

Thoughtlessness in the Age of Homeland Security: Race, Bureaucracy, and the Making of
Modern Immigration Enforcement

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Abstract

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This dissertation examines the politics of bureaucratic development in the United States Department of Homeland Security (DHS) with attention to the ways that bureaucratic processes and policymaking shape racial hierarchy in the contemporary era. I argue that contemporary bureaucracies primarily shape race by working to expand and enhance their department's bureaucratic capacity through modernization and efficiency improving processes. Within each agency, bureaucrats work towards producing efficiency and attempt to demonstrate success in ways that are facially race-neutral but in fact rely upon racial imaginaries. In the context of

homeland security, a racial and carceral imagination of who is an “illegal” immigrant undergirds the department as a whole. As such, when bureaucrats work to optimize the departmental processes, the result is improving and expanding tools of social control such as immigrant surveillance, detention, and deportation. This phenomenon is racialized because the primary targets of the enforcement apparatus are Latinx, and as a more efficient architecture is built, the DHS is better able to police the Latinx migrant community. I draw on the work of Hannah Arendt to argue that a major impact of bureaucratic development is inducing thoughtlessness amongst DHS bureaucrats. Here, thoughtlessness refers to the inability to see outside of the work of bureaucracy to examine the particular harm done to those on the other end of the policy. Bureaucrats are institutionally incentivized to focus on performance optimization and in doing so, the human consequences of immigration enforcement are hidden from bureaucrats.

To make this argument, I conducted an archival analysis of around 32,000 pages of internal bureaucratic documents from the DHS. This document set spans the time from 2002-2022 and includes documentation such as inspections, FOIA documents, email correspondence, and departmental memoranda. I support this primary document analysis with historical analysis and theoretical work, drawing on Hannah Arendt and Max Weber, as well as critical scholarship on immigration and race such as the work of Mae Ngai, Kelly Tuttle Hernandez, and Patricia Macias-Rojas.

To more concretely examine this phenomenon, I center each empirical chapter around a theme of bureaucratic development that I argue has played a major role in expanding the DHS’ role in homeland security. The first empirical chapter focuses on the role of data and metrics in supporting a carceral imagination of homeland security. In this chapter, I argue that the DHS’ focus on carceral solutions to the problem of immigration has led to the use of increasingly

granular and seemingly objective performance metrics. However, these metrics reify ideas of homeland security that focus on detaining and deporting racialized immigrant groups with little regard for the human costs of this form of enforcement. My second chapter examines the role of modernization discourse in leading to expanded immigrant surveillance. This chapter focuses on how an internal bureaucratic desire for modernized technology has helped substantiate increased surveillance of immigrant communities and a drive for perfect information. The further the DHS pushes in this direction, the more effectively it is able to surveil and police immigrant communities. My final empirical chapter examines how demands for efficiency have driven the DHS into increased reliance on the private sector. Because the private sector is often understood as more efficient than government, the DHS has been systematically incentivized to work more closely with corporations. The result is a massive industry and investment in homeland security, which sustains the racial project of immigration enforcement. The conclusion focuses on how to remedy the harms of bureaucracy, focusing on practices of institutional transformation and care in order to address the harms I describe in the empirical chapters. I conclude by suggesting that there is an urgent need for both radical change in immigration law and the necessity of bureaucratic change in order to promote immigrant justice.

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Dedication

For Robby, Andy Kaufmann, and my grandma Margaret. I love you and I miss you.

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List of Acronyms

ADAA – Anti-Drug Abuse Act
ADIS – Automated Departure Information System
AEDPA – Anti-Terrorism and Effective Death Penalty Act
ASI – America Shield Initiative
ATD – Alternatives to Detention
BUR – Bottom Up Review
CBP – Customs and Border Protection
COTS – Commercial Off the Shelf
DHS - Department of Homeland Security
DRO – Detention and Removal Operations
EDDIE – EAGLE Directed Information Environment
FALCON - Fast Agile Lifecycle for Continuous Verification, Operations, and NextGen
FOIA – Freedom of Information Act
GAO – Government Accountability Office
HART – Homeland Advanced Recognition Technology
HSAC – Homeland Security Advisory Council
HSI – Homeland Security Investigations
HSIN – Homeland Security Information Network
ICE – Immigration and Customs Enforcement
IDENT – Automated Biometric Identification System
IIRIRA – Illegal Immigration Reform and Immigrant Responsibility Act
INA – Immigration and Nationality Act
INS – Immigration and Naturalization Service
IRCA – Immigration Reform and Control Act
ISI – Import Subsidization Industrialization
ISIS – Integrated Surveillance Intelligence System
LPR – License Plate Reader
NCIC – National Crime Information Center
OBIM – Office of Biometric Information Management
OIG – Office of the Inspector General
OIS – Office of Immigration Statistics
POE – Ports of Entry
QHRSR - Quadrennial Homeland Security Review
RFID – Radio Frequency Identification Technology
SBI – Secure Border Initiative
UAV – Unmanned Aerial Vehicle
USCIS – United States Citizenship and Immigration Services
US-VISIT – United States Visitor and Immigrant Status Indicator Technology
VSP – Visa Security Program
VWP – Voluntary Work Programs

Chapter 1: Immigration Enforcement in the Age of Administration: Theorizing Bureaucratic Race Making Practices in the U.S. Department of Homeland Security

Introduction

Bureaucracy is the beating heart of contemporary governance. Voting on prominent pieces of legislation, the dramatic readings of courthouse proclamations, and the dazzling spectacle of electoral victory dominate public images and discourse of government. But beneath these images, the practical aspect of governance requires the routine, mundane drudgery of enacting these rules. Without bureaucratic structures to ensure enforcement of legal precepts, law and politics operate in isolation. Furthermore, the process of actually enacting the law is often transformative; the law as written can be difficult to reconcile with the law as it is made through iterative practice. How bureaucracy is organized matters because it shapes how the law plays out on the ground.

The creation of the Department of Homeland Security (DHS) in 2002 remains one of the largest bureaucratic reorganizations in United States history. Following the attacks on the Twin Towers on September 11, then President George W. Bush pushed for a massive reorganization of government resources to create a new Department, which would consolidate the diverse facets of homeland security under a single umbrella. The Act stated that, “In fact, responsibilities for homeland security are dispersed among more than 100 different government organizations. America needs a single, unified homeland security structure that will improve protection against today’s threats and be flexible enough to help meet the unknown threats of the future”.¹ While certainly the events of 9/11 provided the final push to make this reorganization, rumblings of departmental inefficiency and ineffectiveness long preceded this move. A 2003 report from the Government Accountability Office (GAO) noted that the Immigration and Naturalization Service (INS) had long

¹ George W. Bush, “Proposal to Create the Department of Homeland Security”, *Office of the President*, (Washington, D.C.: 2002).

suffered from organizational deficits in its ability to enact an interior enforcement strategy.² When the INS was folded into the DHS, representatives believed this change would fundamentally reshape the beleaguered immigration bureaucracy. It certainly did, although this transformation led to more than just a departmental overhaul. The reshaping of immigration under the umbrella of homeland security structured new department mandates, ideas of efficiency, and notions of effectiveness that helped balloon spending on immigration enforcement from 2001 onwards.

I highlight this element of bureaucratic transformation to preface my broader theoretical examination of the role bureaucratic structures play in maintaining and transforming racial categorization in the U.S. This dissertation examines DHS' development through the lens of bureaucratic expansion and policymaking. The DHS plays a unique role in enforcing racial hierarchy because one of its central tasks is to manage the population, quite literally. DHS is responsible for determining who should and should not be allowed to remain in the polity; it enforces the legal precepts of citizenship and the boundaries between interior and exterior. By examining this entity through the lens of bureaucratic development, I show how the pursuit of bureaucratic objectives such as efficiency, effectiveness, and modernization serve to expand and perpetuate both the power of DHS as a bureaucratic entity, and to cement racialized notions of belonging and citizenship.

I argue that in the contemporary U.S., bureaucratic structures are a central, and often underexamined, site for maintaining and expanding forms of racial hierarchy. Unlike in previous eras, where bureaucracies were explicitly tasked with creating racial categories and building corresponding policies, contemporary bureaucracies perpetuate existing racial scripts by adhering to their bureaucratic mandates. While the racial animus of particular individual actors may play a role in expanding racial power, such as the actions of border patrol officers against particular migrant

² U.S. Government Accountability Office, "Challenges in Implementing Interior Enforcement Strategy 2003" GAO-03-660T, Washington, D.C., April 10, 2003.

groups, far more of these outcomes are driven by how individuals throughout the bureaucracy are incentivized to ignore human consequences in order to further the objective of homeland security. The routine functioning of bureaucracy leads bureaucratic agents to engage in thoughtless activities, a concept drawn from Arendt's *Eichmann in Jerusalem*,³ that focus their actions on department goals such that the real people affected by their work become almost invisible in departmental policymaking. I examine the DHS' bureaucratic arm to show how internal incentives drive the expansion of bureaucratic power, which in turn maximizes the bureaucracy's ability to maintain racial hierarchies of citizenship and belonging. Three particularly central discourses are those of data-driven objectivity, efficiency, and technological modernization. By focusing on bureaucratic power, we see how the DHS creates a facially race-neutral set of internal procedures that lead to maximal exertion of racialized state power. Creating more efficient versions of detention, deportation, and immigrant surveillance do not erase the violence of racial categorization but instead routinize it, diffusing racism through thousands of bureaucratic documents.

To make this argument, I begin by outlining my argument about how bureaucracies function as an important site of political activity. I draw on the works of Weber and Arendt to explore how government focus on efficient exercises of power leads to particular bureaucratic outcomes. I provide an overview of how I theorize race and then put both of these elements into conversation with extant literature on immigration enforcement. From here I transition into my theoretical intervention by providing a high-level analysis of how three particular bureaucratic aspects have driven the expansion of the DHS. These three aspects are the development of quantitative performance metrics for capturing border security, the internal drive for technological modernization, and the role of private partnerships in promoting bureaucratic efficacy. Each of these aspects contributes to the broader patterns of racialization and bureaucratic development. I

³ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, (New York: The Viking Press, 1963).

end this introduction with notes on method, my normative commitments, and an outline of the chapters to follow.

Theorizing Bureaucracy

Law and policy do not simply materialize, fully formed, into the real world. Thus, bureaucracy may usefully be conceptualized as the mechanism by which actors, both in offices and at the “street level”,⁴ transform these mandates into action. This study adds to literature on bureaucracy by exploring how agencies respond to pressure - how they are both responding to and creating the law of the land, and what the consequences of these responses are for the maintenance of racial categorization. By paying close attention to the development of the DHS from the bureaucratic standpoint, we can analyze how the process of implementation changes what the law is, and what the law means. While federal level bureaucrats are not the only locale where this transformation happens, they are a significant one. As such, in this dissertation I focus on this level of politics. Mid-level bureaucratic analysis provides unique insight into the politics of immigration enforcement, and novel insight into how bureaucracies help produce race. My major intervention into the bureaucratic literature is to further explore how and when bureaucracies may be considered “race-making”, and race perpetuating, and suggest that bureaucrats are incentivized to run the system at maximum efficiency, which helps cement pre-existing forms of racial discrimination. I bring together the literature on bureaucracy, critical race theory, and immigration enforcement to demonstrate some of the conditions under which bureaucracies can shape race. When bureaucracies are able to gain a certain degree of autonomy and prioritize the execution of departmental objectives without close examination of the underlying racial frameworks supporting those objectives, these bureaucracies are more likely to entrench racialized outcomes. The DHS is a particularly useful case

⁴ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, (New York: Russell Sage Foundation, 1980).

study because it is a prominent example of a racial institution supported by a massive bureaucratic apparatus.

I begin my analysis by examining Weber's writings on bureaucracy, which I do for two main reasons. First, Weber has long been considered one of the central theorists of bureaucracy, and thus, any intellectual endeavor aiming at conceptualizing bureaucracy in the modern era owes a certain debt to Weber's work. Second, and perhaps more importantly, Weber still presents one of the most comprehensive and effective critical interrogations of the logics of bureaucracy. I both draw on, and expand, Weber's analysis in order to more comprehensively theorize the relationship between bureaucracy and race. To Weber, the perfected form of bureaucracy operates akin to a clockwork device. In his early description of bureaucracy, he argues as follows:

There is the principles of official jurisdictional areas, which are generally ordered by rules, that is, by laws or administrative regulations. This means: (1) The regular activities required for the purposes of the bureaucratically governed structure are assigned as official duties. (2) The authority to give the commands required for the discharge of these duties is distributed in a stable way and is strictly delimited by rules concerning the coercive means, physical, sacerdotal, or otherwise, which may be placed at the disposal of officials. (3) Methodical provision is made for the regular and continual fulfillment of these duties and for the exercise of the corresponding rights; only persons who qualify under general rules are employed.⁵

Bureaucracy, in this formulation, is characterized as a system in which the duty of each individual within the system is to enact laws or administrative regulations that are assigned to them. These activities Weber describes as "regular" because they are those that are conducted on a day-to-day basis in order to enforce a broader set of government regulations. The distribution of these duties is clearly defined by sets of rules that dictate both what the individual bureaucrat will do, and what coercive means they have at their disposal. As Weber argues, "bureaucracy is the means of transforming social action into rationally organized action".⁶ What previously had been the subject of political discussion is transformed; each individual within the bureaucratic clockwork performs their appropriate function to maintain the system as a whole. To this end, Weber further argues that

⁵ Max Weber, *Writings on Economy and Society* eds. Gunther Roth and Claus Wittich, (Berkeley: University of California Press, 1978), 956

⁶ *Ibid.*, 987

this form of power is absolutely incomparable in terms of its ability to conduct business with a degree of efficiency.⁷ This is because bureaucracy perfected removes the inefficiencies of personal discretion. Each individual bureaucrat only needs to examine the set of rules governing their conduct, and from there use those rules to structure their decision making.⁸ The goal is to create specific, measurable criteria so that decisions can be made almost automatically.

Bureaucracy is powerful because it exculpates the individual actors within it, producing a system that appears to be self-sustaining despite requiring individuals to perform their tasks. The machine can always replace any individual worker at any particular time because any individual with similar *technical expertise* can perform the same tasks. This creates a certain degree of difficulty in affecting change in bureaucracy and indeed, Weber states that, “where administration has been bureaucratized, the resulting system of domination is practically indestructible”.⁹ This then, is a central insight from Weber. One of the most powerful ways that modern racial infrastructure continues to function is through the efficient administration of rules-based governance; rules that mask hidden racial architecture. Power is diffused through a matrix of actors creating a nigh unstoppable web of bureaucratic expertise.

Here, I turn to the Arendtian concept of thoughtlessness to flesh out how bureaucracy helps enable some forms of racialized violence. In *Eichmann in Jerusalem*, Hannah Arendt makes the case that Eichmann was not evil in the traditionally malicious sense. Moreover, “He was not stupid. It was sheer thoughtlessness - something by no means identical with stupidity - that predisposed him to become one of the greatest criminals of that period”.¹⁰ Thoughtlessness instead refers to Eichmann’s ability to coordinate the logistics of genocide through his strict adherence to the

⁷ Ibid., 973.

⁸ Ibid., 973-974.

⁹ Ibid., 987.

¹⁰ Arendt, *Eichmann in Jerusalem*, 134

bureaucratic process of the Third Reich. Eichmann's true crime is failing to question his complicity in violence; this thoughtlessness enabled him to oversee administrative massacres by a totalitarian state.¹¹ In the case of structural forms of violence, thoughtlessness helps scholars understand how abstraction breeds routinized forms of violence. When the day-to-day affairs of the modern bureaucrat are abstracted from the lived realities of those whose lives they regulate, if the bureaucrat remains thoughtless, they will not question how these procedures and policies that they are responsible for implementing endanger and harm real people.

In the case of modern immigration enforcement, I suggest thoughtlessness is a symptom, a product of the bureaucratic incentive structures which produce indifference to the suffering of migrants happening on the ground. Within the DHS, the day-to-day activities of high-level bureaucrats rarely bring them into contact with the human experiences of detention and deportation. This remoteness enables these human beings to slide into the background and foregrounds the everyday incentives of reaching productivity goals, improving departmental programming, and meeting the demands of higher ups. Thoughtlessness is the mechanism that enables business to continue "as usual", while simultaneously perpetuating violence.

The framing of thoughtlessness emerged from my research process. In examining the documents I assembled for this dissertation, I was struck by the sheer monotony of DHS documentation. The acronyms, the language used, the style of the emails - if at any moment I forgot what was on the ground resulting from these chains of emails and reports, I could have mistaken these for documents on any business or corporate endeavor in the world. The internal discourse of bureaucracy is not ICE officials sending emails about how they hate immigrants, it is correspondence about numbers, data, figures. This discourse is fundamentally abstracted from the

¹¹ Ibid.

material reality of immigration enforcement: the surveillance, detention, deportation, and punishment of racialized immigrants.

With this in mind, it is also important to situate this particular study within the literature on bureaucracy and in particular to outline conditions under which bureaucratic decision-making and policy choices really matter, with particular attention to the U.S. context. Most scholarship on bureaucracy conceptualizes the “problem” of bureaucracy as a principal-agent issue. Congress is the principal, in charge of setting the agenda and making sure that bureaucrats adhere to Congressional policymaking.¹² But as James Q Wilson outlines, Congress is almost never a principal that can give unidirectional, unchallenged direction. There are several reasons for this dilemma. First, while agencies may not be able ignore the mandates of Congress, Congressional politics are rarely singular. Bureaucrats can maneuver amidst different factions or parts of Congress, or even branches of government, to gain a degree of autonomy.¹³ Members of different Congressional parties or committees may compete for control over agency policy. Similarly, Terry Moe argues, “Opposing groups are dedicated to crippling the bureaucracy and gaining control over its decisions, and they will pressure for fragmented authority, labyrinthine procedures, mechanisms of political intervention, and other structures that subvert the bureaucracies performance and open it up to attack”.¹⁴ Because Congress can rarely exert unitary control over the bureaucracy, agencies end up making decisions regarding the implementation of the law. The spaces between these different regulators can allow for bureaucratic action.

Second, while Congress maintains formal control of administrative agencies, there are a number of factors that can make it more difficult for Congress to directly shape agency decision-

¹² James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989), 237.

¹³ *Ibid.*

¹⁴ Terry M. Moe, “The Politics of Bureaucratic Structure” in John E. Chubb and Paul E. Peterson, eds. *Can the Government Govern?* (Washington: D.C.: Brookings Institution, 1989), 276.

making. Congress has the power to design an agency with procedural controls that push an agency towards a set of outcomes.¹⁵ Structural choices do shape decision making, but they do not inherently determine how a bureaucracy will respond to all issues. In order for structural choices to directly determine how an agency would respond, the agency designers would need to have an impossibly high degree of foresight about what potential new issues that agency will face. This is near impossible because bureaucrats face ever evolving circumstances and new sets of problems, many of which could not have been anticipated in the agency design process.¹⁶

How a bureaucracy is designed shapes both how it relates to Congress, and how it conducts its day-to-day business. Another issue can be the extent to which an agency is designed to be politically insulated. In *Presidents and the Politics of Agency Design*, Lewis notes, “Politicians seek policy gains that endure. They seek to ensure that the authority they delegate to bureaucrats will result in the types of public policy outputs they prefer both now and in the future”.¹⁷ The choices one Congress makes may not be as amenable to a subsequent Congress, but if the previous Congress has encoded certain insulating structural choices into an agency, the subsequent Congress will need to work harder to either restructure or work around those constraints. Creating different types of agencies can lead to different branches of government having differential degrees of control over how that agency operates.

Third, Congress actually has certain incentives to delegate authority to the bureaucracy. Terry Moe argues that the most direct way for Congress to control a bureaucracy would be to specify every single detail of how the bureaucracy should go about its mission but that doing so would both be extremely time consuming for Congress and essentially hamstringing the agencies

¹⁵ David B. Spence, “Agency Policy Making and Political Control: Modeling Away the Delegation Problem,” *Journal of Public Administration Research and Theory: J-PART* 7, no. 2 (1997): 199–219.

¹⁶ Ibid.

¹⁷ David E. Lewis, *Presidents and the Politics of Agency Design: Political Insulation in the United States Government Bureaucracy, 1946-1997*, (Palo Alto: Stanford University Press, 2003), 9.

effectiveness. The more specific the agency criterion, the more difficult it is for the bureaucrats to accomplish their tasks because they must bow and scrape to every particular convention outlined in the agency design.¹⁸ Epstein and Hallorath argue that when legislators have a number of potential controls over an agency, they may delegate discretionary authority to that agency, even if there are meaningful policy differences between the agency and the legislature. Their argument is that having the potential to corral wayward bureaucrats, also called the problem of bureaucratic drift, enables Congress to feel like they can give an agency additional slack to accomplish their day-to-day tasks.¹⁹

Beyond the practical, there are also political reasons to delegate authority to bureaucracies. Congress can sometimes solve collective action problems around an issue by leaving politically difficult decisions up to the agency.²⁰ This enables legislators to sidestep potentially thorny issues that could jeopardize their re-elections chances – similar arguments have also been made about how the legislature might defer certain issues to the judiciary.²¹ Congress is also not the only branch of government with influence over the bureaucracy. In many circumstances the executive branch will step in and take charge. This can include using executive orders, directives to bureaucratic leaders, and other similar tools to influence an agencies direction.²² Competition between the legislature and the Executive branch, say if Congress is controlled by one party and the Presidency by another, can create wiggle room for bureaucrats as they slip between two sets of opposing controls.

Finally, there are a number of ways that bureaucracies can gain conditional autonomy through their own actions. Daniel Carpenter draws on his study of bureaucratic reputation building

¹⁸ Terry Moe, "Public Institutions: The Neglected Side of the Story", *Journal of Law, Economics, and Organization* 6 (1990): 213-53.

¹⁹ David Epstein and Sharyn O'Halloran, "Administrative Procedures, Information, and Agency Discretion," *American Journal of Political Science* 38, no. 3 (1994): 697-722, <https://doi.org/10.2307/2111603>.

²⁰ Spence, "Agency Policy Making and Political Control"

²¹ Mark A Graber, "The nonmajoritarian difficulty: Legislative deference to the judiciary", *Studies in American political development* 7, no. 1 (1993): 35-73.

²² Christopher Carrigan and Cary Coglianese, "The Politics of Regulation: From New Institutionalism to New Governance," *Annual Review of Political Science* 14, no. 1 (2011): 107-29, <https://doi.org/10.1146/annurev.polisci.032408.171344>.

with the post office and proposes several necessary conditions for agencies achieving relative autonomy. He argues that achieving bureaucratic autonomy requires a bureaucracy gaining some leverage over in relation to Congress. This process usually happens through agencies developing an appearance of legitimacy, developing unique organizational capacities, and being politically differentiated from their overseers. The combination of these factors induces Congress to defer to agencies on matters that are their area of particular expertise. Autonomy is conditional on expertise; bureaucrats must demonstrate that they possess issue specific knowledge that overseers need to successfully address the policy domain. In the case of the post office, Carpenter shows how the agency slowly carved out room for administrative discretion through careful cultivation of its reputation, and through creating a powerful, efficient infrastructure for service provision. To this end, agencies have the most power when they are capable of making decisions that actors in Congress or the Executive branch might not prefer but either cannot, or are disinclined to, overturn.

While the DHS does not entirely meet Carpenter's criterion for true bureaucratic autonomy, as an institution it has developed several features that have induced a more conditional form of autonomy. First, since its inception, the DHS occupies a singular position within the American government, owing to the sheer scope of its activities. Consolidating 22 agencies under a single department, the largest bureaucratic transformation since the New Deal, meant that neither Congress nor the President can directly oversee all aspects of the agency. Second, immigration remains a polarizing issue within American democracy. As such, the agency has been the subject of a massive tug-of-war between the two political parties. Comprehensive immigration legislation has not been passed and so the DHS is often able to carve out pockets of autonomy between its competing regulators. Finally, the DHS' modern enterprise is highly technical and enormous, with billions of dollars spent each year. The immensity of this work requires huge teams of both bureaucrats and agents, each of whom possesses distinct subject area expertise. Because immigration is a complex

policy domain, the process of figuring out things like enforcement priorities, funding allocations for surveillance, technological development are often left to the DHS bureaucrats. Thus, we can say here that the DHS achieves some of Carpenter's conditions, namely the development of organizational expertise and being politically differentiated from Congress. This conditional autonomy matters because it substantiates the need to look at bureaucratic policymaking, while still taking Congressional mandates into account. The DHS' conditional autonomy gives it some agency in impacting immigration policy.

Furthermore, because the internal bureaucracy is also notably distinct from agents on the ground, scholars should pay attention to the work performed by these mid to high level bureaucrats. Works like Kelly Tuttle Hernandez' *Migra!* and Amada Armenta's *Protect, Serve, and Deport: The Rise of Policing as Immigration Enforcement* have examined the on the ground development of the immigration enforcement apparatus, but less attention has been paid to the role internal bureaucracy has in shaping enforcement activity.²³ Works in history, notably Adam Goodman's *The Deportation Machine* have demonstrated that the INS bureaucracy played a crucial role in shaping U.S. treatment of immigrants.²⁴ In the mid-1970's, a border crisis emerged that was, in large part, of the INS' own making. The 1965 Immigration and Nationality Act (INA) officially undid the national origins quota system. However, these changes did not remove the role of race in immigration politics. Immigration from the Western Hemisphere was capped at a total of 120,000 immigrants per year, a number insufficient to handle the already extant migration patterns.²⁵ Moreover, the flow of

²³ Kelly Lytle Hernandez, *Migra!: A History of the U. S. Border Patrol* (Berkeley: University of California Press, 2010), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=496566>, and Amada Armenta, *Protect, Serve, and Deport: The Rise of Policing as Immigration Enforcement* (Berkeley: University of California Press, 2017), <https://doi.org/10.1353/book.63426>.

²⁴ Adam Goodman, *The Deportation Machine: America's Long History of Expelling Immigrants* (Princeton: Princeton University Press, 2020), <https://muse.jhu.edu/pub/267/monograph/book/73241>.

²⁵ Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge: Harvard University Press, 2000), <https://doi.org/10.2307/j.ctv1mvw85v>.

immigrants from Central America, and Mexico in particular, continued to increase.²⁶ Faced with increasingly large numbers of new immigrants, and a novel Congressional mandate, INS bureaucrats were tasked with figuring out how to distribute marching orders to those on the border.

The main policy that came to the fore during this time was the use of “voluntary departures” as a way of quickly resolving immigration cases. Voluntary departures entailed asking Border Patrol arrestees if they would prefer to just return to their country, or if they would rather go through a full formal deportation proceeding. For many crossers, it was often easier to just go back across the Mexican border and try again. In contrast with formal deportations, voluntary departures could be done quickly and informally, allowing thousands of people to be deported in a single day. However, as Goodman points out, this policy actually did not sit well with on the ground agents – voluntary departures did not lead to more serious consequences and so migrants would be free to try to cross time and time again, hoping to eventually make it through. But these policies continued to be applied because,

they actually served the bureaucratic interests of the INS. Immigration officials used the ever-rising number of apprehensions and deportations inherent to the voluntary departure– revolving door system to simultaneously celebrate their “accomplishments” and call attention to the dire need for additional funding, all while helping to fulfill the nation’s ongoing labor demands.²⁷

Voluntary departures were not necessarily a practical policy to control immigration. As Goodman points out INS officials were not necessarily interested in enforcing a policy of zero immigration. Quite the contrary, Mexican labor had long been essential to keeping the Southwestern economy productive. Both at the time, and currently, the Arizona borderlands were deeply dependent on influxes of Mexican labor in the industrial sector.²⁸ Immigration officials could use high numbers of apprehensions and deportations to illustrate success to higher ups in government, showing Congress

²⁶ Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Harvard University Press, 2006), <https://doi.org/10.2307/j.ctvk12qvs>.

²⁷ Goodman, “The Deportation Machine,” 119.

²⁸ Patricia Macías-Rojas, *From Deportation to Prison: The Politics of Immigration Enforcement in Post-Civil Rights America* (New York: NYU Press, 2016), <http://muse.jhu.edu/book/49208>.

that they were doing their utmost to keep immigration under control. Since they were producing so many apprehensions, but not necessarily driving down immigration flows, they could also justify making larger budget requests. This both extended agency power and still ensured access to cheap labor. Later, Goodman adds to his analysis by drawing on quotes from an INS statistician, who said,

The pressure from the top people in the administration . . . is extreme,” a former INS statistician explained in the mid-1970s. “We are told periodically that ‘the heats [sic] on,’ and we know that we had better get to work and make it look like we’re after the ‘devils’ who are taking away the jobs from the little- man.” To do so, he and his colleagues turned to the media, which he described as “one of our best tools in emphasizing the threat that the illegals pose to the stability of the economy.”²⁹

Faced with pressure from Congress and the Executive branch, the INS needed to demonstrate that they were actively managing the racialized threat of Mexican devils threatening the American economy. Despite knowing full well the necessity of Mexican labor, INS bureaucrats would leverage this threat to augment their enforcement capacity. Here, we see both the pressures that bureaucrats face, and how those seemingly everyday pressures contribute to constructing a system of violent exclusion. The day to day of the bureaucrat is the mundane - filing reports, looking at enforcement numbers, planning budgets. But these banal activities support a machinery geared at excluding, detaining, and removing immigrants. When the pressure was on to demonstrate results, bureaucrats were incentivized to do more to show how they were ameliorating the threat of illegal immigration.

This analysis underscores that by paying attention to the bureaucratic components of immigration enforcement we develop a more nuanced understanding of how contemporary immigrant exclusion operates. It may be tempting for scholars of Congress or the Presidency to argue that while bureaucrats have some leverage in setting an agenda, ultimately these actors take their mandates from Congress. It is undoubtably true that Congress sets the law of the land and therefore must be understood as a central actor in the history of immigration enforcement. Similarly, the President selects cabinet members, and can utilize powers like Executive Orders to shape an

²⁹ Goodman, “The Deportation Machine”, 118.

agencies agenda. But ultimately, neither Congress nor the Presidency can constantly be looking over the bureaucracy's shoulder at all times. The INS faced pressures from Congress and figured out creative ways to utilize the resources at their disposal to meet those demands. By creatively adapting their policy choices INS bureaucrats were able to carve out a policy making niche. While the federal level bureaucrats are not the only locale where this transformation happens, they are a significant one, as the decisions of INS officials shaped how border patrol officers handled voluntary departures. Mid-level bureaucratic analysis provides unique insight into the politics of immigration enforcement, and novel insight into how bureaucracies help produce race.

Theorizing Racial Reproduction in the Contemporary Era

Immigration is one of the primary sites for making, unmaking, and remaking ideas about race. The role of bureaucracy in the production and reproduction of racialization in the modern era can best be understood as using race neutral discourses alongside racialized policing practices to covertly (though sometimes overtly) prop up the pre-existing system of racial domination. I begin by providing a theory of race and racialization in the immigration context, before exploring how the extant literature explores the question of immigration enforcement more broadly.

Race is neither an inherent biological reality, nor a simple ideological project. Rather, race, as Omi and Winant suggest, is a social category with meaningful material consequences. I follow their definition and argue that race should be understood as, "Race is a concept that signifies and symbolizes social conflicts and interests by referring to different types of human bodies".³⁰ I take the authors to mean that social interests are often constructed along lines that are anchored in, though not inherently constituted by, phenotypical elements. I say not inherently constituted because race thinking creates broad categories of phenotypic difference while simultaneously eliding nuanced

³⁰ Michael Omi and Howard Winant, *Racial Formation in the United States*, Third edition. (London: Routledge, 2014), <https://doi.org/10.4324/9780203076804>, 110.

differences between groups. For example, Junaid Rana notes that in the months following 9/11, there was a massive moral panic around “Muslim-appearing” individuals. But the racial category of “Muslim-Appearing” itself relies on the observer making assumptions about those around them. In the aftermath of 9/11, Sikh individuals were targeted alongside other groups because they had similar phenotypic appearance to people who would be considered “Muslim appearing”.³¹ The racial logic swept aside meaningful differences of culture, ethnicity, and religion, blurring these distinctions to reinforce a racial category, one embedded with social meaning. Sikh individuals were caught in the racial web and racialized as “Muslim”. Thus, race is also an act of interpretation, those making the interpretations exercise substantive power in shaping the world around them.

The United States’ history is fundamentally structured by the creation and maintenance of racial categories. David Theo Goldberg argues “The racial conception of the state becomes the racial definition of the apparatus, the projects, the institutions for managing this threat, for keeping it out or ultimately containing it – but also (and again paradoxically) for keeping it going”.³² Here, Goldberg suggests that race and racism is not an incidental process to state building. Quite the contrary, in defining the “other”, the state consolidates its understanding of what is the interior. The self is defined in relation to the other. The very first immigration law crafted in 1790 specified that only free white persons of good character could be granted citizenship.³³ Some of the earliest institutions in the United States were devoted to the construction and maintenance of racial categories for the purposes of creating a white state. The removal of indigenous people and the enslavement of Black individuals were both essential to constructing this new polity. Black individuals were a potential source of productive labor, a group to be controlled and managed for

³¹ Junaid Rana, *Terrifying Muslims: Race and Labor in the South Asian Diaspora* (Durham: Duke University Press, 2011), <https://doi.org/10.1215/9780822393665>

³² David Theo Goldberg, *The Racial State* (Malden, Mass: Blackwell Publishers, 2002), 24.

³³ Naturalization Act of 1790, 1 Stat 103, enacted March 26, 1790.

the sake of developing a powerful economic system. By contrast, indigenous peoples dwelled on the territory the state desired for its expansion; thus, their very existence on that land constituted a barrier for the state. As such, the native needed to “eliminated” either through physical violence or the cultural violence of “Killing the Indian in him to save the man”.³⁴ The native, as Patrick Wolfe astutely argues, didn’t always need to be killed, if they could be successfully inculcated with the values of settler society, they could become productive members of the burgeoning racial state.³⁵

Law serves as a central site for the production and maintenance of these racial categories. The constitution of the liberal, rights-bearing subject is also bound up in the process of producing bodies that are subject to the law but are not themselves legal subjects.³⁶ In *Union by Law*, McCann and Lovell argue that Filipino cannery workers, as racialized subjects, were not treated as equal subjects under the law. Rather, they were subject to legal violence but would often be denied legal rights in court or in the workplace. McCann and Lovell suggest this is indicative of a broader trend in American history where repressive law and liberal law operate as two sides of the same coin - liberal legal order is sustained through the systematic exclusion of particular groups.³⁷ These two legal orders are not distinct but operate in tandem to produce a hybrid, sometimes contradictory, legal order in which the existence of the liberal subject is premised on the exclusion of those situated differentially within society. This system of dual legalities is not incidental to the production of the American state, rather it has been an integral component of it. Defining the other, the outsider, allows a shoring up of the liberal rights order – law defines the subjects that are the bearers of rights, and those outside the purview of most rights-based protections.

³⁴ Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (December 2006): 387–409, <https://doi.org/10.1080/14623520601056240>, 397.

³⁵ Ibid.

³⁶ Michael W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*, Language and Legal Discourse (Chicago: University of Chicago Press, 1994) and Michael W. McCann and George I. Lovell, *Union by Law: Filipino American Labor Activists, Rights Radicalism, and Racial Capitalism*, *Union by Law* (Chicago: University of Chicago Press, 2020), <https://doi.org/10.7208/9780226680071>.

³⁷ McCann and Lovell, *Union by Law*

For immigrant groups more broadly, making claims upon the state has often meant navigating the language of race. For example, Ian Haney-Lopez examines the prerequisite cases, a set of court cases hearing immigrant petitions from various nationalities seeking naturalization in the United States. He demonstrates that across these cases, success or failure depended on the extent to which the appealing immigrant could make a convincing claim to whiteness.³⁸ The first racial prerequisite case *In re Ah Yup* turned on the legal question of whether or not a person of the “Mongolian race” could make a claim to being a white person for the purposes of citizenship.³⁹ The judges in the case ruled against Ah Yup, arguing that a person from China could inherently not be considered white. Haney-Lopez shows that racial meaning in legal precepts is not inherent. Lawyers, and judges shape who is and who is not considered to be part of different racial groups through the process of adjudication.⁴⁰ Perhaps more pertinently, these decisions also help structure social dynamics for different groups, the process of racialization assigns different ideas and meanings as it elides social difference to construct racial categories. These processes have also led to some groups who were not considered white being incorporated into whiteness. As David Roediger shows, groups like the Irish were later folded into whiteness, shoring up the nation’s racial imaginary.⁴¹ While these groups were able to gain access to the privileges of whiteness over time, this inclusion also cemented the exclusion of racial out-groups like Chinese and Japanese immigrants.

Today, the overwhelming targets of immigration enforcement are Latinx appearing individuals. Cristina Beltran notes that Latinx individuals are certainly not the only people immigrating to the United States. She argues, “Put somewhat differently, alongside the presence of an increasingly diverse population of professionals, politicians, academics, students, media figures,

³⁸ Ian Haney Lopez, *White by Law: The Legal Construction of Race* (New York University Press, 2006), <https://hdl.handle.net/2027/heb34675.0001.001>.

³⁹ *Ibid.*, 88.

⁴⁰ *Ibid.*

⁴¹ David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (Verso, 2007), <https://hdl.handle.net/2027/heb00570.0001.001>.

artists, and cultural workers, low-income communities of color continue to face a civic, economic, and political landscape characterized by forms of structural racism and economic inequality”.⁴²

Latinx racialization occurs alongside other forms of more socially acceptable migration. This is linked to the image in American culture of a “tide” or “flood” of undocumented migrants crossing the Southern border to take jobs, resources, and leech public benefits. The Latinx appearing “illegal immigrant” is the primary figure of immigration in political discourse. Even looking at former President Trump’s statements on the border wall, it is clear that he interprets the “rapists and drug dealers” crossing the Southern border as a central threat to American security.⁴³

To illustrate the racialization of immigration more concretely, I draw on previous scholarship, as well as original data collection to demonstrate that immigration enforcement disproportionately targets Latinx or Latinx presenting individuals. In her 2011 book *Immigration Nation*, Tanya Golash-Boza shows that individuals from Honduras, Guatemala, and Mexico were far more likely than individuals of any other nationality to be deported. Drawing on census and DHS data, she examines the likelihood that someone who was a noncitizen would be deported based on their country of origin. She notes “For example, in 2007, Hondurans were eight hundred times more likely to be deported on criminal grounds than Japanese relative to their proportion in the unauthorized population”.⁴⁴ While it is possible that this discrepancy could be due to Latin American individuals committing more crimes, it seems unlikely that any individual group would be 800 times as likely to commit a crime than any other nationality. The more plausible explanation is that immigration enforcement primarily targets some groups of people.

⁴² Cristina Beltrán, *Cruelty as Citizenship: How Migrant Suffering Sustains White Democracy* (Minneapolis: University of Minnesota Press, 2020), <http://muse.jhu.edu/book/78586>, 20.

⁴³ Michelle Ye Hee Lee, “Analysis | Donald Trump’s False Comments Connecting Mexican Immigrants and Crime,” *Washington Post*, December 7, 2021, <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime/>.

⁴⁴ Tanya Maria Golash-Boza, *Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America* (Boulder: Paradigm Publishers, 2011), 95.

To further demonstrate this discrepancy, I draw on data from DHS' estimates of the unauthorized population and compared this data to statistics on ICE enforcement outcomes, notably formal deportations (removals), and ICE Detainers, which are notifications issued to non-citizens who have been arrested telling them that ICE has identified them as a probable case for removal. I examined data from 2005 – 2018. Year after year, a disproportionate number of individuals from Mexico and the Northern Triangle (MNT) were subject to enforcement actions. While in 2018 MNT individuals made up approximately 63.5% of the unauthorized population, 92.3% of people formally removed that same year were from Mexico or the Northern Triangle. Nor is this an isolated incident. As the graph below shows, removals issued to MNT individuals have consistently been disproportionate to the percentage of the unauthorized population that is MNT. This is also not unique to removals. ICE Detainers, which are warrants issued to individuals in jails indicating that they may be eligible for removal, are also disproportionately utilized against MNT individuals.

Comparison of MNT Individuals Against Total Unauthorized Population

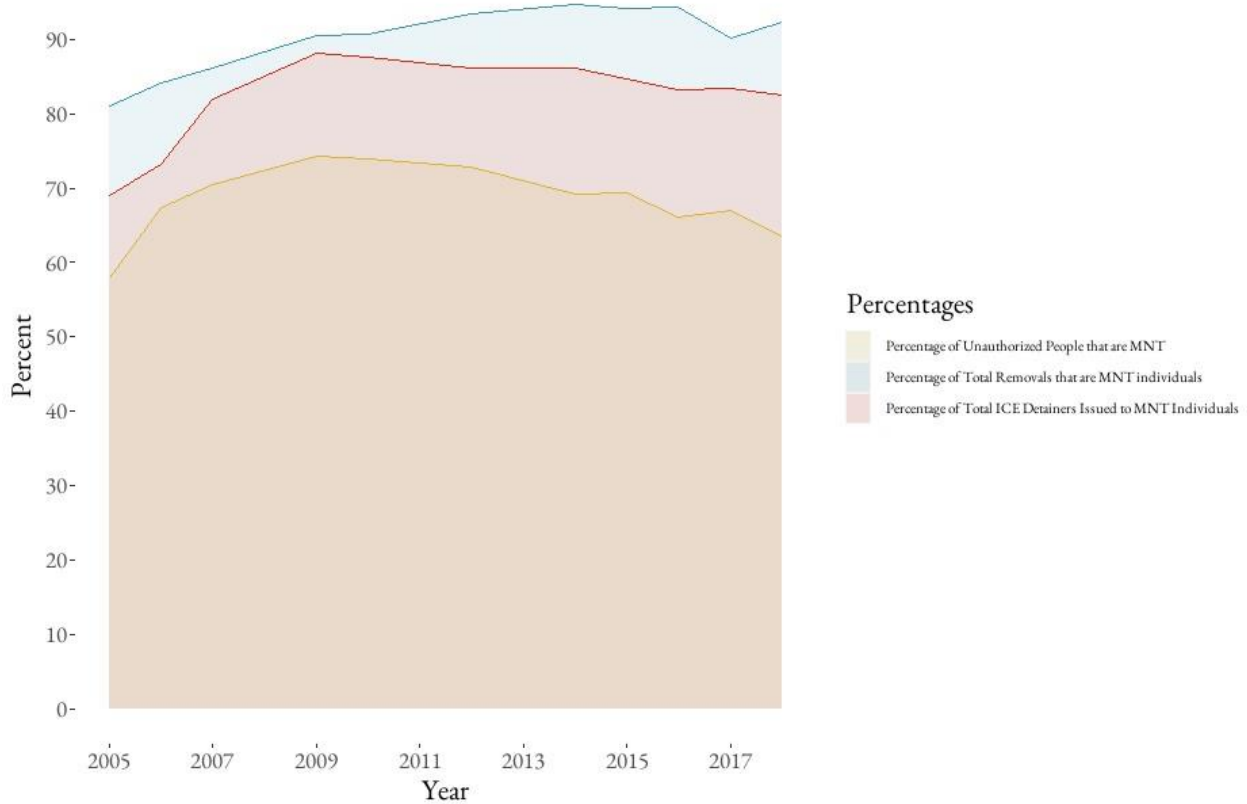


Figure 1: This plot shows the percentage of individuals in the unauthorized population that are MNT as compared to the percentage of unauthorized individuals subjected to an enforcement action (either removal or a detainer) that are MNT. For example, in 2015, MNT individuals were 69% of the unauthorized population but made up 94% of removals and 85% of ICE detainers.

Data Sources: TRAC Clearinghouse ICE Detainer Data, ICE Removal Data and DHS OIS Unauthorized Population Estimates (2005 -2018)

Were immigration enforcement truly proportional to the unauthorized population, we would expect to see higher numbers of individuals from non-Latin American countries subject to enforcement consequences. For example, in 2018, Chinese immigrants made up around 3.6% of unauthorized immigrants but only 0.02% of deportees. To be clear, I am not suggesting that were immigration enforcement proportional to population percentages, that would end its harm. I instead aim to show that this enforcement apparatus is geared towards finding, detaining, and deporting a particular

group of people. Thus, my primary concern in this dissertation is to illustrate how the seemingly racially neutral policies of the DHS continue to re-entrench an already racialized phenomenon.

Here, I draw on Lisa Marie Cacho's concept of the "de facto status crime" to further underscore how Latinx racialization plays out in contemporary America.⁴⁵ This "de facto status crime" is not an illegal activity, it is the notion that certain bodies appear and are apprehended as undeserving and criminal. Those without documentation can be treated as criminal and detained, because their very existence in a particular space is marked as deviant, and therefore in need of control. A routine traffic stop can be tantamount to a deportation for many undocumented immigrants because they have already been rendered deportable. One interaction with the law can be sufficient to send them through the criminal justice system, and later into detention proceedings.⁴⁶ This is the result of a long history of violence that has produced the "illegal alien," an impossible subject, that inhabits the United States but is perpetually outside of the law.⁴⁷ The repressive law exercised against the undocumented immigrant is acceptable because the "illegal alien" is not entitled to the full protections guaranteed under liberal law and race is the logic that marks the shifting boundary between liberal and repressive law. I now situate this analysis in the literature on immigration enforcement and outline the utility of focusing on bureaucratic institutions to understand race making.

Race and the Study of Immigration Enforcement

Immigration enforcement is a central form of population management, and punitive forms of enforcement have long been a staple of U.S. policy. However, the expansion of immigration enforcement's size, scope, and attention in public discourse has greatly increased since the formation

⁴⁵ Lisa Marie Cacho, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected*, (New York, NY: New York University Press, 2012), <https://doi.org/10.18574/9780814723777>.

⁴⁶ Macias-Rojas, *From Deportation to Prison*

⁴⁷ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America - Updated Edition* (Princeton: Princeton University Press, 2014), <https://muse.jhu.edu/pub/267/monograph/book/64461>.

of the DHS. In tracing this expansion, scholars have taken a number of approaches which point to critical junctures and sites of contestation that help us understand modern immigration enforcement. In this section, I explore four of the major sets of scholarship used to analyze this phenomenon – the “cimmigration lens”, the criminalization of immigration lens, the racialization lens, and a final set of literature examining the influence of capitalism on immigration enforcement. My major intervention is to highlight that the insights of immigration enforcement literature can be productively utilized to analyze not just the direct consequences of enforcement, but also the bureaucratic processes that support enforcement operations. I begin by providing an overview of key historical developments informing modern immigration enforcement, and then closely examine the four analytical approaches I describe above.

Historians of early immigration argue that immigration enforcement requires attention to the historical processes that have shaped the construction of immigrant groups, and in turn the shaping of immigration law.⁴⁸ Rather than simply looking at contemporary policy, these historians suggest that the making of “illegality” as a legible category has enabled the United States government to pass particular types of legislation that allow for the criminalization, detention, and deportation of immigrant groups. The first time that United States immigration law was used to deport was in 1882 under the Chinese Exclusion Acts.⁴⁹ Later laws, including the 1924 Immigration and Naturalization Act reinforced the racialized nature of immigration policy through the use of racialized quotas, and exclusionary mechanisms. Furthermore, the use of detention and deportation to address immigration was greatly expanded with the founding of Border Patrol.⁵⁰ Border Patrol was initially a small entity but through time grew into a massive force controlling huge swaths of territory along

⁴⁸ Torrie Hester, *Deportation: The Origins of U. S. Policy* (Philadelphia: University of Pennsylvania Press, 2017), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=4845740>, Ngai, *Impossible Subjects*, Hernandez, *Migra!*, Deirdre M. Moloney, *National Insecurities: Immigrants and U.S. Deportation Policy since 1882* (Chapel Hill: The University of North Carolina Press, 2012), <https://muse.jhu.edu/pub/12/monograph/book/43938>.

⁴⁹ Hester, *Deportation*.

⁵⁰ Hernandez, *Migra!*, and Ngai, *Impossible Subjects*.

the southern border.⁵¹ While these early enforcement efforts did not prioritize detention or deportation⁵², these historians make the case that these efforts set the stage for later punitive development. For example, even as the 1952 McCarran-Walters act loosened aspects of the racial quotas, it also legalized the use of detention by the Attorney General of the United States.⁵³ The project of border policing has changed, but the long history of racialized immigration policies has helped shape contemporary enforcement.

Immigrant detention became a central tactic of immigration enforcement following the Mariel Crisis of 1980. Previously, Cuban refugees were usually admitted to the United States to serve the Cold War geopolitical aims; admitting refugees from Cuba demonstrated the U.S.' moral superiority to communist regimes. The majority of Cuban refugees had been light-skinned, upper-class, and capitalist sympathizers, but the Marelitos tended to be overwhelmingly black, poor, and many of them had been incarcerated for crimes in Cuba.⁵⁴ As this group attempted to enter the United States, the Reagan administration responded by attempting to detain most of the would-be refugees⁵⁵. However, extant detention facilities proved insufficient to house this group and so Reagan requisitioned funding for the first mandatory detention center.⁵⁶ This began a process of detention expansion driven by increased funding for new detention facilities across the country. In 1983, the Wackenhut Corporation – later to become the GEO Group – received the first private contract for detention facilities.⁵⁷ The passage of the 1986 Immigration Reform and Control Act (IRCA), happening in tandem with the massive expansion of the War on Drugs, directed state

⁵¹ Hernandez, *Migra!*

⁵² Macias-Rojas, *From Deportation to Prison*

⁵³ David Manuel Hernández, "Pursuant to Deportation: Latinos and Immigrant Detention," *Latino Studies* 6, no. 1–2 (Spring 2008): 35–63, <http://dx.doi.org/10.1057/lst.2008.2>.

⁵⁴ Jenna M. Loyd and Alison Mountz, *Boats, Borders, and Bases: Race, the Cold War, and the Rise of Migration Detention in the United States* (Berkeley: University of California Press, 2018), <http://muse.jhu.edu/book/62605>.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

resources further in the direction of detention and deportation. This process would be reinforced by the passage of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA), both of which broadened the scope of crimes that rendered immigrants deportable.⁵⁸

While these earlier laws helped lay the groundwork, the major swell in the number of detainees and increased proliferation “criminal aliens” in the news media came out of the post-9/11 politics of fear surrounding terrorism and illegal immigration. The “Crimmigration” school of thought, originating with Juliet Stumpf, emerged from legal scholars working to understand how legal change had led to the conflation of criminal and immigration law; and in turn increased use of detention and deportation.⁵⁹ Stumpf shows that the 1986 IRCA and the 1986 ADAA included provisions which required officers investigating drug related crimes to also examine the immigration status of those they arrested and process them for deportation if they were in violation of criminal law.⁶⁰ She argues that this led to increased intertwining of processes that should have been kept separate, namely the prosecution of criminal issues and the detention of immigrants. These laws made it possible for detained immigrants to serve a prison sentence, and then be immediately sent into deportation proceedings.⁶¹ A large body of scholarship has emerged examining similar legal trends.⁶² These scholars start by noting that legally, deportation and detention are not meant to be punishment for crimes. However, lawmakers have increasingly called upon federal immigration enforcement agencies to use crime as a reason for detention and deportation, intertwining civil and

⁵⁸ Juliet Stumpf, “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,” *American University Law Review* 56 (2007 2006): 367–420,

⁵⁹ Stumpf, “The Crimmigration Crisis”

⁶⁰ Stumpf, “The Crimmigration Crisis”

⁶¹ Ibid.

