

Chapter 9

Mirrors of Justice?

Undocumented Immigrants in Courts in the United States and Russia

Agnieszka Kubal and Alejandro Olayo-Méndez

A few days into office, the new President Donald Trump signed a number of executive orders in the area of immigration law in the United States. Aside from the headline-capturing ones like the “Border Wall with Mexico” (January 25, 2017) or “Muslim travel ban” (May 27, 2017), there was also this, equally far-reaching, though one that never really made it to front-page headlines: “Any undocumented person who has been in the US less than two years is subject to detention and deportation without a hearing unless they can show they have a credible fear of return to their home country.”¹ To anyone even remotely familiar with the immigration law enforcement in Russia, this brings to mind the notorious practices of the Moscow police “randomly selecting” Central Asian migrants for document checks near the metro² and pressing charges of immigration law offenses, the charges having deportation-related consequences.³

Prior to these dramatic immigration law changes in the United States, this type of comparative observation would arguably by many be considered adventurous, by some, plainly speculative. In this chapter, however, we suggest that the relative experiences of the U.S. and Russian immigration regimes at the everyday life level are not that different and highlight the punitive effects of the legal processes on migrant populations.⁴ For the United States, we use the case study of Operation Streamline; for Russia, we rely on the most common immigration law offenses relating to migrants’ residence and work status.

Operation Streamline (currently Streamline Initiative) started in 2005 as an initiative of the United States Department of Homeland Security (DHS) and the Department of Justice (DoJ) to expedite the criminal prosecution of individuals entering the United States illegally through specific geographic regions along the Southwest border between the United States and Mexico.⁵ In practice, the initiative is a legal procedure that accelerates court proceedings and sentencing of defendants accused mostly of reentering the United States illegally. Large groups of defendants (sometimes up to seventy people) are brought to court, presented,

and sentenced in a couple of hours. Defendants have very little pre-hearing time with attorneys assigned by the court, and the jail sentences could range from 30 to 180 days. The program has been called “assembly-line justice” and “conveyor-belt” or “en masse” immigration proceedings, emphasizing the mechanical and dehumanizing dynamics of the operation.⁶ The aim of the program was to establish “zero-tolerance” immigration enforcement zones along the U.S.-Mexico border and to discourage illegal crossing attempts. U.S. Border Patrol sectors use Operation Streamline differently depending on resources, courthouse and jail infrastructure, geography, crossing population, and the prosecutorial priorities of federal authorities. Some Border Patrol sectors use Streamline for persistent border crossers, while others use it for migrants apprehended in specific target zones, regardless of crossing or criminal history.⁷ While the program has changed in the past, it expanded significantly under the Trump administration.⁸ Since May 2018, we saw how “zero-tolerance” policy gained a new and more sinister momentum, leading to the separation of children and families and prioritizing the prosecution of their illegal entry over attending to their potential asylum claims.⁹

There is no direct equivalent of Operation Streamline for Russia, mainly because there is a visa-free movement between Russia and the former Soviet Union “near abroad” republics (Kyrgyzstan, Tajikistan, Uzbekistan) from where most migrants arrive.¹⁰ Anybody can board a plane or a train and, with their passport alone, cross the border with Russia. Upon arrival, migrants have a relatively short “grace period” to regularize their situation in Russia. If they want to work, they have to apply for a work permit (work license since 2015) and a residence registration.¹¹ If they happen not to fulfill one or both of these conditions, or sometimes simply fall through the cracks of the ever-changing and complex immigration rules, their stay in Russia becomes undocumented. For Russia, we therefore use a study of migrants’ experiences of immigration cases, when they have been charged with offenses against Articles 18.8 and 18.10 of the Code of Administrative Offences (CAO)—lack of residence registration or working without a work permit, respectively. The number of immigration administrative cases increased by 100 percent between 2012 and 2013, demonstrating that the administrative prosecution of immigration law violations has become a popular tool of broader migration policy. The record year thus far was 2014, with 249,303 Article 18.8 and 18.10 CAO cases.¹² This translates into nearly 250,000 foreigners brought to trial, with potential expulsion orders issued against their names.

The questions we ask in this chapter focus on migrants’ immediate experiences of the legal process and their “days in court” under two different jurisdictions: How similar and how different are these? How do these similarities and differences play out in everyday practice? Addressing these questions leads us to move beyond the civil-criminal dichotomy and demonstrates a number of similarities of the everyday experiences of justice despite structural embeddedness

of these trials within the criminalized (Operation Streamline) versus administrative justice systems (Russia). First, both case studies demonstrate the limited role of the judge as a fact-finding figure and rather highlight his/her administrative role in delivering justice because of the *de facto* lack of discretion in making these judgments.¹³ This is further amplified by the overwhelming feeling shared by the defendants in these processes that the decision “had already been taken” despite the decorum of the courtroom trial. Second, both case studies put to question the individualization of the justice principle—either by *en masse* “conveyor belt” justice in flip-flop courts¹⁴ observable in the Operation Streamline cases or by the very short time within which the administrative cases and appeals are heard by the Russian courts. Taking a step back and thinking analytically, we put a mirror to *how* immigration and border control is practiced and theorized in Western and Northern American jurisdictions by bringing in its Russian counterpart. Ultimately, we concur with Mary Bosworth and Mhairi Guild, who have long argued that “the substantially harsher treatment of non-citizens flows naturally—some would argue inevitably—from the ‘administrative’ nature of immigration law.”¹⁵ *Why* does this happen? The observed similarities reveal that bureaucratic objectives—to deal with these “floods” of cases as efficiently and expeditiously as possible—override the initial divisions between civil and criminal and collapse the civil and criminal spectrum, especially when looked at from individual migrants’ perspective.

This chapter proceeds as follows. We start with the review of the crimmigration thesis as the main *prima facie* distinguishing factor between how immigration cases are adjudicated in the United States (under Operation Streamline) and in Russia. Setting this context helps us to engage with the question of *how* immigration and border controls are practiced and experienced under these two jurisdictions. Upon presenting our methodology and the two ethnographies of the “day in court,” we discuss the striking similarities between these two contexts and the repercussions these similarities have for further crimmigration theory and the criminal-civil dichotomy, especially addressing the second question as to *why* immigration control takes this specific shape at this specific time.

Why Compare?

The United States and Russia are two out of the top four countries worldwide that hold the largest share of migrants and refugees—23 percent of the world migrant population.¹⁶ And yet there is no single meaningful, systematic, and disciplinary study—be it legal, historical, or sociological—that compares their immigration and refugee law regimes and migrants’ and refugees’ experiences of these wider legal environments. Perhaps this is not surprising. At face value, the

United States and Russia (formerly the USSR) could not be more different—the former being the axiomatic immigration nation where the “huddled masses yearn to breathe free,” the latter well-known for developing the restrictive *propiska* (residence registration) system and heavily controlled movement.¹⁷ However, both global powers reached to their southern neighbors, either through colonization (Russia)¹⁸ or labor recruitment programs (United States)¹⁹ and created a set of structural interdependencies that have resulted in continued, sustained population movements (classified both as forced and economic migration, or mixed). Both countries have a large number of undocumented populations: 10.7 million in the United States²⁰ and 11 million in Russia.²¹

There is a massive scholarship on the immigration and refugee governance systems in the United States as well as their impacts, their everyday practices, and the experiences of those affected by them—largely Mexican and Latin American migrants and asylum seekers.²² The current intense focus of immigration law seems to be the design of measures to combat “illegal” migration, where the various laws at federal, state, and local levels—also extraterritorially in Mexico and Latin America—seek to punish the behavior of undocumented (or would-be) immigrants, but at the same time push them to spaces outside the law, resulting in an overly criminalized immigration law system.²³

