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Criminalization, Social Exclusion, and Punishment: The United States Prosecution of Migrants Under Operation Streamline



For my parents, Arsenio and Gloria

Criminalization, Social Exclusion, and Punishment: The United States Prosecution of Migrants Under Operation Streamline

Abstract

Drawing on ethnographic observations in the Federal District Court of Tucson, Arizona and deportation proceedings at the US-Mexico border, five in-depth semi-structured interviews, as well as an array of evidence including photographs, government documents, news articles, and secondary literature, this dissertation critically examines the criminal prosecution of migrants under Operation Streamline. Established in 2005, Streamline is a federal program which criminally prosecutes migrants in a mass fast-track hearing in order to deter undocumented migration. Streamline, however, does not achieve its purported purpose; instead, the policy does more than it claims. In this dissertation I argue that Streamline has reshaped how the US enforces border controls, cementing the criminal justice system as a mechanism for the management of non-citizens. Consequently, by processing undocumented migrants through the criminal justice system while not affording them basic principles of fairness and equal treatment under the law, the US has conjured a legally sanctioned apparatus that criminalizes, excludes, and unjustly punishes low-income migrants from Latin America. This dissertation contributes new original material about the treatment of undocumented migrants from Latin America at the US-Mexico border and illuminates the racialised nature and impact of the intersection between criminal justice and border controls.

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List of Abbreviations

CBP	Customs and Border Protection
CJA	Criminal Justice Act
DHS	Department of Homeland Security
DOJ	Department of Justice
DRO	Office of Detention and Removal Operations
FBI	Federal Bureau of Investigation
FPDO	Federal Public Defenders Office
ICE	Immigration and Customs Enforcement
IAFIS	Integrated Automated Fingerprint Identification System
IDENT	Automated Biometric Fingerprint Identification System
INS	Immigration Naturalization Services
IIRIRA	Illegal Immigration Reform and Responsibility Act
IOM	International Organization for Migration
NTA	Notice to Appear
OTM	Other-Than-Mexican
PTD	Prevention Through Deterrence
TRAC	Transactional Records Access Clearinghouse
USAO	United States Attorney's Office
USCIS	United States Citizenship and Immigration Services
USC	United States Code

Introduction: Turning Migrants into Criminals

When you're there in the court, you feel bad . . . They treat you really badly. They don't talk to you how they should, as a human being. They bring you chained up as if you were a criminal

—Eduardo Jose Garza quoted in Green et al. (2016, p. 129).

A group of ten dark-skinned migrants were shuffled inside the federal courtroom in five-point restraints, harnessed at the feet, waist, and wrists. The sounds of iron clanking and chains jangling rung throughout the room. It was a disturbing spectacle to watch. Their hair was dishevelled, clothes were weathered like sandpaper, and faces were parched from spending hours if not days under the scorching sun. 48 hours before they were brought to this criminal trial, the US Border Patrol found them in the desert of southern Arizona, attempting to enter the country without authorization.

They migrated from Mexico or Central America for personal and compelling reasons. Most of them had travelled for weeks or months on foot and aboard perilous freight trains to reach the US. Mottled salty patches of sweat from their journey covered their shoulders and necks. In a single file line, each person in the group grabbed a headset from a court interpreter, taking careful steps to avoid falling and pulling on their shackles before finding their seats. Some looked tensed and confused, while the others, depleted from their travels, appeared hopeless and defeated. They were all in the process of being punished, minutes away from becoming criminalized, and ultimately excluded from the US for unlawfully crossing the southern border.

At 1:30 p.m. sharp the hearing began, and the court's clerk asked everyone to rise as a federal magistrate judge entered the room. 'Please be seated,' the magistrate calmly responded

when she took her seat. She faced the only prosecutor in the room and reminded him that she would not stop to ask if he was satisfied with the factual basis for each of the individuals appearing before her. She then shifted her focus towards the 13 criminal defence attorneys (now standing before her) and asked them if their clients were competent, pleading voluntarily, whether they understood the charges, penalties, their rights, the terms of their plea agreement, and their right to appeal. ‘Yes, your honour,’ they replied at once. Only a few seconds passed when the clerk started to read the names of the ten defendants: ‘Alexis Daniel Castillo Hernández, Alex Rodriguez Figueroa [. . .] Eduardo López Pérez.’ Each of them slowly stood on both feet and approached the bench alongside an attorney. The magistrate read them the following script:

Good afternoon, gentlemen. Each of you has been charged with the petty offense of illegal entry, and it’s my understanding that you’re going to plead guilty to that charge. You have the right to remain silent, but if you plead guilty, you’re going to give up that right. The maximum penalties for the offence of illegal entry are up to six months in prison and there is a fine of up to \$5,000. The criminal conviction can be used to remove you from the US and to exclude you from reentering this country in the future. If you commit another crime in the US, this conviction can be used against you to increase any new prison sentencing proceeding

(personal observation, April 3, 2019).

She proceeded to ask each defendant four closed questions—whether they understood the rights they were giving up, if they were voluntarily pleading guilty, if they could confirm the date and place of their unlawful entry, and how they were pleading. Everyone answered ‘yes’ to the first three questions and ‘guilty’ to the last, and they were promptly escorted out the same way they entered. This took eleven minutes in total. Immediately after, the US Marshals ushered another group of ten migrants inside. The same procedures were conducted, and they were repeated until every person on the daily court docket was charged, convicted, and sentenced.

From March 25, 2019 to April 5, 2019, I observed the criminal prosecution of 698 migrants in the US District Court in Tucson, Arizona. If this figure seems strange given the number of days

I was there, it is not. From Monday through Friday, up to 75 migrants are prosecuted each day in Tucson in as little as one hour¹. They are charged with one of two entry-related offenses—in some cases both—under the Immigration and Nationality Act of 1952 found in Title 8 of the United States Code (USC). Under ‘Improper entry by alien’² (8 USC § 1325), people who enter the US without proper inspection are charged with a misdemeanour, while those who attempt to unlawfully reenter or are found in the country after having been denied admission, excluded, deported, or removed are charged with ‘Reentry of removed aliens’ (8 USC § 1326), a felony (US Department of Homeland Security, 2019)³.

Although these federal criminal offenses were codified in 1952, unlawful entry provisions have existed since 1929 (Ngai, 2003; Eagly, 2010; Keller, 2012). However, for over half a century, the US rarely enforced them. In fact, until the mid-1990s when the US began to bolster its border controls (Dunn, 1996; Cornelius, 2001, 2005; Nevins, 2010), there was a long-standing policy of allowing migrants who unlawfully entered or reentered the US to return to their country of origin without facing prosecution through an administrative process known as ‘voluntary departure’.

Yet, even in the 1990s, the number of entry-related prosecutions were relatively small, especially in comparison to recent figures. In 1995, for example, according to the Syracuse University Transactional Records Access Clearinghouse (TRAC) (2011), the US criminally prosecuted a total of 4,376 undocumented migrants under entry-related offenses. In contrast, 97,384 migrants were charged through the criminal justice system under unlawful entry provisions in 2013, representing 53 percent of all federal prosecutions nationwide (TRAC, 2013). Due to a

¹ On Friday, April 5, 30 migrants were prosecuted because the largest courtroom in the building where these hearings normally take place was reserved for a naturalization ceremony.

² Federal immigration law uses the term ‘alien’ to refer to an unauthorized migrant. In this dissertation, I use the terms ‘migrant,’ ‘undocumented migrant,’ and non-citizen interchangeably, unless stated otherwise.

³ Henceforth, I will refer to these offenses as unlawful entry and reentry.

federal initiative known as Operation Streamline, the criminal prosecution of immigration violations has not only skyrocketed, it has also become the new norm for criminalizing, excluding, and punishing undocumented migration.

Launched in 2005, Operation Streamline is a program of the US Department of Homeland Security (DHS) and Department of Justice (DOJ), which criminally prosecutes migrants in a mass fast-track hearing in order to deter undocumented migration. The initiative was born in Del Rio, Texas—one of nine Border Patrol Sectors on the US-Mexico border (see figure 1 below)—and was quickly adopted in other jurisdictions in the Southwest. Under Streamline, instead of being

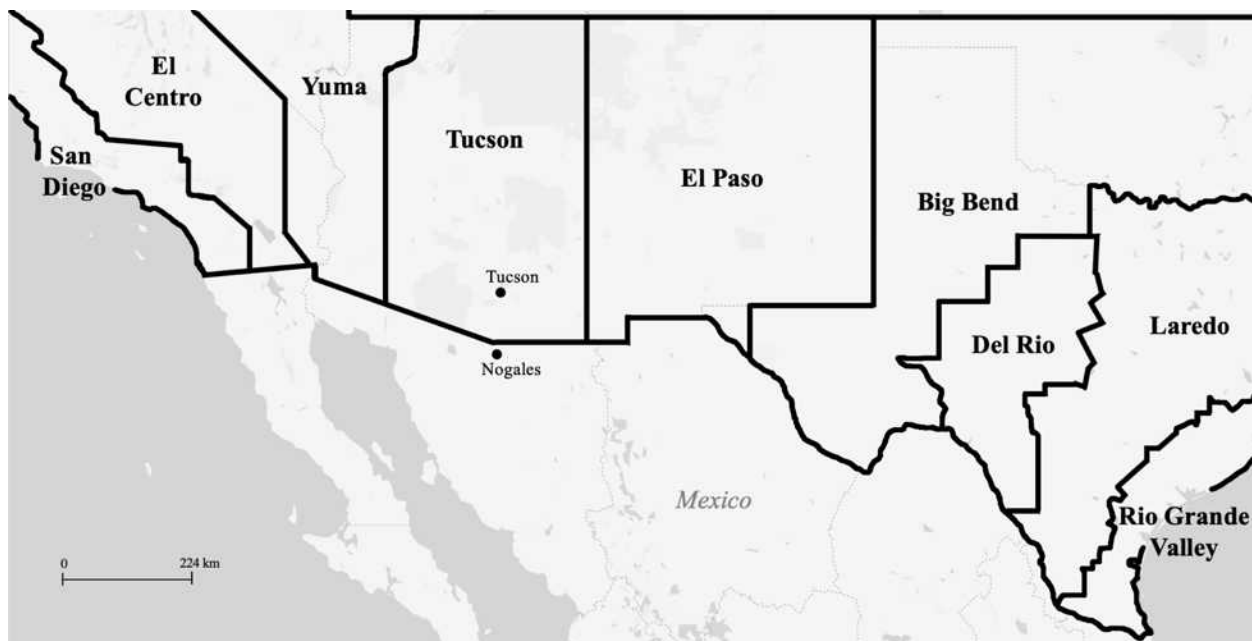


Figure 1: Map of Border Patrol Sectors and cities mentioned in the text. Source: Author, 2019.

processed through the civil immigration system, non-citizens are managed through the criminal justice system, prosecuted, and sentenced to time in prison before being deported to their country of origin. Between 2005 and 2016, the US criminally prosecuted over 730,000 migrants, 412,240 for improper entry and 317,916 for reentry (Green et al., 2016, p. 2).