⁶² Emily Ryo, “Understanding Immigration Detention: Causes, Conditions, and Consequences,” *Annual Review of Law and Social Science* 15, no. 1 (October 13, 2019): 97–115, <https://doi.org/10.1146/annurev-lawsocsci-101518-042743>, Cesar Cuauhtemoc Garcia Hernandez, “Immigration Detention as Punishment,” *UCLA Law Review* 61 (2014 2013): 1346–1415, and Jennifer M. Chacón, “Immigration Detention: No Turning Back?,” *South Atlantic Quarterly* 113, no. 3 (July 1, 2014): 621–28, <https://doi.org/10.1215/00382876-2692209>.

criminal law. By examining how laws and legal decision making contribute to the expansion and entrenchment of the types of crimes that can lead to mandatory detention and deportation, these scholars make the case that this unfortunate overlap is the primary cause leading to expanded enforcement efforts. While this approach provides valuable insight, it does have its limitations. Notably these analyses often do not provide close examination of race, and often do not analyze the role that non-legal actors have played in shaping the DHS' enforcement policies.

In contrast to the “crimmigration” approach, other scholars focus on examining how the rise of mass incarceration and other types of punitive policy, beyond just the law, have contributed to the increased jailing and policing of immigrant communities. Crucially, these scholars look at how discourses of crime and punishment have come to play a central role in American politics. These authors argue that contemporary U.S. policy, specifically immigration policy, often operates in a paradigm of “governing through crime.”⁶³ During the process of enacting the War on Drugs, Black communities were held responsible for their “bad” choices that led to the drug epidemic. Similarly, immigrant communities were also increasingly apprehended as individuals who had made “bad” choices in crossing the border illegally. As such, these communities needed to be disciplined and so policymakers increasingly turned to the criminal justice system as a way of addressing these issues. The phrase governing through crime in this style of research is also associated with this “punitive turn” and the rise of neoliberal forms of governance.⁶⁴ In this framework, the good, productive citizen must be kept separate from the criminal, or dangerous, outsiders. The main goals of policy

⁶³ Julie A. Dowling and Jonathan Xavier Inda, *Governing Immigration Through Crime: A Reader* (Redwood City: Stanford University Press, 2013), Dan Kanstroom, *Deportation Nation: Outsiders in American History*, (Cambridge: Harvard University Press, 2007), Kara Joyner, “Arresting Immigrants: Unemployment and Immigration Enforcement,” *Migration Letters; Luton* 15, no. 2 (April 2018): 215–38, Mary Bosworth and Emma Kaufman, “Foreigners in a Carceral Age: Immigration and Imprisonment in the United States.,” *Stanford Law & Policy Review* 22, no. 2 (March 22, 2011): 429–55.

⁶⁴ Jonathan Xavier Inda, “Subject to Deportation: IRCA, ‘Criminal Aliens’, and the Policing of Immigration,” *Migration Studies* 1, no. 3 (November 1, 2013): 292–310, <https://doi.org/10.1093/migration/mns003>, and Loic J. D. Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Politics, History, and Culture (Durham, NC: Duke University Press, 2009).

become keeping these populations separate from citizens and to warehouse, or deport, those deemed threatening. The distinction between these the good and bad actors is rationalized through the idea of absolute individual autonomy; the individual is the only actor responsible for their choices.

In examining the history of immigration enforcement, this scholarly tradition examines how various types of law, social policy, and statecraft have both responded to, and helped construct, populations that are legible as “criminal aliens” and therefore in need of deportation. Jonathan Inda examines how the 1986 IRCA set in motion a series of policies which made the “criminal alien” both a legible figure, and one that needed to be separated from the general public. It led to the creation of the Institutional Removal Program and the Criminal Alien Program, both of which represented partnerships with correctional facilities in order to find non-citizens who had committed “aggravated felonies,” a new category of crime defined under the IRCA, and to have these non-citizens deported.⁶⁵ Scholars have also examined how the buildup of border security has contributed to the culture of treating immigrants as criminals. The more heavily the border is patrolled and policed, the more likely it is that would-be immigrants are subjected to punitive control.⁶⁶ After 9/11, the goals of policing turned from primarily border enforcement to incorporating practices of interior enforcement. As Coleman articulates, this refocus on the interior has not led to a decrease in border policing, rather, the rise of interior enforcement has occurred in addition to ongoing policies of deterrence. Where crimmigration scholarship tends primarily to focus on the development of law, the criminalization of immigration literature looks at how social construction and power shape lawmaking processes. These constructions have led to the prevalence of detention and deportation

⁶⁵ Inda, “Governing Through Crime”.

⁶⁶ Joseph Nevins, *Operation Gatekeeper and Beyond: The War on Illegals and the Remaking of the U. S. - Mexico Boundary* (London: Taylor & Francis Group, 2010) and Peter Andreas, *Border Games: The Politics of Policing the U.S.-Mexico Divide*, 3rd ed. (Cornell University Press, 2022).

as solutions to the “immigration problem”, an imagination that is reflected in the processes of bureaucratic development. However, these accounts often focus on the idea of criminalization without particular attention to where ideas about who is a criminal come from.

By contrast, approaches to studying immigration enforcement that center race often focus on how immigration discourse constructs “others” as the appropriate targets of enforcement. This work is compatible with the idea of governing through crime, but foregrounds how racialized bodies can legitimate state action. This literature begins from the premise that the “illegal immigrant” is a racialized figure that has been made central to immigration politics. It is not just that immigrants are rendered illegal, but that certain bodies demarcated by racial meanings been rendered illegal and made the particular targets of detention and deportation, notably individuals who are or appear Latinx.⁶⁷ One particularly notable work is David Hernandez’s “Pursuant to Deportation”, which examines how constructions of the Latinx migrant have contributed to the current detention regime.⁶⁸ He suggests that since the racialized origins of immigration policing, including instances like Operation Wetback, and the Bracero Program, Latinx people have been racialized as illegal and dangerous immigrants swarming across the Southern border, and that deportation policies have been put in place to manage this racialized threat. Thus, the history of detention and deportation must also be read alongside the history of the construction of race. Other scholars have built on this work and examined how racialization has emerged and changed over time through iterative interactions between a myriad of social actors.⁶⁹ What these works have in common is a complex

⁶⁷ Throughout the dissertation, I shall be using the term Latinx to refer to this particular racialized group. This is a stylistic choice aimed to honor the complexity of gender identity within the Latinx community, while also calling attention to how this community is racialized in the U.S.

⁶⁸ Hernandez, “Pursuant to Deportation”

⁶⁹ Macias-Rojas, *From Deportation to Prison*, Martha D. Escobar, *Captivity beyond Prisons: Criminalization Experiences of Latina (Im)Migrants*, First edition. (Austin: University of Texas Press, 2016), Mathew Coleman, “The ‘Local’ Migration State: The Site-Specific Devolution of Immigration Enforcement in the U.S. South,” *Law & Policy* 34, no. 2 (2012): 159–90, Loyd and Mountz, *Boats, Borders, and Bases*, and Tanya Maria Golash-Boza, *Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America* (Boulder: Paradigm Publishers, 2011).

engagement with the idea of race, and recognition that law does not simply create racialized communities. Rather, the process of racialization is one that occurs over time and through repeated interactions at the level of lawmaking, individual interaction, and cultural norms.

To provide additional context, when faced with the fear of potential deportation, immigrant communities are induced to behave differently. Nicholas de Genova outlines the concept of “deportability”, which refers to the idea that the removal of certain racialized individuals creates a broader sense that immigrants who look like those who are deported are also vulnerable to this form of legal violence. As such, racialized immigrant communities are induced to behave in ways that comply with the state for fear of potential deportation.⁷⁰ Modern immigration enforcement is founded on a particularly carceral imagination – the solution to which is to detain and deport potential threats to the nation, who by virtue of choosing to cross the border have demonstrated that they are “bad” actors in need of correction.

The key contribution of this literature to analyses of contemporary immigration policies is to show how a long history of racialization led to a system prioritizing carceral tools that make racialized immigrant communities particularly vulnerable. Tanya Golash-Boza makes the case in her 2015 book *Deported*, that the processes of detention, deportation, and criminalization makes these communities feel trapped and powerless, and at the same time, to maintain a global system of white supremacy.⁷¹ Loyd and Mountz suggest that the creation of racialized spaces of detention helps to legitimate an order premised on control of a bounded territory; the creation of a racialized population that is deportable propagates racial order and racial hierarchy within said territory.⁷² These works often draw on rich historiography and complex theorizing in order to foreground race

⁷⁰ Nicholas P. De Genova, “Migrant ‘Illegality’ and Deportability in Everyday Life,” *Annual Review of Anthropology* 31 (2002): 419–47.

⁷¹ Tanya Maria Golash-Boza, *Deported: Immigrant Policing, Disposable Labor and Global Capitalism* (NYU Press, 2015), <https://muse.jhu.edu/book/42808>.

⁷² Loyd and Mountz, *Boats, Borders, and Bases*

in their analysis of homeland security. By foregrounding race, they illustrate that while immigration is being criminalized, the process of criminalization is rooted in maintaining racial hierarchy. Golash-Boza in particular makes the case that the neoliberal order, as articulated in the criminalization of immigration literature, is also deeply dependent on racial norms, and that the distinctions between deserving and undeserving are primarily demarcated along racial lines.⁷³ Thus, this literature may be thought of as building on the criminalization literature by showcasing the relationships between race and criminalization.

The final area of literature I highlight closely examines the relationship between immigration enforcement, race, and, political economy to ask questions of how profit, and political profit, become bound up in immigration enforcement. These works examine how interactions between private corporations, global economic demands, and local political pressures have shaped the expansion of detention centers, and other enforcement processes.⁷⁴ Ackerman and Furman make the case that the prison industrial complex, and the growth of private prisons, is one of the most important influences on the rise of immigrant detention. They note that groups like GEO and CoreCivic have spent millions of dollars lobbying Congressional representatives in order to convince them to give larger detention contracts and in turn, lead to greater profitability.⁷⁵ Tanya Golash-Boza has also made the case that global crises of capitalism contributed to the need for rich actors to maintain their power through expanding carceral tools to help keep racialized groups subordinate.⁷⁶

⁷³ Golash-Boza, *Deported*

⁷⁴ Michael Flynn, “There and Back Again: On the Diffusion of Immigration Detention,” *Journal on Migration and Human Security* 2, no. 3 (September 1, 2014): 165–98, Alissa R. Ackerman and Rich Furman, “The Criminalization of Immigration and the Privatization of the Immigration Detention: Implications for Justice,” *Contemporary Justice Review* 16, no. 2 (June 2013): 251–63, <https://doi.org/10.1080/10282580.2013.798506>, and Lauren L. Martin, “‘Catch and Remove’: Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice,” *Geopolitics* 17, no. 2 (April 1, 2012): 312–34, <https://doi.org/10.1080/14650045.2011.554463>.

⁷⁵ Ackerman and Furman, “The Criminalization of Immigration”.

⁷⁶ Tanya Golash-Boza, “The Immigration Industrial Complex: Why We Enforce Immigration Policies Destined to Fail,” *Sociology Compass* 3, no. 2 (2009): 295–309, <https://doi.org/10.1111/j.1751-9020.2008.00193.x>.

As such, issues of global capital have contributed to a shift in government spending towards incarceration and detention.

To reiterate, my intervention in this study is to draw on central insights across these interrelated bodies of literature and apply them to an understudied piece of the immigration machine - DHS' bureaucratic components. The literature on crimmigration and criminalization illustrate that law and policy have been designed to criminalize certain groups of immigrants, but do not necessarily examine the process of translating law into action, or the role of race. The process of implementing legal precepts is neither linear nor straightforward. Implementation can lead to unexpected results and systemic change. Furthermore, codifying something in law does not immediately make it so. A useful example from DHS documentation can be found in the development of a biometric entry-exit system for tracking visa overstays. During the early period of the DHS' creation, Congress specifically mandated that the DHS should create a comprehensive biometric-entry exit system. Despite this insistence, the DHS was unable to complete the first trials of this system until 2008 and was unable to get even a preliminary version of the system up and running until 2018. Though Congress lobbied heavily for this particular program, the DHS simply did not have the capacity to enact it. By examining the process of bureaucratic implementation, scholars can gain insight into how bureaucracies can also make and shape politics.

In addition, I integrate the insights of the racialization literature into my analysis of DHS bureaucracy. While these works have examined race in many contexts, these insights rarely are imported into the study of bureaucracy. Much of the literature on race and bureaucracy comes from the public administration tradition and focuses on the idea of descriptive racial representation in bureaucracy. By contrast, my chief concern is how bureaucracy shapes, perpetuates, and reifies race through policy actions. To this end, I focus on how bureaucracies leverage facially race-neutral

discourses to produce racial outcomes. Racism in the bureaucracy is no longer the blunt instrument of the Jim Crow era. As Eduardo Bonilla-Silva puts it,

The elements that comprise this new racial structure are the increasingly covert nature of racial discourse and racial practices; the avoidance of racial terminology and the ever-growing claim by whites that they experience “reverse racism”; the elaboration of a racial agenda over political matters that eschews direct racial references; the invisibility of most mechanisms to reproduce racial inequality; and, finally, the rearticulation of some racial practices characteristic of the Jim Crow period of race relations.⁷⁷

In particular, this study calls attention to what Bonilla-Silva calls the invisibility of most mechanisms to produce racial inequality. The DHS operates in an ostensibly race-neutral manner, including having official policies prohibiting the use of race in informing enforcement decisions. But the results of immigration enforcement are clearly racialized. As Ryo and Peacock show, nearly 89% of detainees are Latin American, even though Latin Americans make up less than 60% of the U.S. unauthorized population.⁷⁸ The vast majority of enforcement resources are devoted to maintaining the Southern border, even though more immigrants become unauthorized through flying in and overstaying their visas than directly crossing the border.⁷⁹ I interrogate how these race neutral bureaucratic discourses have enabled and perpetuated racialized outcomes, to see how bureaucracy translates the law of the land into action with racialized consequences.

To analogize, Congressional mandates are a compass and north star, setting the general direction for immigration enforcement. The bureaucracies’ task is the actual process of wayfinding. Getting from a general direction to actually enforcing policy is a complex and messy process, with individuals at all levels of governance shaping how that policy plays out. Thus, I treat the laws of Congress as a central player in the story but focus more on how Congressional pressures structure

⁷⁷ Eduardo Bonilla-Silva, *Racism without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America* (Lanham: Rowman & Littlefield Publishers, 2017), 18.

⁷⁸ Emily Ryo and Ian Peacock, “Jailing Immigrant Detainees: A National Study of County Participation in Immigration Detention, 1983–2013,” *Law & Society Review* 54, no. 1 (2020): 66–101, <https://doi.org/10.1111/lasr.12459>.

⁷⁹ Robert Warren, “US Undocumented Population Continued to Fall from 2016 to 2017, and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year,” *Center for Migration Studies*, 2016, <https://cmsny.org/wp-content/uploads/2019/01/US-Undocumented-Population-Continued-to-Fall-from-2016-to-2017-and-Visa-Overstays.pdf>.

the work of bureaucrats. I scrutinize how the state encounters and interprets the people subject to its laws and regulations; performing an anthropology of the state demonstrates how what the state sees, knows, and understands shapes the polity. I examine these ideas to see how race is produced, reproduced, and reinscribed through the everyday processes of bureaucratic action. I argue that close examination of three major themes – the proliferation of metrics and quantification, technological modernization, and increased use of private partnerships – serve as particularly useful examples of how bureaucratic policies shape the development of immigration enforcement. In addition, across all three domains the concept of efficiency in resource deployment has been central to how the DHS understands its mission. In order to continue to receive funding and to better the department's reputation, modernization and improving efficacy are seen as essential.

Taken together, these three themes produce several major consequences for immigration. First, the quest for efficiency has produced a high degree of thoughtlessness amongst bureaucrats, reducing migrants subject to immigration policies to a series of 1's and 0's on the other end of a bureaucratic spreadsheet. This transition allows the bureaucracy to operate effectively while cloaking the violence of immigration enforcement within the halls of governance. Second, the trend towards efficiency does not undo the systemic forms of racial inequality baked into the American immigration system, instead, these trends serve as force-multipliers amplifying and increasing the degree of surveillance and carceral consequences aimed at migrants, but especially migrants racialized as Latinx. Third, across all these policy domains, there have been more opportunities for private actors to be involved, thus increasing the size of the homeland security marketplace, further entrenching the system of enforcement.

The subsequent sections provide an overview of my theory and empirical examination of each of the themes I explore throughout the dissertation. Each sub-section focuses on a particular set of internal discourses and policies that I argue have had important consequences for

understanding contemporary practices of immigration enforcement. I begin with looking at data and metrics, to illustrate the role that measurement plays in expanding border security. I then move to discussing the role of technological modernization and its consequences for surveillance. Third, I examine how these developments have also led to increasingly deep ties between the private sector and the DHS, with the major consequence being expanding the market for homeland security products and increasing private sector investment in the business of homeland security.

Data and Metrics

Reporting is a core component of modern bureaucracy; each bureaucratic agency is required to submit reports of their activities to Congress and outside reviewers to prove they are making effective use of taxpayer dollars. As such, data and metrics for assessing departmental performance have become an increasingly integral element of the bureaucracy's day-to-day operations. But metrics are not value neutral, they are tied to how states envision successful governance. As Sally Merry reminds us, "Since the emergence of modern states, governments have recognized that controlling their populations requires knowledge of their characteristics, capacities, and performance."⁸⁰ How governments study and define their objectives shapes how they govern that population. In the case of border security, the U.S. has built a system of control centered around the exclusion and control of particular unauthorized groups. As Alfonso Gonzales argues, the homeland security state benefits from keeping undocumented migrants as a flexible labor force that can be detained and deported.⁸¹ The fear of being detained and deported, being rendered "deportable",⁸² incentives many immigrant workers to take jobs that are low-paid and exploitative for fear of being turned over to the DHS. The homeland security imaginary which undergirds DHS' activities focuses

⁸⁰ Sally Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking*, (Chicago: University of Chicago Press, 2016), 43

⁸¹ Alfonso Gonzales, *Reform Without Justice: Latino Migrant Politics and the Homeland Security State*, (New York: Oxford University Press, 2014), 153

⁸² De Genova, "Migrant Illegality".

on exactly this notion; immigration should be effectively policed with heavily carceral consequences in order to create a secure state.

As such, the metrics DHS constructs both respond to and entrench this broader homeland security imaginary. While Congress may specify that the border needs to be controlled, or that performance measures need to be implemented to track security, bureaucrats must design those measures and demonstrate their ability to meet performance goals. Moreover, bureaucrats may construct metrics that help them more easily demonstrate success. The necessity of success is linked to departmental funding – the DHS must be able to show results to receive the same or higher funding allocations. A key metric for the DHS is the number of apprehensions per year. But apprehensions are a curiously flexible metric – high apprehensions could be a sign that the border is secure because Border Patrol is able to apprehend many potential crossers, but low apprehensions could also be a sign that the border is secure because deterrence practices are working.⁸³ As Peter Andreas notes,

Arrest statistics had little to do with actual deterrence and everything to do with bureaucratic incentives. If little else, high apprehension numbers provided political ammunition in annual budget requests. The Border Patrol could boast that it made more arrests than any other law enforcement agency, which at least showed that it was keeping busy. The failure to provide a reasonable measure of effectiveness was even given a positive spin: a 1973 INS publication put it, “The Border Patrol’s contribution to our country’s security and welfare is so far reaching that it cannot be measured”; the patrol “has maintained a reputation for getting the job done.”⁸⁴

Success for Border Patrol then is about demonstrating that it is making progress on the problem of immigration. However, since the 1970s and 1980s, government in general has undergone something of a metrics revolution – evidence based governance, or a broad range of empirical approaches taken from the private sector to measuring the effectiveness of government, has become one of the dominant modalities of contemporary bureaucracies.⁸⁵ As such, since its inception the DHS has been under pressure from overseers to produce metrics that can be easily quantified and linked to

⁸³ Goodman, *The Deportation Machine*

⁸⁴ Peter Andreas, *Border Games*

⁸⁵ Merry, *Seductions of Quantification*

their impact on homeland security. In contrast to the Border Patrol of the 1970's, which could get away with a contribution that "cannot be measured", the DHS has developed increasingly granular and precise measures for tracking success.

This tendency towards developing more specific metrics can be demonstrated by looking at feedback on Border Patrol's early remote surveillance systems. Between 1999 and 2005, the INS and the DHS attempted to implement remote surveillance programs at the Southwestern border which consisted of fixed towers used to monitor open sectors of the border. This program went through several phases but struggled both in terms of effective budgeting and in assessing the benefits of remote surveillance. One report noted,

BP was unable to quantify force-multiplication benefits of remote surveillance technology. Further, data entered into OBP's primary source of ISIS information, the ICAD system, is incomplete and not consistently recorded by OBP sectors. Based on an analysis of sample ICAD data, ISIS remote surveillance technology yielded few apprehensions as a percentage of detection, resulted in needless investigations of legitimate activity, and consumed valuable staff time to perform video analysis or investigate sensor alerts.⁸⁶

The inability to quantify the force-multiplication benefits of this technology is indicative of broader trends in the development of metrics. First, one of the primary mechanisms for assessing performance is whether or not any program directly leads to more apprehensions. This is important because it further reinforces a carceral vision of homeland security – the most direct way to measure if the homeland is secured is to track if more people are being apprehended. Security in this sense is the same as improved efficacy in carceral outcomes. Because the remote surveillance towers were leading to few apprehensions, they were considered an unwise investment.

Second, this vignette helps us better understand what the DHS means when they use the term efficiency. Efficiency is the optimal usage of staff, technology, and data, to achieve enforcement outcomes. Furthermore, efficiency is also about creating the conditions to exert

⁸⁶ U.S. Department of Homeland Security Office of the Inspector General, "A Review of Remote Surveillance Technology Along U.S. Land Borders," OIG-06-05, December 2005. ISIS here refers to the Integrated Surveillance Intelligence System.

maximum punitive control over potential crossers with minimal use of departmental resources. Finally, the benefits must be quantifiable. Quantification is the gold standard for metrics, an objective way to assess whether or not a particular program is contributing “enough” to the department’s objectives. As time has gone on, the DHS has implemented more quantifiable, granular metrics. The result has been continued inscription of carceral visions for the border.

Another useful case comes from the massive overhaul of border security analytics conducted under then-President Trump. In this overhaul, despite questions about the metrics utility, apprehensions were not removed as a key performance metric but instead were broken down into more precise sub-units and supplemented with additional metrics. As the Border Security Metrics reports articulate,

For many years, DHS and the legacy Immigration and Naturalization Service also used apprehensions as a proxy indicator of successful unlawful border crossings, i.e., an outcome measure. Over the long-term and across multiple locations, apprehensions are a problematic indicator of enforcement outcomes since the relationship between apprehensions and successful unlawful entries depends on the apprehension rate, which changes over time and may also differ by location.⁸⁷

Here DHS acknowledges the limitations and contingency of apprehensions as an outcome measure. The solution, however, is not to reconsider whether apprehensions are a good measure of border security but instead to add supplementary metrics to transform apprehensions into a more precise tool. The department decided the addition of apprehension rate, a calculation of the estimated percentage of total crossers that are apprehended, would allow Border Patrol to better consider the context of apprehensions measures. Moreover, by looking at both the percentage and estimating total crossers, the department is incentivized both to lower the number of total crossers through deterrence practices, and to increase the number of apprehensions as a way of demonstrating how few people are getting across. By conducting both practices, Border Patrol can report to DHS officials and to Congress that they are making measurable progress in seizing control of the border.

⁸⁷ U.S. Department of Homeland Security, “Border Security Metrics Report 2018”, February 26, 2019, 21.

The power of quantification and metrification is that it creates additional incentives for bureaucrats to prioritize demonstrable enforcement consequences. In contrast with another vision of security, one which prioritizes aid to migrants or creating safety at the border, quantification pushes the bureaucracy further incentivizes using violence to control the border. Congress further entrenches this dynamic by encouraging use of quantifiable performance metrics for funding allocations.⁸⁸ The more the DHS can show that they are able to exercise carceral control, the more funding they get. And perversely, there is no end in sight to this cycle. There is also no point at which more carceral control is seen as unnecessary because deterrence is also a central metric of success. Carceral control is associated with deterrence and the more migrants are deterred, the more DHS can claim success. So even if apprehensions fall rapidly, the DHS can still argue that it is performing admirably because their deterrence efforts such as surveillance or beyond the border policing, are working. There seems to be no way out of this cycle, so long as the metrics are focused on carceral outcomes as measures of security. Given that this carceral vision is also directed primarily against Latinx immigrants, it is clear that this system functions as a racialized tool of control, disciplining migrant workers, and securitizing the border.

Surveillance, Technology, and Efficacy

Recent developments in law enforcement have often coincided with projects of technological modernization, with the aim of increasing departmental efficiency. In the context of the DHS, a major part of bureaucratic activity has been the escalation of immigrant surveillance under the rhetoric of modernization. Surveillance takes many forms – the increased use of alternatives to detention, building technological surveillance infrastructure at the border, and using technology like facial recognition and cell site simulators to track immigrant communities.

⁸⁸ Congress, U. S., An Act. “Government Performance and Results Act of 1993.” In *103rd Congress, Congressional Record*, 1993.

Surveillance is a way of making immigrants visible to the state, though with the particular aim of enacting enforcement outcomes. Anil Kalhan, a legal scholar focused on immigrant surveillance, notes that,

Like many other areas of contemporary governance, immigration control has rapidly become an information-centered and technology-driven enterprise. At virtually every stage of the process of migrating or traveling to, from, and within the United States, both noncitizens and U.S. citizens are now subject to collection and analysis of extensive quantities of personal information for immigration control and other purposes. This information is aggregated and stored by government agencies for long retention periods in networks of interoperable databases and shared among a variety of public and private actors, both inside and outside the United States, with little transparency, oversight, or accountability.⁸⁹

I take Kalhan to mean that immigration control is shaped by the idea of technology and information, with a particular emphasis on using technology to collect data on immigrants in almost every aspect of their lives. The trend towards the increased collection of data is certainly not unique to immigration, indeed, it is almost ubiquitous in modern society. However, this development has particularly pernicious effects in the context of immigration control and criminal justice.

This trend is not unique to the DHS, law enforcement agencies increasingly rely on a proliferation of new data sources to police. Sarah Lageson illustrates that nearly every aspect of every encounter an individual has with law enforcement is documented and these records are increasingly accessible online through data brokers like LexisNexis.⁹⁰ This “big data” approach to law enforcement focuses on aggregating as much data as possible in order to produce more efficient enforcement outcomes. But these results often amplify pre-existing forms of hierarchy and thus entrench, rather than reduce, the possibility of racialization in enforcement. For example, in her examination of the Los Angeles Police Department’s (LAPD) use of big data technologies, criminologist Sarah Brayne found that one major use of this technology is individual risk classification, focusing on the idea that the highest risk criminals commit a disproportionate amount of violent crime. In reality, however, the risk-based system relies on pre-existing assumptions about

⁸⁹ Anil Kalhan, “Immigration Surveillance,” *Maryland Law Review* 74, no. 1 (2015 2014): 1–78, 6.

⁹⁰ Sarah Esther Lageson, *Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice* (Oxford University Press, 2020), <https://doi.org/10.1093/oso/9780190872007.001.0001>.

who is most likely to commit crime and where those crimes occur – both of which are rooted in pre-existing notions conflating Blackness and criminality. As Brayne notes, “Moreover, individuals living in low-income, minority areas have a higher probability of their “risk” being quantified than those in more advantaged neighborhoods where the police are not conducting point-driven surveillance”.⁹¹ Risk analysis and other forms of predictive analytics based on big data are not value neutral, they require human input to decide how to assess risk, to input the codes that track certain areas or monitor certain types of people. This is, as Ruha Benjamin describes, how race gets embedded into technologies and algorithms – the deeply held systemic biases, ideas about who is and who is not a criminal do not magically disappear through the process of coding.⁹² The subtle assumptions that get encoded into big data systems shape and constrain how these systems can understand and act on race, even if the language of race is not directly inputted into the algorithm. Modernizing technology then can serve to exacerbate pre-existing forms of hierarchy.

In the case of immigration surveillance, there have been several studies exploring how this architecture has been developed but little attention to how the bureaucratic side of immigration enforcement has facilitated this expansion. My research outlines how the need for technological modernization was constructed as imperative to immigration enforcement, even prior to the creation of the DHS. I here illustrate how technological modernization played out in the INS prior to its conversion to the DHS to demonstrate how discourses of efficiency and technological modernization began to suffuse the conversation around immigration enforcement.

As the criminal legal system and immigration enforcement became increasingly intertwined in the 1980's, there was an urgent need for better integration of jail data in immigration spaces. Congressional representatives pushed for more collaboration between branches noting that,

⁹¹ Sarah Brayne, “Big Data Surveillance: The Case of Policing,” *American Sociological Review*, 2017 82(5): 977-1008, 997.

⁹² Ruha Benjamin, *Race after Technology: Abolitionist Tools for the New Jim Code* (Newark: Polity Press, 2019).

“immigration problems are mixed with drug trafficking, terrorism, racketeering, which also bring murder, burglary, kidnapping, alien smuggling, and other felonies”.⁹³ In response, the INS began to establish pilot projects improving INS computer capabilities to help respond to these potential alien narcotics offenders.⁹⁴ During a Congressional hearing on the issue of criminal aliens, Jack Shaw, an assistant commissioner for investigations at the INS, noted that the agency was working on developing,

An information data system that will allow State police agencies to query INS relative to persons arrested as suspected felons or as narcotic offenders and to get limited but instantaneous feedback from INS, two-way communication through remote terminal access, the AISCAP system, which we presented to the Congress as the only means by which INS is ever going to be able to want established chokepoints in every separate State criminal justice system relative to suspected aliens that may be moving through some part of the criminal justice processes, are already sentenced, en route to some penitentiary in that system, and there are 932 State penitentiaries in this country.⁹⁵

There are several aspects of the quote that are worth interrogating further. First, Mr. Shaw represents an information system that shares across state lines as the *only means* by which the INS could possibly address the issue of criminal aliens. He suggests that the type of technological modernization required to make this communication possible is an indispensable element of INS being able actually take on all of its required duties. With over 932 state penitentiaries, having a modernized database would be the only way to manage this potential information deficit. Later, Shaw noted that the INS was developing capacity that “would allow INS officer to be available through an operational support center 24 hours a day to handle these queries”.⁹⁶ The concept of constantly available operation support would continue to resurface as the departmental goals for detention and deportation continued to expand.

⁹³ U.S. Congress. House. 1989. *Criminal aliens: Hearing before the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary*, House of Representatives, One Hundred First Congress, first session, on H.R. 3333 .. November 1, 1989, 6.

⁹⁴ *Ibid.*, 1

⁹⁵ *Ibid.*, 40.

⁹⁶ *Ibid.*

While the INS was often pointed to as a “beleaguered bureaucracy”, as it became increasingly bound up in other types of crime control policies, the department’s goals became to implement systems that would allow the INS instantaneous and constant contact with other law enforcement agencies, with an emphasis on adding automated capacity where possible. This, combined with modernization of its internal documentation and information management capacities would transform this sleepy backward agency into a stalwart defender of American freedom so long as sufficient funds were allocated to the project. The actual practice of enacting this modern management however, meant that the numbers of detainees, deportees, and enforcing agents would continue to escalate over the next decade.⁹⁷ Modernity and efficiency served as central rationales for expanding the INS’s ability to categorize and police immigrant communities.

Going into the 1990’s, the issues driving the INS towards the project of bureaucratic efficiency did not abate. The INS seemed, to Congress, to remain an overworked and incompetent agency ineffectively using resources to deal with a challenging but imperative task. In a Congressional Hearing, one representative stated,

In addition, the Immigration and Naturalization Service, the agency, of course, responsible for enforcing the immigration laws and for deporting criminal aliens, is lacking the resources and the management priorities necessary to effectively deal with criminal aliens. Now, I am not only talking about staffing and training, but also ineffective use of the resources which are available. The INS computer system, for example, seems totally inadequate to the task”.⁹⁸

The point about the computers is particularly notable as it paints a picture of the agency as one needing to be brought up to modernity in order to be able to cope with the problems it is tasked with solving. A modern computer system would better facilitate the categorization of individuals as “criminal aliens”, a category historically imbued with racial narratives.⁹⁹ Yet curiously, the INS’

⁹⁷ Hernandez, “Pursuant to Deportation”

⁹⁸ U.S. Congress, Senate, 1998, *INS reform: the service side: hearings before the Subcommittee on Immigration of the Committee on the Judiciary*, One Hundred Fifth Congress, Second Session, June 11, July 29, and September 16, 1998, 3.

⁹⁹ Ana Muniz, “Bordering Circuitry: Crossjurisdictional Immigration Surveillance Part 1: Latinx Communities, Race, and the Criminal Justice System,” *UCLA Law Review* 66, no. 6 (2019): 1636–81.

struggles did not necessarily mean its budget needed to be reduced. The agency's backwardness combined with the vital nature of its mission served to justify more spending. This gives us a sense of just how vital the state thinks the project of immigration enforcement is.

One of the major issues at the time was deficiency in INS record keeping systems. In multiple hearings, INS officers were unable to provide answers to simple questions like how many detainees the agency had outstanding on criminal aliens. This was due in part, the agency noted, to difficulties in updating its digitized records. In one statement, an INS commissioner wrote, "A standard joke among INS agents is that the computer system tells them where the file was last lost. Confusion over aliases and lost files often leads to the creation of multiple AFiles on the same alien, with each file containing only a part of the history of that particular alien".¹⁰⁰ Automation was often posited as a potential solution to these issues. Doris Meissner, then commissioner of the INS, described the plan for automation saying, "We are planning major systems automation initiatives to counter criminal alien activity by providing a service-wide capability for positive identification, automated case tracking, and management reporting as well as information sharing with other Federal, State and local entities".¹⁰¹ Furthermore, she also stated that, "We are in the process of defining a service-wide standard on positive identification using biometric data such as fingerprint, hand geometry or facial recognition."¹⁰² The goal of these reforms was to improve the overall capability of the department through mitigating potential human error, as well as vastly improving communication between the INS and other enforcement entities. However, as Anna Muniz points out, this discourse ignored the ways that automation is still premised on human encoding; racialized enforcement priorities are automated and made more efficient rather than removed.¹⁰³ Increased

¹⁰⁰ Ibid., 7.

¹⁰¹ Ibid., 44.

¹⁰² Ibid.

¹⁰³ Muniz, "Bordering Circuitry"

automation leads to better technological tools for enforcement, but not necessarily a change in how that enforcement is conducted.

The necessity of major systems overhauls was also premised on the idea that the INS needed almost complete information to execute its federal mandate. In the early 1990's, the INS began to develop a new tool to try and automate their information systems. In answers provided to members of Congress, the INS noted that the new database, ENFORCE, would induce efficiency in a number of ways. They stated,

ENFORCE will allow enforcement personnel resources to perform more actual law enforcement work by providing accurate and rapid: (1) input, storage, distribution, and retrieval of enforcement case data; (2) searching and reporting of specific open or closed cases by name or other key index; and (3) compilation and reporting of enforcement performance and workload statistics. ENFORCE will also allow INS enforcement management to receive up-to-date status for ongoing cases and for overall enforcement operations."¹⁰⁴

ENFORCE is portrayed as working towards the goal of instantaneous access to information anywhere it might be needed. A key phrase is "to perform more actual law enforcement work". By automating many of the data collecting capabilities, the agency would theoretically better harness the potential of their agents by putting them towards the "real work" of on the ground apprehension, detention, and deportation. Automating the back end is a logical step towards the goal of continuous information access.

The initiatives were meant to fill information gaps that prevented the INS from acting effectively, consistently, and decisively. We see again that efficient execution of the INS's mission refers to expanding the department's capacity to keep records on immigrants for the purposes of detention and deportation. Acting effectively means ensuring that no individual alien can slip through the bureaucratic cracks, augmenting a particular idea of national safety through routinizing the rapid exchange of information and maintaining a repository of information that could be accessed at any time. The series of Congressional Hearings, department updates, and government

¹⁰⁴ U.S. Congress, Senate, *Criminal Aliens in the United States: Hearing Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs*, One Hundred and Third Congress, First Session, November 16, 1994, 97.

accountability reports I have examined thus far make almost no mention of the human consequences of detention and deportation. The experiences of those warehoused by the state, and the ways these carceral policies impact the families, communities, and futures of those detained and deported is strikingly absent from official discourse. Rather, the lengthy appendixes provide answers, statistics, and justification for expanded enforcement processes. These bureaucratic actors are highly divorced from the on the ground reality of violent processes like detention or deportation. As Weber suggests, internal processes for these bureaucratic actors are almost exclusively rote application of regulations. The individual bureaucrat primarily deals with discrete pieces of disidentified information rather than looking at the people affected by applying these rules.¹⁰⁵

This too falls in line with Arendt's notion of thoughtlessness. Increasing capacity in the abstract seems banal. But by reducing complex human experiences to the efficient execution of bureaucratic procedure, it enables the individual bureaucratic agents to be simply performing their job, rather than engaging with the realities of what their actions do. And while the mechanisms of racialization and surveillance change in subsequent decades, the layers of abstraction and simplification embedded in these bureaucratic discourses would continue to cement the need for expansion and modernization with little acknowledgment of how modernization shapes the lived experiences of human beings.

The extension of surveillance can be productively linked to the internal discourses of technological modernization and departmental efficiency – surveillance is the end product of these two discursive constructs. Both technological modernization and efficiency are an important part of the project of bureaucratic autonomy; in order to successfully demonstrate their ability to control immigration the INS, and the DHS in turn, needed to show that they were actively working to modernize the department, creating efficient ways of implementing immigration directives.

¹⁰⁵ Weber, *Economy and Society*

Surveillance allows for, at least conceptually, an ideal of perfect information about immigrant communities in service of the larger goal of policing the boundaries of the body politic. But surveillance will never be perfect, and as such, requires both assistance from outside actors and more specified targeting. Surveillance ends up disproportionately affecting immigrant communities racialized as Latinx, and perpetuating a system that relies on racial imaginaries of the homeland to function. While this section has focused on the days prior to the creation of the DHS, the trends towards technological efficiency remained central to immigration enforcement after the departmental reorganization. By highlighting this history in the introduction, I leave room to demonstrate more effectively how this trend both continued and transformed in the decades following 9/11.

Intertwining Bureaucracy, Private Capital, and Racial Projects

My final empirical chapter examines how neoliberal rationality deepens connections between government and the private sector, and in turn shapes racial meaning making. In this section, I begin to illustrate how the imperatives of bureaucracy have shaped the DHS' expansion, and in turn, the expansion and projection of racialized forms of social control in the U.S. In a marketized economy, according to Weber, bureaucracies are transformed to look increasingly like other businesses. More specifically he argues, "Only the expert knowledge of private economic interest groups is superior to the expert knowledge of the bureaucracy. This is so because the exact knowledge of facts in their fields is of direct significance for economic survival".¹⁰⁶ Here, Weber suggests that economic interest groups possess a particular type of knowledge necessary for survival in the capitalist economy. While bureaucratic authority is supposed to stay outside the economic realm, the bureaucratic authority is also a project of rationality; the bureaucratic official engages in a calculus of cost and losses in the

¹⁰⁶ Weber, *Economy*, 994

rational administration of law.¹⁰⁷ As such, bureaucrats may turn to the private industry as a potential source of information. The knowledge that economic officials possess is valuable because it contains the secrets of the capitalist marketplace, the keys to reducing costs and affecting maximally efficient administration.

The DHS has expanded its bureaucratic power through partnerships with private entities, which in turn has caused the DHS to both utilize corporate practices in its own bureaucracy and deepen relationships with corporate entities. One particularly illustrative example comes from a close reading of documents received via FOIA documenting the DHS' partnership with McKinsey. McKinsey is a global management consulting firm; they partner with countless businesses seeking to improve their performance outcomes. The DHS provided a contract totaling \$200 million to McKinsey to facilitate the development of more effective goal-setting, management infrastructure, and a better plan for department's future.¹⁰⁸ A primary goal of this partnership is to craft new types of strategy that would be, "enduring beyond administrations and institutionalized within CBP".¹⁰⁹ Working with McKinsey was portrayed as a way of developing a higher degree of bureaucratic autonomy. We can once again draw on Carpenter, who suggests that bureaucratic agencies seek to develop a form of political autonomy that will be robust beyond any particular actor or group of actors. Carpenter argues that in order to do so successfully, the agency must demonstrate that it is performing a unique function and operates at a high degree of efficiency. The DHS fulfills a unique role in the government and so its partnership with McKinsey aimed to create strategies that would improve managerial efficiency and deepen bureaucratic autonomy.

Improving the DHS also entailed improving the agency's public image. The FOIA documents show that McKinsey was pushing the DHS, "To be America's most trusted and

¹⁰⁷ Ibid., 1003

¹⁰⁸ U.S. Customs and Border Protection McKinsey Contract FOIA Production, August 28, 2018.

¹⁰⁹ Ibid., 17.

innovative law enforcement agency, relentlessly creating a safer and more economically competitive nation”.¹¹⁰ I find this statement particularly fascinating, as it indicates something both about the DHS’s internal priorities and how it conceptualizes what constitutes border security. Trust in this context suggests that they want the public to see CBP as an actor that is working to protect their interests. A more trusted law enforcement agency in this instance really means trusted by those who are invested in maintaining the current structure of stratified citizenship, of urgently policing the boundaries between in and out, dangerous alien and innocent citizen. The more autonomously the DHS can act, the more it can maintain its powers between administrations, the more durable this power becomes. Partnering with McKinsey is a way of optimizing bureaucratic durability and stabilizing the exercise of racial power.

The development and expansion of neoliberal market logics to many aspects of contemporary governance has further driven the privatization and marketization of the DHS. Neoliberalism is often a somewhat contested term, therefore, for the purposes of this dissertation, I draw on the work of David Harvey who argues, “It [neoliberalism] holds that the social good will be maximized by maximizing the reach and frequency of market transactions, and it seeks to bring all human action into the domain of the market”.¹¹¹ Here, Harvey suggests that neoliberalism operates as a political economic infrastructure in which state’s role is to allow the free market to flourish. However, neoliberalism is more than just a political economic ideology, it represents a philosophy of how the world can be most efficiently run. This is why Harvey argues that neoliberalism seeks to bring all human action into the domain of the market - in neoliberal ideology, the market will naturally lead to the most efficient resource distribution. Furthermore, as Wendy Brown suggests, neoliberal rationality recognizes no sovereign except for entrepreneurial masters, and therefore

¹¹⁰ Ibid., 20.

¹¹¹ David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=422896>, 2.

displaces pre-existing political rationale with the power of the market. The sovereign becomes the public manager.¹¹² This framing adds another layer to why DHS would partner with McKinsey. This partnership aims to improve national security and sovereignty by inculcating the DHS with strategies of management and efficacy crafted in the private sector. Indeed, one might argue that this is the ultimate expression of neoliberalism, when the sovereign prerogative over citizenship is subcontracted to the power of neoliberal architecture. The bureaucratic prerogative of generating efficiency further incentivizes cooperation between these entities as the free market and its proponents are seen as having a monopoly on efficiency. The more closely the bureaucracy can resemble the business the more effectively it can operate; with dire consequences for those on the receiving end of its punitive power.

Notes on Method, Methodology, and Positionality

With this theoretical sketch completed, I now turn to how I investigate the problem of bureaucracy, with a particular emphasis on the role of race. Complex analysis of race requires attending to the subjectivities at play, both in how we as researchers interpret our evidence, and in how researchers conceptualize their position in relation to the material they study. I begin by discussing the first concern, the question of how to think about the role of the archive, and in particular, the state archive. The archives of the state, in this case the repository of bureaucratic documents I accessed through both DHS libraries and FOIA materials, reflect a particular set of state logics. The documents in a bureaucratic archive are not value neutral, instead, they embody certain ideas about how the world is and how the world should be ordered. In *The Intimacies of Four Continents*, Lisa Lowe examines a vast colonial archive across multiple colonial contexts and notes,

In this effort, I do not treat the colonial archive as a stable, transparent collection of facts. Rather, I regard its architecture of differently functioning offices and departments as rooms of the imperial state; they house the

¹¹² Wendy Brown, *Walled States, Waning Sovereignty* (Brooklyn: Zone Books, 2010), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=3339760>.

historically specific technologies of colonial governance for knowing and administering colonized populations, which both attest to its contradictions, and yield its critique.¹¹³

I here take Lowe to mean that the colonial archive, or in my case the state archive, is not a set of data to be mined for facts, but instead an aggregation of policies that helps reveal underlying mechanisms and contradictions undergirding relationships of domination. I use domination here to convey the vast discrepancy in power between the immigration enforcement apparatus and those subject to its exercise. There is one way to read the state archive which treats it as primarily factual - evidence-based data that the reader can examine to see how policy develops. But this approach does not attend to how power shapes the ideas and discourses that dictate the bounds of what will appear in the bureaucratic archive. The content and form of bureaucratic policy does not occur in a normative vacuum. Indeed, this is one of the central claims of the dissertation, that the “neutral” discourses of rationality and efficacy that drive bureaucratic expansion have inadvertently served to reify extant forms of hierarchy.

Thus, my methodological approach works to situate the reports and figures presented in bureaucratic documentation within the broader context of power relations shaping the American polity. I also heed Paul Pierson’s call to attend to patterns of institutional development in situating our analyses – it is not enough simply to examine the policy in and of itself, but rather scholars must situate policy within the context of how an institution grows and changes over time.¹¹⁴ Institutional design choices made at a department’s inception continue to structure the organization’s development, both in terms of structure and how the organization is able to respond to emerging patterns of political change. In this particular context, understanding departmental change requires attending to how the long history of race making, nation building, and capital accumulation shape the creation and maintenance of state processes of social control. The bureaucratic archive is not

¹¹³ Lisa Lowe, *The Intimacies of Four Continents* (Durham: Duke University Press, 2015), 3.

¹¹⁴ Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: University Press, 2004).

isolated from these processes, it shapes and is shaped by the power relations that support extant social organization. An effective analysis of this archive necessitates attending to how the discourses of bureaucracy are shaped by these same power relations, crystallized through iteration and codification. The archive both makes and is made by racial logics. Any analysis that fails to attend to this conditionality will miss central elements of how archives emerge and change.

The second problem of methodology is that I, as the reader of this archive, am always interpreting these findings through the particular prism of my personal experience. I call attention to this issue not to undercut my findings, but instead to acknowledge the inherent subjectivity involved in this project. While I have made an extensive study of race and racialization, I remain a white, cis-presenting man with its attendant privileges and biases. As such, a major component of my theory building work has been reflective and reflexive, analyzing documents and then situating them within my own partial knowledge. To this end, I see myself as following in the feminist tradition of standpoint theory, which Aileen Morten-Robinson suggests involves claiming one's own partial knowledge and therefore contesting the hegemony of "objectivity" within the academy.¹¹⁵ I want to clarify that this type of analysis does not involve relinquishing the realm of the empirical. Quite the contrary, by acknowledging how one's own position shapes our readings of particular texts or ideas, researchers give the reader a more honest truth of their research. This theory is not meant to be an iron law of bureaucracy, but instead a nuanced look at how patterns and relationships of domination can shape institutions, and how those institutions shape those within their dominion. These chapters emerge from an iterative process of analysis, introspection, and contemplation, each iteration aiming to be slightly more precise in capturing how scholars can understand these sets of phenomena. The work of the theorist is, as Sheldon Wolin reminds us, is not to create something that can be plugged

¹¹⁵ Aileen Moreton-Robinson, "Towards an Australian Indigenous Women's Standpoint Theory," *Australian Feminist Studies* 28, no. 78 (December 2013): 331–47, <https://doi.org/10.1080/08164649.2013.876664>.

in like an appliance¹¹⁶, but instead to craft novel ways of interpreting the world around us, to help those around us make sense of the world in its infinite complexity.

Normative Commitments – Open Borders and the Violence of Enforcement

This project stems from a strongly held normative position that freedom of movement should be counted amongst the basic rights that all human beings are entitled to, as much as freedom of speech or freedom of religion. This commitment is both moral and personal. My father is an immigrant, who moved to a new city in a new country at the tender age of 23 and found his way. But his experience, and in turn mine, was shaped by his positionality. As a white, educated man from Britain with an American wife, my father was able to obtain a green card with relative ease, and to live in the country for 34 years without feeling sufficiently threatened that he needed to apply for citizenship. Indeed, it was not until the Trump administration that he even considered applying for citizenship, although he was more interested in gaining access to voting rights than being concerned about his safety. His case is the exception, not the rule. As I have argued and illustrated throughout this introduction, my father's experience is not the same as those who occupy racialized bodies or positions in society. His security in his job and his home can easily be linked to his whiteness, to the tacit privileges he possesses merely by having been born in his body. In my mind, the great injustice of the American immigration system is precisely that my father's story is exceptional. To me, that should be every immigrant story – that the challenges of facing a new life in a new country are not exacerbated by the fear of detention and deportation, that those who enter new communities are met with hospitality rather than rejection, and that our institutions are designed to embrace difference rather than shy away from it.

¹¹⁶ Sheldon S. Wolin, "Political Theory as a Vocation," *The American Political Science Review* 63, no. 4 (1969): 1062–82, <https://doi.org/10.2307/1955072>.

I here suggest that the current allocation of citizenship, and its accompanying rights and privileges, represents a systemic form of injustice that could be ameliorated through greater freedom of movement. Shachar and Hirschl argue that one way to conceptualize citizenship in the contemporary era is as a form of inherited privilege. These authors note that one of the chief forms of inequitable distribution in the world is the difference between those who are born in affluent countries and those born in poor countries.¹¹⁷ The problem here is not only that this distribution of privileges is unjust, but that affluent countries also develop restrictive immigration policies to keep the majority of the world from being able to ameliorate their circumstances through movement. The transmission of birthright citizenship, coupled with hardening borders for certain groups, means that inequitable access to basic social goods because of one's birth will be perpetuated.

In this regard, I follow the work of Joseph Carens, who argues in favor of open borders on the grounds that freedom of movement is an essential right for all people. Carens's argument hinges on the idea that the current statist regime, which here means the system where all territory belongs to one state or another and states have the right to police their borders, inherently constrains true freedom of movement.¹¹⁸ This is a normative problem because, Carens argues, freedom of movement is essential for equality of opportunity.¹¹⁹ We can productively link this idea to Shachar and Hirschl's argument about the inherited inequality of citizenship. Freedom of movement is a crucial way to mitigate this particular harm. If people can freely move to seek better opportunities in another country, then they can reduce their accrued disadvantages from having been born in a less affluent place.

¹¹⁷ Ayelet Shachar and Ran Hirschl, "Citizenship as Inherited Property," *Political Theory* 35, no. 3 (June 1, 2007): 253–87, <https://doi.org/10.1177/0090591707299808>.

¹¹⁸ Joseph Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=1336461>.

