



University of Dayton

## Human Rights Studies Program

# Anti-Black Racism in Immigration Courts: Documenting Discrimination in Ohio \* a project of the Ohio Immigrant Alliance

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# Overview of presentation

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- Context and central questions
- Methods and research process
- Preliminary findings: interviews
- Preliminary findings: quantitative data
- Analysis and discussion



# Part 1: Context and Questions

# About the Ohio Immigrant Alliance

The Ohio Immigrant Alliance is a 501(c)(3) non-profit organization working with Ohio immigrants and citizens to protect the dignity and rights of all individuals who choose to make Ohio their home—regardless of race, religion, gender expression, age, ability, and citizenship status.

OHIO IMMIGRANT  
ALLIANCE

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BOOKS

## 'Ohio Migration Anthology' to highlight stories, hopes of immigrants, migrants

 **Danae King**  
The Columbus Dispatch

Published 6:34 a.m. ET July 20, 2021 | Updated 11:42 a.m. ET July 20, 2021

When people read the stories of immigrants and their descendants in "[Far From Their Eyes: Ohio Migration Anthology](#)," Lynn Tramonte hopes they

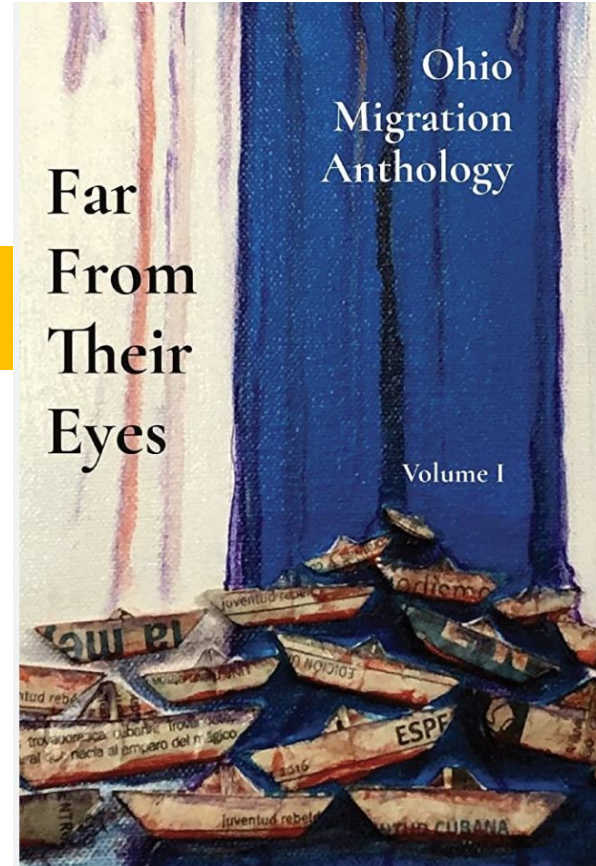


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# Project Background

## Advocacy Efforts and Campaigns of the Ohio Immigrant Alliance

- ReuniteUS campaign to bring separated families and communities back together
- TPS/DED for Mauritania
- *Far from Their Eyes Ohio Migration Anthology* vol. 1
- Research on anti-Black racism in immigration courts



# Project Background

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## **Commitment to knowledge justice in project**

- Centering Black experiences and voices is a priority
- Action Research approach: open ended and collaborative form of investigation with the purpose of social transformation
- Abolitionist framework; links to human rights principles and efforts to denounce systemic injustice



# Research Questions

1. How does anti-Black racism impact Black migrants moving through the immigration court system in the United States at-large and Ohio specifically?
2. What are the institutional processes and dynamics that foster high rates of denial of Black claimants in immigration courts?

# Literature/ key concepts

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**Crimmigration** (Stumpf 2006) - the increasing collapse of immigration and criminal law enforcement as well as their regulatory entanglement; also refers to the ways that illegalization in the immigration context can result in the criminalization of everyday activities such as driving

**Legal violence** (Menjívar and Abrego 2012) - the violent effects and hidden harms felt in immigrants' everyday lives due to their exclusion from legal status in areas of economics, health, education, and more

**“Separate and unequal justice”** (Gonzalez van Cleve 2017) - an adaptation of a concept from W.E.B. DuBois, the “double system of justice,” this describes the systemic effect of observable everyday mechanisms in courtrooms that sort people in racially disparate ways, both reproducing and naturalizing its own unequal impact



# Anti-Black Racism and US Immigration Advocacy

“Black immigrants have reduced visibility in ongoing debates about immigration reform, undocumented activism, and anti-racism. This reduced visibility leads to a lack of protection and advocacy on their behalf: without the inclusion of Black immigrants, efforts to create meaningful immigration and criminal justice reform are impeded.” (Palmer 2017)

“Anti-Black racism exacerbates the vulnerabilities of Black immigrants, and, moreover, the reduced visibility of this diverse population within immigration and criminal reform advocacy impedes efforts to advance meaningful immigration and criminal reform.” (Palmer 2017)

## The Crossroads: Being Black, Immigrant, and Undocumented in the Era of #BlackLivesMatter

BREANNE J. PALMER\*

### INTRODUCTION

This paper discusses the detrimental, intersectional effects of immigration law and criminal law on Black immigrants, both with and without documentation. Anti-Black racism, deeply embedded in America's criminal law system, funnels Black immigrants into the criminal justice system, and subsequently into removal or other punitive immigration proceedings. Black immigrants have long been missing, or purposely erased, from the national immigration narrative. Only a handful of organizations advocate for their particularized needs. As Black immigrant activism increases in visibility, opportunities for a new form of coalition building—known as “transformational solidarity”—must be adopted in order to protect and advocate for Black immigrants.

