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Emotional Directives Of Legal Status Changes: A Study On Immigration Status Grants

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EMOTIONAL DIRECTIVES OF LEGAL STATUS CHANGES: A STUDY ON IMMIGRATION STATUS GRANTS

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EMOTIONAL DIRECTIVES OF LEGAL STATUS CHANGES: A STUDY ON IMMIGRATION STATUS GRANTS

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INTRODUCTION

In a Trump era, immigration is a very divisive topic across many groups. Whether it be a political or legal reasoning, there seems to be little consensus about the direction that immigration laws should take and the protections they should offer immigrant non-citizens in the United States. However, divisive and uncooperative effort from both sides of the argument are nothing new and can hardly be blamed on the new administration. The treatment of immigrants on American soil has always been up for debate, but the treatment of these people differs greatly depending on who is dealing with these populations. This contrast in treatment is starker in immigration legal proceedings than anywhere else. Legal jargon and legal systems are often complicated to understand, more so in immigration proceedings where ever-changing laws are difficult to keep up with. Legal representation in these trials is often a pivotal factor in the direction that the case can take, but competent legal counsel is not provided for immigrants and little protection is provided for them as non-citizens. This leaves them vulnerable to immigration officials that might not have the best interest of the immigrants at heart, and even more vulnerable to detention or deportation.

Representation in court proceedings is not guaranteed to these populations, and these individuals are at the mercy of those litigating their cases. But to what extent? How do the individuals who make legal decisions about status changes affect those that these cases pertain to? The professionals and officials involved in the immigration judicial decision-making process are pivotal for the success of these applicants, but there is no definitive indicator of the success of their applications. There has been very little research done on the effectiveness of the immigration legal system, much less on the protections that this system may or may have not afforded to them. If the effectiveness of this system is in question, what can the immigrant applying for a change of status

do? The intention of this study is to look at different cases in the immigration legal system and identify factors that may be indicative of the acceptance of their change of status applications, as well as the rejection of these applications. This paper will aim to address the emotion of 'sympathy', and how it can be the determining factor in immigration proceedings. Using 'emotional directives', I will test the hypothesis that if immigrants are deemed more sympathetic in legal proceedings, immigration officials are more likely to grant them the status they applied for. If it is assumed the officials' treatment of these immigrants varies depending on their personal beliefs on immigration, can being deserving of sympathy be the determining factor in a desired status? By identifying variables that can aid in the application for status change process, immigrants applying for these statuses can better predict the chances they have when coming to the United States of receiving their desired status.

LITERATURE REVIEW

Immigration today is a very hot-button issue. Regardless of what political party someone may belong to, there are undoubtedly faults in the system that can be fixed to streamline the immigration process. But as it stands now, immigration debates are still being had over the current condition of immigration laws and the treatment of immigrants who make their way into the US. These populations are not subject to the same protections that citizens are, and are often times marginalized from protection of their civil and constitutional rights.

One main issue that can be brought up about immigration legislation is the fault of not being able to subject non-citizen immigrants to due process for their immigration hearing. Following the attacks on September 11th, immigration legislation became harsher and more aggressive where "immigration authority [began] to implement a broad strategy of preventative detention where other civil or criminal law authority would not permit custody" (Cole, 2002). Due to new legislation passed after 9/11, there are less judicial protections for immigrants and often times immigration officials make choices about these non-citizens without due process. For example, the USA PATRIOT ACT "gives the Attorney General new power to detain aliens without a hearing and without showing that they pose a danger or a flight risk" (Cole, 2002). This provision in the USA PATRIOT ACT allows immigration officials to detain any immigrant for up to seven days, and also allows for the holding of non-citizens during their removal proceedings, however long they last. These short timelines and stricter restrictions can be very detrimental to some non-citizens chances of receiving legal status.

Some believe that noncitizens should have heightened procedural safeguards when facing judicial proceedings as a matter of constitutional law, "including the right to counsel, the right

against unreasonable search and seizure, the right against ex post facto application of immigration law, and the right to have removal proceedings in the district in which the noncitizen resides." (Nadadur, 2014). Non-citizens are not eligible to receive legal counsel in immigration proceedings and do not get to apply for discretionary relief if an order of removal should be given (See Appendix). The fact remains that "many immigrants are forced to go before immigration judges without counsel and that unrepresented litigants fare worse than do those with attorneys" (Eagly, 2015). For example, those who have legal representation or access to legal counsel are often times deemed more likely to receive their legal status change. There is a severe lack in legal representation, where "only 37% of all immigrants, and a mere 14% of detained immigrants, secured representation" (Eagly, 2015). Legal counsel is essential in successfully arguing an immigration case and remains a great resource in immigration proceedings.

Discretionary relief is only given to people that are eligible, and include "cancellation of Removal from the US… an adjustment of status… or an administrative appeal" (INA: ACT 240A [8 U.S.C 1151]). Those who are not eligible for discretionary relief often end up being removed or ordered to be removed from the United States. Removal orders can come from immigration courts, through the use of "reinstatement of prior removal orders…administrative removal of non-lawful permanent residents with aggravated felony convictions… stipulated removal orders following waivers of the right to a court hearing…and *in absentia* orders for failure to appear in immigration court" (Koh, 2017). Navigability of the system depends on knowledge of these specific types of relief, or the skills of specialized help trained in immigration legal issues. The individuals who comprise this system are trained to represent different types of cases and types of relief, dependent on the hiring of these services for legal representation by the individual who is in the proceedings. It is generally accepted that immigrants have little to no legal rights when it

comes to judicial proceedings in the US as non-citizens, but some non-profit groups and pro-bono attorneys help fill in some of the gaps in service.

Immigration officials that are in charge of granting these types of relief can sometimes be very random, and results can vary greatly by region and official. For example, in El Paso, Immigration judges deny up to 98.9% of all asylum applications, while judges in the State of New York deny only up to 58.5% of asylum applications (T.R.A.C data). Previous scholarship has correlated that people make evaluations using emotional factors in order to evaluate these individuals' circumstances (Sirin, et al, 2016) Decision makers who are females "not only decide differently than their male counterparts but they evaluate the way in which female counsel communicate in their briefs differently as well" (Gleason et al, 2018). This means that immigration officials and judges who are women can decide cases differently than male decision-makers, regardless of the applicants' situation. Race is another determining factor in legal proceedings, where "black judges tend to treat black and while defendants more equally than do white judges" (Welch, et. al, 1988). Though it is established that factors like gender and race are influential factors for the immigration officials, other variables such as sympathy for certain applicants can invoke different reactions from judges and can make judges more likely to decide immigration cases in their favor.

The emotion of sympathy can be a major part of these judicial processes. Applicants have to be sympathetic enough to get the judges on their side, but also sympathetic enough to be eligible for certain types of visas. Some visa applications, like the Violence Against Women Act (VAWA) visa or T-visa, require applicants to show 'credible fear' of returning to their home country, where an immigration official has to sympathize with the applicant enough to be granted that credibility (See Appendix). Depending on these applicants' characteristics and situations, judges may be more

inclined to rule a certain way over a case based on these variables. Through all this, who is more likely to get their desired status change when decision-makers are controlled for? What makes an applicant a more suitable candidate for receiving status as compared to others? Applicants have different reasons for immigrating, and these can influence the decision on their case regardless of the presiding immigration official.