There is also a burgeoning literature on immigration and refugee legal developments in Russia—everyday experiences of the law and migrant and refugees’ access to justice.²⁴ Labor migrants come to Russia primarily from Central Asia (Uzbekistan, Kyrgyzstan, and Tajikistan). By the virtue of being an important global political player, this country faces an increasing flow of refugees, most recently from Syria and Eastern Ukraine. However, Russia is almost uniformly portrayed through its hostile practices of migrant and refugee governance. Discrimination at work, routine denial of wages, failure to provide required contracts, unsafe working conditions, racial profiling for document checks, extortion of bribes by the police, and other extralegal strategies aimed at controlling migrants’ movement are well documented.²⁵ There is a widespread view supported by empirical and scholarly evidence that state law, including immigration law, “does not work” in Russia.²⁶

Notwithstanding the danger of portraying a too rosy picture of Russia, we suggest that the full picture is more complicated and that there are discernible logics according to which immigration law operates²⁷ and how it is mediated by migrants’ and legal professionals’ variety of legal experiences and positionalities. In Kubal’s earlier work she discerned conditions under which migrants access justice and stand for their rights in Russia, but also what incites them to disengage from formal legal structures and, in some cases, deliberately subvert state agents, particularly those involved in law enforcement.²⁸ Kubal also ventured the first comparison of the everyday experiences of Russian and U.S. immigration law systems in the essay “Spiral Effect of the Law.”²⁹ She based her observations on

in-depth field research in Russia; as far as the U.S. was concerned she limited her findings to conceptual comparison drawing on existing scholarship, primarily the ideas of legal violence developed by Cecilia Menjivar and Leisy Abrego.³⁰ In this chapter we take this scholarship one step forward by bringing two empirical case studies into a dialogue with each other—the undocumented migrants’ experiences of their “day in court” under Operation Streamline (for the U.S.) and migrants’ experiences of the trial process when charged with administrative offenses against articles 18.8 and 18.10 COA (for Russia). The main aim that guides this comparison, aligned with the overall goal of this volume, is to critically engage with the different conceptual frameworks on crimmigration and discuss what a “discovery” of unexpected similarities between two contexts that rely on prima facie completely different immigration management systems can mean for future theorizing of immigration and border practices.

Criminalization versus Administrative Procedure: The Main Caveat?

We begin the comparative study by addressing the main critique that our endeavor may attract—namely, whether we are comparing apples and oranges. Is Operation Streamline directly comparable with the administrative adjudication of immigration offenses under Russian jurisdiction? To answer this question, we need to address the significant structural differences in how migration is governed and managed and how immigration law is enforced in the United States and Russia.

Operation Streamline has been conceptualized in the literature as one of the important pillars of criminalization of immigration law in the United States.³¹ At the local level of its implementation it stands as a case in point of the prioritization of criminal enforcement in immigration law.³² It demonstrates how criminal consequences (actual prison time) are being attached to immigration violations (irregular or “illegal” border crossing). Operation Streamline is a microcosm, where we can see how new immigration-related crimes are being created and prosecuted, how the increased minimum and maximum sentences for existing immigration crimes are being applied, and how more and more frequently, personnel in charge of implementing the criminal justice system are also in charge of enforcing immigration controls.³³

This criminalization of migration—the transplantation of procedures and practices from criminal law into immigration law—has been hugely asymmetrical.³⁴ The enforcement of criminal law presumes a series of elements and rights that guarantee that the individual who committed a crime would be

treated fairly. While the procedures of criminal law have moved into immigration law, there has not been a movement of the legal rights of alleged offenders into the immigration legal framework. For example, “the list of rejected rights includes double jeopardy [prevention to not be judged twice for the same offense], Miranda warnings, the privilege against self-incrimination, . . . right to counsel, and the ban on cruel and unusual punishment,” which are not present in immigration law nor in the enforcement of those laws.³⁵ The right to counsel has been partially remedied by the *Padilla* case law (*Padilla v. Kentucky* 2010), but only insofar as migrants or legal permanent residents who find themselves in criminal proceedings have to be informed about the imminent immigration consequences—deportation—of their guilty plea.³⁶

The majority of recent theorizing of criminalization of migration converges around the crimmigration thesis.³⁷ In 1996 three pieces of legislation—the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), the Antiterrorism and Effective Death Penalty Act (“AEPDA”) and the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) were passed by the United States Congress. Since these bills became law, the boundaries between immigration law and criminal law have become blurred in the United States, linking migration and criminal and security issues.³⁸ At the root of this convergence of criminal and immigration law is membership theory, which emphasizes a distinction between outsiders and insiders; its flexible nature allows the decision-maker to determine who is part of the community and which rights may apply.³⁹ The various conceptualizations of the crimmigration thesis seem to rest on a well-known argument: “Immigration law has been saturated with the punitive or coercive aspects of criminal law but has not absorbed the procedural protections of criminal law; the solution is to incorporate those protections,” reverse this asymmetry, and reduce the vulnerability of the migrant population.⁴⁰ Weber and McCulloch, reviewing the different theoretical advancements around penal power and border control, applauded the crimmigration thesis as accounting for *how* immigration and border control “are being done” in the current era of border criminology.⁴¹

Russia—in contrast to the United States—has not formally criminalized its migration law.⁴² The majority of violations of migration law that lead to migrants’ “day in court” are of an administrative nature and follow administrative process.⁴³ The analysis of migrants’ experiences in courts in Russia therefore invites a deeper reflection about the nature and the consequences of the civil and criminal labels in migration law.⁴⁴ The expulsion order that accompanies the administrative fines for immigration violations (working without a work permit or lack of residence registration) equates to *de facto* self-deportation. Migrants are given five days to leave the Russian territory; otherwise their stay becomes illegal, and in the event of a further document check and yet another administrative conviction, the state takes control of their expulsion (and detention). Because of changes in the law in

2013 (No. 207-FZ of 23.07.2013), the de facto deportation is a nondiscretionary part of administrative penalty in the places of the greatest concentration of migrants, like Moscow or St. Petersburg (and their respective greater administrative areas). It also suggests that the judges and courts have been called upon to be important enforcers of Russian immigration law through being designated a special role in the immigration management and control system. As in this chapter we focus on migrants' experiences in courts—interrogating the disruptive effects it has on immigrants' livelihoods—the de facto deportation definitely constitutes the most punitive aspect of the administrative justice system. It could be seen as one of the Soviet legacies of the current Russian legal system—an inclination to seek solutions to societal problems in repressive measures.⁴⁵ Examining Russia's legal tradition helps to explain this phenomenon: there was no need to criminalize Russian immigration law, as its repressive functions could be equally accommodated within the existing framework of historically punitive administrative law.⁴⁶

The legal differences between the largely criminalized and administrative nature of immigration law in the U.S. and Russia, as pertaining to the structural nature of these immigration systems, have to be acknowledged.⁴⁷ We believe, however, that as we focus on individual migrants and their experiences, the structural and legal architectural conditions perhaps take a more peripheral role. The following sections show that migrants may experience administrative process in equally punitive terms, regardless of its formal classification.

Ethnographic Methods

In 2015, Alejandro Olayo-Méndez spent three months in the city of Nogales at the border region between Mexico and the U.S. state of Arizona. During those months, he not only observed the hearings of Operation Streamline at the Tucson courthouse, but also visited with the U.S. Border Patrol in Nogales, Arizona, a key actor of the Operation Streamline. The stay at the border region and the visits to Arizona were part of a bigger research project that explores the dynamics of migration processes in Mexico, especially the role of humanitarian aid provided to irregular migrants, deportees, and asylum seekers.

Olayo-Méndez's research sought to understand the criminalization dynamics of immigration law involved in Operation Streamline, which range from detention, prosecution, and incarceration to removal. He held several meetings with U.S. Border Patrol aimed at better understanding of enforcement practices, including surveillance of different areas, procedures during apprehension, and processing during custody. The visits to the courthouse over the course of two months sought to witness firsthand the way in which the law is applied and justice

delivered for prosecuted migrants. Additionally, the project sought to recognize the challenges faced by humanitarian organizations trying to deliver aid in the Sonoran Desert, as well as the process of identification and burial of dead and unidentified migrants. To this end, he met with humanitarian groups like the Samaritans and No More Deaths and visited the Pima County Office of the Medical Examiner-Forensic Science Centre and Evergreen Cemetery in Tucson, Arizona.