¹¹⁹ *Ibid.*

I also add that there is a certain moral imperative that should exist for affluent countries because often their policy decisions have led to an increased need for migration. The history of how Mexico was forcibly opened up to disadvantageous free trade agreements provides a useful illustration of this moral issue. In the 1930's to the 1970's, Mexico experienced what has been called an economic miracle. There are a number of factors that this can be attributed to, so I focus on a few highlights here. Firstly, under President Lazaro Cardenas, the Mexican government nationalized key industries, most notably the petroleum industry, to gain more local control over this vital piece of the production economy.¹²⁰ Other strategic industries such as mining, railroads, and automobile manufacturing were also brought under the federal government's jurisdiction. Second, this process of nationalization was accompanied by rising unionization and major increases in real wages for those involved in these industries.¹²¹ This was followed by the implementation of the import subsidization industrialization (ISI) program. These policies helped develop Mexico's national economy by using government tariffs and import protection plans to insulate the newly nationalized industry from foreign commerce.¹²² Taken together, this set of developments helped stimulate huge growth in the Mexican economy and provided good jobs for laborers in industrial sectors. But it was not to last, and when the Mexican economy experienced its first major downturn, the state's response completely altered the domestic economy.

The Mexican economic miracle involved investing heavily in domestic industry, but to do so, the federal government borrowed heavily from international banks. Furthermore, because real wages in Mexico had grown so much, foreign investors were becoming increasingly reluctant to set up shop in Mexico. The Mexican economy was briefly propped up by its oil fields and the nationalized

¹²⁰ Norman Caulfield, *NAFTA and Labor in North America* (Champaign: University of Illinois Press, 2009), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=3414124>, 28.

¹²¹ *Ibid.*, 30.

¹²² *Ibid.*, 30.

oil industry, but when the price of oil collapsed in the 1970's, the national government went massively into debt. The government's response was to seek out new forms of foreign investment, in large part through setting up new industries with cheap labor practices. This new system, the maquiladora system, focused on attracting U.S. based manufacturers with the lure of cheap labor. Caulfield notes, "At the same time, Mexico's move away from the primacy of national markets toward the international market bolstered the position of Mexican elite sectors that had long advocated free-market capitalism, the dismantling of state-run enterprises, and the deregulation of labor."¹²³ It worked and foreign investors came in droves, especially from the U.S. And while the economy as a whole grew, workers were hard hit by these changing policies. This culminated with the introduction of NAFTA in 1994, which further opened the Mexican economy to U.S. imports. The U.S. began exporting grain and other goods at high volume and cheap prices, flooding the Mexican markets with big agriculture grain.

For small farmers and industrial workers, these changes were a death knell to their way of life. Farmers lost their lands; industrial workers lost their jobs or saw their wages plummet. As such, more and more workers from Mexico were forced to seek new opportunities in the U.S., contributing to an expansion in migration. The chief takeaway from this historical episode is that affluent countries like the U.S. play an active role in shaping migration patterns. U.S. direct investment into the Mexican economy and its investment in international institutions like the IMF helped drive a Mexican workers crisis that forced people to seek opportunities elsewhere. I argue that this introduces some moral culpability; if your country's economic policies contribute to pushing others to move, then that country bears some degree of responsibility to letting people in.

But the current system of U.S. border enforcement assumes not only that most people should not be let in, but also that violent forms of exclusion are morally permissible in dealing with

¹²³ Ibid., 55.

migration. Those who travel to the United States without documentation experience a status of deep precarity – Anita Sinha shows immigrant detainees are entitled to less legal rights around representation than even those in criminal justice proceedings.¹²⁴ If we accept that, morally, states do not have an inherent right to police their borders, and that freedom of movement should be treated as a fundamental right, then what justification can there be for the exercise of violence through immigration law? And to be absolutely clear, this system is violent. Detainees can be forced to labor for \$1 per day, can be subjected to solitary confinement for extended periods, or beaten and tear gassed by guards.¹²⁵ Deportees may be taken to a country they have not lived in 20 years, or have never lived in, left on a street corner to find their way. The families of those detained or deported may not know where their loved ones are, children may grow up never knowing parents that have been deported. Migrants die trying to cross the border, die of malnutrition or suicide in detention centers, are given inadequate food and no medical care.

All of these violent acts are symptomatic of a system that treats migrants as other, or less than, simply for the act of trying to cross the border while being the wrong color. I find this system of violence morally impermissible and suggest that the state prerogative to control membership does not trump the moral claims of migrants, refugees, and asylum seekers. Therefore, I take as my central normative precept the idea that the current system of immigration enforcement that relies on violence is morally unacceptable, and therefore merits questioning at all levels. I take up the particular study of bureaucracy to illustrate how the mundane can contribute to processes of violence, and to seriously question the role of the state in enforcing inequality.

Chapter Outline

¹²⁴ Anita Sinha, “Slavery by Another Name: Voluntary Immigrant Detainee Labor and the Thirteenth Amendment,” *Stanford Journal of Civil Rights & Civil Liberties* 11 (2015): 1–44.

¹²⁵ *Ibid.*

To make this argument, I will develop each of the three major themes I have outlined in this introduction. The chapters that follow are organized thematically, rather than purely chronologically. I have made this choice because bureaucratic development does not always follow simple linear paths. Changing administrations, evolving political contexts, new appointees, and new laws can radically shake up how a bureaucracy must work to achieve its ends. Thus, rather than trying to present a linear argument with each chapter covering a particular period of history, I focus on how each of these themes has impacted the DHS across its history. This is also possible because of the relatively short time period of the DHS' existence. Twenty years is a relatively short stretch in the broader history of American immigration enforcement. As such, I aim to provide three different snapshots of the DHS' bureaucratic development to both show how the organization has grown and evolved, but also to highlight how different factors have contributed to processes of change.

The first empirical chapter, "Quantifying the Homeland," investigates the role of metrics and data collection in the DHS' evolution as an immigration enforcement agency. I begin with this chapter because it helps frame the discussion of a homeland security imaginary, and foregrounds how bureaucratic processes of measurement and evaluation shape other priorities. I then move into the second empirical chapter, "Thoughtlessness in the Age of Homeland Security", which delves into the role that technological modernization and the idea of efficiency have played in driving the acquisition and use of new surveillance technologies. The third empirical chapter, "Building the Homeland Security Economy", attends to the ever-shifting relationship between the state and the private sector in the context of immigration enforcement. This chapter builds off the analysis in Chapter 2 to illustrate how bureaucratic politics have driven the DHS deeper into the arms of the private sector. Across all three chapters, I hold taut the thread of race and racialization to explore how these seemingly neutral discourses shape politics of racial hierarchy and domination.

All of these chapters present us with the problem of bureaucracy, of the entrenched systems of rules and regulations that shape modern political life. In the conclusion, I attend to the most pertinent and most challenging of questions in political theory – what do we do with this information? How, as activists or scholars committed to the normative project of preventing racialized violence, do we address the problem of bureaucracy? I do not necessarily have any answers, but, drawing on the works of brilliant feminist abolitionists like Mariam Kabe, Angela Davis, and Ruth Wilson Gilmore, I consider the problem of bureaucracy in the context of transforming institutions and imagining something new. I do not take the approach of suggesting that we can do without institutions. In an increasingly globalized world with a population of over 8 billion, attempting to manage without institutions seems an impossible task. Instead, I argue that abolitionist practices can help us to reconsider what we are designing bureaucracy *for* and to reconceptualize what it means to use bureaucracy to administer social practices. Governments, in this modern era, cannot operate with the bureaucracy so it is imperative for us to consider how bureaucracy can be reimagined to serve not efficiency, but community, not violence but restoration, not impartially, but with a deep attention towards care. I ground my discussion in the feminist care literature, to dream of what a caring bureaucracy could be in an uncaring world. Perhaps these will be merely musings. But it is my hope that these words will ignite thought and critical reflection as we fight for a thoughtful world in an era of thoughtlessness.

Chapter 2: Quantifying the Homeland: Metrics, Race, and Bureaucracy

Introduction

In October of 2023, the Biden administration unexpectedly reversed course, and announced the imminent construction of 20 miles of border barriers initially authorized under the Trump administration.¹²⁶ The decision was largely bureaucratic. Under the Trump administration, Congress had already appropriated funds for this construction and the funds had to be spent to reconcile the federal budget. While the pre-allocation of funds certainly played a role in the decision, the Biden administration also waived many federal regulations in order to expedite the process. Moreover, Secretary Mayorkas argued, “There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States”.¹²⁷ This tactic came as a surprise to many political observers as in his campaign, President Biden had staunchly opposed the construction of additional miles of border wall. But Border Patrol has consistently pushed back, claiming, “The border wall system impedes and denies illicit cross-border activity by allowing law enforcement an increased response time and greater opportunity for successful law enforcement resolution.”¹²⁸ Here, we see that immigration enforcement prioritizes barrier construction as a central tactic to secure the border. The combination of bureaucratic pressure and the belief in walls as an effective way to promote border security led to the Biden administration building sections of wall, despite campaign promises meant to appeal to anti-Trump voters.

¹²⁶ Eileen Sullivan and Colbi Edmonds, “Biden, The Border, and Why a New Wall is Going Up”, *The New York Times*, October 6, 2023.

¹²⁷ Alejandro Mayorkas, United States Department of Homeland Security, “Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, As Amended”, Federal Register 14 No. 9111, October 5, 2023.

¹²⁸ U.S. Department of Homeland Security Customs and Border Protection, “FY 2023 Congressional Budget Justification”, 2022.

Since its inception there has been considerable pressure on CBP to construct new fencing, install new surveillance technology, and take steps to promote greater awareness of what is happening at the border at any given moment in order to improve homeland security. But border walls have long been the subject of controversy, in part because there is considerable difficulty in assessing the extent to which they are actually useful as a deterrent to migration. From an analytical standpoint, this presents something of a puzzle.¹²⁹ How does DHS determine which tactics, funding allocations, and technologies are useful for advancing the goals of immigration enforcement, and what impacts do these assessments have? Given that the DHS is under pressure to demonstrate success in immigration enforcement, how does the department determine what constitutes success?

In this chapter I interrogate how the bureaucratic processes of examining and assessing performance help shape the enactment of immigration enforcement. This first empirical chapter examines the role of data and metrics in the bureaucratic development of the DHS. In doing so, I examine how the relationships between problem definition, performance metrics, and bureaucratic incentives shape the exercise of state power in immigration enforcement. To accomplish this goal, I focus on two research questions. First, how does the DHS conceptualize homeland security? Second, how do the metrics they construct for performance assessment build off that conceptualization to produce a particular vision of security? DHS bureaucrats are under constant pressure to demonstrate that they are effectively leveraging departmental resources to meet department goals, Congressional mandates, and Presidential decrees. DHS bureaucrats are also subject to substantial reporting requirements in order to justify their decision-making processes. Metrics are a way for the DHS to communicate and justify how they go about enacting the law of

¹²⁹ See for example American Immigration Council, “The High Cost and Diminishing Returns of a Border Wall” September 6, 2019, https://www.americanimmigrationcouncil.org/sites/default/files/research/the_high_cost_and_diminishing_returns_of_a_border_wall.pdf

the land. However, the process of translation is not a simple one. Going from law to metrics to implementation and then back up the chain is a complex political process, and how metrics are constructed shapes broader processes of enforcement. I foreground the role of metrics to illustrate how the categories used to assess homeland security are not value neutral, but in fact serve to amplify a particular vision of how the state should be constituted and protected from “undesirable” outsiders, which in turn perpetuates racialized forms of violence.

I argue that since its inception in 2003, the DHS has been pushed both by Congressional mandate and by internal department incentives to develop more quantifiable and precise metrics in order to provide more specific evidence of how DHS’ activities are contributing to homeland security. The DHS adopted many different measures to conceptualize border security and successful immigration enforcement. Shifts in the department’s bureaucratic heads, presidential priorities, and political context also shape how the department measures security. The bureaucracy’s internal incentives, namely bureaucrats’ goals of illustrating departmental success and securing additional funding for future endeavors, push the DHS’ apparatus towards trying to demonstrate its effectiveness to both its internal and external reviewers. Although the DHS has some bureaucratic autonomy, its historic inefficiencies have led to inspection agencies consistently demanding more data from the DHS. In order to meet this demand, there has been an increased turn towards generating data and monitoring more aspects of the DHS’ work. Key to this process of implementation is the idea that quantifiable metrics represent an objective assessment of departmental performance. Border security is difficult to measure and early frameworks like optimum deterrence relied on more qualitative assessments, which were considered less reliable by inspection agencies. Consequently, the Department has responded by moving towards outcome measures that are more readily demonstrable. In the context of the Southern border in particular,

showcasing results means the DHS demonstrating efficiency in terms of enforcement outcomes such as apprehension rates, numbers of detentions, and numbers of fugitives arrested.

However, I challenge this notion of quantification as objective by exploring how the federal government's underlying conception of border security is grounded in a carceral approach to immigration. Given the centrality of this idea to homeland security, the DHS as an agency is pressured, internally and externally, to produce results that illustrate their ability to enforce this carceral, racialized form of immigration politics. What this ideal of effectiveness obscures however is the racialized violence that demonstrating success requires – meeting the performance goals means inflicting racialized violence on immigrant communities through deportation, raids, and apprehensions. Precise, quantified metrics soothe the anxiety that bureaucrats might be enforcing laws unjustly, the facially neutral criteria give bureaucrats a way to illustrate their effectiveness in accomplishing their mission, without necessarily fully seeing the harm being done. And in doing so, the tendency towards increased data collection and quantifiable performance measures helps substantiate an imaginary of immigration enforcement that is both dependent on racial constructions of the “alien”, and carceral constructions of “security”.

I position this analysis as a work of “seeing like a state”, or an opportunity to investigate the ways that state actors in the bureaucracy. In his now seminal work, James C. Scott argues, “Any large social process or event will inevitably be far more complex than the schemata we can devise, prospectively or retrospectively, to map it.”¹³⁰ Scott suggests that the complexity of social phenomena is so great that in order to manage large-scale social projects, humans must engage in practices of simplification. Bureaucracies must rely on depictions of the world that do not, or cannot, capture all of its complexities. The decisions about how to measure and what to observe

¹³⁰ James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, (New Haven: Yale University Press, 1998), 309.

have profound political consequences. In this chapter, I illustrate how internal incentives for bureaucrats and bureaucratic agencies contribute to racialized or carceral outcomes, while simultaneously relying on internal discourses prioritizing efficiency and fair enforcement of the laws. In this sense, this chapter also builds on works like Sally Merry's *Seductions of Quantification*, which seek to elucidate how extant power constellations structure the tools states use to understand and measure the world. Indeed, Merry argues that "One effect of power is what gets measured. What is measured and counted by states depends on which problems seem politically important."¹³¹ I take Merry to mean the process of agenda setting, of deciding what must be measured and counted, is not politically neutral; that process also reflects sets of crystallized power struggles. A central task for bureaucrats is deciding how to assess the extent to which something matters, or the extent to which money should be used to address a particular priority. These decision-making processes are deeply shaped by pre-existing power structures in a given society.

More specifically for this chapter, Merry also develops an argument about how knowledge production for government agency work is a political process of consolidating complex phenomena into particular metrics. In her book, Merry focuses on composite indicators, which are meant to create easily understood data about complex social processes like gender violence. These metrics have often been increasingly quantified, for the purpose of creating comparative data and an aura of objectivity. But as Merry explains, in creating these seemingly objective measures, state and non-state actors transform political processes into data – obscuring the lived realities that form the basis of these selfsame metrics.¹³² A single indicator for the degree of gender violence in a country often misses the complex sets of social phenomena shaping that number. Without critically interrogating the underpinnings of this data, scholars and policymakers lose sight of what these data do and do

¹³¹ Merry, *Seductions*, 29.

¹³² *Ibid.*, 38-43.

not capture, as well as the forms of power that have shaped their construction. For this chapter then, I explore both the role of power in the process of constructing metrics, and how the implementation of metrics shapes the enactment of power through immigration enforcement.

To make this argument, I begin by providing key historical context for understanding the interaction between race and bureaucracy, making the case that studying the use of metrics in bureaucracy is vital to fully analyzing racial immigration politics in the United States. I then move to discussing a theory of bureaucracy, emphasizing why quantification and the proliferation of metrics are central to bureaucracy, and how these features of bureaucracy inadvertently expand and replicate existing forms of racial hierarchy. I provide a brief discussion of my methodological approach and then transition to historical analysis. In the historical analysis, I illustrate the particular role that metrics have played in shaping the DHS, by examining how the turn towards quantification has contributed to the DHS' carceral capacity and outline the consequences of these changes. I divide this section into two main parts of analysis, focusing on the two major immigration enforcement components of the DHS – ICE and CBP. I conclude by reflecting on this study's implications for examining the intersection of race and bureaucracy more generally.

Racial and Carceral Constructions of Border Security

The core premise of border politics is that the border should keep out those who do not merit inclusion in the polity. The criterion for those who should be excluded has evolved to some extent over time, but the essential premise that deportation, removal, and exclusion are appropriate tactics of social control for racially demarcated outsiders has remained relatively consistent. The first sets of deportation policy began to emerge in the late 1800's, the passage of the Chinese Exclusion Acts set the stage for keeping groups of specific racial or ethnic composition outside of the U.S. Crucially, court precedent established that deportation could not be considered punishment for a crime; deportation was instead a mechanism by which the state could engage its power of self-

protection, but remained a civil issue.¹³³ Through the process of enforcement, immigration officials built lists of qualitative deportable characteristics to be applied to immigrants. These characteristics were broadened over time to create more categories of excludable aliens, including the “idiot”, those convicted of crimes, or those who have committed crimes involving “moral turpitude”. Each category was designed to capture groups of immigrants that were not considered deserving of inclusion in the polity; however, categories like “moral turpitude” left substantial room for interpretation by immigration officers. As Hester shows, these policies would be utilized to enforce a racialized vision of deportation; for example, the “likely to become a public charge” provisions for deportation would be used as a catchall to restrict immigrants considered unassimilable such as Indian or East Asian immigrants.¹³⁴ As I stated in the introduction, laws emerging in the 1980’s and 1990’s such as the IIRIRA were drafted and contained provisions that helped increase the number of potentially deportable aliens, including reviving the use of crimes of moral turpitude.¹³⁵ The bedrock of the U.S. immigration enforcement code was constructed during an era of extreme racial exclusion. While the racial composition of those being deported would change over time and the logics used to justify removal evolved, the central logics of racial exclusion and removal remain central to immigration enforcement.

While early versions of restrictive immigration policymaking such as the 1882 Chinese Exclusion Act relied on simple versions of racism to substantiate their claims, later enforcement mechanisms would draw on more scientific versions of racism to justify discriminatory policies used by immigration bureaucracy. By neatly separating immigrants into clearly defined racial categories, immigration officials sought to develop a system of rules to provide different enforcement

¹³³ *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

¹³⁴ Hester, *Deportation*, 152.

¹³⁵ Melina Juárez, Bárbara Gómez-Aguñaga, and Sonia P. Bettez, “Twenty Years after IIRIRA: The Rise of Immigrant Detention and Its Effects on Latinx Communities across the Nation,” *Journal on Migration and Human Security* 6, no. 1 (January 1, 2018): 74–96. <https://doi.org/10.1177/233150241800600104>.

frameworks for different racial groups. This was linked to the need to police the boundaries and privileges associated with whiteness – schema of “scientific” categorization provided a more legitimate doctrine to support the superiority of white Americans.¹³⁶ In his book *Making Americans*, Desmond King outlines the work of the Dillingham Commission, an extensive study in eugenicist policy research that would go on to inform the construction of the national origins quota system formally passed in 1924. As King argues, the work of the Dillingham commission was a nearly \$1,000,000 (approximately \$31 million today) undertaking tasked with assessing the changing phenomena in immigration to inform U.S. policymaking.¹³⁷ Crucially, the commission found that new waves of immigrants were racially distinctive from previous waves, and that the new waves demonstrated remarkable inferiority in intellect.

While the results of the report mainly focused on Southern and Eastern Europeans, groups that would later be incorporated into whiteness, the Commission represents a crucial way that early politics of knowledge production shaped immigration policy. Research and data on race would be used as the backbone of restrictionist or exclusionary policies – by outlining that some groups were not sufficiently intelligent to be assimilated into the polity, researchers provided a stronger justification for eugenicist policymakers to continue exclusionary practices. The report also used eugenicist logics to provide further backing for the complete exclusion of Chinese and other laborers.¹³⁸ Here, it is important to foreground that racial logics have shifted and stratified over time. As David Roediger shows, as the U.S. became increasingly racially diverse, groups like Italian workers who were repudiated by the Dillingham commission would become eligible for inclusion.¹³⁹

¹³⁶ Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106, no. 8 (1993): 1707–91, <https://doi.org/10.2307/1341787>.

¹³⁷ King, *Making Americans*, 77.

¹³⁸ *Ibid.*

¹³⁹ David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 2007), <https://hdl.handle.net/2027/heb00570.0001.001>.

But the frameworks initially utilized to justify their exclusion remained in place – over time, groups further from the white Anglo ideal would become the main targets of restrictionist policy.

Once materialized, this system began to perpetuate additional forms of racial exclusion. Mae Ngai's work demonstrates the importance of the relationship between agential enactment and the passage of laws – while laws shape the agenda of the land, they are made tangible through the process of enforcement, the domain of agencies and bureaucrats. As one example, the 1929 Registry Act allowed immigrants to become lawful permanent residents if they could demonstrate residence and pay a \$20 fee. In practice, this law ended up becoming tremendously racialized because while more educated immigrants, usually from European countries, could both navigate the program and pay the fee, Mexican immigrants often didn't know about the program or couldn't afford the fee.¹⁴⁰ Even though the policy was constructed in a way that theoretically could help all immigrants, differences in their language skills and education levels left groups like Mexican immigrants in a state of legal limbo. Without the resources to access government programs, Mexican immigrants were subjected to fundamentally different relationships with immigration officials. Over time, the enactment of these quota restrictions would cement a racial skeleton upholding immigration policy.

While formal national origins quotas were abolished in 1965, racialized imaginaries of citizenship continued to shape policies of inclusion and exclusion. The type of legal colorblindness enacted by this new legislation did lead to changes in patterns of immigrants coming to the United States, with a notable swell in the numbers of Asian and Latin American immigrants seeking entry. However, these new patterns did not change the underlying logics of racial hierarchy which supporting the immigration system. As Claire Jean-Kim argues, "Colorblind talk furthers racial power not through the direct articulation of racial differences but rather by obscuring the operation of racial power, protecting it from challenge, and permitting ongoing racialization via racially coded

¹⁴⁰ Ngai, *Impossible Subjects*, 82.

methods”.¹⁴¹ Here Kim illustrates that obscuring the role of race in policy is actually a way of both expanding racial forms of power, and of protecting that power from challenge. By cloaking the mechanisms of hierarchy in race neutral discourse, officials are able to justify unequal treatment on the grounds that they are simply enforcing the law as it is written – even though the effects of that law may be tremendously racially disparate.

As the terror inspired by the “Red Scare” of the early 1950’s was beginning to abate, the public’s perception increasingly became that crime was spreading and drugs were being smuggled across the Southern border to flood communities.¹⁴² As many scholars of incarceration have shown, the 1970s saw a major shift towards a politics of punitive incarceration, driven in large part by the early days of the War on Drugs.¹⁴³ As I discussed in the introduction, this time was a substantive turn towards criminalizing immigrant communities through a proliferation of laws that increased the number and type of crimes that necessitated deportation. The passage of the 1986 Immigration Reform and Control Act (IRCA), happening in tandem with the massive expansion of the War on Drugs, marked a pivotal moment in expanding the turn towards criminalizing immigrants. The IRCA set in motion a series of policies which made the “criminal alien” both an institutionally legible figure, and one that needed to be separated from the general public. This law contributed to the creation of the Institutional Removal Program and the Criminal Alien Program, both of which represented partnerships with correctional facilities in order to find non-citizens who had committed “aggravated felonies,” a new category of crime defined under the IRCA, and to have these non-citizens deported.¹⁴⁴ Later, the Anti-Drug Abuse Act (ADAA) of 1988 would also institute

¹⁴¹ Claire Jean Kim, *Bitter Fruit: the Politics of Black-Korean Conflict in New York City*, (New Haven: Yale University Press, 2000), 17.

¹⁴² Naomi Murakawa, *First Civil Right: How Liberals Built Prison America*, (New York: Oxford University Press, 2014).

¹⁴³ For further analysis see Murakawa, *First Civil Right*, 2014, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York: New Press, 2010), and Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics*, (Princeton: Princeton University Press, 2015).

¹⁴⁴ Dowling and Inda, *Governing Immigration Through Crime*.

mandatory detention in cases where non-citizens were convicted of drug offenses. Somewhat unsurprisingly, the law also included provisions that established mandatory detention in drug trafficking related offenses, further expanding and cementing the reach of War on Drugs politics into the realm of immigration.¹⁴⁵

This process would be reinforced by the passage of the 1996 IIRIRA and the 1996 AEDPA, both of which broadened the scope of crimes that rendered immigrant communities deportable.¹⁴⁶ While IRCA first utilized the concept of an aggravated felony, the IIRIRA greatly expanded its reach. Aggravated felonies are an extremely flexible enforcement category, much like the concept of moral turpitude or a public charge. Aggravated felonies are notoriously nebulous to define and can include a variety of crimes such a burglary or illegal re-entry, but most notably many types of drug possession or resale can be considered an aggravated felony.¹⁴⁷ Aggravated felonies represent one of the many ways that the law expanded the set of crimes that could be utilized to deport immigrants. Across these legal policies, the “criminal alien” was reified as the central racialized figure that needed to be managed through border control policies. The criminal alien is a racialized figure because the long history of border politics has shaped a particular vision of who is a “criminal” in the political imaginary – for example, as Chacon and Coutin show, courts have often upheld the category of “Mexican-appearing” as sufficient justification for enforcement actions such as searches or raids. When an entire racial group is marked as potentially criminal, and then state resources are redirected at their control, it reifies the notion that the group as a whole is potentially a “criminal alien”. As Cecilia Menjivar puts it, “The strong association between “illegality” and being Mexican or Latina/o produces a spillover effect that reaches Mexicans and other Latinas/os who hold lawful permanent

¹⁴⁵ Anti-Drug Abuse Act of 1988 (Public Law 100-690, 102 Stat 4181, enacted November 18, 1988, H.R. 5210

¹⁴⁶ Stumpf “The Crimmigration Crisis”, Hernández, “Pursuant to Deportation”.

¹⁴⁷ Immigration and Nationality Act, INA § 101(a)(43), 8 USC § 1101(a)(43)

residence, those who are naturalized, and even those who are U.S.- born”.¹⁴⁸ In other words, when the deported are primarily Latinx, or Latinx appearing, it reinforces a notion that anyone who holds the same racial categorization is also likely to be “illegal”. Thus, at a policy level the U.S. government has drafted laws retooling the vast majority of immigration resources to be used in locating, detaining, and removing “criminal aliens”, now considered a major threat to the security of the polity. These sets of policies help transform the criminal alien into a highly visible and racialized figure – one that in the public imaginary is directly associated with Latinx appearing people, regardless of their actual immigration status.

However, equally crucial is the role of developing bureaucratic capacity to actually enforce these laws. A study conducted by the Government Accountability Office (GAO), which analyzed the ability of the INS to respond to issues of “criminal aliens”, found that the agency would be dramatically underequipped to actually enforce the provisions of the IRCA once it was passed, noting that while the IRCA legally provides grounds for limiting and removing certain immigrant groups, the actual impact of the law may not be “realized for many years”.¹⁴⁹ The report noted that a substantive barrier in this regard is the issue of incomplete information; the INS relied on the addresses that potentially deportable aliens provided to distribute notices of immigration hearings. However, because the INS could not confirm the validity of said addresses, it led to major gaps in the deportation system.¹⁵⁰ Relatedly, the INS did not have access to larger databases like the FBI’s National Crime Information Center (NCIC) at the time, and the GAO recommended that this ability be added so that INS could have access to centralized information on law enforcement contact. What we see here is that the stories of bureaucratic capacity building are not incidental to

¹⁴⁸ Cecilia Menjivar, “The Racialization of “Illegality””, *Daedalus* 150 (2) Spring 2021, 96.

¹⁴⁹ United States Government Accountability Office, *Immigration Control: Deporting and Excluding Aliens From the United States*, GAO/GGD-90-18, 1989, 15.

¹⁵⁰ *Ibid.*, 28.

the process of making race through enforcement. While the legal architecture may have been set in motion in the 1980s and 1990s, it would not be until the consolidation and reorganization of enforcement processes under the DHS that this legal architecture would be fully utilized.¹⁵¹ As the INS and DHS worked to more fully utilize these enforcement laws, they expanded the scope of punitive enforcement and deepened ideas about which groups are appropriate subjects for deportation.

I thus argue that in order to fully understand the development of race in immigration politics, it is imperative to examine processes of bureaucratic development. Law does not materialize into the land fully formed; the process of implementation transforms how law plays out in practice. Indeed, the law sets certain guidelines for bureaucratic action but often the precise details of enacting restrictive policy stem from the work of agency actors. I am not trying to argue that Congressional mandates do not matter. Quite the contrary, I instead want to argue that bureaucracies like the DHS must be aware of their constraints and manage resources to attempt to meet Congressional demands and carve out their own domains of action. These internal incentives matter very much for how racialized politics emerge and shape American political development.

Given the longstanding patterns of entrenched racialization in the U.S., race plays a particularly central role in the politics of immigration enforcement. To reiterate a definition from the introduction, I here use the term thoughtlessness to express a particular cognitive inability to see or think that emerges from how one reads or interprets the world, and in turn can legitimate violence against particular groups because that groups humanity is not seen or understood by the thoughtless actor. While Arendt utilized thoughtlessness specifically to discuss the politics of the German genocidal state machine, through the figure of Eichmann, I here use thoughtlessness to describe the inability to apprehend the targets of enforcement as truly human beings. This is not to say that these

¹⁵¹ Macias-Rojas, *From Deportation to Prison*.

individual bureaucrats are simply heartless or ignorant; rather, the internal structures of the U.S. immigration bureaucracy make it so that the individuals who are subject to policy outcomes are read as data points or part of a broader immigration puzzle to be solved. The bureaucracy as a whole is not incentivized to care about people per se; the immigration system is set up such that the outcomes that matter are those demonstrating “homeland security”. When immigration enforcement is reduced to a policy matrix, the human cost recedes into the background. Though perhaps the scale is not as morbidly grandiose as the work of Eichmann, the scale of violence committed against human beings in the United States through immigration enforcement is truly staggering. The violence of immigration enforcement ripples throughout communities. The shock of seeing a loved one be deported fundamentally changes a child, a sibling, a partner.¹⁵² The heartache of a detained or deported loved one’s absence scars that child’s everyday experiences, inducing a longing, a wondering as to why their parent had to be taken away. The fear of communities that look around the corner, worrying about “La Migra”, worrying if they can go to the hospital safely causes entire communities to live more precarious lives. For those racialized as Latinx, the fear of being apprehended as a “criminal alien” structures one’s relationship to the state. And the inability of immigration enforcement to see or prioritize these types of human experiences stems from the particular bureaucratic structure of immigration enforcement.

Bureaucracy and Measurement in Enforcement

I here outline two central features of bureaucratic development that I argue play central roles in how incentives for bureaucratic agencies shape and enable racialized violence. The first feature of bureaucratic development to examine is a bureaucratic imperative to automate, update, and render more efficient – I elaborate on this concept in terms of metrics here, and then in terms of

¹⁵² For more on this consider Monisha Das Gupta, “Don’t Deport Our Daddies’: Gendering State Deportation Practices and Immigrant Organizing,” *Gender & Society* 28, no. 1 (February 1, 2014): 83–109.

technological modernization in Chapter 3. The central purpose of bureaucracy is to instill a system of order based on the routine application of rules to set situations; the role of the bureaucrat is to provide the correct interpretation of existing rules in order to render a fair outcome.¹⁵³ The bureaucracy is the backbone of modern government; while Congress and the President may set the rules, but for the rules to become material, they require implementation. But of course, the enforcement of the law is not the same as the law itself, and no matter how cleverly designed the policy, without the appropriate resources to move personnel, acquire equipment, or design an infrastructure, the law will not be enforceable.

However, bureaucracy always operates within the confines of resource scarcity, and in a democratic government, has a certain degree of accountability to the voters in terms of using those resources wisely.¹⁵⁴ Logically then, the bureaucracy is motivated to improve its ability to perform its critical tasks. In the contemporary era this may take the form of novel forms of technology, automating certain key tasks, finding ways to speed up the flow of information. Most crucially for this chapter, modernization also entails finding precise ways to capture the extent to which the bureaucracy is performing its tasks. Indeed, within government there is an entire second set of bureaucracy, in the form of auditors, that review departmental programs in order to assess how and where they can be made more efficient or improve outcomes. Bureaucrats are also regularly subject to the whims of Congress and the President – agency outsiders may introduce new laws or doctrinal changes that complicate and slow bureaucratic policy making.¹⁵⁵ Thus, bureaucracy is an ever-moving machine aiming towards efficiency, but often failing to reach it.

The second imperative feature of bureaucratic development is the way that bureaucracy “sees”. As Weber reminds us, both the bureaucracy and the bureaucrat observe the world through a

¹⁵³ Weber, *Economy and Society*

¹⁵⁴ Lewis, *Presidents and the Politics of Agency Design*.

¹⁵⁵ *Ibid.*

particular lens. The bureaucrat operates within a system of logic and regulation, and in order to be visible to that system, one must be encoded in a certain way.¹⁵⁶ James Scott has called scholarly attention to the way that maps, censuses, surveys, and other artifacts of knowledge have been used to render areas and populations visible, and legible, to the state. Scott looks at the implementation of universal last names and argues that,

In almost every case it was a state project, designed to allow officials to identify, unambiguously, the majority of its citizens. When successful, it went far to create a legible people. Tax and tithe rolls, property rolls, conscription lists, censuses, and property deeds recognized in law were inconceivable without some means of fixing an individual's identity and linking him or her to a kin group.¹⁵⁷

From this, we see that bureaucracies do not inherently view people as people, instead, each person is interpreted within the particular function that the bureaucracy plays. In the case of immigration enforcement then, bureaucracy views people as different categories of citizen and non-citizen, carefully placed along a continuum from most desirable, the citizen, to least desirable, the criminal alien. This placement occurs through crafting regulations to decide which groups should receive aid and be uplifted, and which groups should be displaced from political life. One example comes from the ICE's civil immigration enforcement priorities, constructed and refined over several decades. In 2014, a new memo came out which outlined a new prioritization system for which types of immigrants needed to be removed as quickly as possible. At the top of the list were groups including immigrants suspected of terrorism, aliens associated with gang activity, and anyone apprehended while trying to cross the border.¹⁵⁸ This last point is particularly noteworthy – given that border enforcement is strongest along the Southwest border, and that 92% of Border Patrol arrests are from Mexico and the Norther Triangle, this prioritization clearly targets Latinx people, while being

¹⁵⁶ Weber, *Economy and Society*

¹⁵⁷ Scott, *Seeing Like a State*, 65.

¹⁵⁸ Jeh Charles Johnson, "Policies for Apprehension, Detention, and Removal of Undocumented Immigrants", Internal Memorandum, November 20, 2014.

under a race neutral guise.¹⁵⁹ In doing so, ICE's priorities help substantiate an already racialized immigration system by pushing officers to continue to prioritize the racial groups deemed most dangerous.

Taken together, these two internal features help demonstrate the central role of measurement in immigration enforcement. Measurement, data, and categorization are essential to the mission of the bureaucracy, for without the data, how will the population become legible to the bureaucrat? Quantification and metric proliferation are so powerful in the realm of immigration enforcement because the turn towards quantification helps further entrench a pre-existing tendency towards carceral control. This stems from the fact that quantifying and measuring rates of detentions, interdictions, searches, and seizures is a much more accomplishable, and demonstrable mechanism for illustrating security than trying to assess something like overall community welfare. The performance measures the DHS adopts reflect its underlying orientation towards demonstrating its ability to secure the nation. Furthermore, because the bureaucracy contains an internal drive towards efficiency, and requires simplifying the complexities of the world to certain forms of legible knowledge in order to function. The bureaucracy is driven towards creating performance measures that it can use to demonstrate success, and that operate within its particular knowledge paradigm. In the case of the DHS, this is a paradigm informed by the core idea that the border must be secured through the process of enforcement. As a result, I argue that a turn towards quantifiable, specific performance metrics ends up furthering a broader vision of immigration enforcement grounded in racialized, carceral politics. When demonstrating success means showing how many miles of fencing have been put into place and how many criminal aliens have been detained, agents across the

¹⁵⁹ TRAC, "Border Patrol Arrests 2002-2022", Transactional Records Access Clearinghouse, Accessed May 15, 2023, <https://trac.syr.edu/phptools/immigration/cbparrest/>.

bureaucracy are pushed further towards justifying their work through demonstrating carceral success.

Methods

To perform this analysis, I conducted archival research analyzing DHS bureaucratic documents from 2003 up to the present. For this chapter, I focused primarily on the parts of my document set that examined the development of both performance metrics for the department as a whole, as well as documents concerning the DHS' collection and retention of data for enhancing its ability to control border security. I utilize the same document set throughout the dissertation, although for each chapter, I focus on different themes and utilize different sets of codes. This document set contains a wide variety of bureaucratic documents obtained from the Homeland Security Digital Library, FOIA requests, and Congressional Materials. The result was a 763-document set totaling around 32,000 pages. The documents consist of a mix of internal department reports, auditor reviews, FOIA documents, Congressional hearings and appendices, reports on metrics, annual reports, contracts, and fiscal reviews. The FOIA requests were primarily filed by prominent legal non-profits, including the Just Futures Law firm, the ACLU, and newspapers such as the Intercept. These documents contain email correspondence between DHS and private contractors, internal communication and policy decisions from DHS officials, and work schedules for surveillance projects. Once I generated the document set, I read through around 50 of the documents to create a set of thematic codes for the data. These codes included measuring/conceptualizing border security, evaluations of programs, quantification, carceral applications, race, gender, and financial accountability. I then utilized Atlas T.I.'s text search function to fully code the document set for these themes. I examined these themes, putting the document set in chronological order and began to outline a historical trajectory of bureaucratic development.

Each of these documents represents an accumulation of state knowledge creation, which in turn means that it is inundated with particular discourses of what constitutes the appropriate domains and exercise of state power.¹⁶⁰ I also heed the call of scholars like Francis and Stoler, who implore researchers to attend to the way power operates in the process of archival production.¹⁶¹ By paying closer attention to the silences in the archives, whose voices are and are not preserved by the official record, and what internal narrative the archives attempt to tell, historical researchers can provide a more nuanced telling of political development. I draw on Stoler's archival technique of "reading along the grain", where researchers treat archival documents as the subject of analysis, rather than a source of information.¹⁶² By treating the internal DHS documents as my subject of analysis, I am better able to grapple with how these internal logics can be productive of racialized exclusionary systems, while remaining deeply cloaked in bureaucratic machinations of efficiency.

Developing Interior Enforcement Metrics Post 9/11

The post 9/11 era saw the emergence of a particular racial imaginary of who constitutes a potential threat to homeland security that the DHS would need to address. As critical theorist Junaid Rana outlines, in the months following 9/11 there was a moralized panic about the threat of terrorism, but that moral panic was also deeply racialized.¹⁶³ The image of the terrorist is deeply linked to a particular imaginary of the "dangerous Muslim", and in the aftermath of 9/11 there were deep concerns about the linkage between unauthorized border crossing and acts of terror. However, this racial imaginary primarily focused on the bodies of the "Muslim appearing" foreigner; as Rana suggests this racist imaginary was not only targeted towards actual Muslims but also Sikhs and non-Muslim South Asian migrants who were also targeted by anti-Muslim discrimination.¹⁶⁴ This is a

¹⁶⁰ Scott, *Seeing Like a State*, 1998.

¹⁶¹ Francis, "The Price of Civil Rights", and Stoler, "Colonial Archives".

¹⁶² Stoler, Ann Laura, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*, (Princeton: Princeton University Press, 2009).

¹⁶³ Rana, *Terrifying Muslims*, 60.

¹⁶⁴ *Ibid.*, 61.

crucial reminder that race is constructed through everyday processes – the image of the terrorist undergirding DHS policy relied on a sweeping set of logics grouping people into key racial categories like “the terrorist”.

Following the department’s inception in 2003, DHS officials moved quickly to establish new sets of working parameters to shape the future of this new agency. One major part of this process was figuring out what precisely the aims of national security needed to be, and what it really meant for the DHS to be involved in “protecting the Homeland”. In initial proposals to create the DHS, there was a more substantive focus on the idea of providing national security against terrorism, indeed, the proposal lists “Prevent terrorist attacks within the United States; Reduce America’s vulnerability to terrorism; and Minimize the damage and recover from attacks that do occur” as the main strategic priorities for the new department.¹⁶⁵ While border security was considered a substantive part of the DHS’ new strategic objectives, even border enforcement is primarily conceived in relation to the idea of terrorism and also the DHS’s role as an economic agency. In the same document, the plan outlines, “The Department would manage who and what enters our homeland, and work to prevent the entry of terrorists and the instruments of terrorism while simultaneously ensuring the speedy flow of legitimate traffic”.¹⁶⁶ The need for security is balanced against a desire to keep trade flowing effectively, the new DHS needed to effectively leverage its resources both to secure the homeland and prevent economic disruption. As we see here, this proposal provides a general directionality for the agency, but does not necessarily provide a specific plan for managing who or what enters the homeland. Instead, an underlying understanding of which groups are considered threats would be leveraged to draft more concrete agency policy.

¹⁶⁵ Office of Homeland Security, *National Strategy for Homeland Security*, July 2002, 8.

¹⁶⁶ *Ibid.*, 9.

As the initial fervor around terrorist attacks on the U.S. began to subside in public discourse, the DHS began the process of figuring out more specifically how to actually run this new massive department. By 2005, the political context of the bureaucracy had shifted; while the war on Terror raged abroad, domestically the problem of “illegal immigration” took the spotlight. Moreover, as Anna Sampaio shows, between 2001 and 2008 Congress passed increasingly restrictive laws, extending the categories of person considered deportable, and increasing collaboration between federal and local law enforcement.¹⁶⁷ Federal funding also increased border militarization by providing funding for agents and technology. However, while the Congressional mandate pushed for strict control of immigration it was up to the DHS to ascertain the precise mechanisms through which the law would be carried out. As part of the process of adjusting to these new mandates and keeping up with immigration enforcement, the DHS moved to new sets of metrics for assessing performance, new types of data to be collected, and an increasingly modernized reporting system for accountability.

The departmental reorganization was not smooth, and the new DHS was deeply beset with issues of accountability, data collection, information technology, and financial controls.¹⁶⁸ In the face of these organizational issues, the DHS needed to quickly demonstrate its ability to effectively complete its task of executing enforcement mandates. To this end, an urgent organizational priority was figuring out how precisely to coordinate between new component departments to efficiently conduct the business of homeland security. As part of the reorganization, border security was divided between two major components – ICE and CBP. Both component organizations began their tenure with a departmental focus on carceral forms of enforcement. As I have shown earlier,

¹⁶⁷ Anna Sampaio, *Terrorizing Latina/o Immigrants: Race, Gender, and Immigration Politics in the Age of National Security*, (Philadelphia, Temple University Press), 2015.

¹⁶⁸ Department of Homeland Security Office of the Inspector General, “Major Management Challenges Facing the Department of Homeland Security”, OIG 05-06, December 2004.

this focus on controlling immigrant populations through punitive forms of enforcement was not a new mandate – Congress had already given the DHS the legal tools it needed. However, with all eyes on the new department, both ICE and CBP experienced considerable pressure to show that they were serious about controlling immigration.

The newly formed agency was tasked with a massive function and so needed to be able to justify its expenditures to Congress for continued funding. From the outset, ICE's strategic goals focused on improving the extent to which the state is could deploy its punitive power against particular immigrant targets. For ICE, its first major strategic plan – Operation Endgame – focused on the necessity of removing all removable aliens in order to meet the demands of homeland security.¹⁶⁹ More specifically the plan lists the following objectives, “Objective 1.1 Promote public safety and combat immigration-related crimes by removing individuals, especially criminals and other threats to public safety, who are unlawfully present in the United States. Objective 1.2 – Support DHS efforts to deter illegal migration”.¹⁷⁰ In this, we see a particular linkage between the idea of deportation and security. Indeed, there is an almost triumphant, militarist undertone to successful removal. One budget justification presented the following information on removals, “Set New Record for Alien Removals: ICE removed more than 186,600 illegal aliens from the country in FY 2006, a record for the agency and a 10 percent increase over the number of removals during the prior fiscal year.”¹⁷¹ Deportation produces security insofar as it both removes individuals who are threats to security, and it supports broader efforts to deter others from migrating.

Similarly, because this understanding of deportation informed ICE's vision of homeland security, it followed somewhat logically that ICE utilized performance metrics focused on scaling up

¹⁶⁹ United States Department of Homeland Security Immigration and Customs Enforcement, *ENDGAME: Office of Detention and Removal Strategic Plan 2003-2012*, August 15, 2003, 2

¹⁷⁰ *Ibid.*, 3-4.

¹⁷¹ United States Department of Homeland Security, *Budget in Brief FY 2008*, 2008, 41.

removal operations. These performance metrics are shaped both by political context and the internal bureaucratic need to demonstrate effectiveness. In the 2003 annual report, ICE's main performance metric was to "Remove 100% of removable aliens", although the DHS also noted that they did not expect to remove 100% of removable aliens until 2009, when bureaucrats anticipated that sufficient removal capacity would have been developed to meet this goal. In the next three years, removal numbers did increase, moving from 189,386 formal removals in 2003 to 208,521 by 2005.¹⁷² While the change in removal rate likely has many factors, what we see from the bureaucratic documentation is that the department as a whole set its priorities in terms of carceral success. The DHS urgently needed to guarantee further funding for its mission by detaining and removing in higher numbers, showing the agency's ability to secure the homeland by removing potential threats.

To support the process of removing potential threats, ICE began to develop other metrics and collect new forms of data that focused on tracking the efficacy of the agencies carceral control. This stems in part from issues that both ICE and CBP (which I discuss later in the chapter) were facing in terms of data collection from their programs. Accountability efforts from both within and outside the department flagged that both ICE and CBP were consistently unable to provide sufficient data to illustrate the efficacy of the tools they were employing to gain control of the immigration system. A useful vignette comes from the ICE Fugitive Operations Team in 2007. The Fugitive Operations Team is a dedicated sub-entity within the Office of Detention and Removal (DRO), that is focused on apprehending aliens who had a court order for a hearing or removal but did not show up to their court date. Fugitive Operations were a major priority for ICE between 2003 and 2006. Early predictions for this team were optimistic to say the least; initial goals posited that this team would be able to completely work through the backlog of fugitive aliens by 2012.

¹⁷² United States Department of Homeland Security Office of Immigration Statistics, *2005 Yearbook of Immigration Statistics*, 2005.

However, the fugitive operations team, despite having a massive investigative budget, was consistently unable to meet their performance goals.

Table 1: Funds Allocated to Fugitive Operations

Fiscal Year	Total Funds Allocated
FY 2003	\$9,333,519
FY 2004	\$12,683,962
FY 2005	\$72,186,192
FY 2006	\$110,638,837
Total	\$204,842,510

Source: ICE Federal Financial Management System reports

Figure 2: ICE Fugitive Operations Funding 2003-2006

One major issue these teams faced stemmed from how departmental heads conceived of success in fugitive alien apprehension. Early goals in 2004 focused on apprehending criminal aliens, and a departmental memo outlined that each fugitive operations team should ensure that 75% of those they apprehended were “criminal aliens.”¹⁷³ The reconstruction of these performance goals reflected the DHS’ initiative to increase the overall carceral capacity of the department, the new goals prioritized the criminal alien, thus playing into broader patterns of racialization around “criminal aliens” as a particularly central threat to national security. However, it quickly became clear that in terms of meeting the backlog of fugitive cases, this goal was far too restrictive and in 2006 the department changed the criteria again, noting that, “This goal required the apprehension of 1,000 fugitive aliens per team each year. The apprehensions were prioritized as follows: (1) fugitives posing a threat to the nation; (2) fugitives posing a threat to the community; (3) fugitives with a violent criminal history; (4) criminal fugitives; and (5) non-criminal fugitives.”¹⁷⁴ This expansion of

¹⁷³ Office of Detention and Removal Operations Memorandum, “Case Load Priority with Fugitive Operations,” January 22, 2004

¹⁷⁴ Office of Detention and Removal Operations Memorandum, “Fugitive Operations Case Priority and Annual Goals,” January 31, 2006.

potential cases to address was meant to ensure the unit could meet its performance goals. The unit director at the time argued that the 75% goal was too constraining for the fugitive operations teams, and by loosening the requirements the department would be better able to work through the backlog.¹⁷⁵

However, despite the adjustments in performance metrics, the fugitive backlog continued to increase. Interestingly, the team cited two major difficulties in meeting the departmental goals – insufficient detention bed space, and major inaccuracies in the databases for managing deportation cases.¹⁷⁶ The solution to both problems appeared simple, increasing detention bed space and updating the database would improve the programs overall efficacy. Thus, even though this smaller department had consistently failed to meet its metrics, the question was never whether fugitive operations was a worthwhile use of finances. Instead, the focus became how to optimize the carceral politics exhibited by the fugitive operations teams. This vignette helps show how the bureaucracy “sees”. In this instance, the fugitives being apprehended by ICE are seen as a problem to be controlled; the solution is rooted in the carceral imaginary undergirding the DHS’ politics. When the problem could not be managed through the current system of detention and deportation, the bureaucracy’s solution is to innovate, optimize, and update to ensure performance goals can be met. This too can be interpreted as a type of thoughtlessness - the solutions to the department’s problems are optimized carcerality; the possibility of reimagining or reconsidering the overall approach to managing security is never even in question.

Similarly, this time period between 2004 and 2008 also saw a notable increase in ICE detention and removals. ICE as a department continued to develop performance goals oriented towards increasing immigrant incarceration, which helped underscore the broader trend towards

¹⁷⁵ Department of Homeland Security Office of the Inspector General, “An Assessment of United States Immigration and Customs Enforcement’s Fugitive Operations Teams”, OIG-07-34, March 2007.

¹⁷⁶ *Ibid.*, 15.

immigrant criminalization. Perhaps most notably, in 2008, ICE began to implement a new set of guidelines that emphasized not just the percentage of removal orders being carried out but also assessing the success of detention programs in terms of total volume of aliens removed.¹⁷⁷ This is a transition from assessing success in terms of meeting legal criteria, e.g. removal orders, and towards success as sheer numbers of people being cast out. This new measure was tied to monitoring the percentage of removal orders carried out, the number of charging documents issued to undocumented immigrants, and the “percent of illegal aliens removed from the U.S. based on the number of illegal aliens processed for immigration law violations during the same period”.¹⁷⁸ Here, a drive towards providing more precise quantification of how effective ICE was as an agency reflected an internal set of prerogatives centering detention and deportation as the primary measures of border security. By more precisely outlining how to calculate efficacy in deportation, ICE continued to cement its governmental position as one of the foremost carceral bodies in immigration enforcement and to secure increased funding in subsequent years.¹⁷⁹

ICE Under the Democratic Deporter-in-Chief – Metrics During the Obama Era

The Obama presidency was ushered in with promises of comprehensive immigration reform that rapidly fell apart. Despite having a Democratic majority in both the Senate and the House, much of Obama’s first two years were focused on passing the Affordable Care Act (ACA), dealing with economic fallout from the 2008 recession, and working towards better unemployment insurance. After a lengthy battle, the ACA was passed, and the President turned towards immigration reform. It may have been too late of a pivot. The balance of power in Congress had shifted, and the administration was unable to secure comprehensive immigration reform despite campaign promises. Without a strong ability to usher cooperation to promote key campaign

¹⁷⁷ Department of Homeland Security, *Annual Performance Report 2008-2010*, 2008, 27.

