The detainees were well aware of the legal distinction between criminal incarceration and immigration detention. Some detainees, like Garvin, highlighted this formal distinction by explicitly referring to a prison/jail sentence as “criminal” in nature, and immigration detention as purportedly “civil” in nature.<sup>101</sup> Others, like José M., emphasized that individuals in immigration detention were neither “criminals” nor “prisoners.”<sup>102</sup> Yet in practice, many detainees appeared to experience immigration detention as punishment—no different in substance than punishment imposed on convicted criminal offenders through the criminal justice system.

The detainees spoke of how immigration detention made them feel like “criminals.” In Delmy’s words: “Inside detention, it makes you feel like you

100. Whereas my analysis here focuses on the perspectives and experiences of the detainees, César Hernández has examined the ways that immigration detention constitutes penal incarceration based on his analysis of relevant legislative history and theoretical understanding of punishment. See Hernández, *supra* note 16.

101. Telephone Interview with Garvin (Mar. 14, 2014).

102. Interview with José M., in L.A., Cal. (Jan. 26, 2014).

are the worst criminal. The most wanted of all. You tell yourself, I'm not. But that's how they make you feel."<sup>103</sup> The 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. Dilma, for example, recounted asking the immigration officials: "Why are you giving me more time . . . ? I committed a crime, and I paid for it."<sup>104</sup> Likewise, Erick wondered: "Well, I say that if you already completed your [prison] term, why do they have to take you back and lock you up?"<sup>105</sup> In a related vein, Adan declared:

Sometimes immigration officials accuse you of criminal cases that are more than fifteen years old. They bring them out again after having punished you. . . . You can't accuse me twice for a crime that I know I committed and paid for. I agree with one time, but not twice.<sup>106</sup>

Of note, the baseline survey suggests that many detainees consider immigration detention to be a *harsher* form of punishment than criminal incarceration. The baseline survey asked a sample of detainees who had served a criminal sentence prior to being detained by ICE: "In general, which experience was worse for you?"<sup>107</sup> According to the survey results, 47% of the detainees stated that immigration detention was worse than prison/jail; 40% stated that prison/jail was worse than immigration detention; and 13% stated that the two were about the same.

Because the detainees' comparative assessments may be partly a function of the length of each type of confinement they had endured at the time of the survey, I examined the relationship between the detainees' responses on the survey item at issue and their lengths of criminal sentence and immigration detention, respectively. We might also expect the detainees' comparative assessments to be partly a function of the relative recency of their criminal incarceration, given that recent experiences of confinement are likely to be felt more acutely than experiences of confinement remote in time, all else being equal. Thus, I also examined the relationship between the detainees' responses on the survey item at issue and the length of time since their last criminal conviction. Table 2 provides descriptive statistics on the survey responses by length of criminal sentence,<sup>108</sup> length of immigration

---

103. Telephone Interview with Delmy (Mar. 9, 2015).

104. Interview with Dilma, in L.A., Cal. (Jan. 9, 2014).

105. Interview with Erick, in L.A., Cal. (June 10, 2014).

106. Telephone Interview with Adan (Jan. 23, 2014).

107. N-275.

108. Because any given respondent may have more than one criminal conviction, I examined the

detention, and months since last conviction. As shown in Table 2, the mean of each variable is similar across all response categories (about the same; prison/jail; immigration detention).<sup>109</sup>

---

respondent's longest sentence across all of his or her criminal convictions.

109. One-way analysis of variance (ANOVA) of "Longest Criminal Sentence" did not show significant differences between groups ( $F(2,264)=0.38, p=0.09$ ). One-way ANOVA of "Total Length of Detention" also did not show significant differences between groups ( $F(2,271)=1.99, p=0.14$ ). Likewise, one-way ANOVA of "Time Since Last Conviction" did not show significant differences between groups ( $F(2,255)=0.51, p=0.60$ ). I also tested the robustness of these ANOVA results by conducting a multinomial logistic regression analysis of the detainees' comparative assessments of prison versus detention. In the regression model, I included the three independent variables of interest (the total lengths of criminal sentence and detention, respectively, and time since last conviction), and a host of detainee background characteristics as control variables (gender, age, Hispanic origin, education, current legal status, English fluency, legal status of spouse and children, employment status pre-detention, number of felony conviction, and number of misdemeanor convictions). This regression analysis showed that none of the independent variables were significantly related (at  $p<0.05$ ) to the detainees' comparative assessments of prison versus detention, net of the various detainee background characteristics. (Results on file with the author and available upon request).

TABLE 2. Analysis of Prison v. Detention Assessments

<i>Variables</i>	<i>About the Same</i>		<i>Prison/Jail Worse</i>		<i>Immigration Detention Worse</i>		<i>N</i>
	<i>Mean</i>	<i>SD</i>	<i>Mean</i>	<i>SD</i>	<i>Mean</i>	<i>SD</i>	
Longest Criminal Sentence (months)	9.46	11.76	11.45	15.29	12.00	16.18	267
Total Length of Detention (months)	7.37	2.81	8.46	4.26	7.61	3.47	274
Time Since Last Conviction (months)	27.28	31.62	31.28	44.16	25.97	37.71	258

*Note:* Data are from the Baseline Survey.

What factors might be related to the detainees' belief that immigration detention is punishment? In my analysis below, I focus on two possible factors: (1) the basic conditions of immigration detention that stigmatize and subject detainees to an indefinite deprivation of personal liberty, and (2) interactions with the guards that continually reinforce and affirm the detainees' status as prisoners who are deserving of moral condemnation.

### 1. Structural Factor: Conditions of Confinement

That the detainees experience immigration detention as criminal punishment is not surprising given that they are held either at prisons/jails that contract with ICE, or at immigration detention facilities built by for-profit prison corporations, which closely model the physical structure and operation of the facilities based on prisons/jails. Like prisoners, detainees wear government-issued uniforms and wristbands with identifying information at all times.<sup>110</sup> Their uniforms are color-coded based on ICE's assessment of security risk and are indistinguishable in appearance from prison uniforms.<sup>111</sup> Daven, who had no prior criminal convictions and had been detained by ICE, noted: "If you wear a uniform in a jail, doesn't that mean you are a prisoner?"<sup>112</sup>

Like prisoners, the detainees are routinely shackled when being transported outside detention facilities (to attend court hearings, obtain

110. See U.S. IMMIGRATION & CUSTOMS ENF'T, ICE/DRO DETENTION STANDARD: CLASSIFICATION SYSTEM 3 (2008), [http://www.ice.gov/doclib/dro/detention-standards/pdf/classification\\_system.pdf](http://www.ice.gov/doclib/dro/detention-standards/pdf/classification_system.pdf).

111. See *id.*

112. Interview with Daven, in Hawthorne, Cal. (Nov. 27, 2013).

medical care, transfer to different detention facilities, etc.). The detainees also described being shackled during their court hearings.<sup>113</sup> In recounting his experience of being shackled for his courtroom hearing, Pierre stated: “I’m not a murderer. . . . I’m not going to go anywhere. . . . I thought I wasn’t a criminal anymore. I thought I was a detainee.”<sup>114</sup> Another detainee, Francisco L., in describing how he had remained shackled during his bond hearing, worried out loud: “If the immigration judge sees us like that . . . he’s going to think we are a big-time criminal.”<sup>115</sup>

The daily lives of detainees, like those of prisoners, are highly regimented and under strict surveillance. Fernando described the routine of daily counts: “It is torture. Daily in the night, you can’t sleep because they wake you up to count you at four or five in the morning.”<sup>116</sup> Another detainee, Luis, described the two hours a day that the detainees are allowed out of their assigned cells in this way: “Our two hours were basically . . . like under a road meter. You are locked up basically, but you get a chance to come out . . . to make brief phone calls, eat or shower, and call your attorney.” He continued: “Being told when to shower, being told when to go to bed, being told what to eat . . . . [B]asically it’s a jail in there.”<sup>117</sup> There are also a variety of facility rules that regulate the detainees’ interpersonal conduct. According to Doris:

There are crazy rules like if you order commissary . . . you can’t share it with others. . . . In [Facility C], they have this rule, like no touching rule. You can’t touch others at all. . . . Sometimes for court hearings, people want to do other people’s hair. You know, like braid it or whatever it is, to make you feel a little bit better about yourself. But they don’t allow you to touch at all.<sup>118</sup>

Moreover, the detainees are isolated from the outside world in the same way that prisoners are. As Jesús observed in comparing detention to incarceration: “What’s the difference. You are still kept away from society, from your family.”<sup>119</sup> The pain of separation from family was a recurring and emotionally fraught topic for detainees. In Sylvia’s words: “It hurt me

---

113. In January 2014, the American Civil Liberties Union reached a settlement with ICE: with the exception of Master Calendar Hearings, ICE will not restrain detainees in the San Francisco immigration courtrooms for their hearings absent emergency situations. *See Settlement Agreement* at 4–6, *Abadia-Peixoto v. U.S. Dep’t of Homeland Sec.*, No. 3:11-civ-4001 RS (N.D. Cal. Feb. 7, 2013).