Part One presents the increasing presence of Black immigrants in the U.S., and discusses the ways in which racialized policing and application of criminal laws subject Black immigrants to some of the same perils Black Americans face when confronted by the criminal justice system. Yet, for Black immigrants, this confrontation can lead to removal or other dire immigration consequences. Part One lays out statistics about Black immigrants, including their higher rates of detention and removal as compared to other immigrant groups. Part Two proposes that the Black immigrant population's invisibility, and resulting vulnerability, requires targeted activism from both immigration reform and migrant rights advocates and criminal justice reform advocates. Part Two also highlights two such organizations advocating for Black immigrants: the Black Alliance for Just Immigration (“BAJI”) and the UndocuBlack Network (“UndocuBlack”) and shows how their work engages in transformational solidarity. Part Three proposes a forward-looking path for Black advocates, focusing on BAJI's theory of “transformational solidarity:” migrant rights activists and activists in the Movement for Black Lives must collaborate in order to ensure Black immigrants and undocumented Black people are part of the larger narrative and being advocated for. This collaboration will create a fuller, contextualized, and better-informed picture of what criminal and immigration law reform can—and should—look like. This collaboration will add even more texture to the still-burgeoning, and increasingly intersectional, Movement for Black Lives.<sup>1</sup>

<sup>1</sup> During the weekend of April 8 to 10, 2016, the Black Immigration Network (“BIN”) hosted its biennial Kinship Assembly, Black Love Beyond Borders, in Los

\* J.D. 2016, Georgetown University Law Center. © 2016, Breanne Palmer.

1. The Movement for Black Lives refers to not only the formal Black Lives Matter network, consisting of local chapters of Black Lives Matter, but also the efforts of individuals and grassroots groups not formally affiliated with the Black Lives Matter network. Each of these groups is engaged in the work of modern Black liberation.

# Anti-Black Racism and US Immigration Advocacy

“Black immigrants experience marginalization due to pervasive anti-Blackness in the larger society and lack of representation within advocacy organizations...The invisibility experienced by Black immigrants within immigration organizing, advocacy, and reform is an extension of anti-Blackness that reaffirms the Black body, or subject, as unthought-of.” (Benjamin 2021)

“Black immigrants, both documented and undocumented are entering a racial terrain where race, particularly Blackness *and* anti-immigrant biases, are always at play. Their Blackness, or Black skin, is a marker of otherness and their immigrant status places them both outside and inside of presumed Americaness, making their positions as full members of the polity less secure. Their access to resources is shaped by both legal citizenship and race, particularly Blackness.” (Benjamin 2021)

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Black Immigrant Invisibility within Immigration Advocacy and Policy

BY

Tatiana Benjamin, PhD  
Senior Research Analyst

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# Anti-Black Racism in U.S. Immigration Contexts

Pervasive evidence from human rights reports and research studies demonstrates that Black people caught up in immigration systems in the U.S. are disproportionately subjected to:

- Criminalization (Georgetown University Law Center Federal Legislation Clinic & The UndocuBlack Network 2021, BAJI report),
- Mistreatment at the border (S. Priya Morley and BAJI report, Philips and Ricker, Morley and Helton 2021)
- Abuse in detention and disproportionate incarceration (CITES)
- Case study of abuses in Ohio-Butler County ICE contract, now ended (Hallett and Otero Asmar 2022)

“ THERE IS  
A TARGET  
ON US ”

The Impact of Anti-Black  
Racism on African Migrants  
at Mexico’s Southern Border



**BRIEFING GUIDE: THE U.S. GOVERNMENT’S SYSTEMATIC  
MISTREATMENT OF CAMEROONIAN AND OTHER  
BLACK MIGRANTS**

*Records released to immigrant rights advocates raise serious questions about the treatment of Black migrants by the U.S. government, and how Black migrants and advocates are viewed by government officials.*

**BACKGROUND**

Documents from [FOIA litigation brought by Project South, the Southern Poverty Law Center and the Center for Constitutional Rights](#) seeking information about the U.S. government’s [treatment of Black immigrants deported between 2020 and 2021](#), including during the 2020 “Death Flights” to Cameroon and other African countries, reveal federal officials’ disturbing attitudes towards Africa and their treatment of mass deportations as a sport, and highlight the necessity for continued transparency from U.S. immigration officials. The information released so far adds new and important context to the ongoing documentation by human rights groups across the country, who have extensively [reported](#) on and advocated against the chilling effect and inhumane nature of these deportations.