¹⁷⁸ *Ibid.*

¹⁷⁹ Department of Homeland Security, FY 2009 Budget in Brief, 2009.

promises, the DHS and Presidency had to develop new frameworks to improve immigration. One of these priorities was targeted actions to further pursue “criminal aliens”.¹⁸⁰ To this end, both ICE and CBP both greatly scaled up their capacity to detain, and during this time period ICE was highly successful in removing unprecedented number of people. This was most notable in 2012, a “record breaking” year, in where ICE formally removed 409,847 people.¹⁸¹

These new developments were also linked to changes in top DHS administration, and how new administrators understood the department’s role. When Janet Napolitano was appointed to be the new Homeland Security Secretary, she played a large role in initiating departmental overhaul in the form of several comprehensive departmental reviews, notably a Bottom-Up Review (BUR), and the department’s first Quadrennial Homeland Security Review (QHSR).¹⁸² Following these reviews, ICE increasingly positioned success in interior enforcement with improving the efficiency of detention processes. While previous metrics focused on the sheer numbers of removals, or removals as a percentage of orders, by 2010 the department was grappling with other aspects of its detention programs. The BUR outlined a new set of priorities for detention, notably,

To improve the efficiency of this process [immigrant detention], particularly as applied to criminal and other dangerous foreign nationals, DHS will increase non-investigatory law enforcement staffing for detention and removal operations to focus law enforcement on criminal investigations. DHS will continue to institutionalize the Secure Communities program to ensure enforcement resources are targeted based on risk, ensuring that criminal aliens are identified and processed efficiently for removal.¹⁸³

Efficiency here takes on a different meaning than other places in DHS documentation, notably that here it also entails the management of risk. Michael Power argues that one of the key bureaucratic imperatives in the modern era has become to manage risk as precisely as possible, taking

¹⁸⁰ Sampaio, *Terrorizing Immigrants*, 136.

¹⁸¹ *Ibid.*

¹⁸² U.S. Department of Homeland Security, *Bottom Up Review Report*, July 2010 and U.S. Department of Homeland Security, “Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland”, February 2010.

¹⁸³ United States Department of Homeland Security, *Bottom Up Review 2010*, 2010, 22

preventative action to foreclose the possibility of error.¹⁸⁴ Similarly, the BUR also notes that, “DHS will operate its detention system to ensure that the level of detention is commensurate with the risk posed by the detainees in its custody”,¹⁸⁵ a very similar rhetorical construction of the relationship between risk and success. In this sense, efficiency is about the precise exercise of power by focusing on the points of greatest risk – creating more precise protocols to guide who should be removed will minimize risk and improve outcomes for the department as a whole. “Criminal aliens” as the paradigmatic racialized figure of immigration, represented the highest level of risk and therefore needed to be aggressively managed. Risk management discourse increasingly proliferates DHS internal documentation as the years progress, and eventually the idea of risk management would also become central to how DHS conceptualizes border security. Many similar patterns can be noted across the development of CBP, although the process of implementing the metrics presented different sets of challenges.

Securing the Border – CBP’s Process of Developing Border Security Metrics

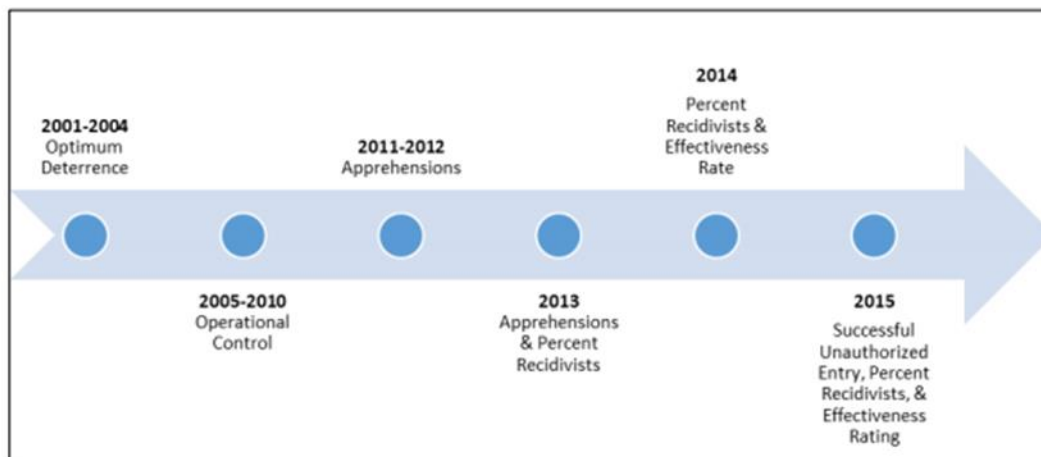
The formation of the DHS meant that CBP was now tasked with both addressing flows of unauthorized migrants across the border and performing customs and inspection duties. With this dramatic shift in departmental priorities, CBP officials were forced to take a hard look at how they assessed border security.¹⁸⁶ In 2003, there were relatively few performance measures for assessing border security. This stemmed from two separate issues; first, in the new department organization, Border Patrol’s role changed considerably. While previously Border Patrol had been coordinated under the INS, which also oversaw detention and removal efforts, the reorganization led to the creation of DRO, housed under ICE, which also had separate oversight and accountability

¹⁸⁴ Michael Power, *Organized Uncertainty: Designing a World of Risk Management* (Oxford: Oxford University Press, Incorporated, 2007), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=415614>.

¹⁸⁵ Ibid.

¹⁸⁶ U.S. Congress, House, Subcommittee on Management, Integration, and Oversight of the Committee on Homeland Security, *CBP and ICE: Does the Current Organizational Structure Best Serve U.S. Homeland Security Interests*, 109th Congress, First Session, November 15, 2005.

structures from CBP. Thus, at this time, Border Patrol was in the process of recalibrating how they aligned border enforcement priorities with detention efforts now that detention was warehoused within a different sub-entity.¹⁸⁷ This process resulted in DHS going through many different performance measures surrounding border security. Figure 3 (below) shows the changes in DHS security measurements from 2003-2015 as articulated by the Congressional Research Service (CRS).



Source: CRS representation of information provided by Department of Justice, *Fiscal Year 2000 Performance Report and Fiscal Year 2002 Performance Plan*, April 2001; U.S. Department of Homeland Security, performance and accountability reports for FY2003-FY2006; U.S. Department of Homeland Security, annual performance reports for FY2007-FY2017.

Notes: For FY2015, Successful Unauthorized Entry represents a metric that was under development that year but not yet reported in the DHS Annual Performance Report for FY2015-FY2017.

Figure 3: Graphic of Border Security Measures 2001 - 2015¹⁸⁸

As we see here, CBP went through several phases of metrics used to ascertain border security. Elements of each would be retained, while others would be dropped. The result was that over time, CBP developed increasingly granular ways to assess Border Patrol performance.

Beginning in 2003, the first set of CBP metrics focused on securing *areas* of the border and successful deployment of resources. At first, Border Patrol’s main metric for border security was the number of sectors that had achieved “optimum deterrence”, which they defined as, “the level at

¹⁸⁷ Department of Homeland Security Office of the Inspector General, *An Assessment of the Proposal to Merge Customs and Border Patrol with Immigration and Customs Enforcement*, OIG-06-04, November 2005.

¹⁸⁸ Carla N. Argueta, “Border Security Metrics Between Ports of Entry”, Congressional Research Service, February 16 2016.

which applying more Border Patrol agents and resources would not yield a significant gain in arrests/deterrence”.¹⁸⁹ Optimum deterrence remained the main assessment metric for border security until 2006. Other metrics focused on more tangibly measurable outcomes, such as the number of pounds of cocaine seized, or the percentage of passengers that complied with vehicle screening.¹⁹⁰ The optimum deterrence framework came under heavy fire from internal auditors, as well as the GAO. Most notably, many of these critiques focus on how optimum deterrence was neither well defined, nor easily measurable. In particular, the assessment of when adding more resources to a sector would significantly improve arrests or deterrence required highly subjective analysis from the CBP agents in that sector. Finding evidence to support that additional resources wouldn't be helpful proved to be difficult, as CBP was not keeping sufficient data on how component technology pieces might contribute to higher degrees of security.¹⁹¹

As such, the DHS began to experience more pressure to quantify its results. As one report reads,

Effective implementation of this framework requires agencies to clearly establish results-oriented performance goals in strategic and annual performance plans for which they will be held accountable, measure progress towards those goals, determine the strategies and resources to effectively accomplish the goals, use performance information to make the programmatic decisions necessary to improve performance, and formally communicate results in performance reports.¹⁹²

These critiques are particularly interesting in that they highlight the beginnings of a department wide transition to increased quantification, and proliferation of metrics. This alongside other reports represent a shift towards “results-oriented performance goals”. This term, ubiquitous in my document set, refers to goals that have quantifiable outcome measures which are demonstrably linked to the agency's mission, preferably with the ability to demonstrate year-to-year improvement.

¹⁸⁹ Department of Homeland Security, *Annual Performance Report 2003*, February 13, 2004, 152.

¹⁹⁰ *Ibid*, 153-157.

¹⁹¹ DHS-OIG, *A Review of Remote Surveillance Technology Along U.S. Land Borders*, OIG-06-15, December 2005.

¹⁹² U.S. Government Office of Accountability, “Better Data and Controls are Needed to Assure Consistency with the Supreme Court Decision on Long-Term Alien Detention”, GAO-04-434, May 2004.

These types of goals, focusing on discrete, measurable outcomes, push bureaucratic agencies away from subjective data and towards more modern standards of efficiency which are primarily oriented towards quantitative analysis.

Following these reports, in 2005 CBP began to transition away from the optimum deterrence framework and towards a new system of “operational control”. This framework emerged from the DHS’ strategic planning process - agency representatives were concerned about the department’s ability to meet the logistical challenges of this new era of homeland security and as such, undertook a strategic planning process aimed at developing “performance management to provide accountability for results”.¹⁹³ As part of this strategic plan, one of the most important new objectives is Objective 2.2 under “Prevention” which specifies that,

The Department will enforce border security in an integrated fashion at ports of entry, on the borders, on the seas and before potential threats can reach our borders. Through the continued deployment of the appropriate balance of personnel, equipment and technology we will create “smart borders.” Not only will we create more secure United States borders but, in conjunction with international partners, we will extend our zones of security beyond our physical borders identifying, prioritizing and interdicting threats to our nation before they arrive. We will develop and provide resources for a cohesive, unified enforcement capability that makes our border security effective, smarter and stronger.¹⁹⁴

In this objective, we see that the department is not only concerned with stopping individual crossers, but also striving to create a border that rebuffs any potential threats. The idea of a “smart” border stresses that technology is an essential component of border security – a point I return to in Chapter 3. This objective also indicates a more encompassing notion of the border that projects state power beyond its territorial boundaries in order to better secure those selfsame boundaries. The department increasingly prioritized deterrence with the goal of creating a border that could prioritize and interdict threats even before they arrive. Deterrence further emphasizes the goal of racialized border control – Border Patrol’s objective should be to ensure that “illegal immigrants” swarming

¹⁹³ United States Department of Homeland Security, *Department of Homeland Security Performance and Accountability Report 2003*, 2003, 2.

¹⁹⁴ United States Department of Homeland Security, *Securing Our Homeland: U.S. Department of Homeland Security Strategic Plan*, 2004, 14.

across the Southern border never even think to cross. This too can be thought of as moving in the direction of efficiency; higher degrees of deterrence mean less work on the back end in terms of finding, detaining, and deporting immigration violators.

Although DHS experts tried to construct more effective metrics, they continued to face pressure from auditors to develop more refined measures of border security.¹⁹⁵ At the same time, CBP faced additional pressure in the form of a new financial system called requirements-based budgeting. This new process pushed for more integration between performance metrics and efficacy in budgeting.¹⁹⁶ The DHS OIG was a major force within the department in pushing for more precise performance measures because of the perceived benefits to efficacy and accountability for the department as a whole. The operational control framework was DHS' first attempt to provide this more refined calculation. Operational control was initially defined as,

Operational Control, as defined in the National Strategic Plan, is the ability to detect, respond to, and interdict border penetrations in areas deemed as high priority for threat potential or other national security objectives. Operational Control will be achieved in a tactical zone when the level of border security (controlled, managed, monitored) in that specific zone matches the level of threat/risk (High, Medium, or Low).¹⁹⁷

As we see, compared to optimum deterrence, the operational control framework is both more expansive for assessing security, and has clearer outcome measures. It is more expansive in the sense that it does not just consider particular routes to be under control, as in the optimum deterrence framework, but focuses on miles where Border Patrol can utilize all of its resources to appropriately address the risk posed in that area. It is more specific in that it outlines multiple gradations of security and provides further guidance on how security can be measured in terms of how well CBP is controlling particular mileage within a "tactical zone". At the time of its introduction, Border Patrol considered 288 miles of the Southern border to be under operational control. Over the next several

¹⁹⁵ Stana, Richard M, Homeland Security and Justice Issues, "Addressing Management Challenges that Face Immigration Agencies", GAO-05-644T, May 5, 2005.

¹⁹⁶ Department of Homeland Security, *Annual Performance Report 2005*, 2005, 169.

¹⁹⁷ Ibid.

years, this number would skyrocket, jumping to 599 by 2007¹⁹⁸, and to nearly 939 miles by 2009 before the metric was retired.¹⁹⁹

A major part of the operational control framework was also linked to the implementation of the Secure Border Initiative (SBI), an initiative that emerged from issues with previous technological infrastructure upgrades along the border. I discuss SBI across the next three chapters, although in this section I focus on how SBI as a plan shaped department metrics. SBI was a high-level strategic plan designed to reduce border crossings, with a particular focus on

Expanded detention and removal capabilities to eliminate “catch and release” once and for all; A comprehensive and systemic upgrading of the technology used in controlling the border, including increased manned aerial assets, expanded use of UAVs, and next-generation detection technology; Increased investment in infrastructure improvements at the border – providing additional physical security to sharply reduce illegal border crossings.²⁰⁰

To this end, the SBI program also structured investment in border security to focus on developing the capacity to detain and deport through systemic upgrades. SBI, operating alongside the new paradigm of operational control, pushed CBP, and the DHS more generally, towards a framework that focused on border security as comprehensive²⁰¹ – interior enforcement and border control become linked in the bureaucratic imaginary, and only by bringing the two together could the border be effectively brought under control. Each element outlined in the SBI plan - from expanding detention to securing infrastructure investment - is an area that can be measured to assess the degree of success for homeland security as a whole.

The further development of SBI came alongside shifts in the political climate that affected how politicians and the public perceived DHS. The development of SBI occurred in the wake of the Sensenbrenner bill, and the subsequent Latino Mega Marches, which was one of the single largest

¹⁹⁸ Department of Homeland Security, *Annual Performance Report Fiscal Years 2007-2009*, 2007, 18

¹⁹⁹ Department of Homeland Security, *Annual Performance Report Fiscal Year 2009*, 10.

²⁰⁰ Department of Homeland Security, “Fact Sheet: Secure Border Initiative”, Press Release, November 2, 2005.

²⁰¹ Richard Stana, “Secure Border Initiative – SBI Planning and Management Improvements Needed to Control Risks”, GAO-07-540T, February 27, 2007, 4.

immigrant protest movements in U.S. history. The defeat of the Sensenbrenner bill, at the time one of the most restrictive immigration bills ever proposed, seemed to represent something of a turning point in immigrant political organizing.²⁰² The Sensenbrenner bill included extremely harsh measures notably making it a felony to be undocumented, increasing federal-local cooperation on immigration enforcement, and vastly increasing the categories of crimes eligible for deportation. But while the bill may not have passed, and the DHS did not receive a Congressional mandate to enact a more draconian vision of immigration enforcement, similar types of restrictions emerged through DHS policymaking after the bill's defeat.

Imagining Security – The Paradoxical Role of Awareness and Apprehensions

To this end, here I examine new initiatives leading to changes in performance goals and metrics originating from the DHS during the period from 2006-2010 that I suggest may have contributed to similar results as measures from the Sensenbrenner bill. Many of these new measures emerge as a result of the Planning, Programming, Budgeting and Execution System (PPBES), a novel framework for assessing program performance. PPBES is described as “a cyclic process that ensures requirements are properly identified, programs are aligned with the Department’s mission and goals, and outcome-based performance measures are established to include factors that are key to the success of the Department”.²⁰³ Of particular note is the strong emphasis on “outcome-based performance measures”, which here means that the implementation of new programs, or the modification of existing programs, must produce measurable outcomes demonstrating that program’s success in order for the program to be retained. The implementation of PPBES further pushed the DHS along the path of quantifying their results by directly linking the budgeting process to program outcomes. In the new pattern of cyclical budgeting, greater emphasis was placed on

²⁰² Chris Zepeda-Milan, *Latino Mass Mobilization : Immigration, Racialization, and Activism*. (Cambridge, United Kingdom: Cambridge University Press, 2017).

²⁰³ Department of Homeland Security, *Annual Performance Report 2006*, 2006, 78.

individual department components specifically demonstrating their contribution to homeland security. As part of this reorganization, the DHS also constructed new strategic goals associated with the various outcome measures. Here, we see that the DHS increasingly prioritizes information, apprehension, and strategic surveillance to support a new set of goals.

In the time period from 2006-2010, two central ways CBP measured border security were the number of border miles with increased situational awareness aimed at preventing illegal entries, and the percentage of apprehensions at Border Patrol checkpoints.²⁰⁴ My analysis of the document set suggests that the concept of situational awareness begins to be substantively used in DHS documentation between 2006-2007 and emerged in response to the new departmental strategic priorities. Situational awareness refers to the department's ability to have access to high levels of information about migrant movement in particular areas that CBP would be able to leverage in the event of a potential crossing. This information was collected by both Border Patrol agents and surveillance technology. The concept of situational awareness fits into a broader network of technological modernization imperatives that expand the enforcement capacity of the DHS, as I discuss further in Chapter 3. However, we also see that situational awareness is linked to measuring enforcement outcomes. Technology is a tool to increase the DHS' ability to know when people cross the border, and then take action to address these crossers. Technology is shown to be effective when it can be directly linked to a performance outcome, namely the apprehension of unauthorized entrants. These measures were also linked with other developments focusing on the development of surveillance infrastructure, including the number of miles of tactical infrastructure, the number of at-risk miles under air surveillance, and the reduction of Southern border air space incursions.²⁰⁵

²⁰⁴ Department of Homeland Security, *Annual Performance Report 2007-2009*, 2007.

²⁰⁵ Ibid.

Situational awareness and operational control are complementary ways of conceptualizing border security; obtaining appropriate situational awareness greatly increases the probability that a border sector would be under operational control.²⁰⁶ The percentage of apprehensions at checkpoints measure is also relevant to consider, the rate of apprehensions was seen as an effective proxy for measuring border security. Apprehension rate's utility was justified by the idea that,

...activities that occur at checkpoints serve as measures not only of checkpoint operational effectiveness, but as barometers of the effectiveness of the Border Patrol's overall national border enforcement strategy to deny successful illegal entries into the United States. This measure will examine one checkpoint activity, apprehensions, and compare it to the Border Patrol apprehensions nationwide. This comparison will measure checkpoint effectiveness in terms of apprehensions, as well as provide insights into the overall effectiveness of the Border Patrol's national strategy.²⁰⁷

Apprehensions here represent a proxy measure for understanding the overall effectiveness of enforcement strategy, simply put, the higher the rate of apprehension at a particular checkpoint, the more effective that checkpoint is in accomplishing its work. Relatedly, it suggests that *nationwide* apprehensions are an especially useful benchmark for assessing how successful a program is – by comparing checkpoint effectiveness to nationwide standards, it should illustrate the “overall effectiveness of Border Patrol's national strategy”.²⁰⁸ The idea that apprehension rates constitute an effective performance measure for security draws on a carceral understanding of immigration and border security. During the Bush Presidency, there heavy pressure on the DHS to exhibit its ability to perform effective enforcement operations. But this idea of effectiveness both reduces human immigrants to a “potential crosser” to be monitored and incentivizes ground officers to step up their apprehension rates. The trauma and the violence of being seized in the process of crossing, of being pulled out of a checkpoint line and kept in a border patrol cell, are not relevant pieces of information in assessing security. Security is measured by state violence not migrant safety.

²⁰⁶ Argueta, Carla N, *Border Security Metrics Between Ports of Entry*, U.S. Congressional Research Service, 7-5700, February 16, 2016.

²⁰⁷ Department of Homeland Security, *Appendix B to the Annual Performance Report 2007-2009*, 2007, 9.

²⁰⁸ *Ibid.*

While ICE detentions rose during the first Obama Presidency, CBP noticed a marked decline in its level of apprehensions. But the rate of apprehensions presented something of a bureaucratic tangle; which direction should the measure be trending? Both increases and decreases in apprehension rates could be construed as a success for Border Patrol. In 2010, the DHS was more focused on the goal of reducing apprehensions through deterrence, it justified the performance measure by saying,

Protection of our Southwest border against threats from illicit cross-border activity is a key element needed to secure our country. This measure calculates the number of apprehensions made of those attempting entry along the Southwest border between an official port of entry. DHS's border security strategy is based on a layered approach of strategically positioning personnel, technology, and defensive infrastructure; developing strong partnerships with law enforcement partners on both sides of the border; and increasing consequences to repeat offenders to provide a deterrent effect. Collectively, these efforts are intended to reduce apprehensions.²⁰⁹

In this description, if the border is being secured, apprehensions should be going down because successful border security would take the form of meaningful deterrence. If no one ever attempts to cross, the border is perfectly secure. But close examination suggests that this logic could also turn the other direction, and in the annual performance report two years later, the DHS justified apprehensions by saying,

Protection of our Southwest border against threats from illicit cross-border activity is a key element needed to secure our country. This measure calculates the number of apprehensions made of those attempting entry along the Southwest border between ports of entry. DHS's border security strategy is based on a layered approach of strategically positioning personnel, technology, and defensive infrastructure; developing strong partnerships with law enforcement partners on both sides of the border; and *increasing consequences to repeat offenders to provide a deterrent effect* [emphasis mine].²¹⁰

While the language is very similar, there is a crucial element of deviation, namely, in this second articulation, apprehensions in and of themselves as essential to border security. Apprehensions are essential to deterrence, and more deterrence also emerges out of higher apprehension rates. Where the previous year suggested that deterrence was the optimal goal, here deterrence becomes a long-

²⁰⁹ U.S. Department of Homeland Security, *Department of Homeland Security Annual Performance Report 2010-2012 Appendix B*, 2010, 12

²¹⁰ U.S. Department of Homeland Security, *Department of Homeland Security Annual Performance Report 2012*, 2012.

term consequence emerging out of a carceral impulse. It is likely that this revision stemmed from rising apprehension rates between 2010 and 2013.²¹¹ When deterrence policies seemed to have a reduced impact, the DHS needed to revise how it explained the role of apprehensions. The key takeaway from this juxtaposition, however, is the centrality of apprehension in measuring border security. While the changes in the metric can alter how it is interpellated by bureaucratic actors, at the same time the concept of apprehensions as a discrete measurable variable helps anchor the direction for border security metrics – the discrete, the calculable, and, the carceral.

Interdiction Effectiveness – Border Patrol in the Second Obama Presidency

The second Obama Presidency also marked a proliferation of new border security objectives, in part due to the departmental reviews initiated under then Secretary Napolitano. This was, however, also a time marked by difficulty in ascertaining the precise contribution of each of these frameworks, hence the DHS cycling through several sets of objectives in a remarkably short time. Following the cessation of the SBI program, the DHS sought to establish a clearer relationship between patterns of apprehension, recidivism, and interdiction effectiveness. By 2013, the DHS agreed to phase out apprehensions as the primary metric for at the border security, arguing that, “This measure is also limited in that it only reports an output and does not convey what the total number of apprehensions means within the context of total number of attempted illegal entries”.²¹² The DHS added measures like percentage of recidivists apprehended, and interdiction effectiveness rate, or how many people are stopped beyond the border out of total crossers, in an effort to more precisely measure the impacts of policy choices. These new measures were tied to CBP initiatives working to improve control over the Southwest Border, particularly the Arizona Border Surveillance Technology Plan. The central goal of this new plan was to, “Identify appropriate mix of

²¹¹ Ibid.

²¹² United States Department of Homeland Security, *Department of Homeland Security Annual Performance Report 2013-2015 Appendix A*, 2013, 20.

technologies to gain situational awareness to manage the Arizona border area”²¹³, and acknowledged that one of the major limitations of the SBI plan had been efforts to create a single unified infrastructure for border security. As such, between 2010 and 2014, the DHS shifts towards generating multiple ways to create comprehensive assessments of border security, relying on an amalgamation of different statistical measures, increasingly sophisticated forms of analysis, and the increased use of risk management frameworks. The goal of adding more performance measures was to create longer lists of more specific measures with higher statistical validity – the more ways the DHS could track its effectiveness, the better it would be able to capture the “truth” of how secure the border was.

However, greater statistical validity does not necessarily lead to less violence in immigration enforcement. Quite the contrary, more specified carceral metrics create more ways for DHS agents to demonstrate policy efficiency. Because the imaginary of a secured border remains one linked to racialized visions of the polity, the secured border is one that successfully eliminates or manages “illegal” activity through the capture and containment of those demarcated as unfit for inclusion in the polity. Incentives for components to demonstrate effectiveness quantitatively through driving up the interdiction effectiveness rate or meting out harsher punishments for recidivists helped keep departmental priorities aligned with a vision of the state focused on carceral control of immigration. The drive for more, quantifiable metrics pushes the bureaucracy increasingly closer to a maximally efficient enforcement process, while simultaneously cloaking the human consequences of that efficiency under rhetoric of data, measurement, and meeting performance goals.

Interdiction effectiveness rate is a particularly useful metric to examine in studying this period because it is illustrative of how the DHS draws on inherently subjective forms of knowledge

²¹³ United States Customs and Border Patrol, “Arizona Border Surveillance Technology Plan: Abridged for CBP Senior Staff”, Presentation, July 23, 2010, 8.

creation, and then treats these subjective metrics as objective measures of security. Interdiction effectiveness also remains a core metric for assessing border security – this is one of the only metrics that has remained in use since it was first introduced in 2014. However, there is inherently an element of extrapolation involved in this metric’s construction, because interdiction effectiveness is defined as the proportion of intended border crossers that are apprehended by CBP.²¹⁴ This requires CBP to engage in a project of extrapolation in order to provide their best guess at how many people are attempting to cross each year.

CBP devised two methods for estimation, both of which are forms of abstraction, indicators that attempt to simplify the complex process of migration to create a single, quantifiable statistic. I highlight the two different approaches to elucidate the subjective, power informed, elements of how metric construction both shapes, and is shaped by, the enactment of state power. The first estimation method is observational based. Here the percentage is calculated using the equation $AR_{\text{Observational}} = \text{Apprehensions} / (\text{Apprehensions} + \text{Got Aways})$. “Got aways” refers to individuals who are detected by border patrol but not apprehended, which serves as a rough proxy for how many total individuals cross the border. This estimation relies on an extremely biased assumption however, namely it excludes any unobserved border crossers from the calculation of effectiveness. The underlying assumption is that CBP has developed, or will develop, sufficient surveillance capacity to actually monitor how many individuals cross the border. This measure also reinforces the urgency of acquiring more surveillance tools. But this is an immense task, and one that CBP’s surveillance infrastructure has not been able reliably estimate.²¹⁵

To remedy this gap, CBP also worked to develop an alternative method, which it calls the model-based approach. The model-based approach is considerably more complex, relying on a

²¹⁴ Department of Homeland Security Office of Inspector General, *Department of Homeland Security Border Metrics Report 2017*, May 1, 2018, 9-10.

²¹⁵ *Ibid.*

distinction between “impactable” and “non-impactable” apprehensions. In CBP jargon, impactable refers to those who will generally be subject to enforcement consequences as outlined by CBP guidelines. In practice, this group constitutes “include adults without children who are not asylum seekers and (prior to 2017) are not from Cuba”, and non-impactable includes, “unaccompanied minors, family units, individuals who request asylum, and (prior to 2017) Cubans”. Using this criteria, the model estimates the overall flow using a “partial apprehension rate”, and calculates the model using the function $AR_{Model} = (Attempts\ Impactable * PAR) + (Attempts\ Non-Impactable * 100) / (Attempts\ Impactable + Attempts\ Non-Impactable)$. Here, the model outlines a much larger potential population of crossers that are being tracked in assessing the interdiction effectiveness rate. These models lead to radically different assessments of border security. The table below, drawn from DHS documents, compares the two rates.

Model-Based and Observational Apprehension Rates, FY 2003 – FY 2016

Fiscal Year	Model-based Apprehension Rate	Observational Apprehension Rate
2003	34.1	NA
2004	37.0	NA
2005	39.1	NA
2006	39.2	63.5
2007	40.2	64.1
2008	44.6	67.7
2009	47.2	70.7
2010	46.6	74.4
2011	46.1	79.4
2012	48.0	77.5
2013	51.0	70.8
2014	65.5	74.8
2015	63.5	76.7
2016	64.8	79.4

Figure 4: Comparison of Model and Observational Based Apprehension Rates²¹⁶

Obviously, these rates are different, particularly between 2006 and 2012. What is more interesting however, is that these discrepancies in rates stem from differences in how migrant flows, and

²¹⁶ U.S. Department of Homeland Security, “Border Security Metrics Report 2017”, 2017.

therefore border security, are conceptualized. Where the observational rate assumes that the DHS is detecting most, if not all, migrants, the model-based apprehension rate relies on DHS' ability to successfully guess how many migrants are crossing based on previous year's data. In this sense, because the model-based rate uses previous years data, in contrast to that years estimations, it provides a different type of validity. At the same time, because the model-based rate relies less on discrete, observable data and instead on technologies of representation, this rate is unreliable in a different way. Part of the difficulty with both measures is the difficulty in standardizing different mechanisms of reporting. For instance, there was not a unified measure of what constituted a "got-away" until 2014, when departmental officials mandated training on this issue across Border Patrol sectors. Prior to that, each border patrol sector had its own set of criteria for evaluating what constituted a "got-away". Increased quantification also requires increased standardization; if each individual sector relies on dissimilar metrics, then the overall validity of the data is called into question. The data must be valid because otherwise the DHS is presenting an "incomplete" picture to oversight bodies. Furthermore, apprehension rate is also linked to other measures of effectiveness such as the probability of detection rate, the number of illegal crossers, and the number of miles under surveillance and therefore calling this data into question undermines other efforts to assess border security.

Despite the push for more objective measures, the nature of controlling and policing the border still requires subjective, power laden assessments of how the border should be controlled and what constitutes a measurable solution to the problems. The border in this instance is represented as a zone of insecurity that can be managed by controlling the flow of those attempting to cross; managing the flow here refers to successfully apprehending or turning away all those who "should be" prevented from entry. Interdiction effectiveness rate as a central metric of border security incentivizes CBP to demonstrate their effectiveness through increasing their ability to detain and

exclude. Furthermore, this imaginary of control is also deeply racialized; a department report from around this time notes that, “While the Department has made progress in its ability to identify and apprehend individuals trying to illegally enter the United States or smuggle contraband across our borders, the nature of the ever-evolving threats continue to present new and complex challenges to the Department’s ability to protect U.S. borders and approaches”.²¹⁷ Curiously however, the nature of where these ever-evolving threats are coming from is narrowly defined; the interdiction effectiveness rate is only kept for the Southwest Border,²¹⁸ enforcement actions involving worksite raids have primarily detained Latinx individuals²¹⁹; the overall application of carceral policy focuses on particular racial groups or sectors of the world as a proxy for race. While the Northern Border’s overall traffic is still considerably lower than the Southern Border’s, representing around 15% of overall crossings, it is striking that Northern Border apprehensions represent less than 1% of the total apprehensions across all border zones. Even one of the smallest Southern border zones still has nearly 3 times as many apprehensions as the entire Northern Border. The Southern border is treated as the site where enforcement matters and where the danger lies.

A Return to “Naked” Racism? – Metrics in the Trump Era

Donald Trump’s strongly anti-immigrant political stances suggested a major shift in DHS’ activities was imminent. However, while Trump’s series of executive orders issued at the start of his presidency included pushing for expanded border wall funding, increased detention and deportation, hiring new border patrol officers, and implementing priority-based enforcement²²⁰, many of these initiatives were already underway within the DHS. For example, in 2015, the DHS had already issued

²¹⁷ Department of Homeland Security Office of Inspector General, *Department of Homeland Security Border Metrics Report 2018*, May 1, 2019

²¹⁸ Ibid.

²¹⁹ Golash-Boza, *Immigration Nation*, 2011.

²²⁰ Executive Order 13767 of January 25, 2017 on Border Security and Immigration Enforcement Improvements, *Code of Federal Regulations*, 82 FR 8793: 8793-8797 (2017), <https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements>

guidelines for prioritizing enforcement targeting – priority 1 aliens were those who were considered either threats to national security, were apprehended at the border or were “criminal aliens”, and²²¹ priority 2 targets referred to those with misdemeanor offenses or new immigration violators.²²² Thus, even though the new executive orders demanded increased performance, they did not enact fundamentally new procedures – these sets of immigration priorities were quite similar to those already being used. The main change was the scope of action demanded by the executive orders. This also meant there was an increased need for more ways of illustrating DHS success. Faced with additional pressure from an active President, the DHS moved rapidly to acquire sufficient resources to meet these demands, and to demonstrate the resources acquired were being employed usefully.

The need to demonstrate effectiveness was further deepened by the passage of the DHS Accountability Act in 2016, which legally mandated additional reporting on DHS activities²²³, and in part from increased public scrutiny on the DHS after the Trump election. A crucial OIG report in 2017 noted that one of the biggest issues with CPB’s enforcement efforts was lack of data being collected on program success, CBP often did not collect sufficient data to illustrate the security impact of a particular policy or acquisition. This issue was not new, but with the extra scrutiny proved concerning for overseers. In the context of Operation Streamline, a policy intended to reduce the number of recidivists, the report noted,

IG concluded that although the Border Patrol measured Streamline’s effect on re-entry of illegal aliens, its metrics did not reflect an alien’s crossing history, re-entry, or re-apprehension over multiple years. As a result, the Border Patrol was not fully and accurately measuring Streamline’s effect on deterring aliens from entering and reentering the country illegally.²²⁴

²²¹ United States Immigration and Customs Enforcement, *Fiscal Year 2016 ICE Enforcement and Removal Operations Report*, 2016, 2.

²²² Ibid.

²²³ S.2976 - 114th Congress (2015-2016): DHS Accountability Act of 2016, June 28, 2016. <https://www.congress.gov/bill/114th-congress/senate-bill/2976>.

²²⁴ United States Department of Homeland Security Office of The Inspector General, *CBP’s Border Security Efforts – An Analysis of Southwest Border Security Between Points of Entry*, OIG-17-39, 2017, 9.

Under pressure from Congress, the President, and the public to generate results, the DHS stepped up its collection of quantitative data to prove its activities merited the massive expenditure.

Part of this transition involved implementing the Border Security Metrics report series, a new set of bureaucratic documents designed to show what measures were being utilized, how they reflected the state of border security, and what could be done to improve them. Most notably, these reports contained a panoply of new metrics for evaluating border security success. These include the number of detected unlawful entries, estimated undetected unlawful entries, the number of “turn backs”, the unlawful border crossing success rate, apprehension by border patrol sector, apprehensions of minors or family units, effectiveness of enforcement consequences, and at the border effective deterrence rate.²²⁵ The reports call these measures the most comprehensive set of DHS enforcement metrics.²²⁶ In this sense, comprehensive is meant to be a synonym for “best”; a comprehensive set of metrics captures the most detail about how well DHS is doing in accomplishing its mission

One of the most important new metrics was the “effectiveness of enforcement consequences” performance measure. Following its initial adoption in 2017, this framework created a new set of quantitative measures for assessing each individual type of enforcement consequence. One component of the new framework was using recidivism rate as a proxy to measure the success of enforcement consequences: the lower the recidivism rate, the more effective the measure. This metric touts harsher punishment as more successful for homeland security, “For example, the more punitive consequence programs such as CCP and standard prosecution generally showed lower recidivism rates (8.36 percent, 8.16 percent) than less punitive programs like voluntary return (24.55

²²⁵ Department of Homeland Security, *Border Security Metrics Report 2017*, 2017.

²²⁶ *Ibid.*

percent) or expedited removal (15.46 percent)”.²²⁷ Using this data, DHS pointed to more punitive measures as most effective in improving the overall level of border security.

Here, we see the punitive elements of DHS’ border imaginary – the border is secured when those who should not cross are punished so harshly that they do not return again. The impact of these punitive policies on their targets, however, is completely obscured from view. Within the paradigm of homeland security, individuals receiving harsh consequences is the *successful* application of border policy. Equally distressing is that despite the putative effects of carceral deterrence, the number of apprehensions and size of migrant flows seem unrelated to the degree of policy punitiveness. Data from the Border Metrics report in 2019 shows a massive upward fluctuation in the number of apprehensions between 2018 and 2019, going from 396,579 to 851,508. If the flows of migration are not impacted by deterrent policies, what impact do these policies really have? This suggests that many of the DHS’ conceptualizations of how to create border security are rooted more in an imaginative version of the relationship between punishment and security than in actually examining the role that global geopolitics play in migration.

A second key feature of the Trump era is the more complete integration of risk management frameworks into measuring border security. As part of his executive orders, Trump also pushed the DHS to readopt a fundamentally revised version of the operational control framework. Given the difficulties the DHS had faced administering this framework before, the Office of Immigration Statistics (OIS) had to work to develop a much more robust set of evidence-based practices that would support this framework as a quantifiable assessment of the state of homeland security.²²⁸ Here, we see that the DHS’ autonomy is somewhat constrained – as an executive agency, the DHS is still required to respond to Presidential action like an executive order. But while the President can

²²⁷ Ibid., 26.

²²⁸ Department of Homeland Security Office of Immigration Statistics, *Efforts by DHS to Estimate Southwest Border Security Between Ports of Entry*, (Washington D.C., 2017), 19

push for certain frameworks, it remains the agencies prerogative to translate that idea into a quantifiable performance goal.

From the outset, the Border Security plan noted that one of the departments major new goals would be to better implement risk management in decision making.²²⁹ As such, the new version of operational control focused on “... specific efforts designed to improve results in the three elements of the OPCON framework: impedance and denial; situational awareness; and applying a law enforcement resolution.”²³⁰ Each of these component measures is understood as a way of managing risk. Impedance and denial provide a two pronged strategy for reducing the risk of unauthorized entry, situational awareness reflects the ability to know how many potential risk factors are at play, and a law enforcement resolution brings the risk under control.²³¹ The goal of this new program is to better see “direct impacts of operations on identified measures”.²³² Risk assessment then is a way of quantifying the potential threat to national security and providing new types of measurable outcomes to demonstrate agency efficacy in addressing the border threat. Demonstrating effective risk management in the case of the border entails showing that CBP has the ability to measure, identify, and control risks to national security. Risk as a quantifiable concept can be productively linked to the broader trend of quantification and metric proliferation across the DHS. Each metric is constructed to help demonstrate the department’s effectiveness in solving the problem of unauthorized immigration, discussing the issues in terms of numbers of crossers that pose risks to national security or the immigration system. The Arendtian framework reminds us here that the risks CBP refers to are most often people, migrants seeking security or opportunity. The

²²⁹ United States Department of Homeland Security, *Fiscal Year 2018 Border Security Improvement Plan*, December 21, 2018, 2

²³⁰ *Ibid.*, 12-13.

²³¹ United States Department of Homeland Security, *Annual Performance Report 2018-2020*, 2018.

²³² *Ibid.*

reduction of persons to risks then can be thought of as a modernized form of thoughtlessness, the risk management approach to the world reduces the human to the potential threat.

Conclusion

While the inauguration of Joseph Biden in 2020 seemed to be a step forward for immigrant rights, and indeed candidate Biden made sweeping promises about immigration, the reality is that the day-to-day operations of the DHS changed relatively little following his inauguration. As performance reports show, the risk management frameworks, new performance measures, and enforcement priorities remained strikingly similar to those under Trump, which in turn were akin to those enforced under Obama. This chapter of the dissertation has argued that this can be traced at least in part to the DHS' particular position as a bureaucracy. I have argued that the DHS as an agency has trended towards an increased proliferation of quantifiable metrics as a way to conceptualize and augment border security. However, this proliferation has provided additional incentives for the bureaucracy to behave as a carceral one – the vast majority of metrics developed to examine border security have prioritized the capture and removal of immigrants as the major way of protecting the homeland. This carceral politics also reflects a racialized vision of immigration enforcement – those who cross and are marked as dangerous to the nation must be contained and expelled. This vision is racialized because it relies on a particular imaginary of both where the threats are coming from, namely the Southwest Border, and interior enforcement prerogatives drawing on long racial scripts about the “criminal alien”. These metrics are not carceral by coincidence, because border security is about creating seemingly neutral metrics, but quantifiable metrics that demonstrate security, the most readily available metrics are those focused on apprehension, detention, and removal. More holistic metrics like optimum deterrence fall by the wayside as the DHS is increasingly incentivized to showcase its ability to perform.

This chapter contributes to the growing literature on quantification and metrics in government, as well as continuing to bridge the gap between studies of bureaucracy and critical race theory. In this chapter, I have used historical analysis of DHS metric development to illustrate how bureaucracy plays a vital role in constructing and managing border security. I have suggested that given the DHS' unique function within government, and the lack of comprehensive immigration reform, the DHS has been given tremendous discretion in the day-to-day business of managing immigration. To that end, looking at the process of constructing performance measures shows how the DHS sets priorities that govern the everyday work of border patrol agents, detention officers, and the wealth of bureaucrats collecting, maintaining, and analyzing data. By looking more closely at how bureaucrats set agency priorities, scholars gain a better understanding of the processes of governance beyond just the law of the land. What becomes visible is how the state sees the problems, how the state constructs agential priorities to address those problems, and in turn where activists can turn to push back against the state's carceral politics. What would be made visible if the DHS' immigration reports focused on migrant experiences with CBP, rather than apprehension rate? What if migrants were asked what they needed to seek asylum, rather than collecting the deterrence rate? Rather than a humanistic plea, I argue that this is a practical one. The work of bureaucracy depends on its ability to see, its ability to "see" depends (as James Scott reminds us) on its ability to construct the problem in a way that is intelligible to the department's data collection apparatus. By changing what the department collects or pushing for the sensory organs to think about the world differently, it may be possible to create a bureaucracy focused on human outcomes, rather than measurable performance.

Chapter 3: Thoughtlessness in the Era of Homeland Security: Surveillance and Technological Modernization

Introduction

In the last several years, non-profits have leveraged Freedom of Information Act (FOIA) requests to reveal how the Department of Homeland Security (DHS) is using new surveillance technology to create a vast “digital drag net”. These FOIA’s have exposed how the DHS utilizes this technology, revealing that major data brokers²³³ such as Thomson Reuters and RELEX have multi-million-dollar contracts with DHS’s subsidiary, Immigration and Customs Enforcement (ICE). These partnerships allow ICE to access massive amounts of personal data for use in immigration enforcement. This data includes phone numbers, addresses, relatives, credit history, social media, driver location coordinates, arrest records and a myriad of other identifying personal information.²³⁴ The use of this data sparked grave concern amongst anti-detention activists, who are pushing for stronger government restrictions on this type of surveillance technology.²³⁵ Simultaneously, the DHS continues expanding its use of surveillance technology for immigration enforcement, investing \$54 million into cyber data analytics research and development in 2022.²³⁶

While these particular surveillance technologies are relatively new and stem from the accelerated development of “big data” policing²³⁷, the imperative to expand immigrant enforcement’s capabilities through increased access to technological tools is not. The utility of such surveillance technology for an organization devoted to detaining and deporting immigrants is

²³³ Data brokers refer to companies or other organizations that collect or purchase commercial data about consumers or individuals. That data is stored and accessible only via a web-based application. Data brokers sell this information to other organizations, including government services.

²³⁴ Immigration and Customs Enforcement June 2021 Commercial Location Data FOIA Production. *ACLU v. Department of Homeland Security* (2021) <https://www.aclu.org/cases/aclu-v-department-homeland-security-commercial-location-data-foia?document=ices-june-2021-production>

²³⁵ “NoTechForICE”. *NoTechForICE*. Accessed April 19, 2023. <https://notechforice.com/>

²³⁶ United States Department of Homeland Security. “FY 2022 Budget in Brief”. https://www.dhs.gov/sites/default/files/publications/dhs_bib_-_web_version_-_final_508.pdf

²³⁷ Sarah Brayne, “Big Data Surveillance: The Case of Policing,” *American Sociological Review* 82, no. 5 (October 1, 2017): 977–1008, <https://doi.org/10.1177/0003122417725865>

relatively clear, but less obvious are the internal logics DHS has leveraged to operationalize and justify the use of these intrusive technologies. Thus, this study examines how departmental modernization and technological advancement as bureaucratic discourses contribute to developing the DHS, and in particular, ICE and CBP's capacity to identify, detain, and deport. Why did technological modernization and innovation become such a central tactic in "securing the homeland", and what political consequences stem from the DHS's vision of technological modernization and national security?

To address these questions, this chapter examines technological development and modernization projects within the DHS from its creation in 2001. I argue that in immigration enforcement, modernization, and particularly technological modernization, operates as a central discourse in defining how the homeland should be secured, and that bureaucrats operating under this particular paradigm play an important role in expanding the use of surveillance as a tool of enforcement. Surveillance and technology occupy a particular role within the bureaucratic fantasy of the secure homeland. In order for the nation to be secure, agencies must have constant access to information about any potential border violation, assess the threat, and contain the situation immediately. Technological modernization serves to soothe a bureaucratic anxiety; the fear that the bureaucracy will never be able to fully control the homeland or provide sufficient security is counteracted by the idea that with sufficient technological modernization, the department can build the capacity to truly protect homeland security. However, these forms of modernization continue to draw on racialized scripts of where threats to national security come from. Those who are demarcated racially as appropriate subjects of immigration enforcement, most commonly Latinx individuals, experience increased degrees of surveillance. The DHS can thus be thought of as a "race-making" bureaucracy, where the processes of bureaucracy help substantiate racial meaning-making, which in turn, render certain subjects removable.

Furthermore, the projects of modernization and efficiency help cloak the material violence done to immigrant communities in layers of bureaucratic discourse and abstraction, insulating bureaucratic agents from the consequences of their decisions. To this end, I suggest that utilizing Hannah Arendt's conception of the "banality of evil" alongside explicit theorization of race can facilitate better understanding of how and when processes of bureaucracy enable horrific acts of violence. To recap from the introduction, Arendt argues that what most enabled Eichmann, a high-ranking Nazi, to commit one of the most heinous crimes ever seen was neither stupidity nor evil but "sheer thoughtlessness".²³⁸ I interpret thoughtlessness to mean an inability to see the world from outside a given perspective, an unwillingness to open oneself up to alternative possibilities. In the case of race-making bureaucracies, I suggest that a similar type of thoughtlessness helps enable political violence against immigrant communities, a thoughtlessness where those who are constructing the deportation machine are so concerned with a particular vision of modernized enforcement that the real human beings on the other end of the surveillance camera entirely disappear from their field of analysis. It is worth noting that I am not conceptualizing thoughtlessness as a totalizing process where bureaucrats are never aware of the suffering that is occurring. However, within the confines of their labor, bureaucrats are not incentivized to care about the health and safety of migrants. They are instead pushed to care about producing results and meeting the demands of their job. Thoughtlessness thus is a consequence of bureaucratic structure, one that further entrenches systemic violence against racialized migrant populations.

In an era of thoughtlessness, these individuals become reduced to statistics, data points to be observed, unauthorized entrants to be removed. Because of the deeply entrenched history of racial immigration politics in the United States, this process of thoughtless apprehension and enforcement means that racial logics continue to circulate throughout the bureaucratic apparatus, unchecked,

²³⁸ Arendt, *Eichmann in Jerusalem*, 21.

unquestioned, and unchallenged. Arendt's conception of thoughtlessness should apply specifically to bureaucratic actors in the upper echelons of the DHS. These actors are given a particular set of tasks, namely the enforcement of certain immigration restrictions and are internally incentivized to conduct these actions with maximum efficacy. Technology soothes the anxiety of not being able to meet productivity goals. Directives related to automation, increased technological surveillance, and access to more data are motivated by bureaucratic actors pushing for improved departmental capacity. But in doing so, the truth of "capacity" is masked; here, capacity is the capacious power to utilize state coercion against migrants perceived as not belonging in the polity. The process of racial violence continues because these initiatives are cloaked in the race neutral language of efficiency, technological modernization, and departmental capacity building.

This case study is useful because it provides a lens for understanding how processes of bureaucratic development expand over time to (re)produce patterns of systemic racial violence and reify notions of who is worthy of inclusion in the state. I also treat this development as a tool of state building and information production. As I have previously stressed, and drawing on the work of James Scott, bureaucracies struggle to adequately capture the complexity of social processes, instead relying on stylized categorical representations to reduce and simplify these processes for the purposes of management and control.²³⁹ The expansion of surveillance in the quest for efficiency and modernity may also be thought of as a new way of rendering individuals legible to the state, reducing the complexity of human circumstances to numbers, names, and dates, that help enact a particular vision of how the state should be composed. Immigration is one of the most direct means by which the state shapes its population; immigration determines how many are allowed in, under what conditions, and what benefits they are entitled to. By examining one of the most direct

²³⁹ Scott, *Seeing Like a State*.

mechanisms of population control, I provide a framework for beginning to assess how other bureaucracies may also shape meanings of race and nation.

To make this argument, I first review extant literature on race, bureaucracy, and surveillance to illustrate where in the field this particular study falls. I elaborate on the concepts of modernity and efficiency in the context of a race-making bureaucracy, to illustrate my particular theoretical intervention. I outline my methods for investigation and examine an archive of government documents, FOIA requests, and Congressional hearings to illustrate how discourses of modernity and efficiency have been transformed and shaped the development of immigration enforcement. I conclude by reflecting on the implications of this study for understanding both immigration enforcement and the use of surveillance technology in a racialized world. While I do not take a stance on whether or not immigration restrictions should exist, I approach this project from the normative position that enforcement of immigration laws often inflicts violence upon immigrant communities and as such, these practices deserve to be seriously interrogated.

