Law & Society REVIEW

The Institutional Hearing Program: A Study of Prison-Based Immigration Courts in the United States

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This article presents the findings of the first research study of the Institutional Hearing Program (IHP), a prison-based immigration court system run by the U.S. Department of Justice. Although the IHP has existed for four decades, little is publicly known about the program's origin, development, or significance. Based on original analysis of archival records, this study makes three central contributions. First, it traces the origin and growth of the IHP within federal, state, and municipal correctional facilities. Notably, although the IHP began in 1980 as a program to deport Cuban asylum seekers held in civil detention in an Atlanta prison, it now operates to deport noncitizens serving prison sentences in twenty-three federal prisons, nineteen state prison systems, and a few municipal jails. Second, this article uncovers the crucial role that prison-based immigration courts have played in shaping the design of carceral institutions around the priorities of an immigration system that primarily targets Latinos for deportation. Third, this article shows how immigration courts embedded in carceral spaces have served as influential, yet overlooked, incubators of changes to immigration law and practice that today apply to all immigration courts, not just the IHP. These findings have important implications for contemporary understandings of the relationship between immigration detention, racialized control of migration, and penal punishment.

A sustained focus on immigrant detention and deportation has led to the creation of a little-known immigration court system built inside prisons and jails throughout the United States. Referred to as the Institutional Hearing Program (IHP),[1] this

This article benefitted from insightful feedback from Heidi Altman, Jennifer Chacón, Susan Coutin, David Hausman, Anil Kalhan, Máximo Langer, Keramet Reiter, Christine Scott-Hayward, Claudia Valenzuela, Emma Winger, and anonymous reviewers. We also thank participants at the Law & Society Association's annual conference and the Southern California Criminal Justice Roundtable. We are particularly grateful to Adam Cohen, Jodi Kruger, Elyse Meyers, Jessica Sonley, Mónica Reyes-Santiago, Skyler Terrebonne, and the expert research staff at UCLA's Hugh and Hazel Darling Law Library for their exemplary research assistance. This project was supported by a Research Enabling Grant from the Council on Research at the University of California.

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[1] The program has at times been referred to by other names, including the Institutional Removal Program (IRP), the Institutional Hearing and Removal Program, the Criminal Alien Institutional Hearing Program, and the Enhanced Institutional Hearing Program. For clarity, this article uses the term Institutional Hearing Program, or IHP, throughout.

Law & Society Review, Volume 54, Number 4 (2020): 788–833

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

court adjudicates the deportation cases of immigrants held in correctional institutions (McGoings 1998; EOIR 2018a). As this article documents, the program began in 1980 as an ad hoc collaboration between the U.S. Bureau of Prisons (BOP), federal immigration courts, and the then-Immigration and Naturalization Service (INS), with the goal of ensuring the deportation of Cuban asylum seekers civilly detained in an Atlanta prison. Subsequently, laws passed in 1986 and 1988 formally established the IHP as a national program to facilitate the rapid deportation of individuals serving criminal sentences in prisons and jails.

Prior to the invention of the IHP, deportation proceedings for persons convicted of a crime typically commenced after the period of criminal incarceration ended (GAO 1986: 11; U.S. Senate 1994: 14–16, 46). The IHP changed this standard process by advancing the immigration court proceedings to occur *during* service of a criminal sentence. To accomplish this, immigration agents started conducting interviews inside penal institutions (OIG Audit 2002: 1). They also performed database checks and reviewed legal documents, including conviction records (H. of Rep. 1997: 17–18; OIG Audit 2002: 1). After identifying persons who might be deportable, immigration officers prepared the relevant paperwork and referred their cases to the local immigration court (Doris Meissner, INS Commissioner, U.S. Senate 1994: 46; H. of Rep. 1997: 10–11, 84–85; OIG Audit 2002: 1). An immigration judge would then travel to the facility to hold court inside the prison or jail (Creppy 1998; H. of Rep. 2001: 16; 2002: 21). In more recent years, judges have increasingly remained in their normal courtroom and handled these cases via telephone or videoconferencing technology (BOP 2001: 18; Eagly 2015; AIC 2019: 4).

Although the IHP has been described as one of "most significant activities" of federal immigration courts (H. of Rep. 2001: 16), very little is known about the program's origin, growth, or use. Scholars have conducted valuable empirical research on U.S. immigration courts (Ramji-Nogales et al. 2007; Legomsky 2010; Benson and Wheeler 2012; Das 2013; Koh 2013; Eagly and Shafer 2015; Miller et al. 2015a, 2015b; Chand et al. 2017; Ryo and Peacock 2018; Ryo 2019; Kim and Semet 2020), but this work has generally focused on deficits in the court and asylum process, access to counsel in immigration proceedings, and the significance of bond hearings. Similarly, although immigrant detention has grown in recent years as a topic of scholarly inquiry (Hernández 2007, 2013; Bosworth 2014; Hiemstra 2019; Evans and Koulish 2020; Ryo and Peacock 2020), less common is research that addresses how carceral sites that hold people as prisoners while serving criminal

sentence are also sites of immigration control (García Hernández 2017; Kaufman 2019; Brouwer 2020). To date, no academic article has studied the IHP.

The current moment is a particularly meaningful time to investigate the IHP. In an Executive Order issued in the first week of his presidency, Donald Trump announced an effort to expand the program (Executive Order No. 13,768 2017; TRAC 2017). Administration officials subsequently instructed immigration authorities to increase reliance on the IHP "to the maximum extent possible" (Kelly 2017: 3), so as to "speed the process of deporting criminal aliens" (DOJ 2017). This new attention drawn to the program raises questions about how the IHP operates to deport vulnerable incarcerated noncitizens.

Our study of the IHP relies on three distinct sets of primary source materials. First, we reviewed internal agency documents—including memoranda, reports, and letters—that we obtained through public record requests or sourced through other methods. Second, we gathered evidence from legislative history records, government reports, court decisions, and historic news articles. Third, we conducted original analysis of several decades of IHP court data made available to researchers by the Executive Office for Immigration Review (EOIR), the agency within the U.S. Department of Justice (DOJ) that contains the immigration courts (*see* Appendix).

Our analysis of the IHP's invention and development shows how noncitizens held in carceral institutions are simultaneously subjected to immigration enforcement and penal punishment. By focusing on the IHP, we identify how immigration courts have served as a crucial link that enabled and justified collaboration between carceral institutions and immigration agents. Housed within the powerful DOJ, the IHP has exercised considerable influence over state and federal prisons, as well as county jails. Establishing prison-based immigration courts has required participating penal institutions not only to build immigration courtrooms, but also to invite immigration agents and prosecutors into their facilities and reserve bed space exclusively for noncitizens. Through the IHP, the criminal legal system's prisons and jails have become directly involved in advancing the immigration system's priorities of targeting noncitizens, primarily Latinos, for deportation. By centering our study on the IHP, we seek to place these little-known immigration courts into the ongoing discussion about the relationship between immigration detention, racialized control of migration, and criminal punishment.

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

1. Theoretical Frameworks

Our study builds on and contributes to three interconnected sociolegal literatures. The first salient body of scholarly inquiry has exposed the ways in which migrant detention facilities, despite their "civil" label, are in fact "immigration prisons" that function as sites of penal control (Dow 2004). Private prison companies often operate civil detention centers (Lopez 2019; Welch 2000) and employ guards who monitor all movements, meals, and personal visits (García Hernández 2014). Civil immigration detention also takes place within existing prisons and jails, the very same facilities that house individuals awaiting a criminal trial or serving a carceral sentence (Stumpf 2014; Lloyd and Mountz 2018). Immigrant detention incarcerates even those who are neither a danger to public safety nor actual flight risks (Kalhan 2010) and imposes other "pains of imprisonment," such as shackling and substandard medical care (Longazel et al. 2016). Keramet Reiter and Susan Coutin (2017) argue that the process of detention and deportation is a sanction comparable to solitary confinement in severity and punitiveness. From these and other insights flow a number of theoretical and practical conclusions about the detention system, including the desirability of enhancing the constitutional protections that apply to migrant detention (Kanstroom 2000; Legomsky 2007) and reducing reliance on detention (García Hernández 2019).

A second foundational literature surveys how immigration enforcement functions as a form of racial control and discrimination that targets Latino and Black communities in the United States (e.g., Golash-Boza and Hondagneu-Sotelo 2013; Hernández 2013; Vásquez 2015; Johnson 2016; Armenta and Vega 2017; Lindskoog 2018). Historical research has underscored that racial exclusion laws and policies have forced migration and fueled deportation since the time of the Chinese Exclusion Act in 1882 (Salyer 1995; Ngai 2004; Kanstroom 2007; Nopper 2008; Lee and Yung 2012; Kang 2017; Caldwell 2019; Gómez 2020). Empirical studies on patterns in detention and deportation have shown how modern-day punitive immigration enforcement disproportionately targets Latino and Black immigrants (e.g., Stephens 2016; Armenta and Vega 2017; Ryo and Peacock 2018). Racially discriminatory enforcement is authorized in part by the immigration law, which allows officials to rely expressly on race in immigration policing (Chacón and Coutin 2018). Social scientists have also shown how imprisonment aggravates preexisting structures of racial inequality through its detrimental effects on educational attainment, mental health, employment outcomes, and family stability (e.g., Foster and

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

Hagan 2009; Green and Winik 2010; Aizer and Doyle 2015; Dobbie et al. 2018).

A third line of scholarship that informs our study of the IHP examines how immigration enforcement priorities have informed the institutional design of the criminal legal system. As U.S. immigration enforcement has increasingly focused on deporting noncitizens with criminal convictions (Armenta and Vega 2017), the criminal legal system has become deeply intertwined with immigration enforcement (Eagly 2010). Since 1996, the federal 287(g) program has authorized local police and sheriffs to identify noncitizens in local jails for deportation (IIRIRA 1996; Beckett and Evans 2015; Armenta 2017). In this way, the 287(g) program reorders the power and priorities of local police and sheriffs and engages them directly in immigration enforcement (Armenta 2017). As scholars have shown, prisons routinely categorize and segregate prisoners along lines of race, gender, and sexual orientation (Goodman 2008; Dolovich 2012). More recent research has documented further sorting of prisoners by creating separate wings of prison institutions—or even separate prisons—for noncitizens (Kaufman 2015; Bosworth 2017; Kaufman 2019; Brouwer 2020). All-immigrant prisons are intended not just to punish, but also to assume the expulsion goals of the immigration system (Ugelvik and Damsa 2018).

Our study of immigration courts embedded inside carceral institutions contributes to these three essential lines of inquiry and draws new connections between them. As we show, the IHP is powerful tool that operates at the intersection of penal punishment, immigration detention, and racial control. Our investigation traces how prison-based immigration courts began as a temporary operation to secure the deportation of Cuban refugees in civil detention and continued to develop as a mechanism to justify, build, and fill segregated prison spaces with immigrants targeted for deportation. Individuals within the IHP are not only serving criminal sentences, but also simultaneously being investigated by immigration agents, subjected to immigration "detainers," and placed under the jurisdiction of the civil immigration court (Keenan and Seamon 2016).