Operation Streamline is a comprehensive immigration process that includes more than the hearings at the courthouse. It starts with the apprehension of irregular migrants by the U.S. Border Patrol. Migrants are registered at Border Patrol stations where biographical and biometrical information is collected from them; they are also questioned and checked about their alleged criminal history. There Border Patrol makes the decision whether or not to refer apprehended migrants to streamline prosecution.⁴⁸ Those migrants referred for prosecution are charged with illegal entry (8 USC § 1325). Cases are accepted and charges presented at the U.S. Court. At this point, often a couple of weeks after apprehension, a U.S. magistrate court holds the trials and sentences migrants. After the sentence, convicted migrants are taken into custody for the duration of their sentences. Once the sentence has been fulfilled, U.S. Immigration and Customs Enforcement (ICE) or Border Patrol takes back the custody of the migrant and processes their removal back to Mexico or another origin country.⁴⁹ Hearings at the courthouse are the most visible part of Operation Streamline and the most accessible to an outside researcher.

At the time of the visit, hearings for Operation Streamline were conducted twice a week. Normally, there will be a hearing every day. Defendants are assigned a lawyer to represent them. Often, these are Criminal Justice Act attorneys who are hired to represent a growing number of defendants. These attorneys counsel about four to six defendants at a time. They have brief consultations with their clients the morning before the trial. Thus, there is not much time to properly explain the charges and the consequences of the charges their clients face if convicted. Nor do they have time to address the particularities of each case, discuss the facts and the individual circumstances of the case, or prepare a strategy for the imminent trial. Similarly, the circumstances do not allow migrants to properly understand the legal process in which they are involved or to discuss with attorneys their cases to assess if any of them may have a rightful claim for asylum or to explore other legal avenues to remain in the country lawfully. In these circumstances, migrants face the U.S. legal system *de facto* alone.

Agnieszka Kubal spent over five months in Russia in 2014 collecting empirical data in a variety of settings. Her broader research project focused on human rights and access to justice for migrants in Russia. As part of this project, she conducted a three-month ethnographic study of a sample of low-level courts in

Moscow (district courts, Moscow City Court, and Moscow Oblast Court). She entered the court building as a researcher and observed the cases once she had received permission from the judge presiding over these cases. She usually sat at the back of the room facing the judge, on the benches reserved for the audience. Normally she would be the only person not involved in the proceedings who would be occupying this place, as immigration cases are not particularly spectacular or known to attract a public audience.

The immigration cases in the Moscow City Court are organized so that the court's president allocates them to a selected number of judges who specialize in immigration questions. When Kubal was observing cases in the Moscow City Court there were two or three judges who, throughout the morning or the afternoon sessions of the court's working day, would be hearing only immigration law cases. Each judge would be allocated approximately five to seven of the 18.8 and 18.10 CAO cases per session. The judge usually heard the cases alone; there were no clerks or assistants present in the courtroom. As a result, the proceedings had to run swiftly, with about five to ten minutes spent per case. Sometimes, for one time slot, there were two or three cases allocated. The judge explained that this happens, as sometimes the parties do not show up in court, so these additional allocations help to reduce the judge's waiting time. However, the other side of the coin was that, when all the parties did actually show up, these overbookings led to delays in cases being heard and inspired derisive comments about the (dis)order of justice in Russia among the people who were waiting in the corridors for the trials to commence.

The courtroom proceedings were organized as follows. An usher normally called the party—consisting of the defendant, with or without legal representative—to enter the room. The usher showed the parties to take their place in front of the court's bench, facing each other. When required, this place would also be occupied by an interpreter—either ordered by the court or brought in by the defendant. Shortly afterward, the usher ordered the parties to stand, and the judge (dressed in a black robe) entered the courtroom from the adjacent office and sat on a raised platform behind the bench. The defendant or his/her legal representation usually kept silent until requested to speak by the judge. It was evidently the judge who was in charge of the room.

Every case hearing would follow a similar script. First, the judge would check all the documents submitted by the state immigration enforcement agents, the decision of the lower court, and the appeal, as contained in the case file, including the power of attorney (*doverennost'*) for the defense lawyer. S/he would inspect the passports of the defendant and his or her legal representative to confirm their identity. The judge then opened the proceedings by introducing him- or herself and asking the defendant if s/he trusted the judge to hear the case. Upon an affirmative response, the judge quickly read out the procedural rights of the defendant under an administrative process (including the right to an interpreter),

which the defendant would be requested to acknowledge in writing. Only after seeing to these formal procedures would the judge move on to the facts of the case, hear the arguments of the defense, and finally render a judgment.

In the empirical section following, one of the authors of this essay focuses on typical cases that the court would hear and render judgments. We adopted a country-by-country rather than a thematic perspective to further highlight the striking similarities between these two immigration law systems, despite the different starting points.

“Migrants’ Day in Court”—U.S. and Russian Perspectives

The E.A.D. U.S. Courthouse is located in downtown Tucson, Arizona. There almost every day about seventy people are tried and sentenced for crimes related to unauthorized entry or reentry into the United States. This courthouse is one of the places where the legal proceedings of Operation Streamline take place. After completing registration and passing the security filter at the courthouse lobby, one can access the room where the hearing will be held. The hearing is open to the public. Attorneys representing migrants and other visitors, often from humanitarian organizations, could be found outside the courtroom before the hearing. There are clear indications that no photography, recording, or use of mobile phone is allowed in the courtroom, although one is allowed to take notes. One member of a humanitarian group summarized the experience of attending these hearings by saying:

One comes here to bear witness and to stand in solidarity with these migrants that experience the injustice of the legal system. At this point, there is nothing else one could do.

Upon entering the room, one should take a seat and remain quiet. There is an edginess that can be felt in the room as lawyers take their place and wait for migrants (defendants) to be allowed into the courtroom and for the judge to enter and officially begin the hearing. Each hearing can take between one and two hours, depending on the number of migrants whose cases are being heard on that day.

It has to be stressed that migrants do not appear in the court freely. They are led in by a U.S. marshal from a special pretrial detention. Their shoelaces and belts have been removed, and they arrive in handcuffs, along with chains around their waists, shackled by their ankles. They move slowly because of the chains and often stare at the floor. Their faces look confused, tired, and deeply sad. It is not too much of an epistemological stretch to compare the scene of people appearing,

walking, and waiting in chains led by a court officer to the historical scenes from slavery times where slaves were sold or punished in open plazas. The defendants are asked to sit in rows at the center of the courtroom. The court officer announces that the judge is about to enter the courtroom, and everybody stands up. Then, migrants are called by name and told of the plea agreement and the charges brought against them. Since many migrants do not speak or understand English, they wear headphones and listen to the translations of the proceedings. An attorney mentions to the author that if the defendant does not speak Spanish or English there are no special accommodations made for him/her. Then, the judge asks the whole group if they understand those charges, if they are satisfied with their legal representation, and if their plea is voluntary. As a group, they respond “Si” (Yes), and the court translator reports back to the judge the answer.

The judge then turns to individual migrants and asks them one by one how they plea to the charges. The answer is often “culpable” (guilty). After the U.S. Border Patrol has read the factual basis for the case (statement of facts), the judge asks the defendants if they have anything to say or to add. For the most part for the remainder of the trial, the answer is “no” or simply silence.

However, during one of Olayo-Méndez’s visits Angela⁵⁰ stood up and said in Spanish:

Your honor, I lived in this country for many years before I was deported. Since then I have been trying to get back into the country. I have a daughter that is a U.S. Citizen and she needs me. My only crime is wanting to be with her. So, you can deport me as many times as you want. I will continue trying to be reunited with her.

After listening attentively, the judge responded:

I understand that these situations are complicated. And that occasionally there may be extenuating circumstances. However, my job is to impart justice according to the law. I am bound to do that and there is nothing I can do, but to work within those boundaries.