Immigration Enforcement, Race, and Technological Advancement in the Literature

This chapter brings together two strands of scholarship, one analyzing the development of U.S. immigration enforcement, focusing in particular on detention and deportation as central enforcement processes, and a second analyzing the politics of bureaucracy and bureaucratic development. As I have argued in the introduction and chapter 2, the system of immigration enforcement in the U.S. is tremendously racialized. Data from the TRAC Clearinghouse shows that in 2019, 262,591 people were deported by the U.S. government, and 91.2% of deportees came from Mexico, Guatemala, Honduras, and El Salvador.²⁴⁰ By contrast, looking at lawful permanent residency allocations reveals that immigrants from these countries made up only 20% of new green

²⁴⁰ TRAC, “Latest Data: Immigration and Customs Enforcement Removals”, Transactional Records Access Clearinghouse, Accessed May 15, 2023, <https://trac.syr.edu/phptools/immigration/remove/>

card allocations, totaling 213,062 new legal residents.²⁴¹ Deportations of immigrants from Latin American countries are grossly disproportionate to the percentage of immigrants from those countries granted lawful residency. This discrepancy is deeply tied to the long history of racialized immigration enforcement in the United States.

The state's patterns of disproportionately surveilling and monitoring Latinx communities can be traced to the emergence of the "illegal" and "criminal" aliens as central figures in immigration discourse. Recent studies on racialization in immigration enforcement focus on how the "illegal alien" and the "criminal alien" as discursive figures in policy making have been embedded with very specific social meanings. "Illegality" is a legible and racialized category, one that enables the passage of legislation criminalizing immigrant groups, which has long term consequences in cementing racial categories.²⁴² For example, Mae Ngai illustrates the national origin system was devised as a way to bring immigration in line with the imaginary of the American body politic, and in doing so, used racial origins as a way of determining which groups were eligible for citizenship.²⁴³ This system defined how many of people from a particular national origin should be admitted by comparing them to the number of members of that race already in the United States. Numerical quotas embodied a novel form of political discourse in which deserving aliens would be allowed to stay and "illegal aliens" became targets for removal. While N migrants might be allowed, the N+1 migrant became an "illegal alien".²⁴⁴ Restrictive policies were also shaped by eugenicist conceptions of race that shaped which types of immigrants were considered desirable, and which groups were considered unfit for incorporation. Eugenicists drew on particular notions of biological racism to

²⁴¹ United States Department of Homeland Security. *2019 Yearbook of Immigration Statistics*. (Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2020).

²⁴² See Kelly Lytle Hernandez, *Migra!: A History of the U. S. Border Patrol* (California: University of California Press, 2010), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=496566>, Mae M. Ngai, *Impossible Subjects*.

²⁴³ Ngai, "Impossible Subjects", 25.

²⁴⁴ *Ibid.*, 61

make the case that non-white immigrants, as well as new immigrants from central and southern Europe, were genetically unfit for citizenship. These arguments help transform the quality of citizenship debates from one of absolute numbers of immigrants to one centering the assimilability of different groups.²⁴⁵ This was particularly salient in terms of the differences between Canadian and Mexican migrants. Following the passage of the Johnson-Reed Act, administrative discretion would be used to allow formally “illegal” Canadian migrants to be granted legal residency, while Mexican immigrants were far more likely to be met with deportation.²⁴⁶ This process of differentiated enforcement contributed to the ongoing racialization and stigmatization of Mexican workers, the “threat” was perceived to be coming from the Southern border, not the Northern.²⁴⁷ This helped harden the distinction between white and non-white immigrants.

While formal racial quotas are no longer part of the U.S. immigration system, the impact of racial logics cannot be abolished simply by declaring the system race neutral. Furthermore, these systems of racial meaning-making have been renegotiated as narratives surrounding the danger of immigrant groups evolve. In the 1800s and 1900s, there was more substantive concern around immigrants from China and other Asian countries, but these racial patterns shifted over time as Asian immigrants were further incorporated into the U.S. As Cristina Beltran argues, “the form of white supremacy peculiar to the United States is oriented not simply toward a commitment to racial purity” but toward a multiracial vision of a nation premised on “racial hierarchy and white domination.”²⁴⁸ In these cases, certain groups interpreted as closer to whiteness may be slowly incorporated into the polity, even as other groups are demarcated for racial domination. Even after the abolition of formal racial quotas through the 1965 INA, immigration remained an area where

²⁴⁵ Desmond King, *Making Americans: Immigration, Race, and the Origins of Diverse Democracy*, (Cambridge, Harvard University Press, 2000), 169-172.

²⁴⁶ *Ibid.*, 67-68

²⁴⁷ *Ibid.*

²⁴⁸ Beltrán, *Cruelty as Citizenship*, 108.

race could be used legally in on the ground enforcement actions. As Leo Chavez argues, the 1970's were a major period in which immigration from Mexico became a problem in the American public consciousness. Latinx migrants are often portrayed in media as dangerous immigrants swarming across the Southern border, prompting increased use of detention and deportation to manage this threat.²⁴⁹ In fact, “the Supreme Court blessed reliance on race as a factor to establish ‘reasonable suspicion’ for an investigative stop in immigration enforcement in the context of both roving patrols (United States v. Brignoni- Ponce (1975)) and checkpoint stops (United States v. Martinez- Fuerte (1976))”²⁵⁰, precedent which remains on the books to this day. In both of these cases, “Mexican appearance” serves as a central legal benchmark for racial categorization.

The War on Drugs, and federal policies expanding incarceration helped drive the massive expansion of immigrant policing and continued to perpetuate racialized forms of immigration control. Laws like the 1986 Immigration Reform and Control Act (IRCA) bridged the theoretical separation of civil immigration law and punitive criminal law, creating a hybrid legal regime.²⁵¹ Legally, deportation and detention are not meant to be punishment for crimes²⁵², but lawmakers have increasingly called upon federal immigration enforcement agencies to detain and deport people who have committed crimes and are marked as “criminal aliens”, a paradigmatic racialized figure I discussed in Chapter 2. These laws expanded the categories of crimes that made immigrants subject to mandatory detention and deportation. The IRCA included provisions which required law enforcement agencies investigating drug related crimes to examine the immigration status of those they arrested. Law enforcement could then process immigrants for deportation if they were in

²⁴⁹ Hernández, “Pursuant to Deportation: Latinos and Immigrant Detention”, 63.

²⁵⁰ Jennifer M. Chacón and Susan Bibler Coutin, “Racialization through Enforcement,” in *Race, Criminal Justice, and Migration Control: Enforcing the Boundaries of Belonging*, ed. Mary Bosworth, Alpa Parmar, and Yolanda Vázquez (Oxford University Press, 2018), <https://doi.org/10.1093/oso/9780198814887.003.0011>.

²⁵¹ See Cesar Cuauhtemoc Garcia Hernandez, “Immigration Detention as Punishment,” *UCLA Law Review* 61 (2014 2013): 1346–1415, Jennifer M. Chacón, “Immigration Detention: No Turning Back?,” *South Atlantic Quarterly* 113, no. 3 (July 1, 2014): 621–28, <https://doi.org/10.1215/00382876-2692209>, and Ryo, “Understanding Immigration Detention”.

²⁵² Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge, Mass: Harvard University Press, 2007)

violation of criminal law.²⁵³ These laws made it possible for detained immigrants to serve a prison sentence, and then be immediately sent into deportation proceedings.²⁵⁴ The result has been a massive increase in the numbers of immigrants in detention and deportation proceedings, the vast majority of whom are Latinx.²⁵⁵ At the same time however, the use of race in enforcement has been stubbornly disavowed by the DHS. A 2013 memorandum proclaimed, “The Department of Homeland Security’s policy is to prohibit the consideration of race or ethnicity in our investigation, screening, and enforcement activities in all but the most exceptional instances”.²⁵⁶ But, it seems implausible to believe that race is not a factor in some capacity, given that approximately 89% of detainees are of Central American descent.²⁵⁷

Racialization literature illustrates that the targeting of black and brown bodies by immigration enforcement is not coincidental. Detention and deportation as mechanisms of control help legitimate an order premised on control of bounded territory. Manufacturing deportable population groups helps propagate visions of racial order and hierarchy.²⁵⁸ I here return to Lisa Marie Cacho’s concept of the “de-facto status crime”, which I discussed in the introduction. She argues that when Latinx-appearing individuals are “criminalized”, these individuals are apprehended as inherently not belonging in the U.S., and therefore are not entitled to the same types of legal protections as citizens.²⁵⁹ As such, these groups remain subject to the law but are denied the political legibility to be able to challenge laws through the hegemonic structure.²⁶⁰ By contrast, while white immigrants such as the Irish or Italians were not initially incorporated into the polity, over time,

²⁵³ Stumpf, “The Crimmigration Crisis”

²⁵⁴ Ibid.

²⁵⁵ Ryo, “Understanding Immigrant Detention”

²⁵⁶ Janet Napolitano, “Memorandum for Component Heads”, U.S. Department of Homeland Security, April 26, 2013, https://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013_0_1.pdf

²⁵⁷ Emily Ryo and Ian Peacock, “Jailing Immigrant Detainees: A National Study of County Participation in Immigration Detention, 1983–2013,” *Law & Society Review* 54, no. 1 (2020): 66–101, <https://doi.org/10.1111/lasr.12459>.

²⁵⁸ Loyd and Mountz, *Boats, Borders, and Bases*

²⁵⁹ Ibid., 5.

²⁶⁰ Loyd and Mountz, *Boats, Borders, and Bases*

these groups were incorporated into whiteness, and granted additional rights and privileges within the state. As Ian Haney-Lopez convincingly shows, legal processes relied on racial categorization to determine who was or was not eligible for entry or citizenship.²⁶¹ While these laws are no longer on the books, the influence of racial perception remains. For example, since 2007 hundreds of U.S. citizens and legal permanent residents have been detained by ICE, the vast majority of whom are Latinx.²⁶² This discrepancy highlights that the detainable alien is a racialized figure – the “illegality” is not legible without the accompanying racialized body. U.S. citizens and even legal residents can be mistaken for “illegal” when occupying a racialized body. White undocumented migrants are not perceived as “illegal” in the same way as undocumented Latinx migrants are because outsider status is linked to inhabiting a racialized body. The result, as I showed in the introduction, is an enforcement system which surveils, detains, and deports a particular type of racial figure, namely the “Mexican-appearing” migrant.

This chapter continues to explore how and when bureaucratic processes may be considered race making, particularly in the context of technology and surveillance. Closer attention to bureaucratic processes and how they have shaped immigration enforcement elucidates some of the ways the state apprehends its own function, and how this self-conception perpetuates racialized forms of governance.²⁶³ Returning to Weber, a bureaucracy as an entity exercising a particular type of authority that stems from fixed activities assigned to specific bureaucratic agencies.²⁶⁴ This system entails systematic provision and allocation of various duties to their appropriate agents within the broader bureaucratic system. Bureaucratic agents are governed by internal rules and policies designed to achieve the agencies’ proposed goals. For bureaucrats to perform their functions, they

²⁶¹ Haney-Lopez, *White by Law*

²⁶² Eyder Peralta, “You Say You’re An American, But What If You Had To Prove It Or Be Deported?,” *NPR*, December 22, 2016, , <https://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported>.

²⁶³ Weber, *Economy and Society*

²⁶⁴ *Ibid.*, 956-957

must possess technical knowledge of the relevant rules for their task. Thus, the main task of bureaucratic governance is to find and apply the appropriate policies and procedures to the task at hand.²⁶⁵

A key goal for this apparatus is to create an efficient structure through maximizing the process of “rational” decision making. Close examination and application of a set of rules produces routine, predictable outcomes. The repetition of this exercise enables the maximal exertion of authority with minimal additional input.²⁶⁶ In examining internal documents from DHS subsidiary entities, I was struck by how strictly they adhered to policy and procedure. Huge swathes of correspondence were devoted to checking and double-checking adherence to departmental policies constructed to optimize the enforcement apparatus. I return to Weber here to remind the reader that state violence is supported by a massive internal infrastructure and processes of technical development. Despite the punitive character of the DHS’s end activities, the internal processes and procedures remain dictated by specialized and technical knowledge about immigration enforcement.

There is strong scholarly work, particularly in American Political Development, outlining how the federal government has used racial categorization within its own bureaucracy, such as using segregation within federal agencies to reinforce particular visions of white democracy.²⁶⁷ This chapter adds to this literature by more closely examining the evolution of the DHS’ internal bureaucratic logics around modernization to better understand how contemporary bureaucracies shapes racial categorization, and immigrant exclusion.²⁶⁸ Here, it is worth returning to Carpenter to examine how bureaucracies gain agency to shape policy implementation. Carpenter argues that for

²⁶⁵ Ibid., 957-959.

²⁶⁶ Ibid., 960-961.

²⁶⁷ Desmond King, *Separate and Unequal: Black Americans and the US Federal Government*. (Oxford: Oxford University Press, 1995)..

²⁶⁸ See for example Ngai, *Impossible Subjects*, Jamie Rowen and Rebecca Hamlin, “The Politics of a New Legal Regime: Governing International Crime through Domestic Immigration Law,” *Law & Policy* 40, no. 3 (2018): 243–66

an agency to gain autonomy, they must first demonstrate that the agency is capable of providing services to be found nowhere else in the polity.²⁶⁹ Second, he stresses that in order for the agency to have legitimacy, there also needs to be diverse political support for their mission. Bureaucratic actors mobilize everyday processes to demonstrate effectiveness and enable a certain degree of political autonomy. The development of extensively modernized technology for immigration enforcement is one mechanism for attaining this goal of bureaucratic autonomy. The DHS has often been portrayed as an “ineffective” agency, but also one that performs an imperative function for the state.²⁷⁰ Both political parties have supported the expansion of DHS, though they have not provided a consistent overarching framework for how immigration enforcement should be achieved.²⁷¹ Absent a clear consensus, the DHS has operated with a relatively high degree of autonomy and discretion despite their perceived inefficiency. Furthermore, while Congress sets general directions for immigration enforcement, because of enforcement’s specialized nature, more specific decisions are left to the experts. Immigration restrictions must be enforced but many decisions as to how enforcement will be carried out are left to DHS bureaucrats.

A major domain where DHS has leeway is the development of its infrastructural capacities, and particularly how it thinks about the process of technological modernization. Because immigration enforcement is specialized, DHS officers are generally assumed to have deep knowledge of what modern tools are necessary for successful immigration enforcement. For example, in a Congressional hearing on DHS use of technology one representative argued, “If there are technology based solutions that can help them fulfill their mission, it is essential that the

²⁶⁹ Carpenter, *Forging of Bureaucratic Autonomy*

²⁷⁰ Patrisia Macías-Rojas, *From Deportation to Prison: The Politics of Immigration Enforcement in Post-Civil Rights America* (New York: NYU Press, 2016), <http://muse.jhu.edu/book/49208>.

²⁷¹ Tichenor, *Dividing Lines*, Sophia Jordán Wallace and Chris Zepeda-Millán, “Walls, Cages, and Family Separation: Race and Immigration Policy in the Trump Era,” *Elements in Race, Ethnicity, and Politics*, September 2020

Department and Congress provide them with those resources”.²⁷² Later in the hearing, an officer from the DHS OIG stated,

The Department relies heavily on IT, spending about \$6 billion a year for IT systems on infrastructure. Effective oversight and management of IT expenditures is critical. In the past we identified the need for the Department’s chief information officer to have greater authority, to become a more effective steward of IT funds. The Department has responded by strengthening the CIO’s role of a centralized management of IT and providing the CIO with authority and oversight of components IT investments.²⁷³

Taken together, these quotes provide vital insight into DHS’ technological operations. First, technology is construed as imperative to homeland security, and putting technology in the hands of the DHS will help fulfill its mission. Congress’ job then, is to ensure that the requisite funds are available to make this happen. Second, the DHS is continually moving towards a structure with more authority and oversight of IT investments. Given the technical nature of the project, it is essential for bureaucrats with robust knowledge of immigration enforcement, like the chief information officer, to have a high degree of leverage in developing technology programs.

Particularly given the cost of information technology, maintaining strict control of these programs is critical. While Congress certainly has a responsibility to monitor the DHS’ use of funds, generating technological policy is an area where bureaucratic expertise is especially salient. But greater use of technology does not solve many of the issues the DHS perpetrates, particularly in terms of race.

Extant literature on the use of technology by law enforcement agencies highlights how the increased use of technology can reinforce racial hierarchy through mechanisms such as uncritical use of “big data” and automation. “Big data” refers to the aggregation and collection of personal data across various databases, which can be accessed by a myriad of users through online portals.²⁷⁴ Big data surveillance is a policing tool that tracks individuals across massive repositories of data,

²⁷² U.S. Congress, House, “DHS INFORMATION TECHNOLOGY: HOW EFFECTIVELY HAS DHS HARNESED IT TO SECURE OUR BORDERS AND UPHOLD IMMIGRATION LAWS?”, Hearing Before the Committee on Homeland Security, One Hundred Thirteenth Congress, First Session, March 19, 2013, 8

²⁷³ *Ibid.*, 27.

²⁷⁴ Margaret Hu, “Algorithmic Jim Crow,” *Fordham Law Review* 86, no. 2 (2018 2017): 633–96.

monitoring criminal or terrorism risk across entire populations through massive data collection and population level analysis.²⁷⁵ But, as Ruha Benjamin stresses, merely being added to a database changes how one interacts with the world. Being marked as different because, for instance, your name does not conform to the standards of whiteness, can shape the experience of living in a surveilled society.²⁷⁶ As someone with the last name Martinez instead of Smith, you are significantly more likely to be subject to the prerogatives of law enforcement, a process that is exacerbated by big data surveillance.²⁷⁷ Furthermore, surveillance technologies themselves are not race neutral. Benjamin points out that, “tech designers encode judgements into technical systems but claim that the racist results of their designs are entirely exterior to the encoding process”.²⁷⁸ As an example, Benjamin looks at the use of predictive policing tools. The use of “risk scores” for assessing how strongly an area needs to be patrolled or the likelihood of recidivism is often premised on variables that are already structured by systemic racism, such as neighborhood characteristics. If a neighborhood has been over-patrolled and over-policed for decades, massively driving up arrest rates in that area, and then that data is used in a predictive policing algorithm, the algorithm will categorize the area as high risk and therefore in need of patrol.²⁷⁹ The inputs that go into constructing an algorithm are not inherently racially neutral.

Further, criminologist Anna Muniz argues that the dream of bureaucratic automation, while ostensibly aimed at reducing human error by minimizing the risk of human data mis-entry or other such clerical mistakes, ultimately legitimates increased surveillance of immigrant communities.

Automation is presumed to be a solution to bias, but instead often embeds bias into algorithmic analysis.²⁸⁰ Communities already suspected of being potentially “illegal” will continue to receive

²⁷⁵ Ibid., 641.

²⁷⁶ Ruha Benjamin, *Race after Technology: Abolitionist Tools for the New Jim Code* (Newark: Polity Press, 2019),

²⁷⁷ Hu, “Algorithmic Jim Crow”.

²⁷⁸ Benjamin, *Race After Technology*, 6.

²⁷⁹ Ibid.

²⁸⁰ Ana Muñoz, *Borderland Circuitry: Immigration Surveillance in the United States and Beyond* (Univ of California Press, 2022), 85.

disproportionate surveillance targeting.²⁸¹ This creates a feedback loop where automation reinforces pre-existing societal constructs. This too aligns with the Arendtian concept of thoughtlessness.

When coding engineers are not institutionally incentivized to question the data provided for constructing immigrant surveillance networks, they will continue to replicate systems of dominance and oppression. Muniz's study of borderland circuitry represents a remarkable advance in the area of immigrant surveillance and methodically outlines how the development of ICE's internal processes of surveillance have contributed to expanded criminalization of immigrants and expansion of the border.²⁸² To further develop this vein of analysis, this chapter focuses on the internal bureaucratic state logics driving technological modernization and surveillance. In particular, I examine how the discursive constructs of modernity and efficiency undergirding surveillance expansion and technological innovation constitute particular imaginaries of how immigration should be managed that massage the violence committed through these efforts.

Methods

For this chapter, I continue to draw on the document set I collected from the DHS library and FOIA requests, although for this chapter I focus more heavily on data obtained through FOIA requests. As in my previous chapter, I began by conducting a preliminary analysis of around 50 documents, including 2 major FOIA requests concerning Venntel and Thomson Reuters. Following this initial read, I developed a set of themes including concepts of efficiency, modernization, race, gender, surveillance, automation, and technological infrastructure. I used Atlas T.I., a qualitative data analysis software, to code the document set with these themes, and to group documents chronologically. The coding function was performed using Atlas TI's in-text search function; I used the keyword search to find potentially relevant quotations within each document and then manually

²⁸¹ Ibid.

²⁸² Ibid.

verified if that section aligned with how I defined the theme. This method generated 7855 relevant quotations across the document set, which I utilized to track the development of surveillance technology, and the justifications for expanding surveillance over time. I used this data to conceptualize and analyze the underlying logics supporting the expansion of surveillance within the DHS bureaucracy.

I treat these documents more as artifacts of a government orientation towards the world rather than facts in and of themselves. Reading through a fulfilled FOIA request from ICE can feel like an exercise in futility. The vast majority of the turned over documents are so redacted that it is difficult to ascertain its main purpose. I read nearly 200 pages of documentation before I pieced together that ICE's contracts with Venntel were for the purpose of securing access to their geolocation database. Each document represents an accumulation of state knowledge creation and is therefore inundated with discourses and visions of what constitutes the appropriate domains and exercise of state power.²⁸³ Conducting research in this way helps attend to how power operates in the process of archival production.²⁸⁴ By paying closer attention to silences in the archives, and what internal narrative the archives attempt to tell, historical researchers can provide more nuanced accounts of political development. Moreover, this particular project required careful attention to the literal silences in the archive – many of the FOIA requests were heavily redacted because under the Freedom of Information Act agencies retain a high degree of discretion in what they can censor. As such, this analysis requires some degree of deductive work. By treating the internal DHS documents as my subject of analysis, rather than facts in and of themselves, I am better able to grapple with

²⁸³ Scott, *Seeing Like a State*.

²⁸⁴ Megan Ming Francis, "The Price of Civil Rights: Black Lives, White Funding, and Movement Capture," *Law & Society Review* 53, no. 1 (2019): 275–309, Ann Laura Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2, no. 1 (March 1, 2002): 87–109, <https://doi.org/10.1007/BF02435632>.

how these internal logics can be productive of racialized exclusionary systems, while remaining cloaked in bureaucratic discourses of technological efficacy.

Developing the Infrastructure

In its creation proposal, the DHS was described as an entity that would lead to the creation of a “border of the future” and provide greater security through intelligence gathering and improved efficiency.²⁸⁵ Technological modernization was central in bureaucratic discourse, painted as absolutely imperative to achieving these goals. The first national policy for Homeland Security, constructed in cooperation between the newly established DHS and the president’s cabinet, articulated the construction of smart borders, and the systemic harnessing of technology as essential to controlling homeland security.²⁸⁶ However, in translating this mandate into policy action, ICE ascertained that the primary goal of DHS enforcement should be the “Endgame”, which refers to deporting “all removable aliens”.²⁸⁷ The role of technology is to automate and serve as a force multiplier for this goal. In the “Operation Endgame” Strategic Plan, key objectives for technology included, “Objective 4.3 – Develop fully automated management information systems. Provide effective control of persons released into the community during immigration proceedings or while awaiting removal. Objective 4.4 – Maximize the capability to collect and disseminate intelligence data and trends on a real-time basis to support ICE enforcement objectives.”²⁸⁸ Similarly, “state of the art technology” is noted as a key strategy in pursuing effective removals.²⁸⁹ From 2000 to 2012, the number of annual deportations roughly doubled and spending on internal immigration enforcement massively increased.²⁹⁰

²⁸⁵ George W. Bush, “Proposal to Create the Department of Homeland Security”, June 2002, 9.

²⁸⁶ Office of Homeland Security, *National Strategy for Homeland Security*, July 2002, vii, xii

²⁸⁷ United States Department of Homeland Security Immigration and Customs Enforcement, *ENDGAME: Office of Detention and Removal Strategic Plan 2003-2012*, August 15, 2003, 2.

²⁸⁸ *Ibid.*, 26

²⁸⁹ *Ibid.*, 30.

²⁹⁰ Alfonso Gonzales, *Reform Without Justice: Latino Migrant Politics and the Homeland Security State* (New York: Oxford University Press, 2013), <https://doi.org/10.1093/acprof:oso/9780199973392.001.0001>.

Furthermore, beginning in 2007, one of the DHS' major strategic goals became to "Protect our Nation from Dangerous People".²⁹¹ As Simone Browne reminds us,

"... labeling as dangerous is then massively applied to certain nations and their citizens and to those outside the bounds of citizenship, where the anxieties and the anticipation of risk stemming from those deemed "dangerous minorities" then shape security measures at borders, on city streets, and other spaces that come to be associated with risk, or with being at risk of becoming risky".²⁹²

This particular discourse implicitly draws on a long history of referring to foreigners, particularly those from Central America and Asia, as potential dangers to be controlled.²⁹³ A useful example is ICE's implementation of the Visa Security Program (VSP), which began in 2004. The VSP was intended to automate screening of visa applicants by integrating with pre-existing databases containing biographic information on previously known national security threats, or "potential terrorists".²⁹⁴ However, as we have seen previously, the discourse of potential terrorist was at this time linked to "Muslim-appearing" bodies. The figure below, taken from a DHS OIG report showcases that the Visa Security Program was overwhelmingly aimed at inspecting Middle Eastern countries.

²⁹¹ Department of Homeland Security, *Annual Performance Report Fiscal Years 2007 – 2009*, 2007, 15.

²⁹² Simone Browne. *Dark Matters: On the Surveillance of Blackness*. (Durham: Duke University Press, 2015), 38

²⁹³ Chavez, Leo R, *The Latino Threat : Constructing Immigrants, Citizens, and the Nation*, (Stanford, Calif: Stanford University Press, 2008)

²⁹⁴ U.S. Department of Homeland Security, Office of the Inspector General, "U.S. Immigration and Customs Enforcement Visa Security Programs", OIG-08-79, July 2008, 3-4

Selected FY 2007 Post-by-Post VSU Results					
Post	Recommended Denials ²	“Not Yet Known” Identified	Watchlist Nominations	Lookouts Created	Subject Records Created
Abu Dhabi	95	0	1	101	59
Cairo ¹	263	0	0	20	31
Caracas ¹	16	0	0	18	31
Dubai	35	0	0	41	16
Islamabad	5	3	18	235	133
Manila	283	37	41	395	96
Montreal ¹	14	1	0	6	29
Riyadh	39	8	8	117	162
Totals	750	49	68	933	557

¹ Totals for these posts do not include all of FY 2007. VSU operations began in Cairo, Caracas, and Montreal in January, March, and May 2007, respectively.

² Includes Prescreen, SAO, and Post-Adjudication VSU Recommended Denials.

Figure 5: Visa Security Program Results from 2007, taken from OIG report.²⁹⁵

We see here that while the discourse of “dangerous people” is not in and of itself a racial term, its operationalization certainly is. Moreover, by automating the VSP databases, pre-existing racial patterns become more entrenched. Technology substantiates the enforcement priorities of the department while simultaneously tapping into a long history of racial exclusion.

Around this time, immigration enforcement began to more substantively prioritize enforcement of the interior. As geographer Matthew Coleman articulates, this refocus on the interior has not led to a decrease in the policing of the border, rather the rise of interior enforcement has occurred in addition to ongoing policies of deterrence. He further states, “In this sense, the detention and deportation of non-citizens in the US (documented and undocumented) as well as the withdrawal of immigration enforcement from the purview of the courts (and the public), have emerged as central constituents of the Bush administration’s war on terrorism ‘at home’.”²⁹⁶ The makings of a stronger detention state was not incidental to the war on terror, rather, the refiguring

²⁹⁵ Ibid., 11.

²⁹⁶ Mathew Coleman, “A Geopolitics of Engagement: Neoliberalism, the War on Terrorism, and the Reconfiguration of US Immigration Enforcement,” *Geopolitics* 12, no. 4 (September 28, 2007): 607–34, <https://doi.org/10.1080/14650040701546087>, 616.

of racial logics, and the new purviews of “homeland security” in a post 9/11 world reshaped state practices, creating new ways of targeting immigrant communities. As such, this time period also saw a shift turning technology use. Not only did the systems need to be modernized, but new capacities needed to be expanded to track potential deportees within the bounded territory of the nation.

Despite the bureaucratic transition, DHS’s information technology systems lagged behind the department’s new scope. For example, a GAO report noted that ICE was in the process of updating its case management system for enforcement operations but had no assurances of when this system would be fully operational.²⁹⁷ Not only did existing systems need to be modernized, but new capacities needed to be added to track potential deportees within the state’s borders. Reports from the DHS OIG illustrated the limitations of the DHS’ monitoring systems for detainees. One report from 2006 noted that approximately 10% of the records of where detainees were supposed to be warehoused were inaccurate.²⁹⁸ The report provided recommendations for policies that would facilitate more accurate information about where detainees were located at any given moment. This surveillance and monitoring of those in DHS custody was conducted to improve “economy, efficiency, and effectiveness” within the department.²⁹⁹ Improved monitoring of those in custody would further increase the department’s degree of control over those in detention proceedings, and in turn the ability to remove them.³⁰⁰ Economy and efficiency serve as useful bureaucratic language for justifying the expansion of surveillance and detainee monitoring.

As time passed and homeland security spending continued to increase, immigration enforcement agencies sought out increasingly more sophisticated monitoring technologies,

²⁹⁷ United States Government Accountability Office, “Addressing Management Challenges that Face Immigration Enforcement Agencies”, May 5, 2005, GAO-05-664T.

²⁹⁸ US Department of Homeland Security Office of the Inspector General, “Review of U.S. Immigration and Customs Enforcement’s Detainee Tracking Process”, November 2006, OIG 07-08.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

constantly accessible to field agents. In the 2010's many U.S. agencies adopted a "cloud first" policy.³⁰¹ This cloud first policy mandated that agency data should be warehoused through cloud data storage, making it accessible to field officers at a moment's notice. Field officers anywhere in the country, from Seattle to rural Michigan, needed constant access to all available intel. This departmental recommendation also encouraged these organizations to seek out partnerships with private entities; companies like Amazon and Google control the vast majority of cloud computing technology.³⁰² The passage of the 2014 Federal Information Technology Acquisition Reform Act, further consolidated this technological transformation in government by providing increased incentives for departments to adopt the latest in data acquisition technology. This particular piece of legislation was also heavily lobbied for by cloud computing companies including Amazon and Palantir³⁰³ At this time, the fantasy of near instantaneous information acquisition became increasingly feasible. In Congressional budget hearings, DHS agents stressed that the only way to ensure homeland security was through greatly expedited information sharing. One hearing indicated that when the department was facing potential sequestration, representatives from ICE and CBP were deeply concerned about how sequestration would affect the timeliness of responses. One agency official stated,

In addition, at the Law Enforcement Support Center (LESC), timeliness of critical law enforcement information sharing will be affected by slowing query response times due to staffing levels. Total Secure Communities interoperability submissions have risen exponentially with the full deployment of Secure Communities from approximately 1 million in FY 2009 to a projected total greater than 10 million in FY 2013. This increased workload combined with constrained staffing will overwhelm the LESL resulting in officers in the field not receiving critical information in a timely manner.³⁰⁴

³⁰¹ Karen Hao, "Amazon is the Invisible Backbone of ICE's Immigration Crackdown". *MIT Technology Review*, October 22, 2018, <https://www.technologyreview.com/2018/10/22/139639/amazon-is-the-invisible-backbone-behind-ices-immigration-crackdown/>. I elaborate further on the role of lobbying and its particular relation to bureaucratic development in Chapter 4.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ U.S. Senate, *Measuring the Progress and Addressing the Challenges: Hearing Before the Committee on Homeland Security and Government Affairs*, United States Senate, One Hundred and Thirteenth Congress, First Session, March 14, 2013, 252.

These officials argue that immigration enforcement is deeply dependent on urgency in information sharing. The danger of sequestration is that officers in the field will not receive critical information in a timely manner.

It is here worth returning to the concept of thoughtlessness. Arendt suggests that the individual agents operating within the system come to distance themselves from the outcomes and experiences of those affected by their decisions. Thoughtlessness is linked to abstraction from lived consequences. In this case, the institutional priority of efficiency is efficiency of enforcement. Bureaucrats focused on sharing information instantly, in order to pursue internal directives. Simultaneously, the desire for instantaneous information transfer is sharply contrasted with the experiences of those in detention, who may wait months or even years for a hearing date.³⁰⁵ While institutions set up officers and agents to have instantaneous information transfer, immigrants impacted by that selfsame information transfer cannot have any reasonable expectation of when they can leave detention or return to their families. Efficiency in this sense is not about efficiency of the immigration system as a whole, rather efficiency is almost exclusively efficiency in enforcement outcomes. Once the appropriate subjects are correctly apprehended, efficiency is less imperative.

At the same time, another crucial component of the vision of bureaucratic efficiency became the extent to which homeland security departments could consistently monitor massive swaths of territory. A Commission hearing in 2013 showed expert witnesses from various branches of immigration enforcement arguing that outcome performance measures needed to give answers to policy questions were not available owing to failures in the agency's ability to obtain data, which was a justification for additional funding for data acquisition.³⁰⁶ Around the same time, agents of Border

³⁰⁵ Ryo, "Understanding Immigrant Detention"

³⁰⁶ U.S. Senate. *Examining Provisions in the Border Security, Economic Opportunity, and Immigration Modernization Act (S744): Hearing Before the Committee on Homeland Security and Government Affairs*, United States Senate, One Hundred and Thirteenth Congress, First Session, May 7, 2013.

Patrol highlighted that one of their key demands was to be able to have 100% monitoring of the border, and 90% effective control over the border.³⁰⁷ Mr. Fisher, a Chief of the Border Patrol, explained the goal of monitoring through the lens of “persistent surveillance” stating that,

On the persistent surveillance, it is very similar to how we operationalize today. So I think of it in two terms. One is in areas where we need eyes on all the time, and so there are sections along the border where our field commanders and agents have assessed that there is always going to be a vulnerability, think in terms of urban areas or even in the fringes, where we know that if a person is not there or if a camera is not there, people are going to exploit those areas. So we have identified those areas over time that we do, in fact, need in a true sense persistent surveillance in either technology or Border Patrol deployments.³⁰⁸

What is worth noting is the idea that “there is always a vulnerability” if there are not actually agents or cameras monitoring the area. Even if an area is monitored visually, it is insufficient if those camera records are not consistently being checked by border patrol agents. Persistent surveillance is the essential tool to reach the goal of 100% monitoring. Another report from 2014 indicated that CBP had invested massive resources into additional video and electronic surveillance, such as the use of mobile surveillance devices and the construction of new video towers along the Arizona border.³⁰⁹ Even though the data on how this new capacity would enhance enforcement was not collected, the DHS continued to authorize expenditures on collecting these data to “provide security for the remainder of the Arizona border”.³¹⁰ Border vulnerabilities and surveillance capabilities are two sides of the same coin, where there is surveillance capability there is no vulnerability.

These documents illuminate how the DHS as a bureaucracy imagines border enforcement. The border can be controlled, internally and externally, when the Department is able to exert maximal influence through observation. For bureaucrats, the ideal of perfect border monitoring theoretically should inherently lead to a more secure border. In a later part of his testimony, Fisher noted that the idea of effective border control is also related to minimizing the possibilities of entry,

³⁰⁷ U.S. Senate. *Frontline Perspectives on Progress and Remaining Challenges: Hearing Before the Committee on Homeland Security and Government Affairs*, United States Senate, One Hundred and Thirteenth Congress, First Session, April 10, 2013.

³⁰⁸ U.S. Senate, *Examining Provisions in the Border Security*

³⁰⁹ Rebecca Gambler, “Arizona Border Surveillance Technology Plan: Additional Actions Needed to Strengthen Management and Assess Effectiveness”, US Government Accountability Office, GAO-14-411-T, March 12, 2014.

³¹⁰ *Ibid.*

and that to reach the goal of “90% effectiveness” there needs to be a strong ability to detect those that have turned back, the “got-aways”.³¹¹ The goal of the department’s monitoring system is to slowly drive up the percentage of the “turn backs”, those that notice the possibility of being observed and choose not even to enter. Ideally, there would never need to be any type of intervention because those who were attempting to enter would be aware of the certainty that they would be surveilled, monitored, and captured. It is a particular vision of deterrence that is premised on the micro-exercise of the power to observe.

In the second half of the Obama presidency, the DHS initiated acquisition processes for new technologies designed to give field agents access to pre-existing data repositories held by private companies in order to expand interior surveillance capacity. One particular technology that ICE agents were interested in was commercial license plate readers (LPRs). A LPR is a powerful tool for tracking vehicles across jurisdictions. The database warehouses millions of license plate images taken by traffic cameras and allows users to search the database for hits on license plate numbers. ICE first attempted to acquire access to an LPR in 2014 but ran into difficulties because of major privacy concerns surrounding the technology.³¹² Despite these issues, ICE considered LPR’s to be a powerful potential asset and continued to work on its acquisition. Finally, in 2017, ICE was able to get a contract for a test pilot of an LPR service provided by Thomson Reuters. Reuters had recently acquired Vigilant Solutions, a smaller firm that had developed a strong LPR database. Vigilant added 150-200 million new images per year from cameras all across the country. The figure below, drawn from an LPR FOIA, illustrates the extent of the camera coverage.

³¹¹ US Senate, *Examining Provisions in the Border Security*, 284.

³¹² Immigration and Customs Enforcement, “Commercial License Plate Reader FOIA”, 2021, 108

The map below shows the density and coverage of Vigilant’s commercial LPR data. Red areas have higher concentrations followed by yellow and green.



Figure 6: Map of Vigilant Solutions Camera Coverage³¹³

Because of pre-existing contracts between DHS and Thomson Reuters, the organizations were able to reach a tentative agreement. The news was met with elation by ICE investigators – email chains show that department administrators were eager to use the new technology.³¹⁴ Shortly after the licenses were made available to ICE users, agents began rapidly querying the database for use in interior enforcement investigations.³¹⁵ Access to millions of commercial license plate images dramatically increases investigator’s ability to track movement across states. One example from the license plate FOIA showed inter-departmental emails where officers involved in gang investigations tracked the same license plates across multiple state lines.³¹⁶ LPR data would become one of a number of commercially available tools that ICE agents acquired to serve as “force multipliers” in investigations. Access to LPR technology enhances the DHS’ ability to surveil, control, and eventually detain immigrants who are considered unworthy of inclusion in the polity. This can be productively connected to the idea of creating “deportability”; while not every immigrant can be

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Ibid., 227.

³¹⁶ Ibid., 551

detained and deported by the immigration enforcement system, the knowledge that immigrants are being rounded up and deported produces a population that lives in the shadow of state power.³¹⁷ In this instance, immigrants racialized as Latinx are disproportionately targeted by immigration enforcement, and the expansion of LPR usage allows this community to be further surveilled and made deportable.

However, technological modernization has often been slow, stymied by internal contradictions. One example comes from ICE and CBP's collaboration to modernize the TECS system in 2014 which aimed to create a reliable data repository consistently accessible by all ICE users.³¹⁸ TECS is ICE's main case management database, a system that had been in use since 1987. The TECS modernization process was agonizingly slow, spending vast amounts of money with little to no deliverable updates.³¹⁹ One major reason ICE cited for the delays was that the TECS system could never be fully shut down; field agents needed constant access to the system to ensure that there was never a gap in the data management process.³²⁰ Most of the TECS mainframe was constructed during the 1980's and by 2014 was sufficiently defunct to necessitate either near complete overhaul or total shutdown.³²¹ Stuck between needing the mainframe to be modernized, and needing the system to be constantly in operation, ICE found itself caught in a seemingly never-ending loop where resources were thrown at the problem with little planning for how to actually resolve it.³²²

This vignette of inefficiency is particularly telling about how ICE, and by extension the DHS, struggles to reconcile efficiency in resource use with efficiency in homeland security. Despite

³¹⁷ De Genova, "Deportability"

³¹⁸ US Department of Homeland Security, *TECS Modernization Plan*, 6.

³¹⁹ David Powner, "DHS Needs to Strengthen Its Efforts to Modernize Key Enforcement Systems", US Government Accountability Office, GAO-14-342T, 2014, 6-8.

³²⁰ *Ibid.*

³²¹ *Ibid.*

³²² *Ibid.*

evidence of ineffectiveness in spending, ICE's central mission was considered sufficiently important that the ICE technology budget continued to swell in the following years.³²³ For the DHS bureaucracy, the apex of efficiency is the maximization of the capacity to enforce. Modernization is only a priority insofar as it enhances the capacity to enforce at all times. Thus, "efficiency" is not merely a codeword, instead, "efficiency" legitimates the idea that efficient law enforcement is not necessarily efficient in terms of resources, but rather efficient in terms of maximizing capabilities. The urgency of actively monitoring cases consistently trumped the need for modernized systems, all at massive cost to taxpayers. The Congressional response has been to bring spending under control in the name of effective governance. Reports on wasted spending for TECS focused on bringing down costs and improving enforcement outcomes. For example, in a hearing on the DHS' use of information technology, a Congressional member noted, "I think the American people would want us to make sure that those Border Patrol agents have up-to-date and complete information on suspected terrorists that might be coming in, or other individuals. So I am looking forward to seeing how TECS Modernization goes forward."³²⁴ There is an assumption embedded in analysis of DHS technology policy that the technology is necessary, the problem is implementing it efficiently.³²⁵

These systems initiatives were meant to fill in the information gaps preventing the DHS from acting effectively and decisively. Acting effectively means ensuring that no individual alien can slip through the bureaucratic cracks, augmenting a particular idea of national safety through routinizing the rapid exchange of information and maintaining a repository of information that could be accessed at any time. The document set I have examined makes almost no mention of the human consequences of detention and deportation. The experiences of those warehoused by the

³²³ US Department of Homeland Security, *FY 2016 Budget in Brief*, 2016, https://www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf

³²⁴ U.S. Congress, House of Representatives, *DHS Information Technology: How Effectively Has DHS Harnessed It to Secure Our Borders and Uphold Immigration Law?*, House of Representatives, 113th Congress, First Session, March 19, 2013, 31.

³²⁵ Powner, "DHS Needs to Strengthen Its Efforts", 2014.

state, and the ways that these carceral policies impacted the families and communities of those detained and deported is strikingly absent from official discourse. Rather, the documents provide answers, statistics, and justification for expanded enforcement processes. These bureaucratic actors are highly divorced from the on the ground reality of violent processes like detention or deportation. The individual bureaucrat is primarily dealing with discrete pieces of disidentified information rather than looking at the people whose lives are affected by the application of rules.³²⁶ This too aligns with Arendt's notion of thoughtlessness. Internal bureaucratic incentives of improving technological capacity to improve efficiency, mask the humanity of those impacted by these policies, making immigrants data to be wrangled, points of information to be categorized.

In more recent years, the DHS has continued to augment its ability to surveil and detain through acquiring access to increasingly powerful surveillance tools. I here focus on ICE's contracts with Venntel, a third-party contractor which provides geodata from thousands of cell phones to other companies for a hefty sum.³²⁷ Contracts with Venntel noted that,

Geolocation data service is a data subscription that will give ICE ERO the capability to view location signals from known locations of interest and track movement to identify patterns and reveal other source locations. It is a tool that will greatly enhance law enforcement abilities for identifying administrative and criminal activity as well as effective operational decision-making.³²⁸

The use of geolocation data is the closest ICE has ever been to its ideal of perfect surveillance.

It was met with resounding enthusiasm from internal bureaucrats, emails noting that, "our shop has trial use but we would love to get licenses as well. The tool is phenomenal ...".³²⁹ Geolocation data is one of the most powerful tools for discovering where, and how, certain subjects have moved and can be used to track down anyone who is potentially subject to immigration enforcement. In internal

³²⁶ Weber, *Economy and Society*

³²⁷ Immigration and Customs Enforcement, "Location Data FOIA".

³²⁸ Immigration and Customs Enforcement October 2021 Commercial Location Data FOIA Production. *ACLU v. Department of Homeland Security* (2021)

³²⁹ Immigration and Customs Enforcement July 2021 Part 2 Commercial Location Data FOIA Production, DHS Internal email communication with Venntel, *ACLU v. Department of Homeland Security* (2021), 6.

documentation the DHS outlined that Venntel data is a potential way to identify new trends in “illegal immigration,”³³⁰ but continued to focus searches on previously existing racial notions. The vast majority of searches in the database were confined to a small area of the Southwest along the border where there are known to be large Latinx communities.³³¹ While the use of cell site simulator technology like that employed by Venntel is theoretically limited by privacy constraints imposed on federal agencies, if the investigation is for a “criminal alien” then use of cell site simulators is almost unlimited.³³² This lines up neatly with Cacho’s conception of the “de facto status crime”: those who could potentially be “criminal aliens”, particularly Latinx immigrants, are rendered appropriate targets for geolocation surveillance. The further the reach of surveillance and enforcement against these racialized communities, the greater percentage can be rendered deportable. Efficiency in enforcement is efficiency of capacity *to enforce*. Thus, it is clear that the root of the problem with improving technological efficiency is not the extent to which ICE can manage its resources well, but that the very foundation of its idea of efficiency is one that cloaks violent forms of social exclusion.

The administration and expansion of surveillance is not the malevolent action of individual bureaucrats. Analysis of systemic racism illustrates that conceptualizing contemporary racism through a perpetrator/victim dyad obscures the realities of systemic forms of violence.³³³ What Arendt’s vision of bureaucracy adds here, is that, “...perhaps the nature of every bureaucracy, is to make functionaries and mere cogs in the administrative machinery out of men, and thus to dehumanize them”.³³⁴ The DHS’ thoughtlessness, the inability to see the human consequences of expanding surveillance, stems from how the bureaucracy conceptualizes immigration. Immigration is

³³⁰ Department of Homeland Security September 2021 Commercial Location Data FOIA Production, DHS Internal email communication, *ACLU v. Department of Homeland Security* (2021), 17.

³³¹ Shreya Tawari and Fikayo Walter-Johnson, “New Records Detail DHS Purchase and Use of Vast Quantities of Cell Phone Location Data”, July 18, 2022, <https://www.aclu.org/news/privacy-technology/new-records-detail-dhs-purchase-and-use-of-vast-quantities-of-cell-phone-location-data>

³³² Immigration and Customs Enforcement July 2021 Part 2 Commercial Data Location FOIA.

³³³ Omi and Winant, *Racial Formation in the United States*.

³³⁴ Arendt, *Eichmann in Jerusalem*.

a problem to be “solved”, one that requires attention to detail and specific planning related to the everyday bureaucratic problems of logistics. Regarding the Eichmann trial, Arendt writes that, “Of course it is important to the political and social sciences that the essence of totalitarian government, and perhaps the nature of every bureaucracy, is to make functionaries and mere cogs in the administrative machinery out of men, and thus to dehumanize them”.³³⁵ In the case of the Department of Homeland Security, the thoughtlessness of the agency, the inability to see the human consequences of expanding surveillance, stems from how the bureaucracy conceptualizes immigration. Immigration is postulated as a problem to be “solved”, one that requires attention to detail and specific planning that attends to the everyday bureaucratic problems of logistics. I turn to a quote from Assistant Inspector General Ann Richards to illustrate. Richards noted, referring to developing a strategic enforcement plan that,

The planning that I am talking about is if you are going to buy a certain kind of aircraft, what does it need to be on the aircraft and how many do we need and how many pilots do we need and how many mechanics do we need? That is the kind of detailed planning that I would like to see the Department do before they spend the money that is identified in this legislation to implement the broader plan of securing the border through greater surveillance and technology.³³⁶

Achieving the DHS’ security goals requires thinking about the logistics and micro-physics of enforcement, but what is lost in the mire of bureaucracy is that the purchased aircraft will be used to surveil, detain, and deport certain groups of human beings. Surveillance and technological modernization are central components of this logistical planning.

Bureaucracy creates a level of abstraction from on the ground reality; the entire purpose of bureaucracy as Weber suggests is to create well defined systems, to ideally render the same decisions regardless of who the individual deciding entity is.³³⁷ Thus, as Arendt suggests, thoughtlessness occurs when each individual becomes another cog in the bureaucratic entity, when the individuals

³³⁵ Arendt, *Eichmann in Jerusalem*.

³³⁶ U.S. Senate, *Measuring the Progress*.

³³⁷ Weber, *Economy and Society*.

are so steeped in the internal bureaucratic logics that they begin to think, to dream in terms of abstract logistical planning. The racial component creeps in because the concepts of bureaucratic efficiency are still grounded in particular visions of who constitutes the appropriate target of surveillance, visions that are normalized and taken for granted within the bureaucratic policy space. Cacho's concept of the "de facto status crime" shows how racial meaning making happens at the societal level, and often without conscious directive. In the context of surveillance, DHS' internal oversight often pushed for more detailed accounting and planning for how and when different types of equipment would be deployed. Achieving the DHS' security goals required thinking about the logistics and micro-physics of enforcement, but what is lost in the mire of bureaucracy is that new monitoring towers or cameras will be used to surveil, detain, and deport certain groups of human beings, designated by their racial origins. The more detailed the planning, the easier it can be to lose sight of the bigger picture of enforcement.

This is one of the reasons, I argue, that bureaucracy has been a central site of making and maintaining racial categorization. The racial component creeps in because the concepts of bureaucratic efficiency are still grounded in particular visions of who constitutes the appropriate target of surveillance, visions that are normalized and taken for granted within the bureaucratic policy space. This is the key mechanism then of the internal logics of immigration enforcement. While racial animus and xenophobia may potentially guide the actions of individual agents on the ground, or politicians calling for better enforcement, bureaucracies are fundamentally shaped by abstraction, rationalization, and adherence to dreams of efficiency.

Conclusion

This chapter analyzed the development of the DHS's surveillance apparatus through the lens of internal bureaucratic logics. Surveillance provides a particularly useful lens for understanding bureaucracy because the logics of developing surveillance technology are often cloaked in banal

rhetoric of modernization, securitization, and efficiency. What these discourses ultimately end up producing is a massive state apparatus grounded in a particular type of Arendtian thoughtlessness, where each individual bureaucrat operates more akin to a cog in the machine, distanced from the human consequences of the emails they send, the technologies they requisition, and the cameras they deploy. Bureaucrats are subjected to internal processes and procedures, demanding optimization and efficacy, and those internal demands lead to the invisibility of the violence of immigration enforcement to those same bureaucrats. Furthermore, the processes of internal bureaucratic development capture how racial categorization is maintained in the modern era; not just through racial animus but through the replication of existing systems through networks of technology and infrastructure. Pre-existing racial categories continue to be upheld through bureaucratic policies that center modernization and efficiency. Race helps determine how and where surveillance should be placed. The marked difference in surveillance infrastructure on the Northern and Southern borders, the necessity of accessing constant information about potential crossers on the Southern border, and desire to round up and deport a racialized detained population, illustrates that while these policies are facially race neutral, the consequences of how they are enacted are deeply racialized. Challenging these policies and directives necessitates intentional engagement with the mechanisms of bureaucracy, examining how and when seemingly innocuous processes produce inequitable and violent outcomes. By paying closer attention to how bureaucracies shape everyday forms of meaning making and how bureaucratic discourse elides, conceals, and replicates hierarchical power structures, scholars and activists alike can pinpoint weaknesses in the bureaucratic structure and anticipate potential avenues of state power expansion.