114. Telephone Interview with Pierre (Mar. 9, 2014).

115. Interview with Francisco L., in L.A., Cal. (June 17, 2014).

116. Interview with Fernando, in L.A., Cal. (Dec. 15, 2013).

117. Telephone Interview with Luis (Aug. 5, 2014).

118. Telephone Interview with Doris (Aug. 6, 2014).

119. Interview with Jesús, in Claremont, Cal. (May 26, 2014).

so much, I was hurting so much I became depressed without knowing it. . . . It's traumatizing . . . the separation of kids from a mother."<sup>120</sup> Likewise, German V. recounted: "[D]etention hurt me, but it hurt my children more. They are the ones that suffered the most. . . . [D]etention separated us and they were very attached to me."<sup>121</sup> The detainees also described the emotional hardship of the no-contact policy during family visitations. Jacqueline offered the following account of her visits with her four-year-old son:

When I went to immigration detention, he'd cry because he'd see the deputies and say, "Cop, cop, cop." . . . He didn't want to talk to me on the phone . . . . And then sometimes he would want to come inside, like where I was—like he'd point at the door, because there's a door next to the windows, so he'd tell me he wanted to go over there—but he couldn't.<sup>122</sup>

The foregoing discussion highlights the many ways in which immigration detention appears indistinguishable from criminal incarceration from the detainees' perspective. I now turn to one significant condition of detention that is *different* from criminal incarceration—the condition that informs many detainees' belief that detention is an even harsher form of punishment than criminal incarceration. In a follow-up question to the survey item asking the detainees which experience—immigration detention or prison/jail—was worse for them, the detainees were invited to share the underlying reasons for their response. As shown in Table 3, I classified these stated reasons into nine broad categories. By far, the most commonly stated reason (33%) why some detainees felt that immigration detention was worse than prison/jail was the uncertainty and indefinite duration of immigration detention.

---

120. Interview with Sylvia, in L.A., Cal. (Apr. 4, 2014).

121. Interview with German V., in L.A., Cal. (Sept. 14, 2013).

122. Interview with Jacqueline, in Orange, Cal. (Mar. 8, 2015).

TABLE 3. Stated Reasons Why Detention Is Worse than Prison/Jail

<i>Stated Reasons</i>	<i>Proportion</i>	<i>Example Statements</i>
Uncertainty / Indefinite Nature of Detention	0.33	"In immigration detention, you never know when you are going to get released." "Because you have to fight the case and you don't know how long you'll be here."
Poor Facility / Living Conditions	0.14	"The detention centers are crowded, and the food is awful." "Immigration is worse because we are in constant lockdown and there is nowhere to go or to talk to about the conditions here."
Impact on Family / Separation from Family	0.09	"I'm so far from my family." "I feel like my family is suffering more during my detention term."
Spent More Time in Detention	0.09	"Detention is worse because I've just spent more time here than in prison."
Limited Programs and/or Recreational Activities	0.06	"There aren't any programs in detention and we don't get a lot of yard time." "Jail is better because they have different programs and activities for inmates and one can work. In detention there is nothing to do."
More Rules and Less Rights	0.05	"There are more rules to follow in detention, and I feel like I had more rights as a prisoner than when I was a detainee."
Treatment from Guards	0.05	"Deputy called women 'bitches.' Some deputies ask detainees to kneel down. Deputy tells detainees 'you're too fat.'" "Detention is worse because the deputies don't give any respect to the detainees. They are always saying racist comments and saying racist jokes."
Internal Conflict or Violence Among Detainees	0.05	"There are a lot of different people in detention and this leads to a lot more disagreements and fights."
Stress / Other	0.13	"Being in detention is more stressful on an emotional, psychological and physical level." "People are making money to have us here." "I've already



paid for the crime I committed in the past, but I'm being punished again by being forced to spend time in detention."

---

*Note:* Data are from the Baseline Survey. N=183 (total count of stated reasons). Each respondent provided between one to three reasons.

According to Francisco V., "Dates don't exist in immigration detention."<sup>123</sup> He continued, "If you don't have dates . . . you can't do anything, you can't participate in anything, nothing."<sup>124</sup> Another detainee, Alfredo, likened his situation to being a "blind prisoner" because "in immigration, you don't have a sentence; you're just locked up."<sup>125</sup> Yet another detainee, Miguel V., related that he had tried to hang himself twice while in immigration detention; he went on to explain: "You never know how long you're going to be locked up. I already had a year and a half and I was already hopeless."<sup>126</sup> Similarly, Doris described the mental hardship associated with the uncertainty and indefinite duration of immigration detention in this way:

When you are in jail . . . you have a release date. Being detained . . . you have no release date. You don't know how your case is going to go. If you don't have a strong mind, you are screwed. . . . It really psychologically affects someone really, really bad.<sup>127</sup>

Given this psychological burden, José B. concluded: "You know, I would have preferred to get ten years in prison than another year in detention."<sup>128</sup>

## 2. Interactional Factor: Treatment by the Guards

Thus far, I have analyzed the detainees' belief that detention is punishment because the structural conditions of confinement in immigration detention are indistinguishable from, or even worse than, criminal incarceration. I now turn to the key interactional factor that likely underlies the detainees' belief that detention is punitive. This interactional factor can be succinctly summarized by the common refrain among the detainees that they are "treated like criminals" by the guards. In Gabriel's words: "They say we are detainees but the guards treat us the same as the inmates. . . .

---

123. Interview with Francisco V., in Compton, Cal. (Apr. 13, 2014).

124. *Id.*

125. Interview with Alfredo, in Palmdale, Cal. (Aug. 28, 2013).

126. Interview with Miguel V., in Compton, Cal. (Jan. 28, 2014).

127. See Telephone Interview with Doris, *supra* note 118.

128. Interview with José B., in Norwalk, Cal. (July 31, 2014).

Detainees are supposed to have more rights, but they don't grant them."<sup>129</sup> Similarly, Vanik observed:

It's called detention; you don't call it incarceration. But what's the difference? It's the same stuff. You can't change the guards' minds. They look at you as a criminal. Maybe they don't want to put it that way, or say it that way, but the way they treat you, that's the way it goes.<sup>130</sup>

What does it mean for the detainees to feel that they are treated as criminals by the guards? I highlight two aspects of the interpersonal dynamic that reinforce and affirm the detainees' "prisoner" status. First, the detainees discussed certain treatments by the guards that conveyed moral condemnation. Cristóbal's account below is instructive:

If an officer appeared in front of us, I could not look at him like how I am looking at you in the eyes. I had to be hunching down, and not turn to look at the officer. . . . There were two or three officers who were Christian, and one time one of them greeted me. Another officer told me, "Come over here." I went to him, and he told me, "He is my sergeant and you do not have the right to greet him." I said: "He's the one who greeted me, and then I greeted him." He said, "No."<sup>131</sup>

Gabriel summarized the feeling of moral degradation from these types of treatment in this way: "We are there as if we had a deadly infection . . . like we are going to contaminate you."<sup>132</sup>

Second, from the detainees' perspective, the guards' exercise of seemingly unfettered control over them continually reminded them of their loss of personal autonomy and dignity. In this context, the detainees discussed the guards' broad discretion to dispense privileges and to discipline. José L., for example, described a rare visit from his six-year-old son, recounting how his ability to have contact with his son during that visit depended on which guard was on duty:

José L.: When they brought [my son], it was difficult because I wanted to hold him.

