Changes in the Probability of being Ordered Removed from the U.S. Interior, 1988-2010

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Abstract While the growth in U.S. interior immigration enforcement over the past several decades has been widely discussed, as has the growth in the U.S. noncitizen population, little is known about how immigration enforcement practices in the interior have changed relative to changes in the underlying noncitizen population at risk of deportation. Combining administrative records of immigration court proceedings and immigration removals with Census data, this paper begins to build this understanding. I estimate change over time in noncitizens' probability of being ordered removed from the interior as a function of the probabilities of apprehension, detention, and removal given apprehension. Findings reveal that noncitizens' probability of being ordered removed roughly doubled during between 1988 and 2010. Results further show that the increase in noncitizens' probability of being ordered removed is driven primarily by actions at the apprehension stage rather than differences over time in immigration detention use and immigration judges' decision-making.

Statement of research question

In this article, I examine how the probability of being ordered removed[1] from the U.S. interior has changed over time and explore what types of immigration policies may contribute to this change. This analysis extends our current understanding of the U.S. immigration enforcement system in two key ways. First, it provides estimates for the first time of the probability of being ordered removed from the U.S. interior. Previous research has largely relied on annual statistics of overall counts of removals from the United States. These statistics, however, do not provide information on interior removals prior to fiscal year 2008 nor do they account for the large increases over the past several decades in the size of the United States' noncitizen population, and especially its undocumented population. It is thus unclear how much of the increase in annual counts of removals is due to the increase in the size of the deportable population versus changes to how the federal government is carrying out immigration enforcement.

By moving beyond aggregated counts of removals to instead estimate year-to-year changes in the probability of being ordered removed from 1988 to 2010, this analysis accounts for underlying changes to the size of the U.S. noncitizen population during this period and sheds light on how noncitizens' risk of being ordered removed has changed over time. Findings indicate that the probability of being ordered removed roughly doubled for noncitizens during this period, from .004 in 1988 to .0083 in 2010. When looking at the probability of being ordered removed for undocumented individuals, specifically, a different story emerges. Among this group, the probability of being ordered removed was greatest in 1989 at .016, dropped considerably in the 1990s, and increased again in the 2000s, but not to the levels seen in the late 1980s. These results not only show the importance of accounting for migration flows when assessing change over time in interior enforcement, but also show that interior enforcement is more stable over time than previous scholarship suggests.[2]

Second, this study demonstrates that the increase over time in noncitizens' probability of being ordered removed is mostly driven by the change in noncitizens' probability of apprehension. Legal changes since the 1980s, both to formal law and to legal practices in law enforcement departments as well as criminal and civil courtrooms across the country, have helped reshape the U.S. immigration enforcement system by, among other things, expanding the criminal grounds for deportation, enhancing enforcement tools and resources, curtailing judicial discretion, and increasing the use of immigration detention. While these changes have all been well documented (e.g. Golash-Boza 2015; Kanstroom 2010; Stumpf 2006; Torrey 2015; Wishnie 2004) the extent to which they have contributed to the overall growth in deportations has largely been a black box that this study begins to open.

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[1] In talking about removals, I am combining both deportations and voluntary departures. The latter occurs when individuals who are facing possible deportation, waive their right to have their case heard in immigration court and agree to voluntarily depart the country. Additionally, because I cannot determine with the data whether the individual was actually removed or not, results should be interpreted as the probability of being ordered removed and not the actual probability of removal.

[2] In the full draft, I will incorporate additional data that bolsters this claim. Findings from archival analyses I recently completed suggest that for noncitizens the probability of being apprehended within the US interior was greater throughout the 1970s and early 1980s than in the 2000s.

Data and Methods

Scholars have largely been unable to track how patterns of immigration apprehensions, detentions and removals have changed over time in the U.S. interior because of limited publicly available data on the federal government's enforcement actions. While the DHS releases annual counts of removals and disaggregates these statistics by nationality, it is unclear what percent of the deportations to each country resulted from apprehensions in the interior and it is not possible to track an individual's trajectory through the immigration enforcement system—from apprehension to possible detention and to the final determination. This study overcomes these data limitations by drawing on administrative records of all immigration court proceedings in the United States and administrative records of all ICE removals since fiscal year 2003.