The U.S. government’s continued lack of transparency in its practiced policies against Black immigrants is gravely concerning. Amidst the COVID-19 pandemic, deportations continued despite [allegations](#) of mistreatment and abuse at the hands of U.S. government officials and contractors while in U.S. Immigration and Customs Enforcement (ICE) custody, and serious concerns raised by [civil society](#) and [U.S. Congress members](#). The information that immigrant rights advocates have accessed thus far clearly demonstrates [racism](#) against Black migrants within the federal immigration sphere, as well as a practice of [heightened deportation, exclusion,](#) and [violence](#) of and towards Black migrants in comparison to other migrants.

**I. DISREGARD FOR BLACK MIGRANTS AND HOSTILITY TOWARDS  
IMMIGRANT RIGHTS ADVOCATES: DOCUMENTS SHOW U.S.  
GOVERNMENT OFFICIALS DISREGARDING THE EXPERIENCES OF BLACK  
IMMIGRANTS AND FURTHERING PARANOIA AROUND PUBLIC SAFETY.**

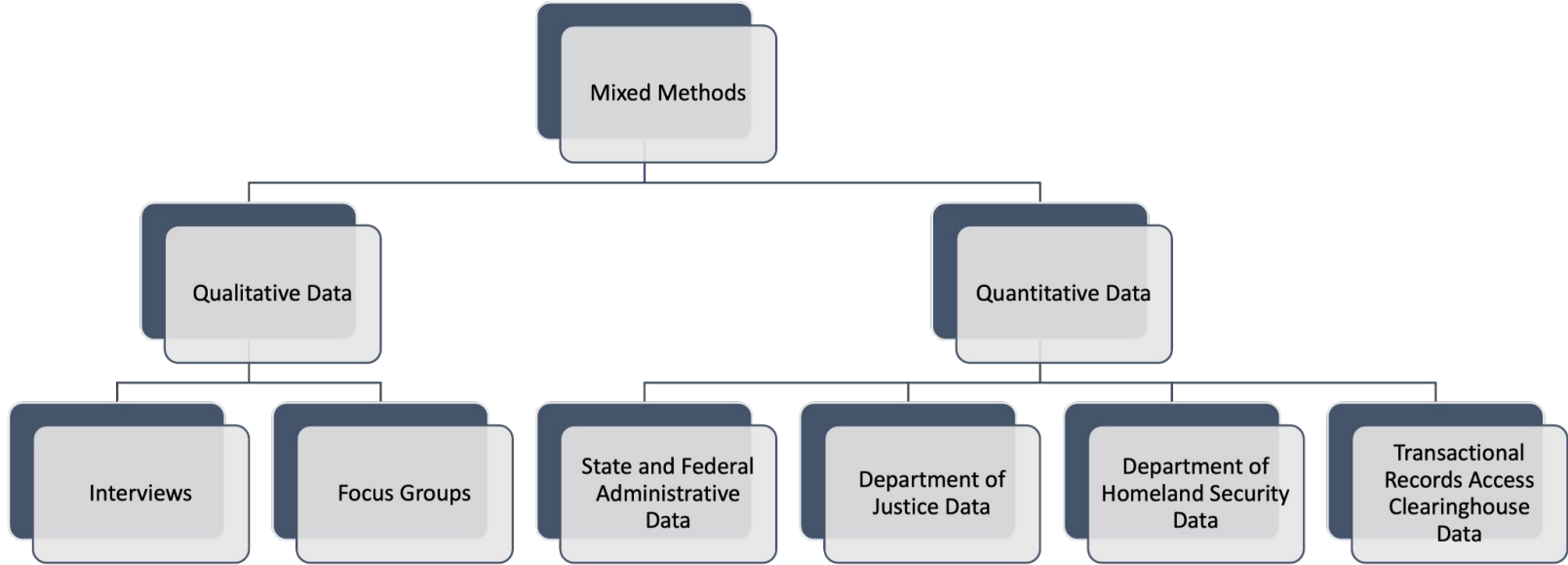
- (a) In a December 16, 2020 email to colleagues in response to a [Foreign Policy article](#) about the U.S. failing Cameroonian asylum seekers, Deputy Chief of Mission at the U.S. Embassy in Cameroon, Vernelle FitzPatrick, wrote: “As an aside, while I was at home, I used three Lyft drivers who were Cameroonians. One said he was in the United States illegally; he came on a visa six years ago and