Interviewer: You couldn't?

José L.: I couldn't. . . . We sit in front of each other, but that's it.

Interviewer: You can't touch your child?

José L.: No.

---

129. Interview with Gabriel, in Lakewood, Cal. (Feb. 25, 2014).

130. Interview with Vanik, in West Hollywood, Cal. (Jan. 29, 2014).

131. Interview with Cristóbal, in L.A., Cal. (Mar. 18, 2014).

132. See Interview with Gabriel, *supra* note 129.

Interviewer: So what if you were to ask the guard if you could hold your child just for a little while?

José L.: There were certain guards that were like lenient that would be like, okay, go ahead. But there were other ones that were like, really mean; they were being strict and they were like, “I can’t let you touch.” They were following the rules.<sup>133</sup>

The detainees also discussed the guards’ power to discipline them at the guards’ sole discretion, which would result in the loss of privileges, being placed in the isolation/segregation unit (commonly referred to as the “hole”), or being transferred to another facility with harsher conditions. The infractions could be minor, according to the detainees, but lead to harsh disciplinary action at the discretion of the guard. Patricia, for example, described being disciplined by a “very strict” guard for having kept two oranges in her cell without permission:

I got two oranges at meal time. That day I wasn’t feeling good, I had my period. And since you can’t buy pills there, I got the oranges, and I said I’ll peel them later and make myself some orange tea. I was hurting a lot and things like that can help me forget [the pain]. That day, an officer who is very strict . . . entered to check our cells, and she said, “Whose oranges are these?” because having food in the cells is prohibited. I told her they were mine, and she locked me up for twenty-three hours—for an orange.<sup>134</sup>

The detainees also reported instances of disciplinary action even when they had not violated any rules. Vicente, for example, recounted the following incident that triggered a transfer from one facility to another:

The problem at [Facility B] was that one of the sheriff officials was racist and began to say, “Oh you guys Mexicans stink.” . . . So then I went to talk to the officials and said, “You know, I came to talk to you on behalf of everyone. . . . I don’t want anything to do with politics, but they asked me to talk to you because they feel bad that you have used those words.” The official told me, “Oh, you are the last one who is supposed to tell me that.” And he told me, “Okay, tell them that I won’t tell them they stink, but you are leaving to [Facility D].”<sup>135</sup>

In some respects, the detainees viewed the guards in immigration detention as wielding even greater power and control than the guards in criminal incarceration. This perception appears to be based on the detainees’ pervasive fear that any negative record in their detention files would have a

---

133. Telephone Interview with José L. (Apr. 22, 2015).

134. Interview with Patricia, in L.A., Cal. (Jan. 6, 2014).

135. Telephone Interview with Vicente (Jan. 24, 2014).

detrimental effect on their immigration cases and their ability to fight removal.<sup>136</sup> Juan C., discussing how the guards sometimes liked to “mess around” with the detainees, noted: “The guards know there’s nothing you can do about it. Anything you do in detention, you will get a count against you in immigration court.”<sup>137</sup> Roberto explained the situation this way: “When you go to court, and you went to the hole, the judge sees that you’ve been a troublemaker. So the judge will be like, ‘Why am I going to let you out if you are causing problems here?’”<sup>138</sup>

In sum, I suggest that these types of interactional dynamics, combined with the structural conditions of confinement analyzed above, continually serve to remind the detainees of their stigmatized status and to affirm their belief that the immigration system is punitive.

#### B. LEGAL RULES AS INSCRUTABLE

According to June Louin-Tapp and Felice Levine, the legally impoverished are those who “lack[] the knowledge of rights and resources, the sense of self, and the problem-solving competence sufficient to mobilize the law.”<sup>139</sup> By this definition, many detainees are “legally impoverished” to an extraordinary degree. I discuss the detainees’ legal impoverishment as the starting point of my analysis in this section for the following reason: at the core of the detainees’ legal cynicism is their awareness of their legal impoverishment and the implications of this impoverishment for their future, and the belief that legal rules are made inscrutable to them—inaccessible and incomprehensible—by design. Consequently, I first delineate the basic aspects of the detainees’ legal impoverishment before analyzing their associated legal cynicism.

The following baseline survey results help to illuminate the extent of legal impoverishment among immigrant detainees. When asked whether they knew why the government had placed them in a removal proceeding, 10% of the detainees reported that they did not know.<sup>140</sup> Ten percent may not be considered large in other contexts, but it is arguably a significant

---

136. To be sure, guards in the criminal incarceration context also exercise a great deal of discretionary power; for example, guards might influence sentence lengths and the outcome of parole hearings for prison inmates.

137. Interview with Juan C., in Santa Ana, Cal. (Apr. 26, 2014).

138. Interview with Roberto, in L.A., Cal. (Mar. 28, 2014).

139. June Louin Tapp & Felice J. Levine, *Legal Socialization: Strategies for an Ethical Legality*, 27 STAN. L. REV. 1, 8 (1974).

140. N=546. The item asked: “Do you know why the government has placed you in a removal proceeding?” The answer choices were “no” or “yes.” If the respondent answered “yes,” they were asked: “Please tell me *all* of the reasons why you think the government has placed you in a removal proceeding.”

proportion here, as the stakes in this knowledge are extraordinarily high given the complete and long-term loss of personal liberty. Next, the baseline survey asked the detainees about their level of understanding about the content of the bond hearing notices they had received from the government. As I discussed earlier, all *Rodriguez* class members are legally entitled to a written notice of their bond hearings in plain language.<sup>141</sup> Forty-eight percent of the detainees on the baseline survey reported that they understood “none” or only “some” of the content of the bond hearing notices.<sup>142</sup>

The detainees’ lack of legal knowledge related to both procedural and substantive law, and it constituted one of the most commonly recurring themes during the post-release interviews. For example, Hilario did not know in what stage his immigration case was (e.g., before an immigration judge, the BIA, or the Ninth Circuit Court of Appeals).<sup>143</sup> Garvin related that he had unknowingly waived his right to appeal after the conclusion of his bond hearing.<sup>144</sup> Juan C. recounted how he was told by the immigration judge that even though he had once qualified for some type of legal relief from deportation, he no longer qualified because he had not known to ask for it at the time.<sup>145</sup>

Silvie, a French citizen who had entered the United States through the Visa Waiver Program<sup>146</sup> to join her U.S. citizen husband seventeen years ago, explained that she had not been aware that she had entered the United States as a tourist; because she was coming to join her U.S. citizen husband, she had presumed her stay would be permanent.<sup>147</sup> Silvie recounted how she first discovered her manner of entry:

The first time I arrived at [Facility B], the ICE officer says, “Do you know you came on a visa waiver?” I’m like, “I don’t know.” He says, “I’m telling you, you came on a visa waiver program.” And he says, “Bye, French Fry; you are removable.” I didn’t know that word, “removable,”

---

141. See *supra* note 57.

142. N=411. The other two answer choices were “most of the content” (20%), and “all of the content” (31%).

143. Interview with Hilario, in Westminster, Cal. (Feb. 23, 2014) (“Well, right now, honestly, I don’t know in what stage [it is].”).

144. See Telephone Interview with Garvin, *supra* note 101 (“Well, they said in their report that I was not eligible to appeal [the immigration judge’s bond decision] because I waived my right to appeal at the hearing, which I didn’t knowingly or intelligently do, because that was not my intention.”).

145. See Interview with Juan C., *supra* note 137 (“The immigration judge said I qualify for this and this, but since I didn’t ask for it, I don’t qualify now. . . . How am I supposed to know [to ask for it]?”).

146. The Visa Waiver Program allows citizens or nationals of certain participating countries, such as France, to enter the United States as a tourist without a visa for ninety days or less, so long as certain statutory requirements are satisfied. 8 U.S.C. § 1187 (2012).