By documenting the program's evolution, we show that the IHP is not merely a court operating independently, but the lynchpin in a complex and interconnected system that ties together immigration and criminal enforcement in ways that have fundamentally shaped the institutional design of both systems. Through the IHP, prisons and jails participate actively in supporting a noncitizen court system that is also often targeted at only certain nationalities, such as only Mexicans. To be sure, the program has sped up deportations of noncitizens convicted of crimes, but the

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

program's existence also comes at the cost of merging criminal punishment with a court system directed at the exclusion of immigrants. In this article, we lay the important groundwork for understanding the program's crucial features and structure. We conclude by discussing some of the key findings that this research generates.

2. Data and Methods

This article relies on a mixed-methods approach that incorporates analysis of three sets of primary source material. First, we reviewed internal agency records about the IHP that we obtained through Freedom of Information Act requests seeking documents from the EOIR regarding the IHP. In separate sets of requests sent in 2013 and 2019, we asked the agency for all policies, protocols, procedures, trainings, and related documents for handling IHP cases. In addition, we sought documents regarding the facilities in which the IHP has operated, the use of videoconferencing to adjudicate IHP cases, and the planned expansion of the IHP pursuant to President Trump's 2017 Executive Order.

Second, we supplemented these records with other publicly available materials, which included government reports, legislative history records, and federal court decisions available on government web pages and through other sources. These records dated back to the early 1980s and provided insight into the relationship between the then-INS and the BOP. We also considered the changes in federal law that incorporated the IHP into the formal law in 1986 and 1988 and enabled its further growth during the 1990s. Historic newspaper articles and scholarly accounts enhanced our understanding of these records.

Third, we analyzed immigration court records obtained from EOIR (EOIR CASE Data November 2, 2018; EOIR CASE Data December 11, 2019). These records included 252,594 immigration court proceedings that were completed or initiated as part of the IHP program between 1980 and 2019. Prior to relying on these court records, we performed reliability checks against legislative history materials and government reports which contain official government calculations of detailed statistical information on the processing of IHP court cases dating back to the 1980s (e.g., GAO 1989: 9; H. of Rep. 1994: 183; 1995b: 22, 25; 1997: 40; 2001: 16; 2002: 21; U.S. Senate 1994: 63; 1995: 17; EOIR 2001: U1). This article's appendix explains the steps we took in preparing and analyzing the EOIR data and

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

shares additional information about the variables included in our analysis.[2]

3. Findings and Discussion

We begin by tracing the origin of the IHP. Most accounts of the IHP report that the program began in 1986 or 1988 when it was formalized by congressional action.[3] However, through analysis of immigration court records, as well as review of legislative history, historic news articles, and other sources, we trace the program back to 1980 when it emerged as a small-scale project of the INS at the end of President Jimmy Carter's term in office.

As we investigate in the next section, the initial goal of the IHP was not to conduct the immigration hearings of noncitizens serving prison sentences. Rather, it began when the U.S. government started holding noncitizens in federal prisons for purposes of civil immigration detention. Since these refugees seeking to enter the United States had a right to have an immigration hearing, immigration judges were compelled to hold court behind prison bars. This untold origin story of the IHP as part of a program of civil detention helps to illuminate how the IHP functions today to transform prison space into a site of immigrant detention and deportation.

3.1 1980–85: Invention of the IHP in the Atlanta Penitentiary

In 1980, after Fidel Castro announced that Cubans wishing to leave Cuba could do so through the port of Mariel, over 120,000 Cuban refugees fled to the United States in what became known as the "Mariel" migration (Aguirre et al. 1997: 1–2). Rumors swirled that Cuban President Fidel Castro had emptied his jails into the boats departing Cuba, but, as the *New York Times* reported, the "overwhelming majority" of those with arriving with criminal records had "been imprisoned for so-called 'anti-social' and 'antirevolutionary' offenses such as attempting to flee Cuba, refusing to work and criticizing or actively opposing the Castro regime" (Treaster 1980: 18).

The United States responded to the Mariel migration with a punitive policy of detention. In contrast to earlier periods of Cuban migration, researchers have found that those in the Mariel

[2] The appendix is available online under the heading Supporting Information.

[3] For examples of claims that the IHP began in 1986, see H. of Rep. (1994: 183; 1997: 34). For examples stating that the program began in 1988, see OIG Audit (2002: 3), Rosenblum and Kandel (2012: 11), and AIC (2019: 1).

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

boatlift had a significant number of Black and Afro-Cubans, who were later disproportionately subjected to detention (Stephens 2016). During the same time period, another group of Black refugees was arriving in increasing numbers to the Florida shore from Haiti and was also targeted for the harsh new detention policy (Lindskoog 2018). Soon, the INS ran out of detention capacity (McGrath et al. 1982).

To supplement its civil detention capacity, the INS turned to the federal BOP to hold many arriving asylum seekers (Rudolph Giuliani, Associate Attorney General, H. of Rep. 1983: 3; Simon 1998: 579; Lindskoog 2018: 33). Initially, a group of Cuban asylum seekers was scattered across the country in eight different federal prisons, including the Atlanta penitentiary (*Rodriguez-Fernandez v. Wilkinson* 1980; Pear 1981: A8). By 1982, most of the remaining imprisoned Cubans were transferred to Atlanta (Pear 1981: A8; Rep. Robert W. Kastenmeier, H. of Rep. 1983: 223–25). It was undisputed that these individuals had committed no crime in the United States, but the federal government claimed they were dangerous (Rep. Robert W. Kastenmeier, H. of Rep. 1983: 225). Yet, even among those detained in Atlanta, the existence of any criminal record in Cuba was difficult to verify. Some individuals held in the Atlanta prison had been convicted of a violent crime in Cuba (Palmieri 1980: 73), while others had done little more than arrive without proper entry papers (*Soroa-Gonzales v. Civiletti* 1981: 1052–53, 1060; Marvin H. Shoob, U.S. District Judge, H. of Rep. 1989: 123) or commit minor infractions such as stealing food to feed their families or disagreeing with Castro's regime (Dolman 1986; Smothers 1987: B11).

Prior to bringing Cuban refugees to Atlanta, the BOP had only rarely been asked to hold individuals for the purpose of civil immigration detention (Rep. Robert W. Kastenmeier, H. of Rep. 1983: 223; Kaufman 2019: 1394–408). The Atlanta prison was slated to close at the time that it was converted for use as an immigration prison (U.S. Senate 1980), and the conditions at the dilapidated facility were described as "brutal and dehumanizing," far "worse than those which exist[ed] for the most dangerous convicted felons" (Rep. John Lewis, H. of Rep. 1989: 12). Converting the prison into an overcrowded site of immigration detention allowed it to continue to operate, serving the needs of the nascent expansion of the immigration detention complex. Moreover, the deliberate choice of a notorious federal penitentiary marked the Cuban refugees as criminal and undesirable, while at the same time fostering a system that justified their harsh treatment without any need to prove criminal conduct (Pear 1987: 36).

Lawyers filed habeas petitions and a class action on behalf of the Cubans with the U.S. District Court in Atlanta contending that, at a minimum, they were entitled to bond hearings (Marvin H. Shoob, U.S. District Judge, H. of Rep. 1989: 122). Lawyers also argued that the men could not be returned to Cuba without first obtaining a due process hearing on their claims for political asylum (Schmidt 1985: 6; Hamm 1995: 72–73). Early on in the litigation, Judge Marvin Shoob refused to allow the Cubans to be deported without "an exclusion hearing at which the Immigration Judge heard evidence on all grounds of exclusion the detainee was charged with" (*Fernandez-Roque v. Smith* 1981: 124). "Exclusion hearing" was the term used prior to 1996 to refer to the formal court proceeding in which the immigration judge determined if an arriving immigrant should be admitted to the United States (Appendix).

Judge Shoob's ruling put immediate pressure on immigration judges to adjudicate exclusion cases from within the federal prison where the Cubans were held. As a result, the IHP was born.

The immigration court data enabled us to confirm these archival findings about the origin of the IHP in Atlanta (EOIR CASE Data December 11, 2019). The court records included a proceeding-level marker that signifies whether the case was part of the IHP program and also indicates whether the respondent was being held at a federal, state, or municipal correctional facility during the immigration court process. As summarized in Table 1, the earliest cases designated by the immigration courts to be part of the IHP occurred in 1980 in the Atlanta penitentiary. From 1980 to 1985, there were 395 exclusion proceedings at the Atlanta prison, almost exclusively (99%) of Cuban nationals. Access to counsel for these individuals was dismal: only 2% obtained counsel. Everyone was ordered deported, most with only one hearing provided (Table 1).

Table 1. Descriptive Statistics for the Atlanta Federal Penitentiary (Fiscal Years 1980–1985)

Variable	Atlanta Federal Penitentiary
Proceedings (*n*)	395
Cuban National	99%
Exclusion Case	100%
Representation by Counsel	2%
Application for Relief	2%
Excluded	100%
Number of Hearings	
Median	1
Mean	1.1
(SD)	(0.4)

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

Notably, several hundred Haitian refugees arriving during this same time period in the early 1980s were also held in federal prisons, including Federal Correctional Institution (FCI) La Tuna in Texas, FCI Alderson in West Virginia, FCI Lexington in Kentucky, and FCI Ray Brook and Otisville in New York (H. of Rep. 1983: 58, 68–75, 201, 225–27; Lindskoog 2018: 74; Loyd and Mountz 2018: 89–91). However, the immigration court data contained no cases involving exclusion cases of Haitians detained in federal prisons during this time (EOIR CASE Data December 11, 2019). Instead, the pre-1986 court data recorded exclusion cases of Haitians held in INS facilities such as Miami's Krome North Service Processing Center. This apparent omission may mean that Haitians were not subjected to the IHP, due perhaps to the extensive litigation challenging the handling of Haitian exclusion hearings (GAO 1983: ii–iii, 7–8). In one landmark lawsuit brought in the Southern District of Florida (*Louis v. Meissner* 1981), lawyers objected to the transfer of Haitians to far-off federal prisons as unlawful (H. of Rep. 1983: 37–39, 78). Judge Alcee Hastings found that the INS was playing "a human shell game," moving Haitians to "desolate, remote, [and] hostile" prisons, without adequate access to counsel or interpreters (*Louis v. Meissner* 1981: 926). As a remedy, Judge Hastings concluded that exclusion hearings for the Haitians could not go forward in federal prisons unless counsel was first provided (Murphy 1982: A2; GAO 1983: 9–12; H. of Rep. 1983: 185, 196; 1986: 15). Difficulties in finding counsel and interpreters in these remote locations delayed hearings (GAO 1983: 12; H. of Rep. 1983: 203), and in the meantime many of the imprisoned Haitians were released on parole (*Louis v. Nelson* 1982: 1003–04; GAO 1983: 15, 33; H. of Rep. 1983: 2, 78–81, 200; Churgin 1996: 316).

