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LEARNING FROM OUR MISTAKES: USING IMMIGRATION ENFORCEMENT ERRORS TO GUIDE REFORM

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ABSTRACT

Immigration scholars and advocates frequently criticize our immigration system for imposing severe penalties akin to (or worse than) those in the criminal justice system—such as prolonged detention and permanent exile from the United States—without providing sufficient procedural protections to minimize enforcement errors. Yet there has been relatively little scholarship examining the frequency of errors in immigration enforcement and identifying recurring causes of those errors, in part because the data is hard to come by. This Article begins by canvassing some of the publicly available data on enforcement errors, which reveal that such mistakes occur too frequently to be dismissed as flukes. Although the data is too limited to draw any definitive conclusions as to the causes of such errors, it appears that some errors occur because low-level officials are asked to administer complex and ambiguous immigration laws quickly and with little training or oversight. This Article concludes by calling for immigration reform advocates to gather more information about wrongful deportations, following the lead of the Innocence Project, which has used data from DNA exonerations to raise public awareness of wrongful convictions and to advocate for additional procedural protections in the criminal justice system.

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INTRODUCTION

U.S. immigration law has morphed from a civil to a quasi-criminal system, and yet it has failed to incorporate the procedural protections that accompany enforcement of criminal law. As immigration scholars have observed, criminal law and immigration law are now in a symbiotic relationship: many criminal convictions trigger serious immigration consequences, and many violations of immigration law are prosecuted as crimes.[1] Furthermore, the consequences of immigration violations, such as prolonged detention and removal from the United States, are as severe, if not more so, than those for violating criminal law.[2] Yet many of the procedural protections available in the criminal justice system to prevent wrongful convictions are absent from immigration enforcement.[3] As

1. *See, e.g.*, Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 376 (2006).

2. *See, e.g.*, Ng Fung Ho v. White, 259 U.S. 276, 284 (1922) ("To deport [an alien] . . . . may result . . . in loss of both property and life, or of all that makes life worth living." (citation omitted)).

3. *See, e.g.*, Jennifer C. Daskal, *Pre-Crime Restraints: The Explosion of Targeted, Noncustodial Prevention*, 99 CORNELL L. REV. 327, 372 (2014) (noting that the procedural protections available in the criminal justice system could reduce errors in immigration enforcement); Stephen H. Legomsky, *The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms*, 64 WASH. & LEE L. REV. 469, 469 (2007).

Professor Stephen Legomsky put it, immigration law has "absorb[ed] the theories, methods, perceptions, and priorities associated with criminal enforcement," but has thus far "explicitly reject[ed] the procedural ingredients of criminal adjudication," leaving "noncitizens in deportation proceedings exposed to large risks of error when the personal stakes are high."[4]

This Article argues that it is time to determine whether accuracy is in fact a significant problem in immigration enforcement and, if so, whether additional procedural protections could prevent some of these errors from occurring. The Article is inspired in part by the work of Professor Brandon Garrett, who uncovered systemic errors in the criminal justice system by closely studying the records of 250 innocent people exonerated by DNA testing. Before the advent of DNA testing, many assumed that wrongful convictions were the rare exception.[5] As Garrett explained in his book, *Convicting the Innocent*, "DNA exonerations have changed the face of criminal justice in the United States by revealing that wrongful convictions do occur and, in the process, altering how judges, lawyers, legislators, the public, and scholars perceive the system's accuracy."[6] Garrett studied the records of many of the 250 exonerees' judicial proceedings to determine whether these cases were rare exceptions in an otherwise healthy system or, alternatively, evidence of systemic failure.[7] He concluded that they demonstrated the latter after identifying several recurring problems—including "contaminated" confessions, eyewitness misidentification, unreliable informants, and inadequate representation—that resulted in wrongful conviction in these cases.[8] And he observed that similar errors must have resulted in the wrongful conviction of many who still languish in prison—or worse, who have been executed—because they cannot be exonerated after the fact through a definitive mechanism such as DNA testing.[9] Professor Garrett concluded by sug-

4. Legomsky, *supra* note 3. Procedural protections serve many values in addition to ensuring accurate outcomes, such as protecting personal privacy and dignity, and ensuring government accountability. *See, e.g.*, Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication: Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28, 49–50 (1976). However, this Article will focus on benefits of added procedural protections to guard against errors in decision making.

5. BRANDON L. GARRETT, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG 5 (2011).

6. *Id.* at 6; *see also* Robert J. Ramsey & James Frank, *Wrongful Conviction: Perceptions of Criminal Justice Professionals Regarding the Frequency of Wrongful Conviction and the Extent of System Errors*, 53 CRIME & DELINQ. 436, 439 (2007) ("Accumulating proof that wrongful convictions occur, and that they occur with a frequency that was not previously anticipated, has resulted in more resources being devoted to discovering cases involving factually innocent defendants and in increased academic interest in the extent and causes of wrongful convictions; in turn, system actors have become increasingly aware of the problems and dangers of convicting innocent defendants.").

7. GARRETT, *supra* note 5, at 6–7.

8. *Id.* at 8.

9. *Id.*

gesting reforms that would prevent such errors from tainting future proceedings.[10]

It is time to conduct a similar study of the "wrongfully deported." Indeed, the need is even greater in the immigration context, not only because the penalties imposed are so high, but also because the current procedural protections are so low. As the Supreme Court explained in *Mathews v. Eldridge*,[11] courts must balance the risk of an erroneous deprivation of the individual's liberty against the burden on the government of providing additional procedural protections to lessen that risk.[12] Accordingly, if there are systemic problems in the accuracy of immigration-related detention and removal, it is time to determine why those mistakes occur and whether they can be prevented.[13]

Unfortunately, however, data on immigration enforcement errors is hard to come by. Although the Executive Office of Immigration Review (EOIR) and the Department of Homeland Security (DHS) both publish statistics on immigration enforcement, they do not keep track of cases in which the government is found to have erred in targeting individuals for removal. For example, although immigration scholars and advocates have shown that U.S. citizens are detained and even deported by immigration officials with surprising frequency, the U.S. government maintains no publicly available statistics tracking that problem.[14] Nor does the government appear to record how often it mistakenly bars entry into the United States or erroneously seeks to remove noncitizens lawfully permitted to reside in the United States.[15] Thus, this Article cannot comprehensively analyze immigration enforcement errors, but rather can only review some of the limited data on enforcement errors and describe avenues for future research of this question.