147. Interview with Silvie, in Mission Viejo, Cal. (Jan. 10, 2014).

so I said, “What’s removal mean?” And he says, “Bye, French Fry,” like I’m going to be deported.<sup>148</sup>

There are two aspects of the detainees’ legal impoverishment that are central to understanding their legal cynicism. First, the detainees were keenly aware of their legal impoverishment and its implications for their future. Daven’s depiction of his bewilderment during his appearance before an immigration judge illustrates this point:

I don’t know how the rules work. What are the rules? If you go to my country, Fiji, and I detain you . . . how are you going to feel? You don’t know anything. Then they put you in the court. What are you going to say? You don’t know anything.<sup>149</sup>

Second, the detainees commonly believed that the legal rules were made inscrutable by design. Daniel’s discussion of his attempts to navigate the immigration system is instructive:

I mean, I don’t know. . . . First of all, I would have to be able to understand my own legal situation, which I don’t. But it just seems like, everything is so confusing. There are so many freaking steps, so many freaking things, and it’s like oh my God. It’s like the court system doesn’t want you to be free to do anything. That way, you can just give up. It seems like that.<sup>150</sup>

Doris offered a similar view in explaining her legal experience:

We don’t know anything about the law, right? I know that I broke the law a few times, I know that. I know the penal codes. I know that law. I don’t know immigration law, and they don’t give you anything. They just throw you in there [in detention], and it’s like you’re on your own.<sup>151</sup>

By “you’re on your own,” Doris was referring to her lack of right to a government-appointed legal counsel under the immigration law: “My asylum and my Ninth Circuit case . . . this process is pretty hard because they don’t give you . . . a public defender. When you are in detention, they don’t give you a public defender, so you don’t know what you are doing.”<sup>152</sup>

In the next section, I explore two factors that likely shape this belief that legal rules are made inscrutable by design: (1) institutional barriers to legal knowledge, and (2) the detainees’ encounters with ICE officials whom the detainees report as failing to inform or misinforming them about the law.

---

148. *Id.*

149. *See* Interview with Daven, *supra* note 112.

150. *See* Telephone Interview with Daniel, *supra* note 3.

151. *See* Telephone Interview with Doris, *supra* note 118.

152. *See id.*

## 1. Structural Factor: Barriers to Legal Knowledge

There are two major sources of legal knowledge for the detainees that are relevant for my analysis of legal cynicism: (1) attorneys (if the detainee is able to obtain legal representation, given that generally there is no right to a government-appointed attorney in immigration proceedings),<sup>153</sup> and (2) legal materials available through the law library in detention facilities.<sup>154</sup> In addition, because family members often function as an informational conduit between detainees and the outside world, family members constitute another potential, albeit indirect, source of legal knowledge for some detainees. The baseline survey asked the detainees how easy or difficult it had been for them to access each of these different potential sources of legal knowledge.<sup>155</sup> With respect to access to attorneys, the baseline survey collected information on two layers of access. The first layer is the extent to which the detainees were able to obtain legal representation, and the second layer is the detainees' ability to communicate with their attorneys.

Table 4 shows that more than half of the detainees (52%) lacked legal representation at the time of the survey (see "Pooled Sample Mean").<sup>156</sup> Note that this statistic captures whether or not the detainee reported having legal representation *at the time of the survey*. Thus, we do not know at what point in the legal proceedings the respondents obtained legal representation, nor how long they were able to retain their legal counsel. It is possible—indeed, even likely—that many detainees do not have legal representation throughout their immigration cases, even if they are able to retain representation for some portions of those cases.<sup>157</sup> Among those who had an

---

153. See KATE M. MANUEL, CONG. RESEARCH SERV., R43613, ALIEN'S RIGHT TO COUNSEL IN REMOVAL PROCEEDINGS: IN BRIEF 1 (2016) (explaining that "courts have declined to recognize a categorical right to counsel, applicable to all aliens in removal proceedings").

154. The other significant source of legal knowledge for detainees is "jailhouse lawyers"—detainees who offer legal assistance to fellow detainees. I do not examine this source of legal knowledge here, as it is not directly relevant to understanding the legal cynicism at issue.

155. The possible answer choices were: "very easy," "easy," "difficult," and "very difficult." Table 4 shows proportions corresponding to the collapsed categories, "very easy/easy" versus "difficult/very difficult."

156. This rate of representation among the baseline survey respondents, however, may be significantly higher than the rate of representation among other detainees at the national level. For example, according to a national study of removal cases decided between 2007 and 2012, only 14% of those detained *throughout* the pendency of their removal proceedings were legally represented. See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 31–32 (2015). In contrast, 38% of respondents in the baseline survey who had been denied bond at the time of the survey (and thus were likely to remain detained throughout the pendency of their removal proceedings) reported having legal representation.

157. For a detailed discussion on the appropriate unit of analysis (i.e., cases, proceedings, or hearings), and the importance of not assuming constant representation throughout cases, see Eagly &

attorney and tried to meet with their attorney, 27% found it “difficult/very difficult” to do so while in detention. An even greater proportion of detainees—44%—found it “difficult/very difficult” to see their family members. Finally, with respect to materials available through the detention facility law libraries, about 37% of detainees found it “difficult/very difficult” to access hard copies of legal materials, and 39% found it “difficult/very difficult” to access electronic legal materials.

TABLE 4. Descriptive Statistics on Access to Legal Knowledge

<i>Variables</i>	<i>Adelanto</i>	<i>Musick</i>	<i>Santa Ana</i>	<i>Theo Lacy</i>	<i>Pooled Sample</i>	<i>Pooled Sample</i>
	<i>Mean</i>	<i>Mean</i>	<i>Mean</i>	<i>Mean</i>	<i>Mean</i>	<i>N</i>
Do not have legal representation	0.58	0.46	0.44	0.52	0.52	558
It has been difficult/very difficult to...						
<i>see my attorney</i>	0.29	0.23	0.28	0.26	0.27	290
<i>see family members</i>	0.45	0.40	0.50	0.41	0.44	489
<i>access hard copies of legal materials like law books</i>	0.34	0.36	0.36	0.45	0.37	491
<i>access electronic legal materials through computers</i>	0.42	0.44	0.30	0.36	0.39	448

*Note:* Data are from the Baseline Survey. With respect to all of the variables, differences across the detention facilities are not significant at  $p < 0.05$  (two-tailed tests).

The detainees discussed a number of serious challenges in detention that made their retaining and communicating with attorneys difficult. First,



the baseline survey indicates that 90% of the detainees had been employed during the six-month period preceding their immigration detention; the forced loss of employment resulting from detention meant acute financial stress for these detainees and their families, which made retaining private legal counsel that much more infeasible. The government is required to maintain a list of organizations and attorneys who provide pro bono services,<sup>158</sup> but the detainees described this list as useless and misleading. Vanik explained:

Vanik: When you go into immigration court, they give you a list of pro bono lawyers. But that's not true. They don't do anything for free.

Interviewer: You tried calling those lawyers?

Vanik: Oh yeah, I called them. Everybody called them.

Interviewer: And what did they say?

Vanik: They say, "Oh, you know what, you have a family? Ask your family to come see us." Then just for a conversation, they want to charge you money.

Interviewer: That's what the lawyers on the pro bono list say?