As this section has shown, the IHP originated out of the legal obligation to hold exclusion hearings for refugees detained in the federal prison in Atlanta (*Louis v. Nelson* 1982: 977–81; Arthur C. Helton, Lawyer's Committee for International Human Rights, H. of Rep. 1983: 79). Operating inside the prison, immigration agents would interview detainees, write charging documents, and coordinate between immigration judges and the correctional institution (GAO 1989: 8–9; Paul W. Virtue, INS Acting Executive Associate Commissioner for Programs, H. of Rep. 1997: 34). Immigration judges, who until 1983 worked as employees of the INS (Kocher 2017: 122–23), were obliged to travel to the prison to rule on whether the Cuban refugees would be admitted to the United States (BOP, Report to the Attorney General, H. of Rep. 1989: 293; Michael J. Creppy, Chief Immigration Judge, H. of Rep. 1997: 41). In the next section, we introduce the second chapter of the IHP's evolution: the use of prison-based

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

immigration courts to hear the immigration cases of individuals serving prison sentences for crimes committed in the United States.

3.2 1986–88: Early Ad Hoc Development of Immigration Courts in State Prisons

The first pilot project for a state IHP program began in the summer of 1986 at the state prison in Fishkill, New York. With the support of prison staff, INS agents set about interviewing men as they were booked into the Fishkill facility (Pear 1986: B3; Rep. Lamar S. Smith, H. of Rep. 1997: 3). Immigration judges spent one week per month holding court inside the prison's maximum-security reception center (Anthony J. Annucci, Deputy Commissioner and Counsel, New York Department of Correctional Services, H. of Rep. 1997: 77).

The Fishkill IHP was a central component of the Alien Criminal Apprehension Program, an INS initiative begun in 1986 to "identify, locate and initiate removal proceedings against criminal aliens" (U.S. Senate 1994: 16; GAO 1987: 30). According to the Director of the "Criminal Alien Branch" of the INS at the time, the IHP was an "extremely effective and efficient use of INS resources because these aliens have already been arrested and detained or incarcerated," meaning that INS did not need to "locate and detain them" (Cynthia Wishinsky, Director, INS Criminal Alien Branch, H. of Rep. 1995a: 281).

In early 1988, the INS began a second state prison program at the Robert J. Donovan Correctional Facility in California. In what the *Los Angeles Times* described as a "novel program," immigration judges held deportation hearings in a "makeshift immigration courtroom" on prison grounds (McDonnell 1989). The California Department of Corrections reserved one hundred beds for individuals to participate in the IHP and chose the Donovan facility because of its location near the Mexican border in San Diego County (Joe Sandoval, Secretary, California Youth and Adult Correctional Agency, H. of Rep. 1997: 59). The California prison program not only targeted Mexican nationals (Table 2), but also focused on identifying individuals who would waive their right to contest their deportation and consent to be deported quickly (U.S. Senate 1994: 19; *see also* McDonnell 1989; Rudman and Berthelsen 1991: 18–19). Because Donovan was "conveniently located a few miles from a Mexican border checkpoint," individuals deported through the court program could be "loaded in buses, driven to the checkpoint and handed over to Mexican authorities or simply released into Mexico" (U.S. Senate 1994: 19).

Table 2. Descriptive Statistics for Early State Experimentation with the IHP, by Facility (Fiscal Years 1986–1988)

	Downstate Correctional Facility (Fishkill, NY)	R.J. Donovan Correctional Facility (San Diego, CA)
Proceedings (*n*)	534	337
Mexican National	2%	94%
Deportation Case	99%	100%
Representation by Counsel	63%	0%
Application for Relief	10%	0%
Deported	82%	98%
Number of Hearings		
Median	1	1
Mean	1.96	1.0
(SD)	(1.4)	(0.0)

The immigration court data enabled us to compare these two early state prison pilot programs (Table 2). From 1986 through 1988, the Downstate Correctional Facility in Fishkill, New York, was the largest generator of state IHP cases, completing 534 proceedings (Table 2). The R.J. Donovan Correctional Facility in San Diego, California, followed closely behind with 337 proceedings (Table 2).[4] Whereas Fishkill operated at the point of being booked into the prison, Donovan focused on the back end of the process, when the prison sentence was almost completed. This difference in timing may be one factor that contributed to the difference in access to counsel between the two programs. In Donovan, where individuals were sent to the remote facility on the U.S.–Mexico border at the end of their sentence, all proceedings were completed in one hearing, nobody obtained counsel, zero applications for relief were filed, and 98% were deported (Table 2). Outcomes were quite different in Fishkill where the IHP took place at the beginning of the prison sentence: 63% were represented by attorneys, 10% sought relief, and 18% avoided deportation (Table 2).

3.3 Institutionalization of the IHP

Several momentous legislative reforms transformed this early experimentation with prison-based immigration courts into today's IHP. First, the Immigration Reform and Control Act (IRCA) of 1986 required the Attorney General to commence deportation proceedings as expeditiously as possible for noncitizens convicted of crimes (IRCA 1986: § 701). Although IRCA is often remembered for its central provisions that granted amnesty to certain undocumented immigrants and put in place employer

[4] An additional 429 state IHP proceedings took place between 1986 and 1988 in a scattered collection of state prisons, under ad hoc relationships set up between immigration court judges, the INS, and corrections officers (Brief for Aleinikoff, *Demore v. Kim* 2003: 17; EOIR CASE Data December 11, 2019).

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

sanctions (Calavita 1989), IRCA was also pivotal in motivating the criminalization of immigrants that occurred in the decades that followed (Inda 2013: 293). Moreover, IRCA was soon combined with the Anti-Drug Abuse Act (ADAA) of 1988 which mandated that immigration authorities complete the deportation hearings of prisoners convicted of "aggravated felonies" before release from criminal custody (ADAA 1988: § 7347(d)). As a result of this mandate, 1988 is often considered the year when the IHP formally began. As this section explains, immediately following the passage of the ADAA, INS and EOIR launched concentrated efforts to institutionalize the IHP within federal, state, and municipal facilities.

3.3.1 Federal IHP

In 1989, the BOP opened a centralized IHP court site for federal prisoners at the FCI in Oakdale, Louisiana (INS et al. 1996: 2). The Oakdale prison, which opened in 1986 (Kahn 1996: 151), was unique because it was the first federal facility operated jointly by the BOP and the INS to house both federal prisoners and immigration detainees (Marcus 1986: A14; BOP, Report to the Attorney General, H. of Rep. 1989: 302; Dow 2004: 161–62). Multiple "courtrooms for immigration judges" were constructed "within the secure perimeter of the institution" (Kathleen Hawk, Director, Federal Bureau of Prisons, H. of Rep. 1994: 169). Immigration judges hired at Oakdale handled both the IHP cases of immigrants imprisoned in the BOP facility as well as the non-IHP cases of those detained in the administrative side of the facility (Kahn 1996: 151).

Oakdale was also unique because of its huge detention capacity. As originally established, BOP prisoners were brought from facilities throughout the United States to Oakdale at the tail end of their sentences (John J. Clark, Assistant Director, Community Corrections & Detentions, H. of Rep. 1997: 55; GAO 1997: 17–18). A full 600 beds were reserved for "male, non-Cuban, non-Mexican inmates" to participate in the IHP court (Doris Meissner, INS Commissioner, U.S. Senate 1994: 46; H. of Rep. 1997: 55). At the same time as the BOP developed Oakdale for non-Cuban, non-Mexican men, the BOP opened a separate IHP location at the La Tuna FCI in Anthony, Texas, specifically to target Mexican men (INS et al. 1996: 2). Focusing on Mexican incarceration at La Tuna was consistent with the facility's historical roots: it was opened in 1932 and immediately filled with more than 90% Mexican inmates who were forced to labor on the prison's farm (Hernández 2017: 140).

The immigration court data we relied on contained information on national origin and citizenship (Appendix), and thus allowed us to confirm that the IHP often segregated individuals by both national origin and citizenship within IHP courtrooms

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

and residential prison facilities. The data did not include information on the racial and ethnic identifications of IHP participants. However, given the correlation between race, ethnicity, and national origin (Gómez 2020), patterns in the immigration court data suggest that racial and ethnic segregation also occurred in the IHP courts and facilities we studied.

Table 3. Descriptive Statistics for Federal IHP, by Facility (Fiscal Years 1989–1990)

	FCI-La Tuna (Anthony, TX)	FCI-Oakdale (Oakdale, CA)
Proceedings (*n*)	214	1,065
Nationality		
Mexican	89%	0.9%
Cuban	4%	0.4%
Haitian	1%	2%
Jamaican	0%	8%
Dominican	1%	9%
Northern Triangle	0%	3%
Colombian	3%	36%
Nigerian	1%	8%
Other	3%	34%
Deportation Case	91%	88%
Representation	8%	12%
Application for Relief	11%	9%
Deported/Excluded/ Removed	78%	75%
Number of Hearings		
Median	1	1
Mean	1.9	2.1
(SD)	(1.4)	(1.7)

As Table 3 highlights, 89% of the IHP cases of individuals held in La Tuna from 1989 to 1990 were of Mexican men and an additional 4% were Cuban. In contrast, the FCI-Oakdale prison did, as intended, almost entirely exclude Mexican and Cuban nationals. As also shown in Table 3, during this two-year period Oakdale's IHP included a concentrated population of men from Jamaica, Nigeria, and Haiti, suggesting that Black immigrants were targeted for incarceration and rapid deportation at the Oakdale IHP. Through these data, we begin to see how the highly segregated organization of the IHP court shaped residential groupings in participating federal prisons.

Building on the Oakdale model, in 1994 the BOP opened a second massive joint BOP–INS facility in Eloy, Arizona (Loyd and Mountz 2018: 195). Concept Inc., a private prison contractor, was hired to run the Eloy prison. An attorney who represented immigrants in Eloy described the new facility as "a really wretched place to be, with nothing to do and very little in the way of programming" (Volante 1994: A2). Central to the design of Eloy and Oakdale as facilities serving both BOP and INS was the

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construction of "courtroom facilities for hearings" and the commitment from EOIR "to provide a sufficient number of immigration judges and court personnel" (Kathleen Hawk, Director, Federal Bureau of Prisons, H. of Rep. 1994: 168; Creppy 1995a). By 1998, there were fifteen federal prisons hosting IHP courts (BOP 1998: 16; GAO 1998: 4).