Part I of this Article examines cases in which the government mistakenly concluded that an individual was not legally entitled to be in the United States, leading to the exclusion, detention, or removal of that individual. This Article uses data from the Transactional Records Access Clearinghouse (TRAC), EOIR's annual statistics, advocacy reports, as well as Westlaw and other publicly available databases, to determine the

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10. *Id.* at 12–13.
11. 424 U.S. 319 (1976).
12. *Id.* at 321.
13. Some criminal defense lawyers have critiqued the Innocence Project as unduly focused on wrongful convictions, detracting attention from other needed reforms of the criminal justice system, such as ensuring that the punishment fits the crime. *See, e.g.*, Abbe Smith, *In Praise of the Guilty Project: A Criminal Defense Lawyer's Growing Anxiety About Innocence Projects*, 13 U. PA. J.L. & SOC. CHANGE 315, 324 (2009–2010). That critique is well-taken, and in this Article I do not mean to suggest that immigration reform efforts should myopically focus on avoiding mistakes in immigration enforcement at the cost of all potential areas for reform.
14. Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, 18 VA. J. SOC. POL'Y & L. 606, 618–20 (2011).
15. *See id.* at 629–32.

frequency of such errors, and provides several examples to illustrate the problem.

Part II then asks what we can learn from the mistakes catalogued in Part I. A number of themes emerge, many of which are similar to the recurring errors that have led to wrongful convictions in the criminal justice system. Coerced confessions, lack of legal representation, and mental illness all appear to play an outsized role in leading immigration officials to detain, exclude, and remove those legally entitled to be in the United States. But some immigration enforcement errors are caused by a problem unique to immigration law: the complexity of immigration law itself. Byzantine immigration laws and regulations appear to confound not only the targets of immigration enforcement but also the low-level (and sometimes not-so-low-level) officials tasked with enforcing the laws. The laws that control who is a U.S. citizen, who is legally permitted to enter and remain in the United States, and what types of post-entry conduct justify removal take up hundreds of pages of the U.S. Code and the Federal Reporter and are often ambiguous and confusing. Yet those who administer such laws often must do so quickly, with little opportunity to consult and reflect, and with a bureaucratic rigidity that can lead to terrible consequences for those legally entitled to be in the United States. In short, it appears that the complexity of our immigration system defeats even the supposed experts who administer it.

Part III lays out a framework for gathering and analyzing the data on immigration enforcement errors going forward. Eliminating all errors from any enforcement system is impossible; enforcing the law requires a willingness to accept that occasionally an innocent party will be targeted in error.[16] Nonetheless, a reasonable enforcement system must ensure that the costs of the errors do not outweigh the benefits of enforcement, and this calculation can only be made with a clearer picture than we have today about the frequency and causes of immigration enforcement errors.

I. IMMIGRATION ENFORCEMENT ERRORS

Part A describes the types of enforcement errors that are the focus of this Article, and Part B canvasses the existing data regarding the frequency of such errors.

A. Enforcement Errors

This Article is focused on errors in which the government detains, excludes, or removes individuals who it mistakenly concludes are not

16. *See, e.g., Problems with ICE Interrogation, Detention, and Removal Procedures: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security, and International Law of the H. Comm. on the Judiciary*, 110th Cong. 87 (2008) (statement of Rep. Steven King, Member, H. Subcomm. On Immigration, Citizenship, Refugees, Border Security, and International Law), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg40742/pdf/CHRG-110hhrg40742.pdf (suggesting that immigration enforcement will always produce some errors).

entitled to be in the United States. For example, the government errs when it seeks to remove a U.S. citizen, or a noncitizen with lawful status whom the government miscategorizes as lacking legal status, and when it denies admission to those legally entitled to enter the United States.[17]

Below are five examples of the types of classification errors that are the focus of this Article. They were chosen for the purely practical reason that they were publicly available—that is, descriptions of these errors can be found in newspapers, law review articles, court documents, and reports by advocacy groups. Although these individual cases cannot be presumed to represent a larger sample, they do provide concrete examples of the types of mistakes that should be subject to further research and analysis to determine the factors that lead to immigration enforcement errors.

1. Pedro Guzman

Pedro Guzman, a U.S. citizen who was born in California, was removed to Mexico after an employee in the Los Angeles County Sheriff's Office mistakenly concluded that Guzman was a Mexican national.[18] Guzman was arrested for trespassing after he entered a private airport and tried to board an airplane.[19] He pled guilty and was sentenced to 120 days in jail but was deported to Mexico before he completed his sentence.[20] Although immigration officials subsequently conceded their mistake, they insisted Guzman told them he was born in Mexico and was not authorized to be in the United States and that he signed documents in which he agreed to be returned to Mexico.[21] Guzman's attorneys responded that he never told officials he was born in Mexico and that documents, such as the incident report filed after the arrest, stated Guzman was a U.S. citizen.[22] They also noted that the Sheriff's Office knew Guzman complained of hearing voices and was taking antipsychotic medication, and thus even if Guzman reported he was a noncitizen they should have known not to rely on those statements exclusively when deciding whether to deport him from the United States.[23]

17. These types of classification errors are not the only mistakes that the government can make when enforcing immigration law. For example, the government can mistakenly conclude that a noncitizen is ineligible for discretionary relief, denying the noncitizen a remedy that is legally available. However, the purpose of this Article is not to canvass every type of error that can occur in immigration enforcement, but rather to set out a few types of clear-cut errors that can then be used to determine whether there are systemic problems with accuracy in immigration enforcement.