APPLICANTS: WHO ARE THEY?

There are many misconceptions about who is coming into the US as an immigrant. Some opponents of immigration say that they come to 'take American jobs' or that they have come to be part of illegal operations such as drug trafficking. These misconceptions fuel the animosity towards immigrants but deviate the rhetoric from real causes for immigration- protections from physical, emotional, and economic duress. Often times immigrants come into the United States looking for work, for protection of their human and civil rights, and to be safe from oppressive or dangerous regimes in their home countries. But how do you provide evidence that you are deserving of a special, protected status? Most applications for status change require you to procure evidence that you are deserving of one, but providing documentation is not exactly in some of these immigrants' priorities when fleeing their countries. A large portion of these immigrants are escaping abusive spouses, abusive conditions, and dangerous individuals who seek to do them harm. However, only a select few of these individuals qualify for the visa categories pertaining to these situations, and this leaves all others who do not qualify vulnerable to removal.

Those who are fleeing their countries for their safety generally fall into two categories- refugees and asylum seekers. There is one distinct difference between those seeking refugee status and asylum status. Generally, Asylum seekers identify themselves to the Department of Homeland Security "either affirmatively or defensively…[where] an affirmative applicant seeks asylum on her own initiative…[while] a defense applicant applies for asylum after being apprehended by DHS" (Ramji-Nogales, 2014). Immigrants are considered asylum seekers when they are already in the US or ask for asylum at a Port of Entry, as well as after they are detained and claim the status. Asylum seekers who file asylum claims file them "knowing that they will be placed into removal proceedings if they are not successful and have no lawful immigration status in the United

States" (Ramji-Nogales 2014). Since they have already identified themselves as an asylum seeker in their applications, those who do not receive a favorable claim are placed into removal proceedings and are eligible for deportation. On the other hand, applicants who seek the 'refugee' status must show credible fear that they cannot return to their home countries for their safety. These refugee applicants must fit the description of 'refugee' as dictated by section 101(a)(42) of the INA which states "that they have a well-founded fear of persecution in their own countries, and that their race, religion, nationality, or political opinion or membership in a particular social group is at least one central reason for threatened persecution" (Ramji-Nogales, 2014). When applying for this status, refugees must show to an immigration official that their safety is in jeopardy should they remain in their home country.

There are some protections provided to those that qualify for specific, merit-based relief visas. These visas are generally reserved for immigrants that have been victims of crimes such as domestic violence, human trafficking, or slavery (see Appendix). These victims are generally afforded some more specific visas to help remove them from dangerous situations, but even then only a small number of these people receive aid. Since 2008, The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 requires immigration courts to "ensure, to the greatest extent practicable…that all unaccompanied alien children who are or have been in the custody [of the federal government]…have counsel to represent them in legal proceedings or matters…" [8. U.S.C 1232(c)(5)]. The TVPRA generally affords some protections to children and victims but these are given based on eligibility and availability. Protections have also been extended for "non-citizens with serious mental disabilities …apparently because the government was (understandably) unwilling to proceed against a defendant who could not understand the proceedings" (Guttentag, 2013). The protection of children and the disabled is considered

progress, but there is still an overwhelming majority of immigrants that are not considered eligible for these special status visas, even if they fit all of the criteria. The general immigration population are only given 'fairly perfunctory [legal] representation that does not involve a great expenditure of legal resources…" on behalf of the Department of Justice (Guttentag, 2013). Meaning, that immigrants who are caught up in legal proceedings have minimal protections and must often find their own legal counsel, regardless of the visas they are eligible for.

Other issues that immigrants coming into the US face are human trafficking and slavery. The illegal nature of these crimes makes it so there can never be a true gauge of the issue without the possibility of over or under reporting it, making it difficult for those seeking protective status to make their case before immigration courts. Due to this lack of information, often times victims of trafficking are not protected under the law as victims, but rather as perpetrators of immigration crimes. In fact, "The US-Mexican border provides also evidence on how Operation Gatekeeper and other crackdowns have put migrants in more peril as they try to enter the United States" (Vayrynen, 2003). This fault in protection exuberates the barriers against prosecution and sentencing of crime groups that often times force vulnerable populations into different types of slavery and puts the blame on the immigrant themselves. In Mexico, protections for victims is not very widely available and serve a small population of victims, where "the Mexican government continued to provide only limited specialized services for trafficking victims" (United States, State Dept.). Victims who continue through Mexico into the US have little to no protections in Mexico and run the risk of being prosecuted upon their arrival in the US. Once in the US, these victims of trafficking are labeled the same way that other immigrants are and are eligible for 'administrative removals', making them ineligible for protected status granted by some visas.

Another type of immigrant who come to the United States are those looking for work, solely to increase the quality of life for themselves and their family members. A majority of immigrants that come into the US illegally are considered unskilled workers, and that label itself affects how people in the US view immigrants. In forming immigration policy, a lot of the regulations are aimed at the labor-market, where the price of labor greatly affects the attitudes of the incoming immigrant worker. Studies on the economic determinants of immigration attitudes show that "the labor-market variables continue to play a key and robust role in preference formation over immigration policy", with the price of labor being a primary, economic factor (Mayda, 2006). Tests show that "Better-skilled individuals are more likely to be pro-immigration in richer countries, and less likely in poorer countries" (Mayda, 2006). This is likely due to the availability of skilled labor positions in countries with a higher GDP, as opposed to poorer countries which generally have less opportunities for skilled worker and rely on their native unskilled labor force. Immigrants are often seen as intruding into the labor-force of countries with low GDP and are therefore viewed more unfavorably in communities where there is low education levels and low levels of individual skills for native labor workers.

Taking all of the above into account, the overall theory of this paper aims to address the complexities of applying for a legal status change and what immigrants can do to tip the scales in their favor when facing immigration officials. The intention is to see what different factors affect the chances of receiving a 'positive' status change, as opposed to a 'negative' status change characterized by denial of their application up until deportation and removal. A possible explanation for these is an emotional directives theory of legal status changes- a theory that encompasses variables that make immigrants more sympathetic in the eyes of immigration officials, and in turn more 'deserving' of status change. This is not to say that those who do not fit the 'sympathetic' criteria are not deserving of their desired status, but that immigration officials who take part in these immigration proceedings are more likely to grant a status change to someone who invoke a more sympathetic reaction from them due to their current situation.

'Emotional Directives' theory of legal status changes addresses solely the emotion of 'sympathy' as the primary emotion in immigration proceedings, one that can be described as "a distinct caring response…or 'compassion'" (Zariski, 2016). The theory addresses the concept of caring for an individual's safety, a condition that immigration officials have to be convinced of when applying for asylum and specific types of visas where the immigrant's safety could be in jeopardy. The characteristic of sympathy should be able to be conveyed to the immigration official through the application of the immigrant and the case they present when dealing with them. This theory states that 'a capacity for sympathy, in the sense of caring and compassion, is essential in arriving at just results" in judicial proceedings (Zariski, 2016). Taking this to heart, emotional sirectives theory of legal status changes identifies the emotion of 'sympathy' as the primary directive of judicial decision-makers to approve or deny legal status changes for immigrants.

