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US Asylum Lawyering and Temporal Violence

Catherine L. Crooke

Research on the temporal dimensions of international migration focuses on how migrants experience time. This study instead turns attention to public interest lawyers, whose work plays a crucial role in ensuring favorable legal outcomes for immigrants, in order to consider time's salience within the US asylum context. Based on twelve months of ethnographic fieldwork with Los Angeles-based public interest asylum attorneys, this article argues that lawyers confront both weaponized efficiency and weaponized inefficiency in the course of representing asylum seekers. Advocates must rush to keep pace, on the one hand, as various state actors accelerate asylum processes and, on the other, find ways to advance clients' interests even as state agencies selectively slow procedures to a standstill. These findings affirm that temporal contradictions define the US asylum system. Further, they demonstrate that lawyers experience these contradictions not as natural phenomena but, rather, as temporal violence: in a range of contexts, government action mobilizes time—whether actively or passively—in the service of migration control.

INTRODUCTION

Effective lawyers are a key asset to people navigating the US asylum system. Legal experts matter for refugee rights both because the law constitutes the sole path to protection and because state actors—from White House officials who announce new federal guidelines to street-level immigration officers who determine implementation—routinely leverage law and policy to restrict migration. The Trump administration, for example, implemented a staggering 1,059 known immigration policies during its tenure, often through opaque legal mechanisms that made the changes hard to follow (Guttentag 2021). Reforms like these may revise not only who counts as a refugee but also how, where, and when individuals may request asylum. They create systemic instability that presents a challenge to those pursuing avenues to protection, and lawyers are uniquely positioned to maneuver this instability. To approximate a full picture of how law governs the lives of people seeking protection, researchers must endeavor to understand how attorneys adapt to the tumult that shifting migration control measures

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perpetuate. Based on ethnographic data collected during twelve months of fieldwork at a nonprofit legal aid organization, this study examines the dynamic work of asylum lawyering in Los Angeles, a global hub of asylum procedure. Specifically, it explores how public interest asylum lawyers contend with continually evolving legal rules that mobilize time against immigrants. In focusing on how asylum lawyers experience the ever-changing nature of immigration policy, this article illuminates how the weaponization of time operates as a foundational tool of migration control.

Defend Asylum (DA),[1] the nonprofit organization where I conducted fieldwork between February 2020 and February 2021, legally represents low-income asylum seekers and also advocates for reforms to US immigration policy. The close relationships I developed with DA's team of staff attorneys afforded a vantage point from which to consider how policies imposed or implemented by the White House, the Department of Homeland Security (DHS), the Executive Office of Immigration Review (EOIR), and other state entities structure the work of asylum lawyers at various levels of their practice. DA's attorneys also supervise pro bono corporate lawyers who expand the organization's capacity for individual representation as well as its ability to discern emerging systemic trends in asylum law's implementation. Because DA staff engage in both individual representation and policy advocacy, they are especially attuned to the ways in which immigration policy affects the day-to-day work of asylum lawyers.

Based on my fieldwork at DA, this article addresses two fundamental questions. First, how does time shape the daily work of public interest asylum lawyers, and, second, how do these lawyers adapt their practices when government officials weaponize time to restrict access to asylum? As discussed further in the next section, public interest lawyers form only a small minority of the full population of attorneys handling US immigration cases, but research suggests that they tend to achieve more positive outcomes for their clients than other types of immigration lawyers (Eagly and Shafer 2015). Accordingly, while this study's findings are not universally generalizable to US immigration practice at large, my observations reveal how even a highly specialized, well-trained, and well-networked subgroup of asylum lawyers struggle to deliver quality legal representation to their clients in the face of state-imposed temporal constraints.