Relying on EOIR court data and other public records, we identified twenty-three different federal prison facilities holding noncitizens participating in the IHP in 2019. Some cities had more than one participating facility. These federal IHP prisons included sixteen operated by the BOP,[5] and seven operated by private for-profit contractors such as CoreCivic or the GEO Group (Chacón 2017).[6] Figure 1 marks with dots the cities with

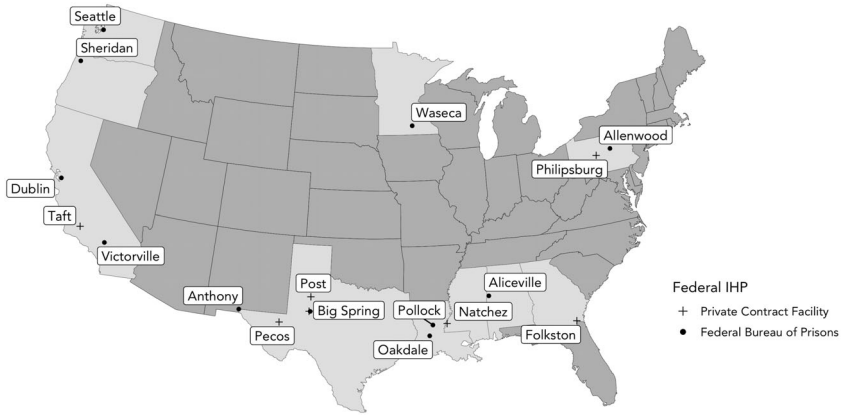

Figure 1. Federal Prison Facilities Participating in the IHP (Fiscal Year 2019)

[5] The following cities hosted only one facility: FCI La Tuna in Anthony, Texas; FCI Big Spring in Bring Spring, Texas; FCI Oakdale in Oakdale, Louisiana; Federal Detention Center SeaTac in Seattle, Washington; FCI Dublin in Dublin, California; FCI Aliceville in Aliceville, Alabama; FCI Sheridan in Sheridan, Oregon; and FCI Waseca in Waseca, Minnesota. Three of these BOP locations hosted more than one IHP hearing location: Allenwood, Pennsylvania hosts the FCI Allenwood Low (a low security institution, the FCI Allenwood Medium (a medium security institution), and the U.S. Penitentiary (USP) Allenwood (a high security institution). Victorville, California also hosted three federal facilities, low and medium security FCI institutions, as well as U.S. Penitentiary. Finally, Pollock, Louisiana hosted both FCI Pollock (a medium security institution) as well as a U.S. Penitentiary holding inmates under high security conditions. Only three of these facilities held women (FCI Aliceville, FCI Dublin, and FCI Waseca).

[6] These for-profit facilities were: Correctional Institution Adams County in Natchez, Mississippi; Correctional Institution Big Spring in Big Spring, Texas; Correctional Institution Giles W. Dalby in Post, Texas; Correctional Institution Reeves in Pecos, Texas; Correctional Institution D. Ray James in Folkston, Georgia; Correctional Institution Moshannon Valley in Philipsburg, Pennsylvania; and Correctional Institution Taft in Taft, California (*see also* EOIR 2017b).

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one or more BOP facilities where IHP participants were held. The crosses in Figure 1 represent cities where IHP participants were held in facilities run by private contractors.

All seven contract IHP facilities also operated as Criminal Alien Requirement (CAR) prisons (Kaufman 2019: 1401–02). These CAR prisons are run by private corporations, house only noncitizens, and provide less programming and inferior conditions to BOP-run facilities. (Greene 2001; Loyd and Mountz 2018: 196–97; Kaufman 2019: 1383). As Emma Kaufman has found, CAR prisons not only segregate people by citizenship, but also house almost exclusively Latinos, the majority of whom are Mexican (Kaufman 2019: 1382).

3.3.2 State IHP

During the early years of the IHP, the INS implemented a "Five State Criminal Alien Model" focused on California, New York, Texas, Florida, and Illinois (GAO 1990: 2; Jack Shaw, Assistant Commissioner, INS, H. of Rep. 1995a: 26; IHP Working Group 1995). In 1987, 99% of all state IHP proceedings took place within these five states (Figure 2). As the IHP expanded during the early 1990s, the immigrant-destination states of Arizona, New Jersey, and Washington took on a larger share of the state IHP cases (Figure 2).

During the Clinton administration, the INS sought to implement an "enhanced" IHP (INS 1996; BOP 1996: 12; 1997: 15; Peggy Philbin, EOIR, H. of Rep. 2001: 14). The overarching goal

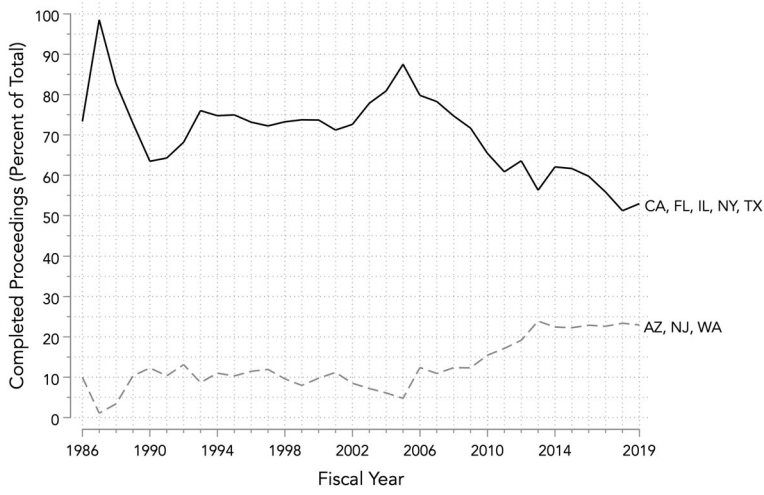

Figure 2. Top Eight State IHP Programs (Fiscal Years 1986–2019)

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of these Clinton-era enhancements was to increase the number of IHP sites and eventually to "complete deportation proceedings on virtually 100 percent of the criminal aliens detained in Federal and State prisons before the end of their sentences" (T. Alexander Aleinikoff, INS General Counsel, H. of Rep. 1995b: 4). By 1995, the IHP operated in forty-one states, the District of Columbia, and the Virgin Islands, with plans to expand further (5).

Today there are far fewer states participating in the IHP (EOIR 2017a, 2018b). In 2019, the final year of our study period, there were only nineteen states with active IHP programs. Among the top eight states already discussed (Figure 2), Washington no longer had an active state IHP program (Figure 3). In 2019, the IHP was also active in Connecticut, Georgia, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, Ohio, Pennsylvania, and Wisconsin. Figure 3 depicts these active participating states with light shading.[7] The remaining states, appearing in dark gray shading, did not participate in the IHP in 2019. These patterns reveal considerable state-level variation in IHP program participation.

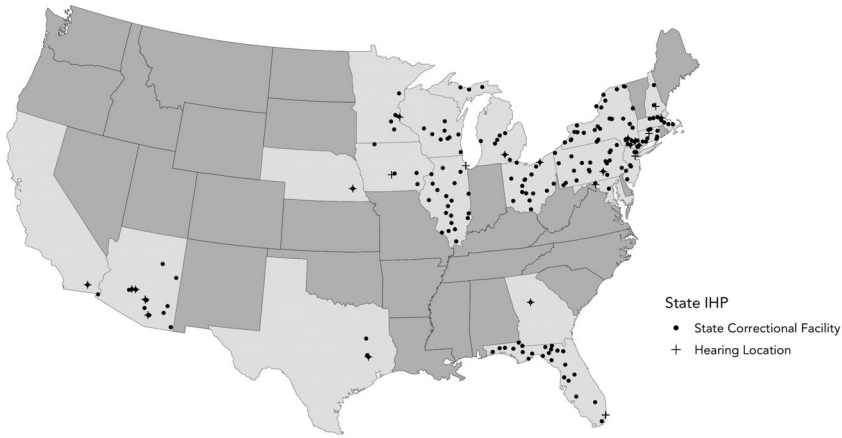

Figure 3. State Correctional Facilities Participating in the IHP (Fiscal Year 2019)

Each dot on Figure 3 represents a city with one or more state correctional facilities that participated in the state's IHP as of 2019. Each cross represents the hearing location where judges adjudicated these cases. Sometimes, the court's hearing location was inside the state correctional facility, but other times the

[7] For the state IHP analysis in Figure 3, we included all states that had more than one new IHP proceeding beginning in fiscal year 2019. South Dakota had only one new proceeding and therefore does not appear in Figure 3.

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hearing location was an immigration court outside of the prison that was connected via videoconference to the respondents held in the state prison. In other instances, incarcerated individuals were brought to a nearby court location outside of the prison facility to attend their hearings (e.g., Keenan and Seamon 2016: 2).

The dot and cross patterns in Figure 3 highlight how participating states have advanced different models for structuring their prisons around IHP participation. Specifically, six states maintained a centralized model for the IHP: California, Georgia, Nebraska, Texas, Maryland, and New Hampshire. By dedicating bed space within one or two facilities to use for the IHP and physically housing inmates in only those centralized IHP sites, these states created prison spaces segregated by citizenship and national origin in ways that advanced immigration enforcement goals and ensured swift deportations. For example, in California all persons targeted for inclusion in the IHP in 2019 were transferred to the Calipatria State Prison located near the U.S.–Mexico border.

The remaining thirteen states adopted a decentralized model in which three or more facilities housed individuals as they participated in immigration court hearings (Figure 3). Rather than build centralized housing for the IHP, typically these decentralized state systems operated by heavy reliance on videoconferencing, which linked judges in one or more hearing sites to respondents in scattered facilities. New York, for instance, housed individuals undergoing IHP hearings in facilities located across thirty-six different cities. These findings of a patchwork system of state-level IHP participation contribute to the emerging scholarship on how state and local policy shapes federal immigration enforcement (e.g., Moinester 2018; Ryo and Peacock 2020).

3.3.3 Municipal IHP

Following the 1992 protests of the brutal beating of Rodney King by Los Angeles police officers, the city responded by increasing its policing of immigrant communities (H. of Rep. 1995a: 257–61). In violation of established policy, the Los Angeles Police Department collaborated with the INS and the Los Angeles County Sheriff to charge and deport hundreds of immigrants, the majority of whom were from Mexico, on protest-related charges (ACLU of Southern California 1992: 7–9, 50). That same year, the County Sheriff became the very first sheriff to open a municipal jail to host the IHP (Ostrow 1992; Sengupta 1992). These developments were not an anomaly for Los Angeles. As historian Kelly Hernández has shown, Los Angeles had long served as "a hub of incarceration, imprisoning more people than any city in the United States," with a particular focus on criminalizing Mexican immigrants (Hernández 2017: 1, 154).

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In the Los Angeles IHP pilot, a local immigration judge would travel to the jail one day per week to hear deportation cases (U.S. Senate 1994: 18–19, 69). In identifying cases for the IHP, as one IHP judge told a Senate Committee, the "intent" of the INS was to present "quick deport" cases, meaning cases that could be resolved in a single hearing (69). Immigrant rights advocates spoke up against the new program, warning that it would "speed things up so quickly that no one will know what happened to them" and put "pressure on people to sign away their rights" (Ostrow 1992).

Our analysis of IHP court data shows that 90% of those targeted for the Los Angeles jail program during the first three years of its operation were Mexican, and 9% were from the so-called Northern Triangle countries of El Salvador, Guatemala, and Honduras (Table 4). We also find that 99% of those in the Los Angeles IHP court were not represented by counsel, none applied for relief, and almost all cases were decided in only one hearing (Table 4). Yet, 11% of proceedings inside the county jail did not end in deportation (Table 4). The majority of these proceedings ended in transfer, suggesting that the judges simply handed contested cases over to non-IHP courts rather than resolve them within the IHP as "quick deports." Another 8% ended in termination, suggesting that these individuals had lawful permanent resident status and the charge was not one that made them deportable, or that they were U.S. citizens erroneously held for immigration enforcement. This error rate also raises questions about whether lawful permanent residents or citizens may have been accidentally deported in the county's quick deport program. As political scientist Jacqueline Stevens has shown, "the government of the United States has been misclassifying its own citizens as aliens and deporting them for over 100 years" (Stevens 2011).