Ultimately, while this analysis cannot perfectly capture the nuances of how the Department of Homeland Security has developed technology for the purposes of enforcement, what it does show is how the intertwined ideas of technological modernization and efficiency have been

constituted as essential to securing the nation's borders. Surveillance technology, and the allocation of funds towards the development of a massive surveillance network, come out of a particular bureaucratic imaginary of what modernization and efficiency mean, and I have further suggested that these imaginaries are rooted in a concern for enforcing particular visions of state security, and therefore who is constituted as deserving of inclusion in the state. The development of surveillance capacity is part of a political project of expanding the ability to detain and deport, creating a modern agency that straddles the line between bureaucracy and law enforcement, and in turn enforcing a particular vision of race and nation through the everyday process of managing the immigrant population.

Chapter 4: Profiting from Enforcement Infrastructure: Bureaucratic Incentives and Political Consequences of DHS Relationships to the Private Sector

Introduction

In 2014, DHS began the process of replacing its pre-existing biometric database (IDENT) with a new system, the Homeland Advanced Recognition Technology (HART) system. The initial proposal focused on the Office of Biometric Identity (OBIM) partnering with internal technology development organizations and some outside stakeholders to create a modular, scalable system for tracking biometric data.³³⁸ HART was considered an essential upgrade because there were many underlying issues with the IDENT system, ranging from an inability to maintain system accessibility 24/7 to increased costs of maintaining a legacy system. HART was marketed as a major step forward for the DHS in terms of its ability to conduct successful biometric monitoring.³³⁹ But by 2017, the HART system was still not operational, and the DHS was forced to put out a procurement order to find contractors to bring the new system online. These new procurement orders put the onus for systems development squarely in the hands of the contractor. Under pressure to produce a new technological system to aid in enforcement efforts, the DHS moved from an in-house development system to sourcing technology from the private sector.³⁴⁰

This example is not an isolated one; the DHS has developed deep ties to corporations that provide vital technologies to support current immigration enforcement policies. Private actors are no longer incidental parts of the DHS' mission, many core elements of the DHS' ability to implement its current policies depend on infrastructure, ideas, contracts, and technology provided by corporations. As such, this chapter of the dissertation examines the relationship between the DHS' bureaucratic components and the private sector in order to understand how internal

³³⁸ U.S. Department of Homeland Security, "Privacy Threshold Analysis – Homeland Advanced Recognition Technology", January 1, 2014.

³³⁹ Ibid.

³⁴⁰ U.S. Department of Homeland Security, Office of Procurement Operations, "Solicitation Number HSHQDC-16-R-00080 Homeland Advanced Recognition Technology (HART)", Washington, D.C., February 13, 2017.

bureaucratic incentives shape these interactions. How has the relationship between DHS' internal bureaucracy and the private sector evolved since the DHS' inception? What factors have driven these changes? This chapter explores how the DHS' position as a semi-autonomous bureaucratic agency has shaped its relationship with private partners to better understand the relationship between an increasingly powerful private sector, state actors, and immigration control.

Under certain circumstances, bureaucratic agents are able to exercise considerable discretion, and the agglomeration of bureaucratic decision-making plays a vital role in how laws, statutes, and Congressional mandates are enacted. However, equally important to examine is what happens when bureaucrats are unable or unwilling to successfully enact certain portions of Congressional mandates. In this chapter, I argue that in the case of the DHS, one major consequence of Congressional mandates has been a push towards increased reliance on the private sector in an attempt to improve the DHS' overall ability to complete its mission. DHS has built an architecture of enforcement that is now deeply reliant on tools and techniques imported from the private sector. The previous chapter discussing technological modernization highlighted internal bureaucratic incentives driving technology acquisition, but these imperatives have also shaped how the DHS works with the private sector in acquiring new monitoring systems. This has crucial implications for how we study immigration enforcement, because it illustrates that the system of immigration enforcement and the harmful outcomes that emerge for immigrant communities are linked to perceptions of the private sector as a tool to solve the problems of governmental inefficiency. In the document set I examine, the private sector is often highlighted as a model of efficacy, a domain whose practices bureaucratic actors should seek to emulate in their decision-making processes. What then are the implications for this increased turn to the private sector, both in terms of the practice of immigration enforcement, and for how immigration enforcement perpetuates and extends racial logics?

To this end, I argue that external pressure from Congressional mandates and Presidential policymaking combined with internal bureaucratic incentives to demonstrate success and efficacy in the DHS' ability to surveil, detain, and deport, contributed to a departmental shift towards increased reliance on the private sector to develop the systems necessary for modernized immigration enforcement. Congressional mandates represent the largest point of pressure on an American bureaucratic agency; Congress controls the process of funding and therefore agencies must respect that potential point of coercion. However, Congress mandating something does not simply make it so – there is still tremendous responsibility on the part of a department to translate a Congressional mandate into reality. In the case of the DHS, Congressional mandates can be too expensive, or call on the DHS to complete tasks beyond its capacity. Simultaneously, the private sector is instantiated in agency culture as the bastion of efficacious action. To this end, bureaucratic actors have often turned to the private sector to try and address departmental inefficiencies and meet the goals outlined by Congress. The end result of this process, however, has been an increased dependency of government on the private sector to accomplish the goals of enforcement. These types of partnerships are not necessarily new to governmental processes – as I examine later, sectors like the defense industry have also been shaped by interplay with corporations. In the case of homeland security, the creation of the DHS helped substantiate homeland security as a new industry for tech companies, defense sector players, and other corporate giants. Homeland security as an industry creates perverse incentives for corporations to continue to push for carceral policies, and further entrenches profit incentives in the construction of immigration enforcement policy.

Furthermore, this set of developments also further reifies neoliberal logics of market efficiency as the solution to social issues and yokes these logics to the racial project of immigration enforcement. As I have argued throughout this dissertation, racialized processes can be continued even without explicitly racial policies. In the case of immigration enforcement, the vast resources of

the DHS are targeted primarily at Latinx individuals, which stems from a long legacy of projects of racial exclusion. As the DHS continues to rely on private sector assistance to create enforcement systems, the result is that there is a vast market created for the business of both violent forms of immigration enforcement and for developing the systems that support this violence, such as technological infrastructure. By deepening its relationships to the private sector, the DHS expands the market for profiting from enforcement. Race remains an important logic to explore because the expansion of this capitalist marketplace uses facially race-neutral discourses to prop up racially inequitable policies. Companies are able to further profit off the pain of immigrant communities through the discourses of market efficiency and optimization.

To make this argument, I begin by reviewing literature on how the relationship between the state and private corporations has evolved in the contemporary era, particularly in terms of how these relationships shape broader circulations of capital and racial logics. I bring this literature into conversation with previous historical work on immigration enforcement to provide key context for the study. I outline my methodology in terms of approaching the archival evidence for this chapter. I then turn to demonstrating how the exigencies of poor financial management, Congressional pressure, and internal bureaucratic incentives pushed the DHS towards increased reliance on private entities, and in particular, the role of acquisition strategy and contract management in expanding force multipliers for immigrant detention. To do so, I focus on three major historical threads: the adoption of techniques and management practices from the private sector, issues in developing a comprehensive biometric exit program, and the transition to increased dependence on private technology companies. I conclude by reflecting on the role that purportedly race neutral policies oriented towards financial efficacy can play in shaping the expansion and retrenchment of racial capitalism through immigration enforcement.

Race, Capitalism, and the State

Earlier sections of this dissertation have focused on how internal bureaucratic structures of the DHS have further entrenched, and even expanded, racial logics of immigrant exclusion. However, given that this chapter is much more directly focused on the political economy of DHS relationships to the private sector, here I examine the relationship between capitalism, neoliberal economization, and race in order to demonstrate how DHS' increasing ties to the private sector further cement the racialized segmentation of the U.S. economy.

Theorists of racial capitalism have made the case that capitalism cannot be understood outside processes of racial meaning making that designated certain populations as the appropriate targets of dispossession and expropriation. In his book *Black Marxism*, Cedric Robinson outlines how one of the major tendencies of European capitalism was to mark and categorize different groups of people in order to figure out how they should be managed, “The tendency of European civilization through capitalism was not to homogenize but to differentiate – to exaggerate regional, subcultural, and dialectical differences into racial ones”.³⁴¹ In his thorough historical account, Robinson illustrates how the rise of capitalism was linked to making broad generalizations about groups of people, eliding certain forms of difference, to make specific types of racial difference very meaningful for the distribution of material resources. He argues that, “as the systems of manufacturing, plantation slavery, and farming had closed together into an integrated national economy sharing the exploitation of land, labor, and natural resources, the social ideology and historical consciousness of the ruling class acquired two domestic enemies, the Indian and the Negro.”³⁴² Robinson here articulates that these two different racial groups, the “Indian” and the “Negro”, were manufactured over time through the processes of the capitalist economy, and that each of these domestic enemies was dealt with in a different way. Racial meaning making helped

³⁴¹ Cedric Robinson, *Black Marxism, Revised and Updated Third Edition: The Making of the Black Radical Tradition* (Chapel Hill: The University of North Carolina Press, 2021), https://muse.jhu.edu/pub/12/edited_volume/book/81110, 126

³⁴² *Ibid.*, 187

differentiate labor that could be exploited, namely black labor, from those who needed to be stripped of their land and made white, namely indigenous peoples.³⁴³ The chief contribution of the racial capitalism literature is that this tendency of capitalism is not coincidental, it is an underlying premise of capitalist exploitation. The accumulation of sufficient capital required groups of people who could be systematically stripped of their resources to further development.³⁴⁴

These forms of racialized capitalist exploitation continue into modern politics, many of which are enabled by the way that the legal construction of immigrants sets up different modes of il/legality for undocumented immigrants that operate alongside the laws governing the majority. In the case of contemporary undocumented immigrants, as Juliet Stumpf persuasively argues, the confluence of criminal and civil law in immigration enforcement proceedings pushes detained immigrants into a peculiar liminal legal space.³⁴⁵ Despite the fact that legally detention and deportation are not punishments for a crime, the procedures used in immigrant detention and removal processes more closely resemble other carceral processes. However, because those subject to immigration enforcement actions are not technically part of the criminal legal system, they actually have very little in terms of legal rights. This relates to an argument I advanced in the introduction, drawn from the work of McCann and Lovell, which suggests that repressive and liberal law are not necessarily distinct but operate in jointly to produce legal orders that exclude certain types of subjects.³⁴⁶ In immigration, those marked as detainable, deportable, and excludable, are governed by different sets of legal logics than the full citizen. As Cristina Beltran puts it,

Moreover, because migrants are often depicted as choosing to move and enter the country illegally, enforcement and sanctions are authorized through the discursive terrain of liberalism and the rule of law. Unlike other *Herrenvolk* practices that are now legally prohibited, aggressive immigration enforcement can be

³⁴³ Robinson, *Black Marxism*, María Lugones. "Heterosexualism and the Colonial/Modern Gender System." *Hypatia* 22, no. 1 (2007): 186-209, Leanne Simpson, *As We Have Always Done : Indigenous Freedom through Radical Resistance*, (Minneapolis: University of Minnesota Press, 2017), Taiaiake Alfred, *Peace, Power, Righteousness : An Indigenous Manifesto*. 2nd ed. (New York: Oxford University Press, 2009).

³⁴⁴ Robinson, *Black Marxism*, Nancy Fraser, "Behind Marx's Hidden Abode", *New Left Review*, 86 (March/April 2014), <https://newleftreview.org/issues/ii86/articles/nancy-fraser-behind-marx-s-hidden-abode>

³⁴⁵ Stumpf, "The Crimmigration Crisis".

³⁴⁶ McCann and Lovell, *Union by Law*.

witnessed and enacted by a liberal polity whose citizens and policing apparatus can legitimately claim that its actions have been democratically approved as lawful, necessary, and authorized.³⁴⁷

The liberal legal polity supports immigration enforcement because enforcement has been deemed both legal and necessary to secure the boundaries of the polity.

Immigrant detainees showcase how repressive policies can be justified even within a liberal legal order. Immigrant detainees in the United States are rendered as outsiders, which makes them uniquely vulnerable and subject to forms of violence that are considered intolerable when used against American citizens. These immigrants may be held indefinitely, without any notification as to their status, may not know when they can expect a hearing, may be transferred between detention facilities without notice, and are forced to labor to maintain their sites of detention for \$1 per day.³⁴⁸ Rights contained in the 4th, 5th, and 6th amendment do not have to be granted to people in removal proceedings.³⁴⁹ Through the process of racialization, and the creation of immigrant detainees as an appropriate target for repressive laws, the practices of treating immigrant detainees as less than human have been incorporated into the legal regime. This dual system of law enables the state to maintain the legal fiction of detention as non-punitive while in reality building a massive engine of repression.

To further elucidate this comparison, I return once more to Lisa Marie Cacho's concept of the "de facto status crime", which she uses as a way to theorize racialized forms of rightlessness in the United States. As we recall from previous chapters, the "de facto status crime" does not refer to migrants conducting illegal activity, rather, Cacho argues that certain bodies appear, and are apprehended, as inherently undeserving and criminal. Crucially, this is not applied equally to all undocumented immigrants. As an example, in 2015-2018 while Chinese immigrant made up an estimated 3.6% of all unauthorized immigrants, they made up less than half a percent of all

³⁴⁷ Beltran, *Cruelty as Citizenship*, 92.

³⁴⁸ Ryo and Peacock, "Jailing Immigrant Detainees".

³⁴⁹ Ibid.

immigrants subject to an enforcement outcome. By contrast, while Guatemalan nationals made up an estimated 5.4% of the undocumented population, in 2018 nearly 11% of ICE detentions were Guatemalan nationals. Finally, while Mexican immigrants certainly make up the largest flow of migrants to the United States, they are still subjected to enforcement actions at a disproportionate rate. Mexican immigrants are estimated to make up around 47.5% of the undocumented population as of 2018, but in the same year, over 60% of ICE arrests were Mexican nationals.³⁵⁰ In aggregate Latinx people make up around 90% of all people subject to immigration enforcement.

These racial patterns should, at this point in the dissertation be familiar, but I reiterate them to reemphasize that expanding the system of immigration enforcement maintains these pre-existing patterns of racialization. The consistent over enforcement of Mexican or “Mexican appearing” communities, is not an accident. It is the result of a long history of violence which produced the “illegal alien,” a racialized figure that can be legitimately subjected to enforcement processes in order to secure the liberal polity.³⁵¹ The particular racial composition of this imagined figure has changed over time. As the boundaries of whiteness shifted, different immigrant groups came to be included in the polity. Today, stereotypes about Asian immigrants such as the myth of the model minority³⁵² have primarily left this group outside the bounds of immigration enforcement, though of course differences between Asian groups leave some more vulnerable to enforcement than others. By contrast the Latinx immigrant has been highly visible in public consciousness and discourse, shaping this racial group as the primary figure of illegality.³⁵³ The repressive law exercised against the undocumented immigrant is acceptable because the undocumented immigrant has never been a fully

³⁵⁰ All statistics above are drawn from aggregation of two sources: TRAC Immigration, “Immigration and Customs Enforcement Arrests 2015-2018”, (Syracuse: Transactional Records Action Clearinghouse, 2020), and United States Department of Homeland Security Office of Immigration Statistics, “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015 – January 2018”, 2019.

³⁵¹ Ngai, *Impossible Subjects*

³⁵² See Ngai for a more robust discussion.

³⁵³ Leo Chavez, *The Latino Threat Narrative*, 2007.

rights bearing subject under liberal law; race is the logic that marks the shifting boundary between liberal and repressive law.

The important connection I emphasize in this chapter is that the economic relationships between the government's enforcement apparatus and the private sector are deepening, which further substantiates this racial order, and induces additional incentives to maintain this illiberal legal order. The DHS is increasingly supported by the outsourcing of sovereign functions to private entities, a form of neoliberal border management. In contemporary U.S. immigration enforcement, the phenomenon of private prisons utilizing immigrant detainee labor to cut costs has emerged as the most publicly visible facet of DHS and private sector integration. As Doty and Wheatly suggest, corporations such as the GEO Group Inc., and CoreCivic, two of the largest private prison corporations in America, are tasked with detaining greater and greater numbers of immigrants.³⁵⁴ According to data from Urban Justice Center's Corrections Accountability Project, nearly 72% of detainees in the United States are currently being held in private detention facilities.³⁵⁵ The net profit for the GEO Group of holding this many detainees amounted to \$541 million in 2018 or nearly 24% of their annual profit.³⁵⁶ This privatization of the formerly sovereign function of immigration control introduces additional elements of profitability into the racialized treatment of undocumented immigrants.³⁵⁷ Mat Coleman has suggested, an increasing priority of immigration enforcement has been the interior management of immigrant populations.³⁵⁸ By making these populations detainable and deportable, racialized immigrant communities are kept in a position of societal vulnerability which also enables their continued exploitation in positions of low wage work.³⁵⁹ Here, it becomes

³⁵⁴ Roxanne Lynne Doty and Elizabeth Shannon Wheatley, "Private Detention and the Immigration Industrial Complex," *International Political Sociology* 7, no. 4 (December 1, 2013): 426–43, <https://doi.org/10.1111/ips.12032>.

³⁵⁵ Worth Rises, "Immigration Detention: An American Business", https://worthrises.org/immigration#block-yui_3_17_2_1_1529983273570_25026

³⁵⁶ Ibid.,

³⁵⁷ Doty and Wheatly, "Private Detention"

³⁵⁸ Coleman, "A Geopolitics of Engagement".

³⁵⁹ De Genova, "Migrant Illegality".

clear that capitalist profit motivations interact with racialization processes to produce systems that depend on the ongoing production and management of certain racialized bodies.

Neoliberal political development has contributed to broader racial processes, and the expansion of capitalist logics into new domains. To supplement this analysis, I here take the time to flesh out my conceptualization of neoliberalism, particularly as it connects to evolving relationships between government and corporations. Neoliberalism is a notoriously slippery concept to define, yet at the same time represents a unique conflagration of ideas that can be productively used to describe emergent patterns in the relationship between politics and the economy. In general, I draw on David Harvey's definition of neoliberalism which states that,

a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices.³⁶⁰

This definition focuses on a particular bundle of practices that have been increasingly adopted as a staple of economic policy in regimes across the world, though especially notably in the austerity regimes of Thatcher and Reagan. These policies focus on cutting taxes, deregulation, privatization of industries, and the rollback of public welfare benefits.³⁶¹ At the core of this neoliberal agenda is an assumption that the market provides the most rational and effective distribution of goods and services for the population. But four decades past the first implementation of neoliberal policies, the term has come to be a much larger signifier, a placeholder for a political, social, and economic order oriented towards the extension of market logics into new domains.

A useful descriptor of how neoliberal rationality functions can be drawn from Wendy Brown's examination of neoliberalism in *Undoing the Demos*. One of the main attributes of modern neoliberalism, Brown argues, is the idea that the government's central concern should be the

³⁶⁰ Harvey, *A Brief History of Neoliberalism*, 2.

³⁶¹ *Ibid.*, 3

economy – whatever social policy successes emerge should be related to the success of economic growth. Brown draws on a speech from then-President Barack Obama where she notes that, “... every progressive value — from decreasing domestic violence to slowing climate change — Obama represented as not merely reconcilable with economic growth, but as driving it.”³⁶² Neoliberalism suggests that the role of government is to get out of the way of the economy where it can and to integrate economic growth principles in all aspects of policymaking. The projects of social good are only useful insofar as they are connected to the projects of economic development.

The turn towards neoliberalism has also included the importation of private sector management methods and economic techniques into government administrative practices. Returning to Wendy Brown, she argues that the neoliberal version of government, which she refers to as governance, is focused almost exclusively on problem solving and solution implementation. “Good” governance prioritizes effectiveness, efficiency, regulation, and the ability to solve problems through technocratic solutions.³⁶³ Brown’s critique focuses on how this turn towards governance has led to an evacuation of the political in modern democratic society. She argues, persuasively, that the reduction of politics to problems of logistics means that bigger questions animating the political such as what is good or what is justice, are no longer central to politics and the foundations of modern democratic institutions begin to crumble. I build on this argument to further suggest that in the context of racialized forms of immigration enforcement this transition has exacerbated tendencies within government to focus on immigration as a “problem to be solved” rather than a broader human or political process.

Moreover, private actors are far from politically neutral. Scholarship on the military industrial complex has shown that the defense industry is a major part of the American economy. Millions of

³⁶² Wendy Brown, *Undoing the Demos: Neoliberalism’s Stealth Revolution*, (Cambridge: Zone Books, 2015), 25.

³⁶³ Brown, *Undoing the Demos*, 129.

Americans are dependent on weapons designers or aircraft manufacturers for their livelihoods. As Gholz and Sapolsky argue, during the Cold War there was a major ramp up in production of various military technologies. However, when the Cold War ended, these companies did not want to lose this powerful source of revenue, and as such utilized their political capital to continue to secure multi-billion dollar defense contracts. Gholz and Sapolsky state, “Stranded investment acts as a barrier to exit, and investing in politics is the mechanism by which contractors keep plants open”³⁶⁴, which suggests that political investment is necessary for military contractors to continue to secure high levels of profit. Similarly, the DHS has become a comparable type of marketplace where contractors seek to sustain extended relationships with the government for profit, and leverage political resources where necessary to sustain these gains. Moreover, many of these actors are the same – Deepa Fernandes found that the biggest DHS contractors were also defense industry contractors like Lockheed Martin, Northrop Grumman, and Accenture LTD.³⁶⁵ In fact, in 2004, there were actually more companies and organizations actively lobbying the government for homeland security legislation than defense legislation.³⁶⁶ These companies are involved at many levels of immigration enforcement from designing border fencing to helping build basic IT infrastructure. In other words, like defense spending, homeland security is a massive industry, and one corporations are willing to fight politically to protect. This further incentivizes politicians and bureaucrats alike to continue to promote carceral solutions – the pre-existing profit infrastructure could be jeopardized were the DHS to pivot away from these policies.

Bureaucracy and the Private Sector

³⁶⁴ Eugene Gholz and Harvey M. Sapolsky, “Restructuring the U.S. Defense Industry.,” *International Security* 24, no. 3 (December 22, 1999): 5-51.

³⁶⁵ Deepa Fernandes, *Targeted: Homeland Security and the Business of Immigration*, (New York: Seven Stories Press, 2007), 179.

³⁶⁶ *Ibid.*

In previous chapters, I have focused heavily on the ways that the DHS' peculiar position as both a bureaucratic agency and a legal enforcement agency have granted it a certain degree of leeway in its ability to create immigration policy. While the DHS does not exercise complete autonomy from Congressional mandates, it is often up to the DHS to figure out how precisely to administer immigration enforcement agenda. The process of designing the agency to address these issues means that bureaucrats and bureaucratic incentives play a notable role in the politics of immigration enforcement in modern America. As I suggest in the introduction however, it is also important to explore the consequences of Congressional mandates for the DHS and to explore how those legal precepts interact with internal departmental drives to better understand how bureaucratic development shapes immigration policy. The trend towards increasingly deep ties between the DHS and private entities has been shaped by departmental incentives, Presidential decrees, and Congressional directives. This combination of factors, which I theorize below, help structure and mediate public-private relationships in homeland security.

The process of departmental planning is shaped both by that department's particular goals, and the goals of the varying agents overseeing how that department carries out its mission. In his now seminal work on bureaucracy, James Q. Wilson argues that the INS as an institution was hampered by having vague and competing goals. The INS was tasked both with finding and expelling illegal aliens but also making sure that sufficient workers entered the country for particular jobs. As a result, owing to the broad scope of its mission, the INS often found itself with a workload far greater than it had the resources to complete.³⁶⁷ This problem is further complicated when bureaucratic agencies have to address multiple competing demands stemming from Congress. Wilson notes that while agencies are never free of Congressional control, they may also maneuver

³⁶⁷ Wilson, *Bureaucracy*, 158.

among their varying political masters to further the overall agency goals.³⁶⁸ In the case of the DHS, mandates set by Congress, or the Presidency, have often been outside of the DHS' actual capabilities at the time the mandate was issued. A notable example from recent years can be seen in former President Trump's first executive order on border security, which mandated the immediate hiring of 5,000 Border Patrol agents to stem the urgent crisis at the Southern border.³⁶⁹ A report from the DHS OIG highlighted that the DHS was experiencing a number of issues in meeting this executive order's demands from an inability to hire staff quickly. The department had insufficient internal staffing to actually hire these agents, nor did they not have an effective plan for how to utilize these agents once hired.³⁷⁰ While then-President Trump outlined an ambitious, if highly violent and racialized, agenda for Border Patrol, it quickly became apparent that merely authorizing a particular endeavor does not guarantee its success – an effective machinery must be built in order to support broader immigration enforcement activities.

As such, a bureaucratic agency can be understood as operating under several major constraints. First, the bureaucratic agency has a duty to enforce certain laws as enacted by the Congressional majority. However, a Congressional mandate does not instantaneously come into effect – in order for a law to be fully realized, it requires implementation by bureaucratic actors, and the processes by which those actors develop systems to enact those mandates has its own set of political and human consequences. At the same time, these mandates are a constant pressure on the agency, a reminder of what they need to accomplish overall in any given year. Congress still retains the power of the purse, and thus agencies must be concerned about how their decision-making will affect future funding. The DHS gets to submit its proposed budget to Congress, but the process of

³⁶⁸ Ibid.

³⁶⁹ Donald J. Trump, Executive Order 13767, "Border Security and Immigration Enforcement Improvements" *Code of Federal Regulations*, title 3 (2017).

³⁷⁰ Department of Homeland Security Office of the Inspector General, "Special Report: Challenges Facing DHS in its Attempt to Hire 15,000 Border Patrol Agents and Immigration Officers", OIG 17-98-SR, July 27, 2017.

Congressional appropriation can lead to substantive changes before the budget is actually passed. If the DHS cannot effectively justify the funds it requisitioned, say because they failed to meet goals for efficient procurement the year before, then Congress may see fit to slash elements of the budget. While in practice DHS funding has tended to increase, this is also related to the perceived necessity of immigration enforcement as a central tool of state power.

The second major constraint on bureaucracies is the decision-making powers of higher up actors in the Executive branch, notably the President. Presidential orders and appointments have a direct impact on the day-to-day operation of agencies. However, as the example above illustrates, a command from the President may set the tone or direction of operations but there is an entire machinery that must be redirected to accomplish those ends. The third major constraint on any agency is budgetary. Each agency only has so many resources, and given their ostensible responsibility to the taxpayers, agencies must demonstrate that they are spending those funds effectively. Finally, agencies are constrained by their structure – as Weber reminds us, an essential component of an effective bureaucracy is clear delegation of tasks within an organizational structure to enable each individual agent to focus on successfully applying and implementing the rules of the agency.³⁷¹ Structure enables the agency to perform its tasks effectively. This chapter examines how the combination of these constraining factors has pushed the DHS into increasingly seeking out private sector acquisitions, technological infrastructure, and contracting. Internal demands for technological modernization, as I discussed in chapter 3, and outside demands for greater productivity drive DHS to seek out more (seemingly) efficacious means of meeting their departmental goals. The private sector is often perceived as a more efficient sector than government bureaucracy. So, when tasked with outsized demands by Congress and the President, and with an

³⁷¹ Weber, *Economy and Society*.

ongoing need to demonstrate effective use of taxpayer's dollars, the DHS utilizes the private sector to try and bridge the gap.

The integration of bureaucracy and the private sector is certainly not a new phenomenon. The INS also relied heavily on private contractors to meet mission goals, especially in expanding their ability to surveil immigrant populations. As early as 1977, the INS had begun contracting with private entities to develop new ways of collecting data on where undocumented populations were residing, and to think critically about how to track down these groups. Receipts from the time show the INS contracting with survey firms to develop new methodologies for creating databases to study undocumented immigration. One contract showed that the INS had spent \$485,906.75 (approximately \$2,443,177 today) on this survey work.³⁷² At the time, the total INS budget was approximately \$244 million, so these contracts represented a substantive investment.

Furthermore, Border Patrol officers treat private sector reports as valuable sources of knowledge and potential ways to build new solutions to immigration problems. Reports published by Sandia National Laboratories in 1993 provide a useful illustration of this precept. Sandia was tasked by the INS with conducting a systematic analysis of Southwest border security, with a particular focus on controlling drug-related traffic across the border.³⁷³ This report highlighted two major domains of effective immigration control, both of which focused on controlling the flow of traffic in urban areas. The two main methods Sandia identified were increasing the amount of fencing along the border to control the majority of traffic and having 24 hour checkpoints beyond the border to check for people who managed to slip through the frontline of border security.³⁷⁴ The report focused heavily on preventing the threat of criminal aliens, drug smugglers, and other similar

³⁷² U.S. Congress, House, *Hearing Before the Subcommittee on Immigration, Citizenship and International Law of the Committee on the Judiciary*, Oversight of the Immigration and Naturalization Service, 95th Congress, March 9, 1977, 340-355.

³⁷³ Sandia National Laboratories, "Systematic Analysis of the Southwest Border Volume 1", (Albuquerque: Sandia National Laboratories, 1993), ES-1.

³⁷⁴ *Ibid.*, ES-4.

actors, with the underlying assumption that the goal of border patrol activities should be to set up sufficient infrastructure that border patrol can track all illegal crossings outside of Ports of Entry (POEs). Once this level of investment had been met, smugglers and other actors would be forced to cross through POEs, where the majority of personnel would be concentrated.³⁷⁵

I highlight this report for two reasons. First, this report would go on to inform much of the INS, and later the DHS' approach to addressing border security issues. As this demonstrates, the INS thought extremely highly of knowledge produced by entities like Sandia and used it to construct not just policies but holistic approaches to border security. Second, this report was not an isolated instance. Sandia continues to produce and procure knowledge for the DHS, and this knowledge production goes on to inform how the DHS allocates funding, makes requests to Congress, and conceptualizes security. As of 2021, Sandia remained one of the DHS' primary partners for developing its information analytics technologies.³⁷⁶ From this, we glean that immigration officials rely on private sector actors and see that immigration enforcement has not always been solely the prerogative of government. This relationship has evolved over time as the DHS has evolved and global patterns of economic development have shifted, resulting in deeper ties between the two sectors. Furthermore, the work of the private sector can inform how the DHS conceptualizes security – in the neoliberal era, private sector practices can shape the business of governance.

Methods and Methodology

As in previous chapters, my primary source for this chapter is the document set I assembled from the Department of Homeland Security Digital Library, FOIA data obtained by legal organizations, Congressional hearings containing bureaucratic analysis, and memoranda published by component organizations. Given the nature of this particular chapter, I also included documents

³⁷⁵ Ibid., 19.

³⁷⁶ U.S. Department of Homeland Security, "Celebrating 20 years of collaboration", Accessed April 23, 2024. <https://www.dhs.gov/science-and-technology/twenty-years-collaboration>

focusing on DHS financial management and acquisition practices, in order to develop a more nuanced understanding of the internal processes surrounding private sector interactions. I first decided to examine the question of private partnerships following my pilot data collection. In conducting this analysis, I began with a set of codes focusing on accountability, private sector relationships, contracts, efficiency, financial management, and procurement. Each of these codes was utilized with a positive and a negative tag, to provide some indication of the direction of the sentiment on each issue contained within the document. From this data set, I employed Atlas TI's text search functionality to find similar tags across the document set. I then went back to manually adjusted the coding for most documents. With the documents coded, I began to read through crucial documents, developing a timeline of events, manually creating document groups for ease of research, and organizing an analysis of the historical trajectory of bureaucratic development.

For this chapter, I supplement this archival analysis with data on homeland security lobbying expenditures in order to show some of the other political consequences of the evolving bureaucratic-private relationships. In particular, I focused on looking at lobbying expenditures conducted by key players in the homeland security technology industry. I collected data on the lobbying activities of Palantir, Amazon, Accenture Ltd., Northrop Grumman, Thomson Reuter, Lexus Nexis, Microsoft. I obtained this data from Open Secrets, a non-profit focused on tracking the influence of corporations on Congress. This data primarily is used as a way of triangulating my political analysis – I examined lobbying expenditures around certain key junctions in order to see if these corporations were wielding their influence in order to continue to secure useful contracts. I find that this type of data shows how valuable the homeland security industry is to private contractors – if they are willing to shell out millions in lobbying to secure their investment, it is highly likely that they see it as in their financial interest to continue their relationship with the DHS.

As in previous chapters, my archival technique primarily focused on reading “against the grain”, treating each document from the DHS not necessarily as knowledge in and of itself but as a way of understanding the underlying power systems that led to its production.³⁷⁷ This method ended up being more time intensive than traditional archival reading. Not only did I need to develop a coding system for understanding the document set as a whole, I also needed to then reflect critically on how different constellations of power, such as neoliberal economic rationality or structural racism, may have impacted the production of that particular document. I found this particularly difficult in analyzing business practices; in many ways, these practices feel the most abstracted from the racialized outcomes occurring on the ground. To this end, I follow the lead of scholars like Kelley Tuttle Hernandez, who argues that, “The development of the Border Patrol, in other words, is best understood as an intrinsically social and political process revolving around questions of violence and social order rather than as a system of unmitigated responses to criminalized activity.”³⁷⁸ I take Hernandez to mean that developments in systems like Border Patrol, and later ICE or CBP, cannot be understood only by looking at the actions of particular agents in responding to criminalized activity like crossing the border without documentation. Instead, these developments occur within a broader constellation of social forces and political decisions that shape the context in which individuals make particular decisions. Critical analysis of state documents requires attending to those particular political networks in order to truly make sense of what is occurring within bureaucratic documentation, email correspondence, or fund reallocation. I prioritize the critical reading in order to underscore how trends in the political sphere such as racial economic exploitation or the expansion of neoliberal political rationality shape the particular actions taken by bureaucrats.

Departmental Policymaking – Commercial Acquisitions and Private Sector Efficacy

³⁷⁷ Stoler, “Along the Archival Grain”

³⁷⁸ Hernandez, *Migra!*

From the early days of the DHS, the private sector has played an essential role in setting departmental priorities. As I briefly discussed in my chapter on metrics, in 2004 and 2005 there was notable concern over whether the department's new structure, which divided the work of apprehension and deportation between ICE and CBP, effectively served the purported goals of the DHS. In response to this concern, a 2004 report from the Heritage Foundation became the topic of major debate both within the DHS, and in Congressional oversight bodies. The Heritage Foundation, a leading conservative think tank prioritizing "principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense",³⁷⁹ noted that the artificial distinction between interior immigration enforcement and enforcement at the border was causing massive problems within the DHS. The work of the Heritage Foundation was taken seriously by bureaucrats in the DHS, and collaboratively, they worked to develop a new proposal for restructuring the DHS to take on this change.³⁸⁰

While ultimately ICE and CBP remained divided, a number of other recommendations from the Heritage Foundation subsequently made their way into DHS politics. For example, one of the overarching recommendations within the report is the need to adopt risk-based mechanisms for determining departmental resource allocation.³⁸¹ The concept of risk has taken on a very particular function within a neoliberal political rationality – managing risk has become one of the central functions of modern governance. Here, risk refers to anything with the potential to threaten the normal (and profitable) operations of a particular industry. As Michael Power argues, risk management discourse has become endemic to the private sector.³⁸² To that end, subsequent to the

³⁷⁹ Heritage Foundation, "Mission", <https://www.heritage.org/about-heritage/mission>

³⁸⁰ U.S. Department of Homeland Security Office of the Inspector General, "An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement", OIG-06-04, November 2005.

³⁸¹ James Jay Carafano and David Heyman, "DHS 2.0: Rethinking the Department of Homeland Security", (Washington D.C.: The Heritage Foundation, 2004), 7.

³⁸² Michael Power, *Organized Uncertainty: Designing a World of Risk Management* (Oxford: Oxford University Press, 2007), <http://ebookcentral.proquest.com/lib/washington/detail.action?docID=415614>.

Heritage Foundation report, the DHS began to adopt more risk-management techniques especially in procurement. The DHS released its first Capital Planning Process in 2007, where it noted that, “It supports alignment of investments to the DHS mission and supports business needs while reducing risks and increasing returns throughout the investment’s lifecycle. CPIC relies on well-defined and systematic processes to ensure each investment’s objectives support the business and mission needs of the Department.”³⁸³ Here, the idea of risk management underscores the DHS’ acquisition and business planning practices. Risk must be managed in order to restore the highest level of confidence in the Department’s ability to meet its goals both financially, and in terms of successful enforcement. Risk management continued to creep into departmental discourse over the subsequent years.

This transformation is indicative of two important phenomena in the DHS’ development as a bureaucracy. First, the DHS treats the private sector as a vital source of potential knowledge and development, one that they are willing to engage seriously with to improve public administration. Second, the DHS often considers private sector systems to be more efficacious than those of traditional bureaucracies. The slimmed down, tight spending approach of the private sector is held as the gold standard for government success. Risk management is another way of ensuring an efficient approach, any potential danger to the baseline functionality should be recognized and addressed. From the bureaucrat’s perspective, reducing risk is important for future budgetary processes – failures in the short term could result in budget cuts in the long run. Adopting risk management techniques in order to better align with private sector best practices helps build a bureaucracy that is, at least theoretically, better equipped to proactively address departmental management issues. The pressure to show efficiency drives DHS towards private sector practices.

³⁸³ Department of Homeland Security Office of the Chief Information Officer, “Capital Planning and Investment Control Guide”, May 2007, 7.

Moreover, the governing architecture of the DHS was developed in close consultation with private sector executives, including former executives at defense contractors like Lockheed Martin.³⁸⁴ As Deepa Fernandes shows, the initial planning phases for the DHS involved private sector executives through the Homeland Security Advisory Council (HSAC). Then-president Bush convened HSAC in order to get private sector input on how the new department could function.³⁸⁵ HSAC continued to be centrally involved in DHS planning enterprises. Meeting minutes from later iterations show that corporations with a substantial investment in the business of homeland security remained on the advisory council. Notably, this included people like Norman Augustine, a former Lockheed Martin CEO, and Ruth David, a CIA official who was well known for pushing for increased partnerships between the CIA and industry.³⁸⁶ The meeting minutes show that HSAC was actively involved in building the acquisition process and in particular pushing the DHS to work more closely with private partners. In a meeting on September 11, 2008, one member noted, “We also see through this acquisition process the need to build much stronger relationships with the private sector so that we reduce some of the programmatic failures that we have experienced over the last few years.”³⁸⁷ Here we see that outside advisors, including many who have a profit stake in the DHS’ acquisition choices, pushed the department further towards the private sector with the intent of alleviating systems failure.

This can be productively linked to other commercialization transformations occurring in the DHS at the tail end of the Bush presidency. In early 2008, the DHS initiated a new phase of its commercialization efforts in order to improve its ability to meet its projected needs in the coming year. The new process, entitled “SECURE”, aimed to “leverage the vast capabilities and resources of

³⁸⁴ Fernandes, *Targeted*, 171

³⁸⁵ *Ibid.*

³⁸⁶ Homeland Security Advisory Council, “Summary of Public Teleconference Held on September 11, 2008”, September 11, 2008, 1, https://www.dhs.gov/sites/default/files/publications/hsac_meeting_minutes_09112008.pdf

³⁸⁷ *Ibid.*, 3.

the private sector through innovative ‘win-win’ private-public partnerships’.³⁸⁸ The partnership system suggested that, in juxtaposition to previous approaches, many of the DHS’ needs could be met through purchasing commercial off-the-shelf (COTS) solutions. These are products that are developed by a company and then can easily be modified to suit any particular enforcement objective. The partnership system was rooted in the logic that the private sector has significant incentives to develop new forms of technology or practices that could easily be adapted to an immigration enforcement context. The graphic below, taken from a report on DHS commercialization, provides a sketch of the perceived benefits.

Benefit Analysis – “Win-Win-Win”		
Taxpayers	Public Sector	Private Sector
1. Citizens are better protected by DHS personnel using mission critical products	1. Improved understanding and communication of needs	1. Save significant time and money on market and business development activities
2. Tax savings realized through private sector investment in DHS	2. Cost-effective and rapid product development process saves resources	2. Firms can genuinely contribute to the security of the Nation
3. Positive economic growth for American economy	3. Monies can be allocated to perform greater number of essential tasks	3. Successful products share in the “imprimatur of DHS”; providing assurance that products really work.
4. Possible product “spin-offs” can aid other commercial markets	4. End users receive products aligned to specific needs	4. Significant business opportunities with sizeable DHS and DHS ancillary markets
5. Customers ultimately benefit from COTS produced within the Free Market System – more cost effective and efficient product development	5. End users can make informed purchasing decisions with tight budgets	5. Commercialization opportunities for small, medium and large business

Figure 7: Benefit Analysis of SECURE Commercialization Plan³⁸⁹

There are several key ideas contained in this table that illustrate how DHS bureaucrats conceptualize the relationship between the private sector and the bureaucracy. First, there is a central notion that the free market, and effective use of the free market, will provide more cost-effective product

³⁸⁸ Thomas Celluci, “DHS Implements Commercialization Process”, United States Department of Homeland Security Science and Technology, August 2008, 1.

³⁸⁹ Ibid., 5.

development. This can be seen both on the taxpayer side, where taxpayers are expected to directly benefit from COTS, and in the public sector, where money can be saved by outsourcing the technological development process to the private sector. Second, this policy suggests that by outsourcing, agencies like the DHS can perform a greater number of essential tasks. By outsourcing the work of research and development, agency officials can focus on the tasks that more directly conform to their mission expectations. Finally, this document suggests that partnerships between the government and the private sector are good for the economy as a whole. By creating more opportunities for these types of partnerships, companies of all sizes will gain access to more government contracts. Similarly, the idea of the “spin-off” product emphasizes that the work companies do for the DHS can be translated into additional products for the general public. Taken together, this new commercialization process indicates the evolving relationship between DHS and its private sector partners. Rather than simply being a way for the DHS to acquire services or technology, partnerships between the DHS and other actors become a way for the department to both contribute to economic growth and improve the efficiency of program administration.

Congressional Mandates and Biometric Exit – A Story of Induced Private Sector Cooperation

A useful example of how the DHS gets incentivized to work more closely with the private sector is the process of implementing a biometric entry-exit program at airports and ports of entry. When the DHS was established, Congress included a specific mandate for developing an automated entry-exit system to track entrants and potential visa overstays. This mandate was not new to the DHS. Quite the contrary, the Immigration and Naturalization Service Data Management Improvement Act of 2000 had already mandated the creation of this system.³⁹⁰ The INS began the process of creating an entry system. In order to obtain a visa, individuals would now have to provide

³⁹⁰ United States Department of Homeland Security Office of the Inspector General, “US-VISIT System Security Management Needs Strengthening”, OIG-06-16, December 2005.

the U.S. government with certain biometric information. More specifically, each individual would have to provide fingerprints, photos, and their background information to the embassy, which would then be cross referenced by CBP officers as they crossed into the country through a Port of Entry (POE).³⁹¹ This program initially existed under its own program office, the US-VISIT Program. But while the DHS was quickly able to get the entry program up and running, there were a number of major issues with the process. First, the DHS was obligating vast amounts of money towards contractors for implementing the US-VISIT system – reports in 2005 noted that the DHS had set up a \$10 billion new contract with Accenture Ltd., a powerful defense industry player, that would work to help get US-VISIT fully operational.³⁹² Early DHS reports on management challenges repeatedly stressed concerns about the department’s lack of financial controls – indeed the 2005 Management Challenges Report noted that this was one of the department’s primary risk areas.³⁹³ In the context of the US-VISIT program, the major concern was that with relatively low financial controls and insufficient human capital management, successfully coordinating a \$10 billion contract would stretch the department far beyond its capacity.³⁹⁴ Moreover, by awarding the contract to Accenture, the DHS further reified connections between the new department and active defense industry players.

There were also a number of reasons why, in terms of the technological infrastructure, the implementation of US-VISIT was concerning to outside auditors. First, the new system required access to multiple other technological components, many of which contained outdated enterprise architecture or were not easily interoperable. Figure 8 below shows the complexity of the system.

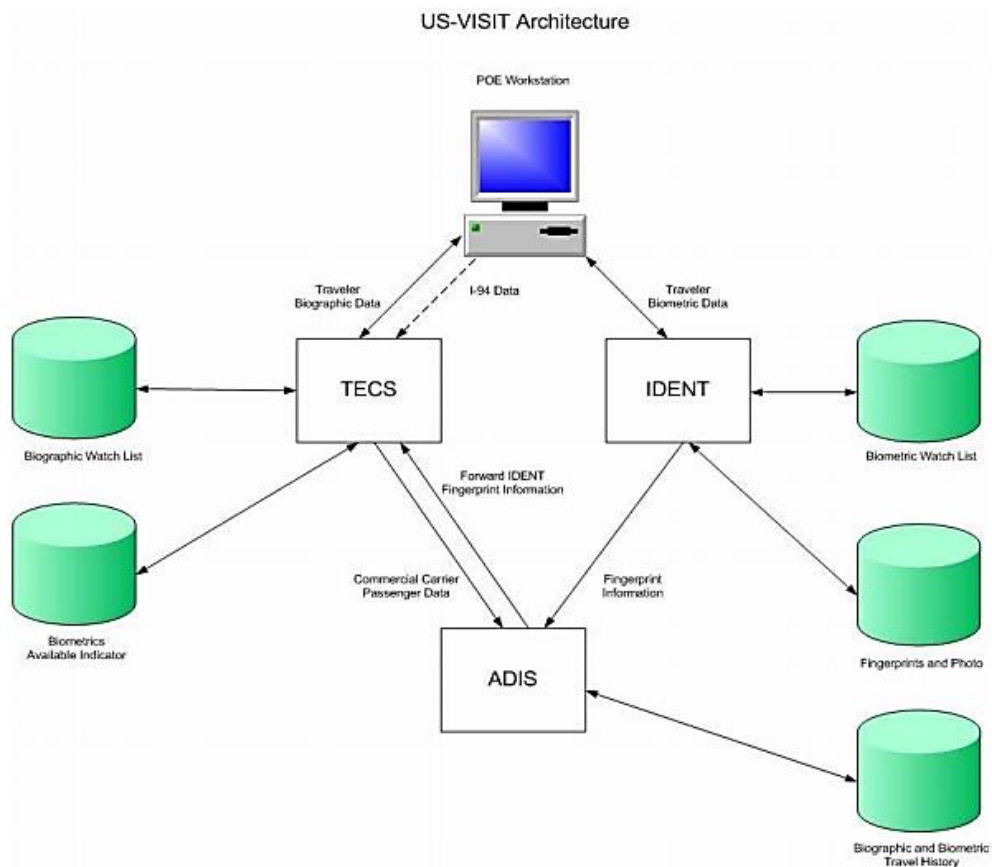
³⁹¹ Ibid., 4.

³⁹² United States Department of Homeland Security, “Major Management Challenges Facing the DHS – 2005”, 11 and US-VISIT, “US-VISIT Program Prime Contractor Acquisition, Volume 2 Cost/Price”, January 11, 2004.

³⁹³ Ibid.

³⁹⁴ Ibid.

Figure 2

Figure 8: US-VISIT Software Architecture³⁹⁵

As the diagram indicates, the success of the US-VISIT program required complete access between three other major databases, TECS, IDENT, and ADIS. As I discussed in earlier chapters, TECS is the central case management database for DHS enforcement components. IDENT was the DHS' attempt to create an automated fingerprint database and the predecessor to the HART – it was also Congressionally mandated to be made interoperable with the FBI fingerprint database. Finally, the ADIS system contained data from commercial carriers, including the travel history of individual passengers. Because these systems had not initially been built to be interoperable, there was a

³⁹⁵ Department of Homeland Security Office of the Inspector General, "US-VISIT System Security Management Needs Strengthening", 7.

considerable amount of work that needed to be done on the back end to ensure that the system would accomplish the goals outlined by the Department. However, notable issues already existed across these systems – for example, the TECS technological infrastructure had been initially constructed in 1987 and struggled to integrate with other databases.³⁹⁶ Given the size of the task, and how hard Congress pushed for the system to be fully implemented, the DHS’ technology struggles contributed to a reputation that the DHS did not know how to manage its technological assets.

Although the US-VISIT program was eventually able to get the entrant tracking system up and running, implementing the exit portion of the program proved to be far more difficult. This stemmed in part from a fragmented implementation process – a DHS report from 2005 noted that the exit program couldn’t be instituted immediately and was instead being slowly being rolled out at different POE’s.³⁹⁷ The goal was for the system to be fully automated, but the DHS’ technological capacity was not yet up to the task. At the time of the exit system’s implementation, seemingly easier technological solutions such as using radio frequency identification technology (RFID) had not been sufficiently developed to be used as an automated system.³⁹⁸ As such, in addition to a fragmented implementation, the DHS was also still relying on individuals participating in the program and registering their exits. As a result, there were thousands of unaccounted for overstays every week.³⁹⁹

By 2009, at the tail end of the Bush administration, the DHS had not made substantive progress in actually implementing a biometric exit system. This program is indicative of other trends that would occur in the department, namely that the DHS as an institution often struggled to implement solutions that would greatly expand the department’s enforcement capacity owing to

³⁹⁶ Thomas Michelli, “Statement Regarding Examining Challenges and Wasted Taxpayer Dollars in Modernizing Border Security IT Systems”, Statement Before United States House of Representatives, February 6, 2014.

³⁹⁷ Department of Homeland Security Office of the Inspector General, “Review of Immigration and Customs Enforcement’s Compliance Enforcement Unit”, OIG-05-50, September 2005, 10.

³⁹⁸ United States Government Accountability Office, “Homeland Security – US-VISIT Pilot Offers Limited Understanding of Air-Exit Options”, GAO-10-860, August 2010, 23.

³⁹⁹ Department of Homeland Security Office of the Inspector General, “Review of Immigration and Customs Enforcement’s Compliance Enforcement Unit”, 9.

both issues with internal management, and in terms of the organizations ability to secure sufficient technological infrastructure to support the new goals. Despite strong Congressional urging to develop the biometric exit system, the DHS struggled to quickly implement this new program, causing oversight staff to question the department's ability to deploy novel systems.⁴⁰⁰ As I explore later in the chapter, the DHS would later turn to increased reliance on private sector assistance to get these new types of systems up and running.

The early years of the Obama administration also saw continued difficulty in implementing the biometric exit solution. In 2009, US-VISIT scheduled its first official trials for the exit system, which failed for several reasons. At the time of the test, US-VISIT was scheduled to explore two potential solutions – one where CBP collected exit data, and another where airlines would be responsible for doing so. One notable issue was, “the degree to which the results of these pilots can inform DHS’s future decisions was limited because the department was unable to test one scenario and did not meet a congressional expectation”.⁴⁰¹ The DHS was only able to test the version where CBP officers manually collected exit data. This was because, at the time, no airline was willing to provide its cooperation in collecting exit data from its passengers.⁴⁰² Without this cooperation, it proved difficult for the DHS to ascertain the viability of this potential option. Second, the DHS did not collect sufficient data on many aspects of the pilot tests, including impact on travel times, and degree of interoperability with other systems.⁴⁰³ As such, the pilot tests were inconclusive as to whether or not the exit protocol could be successfully deployed. With this failure in hand, and the Congressional mandate still unmet, DHS returned to the drawing board for the biometric exit

⁴⁰⁰ Richard Skinner, “STATEMENT OF RICHARD L. SKINNER INSPECTOR GENERAL U.S. DEPARTMENT OF HOMELAND SECURITY BEFORE THE COMMITTEE ON HOMELAND SECURITY U.S. HOUSE OF REPRESENTATIVES”, U.S. Department of Homeland Security, March 25, 2010, 4.