The US asylum system formally comprises two separate routes to protection: an affirmative track for people not in removal proceedings and a defensive track for those who are. This study attends to both tracks. Both avenues to protection cling to strict temporal benchmarks even as the government agencies responsible for their coordination fail chronically to achieve timely adjudications. Defensive asylum seekers request asylum as a defense against removal from the United States. People seeking asylum upon arrival to the United States must promptly vocalize their fear of persecution to US Customs and Border Protection (CBP) officials, but expressing a fear of return does not in itself reliably insulate asylum seekers from immediate removal. Expedited removal—a form of "speed deportation" that can unfold within a matter of hours or days (Wadhia 2014)—places the burden on new arrivals to prove their right to remain and gives low-level immigration officers broad authority to deport people before they can consult with an attorney or other advisor, let alone enjoy a hearing (American Immigration Council 2019). Those who successfully communicate their fear of return

1. Defend Asylum (DA) and all personal names used in this article are pseudonyms.

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are subject to mandatory detention at least while they await a credible fear screening, which the government uses to determine the potential existence of an asylum claim (see generally Human Rights First 2013; Hillel Smith 2021). Only those individuals who pass the credible fear screening will be placed into regular removal proceedings, giving them an opportunity to make their case in immigration court. They then await notice from the EOIR of an initial hearing before an immigration judge, at which they must assert asylum as a defense to removal. The immigration court will next schedule a subsequent hearing, and possibly additional hearings thereafter, until the applicant eventually receives an individual hearing date at which they hopefully obtain a final determination. The time frame for each of these court hearings depends largely on the EOIR backlog, which under the Trump administration ballooned from 542,411 cases in 2017 to 1,290,766 cases as of December 2020 (TRAC Immigration 2021b). This inflation resulted not only from court understaffing (Human Rights First 2016b) but also from executive orders that reassigned immigration judges to border detention facilities, changes to prosecutorial discretion practices by government attorneys (Human Rights First 2017), and Attorney General Jeff Sessions's restrictions on judges' discretion to suspend cases (Preston and Calderón 2019). In 2021, the EOIR backlog meant that defensive asylum cases remained pending for an average of 1,621 days or nearly four-and-a-half years (TRAC Immigration 2021a).

On the affirmative side, a person who wishes to apply for asylum must do so through an asylum office of US Citizenship and Immigration Services (USCIS) within one year of arrival in the United States. They must then navigate the temporal implications of the enormous backlog of affirmative cases that has plagued USCIS for nearly a decade, a result partly of rising case numbers and the reallocation of USCIS resources to manage expedited removal procedures (Human Rights First 2016a). Despite advocates' warnings that fast-tracked screenings for asylum eligibility at the border are ineffective and harmful (see, for example, Women's Refugee Commission et al. 2021), the diversion of USCIS asylum officers to conduct these adjudications has continued to exacerbate the affirmative backlog in recent years; as of December 2020, it surpassed 350,000 cases (USCIS 2020, 9). Affirmative asylum seekers may wait years for a decision. USCIS's flip-flopping logics of prioritization produce further complications. From 1995 to 2014, USCIS (2021, 2) adjudicated cases on a "last-in, first-out" basis, but it then switched to a "first-in, first out" basis, which experts considered more fair, logical, and aligned with asylum seekers' expectations (see, for example, Hawthorne Smith 2021). In 2018, under the Trump administration, USCIS (2021, 3) reverted to the "last-in, first-out" policy, which failed to reduce the backlog and left to languish those asylum seekers who had already awaited a decision for years, while simultaneously affording recent arrivals little time to prepare their asylum cases (Human Rights First 2021, 17).

Time is one of the central organizing principles of the US asylum system. The system renders time so salient throughout the duration of an asylum case that concerns about time risk practically overshadowing, in the course of day-to-day legal procedures, the paramount issues of asylum seekers' vulnerability, well-being, or safety. State agencies manage asylum seekers through a myriad of temporal rules, including legal submission deadlines, work authorization eligibility clocks, and age limitations for derivative applicants. Taking account of all these points of temporal significance, what emerges is a process that insists on timeliness as a day-to-day norm even as the system as

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a whole is marked by backlogs and egregious delays. My ethnographic observations brought this contradiction vividly to life.