EOIR Records

Data on immigration court proceedings were obtained through a Freedom of Information Act (FOIA) request with the Executive Office for Immigration Review (EOIR).[3] These data include all immigration court proceedings from 1951 through 2016 and are organized at the case level, with a case often consisting of multiple proceedings. To conduct the below analysis, I link three separate sets of records: 1) removal proceedings; 2) applications for relief; and 3) appeals to the Board of Immigration Appeals (BIA). By combining these records, I am able to track the trajectory of an individual case from the initial master calendar proceeding through applications for possible relief and the appellate process. Because it can take several years for a case to conclude, many of the records in the latter years were right censored and missing a final outcome. For this reason, I restrict the below analysis to cases that began no later than 2010.[4] I also start the analysis in 1988, because analysis of INS's annual reports from the 1980s revealed that the administrative records were incomplete prior to 1988. I further restrict the analysis to only cases that began with an apprehension in the interior.[5] Between 1988 and 2010, there were a total of 2,270,219 cases in immigration court that began with an apprehension in the interior.

ICE Removal Records

Because the immigration reforms passed in 1996 established several pathways through which federal immigration officers could deport individuals while bypassing the courts, relying solely on court data would underestimate the true probability of being ordered removed from 1997 onward. There are four primary mechanisms through which due process can be circumvented, but only two apply to apprehensions from the interior—reinstatements of removal

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[3] Kenneth Mayeaux filed the FOIA request while a clinical law professor at Louisiana State University.

[4] Remaining in the dataset are 25,924 right-censored cases, for which I impute the final outcome. Given that the data end in 2016, each of the right-censored cases took at least 6 years to complete. To impute the final outcome of right-censored cases, I looked at all completed cases in the data that took at least six years to complete and analyzed their outcomes. Of these cases, 71% ended with the individual winning relief and this percent did not change considerably when looking year-by-year. I therefore randomly sampled 71% of the right-censored cases and assigned them an outcome of relief and coded the remaining as removed.

[5] For a detailed discussion of my identification strategy, see the Data Appendix.

and administrative removals. To capture removals that occurred without the individual having a case heard in immigration court, I draw on administrative records of ICE removals.

These data were obtained through a FOIA request submitted by the Transactional Record Access Clearinghouse (TRAC) at Syracuse University and contain information on 4,001,882 removals between FY 2003 and 2016. With these data it is possible to distinguish between removals that resulted from apprehensions of individuals trying to enter the country versus apprehension of individuals already residing in the country.[6] It is also possible to identify whether the removal was a reinstatement of removal. I reduce these data to all removals that resulted from a reinstatement of a removal and that occurred as a result of an interior apprehension. The reduced dataset consists of 251,985 removals.

Although combining these records with the EOIR data provide a substantially more complete picture of immigration removals, there remain a few limitation. The primary limitation is that I do not have data on reinstatements of removal from 1996 through 2002, and as a result, I likely underestimate the true probability of removal for noncitizens in that period. Additionally, with the removal data, I am unable to identify administrative removals. While administrative removals represent the least frequently used mechanism for bypassing the courts, not accounting for this form of removal in the analysis further underestimates the true probability of removal.

Estimating the Probability of Removal

The conditional probability a noncitizen is ordered removed from the interior of the United States depends upon three factors: 1) the probability of being apprehended; 2) conditional on being apprehended, the probability of being detained; and 3) conditional on detention status, the probability of being ordered removed. As such, to estimate the conditional probability of being ordered removed in a given year requires information on all interior apprehensions that year, whether each apprehended individual was detained and whether the individual was ultimately ordered removed. It also requires information on the size of the U.S. noncitizen population in that year. For the first set of estimates, I exclusively use the EOIR data. Using these data, I measure apprehensions as the number of notices to appear (NTAs) issued in a given year. The Department of Homeland Security (DHS) and previously, the Immigration and Naturalization Service (INS), initiate removal proceedings by serving a NTA to the noncitizen it seeks to remove (8 U.S.C. § 1229a(a)(1)).