Released February 6, 2023

**The Invisible Wall:  
Title 42 and its Impact on  
Haitian Migrants**



## Part 2. Methods and research process

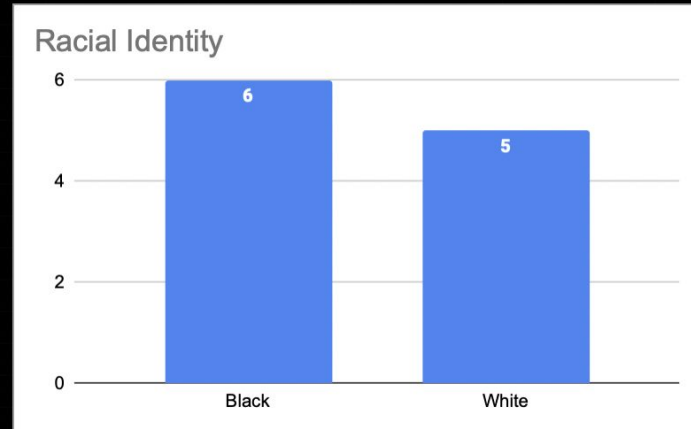
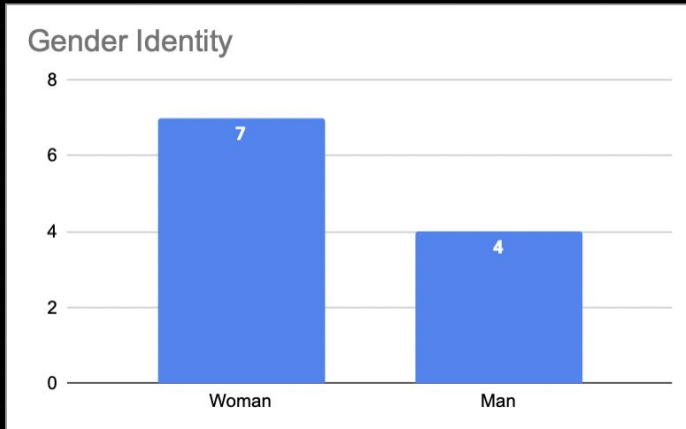
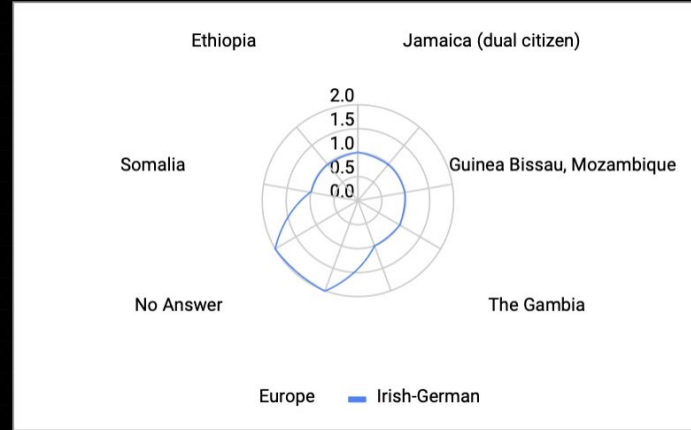
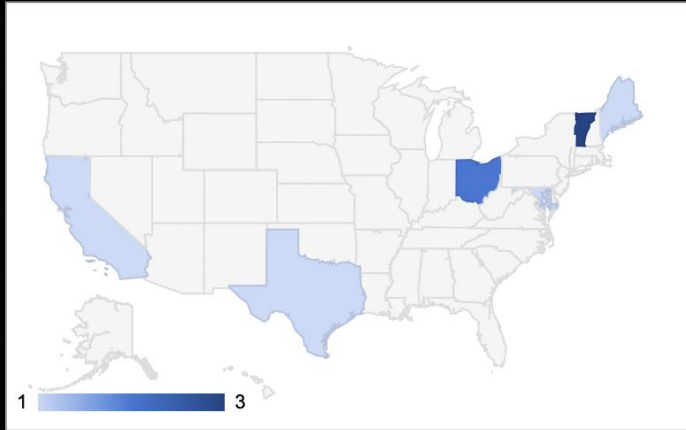


# Research Design



Part 3. Preliminary  
findings: interviews

# Interview Participants - Demographic Information





# Emerging Themes

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- Language Access Disparities
- Explicit Bias of Immigration Judges
- Bond Amounts Disparities
- Subjectivity of Credibility Determinations
- Incompetence of Immigration Judges
- Absence of Cultural Responsiveness and Empathy

# Emerging Themes



- Complete Transformation and/or Abolition of System
  - Transparency and Accountability Measures and Mechanisms for the Courts
  - Permanent Relief Pathways/Solutions
  - Dismissal of Cases (particularly those in backlog)



# Lack of Access to Justice

***“I think there's this fundamental unfairness built into the system...The entire immigration court system being part of the Justice Department is... very politicized and a huge number of the judges are former prosecutors. The entire system is...skewed towards denying people asylum. I joke with other lawyers and law students about [it]... if you were this evil genius and you wanted to design like a system where it was almost impossible for anybody to win, this is pretty much what you would design.”***

***(Ohio Attorney #1)***

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# Anti-Blackness in the Court

***“I would say Black immigrants...at much higher percentage rates are found not credible when they should be found credible...The adjudicators, be it a judge or an asylum officer, will pick the case apart, ask question after question after questions to confuse them when they're telling the truth...If I were in their shoes...I would myself be confused...I think they [adjudicators] pick their cases apart oftentimes because they're from countries where they've been tortured, they have scars all over their body, and they have to win asylum unless they're found not credible. So the only way to not grant asylum is not find them not credible... and that's like the scarlet letter that sticks with them for the entire case...They're framed as fraudsters, liars when they are in fact telling the truth.” (Ohio Attorney #2)***