However, in practice, Streamline has proven ineffective in deterring undocumented migration (Lydgate, 2010; Corradini et al., 2018). Rather, the program has cost American taxpayers billions of dollars, and has raised significant legal and social concerns, such as undermining due process and fuelling the overrepresentation of Latinos in federal prisons. According to the US Federal Bureau of Prisons (2019), Latinos represent 32% of all inmates but only constitute 18 percent of the country's total population (US Census Bureau, 2018).

This dissertation critically examines the development of Operation Streamline, the policy's legal and social implications, and its impact on the people who experience it. In doing so, I argue that as a policy instrument, Streamline does much more than it claims. Streamline has fundamentally reshaped how the US enforces border controls, cementing the criminal justice system as a primary mechanism for the management of non-citizens. By processing undocumented migrants through the criminal justice system while not affording them basic principles of fairness and equal treatment under the law, the US has conjured a legally sanctioned machinery that criminalizes, excludes, and unjustly punishes low-income migrants from Latin America.

At its core, then, this dissertation is about how legal structures mask and engender these processes. One of my goals is to understand sociologically how and why Operation Streamline—a policy that is expensive, ineffective, and damaging to the people who are subjected to it—exists today. My second aim is to untangle, or at the very least, begin to deconstruct how marginalization and suffering are intricately and pervasively woven within the processes of criminalizing migrants. In achieving these tasks, I seek to contribute to the growing field of criminological scholarship, 'known variously as border criminology, the criminology of mobility, and "crimmigration law"' (Bosworth et al., 2019).

The insights that I present in this dissertation are based on ethnographic observations of Streamline hearings inside the US District Court of Tucson, Arizona and deportation proceedings at the US-Mexico border. My analysis also draws on informal conversations with US magistrate judges, Marshals, and court officers, and five in-depth, semi-structured interviews with criminal defence lawyers who participate in Streamline proceedings, as well as a range of sources, including secondary literature, government documents, and newspapers.

I make two contributions to the border criminology literature. Empirically, my ethnographic research illuminates the nuances and complexities surrounding the contemporary criminalization of migration in the US, and thereby fleshes out the racialised nature and impact of the intersection between criminal justice and border controls. Conceptually, I develop the concept of ‘vicarious punishment’ to illustrate how penal power operates in a deterritorialized existence to manage and exclude non-citizens. Before I outline the structure of this dissertation, it is important to elaborate on the theoretical framework that undergirds it.

Theoretical Framework

The Criminalization of Migration

Operation Streamline can be understood as one of numerous initiatives that represents the convergence of criminal and immigration law, or what the American legal scholar Julia Stumpf (2006) calls ‘crimmigration’ (p. 376). For her, criminal and immigration law have become intertwined as states criminalize immigration violations, deport individuals for a greater number of crimes, and rely on criminal law enforcement for border controls (ibid., p. 384).

In the US, the trend toward criminalizing immigration law has been palpable in the last three decades (Miller, 2003; Sklansky, 2012). The 1996 Illegal Immigration Reform and

Immigrant Responsibility Act (IIRIRA), which made certain crimes grounds for deportation is a clear example (Legomsky, 2007; Kanstroom, 2014; Golash-Boza, 2015). At the state level, local legislatures have accelerated the merger between criminal justice and civil immigration systems. Arizona, for instance, not only turned unlawful entry into the crime of self-smuggling, it also authorized police officers the power to check an individual's immigration status upon reasonable suspicion that the person is present without authorization (Eagly, 2010, 2011; Chacón, 2012). Indeed, the crimmigration trends displayed in the US through various federal and state policies—especially after the attacks of September 11, 2001 (Ewing et al., 2015)—represent ‘a wholesale retooling of the criminal justice system to manage migration’ (Chacón, 2009, p. 147).

Although some crimmigration developments are exclusive to the US, it is important to note that the processes of criminalizing migration are reverberating across Western liberal democracies. Several European countries are increasingly deploying penal institutions to manage undocumented migration (Wacquant, 1999, 2006; Bosworth, 2008; De Giorgi, 2010). In the UK, in particular, scholars have documented the government's use of criminalization discourses to target undocumented migrants (Bosworth and Guild, 2008), the state's reconfiguration of prisons (Kaufman, 2013, 2015) and removal centres (Bosworth, 2014) to detain non-citizens, and the legal procedures that criminalize mobility (Aliverti, 2012, 2013). Similar patterns have been detected in Switzerland, Greece, and Italy where the criminalization of migration has contributed to the mass incarceration of non-citizens (Aebi and Delgrande, 2015). Around the world, the relationship between criminal and immigration law is becoming inseparable.

In the US, however, while the management of migration ‘has come to bear a striking resemblance to criminal processes’ (Stumpf, 2006, p. 390), the due process protections afforded under criminal law have not transferred into the immigration domain. Certainly, and as I illustrate

in chapter three, when undocumented migrants are criminally prosecuted, they are treated differently than citizens under criminal law.

The Crisis of State Sovereignty

Given the global patterns described above, the following question is worth asking: what are the forces driving the criminalization of migration? The crimmigration trends across the Western world would seem to imply that migrants are more likely to engage in criminal behaviour. However, scholars consistently find that both documented and undocumented migrants are less likely than native-born populations to offend (Hagan and Palloni, 1999; Rumbaut et al., 2006; Morenoff and Astor, 2006; Sampson, 2008; Bell and Machin, 2013). This holds true not only in the US, but also in other countries where the criminalization of migrant communities is becoming commonplace.

From a theoretical perspective, the erosion of state sovereignty helps explain why Western states criminalize migration. In recent decades, increased globalization has compromised a state's ability to autonomously govern. The rapid flux of political, economic, and technological exchanges at the end of the millennium have facilitated the interconnection of societies across geopolitical borders, rendering national boundaries more fluid, and thus, stripping states of their 'sovereign prerogatives' (Bauman, 2004, p. 56).

The forces of globalization have also undermined sovereignty by accelerating the movement of people. As the world become more integrated, social networks are formed across geopolitical spaces (Basch et al., 1994), which set in motion migratory processes (Massey et al., 1998; Castles et al., 2014). For example, data from the International Organization for Migration (IOM) (2017, p. 15) reveals that the international migrant population increased from 84 million in

1970 to nearly 244 million in 2015—a great portion of which occurred from developing regions to more industrialized countries in the Global North (United Nations, 2017). Given that the concept of territory is integral to a state's existence (Gottmann, 1973; Mann, 1984; Giddens, 1985; Miller, 2012), migration, and particularly undocumented migration, emerges as an 'affront to sovereignty because it is evidence that a nation is not in control of its borders' (Dauvergne, 2004, p. 598).

Hence, confronted with the challenges of globalization, the state reaffirms its authority through increased migration controls in the interior as well as on its borders (Bosworth and Guild, 2008). The criminalization of migration thus represents both the crisis of state sovereignty and the symbolic 'staging of sovereign powers of protection' (Brown, 2010, p. 24).

The System of Global Apartheid

The criminalization of migration also speaks to the restrictive migration controls that industrialized countries in North America, Europe, and Australasia have adopted to manage migration from poorer regions in the Global South and simultaneously police a system of global apartheid (Richmond, 1994; Bowling, 2013).

Coined by Gernot Köhler (1978), 'global apartheid' is 'a structure of world society', defined and maintained by 'extreme inequality in cultural, racial, political, economic, military and legal terms, as in South African apartheid' (p. 226). Conceptually, global apartheid captures the central characteristics of today's world order. These features include vast disparities in wealth (Köhler, 1995; Alexander, 1996), as well as living conditions and life expectancy (Booker and Minter, 2001) between the Global North and Global South. The concept bears a stark resemblance to the management of black people under South African apartheid for the geographic segregation

of the world—and the Global North’s efforts to maintain it through border controls—is divided along racial and ethnic lines (Nevins, 2012).

If we understand that the current world order resembles a global system of apartheid, then we begin to observe how undocumented migration not only poses a threat to state sovereignty, but more importantly, to the social order.

Under global apartheid, undocumented border crossings manifest as everyday acts of resistance. They represent—in David Spener’s (2009, 2010) observation of Mexican undocumented migration to the US—what James C. Scott (1985) refers to as ‘weapons of the weak’ (p. 29). In this sense, undocumented migration functions as a ‘household and community reproducing strategy’, allowing migrants ‘to support their families above the bare minimum of subsistence’ (Spener, 2011, p. 159), which would otherwise be impossible in their home countries. Put differently, undocumented migration is a survival strategy in a system of global apartheid. When people refuse to let industrialized countries in the Global North dictate their chances of survival, according to the sociologist Néstor Rodríguez (1996), border controls surface as ‘more than just a struggle to “stem the tide” of an undocumented migrant wave; the battle for the border is fundamentally about social-historical development’ (p. 22).

Indeed, one claim I make is that through the criminalization, exclusion, and punishment of Latino non-citizens, Operation Streamline contributes to global apartheid, which is designed to keep poor people from Latin America out of the US.



Figure 2: Nogales, Arizona, left, and Nogales, Sonora, right, divided by the US-Mexico border: a concrete and steel fence with newly installed barb wire. Photo: Author, 2019.

The US Exclusion of Latinos

Another question that deserves attention concerns the social processes that legitimate the criminalization of migration, especially when it disproportionately targets one racial demographic. To comprehend how and why a policy like Streamline exists in the US, as well as the consequences it has on Latino non-citizens, I draw upon peace studies scholar Johan Galtung's (1969, 1990) framework of violence.

Galtung (1969) broadly accepts that violence exists 'when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations' (p. 168). From here, he establishes two forms of violence: physical and structural. In brief, physical violence represents the 'actions that can be traced back to concrete persons as actors' (1969, p. 170-171). In contrast, structural violence does not involve a clear perpetrator—it 'is built into the structure and shows up as unequal power and consequently as unequal life chances' (ibid.). Galtung (1990) later added 'cultural violence' to his original framework. Cultural violence includes 'those aspects of culture, the symbolic sphere of our existence [...] that can be used to justify or legitimize direct or structural violence' (p. 291).

Drawing on Galtung's framework, I aim to demonstrate how a history of structural and cultural violence involving the US exclusion of Latinos has facilitated the existence of Operation Streamline. How has the legal and social exclusion of Latinos (Ngai, 2004; Haney-López, 2006) and their construction as a threat to America's national identity (Chavez, 2013) legitimated the mass criminal prosecutions happening today? I follow in the footsteps of other migration scholars (Nevins, 2003, 2005; Holmes, 2013; De León, 2015; De La Rosa, 2018) in applying Galtung's (1969, 1990) ideas of violence in order to illuminate the consequences of US border controls.

Structure of the Dissertation

This dissertation is divided into four chapters to understand how Operation Streamline has restructured US migration controls to criminalize, exclude, and punish Latino non-citizens.