Table 4. Descriptive Statistics for IHP Proceedings in the Los Angeles County Jail (Fiscal Years 1992–1995)

	Los Angeles County Jail
Proceedings (*n*)	1,504
Nationality	
Mexican	90%
Northern Triangle	9%
Other	1%
Deportation Case	100%
Representation by Counsel	1%
Application for Relief	0%
Deported	89%
Number of Hearings	
Median	1
Mean	1.2
(SD)	(0.6)

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As we explore further in the next section, over the years very few municipal jails have participated in the IHP.[8] The lack of development of the IHP at the local level is partially due to the fact that the time individuals spend in jail is often too brief to complete the immigration court hearing process (U.S. Senate 1994: 19; Rep. Lamar Smith, H. of Rep 1997: 5). It may also reflect resistance by some localities to get involved in immigration enforcement (Lasch et al. 2018).

3.4 Tracing IHP Trends and Outcomes

This section begins by providing a big picture overview of IHP caseloads across time. It then examines how the IHP has functioned largely without access to counsel, resulting in extremely high deportation rates. It concludes by analyzing the facility placements of IHP participants, revealing striking patterns of residential segregation by citizenship status and national origin.

3.4.1 The Rise and Post-1997 Decline of the IHP

An immigration court proceeding consists of one or more hearings that end in the decision of an immigration judge to terminate the case, grant relief, issue administrative closure, or order removal. In analyzing the court data, we find that 250,731 IHP proceedings were completed between 1980 and 2019 (Figure 4). The number of IHP proceedings rose remarkably fast through 1996, reaching a high of 19,171 proceedings completed in 1997 (EOIR CASE Data December 11, 2019).

Over the almost forty years of our study, 72% (n = 181,892 of 252,594) of all IHP proceedings occurred in state prisons. The state program was boosted by the Immigration Act of 1990, which required states to provide the INS certified records of convictions of noncitizens within thirty days of conviction (T. Alexander Aleinikoff, INS General Counsel, H. of Rep. 1995b: 8). Additional support came in 1994 when the federal government authorized funding to reimburse states and localities for incarcerating all noncitizens under the State Criminal Alien Assistance Program (VCCLEA 1994; Morse 2013; 8 U.S.C. § 1231(i) 2018), building on the existing program to partially reimburse states for incarcerating Mariel Cubans (Act of August 30, 1984; 49 Fed. Reg. 38,719 1984; *see also* Clark 1991).

[8] The Miami-Dade County Jail was the leader in municipal IHP proceedings, with only 1,640 completed proceedings during our study period. Other county jails with more than 300 completed proceedings during the study period were the following: Los Angeles County (California) Jail System (n = 1,527); Essex County (New Jersey) Correctional Facility (n = 1,496); Otero County (New Mexico) Processing Center (n = 388); and Plymouth County (Massachusetts) Correctional Facility (n = 361). As of 2019, municipal jails in Louisiana (n = 215 of 257) and New Jersey (n = 37 of 257) were the most active.

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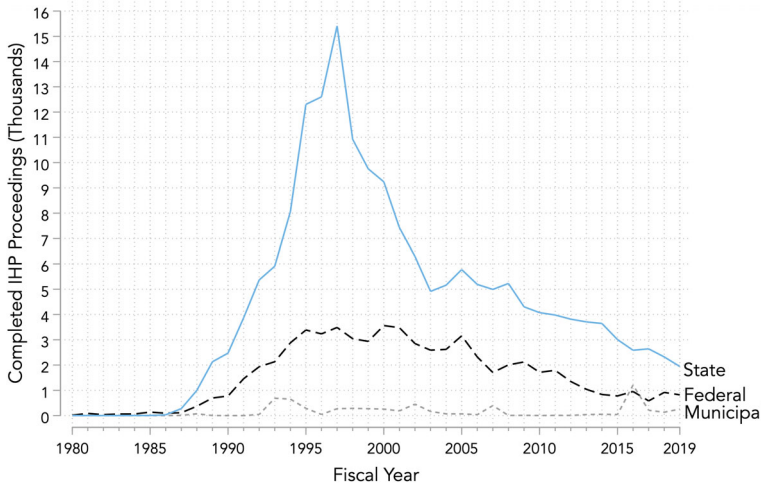

Figure 4. IHP Proceedings, by Program Type (Fiscal Years 1980–2019)

Figure 4 spotlights a sharp overall decline in the number of IHP proceedings completed since 1997. This downward slide has been attributed to a number of factors, including insufficient staffing (GAO 1997: 1; H. of Rep. 1997: 2, 4; OIG Audit 2002: 14–15), misdirection of funds and resources away from the IHP to other INS programs (H. of Rep. 1997: 2, 4; Schuck 2013: 612), the short length of some prison stays (Ford 1992; Robie 1992; Dufresne 1994; Creppy 1995b; INS et al. 1996: 4), and the lack of cooperation of some state prison systems (H. of Rep. 1997: 77–79; Schuck and Williams 1999: 407–17; Lasch et al. 2018: 1743–45). The post-1997 fall in IHP cases is also a result of changes in the law that eliminated the right to a hearing for many incarcerated individuals. In 1994 Congress allowed for administrative removal of certain undocumented immigrants convicted of aggravated felonies, without access to a hearing before an immigration judge (VCCLEA 1994; 8 U.S.C. § 1228(b) 2018). At the same time, the number of crimes that constitute aggravated felonies has grown dramatically (Chacón and Coutin 2018; Goodman 2020: 176). Also in 1994, the Immigration and Nationality Technical Corrections Act allowed for the judicial deportation of immigrants by order of a U.S. District Court judge at the time of sentencing (INTCA 1994: § 224; *see also* BOP 2006: 4). Two years later, Congress invented reinstatement of removal, a process by which a prior order of removal can be reissued through administrative channels without allowing for further scrutiny by an immigration judge (IIRIRA 1996; 8 U.S.C. § 1231(a)(5) 2018). Together, these programs of administrative removal, judicial deportation, and reinstatement of removal have eliminated the ability of many

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incarcerated noncitizens to have their cases reviewed by immigration judges (Family 2009; Sivaprasad Wadhia 2014; Koh 2017), shrinking the size of the IHP (H. of Rep. 2001: 16).

Although the Trump administration tried to increase reliance on the IHP (Kelly 2017: 3; TRAC 2017; AIC 2019), program participation declined from 3,433 completed proceedings in 2017 to 3,021 in 2019 (Figure 4). This continued reduction in IHP court proceedings under the Trump administration may be partially due to the fact that President Trump ordered that administrative procedures "shall be used in all eligible cases" in lieu of formal court proceedings (TRAC 2017).

3.4.2 Access to Counsel

Unlike in criminal court, in immigration court there is no right to appointed counsel. Thus, although noncitizens have a right to counsel, they must hire an attorney or find a pro bono volunteer to take on their case (8 U.S.C. § 1229a(b)(4)(A) 2018). Federal prisons participating in IHP proceedings are generally located in remote areas of the country, such as Oakdale, Louisiana, that are far from immigration counsel. In addition, by definition, IHP participants are incarcerated during their court proceeding. As studies on migrant detention have identified, those who remain detained during their court case rarely find lawyers (Eagly and Shafer 2015; Ryo 2016).

Representation by counsel within the IHP is dismal. Between 1988 and 2019, only 10% of IHP participants were represented by counsel at their initial case completion (n = 20,140 of 196,262).[9] Notably, these representation rates differed across program type. From 1988 to 2019, persons participating in the federal IHP were the least likely to have counsel at their initial case completion (only 7%, n = 4,032 of 54,710), while those in the municipal IHP (18%, n = 741 of 4,153) and state IHP (11%, n = 15,367 of 137,399) were somewhat more likely to find lawyers.

Within the federal IHP, representation rates also varied by facility type. While 10% of those in BOP facilities found counsel (n = 2,829 of 27,414), only 3.5% of those sent to for-profit contract facilities did (n = 919 of 26,194) (initial completions from 1988 to 2019). This statistic raises serious concerns regarding the availability of lawyers at for-profit CAR facilities, which are known for

[9] In contrast, during this same time period 16% of non-IHP detained individuals had counsel at their case completion (n = 320,322 of 1,948,514) (*see* Appendix). An initial case completion is the first substantive decision in an immigration case, including initial immigration decisions regarding removal, as well as administrative closures. We focus on initial case completions to compare removal cases at the same stage, and because most cases end after the initial case completion.

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poor conditions and lack of programming (ACLU of Texas and ACLU 2014).

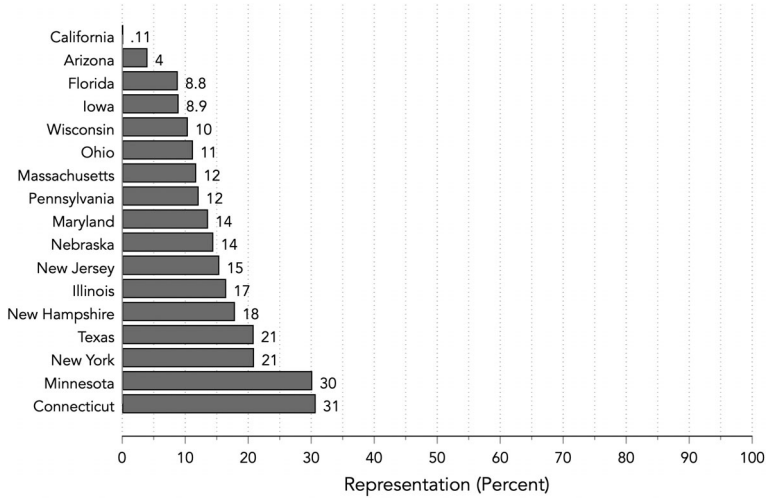

Figure 5. Representation Rates in Active State IHP Programs, Initial Case Completion (Fiscal Years 1988–2019)

The different state IHP programs also varied widely in their level of attorney involvement (Figure 5). At the high end were Connecticut (31%) and Minnesota (30%), where almost one-third of respondents were represented by counsel. At the low end were California (0.11%) and Arizona (4%), where almost nobody found a lawyer. Although Texas had an overall representation rate of 21% (Figure 5), representation was highly concentrated in cases that ended in stipulated removal. This outcome was due to a Texas state program that appointed counsel to IHP respondents only if they agreed to stipulated removal, a topic that we address in more depth in Section 3.5.2. When stipulated removal cases were eliminated from the analysis, the Texas IHP representation rate fell to 10%.[10]

3.4.3 Deportation Rates

It is important to evaluate respondent outcomes within the IHP program. Research on pretrial detention in the criminal justice system has consistently found that persons who are not

[10] Unfortunately, our immigration court data only allowed us to identify stipulated removals present in the data as of 2004. However, we did find that from 2004 through 2019, Texas appears to have continued the practice of providing lawyers if the case ends in stipulated removal. We find that 94% of IHP cases ending in stipulated removal in Texas had counsel (n = 668 of 712), whereas only 10% of Texas IHP cases not ending in a stipulated removal order had counsel (n = 593 of 6,250).