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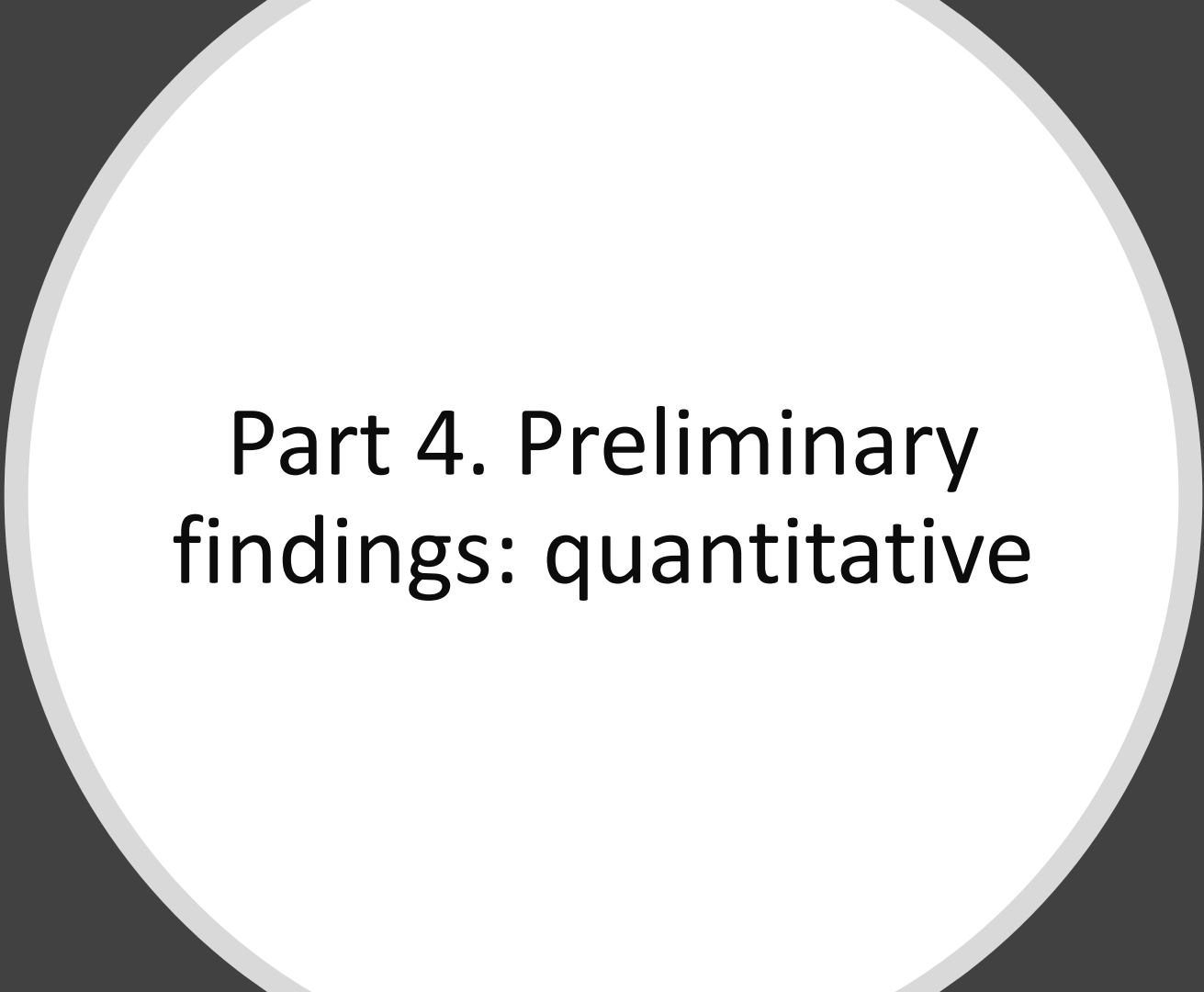


# Emerging Theme - System Transformation/Abolition

***“I think they need to basically terminate [the system]...They need to go in and just clean house. They need to get rid of these judges. They need to get rid of these government attorneys. They're puppets. They're using egregious methods to cross-examine witnesses and ...they're bias[ed]...Basically tear the court down and get rid of all the bad attorneys and judges. Maybe there needs to be an investigative committee. That's made up of...different people and different organizations...”***

***(Ohio Attorney #2)***

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Part 4. Preliminary  
findings: quantitative