18. Paloma Esquivel, *Suit Filed Over Man's Deportation Ordeal*, L.A. TIMES (Feb. 28, 2008), http://articles.latimes.com/2008/feb/28/local/me-guzman28.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

2. Wilfredo Garza

Wilfredo Garza was born in Mexico to a U.S. citizen father and a Mexican mother.[24] Garza's father divorced his mother shortly after he was born, and when Garza was eight years old he went to live with his father in the United States.[25] Over the next twenty-five years, ICE officers repeatedly deported Garza to Mexico, and Garza repeatedly surreptitiously reentered the United States by swimming across the Rio Grande. It was not until Garza was in his thirties that he learned he had acquired U.S. citizenship from his father, who had lived in the United States a sufficient number of years to automatically bestow citizenship on his son.[26] Garza petitioned the United States Citizenship and Immigration Services (USCIS) to acknowledge his citizenship, but while that petition was pending he was picked up again and charged with illegal re-entry—a felony that could have subjected him to two years in prison.[27] Garza insisted he was a U.S. citizen and the charges were dropped. Nonetheless, he was removed once again from the United States over his protests that he was a U.S. citizen and without an opportunity to be heard by an immigration judge.[28] Eventually USCIS recognized his claim to citizenship, but only after he had spent months in jail and had been removed from the United States on four separate occasions.[29]

3. Roberto Lopez-Gutierrez

Roberto Lopez-Gutierrez, a Mexican citizen, was kidnapped in Mexico and held for ransom near the U.S.–Mexico border.[30] He escaped and was arrested by the U.S. Customs and Board Protection (CBP).[31] The CBP officer asked if he was afraid of returning to Mexico, as the officer was required to do by law.[32] Lopez-Gutierrez explained he was afraid of his kidnappers.[33] Nonetheless, the CBP officer wrote down that Lopez-Gutierrez was not afraid, and Lopez-Gutierrez was prosecuted for illegal entry.[34] In subsequent court proceedings, the CBP officer explained she recorded that he had no fear of returning because "he was afraid of kidnappers, not of government persecution."[35] The officer further testified she was not trained in asylum law and that she believed if a person was

24. Lauren Etter, *Immigration Twist Gives a Laborer a Fresh Beginning*, WALL ST. J. (May 12, 2006, 12:01 AM), http://www.wsj.com/articles/SB114739948011750992.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. AM. CIVIL LIBERTIES UNION, AMERICAN EXILE: RAPID DEPORTATIONS THAT BYPASS THE COURTROOM 37 (2014) [hereinafter ACLU REPORT], *available at* https://www.aclu.org/sites/default/files/field_document/120214-expeditedremoval_0.pdf.
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*

afraid of private individuals and not the government, that person had no right to seek asylum in the United States.[36] For that reason, she erroneously assumed Lopez-Gutierrez was not eligible for asylum, and so she did not refer him to an interview with an asylum officer to determine if he had a credible fear of returning to Mexico.[37]

4. Ian McEwan

Award-winning British author Ian McEwan was denied admission to the United States as he tried to board an airplane from Vancouver, British Columbia to Seattle, Washington on March 30, 2004.[38] After McEwan informed CBP officers in the Vancouver airport that he would be paid thousands of dollars in honoraria for giving a few speeches in the United States, the officers erroneously concluded he could not enter the United States on a tourist visa, detained him for four hours for questioning, and then stamped his passport "Refused Admittance."[39] McEwan spent the night in Vancouver, and he was only permitted to enter the United States the next day after immigration lawyers, consular officers, and members of Congress all got involved.[40] A few weeks later he received a rare letter of apology from the United States Customs and Border Patrol admitting the denial of entry had been an "error[]" and promising that it would not impact his future attempts to enter the United States.[41]

5. Francisco N.G.

Francisco N.G. and his mother had both been granted U visas[42] after they testified against his abusive father, and thus Francisco was legally living and working in the United States.[43] In 2014, Francisco was driving himself and some of his coworkers to work when he was pulled over by the police for having an expired registration sticker on his truck.[44] The police then called ICE, who arrested all the occupants of the truck.[45]

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36. *Id.* at 37–38.

37. *Id.*

38. John Marshall, *British Author Detained 24 Hours at Border*, SEATTLE POST-INTELLIGENCER (Mar. 31, 2004, 9:00 PM), http://www.seattlepi.com/ae/books/article/British-author-detained-24-hours-at-border-1141079.php.

39. *Id.*

40. *See id.*

41. Lawrence Van Gelder, *Arts Briefing, U.S. Apologizes to McEwan*, N.Y. TIMES (Apr. 22, 2004), http://www.nytimes.com/2004/04/22/books/arts-briefing.html (quoting statement by The Associated Press).

42. U visas are available to noncitizens, including undocumented immigrants, who have been the victim of a crime and are willing to help in the investigation and prosecution of that crime. *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGRATION SERVS., http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status (last updated Jan. 9, 2014); *see also* Immigration and Nationality Act § 101, 8 U.S.C. § 1101(a)(15)(U) (2012).

43. ACLU REPORT, *supra* note 30, at 52.

44. *Id.*

45. *Id.*

Francisco was interrogated by several different ICE officers, one of whom threw away his U visa ID and denied that he had lawful status to remain in the United States.[46] ICE officers then told Francisco that some of the occupants of his car had been undocumented immigrants, and he would be charged with smuggling.[47] The next day Francisco was deported to Piedras Negras, Mexico.[48] He was only able to return to the United States after finding a lawyer who accompanied him to the border to explain the situation, and then spending several days in immigration detention while immigration authorities verified his status.[49]

B. The Frequency of Immigration Enforcement Errors

Are the examples of enforcement errors described in Part I the type of mistakes that can occasionally occur in even the most carefully managed large-scale criminal or civil enforcement system, or are they evidence of systemic failures that require systemic reform? This Part examines data on immigration enforcement errors to try to determine the scope of the problem. Although the available data is too limited to provide a comprehensive assessment of the error rate in immigration enforcement, it does suggest that errors occur too frequently to be dismissed as flukes.