Looking closely at how public interest lawyers confront procedural challenges in the course of their work reveals that state actors and institutions weaponize time in ways that make it difficult for lawyers to leverage the state's humanitarian obligations. My research affirms depictions of the US asylum regime as a machine: an operation routinely unresponsive to the human realities it regulates, whose function (or dysfunction) hinges on the management of time. From the vantage point of asylum advocates, numerous government actors—including members of the White House, DHS officials (including Immigration and Customs Enforcement [ICE] and CBP officers), EOIR leadership, and adjudicators—take actions that, whether willfully or inadvertently, selectively speed up and slow down the gears of that machine. These practices enact what I call temporal violence on people navigating the asylum system: they deploy time in a way that results in real, if not physical, harm. Temporal violence hamstrings lawyering work and entrenches outsized state power. I frame these practices as a form of violence to make clear that they cause tangible suffering even as they operate through the law's seemingly normal temporal mechanisms (see Menjívar and Abrego 2012).

I embarked on my fieldwork only weeks before the descent of the coronavirus pandemic, and the pandemic's reverberations through the US asylum regime showed up starkly in my ethnographic observations. The pandemic presented everyone operating within the asylum system with novel circumstances: border closures, hearing postponements, remote work arrangements, and more. This unprecedented reality not only engendered new risks to migrants and transformed how lawyers worked but also created cover for the Trump administration to push ahead with severe immigration policies thinly disguised as public health protections. The universal doubt, unpredictability, and limbo engendered by the pandemic lay at the root of many of the temporal contradictions that I observed during my fieldwork. In this sense, this study speaks to a singular historical moment in which external conditions exacerbated the temporal dynamics of the asylum system. Yet the patterns I observed during this period were not historically unique. Rather than producing new paradigms, the pandemic amplified temporal double standards already well established within the asylum regime. This study therefore bears relevance beyond the pandemic era, though my findings suggest that periods of heightened external turbulence have the capacity to compound the effects of temporal violence.

In what follows, I first review relevant insights from existing research on the temporality of international migration and immigration law practice. Next, I discuss my ethnographic data collection and analysis. I then present the results of my data analysis to illustrate the temporal double standards of the US asylum system, showing how public interest lawyers contend with temporal violence in the course of practice, including instances of both weaponized efficiency and weaponized inefficiency.

THE TEMPOS OF IMMIGRATION LAW

This article responds to scholars' calls to scrutinize the temporal dimensions of international migration, citizenship, and law (see, for example, Cwerner 2001; French 2001; Bloom 2015; Cohen 2015). Over the past two decades, migration scholars have

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increasingly focused on temporal aspects of international migration, including temporal synchronicity and regional belonging (Eder 2004), the migrant life-course and journeys (King et al. 2006), time's resonance within the "mobilities" framework (Cwerner 2001), imagined national futures (Golden 2002), and how the tempo of legal processes impacts immigrants (Griffiths 2014; for a review of the aforementioned themes, see Griffiths, Rogers, and Anderson 2013). This last topic of interest forms the point of departure for this article: I add to research on the tempos of legal procedures by providing an analysis of public interest immigration lawyers' work, which offers valuable yet overlooked insights into how temporal dynamics play out in the asylum law context.

Time is cultural; it is socially constructed (Engel 1987), in part to signal political legitimacy within legal systems (Greenhouse 1996) and mobilize institutional power (Bloom 2015). Strategically speeding up, slowing down, compressing, and expanding time is pivotal to power struggles in lawmaking (Halliday 2017). Although time appears natural or neutral, it operates, in fact, as a political good that the state often values unevenly, thereby not only generating temporal injustices but also creating opportunities for non-state actors to reclaim power (Cohen 2018). Immigration law uses time to regulate citizenship, legal status, and punishment for perceived transgressions of its norms (Stumpf 2011). State bureaucracies exert enormous control over immigrants' time (Anderson 2020). Because their legal status can shift over time, migrants' embodied experiences of irregular status (as well as their anticipation of possibly being deemed "illegal" in the future) fluctuate over the duration of their lives lived abroad (Garza 2018). Extended experiences of dwelling in legal gray areas accumulate to produce feelings of "liminal legality" (Menjívar 2006) and legal limbo for immigrants (Mountz et al. 2002; see also Hasselberg 2016).