Chapter one identifies the qualitative methodology that I employed, based on a multi-sited and nonlocal ethnographic approach, to discern the social and legal implications of criminally prosecuting migrants. In resorting to a complementary set of methods for studying the criminalization of migration, I concur with border criminology scholars about the need for ‘methodological innovation’ (Pickering et al., 2015, p. 391) when investigating migration controls in a globalized era of mass mobility.

Chapter two outlines how Streamline developed along the US-Mexico border and reified the use of the criminal justice system as the primary strategy for managing undocumented migrants. I focus in detail on the role of Streamline in Tucson, Arizona where my fieldwork took place. More importantly, this section tackles the central objective that Streamline purports to achieve, demonstrating that the policy does not in fact deter undocumented migration.

Chapter three contends that Streamline can be better understood not as a policy of deterrence but as one of numerous border control measures that contributes to a global system of apartheid through the exclusion and management of Latino non-citizens. In doing so, I trace the legal and social ramifications that result from the US criminal prosecution of migrants.

Chapter four unearths the instrumental role that punishment plays through Streamline in constructing a punitive experience for non-citizens and simultaneously penalizing their families. By concentrating on the manifestation of penal power and its vicarious nature, I reveal how the state’s monopoly of legitimate use of violence transcends territorial borders in an effort to uphold the social order.

I conclude with a brief discussion of the present challenges of decriminalizing migration. Decriminalizing migration will involve a collective movement, which borders scholars can have a vital role in leading. As academics, it is important that we not only seek the truth, but also make an effort to focalize it by engaging wider audiences and bringing to light the lived experiences of marginalized populations. This dissertation is my attempt.

Chapter One: Researching the Criminology of Borders: A Multi-sited and Nonlocal Ethnographic Approach

We all went in a big group in front of the judge . . . they put chains on us really tight . . . the whole time in there they made me feel like I killed someone

—Javier quoted in Slack et al. (2013, p. 30).

A critical premise underlying this dissertation is that we cannot comprehend the state's instruments of exclusion and punishment, particularly as they relate to migration control, by relying on traditional criminological research methods. Certainly, as an interdisciplinary field, border criminology is well-positioned to locate the social processes of exclusion and penal power at the border of and within states (Aas and Bosworth, 2013). Nevertheless, the existing literature has been predominantly theoretical, privileging inquiries about the law and policy over empirical research. Without empirical work, we will never fully grasp how the effects of crimmigration unfold on the ground.

Much of the lack of empirical research is due to the challenges of obtaining access. On the one hand, it is difficult to document the experiences and effects of border controls on migrant populations because of their transient and precarious status. On the other hand, it is hard to excavate first-hand accounts of the state's innerworkings, owing to the politically charged nature of undocumented migration. From a theoretical perspective, these questions of access also speak to the methodological obstacles of conducting fieldwork in 'a world in motion' (Aas, 2007, p. 283) under heightened conditions of globalization (Fraser, 2013). As such, if we are to capture how migration is changing criminal justice (Bosworth, 2016), border criminologists Sharon Pickering, Mary Bosworth, and Katja Franko (2015) conclude that 'methodological innovation' (p. 391) is necessary.

This chapter discusses the versatile ethnographic methodology that I employed in this study, which draws on the methodological approaches of two anthropologists. Both complementary methods and grounded upon a constructivist epistemology, George Marcus's (1995) 'multi-sited ethnography' and Gregory Feldman's (2012) 'nonlocal ethnography' are ideal for tracking the criminalizing, exclusionary, and punishing mechanisms that target non-citizens under Operation Streamline.

I divide this chapter into three sections. In the first part, I explore the significance of ethnographic research in border criminology prior to evaluating the methodological challenges of undertaking ethnography in a globalized era of mass mobility. I then proceed in the second part to explain how the two ethnographic approaches mentioned above respectively address these obstacles and enhance our methods for investigating migration controls. Lastly, I sketch in the third part how I adopted a multi-sited and nonlocal ethnographic approach during my fieldwork. In the process, I identify my research sites and participants, what questions I asked them, and how their responses and my observations informed my comprehension of Streamline and its effects.

Border Criminology in a Globalized Era of Mass Mobility

Ethnography has proven to be a useful method for criminologists working at the intersection of criminal and immigration law. Ethnographic methods allow researchers to provide a detailed, in-depth description of people's everyday life, 'revealing the complexity of their social world, their experiences and their subjective attitudes' (Wincup, 2017, p. 126). Scholars have used ethnographic research to comprehend the lived experiences of non-citizens during undocumented border crossings (Spener, 2009; Sanchez, 2014; Andersson, 2014) and within courts (Aliverti,

2013), detention centres (Bosworth, 2014), and foreign national prisons (Kaufman, 2015). In short, ethnography allows researchers to ‘understand the abstract in human terms’ (Shover, 2012, p. 126).

However, because we live in a globalized era of mass mobility, scholars limiting their ethnographic scope to one specific locale and research population risk sacrificing a nuanced and comprehensive understanding of migrants’ lived experiences. Today’s global condition is such that the rapid exchanges of capital, culture, and information, coupled with the compression of time and space (Harvey, 1989), have unbounded geographic locales as social relations are formed across the world (Giddens, 1990; Appadurai, 1995, 1996; Hannerz, 1996). Therefore, the process of capturing people’s everyday lived experiences through participant observation—the ‘methodological touchstone’ of ethnography (Kane, 2004)—is more challenging as individual experiences are shaped and mediated by phenomena beyond their nearby surroundings.

The challenges of performing participant observation are more pronounced when studying migrant populations given their ephemeral nature. The ability to carry out ethnography in one site may be impossible, particularly for scholars interested in collecting a wide-ranging example of how, for example, migrants experience penal power throughout the migratory process. In a globalized era defined by mass mobility and the volatility of spaces like borders, ethnographic approaches that are adaptable but simultaneously systematic are warranted. As scholars have shown, the combination of a multi-sited and nonlocal ethnographic approach can strengthen how we navigate research in the current global condition and our efforts to document border controls and their effects on the ground.

Multi-sited and Nonlocal Ethnography

Multi-sited Ethnography

The cultural anthropologist George Marcus (1995) developed ‘multi-sited ethnography’ as a methodological response to the forces of globalization. Multi-sited ethnography is predicated on the notion that conventional, single-sited ethnographic research has collapsed in a capitalist world system. Building from this premise, he posits that multi-sited research absolves the dichotomization between the ‘local’ and the ‘global’, the lifeworld and system, in order to ‘discover new paths of connection’, so ‘traditional ethnographic concerns with agency, symbols, and everyday practices can continue to be expressed on a differently spatial canvas’ (ibid., p. 98). As such, multi-sited ethnography is ‘designed around chains, paths, threads, conjunctions, or juxtapositions of locations in which the ethnographer establishes some form of literal, physical presence’ (ibid., p. 105). In doing so, multi-sited ethnographies define their object of study by following the circulation of people, things, symbols, and stories (ibid., p. 106-109). As a methodological approach privileging social connections across singular places, multi-sited ethnography has emerged as the prominent response to the increased challenges of globalization (Gupta and Ferguson, 1997; Faubion and Marcus, 2009).

Multi-sited ethnographies have been useful in illuminating migrants’ lived experiences and the effects of border control. However, this has been mainly the case in anthropology and migration studies. For example, Seth Holmes (2013) employs multi-sited fieldwork to record the violent experiences of Mexican migrants as they navigate a perilous migratory journey from their rural homes to the US. Similarly, Ruben Andersson (2014) follows the undocumented migration flow from Africa to Europe, shedding light on Europe’s expansive border regime and struggles to control migration from the Global South. While the scholars who use multi-sited ethnographic

research do not explicitly identify as criminologists, their work reflects the aims of border criminology. By the same token, there are border criminologists who use multi-sited ethnography but do not identify their work as such. Mary Bosworth's (2014) fieldwork in six immigration removal centres to comprehend immigrant detention and Emma Kaufman's (2015) research across five prisons regarding the imprisonment of non-citizens in the UK are two examples. Nevertheless, there are countless of multi-sited ethnographic examples that fall outside the confines of border criminology, which can supplement their methodological approaches to migration and its control.

Nonlocal Ethnography

Feldman's (2012) 'nonlocal ethnography' is also useful for researching the criminology of mobility in a globalized era of mass movement. Nonlocal ethnography is premised on the idea that ethnographic research emphasizing the physical presence of an ethnographer does not fully capture 'how globalization has generated new forms of social regulation, economic transaction, governance, and identity production, all of which evade "location"' (ibid., p. 187). For Feldman, 'nonlocal' consists of 'rationales and practices that are present *in* multiple locations but are not *of* any particular location' (ibid., p. 192, emphasis in original). In this regard, unlike multi-sited research, nonlocal ethnography 'shifts the accent of analysis from location specific practices [...] to processes that create the conditions for certain kinds of objectifications and institutional and network configurations' (ibid).

Developed as a method for analysing the disparate policy processes that enable and organize Europe's migration controls, nonlocal ethnography is appropriate for researching border criminology where issues can be politically charged and access difficult to obtain. Nonlocal ethnography emphasizes using empirical sources, such as 'policy documents, newspapers,

interviews’, as well as ‘listening to public statements from politicians and high-level bureaucrats, interviewing officials and experts, and following the press releases’ (ibid, p. 19). In doing so, nonlocal ethnographic research shows how ‘an amorphous, polymorphous, and ungrounded apparatus emerges as a device of population management’ (ibid, p. 196). For Feldman, this type of research employs an ethnographic methodology because similar to participant-observation, ‘it critiques the hegemony of “common knowledge” and traces the role of contingency in human affairs’ (ibid.).

As a complementary set of methods, a multi-sited and nonlocal ethnographic approach helps researchers overcome the challenges of conducting ethnography in a globalized era of mobility. The growing usage of these two methods have enabled border criminologists the ability to gather the empirical material that is necessary for understanding the effects of migration controls as well as the ‘more durable (but less tangible) rationales, discourses, and processes’ (Feldman, 2012, p. 18) that (re)produce them. I drew on both of these ethnographic approaches to obtain a comprehensive account of Streamline and its effects.

A Multi-sited and Nonlocal Ethnography of Operation Streamline

From March 25, 2019 to April 5, 2019, I conducted ethnographic research in the US District Court of Tucson, Arizona and on the US-Mexico border⁴. Tucson was an ideal location to study Operation Streamline proceedings given that it is one of three jurisdictions where these hearings take place.

⁴ Under reference R62862/RE001, I was granted research ethics approval by the University of Oxford’s Social Sciences and Humanities Interdivisional Research Ethics Committee.

As one of my research sites and a space open to the public, the Tucson federal courthouse provided an opportunity to observe Streamline in practice and engage various professionals who participate in the program before and after the hearings. I spent about 35 hours in the courthouse, observing Streamline hearings from Monday through Friday and informally interacting with three magistrate judges, two Marshals, and three criminal defence lawyers. I wrote fieldnotes during the hearings, and recorded ‘the information flow in the court, namely how it was gathered, summarized, and presented’ (Harris and Paik, 2015, p. 289). This included noting who was in the courtroom, its organization and culture, how decisions were made, and how race, gender, and class operated within this space.