1. Detention and Deportation of U.S. Citizens

As Professor Jacqueline Stevens has shown, a surprising number of citizens are erroneously detained and sometimes even deported.[50] Based on her research, Professor Stevens estimates that approximately 1% to 1.5% of the persons detained by ICE at any given time are U.S. citizens and that U.S. citizens constitute approximately .5% of the persons deported by ICE each year.[51] The percentages are not large, but they add up to approximately 4,000 U.S. citizens each year who are erroneously caught up in the immigration enforcement system.[52] In addition, ICE issued 834 detainers against U.S. citizens between FY 2008 and FY 2012, which led to U.S. citizens being held in custody for longer than they would have otherwise because ICE erroneously believed they had violated immigration laws.[53]

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46. *Id.* at 53.
47. *Id.*
48. *Id.*
49. *Id.* at 52–53.
50. Professor Stevens estimates that approximately 1% of all persons detained by U.S. Immigration and Customs Enforcement (ICE) are U.S. citizens at any given time. Stevens, *supra* note 14, at 629. Part II.B discusses the frequency of immigration enforcement errors in more detail.
51. *Id.* at 629, 632.
52. *See id.* at 608 ("Recent data suggests that in 2010 well over 4,000 U.S. citizens were detained or deported as aliens, raising the total since 2003 to more than 20,000 . . . .").
53. *ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents*, TRAC REPORTS, INC. (Feb. 20, 2013), http://trac.syr.edu/immigration/reports/311/.

The detention and deportation of U.S. citizens is not the only type of immigration enforcement error, however. As catalogued in Part I.A., immigration officials can also err by deporting noncitizens legally entitled to remain in the United States and by excluding noncitizens legally entitled to enter. Assuming immigration officials err with similar frequency when they wrongfully detain and remove noncitizens, then the actual error rate in immigration enforcement for these types of categorical errors is sure to be much higher. Furthermore, ICE may also erroneously deny noncitizens discretionary relief—for example, by mistakenly asserting they are not eligible for cancellation of removal. Such errors are even harder to detect and to study, but presumably they will further contribute to the overall ICE error rate. In short, if ICE is erroneously detaining and deporting 4,000 U.S. citizens each year, it seems reasonable to assume that thousands of noncitizens are also mistakenly excluded, detained, and deported.

2. Termination of Removal Cases

Another important data point regarding ICE enforcement errors comes from the Transactional Records Access Clearinghouse (TRAC), which uses Freedom of Information Act requests to gather data regarding ICE's enforcement record before the immigration courts.[54] In 2010, TRAC noted that in a "significant and increasing" number of cases, immigration courts were rejecting ICE's attempts to have noncitizens removed from the United States.[55] ICE's failure rate for the last three months of fiscal year 2010 was 31%, which is significantly higher than the 25% of cases in which it failed to obtain a removal order in Fiscal Years 2004 through 2009.[56] In approximately 15% of these cases, the immigration judge granted affirmative relief from removal after a finding of removability, and so it does not appear that ICE committed an error in targeting the noncitizen for removal.[57] But approximately 12% of cases in the last three months of fiscal year 2010 were terminated by immigra-

54. *Id.*

55. *ICE Seeks to Deport the Wrong People*, TRAC REPORTS, INC. (Nov. 9, 2010), http://trac.syr.edu/immigration/reports/243/. Department of Justice statistics reveal that in FY 2013, immigration judges terminated 15.4% of all the cases before them on the ground that ICE was unable to sustain the charges, permitting 24,453 people in removal proceedings to remain in the United States in their original status. *See* U.S. DEP'T OF JUSTICE, EXEC. OFFICE FOR IMMIGRATION REVIEW, FY 2013 STATISTICS YEARBOOK C2–C3 (2014) [hereinafter FY 2013 STATISTICS YEARBOOK], *available at* http://www.justice.gov/eoir/statspub/fy13syb.pdf.

Immigration judges are permitted to terminate a proceeding to allow a noncitizen to pursue a naturalization application upon the showing of compelling humanitarian circumstances, or if evidence shows the government has not proved removability. 8 C.F.R. § 1239.2(f) (2004). The immigration judge does not have the authority to terminate proceedings for any other reason. *See* Wong, 13 I. & N. Dec. 701, 703 (B.I.A. 1971). Terminations do not include administrative closures or the granting of affirmative relief, which cannot be considered clear enforcement mistakes by ICE even though these rulings also permit the targets of immigration enforcement to remain in the United States. *See ICE Seeks to Deport the Wrong People*, *supra*.

56. *ICE Seeks to Deport the Wrong People*, *supra* note 55.

57. *See id.*

tion judges after finding no grounds for removal, an increase from the approximately 5% to 7% of cases terminated for such reason from 1999 through 2005.[58]

Significantly, the trend that TRAC identified in 2010 has continued, as EOIR's own statistics show. EOIR's FY 2013 Statistics Yearbook states that only 6.4% of cases were terminated in 2009, either because the charges were not sustained or because the noncitizen established eligibility for naturalization.[59] That number jumped up to 9.6% in 2010, 10.1% in 2001, 11.5% in 2012, and was 13.3% in 2013.[60] In 2013 alone, 19,107 cases that came before an immigration judge for removal were terminated, allowing the target to remain in the United States in the status they held before removal proceedings began.[61]

However, it is not clear that in all of these cases ICE has committed the type of enforcement errors described in Part I. A case may be terminated by an immigration judge for several reasons, not all of which are due to targeting the wrong person for removal. For example, if the immigration court found that ICE obtained evidence of alienage through egregious violations of the Fourth Amendment, then that evidence will be excluded and the case terminated even though the individual targeted for removal was not in fact legally permitted to stay in the United States.[62] Likewise, a case may be terminated because ICE chose to grant prosecutorial discretion for humanitarian reasons.[63] Nonetheless, the data supports the conclusion that ICE cannot find evidence to support removal for a significant percentage of those whom it brings before an immigration judge, which further suggests that ICE errs in selecting targets for removal.

3. Errors in Summary Removals

EOIR's statistics, described above, relate only to the small percentage of removal cases brought before an immigration judge. Most removals in the United States occur through a streamlined removal procedure in which there is no opportunity for review of the initial removal decision

58. *See id.* In the other cases in which ICE failed to obtain a removal order, the target of removal obtained affirmative relief, or the case was dismissed for another, unspecified reason. *See id.* at fig.1 (showing removal order requests that were not granted by immigration courts).