Within the study of time and international migration, research into asylum systems is particularly compelling because of the unique temporal conditions asylum processing tends to produce—in particular, systemic delays like those described toward the start of this article. Previous research attends to asylum seekers' experiences of waiting (see, for example, Brekke 2004; Rotter 2015; Jacobsen 2021). While they wait for decision makers to deem them either worthy of inclusion or fated to removal, asylum seekers occupy an "ambiguous dual positionality" that produces a sense of "existential limbo" (Haas 2017, 76). Asylum seekers waiting for a decision inhabit a precarious temporality that disrupts their ability to plan for the future (O'Kerry 2018). In making them wait, the state exerts "temporal power" to shape its subjects (Bourdieu 2000, 228).[2] As in other bureaucratic contexts, the state instrumentalizes waiting to teach marginalized people that "they have to remain temporarily neglected, unattended to, or postponed" (Auyero 2010, 857; see also Andersson 2014). At the same time, asylum seekers do not experience waiting as purely passive subjects; temporal zones of waiting also potentially create the conditions for networking, organizing, and resistance amongst asylum seekers (Mountz 2011, 383). These are opportunities that advocates may help amplify.

2. In *Pascalian Meditations*, Pierre Bourdieu (2000, 228) relates temporal power to "the power to make oneself unpredictable and deny other people any reasonable anticipation, to place them in total uncertainty by offering no scope to their capacity to predict." Making people wait, along with "adjourning, deferring, delaying, raising false hopes, or, conversely, rushing, taking by surprise," all constitute exercises of temporal power (228).

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The scholarly emphasis on waiting gives rise to a picture of asylum systems as typically slow, bloated, and stagnant. Yet this does not tell the full story. Asylum procedures also show themselves capable of noticeable, if selective, speed and efficiency (Cwerner 2004). According to Melanie Griffiths (2014, 2004), the asylum system in the United Kingdom operates "both ... too fast and too slow." She offers a typology of four temporalities experienced by asylum seekers in the United Kingdom: "sticky time" (the slow time of waiting for procedures to move forward), "suspended time" (the utter standstill often experienced by long-term immigrant detainees, for example), "frenzied time" (a swift, out-of-control time, exemplified by expedited procedures), and "temporal ruptures" (which abruptly dislocate asylum seekers expectations for the future—as when a person suddenly finds themselves deported) (2001). My deep dive into the world of public interest asylum lawyers in Los Angeles suggests that the US asylum regime, like the UK system, possesses internally contradictory, too-fast-yet-too-slow qualities. By centering advocates' daily work, I capture with high granularity the state processes that, in the experiences of public interest lawyers, weaponize time within the asylum system. The result is a critical assessment of the temporal double standards of the US asylum regime, showing how advocates interpret temporal discord and strive to overcome it to represent clients effectively.

In describing the system's temporal double standards as the product of temporal violence, this article highlights an instance of what Pierre Bourdieu (2001, 1) dubs broadly "symbolic violence": the processes through which power hierarchies become entrenched and taken for granted. More narrowly, temporal violence constitutes a form of "legal violence" executed by the state—that is, the state leverages the law's temporal order to do damage that is "not directly physically harmful and that [is] not usually counted and tabulated" and that arises from "otherwise 'normal' or 'regular' effects of the law" (Menjívar and Abrego 2012, 1383, 1384). My research participants do not take temporal chaos for granted; rather, they frequently make sense of the temporal contradictions they endure by pointing to government actors' disregard, callousness, or self-interest—even, at times, to the government's malice. Their subjective experiences attest to the ways in which governments "tilt the balance of the politics of time in [their] favour" (Cwerner 2004, 73).

US immigration lawyers are a scarce resource. Immigrants in the United States have no right to government-appointed counsel (see generally Eagly 2013; Guttentag and Arulanantham 2013), and legal representation is relatively uncommon within the immigration court system. According to one national study, only an estimated 37 percent of adults in removal proceedings had counsel; of those detained, only 14 percent had a lawyer (Eagly and Shafer 2015). Most immigrants who do obtain representation do so through small firms and solo practitioners, and the quality of the guidance they receive is unreliable (see Abel 2006; Markowitz 2009; Posner and Yoon 2011). People who obtain pro bono counsel through law school clinics, large law firms, or nonprofits like DA generally enjoy higher success rates throughout the course of their cases, but this form of representation is exceedingly rare, benefiting only around 2 percent of people in removal proceedings (Eagly and Shafer 2015). For those who do obtain effective legal representation, it can serve as a crucial lifeline (Ramji-Nogales, Schoenholtz, and Schrag 2007; Miller, Keith, and Holmes 2015).