Assuming that judicial decision-makers are not as rational as they claim to be, the idea is that the more sympathetic an applicant is, the higher the chances an immigration official will side with them on their application. The applicant needs to come off as sympathetic enough to win the favor of the immigration official, as well as fit the conditions set by the type of visa or relief they are applying for. The theory identifies several variables as particularly important in legal status change proceedings and in evoking sympathy from judicial decision-makers, such as age, application type, detainee status, among others.

The theory is derived from previous research that concludes that laws are not the end-all-be-all when it comes to judicial decision-making. Many scholars have concluded that "it is widely considered a settled social scientific fact that law has almost no influence on the justices" (Gillman, 2001). Judicial officials are influenced by other factors that are not legal doctrine. Immigration officials "base their decisions, consciously or unconsciously, on visceral reactions that reflect their own political outlooks…" (Miller, 2014). Segal and Spaeth describe this phenomenon in their attitudinal model, which "holds that the Supreme Court decides disputes in light of the facts of the case vis-à-vis the ideological attitudes and values of the justices" (Segal & Spaeth, 2002). Segal and Spaeth conclude that "justices decided cases on the basis of their personal ideologies as conventional liberals or conservative… and not on the basis of any sense of fidelity to law or legal interpretation" (Gillman, 2001). Judges base their decisions on previous experiences in courts and their personal ideologies, leaving room for non-citizen applicants to be able to make a case for their legal status change based on the preferences on the judge or official who presides over their case.

This is not to say that judicial decision-makers do not follow current immigration legislation, but it does give applicants a sort of 'wiggle-room' when it comes to trying their cases

in front of officials. However, "the psychological research indicates that while sympathy may very well lead to better decisions by enhancing the decision-maker's understanding of the situation, it is also likely to be inconsistent with both the process and the substance of good decision-making" (Feigenson, 1997). What this means is that, however capable these judges and decision-makers are, sympathy can influence their decision regardless of the current legislation in place for those scenarios. This is not to say that law is completely disregarded, but it should not be considered the primary decision-making factor.

Other studies have reiterated the idea that individual attitudes of judicial decision makers are the primary determinants of judicial behavior, but emphasize the ability of these attitudes to be able to change depending on the situation. Some scholars say that "research [can] confirm the importance of individual attitudes in judicial decision making, but indicate that attitudes are dynamic and susceptible to change in response to public opinion or social change" (Mishler, 1996). If this is true, then some judicial decision-makers can be swayed by certain variables present in the cases and the way their personal attitudes respond to these situations. For example, Judges granted favorable decisions at a higher rate to those asylum seekers who were accompanied by other family members (Schoenholtz, 2008). Another example is that 'female judges granted asylum at higher rates than male judges" (Schoenholtz, 2008). This can mean that, regardless of the judicial official making the decision, the variables of those applying for a status change can be the indicative factor of receiving a 'positive' status change or not. It all depends on the emotion or sympathy the applicant receives from the judge.

Though there are many different variables that can affect the judges decision-making process, this study aims to look at the variants in the applicants' applications and situations. The interactions between these judges and other variables present in the cases they decide over have

been a point of contention in other works describing the phenomenon. When looking at judges' decision-making capabilities, it is important to study these by "describing and analyzing the other intervening variables which interact with personal values, and of finding a way to integrate these variables in a theory which emphasizes their effect on judicial decisions" (Grossman, 1966).

The following independent variables are considered in this model:

PRACTICE AREA: Practice area is a nominal variable that denotes the type of application these immigrants are submitting. There were 12 total practice areas which include Deferred Action on Childhood Arrivals (DACA) visas, VAWA visas, Citizenship proceedings, Asylum, Court proceedings, Family immigration, Bond Assistance, Pro Se Advice, Temporary Protected Status (TPS), T-Visas and U-Visas. Asylum cases were split into Mexican and Non-Mexican applicants due to the propensity of Mexican Asylum cases coming into El Paso (due to proximity with Mexico). All of these applications have different requirements for applying, as well as different fees. A dummy variable was created for every type of practice area these applicants fell into so that each practice area can be tested for individually. The first hypothesis will be testing the effect of practice area. The first hypothesis states that Practice Areas where applicants will need to prove 'credible fear' will be deemed more sympathetic than other areas. These types of applications include Asylum, VAWA, U-Visas, and T-visas.

H1: Practice Areas with 'Credible Fear' claims will be deemed more sympathetic than others

The reasoning behind this is that 'credible fear' can be an impetus for immigrants to come into the US and change their status. For example, women applying for VAWA visas that show 'Credible Fear' of returning to their home countries or to their abusive spouse can be deemed more

sympathetic due to the threat to their safety, and may be more likely to receive a positive status change from judges who sympathize with them in their situation. Similarly, those applying for T-visas (trafficking victim visas) can gain sympathy from judicial decision-makers if they fear their safety is in jeopardy if they return to their home country or to those who trafficked them in the first place.

REGION OF ORIGIN: Region (country) of origin is a pretty self-explanatory. A nominal variable that codes where these applicants are originally from, divided by region. There are 21 countries represented in the sample, though there are certain concentrations of different regions. This variable was split up into regional groups, including North America (NorAm, excluding Mexico), Africa, LatAm (Latin America), and CAsia (Central Asia). El Paso's proximity to the Border can explain the concentration of Latin American countries where a majority of these cases are from. Because of the propensity of Mexican applicants in El Paso courts, the applicants for asylum have been categorized as Mexican/Non-Mexican and the Mexican group has been kept at the comparison group. The second hypothesis involves these types of cases- Applicants that are from Mexico will be more likely to be rejected than those from other countries.

H2: Mexican Asylum applicants are less likely to receive their desired status change

This can be due to a bias on the part of immigration officials, or just due to the volume of applications that Mexican immigrants submit each year. The high number of applicants can mean higher denial rates for applicants who are coming to the US from Mexico. This being the case, Mexican nationals applying for status have been distinguished in the sample and will be tested against all other countries. The assumption is that people from other regions around the world, say African countries, would have had a much longer and rougher trip arriving in to the United States

than some Mexican citizens. All other regions including Latin America are further from the US than Mexico, which might gain sympathy from judicial officials. In order to simplify the testing and to avoid collinearity, these some of these variables have been split up into different regressions to avoid collinearity issues.

EXPERIENCED VIOLENCE? : This variable asks applicants if they experienced violence in their home country. Not only would this make them seem more sympathetic, but it also allows applicants to apply for different types of assistance. For instance, women who are victims of domestic violence in their home country are eligible to apply for the VAWA visas, as well as general asylum assistance. The third hypothesis being tested is that applicants who experienced violence in their home country are more likely to receive their status and are deemed more 'sympathetic'.