59. FY 2013 STATISTICS YEARBOOK, *supra* note 55, at C2.

60. *Id.*

61. *Id.* Furthermore, immigration judges reject ICE's request for a removal order in close to 50% of cases, which further suggests that ICE is targeting the wrong individuals for removal. *See ICE Targeting: Odds Noncitizens Ordered Deported by Immigration Judge Through June 2015*, TRAC REPORTS, INC., http://trac.syr.edu/phptools/immigration/court_backlog/apprep_outcome_leave.php (last visited Mar. 29, 2015); *see also* Jason A. Cade, *The Challenge of Seeing Justice Done in Removal Proceedings*, 89 TUL. L. REV. 1, 36 (2014) (observing that ICE's high rate of failure in obtaining removal orders suggests that it is seeking to remove individuals with a legal right to remain in the United States).

62. *See* Immigration & Naturalization Serv. v. Lopez-Mendoza, 468 U.S. 1032, 1050–51 (1984).

63. *See* Stevens, *supra* note 14, at 656.

by an immigration judge. In 2013, 83% of removals were carried out by immigration officials making unilateral decisions that were not subject to judicial review.[64] In such summary removals, the decision is made by immigration officials, often in a matter of hours, and the individual usually has no opportunity for a hearing before an immigration judge.[65] If immigration enforcement officials are consistently targeting for removal those who are entitled to stay in the United States—as the data regarding terminations of removal cases described in Part I.B.2 suggests may be the case—then those types of errors are likely occurring at an even higher rate in the context of summary removals.

The American Civil Liberties Union (ACLU) recently published a report entitled *American Exile: Rapid Deportations that Bypass the Courtroom,* examining 136 cases of individuals removed from the United States through summary removal procedures "such as expedited removal, voluntary return, administrative removal, or a stipulated order of removal."[66] Although the ACLU Report was not exclusively focused on erroneous deportations, it nonetheless provided numerous examples of cases in which immigration officials mistakenly deported U.S. citizens and noncitizens with valid visas.[67] In several of those cases—such as that of Francisco N.G., described in Part I.A—the individuals involved explicitly informed immigration officials they were legally entitled to remain in the United States and yet were deported without a hearing.

Data compiled by the American Immigration Lawyers Association's (AILA) and the American Immigration Council's (AIC) Artesia Pro Bono Project provides further evidence of immigration enforcement errors in these types of summary removal proceedings.[68] In the summer of 2014, unusually high numbers of women and young children crossed the southwest border into the United States, many of whom sought asylum.[69] In June of 2014, the U.S. government began to house some of these women and children at a family detention center in Artesia, New Mexico—a small town in the New Mexico desert that is hundreds of miles from the nearest major metropolitan area.[70] As required by law, those women who sought asylum were granted interviews with asylum officers

64. JOHN F. SIMANSKI, OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., IMMIGRATION ENFORCEMENT ACTIONS: 2013 2–3, tbl.7 (2014), *available at* http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf.

65. *See, e.g.*, DANIEL KANSTROOM, AFTERMATH: DEPORTATION LAW AND THE NEW AMERICAN DIASPORA 65–67 (2012) (describing summary removal procedures).

66. ACLU REPORT, *supra* note 30, at 9.

67. *See id.* at 44–66.

68. Stephen Manning, *Ending Artesia*, INNOVATION LAW LAB, https://innovationlawlab.org/2014/12/20/the-artesia-report/ (last visited Aug. 3, 2015).

69. *Id.*

70. *Id.*

to determine if they had a credible fear of persecution in their home countries.[71]

Initially, almost none of the women were represented by lawyers before or during these interviews and approximately 60% of the women were found not to have credible fear and were deported shortly thereafter.[72] For the first month, no one was released from the detention facility aside from those who were deported.[73] Starting in July 2014, AILA and AIC organized pro bono representation for these families, putting volunteer attorneys on the ground at the detention facility each week to interview and prepare the women to seek asylum, as well as to obtain bonds for those who passed their credible fear interviews and were scheduled for asylum hearings.[74] Shortly thereafter, the approval rate for credible fear interviews shot up from only 38% for the unrepresented women to near 100% for those who had access to counsel.[75] Thus far, approximately 50% of the detainees represented by AILA have been released from the facility on bond,[76] and AILA attorneys have won fourteen of the fifteen asylum cases that have gone to trial.[77]

In light of these statistics, it seems likely at least some of the unrepresented detainees who were found not to have a credible fear of persecution and returned immediately to their home countries were actually entitled to asylum in the United States. That nearly 100% of the women and young children who received legal assistance were able to show credible fear meriting an asylum hearing strongly suggests some of the 60% who were found not to have credible fear were in fact eligible to seek asylum.[78] Moreover, similar problems have been reported in the past. In 2005, the bipartisan United States Commission on International Religious Freedom also found that immigration officials failed to properly

71. *Id.*

72. *Id.*

73. *Id.*

74. *See id.* In the interest of full disclosure, I should note that I spent a week at the detention facility in Artesia, New Mexico supervising students in American University's Immigrant Justice Clinic who represented the detainees.

75. *See id.*

76. E-mail from Vanessa Sischo, Coordinator, Artesia Pro Bono Project, to author (Nov. 16, 2014) (quoting Stephen Manning) (on file with author). At least one of the detainees released in December was a U.S. citizen—a fact discovered by AILA volunteers after the detainee told them that her mother was a citizen who had lived for the requisite amount of time in the United States, and thus that she had automatically derived U.S. citizenship upon birth. After a meeting with ICE officials at which AILA volunteers provided them with evidence of this fact, the detainee was released two hours later. *See* E-mail from Maria Andrade, to author (Dec. 2, 2014) (on file with author).

77. Manning, *supra* note 68.

78. A skeptic might argue that lawyers can manipulate the system on behalf of their clients because the credible fear standard is both subjective and vague. But as anyone who attends a credible fear interview knows, the lawyer plays only a very minor role at the interview, usually speaking only very briefly, after the client has been interviewed for several hours. Even well-prepared clients will not be able to demonstrate a credible fear of persecution without being able to cite specific events in their own lives that suggest they have reason to fear return to their home country. In short, lawyers can help those with genuine fear make their case to an asylum officer, but cannot manufacture a factual basis for having such a fear for their clients.

screen for asylum claims and removed those who had expressed a credible fear of persecution.[79] Thus, the evidence suggests that noncitizens with meritorious asylum claims are deported with surprising frequency.