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released prior to trial are more likely to be convicted and also more likely to receive longer sentences (Scott-Hayward and Fradella 2019: 135–43). IHP participants are by definition incarcerated throughout the court process, and analysis of the IHP data shows, perhaps not surprisingly, that 93% of IHP participants were deported (n = 182,059 of 196,262 initial completions 1988–2019). This IHP removal rate was greater than the 83% removal rate for non-IHP detained removal proceedings during the same period (n = 1,626,348 of 1,948,514) ($p < .001$ two-tailed difference of proportions test) (*see* Appendix).

Despite high overall deportation rates, outcomes did vary by program type: 86% were ordered removed in the municipal IHP (n = 3,564 of 4,153), 92% in the state IHP (n = 126,901 of 137,399), and 94% in the federal IHP (n = 51,594 of 54,710) (at initial case completions 1988–2019). Also striking was the difference in removal rates between for-profit federal contract facilities and federal facilities run by the BOP. While only 4% of those placed in for-profit contract facilities avoided deportation (n = 25,189 of 26,194), 7% of IHP participants in BOP-run facilities were not deported (n = 25,476 of 27,414).

Finally, as seen in Figure 6, IHP participants in every jurisdiction were less likely to be deported when they had a lawyer. Among IHP participants, counsel was associated with the biggest reduction in removal rate for those in the municipal IHP. This outcome makes sense because those in the municipal program

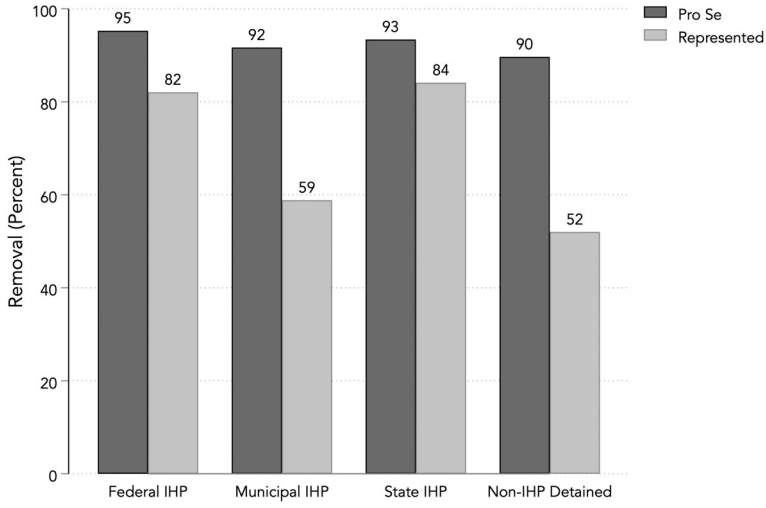

Figure 6. IHP Removal Rate by Representation Status, Initial Case Completion (Fiscal Years 1988–2019)

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may have been held pretrial and thus not yet convicted, or may have had only a misdemeanor conviction that left open more possibilities to qualify for relief from removal. Greater success by counsel in municipal cases may also mean that there was a stronger pool of qualified lawyers able to take on these cases in urban jail locations (Miller et al. 2015b).

3.4.4 Segregated Prisons

Since its inception, the IHP has been based on the creation of what Jack Shaw, Assistant Commissioner for Investigations of the INS under President Clinton, called "chokepoints" or "centralized locations" at participating correctional facilities (H. of Rep. 1995a: 15). These chokepoints relied on INS agents working inside prisons to identify individuals to place in the IHP. Prisons participating in the IHP therefore had to create the physical space within their facilities dedicated to the identification and deportation of noncitizens. For example, in New York, corrections officials built "model courtrooms in two of its male reception centers and provided new office space for use by INS personnel" (Anthony J. Annucci, Deputy Commissioner and Counsel, New York Department of Correctional Services, H. of Rep. 1997: 73). They also arranged for segregated bed space within the facility to house persons awaiting their immigration court hearings (73). Similarly, the Texas state corrections department built an entire facility dedicated exclusively to housing noncitizens for its IHP program, complete with office space for INS officials and immigration courtrooms (Catherine McVery, Assistant Director, Programs & Services Division, Texas Department of Criminal Justice, H. of Rep. 1997: 83–84).

This "chokepoint" system has meant that prison management has a great deal of influence over the IHP because the prison controls the size and location of housing capacity and directs where inmates are assigned to live. When prisons reserve beds exclusively for noncitizens to participate in the IHP, by definition they also engage in residential segregation of noncitizens targeted by the immigration agency for deportation. For example, when the Mariel Cubans were sent to the federal prison in Atlanta (Rep. John Lewis, H. of Rep. 1989: 12), the BOP chose to "consolidate this population" of noncitizens at one location, rather than have them "dispersed throughout the Federal prison system" (Kathleen Hawk, Director, Federal Bureau of Prisons, H. of Rep. 1994: 167). Before long, the BOP began to "operate several institutions in which more than half of the population consist[ed] of non-U.S. citizen inmates" (167). Within these institutions, federal prison wardens participating in the IHP were required to set aside bed space exclusively for noncitizens going

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through immigration proceedings (Carter 1996: 1; McGoings 1998: 1).

In the most complete form of citizenship segregation, IHP locations have been created inside federal prisons that were built to hold exclusively noncitizens serving their sentences. Researchers have documented that a certain type of immigrant prison—known as known Criminal Alien Requirement or CAR prisons—began in 1999 (Greene and Mazón 2012: 16; Kaufman 2019: 1401). Our investigation of the IHP reveals somewhat earlier start of all-noncitizen federal prisons managed by private contractors. In 1994, the Director of the BOP testified that her agency ran four contract prison facilities and all individuals held there (except for two) were noncitizens (H. of Rep. 1994: 167).[11] The IHP was the glue that supported and helped to justify the creation of these early all-immigrant prisons.

Our analysis brings to light that the IHP has not only separated immigrants from the rest of the prison population, but also engaged prisons in worrisome patterns of residential segregation based on national origin and, by extension, race and ethnicity. As previously established, the original IHP experiment that took place in the early 1980s in the Atlanta penitentiary was limited to Cuban men (Table 1), many of whom were Black or Afro-Cuban (Stephens 2016). Similarly, the Oakdale and La Tuna initiatives that followed in 1989 also segregated people by national origin. As internal DOJ documents confirm, the BOP purposefully transferred non-Cuban, non-Mexican males to the centralized Oakdale, Louisiana, location for their hearings (INS et al. 1996: 2; BOP 2002: ch. 10, 8B–9; *see also* Doris Meissner, INS Commissioner, U.S. Senate 1994: 46), while those identified as Mexican were sent to the La Tuna facility in Texas (Table 3).[12] The strategic expansion of the IHP to the Donovan facility in California along the Mexican border allowed the IHP to further its goal of deporting Mexican immigrants (Table 2), or as U.S. Representative Lamar Smith put it, "illegal aliens who speak English or Spanish and who are willing to be deported" (H. of Rep. 1997: 5). At times the targeting of Latinos was even more explicit. For example, in 1997, a BOP official told members of Congress that they planned to

[11] These four private contract facilities were located in Big Spring, Texas, Reeves County, Texas, Eden, Texas, and Hinton, Oklahoma (H. of Rep. 1994: 167).

[12] In its 1996 "Enhancement Plan," the INS consistently identified immigrants as belonging to one of two racialized categories: "Mexican" or "OTM," a term used by the Institutional Hearing Program Working Group to abbreviate "other than Mexican" (INS et al. 1996). While "OTMs" were sent to Oakdale, more sites were needed to enable "systematic identification of Mexican inmates" (4, 5).

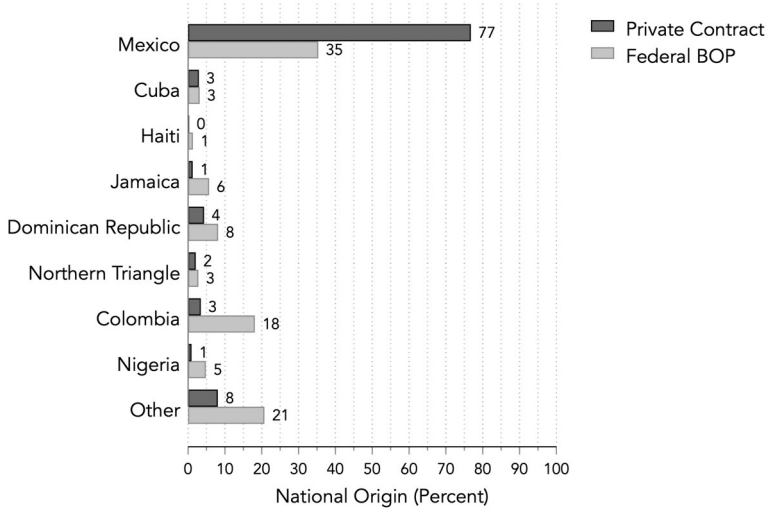

Figure 7. Percent National Origin by Federal IHP Type, Initial Case Completions (Fiscal Years 1988–2019)

work with the INS to establish additional IHP locations "targeted at the Mexican citizens" (John J. Clark, Assistant Director, Community Corrections and Detentions, H. of Rep. 1997: 91).

We also find that Mexican IHP participants were disproportionately placed in facilities operated by for-profit private contractors. As seen in Figure 7, 77% of IHP participants held in for-profit contract facilities were Mexican nationals (n = 20,108 of 26,194), compared to only 35% of IHP participants in BOP facilities (n = 9,688 of 27,414). These patterns are especially concerning given the subpar conditions documented in these private, for-profit facilities (Greene 2001; ACLU of Texas and ACLU 2014). Also of note are clear patterns of residential and court segregation along lines of national origin, with, for example, the vast majority of Jamaicans, Nigerians, and Colombians being held in BOP facilities rather than for-profit contract facilities (Figure 7).