After that, the judge dictates a sentence to each of the defendants. One by one, migrants from Central American countries and Mexico hear that they will spend in jail thirty, sixty, ninety, or up to 180 days depending on their particular circumstances and how many times they have tried to enter the United States illegally. Angela is given a ninety-day sentence. At the end, the U.S. marshal asks everybody to stand up again, and the judge departs. There is more confusion now, as migrants do not know what is next. Many of them keep looking down, and, when possible, one can see a deep disappointment on their faces. Migrants have to get up again. Moving with difficulty and following the instruction from the court officer, they leave the courtroom to be handed into custody of other officers so they can be transferred to the prisons where they will complete their jail sentences, only to be handed once more to ICE officials for their removal. The particular hearing described here in detail took place in just under two hours. During this

hearing, fifty-three migrants were tried and sentenced (leaving approximately two minutes per migrant defendant of an individualized justice process).

Upon the completion of their jail sentences, these migrants are deported. They travel handcuffed and in the company of a U.S. marshal across the border. Upon arrival, there is always confusion, as migrants return with few of their original belongings, without an I.D., and with no money. If migrants worked during incarceration, they receive their payment through an ATM card that charges high fees for any cash withdrawals in the country of origin (Mexico or Latin American countries). In any case, migrants return in extremely vulnerable positions—economically, socially and politically—often only to resume another attempt to enter the U.S. illegally.

Olayo-Méndez’s subsequent visit to the courthouse was no different. Same procedure, same chains, same faces, same charges, same responses, same sentences given by the judge, and same fate for migrants. This time no one said anything at the end or challenged the judge’s decision. Witnessing this scene and imagining playing it over and over every day, one can see why Operation Streamline is called “Assembly Line Justice.”⁵¹ At the same time, Angela’s case and the judge’s response show the moral dilemmas inherent in a legal procedure that aims to punish migrants regardless of any extenuating circumstance.

The detention process, the waiting, the uncertainty about what is going to happen—other than knowing that U.S. migration authorities had captured them—the chains, the trial, and the incarceration time are part of how Operation Streamline punishes and instills fear in migrants, hoping that they would not attempt another reentry, even when, for some of them, their only crime is entering the country illegally to be reunited with their U.S. family members. Often, the desire to be reunited with close family is stronger than any judicial system. As Angela said, “You can deport me as many times as you want. I will continue trying to be reunited with [my daughter].” Undoubtedly, these procedures have psychological effects on migrants as well as on their families, who rarely know of their whereabouts. However, the consequences and punishment involved in the legal system do not end with the removal of the person from the United States. Aside from family separation, there are always risks of losing custody of the children and being banned from returning to the United States through legal channels for prolonged periods.⁵² At times, migrants are truly fleeing violence and may have a rightful claim asylum. However, the hasty prosecutions of their illegal entry in flip-flop courts focusing on their *immigration crime*,⁵³ the subsequent removal, and the context for such removal do not allow them to access the legal means to put their claim forward and remain in the country lawfully.⁵⁴

And what of migrants’ experiences of their day in court in Russia?⁵⁵ Many of the cases that Kubal observed resulted from Federal Migration Service (FMS) raids on the premises occupied by migrants—either to allege that they were living

there without the required residence permit (registration) or they were working there without the work permit.

One day a group of seven Central Asian men was brought into the B. District court following an FMS visit to a construction site in Moscow. The group was escorted to the court by two FMS officers on duty and charged with offenses against Art. 18.10 (part 3) of the CAO (working without a work permit). The men were kept waiting in the corridor. Kubal happened to be in court at that time, as she had just finished observing a different case. The FMS officers were sitting next to the Central Asian men, reviewing the documents in the case file: the pictures from the raid, the protocols, and the printouts from the FMS database confirming the men's immigration record in Russia—when did they arrive, how did they cross the border, when did they apply for residence documents and/or work permit?

After some time the FMS officers collected all the case files and submitted the bundles of documents, together with the passports of the Central Asian migrants, to the judge's assistant. The assistant took the files to the courtroom. Kubal did not have a chance to examine these particular case files in detail, but from observing the FMS officers, she concluded that the case files looked standard in content and size. The Federal Migration Service would normally supply the lower court with (1) protocols from the immigration raids, (2) a collection of photographs taken on site, and (3) elaborate affidavits, signed by migrants, confirming that they actually lived and/or worked at the raided addresses. This type of evidence was then debated and reviewed by the appeals court. This type of evidence served as the main reference for rendering a judgment.

After some time, the judge's assistant emerged from the room and asked if any of the men—Central Asian migrants—were married to Russian citizens or had close family members who were Russian citizens. They all responded negatively. The judge's assistant went back to the courtroom. The FMS officer turned to the Central Asian migrants and said, "Next time you have to do work permits, just do the work permits." The judge's assistant emerged again from the courtroom and asked if any of these men had small children who could be Russian citizens. Three of the men orally gave details of the gender of their children, together with their dates of birth. The judge's assistant, equipped with this information, went back into the courtroom. Then, the judge started calling the men into the courtroom one by one.

This interaction between the FMS officers, the defendants, and the judge's assistant—prior to the actual trial—made us think that the low-level district court judges act primarily as the auditors of the immigration case file. They know what the law is, and they know what documents should be included in the case file if the case is to be processed quickly and efficiently.⁵⁶ Prior to the trial, the judge must review (or audit) the written evidence supplied by the FMS, and the assistant's

role is to make sure that all the procedurally required information is supplied and filed accordingly. The judge specifically asked whether the men had any close family members who were Russian citizens, as, given the fact that Russia is party to the European Convention on Human Rights, Article 8—the right to private and family life—could have been applicable to these cases. What this meant in practice was that the men were still found responsible for committing a particular immigration offense, but the expulsion (or self-deportation) would be excluded from the final judgment, given the men’s strong family ties in Russia. In other words, the judge had to check these circumstances not necessarily from goodwill toward the migrants but to make sure that all the grounds that might have resulted in having the decision overturned on appeal were covered. About an hour later, all the defendants were handed written court judgments confirming that they have all committed administrative offenses working without a required work permit. The judgment specified the fine to be paid (5,000 rubles) and contained an expulsion order from Russia to be carried out “by independent means” (*samostoyatel’no*) within the next five days. With these court judgments in hand, the men were released from the custody of the FMS officers and allowed to leave the court building.

As Kubal already observed elsewhere, the main attribute of these everyday immigration law cases adjudicated in accordance with the administrative procedure was documentary evidence contained in the case file.⁵⁷ These cases, as “paper cases,” were primarily decided according to what documents could be found in the bundle with which the FMS supplied the court. The judge very much scrutinized the material evidence contained in the case file, but did not venture further as to question to what extent these papers, protocols, and affidavits actually reflected the real facts of the case. The judge did not question the actual content of the file. Given the messy empirical reality and multiple possible scenarios of what really happened on the day of the raid at the building site (including the style of evidence-gathering by FMS), the written documents contained in the case file and signed by the defendants were the only “stable and solid” things according to which the judge seemed able to manage the reality and adjudicate the case. Dealing with complex legal rules and their haphazard enforceability by the FMS, the judge relied on the material evidence to take control over the volume of cases that still awaited decisions and deal with them in an efficient manner.

Given the nature of the administrative procedure, migrants had the right to appeal the decision of the lower court to a higher-instance court. Of course, not many migrants actually used this right. The right to appeal was primarily used by those migrants who were able to find legal representation. The quality of the legal counsel varied a lot; it ranged from excellent pro bono immigration lawyers who would passionately dispute the evidence presented by the FMS to lawyers who did not necessarily specialize in immigration cases and had taken the case because of the fee involved. At the appeals stage, the primary attention in the courtroom was

again directed to the case file. As a result, migrants with whom Kubal spoke afterward quite often had the impression that “the decision has already been made” or “the judgment has already been prepared—the appeal trial is just a formality.” The administrative case file logic meant that the judge once again turned to the papers before him or her, often at the cost of examining the witnesses and asking questions of the defendant. Migrant-defendants therefore directly questioned the discretion of the appeals judge in giving other judgment rather than just confirming (or rubber-stamping) the lower court’s decision.