I next determine detention status using a field in the data that indicates whether the individual was detained, released from detention or never detained. This field is recorded at the proceeding level and can therefore change during the trajectory of an individual's case. I recode this field into a constant dummy variable. Assuming that the negative effects of detention on case outcomes is greatest for individuals who are detained for the entire length of their case, I code people who had initially been detained but were released at some point while their case was pending in immigration court as not detained.

Lastly while there are a number of ways in which a case can end in EOIR proceedings, I combine all possible outcomes into a binary variable indicating whether the individual was removed or not. I code deportations and voluntary departures as removals and all other outcomes as non-removals. Some of these outcomes, such as administrative closure, are not final outcomes, as the government can opt at any point to reopen the case. However, because the

[6] See data appendix for my strategy of distinguishing between border and interior removals

individual is not ordered removed and has not taken voluntary departure at the time the case is concluded, I treat these outcomes as non-removals.

Data on the noncitizen population are from the Census and American Community Survey (ACS) Integrated Public USE Microdata Series. Specifically, I draw on the 1980, 1990, and 2000 Censuses and annual ACS data from 2001-2010 and use linear interpolation to fill in missing years. Noncitizens include legal permanent residents, temporary migrants, unauthorized immigrants and other resident statuses. To examine how the probability of being ordered removed changes for undocumented noncitizens, specifically, I draw on estimates of the undocumented population from Warren and Warren (2013) and Passel and Warren (1987) and use information on the offenses each individual in immigration court is charged with to identify undocumented individuals.[7]

To estimate the probability of removal with the EOIR data, I use the following equation:

$$p(R) = p(A) * p(R|A) \quad (1)$$

where p(R) is the probability of being ordered removed, p(A) is the probability of apprehension, and p(R|A) is the probability of being ordered removed given apprehension. I estimate p(A) as the total number of NTAs issued in a given year over the size of the noncitizen population in that year. I account for the impact of detention on one's chances of being ordered removed when estimating the p(R|A) using the following equations:

$$p(R|A) = \pi * p(R|D = 1) + (1 - \pi) * p(R|D = 0) \quad (2)$$

$$\text{where } \pi = p(D|A) \quad (3)$$

Here, p(R|D=1) is the probability of being ordered removed given detention (i.e. the number of detained individuals ordered removed over the number of detained individuals in EOIR proceedings); p(R|D=0) is the probability of being ordered removed given no detention (i.e. the number of non-detained individuals ordered removed over the entire population of non-detained individuals in EOIR proceedings); and where p(D|A) is the probability of detention given apprehension, measured as the total number of individuals issued a NTA and detained over the total number of NTAs issued. I estimate these parameters annually from 1988 through 2010 for all noncitizens and then separately for undocumented individuals.

As noted above, given the increase in removals outside of the immigration court system, using only EOIR data underestimates the probability of being ordered removed following 1996 immigration reforms. For this reason, I generate an additional set of estimates for 2003-2010 using both the EOIR and ICE removal data. I exclude detention status from this analysis because the ICE removal records do not provide information on individuals' detention status. The equation is the same as equation 1, but the parameters are calculated differently. Here, p(A) is estimated as the total number of NTAs issued in a given year plus reinstatements of removals over the entire population of noncitizens in the US that year and p(R|A) is estimated as all removals in EOIR plus reinstatements of removal over the total number of NTAs and reinstatements of removal.

[7] For a detailed discussion of these charges, see the data appendix.

Estimating probabilities of removal annually is complicated by the fact that the process of adjudicating immigration cases is often slow. The period between the date of apprehension for an individual and the culmination of her case often takes more than a year, especially for non-detained individuals and in cases where multiple appeals are filed. I attend to this issue by estimating the probability of apprehension in a given year and then following all individuals apprehended in that year through detention and the completion of their case in immigration court and record their outcomes. As such, the estimations of the probability of being ordered removed in say 1988 should not be interpreted as the probability that a noncitizen living in the U.S. is ordered removed from the country in 1988. Rather, the probability of being ordered removed in 1988 should be interpreted as the probability that a noncitizen living in the U.S. in 1988 ends up being ordered removed, which is a function both of the probability of being apprehend in 1988 and a function of how the cohort of individuals apprehended in 1988 fair in immigration detention and immigration court.