Vanik: Oh yeah, crooks.<sup>159</sup>

Second, the detainees discussed another type of financial challenge resulting from detention that made their search for legal representation extremely difficult, if not impossible. Daven, in describing the comparative ease with which one could search for an attorney on the outside, explained the challenge of searching for an attorney inside detention in this way:

It was very easy [on the outside]. . . . If I want to hire a lawyer, I go to the internet and check out the lawyer, check out the lawyer's price. But from the facility, it's very hard to call. . . . But when you are outside, you are twenty-four-seven. You can call anytime, and you can interview several lawyers. When you are in detention, the lawyer charges \$500 to come see you there. When you are outside, it's free. . . . That's why I never interviewed anybody in detention. Now I'm outside, I have interviewed several lawyers.<sup>160</sup>

Third, the detainees who had managed to find legal representation were often unable to directly communicate with their attorneys to discuss their cases. They highlighted the seemingly prohibitive costs and the logistical difficulties of making telephone calls.<sup>161</sup> According to Miguel S., "I never

---

158. See 8 C.F.R. § 1003.61 (2016).

159. See Interview with Vanik, *supra* note 130.

160. See Interview with Daven, *supra* note 112.

161. In *Lyon v. U.S. Immigration Customs & Enforcement*, immigrants held in detention facilities in California's Contra Costa County, Sacramento County, and Yuba County sued the federal government

spoke with the lawyer who was representing me because my wife was the one that spoke to her. Sometimes it is a little expensive making calls, and the truth is, I didn't have much money."<sup>162</sup> Patricia noted: "The whole year, the whole ten months that I was [in detention], only my husband was the one that talked to [the attorney], not me. I didn't because [the attorney] didn't answer my calls."<sup>163</sup> Given the attorneys' general unwillingness or inability to visit their clients in detention, it was not uncommon for the detainees to note that their bond hearings had been the first time that they had ever seen or spoken with their attorneys.<sup>164</sup>

For *pro se* detainees who were trying to teach themselves the legal rules, the detention facilities' law libraries, consisting primarily of computers with basic legal research databases, offered little hope of obtaining legal knowledge. As Marvin G. and others explained, "[I]t was limited, very limit[ed] what they give you there."<sup>165</sup> The detainees also explained that they were typically allowed only an hour a day to access the library, which they felt was woefully inadequate in gathering useful information. As Sylvia explained: "You have to sign up for the time that you are going to use the computer, and if you don't really know how to use it, it's obviously even more difficult."<sup>166</sup>

Finally, the detainees found that they often lacked the basic foundation necessary to understand the legal materials found at the law libraries, and the libraries did not offer basic materials or assistance that would enable them to develop this foundational knowledge. Jesús explained: "I went to the law library that they offer. . . . I went a few times, but it was too confusing. . . . I didn't really comprehend what I was reading."<sup>167</sup> Rafael, discussing these types of challenges that he encountered in trying to access legal knowledge through the detention facility law library, simply concluded: "They are making it very difficult for us to fight our cases."<sup>168</sup>

---

in a class action lawsuit, alleging lack of meaningful access to telephones. Complaint for Injunctive & Declaratory Relief at 9- 12, 20, *Lyon v. U.S. Immigration Customs & Enf't*, No. 3:13-cv-05878 (N.D. Cal. Dec. 19, 2013). The parties reached a settlement agreement, which requires the government to provide detainees improved access to telephones. See Settlement Agreement and Release at 6- 14, *Lyon v. U.S. Immigration & Customs Enf't*, No. 3:13-cv-05878-EMC (N.D. Cal. June 14, 2016).

162. Interview with Miguel S., in Rancho Cucamonga, Cal. (Jan. 5, 2014).

163. See Interview with Patricia, *supra* note 134.

164. Ingrid Eagly documents how these types of issues are amplified in the context of detainees attending their immigration proceedings via televideo. Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 NW. U. L. REV. 933, 983- 88 (2015).

165. Interview with Marvin G., in L.A., Cal. (Aug. 10, 2014).

166. See Interview with Sylvia, *supra* note 120.

167. See Interview with Jesús, *supra* note 119.

168. Interview with Rafael, in L.A., Cal. (June 12, 2014).

## 2. Interactional Factor: Treatment by ICE Officials

The detainees' interactions with ICE officers to whom they are assigned likely also shaped the detainees' belief that legal rules were made inscrutable by design. Also known as deportation officers or detention and deportation officers, these ICE officers are responsible for overseeing all aspects of their assigned noncitizens' detention and removal processes.<sup>169</sup> The detainees reported instances in which the ICE officers appeared to be either failing to inform or misinforming them of their legal rights and/or relevant legal information. Julio described the ICE officers' failure to inform in this way: "I know that they aren't going to tell you. For example, if someone drops a hundred dollar bill, they aren't going to tell that person . . . . They know about the things that you have a right to, and they don't say it."<sup>170</sup> José G., like many other detainees, attributed this kind of withholding of legal knowledge to his assigned ICE officer's desire to convince him to give up on his immigration case. José G. explained:

He was supposed to come and tell me, "You are having a bond hearing." They got to let you know like two weeks ahead. His job was to come and tell me that. But he just told me, "Would you like to start all over and go to Mexico?" He probably figured, "Oh yeah, he's going to quit; let him sign up [for voluntary departure] and leave."<sup>171</sup>

Vicente, recounting how he had been deported previously from the United States, described how his ICE officer had failed to inform him of important legal information that had been directly relevant to his case:

The ICE officer told me "You are Mexican; we will deport you to Mexico." They didn't inform me I had a right to contact a lawyer. They didn't tell me I had bail of \$3,000. I found out years later I had bail. They didn't tell me I had a right to appeal the decision they had made. Instead, they took me on a plane, sent me to Los Angeles, and from there, to Mexico.<sup>172</sup>

According to some detainees, ICE officers not only failed to inform, but also misinformed them of their legal rights in order to expedite the removal process. Daniel's account of how he was deported from the United States

169. See OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC., OIG-17-41, ICE DEPORTATION OPERATIONS 1 3 (2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-51-Apr17.pdf>; Memorandum from John P. Torres, Acting Dir. of Office of Det. & Removal Operations, to Field Office Directors (Mar. 27, 2006), [https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/09684drofieldpolicymanual.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf); *Occupations*, U.S. IMMIGR. CUSTOMS & ENFORCEMENT, <https://www.ice.gov/careers/occupations> (last visited Aug. 10, 2017).

170. Interview with Julio, in L.A., Cal. (July 19, 2014).

171. Interview with José G., in L.A., Cal. (June 10, 2014).

172. See Telephone Interview with Vicente, *supra* note 135.

after being convicted of a drug offense when he was seventeen years old is illustrative:

I didn't want to leave the country; I've been here since I was two years old, I was terrified to go. . . . I didn't know, I had no idea, I mean I was eighteen years old. [ICE officer] told me, "Sign right here so you can go to Tijuana and you can be eating tacos tonight." She told me, "You don't have a right to see a judge; you don't have a right to an appeal, because you are just a fucking drug dealer, nobody wants you in this country."<sup>173</sup>

Similarly, Garvin recounted how he faced constant pressure from his assigned ICE officer to accept removal—either to Trinidad, where he was born, or to Canada, where he had been a long-time resident. He related: "My deportation officer basically informed me that if I were to be deported back to Canada, then I could easily come back to the United States by going to the border and walking across, if I choose to, it was just that easy."<sup>174</sup> According to Garvin, the same ICE officer would ask him on other occasions: "Why don't you just accept deportation? It's very nice in Trinidad this time of year. You can go, and you can get a ticket and you can fly back. You could have been back here for dinner already."<sup>175</sup>

Garvin believed that ICE officers were motivated to withhold or misinform the detainees in part by their own instrumental reasons of getting a "free trip" out of escorting detainees who were being deported to their countries of origin:

I've gone to the intake office to check something or to talk to my deportation officer, and the majority of them would be sitting there, making hotel arrangements and talking back and forth saying, "Oh, I've stayed here, I've stayed there, this is real nice." You know, all making travel arrangements.<sup>176</sup>

In brief, the detainees perceived multiple barriers to obtaining basic legal knowledge that they considered to be critical in fighting their removal proceedings. I suggest that these barriers are both structural and interactional in nature, and they likely play an important role in shaping the detainees' belief that legal rules are made to be inscrutable by design.

### C. LEGAL OUTCOMES AS ARBITRARY

Finally, I analyze the detainees' belief that legal outcomes are arbitrary.

---

173. See Telephone Interview with Daniel, *supra* note 3.

174. See Telephone Interview with Garvin, *supra* note 101.

175. See *id.*

176. See *id.*

The vast majority of the detainees in the study had received a substantive decision on their bond hearings at the time of the baseline survey.<sup>177</sup> I thus focus my analysis here on the detainees' experiences with and perceptions of their bond hearings. As I have argued elsewhere, immigration bond hearings warrant a systematic investigation for a number of reasons.<sup>178</sup> For example, immigration bond decisions likely impact subsequent decisions in the removal proceedings.<sup>179</sup> In addition, immigration bond decisions likely have major and lasting socioeconomic and health consequences for the detainees and their families.<sup>180</sup>

"It's pretty much a lottery in there."<sup>181</sup> With these words, Jorge poignantly summarized the detainees' widespread perception that immigration bond decisions were arbitrary. The following observations by Edson offer a helpful elaboration: "It's just the luck you have honestly . . . [t]he judge you get and how they're feeling that day."<sup>182</sup> A widely shared sentiment among the detainees was that bond hearing outcomes varied substantially and unpredictably *between* immigration judges as well as *within* individual judges. I refer to these two types of perceived arbitrariness as between-judge and within-judge arbitrariness, respectively, and explore them in turn below.