4. Conclusion

The U.S. government does not publicly report how often it discovers that it detained or deported a person in error. Nor does it record why removal cases are terminated, or why some individuals are readmitted to the United States after deportation, or why others are permitted to enter after a previous finding of inadmissibility. In short, the government does not keep records of its mistakes. Although the currently available data cannot provide a comprehensive picture of the error rate in immigration enforcement, it does suggest errors are too frequent to be dismissed as rare outliers. If the United States is erroneously deporting thousands of people a year, as would seem to be the case, it is time to address systemic problems in the accuracy of immigration enforcement.

II. SOURCES OF IMMIGRATION ENFORCEMENT ERRORS

The data described in Part I regarding wrongful detention and deportation is incomplete, and thus cannot provide any definitive answers about the causes of such errors. Nonetheless, the data suggests there are recurring problems in immigration enforcement worthy of closer study and further research. Some of these errors mirror those observed in the criminal system, while others appear to be unique to the problem of allowing immigration officials to interpret and enforce complex and ambiguous immigration statutes and regulations without outside review.

A. "CrImmigration" Errors

Not surprisingly, immigration enforcement errors appear to be caused by the same sorts of mistakes that lead to wrongful convictions in the criminal justice system. For example, coerced confessions appear to be a problem in both systems. Professor Garrett's analysis of 250 cases in which convicted felons were exonerated through DNA evidence demonstrates that false confessions—often made after hours of questioning, intimidation, and threats—are a significant source of error in the criminal justice system.[80] Likewise, those who were removed from the United States despite having a legal right to remain in the country are often subject to lengthy interrogations and end up signing documents agreeing to their own removal.[81] Professor Stevens's research reveals

79. U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, REPORT ON ASYLUM SEEKERS IN EXPEDITED REMOVAL 4–5 (2005), *available at* http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal.

80. GARRETT, *supra* note 5, at 5–8.

81. *See, e.g.*, Singh v. Mukasey, 553 F.3d 207, 209, 215 (2d Cir. 2009) (excluding a noncitizen's confession that he violated immigration laws because it had been made after many hours of interrogation over the course of a single night, and thus was involuntary and unreliable).

that a significant percentage of U.S. citizens who are wrongly detained and deported falsely "confess" to being undocumented immigrants after interrogation by immigration officials.[82] Another immigration advocate observed that "very difficult detention conditions create a strong incentive to agree to any option that will end the detention quickly, and provides a strong disincentive to exercising rights of appeal, which can stretch a period of detention out for months longer."[83]

Intellectual disabilities and mental illness are also factors that increase the error rate in both the criminal justice and immigration enforcement systems. As many immigration advocacy groups have noted, those with such disabilities are particularly likely to be the victims of enforcement errors.[84] The deportation of Pedro Guzman provides an example of the problem. Guzman reported hearing voices and was on antipsychotic medication, which may have led him to sign papers conceding to his deportability, and which certainly hurt his ability to convince immigration officials that he was in fact a U.S. citizen.[85] Mentally impaired individuals may not be able to gather evidence and make a compelling argument about their legal right to remain in the United States, and thus they are at the mercy of immigration officials' willingness to investigate the matter for them.[86] And yet immigration officials lack the capacity, and possibly the incentive, to do so.

Inadequate representation also leads to errors in both the criminal and immigration systems. In the criminal justice system, defendants have a right to counsel provided by the government when charged with felonies.[87] All too often, however, indigent defense lawyers are overworked, or simply unprepared, to defend their clients against serious charges.[88] Moreover, criminal defendants have no right to counsel in misdemeanor cases, and thus wrongful convictions appear even more likely in that context.[89] Likewise, there is no constitutional right to government-funded

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82. *See* Stevens, *supra* note 14, at 629–32.

83. Elizabeth Keyes, *Zealous Advocacy: Pushing Against the Borders in Immigration Litigation*, 44 SETON HALL L. REV. (forthcoming 2015) (footnote omitted) (quoting the manuscript at 28).

84. *See, e.g.*, ACLU REPORT, *supra* note 30, at 48 ("[I]ndividuals with mental disabilities may be at particular risk of erroneous deportation given the complexity of immigration law, the continued absence of appointed counsel in all immigration proceedings, and (in the absence of a lawyer) the reliance on a person's own statements and admissions as the primary evidence.").

85. Esquivel, *supra* note 18.

86. *See* ACLU REPORT, *supra* note 30, at 48–49.

87. Gideon v. Wainwright, 372 U.S. 335, 342–43 (1963).

88. *See* GARRETT, *supra* note 5, at 165–67 (stating that "[p]oor lawyering appears to have played a crucial role in these exonerees' cases," although also noting the degree to which inadequate representation led to the wrongful convictions is hard to determine).

89. *See* Jason A. Cade, *The Plea-Bargain Crisis for Noncitizens in Misdemeanor Court*, 34 CARDOZO L. REV. 1751, 1808 (2013). Errors in the criminal justice system produce errors in the immigration system, and vice versa. If a U.S. citizen is erroneously removed from the United States, that citizen might subsequently be prosecuted for illegal re-entry when he tries to come back to the United States—as happened to Wilfredo Garza. *See* Etter, *supra* note 24. Or if a noncitizen is mistakenly convicted of a misdemeanor shoplifting offense, he might be deported as a result. Thus, the

counsel in removal proceedings, even when the target of removal is a child or is mentally disabled.[90] Immigration enforcement errors almost always occur in cases in which the individual lacks legal representation, as the cases described in Part I.A show, and it is only with the assistance of counsel that the wrongfully deported are able to find their way back into the United States.[91] The striking statistics from AILA's Artesia Pro Bono Project illustrate the difference that counsel can make: although approximately 60% of the women without legal representation were found not to have a credible fear of persecution, almost 100% who benefitted from legal representation met that standard and were allowed to remain in the United States while they pursued their asylum claims.[92]

B. Immigration Law's Complexity as a Causal Factor

Although some of the causes of errors in immigration enforcement are similar to those in the criminal justice system, others are due to factors unique to immigration law, such as the fact that low-level officials are expected to interpret and apply a complex body of laws and regulations without review or oversight.