Results

Between 1988 and 2010 the probability of being ordered removed from the interior of the United States for noncitizens roughly doubled from .004 in 1988 to .0083 in 2010, once reinstatements of removals are accounted for (Figure 1). However, when looking at the probability of being ordered removed for undocumented individuals, specifically, a different story emerges (Figure 2). For undocumented individuals, the risk of being ordered removed was greatest in 1989 at .0161, dropped considerably in the 1990s, and began to increase again in the 2000s. By 2009, which according to annual reports from the Department of Homeland Security appears to be the peak of interior removals (DHS 2016), the probability of being ordered removed for undocumented individuals reached .0137. Over 80% of individuals in removal proceedings in the late 1980s were undocumented and undocumented individuals only accounted for roughly 30% of the noncitizen population at the time. Overtime, however, the share of noncitizens who are undocumented grew and the government also began prioritizing the removal of noncitizens with criminal convictions, whether documented or not, which is likely why the probability of being ordered removed dropped through the 1990s.

Breaking down the probability of removal into its component parts helps clarify how changes in the probability of apprehension, detention, and removal once apprehended differently contribute to noncitizens' overall chances of being ordered removed. Figure 3 illustrates the change over time in the probability of apprehension for noncitizens and undocumented individuals residing in the United States. These trends closely resemble that of the probability of being ordered removed, although the scales differ. Both plots show a considerable increase the probability of being apprehended beginning in the early 2000s. This trend maps onto scholarship that discusses how measures in the 1996 legislation, such as the authorizing of the Attorney General to deputize local police officers as immigration officers under section 287(g) of IIRIRA did not go into effect until after September 11, 2001 (e.g. Armenta 2017; Coleman 2012).

Taking a counterfactual approach helps to elucidate the extent to which the increase in the probability of being ordered removed following the passage of IIRIRA and AEDPA in 1996 is the result of changes in the probability of being apprehended versus changes in how individual fare once apprehended. Holding the probability of being ordered removed given apprehension at the 1997 level, but changing the probability of apprehension to that seen in 2009—the year that the probability of apprehension was greatest for noncitizens—would increase the probability of

being ordered removed in 1997 by a factor of 2.18. In contrast, keeping the probability of apprehension at the level seen in 1997 but changing the probability of being ordered removed given apprehension to that seen in 2009 would increase the probability of being ordered removed in 1997 by a factor of .903. These results suggest that the increase in the probability of being apprehended is what mattered most for the observed change in the probability of being ordered removed, rather than the change in the probability of being ordered removed given apprehension or the interaction of these two changes.[8]

Despite considerable investment in the immigration detention system, a curtailing of judicial discretion, and the creation of pathways for deportation that completely bypass the courts, the probability of being ordered removed given apprehension did not substantially change in this period (Figure 4). As Figure 5 and Figure 6 show, the probability of being ordered removed given apprehension did not substantially change, because the probability of being detained for the entire length of one's case following apprehension and how detention affects the likelihood of removal did not change substantially during this period.

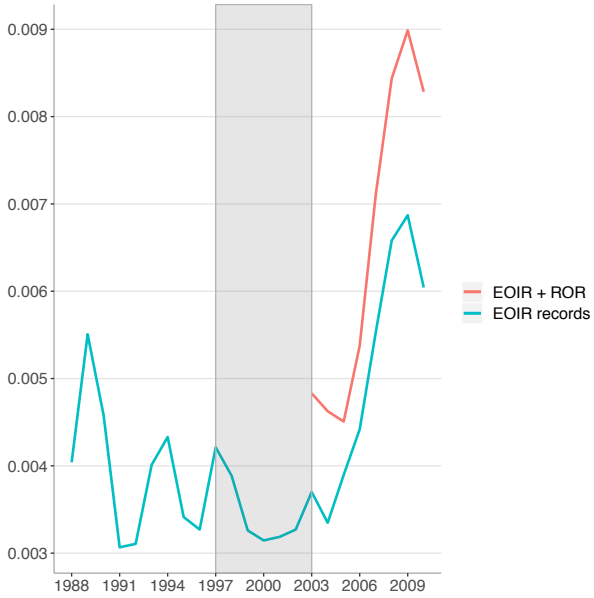

Fig. 1 Plot of the probability of removal, 1988-2010. The blue line uses only EOIR data and the orange line combines EOIR data with reinstatements of removal.
NOTE: Trends in the gray area should be interpreted with caution, as the probabilities do not account for reinstatements of removal occurring in this period.