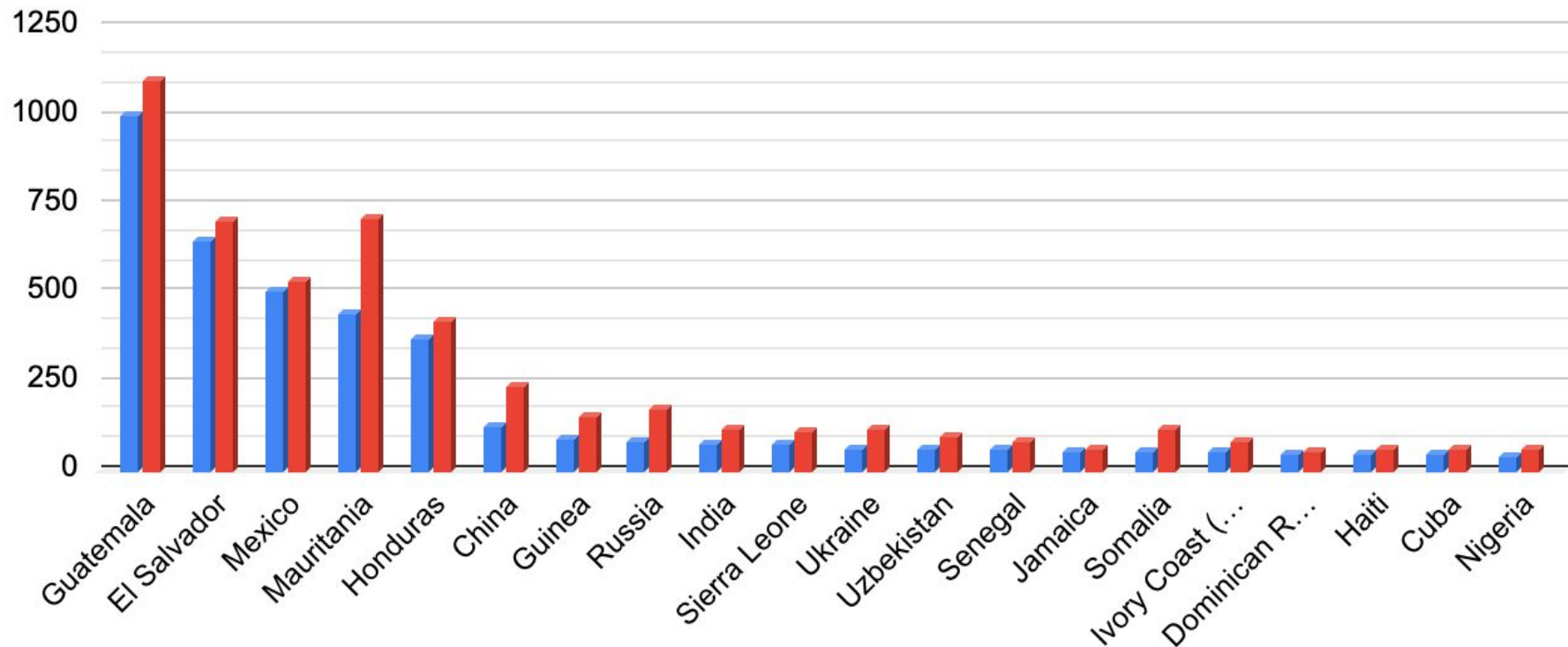
# 18%

18%, or 103,000 of Ohio's foreign-born population are Black immigrants, mainly from the continent of Africa. ([Ohio Department of Development, Office of Research](#))

# Cleveland, Asylum Denial vs Total Cases

Top Twenty Country of Origins

Asylum Denied Total Asylum Cases





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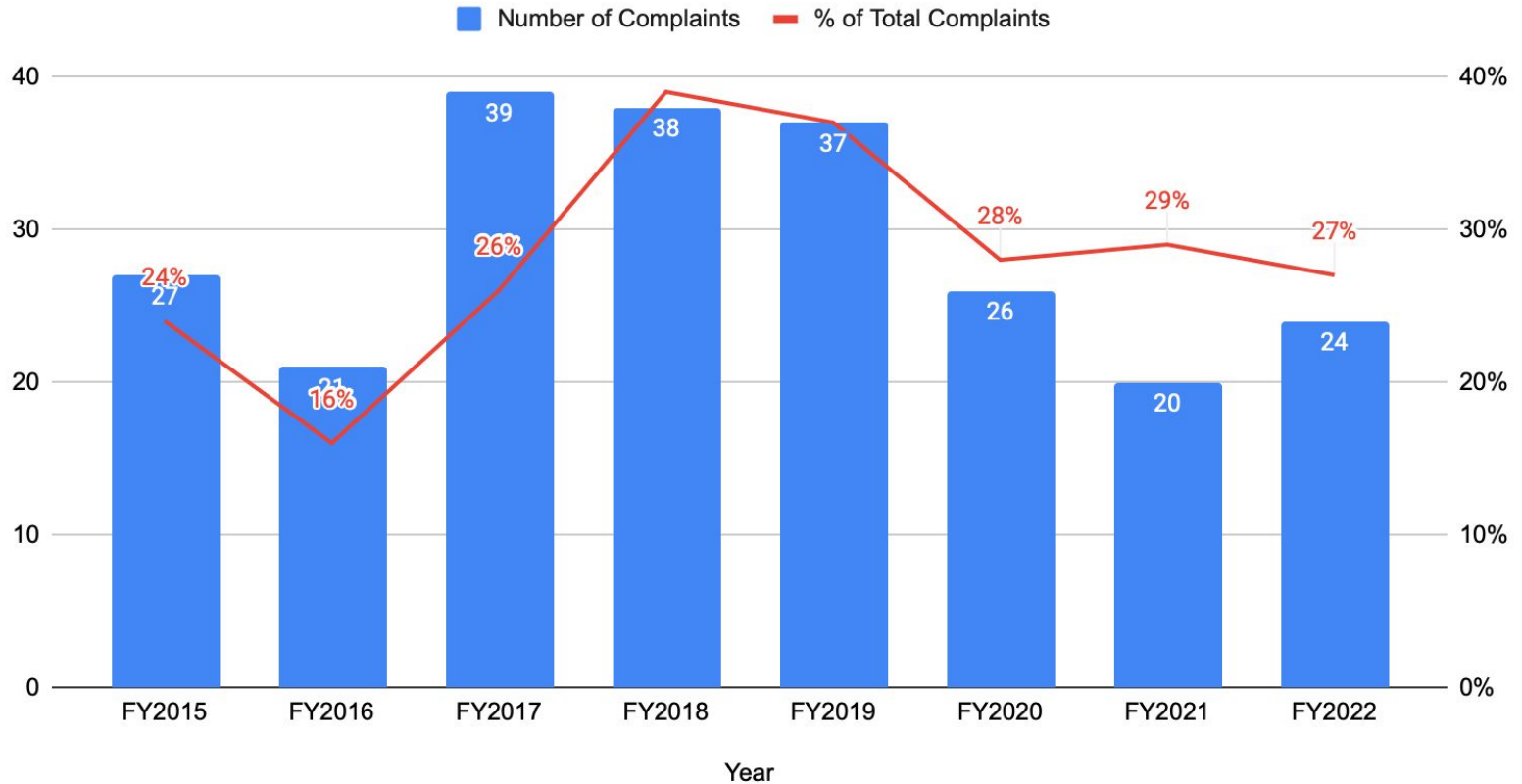
Number of Immigration Judges in Cleveland