H3: Applicants who experienced violence in their home country are more likely to receive their status change

Sympathy can come from judicial officials due to the physically abusive conditions that these people faced in their home country. Similar to the 'Credible Fear' directive in H1, H3 aims to create a well-rounded variable for those who are not able to apply for special category visas such as the VAWA visa, but still experienced physical duress on their person. Men generally fall in this category and can use this variable to explain difficult situation in their home country without having to apply for a special status visa.

PROBONO?: A portion of these cases are represented on a *pro-bono* or *low-bono* basis. The Pro-Bono variable indicates the ability of the applicant to pay the fee for these legal services, as the non-profit organization charges a nominal fee for its assistance. This not only diversifies the

sample of applicants, but this lets applicants who would have otherwise gone unrepresented to receive legal representation at a low and reasonable cost. It is important to note that all applicants in this sample have received at least some form of legal counsel, signifying that all those in this sample have had legal representation during their immigration proceedings. Everyone in the sample had legal representation, and ProBono only indicates ability to pay the legal representatives fee. Financial difficulties are often a deterrent to applicants, so this variable is more of an indicator of who may or may have not been able to afford legal services, instead of who is represented or not. Because there is no income threshold or indicator of the economic situation of the applicants who are *pro-bono*, this will be used as a demographic variable. Also, all applicants who are detained at a detention center are represented on a pro-bono basis. There is no hypothesis pertaining this variable, this variable was only included for control purposes and does not serve any theoretical purpose.

DETAINED: This particular non-profit provides in-person legal representation to detainees in one of three federal detention centers in the El Paso area. Legal representatives from this organization go to these detention facilities around El Paso and provide legal services on a *pro-bono* basis, and all services completed at these are at no charge to the applicant. The fourth hypothesis tested states that detainees and those who are detained are to be deemed more sympathetic and therefore more likely to receive their positive status change in immigration proceedings.

H4: Detainees or people in detention centers are more likely to receive their desired status.

This can be due to the lack of legal resources in detention centers, but also due to the physical and emotional distress that being detained can have on applicants who require legal assistance while

in detention. Those who do not have the resources to be able to pay for legal representation while in detention can be deemed more sympathetic in the eyes of judicial officials.

GENDER: Gender is a binary variable. The fifth hypothesis tested pertains to the gender of the applicant, and how this can help or hinder the chances of receiving the desired status change. Women are generally more likely to be deemed 'sympathetic' than men are. This is not to say that men are less deserving of their status, but that women will benefit more from some types of applications such as the VAWA visas and Asylum visas.

H5: Women are more likely than men to receive their desired status

This can be due not only to their gender, but to these womens' role as mothers and caregivers for their families. Immigration officials can be more sympathetic towards women who are victims of violence, those who are mothers, as well as those who are younger and more vulnerable.

AGE RANGE: Age range is also pretty self-explanatory, but is split up into three primary categories. The categories are young (18-24 years), medium age (25-64 years), and old age (65+ years). Age range 1 encompasses the youngest age group, Age range 2, the middle age group, and Age range 3 the oldest age group. The sixth hypothesis tested is one in which the older the applicant, the more sympathetic they will be. For example, I will test if the Old-Age age group will have a higher rate of positive status changes that the younger age group.

H6: Older applicants will have a higher change of receiving their status change.

This can be due to their ability as older applicants, to the distress they have been put under in their older age, or to the physical exertion that they go through to arrive in the United States. Younger applicants might have higher chances of arriving at their final destination, as well as the physical ability of moving to and from country to country.

OTHER VARIABLES: There were a variety of other variables tested for in this model that were not deemed significant and had no explanatory value. Other variables include Ability (if the applicants had a disability), if the applicant was LGBT, State of Residence and what language the applicant spoke. Ability describes if these applicants are mentally or physically disabled, the sample includes applicants that either have a mobility issue, have some mental disability, or are deaf/blind. The LGBT and Language variables are self-identified by the applicant when applying for services. LGBT applicants are only labeled as such if the applicant themselves identify as LGBT or experienced violence due to their sexuality. Language was tested through a set of dummy variables which pooled languages into English Only, Spanish Only, and all other languages. The above variables are included as controls since some of them do not hold any theoretical relevance. These variables are still important as demographic information but are only indicators of the overall larger sample's diversity.

The above variables were tested to see if official or legal representative 'care' about the applicants that they preside over. The definition of caring used in this study is one that states sympathy is "closest to compassion, which differs primarily by requiring a higher threshold of others suffering" (Feigenson, 1997). For the purpose of this paper, this definition of sympathy will be used as a marker for cases that can invoke compassion from immigration officials. The emotional directives theory involves these individuals being able to invoke sympathy for themselves when facing judicial proceedings, which would possibly increase or decrease the chances of getting their desired status change from immigration officials. For example, individuals who are older and face difficult situations due to their ability are more likely to invoke compassion from people involved in their case than those who are

younger. These tests will look at the possibility of receiving a positive status change when certain variables are present in the application.

The process for these tests start off with basic demographic information about the dataset and the cases involved. Basic descriptive data from the sample will serve as a glimpse to the population that was served at the non-profit the sample was derived from. I will be running separate regression tests on the variables to see which variables are significant when trying the cases, as well as to see what variables affect the chances of getting a positive or negative status. Separate regressions will be run in order to avoid collinearity issues between some variables, for example those who are applying for Mexican Asylum and those who are from Mexico. The last portion of these regressions will involve post-estimations in which I will compare different variables and assess the probability of receiving their status change.

RESEARCH DESIGN

The empirical analysis used a dataset created from a local non-profit that specializes legal representation for immigrants in El Paso, Texas. All client identifiers have been removed, but each case was coded for demographic variables including region of origin, state of residence, etc. Each case was also coded for its type of visa application, age, if the applicant is a detainee at a detention center, and other pertinent facts that can influence their immigration status. This was a convenience sample (due to proximity), but is meant to be a snapshot of how other similar organizations like this non-profit provide well-needed services to immigrants all over the US with intentions to change their immigration status. This particular organization provides a wide range of legal immigration services and assistance for asylum seekers, victims of domestic violence, and other general immigration concerns. The dataset used in this paper is derived from cases that this non-profit took on and provided legal advice for spanning from 2013 to 2017, and encompass the entire range of services that this organization provided in that timeframe. The dataset also includes cases that were taken on in Detention Centers, due to the proximity of the legal aid center to these in the El Paso area. The judicial site is located in the 5th federal district court which tries all immigration cases on behalf of the Board of Immigration Appeals (BIA), where most of these applicants faced judicial officials. The *n* of this study is 557 (n=557) and were all collected through a survey form that the non-profit uses for its case information. All clients represented in the data had legal representation when entering their immigration proceedings, whatever those proceeding were. This sample does not have any individuals that did not receive legal advice, and does not compare the results from people who had legal representation versus those who were not.