Tables 5 and 6, which feature only those facilities associated with 250 or more IHP proceedings since 1980, delve into a more detailed examination of residential segregation within the federal prison facilities where IHP participants lived. Table 5 focuses on federal facilities run by the BOP, while Table 6 includes federal facilities run by private for-profit contractors. Here, we show once again stark patterns of segregation among participating federal prisons. In particular, while Mexicans were 52% of all participants in these IHP programs since 1980, they have been highly concentrated in select facilities. For example, 91% of all IHP participants at La Tuna have been Mexican, 90% at Reeves, 87% at Eden, and

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Table 5. Descriptive Statistics for Federal IHP, Federal Bureau of Prisons Facilities (Fiscal Years 1980–2019)

		Federal Bureau of Prisons									
	All Federal	Allenwood	Atlanta	Big Spring	Danbury	Dublin	La Tuna	Leavenworth	Lexington	Lompoc	Oakdale
Proceedings (*n*)	63,101	2,385	765	2,245	2,363	3,560	2,929	516	797	2,396	13,755
Active Years	All	2001–2019	1980–88, 91	1992–2019	1991–2013	1993–2019	1998–2014	1990–95	1991–94	1997–2018	1990–2019
Nationality											
Mexican	52%	14%	0%	77%	24%	80%	91%	7%	10%	70%	5%
Cuban	4%	3% ^{NS}	99%	3% ^{NS}	2%	1%	1%	73%	3% ^{NS}	2%	0%
Haitian	1%	2%	0%	0%	1% ^{NS}	0%	0%	1% ^{NS}	5%	0%	2%
Jamaican	4%	9%	0%	1%	8%	1%	0%	3% ^{NS}	6%	1%	9%
Dominican	7%	22%	0%	2%	13%	1%	1%	1%	8% ^{NS}	0%	12%
Northern Triangle	3%	4%	0%	2%	3% ^{NS}	2%	1%	1%	1%	4%	4%
Colombian	10%	9%	0%	5%	18%	5%	2%	5%	36%	2%	29%
Nigerian	3%	3% ^{NS}	0%	2%	3% ^{NS}	1%	0%	0%	8%	1%	9%
Other	17%	34%	1%	8%	28%	10%	3%	10%	24%	21%	30%

Note: Facilities listed in Table 5 are Federal Bureau of Prisons (BOP) facilities that completed 250 or more proceedings since 1980. "All Federal" includes all federal IHP proceedings in all facilities completed between 1980 to the end of the study period that completed 250 or more proceedings. Active years include those years with a consistently larger numbers of completed proceedings. Statistical significance tests are based on a 2-tailed difference of proportions test; base category is "All Federal" excluding comparison group; all differences statistically significant at $p < .05$, unless indicated as non-significant (NS).

Table 6. Descriptive Statistics for Federal IHP, Federal For-Profit Contract Facilities (Fiscal Years 1980–2019)

		Federal Contract Facilities						
	All Federal	Adams County	Big Spring	Eden	Eloy	Moshannon Valley	Reeves	Taft
Proceedings (*n*)	63,101	825	8,622	4,723	4,695	3,323	6,782	274
Active Years	All	2011–19	1992–2019	2001–16	1994–2007	2008–2019	1997–2019	2018–2019
Nationality								
Mexican	52%	50% ^{NS}	77%	87%	84%	11%	90%	73%
Cuban	4%	14%	3%	2%	1%	4% ^{NS}	1%	1%
Haitian	1%	1% ^{NS}	0%	0%	0%	2%	0%	0% ^{NS}
Jamaican	4%	4% ^{NS}	1%	1%	1%	6%	0%	0%
Dominican	7%	6% ^{NS}	2%	1%	1%	29%	1%	1%
Northern Triangle	3%	3% ^{NS}	2%	2% ^{NS}	2%	3% ^{NS}	2%	4% ^{NS}
Colombian	10%	2%	5%	2%	3%	7%	1%	0%
Nigerian	3%	1%	2%	0%	1%	3% ^{NS}	0%	1% ^{NS}
Other	17%	19% ^{NS}	8%	4%	9%	35%	3%	19% ^{NS}

Note: Facilities listed in Table 6 are private contract facilities that completed 250 or more federal IHP proceedings since 1980. "All Federal" includes all federal IHP proceedings in all facilities completed between 1980 to the end of the study period that completed 250 or more proceedings. Active years includes those years with a consistently larger numbers of completed proceedings. Statistical significance tests are based on a 2-tailed difference of proportions test; base category is "All Federal" excluding comparison group; all differences statistically significant at $p < .05$, unless indicated as non-significant (NS).

84% at Eloy (Table 6). Cuban immigrants have been concentrated at Adams County (14%) and D. Ray James (49%) (Table 6), while excluded from Oakdale (0%) and La Tuna (1%) (Table 5). Jamaicans, who are only 4% overall of federal IHP participants, have been disproportionately sent to Allenwood (9%) and Oakdale (9%) (Table 5). This analysis reveals that, rather than integrate immigrants into the national prison system, federal prison officials—who have discretion to house migrants across the country—have crafted a residential and court system that divides participants along lines of national origin, often within private, for-profit facilities that are also entirely segregated by citizenship (Kaufman 2019: 1387–1408).

3.5 The IHP's Influence on Immigration Law

Over time, the IHP has served as a laboratory for profound legal and procedural innovations designed to speed up deportations. In this section we offer four examples of areas where the experimentation within the IHP has later changed the course of immigration enforcement: videoconferencing technology, stipulated removal, elimination of 212(c) relief, and jail-based immigration enforcement.

3.5.1 Videoconferencing Technology

When the IHP first began, immigration judges would generally travel to the facilities where noncitizen inmates were housed and hold court inside the prison (Alex C. Moscato, Director, EOIR, H. of Rep. 1995b: 22; Michael J. Creppy, Chief Immigration Judge, H. of Rep. 1997: 41). Sometimes, rather than having judges travel, respondents were transported from remote prison locations to a central court on the days of their hearings. As the IHP grew, however, officials sought to expand capacity and therefore looked for ways to reduce the time judges and respondents spent traveling. An early pilot program at the Marion County Jail in Oregon experimented with adjudicating IHP cases over the telephone (Cynthia Wishinsky, Director, INS Criminal Alien Branch, H. of Rep. 1995a: 282; 1997: 41). In 1992, the EOIR set in motion its first pilot project with videoconferencing technology by linking a federal BOP facility in Lexington, Kentucky, with immigration judges in Chicago (BOP 1992; Petersburg 1994; H. of Rep. 1995a: 282; GAO 1998: 5).

Reliance on videoconferencing eliminated the need for travel to conduct an in-person hearing. Instead, the immigration judge could remain in the downtown Chicago court and be connected via video link to the federal prison in Kentucky (Cynthia Wishinsky, Director, INS Criminal Alien Branch, H. of Rep. 1995a: 293; Paul

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W. Virtue, INS Acting Executive Associate Commissioner for Programs, H. of Rep. 1997: 36–37). Soon, other IHP courts began to experiment with videoconferencing (Aleinikoff 1995; Flores 1996; Pearson 1999).

Influenced by the success of the IHP pilot, Congress formally incorporated videoconferencing into the immigration law in 1996 (IIRIRA 1996: § 304). The technology could now be used not only within the IHP, but also more broadly within all immigration courts. At first, immigration judges limited their use of videoconferencing to initial hearings in a case, also known as "master calendar" hearings (Michael J. Creppy, Chief Immigration Judge, H. of Rep. 1997: 41). However, video gradually spread to include "individual" hearings, that is, the trial stage of an immigration case in which the merits of any motion or application for relief is adjudicated (Eagly 2015: 945). In 2019, the majority (56%) of all scheduled hearings within the IHP were conducted by video or telephone. Notably, in 2019 video was also used in 20% of all hearings in detained immigration courts outside of the IHP.[13]

3.5.2 Stipulated Removal

As mentioned earlier, a desire to complete higher numbers of IHP cases drove INS officers to prioritize individuals who would not contest their deportation (U.S. Senate 1994: 18–19). Mexicans and Central Americans were targeted for the program as so-called "quick deports" (19). Senate staff observing IHP hearings in the early 1990s found that immigration judges typically spent less than five minutes of court time on each case. In these quick proceedings, the respondent would state their name, the judge would read the charges and the rights, the respondent would typically make no objections, and the judge would order the respondent deported (19).

The IHP's sustained focus on cases that could be resolved quickly was a subject of some concern by the Senate Committee on Governmental Affairs. Although INS had claimed it was removing "the worst of the worst," the committee noted that the program was "actually a fast-track home for the 'best of the worst' criminal aliens" (Senator William Roth, U.S. Senate 1995: 3). In their view, cases that may have been difficult to complete before

[13] In the early years of video experimentation, data were not reliably recorded for the medium of immigration court hearings (Eagly 2015). However, from 2007 to 2019 recording of adjudicative medium is reliable. During this time period, 51% of all scheduled IHP hearings were conducted by videoconference, 9% by telephone, and 40% in person. By comparison, in the non-IHP detained courts, 23% of hearings were conducted by videoconference, 1% by telephone, and 76% in person (all differences significant at $p < .001$ two-tailed difference of proportions test).

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

sentences ended were "excluded from the program in favor of less complicated, uncontested cases" (3).

With pressure building to boost deportation numbers, an exploratory practice quietly emerged within the IHP in Huntsville, Texas, whereby noncitizens would, through counsel, sign an agreement to waive their right to an in-person IHP court hearing (Hetrick 1994). The result was that individuals were ordered deported without ever coming to court so that judges could "more efficiently handle [their] caseload" (Gerald Hurwitz, Counsel to the Director of EOIR, H. of Rep. 1994: 184). During the Huntsville pilot in the early 1990s, more than half of IHP participants waived their right to a court hearing (T. Alexander Aleinikoff, INS General Counsel, H. of Rep. 1995b: 11). The Huntsville program relied on state-funded staff attorneys to facilitate these waivers of rights. Individuals who agreed to deportation without seeing the judge were represented by a staff attorney to complete all the required paperwork (11). In contrast, individuals who chose instead to go to court were not given a state-funded lawyer.

Other trial programs with stipulated removal were also underway in the early 1990s. In Florida, those charged with misdemeanors or non-violent offenses could agree to deportation. In exchange, state court prosecutors would drop their criminal charges (H. of Rep. 1995b: 11). Similarly, under a memorandum of understanding between INS and the Governor of Florida in effect as of 1995, Florida gave conditional clemency to persons convicted of nonviolent offenses if they agreed to stipulate to their deportation (41).

Building on these state experiments, the EOIR began to work with the INS to draft "a regulation permitting immigration judges to enter uncontested stipulated orders of deportation or exclusion without a hearing" (Sheila F. Anthony, Assistant Attorney General, H. of Rep. 1995a: 592; *see also* 59 Fed. Reg. 24,976 1994). In 1996, the procedure for stipulated removal was formally codified into the immigration law (IIRIRA 1996). Today, even individuals without counsel can be removed through stipulation without ever appearing before the immigration court (8 U.S.C. § 1229a(d) 2018; Koh 2013: 497, 503). From 2004 to 2019, 5% (n = 3,628 of 67,305) of removal orders at an initial completion in the IHP were stipulated.[14] Importantly, stipulated removals have now spread into the non-IHP detained population of cases. During this same time period of 2004 to 2019, stipulated removals constituted 17% of all removal orders in the non-IHP detained population (n = 202,898 of 1,216,183).

[14] Prior to 2004 stipulated removals were not recorded in the immigration court data (EOIR CASE Data December 11, 2019).