For example, M, a migrant worker from Tajikistan, was found guilty of working without a work permit on the basis of a photograph provided by the FMS in which he was sitting behind the steering wheel in a car, and an affidavit where he confirmed that he had been working as a driver. In the appeals city court M wanted to clarify this evidence, saying that in the picture taken by the FMS and contained in the case file, he, indeed, was sitting in the car, but he was waiting for a friend. That friend came with him to testify in court. The judge did not seem to give much credibility to this explanation, nor did he attempt to hear the witness brought before her. Instead, the judge brought everyone’s attention to the signed affidavit already contained in the case file:

But I have an affidavit signed by you, saying you were hired to work by company X., you were supposed to drive and deliver a package from this place to this place, it was an oral contract and you were to be paid 4,000 roubles per day. . . .

M: [interrupting] But I have never earned that much, anywhere in Moscow. This is not a day’s going rate of pay, it is far too high!

M was not trying to be disrespectful to the judge—he interrupted the judge but actually made an important observation about the artificiality of the affidavit-only-based evidence. He was genuinely astonished by the figure quoted in the testimony. He was attempting to challenge the affidavit for what it was: a piece of paper with all the correct signatures and official stamps to make it look like formal evidence but that was in no way connected to the reality of the situation. It did not account for what had happened on that particular day, nor was it true in general when it described the context of going wages for migrant workers in Moscow. The judge responded:

But you have signed it. This is your signature. I have to expel you, as this is the minimum penalty.

The migrants, the defendants, the agents were rarely recognized *in* the people pleading before the judge who physically came to the court trying to clarify evidence and appeal the decision of the lower court. Instead, to the judges the agents were those *of whom* the documents contained in the case file spoke, who were portrayed on the photographs, or who signed the affidavits (sometimes *under duress* or without the working knowledge of Russian). The way the judges read and interpreted this documentary evidence in courts was crucial for the case file to

attain the hyperbolic reality-mediating function: *Quod non est in actis, non est in mundo*—What is not kept in the case file does not exist.⁵⁸ This gives an impression that the trial indeed is only a formality, and the “real” decision has already been taken.

We do not want to portray the Russian judges as heartless. The perceived lack of discretion in how they arrived at the judgments and strict adherence to the formal legality of the case file could often be conflated with outward hostility toward the migrants themselves. We would argue that it is not so much a negative attitude to migrants as a bureaucratic and administerial approach to managing their docket full of immigration cases that makes the judges pay utmost attention to the papers before them.⁵⁹ They rely on the case file logic as a way of managing their workload in order to process these cases as quickly and as expeditiously as possible. In the breaks before the different cases, or even before the case has been formally closed, Kubal would often hear the judge saying:

I cannot really change the decision—it was legally taken.

I feel sorry for you, you work here, you live where possible, but Moscow has a different regime. I have to follow the law.

The oft-perceived rubber-stamping on the written evidence by the appeals judge leads to a conclusion that the delivery of justice does not seem to be related to hearings in a courtroom but is rather accumulated gradually through the various stages of pre-trial document gathering. It starts when the Federal Migration Service forms a suspicion and begins to investigate and continues through the several phases of the court proceedings.⁶⁰ The appeals courtroom in this administerial and bureaucratic model of justice is merely the final point in the chain. The collateral effect—particularly vocal in the corridors of justice immediately after the trial—is that the appeals court is often blamed for the procedural injustices of the pre-trial stage, and all the different (arguably autonomous) elements in the law enforcement hierarchy are conflated into one big, oppressive and unjust institution. “The judgment was ready before the trial had even taken place”—is an explanation I have heard from most of my respondents who were not successful in court.

Discussion

What can be said about the U.S. and Russian immigration justice systems? Are they indeed a mirror image of one another? Following the Cambridge Online Dictionary, “a mirror image” is “something that looks exactly the same as another thing but with its left and right sides in opposite positions.”⁶¹ This analogy strikes us as true if we compare many elements of the system, particularly taking the

migrants-defendants' perspective; however, the full picture is more complex than the catchy mirror metaphor.

As mentioned earlier in this chapter, any comparative discussion between the United States and Russia in the domain of immigration law has to start with the initial structural and ideological differences: the U.S. immigration law system has been (largely) criminalized, while in Russia it still lies primarily within the administrative domain. The cases in Operation Streamline are criminal cases for illegal border crossings, while the cases heard before the domestic courts in Moscow follow the administrative law procedure for illegal residence or undocumented work. These differences can clearly be observed in the materiality of the trial and the court hearing. On the U.S. side Olayo-Mendéz documented the unkempt outlook of the defendants (some U.S. districts give defendants prison uniforms, but others do not) and the highly symbolic (though highly disproportionate and unnecessary) chains and shackles in which the migrant defendants appear in court for their cases to be heard. These experiences, particularly the visual and material decorum of the trial, are profoundly linked to the projected image of the criminalized immigration domain.

In Russia, in contrast, the migrant-litigants observed by Kubal were free to appear before the judge. Those migrants-litigants observed before the appeals court came because they disputed the verdict of the lower court—because they disputed their expulsion order, and because they hoped that the appeals court could reverse the judgment.⁶² While there were no chains and shackles, the administrative procedure that applied in these immigration cases manifested itself in the sole reliance on written evidence: documents, photographs, protocols from the immigration raids, affidavits signed by the defendants. This materiality of the “trial by paper” was the most salient feature of the administrative immigration proceedings in Russia.⁶³

Yet despite these initial differences, we may draw some analogies in how the two immigration justice systems were experienced by migrants.

The first analogy relates to the “on the ground” experience of the principle of individualization of justice, or rather how the actual experiences of the legal process put this principle into question. Many have dubbed Operation Streamline the “conveyor belt of justice”;⁶⁴ Olayo-Mendéz demonstrated that one two-hour hearing might involve up to seventy migrant defendants in the room. The judge at different stages of the trial attempts to make the process somewhat individualized by asking the defendants in turn about their plea and whether they have anything to add about the statement of the facts of the case. However, the convention and the decorum of the trial do not inspire the confidence to delve into personal extenuating circumstances that may pertain to an individual case. As Olayo-Mendéz documented, only the bravest or the most desperate migrant-defendants actually decide to speak to the judge and present the intricacies of their personal

circumstances. Others quietly and passively accept the convention of the mass trial and limit their voice to monosyllables such as “guilty” or opt for submissive silence.

In Russia, while at face value, the migrant-defendants enter the courtroom individually and the judge listens to their cases one by one, the time difference between the consecutive hearings is sometimes as short as five to ten minutes. This is because of the high volume of the immigration cases and the need for the judge to process them quickly and efficiently. A ten-minute trial—which may result in a sentence affecting all future plans and livelihood in Russia—really puts into question how the individualization of the justice principle is experienced in practice. The individualization of justice in Russia is further put to question by deciding the cases on the basis of formal written documents with little or no time afforded to hear the personal stories of migrants appearing before the judge. That would lead to significant delays in the tightly knit schedule of processing these cases or, in the most serious scenario, could result in the judges losing control of their docket.

The second analogy we found striking when comparing our empirical material was how the justice by migrant-defendants in the United States and in Russia was perceived as a “done deal.” Migrants in the U.S. sensed the inevitability of the guilty plea; this was reflected by their passive participation in the trial—they kept their heads low, they did not talk, they did not try to present “their version of events” or voice extenuating circumstances, even when requested to do so by the judge. The “done deal” nature of the trial was also confirmed by the attitude of the judge in Olayo-Mendéz’s account; he seemed to be sympathetic to the plea by Angela about her U.S. citizen daughter, but at the same time had to “act within the remits of the law.” The scope for discretion and a change of the judgment seemed significantly limited, if not outright nonexistent.