⁴⁰¹ Government Accountability Office, “US-VISIT Pilot Evaluations”

⁴⁰² *Ibid.*, 16.

⁴⁰³ *Ibid.*, 17.

solutions, tasking the Science and Technology directorate with researching new potential options.⁴⁰⁴ However, the DHS repeatedly noted that without a fully operational biometric exit system at ports and land exit ports, tracking potential overstays was inherently limited. In airports, the DHS was forced to rely on the self-reported data provided by airline passenger manifests, which had high potential for inaccuracy.⁴⁰⁵ If the DHS was unable to demonstrate progress, Congress would deem it necessary to step in and alter the program direction.

By 2013, US-VISIT had still made remarkably little progress in getting the biometric exit protocol up and running, as such, Congress acted to transfer responsibility for the US-VISIT subdivision of the DHS over to CBP. However, CBP encountered many of the same issues – namely that without explicit cooperation from commercial airlines, and without the ability to rigorously double-check the results of biometric screening procedures, it would not be possible to construct any type of exit system, let alone the fully automated one requested by Congress.⁴⁰⁶ To this end, CBP was forced to begin testing a number of different potential technological solutions. Rather than relying on in-house development, many of these alternatives combined COTS solutions with private sector partnerships to expand CBP’s ability to collect biometric data from airport passengers. In 2016, CBP launched its first pilot of a facial recognition program initially called the Departure Verification System Test. This program relied on existing biometric data for matching exits to entries. CBP placed cameras at specified departure gates and used these cameras to take photos of passengers. These new photos were compared against the pre-existing biometric records housed in systems like IDENT to ascertain the facial recognition technology’s ability to successfully match the

⁴⁰⁴ U.S. Government Accountability Office, “OVERSTAY ENFORCEMENT: Additional Actions Needed to Assess DHS’s Data and Improve Planning for a Biometric Air Exit Program”, GAO-13-683, July 2013.

⁴⁰⁵ U.S. Department of Homeland Security Office of the Inspector General, “DHS Tracking of Visa Overstays is Hindered by Insufficient Technology”, OIG-17-56, May 2017, 17-18.

⁴⁰⁶ Chapter 3 contains a more robust discussion of why automation is seen as particularly beneficial to immigration enforcement.

records.⁴⁰⁷ Even this most updated version of the technology still required cooperation from commercial airlines; without the biometric records and passenger manifests supplied by these groups, the pilot project would have been unable to make any progress. With a successful pilot underway, the department began the process of more wide scale implementation.

While the pilot programs were relatively successful, the DHS needed outside support in order to fully scale up the operation. To this end in 2019, Northrop Grumman was awarded a \$68 million contract for the development and maintenance of the new solution.⁴⁰⁸ While this is a relatively small contract for Northrop Grumman, it shows that when a system could not be brought online, the DHS brought in trusted contractors – notably ones with deep ties to the defense industry. Indeed, in 2018, Northrop Grumman invested \$4.4 million in lobbying expenditures for Homeland Security related appropriations, indicating that they wanted to retain a foothold in this sector.⁴⁰⁹ In addition to this contract, Northrop Grumman was awarded 11 other multi-million dollar technology contracts in 2019 alone.⁴¹⁰ Plans for the future of biometric recognition technology made by the TSA and CBP in tandem noted, “innovative models of public-private partnership will be key to implementing scalable and cost-effective solutions.”⁴¹¹ Years of developing biometric entry-exit protocols led to a system that is dependent on both the cooperation of private airlines, and the support of private sector giants.

⁴⁰⁷ U.S. Department of Homeland Security, “Privacy Impact Assessment Update for the Departure Verification System Test”, December 16, 2016.

⁴⁰⁸ Jackie Gilbert, “CBP Office of Information and Technology awards \$68M task for Software O&M and Development for Traveler Verification Service System”, G2xchange, September 12, 2019, <https://app.g2xchange.com/fedciv/posts/cbp-office-of-information-and-technology-awards-68m-task-for-software-om-and-development-for-traveler-verification-service-system/>

⁴⁰⁹ Open Secrets, “Lobbying Profile: Northrop Grumman”, Accessed April 4, 2024, https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2018&id=D000000170&spec=HOM&specific_issue=Homeland+Security#specific_issue

⁴¹⁰ Data taken from USAspending.gov.

⁴¹¹ Transport Security Administration, “TSA Biometrics Roadmap: For Aviation Security & the Passenger Experience”, September 2018, 7.

This extended vignette illustrates an important element of how the DHS has ended up with such deep ties to the private sector. Even though, particularly in the earlier years of the department, bureaucrats had deep concerns about the new departments ability to successfully manage massive contracts with private sector collaborators, many of the specific border security asks made by Congress could not be achieved solely through departmental operations. CBP was able to develop a basic facial recognition technology through its science and technology directorate, but was not able to fully implement it without the addition of more COTS scanning and camera technology, software developers to flesh out the pilot software, and data provided by commercial airlines.⁴¹² In the modern globalized economy, even with the massive resources at its disposal, the DHS continues to be reliant on work conducted by the private sector in order to meet certain Congressional goals, particularly those that are not clearly constructed in relation to extant departmental capacity. Under pressure to perform, the bureaucrats seek help wherever they can find it and many private corporations are more than willing to help develop this technology for a hefty sum. Homeland security has been further alchemized into a business that turns the tracking of individuals across borders into a corporate goldmine. I now turn to broader examples of how the issues plaguing the biometric exit protocol also extended to other issues in implementing technological solutions and show how the DHS developed similar processes to address them.

Contracts to Off-the-Shelf Acquisition – Departmental Solutions to Internal Inefficiency

In the early days of the Bush administration the DHS first began their project of utilizing private sector data networks to augment their enforcement capacity. In 2004, ICE launched a pilot project with LexisNexis to gain access to their jail monitoring data, and the associated phone

⁴¹² Anh Duong, Craig Healy, and John Wagner, “Statement for a Hearing on the Biometric Exit”, United States Senate Subcommittee on the Judiciary, January 20, 2016, 9-11.

records.⁴¹³ The initial project was only a \$50,000 contract, but ICE officials seemed to find value in the data and quickly expanded to a \$250,000 contract in 2005, and a \$265,000 contract in 2006. Jail monitoring data is useful for ICE agents in terms of their ability to locate undocumented immigrants that have been brought into contact with the criminal justice system. For example, Operation Secure Streets focused ICE resources on looking for potentially “criminal aliens”⁴¹⁴ and data from jails expanded ICE’s information network for locating these individuals. ICE saw that this data was useful for their mission as indicated by the fact that by 2009, both the scope of data provided and the size of the contract had dramatically increased. In 2009, ICE awarded LexisNexis a \$3 million dollar contract with broader stipulations in terms of the data provided. New features included customizable batch searches of jail monitoring data to improve search efficiency and reporting services for up to 300,000 names per month.⁴¹⁵ Similarly, in 2008, ICE initiated its first contract with Thomson Reuters to provide access to their CLEAR database, a system which provided real time law enforcement alerts and jail records. A contract describes the CLEAR databases services saying,

Thomson Reuters Consolidated Lead Evaluation and Reporting (CLEAR) system is an investigative platform used by ERO personnel to work more efficiently and effectively as part of their investigation, for example:

- Locate people, assets, businesses, affiliations, and other crucial facts;
- Make connections among individuals, incidents, activities, and locations;
- Visualize, detect, and analyze text patterns and trends in offenses and offenders.⁴¹⁶

This description of the CLEAR database illustrates that at this time, ICE was seeking to expand its capacity to more efficiently investigate, in line with the argument I made earlier in the chapter on

⁴¹³ LexisNexis Special Services Inc., “Contract for Period of Performance”, Contract, Immigration and Customs Enforcement FOIA Library,

<https://www.ice.gov/doclib/foia/contracts/g35f0309porderhsceop05f00499lexisnexisspecialservices.pdf>

⁴¹⁴ John P Torres, “Operation Secure Streets – Directives and Guidance”, Office of Detention and Removal Operations, Memorandum, August 3, 2006

⁴¹⁵ LexisNexis Special Services Inc., “Contract for Period of Performance 7/2/2009 – 6/30/2010”, Contract, Immigration and Customs Enforcement FOIA Library,

<https://www.ice.gov/doclib/foia/contracts/lc09d7027orderhscecr09f00031lexisnexisspecialservices.pdf>

⁴¹⁶ Immigration and Customs Enforcement, “Commercial License Plate Reader Data FOIA”, ICE FOIA Case No. 2018-ICLI-00035 - ACLU v. U.S. Immigrations and Customs Enforcement (ICE), 18-cv-04105, 76.

surveillance. What is also interesting here however, is that this particular partnership indicates the increased dependence of ICE and other enforcement entities on private sector tools to be able to complete their tasks. Teams like ICE's Fugitive Operations Team regularly utilize jail data to look for potential fugitive aliens.⁴¹⁷ This stems in part from a massive expansion in the private sectors ability to collect and maintain repositories of personal data. Where in previous decades law enforcement alerts or jail records would need to be collected from individual counties or even jail facilities, in the modern era, corporations like Thomson Reuters serve as data aggregators, compiling swathes of data for easy access.⁴¹⁸ Under pressure to demonstrate efficacy, but with some leverage in terms of how the DHS conducted their daily business, DHS bureaucrats could make a rational calculation to incorporate these new technologies into the DHS' enforcement work.

The set of trends I described above substantiated the DHS position as a major buyer of surveillance technology and data from private actors. These partnerships would make homeland security operations increasingly dependent on the private sector. My concern is the extent to which private enterprises enable massive violence against immigrant communities, and indeed profit from them. Operations like private prison companies running immigrant detention centers has attracted a high degree of activist attention, but the DHS' increased reliance on the private sector shows that there are a myriad of actors profiting from the business of homeland security. With so many powerful interests at stake it makes sense that the DHS would continue to expand its operational capacity and build increasingly deep ties to the private sector.

Disastrous Partnerships – The Rise and Fall of SBInet

⁴¹⁷ Margot Mendelson, Shayna Strong, and Michael Wishnie, "Collateral Damage: An Assessment of ICE's Fugitive Operations Program", *Migration Policy Institute*, February 2009, https://www.migrationpolicy.org/sites/default/files/publications/NFOP_Feb09.pdf. This report also noted that despite the use of this data, the fugitive operations team regularly brought in people who did not align with the agency's priority goals in terms of criminality.

⁴¹⁸ Lageson, *Digital Punishment*

Throughout the early days of the DHS, the department remained beset by notable issues with their use of contractors and the overall ability to keep up with projects designed to enhance enforcement capacity. This was particularly evident in the DHS' SBIInet program. The SBIInet program was first implemented in 2006, and emerged from the imperatives contained in the Secure Fence Act, passed by Congress in the same year.⁴¹⁹ The Secure Fence Act is one of the few pieces of notable immigration reform passed under the Bush administration, and directly contributed to border militarization through mandating the use of systemic border surveillance and increased fencing along the border.⁴²⁰ Notably, the Secure Fence Act emerged after the defeat of the infamous Sensenbrenner bill, which sparked massive public outcry against the laws draconian measures.⁴²¹ After meeting with a highly publicized defeat, Republican lawmakers came back to the table with more limited proposals for border security. As such, and in contrast to the Sensenbrenner bill, the Secure Fence Act was a relatively subdued affair, and the bill passed easily in both houses, with the House voting 283-138 in favor and the Senate voting 80-19 in favor.⁴²²

This act mandated an immediate survey of border security to assess how best to use personnel and technology to gain operational control of the border. The SBI program was divided into two major components. The first was the SBI Tactical Fencing initiative which focused on constructing new physical barriers to prevent unauthorized entry, drawing on recommendations from the 1993 Sandia report previously discussed. The second was the SBIInet program, which was designed to update the use of surveillance technology along the Southwest border. Prior to the implementation of SBI, remote surveillance was conducted by the Integrated Surveillance Intelligence System (ISIS) program and the America's Shield Initiative (ASI). However, despite

⁴¹⁹ Department of Homeland Security Office of the Inspector General, "CBP Faces Challenges in Achieving Its Goals for Small Business Participation in Secure Border Initiative Network", OIG-10-54, 2010.

⁴²⁰ Sampaio, *Terorizing Latina/o Immigrants*, 63.

⁴²¹ Zepeda-Millán, "Latino Mass Mobilization".

⁴²² Congress.gov, "Actions - H.R.6061 - 109th Congress (2005-2006): Secure Fence Act of 2006", October 26, 2006, <https://www.congress.gov/bill/109th-congress/house-bill/6061/actions>.

receiving over \$429 million in funding, the actual benefits of both ISIS and ASI were unclear. Indeed, multiple reports from the GAO and the DHS OIG noted that remote surveillance through these programs contributed very little to actual enforcement outcomes and data captured on the use of these technologies was extremely fragmented.⁴²³ SBIInet was intended to redress these program deficiencies by implementing new technological solutions with effective management to expand CBP's operational control of the border.

While SBIInet was touted as an essential component of improving border security, management remained concerned about the program's success, in large part because the DHS and its predecessor agencies had historically struggled to implement new programs of this size. The Major Management Challenges Report of 2006 noted that SBI procurement was a "considerable acquisition risk because of its size and scope".⁴²⁴ The funds obligated towards SBI were indeed a massive government expenditure – the program received \$1.5 billion in 2007, and an additional \$1.25 billion in 2008.⁴²⁵ At the time, the total DHS budget was \$41.4 billion so SBI was a truly massive program. Yet despite the size of the project, the DHS did not clearly define program goals or objectives, intensifying concerns about the development of technological infrastructure.⁴²⁶ Initial phases of SBIInet focused on acquiring COTS surveillance technology to try to immediately expand border patrol capacity along the Southwest border.⁴²⁷

⁴²³ U.S. Department of Homeland Security Office of the Inspector General, "A Review of Remote Surveillance Technology along U.S. Land Borders", OIG-06-15, December 2005 and United State Government Accountability Office, "Key Unresolved Issues Justify Reevaluation of Border Surveillance Technology Program" OIG-06-295, February 2006.

⁴²⁴ U.S. Department of Homeland Security Office of the Inspector General, "Major Management Challenges Facing the DHS 2006", 2006, 5.

⁴²⁵ U.S. Department of Homeland Security Office of the Inspector General, "Progress in Addressing Secure Border Initiative Operational Requirements and Constructing the Southwest Border Fence", OIG-09-56, April 2009, 4.

⁴²⁶ U.S. Department of Homeland Security Office of the Inspector General, "Risk Management Advisory for the SBIInet Program Initiation", OIG-07-07, November 2006.

⁴²⁷ U.S. Government Accountability Office, "Secure Border Initiative: DHS Needs to Reconsider Its Proposed Investment in Key Technology Program", GAO-10-340, May 2010

But from the outset, the program was beset with issues. For example, during the process of constructing fencing, CBP officials realized that they had not done sufficient market research to accurately calculate the costs. Steel prices had risen globally and CBP did not have a strong enough supply chain to get materials to border sites affordably. As such, they issued additional contracts to Boeing to serve as the supply chain manager for fencing material acquisition in addition to the fence construction work Boeing was already doing. CBP continued to use commercial labor to get more tactical fencing built. However, outside reviewers expressed serious concerns about CBP's contract management for the SBI program. On the subject of tactical fencing, auditors noted that while CBP was able to use commercial labor to speed up construction, it led to additional accrued expenses. A massive amount of work for the project was performed by contract laborers, as the chart below indicates.

Table 1: Contract and Government Employees in SBI Programs

	Program Startup		May 2007		November 2007		March 2008		November 2008*	
	Number	%	Number	%	Number	%	Number	%	Number	%
Contract	129	78	120	57	174	53	175	51	136	51
Government	<u>37</u>	22	<u>89</u>	43	<u>152</u>	47	<u>167</u>	49	<u>132</u>	49
Total	166		209		326		342		268	

*The workforce reduction in November 2008 reflects the transportation program's removal from SBI.

Figure 9: Usage of private contractors by percentage of work done on the SBInet program⁴²⁸

Regulators expressed deep concerns about this use of contractors, noting that there was insufficient oversight for contractors, and because of poor management, contractors were performing functions that should have been reserved for government employees.⁴²⁹ This included contractors making

⁴²⁸ United States Department of Homeland Security Office of the Inspector General, "Better Oversight Needed of Support Services Contractors in Secure Border Initiative Programs", OIG-09-80, June 2009, 3-4

⁴²⁹ Ibid.

changes to the statement of work for SBI projects and drafting parts of acquisition plans.⁴³⁰ The issues around contractor management for this program are suggestive for understanding the relationship between the DHS and the private sector more generally. The decision to relegate infrastructure sourcing to a private entity, namely Boeing, exposes that bureaucrats involved in this process were concerned about their ability to navigate the market. Tasking an outside organization with market supply sourcing is a way to alleviate potential concerns about departmental inefficiency. Relatedly, the heavy use of contract labor was meant to offset potential costs. But the extent to which the DHS leveraged these partnerships showcased that the department as a whole was primarily interested in trying to accomplish tasks quickly and cheaply. The faster border fencing could go up, the more the DHS could state that it had accomplished. The private sector serves as an imagined solution to expand the scope of projects bureaucrats are capable of completing.

I say imagined however, because the perceived efficacy of the private sector does not necessarily bear out in terms of actual program success. In 2010, all of the SBInet programs assets were frozen because of how poorly the department had fared in implementing the required technological components.⁴³¹ For example, in 2008 CBP had acquired and deployed new COTS cameras and sensors along 28 miles of the Tucson border, as part of a test project to work with companies to develop a holistic virtual surveillance system. Because of the sheer number of contractors employed to set up the new system, and nebulously defined technological requirements, the project was delayed time and time again. Even without having to develop new technologies, it took 8 months longer than expected to complete this tactical infrastructure. These types of issues were commonplace in the SBI program as numerous reports from the DHS-OIG, the GAO, and other internal memoranda indicate. In response to these issues, CBP attempted to narrow the scope

⁴³⁰ Ibid.

⁴³¹ GAO, "Secure Border Initiative".

of the project both geographically and technologically. The agency worked to acquire more off-the-shelf technology to cover a smaller area.

But ultimately, after years of delays, incomplete projects, and issues with contractors, the entire SBI program was cancelled. What is perhaps most interesting about this failure of public-private cooperation is that while SBI can undoubtedly be called a massive waste of government funds, over \$4 billion spent with little to show for it, the DHS' approach to creating border security through virtual fencing was remarkably similar in subsequent iterations. After SBI was frozen, the department began work on a new project, the Arizona Surveillance Technology Plan, which implemented new management controls to achieve a very similar set of objectives. Wholesale acquisition of private technology remained a cornerstone of the plan. The biggest change between the two plans was departmental acknowledgement that "there is no "one-size-fits-all" solution, 'best' solution depends on specifics of a given area".⁴³² The new plan sought to acquire component technology pieces to suit the needs of particular sectors, rather than creating a universal virtual fence for border surveillance. The mix and match approach was intended to be more cost effective as well as providing more concrete results in each border sector.

Consequently, CBP also altered its acquisition strategy, focusing more heavily on non-developmental items, meaning technology the DHS didn't have to modify to suit its needs. In practice, this meant that CBP transitioned away from partnerships working with CBP directorates to develop systems that did not exist and instead conducting more market research to find, "technology systems already existed that could provide most, if not all, of the capabilities we felt

⁴³² U.S. Customs and Border Protection, "Arizona Border Surveillance Technology Plan", Presentation to CBP Senior Staff, 7, https://www.dhs.gov/sites/default/files/publications/0005 - bw7_foia_cbp_000652 - 000688.pdf

were required”.⁴³³ The new plan demonstrated early signs of success, and in a statement, one department official noted that,

We attribute these positive indications to our acquisition strategy, our thorough market research, our staff's hard work, our willingness to trade schedule for risk reduction, and our ongoing dialogue with industry. DHS and CBP acknowledged that we needed to do things differently if we wanted a better result from past acquisition failures.⁴³⁴

This quote exemplifies that department officials see successful market analysis as a core component of building new technological infrastructure. A major result of the SBI program was not any particular technological outcome. Instead, the DHS learned that its ability to wholesale create and deploy new systems had serious constraints, and as such, it would be more effective to dialogue with industry and develop a strategy focused on acquiring pre-existing technologies. This statement is not an isolated example either; guidance on developing operational requirements for technology acquisitions stated,

The DHS commercialization process is based upon the simple premise that the private sector is willing and able to use its own money, resources, expertise and experience to develop and produce fully developed products and services for DHS if significant market potential exists. The private sector has shown remarkable interest in devoting its time and resources to such activities, if and when an attractive business case can be made related to large revenue/profit opportunities.⁴³⁵

A key tenet of neoliberal rationality is that the free market and market like systems will produce the most efficient outcomes for all parties involved. The failure of the SBI program suggested to DHS officials that rather than trying to develop systems in tandem with the private sector, often they could let the private sector do the work of innovation and then simply research what technological solutions were on the market and acquire them at a lower cost. This transition in many ways increases DHS dependence on the private sector – if they are simply acquiring technologies

⁴³³ Mark Borkowski, “The Arizona Border Surveillance Technology Plan and its Impact on Border Security”, Statement Prepared for the House Committee on Homeland Security, March 12, 2014, <https://www.dhs.gov/news/2014/03/12/written-testimony-cbp-house-homeland-security-subcommittee-border-and-maritime>

⁴³⁴ Ibid.

⁴³⁵ Thomas Celluci, “DHS: Leading the way to Help the Private Sector Help Itself”, Homeland Security Science and Technology, February 2009, 5.

then it places the impetus for technological development and privacy maintenance squarely in the hands of technology companies. The DHS' role is to keep sufficient money in the sector so corporations will want to continue to invest in technology that could be used for homeland security. As such, the modern architecture of homeland security is increasingly controlled by private interests who reap hefty profits from service fees, maintenance, licenses, and updates to these systems. Analogous to the defense industry, the internal politics of the department incentivize the government to create a market for technological infrastructure that supports the project of enforcement and control. Private actors are equally incentivized to keep funding flowing to the DHS. By further incentivizing industry to create solutions that supports the racial project of homeland security, DHS bureaucrats acquisition processes reinforce both the extension of neoliberal rationality into governance, and further cement the link between economic success and racialized oppression of immigrant communities.

Lessons from SBInet – Accelerating Acquisition Processes

In the second half of the Obama presidency, the DHS initiated acquisition processes for a number of new technologies designed to give field agents access to pre-existing data repositories held by private companies. Two major pieces of commercial data software utilized by ICE are the FALCON system and the EDDIE system, both of which would be integrated into ICE's other case management software. FALCON is a COTS technology developed by Palantir and then modified to suit the particular needs of the DHS.⁴³⁶ The goal of FALCON is to provide a singular integrated platform where any particular agent could access a vast repository of investigative data including data from other government agencies, records from previous investigations, and some commercially accessible data. The database also includes a number of tools for improved investigative analytics

⁴³⁶ U.S. Immigration and Customs Enforcement, "Palantir FOIA Production Part 3", EPIC v. ICE (Palantir Databases), 2018. 53-60.

such as indexing all available data for user queries.⁴³⁷ FALCON replaced several pre-existing DHS software tools in order to provide a singular investigative warehouse for ICE agents conducting interior enforcement work. The tool was touted by agents as a major step forward and a valuable asset in their ability to conduct investigative work.⁴³⁸ While the contract for FALCON was substantive, nearly \$9.9 million in FY 2016, it was still a considerably smaller investment than in department tech overhauls like the TECS modernization project. Particularly given the difficulty the DHS faced in the TECS modernization (as I detailed previously in my chapter on surveillance), it is reasonable that department officials would pursue alternative options in updating their IT systems.

Another example of a similar phenomenon is the EDDIE system, which first went live in 2015. EDDIE is an enhancement to ICE's pre-existing case management system, which added features allowing ICE agents to access and capture biometric data from mobile devices and upload them to the cloud.⁴³⁹ HSI developed the EDDIE app in conjunction with Palantir to be able to integrate it into other systems, like FALCON. As with FALCON and LPR technology, EDDIE's deployment was marked by departmental excitement, and a belief that this force multiplier would greatly improve the departments use of biometrics in enforcement.⁴⁴⁰ EDDIE was built to be integrated with other departmental databases and mobile biometric acquisition became possible for every single booking made by ICE agents.⁴⁴¹ Each piece of technology adds another formidable tool of surveillance and control to the DHS' arsenal.

⁴³⁷ United States Department of Homeland Security, "Privacy Impact Assessment for FALCON Search and Analysis System", DHS/ICE/PIA-032(a), November 12, 2012.

⁴³⁸ Immigration and Customs Enforcement, "Palantir FOIA Production Part 4", EPIC v. ICE (Palantir Databases), 2018.

⁴³⁹ Immigration and Customs Enforcement, "EDDIE Training Manual 2015", Slides from Presentation on EDDIE to ICE Staff, <https://static1.squarespace.com/static/62c3198c117dd661bd99eb3a/t/62debfd27e30e04bc429b4e1/1658765279745/4-EDDIE-Training-manual.-2015.pdf>

⁴⁴⁰ Ibid.

⁴⁴¹ United States Immigration and Customs Enforcement Homeland Security Investigations, "Mandatory Booking of Arrestees Using EAGLE", HSI Directive 14-01, April 23, 2014.

By 2019, commercial technology acquisition as a concept had become deeply embedded in DHS strategic planning. One set of slides on private security innovations for border control noted that the majority of new technology is being developed in the private sector and that it is imperative for the government to leverage this capacity.⁴⁴² CBP went on to develop an innovation team specifically for these types of processes; the team's seeks to bring "innovative commercial capacities to users at the end, fast and in operational quantities".⁴⁴³ Under pressure from Congress and the Presidency to bring the border under control, particularly during the Trump era, CBP moved towards a strategy of quickly bringing in pre-existing solutions to augment enforcement capacity. Commercial acquisition expanded the market for homeland security tools and deepened DHS reliance on the private sector. In order to meet demand, particularly after a spectacular series of failures, bureaucrats pivoted towards finding solutions requiring minimal adaptation while also providing increased surveillance power. The DHS agrees to give up control over certain elements of technological development in exchange for access to the perceived efficacy of private sector development tools. This immigration enforcement apparatus can no longer function without the litany of subscription services, interoperable databases, and privately maintained information.

Moreover, these ties have both economic and racialized impacts. Homeland security is the business of companies providing services for racialized enforcement, and this pattern has only become further entrenched as private sector innovation produces more sophisticated tracking and monitoring tools. Faced with a seemingly impossible task, the DHS pivoted its strategy to build on market efficiencies, extending neoliberal models of success into government enterprise. Thus, this extension also further yokes private capital to the task of racial categorization. Given the unique way that the homeland security state targets individuals racialized as Mexican or Mexican appearing, the

⁴⁴² United States Customs and Border Protection, "Private Security Innovations for Border Security 2019" Slides from Presentation to CBP Senior Staff.

⁴⁴³ Ibid.

increased involvement of private capital deepens relationships of racial capitalism. Under the guise of building cost-effective business practices, DHS has created a massive marketplace for corporations to turn a tidy profit by adding more tools to supplement enforcement. These tools continue to rely on the pre-existing biases baked into immigrant policing. The new emerging market of homeland security extends market logics into governance and creates massive profit incentives for providing the backbone of racial enforcement systems.

Into the Cloud – Cloud Computing and the Homeland Security Architecture

One of the most notable developments that occurred at the tail end of the Obama administration and continued under the early days of the Trump presidency was the migration of key data services over to privately owned Cloud servers. The first service to undergo this dramatic transformation was the Homeland Security Information Network (HSIN). In 2016, HSIN was selected as a pilot project for Cloud computing. DHS officials had previously noted that because HSIN was a critical database used by multiple agencies for enforcement investigations, and because HSIN was hampered by its dependence on the rigid environment of its extant data servers.⁴⁴⁴ In 2016, Amazon Web Services (AWS) was the only Cloud computing service that could deliver on all of the DHS' technological needs in terms of security, scale, and ability to warehouse sufficient data.⁴⁴⁵ The move to the Cloud was heralded as a major advancement in terms of HSIN's infrastructure. Stakeholders in the project argued that the transition would increase the speed at which intelligence products could go to the market, namely be made available to the intelligence community because of the instantaneous access that Cloud computing could provide.⁴⁴⁶ They also argued that it would ease financial concerns because of the ability of Cloud servers to scale the

⁴⁴⁴ United States Department of Homeland Security Office of the Inspector General, "Homeland Security Information Network Improvements and Challenges", OIG-13-98, June 2013.

⁴⁴⁵ Damon Bragg, "DHS HSIN's Journey to FedRAMP High on AWS GovCloud (US)" filmed on July 2, 2018 at AWS Public Sector Summit, Washington D.C., [DHS HSIN's Journey to FedRAMP High on AWS GovCloud \(US\) \(youtube.com\)](https://www.youtube.com/watch?v=...)

⁴⁴⁶ Ibid.

product at a relatively low cost, and that it would allow stakeholders in HSIN to get out of the hardware procurement business, leaving the technological development to private corporations who could conduct this work more efficiently.⁴⁴⁷ Damon Bragg, operations manager for HSIN noted that the full migration went far more quickly than expected and came in relatively close to the projected cost estimates.⁴⁴⁸ Nor was this process free of political influence. In 2015, Amazon spent over \$2 million on pushing the federal government to move towards Cloud based solutions prior to being awarded this DHS contract.⁴⁴⁹ This success would set in motion a number of subsequent migrations of major web-based services over to privately held servers like AWS, AWSgov and others.

For DHS bureaucrats, the transition to relying on private companies for Cloud services was a logical one. Factors like the private sector's perceived ability to create and manage technological infrastructure efficiently, the ongoing perceived need to have 24/7 access to "mission critical technologies", and the fact that this migration is perceived to be cost cutting helped drive this decision. Bureaucrats searching to improve system efficacy are deeply incentivized to migrate these systems over to the Cloud. Less discussed however, are the central concerns of outsourcing previously sovereign functions to private corporations. While it could be argued that AWS is not inherently performing border enforcement, they are turning a tidy profit from ongoing web service provision with the DHS. Equally importantly, the DHS' success as an organization is now fundamentally intertwined with the private sector's ability to host their key applications.

Part of the decision to move towards Cloud based solutions came from a departmental initiative aimed at getting products to users more quickly. In 2016, the DHS transitioned to an agile software development model, which replaced its previous technology update model. Agile software

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

⁴⁴⁹ Open Secrets, "Client Profile: Amazon.com", Accessed April 4, 2024, https://www.opensecrets.org/federal-lobbying/clients/issues?cycle=2015&id=D000023883&spec=CPI&specific_issue=Computers+%26+Information+Tech#specific_issue

development is another model taken almost directly from the private sector.⁴⁵⁰ This model prioritizes sending out software updates in small, rapid increments. In contrast to a developmental model which works to design system through their entire life cycle, agile development is meant to deliver updates to end users as quickly as possible – agile programs continue to deliver services to users even as they are being updated against program feedback being delivered by users. This decision emerged out of concerns around previous IT processes taking too long; the Biometric Exit Protocol and SBInet showcased that the DHS often struggled to implement long term technology programs.⁴⁵¹ Agile software development also can be productively linked with Cloud transitions because Cloud interfaces are meant to deliver system wide updates to all users as quickly as possible. When combined with a department wide move towards getting out more updates quickly, the end result is to deliver higher quality services to end users at a more efficient pace.

After the successful transition of HSIN, the department as a whole began to push for increased Cloud optimization and transfer. The notion of Cloud computing as essential to DHS strategy was so central that the department’s IT strategic plan in 2019 specifically listed “Network Modernization” and “DHS Cloud Smart” as major objectives.⁴⁵² Cloud migration was also posited as a solution to the department’s ongoing problem of integrating legacy systems into a cohesive whole.⁴⁵³ Central to this transition is the idea of the Cloud as a more efficient form of technological infrastructure.⁴⁵⁴ Cloud services are more efficient because they allow for more complete integration of information across agents, components, and allow greater integration across platforms. For a department aiming to produce perfect information, the transition to the Cloud is essential because it

⁴⁵⁰ U.S. Government Accountability Office, “Agile Software Development: DHS Has Made Significant Progress in Implementing Leading Practices but Needs to Take Additional Actions”, GAO-20-213, June 2020.

⁴⁵¹ *Ibid.*, 16.

⁴⁵² U.S. Department of Homeland Security, “IT Strategic Plan 2019-2023”, 2019, 2.

⁴⁵³ U.S. Department of Homeland Security Office of the Inspector General, “Major Management Challenges Facing the Department of Homeland Security”, OIG-21-07, November 10, 2020.

⁴⁵⁴ U.S. Department of Homeland Security Office of the Chief Information Officer, “Implementing DCOI DHS Enterprise Computing Services (DHS ECS) Strategic Plan”, October 7, 2016.

allows end users to access information at anytime, anywhere. This can be thought of as emerging both out of the internal drives for technological modernization described in Chapter 3, and the pressures of Congressional mandates I discuss throughout this chapter.

But in the context of the relationship between the private sector and the DHS, the increased reliance on Cloud service must also be understood as creating a relationship of dependence. In 2024, the vast majority of Cloud hosting system architecture is owned by private corporations, and the servers used to host DHS programs are no exception. The neoliberal belief in allowing the market to dictate the lowest prices for technological services has pushed the DHS deeper into the arms of tech giants like Amazon, Google, Microsoft, Palantir, and more. The bureaucratic incentive to produce results that meet departmental pressures and to create more interoperability between systems has led to a deep confluence of private interests and homeland security. This is concerning in that it can be interpreted as deepening the power of the immigrant enforcement industry. As companies make more money providing software architecture to the DHS, the further incentivized those companies are to maintain those contracts. Should the business of immigrant enforcement ever dry up, those companies would be out a major source of revenue. This can be easily evinced by looking at the lobbying activities of these firms. Palantir, for example, spent over \$5 million on lobbying expenditures in 2023, pushing for adoption of their technological products.⁴⁵⁵ With lucrative contracts valued at hundreds of millions of dollars, it is no wonder that these firms are willing to shell out substantial sums to invest in maintaining these contracts. This further entrenches a cycle where the business of homeland security is built on the backs of tech giants.

Conclusion

⁴⁵⁵ Open Secrets, “Client Profile: Palantir Technologies”, last modified January 24, 2024, <https://www.opensecrets.org/federal-lobbying/clients/lobbyists?cycle=2023&id=D000055177>

The advent of neoliberal policies marked a major shift in bureaucratic policies. As the free market was increasingly enshrined as the global bastion of efficient operations, government politics were increasingly neoliberalized. As Wendy Brown puts it, the transformation to neoliberal modalities of governance has been one of an ascendant technocracy, a system of governance that displaces questions of the good and the political in exchange for questions of technical solutions to global problems. In the case of the DHS, neoliberal rationality paired with pre-existing bureaucratic incentives has shaped an ever-deepening relationship between the DHS and the private sector. While previous studies have examined the business of immigration enforcement, and in particular the egregious violations of human rights for profit found in immigration detention centers, this chapter has focused on how bureaucratic policymaking led to the construction of homeland security architecture dependent on private sector investment. I have examined how DHS difficulties in technology management propelled a strategy focusing more heavily on acquiring COTS technology, relying on market logics of comparative advantage, and in turn leaving many DHS systems dependent on outside contractors. I emphasized how in the case of biometric exit protocols, when agencies struggled to implement particular technological solutions, they turn to private sector assistance to bring the program to fruition. I also explored how the DHS has adopted a internal policies that venerate the efficacy of the private sector, incorporating techniques and practice from private management to attempt to meet internal goals of efficiency. This has also led to developments like increased use of private cloud servers, further cementing the necessity of private tools in the homeland security enterprise.

Throughout the chapter, I have also worked to show that these transitions to a more business-like model have not been solely driven by bureaucrats. Rather, Congress and the President often put extreme demands on bureaucratic actors, seeking to drive a particular political agenda. However, these demands cannot always be met with the agency's existing capacity, often forcing

agents to develop new strategies to try and meet these demands. In the case of capacity building, and because of the enshrined notion of private sector efficiency, this can often mean turning to the private sector for assistance. While Congress may not have directly mandated that the DHS purchase tools from the private sector, the tasks assigned to the DHS have driven them directly into the arms of waiting tech giants.

Finally, this chapter helps illustrate the alignment of race and capitalism that undergirds the entirety of homeland security. While the DHS' financial policies are not inherently racialized, the enforcement outcomes the department enacts are. When a market is created that allows corporations to reap profits from the business of detaining, deporting, and deterring migrants, a system is created that incentivizes further violence against these communities. As the DHS continues to expand on the backs of companies like Amazon and Palantir they allow these companies to hold a vested interest in maintaining a regime hostile to particular types of immigrant workers. Those racialized as Mexican or Mexican appearing are targeted at overwhelming rates, and funds are transferred from the taxpayer to the federal government and straight into the hands of corporate interests. For those of us who are invested in unpacking the major logics of racial capitalism it is imperative to remember that racialized profiteering is not just happening in the extreme cases of detention and deportation. The everyday infrastructure that allows detention and deportation to happen is also a flow of racialized capitalism. Wealth continues to flow, generated through the pain of immigrant communities, and concentrating in the hands of the very few. Bureaucracy doesn't inherently enable this process, but the intersection of homeland security bureaucracy and private profit furthers racialized extraction.

Chapter 5: Can Bureaucracy Be Transformed? Towards a Theory of Caring Bureaucracies after Violent Enforcement

Introduction

This dissertation has focused on how a well-functioning bureaucracy can inadvertently perpetuate violence against immigrant communities. Drawing on the Arendtian conception of thoughtlessness, I have highlighted how “business as usual” for the DHS leads to expanding and improving carceral control targeting racialized immigrant communities. These developments have perpetuated forms of racial control aimed at Latinx communities – those marked as “illegal” and therefore in need of being managed by the state. But all this research leaves us with several central questions. If, as Weber states, “Where administration has been completely bureaucratized, the resulting system of domination is practically indestructible”,⁴⁵⁶ what strategies are available to address the resulting harms emerging from this system? Where might a transformation in bureaucracy lead? Can bureaucracy ever be truly purged of its origins in racial systems of control?

Given the scope of our globalized economy and the sheer size of the American immigration system, working to simply abolish immigration bureaucracy is neither feasible nor desirable. While I might simply wish for the immigration system to upend itself and for borders to vanish overnight, until such a time comes bureaucracy remains a necessity. So, what can be done to convert bureaucratic priorities in the DHS? How could an agency prioritizing carceral efficiency become an agency prioritizing efficiency in delivering services to immigrants?

Drawing on abolitionist scholarship, feminist theories of care, and critical scholarship addressing the nexus of criminality and “illegality”, I outline a three-prong process that could transform the bureaucracy to be, if not a liberatory agency, at minimum a compassionate and welcoming one. Each prong of my approach corresponds to a harm of bureaucracy that I outlined

⁴⁵⁶ Weber, “Economy and Society”, 987.

in a chapter of the dissertation. The removal of private entities to attempt to address the current profit incentives within immigration enforcement, which responds to Chapter 4, draws on abolitionist theories of anti-capitalist organizing to focus on implementing solutions designed to meaningfully help communities. This prong is also a necessary precondition for the other aspects I examine – the profit incentive within the DHS will keep bureaucrats focused on carceral solutions unless it is addressed. The second prong focuses on revaluing metrics to prioritize human welfare, which draws on a feminist theory of caring democracies, and directly responds to my second chapter. The third prong entails revaluing efficiency to focus on efficiency in service provision to immigrant communities. This prong responds to current DHS practices of technological modernization outlined in Chapter 3. I focus in particular on the question of incentives because throughout my research, I was struck by how much harm can be done when people are working hard to be good at jobs that seem banal but in fact reproduce systems of racial control. Throughout the research, I found myself asking, “What would it mean if these same bureaucrats that devoted countless hours to researching new surveillance technologies were instead rewarded for finding more effective ways to distribute aids to immigrant communities?” Incentives structure the everyday experiences of governance, so by fundamentally altering incentives, perhaps new visions of bureaucracy could materialize.

However, equally importantly, these changes in bureaucracy would mean very little without an accompanying transformation in the U.S.’s overall approach to the question of immigration. This would necessitate dramatic policy change. First and foremost, the transformation of immigration enforcement would require, at the bare minimum, a radically inclusive agenda that prioritizes hospitality over skepticism, and more likely an open borders approach. The majority of immigration legislation in recent decades operates from a position of skepticism – immigrants are seen as potential terrorists, drains on societal welfare, or dangerous. These images are linked to the

racialization of immigrants, and the production of the “illegal immigrant” as a figure to be managed for fear that it will damage the polity’s social fabric. Building a caring bureaucracy would require starting from an assumption of hospitality, to assume that the overwhelming majority of immigrants are people who are simply seeking to build a better life for themselves because war, poverty, environmental change, and economic crisis have pushed them to leave their homes. By enshrining an active duty towards migrants in American immigration law, the changes I envision in bureaucracy would become much more effective. I focus more heavily on bureaucracy in this conclusion for two reasons. First, there is already a rich body of literature discussing the merits and concerns of open borders.⁴⁵⁷ Other authors have already made the case, and in greater detail than I can in a conclusion chapter. The second reason is that throughout my research I have seen how complex the process of implementing new Congressional priorities can be. Even with the full weight of Congress behind an initiative, if the bureaucracy is not prepared to tackle the task, the task will be completed imperfectly or perhaps not at all. The case of developing a caring immigration system is no different – immediately pausing detentions and deportations will not solve all the problems of immigration unless a robust system is put into place to fill in the gaps with caring alternatives. Thus, I see bureaucratic transformation as an indispensable part of working towards immigrant justice.

These solutions would, by necessity, need to be pursued through multiple avenues. Given the complex constellation of interests entangled in the DHS bureaucracy, I suggest that merely pursuing legal change, court action, or bureaucratic remedies alone will be insufficient to truly transform the bureaucracy. Instead, bureaucracy must be transformed through multiple avenues of advocacy – finding useful avenues of attack can begin to productively alter the trajectory of bureaucratic institutions. These solutions will, of course, be far more difficult to implement than

⁴⁵⁷ For example, see Carens, *The Ethics of Immigration*, Jason L. Riley, *Let Them in: The Case for Open Borders* (New York, N.Y: Gotham Books, 2008), or Mathew Coleman, Sapana Doshi / Reece Jones. *Open Borders: In Defense of Free Movement*. 1st ed. Vol. 41. (Athens: University of Georgia Press, 2019).

they may seem from what I present here. Yet at the same time, without active effort to reshape the bureaucracy and disrupt business as usual, the current practices of violent immigration enforcement will continue unchecked.

Given how deeply powerful the entrenched interests of the state are in excluding certain immigrants, how prominently politicians advocate for the removal of detainees, and how strong private sector interests are in a modern democracy, the project of bureaucratic reevaluation may not be possible. However, attempting this project of reevaluation is important because the current system of bureaucracy fails on all counts. The system of immigration enforcement as it currently exists is both inhumane and inefficient. Moreover, it is not just discriminatory, it is deeply violent and even deadly. As recently as March 7, 2024, an immigrant who had been held in solitary confinement for over 800 days died by suicide while held at the Northwest ICE Processing Center.⁴⁵⁸ This death is not an isolated instance, and ICE records show documentation of other uses of solitary confinement, abuse, and death in detention centers.⁴⁵⁹ These deaths are merely the tip of the iceberg. Immigration scholars have drawn on abolitionist works to make connections between the damages of mass incarceration and immigrant detention. Tanya Golash-Boza notes that, “Similar to the failure of crime policy, there is substantial research that demonstrates quite conclusively that tougher immigration policies fail to achieve their stated goals.”⁴⁶⁰ Tougher immigration policies do not have the deterrent effect they often claim to have. More often, these policies tend to make the crossing more dangerous for migrants or instill fear in detained communities but don’t necessarily actually drive down attempted entries. When then-President Trump took office, he implemented new

⁴⁵⁸ Lilly Fowler, “ICE identifies man found dead at Northwest ICE Processing Center”, KNKX Public Radio, March 8, 2024. <https://www.knkx.org/tacoma/2024-03-08/police-find-man-dead-northwest-ice-processing-center-tacoma-immigration-detention> and University of Washington Center for Human Rights, “NWDC Conditions Research Update: Charles Leo Daniel’s Death at NWDC in Context,” March 15, 2024. <https://jsis.washington.edu/humanrights/2024/03/15/nwdc-conditions-research-update-daniel-death-in-context/>

⁴⁵⁹ UW Center for Human Rights, “NWDC Conditions Research Update”.

⁴⁶⁰ Golash-Boza, “The Immigration Industrial Complex”.

policies that should theoretically have deterred more migrants from entering. But as the graphic below indicates, the next two years actually saw a notable increase in the number of unauthorized entries. This trend suggests that migration is not necessarily tied to a calculus about whether or not you will be caught and punished, there are other factors such as civil war, poverty, or famine that play a more central role. Deterrence is an ineffective policy because deterrent forces are often not a primary consideration when migrants move. If the circumstances in their home country are sufficiently dire, migrants are likely to continue to make their journeys regardless of how punitive the regime is.

Figure 1.
Estimated Detected Unlawful Entries Nationwide Between POEs, FY 2006 to 2019

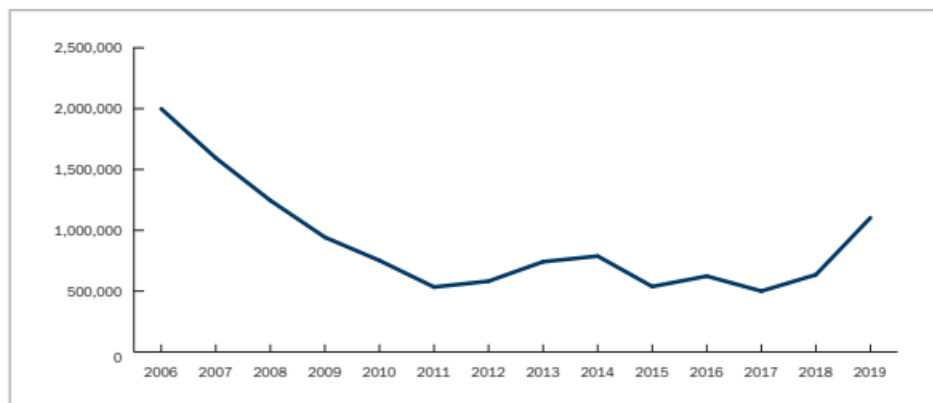


Figure 10: Estimates of Detected Unauthorized Entries from 2006-2019, taken from Border Security Metrics Reports

Furthermore, more punitive policies have not led to greater efficacy in enforcement outcomes, as exemplified by the backlog of federal immigration cases. Indeed, during the Trump administration – an era with some of the most intentionally punitive immigration policies – the backlog skyrocketed. Data below, taken from the TRAC Clearinghouse, illustrates that the backlog in immigration cases more than tripled during the Trump administration. This trend did not end during the Biden administration; Trump era policies created a certain degree of path dependence that continued to cause cases to skyrocket.

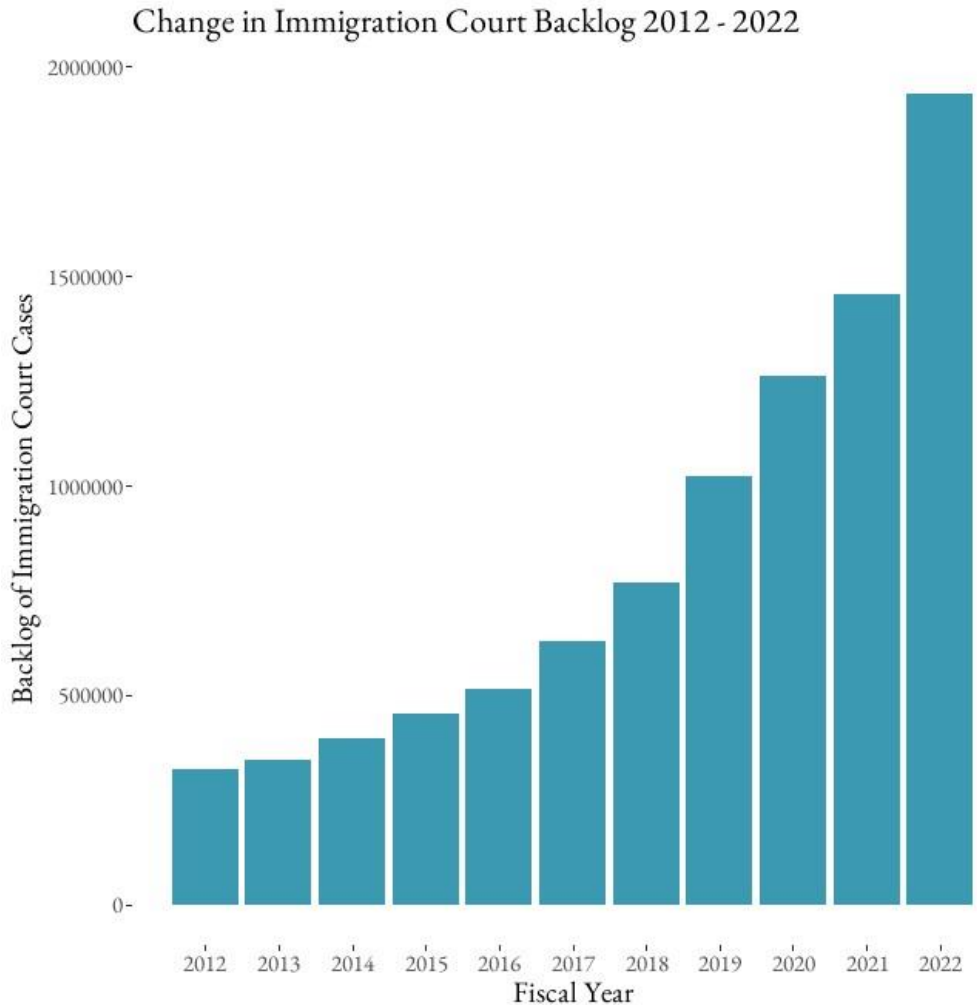


Figure 11: Chart depicting increases in the immigration court backlog from 2012 – 2022. Data taken from TRAC Clearinghouse Immigration Court Backlog Tool

The backlog matters for thinking about efficiency in enforcement because immigration courts are where outcomes like deportation or asylum are decided. A formal deportation can only happen if an immigration court hearing is held, and the judge deems removal appropriate. If the backlog is rising, then that means that the system is unable to keep up with the number of people being charged with immigration related offenses. Trump-era policies may have pledged to deal with the problem of “illegal immigration” but instead these policies have led to millions more people waiting for their day in court. In this regard a punitive approach has simply created a bigger problem for future administrations to address. Holding people in detention is expensive, and as the immigration

backlog increases more funds will need to be used. At the same time, rising backlog in cases also suggests that these removals are not having their purported effect on reducing “illegal” immigration. Thus, while proponents of punitive policy may argue that they are working to bring the problem of “illegal immigration” under control, the evidence suggests quite the opposite – these policies do not function as intended. For the pragmatists reading this argument, this may be a useful counterpoint to suggest that a different imagination of immigration bureaucracy is necessary, both morally and practically. More punitive policies lead to greater spending, but without a corresponding increase in public safety. Even if we were to consider immigrant removal a legitimate cause, a position which I do not take, the current mechanisms of doing so are both wasteful and ineffective.