The data was tested using logit regressions, due to binary nature of the dependent variable. The dependent variable is the Status Change of the case- whether these clients received their

desired status change or not. The way this variable was coded it asks if the applicant received their 'positive' status change (y=1) or if their application was denied (y=0). People who were coded as not receiving their desired status were either denied their application for status, deported from a detention center, or were denied their visa.

The reason the independent variables were selected for testing is that they were all deemed to make an immigration official or legal representative 'care' about the applicant. Basic descriptive data from the sample (see Table 1) will serve as a glimpse to the population that was served at the non-profit the sample was derived from, as well as a sample of the population that faces immigration proceedings along the southern border. I will be running separate logit regression tests on the variables to see which variables are significant when trying the cases, as well as to see what variables affect the chances of getting a positive or negative status. The last portion of my regression will involve post-estimation tests in which I will compare different variables and make predictions based on the likelihood of receiving desired status change.

DATA RESULTS

The dependent variable of this study is StatusChange, a dichotomous variable that indicates whether these applicants received their desired status change or not. The results are evenly split, with 52% of the applicants receiving their desired status and 47% being denied (see Table 2).

In order to avoid issues with collinearity of variables, Kendall's tau-b and gamma correlation tests have been run in order to see how similar they are. For example, Applicants from Mexico (Mexico) and applicants applying for Asylum from Mexico (AsylumMexican) have a gamma of 1.00, a very high measure of collinearity. Another relatively high correlations are the one for DACA and AgeRange1 students, with a gamma of .9479 and tau-b of .5921. Due to the

high correlations between some variables, two different logit tests have been run in order to avoid problems within the model.

The first logit test was run with 18 variables including Violence, ProBono, Detained, LGBT, AsylumMexican, Citizenship, CourtProceeding, Family, TPS, UVisa, and AgeRange1. Some variables such as LGBT, Bond, and TVisas were omitted due to their minimal significance or small sample size. Several variables were deemed significant (See table 3). One variable, AgeRange2, is deemed very significant. In this first regression, the AgeRange variable was included, but the DACA variable was omitted due to a high correlation. Family, a practice area, is deemed significant in this first regression, but there is no theoretical explanation for it. The second regression shows differences in significance for this variable.

In the second logit regression, the only difference is the replacement of the AgeRange variables with the DACA substitute. This is to see the differences in the model with the DACA variable, but also to separate the importance of the DACA and other variables differences. In this regression, only three variables were deemed significant (see Table 4). Significant variables are ProBono, Detained, and DACA. Family, deemed significant in the first regression, is no longer significant when adding the DACA variable. The DACA variable has absorbed a majority of the explanatory value that the Family and AgeRange variable had in the first regression.

Using these logit tests, we can answer and make predictions about the hypothesis. For hypothesis 1 (**H1: Practice Areas with 'Credible Fear' claims will be deemed more sympathetic than others),** experiencing violence is not a variable that makes it more likely for the applicants to receive a status change. To reiterate, 'credible fear' applications are different than those that have experienced violence, because 'credible fear' by definition does not involve

experiencing violence. These variables are not significant when applying for a status change. Hypothesis 1 is not supported.

For hypothesis 2 (**H2: Mexican Asylum applicants are less likely to receive their desired status change)** both types of applicants, non-Mexican regional applicants and Mexican applicants, do not have an increased chance of receiving their status change. Asylum applications as a whole do not have any significant advantage in their cases over other applicants and are generally treated in the same way that all other Practice Areas are. Any of these are equally at risk of not receiving their desired status. This hypothesis is not supported.

Hypothesis 3 (**H3: Applicants who experienced violence in their home country are more likely to receive their status change)** is similar to hypothesis 1 in that it pertains to the physical safety of the person. The difference is that applications that have to prove 'credible fear' include those that have not experienced violence, but still fear for their safety. Proving 'Credible Fear' is not synonymous with experiencing violence. The variable 'Violence' is not deemed significant and H3 is not supported. Still, I will make comparisons with other variable to see if violence influences any other outcomes.

Hypothesis 4 (**H4: Detainees or people in detention centers are more likely to receive their desired status)** pertains to the detention status of an individual. People end up in detention in a variety of ways but all, if not most, of those in detention are either facing bond hearings or deportation proceedings. They generally do not apply for any other type of assistance until after these proceedings are granted or denied. The variable 'Detained' is deemed significant in the first regression but its negative coefficient brings to light a negative relationship between detainees and receiving their desired status. This means that being detained has a negative impact on receiving

desired status changes instead of a positive effect, leading to less detained applicants receiving their desired status change.

Hypothesis 5 (**H5: Women are more likely than men to receive their desired status)** is not supported, as gender is not deemed a statistically significant variable. However, this variable will be used to compare the 'positive' status change probability between men and women in many of the other possible scenarios that they can be involved in.

Hypothesis 6 regarding age ranges (**H6: Older applicants will have a higher change of receiving their status change)** is deemed significant in the first regression. However, the variable has a negative coefficient signifying that as age increases, probability of a 'positive' status change decreases. That means that H6 is not supported and that younger applicants have a higher chance of receiving their status change than their older counterparts. This can also explain the significance of AgeRange2 in the first regression, and the difference in the second regression with the DACA applicants.

Each of the independent variables were used to determine changes in probability for status change as their values go from their minimum to maximum(See table 5). Only 4 of my initial independent variables were deemed significant in the first regression. The first significant variable is Probono, an indicator if the legal representation fees were paid for by the client or taken on free of charge. The minimum to maximum value tells us that there is a negative correlation between ProBono cases and the chances of receiving a status change. Applicants who are ProBono see a drop of 20.66% less likelihood of receiving their desired status change. There was no theoretically significant value to this variable, but it does indicate that often those who receive pro-bono aid have a reduced chance of receiving their desired status change. It might be an overall statement

about the availability of resource these applicants have and the correlation in receiving their status change. My guess is that this relationship might be positive if I was testing a private, paid attorneys cases to their desired status change. This is not to say that the non-profit agency that took on these cases is a bad option for receiving your desired status, but the lack of resources can come from either the organization or the individual applicant and affect both chances of status change.

The second significant variable 'Detained' also gives us a negative correlation to receiving desired status changes and being detained. Detained cases in themselves are pretty complicated due to the incarcerated nature of the applicants, and because detained applicants are usually limited to deportation proceedings when applying for assistance. These people might also end up applying for other services, but generally detained applicants do not receive the desired status they apply for. Detainees have a reduced 18.71% chance of receiving their status change, meaning their status as detainees actually reduces their chances of changing their status. Hypothesis H4 is not supported.

The third significant variable, Family, pertains to the Practice Area where people apply for status either for themselves or a family member. The significance of this variable is not explained by the first regression, but the significance of the Family application type can be explained by the DACA variable in the second regression. The probability change value for Family is only 5.79%, which is later absorbed by the DACA variable.

The fourth significant variable is DACA, a type of application that falls within the categories of 'Practice Area'. There is a positive relationship between DACA applicants and their 'positive' status changes. DACA applicants are 36.79% more likely to receive their status change than other applicants within the sample. DACA absorbs the significance of the Family variable, as

well as the AgeRange variables. It seems that the younger the applicant, the more likely they are to receive their status change. The requirements for DACA can also explain the high probability change value. The status of DACA only last for 2 years, and must be renewed bi-annually through an application, of which all DACA applicants have to remain eligible. The high acceptance rates can be attributed to the renewals of past DACAs or the acceptance of new applications.