Jorge summarized the nature of the between-judge arbitrariness in this way:

One thing I realized being in detention is that you can have two similar cases and it's up to the judge to decide whether you are going to get bond or not. . . . You know, you have the same person and everything, but two different judges. And one judge says "no," and the other says "yes."<sup>183</sup>

It was a common refrain among detainees in discussing their bond hearings that they were either "lucky" or "unlucky" in getting assigned to certain immigration judges. In these discussions, the detainees consistently

---

177. Among 565 detainees who participated in the baseline survey, 94% had received a substantive bond decision (grant/deny) at the time of the survey. About 60% of these detainees had been granted bond and 40% had been denied bond. For a detailed quantitative analysis of these bond decisions, see generally Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, 50 LAW & SOC'Y REV. 117 (2016).

178. *Id.* at 118.

179. *Id.*

180. *Id.*

181. Telephone Interview with Jorge (Dec. 14, 2013). Of note, the word "lottery" in Jorge's statement echoes the major theme of *Refugee Roulette*, a national study of asylum adjudications. See JAYA RAMJI-NOGALES ET AL., *REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM* (2011).

182. See Interview with Edson, *supra* note 2.

183. See *id.*

characterized certain judges as “good,” “kind hearted,” “cool,” or “lenient,” and other judges as “bad,” “harsh,” “mean,” or “tough.” José G., for example, described two different immigration judges he had observed in the courtrooms and their respective attitudes toward family members during hearings: “[Judge A] asked, ‘Oh, whose family are you?’ . . . But [Judge F], she doesn’t ask. She don’t ask, and she don’t care.”<sup>184</sup> The detainees believed that these general judicial predispositions influenced both the intermediate judicial decisions<sup>185</sup> and final bond decisions.

The detainees also discussed how the between-judge arbitrariness was a product of the judges’ differing *personal* views on the relative importance of various factors. For example, the detainees believed that certain judges viewed DUI convictions much more harshly than other types of convictions. Speaking of the judge to whom he had been assigned, Judge A, Isaac declared, “If you’ve had like a DUI conviction . . . oh, he’s going to treat you bad; you’d rather go in front of him with a drug conviction.”<sup>186</sup> Isaac commented: “This is what [Judge A] says: ‘Druggies, they kill themselves. Alcoholics, they kill other people.’”<sup>187</sup> Speaking of his judge, Judge F, Edin remarked that there had been a death in the judge’s family involving a drunk driver, and thus Judge F denied bond to any detainee who had a DUI conviction.<sup>188</sup>

As for the within-judge arbitrariness, the detainees emphasized the significance of the judges’ ever-shifting “moods”—not only from day to day, but throughout any given day. As Edson remarked, immigration judges’ feelings can change “from the morning to the afternoon.”<sup>189</sup> Marvin G.’s account below more fully illustrates the nature of this perception:

If [the judges] are having any problems in their homes or if they get upset, everything changes. I mean we saw it all the time. Because one day, some [detainees] would come back from court and they were all happy because everybody got bond. And then the next day, nobody got bond and they

---

184. See Interview with José G., *supra* note 171.

185. The intermediate decisions include, for example, whether to grant continuances to allow the detainees additional time to retain legal counsel or to provide supporting documentation, and whether to recognize and allow the detainees’ supporters to testify during bond hearings.

186. Interview with Isaac, in Anaheim, Cal. (Mar. 6, 2014).

187. *Id.*

188. See, e.g., Telephone Interview with Edin (Jan. 17, 2015) (“I believe her husband or friend of hers died in a car accident from a drunk driver. So she started to pick on people with a record like mine with DUI, and she would deny us bail or give us a very high bond.”).

189. See Interview with Edson, *supra* note 2.

were talking about how the judge was just throwing everyone out of court.<sup>190</sup>

Some detainees explained that the judges' moods were largely a function of the vicissitudes of their personal lives. Jorge thus observed with resignation:

I understand that we're human beings, but the immigration judges' job is that they have to be neutral. I know when I was a manager for Walmart, I would leave what happens at the house at the house. Not mixing work with my personal life. But I don't know, I guess it's not the same for immigration judges.<sup>191</sup>

Other detainees like Juan C. explained that judges' moods were often set by the flow of their dockets:

It depends if [the judge] gets in a bad mood. . . . Let's say there were three or four people who went in already and got [the judge] pissed, and you were the last one, then you would get all the heat. Whether you believe it or not, it's true.<sup>192</sup>

In sum, whether the legal outcomes were ostensibly a product of varying judicial predispositions, the judges' idiosyncratic views on the relative importance of different legal factors, or their shifting moods, the legal outcomes appeared fundamentally arbitrary to the detainees.

### 1. Structural Factor: Base of Informal Knowledge

What are the structural conditions that likely underlie the detainees' perception that legal outcomes are arbitrary? I have previously analyzed the significant variations that exist in bond decisions across immigration judges using the baseline survey data.<sup>193</sup> The detainees obviously do not have access to these aggregate patterns and statistics. They do, however, have relatively easy access to informal information pertaining to each other's bond hearing outcomes. This informal information, invariably incomplete and anecdotal in nature, likely promotes comparative assessments that lead the detainees to conclude that similar cases are not treated alike by different judges, nor even by the same judges.

The detainees acquire their informal information through both direct and indirect means. First, the detainees acquire direct knowledge about their fellow detainees' cases and legal outcomes as a result of observing each

---

190. See Interview with Marvin G., *supra* note 165.

191. Telephone Interview with Jorge (Jan. 4, 2014).

192. See Interview with Juan C., *supra* note 137.

193. Ryo, *supra* note 177, at 144-49.

other's hearings, to the extent these hearings are conducted in person, rather than via televideo.<sup>194</sup> This type of direct observation is possible and frequent because all detainees who have a hearing scheduled before the same judge on the same day are taken into the courtroom together. Victor M.'s account of his trips to the courthouse demonstrates how his personal observations of other detainees' hearings led him to apply a comparative lens in evaluating his own legal outcome:

It was something contradictory. The first time that I went to court, there was a boy—he always went with me, and he was waiting for a bond. He had already done ten years in state prison. So the judge gave him a bond of \$10,000. . . . I talked to the boy and he told me that his conviction was for assault with a firearm and everything. So I said to myself, well, the judge should give me less.<sup>195</sup>

Similarly, Miguel G. related that when he attended his bond hearing, there were several other detainees in the courtroom who had their hearings with the same judge. When the judge granted bond to everyone in the group except Miguel, the group consensus was that the judge “had it out” for Miguel:

The other detainees were all getting bonds. And me, I was the only one the judge denied bond. The judge even told the government attorney, “Look, there has to be something more [on his criminal record].” The government attorney looked and said there was nothing else. The other detainees had more serious convictions and the judge still gave them bond. When we were all locked back up during court recess, the other detainees who were with me made fun of me. They said it was funny to see that the judge had it out for me, and I didn't even have any major criminal convictions.<sup>196</sup>

Second, the detainees acquire indirect knowledge about each other's cases and legal outcomes through word of mouth. Not surprisingly, given the centrality of the bond hearings in the detainees' lives, the detainees routinely discuss and reflect upon their cases and bond hearings with others. The closed batch living required in immigration detention means that the detainees' knowledge of each other's legal experiences are constantly updated and rapidly diffused throughout their social networks in detention. Jorge explained how this diffusion of informal knowledge naturally resulted in comparative assessments: “Once you go to the detention center, you see a

---

194. Ingrid Eagly documents how these sources of knowledge are not available to detainees who face adjudications via televideo. *See* Eagly, *supra* note 164, at 988–94.