In most criminal cases, whether the defendant is guilty of a crime is a straightforward question of fact, even if there is some ambiguity regarding the proper charge and sentence for that crime.[93] And in most criminal cases, the decision whether to charge someone with a crime is made by a lawyer, and a conviction or plea bargain is reviewed by a judge.[94] In contrast, many important questions in immigration law turn on complex statutes and regulations that are not easily interpreted even by experienced lawyers. For example, whether a legal permanent resident has committed a crime that renders him removable is a topic that takes up thousands of pages in casebooks, treaties, and practitioners' guides.[95] Admissibility also can sometimes be difficult to determine, as evidenced by the experience of author Ian McEwan.[96] Even the basic question of whether an individual is a U.S. citizen can get complicated

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error rate of one system can come with twice the costs to the victim of that error. *See* Cade, *supra*, at 1808–09.

90. *See* Complaint at 2, J.E.F.M. v. Holder, No. 14-1026 (W.D. Wash. July 9, 2014) (filing class action lawsuit challenging government's failure to provide children in asylum proceedings with counsel as a violation of due process).

91. *See* Rachel E. Rosenbloom, *The Citizenship Line: Rethinking Immigration Exceptionalism*, 54 B.C. L. REV. 1965, 2022 (2013) ("The U.S. citizen deportation cases that have come to light provide powerful examples of the difference that access to counsel makes, due to the growing number of cases in which those who have been misclassified as noncitizens within removal proceedings later prevail on citizenship claims when prosecuted for illegal reentry.").

92. *See* MANNING, *supra* note 68.

93. *See* CANDACE MCCOY, POLITICS AND PLEA BARGAINING: VICTIMS' RIGHTS IN CALIFORNIA 55–61 (1993).

94. *See id.* at 50–52.

95. *See, e.g.*, STEPHEN H. LEGOMSKY & CRISTINA M. RODRÍGUEZ, IMMIGRATION AND REFUGEE LAW AND POLICY 548–88 (5th ed. 2009).

96. *See supra* text accompanying notes 38–41 (describing error that led to CBP officials deny Ian McEwan entry into the United States).

quickly when the individual is born abroad and acquires citizenship from a U.S. citizen parent. In all of these cases, it is not just the facts that may be hard to ascertain, it is the law itself.

For example, at first glance McEwan's travails appear to be the result of negligence by the low-level CBP officials who prevented him from entering the United States after learning he would receive honoraria for his speaking engagements.[97] But in fact honoraria are a gray area in U.S. immigration law. Although the law clearly allows visiting foreign artists and academics appearing before educational and non-profit groups to accept honoraria without first obtaining a work visa,[98] there are no regulations to guide field officers who are trying to distinguish permissible honoraria from impermissible payment for labor in the United States, leading to inconsistent admission standards and general confusion. Representative Jim McDermott, who helped to resolve McEwan's predicament, explained that his office handles these types of border situations on a daily basis, and he told the press that "this happens more often than most people think."[99]

Similarly, Wilfredo Garza only learned that he was a U.S. citizen after his brother's lawyer determined their father had resided in the United States for a sufficient number of years to automatically transmit citizenship to his children.[100] The laws regarding acquisition of citizenship are complex and have changed frequently, requiring lawyers to consult lengthy charts to determine the standards in place at the time their clients were born.[101] Garza was removed from the United States four times, and it apparently never occurred to immigration officials to inquire about his parents' citizenship. But even if they had known of Garza's U.S. citizen father, these officials would have had difficulty determining whether Garza was therefore a citizen himself.

The complexity of immigration law is a particular problem when admission or removal decisions are made through streamlined removal procedures, which require only that two enforcement officers agree that

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97. *See supra* text accompanying notes 38–41 (describing error that led to CBP officials deny Ian McEwan entry into the United States).

98. Immigration and Nationality Act § 212, 8 U.S.C. § 1182(q) (2013) ("Any alien admitted under section 1011(a)(15)(B) of this title may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(1) of this section and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.").

99. John Marshall, *Author's Problems at U.S. Border May Signal Things to Come*, SEATTLE POST-INTELLIGENCER (Apr. 1, 2004, 9:00 PM), http://www.seattlepi.com/ae/books/article/Author-s-problems-at-U-S-border-may-signal-1141231.php (quoting Jim McDermott, Washington State Representative).

100. Etter, *supra* note 24.

101. LEGOMSKY & RODRÍGUEZ, *supra* note 95, at 1293–95.

removal is justified, and are decisions that are typically made and then executed quickly—often in a matter of hours, if not minutes.[102] Some advocates have criticized the expansion of summary removal proceedings and suggest more cases should be referred to the immigration courts.[103] Assuming Congress is unlikely to make such a change, it is essential that the immigration officials making these determinations receive proper training. For example, the CBP official who concluded Robert Lopez-Gutierrez could not have a valid asylum claim based on his fear of harm from non-governmental actors had not been trained in asylum law.[104] If she had even a basic understanding of the subject, she would have known that a person who expresses credible fear of harm from private actors rather than the government nonetheless may have a valid asylum claim that is worthy of exploration in a credible fear interview.[105] For those seeking asylum in the United States, the rights granted to them by statute matter far less than the legal knowledge of those CBP officials charged with making these crucial threshold determinations.

In addition, training should be accompanied by a change in interpretive approach. When immigration officials make determinations about who may enter and remain in the United States, they should err on the side of interpreting the law expansively, at least in those cases that do not raise national security concerns. Courts have adopted a "rule of lenity" favoring the noncitizen when interpreting ambiguous immigration statutes;[106] immigration officials should do the same, particularly when they are the sole adjudicator of an individual's claimed right to enter or remain in the United States.[107] The immigration enforcement system cannot eliminate all error, but it should seek to minimize errors that lead to wrongful exclusion and deportation of those entitled to remain in the United States.