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The consequential links between access to counsel and temporal violence within the US immigration system cut in two directions. On the one hand, access to counsel fundamentally depends not only on one's geographic proximity to legal services (see Eagly and Shafer 2015; Srikantiah, Hausman, and Weissman-Ward 2015) but also on having enough time to acquire a lawyer (Hausman and Srikantiah 2016). Yet instances of weaponized efficiency such as "speed deportations," which targeted more than half of those removed from the United States in recent years (Wadhia 2014), leave people no time to find a lawyer. One primary and profound effect of weaponized efficiency, then, is precisely to eliminate access to counsel. On the other hand, quality legal representation offers one of the only potential defenses against temporal violence. Research indicates that lawyers' most meaningful impact within civil proceedings may not be their substantive expertise but, rather, their procedural savvy and familiarity with legal institutions and actors (Sandefur 2015; compare Ryo 2018). Moreover, lawyers may play an active role in helping courts adhere to their own rules of fairness (Sandefur 2015). In the context of immigration proceedings, lawyers help ensure due process protections that accelerated procedures threaten (Eagly and Shafer 2015) and defend their clients against procedural harms such as *in absentia* removal orders (Eagly and Shafer 2020). Immigration lawyers are also uniquely situated to witness the subordinating effects of legal limbo and potentially help mitigate its harms (Rabin 2021). My findings examine qualitatively the ways in which public interest lawyers invest themselves in navigating procedural issues on clients' behalf. In line with calls for further research on the "longitudinal nature" of immigration matters and how lawyers make a difference as cases unfold through time (Ryo 2018, 526), this study explores how public interest asylum lawyers organize their activity around the variable tempos of in-progress cases.

Adjacent to the conundrum of how lawyers matter, unresolved questions persist about how lawyers ought to matter—that is, how advocates should (re)conceptualize their value, purpose, and priorities to adequately meet clients' dynamic needs. In the US asylum space, one view holds that a purely legal model of representation is insufficient to achieve access to justice; lawyers must instead pursue a "multidisciplinary" and "holistic" approach to representation to ensure that asylum claims are effectively presented to adjudicators (Ardalan 2015). As this relates to temporal violence, lawyers may need to adapt their practices to defend their clients against the weaponization of time. Lawyers could, for example, seek to combat the detrimental effects of legal limbo by engaging in holistic representation, leveraging a broader range of nonlegal community resources, and advancing a wider scope of advocacy goals (Rabin 2021). By exposing how temporal violence threatens case outcomes and intensifies pressure on lawyers, my study helps map the challenges lawyers must creatively overcome to ensure access to justice.

DATA AND METHODS

This article arose out of twelve months of ethnographic fieldwork at a Los Angeles-based nonprofit organization—Defend Asylum (DA)—that provides free legal assistance to asylum seekers. I moved to Los Angeles in August 2019 with prior

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professional experience in refugee and asylum advocacy but with little knowledge of the asylum advocacy world in southern California. In the fall of 2019, through basic Internet research as well as several informal conversations with advocates acquainted with the space, I familiarized myself with the work of various legal aid organizations in Los Angeles providing assistance to immigrants. I then leveraged my own existing professional network to make contact with attorneys at several organizations that included asylum seekers among their client population, explaining my interest in becoming involved as a volunteer and studying their work as part of my doctoral research. My decision to move forward with DA was collaborative: the DA attorney I spoke with expressed enthusiasm about the alignment between their advocacy priorities and my broad research interests, and our conversation left me confident that the data I could collect at DA would advance my research objectives.