To make this argument, I begin by recapping crucial premises about my theorization of bureaucracy, with particular attention to how the current incentive structure for DHS bureaucrats enables thoughtlessness and perpetuates forms of racial violence. I provide an overview of key theories of care and abolitionist transformation that I will draw on in this conclusion. I then begin my discussion of the feminist practices of revaluation and explore some of the ways these practices could be implemented and transform DHS’ metrics processes. I move to discussing how to prioritize services and compassion as a form of bureaucratic efficiency, drawing on both feminist and abolition theorizing. I analyze practices that focus on removing and limiting the power of the private sector in order to reduce the role of profit incentives in the immigration process. I conclude by reflecting on the key takeaways from these solutions and possibilities for future research.

Feminist Theories of Care and Abolitionist Theories of Transformation

In theorizing potential alternatives to the contemporary form of immigration bureaucracy, I foreground two concepts – the feminist conception of care, and abolitionist notions of institutional transformation. I remain agnostic about the necessity of abolishing bureaucracy, though certainly

feminist scholars such as Kathy Ferguson have made compelling cases against it.⁴⁶¹ But I am convinced that without a fundamental reconsideration of how bureaucracies operate, it will not be possible to create a society that appropriately addresses the question of immigration. I foreground a politics of care and vulnerability because I see it as being diametrically opposed to the current practices of thoughtlessness in immigration enforcement. In defining care, I follow Bernice Fisher and Joan Tronto who argue,

On the most general level, we suggest that caring be viewed as a species activity that includes everything that we do to maintain, continue, and repair our ‘world’ so that we can live in it as well as possible. That world includes our bodies, our selves, and our environment, all of which we seek to interweave in a complex, life-sustaining web.⁴⁶²

I here take Fisher and Tronto to mean that care refers to the sets of practices that enable humans to thrive, not merely survive. By arguing that caring is a “species-activity”, much in the vein of Marxist species-being arguments about work, these scholars position care as an indispensable element of the human condition. However, in the context of thinking about bureaucracy, this theory of care is somewhat overbroad, and includes a vast swath of activities that might be outside the scope of bureaucratic endeavors. In the context of immigration bureaucracy, care is a more defined political project that works to approach migrants from a place of welcoming and hospitality.

This approach also diverges from carceral, racialized politics. In a recent critical exchange, Miriam Ticktin argues, “The idea is to learn to use an attuned, caring manner to resolve issues, rather than resorting to strategies like incarceration or expulsion.”⁴⁶³ Here, Ticktin positions incarceration as fundamentally opposed to care. Indeed, incarceration may even be conceptualized as an extraction of care from communities. When individuals are detained or deported, their ability to give and receive care is removed from their communities. Indeed, noted abolitionist Ruth Wilson

⁴⁶¹ Kathy E. Ferguson, *The Feminist Case against Bureaucracy*, (Philadelphia: Temple University Press, 1984).

⁴⁶² Joan C Tronto, *Caring Democracy: Markets, Equality, and Justice*. (New York: New York University Press, 2013), 19.

⁴⁶³ Miriam Ticktin, “Care and the Commons” in “The Politics of Care: A Critical Exchange”, *Contemporary Political Theory*, Vol. 20 (4) 2021: 890-925.

Gilmore argues that a central injustice of carceral practices is the theft of time – time that could be spent giving back to communities, building relationships, and creating networks of care.⁴⁶⁴ I suggest here that a caring bureaucracy would center the idea of human vulnerability, and work to implement practices that support differing degrees of vulnerability. The notion of vulnerability I draw from feminist disability studies, which focuses on the idea that all humans share vulnerability as a common attribute. As disabilities studies scholar Amber Knight argues, “Specifically, the notion of a shared vulnerability is important because it ultimately moves us beyond thinking about disability primarily as a discrimination issue facing a distinct group and instead approaches it as a shared matter of political planning and public welfare.”⁴⁶⁵ Here, Knight argues that as opposed to thinking of vulnerability as an issue only affecting some groups, it is more productive to recognize that everyone will be vulnerable at some point in their lives. We are all vulnerable as infants and require protection. When we age, we will need assistance as our bodies deteriorate. At any point an able-bodied person could experience an injury or illness that transforms their degree of vulnerability. A politics foregrounding vulnerability entails building structures and relationships that acknowledge this fact of the human condition and builds systems to protect people in need. Vulnerability intertwines with the notion of care because vulnerability suggests that the human condition is a condition of needing care – care and vulnerability are relational understandings of human life as opposed to the autonomous conceptions often underlying modern neoliberal politics.

Placing care at the center of our contemporary immigration system would look to transform current immigration practices from ones that focus on exclusion to ones that center hospitality and welcoming. In contrast to a power to exclude, a politics of vulnerability would recognize that civil

⁴⁶⁴ Ruth Wilson Gilmore, Katz Distinguished Lecture Series – “Making Abolition Geographies”, University of Washington, February 25, 2021.

⁴⁶⁵ Amber Knight, “Disability as Vulnerability: Redistributing Precariousness in Democratic Ways,” *The Journal of Politics* 76, no. 1 (January 2014): 15–26, 16 <https://doi.org/10.1017/S0022381613001266>.

war, climate disaster, crop failure, or other disasters could befall a communities at any given moment. It would prioritize a state mandate to include, to welcome the stranger at the shores. This would lead to care remaining in communities instead of being extracted to further processes of capital. Rather than seeing the immigrant as a threat, a caring bureaucracy would focus on promoting immigrant welfare through a range of social services.

The corollary component is to critically question what needs funding in the immigration realm. Is further expansion of surveillance technologies necessary in a bureaucracy whose primary function is to provide care to new migrants? Likely not. Here, I turn to the critical literature from abolitionist scholars thinking about how to undo the structures of the prison industrial complex. The concept of a prison industrial complex highlights that the emergence of mass incarceration stems from the confluence of social, economic and political interests that create an ongoing societal investment in practices of incarceration.⁴⁶⁶ As such, a central component of dismantling this complex is to break apart this constellation of interests and create new sets of funding priorities that are devoted to building connections within communities, rather than draining that same care. As Angela Davis argues,

The transformation of imprisoned bodies— and they are in their majority bodies of color— into sources of profit who consume and also often produce all kinds of commodities, devours public funds, which might otherwise, be available for social programs such as education, housing, childcare, recreation, and drug programs.⁴⁶⁷

Davis notes that the amount of funding poured into incarceration, which is substantial, could have easily been converted for use in other types of social programs. However, the particular intersection of political, racial, and economic interests supporting the prison industry leads to those funds being perpetually reinvested into incarceration. This is in large part because incarceration is not a peripheral part of the neoliberal economy – quite the contrary, the wide range of corporations

⁴⁶⁶ Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003).
<http://ebookcentral.proquest.com/lib/washington/detail.action?docID=565486>

⁴⁶⁷ *Ibid.*, 88.

involved in the prison economy, everything from health care to electronic security, elucidate that there is a huge web of actors invested in maintaining the system as it currently exists. The investment in homeland security is a clear analogue. As I argued in chapter 4, the system of bureaucratic incentives has pushed DHS bureaucrats deeper into relationships with tech companies, military investors like Lockheed Martin, and private prison corporations like the GEO Group. As such, abolitionist insights about building anti-carceral funding alternatives can be utilized to envision anti-carceral immigration funding priorities.

This is a central area where feminist theories of care and abolitionists ideas of institutional transformation can be brought into productive conversation. For example, Shatema Threadcraft argues,

We could offer people in under-resourced communities the things that have been proven to decrease violence and harm, we could devote resources to preventing harm and not simply punishing it: adequate housing, mental and physical health care, flexible childcare and flexible and proximate jobs that recognize and support the disproportionate caregiving work that Black women provide. We should also be sure to allow communities to participate in the processes by which we determine what they themselves need. In short, we could follow the advice of abolitionists.⁴⁶⁸

Centering care in thinking about funding for public policies entails centering community needs in allocating funds. This may include processes like participatory budgeting, or community learning sessions. Nor is this work unheard of. For example, Tulsa, Oklahoma has implemented an Equity Dialogues program, which strives to center community needs in shaping city level policies. In this program, the city sponsors individuals to go through training programs to be able to facilitate racial equity conversations – including paying these individuals to lead training sessions on equity around the city.⁴⁶⁹ These community leaders are then more involved in ongoing conversations and government work that helps create new opportunities for community leaders, Moreover, these opportunities are a form of active involvement in the process of governance. One of these notable

⁴⁶⁸ Shatema Threadcraft, “Mass Incarceration and Public Care” in “The Politics of Care: A Critical Exchange”, *Contemporary Political Theory*, Vol. 20 (4) 2021: 890-925.

⁴⁶⁹ Bloomberg Cities Network, “What Tulsa Has to Teach Others About Rebuilding Cities”, August 18, 2023 <https://bloombergcities.jhu.edu/news/what-tulsa-has-teach-others-about-rebuilding-trust-cities>

programs is that these leaders get opportunities to provide qualitative feedback on the Tulsa Equality Indicators, a set of data used to track disparities in the Tulsa area. I highlight this example to show that while getting communities directly involved in the process of governance is challenging, it is very much possible and entails a renegotiation of what is prioritized processes of governance.

In the context of imagining anti-carceral possibilities for an immigration bureaucracy, these notions of re-envisioning community involvement provide productive visions for how immigration bureaucracy could be reconstituted. A project of care is inherently a project grounded in relationships; caring for others means forming a particular types of human connection. Centering care in immigration then would also entail centering cooperative relationships between governments and immigrant communities. This would represent a particularly stark break with current practices of immigration governance. Across the full set of bureaucratic documents I examined, immigrant communities are rarely, if ever, consulted in the process of creating policy that shapes their lives. I suspect that were immigrant communities more directly involved in allocating funding for the DHS, far more dollars would be directed to adjudicating asylum claims, fast-tracking immigration court backlogs, and providing services to vulnerable immigrants than funding detention, deportation, and other punitive forms of immigration enforcement. Participatory budgeting could also be imagined as a process of democratizing care. As Joan Tronto argues, "...democratic politics should center upon assigning responsibilities for care, and for ensuring that democratic citizens are as capable as possible of participating in this assignment of responsibilities".⁴⁷⁰ Involving immigrant communities in shaping the regulations that govern their lives would help bring affected community members into the democratic discussion of care allocation.

⁴⁷⁰ Tronto, *Caring Democracies*, 30.

Another crucial component of abolitionist literature is the notion that transforming institutions also involves proliferating a multitude of alternatives that build practices of community care. Here, I return to Angela Davis, who argues,

In other words, we would not be looking for prisonlike substitutes for the prison, such as house arrest safeguarded by electronic surveillance bracelets. Rather, positing decarceration as our overarching strategy, we would try to envision a continuum of alternatives to imprisonment— demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation rather than retribution and vengeance.⁴⁷¹

This is particularly pertinent in the context of discussing immigration enforcement, given that “Alternatives to Detention” are an increasingly central tactic in ICE’s punitive repertoire. A telling email exchange taken from the ICE Venntel FOIA shows agents discussing Alternatives to Detention, but only in its abbreviated form (ATD). At one point, an agent asks for clarification on what ATD is, and gets the response, “Alternatives to Detention, aka ankle bracelets”.⁴⁷² This is revealing as it shows how, for members of the ICE bureaucracy, alternatives to detention and carceral means of ensuring hearing attendance are one and the same. Alternatives to detention could just as easily mean check ins or community service, but for ICE agents, ATD is synonymous with ankle shackles and monitoring. Abolitionist theorists are clear that replacing jailing with monitoring is not the same as liberation. Instead, these organizers advocate for a continuum of alternatives that center community needs and community advancement. A more meaningful ATD program might look like temporary housing and workers assistance programs for new migrants to the United States. It might look like providing additional funding to FEMA for migrant communities caught in the wake of environmental catastrophe. The institutional transformation perspective highlights that there are always alternatives to carceral enforcement, the question is how to chip away at these carceral institutions to build towards these alternatives.

⁴⁷¹ Davis, *Are Prisons Obsolete?*, 107.

⁴⁷² U.S. Immigration and Customs Enforcement, Venntel FOIA Production, 226.

To reiterate, while I draw deeply on ideas of institutional transformation stemming from abolitionist theories, I am not here advocating for an abolition of immigration bureaucracy. Instead, I more closely follow the work of Tommie Shelby, who focuses on the role of structural transformation in working towards freedom from incarceration. In his most recent work, *The Idea of Prison Abolition*, he systematically and rigorously engages with ideas from the prison abolition tradition and posits that even if prisons might be thought of as reducing crime, there are still less harmful crime control measures that could be more effective. Though Shelby is not a prison abolitionist, he concedes that approaches like community-based harm reduction, and transformative justice that abolitionists advocate for are major improvements over the current system of policing and incarceration.⁴⁷³ I find Shelby's approach compelling in that, despite not being an abolitionist himself, he sees how measures drawing on abolitionist thought may be useful and even necessary to transform the system as it currently exists. In the case of bureaucracy, I am uncertain whether abolishing immigration bureaucracy altogether is either useful or necessary. The enormous scope of our current immigration system requires a highly organized group of people to address the concerns of immigrants. Even if the bureaucracy was an entirely caring one, focused on service provision, this type of government work remains immensely complex – a logistical problem that requires careful attention, planning, and foresight. Therefore, like Shelby, I find myself engaging critically with abolitionist ideas without necessarily calling myself a bureaucratic abolitionist. But in order to achieve structural transformation of the bureaucracy, the current system would need to be fundamentally reoriented. I now turn to three more specific elements of transformation that would be required in order to establish an immigration bureaucracy focused on human welfare.

Taking Aim at the Profit Incentive – Building on Existing Approaches

⁴⁷³ Tommie Shelby, *The Idea of Prison Abolition*, (Princeton: Princeton University Press, 2022).

The profit incentive in homeland security is one of the most blatant ways the immigration bureaucracy remains mired in the politics of carceral enforcement. As I elaborated in chapter 4, homeland security is a new site of potential profits for key players in the neoliberal economy including defense contractors, tech giants, and private prison corporations. Until these companies are excised from Congress and the immigration bureaucracy, their pervasive influence will continue to drive the politics of homeland security. Thus, the first step in transforming bureaucracy is addressing existing profit incentives in immigration enforcement. One tactic activists have already utilized to undermine the profitability of homeland security has been through lawsuits challenging the “voluntary” work programs (VWP) in immigrant detention centers. I begin by providing an overview of what these “voluntary” programs look like, before describing how a series of creative lawsuits worked to challenge this type of immigration profiteering. I then transition into discussing what lessons can be learned from this activism in terms of thinking about the profit incentive in other parts of the bureaucratic apparatus.

In detention centers run by private prison companies like the GEO Group and CoreCivic, detainees have the “option” to participate in the VWP, which may involve folding laundry, cleaning the facilities, preparing meals, and other similar tasks. I place option in quotations marks because there are many documented instances of detainees being faced with a choice to participate in the program or be placed in solitary confinement. Detainees are often coerced into carrying out the essential work that helps maintain the facility holding them captive. In exchange for this labor, detainees are compensated at a rate of \$1 for each 8-hour day of labor. In the commissary, a packet of cup ramen costs \$1.25, so a full day’s labor is not enough to purchase the most basic

sustenance.⁴⁷⁴ Given that detainees consistently suffer from malnutrition and literally inedible food, the commissary is often one of the only options to get vital nutrients.⁴⁷⁵

The federal government contracts with these private prison companies, giving them sufficient funds to pay detainees \$1 per day. The \$1 per day fee stems from the historical precedent set by *Alvarado v. INS*. In *Alvarado*, the Court held that detainees were entitled to redress of only \$1 per day, on the grounds that immigrant detainees were substantively similar to other types of prisoners and inmates. Legally, detainees were considered part of a captive labor force, operating in the care of the federal government.⁴⁷⁶ According to this logic, the Fair Labor Standards Act (FLSA) does not apply to immigrant detainees. The *Alvarado* decision set a type of bad precedent in which, even though the areas of immigration and criminal law are supposed to be distinct, criminal provisions were applied to legitimate the treatment of immigrant detainees.⁴⁷⁷

Private prison companies reap massive profits from this arrangement because detainee wages are covered by the federal government, and they do not need to pay additional staff to maintain the facility. In 2012, an estimated 25% of GEO and CoreCivic's revenue came from detention contracts, a number that has continued to climb.⁴⁷⁸ These facilities have also been notorious for poor and exploitative treatment of immigrant detainees, even compared to other ICE facilities.⁴⁷⁹ But, while the *Alvarado* decision refers specifically to federal government entities, it did not inherently protect private corporations, opening a window for legal advocates to challenge private actors engaged in the business of detention. Thus, given the social history of detention, and

⁴⁷⁴ *State of Washington v. The GEO Group, Inc.*, Case No. 17-cv-05806 (W.D. Wa. 2017)

⁴⁷⁵ *Ibid.*

⁴⁷⁶ *Alvarado Guevara v. INS*, 902 F.2d 395, 395 n.2 (5th Cir. 1990)

⁴⁷⁷ Anita Sinha, "Slavery by Another Name" and Jacqueline Stevens, "ONE DOLLAR PER DAY: THE SLAVING OF IMMIGRATION JAIL, FROM 1943 TO PRESENT", *Georgetown Immigration Law Journal* 29, no. 3 (2017): 391.

⁴⁷⁸ Stevens, "One Dollar Per Day"

⁴⁷⁹ Southern Poverty Law Center (SPLC), "Shadow Prisons: Immigrant Detention in the South", 2016, <https://www.splcenter.org/20161121/shadow-prisons-immigrant-detention-south>

legal precedent set in earlier decisions, non-profit and major legal actors targeted GEO and CoreCivic for forced labor violations because these corporations are a critical part of detention and more targetable through litigation than the federal government. While a somewhat limited approach to curtailing the harms of detention, activists had broader goals they believed could be reached through this litigation. Early in my research process, I conducted interviews with attorneys working in the anti-detention advocacy field, and one interviewee noted,

“So I mean the thinking is in part about getting at the profit model of companies like Core Civic, which is the defendant in our case Barrientos, or GEO, which are both private prison companies that are two of the largest companies in the immigration detention sphere. And they are still very dependent on the voluntary work program, as ICE calls it, at their facilities to really perform kind of core functions of the facility like cleaning and food service, things that absolutely have to happen every day”.⁴⁸⁰

The profit incentive is an important place to push for change, both pragmatically in terms of cases that appear at least somewhat winnable, and in terms of the broader abolition goal of reducing state capacity to detain cheaply.

To push for change, between 2014 and 2019, a number of lawsuits were filed against private prison companies and challenged the practices of forcing detainees to engage in labor including laundry, barbershop work, cleaning, food preparation, and other types of manual labor in facilities across the country, including Washington, Colorado, Georgia, California and Texas. These lawsuits generally made a similar set of claims. The cases made a three-pronged complaint, where each prong challenged different aspects of forced labor. The first prong focused on the question of minimum wages for detainees. The complaints articulate that, as detainees, the plaintiffs should be protected under minimum wage law. Therefore, detainees should be entitled to compensation for the difference between the \$1 per day wages paid by private prison companies and the amount they would have received under the minimum wage.⁴⁸¹ This prong also highlighted that, going forward, all

⁴⁸⁰ Author Interview, March 15, 2021.

⁴⁸¹ *ALEJANDRO MENOCA, MARCOS BRAMBILA, GRISEL XAHUENTITLA, HUGO HERNANDEZ, LOURDES ARGUETA, JESUS GAYTAN, OLGA ALEXAKLINA, DAGOBERTO VIZGUERRA and DEMETRIO VALERGA v. The GEO Group, Inc.*, Case No. 14-cv-02887 (W.D. Co. 2014)

detainees must be paid at least the state minimum wage. The second prong focused on private prison's unjust enrichment from this process of wage extraction. The final element of the complaints argues that private prisons have violated the Trafficking Victims Protection Act (TVPA) owing to the fact that in ICE's detention standards, detainees are only required to keep the area around their bunks clean and that by forcing them to clean large areas or be sent to solitary confinement, these corporations had engaged in trafficking.

The results of these claims differed widely depending on the judge and the jurisdiction. For example, in Colorado, the judge struck down the claim to a minimum wage order on the grounds that, "inmates and detainees are similar in that they have been incarcerated and are under direct supervision and control of a government entity".⁴⁸² However, the judge allowed the claims of unjust enrichment and the TVPA claims to proceed. By contrast in Washington, a summary judgement was delivered against the GEO Group demanding that it reimburse former detainees for that same difference.⁴⁸³ This claim remains unpaid, as the GEO Group appealed to a higher court where a decision still has yet to be reached.

In interviews conducted with attorneys about these lawsuits, they consistently noted the importance of reducing the profitability of immigrant detention as a way of disincentivizing the DHS from defaulting to detention as a tactic of immigration control. One attorney I interviewed argued,

I think removing business incentives from the system, removing perverse financial interests that want more people behind bars rather than less would be a good starting point and then let's sit down around a table and talk about policy. But right now, there's a thumb on the scale for putting as many people behind bars as possible, because corporations in this country make money. I think removing that and making this something that we have to deal with. Uh, as a as a society as part of our government, rather than outsourcing it would be a good first step.⁴⁸⁴

Similarly, another attorney suggested,

⁴⁸² Ibid.

⁴⁸³ *State of Washington v. The GEO Group, Inc.*, Case No. 17-cv-05806 (W.D. Wa. 2017)

⁴⁸⁴ Author Interview, December 4, 2020.

So that's, you know, ultimately what we're aiming towards is the reason these companies are profitable. They are profitable because they do not have to pay for, and they do not have to bear the risk of all of the money that it would take to do the jobs. Which is by the way, their entire value proposition when they start and continuing to this day, they're much better about not saying it out loud you know, but their thing is "we will do the same thing you're can do state but at a lower cost."⁴⁸⁵

This particular attorney positioned the lawsuits as attacking one vein of the detention apparatus, notably the profit incentive and the monetary efficacy of detention. Litigation is an inherently imperfect tactic. It requires speaking the language of power back to the government. After all, the role of the courts is to rely on legal precedent to determine the applicability of laws and regulations. But the power of these particular lawsuits is that they identified a material weakness within the system of detention and deportation, a crack in the armor of power, and made a compelling legal argument for why the system must change. Private prisons and private detention centers are not the sole source of the issues with immigrant detention. But attacking their profitability helps destabilize the hold the detention operators have on detained communities and the levers of power that incentivize higher and higher levels of punitive immigration control.

In the context of bureaucracy, a key avenue of potential transformation is work that aims to undo the deep ties between the private sector and the immigration bureaucracy. Attacking the profit incentive within the homeland security sector would ameliorate some of the key problems of modern bureaucracy. When the DHS is incentivized to contract with companies like Palantir, Amazon, Venntel, and Thomson Reuters to expand their carceral reach, it creates a feedback loop in which these same companies continue to pour money into maintaining DHS security contracts. This in turn cements the profit-based incentive. At the structural level these companies aim to increase their profits. As such, so long as there is money to be made in homeland security, they will continue to lobby Congress and work with bureaucracies to expand the use of relevant technologies.

⁴⁸⁵ Author Interview, October 29, 2020.

Disentangling this profit incentive is one way to disrupt a self-reinforcing cycle of punitive bureaucracy.

With the profit incentive removed or reduced, it might become more possible to start to alter funding priorities within the department, and to divest from expensive technologies devoted to finding and detaining immigrants. This step is also important from the perspective of policy change – Congressional leaders are being incentivized to maintain a punitive immigration system because lobbyists from interested stakeholders push for the expansion of profitable enterprises like detention, or surveillance. The profit cycle is part of why funding within the DHS’ immigration components overwhelmingly focuses on enforcement rather than services. For example, until 2022 the DHS’ budget request did not include special discretionary funding focused on addressing asylum backlogs. Even when they made this request, additional funding for asylum is a small fraction of the amount spent on increasing enforcement capacities. In 2022, the DHS earmarked \$345 million in discretionary funding for improving USCIS’ ability to adjudicate asylum cases. By contrast, two budget items later,

The Budget provides \$1.8B for a total of 32,500 detention beds, including 2,307 funded by mandatory fee accounts; and, 2,500 beds for the short-term processing of family units at Family Residential Centers. This ensures apprehended noncitizens subject to removal from the United States are held in safe and secure facilities pending their immigration proceedings.⁴⁸⁶

Funding priorities are a central component of building a more caring bureaucracy. In order for bureaucrats to provide hospitality and care, they must be internally incentivized to focus on providing these services. Asylum, rather than being an afterthought, should become a central pillar of U.S. immigration. A marker of success could just as easily be the number of asylum cases granted, and the amount of aid procured. However, because these markers are much less likely to be profitable, removing the profit incentive from homeland security is a vital first step in transitioning towards a politics of care. Until bureaucrats are incentivized to prioritize people over efficiency,

⁴⁸⁶ United States Department of Homeland Security, “FY 2022 Budget in Brief”.

which drives them into the arms of the private sector, it is likely that the DHS' carceral policies will persist.

Rebuilding Internal Incentives: The Problem of Metrics

In order for substantive transformation to occur, the immigration bureaucracy would also need to be internally incentivized to provide aid and adopt caring approaches to addressing immigration, instead of being rewarded for demonstrating carceral success. As I highlighted in Chapter 2, the DHS' current practices for assessing border security and immigration enforcement center a carceral vision of immigration law. The need to demonstrate enforcement efficacy pushes the department as a whole to construct increasingly granular measures of control in order to demonstrate security and showcase the department's ability to "get the job done". The DHS is institutionally incentivized to demonstrate success with more detentions, more deportations, and more departures. In an ideal universe, this bureaucratic transformation would be driven by the successful passage of comprehensive immigration legislation that centers the needs of immigrant communities rather than focusing on policies of exclusion. Were Congress to overhaul the immigration system in this way, it would necessitate a complete reorientation of bureaucratic priorities and could potentially lead to changes that would more closely reflect the ideals I describe throughout the dissertation.

However, I am skeptical that this change in legislation will inherently solve the problem of bureaucracy for a number of reasons. Perhaps most centrally, I am skeptical that merely overhauling the surface level legal infrastructure will fundamentally reorient the departments approach to immigration. The passage of the 1965 Immigration and Naturalization Act serves as a useful example here. While the act was a remarkable step forward in terms of abolishing racial quotas, it did not undo the underlying state imaginary of how immigration should be enforced. For Mexican immigrants in particular, the act actually increased the number of Mexican migrants designated as

“illegal”.⁴⁸⁷ Furthermore, the passage of a single piece of legislation, no matter how comprehensive, does not immediately lead to a perfect reorganization of a department. The process of redesigning an agency is an immensely complex one, and there is no guarantee the department will turn out exactly how it was envisioned by legislators. The DHS itself is a powerful example of this. While the DHS certainly transformed many components of immigration enforcement, it had to grapple with the legacy problems of the INS and the difficulties of full reorganization. Even if a comprehensive law was passed, there would still be a lengthy period of bureaucratic reconstitution that would be necessary to meet the agency’s new goals. Thus, I suggest that even if comprehensive legislation were passed, more work would still be needed to successfully transform the bureaucracy.

As such, the nature of DHS metric construction would need to be overhauled in order to reach more just outcomes. A major part of this work would be to critically reassess what constitutes success in immigration enforcement. For example, a metric adopted in 2017 which has become central to the department’s enforcement strategy is the “consequence delivery system”. This measure assesses how effective a particular enforcement consequence is based on the recidivism rate for that consequence.⁴⁸⁸ In the DHS strategic plan for 2020, one of the agencies priority goals is listed as “Improve security along the Southwest Border of the United States between ports of entry. By September 30, 2019, DHS will implement the Operational Control (OPCON) framework between ports of entry in 100 percent of U.S. Border Patrol Sectors along the Southwest Border as the means to enhance security.”⁴⁸⁹ As a reminder, the OPCON framework refers to “USBP’s ability to impede or deny illegal border crossings, maintaining situational awareness, and applying the appropriate, time-bound, law-enforcement response between the ports of entry as its contribution to DHS’s

⁴⁸⁷ Ngai, *Impossible Subjects*.

⁴⁸⁸ U.S. Department of Homeland Security, “Border Security Metrics Report 2020”, September 21, 2021, 18.

⁴⁸⁹ U.S. Department of Homeland Security, “The DHS Strategic Plan Fiscal Years 2020-2024”, 2020.

overall border-security mission.”⁴⁹⁰ Across these examples, security is equated with the state’s ability to control who can and cannot cross the border. The performance measures are constructed with this central insight in mind.

An alternative approach would start with a different definition of security. Security in the context of border enforcement could just as easily mean the ability of people to safely cross into the U.S. and the percentage of people who are able to be connected to resources to help them find housing and employment upon entry. The 2020 strategic plan focuses heavily on potential fraud in the immigration system – people leveraging false identities, documents, or connections to inappropriately gain access to the benefits of the immigration system. But the massive use of department resources for adjudicating fraud could just as easily be used to build infrastructure to support migrant communities. If the concern is that migrants are potentially going to be a drain on the economy, then it would be both more effective and moral to focus on providing support services that would set people up for success in their new country, rather than trying to catch potential wrongdoing. Similarly, the resources spent on guns, helicopters, and surveillance equipment for Border Patrol could just as easily be poured into education and vocational training, childcare services, or community building programs.

Building a new vision of security is not something that would happen overnight and would require fundamental changes in how the immigration bureaucracy is run. However, some of these transformations could start with something as simple as putting new metrics in place to alter the objectives of different departments. Instead of having ICE’s priority metric be the number of aliens removed per year, a bureaucracy focused on care would have metrics that redress the extant harms of the immigration system. Bureaucrats could be working towards goals like “Number of family

⁴⁹⁰ Carla Provost, “Agency Priority Goal Action Plan: Enhance Southern Border Security”, U.S. Department of Homeland Security, 2018, https://assets.performance.gov/APG/DHS/FY2018_Q1_DHS_Enhance_Southern_Border_Security.pdf

units reunified and provided housing”, or “Percentage of aid funds successfully dispersed”. Instead of building walls and cages, the development of different metrics would create institutionalized incentives for bureaucrats to help develop alternative systems. If funding was linked to successful aid dispersal instead of punitive measures, it fundamentally alters how bureaucrats behave. Suddenly “business as usual” becomes working to provide care.

But as numerous studies on the trouble with welfare programs have suggested, there needs to be more than just bureaucratic involvement in care. For example, instead of contracting with McKinsey to improve “managerial efficiency”, the DHS could instead focus on developing partnerships with community-based organizations to ask what steps would be necessary to help their communities. While bureaucracy runs on certain types of technocratic expertise, that expertise is no substitute for lived experience. As immigration activist Maru Mora Villapando puts it,

I don’t think that people in detention are victims. People in detention are organizers to me... So to treat us as victims, I think it plays the white savior mentality. And second it really is a disservice to the organizing of people who have done hunger strike after hunger strike in the detention center not only here, but throughout the nation. So that’s been a challenge, to make sure that people who want to come and support our work understand that we’re not victims, that we know what we’re doing.⁴⁹¹

I find this quote particularly inspiring in thinking about transforming bureaucracy. Villapando argues here that when the experiences of detainees or other groups who have been harmed by punitive systems are pushed to the side or merely treated as victims, their expertise built from lived experience is also dismissed. The idea that people in detention are organizers highlights that they have a unique contribution in terms of reimagining the immigration system. Thus, reimagining metrics also entails reimagining who has a say in metrics construction. This also aligns with Sally Merry’s work, which points to the need for deep, qualitative community engagement in addressing problems like gender violence and human trafficking, rather than composite indicators.⁴⁹² High level

⁴⁹¹ Maru Mora Villapando quoted in, “Maru Mora Villapando in Her Own Words”, *Seattle Globalist*, October 22, 2018, <https://seattleglobalist.com/2018/10/22/maru-mora-villapando-in-her-words/77959>

⁴⁹² Merry, *The Seductions of Quantification*

abstraction in developing metrics ignores the essential lessons of on the ground organizers. Without this knowledge, the harms of the immigration system as it currently exists cannot be addressed. Co-creation should be co-creation with the communities that have been most harmed.

Rebuilding Trust – Service and Efficiency in Working with Communities

With the appropriate metrics in place to assess security, it now is essential to examine what role bureaucrats would have in this new system. A crucial component of rebuilding a bureaucracy to orient towards service and care would also require the bureaucracy to take a new stance on the question of race. In *Reparations Reconsidered*, Olufemi Taiwo argues “a good reparations view should discriminate, selecting beneficiaries and burdened parties based on their historical relationships to the core moral wrongs under consideration”.⁴⁹³ In this particular case, as I have outlined throughout the dissertation, Latinx communities are disproportionately impacted by the harms of immigration enforcement. As such, I suggest that a caring bureaucracy would need to prioritize services to these communities in an effort to actively redress these harms. I point to this need as a core element of bureaucratic transformation because these communities have active reasons to distrust the immigration bureaucracy. Presidents, members of Congress, and bureaucrats alike have made commitments to the Latinx immigrant community only to turn their backs when helping them became politically inexpedient. A notable example is President Biden’s pledge to end the use of private immigrant detention facilities during his campaign. While Biden did issue an executive order to phase out federal use of private facilities for incarceration, federal immigrant detention centers were notably exempt from this order.⁴⁹⁴ As such, it is difficult to imagine that these communities would commit to an active process of government co-creation unless significant steps were taken to

⁴⁹³ Olufémi O. Táiwò, *Reconsidering Reparations* (Oxford: Oxford University Press, 2022), <https://doi.org/10.1093/oso/9780197508893.001.0001>.

⁴⁹⁴ Kyle Virgjen and Nina Patel, “President Biden’s Order to Ban Private Prisons Faces a Persistent Internal Challenge: The U.S. Marshals Service”, ACLU News, March 1, 2024, <https://www.aclu.org/news/criminal-law-reform/president-bidens-order-to-ban-private-prisons-faces-a-persistent-internal-challenge-the-u-s-marshals-service>

demonstrate that the U.S. would actually make meaningful changes. I see the excision of the profit incentive, and the reconstruction of metrics as good initial signs of relationship repair but suggest that without services to back up these ideals, immigrant communities will (and should) remain distrustful of the state.

I envision this happening through a reduction in Border Patrol and ICE agents, with these groups being replaced by bureaucrats with deep knowledge of service provision and community care. There are numerous ways this could immediately benefit immigrant communities. In 2020, a DHS report came out describing how Border Patrol agents engaged in practices of “queue management” to redirect asylum seekers or have them return to Mexico, despite issuing decrees in 2018 that asked asylum seekers to declare themselves at ports of entry.⁴⁹⁵ Not only that, but the DHS actually directed agents away from processing asylum claims. In an alternate universe, instead of being redirected, asylum seekers could have been met by caseworkers specializing in working collaboratively with immigrants and approaching them with a trauma-informed, caring approach. Instead of being treated as potentially fraudulent asylum seekers, new entrants could be given opportunities to find temporary housing or work while they work to settle in their new home. The American economy is already deeply dependent on immigrant labor, so instead of trying to excise immigrants, a caring bureaucracy would ask what immigrant communities need in order to succeed.

It is worth noting here that the costs of implementing this care work would likely be less than the current punitive policies. An entry level CBP officer is compensated at a rate of \$42,516 per year, although the majority of CBP’s workforce receives higher compensation.⁴⁹⁶ An entry level asylum officer is compensated slightly more at \$49,028 annually.⁴⁹⁷ However, while the salary paid to

⁴⁹⁵ U.S. Department of Homeland Security Office of the Inspector General, “CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry”, OIG-21-02, October 27, 2020.

⁴⁹⁶ U.S. Department of Homeland Security Customs and Border Protection, “Benefits Guide for Agents and Officers”, 2022.

⁴⁹⁷ U.S. Citizenship and Immigration Services, “Asylum Division: Be Part of the Mission”, 2023, https://www.uscis.gov/sites/default/files/document/brochures/RAIO_Asylum_Hiring_Brochure_508.pdf

a CBP officer is slightly less, there are far more CBP officers than there are asylum workers – in 2023 CBP retained over 50,000 agents, while USCIS only had funds to hire 2,709 asylum officers.⁴⁹⁸ Moreover, the costs of detaining migrants are not limited to just processing them at the border, detaining an immigrant costs an average of \$144 per day, in 2023 CBP invested over \$1 billion in utilizing and improving surveillance technology to detect entries.⁴⁹⁹ The list of enforcement costs goes on and on. Across the board, the expenses of maintaining a carceral system are often higher than building a caring one. Military hardware is costly, surveillance technologies require substantive investment, and ongoing subscription fees to support mass data interrogation keep the DHS in relationships with tech giants. A caring bureaucracy is efficient in that it can provide services at a cheaper cost than using carceral tactics.

The obvious objection here is that there are concerns about dangers coming into the country from unauthorized crossers. I suggest that this objection does not pose an immense threat to my proposals for a number of reasons. First, in terms of violence, white domestic extremists are far more likely to cause violence than migrant communities – data compiled by researchers at the University of Maryland shows that instances of radical violence (ostensibly the reason for the DHS’ inception) are most often committed by white, far-right extremists such as those affiliated with white supremacist and anti-government movements.⁵⁰⁰ Moreover, studies have shown no evidence that

⁴⁹⁸ U.S. Department of Homeland Security Customs and Border Protection, “U.S. Customs and Border Protection Congressional Budget Justification FY 2023”, 2022, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection_Remediated.pdf and U.S. Citizenship and Immigration Services, “U.S. Citizenship and Immigration Services Congressional Budget Justification FY 2023”, 2022, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Citizenship%20and%20Immigration%20Services_Remediated.pdf

⁴⁹⁹ U.S. Department of Homeland Security Customs and Border Protection, “U.S. Customs and Border Protection Congressional Budget Justification FY 2023”, 2022, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection_Remediated.pdf and U.S. Department of Homeland Security Immigration and Customs Enforcement, “Congressional Budget Justification FY 2023”, 2022, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Immigration%20and%20Customs%20Enforcement_Remediated.pdf

⁵⁰⁰ “National Consortium for the Study of Terrorism and Responses to Terrorism (START)”, University of Maryland. (2023). Profiles of Individual Radicalization in the United States (PIRUS) [Data file]. Retrieved from <http://www.start.umd.edu/data-tools/profiles-individual-radicalization-united-states-pirus>

immigrant communities are more likely to commit crimes; if anything, the data shows that immigrants are actually less likely to be involved in violent crime than citizens.⁵⁰¹ Research from the Pew Center showed that across communities there were no changes in violent crime rates in communities with rising numbers of unauthorized immigrants. Another study from Stanford noted that from the 1960's to the present, immigrants were nearly 60% less likely to be incarcerated for violent crimes than U.S. citizens, and that many of the spikes in immigrant prison populations are actually linked with detention in ICE facilities.⁵⁰² If the goal is to prevent violence, then the DHS' border security politics do not seem to be meaningfully working towards that goal. Therefore, I am unconvinced by the argument that detaining and deporting people is leading to higher degrees of safety.

A second worthwhile objection is that if the country is overhauling a bureaucracy to promote caring practices, then shouldn't that country focus on its own citizens instead of immigrants? Aren't the homeless and the poor more deserving of these funds? This objection is more difficult to address. First and foremost, I do not want these proposals to be seen as denying the material realities of poverty and homelessness that exist in the U.S. However, I am not entirely convinced that overhauling the DHS is where the funds should come from to address this issue. As I illustrated in the introduction, the U.S. is not politically neutral in the production of immigration flows. Quite the contrary, U.S. foreign and trade policy have driven mass exoduses and migration. As such, the U.S. government has a strong moral obligation to help those that it has induced to move. Given that the DHS' resources are being used to criminalize the same immigrants that U.S. foreign policy has induced to move, reallocating the DHS' funding to prioritize immigrant

⁵⁰¹ Anna Flagg, "Is There A Connection Between Undocumented Immigrants and Crime", *The Marshall Project*, May 13, 2019, <https://www.themarshallproject.org/2019/05/13/is-there-a-connection-between-undocumented-immigrants-and-crime>

⁵⁰² Ran Abramitzky, Leah Platt Boustan, Elisa Jácome, Santiago Pérez, and Juan David Torres, "Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-born, 1870–2020", NBER Working Paper No. 31440 July 2023, Revised March 2024, https://www.nber.org/system/files/working_papers/w31440/w31440.pdf

communities seems to me to be the most effective way both to use funds and to address this central moral imperative. Similarly, the funds used to criminalize homelessness through policing could instead be devoted to care. But given the particular moral obligations that the U.S. has to migrants, I am of the opinion that it is necessary to devote a specific department to the problem of immigrant welfare.

As such, working towards a caring bureaucracy seems the most prudent and compassionate way to alleviate migrant suffering. If we begin from the premise, as I outlined in the introduction, that migrants are entitled to certain rights and protections, then a caring bureaucracy is an effective way to secure this standing. But this efficacy can only be put into place through a radical realignment of bureaucratic priorities. When technological modernization for the sake of enforcement trumps human concerns, then the result will be the continued entrenchment of a carceral immigration system. But if the needs of migrants are placed as central to immigration politics, and the state learns to recognize the importance of centering vulnerability, then a new system could be imagined. A bureaucracy that is invested in hospitality and human well-being is a somewhat idealistic dream. And yet, it seems to me to be a goal worth working towards.

Towards a Theory of Hospitality – The Question of Legislation

As I suggested earlier in this concluding chapter, building this system of caring bureaucracy also requires a radical transformation in the legislative prerogatives assigned to the DHS. In order to meet the criterion I have outlined, the bare minimum would be to instantiate immigration laws that start from a fundamentally different orientation towards potential immigrants. In their analysis of Kant, authors Kearney and Fitzpatrick argue, “Hospitality to strangers is not a gift or benevolent offering. It is a moral guarantee that is granted by virtue of the stranger’s intrinsic dignity as a free

being”.⁵⁰³ Building on this notion, beginning from a position of hospitality suggests that by virtue of being a human being, each person is entitled to be welcomed into a new country. Equally importantly, this moral responsibility is not linked to a particular set of circumstances, as is often the case in refugee law. There is not a special moral imperative around hospitality reserved for those who have no other choice, though these people may be entitled to additional protection. All migrants are entitled to find hospitality in a new land. This also entails “refusing to treat an alien as a prisoner”,⁵⁰⁴ and not utilizing carceral tactics in order to control new entrants. In *The Ethics of Immigration*, Carens argues that restrictions on freedom based on arbitrary criteria require a strong moral justification.⁵⁰⁵ In the case of immigration enforcement, I have shown throughout this dissertation that the policing of immigration shores up a racial imaginary of the United States, and as such, current policies do not meet this baseline criteria of a strong moral justification. Moreover, because the efficacy of these policies, both financially and in terms of accomplishing their putative goal of border security, is highly questionable, it seems difficult to justify such an abrogation of the human right to movement.

As such, my demands for a caring bureaucracy require, at an absolute moral minimum, a radical departure from current immigration policies to move towards an immigration system that makes it far easier for people to enter the country and provides resources for those who enter. Let me provide some context for the scope of enforcement as compared to welcoming policies. In 2022, 1,018,349 immigrants were granted lawful permanent resident status. By contrast, that same year, 2,584,220 immigrants were subject to enforcement action, either in the form of expulsion or by being apprehended at the border.⁵⁰⁶ What this evidence suggests is that for every immigrant granted

⁵⁰³ Richard Kearney and Melissa Fitzpatrick, *Radical Hospitality: From Thought to Action*, First edition., Perspectives in Continental Philosophy (New York: Fordham University Press, 2021).

⁵⁰⁴ Ibid.

⁵⁰⁵ Carens, *The Ethics of Immigration*

⁵⁰⁶ U.S. Department of Homeland Security Office of Immigration Statistics, “2022 Yearbook of Immigration Statistics”, 2022.

long term residency in the United States, there are 2.5 immigrants that are expelled or apprehended trying to enter the country. Moreover, looking at funding, USCIS receives only 5% of the overall DHS budget as compared to ICE's 9% and CBP's 18%. Still more telling, USCIS, ostensibly the arm devoted to helping people find belonging through administering visas and refugee policies, has distinctly carceral elements.⁵⁰⁷ In 2022, USCIS spent \$114.5 million on the E-Verify program, a program designed to be used by employers to locate unauthorized immigrants applying for positions.⁵⁰⁸ Enforcement is not merely incidental to the current version of U.S. immigration policies – it is in fact the primary operative mode for addressing immigration issues. When each year more people are subject to enforcement consequences than granted residency, it demonstrates that the country's immigration policies begin from a place of skepticism about admitting immigrants.

Immigration law operating from a place of hospitality would need extremely stringent criteria to prevent someone from being granted residency. In my mind, this would require unmistakable evidence that the potential immigrant had committed a violent crime so egregious that there would be a genuine public safety concern were they admitted. There would, as such, need to be a small subset of officers who would review these programs, but this would be a greatly reduced number compared to the current system. Even then, it is possible that these types of applicants could be admitted to some type of treatment program. This would likely happen in the application for residency – the types of issues I describe would likely be visible through a cursory background check. This approach rests on the assumption that when people are generally taken care of, the likelihood that they will need to resort to extra-legal methods in order to survive is greatly reduced. An objection to this assumption could be that some people are just inherently violent and therefore immigration should take this into account. But if this objection is taken to its logical conclusion, it

⁵⁰⁷ U.S. Department of Homeland Security, "FY 2022 Budget in Brief"

⁵⁰⁸ *Ibid.*

would require everyone in a polity to be submitted to strict background checks to ensure that they are not “violent”, a policy that even the most Hobbesian of us would struggle to justify. As such, the choice is either to subject everyone in a country to intensive investigative practices or to revise our assumptions to focus on providing aid and treat people who commit violent acts as exceptional. Thus, while this approach may have some very limited checks on open borders, these checks would require substantive moral and political justification.

This new immigration policy would also require several major changes in the structural nature of immigration enforcement. First and foremost, ICE would need to be completely removed as a sub-component of the DHS. The reason for this is relatively simple. ICE as an institution does not provide any hospitality services – it is in fact an entirely enforcement-oriented component of the DHS. Moreover, given that the INS operated for decades without needing a specific interior enforcement component, there is not clear evidence that the practices implemented by ICE – investigations and interior enforcement - are at all necessary to have a functional immigration system. The obvious rebuttal to this point is that ICE’s detention practices help ensure that immigrants make it to their deportation hearings. But in a system focused on hospitality, there would be very little, if any, utility for deportation and as such no need to hold people in preparation for their immigration hearings. Moreover, as I argued earlier in this chapter, detention is harmful and even lethal to some who are detained. A system oriented towards hospitality does not require a purely punitive component. Equally importantly, Border Patrol operations would be dramatically reduced and funding for enforcement equipment could be redirected towards other components. This funding could be used for services for immigrants.

A relevant concern here is that this new open policy could potentially lead to Southern border states being inundated with immigrants and being forced to take in more people than they would have capacity for. This is a reasonable objection, but also a manageable one within the

parameters I have outlined. With the resources from ICE and CBP, it would be possible to establish component agencies focused on helping new immigrants find long-term communities across the United States. This could follow a logic analogous to that espoused by Matthew Gibney in addressing a just distribution of refugees – allocation of immigrants should consider both immigrant preferences and the capacity of any given county.⁵⁰⁹ With the resources divested from enforcement, resettling people into compatible homes where they will be able to succeed would be a manageable project. This aligns with an earlier point I made about bureaucracy – namely that focusing on developing a bureau of immigrant welfare should be an integral part of building this caring bureaucracy. A caring bureaucracy backed by a welcoming set of immigration laws would radically transform the character of the American immigration system. Moreover, by committing heavily to this principle of hospitality, I suggest that the racialized components of immigration enforcement should be whittled away. A policy that genuinely focuses on welcoming would work to actively undo the legacy of racialized exclusion by committing to building opportunity for all immigrants. This approach need not be color-blind but could consider historical legacies of racialization, prioritizing resettlement of immigrants impacted by previous policies of enforcement. By paying attention to the history of immigration, this new bureau could prioritize resources towards communities that need assistance, with the overall goal of promoting equity in the immigration system.

While this vision is difficult to imagine in the near future, working towards this aim is a worthwhile project in terms of promoting immigrant justice. Building a caring bureaucracy could serve not just immigrant communities, but also be a model for how other government bureaucracies could operate. The most notable example to me is welfare. If, instead of approaching welfare from a place of suspicion and verification, welfare programs generally assumed the best intentions, far more

⁵⁰⁹ Matthew J Gibney, “Refugees and Justice between States,” *European Journal of Political Theory* 14, no. 4 (October 1, 2015): 448–63, <https://doi.org/10.1177/1474885115585325>.

people could receive aid. Funding for these more expansive programs could be found by reducing extant carceral or investigative agencies. The project of caring bureaucracy is meant to transform the relationship between government and people – both non-citizens and citizens alike. It is my hope that by working towards a bureaucracy that administers care to all instead of curtailing life chances for the social outsider, we can build towards what Joan Tronto describes as a “caring democracy”.⁵¹⁰

Concluding Remarks

This dissertation has shown how essential the banal is in maintaining systems of racial domination, carceral enforcement, and racialized capitalism. I have demonstrated how everyday bureaucratic processes like the construction of metrics, technological modernization, and private contracts help cement and expand pre-existing racial violence exercised through the immigration system. These findings have helped illustrate how power functions in the modern era. The violence of processes like deportation is supported by a massive structure of workers who do not even see the impacts of their policies. Hidden behind emails and cloaked in statistics, the day-to-day immigration bureaucracy insulates the bureaucrat from the violence their work produces. In this conclusion chapter, I have endeavored to imagine ways that bureaucracy could be different, as well as trying to outline steps that could be taken to get there. These solutions are inherently imperfect, but if perfection is the standard for solutions, then we will be forever waiting for a messiah to abolish borders and bureaucracy. Just because the problem is difficult to solve does not mean it is not worth fighting for.

This project, like all academic research, leaves room for future investigations. One major question still underlying this project is how similar the homeland security industry is to the defense industry – while in chapter 4 I outline some connections, the extent of these ties could easily be the subject of a book length project. Second, more research should be done to see how federal

⁵¹⁰ Tronto, *Caring Democracy*

bureaucracy interacts with local level actors – the document set I examined shows little in terms of how border patrol officers interact with higher ups in the department which could be revealing in terms of better understanding the processes of implementation. Finally, another project could examine the role of gender in constructing the homeland security state. Immigration enforcement certainly exhibits gendered patterns, but the intersection of gender, race, and bureaucracy remains an underdeveloped area of scholarship. I am certain that there are countless other projects to be conducted in this area, but these three have stood out as areas that I would be particularly intrigued to see examined.

I give the final words of this dissertation to Angela Davis as a tribute to a thinker whose works completely changed my approach to the question of incarceration and justice. If an entrenched form of bureaucracy is as powerful as Weber suggests, then an ordinary effort will not suffice. To transform bureaucracy and build a more caring world, “We will have to go to great lengths. We cannot go on as usual. We cannot pivot the center. We cannot be moderate. We will have to be willing to stand up and say no with our combined spirits, our collective intellects, and our many bodies”.⁵¹¹

⁵¹¹ Angela Davis, *Freedom is a Constant Struggle*, (New York: Haymarket Books, 2016), 145.

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