Similarly, in Moscow, because of the strict reliance on the formal, written evidence material contained in the case file, many migrants perceived the judge as simply rubber-stamping the evidence rather than delivering justice. They did not feel like they had the opportunity to be heard or share “their side of the story.” Sometimes, like in the case of M before the appeals court, they categorically challenged the written evidence for what it really was: a piece of paper with stamps and signatures but detached from everyday realities of “migrant Moscow.”⁶⁵ This did not seem to make a difference or change the course of the trial; many migrants thereby rightly felt that they were left outside the justice system, that the decision had already been taken regardless of whether they showed up to the court or not. These experiences were tied to the structural position of the judge as bounded by strict immigration laws. Moscow and greater Moscow, as the capital city and the place of one of the greatest concentration of migrants, follow their own immigration regime, whereby any of the immigration administrative offenses attracts an expulsion order as the minimum penalty. This

lack of discretion in delivering the judgment was echoed in the words of one of the judges observed by Kubal: “I have to follow the law. In Moscow we expel everyone.”

Conclusion: beyond Crimmigration

The main conclusion that stems from the comparative analysis of the everyday experiences of immigration cases under (largely) criminalized and administrative jurisdictions is that there are more similarities between them than there are differences. What looms large from our ethnographic data is a generally punitive experience of the immigration justice system whereby “the process is the punishment.”⁶⁶ This has important repercussions for the crimmigration thesis.

Graham Hudson, in his recent controversial but extremely well-argued piece entitled, “Does Crimmigration Theory Rest on a Mistake?,” proposed in relation to the punitive aspects of immigration law that “it is not necessary to invoke the concepts and organising divisions of criminal law to describe what is going on.”⁶⁷ Expanding the notion of crimmigration or attributing the punitive aspects of immigration law solely to the encroachments of criminal law, where in fact these could easily be explained by coercive features inherent to administrative law itself,⁶⁸ is not the most productive way forward, either for analytical clarity or for the future of the crimmigration thesis. We agree with Hudson that “overreliance on criminal law as a heuristic device can harden faulty concepts and categories of thought into unalterable form, allowing accreted doctrine and underlying ideologies of exclusion to delimit constitutional aspirations.”⁶⁹ Our comparative study illustrates more similarities with regard to *how* immigration control is exercised under (largely) criminalized and administrative jurisdictions than the uncritical reliance on crimmigration would perhaps permit.

Perhaps it is time to move beyond the criminal-civil dichotomy that crimmigration (unintentionally) reproduces.⁷⁰ In the various conceptualizations of the crimmigration thesis, one thing seems clear: the solution to punitive or coercive aspects of criminal law with which immigration law has been fused is the incorporation of protections inherent in criminal law.⁷¹ Yet the proceedings for immigration law violations under Operation Streamline—we would say, “a bread-and-butter criminal law applied in the context of migration”⁷²—demonstrate that bringing in criminal law-derived procedural protections does not necessarily sufficiently counterbalance the punitive elements inherent in the legal process. The counsel time afforded to defendants in the morning ahead of the court hearing does not make any difference to their legal representation and is not in any way outcome-determinative. The principle of individualization of justice is compromised in “conveyor belt” trials in flip-flop courts,⁷³ which see up to

seventy defendants having their cases heard at once. The waiver of protections normally afforded to defendants in criminal justice proceedings might bring a significant downgrade of their “crime” from felony to the petty offense of illegal entry or a misdemeanor charge of possessing a fake I.D.⁷⁴ However, the outcome of these tradeoffs is the same: less time in prison only translates to quicker removal from the country. Deportation is a collateral consequence of a guilty plea. Given this evidence, we question whether the organizing principle of crimmigration actually sheds any light on what is going on here, as the procedural safeguards, tradeoffs, and assurances put in place seem to make no difference to the outcome of these cases. These cases rather seem to be predicated upon bureaucratic-administerial logic, serving the policy goal of processing them as quickly and efficiently as possible.

The Russian element of our comparative case study engages with and adds to the growing body of literature that further reveals the breakdown of the civil-criminal dichotomy in practice.⁷⁵ In Russia, the borders between criminal and administrative law and procedure have historically been rather porous: officers from the Federal Migration Service (which until 2016 was an administrative agency) cooperate with local police to enforce “civil” immigration regulations set by the very same administrative agencies.⁷⁶ Duress and social exclusion associated with an expulsion order, too often accompanied by the language of blame,⁷⁷ have been part of immigration law centered on “dispassionate management of population groups.”⁷⁸ While migrants have the right to appeal their cases, and while some of them use this right and appear freely before the judge, these procedural assurances do not seem to counterbalance the highly punitive experiences of the justice process that emerge from our ethnography. We do not find the basic premise of crimmigration helpful here to account for these nuances, many of which are not specific to Russia.⁷⁹

Indeed, the very features of the Russian immigration law trials that compelled us toward the comparative analysis of the cases churned out under Operation Streamline in the United States were the striking similarities: the perceived lack of individualization of justice principle, the inevitability of the outcome of the trial, and the lack of judicial discretion. *Why* does it happen? Our overall conclusion is that these immigration cases, regardless of the criminal or administrative jurisdictions under which they are heard, are overridden by the bureaucratic-administerial logic of efficiency. The judges in U.S. flip-flop courts and in Moscow are primarily concerned with processing these cases as quickly and expediently as possible—to clear their docket and make space for more cases that inevitably need to be decided the following day. The underlying bureaucratic efficiency, despite the formal procedural assurances of the court process, makes the experiences of these cases so uniformly punitive.

Notes

¹ Executive Order 13768, signed January 25, 2017: “(c) Pursuant to section 235(b)(1)(A)(iii)(I) of the INA, the Secretary shall take appropriate action to apply, in his sole and unreviewable discretion, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II).”

² “Ethnic Profiling in the Moscow Metro,” *Open Society Institute*, 2006, http://www.soros.org/sites/default/files/metro_20060613.pdf.

³ A. Kubal, “Refugees or Migrant Workers? A Case Study of Undocumented Syrians in Russia—LM and Others v. Russia,” *ECtHR* (March 14, 2016), *Journal of Immigration Asylum and Nationality Law* 30, no. 4 (2016a): 265–82; K. Troiskiy, “Administrative Expulsion from Russia: Court Proceedings or Mass Expulsion?,” 2016, http://refugee.ru/wp-content/uploads/2016/05/Doklad-o-vydvoreniyakh_pechat.pdf.

⁴ See for the USA, C. Menjívar, and L. J. Abrego, “Legal Violence: Immigration Law and the Lives of Central American Immigrants.” *American Journal of Sociology* 117 no. 5 (2012): 1380-1421.

⁵ “Streamline: Measuring Its Effect on Illegal Border Crossing,” *Department of Homeland Security*, 2015, http://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf; A. Burrige, “From the Desert to the Courtroom: Challenging the Invisibility of the Operation Streamline Dagnet and En-Masse Hearings,” in *Migration, Squatting and Radical Autonomy*, ed. P. Mudu and S. Chattopadhyay (London: Routledge, 2017), 35–39.

⁶ J. J. Lydgate, “Assembly-Line Justice: A Review of Operation Streamline,” *California Law Review* 98, no. 2 (2010): 481–544; J. Slack, D. E. Martínez, S. Whiteford, and E. Peiffer, “In Harm’s Way: Family Separation, Immigration Enforcement Programs and Security on the US-Mexico Border,” *Journal on Migration and Human Security* 3, no. 2 (2015): 109–28.

⁷ “Streamline.”

⁸ Attorney General Jeff Sessions Announces the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement,” *Department of Justice, Office of Public Affairs*, 2017, <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-announces-department-justice-s-renewed-commitment-criminal>.

⁹ J. M. Chacón, *Narrowing Asylum Grounds, Family Separations and Supreme Indifference at the U.S. Border, 2018*, Border Criminologies Blog, Accessed from <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/07/narrowing-asylum> on 9 July 2018.