On the first day of my fieldwork, I tried to familiarize myself with the entire process and the daily routine of the professionals who participate in Streamline. For example, I got there at 8 a.m. to observe when migrants were transported to the court and the arrival of the criminal defence lawyers who meet with them. Moreover, while lawyers met with migrants, I made an effort to introduce myself to whoever I spoke to as a graduate student from the University of Oxford in order to become a reliable presence in the courthouse. And, before the hearings began, I stood outside the courtroom to watch the different actors who gathered and entered.

Unquestionably, my university affiliation facilitated my access. For instance, at the end of my first day of observations, the magistrate approached the area where I was sitting to speak to a group of college students who were also observing Streamline proceedings. Once he finished and left to his chambers, I quickly approached the nearest Marshal, explained that I was from Oxford working on a research project about Streamline, and asked if I could ask the magistrate a few questions in private. The Marshal went to speak to the magistrate, and subsequently, the magistrate returned to chat with me individually. Interested in my research, the magistrate encouraged me to

contact and speak with other magistrates, mentioning that he would inform them about my project ahead of time. As days went by, the word about a student from Oxford writing his dissertation on Streamline quickly grew, and individuals increasingly made time to speak with me before and after the hearings.

At the same time, however, my role as a researcher raised barriers to access. I managed to speak to every professional who participates in the Streamline process except for court interpreters, CBP agents, and most notably, prosecutors. As attorneys who represent the interests of the state, prosecutors are often unable or unwilling to participate in this type of research given the politicized nature of the topic. On one occasion, as I approached a prosecutor after a hearing concluded, he stopped me in my tracks when he raised his hand and said, 'I can't speak to you,' abruptly grabbing the case files of the 75 non-citizens prosecuted that day and exiting the courtroom.

At the end of each day, in following the advice of Harris and Paik (2015, p. 291), I converted all my fieldnotes into text and reflected on my observations with as much detail as possible in a coffee shop nearby. It was during my first day of reflection, after being struck by the mass criminal prosecution of 75 migrants in fast-track court proceeding, that I not only pondered about the role of punishment during the process but also how it may manifest before the start of the hearings and after they conclude. I figured that in order me to gain a better understanding of Streamline, its effects, and how punishment circulates before and after hearings, I had to, literally, follow the people through the immigration removal process.

To observe immigration removal proceedings, I decided to visit the US-Mexico border. As a second research site, the US-Mexico border allowed me to witness the deportation of non-citizens and better comprehend the flow of penal power throughout the migratory process. On Tuesday and Thursday evenings during my fieldwork, I made my way down to the city of Nogales, Mexico,

which borders Arizona. Standing on the Mexican side of the US port of entry, I watched and took notes of the removal process, observing the arrival of the buses that transported migrants to and from Streamline (see figure 3 below) and how migrants were escorted out of the US.



Figure 3: Buses used to transport non-citizens to and from the US District Court in Tucson, and to deport them at the US-Mexico border. Photo: Author, 2019

Throughout my ethnographic fieldwork, I reflected on my positionality as a researcher. On the one hand, I could not help to think my role as an observer in the court and on the US-Mexico border perhaps contributed to people's suffering as they felt humiliated to be in such a position while others watched. On the other hand, as a Mexican-American whose mother was deported from the US, I, to a certain extent, can relate to their pain. During my research, I often felt the embodiment of what the Black feminist scholar Patricia Collins (1986) calls the 'outsider within'.

While there were degrees of difference between us, we were all bound by separation and our shared experience with the US deportation regime. That said, I had enormous privilege to be there as a researcher from Oxford. Unlike the migrants who were prosecuted, I could enter and exit the courtroom whenever I wanted.

Besides participant observation and informal conversations, my empirical ethnographic research also included in-depth, semi-structured interviews with five criminal defence lawyers—two men and three women. I relied on snowball sampling to recruit participants. One interview was conducted in person while the rest were done over the phone when I returned to Oxford during the months of May and June. I asked each person a set of seven questions with a list of follow-up questions to gather more in-depth data (Wincup, 2017, p. 101). Questions generally concentrated on the entire Streamline proceedings—from the moment attorneys arrive at the court in the morning to what happens after the hearing ends—as well as topics concerning due process, deterrence, and punishment. The interviews ranged in length from 54 minutes to nearly three hours. I assigned all of my participants pseudonyms and each interview was audio-recorded, transcribed, and password-encrypted to protect their confidentiality.

To supplement my ethnographic research inside the federal courthouse in Tucson and on the US-Mexico border, I relied on nonlocal ethnography. This method was particularly beneficial in my research, given that I was in the field for only two weeks. From Oxford, I examined a range of sources, which included government documents, press releases, and newspapers, to understand the development and function of Operation Streamline. I focused particularly on what policymakers, bureaucrats, and the professionals who participate in Streamline said to learn how the policy is presented and justified over time. As Feldman (2012) notes, ‘nonlocal ethnography

prioritizes any method that suits the particular research design as long as it illuminates the rationales and fluid processes through which an apparatus materializes' (p. 196).

The insights I present in this dissertation are based on the multi-sited and non-local research described above. Adopting a 'grounded theory' approach (Wincup, 2017, p. 132), my understandings of how Streamline criminalizes, excludes, and punishes Latino non-citizens are mainly predicated upon my participants' responses as well as my field observations. Before I proceed to discuss Streamline in detail, it is important to acknowledge that the input of migrants themselves are largely absent from this research. Ideally, I would have also conducted research in a place like a migrant shelter where I could hear first-hand from them, but the constraints associated with this research made it impossible. I hope to brighten their presence by including their voices at the start of each chapter and through ethnographic examples.

Chapter Two: Operation Streamline: The Mass Criminal Prosecution of Migrants

People are going to keep coming . . . There are some people who say, 'We're going to put big bars beside the river, so people won't cross.' We, as human beings, are going to say, 'How can we cross? That won't be an impediment to us, you make a tunnel below or a ladder above and you cross

—Hortencia Medina quoted in Green et al. (2016, p. 128).

In the 1990s, the US increased border controls and passed strict immigration laws to stop undocumented migration from Latin American. Most of these policies were premised on the concept of deterrence, namely that if the costs of unlawfully migrating to the US exceeded the potential benefits, then people would be discouraged from attempting to cross in the first place (Andreas, 2001; Nevins, 2010). However, undocumented migration during these years did not decrease. From 1990 to 1999, the number of undocumented migrants apprehended increased each year with an annual average of 1.23 million. And, in 2000, the Border Patrol apprehended a record breaking 1.64 million undocumented migrants near the US-Mexico border (US DHS, 2018). As part of a broader effort to curtail undocumented migration, the US implemented Operation Streamline in 2005. Since then, the government has claimed that the sole objective of Streamline is to deter undocumented migrants through the criminal prosecution of unlawful entries.

This chapter charts the development of Streamline. I start by outlining how the US processed unlawful entries prior to Streamline to highlight how the policy transformed the management of non-citizens, infusing the criminal justice system at the heart of migration controls. I then shift my attention towards the policy. I highlight how Streamline emerged as a strategy to efficiently manage and control undocumented migration before delineating how it unfolds in Tucson, Arizona. I conclude this chapter with an explanation of how Streamline, as a policy

instrument, fails to accomplish its intended goals. Certainly, by affirming that Streamline is an ineffective deterrent strategy, I aim to substantiate my overarching argument that this policy does more than it claims. Streamline is not about deterrence but about pervasively enabling the processes of criminalization, exclusion, and punishment of Latino non-citizens.

Operation Streamline in Context

The Apprehension Process at the US-Mexico Border

To comprehend the nature of Operation Streamline and how it has restructured the US management of non-citizens, it is helpful to first provide an overview of the immigration removal procedures before the policy's implementation.

The US Border Patrol within DHS is charged with securing the borders and preventing undocumented migration between official ports of entry. When a Border Patrol agent apprehends a person attempting to unlawfully enter the US, the agent is responsible for handling initial paperwork on site. This includes writing the person's name, date and place of birth, country of citizenship, and reading to him or her their administrative rights listed on Form I-826 (Nuñez-Neto et al., 2005, p. 2). Form I-826 allows migrants to request a hearing before an immigration judge, declare asylum, or admit to unlawfully entering the US and ask for voluntary removal.

The agent then transports the person to the nearest Border Patrol station for further processing. Here, the migrant's fingerprints are taken, entered into the Automated Biometric Fingerprint Identification System (IDENT), and cross-referenced with the Federal Bureau of Investigation's (FBI) Integrated Automated Fingerprint Identification System (IAFIS) (Sheldon, 2013). In doing so, the Border Patrol determines an individual's immigration and criminal history.

Removal Procedures Before Operation Streamline

None of the steps that I described above have changed to this day. However, before Streamline existed, the migrant's country of origin determined the next phase (Lydgate, 2010). According to the Congressional Research Service, if a person was either Mexican or Canadian, and had no criminal record, prior deportations, or arrest warrants in the IAFIS system, the person was traditionally 'voluntarily returned' to his or her country (Nuñez-Neto et al., 2005, p. 3). Along the US-Mexico border, this was a quick process, taking no longer than 15 minutes (ibid.).

In contrast, if the migrant was—to use DHS words—'other-than-Mexican' (OTM), then removal procedures were more complicated as the US cannot release the person across its borders. In these cases, the agent had to first identify the person's country of origin. Only when a person was not from a 'special interest country' (a country that has produced terrorism), had no criminal history, and did not express fear of returning home, he or she would be placed under deportation proceedings from the US to their country of origin (ibid., p. 12).

Historically, removal proceedings of migrants OTM were a lengthy process, taking an average of 89 days to complete (ibid, p. 8). Prior to 1996, these cases went through a formal hearing before an immigration judge who was responsible for authorizing the formal order of removal. This process was cumbersome not only because the burden of proof fell on the government, but especially because DHS lacked the detention bed space to administratively detain migrants OTM while their hearings were scheduled. If the Office of Detention and Removal Operations (DRO) within Immigration and Customs Enforcement (ICE) had no beds available when a migrant was apprehended, Border Patrol released the person within the US with a 'Notice to Appear' (NTA) in court on a specific date (ibid., p. 8). However, many of those who were released, failed to attend their hearings, leaving critics to label this a 'catch and release' program (ibid.).

Through the passage of IIRIRA in 1996, Congress established an administrative procedure called ‘expedited removal’. Under expedited removal, any person apprehended within 161 kilometres of the border and not requesting asylum was no longer eligible for a formal hearing before an immigration judge. Instead, immigration officers were granted the authority to formally deny and order their removal (*ibid.*, p. 6). Afforded less judicial review, a migrant placed in expedited removal proceedings spent on average 32 days in administrative detention, a significant reduction in time (Nuñez-Neto et al., 2005).