I determined that DA would serve as the ideal home for my research for a number of reasons. First, DA's attorneys spent a significant amount of time on asylum cases, meaning that my ethnographic observations rendered robust data specific to asylum law practice (as opposed to other aspects of immigration law, such as Special Immigrant Juvenile Status applications, U-Visa applications for victims of US-based crime, or cancellation of removal). Second, DA works with a wide range of asylum-seeking clients, including people seeking asylum affirmatively through USCIS, people with defensive cases in immigration court, people in detention, and people held in Mexico under the Remain in Mexico program (officially—and deceptively—labeled the Migrant Protection Protocols [MPP]).[3] DA's programmatic work thus attends to the multiple distinct contexts of US asylum that have emerged as the US government enhances its efforts to deny asylum seekers access to the national territory. Moreover, DA assists people fleeing a range of persecutory harms from all over the world (though Central Americans dominated the client pool during the period of this study). Third, although DA places many cases with pro bono law firm volunteers, in-house attorneys also handle a substantial portfolio of direct representation cases. This meant that my observations at the field site reflected all dimensions of the underlying casework and all stages of the asylum process—from screening potential clients to assisting successful clients with community integration. Finally, DA's staff routinely collaborate closely with other immigration lawyers nationwide, which meant my position within the organization also afforded a partial view into how asylum lawyering operates across the country. DA's staff join weekly calls with their counterparts in other locales to compare ground-level experiences and strategize about advocacy at the national level. As an active participant in the policy advocacy space, DA provided a window into how asylum lawyers across different regions synchronize their responses to challenges at the federal as well as state and local levels.

I relied on my background as a law school graduate as well as past experience in refugee advocacy to gain entry to DA's work. I initially took a position as a part-time legal intern at DA in early February 2020, prior to the stay-at-home orders enacted in response to the coronavirus pandemic. When lockdowns went into effect the following month, I continued my internship remotely, adapting to working from home alongside DA's staff. I subsequently extended my time there as a legal volunteer through the end

3. For a succinct overview of the Remain in Mexico program, see Ardalan 2019.

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of 2020 and into 2021, remaining remote indefinitely, while the organization as a whole also maintained its work-from-home policy. Throughout this period, I engaged in at least twelve to sixteen hours of participant observation each week.

By volunteering my legal skills in exchange for the opportunity to conduct research, I forged relationships of trust and reciprocity with my participants. My legal training enabled me to make behind-the-scenes observations of asylum law practice by supporting the substantive work of my research participants. I contributed at my field site in two core areas. First, I assisted with attorneys' casework: I conducted intake interviews with prospective clients, produced write-ups of client narratives, drafted case documents, and conducted research on legal issues and human rights conditions in clients' home countries. Second, I helped conduct research on how changes to immigration policy impacted due process and access to counsel. This involved interviewing attorneys and documenting their clients' experiences as well as monitoring relevant policy changes. Fortunately, participating remotely did not significantly interfere with any of this work. All files and documents resided on a shared drive that I could access from my laptop at home, enabling me to collaborate seamlessly on projects as I had before the pandemic. I continued to meet with DA staff as well as prospective clients via videoconference or phone on most days that I volunteered. In addition to one-off coalition meetings, a weekly one-hour staff videoconference meeting, a weekly thirty-minute check-in with my supervisor, and two biweekly hour-long staff videoconference meetings all ensured that I consistently took part in real-time interactions. Following my research participants, I also became more active on the organization's work chat platform, where I observed and participated in lively asynchronous exchanges between staff. The only activity the pandemic firmly precluded was my attendance at asylum hearings; however, the pandemic triggered the widespread postponement of many hearings, such that during much of the study period there was relatively little adjudicatory activity to observe.

My work with DA brought me into contact with attorneys both in and outside of the organization, as well as within and beyond Los Angeles, which in some sense blurred the boundaries of my field site. Because I could not feasibly obtain informed consent from everyone with whom I interacted in my capacity as a legal volunteer, the observations that form the basis of this study focus primarily on DA's full-time, Los Angeles-based staff. The size and makeup of this group fluctuated somewhat during the study period but always remained small. The attorneys ranged in experience from recent law school graduates to seasoned attorneys with more than ten years of asylum law expertise. My data consists of ethnographic observations collected in the course of fieldwork, including notes from my own informal conversations with my research participants (but no formal interviews). To preserve confidentiality and protect individual privacy, this study treats all clients, community members, and any attorneys from beyond the immediate field site only abstractly. This means that I selectively include their anonymous stories or words without referencing their location, affiliations, or other identifying information.