These four variables are the only ones that have significance at the 0.05 level, so what can they tell us about the applicants for these services? Using post-estimation tests, lets compare what the probabilities of receiving desired status are when these variables are present individually. These estimations can give us a view on how these variables relate to each other and how the immigrants applying for these practice areas should take into account the increased or decreased chances of receiving their desired status.

PROBONO

Probono has a negative correlation with receiving desired status. Using the prvalue post-estimation test, we can see that people that are ProBono only have a 1 in 3 chance of receiving their desired status (see table 6). At its highest confidence interval, 51.14% of applicants are likely to receive their status, meaning the chances are pretty close to 50/50. At its low end, the confidence interval can be as low as 21.62%, a dismal rate for those who cannot afford legal services and rely on pro-bono legal counsel. Though there was no hypothesis for this variable, this is an indicator of the availability of resources applicants have and their likelihood of receiving their status.

DETAINED

The second significant variable is Detained. In this probability change test I will compare the chances of detained applicants with those that were probono or not. Being ProBono and

Detained are not good in terms of applying for a status change. Those that are detained and represented ProBono have only a 22.46% predicted possibility of receiving their status change.(see Table 6). The lower end of this confidence interval is only 6.35% of a possible status change, while the max interval is at 38.57%. Detainees who have not paid for their services have a lower chance of receiving their status than those represented by private counsel.

On the other hand, those that have paid for their legal counsel and are detained have a much higher chance of receiving their 'positive' status change in immigration proceedings (See table 6).

Those who are not ProBono applicants have a 40.21% chance of receiving their status change, giving those who can afford legal counsel a 20+% advantage over those who are ProBono This dispels the notion that those who are detained cannot receive their desired status, but brings up the point that there are other factors that may or may not affect the chances of detainees receiving their status.

DACA

DACA was one of the most significant variables in the regression. Those that applied for DACA have the highest overall acceptance rate of all other variables at 81.91% (see Table 6). At the low end of the confidence interval, DACA applicants still have a 65.58% chance of receiving their status change, and a near perfect 98.24% chance of receiving their status on the maximum end of the confidence interval. This can be explained by the importance that the AgeRange variable has when applying for a status change through DACA, but also signified that DACA applicants can be the most sympathetic group of applicants. DACA also absorbed the significance of Family applications, another indicator that those who are younger and came to the US with family members are more sympathetic. The high probability change value can also be explained by the

strict restrictions that DACA applicants have to apply with, as well as the relatively short ‘life’ of DACA visas.

CONCLUSION

This paper started off with a brief overview of the how judicial decision-makers can make decisions based on the individuals they are deciding over.The purpose of this study was to identify what relevant variables can affect the possibilities of receiving a status change, and how applicants who are more deserving of 'sympathy' are at increased chances of receiving the aid they applied for. Using an emotional directives theory, variables were tested that can deem an applicant deserving of a 'positive' status change. The variables indicated in this study were meant to be tested as means of invoking 'compassion' in judicial decision makers in charge of these immigration proceedings. As the preceeding results indicate, those who are younger, or eligible for DACA are the applicants who are more likely to receive their status change. Those who do not have resources to pay for a private attorney and those who are detained have a decreased chance of receiving their status change. This study adds to the literature that says judicial decision-makers use their perception of the applicant, which can vary greatly depending on the applicants situation.

So what does this mean for those involved in these proceedings? Some of these variables do indicate that there is sympathy for those who are younger due to their higher grant rates. But some variables that can invoke sympathy have the opposite effect and can detter immigrants from applying for a status change, such as the status as a detainee. Applicants who are detained should make any and all efforts to hire private counsel instead of going through a Pro-Bono attorney due to their higher grant rates for those cases. One of the largest indicators of 'sympathetic' decision-making is the higer likelihood of younger people receiving their status. My hypothesis regarding age was incorrect, but did make the point that younger applicants who can be deemed more vulnerable and deserving of sympathy are at a higher chance of receiving their desired status as compared to older adults.

Although this study does add to the current debate about sympathetic applicants, it is important to remember that this is only a convenience sample of West Texas immigration demographics. In order to arrive at more generalizable results, comparisons should be made in other regions in the US that have high rates of immigration, as well as those that fall in different court systems. This sample was taken from the 5th district court, one that encompasses southern states in the US including Texas. Further research can incorporate different jurisdictions in the US for a more generalizable contribution to the literature on immigraiton status grants. Further research should also make the distinction between programs that have emotional directives built into the application system, versus those who do not. For example, the VAWA visa program has a sympathetic component built into the application requirements, where an immigration official has to believe their 'credible' fear claims. The same can be said for T-visa and U-visa applicants, as well as younger applicans such as the DACA Dreamers who are, by definition, younger applicants who are students and employed in the United States. Emotional directives are built into some visa applications by default, and further research can introduce new ways of comparing these sympathetic applications from more general immigration applications.

Suggested improvements for this study include adding some data about the actual decision-makers in these proceedings and how their own personal characteristics might have them relate to those they need to pass judgement over. If the judge was a woman, they might be more sympathetic to women applying for their VAWA visa, as well as towards younger applicants for DACA status based on their gender. Gender is an important variable in the decision-makers, but seeing the applicants' and judges' gender can lead to more interesing gendered relationships Perhaps a judge with Mexican family members can have higher grant rates for Mexican Asyulum seekers as opposed to those from any other country. Further improvements to this study can include

increasing the scope of the study and adding more variables. This study was done on a small scale at a single legal counsel agency, and future testing should include comparisons between other non-profit organizations or with paid legal representation. An interesting comparison would be these cases that were tried on a pro-bono basis compared to paid legal counsel in the same region. We could also expand this study to include those with or without legal counsel and the results that their cases come to.

In order for us to have more just and enforceable immigraiton laws, policy recommendations can be made based on the comclusion that judges do not make rational decisions based solely on laws. For example, the power that judicial decision-makers have over these applicants is not regulated, and not defined in the laws. The 'credible fear' applications are very vague in their wording and can be detrimental to a more fair immigraiton system. For us to change the way immigration looks in this country we first need to analyze and rewrite immigration laws.

Immigration is a very touchy subject in today's political environment. Not only was this study meant to find what can increase applicants' chances in receiving their status, but it was also meant to see where our immigration system fails people applying for legal assistance. The complexities of this system are very difficult to navigate, moreso if you have no resources to hire legal counsel or to advise you of possible alternatives. Studies like this are necessary to open a window into what immigrants go through in the search of legal status. By increasing awareness to the turmoil that the system causes applicats, we can go about making improvements to the application process.