Although the removal of OTMs accelerated, an increase in undocumented migration from Latin American countries south of Mexico undermined US border controls in 2004 and 2005. Every sector across the southwest experienced an increase in OTMs unlawfully crossing the border but the intensification was particularly palpable in Del Rio. In this sector, the number of OTMs apprehended went from 9,896 in 2004 to 15,642 in 2005, surpassing DRO’s bed space capacity (Lydgate, 2010, p. 492). With limited beds, the Border Patrol in Del Rio had to, once again, issue NTAs. In 2005, 91 percent of OTMs arrested were released on their own recognizance (Nuñez-Neto et al., 2005, p. 16), which created uproar about undocumented migrants being ‘systematically set free’ (Arrillaga, 2005) in the interior of the US.

The Criminal Prosecution of Migrants

The Birth of Operation Streamline

In early 2005, in response to increased flows of OTMs and public pressure, the Border Patrol in Del Rio approached the US Attorney’s Office (USAO) with a plan. The Border Patrol recommended the USAO to criminally prosecute all OTMs and process them through the criminal justice system where more bed space would be available (Lydgate, 2010, p. 493). By criminally

prosecuting OTMs, the Border Patrol also presumed that undocumented migration would decrease. The USAO initially refused to participate given that prosecuting individuals on the basis of national origin was a violation of equal protection. To address their concerns, the Border Patrol proposed ‘to prosecute *all migrants*—Mexicans and non-Mexicans alike’ (ibid., emphasis in original), which the USAO then accepted, giving birth to Operation Streamline: a zero-tolerance border enforcement program.

DHS (2005) publicly introduced Streamline in a news release in December 2005, calling it a ‘multi-agency law enforcement initiative’. Similar to an apparatus, Streamline consisted of several agencies—CBP, ICE, DRO, USAO, US Marshals Service, among others—each with a definite function and together performing a specific task: ‘deter future activity’ and ‘ensure those who enter illegally are removed expeditiously’ (ibid.).

Right away, DHS (2007) touted Streamline as a success in the Del Rio Sector, citing a 38 and 46 percent reduction in undocumented migrant apprehensions in 2006 and 2007, respectively. Over the next several years, DHS replicated variations of Streamline in six of its nine Border Patrol Sectors: Yuma in December 2006, Laredo in November 2007, Tucson in January 2008, El Paso in February 2008, Rio Grande Valley in June 2008, and McAllen in late 2009. Although these programs vary across location, they share the same policy objective: ‘the criminal prosecution of all migrants’ who unlawfully enter the US (Lydgate, 2010, p. 495). Today, Streamline continues in Tucson, Arizona, and Del Rio and Laredo, Texas.

Operation Streamline in Practice: Tucson, Arizona

To understand how Operation Streamline functions on the ground, I attended the US District Courthouse in Tucson, Arizona where these hearings have been held since 2008. Prior to

describing the process in Tucson, it is helpful to clarify how migrants land in Streamline in the first place.

To begin, although Streamline started as a zero-tolerance enforcement program, in practice not every migrant who is apprehended crossing the border unlawfully is criminally prosecuted. The capacity of a court limits how many migrants the Border Patrol refers for criminal prosecution. As explained earlier, when a migrant is apprehended, the person is taken to a Border Patrol station to have his or her information entered in the IDENT and IAFIS databases. Depending on these results, the Border Patrol Screening Office decides whether the person is removed through either voluntary return, expedited removal, or criminal prosecution (Sheldon, 2013, p. 97). This determination is based on ‘confidential guidelines’, which include the ‘migrant’s citizenship, age, health, criminal history, and immigration history, as well as the capacity of the area court’ (ibid.). The US District Courthouse in Tucson has the capacity of prosecuting 75 migrants per day (see Figure 4 on the following page).

Before the hearings start at 1:30 p.m., criminal defence attorneys meet with their clients for the first time at 9 a.m. Although Tucson’s Federal Public Defenders Office (FPDO) handles the representation of Streamline defendants, majority of migrants are represented by Criminal Justice Act (CJA) Panel attorneys, a group of court-approved lawyers, due to the daily caseload. Each lawyer is assigned between five and six migrants to represent and given three hours to speak with them.

While I did not observe these encounters, my participants described them in great detail. When lawyers arrive on site, the court deputy provides them with a packet of files containing the

immigration and criminal records, if any, of each individual they are about to meet. These files also contain the plea deal and recommended sentence set forth by the prosecutor. Once they review



Figure 4: The US District Courthouse in Tucson, Arizona. Photo: Author, 2019

this information every attorney simultaneously meets with their clients in the same courtroom where Streamline hearings are held. This room is called the Special Proceedings Courtroom, and although everyone meets with their clients at the same time, my participants agreed the room was large enough to maintain confidentiality.

All of my participants carried out their interviews differently. For example, Paulina, a CJA attorney who once worked for the Tucson's FPDO, held a basic 'know-your-rights session' with everyone together before meeting her clients separately to discuss the specifics of their case. In

contrast, Paul, another CJA attorney, advised his clients on their rights and charges all at once. After the meetings conclude at noon, the lawyers break for lunch and return slightly before 1:30 p.m., when the hearings start.

The hearings that I observed never exceeded 90 minutes. The fastest one I witnessed lasted one hour. Streamline hearings combine the arraignment, evidentiary, and sentencing stages of a criminal trial in one day. As I described at the beginning of this dissertation, non-citizens are prosecuted in groups of ten, meaning that in as little as eight minutes they are charged, convicted, and sentenced. The hearings and their lengths vary depending on which magistrates are presiding. For instance, the magistrate I observed in the first week took more time to repeat himself and explain the proceedings clearer than the second magistrate I witnessed the following week. According to one of my participants, both of these magistrates are ‘committed to doing proceedings properly’, but there are others who conduct them in a ‘slipshod fashion.’ In an article in *The New York Times*, one magistrate judge in Tucson, told reporters his ‘record is 30 minutes’ (Santos, 2014).

It was not always the case that 75 migrants were prosecuted in the US District Court in Tucson. Paul, who has participated in Streamline since the beginning, said that when DHS officials first approached the courthouse in December 2007, they intended to prosecute 150 in one hearing. A magistrate who was present at this meeting described it as a ‘brilliant display of separation of powers’ (Charles Pyle cited in Green et al., 2016, p. 34). Ranking officers from the Border Patrol were present, as well as the head Federal Marshal, a Federal Detention Trustee, all of the Tucson federal magistrates, and the federal public defender. According to Paul, the idea of prosecuting 150 people in less than two hours was unpopular: ‘the magistrate judges to most of the public defenders were really up in arms against it.’ For example, the public defender Jon Sands, called

the DHS proposal ‘a moral outrage’ and a violation of the constitution (ibid., p. 35). However, with little choice in the end, the magistrates in Tucson agreed to begin with 40 defendants in January 2008 and increase the number to 70, with a maximum cap of 75 (Green et al., 2016, p. 34). Like in Texas, Streamline in Tucson was presumed to ‘be a more effective deterrent for people [...] who would be intimidated and frightened by going through a criminal process’ (Charles Pyle cited in Green et al., 2016, p. 36). Yet, after more than a decade of criminally prosecuting migrants, the research shows otherwise.

Operation Streamline as a Policy of Deterrence

The Deterrent Effects on Undocumented Migration

The policy objective of Operation Streamline is to deter undocumented migrants from unlawfully entering the US by criminally prosecuting them. Overall, the policy has been portrayed as a successful deterrent from the outset and as it expanded along the US-Mexico border. A review of government documents and press releases reveals how DHS officials point to a reduction in undocumented migrant apprehensions after Streamline’s launch as indicative of the program’s success (US DHS, 2006, 2007a, 2007b, 2008).

While it is true that undocumented border crossings decreased after Streamline was introduced in 2005, this decline does not paint a complete picture. Undocumented migration was already diminishing before 2005. As Figure 5 below illustrates, border crossings dropped precipitously from 2000 to 2003. This could suggest that the reduction in undocumented migration after Streamline commenced was part of a longer-term decline. Wayne Cornelius (2010) of the Center for Comparative Immigration Studies found that improved economic conditions in Mexico, coupled with the economic downturn in the US, was the primary cause in the decline of border

crossings. In this regard, we cannot evaluate Streamline’s success based solely on the simple difference in the number of apprehensions before and after the policy began.

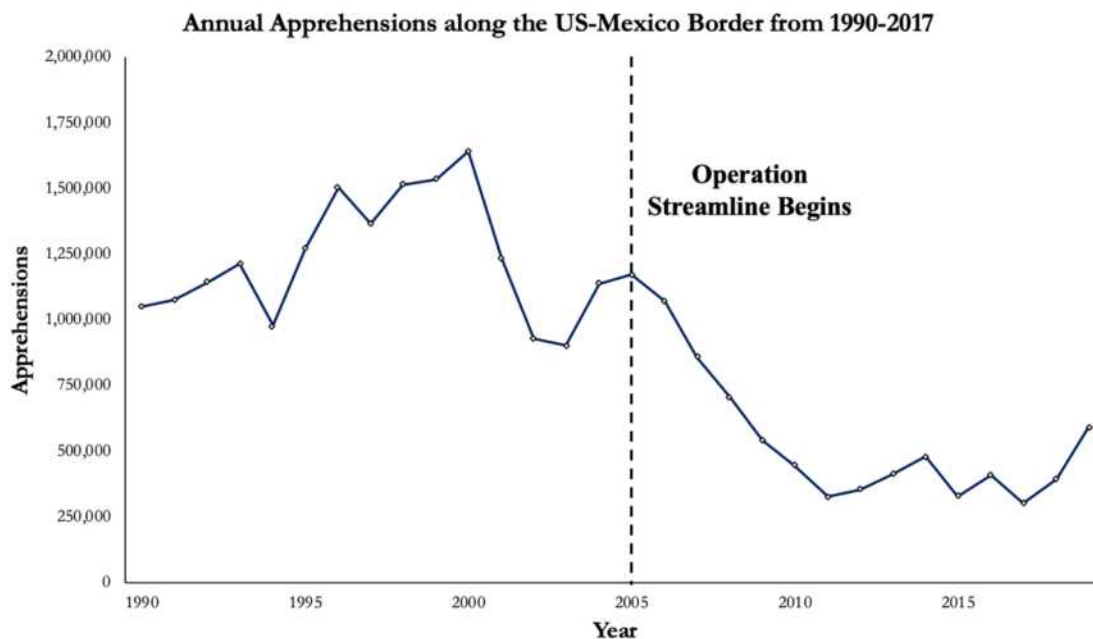


Figure 5: Annual Apprehensions along the US-Mexico Border from 1990-2019

A recent study by the Vera Institute of Justice (Corradini et al., 2018) demonstrated the clearest evidence showing that Streamline, in fact, does not have a deterrence effect. Researchers analysed the monthly apprehension rates from 1992 to 2014 in each Border Patrol Sector where Streamline was active. They not only found that border crossings were decreasing in each sector before Streamline began, but after conducting multiple time-series analyses they also discovered no proof of a deterrent effect in any sector (ibid., p. 5-6). The specific technique they implemented was particularly useful ‘for examining the impact of a policy change (like Operation Streamline) on an outcome (like apprehensions) over time’ (ibid., p. 9). The lack of a statistically significant effect shows that Streamline is not only ineffective but that the decline in apprehensions results ‘from other long-term trends and short-term fluctuations’ (ibid., p. 10) in migration patterns.