**22,322**

FY 2023 Cleveland Immigration Court Pending Cases (TRAC)

# Number and Percentage of Total Bias Complaints Against Immigration Judges

U.S. Department of Justice



# 5. Analysis and discussion

# Structural and Systemic Racism In Immigration Court

- Crimmigration
- Immigration Courts' Lack of Independence
  - ***Judges are career civil servants within the Department of Justice, the same agency the represents the government in removal proceedings***
- Immigration Courts' High Caseload
- Lack of Representation
- Lack of Adequate Translation
- Oral (rather than Written) Decisions
  - ***Oral decisions are typically given as soon as testimony is completed, giving less time for thoughtful, documented deliberation***
- Limited Court Staff

# “Built into the system”

## *Structural/systemic issues:*

- Judges' prior formation as prosecutors does not prepare them for their ethical role as judge, often contains little to no grounding in human rights frameworks or asylum law, and often involves developing attitudes of instrumentalized suspicion
- Lack of adequate representation and interpretation for claimants
- Remote hearings with inconsistent procedures
- Claimants are not able to communicate continuously with their lawyer, even when such exists

# “Any reason to deny”

*Observed bias and discrimination:* highly adversarial attitudes and practices of judges in an allegedly “non-adversarial” role; judges seem to be looking for any reason to deny, no matter how flimsy

- High rates of adverse credibility determinations (suspicion, cultural misreadings)
- Refusal to accept documents, or disqualification of claimants because it is impossible for them to acquire bureaucratic records
- Spurious and over-simplified claims that “things are better now” in country of origin

# Legal “truths” and the institutional materialization of racist ideology

- **Law requires strict boxes** despite the complexity of life and reality (law scholar Patricia Williams)
  - refugee/migrant binary ideology
- **System designed to deny:** criminalization and anti-Black bias in immigration contexts drives the categorization of Black migrants as “illegitimate” through mechanisms of exclusion and invalidation
- Experiences of oppression are intersectional because **the system is designed to target** some more; i.e. *it is designed to discriminate*
- Ironically, even the **efforts of advocates can often end up reinforcing racism**

AMELIA FRANK-VITALE  
Princeton University

## Particular Social Group Trouble: Producing Categories of “Unworthy” Asylum Seekers

*Developing ethnographic knowledge is largely about understanding and retaining nuance, complexity, and, even, contradiction. In the asylum courtroom, however, the law looks for certainty, clear percentages of likelihood of harm, and general, essential claims that a given people/country are a particular way. In this essay, I reflect on the ways in which the asylum system, by requiring that individuals be at risk because of their category (particular social group with immutable characteristics), casts other categories of people as inherently violent. I am particularly concerned with this dynamic in terms of gender-based violence claims,*

hung up the phone and burst into tears. I knew two things for sure: First, that the judge would decide against the asylum seeker on whose behalf I had just testified and, second, that this young man would be murdered if he were made to return to Honduras.

Before the hearing, Frank’s lawyer had warned me—This judge is really great with other cases: women, girls, domestic violence, the judge is kind and sympathetic. But the lawyer suspected that this case—of a young, Honduran man who had been marginally gang-involved as a minor—would not benefit from the compassion and empathy this particular judge shows for asylum-seeking women.