¹⁰ V. S. Malakhov, “Russia as a New Immigration Country: Policy Response and Public Debate,” *Europe-Asia Studies* 66, no.7 (2014): 1062–79, <http://doi.org/10.1080/09668136.2014.934140>.

¹¹ S. Abashin, “Migration Policies in Russia: Laws and Debates,” in *Migrant Workers in Russia: Global Challenges of the Shadow Economy in Societal Transformation*, ed. A.-L. Heusala and K. Aitamurto (London: Routledge, 2017: 16–34); Kubal, “Spiral Effect of the law: Migrants’ Experiences of the State Law in Russia—A Comparative Perspective,” *International Journal of Law in Context* 12, no. 4 (2016): 453–68, <http://doi.org/10.1017/S1744552316000215>.

¹² Kubal, “In Search of Justice: Migrants’ Experiences of Moscow City Court,” in *Sociology of Justice in Russia*, ed. M. Kurkchiyan and Kubal (Cambridge: Cambridge University Press, 2018).

¹³ M. Kurkchiyan and Kubal, “Administerial Justice: Concluding Remarks on the Russian Legal Tradition,” In *Sociology of Justice in Russia*, ed. M. Kurkchiyan and Kubal (Cambridge: Cambridge University Press, 2018), 259–77.

¹⁴ M. Lynch, “Backpacking the Border: The Intersection of Drug and Immigration Prosecutions in a High-Volume US Court,” *British Journal of Criminology* 57, no. 1 (2017): 112–31.

¹⁵ M. Bosworth and M. Guild, “Governing through Migration Control: Security and citizenship in Britain,” *British Journal of Criminology* 48, no. 6 (2008): 712.

¹⁶ “The International Migration Report 2017 (Highlights),” *UN Department of Economic and Social Affairs*, 2018, <https://www.un.org/development/desa/publications/international-migration-report-2017.html>.

¹⁷ M. Light, “Policing Migration in Soviet and Post-Soviet Moscow,” *Post-Soviet Affairs* 26, no. 4 (2010): 275–313.

¹⁸ H. Pilkington, *Migration, Displacement, and Identity in Post-Soviet Russia* (New York and London: Routledge, 1998).

¹⁹ D. Massey, J. Arango, G. Hugo, A. Kouaouci, A. Pellegrino, and E. J. Taylor, “An Evaluation of International Migration Theory: The North American Case,” *Population and Development Review* 20, no. 4 (1994); Massey and K. Espinosa, “What Is Driving Mexico-US Migration? A Theoretical, Empirical and Policy Analysis,” *American Journal of Sociology* 102, no. 4 (1997): 939–99.

²⁰ J. M. Krogstad, J. S. Passel, and A. C. D’Vera, “5 Facts about Illegal Immigration in the U.S.,” *Pew Research Center*, 2018, <http://www.pewresearch.org/fact-tank/2018/11/28/5-facts-about-illegal-immigration-in-the-u-s/>.

²¹ Abashin, “Migration Policies in Russia,” 16–34.

²² E. Aranda, C. Menjívar, and K. M. Donato, “The Spillover Consequences of an Enforcement-First U.S. Immigration Regime,” *American Behavioral Scientist* 58, no. 13 (2014): 1687–95, <http://doi.org/10.1177/0002764214537264>; Menjívar, “Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States,” *American Journal of Sociology* 111, no. 4 (2006): 999–1037; Menjívar, “Immigration Law beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization,” *Annual Review of Law and Social Science* 10 (2014): 353–69.

²³ Chacón, “Overcriminalizing Migration,” *Journal of Criminal Law and Criminology* 102, no. 3 (2012): 613–52; A. G. Cervantes and Menjívar, “Mass Deportation: Forced Removal, Immigrant Threat, and Disposable Labor in a Global Context,” *Handbook of Race, Ethnicity, Crime, and Justice* (2018): 527–46; Menjívar, Cervantes, and D. Alvord, “The Expansion of “Crimmigration,” Mass Detention, and Deportation,” *Sociology Compass* 12, no. 4 (2018): 1-15.

²⁴ B. Davé, “Becoming ‘Legal’ through ‘Illegal’ Procedures: The Precarious Status of Migrant Workers in Russia,” *Russian Analytical Digest* 159 (2014): 2–6; M. Reeves, “Clean Fake: Authenticating Documents and Persons in Migrant Moscow,” *American Ethnologist* 40, no. 3 (2013): 508–24, <http://doi.org/10.1111/amet.12036>; J. Round and I. Kuznetsova, “Necropolitics and the Migrant as a Political Subject of Disgust: The Precarious Everyday of Russia’s Labour

Migrants,” *Critical Sociology* (2016): 1–18, <http://doi.org/10.1177/0896920516645934>; Kubal, “Refugees or Migrant Workers?,” 265–82; Kubal, “Spiral Effect of the Law,” 453–68; Kubal, “In Search of Justice.”

²⁵ “Ethnic Profiling in the Moscow Metro.”

²⁶ A. Doolotkeldieva, “Conducting Interviews with Labour Migrants in Moscow,” *CESR* 7, no. 2 (2008): 31–34; K. Hendley, “Varieties of Legal Dualism: Making Sense of the Role of Law in Contemporary Russia,” *Wisconsin International Law Journal* 29, no. 2 (2011): 233–62; J. Kahn, “In Search for the Rule of Law in Russia,” *Georgetown Journal of International Law* 37 (2006): 353–409; V. Ruget and B. Usmanalieva, “How Much Is Citizenship Worth? The Case of Kyrgyzstani Migrants in Kazakhstan and Russia,” *Citizenship Studies* 14, no. 4 (2010): 445–59, <http://doi.org/10.1080/13621025.2010.490038>; R. Urinboyev, “Migration and Transnational Informality in Post-Soviet Societies: Ethnographic Study of Po Rukam (‘Handshake’) Experiences of Uzbek Migrant Workers in Moscow,” in *Migrant Workers in Russia*, ed. Heusala and Aitamurto (London: Routledge, 2016); T. N. Yudina, “Labour Migration into Russia: The Response of State and Society,” *Current Sociology* 53, no. 4 (2005): 583–606, <http://doi.org/10.1177/0011392105052716>.

²⁷ A. Kubal, “Spiral effect of the law: migrants’ experiences of the state law in Russia – a comparative perspective.” *International Journal of Law in Context* 12, no.4 (2016): 453–468.

²⁸ Kubal, “Entry Bar as Surreptitious Deportation? Zapret na v’ezd in Russian Immigration Law and Practice: A Comparative Perspective,” *Law & Social Inquiry* 42, no. 3 (2017): 744–68.

²⁹ Kubal, “Spiral effect of the law”

³⁰ Menjívar and L. J. Abrego, “Legal Violence: Immigration Law and the Lives of Central American Immigrants,” *American Journal of Sociology* 117, no. 5 (2012): 1380–1421, <http://doi.org/10.1086/663575>.

³¹ Burrridge, “Differential Criminalization under Operation Streamline: Challenges to Freedom of Movement and Humanitarian Aid Provision in the Mexico-US Borderlands,” *Refuge: Canada’s Journal on Refugees* 26, no. 2 (2009): 78–91; Chacón, “Managing Migration through Crime,” *Columbia Law Review Sidebar* 109 (2009): 135–48.

³² S. H. Legomsky, “The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms,” *Washington & Lee Law Review* 64, no. 2 (2007): 489.

³³ *Ibid.*, 476, 480, 496.

³⁴ *Ibid.*

³⁵ *Ibid.*, 515–16.

³⁶ A. Ortiz Maddali, “Padilla v. Kentucky: A new Chapter in Supreme Court Jurisprudence on Whether Deportation Constitutes Punishment for Lawful Permanent Residents?,” *American University Law Review* 61, no. 1 (2011): 1–58.