TABLES

Table 1. Descriptive statistics of the data sample (*N=557)*

VARIABLES TESTED	Mean	Standard Deviation	Minimum	Maximum
Violence	0.3608	0.4806822	0	1
ProBono	0.1346	0.3416561	0	1
Detained	0.1077	0.310305	0	1
LGBT	0.0089	0.0944038	0	1
Status Change	0.5296	0.4995704	0	1
Asylum- Mexican	0.2154	0.4114967	0	1
Asylum-Non-Mexican	0.1111	0.3147991	0	1
Bond	0.0003	0.0598682	0	1
Citizenship	0.0754	0.2642794	0	1
CourtProceedings	0.0305	0.1721696	0	1
DACA	0.2136	0.4102471	0	1
Family	0.1813	0.3856365	0	1
TPS	0.0003	0.0598682	0	1
Tvisa	0.0003	0.0598682	0	1
Uvisa	0.0682	0.2523542	0	1
VAWA	0.0915	0.2886658	0	1
Mexico	0.8438	0.3633654	0	1
Female	0.4093	0.4921533	0	1
AgeRange1	0.3771	0.4851183	0	1
AgeRange2	0.5816	0.4937577	0	1
AgeRange3	0.0412	0.1991143	0	1
Casia	0.0125	0.1114976	0	1
Africa	0.0320	0.1769969	0	1
LatAm	0.1005	0.3009871	0	1
NorAm	0.0107	0.1033205	0	1
Texas	0.8330	0.3732806	0	1
NotTX	0.1669	0.3732806	0	1
SpanishOnly	0.7163	0.4511802	0	1
NonSpanish	0.0502	0.2186965	0	1
English	0.2333	0.4233705	0	1

Table 2. Dependent Variable: StatusChange details

Did applicant receive a positive status change?	# of cases	Percent
No	262	47.04%
Yes	295	52.96%

Table 3. First Logit Regression

	Number of Obs=526	
	LR chi²(18)=88.22	
	Prob>chi²=0.000	
Log Likelihood=-319.384		
StatusChange	**Coef.**	**P>|z|**
Violence	0.079091	0.705
ProBono	-1.125023	0.003**
Detained	-1.114054	0.007**
AsylumMexican	-0.7020615	0.068
Citizenship	-0.5045954	0.243
VAWA	0.1091873	0.795
CourtProceeding	-0.9328414	0.124
Family	-0.8045181	0.015**
TPS	-0.1148235	0.938
UVisa	-0.5203382	0.249
Female	-.0265585	0.897
AgeRange2	-0.7552868	0.002**
AgeRange3	-0.376064	0.466
Africa	-0.2290132	0.807
LatAm	-0.3656592	0.416
NorAm	-1.559724	0.178
Texas	0.4070288	0.126
English	-0.2610998	0.742
Spanish Only	-0.5751014	0.458
_cons	1.403842	0.092

**$p \leq 0.05$

Table 4. Second Regression- AgeRange replaced by DACA

	Number of Obs=550
	LR chi²(17)=80.00
	Prob>chi²=0.000
Log Likelihood=-339.77617	

StatusChange	**Coef.**	**P>|z|**
Violence	.1148236	0.678
ProBono	-.8420293	0.017**
Detained	-.7647802	0.057
AsylumMexican	.30984	0.632
Citizenship	.6149484	0.384
VAWA	1.123231	0.102
CourtProceeding	-.1847096	0.800
Family	.2198594	0.736
TPS	.2515423	0.866
UVisa	.4200627	0.551
Female	-.0306944	0.876
DACA	1.693725	0.015**
Africa	.338988	0.729
LatAm	.1615184	0.772
NorAm	-.8559232	0.342
Texas	.1834363	0.468
English	-.3897834	0.612
Spanish Only	-.6889429	0.359
_cons	.0924459	0.924

**$p \leq 0.05$

Table 5. Probabilities for Status Change for variables that are significant

Logit: Changes in Probabilities for Status Change	
Probono	-20.66%
Detained	-18.71%
Family	-19.64%
DACA	36.79%
AgeRange2	-18.54%

Table 6. Probabilities of Status Change based on variables

	Probability of status change	[95% Conf. Interval]	
Probono	36.38%	21.62%	51.14%
Detained	37.59%	20.20%	54.97%
Paid fees& Detained	40.21%	22.13%	58.29%
Probono & Detained	22.46%	6.35%	38.57%
DACA	81.91%	65.58%	98.24%

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APPENDIX: LEGAL BACKGROUND

In order to understand how the immigrants applying for status change end up in difficult situations, a look into current immigration laws is necessary. The US immigration system is not perfect but does provide some forms of relief for immigrant applicants eligible for assistance. However, it is important to understand that the immigration system is not currently set up to assist all applicants, but only those that fit certain criteria and are eligible for a legal status change in their current situations. Often times specialized immigration law assistance is required for these proceedings, based on the resources available to the applicant. Regardless of the particulars of each case, the current immigration laws should be considered some of the primary directives behind some of these immigration officials' decisions. This is not to say that immigration officials take these rules and regulations and follow them to a tee, but they do guide their judicial decisions based on current regulations.

The United States immigration system is complicated and changes depending on the official's discretion when making decisions. The main, current legal doctrines of naturalization and citizenship eligibility are the Immigration and Nationality Act of 1965 (INA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The INA created categories "based on skills or family relationships…the new preference categories were[are] based on employment skills or family connections to citizens or permanent resident aliens" (Chin, 1996). The INA of 1965 allocated visas on a lottery or quota basis, setting long outlines for immigration processes that are still relevant today. There is an outlined preference for "family-sponsored immigrants…and employment-based immigrants" (INA: ACT 201 [8 U.S.C 1151]). Immigrants apply for different categories of visas depending on their relationship to other citizens or residents, as well as for specialized visas depending on their current situations or skill set. The US. Citizen

and Immigration Services (USCIS) awards non-immigrants visas to foreign citizens for business purposes and travel purposes (B1, B2 visas), for employment (E, H, L, O, P visas), and asylum visas for special situations (U, T visas). A preference is given for non-citizen applicants who own business interest in or outside of the United States, but applicants who apply through a family member are required to provide documentation determining their eligibility for these.

All immigrants are subject to verification of their eligibility for these visas, often including complicated time or age requirements, and an interview with USCIS officers. All applications for a change of status have fees starting between $400-$1000+ ; examples include a $455 fee for I-90 Application to Replace Permanent Resident Card, and a whopping $930 fee for a I-212 Application for Permission to Reapply for Admission into the US After Deportation or Removal. Applications to Register Permanent Residence or Adjust Status are $1,140 for non-resident immigrants. These high prices are often out of reach for many immigrants, making applying for a change of status unlikely for lower-income non-citizens. There are application fee waivers available, which also have lengthy and complicated eligibility requirements and are means-tested benefit programs. (USCIS, 2016). Without the ability to pay for these applications and services, these people are often left to the mercy of Immigration and Customs Enforcement (ICE), or rely on non-profit or *Pro Bono* legal assistance to receive their status change. Without payment of these initial fees, no application can be processed unless a fee waiver has been received.