In the hearing, the judge was hostile to me, impatient, and, at one point, balked a bit when I refuted a generalization about MS-13. When my gut feeling was confirmed a short while later—Frank’s petition was indeed denied—I was heartbroken. I had provided expert opinions in nearly 30 asylum cases by that point; this young man was by far the person who I was most sure would be subjected to horrific violence if deported.<sup>2</sup>

Honduras has one of the highest homicide rates in the world, roughly 45 murders per 100,000 people in 2019 (Igarapé Institute

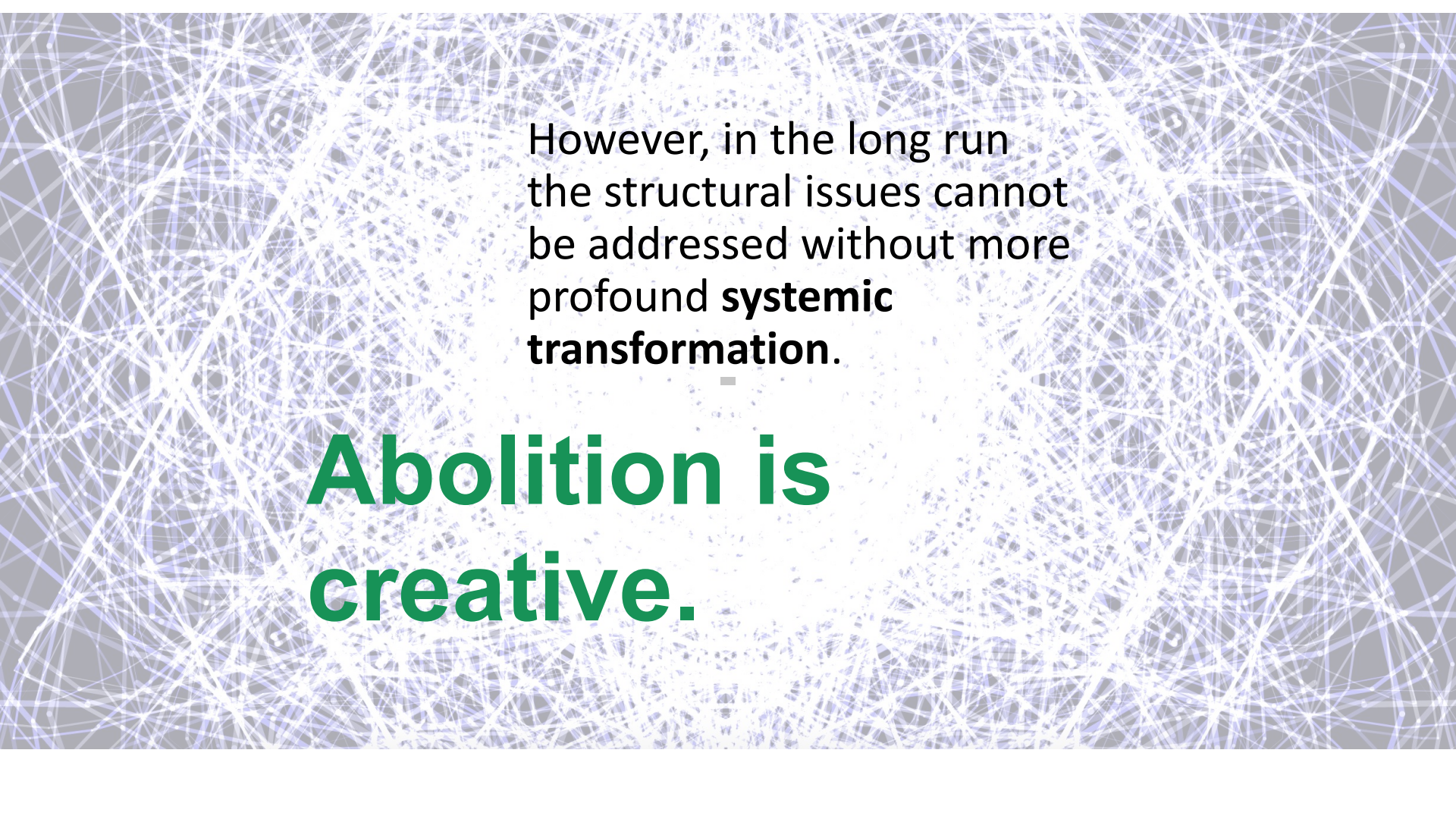


# Preliminary Recommendations

- Policy and practice:
  - Provide in-person hearings for all humanitarian immigration hearings, including asylum and Convention Against Torture cases
  - Provide adequate legal representation and qualified interpreters for claimants
  - Eliminate the highly subjective credibility determination standard

# Preliminary Recommendations

- Legal education:
  - Judicial ethics and immigration law should be required part of background for these positions
  - Advocates should be trained on what it requires to communicate and work effectively with asylum seekers from many different backgrounds, including interview skills
  - Professional training for judges and lawyers who will work in immigration courts should include support in developing a reflective and critical understanding of how their own racial and cultural background shapes their assumptions, and tools to deconstruct/minimize bias in their practice



However, in the long run  
the structural issues cannot  
be addressed without more  
profound **systemic  
transformation.**

**Abolition is  
creative.**

# Thank you for your attention.

Any questions? Ask now...

Or later: [mhallett1@udayton.edu](mailto:mhallett1@udayton.edu)