³⁷ K. F. Aas, “Crimmigrant’ Bodies and Bona Fide Travelers: Surveillance, Citizenship and Global Governance,” *Theoretical Criminology* 15, no. 3 (2011): 331–46; Menjívar, Cervantes, and Alvord, “Expansion of ‘Crimmigration,’ Mass Detention, and Deportation,” 1-15; J. Stumpf, “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,” *American University Law Review* 56, no. 2 (2006): 367–419; Stumpf, “The Process Is the Punishment in Crimmigration Law,” in *The Borders of Punishment: Migration, Citizenship, and Social*

Exclusion, ed. K. Franko Aas and M. Bosworth (Oxford: Oxford University Press, 2013), 58–75; L. Weber and J. McCulloch, “Penal Power and Border Control: Which Thesis? Sovereignty, Governmentality, or the Pre-Emptive State?,” *Punishment & Society* 21, no. 4 (2018): 496–514.

³⁸ Chacón, “Overcriminalizing Migration,” 613–52; T. Golash-Boza, “The Criminalization of Undocumented Migrants: Legalities and Realities,” *Societies without Borders* 5, no. 1 (2010): 81–90; A. S. Hartry, “Gendering Crimmigration: The Intersection of Gender, Immigration, and the Criminal Justice System,” *Berkeley Journal of Gender, Law & Justice* 27, no. 1 (2012): 1–27; Stumpf, “Crimmigration Crisis,” 367–419.

³⁹ Stumpf, “Crimmigration Crisis,” 412.

⁴⁰ G. Hudson, “Does Crimmigration Theory Rest on a Mistake?,” *International Journal of Migration and Border Studies* 4, no. 4 (2018): 307.

⁴¹ Weber and McCulloch, “Penal Power and Border Control,” 3.

⁴² While illegal border crossing by presenting counterfeit documents is a criminal offense in Russia (pursuant to art. 30.3 and art. 322.1 of the Criminal Code of the Russian Federation), it does not apply to a great majority of migrants in Russia because of a visa-free movement with Central Asia.

⁴³ Kubal, “In Search of Justice.”

⁴⁴ A. Sarat, L. Douglas, and M. M. Umphrey, eds., *Law as Punishment* (Stanford, Calif.: Stanford University Press, 2011); C. Steiker, “Punishment and Procedure: Punishment Theory and the Criminal-Civil Procedural Divide,” *Georgetown Law Journal* 85, no. 4 (1997): 775–819.

⁴⁵ S. Pomorski, “Reflections on the First Criminal Code of Post-Communist Russia,” *American Journal of Comparative Law* 46 (1998): 392.

⁴⁶ Which Kubal did elsewhere, see Kubal, “Entry Bar as Surreptitious Deportation?”

⁴⁷ We readily acknowledge that not all U.S. immigration law has been criminalized, and U.S. immigration is of course still largely an administrative law system. While we note that many immigration cases in the U.S. are civil, we used the Operation Streamline case study to critically engage with the crimmigration thesis and thereby make our point of comparison with Russia even clearer.

⁴⁸ Lynch, “Backpacking the Border,” 112–31.

⁴⁹ “Streamline.”

⁵⁰ The name has been changed to protect the identity of the defendant.

⁵¹ Lydgate, “Assembly-Line Justice,” 481–544.

⁵² C. E. Hall, “Where Are My Children . . . and My Rights? Parental Rights Termination as a Consequence of Deportation,” *Duke Law Journal* 60 (2011): 1459–1503; M. Yablon-Zug, “Separation, Deportation, Termination,” *Boston College Journal of Law & Social Justice* 32, no. 1 (2012): 63–117.

⁵³ Lynch, “Backpacking the Border,” 112–31.

⁵⁴ Chacón, *Narrowing Asylum Grounds*.

⁵⁵ An earlier version of this material has already been published as Kubal, *Immigration and Refugee Law: Socio-Legal Perspectives* (Cambridge: Cambridge University Press, 2019), Chapter 5, pp. 78–101.

⁵⁶ See also K. Hendley, *Everyday Law in Russia* (Ithaca and London: Cornell University Press, 2017), V. Andrianova, “The Everyday Experiences of Russian Citizens in Justice of the Peace Courts,” in *A Sociology of Justice in Russia*, ed. M. Kurkchyan and A. Kubal (Cambridge: Cambridge University Press, 2018), 65–92.

⁵⁷ Kubal, “In Search of Justice.”

⁵⁸ J. Kahn, “Adversarial Principles and the Case File in Russian Criminal Procedure,” in *Russia and the Council of Europe: Ten Years After*, ed. K. Malfliet and S. Parmentier (Basingstoke: Palgrave Macmillan, 2010), 107–33.

⁵⁹ Kurkchyan and Kubal, “Administrative Justice,” 259–77.

⁶⁰ *Ibid.*

⁶¹ See Cambridge Online Dictionary, <https://dictionary.cambridge.org/dictionary/english/mirror-image>, accessed February 1, 2018.

⁶² It has to be said, however, that this situation was particular for its time and place—Moscow of 2014. Since then, and particularly since the disbandment of the Federal Migration Service in 2016 and making immigration matters a prerogative of the Ministry of Internal Affairs (MVD), more and more migrants upon receiving the expulsion order by the first-instance court are kept in administrative detention (Centre for temporary detention of foreign citizens, CVSIG), and their removal from the country is supervised and organized by the MVD local field office.

⁶³ See also, Kubal, “In Search of Justice.”

⁶⁴ Lynch, “Backpacking the Border,” 112–31.

⁶⁵ M. Reeves, “Living from the Nerves: Deportability, Indeterminacy, and the ‘Feel of Law’ in Migrant Moscow,” *Social Analysis* 59, no. 4 (2015): 119–36.

⁶⁶ Stumpf, “Process Is the Punishment in Crimmigration Law,” 58–75.

⁶⁷ Hudson, “Does Crimmigration Theory Rest on a Mistake?,” 305.

⁶⁸ Bosworth and Guild, “Governing through Migration Control,” 712.

⁶⁹ Hudson, “Does Crimmigration Theory Rest on a Mistake?,” 305.

⁷⁰ R. Nadadur, “Beyond Crimmigration and the Civil-Criminal Dichotomy—Applying *Mathews v. Eldridge* in the Immigration Context,” *Yale Human Rights & Development Law Journal* 16, no. 1 (2013): 141–75.

⁷¹ Bosworth and Guild, “Governing through Migration Control,” 703–19; Legomsky, “New Path of Immigration Law,” 469–528; P. L. Markowitz, “Deportation Is Different,” *University of Pennsylvania Journal of Constitutional Law* 13, no. 5 (2011): 1299–1363; Stumpf, “Process Is the Punishment in Crimmigration Law,” 58–75.

⁷² Hudson, “Does Crimmigration Theory Rest on a Mistake?,” 308.

⁷³ Lynch, “Backpacking the Border,” 112–31.

⁷⁴ *Ibid.*, 112–31.

⁷⁵ Hudson, “Does Crimmigration Theory Rest on a Mistake?,” 303–25; Kubal, “Entry Bar as Surreptitious Deportation?,” 744–68; K. Mann, “Punitive Civil Sanctions: The Middleground between Criminal and Civil Law,” *Yale Law Journal* 101, no. 8 (1991): 1795–874; Nadadur, “Beyond Crimmigration and the Civil-Criminal Dichotomy,” 141–75; Steiker, “Punishment and Procedure,” 775–819; W. J. Stuntz, “Substance, Process, and the Civil-Criminal Line,” *Journal of Contemporary Legal Issues* 7, no. 1 (1996): 1–42.

⁷⁶ Kubal, “Entry Bar as Surreptitious Deportation?” 744–68.

⁷⁷ I. Kuznetsova and J. Round, “Postcolonial Migrations in Russia: The Racism, Informality and Discrimination Nexus,” *International Journal of Sociology and Social Policy*, 39 no. 1/2 (2018): 52-67.

⁷⁸ Bosworth and Guild, “Governing through Migration Control,” 712.

⁷⁹ See Nadadur, “Beyond Crimmigration and the Civil-Criminal Dichotomy” for the United States.