III. FRAMEWORK FOR FUTURE RESEARCH

This Article began by noting that although many immigration scholars and advocates criticize the lack of procedural protections in immigration enforcement, there is very little data on the frequency or causes of such errors. The data on immigration enforcement errors described in Part I is far from complete, and thus no definitive conclusions can be

102. *See* Immigration and Nationality Act § 235, 8 U.S.C. § 1225(b)(1)(A) (2013).

103. *See, e.g.*, ACLU REPORT, *supra* note 30, at 7–8.

104. *See id* at 37–38.

105. *See, e.g.*, Nabulwala v. Gonzales, 481 F.3d 1115, 1118 (8th Cir. 2007).

106. Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545, 568 (1990) (describing the immigration rule of lenity as a means of "offset[ting] the disadvantaged position of aliens in constitutional immigration law").

107. *Cf.*, Trevor W. Morrison, *Constitutional Avoidance in the Executive Branch*, 106 COLUM. L. REV. 1189, 1226 (2006) (asserting that the executive branch has an obligation to implement laws to avoid encroachment of constitutional norms just as courts do and further noting that the obligation is particularly strong when courts are not available to review executive action).

drawn about how often immigration officials err and why they do so. Nor would such a comprehensive data analysis be possible in the confines of a symposium article. Accordingly, this Part sketches a framework for future research and analysis and describes some challenges and issues that such a project would entail.

A. Overcoming Secrecy

Immigration enforcement is disturbingly nontransparent, which can both raise the risk of errors and make it difficult to identify and change the practices that caused those mistakes.[108] The lack of information about detention and deportation of U.S. citizens provides a good example of the problem. As Professor Stevens noted, DHS does not keep statistics on the number of U.S. citizens that are detained and deported, and yet DHS has claimed that such mistakes were rare.[109] After researching that question, Stevens uncovered a significant number of errors, demonstrating that DHS is unaware of the scope of its most egregious errors.[110]

Secrecy can be overcome in a number of ways. First, researchers should seek out more information about immigration enforcement errors through Freedom of Information Act requests, such as requests for documents from ICE and CBP in which those agencies admitted error in targeting an individual for removal from the United States.[111] In addition, advocates can push the federal government to track and publicize its own error rate. Congressional oversight is yet another method of forcing immigration officials to publicly disclose the frequency of their errors. Finally, immigration advocates should keep each other informed about enforcement errors through listservs and other methods of data sharing, which can be used by researchers to gain a more comprehensive picture of these types of errors.

B. The Scope of the Project

Although it may be impossible to determine the full extent of immigration enforcement errors, even a partial picture would be helpful to determining the causes of immigration enforcement errors. Scholars of

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108. *See* KANSTROOM, *supra* note 65, at 102 (criticizing immigration enforcement for its lack of "accountability and transparency").

109. *See* Stevens, *supra* note 14, at 618–19.

110. *See id.* at 620–21.

111. AILA has recently filed suit against the Executive Office of Immigration Review (EOIR) seeking data on complaints filed against federal immigration judges, as well as information about how EOIR responded to those complaints. AILA contends that EOIR is violating the Freedom of Information Act by failing to proactively post online resolutions of complaints against federal immigration judges, and it explains that it has "sought public disclosure of the[se] records in light of longstanding public concern that EOIR has failed to adequately investigate complaints against immigration judges and to take disciplinary action where appropriate." Memorandum of Points & Authorities in Support of Plaintiff's Motion for Summary Judgment & in Opposition to Defendants' Motion for Summary Judgment at 1, Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review, No. 13-cv-00840, 2014 WL 2776308 (D.D.C. June 16, 2014).

the criminal justice system give widely varying estimates of the number of wrongful convictions, and there appears to be no consensus as to whether that number is closer to 1% or 20%.[112] Nonetheless, Professor Garrett's examination of several hundred cases in which individuals were exonerated through DNA evidence has value because it shows where the system repeatedly went wrong in cases in which innocence is no longer questionable. Likewise, a similar study of a small subset of cases in which immigration enforcement officers admitted error could shed light on how those mistakes were made, and thus how to prevent them from recurring in the future.

C. Drawing Conclusions from Data

The question at the heart of this Article is whether the error rate in immigration enforcement is too high. No system of law enforcement can ensure 100% accuracy, and thus errors are a necessary, albeit regrettable, by-product of enforcing immigration laws. Thus, uncovering errors by immigration enforcement officers does not prove that the costs of those errors outweigh the benefits of enforcing immigration laws.

Nonetheless, *systemic* and *preventable* errors can never be justified by any enforcement system, no matter how good its overall track record. For example, if ICE is regularly deporting mentally ill and intellectually disabled individuals who mistakenly "confess" to being undocumented immigrants, then it should change its policies regarding its willingness to rely on such statements as the primary basis for removal. If CBP officers' lack of knowledge of asylum law leads to frequent failures to recognize valid asylum claims, then CBP should improve its training. Even if these errors are rare—and, as described in Part I.B., the available evidence suggests they happen with some frequency—they are preventable and thus must stop.

CONCLUSION

Every system of enforcement and adjudication will commit errors, no matter how many procedural protections are put in place. On occasion, an innocent person will be convicted, or an individual entitled to remain in the United States will be deported. But these mistakes should be rare. The criminal justice system incorporates heightened procedural protections to minimize such errors, not only to protect the innocent, but also to promote the legitimacy of the government's exercise of its criminal enforcement authority. Now that immigration law comes with many of the penalties that accompany the criminal system, it is important to minimize the error rate in this field as well. To do so, immigration reform advocates should follow the lead of advocates for reform in the

112. Ramsey & Frank, *supra* note 6, at 440 ("Various studies have provided estimates of the frequency of wrongful conviction ranging from .5% to as high as 20%.").

criminal justice system who have used the data gathered from wrongful convictions to seek new procedural protections in the enforcement of criminal law. Only after obtaining a clearer picture of the number of wrongful deportations that occur each year, and the reasons why they occur, can we begin to address the causes of those errors.