[8] This finding supports Motomura's (2011) analysis where he concludes that the discretion in the immigration enforcement that really matters is that that relates to apprehensions.

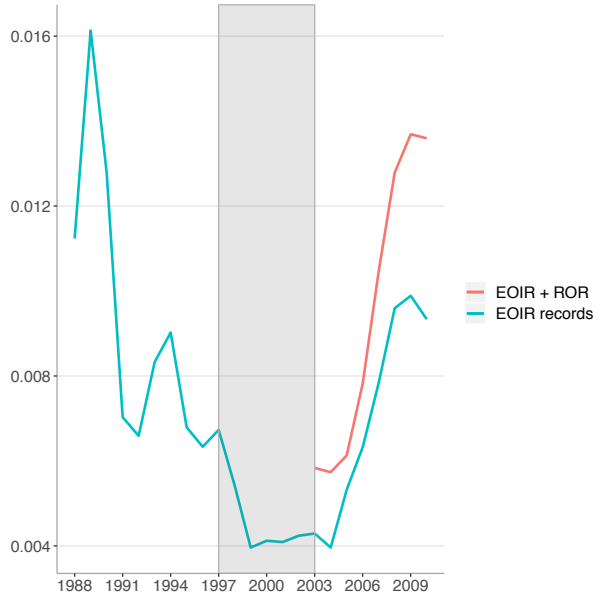

Fig. 2 Plot of the probability of removal, 1988-2010. The blue line uses only EOIR data and the orange line combines EOIR data with reinstatements of removal.
NOTE: Trends in the gray area should be interpreted with caution, as the probabilities do not account for reinstatements of removal occurring in this period.

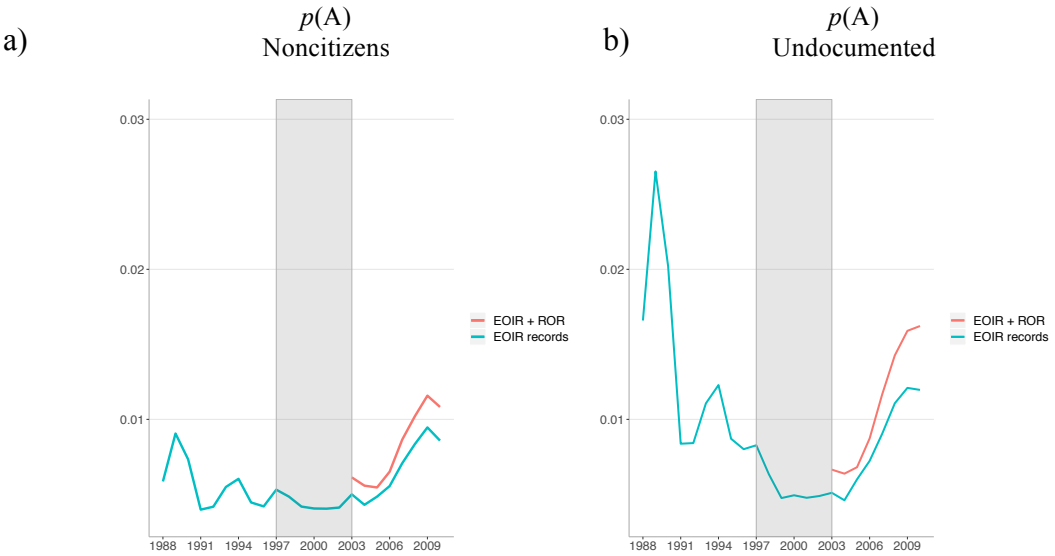

Fig. 3 Plot of the probability of apprehension, 1988-2010 for noncitizens and undocumented individuals. The blue line uses only EOIR data and the orange line combines EOIR data with reinstatements of removal.
NOTE: Trends in the gray area should be interpreted with caution, as the probabilities do not account for reinstatements of removal occurring in this period.