While Streamline on its own does not deter undocumented migration, one could argue that as part of a broader system of border controls, it may play a role in discouraging migration. After all, the Office of Inspector General (2015)—an evaluation office within DHS—concluded that Border Patrol has no method for assessing the individual deterrent effects of Streamline. On this view, however, the research is also clear. By and large, scholars find that border controls do not have a deterrent effect on undocumented migration (Cornelius and Salehyan, 2007; Ryo, 2013; De León, 2015; Massey et al., 2016).

The Complexity of Human Migration

Border enforcement policies such as Operation Streamline fall short of their objectives because they fail to understand the complexity of human migration. Border controls regard undocumented migrants as rational decision makers who make cost-benefit calculations to maximize potential gains (Lee, 1966; Todaro and Maruszko, 1987; Massey et al., 2016). Under this neoclassical rationale, border controls presume people will migrate, with or without authorization, if the potential benefits of moving supersede the overall costs. In theory, then, by increasing security measures and criminally prosecuting migrants, the US Border Patrol believes it can offset people's expected earnings, and in the process, discourage undocumented migration.

Yet the theory is far from reality. Migration is a complex phenomenon, unreducible to a set of pluses and minuses. Migration occurs for various reasons ranging from personal aspirations to the lasting legacies of colonialism and effects of globalization. Undocumented migration is also dynamic. Undocumented migrants on the US-Mexico border engage in border crossing industries (De León, 2012, 2015) and hire human smugglers (Singer and Massey, 1998; Spener, 2009; Sanchez, 2014) in order to adapt to migration controls, which render them futile.

All five of my participants, while they believed that Streamline was having an effect on first-time border crossings, they acknowledged the complex forces that drive migration. In the context of the US, these forces include the widespread violence and economic insecurity in Central America (Labrador and Renwick, 2018)—push factors which have encouraged thousands of people to migrate regardless of the costs. These forces are also partly the reason why undocumented migrant apprehensions in the US have increased in recent years as Figure 5 above illustrates. Given the complexity of human migration and the fact Streamline is not fulfilling its intended purpose in deterring undocumented migration, what, then, does it achieve?

Chapter Three: The Criminalization of Migration and the Social Exclusion of Latinos

You are pushed to plead guilty, to push through as many people as possible... There was no clarity in the courtroom. I had no voice . . . There was no justice

—Norlan Flores quoted in Portillo (2015).

In the previous chapter, I highlighted how Operation Streamline was born, adopted along the US-Mexico border, and has little effect in deterring undocumented migration. From a policy perspective, there are several other reasons to question Streamline's efficacy, including the diversion of resources from key law enforcement objectives and the exorbitant costs to taxpayers (Lydgate, 2010, p. 519-529). It is estimated that at least \$7 billion have been spent exclusively on the incarceration of migrants prosecuted for unlawful entry and re-entry between 2005 and 2015 (Green et al., 2016, p. 143). A comprehensive review of these issues, however, would exceed the limits of this dissertation⁵.

Instead, this chapter examines the main legal concerns and social effects of Streamline. In doing so, my main focus is to uncover the ulterior motives behind the criminal prosecution of migrants and their consequences. I argue that Streamline, as part of various border enforcement strategies, perpetuates the exclusion of Latinos, and in the process, reinforces a global system of apartheid, which is designed to keep poor citizens from Latin America out of the US. In the first part, I describe the legal concerns that arise under Streamline, explaining how the process compromises basic principles of fairness and equal treatment under the law. The second part explores the social outcomes of Streamline. Streamline disproportionately targets Latino non-

⁵ See Joanna Lydgate's (2010) article in the *California Law Review* for an extensive review of Streamline's policy and legal concerns.

citizens, and while it does not deter unauthorized migration from Latin America, it (re)produces the racialization of Latino non-citizens as criminals.

Efficiency at the Expense of Equal Treatment

Due Process

Before I assess how Operation Streamline undermines basic principles of fairness and equal treatment under the law, I must acknowledge that examining this subject from a legal perspective is complicated. After all, Streamline ticks every box regarding the administration of justice under procedural due process as required by the Fifth and Fourteenth Amendment. In short, migrants are provided access to an attorney, read their rights, and are heard before a magistrate.

At the same time, however, if one observes Streamline hearings in action, one will recognize that the process in which justice is administered is questionable to say the least. It is difficult to comfortably sit and observe the amalgamation of the arraignment, evidentiary, and sentencing phases of a federal court proceeding into an en masse hearing that can last one hour, coupled with the fact that the people who are being prosecuted were recently apprehended crossing a desert, experience language and cultural barriers, and are unfamiliar with the US legal system. How, then, may Streamline undermine the basic principles of fairness and due process?

For one, Streamline's fast-track judicial process ensures that some people will not understand their rights and the consequences of pleading guilty. In a recent study with 46 people who were processed through Streamline, researchers found 52.2 percent of respondents did not understand that they were renouncing rights as a result of their plea, while only 19.6 percent and 37 percent understood they would get a conviction and be deported after pleading guilty, respectively (Irvine et al., 2019, p. 5-6). In a news article, one magistrate acknowledged that she

was ‘aware that a person could probably make it through the proceedings without a thorough understanding of their rights and the court proceedings’ (Stanton, 2018). I personally witnessed three instances in which the defendants, clearly confused about what was happening, did not know how to respond to the magistrate’s questions. For example, on April 3, when the magistrate decided to check a man’s competency, she asked him if he could tell her what he was being charged with. ‘Guilty,’ he nervously answered. She asked again, ‘Do you know what the crime is that the government says you committed?’ ‘Guilty,’ he repeated. At this point, the magistrate stated she was uncomfortable moving forward, and the prosecutor dismissed the charge. John, one of my participants who was present that day, called this incident ‘a golden moment’ because it clearly exposed Streamline’s lack of procedural due process.

Effective Assistance of Counsel

The court proceedings and the inability of migrants to understand their rights challenge the notion that they are receiving effective assistance of counsel as required by the Sixth Amendment. As mentioned in the previous chapter, defence attorneys have three hours to meet five or six clients during the morning of the hearings. In this time, lawyers must ascertain their clients’ native language, competency, whether they have any claims to asylum, as well as explain to them the process, their rights and charges, and advise them on their plea deal. All of my participants said they felt like they had an adequate amount of time to counsel their clients in the allotted 30 minutes per person. They also noted, however, that a person’s education level influenced the interview’s length. Paul, for instance, confidently stated he only needed 15-20 minutes if a person was ‘perceptive’ and ‘knows what he’s doing’.

Although my participants believed they provided appropriate counsel, their experience differs from what the research findings reveal. US and Mexican researchers conducted a random survey of 1,100 recently deported migrants in Mexico between 2009 and 2012 (Slack et al., 2015). Out of the 297 people who were processed through Streamline, when asked ‘What did your lawyer inform you about your rights?’ only 89 cited any ‘sort of basic legal right’, such as the right to fair trial, while 163 stated that ‘their lawyer simply informed them that they needed to sign their order of removal and plead guilty’ (Ibid., p. 117). This evidence highlights that there are, in fact, a substantial number of people who are criminally prosecuted through Streamline without knowing their rights. The ability to prosecute up to 75 migrants in under two hours while expecting them to comprehend the complexity of their charge, the US legal system, plea bargain, and hearing process guarantees that some people’s rights will be violated. On the surface, then, Streamline appears to provide fairness and due process; however, underneath, it is a façade cloaking the unequal treatment of people under the law.

The Role of Criminal Defence Lawyers

One question that I raised with criminal defence lawyers was how they understood their job given that prosecutors prearranged plea agreements and defence attorneys were unable renegotiate them. In other words, did they see themselves as being effective in advocating for the needs of their clients? To varying degrees, all of my clients acknowledged the disproportionate power that prosecutors have in Streamline and how neither the magistrates or the defence attorneys have any discretion or ability to change a defendant’s outcome.

Gabrielle, for instance, was ‘absolutely convinced that these people are better served by having a defence attorney who is bright and motivated and compassionate because there is a chance

that [she'll] find something that will assist them in one way or another.' In contrast, Paulina accepted there was hardly anything she could do to properly represent them. Instead, she focused on making migrants feel valued when she interviewed them prior to the hearings:

I try to encourage everybody [to exercise their rights], because I don't want them to feel like they're actually, you know being forced to plead guilty because of the circumstances and the way that its set up, inevitably will, um, will require that, that they plead *guilty*. I don't want them to get that from me, so I try to tell them, you know, that we have to value our rights, and if we don't value them, if we don't exercise them, then they are meaningless.

As Paulina acknowledges, there is little she can do about their outcome give how process is organized. Under Streamline, then, it is not only the case that the arrangement of mass fast-track court proceedings challenges effective assistance of counsel but its configuration also 'strips defence attorneys of many indispensable weapons in their arsenal' (Sheldon, 2013, p. 106).

Social Exclusion: The Human Consequences of Streamline

So far, I have documented how Operation Streamline functions today. The question that remains is why such a policy, one that is ineffective, inefficient, and simultaneously undermines basic notions of due process, persists today. In other words, what social processes have facilitated the continuation of this policy? Furthermore, how do they help us understand the social implications that result from the criminal mass prosecution of non-citizens?

A History of Exclusion

To understand how Streamline can be better understood as an instrument of exclusion, it is important to explain how structural and cultural violence have legitimated the policy into existence. The US history of Latino exclusion spans more than a century and has been carefully documented (Ngai, 2004; Haney-López, 2006). When the US passed the Immigration Act of 1924,

it imposed numerical restrictions on every country except for those in the Western hemisphere (Ngai, 2004). The US exempted Latin American countries from the restrictive immigration law primarily because it was experiencing agricultural labor shortages. Mexicans were allowed to work in the US upon paying a 'head tax' at the border, which many evaded by circumventing official ports of entry. According to the historian Mae Ngai (2004), with no legal classification under the 1924 immigration law, Mexicans who avoided taxes and found themselves in the US became 'a new class of persons within the national body—illegal aliens—whose inclusion in the nation was at once a social reality and a legal impossibility' (p. 57). At the same time, the formation of the Border Patrol in 1924 'rearticulated the US-Mexico border as cultural and racial boundary, as a creator of illegal immigration' (ibid., p. 67), since their sole duty was to police Mexicans who avoided paying entry taxes.