195. Interview with Victor M., in L.A., Cal. (Dec. 2, 2013).

196. Interview with Miguel G., in Santa Ana, Cal. (Dec. 6, 2014).



lot of people. They have the same cases, same scenarios and everything. They go in front of the same judge and one of them gets a bond, and one of them doesn't."<sup>197</sup>

In sum, both sources of knowledge—direct and indirect—provide the detainees informal information about each other's cases and legal outcomes, which the detainees use to engage in comparative evaluations of their legal outcomes. However, because this informal information is necessarily incomplete and anecdotal, and many detainees lack formal legal knowledge as discussed earlier, perceptions of arbitrariness may proliferate whether or not like cases are in fact being treated alike.

## 2. Interactional Factor: Treatment by Immigration Judges

Another important factor that may shape the detainees' belief that legal outcomes are arbitrary is the nature of their interactions with immigration judges. The detainees often described their bond hearings as brief, impersonal, and with very few opportunities to speak. Indeed, when the detainees were asked during the baseline survey, "how much opportunity did the judge give you to tell your side of the story before making a decision" 59% answered, "not much opportunity."<sup>198</sup> These experiences contribute to the detainees' perception that judges do not make individualized determinations based on the particular facts of their cases.

The detainees highlighted a number of signals from the immigration judges that contributed to their view that the judges do not engage in individualized assessments of their cases. Some detainees discussed the immigration judges' ostensibly dismissive body language toward their files. For example, José C. described the immigration judge's treatment of his file in this way:

I turned in all my records, everything to show I was clean. I've never had a bad record. I turned in all my school reports. She looked through them like flipping through a book. . . . She didn't even read anything. She just flipped through it, and then she just denied. She stamped it: "Denied."<sup>199</sup>

Other detainees spoke of how uninterested their immigration judges had been in listening to the detainees speak. According to Erick: "I didn't have an opportunity to speak with the judge and explain my case. He never asked

---

197. See Telephone Interview with Jorge, *supra* note 181.

198. The other answer choices were "some opportunity" (23%), and "a lot of opportunity" (18%). N=466.

199. Telephone Interview with José C. (Apr. 13, 2014).

me anything. The hearing didn't even last ten minutes."<sup>200</sup> Francisco L. had faced a similar situation during his bond hearing, and the incident left a deep impression on his mind, especially given the trouble he had gone through to write a testimony that he had planned to present to the judge during his bond hearing:

I kind of thought of all the questions they would ask, and I wrote down the answers. I wrote the whole testimony down; I still have it. Maybe like two pages. . . . I didn't even get to read any of it. The judge didn't let me. He didn't take my testimony, so I didn't get to say anything I wanted to say.<sup>201</sup>

Gabriel's account further illustrates this point:

[Judge F] doesn't give you any chance to explain your case. It's what she wants to hear, nothing else. If you want to ask a question, if you want to say something that was off topic from what she wants to hear, she said, "No, simply answer yes or no." She said, "Afterwards, you will have time for questions." But she never gave me time to ask questions.<sup>202</sup>

In brief, certain aspects of the detainees' encounters with the immigration judges likely help shape their belief that judges are unwilling to recognize and weigh the facts of their cases. From the detainees' perspective, judicial decisions that are not based on individualized fact determinations, but instead on judges' personal predispositions and changing moods, are bound to produce arbitrary outcomes. Together with their base of informal knowledge about each other's cases, the detainees' interactions with immigration judges might play an important role in promoting the belief that legal outcomes are largely a matter of luck.

## V. WHY LEGAL CYNICISM MATTERS

My analysis suggests that various structural and interactional factors in immigration detention might help to promote or reinforce deep and varied types of legal cynicism. What are the implications of these findings? I focus on three key issues. First, the detainees' legal cynicism may have significant negative effects on their ability and willingness to fully pursue the legal relief to which they are entitled under the law. The detainees described the threat or the prospect of long-term indefinite confinement as a powerful deterrent to continuing with their immigration cases. According to José L.:

You are incarcerated for nothing, for no reason. . . . You don't even know what date you are going to be released. . . . You are just there waiting. And

---

200. See Interview with Erick, *supra* note 105.

201. See Interview with Francisco L., *supra* note 115.

202. See Interview with Gabriel, *supra* note 129.

sometimes people will get frustrated; people will get sad; people will get mad. It was a lot to take, to be honest. . . . Your wife leaves you while you are incarcerated in immigration detention, and you are pretty much stuck in there, and you can't do nothing. It will break you down emotionally. You just want to sign and get deported and get out of there, period.<sup>203</sup>

In this context, the detainees' attempts to navigate the law that is seemingly inaccessible by design, and their expectations of arbitrary legal outcomes likely contribute to their decisions to opt out of the legal system altogether. This result is contrary to immigration law's legislative intent, insofar as the goal of our existing legal system is to provide a fair and neutral process that ultimately affords legal protection to those individuals who have meritorious claims.

Second, my findings suggest that although we tend to view the immigration enforcement system primarily through the narrow prism of "law and order"—i.e., ensuring legal compliance—the system might also maintain a much broader, albeit unintended, function that we have yet to fully appreciate. To reconceptualize the immigration enforcement system in this way, it is instructive to consider the growing scholarship on the criminal justice system that critically analyzes that system's potential for civic instruction—or to be more precise, an "education in anticitizenry," as Justice and Meares have noted.<sup>204</sup> These scholars argue that the criminal justice system, much like the educational system, has the potential to inculcate in citizens the meaning and value of full and equal participation in the social, political, and economic spheres of our society.<sup>205</sup> However, empirical evidence on the exclusionary and discriminatory functions of the criminal justice system demonstrate that the system in practice imparts precisely the opposite lessons.<sup>206</sup>

Notably, this literature on the criminal justice system has explicitly and implicitly focused on what the legal system teaches our citizens—those who are within our *legal* boundaries of membership.<sup>207</sup> Yet, as Hiroshi Motomura has argued, legal status is neither immutable nor unambiguous: "Immigration status can change, even if it is clear. Or status may be in a gray area between lawful and unlawful. And a great many noncitizens whose presence clearly violates immigration law have historically not been

---

203. See Telephone Interview with José L., *supra* note 133.

204. See Justice & Meares, *supra* note 68, at 161–62.

205. See *id.*

206. See *id.* at 166–75.

207. See, e.g., sources cited *supra* note 66.

apprehended and deported.”<sup>208</sup> Consequently, many individuals currently outside our legal boundaries of membership may one day claim full citizenship rights. And even if national citizenship remains out of reach for certain noncitizens at any given time, they are often *de facto* members of our society for whom social, economic, and political integration constitutes an important societal goal from both a moral and pragmatic standpoint.<sup>209</sup> Thus, providing a positive “civic” education through the legal system to not only citizens but noncitizens within our borders serves a core mission of our civil society: promoting solidarity, prosocial behavior, and community engagement.

The third implication of my findings that warrants careful consideration relates to the potential diffusion effects of legal cynicism. There are at least three different types or levels of diffusion that are notable. The first is individual-level diffusion, in which an individual’s legal cynicism about one area of the law, a specific legal institution, or legal authority, spreads to his or her attitudes toward other areas of law. Weaver and Lerman note that “contact with one part of government can form a ‘bridge’ to perceptions of other aspects of the state.”<sup>210</sup> For example, they discuss studies that show that welfare recipients do not distinguish their legal attitudes toward welfare caseworkers from their attitudes toward other government officials.<sup>211</sup> Similarly, the detainees’ legal cynicism about the U.S. immigration law and legal authorities may “translate into a broader cynicism about government authorities as a whole.”<sup>212</sup>

The second type of diffusion effect that might be of concern is intergenerational diffusion. A large proportion of the detainees in the baseline survey—more than 73% of the sample—had children. Studies show that parents play an important role in the legal socialization of their children.<sup>213</sup> José G.’s discussion of his twelve-year-old daughter’s future occupational choice is illustrative of this point. According to José G., his daughter once told him that she wanted to be a judge.<sup>214</sup> When asked why, his daughter responded: “Because judges can do whatever they want.”<sup>215</sup> I

---

208. HIROSHI MOTOMURA, *IMMIGRATION OUTSIDE THE LAW* 30 (2014).

209. *Id.* at 86–112.