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Within the IHP, stipulated removals were most common in the federal IHP, where 13% (n = 2,696 of 20,530) of initial removal orders were stipulated since 2004. Moreover, stipulated removals were concentrated in three for-profit contract federal prison locations: Correctional Institution Big Spring in Big Spring, Texas (31%, n = 1,174 of 3,838), Correctional Institution D. Ray James in Folkston, Georgia (20%, n = 29 of 143), and the McRae Correctional Facility in McRae-Helena, Georgia (22%, n = 48 of 220). At the state IHP level, stipulated removals were less common during this period, constituting 13% of IHP removals in Ohio (n = 65 of 517), 10% of removals in Texas (n = 712 of 6,962), and 6% of removals in New Hampshire (n = 5 of 82).

3.5.3 Repeal of 212(c) Relief

The deportation process is generally understood to contain two stages. In the first stage, individuals are informed of the charges against them and their rights in the removal process, including the right to be represented by counsel (GAO 1990: 8; 1997: 4). A hearing is held for this purpose, during which the person charged may "immediately accept an order of deportation" (GAO 1997: 5). Alternatively, the individual may contest the ground for deportation or continue to the second stage of removal and apply for relief from deportation, including for cancellation of removal, as well as for asylum, withholding of removal, or protection under the Convention Against Torture (GAO 1990: 9; 1997: 5). If relief is sought, an evidentiary hearing will be held (Immigrant Rights Clinic, Stanford Law School 2019: 4).

In the early years of the IHP, the most common type of relief sought by respondents was under section 212(c) of the INA (Figure 8). This form of relief allowed lawful permanent residents with an aggravated felony conviction to obtain relief from removal if they had lived in the United States for seven years and had not served a sentence of five years or more for a felony (INA 1952: § 212(c); Immigration Act of 1990: § 511). Time spent in custody was counted toward the seven-year residency requirement (Jere Armstrong, Assistant Chief Immigration Judge, U.S. Senate 1994: 89; Senator William Roth, U.S. Senate 1995: 4). In 1992, just over 10% of IHP cases included a claim under 212(c) (n = 761 of 7,345) (Figure 8).

In a 1993 Senate hearing, Assistant Chief Immigration Judge Jere Armstrong testified that the cases of "criminal aliens" in the IHP could be quite time consuming "due to case complexity," including the fact that 212(c) applications took time to adjudicate

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

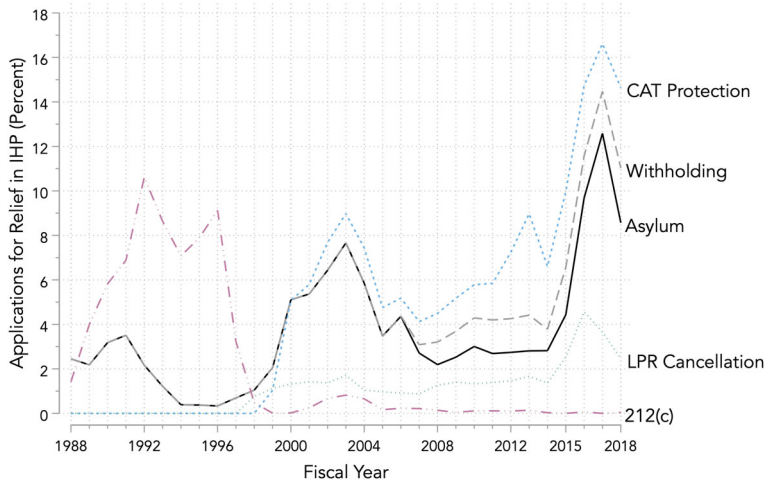

Figure 8. Applications for Relief from Removal in IHP, Initial Case Completion (Fiscal Years 1988–2018)

(U.S. Senate 1994: 65–68, 88; 1995: 28). In an effort to speed up IHP deportations, Judge Armstrong recommended that Senate members consider changes to "simplify" the deportation standard and "expedite the process" of deportation (U.S. Senate 1994: 66). Both Judge Armstrong and his colleague, Los Angeles Immigration Judge Thomas Fong, concluded that in their "personal opinion" the 212(c) law "probably need[ed] re-examining" (67–68).

In 1996, Congress responded by eliminating 212(c) eligibility for lawful permanent residents with certain types of convictions (AEDPA 1996: § 440(d)). The next year, Congress repealed 212(c) entirely (IIRIRA 1996: § 304(b)). As shown in Figure 8, applications for 212(c) declined sharply after the statute was repealed, but did not completely disappear due to a subsequent ruling of the U.S. Supreme Court that preserved the right to seek 212(c) relief for those who pleaded guilty prior to the statue's repeal (*INS v. St. Cyr* 2001). In its place, IHP participants began to pursue other forms of relief. By far the most common has been relief under the Convention Against Torture, followed by withholding, asylum, and cancellation of removal for lawful permanent residents (Figure 8).

3.5.4 Jail-Based Immigration Enforcement

Finally, one of the IHP's most consequential imprints has been to insert federal immigration agents into carceral institutions to screen for immigration status and expedite deportations (GAO 1998: 4). Prisons and jails participating in the IHP not only built immigration courts but also opened their door to allow INS

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

agents to establish physical offices within their institutions and to roam their facilities looking for deportable immigrants. In Los Angeles, for example, the County Sheriff's office supplied the then-INS with a daily list of individuals in the jail allegedly born outside the United States, and INS officers would then go about investigating who might be deportable (U.S. Senate 1994: 19). These early collaborations between the INS and prisons and jails established the foundation for later innovations in what has often been termed "crimmigration," or the merging of immigration and criminal enforcement (Stumpf 2006).

In 1996, as part of the Illegal Immigration Reform and Immigrant Responsibility Act, the immigration law was amended to allow state and local police departments to enter into formal agreements with the federal immigration agency to perform the functions of immigration agents (IIRIRA 1996). The resulting program, known as 287(g), borrowed directly from the IHP's signature design of conducting immigration screening inside prisons and jails. By thus growing and expanding prison- and jail-based enforcement, 287(g) and other related programs such as Secure Communities have placed "ever larger numbers of removable noncitizens—both unauthorized and authorized—in the pipeline for removal" (Meissner et al. 2013: 7). Although states and localities have passed sanctuary laws and begun to question the propriety of mixing immigration enforcement with state and local criminal enforcement (U.S. Senate 1994: 22–23; Lasch et al. 2018), the IHP has retained its foothold even within many so-called sanctuary states such as California and New York (Figure 3).

4. Conclusion

This article has offered the first empirical examination of the IHP, a federal immigration court program embedded inside U.S. prisons and jails. Through analysis of varied sources, this article has yielded three important sets of findings about the IHP's origin and development, its impact on the design of participating carceral institutions, and its role as a precursor to changes in immigration law and practice.

First, by unearthing the origin story of the IHP, this article has provided a detailed picture of the evolution and function of the modern-day prison-based immigration courts. We traced the program's start to 1980 when it began as an ad hoc experiment to secure the exclusion of Cuban asylum seekers held for the purpose of civil immigration detention in a federal prison in Atlanta. In this initial iteration of the IHP, all were ordered deported and

https://doi.org/10.1111/lasr.12523 Published online by Cambridge University Press

virtually none had lawyers (Table 1). This early pilot program solidified the idea that immigration judges could be inserted inside prisons to legitimize the deportation of individuals held in remote facilities with little access to counsel. Under the pretense of due process, the IHP ensured the swift entry of uncontested deportation orders, most often with only one court appearance (Table 1). The program was soon enacted into law and institutionalized as a program to target individuals serving criminal sentences for deportation. Today, the IHP operates in twenty-three federal prisons and nineteen state prison systems (Figures 1 and 2), as well as a few municipal jails.

Second, this article has revealed how the IHP has shaped and reorganized participating prisons and jails around the goals and priorities of immigration enforcement. Indeed, penal institutions have been physically restructured to make way for immigration courtrooms, dedicated bed space for immigrants, and offices for immigration agents. At the Texas State Penitentiary in Huntsville, for instance, prison officials erected a new residential dorm space exclusively for noncitizens, and also built an on-site immigration court. As the IHP grew, it became the lynchpin for the invention of new models of federal prisons focused on deportation. For example, the IHP paved the way for the construction of deportation megacenters in Oakdale, Louisiana, and Eloy, Arizona, that operated as both a prison and a civil detention facility. Immigration judges were crucial to these dual-purpose centers, which economized by having a single on-site court that adjudicated both IHP and non-IHP cases. Another major institutional design choice that the IHP emboldened was CAR federal prisons built to house exclusively noncitizens in for-profit facilities known to have less programing and inferior conditions (Table 6). Notably, only 3.5% of those sent to CAR prisons were able to find lawyers to represent them in the IHP. Also troubling is the way in which the IHP has justified the segregation of individuals within carceral institutions by national origin, citizenship, and race. Consider again how the California IHP concentrated noncitizens—almost all Latinos from Mexico—into one central dormitory space, to attend a court in which almost all cases ended in deportation and very few had lawyers (Table 2). Immigrants from Haiti, Jamaica, and Nigeria have been disproportionately sent to federal BOP facilities in Oakdale, Louisiana, and Lexington, Kentucky, to participate in the IHP (Table 5). Targeted immigration enforcement within the IHP thus not only determines who will be subjected to deportation, but it also shapes the penal institutions that participate in the deportation process. Through the IHP, noncitizens are simultaneously subjected to both criminal punishment and immigration

enforcement, transforming the purpose and experience of punishment.

Third, this article has traced how the IHP has served as an influential, yet overlooked, incubator of immigration court practices that now apply far beyond the walls of prison-based immigration courts. In one such pilot program, the Chicago IHP pioneered the use of videoconferencing as a tool to facilitate prison-based deportation, linking judges in downtown Chicago with the federal prison in Lexington, Kentucky. Today, videoconferencing connects remote detention facilities scattered across the country to immigration courts over a vast network of television screens. Videoconferencing has fostered a court system in which detained immigrants are routinely denied face-to-face contact with the immigration judge deciding their deportation case. The process of stipulated removal was also invented within the IHP. Immigration judges in San Antonio, Texas first experimented with stipulated removal by relying on government lawyers to assist persons imprisoned in Huntsville, Texas, to sign a written agreement to their own deportation, without ever stepping foot in court. Stipulated removal is now part of the immigration law and regularly relied upon outside of the IHP to order the deportation of noncitizens, most of whom have no lawyer. Finally, another of the IHP's central innovations was implanting federal immigration agents inside carceral institutions to identify noncitizens and refer them to immigration judges. This basic infrastructure of immigration screening inside carceral institutions paved the way for modern prison- and jail-based enforcement programs such as 287(g) and Secure Communities. These programs have focused federal deportation efforts on individuals who come into contact with law enforcement and involved state and local police in immigration policing.

In conclusion, this article has relied on a diverse set of archival records to study the IHP, an immigration court initiative that until now has escaped academic scrutiny and review. This research contributes to public understanding of the history and significance of prison-based immigration courts. By delving deep into the forty-year-old court program, this study also expands the lens of existing research on detention, deportation, and racialized control of migration to include carceral spaces that have for some time operated simultaneously as sites of immigration enforcement and penal punishment.

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