From the outset, then, the bodies of Mexicans have been racialised as 'illegal aliens'. As De Genova notes, Mexicans came to represent 'the legal production of "illegality" as a distinctly spatialized and typically racialized social condition' (p. 439). Over time, as the 'illegal alien' discourse became interchangeable with Mexican migrants, it gradually became productive, influencing various border controls that were implemented starting in the mid-1970s to keep Mexicans out. Today, it is not only Mexicans who are infused with a racialised 'illegal alien' identity. Latinos in general are now constructed as a threat to the nation and their presence generate moral panic about 'illegal aliens' overrunning the US (Chavez, 2013). We must not look beyond Samuel Huntington's (2009) 'The Hispanic Challenge' to observe how Latinos are conceived today. He argued that the US White Anglo-Saxon Protestant identity is being erased as 'the persistent inflow of Hispanic immigrants threatens to divide the US into two peoples, two cultures, and two languages', cautioning that 'the US ignores this challenge at its peril'.

Managing Latino Non-citizens through Exclusion

When thinking about what social processes have enabled the existence of Operation Streamline, it is essential to highlight the long history in which Latinos, and in particular Mexicans, have been racialised as ‘illegal aliens’.

In this light, the mass criminal prosecution of migrants through Operation Streamline has dual purposes. On the one hand, by prosecuting Latinos for entry-related offenses, Streamline reifies their construction as ‘illegal aliens’—foreigners who do not belong within the US social imaginary and must therefore be treated differently. This includes being prosecuted in a mass fast-track hearing where basic principles of fairness and equal treatment under criminal law are gilded at best. On the other hand, by deploying the criminal justice system, Streamline gives legitimacy to migrant discourses of criminalization, further otherizing Latinos in the US and facilitating their expulsion from the country. As one of my interviewees said, ‘Any criminal—anybody that you can label as a criminal, be it a misdemeanour or a felony, then, ‘I can,’ you know, ‘I have *carte blanche* to do whatever I think is good.’

More importantly, in the process of managing Latino Non-citizens through exclusion, the US is contributing to a system of global apartheid. Due to Streamline, Latinos are both socially, and now because of their criminalization, legally banned from the US. ‘This otherization, so to speak,’ as the anthropologist Didier Fassin (2018) states, ‘is what allows condescension, inflexibility, and even, sometimes cruelty. It is what allows a punitive society’ (p. 115), which I now turn to in the next chapter.

Chapter Four: Controlling Mobility Through Punishment

Please forgive me. I am guilty, but I did it for my children. I am a single mother. My children are in Mexico. They need me and I need them. I came to the United States because I wanted to provide for my children. I did not mean to cause any harm. And now I just want to go home

—Galvez quoted in Shimoda (2017).

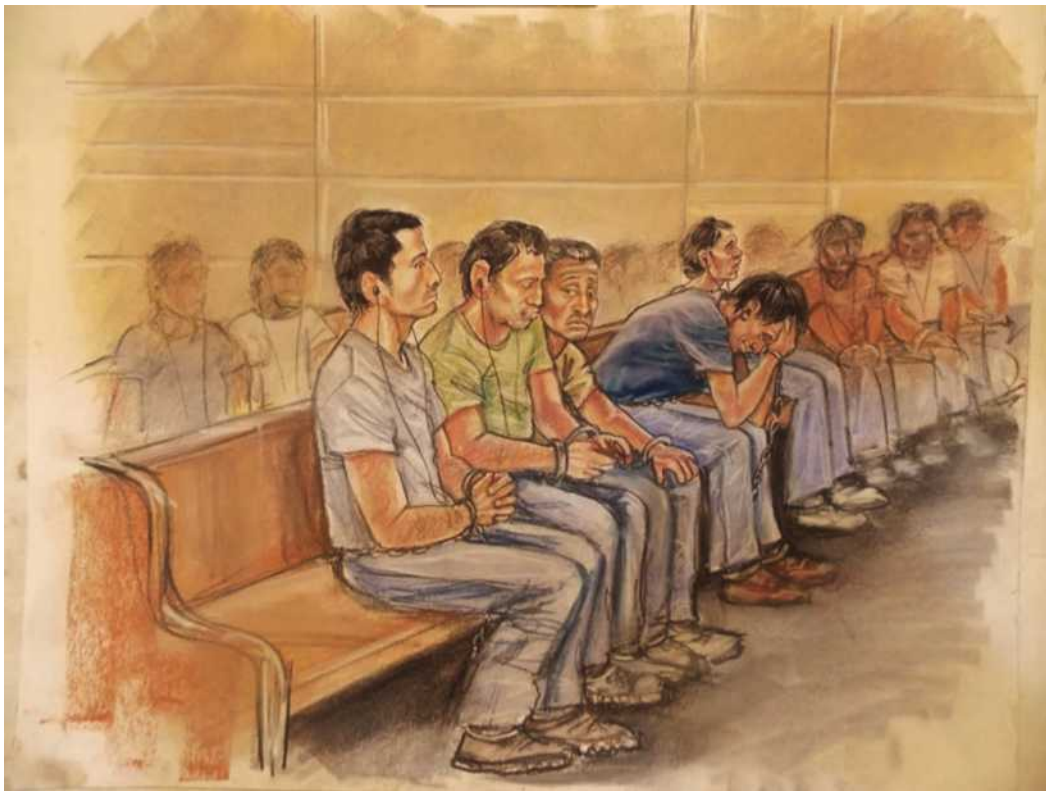


Figure 6: An artist's rendering of an Operation Streamline hearing in Tucson, Arizona. Source: Human Rights Watch (2013)

As I illustrated in the previous chapter, the failure of Operation Streamline to deter unauthorized migration raises questions about its purpose. The prime objective of this policy is not deterrence but to exclude and manage Latino non-citizens through their criminal prosecution, and thus, contribute to a global system of apartheid designed to keep poor Latin American citizens out of the US.

On Friday, April 5, I spoke to a magistrate judge after the hearings concluded. When I asked her about how she thought Streamline meted out punishment, I received an incredulous look and the following response: ‘I mean for sure its punishment—I don’t want to go to prison. It seems pretty awful!’ The magistrate is correct. After all, whereas undocumented migrants in the past would be immediately deported, now they are deprived of their liberty prior to their removal. However, a prison sentence is not the only way in which punishment operates throughout Streamline, and if we limit punishment to these terms, ‘we will be blind to the way penalty operates throughout our social world, in both its extent and its aims’ (Kutz, 2018), especially through border controls.

In this chapter, I explore how punishment is intrinsically woven throughout Streamline in order to understand how the state administers it to control undocumented migration. I argue that Streamline is not only a punitive experience for the migrants who are criminally prosecuted, but also a policy that punishes the families of the people in question. In doing so, penal power in crimmigration law operates vicariously to amplify suffering in an attempt to discipline mobility. Consequently, punishment is uprooted in this sense, operating beyond the limits of the state in a deterritorialized existence. This chapter is divided into three parts. I start with discussing the need to expand our conception of punishment, particularly as it pertains to migration control. I then examine how Streamline proceedings constitute a punitive experience for the migrants who are subjected to them. In the final section, I explain how punishment functions vicariously to control mobility.

Punishment and Migration Control

Expanding our Understanding of Punishment

Punishment has undergone substantial changes in the interconnected society that we live in today. With regards to migration controls, traditional studies of punishment that are grounded within the state are unable to fully capture the penal processes that manifest themselves through immigration detention and deportation (Aas, 2014; Bosworth, 2017). They fall short of understanding how, in a globalized era of mobility, ‘the penal field has become infused by novel rationalities with particular focus on expulsion and control of unwanted cross-border movement’ (Bosworth et al., 2018, p. 43). While much work has yet to be done, several scholars have begun to trace how detention centres (Hernández, 2014; Bosworth, 2014; Kaufman and Weiss, 2015), foreign national prisons (Kaufman, 2013; Warr, 2016; Ugelvik and Damsa, 2018), and deportation proceedings (Coutin, 2010; Golash-Boza and Hondagneu-Sotelo, 2013; Kanstroom, 2014) reflect extended forms of state penal powers. How, then, is punishment manifested through Streamline?

The Process is the Punishment in Operation Streamline

To understand how penal power flows through Streamline, it is important to observe the process. Drawing on Malcolm Feeley's (1979) study of the lower criminal court system in Connecticut, Julia Stumpf (2013) explains how the process in crimmigration law is the punishment for non-citizens. For Stumpf, crimmigration processes create a punitive experience for the following five reasons: (1) the costs of procedure determine outcomes, (2) negotiated convictions are used as substitutes for formal criminal punishment, (3) non-judicial actors have more power than judges in imposing procedural burdens, (4) the criminal prosecution is a stepping stone towards

deportation, and (5) the different treatment non-citizens receive under the criminal justice system (ibid, p. 65-72).

The first and third reasons of Stumpf's taxonomy of how the process in crimmigration law becomes punishment are the most applicable to Streamline. On the first, it is almost always the case that undocumented migrants refuse to contest the charges because the risks of doing so are higher than the cost of pleading guilty. For one, a person who rejects his or her plea bargain will face a significantly higher sentence if they lose their trial. This is especially the case with people who are charged with unlawful reentry. They can either accept a plea agreement that involves a sentence of up to six months or potentially face a charge which carries a maximum of two years with sentencing enhancements of up to 20 years depending on their criminal and immigration history (Greene et al., 2016). Second, the process of contesting charges will take between four to six months alone. For these reasons migrants feel compelled to accept their plea deals. In all of the hearings that I observed, there was no person who refused to plead guilty. Paul, one of my participants, put it simply, 'Accept the plea and you get less time. It's a no brainer.'

Yet, besides a long prison sentence, there are other real costs that non-citizens in Streamline uniquely encounter. Feeley (1979, p. 154-158) and Stumpf (2013, p. 65) note the costs that defendants incur due to the elongation of the criminal process—lost wages from missed work, undue stress, and time. Under Streamline, however, the costs that defendants face are inextricably linked to their precarious status as undocumented migrants. To unlawfully migrate to the US, many migrants undertake debt to hire human smugglers. Undocumented migrants are often left with no choice but to accept their plea deals in order to return home and begin paying off their migration debts. This is because as long as migrants are indebted to human smugglers, their families remain in danger. Four of my research participants mentioned that their clients often cited this as a reason

for pleading guilty. And, in three separate instances, I observed three different migrants plead with the magistrate to reduce their sentence due to the potential harm their families faced.

For example, on March 22, a criminal defence lawyer told the magistrate that his client wanted to make a statement. The man, dressed in a long-sleeve camouflage shirt and dark blue denim, remained standing in front of the bench after everyone in his group had been escorted out of the courtroom. His voice quivering, he began by asking God for forgiveness and then the magistrate, before explaining that his family was in danger because they took a loan of \$120,000 pesos (\$7,370 dollars) to pay for his smuggler. He was supposed to repay the loan from his earnings in the US. His voice cracked as he spoke. He reassured the magistrate that he learned his lesson, and if the magistrate dismissed his prison sentence, he would never step back into the country. The magistrate, emotionless, repeated that he was facing a minimum of 75 days in prison, saying, ‘I cannot reduce your plea agreement—many individuals in the courtroom would like a reduced sentence as well,’ and referenced the migrants sitting in the back watching. He asked one more time, ‘How do you plead?’ ‘Guilty,’ the migrant from Mexico responded in disappointment. For non-citizens in Streamline, contesting charges is not only inconvenient, it may also carry grave consequences for them and their loved ones.