210. Weaver & Lerman, *supra* note 66, at 819.

211. *Id.*

212. *Id.*

213. See Caitlin Cavanagh & Elizabeth Cauffman, *Viewing Law and Order: Mothers’ and Sons’ Justice System Legitimacy Attitudes and Juvenile Recidivism*, 21 *PSYCHOL. PUB. POL’Y & L.* 432, 433–34, 437–39 (2015).

214. See Interview with José G., *supra* note 171.

215. See *id.*

asked José G., “Do you think your daughter saw that from what was happening to you?” José G. replied: “Yeah, because she went to my case hearings two years ago.”<sup>216</sup>

The third type of diffusion is the community-level diffusion—both domestic and international. By definition and in theory, immigration detention is a temporary administrative process, and eventually all detainees must either be deported to their countries of origin or released back into their communities in the United States. From this standpoint, immigration detention has the potential to lead to a wide dissemination of delegitimizing beliefs about the U.S. legal system and legal authorities—both to communities within the United States (as detainees are released back into their communities if they win their cases) and around the world (as detainees are deported if they lose their cases).

These diffusion processes are of concern because perceptions of the legitimacy and fairness of the legal system and legal authority are central to social and political stability in democracies. Existing research has documented various behavioral consequences of people’s legal attitudes.<sup>217</sup> Studies, for instance, have found that individuals who view authorities as legitimate are more likely to comply with the law and voluntarily cooperate with legal authorities.<sup>218</sup> Conversely, researchers have shown that legal cynicism increases the likelihood of criminal offending and violence, and decreases the likelihood that individuals will cooperate with the police to fight crime or to engage in individual or collective action to control crime.<sup>219</sup> Studies that focus on noncitizens’ interactions with immigration law and

---

216. *See id.*

217. *See generally* Manuel Eisner & Amy Nivette, *Does Low Legitimacy Cause Crime? A Review of the Evidence*, in *LEGITIMACY AND CRIMINAL JUSTICE: AN INTERNATIONAL EXPLORATION* 308 (Justice Tankebe & Alison Liebling eds., 2014); Ellen S. Cohn et al., *An Integrated Model of Legal and Moral Reasoning and Rule-Violating Behavior: The Role of Legal Attitudes*, 34 *LAW & HUM. BEHAV.* 295 (2010); Cohn et al., *Legal Attitudes and Legitimacy*, *supra* note 59.

218. *See* Lorraine Mazerolle et al., *Legitimacy in Policing: A Systematic Review*, 9 *CAMPBELL SYSTEMATIC REVIEWS* 1, 75–78 (2013), [https://hsbiblio.uni-tuebingen.de/xmlui/bitstream/handle/10900/64690/Mazerolle\\_Legitimacy\\_Review.pdf](https://hsbiblio.uni-tuebingen.de/xmlui/bitstream/handle/10900/64690/Mazerolle_Legitimacy_Review.pdf); Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 *ANN. REV. PSYCHOL.* 375, 379–80 (2006). *But see* Adam B. Cox & Thomas J. Miles, *Legitimacy and Cooperation: Will Immigrants Cooperate with Local Police Who Enforce Federal Immigration Law?* (N.Y. Univ. Sch. of Law Pub. Law & Legal Theory Research Paper Series, Working Paper No. 15-43, 2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2658265](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2658265) (calling into question whether delegitimizing policy interventions actually undermine community cooperation with police).

219. *See, e.g.*, Monica C. Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 *LAW & SOC’Y REV.* 314, 317–19 (2016); John Hagan et al., *The Theory of Legal Cynicism and Sunni Insurgent Violence in Post-Invasion Iraq*, 81 *AM. SOC. REV.* 316, 324–26 (2016); Kirk & Matsuda, *supra* note 76, at 457–65; Kirk et al., *supra* note 82; Reisig et al., *supra* note 59, at 1266–68.

immigration authorities offer evidence that is generally consistent with these findings.<sup>220</sup>

A number of important areas of inquiry and investigation remain open for further study. First, individuals acquire and develop beliefs about the law, legal systems, and legal authorities from not only legal sources but also extralegal sources such as family, school, and religion.<sup>221</sup> Thus, future research should apply a broader approach that integrates other domains of social and political life of noncitizens in analyzing their legal socialization process. Second, a growing number of noncitizens are now part of the mass incarceration system in the United States,<sup>222</sup> due in large part to the increased federal prosecution of immigration-related offenses.<sup>223</sup> While I have explored some of the ways in which the detainees' comparative evaluations of the criminal justice system and immigration detention system might engender a particular type of legal cynicism, future research should explore more systematically the interactive effects of these two systems on noncitizens' legal socialization process. Finally, as Fagan and Tyler have noted, "Legal socialization is . . . the product of *accumulated* social experiences."<sup>224</sup> Thus, future research should explore whether, to what extent, and under what conditions noncitizens' legal cynicism might change, persist or dissipate over time.

## CONCLUSION

Understanding the educative or socializing function of law, legal systems, and legal authorities is a critical task for any nation state. In the current era of exclusionism, stepped-up enforcement, and migration control, understanding this function for noncitizens within host societies is a

---

220. See Ryo, *supra* note 74. See also sources cited *supra* note 6.

221. See, e.g., Ellen S. Cohn & Susan O. White, *Legal Socialization Effects on Democratization*, 49 INT'L SOC. SCI. J. 151, 152 (1997); Gary B. Melton, *The Significance of Law in the Everyday Lives of Children and Families*, 22 GA. L. REV. 851, 887 (1988); Tapp & Levine, *supra* note 139, at 3-4; Trinkner & Cohn, *supra* note 65, at 603.

222. As of May 2017, more than 21% of federal inmates were noncitizens. *Inmate Citizenship*, FED. BUREAU PRISONS, [https://www.bop.gov/about/statistics/statistics\\_inmate\\_citizenship.jsp](https://www.bop.gov/about/statistics/statistics_inmate_citizenship.jsp) (last updated June 24, 2017) (archive version on file with author).

223. See e.g., U.S. SENTENCING COMM'N, *ILLEGAL REENTRY OFFENSES* 27-29 (2015), [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/immigration/2015 Illegal-Reentry-Report.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/immigration/2015%20Illegal-Reentry-Report.pdf); HUMAN RIGHTS WATCH, *TURNING MIGRANTS INTO CRIMINALS: THE HARMFUL IMPACT OF U.S. BORDER PROSECUTIONS* 2 (2013), <https://www.hrw.org/report/2013/05/22/turning-migrants-criminals/harmful-impact-us-border-prosecutions>; Michael T. Light et al., *The Rise of Federal Immigration Crimes*, PEW RES. CTR. (Mar. 18, 2014), <http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes>.

224. Fagan & Tyler, *supra* note 61, at 220 (emphasis added).

significant and pressing issue. This Article represents the first step toward establishing a basic foundation for further investigations that might lead to a better understanding of how our immigration system and its enforcement apparatus might be functioning as a socializing agent that helps to engender widespread and varied legal cynicism among noncitizens.

Insofar as detention works to promote or reinforce legal cynicism, how might we counter its development and diffusion? On the one hand, this Article challenges us to critically consider and evaluate measures that might ameliorate or eliminate the structural and interactional conditions that might underlie the kind of legal cynicism explored in this Article. On the other hand, this Article raises a more fundamental and complex question of what role, if any, detention ought to play in immigration law. After all, implementation of measures that merely make detention more tolerable may not constitute meaningful reform at all.<sup>225</sup> As Walter, one of the detainees in the current study observed: “Immigration detention is jail; for me, it’s jail—it’s the same thing. Even if it’s made of gold, it’s still jail.”<sup>226</sup>

---

225. See Mark Noferi, *Making Civil Immigration Detention “Civil,” and Examining the Emerging U.S. Civil Detention Paradigm*, 27 J. C.R. & ECON. DEV. 533, 533–34 (2015) (“More meaningful and more ‘civil’ reform would be to implement a system that detains less, not just better.”); Hernández, *supra* note 16, at 1411 (“In a truly civil detention system, detention is the exception.”).

226. Interview with Walter, in L.A., Cal. (Dec. 14, 2013).