If immigrants are ever to be arrested by ICE or other law enforcement agencies, procedures must begin for either the removal of the non-citizen or their adjustment of status. Applications can be made for Stays of Removal from the US based on length of physical presence in the US, or on "special rule for battered spouse or child" (INA: ACT 240A.2/2 [8 U.S.C 1151]). The INA gave non-citizen immigrants defined routes to become US citizen, but made these resources exclusive,

not inclusive. Different factors such as nation of origin and time of arrival into the United States became necessary, reportable details in applications for a legal status change and greatly affect the possibility of receiving residency status. If immigrant applicants for these statuses cannot provide documentation of their length of stay, or of the credible fear they have for their spouse they can be removed and deported from the US.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 further accented immigration attitudes and regulations that the INA of 1965 outlined. Following a push from the 1980's to reform immigration, the IIRIRA of 1996 outlined a stricter definition of what constitutes removable offenses for immigrants and what kind of actions immigrants have to appeal the decision on their legal status, complementing the removable offenses listed in the INA. The IIRIRA criminalized altered definitions of 'aggravated felonies' to include "crimes which are neither aggravated nor felonious- such as prostitution, undocumented entry after removal, drug addiction, shoplifting, failure to appear in court, falsifying a tax return, and generally any crime warranting a sentence of one year or more" (Abrego, 2017). The IIRIRA also made changes to removal proceedings and procedural safeguards that immigrants had before the passing of the act such as exemptions from various stays of removals, as well as some applications for asylum. Further criminalizing previously minor offenses, provision 287(g) of the IIRIRA extended the powers given to local law enforcement and their ability to intercede in the execution of immigration law enforcement, allowing local law enforcement to enforce federal immigration laws. Section 287(g) "authorizes state and local officers to screen people for immigration status, issues detainers to hold them on immigration violations…and generate charges that begin their process of removal" (Capps, 2011). Section 287(g) allows local law enforcement to act in cooperation with ICE and be trained in implementing immigration laws, while under the guise of

looking for more serious offenders of the law. However, Section 287(g) "make[s it] clear that the priority articulation is not intended to discourage apprehension and removal of unauthorized immigrants in general" (Capps, 2011). By blurring the lines of 'aggravated felonies' and crimes, the Department of Homeland Security has the discretion and full authority to remove non-citizen immigrants through an administrative removal, making the immigrants involved in the case unable to appeal their removal and more susceptible to deportation. The pushback from local and federal law enforcement agencies adds an additional hurdle for non-citizens to be able to apply for their status.

The judicial aspect of how the immigration system works begins when noncitizen immigrants are issued a Notice To Appear before an Immigration Judge in Immigration Court, a notice sent from within the Department of Justice in order to begin the adjudication process for removing them from within the US (Marouf, 2014). These Notices are sent from the Executive Office of Immigration Review (EOIR), an office with the sole responsibility of deciding whether "foreign-born individuals, who are charged by the Department of Homeland Security (DHS) with violating immigration law, should be ordered removed from the United States or should be granted relief or protection from removal and be permitted to remain in this country" (Department of Justice, United States). The EOIR only begins these proceedings "due to an encounter with the criminal justice system or after the noncitizen files an immigration benefits application with the government that is denied" (Koh, 2017). This means that immigrants who are caught up in the criminal system for misdemeanors and felonies are equally as able to be ordered removed from the US as are families or individuals who applied for immigration benefits and have been denied.

After an order of removal is sent out, the Board of Immigration Appeals (BIA) allots a thirty-day period in which either the immigrant ordered removed could appeal, or in the case of a

judge siding with the immigrant, an opportunity for DHS to appeal for the removal of the non-citizen. A final opportunity to appeal the ordered removal can be taken up with the presiding state circuit's US Court of Appeals. This final appeal, however, does not "stay the removal of an alien pending the courts decision on the petition, unless the court orders otherwise" (131d. § 1252(b)(3)(B)). Immigrants can and may be removed from the United States during the final appeal in the US court of appeals if the Immigration Judge overseeing the case does not specifically address the past orders of removal. Non-citizens are "at risk of being deported from the United States while their appeals are pending unless they specifically request and receive stays of removal" (Marouf, 2014). The job of all of these courts is to be able to identify the merits of these cases and to identify the immigrant applicant's need for citizenship and/or refuge. This, however, is left to the discretion of either the border official from where they ask for asylum or of the immigration judge reviewing the merits of the case. Asylum seekers need to provide evidence that they "are vulnerable to being deported to countries where they face a risk of persecution or torture" (Marouf, 2014).

Some faults within the Department of Justice are accented by the number of deportations in which "the government issues removal orders against noncitizens [without] reaching the immigration courts" (Koh, 2017). This is done without the Notice to Appear before an Immigration Judge and subsequently omits the opportunity for non-citizens to present their case in court. In 2013, about 83% of all formal orders of removal "took place through reinstatement of prior removal orders or expedited removal of individuals seeking admission at the border" (Koh, 2017). This means that officials at the border where people are seeking admission are usually the deciding factor in their removal or rejection into the United States. In 2014, this measure increased to about 84% of all formal orders of removal that came from expedited removals or reinstatement of prior

removal orders (Baker, 2014). These border officials bypass the immigration court system in that they decide whether to allow these immigrants entry into the United States or order their immediate removal. Similarly, immigrants who are ordered to be removed due to "aggravated felonies" also bypass the immigration court system by being labeled as 'administrative removals', thereby allowing for their removal without legal representation (Koh, 2017). Bypassing the immigration court system does not allow immigrants to be able to appeal the order or removal and sentences them to deportation without the input of an immigration judge. Often referred to as 'shadow proceedings', there are three types of removals in which immigrants are not represented in immigration court and sentenced to removal without the chance of appeal: expedited removals, reinstatement of removal, and administrative removals (Koh, 2017). Expedited removals are usually processed on or close to the border and are processed by border officials without input from a judge. Reinstatement of removals are given to non-citizen immigrant who have been removed from the United States and re-entered the country, usually through illegal means. Administrative removals are given only to immigrants who have committed felonies under immigration law and now have a criminal conviction on their record. If these immigrants are labeled with any of the above categories, there is little to no chance of appeal or status change.

It is important to remember that immigration law is an ever-changing topic in today's legislative chambers. There are constant changes and challenges to immigration law and there is no program that is absolutely set into our American government. As the law changes rapidly, so are the number of non-citizen applicants that are affected by these regulations. Not only do these immigrants have to fund their own applications, but they must do so in specific time-frames from their arrival in the US, and provide adequate and thorough documentation on their and their

family's situations. The barriers to adjusting their status are many, but even so some of these immigrants would rather risk deportation than risk their safety and security.

CURRICULUM VITA

Perla Molina Galindo is a current student at the University of Texas at El Paso, with a B.A in Political Science and a certificate in North American Studies. With a concentration in International Relations, Perla has extensively studied the effects of current immigration legislation on the borderland and has made this her primary topic of interest. She has interned and worked with a variety of organizations in El Paso, including Las Americas Immigrant Advocacy Center, West Fund, Beto O'Rourke for Senate office, as well as at the UTEP Political Science Department. She currently has no published works.

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