Returning to Stumpf’s analysis, in Streamline it is also the case that non-judicial actors have more influence than magistrates in imposing procedural burdens. However, whereas Stumpf’s observation focused on the role of police and prosecutors adjudicators of criminal and immigration sanctions (*ibid.*, p. 66), under Streamline it is the Border Patrol and prosecutors who have the most influence. As I explained in chapter two, the Border Patrol, using a confidential set

of guidelines, determines who is processed through Streamline⁶. Similar to the arrest of a police officer, when a border apprehension ‘takes on a life of its own’, the apprehension ‘becomes a means of penalizing the arrested non-citizen’ (p. 67). Once migrants are in the system, the prosecutors determine charges and plea agreements, while the roles of criminal defence lawyers and magistrates—as I discussed in chapter three—become largely symbolic.

Aside from Stumpf’s classification, the degrading and dehumanizing conditions that migrants are put through make Streamline especially coercive. In a study with former Streamline defendants, researchers (Irvine et al., 2019) documented an array of punitive pre-hearing conditions that people experience. For instance, 82.6 percent of respondents ‘described conditions that undermined their ability to sleep’ while 80.5 percent ‘reported being intimidated, verbally or physically abused or neglected by guards during their time at the border patrol facility’ (p. 4).

The punitive experience that Streamline creates is compounded further when migrants question the legitimacy of their treatment. Gabrielle, a CJA criminal defence lawyer who I interviewed, said her clients felt the treatment they received was unjustified:

And so, a lot of them will say to me, you know, ‘I never—I didn’t kill anybody, I didn’t hurt anybody.’ And [...] a lot of my clients say you know, ‘I just want what is just.’ [...] Some of them see it as deeply unjust that they’re going to prison for crossing the border when they didn’t hurt anybody, and they come with very good motives. Um and a lot of them, you know, they’re just like, you know, ‘Are you kidding me, this is what’s going to happen?’ And I have to say, ‘Yeah, that’s the law.’

Because migrants in Streamline do not accept their treatment and the conviction they receive, they do not perceive their punishment as legitimate. As such, ‘the very means by which they could legitimate their experience of incarceration is eroded and deprived’ (Warr, 2016, p. 310). Indeed,

⁶ Border Patrol also wields more influence given that non-citizens who experience physical violence by them are unable to file a claim because doing so would prolong the process, preventing migrants to return to their homes as soon as possible.

punishment is woven throughout Streamline, and the process is meant to be a punitive experience in order to discipline non-citizens about their position in the global system of apartheid.

Vicarious Punishment: Unbounded, Uprooted, and Unjust

Punishing Vicariously

In my observation of Streamline hearings and interviews with criminal defence lawyers, I was struck to learn about how the criminal prosecution of one individual would have lasting effects on one's family members in either the US or Latin America. Hearing migrants talk in court about how their families would suffer because of their incarceration made me wonder whether punishment in this setting had a vicarious function, and particularly, whether it was intended as such.

'Vicarious punishment' captures the ways in which the state not only punishes migrants by criminally prosecuting them but also their families, who either supported their mobility or depend on their migration. In one sense, vicarious punishment relates to Didier Fassin's (2018) notion of 'collective punishment', which is the act of 'sanctioning the whole group to which the alleged culprit belongs' (p. 40). Like collective punishment, vicarious punishment 'extends beyond prison time and affects family and friends, and also 'participates in the aggravation and perpetuation of social disparities by disproportionately affecting the most disadvantaged segments of the populations' (ibid., p. 116). Unlike collective punishment, vicarious punishment in migration controls explicitly targets migrant communities in order to remind them about their position in the social order and keep them from resisting global apartheid. It aims to suppress the migratory acts of resistance—'the weapons of the weak' (Scott, 1985, p. 29) that I described at the beginning of this dissertation—by amplifying suffering to the fullest extent.

Unrestrained and Intentional

The claim that the state, by engaging in the criminal prosecution of migrants, simultaneously and intentionally punishes the migrants' families may appear provocative at first glance. After all, how do the decisions of a magistrate inside a place like the federal courthouse in Tucson, Arizona transcend geopolitical boundaries to deliver a message?

One must keep in mind that Operation Streamline is one policy of a vast web of US enforcement strategies, which have been shown to exploit the suffering of migrants and their loved ones. For instance, in the months before and during this writing, the Trump administration has carried out a 'zero-tolerance' policy whereby thousands of children have been

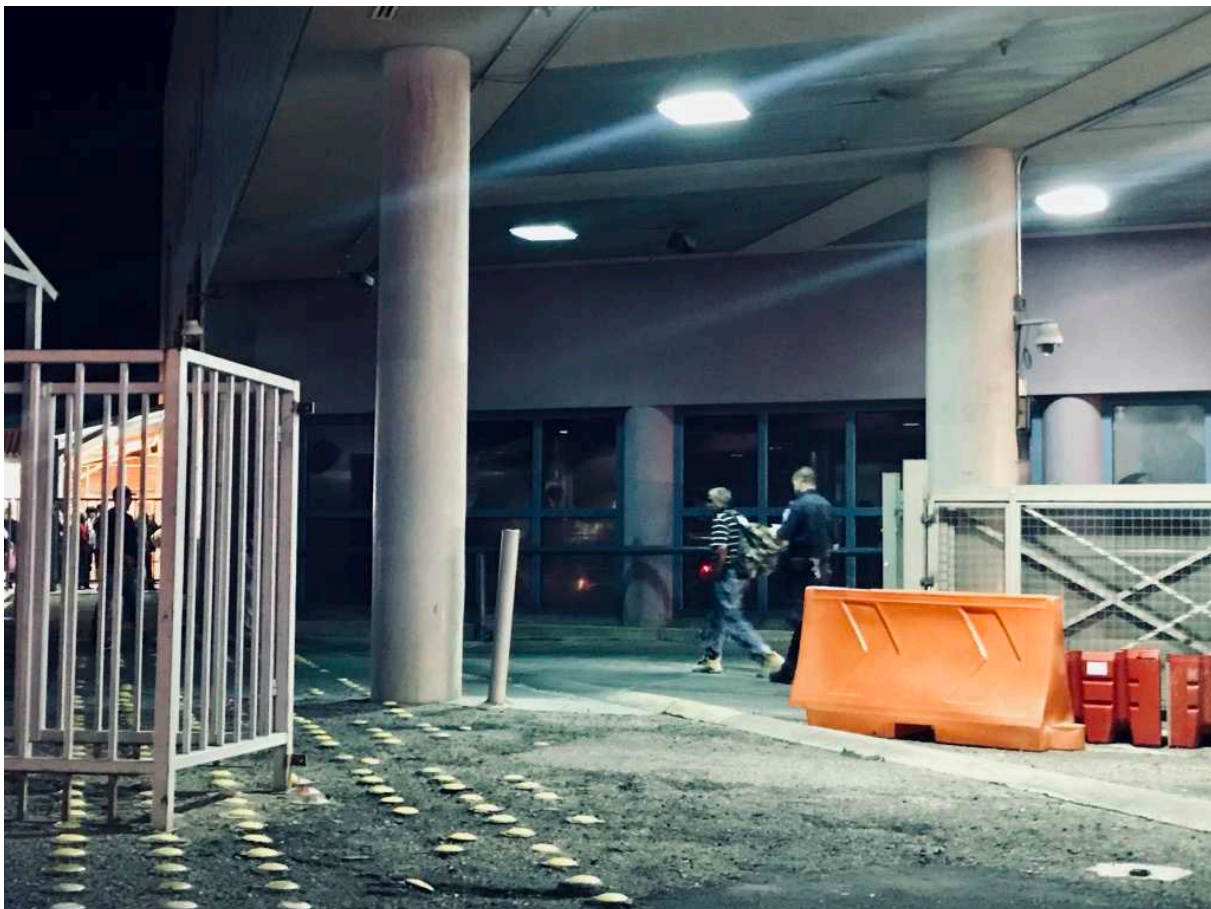


Figure 7: The deportation of migrants at night at the US-Mexico border. Photo: Author, 2019.

separated from their parents, showing no remorse in the process (Delgado, 2019). The separation of families at the border, like Streamline, is situated on punishment in order to deter undocumented migration.

At the same time, scholars have extensively uncovered the sinister logics of US border controls. For example, since 1994 the US has enforced a policy known as Prevention Through Deterrence. This policy has relied on *purposefully* funnelling undocumented migrants through the desert of Southern Arizona in order to discourage them from unlawfully entering the US (Cornelius, 2001; Inda, 2006; De León, 2015; De La Rosa, 2018). And, while more than 3,000 migrants have perished attempting to cross (Jimenez, 2009), the policy is still in practice. Other border control policies that focus on inflicting suffering include the deportations of people at night through the Alien Transfer and Exit Program (Slack et al., 2015) (See Figure 7 above). By deporting migrants at obscure times in the night, the process is meant to add further pain to individuals.

Certainly, Operation Streamline and its logics of punishment must be considered within these larger set of border controls that centre around suffering for the purpose of controlling and managing non-citizens of Latino descent. By approaching Streamline with an open mind, we can see how it administers punishment vicariously to discipline migrant communities and contain their movement. ‘Globalization’, Bosworth, Franko, and Pickering (2018) suggest, ‘demands a different and expanded understanding of punishment and penal power in geographic and substantial terms’ (p. 41). Vicarious punishment offers this understanding, and through its use, the US continues to target and exclude low-income Latinos. On the whole, alike other border controls, punishment in Streamline ‘is not so much concerned with moral censure than it is with issues of identity, nationality, and control of cross-border movement’ (Bosworth et al., 2018, p. 43).

Conclusion: The Present Challenges of Decriminalizing Migration

Criminal justice and migration controls are becoming increasingly interlinked. All around the world, a growing number of Western liberal democracies have deployed their criminal justice systems as a means of managing non-citizens through exclusion.

In this dissertation, I concentrated on crimmigration in the US, and particularly, on how a policy known as Operation Streamline has cemented the criminal justice system as the prime mechanism for criminalizing, excluding, and punishing low-income Latino non-citizens. The US has criminally prosecuted over 730,000 migrants for entry-related offenses since Streamline's implementation (Green et al., 2016, p. 2). For a country that once overwhelmingly managed immigration violations through the civil immigration system, prosecuting non-citizens at this rate underscores the punitive shift the US has undertaken in only the past two decades.

What is particularly concerning, however, is the fact that Streamline has overcome a series of legal hurdles and shows no sign of ending. In other words, the apparatus that Streamline has become today is deemed constitutional even though widespread violations of basic principles of fairness and equal treatment under the law have been documented. It is backed by and disguised under the law, and through this veil, it emerges as a legitimate means for criminalizing, excluding, and punishing Latino non-citizens.

While I have not offered any solutions, I hope this dissertation has contributed new material about the treatment of undocumented migrants from Latin America at the US-Mexico border, and in the process, highlighted the racialised nature and impact of the intersection between criminal justice and border controls.

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