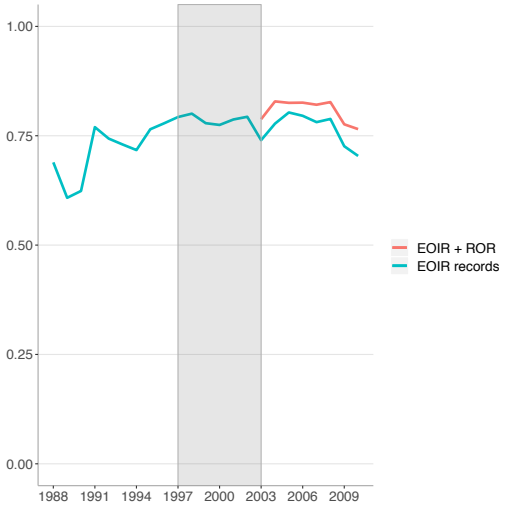

Fig. 4 Plot of the probability of being ordered removed given apprehension, 1988-2010 for noncitizens. The blue line uses only EOIR data and the orange line combines EOIR data with reinstatements of removal.
NOTE: Trends in the gray area should be interpreted with caution, as the probabilities do not account for reinstatements of removal occurring in this period.

Fig. 5 Plot of noncitizens' probability of being detained for the entire length of one's case given apprehension, 1988-2010.

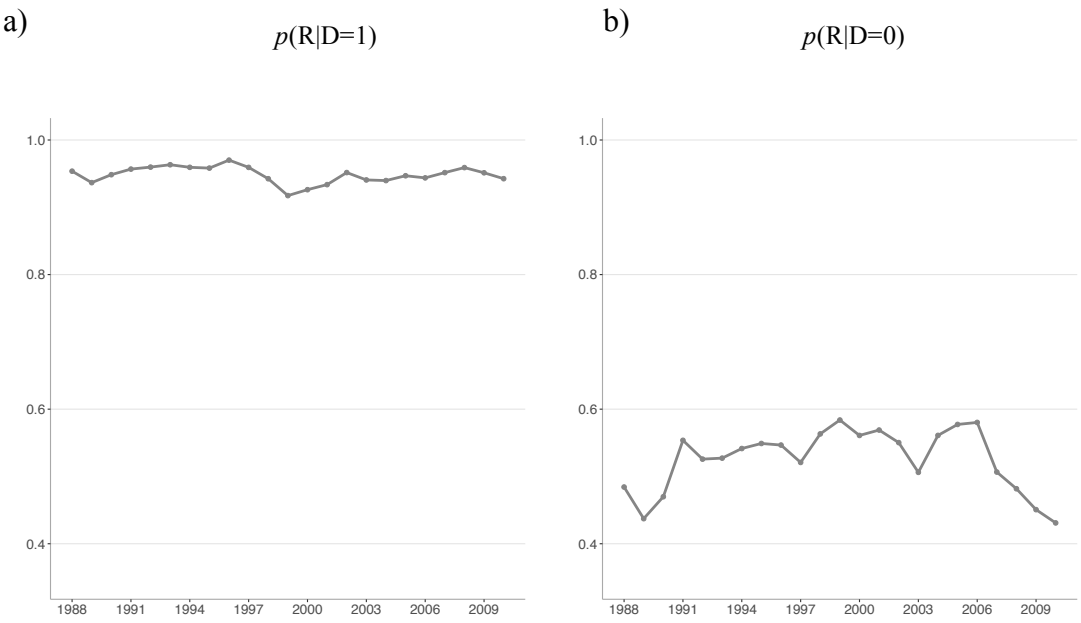

Fig. 6 Plot of the probability of being ordered removed conditional on detention status, 1988-2010 for noncitizens. Plot a shows the probability of being ordered removed among detained individuals and plot b shows the probability of being ordered removed among non-detained individuals.

Data Appendix

Distinguishing between border and interior apprehensions in the EOIR data

To identify which of the cases in the EOIR data began with an interior apprehension I took the following steps. First, I drop cases that included an "exclusion proceeding," which accounts for 4.9% of all cases. Prior to the passage of IIRIRA in 1996, there were two major types of courtroom proceedings in immigration court—deportation and exclusion. While deportation proceedings pertained to noncitizens already residing in the U.S., exclusion proceedings applied to noncitizens seeking admission to the country. IIRIRA replaced both deportation and exclusion proceedings with removal proceedings. Given this change, it is not possible after 1996 to reliably distinguish individuals apprehended at the border from those apprehended in the interior by the type of proceeding. As next steps, I compare the date recorded in the data as the individual's entry date into the U.S. with the date in which the individual's NTA was issued and also look to see if the individual applied for asylum. I exclude any individual who was issued a NTA within ninety days of entering the country.

Additionally, individuals apprehended at the border while trying to enter the country and who express a fear of returning home undergo a "credible fear interview" by an immigration agent. If the agent makes an initial finding of credible fear, they then refer the case to an immigration judge and a NTA is issued. Individuals, however, can also apply for asylum after already residing in the country (Legomsky 2010). For this reason, I conduct a robustness check that excludes from the analysis the 285,398 cases with asylum proceedings where the date of entry was missing. Results did not substantively change.

Distinguishing between border and interior apprehensions in the ICE removal data[9]

To identify removals of individuals who were apprehended after settling in the United States (i.e. interior removals) I take a multi-pronged approach that uses information on the agency involved in the apprehension, the date of entry, and the type of removal. First, among the 2,041,542 removals where Border Patrol was not involved in the apprehension and the apprehension did not occur at a port of entry, I exclude all expedited removals (n=34,213). These removals only occur in cases where the individual is apprehended within 14 days and 100 miles of the border (American Immigration Council, 2017). Next, among the remaining cases I compare the entry date and removal date and exclude an additional 113,449 removals where the individual was removed within 90 days of entering the country.[10] Lastly, to identify individuals likely to have been apprehended by Border Patrol after already residing in the country, I mark as

[9] The numbers presented below refer to the full dataset, while the analysis above ends in 2010.
[10] Here, I depart from a similar analysis conducted by Rosenblum and McCabe (2014), which uses a 14-day cutoff when identifying interior removals. I chose a more conservative approach because it is not uncommon for an individual apprehended while trying to enter the country to be detained for several weeks prior to removal, especially if the individual is trying to apply for asylum. Using a 14-day cutoff, I would have excluded from the analysis far fewer cases—42,467.

an interior apprehension any removal that occurred more than 5 years after the recorded entry date and where Border Patrol was responsible for the apprehension (n= 70,876 cases).[11]

Charges relating to Undocumented Status

1. 212a06 - Illegal entrants and Immigration Violators under section 212(a)(6)
2. 212a06Ai I - Alien is U.S. without Admission or Paroled
3. 212a06D - Stowaways
4. 212a07Ai I - No valid immigrant visa
5. 212a09Bi II- Alien unlawfully present in the U.S. for more than 180 days but less than 1 year, voluntarily departed the U.S. prior to proceedings commencement and seeks admission within 3 years of the alien's departure or removal date
6. 212a09Bi II - Alien unlawfully present in the U.S. for 1 year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the U.S., is inadmissible
7. 212a09Ci I - Alien unlawfully present in the U.S. for an aggregate period of more than one year
8. 212a20 - No valid immigrant visa 237a01A - Inadmissible Aliens
9. 237a01Ci - Non-immigrant status violators
10. 241a01 - Missing description but is part of a category of immigration violations
11. 241a01A - Excludable at time of entry or adjustment of status or violates status
12. 241a01B - Entered without inspection
13. 241a01Ci - Non-immigrant status violators
14. 241a02 - Entered w/out inspection, or violation of any other law

[11] I use 5 years as a cutoff because it exceeds the average wait time for a case to be adjudicated in all courts across the country (TRAC, 2017), thereby minimizing the chance that I am miscoding removals of individuals who were apprehended while trying to enter the country, pursued some kind of relief in immigration court over several years, and were deported after losing the case.

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