I took a grounded theory approach to my fieldwork, striving especially in the initial weeks of data collection to keep an open mind and to record as much as possible about all aspects of the social world I had entered. I used a notebook or my laptop to record "jottings" reflecting conversations, other interactions, and general observations about

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organizational activity (Emerson, Fretz, and Shaw 1995). When sitting in on staff meetings, as well as meetings between my participants and external allies, I sought to capture as much of the dialogue between advocates as possible, including verbatim quotes where the precise choice of words seemed either weighted for the speaker or resonant to other participants. When participating in other lawyering work, I periodically took brief breaks to jot down key highlights from the day.

Once I finished gathering data, I processed all of my fieldnotes using an iterative process of coding in ATLAS.ti and drafting analytic memos. My analysis proceeded inductively. I initially began with "open coding," closely rereading all of my fieldnotes and identifying emergent themes as I went along that I then referenced with short phrases, such as "anticipation-based action," "flow of the machine," and "dance of court timelines" (Emerson, Fretz, and Shaw 1995). As I reviewed my data for recurrent issues, I trained my attention on the daily practical concerns of my research participants, how participants perceived and experienced events, and how processes unfolded rather than what caused them. Early in the analytic process, I drafted "initial memos" that elaborated on the theoretical import of particularly rich incidents from the field to help elicit connections between themes (Emerson, Fretz, and Shaw 1995). These memos explored, for example, the links between how deadlines dominate the daily work of my participants, how legal actors leverage time as a resource, and how the management of time forms a ritual through which advocates interact with adjudicators, courts, government attorneys, and lawmakers. I ultimately homed in on a set of core themes by prioritizing the issues that seemed most salient to my research participants—the issues in which they invested the most time and energy.

WEAPONIZING TIME: THE TEMPORAL DOUBLE STANDARDS OF THE US ASYLUM REGIME

I draw upon my ethnographic fieldwork to illustrate two seemingly opposite yet coexistent dimensions of the US asylum system. Observing the day-to-day work of asylum lawyers reveals that advocates must routinely withstand, on the one hand, the pressure of intensely swift or abrupt procedural timelines and, on the other, the rights-smothering—and life-threatening, in many cases—slow pace of procedural activity (including adjudications), enacted by EOIR, US Immigration and Customs Enforcement (ICE), and other government actors. The temporal contradictions of lawyers' work reflect a double standard within the asylum field, in which state institutions may simultaneously demand both speed and patience from asylum advocates.

In the experiences of asylum lawyers, US government actors alternately weaponize efficiency and inefficiency as tools of control, enacting temporal violence that harms immigrants as well as their advocates. By weaponizing time, it is possible to circumvent state obligations to asylum seekers, to curtail human rights, to achieve a more exclusionary protection regime, to overextend the resources of pro-immigrant advocates, and to dehumanize people navigating legal pathways. This temporal violence is pervasive within the US asylum system; however, it varies in the degree to which it seems willful. In some situations, lawyers find that deliberate choices by US

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policy makers or immigration officials weaponize time against asylum applicants. Elsewhere the system's built-in infrastructure tips time's favor against asylum seekers and entrenches the state's control, without the need for any actor's intent. Temporal violence, like other forms of legal violence, may be "embedded in legal practices, sanctioned, actively implemented through formal procedures, and legitimated—and consequently seen as 'normal' and natural because 'it is the law'" (Menjívar and Abrego 2012, 1387). Systemic conditions such as underfunding, understaffing, and bureaucratic confusion, as well as external disruptions like those caused by the coronavirus pandemic, can all meaningfully advance the state's weaponization of time against the interests of asylum seekers.

Weaponized Efficiency

In April 2020, I attended a national briefing call, hosted by a progressive legal organization and attended by immigration attorneys from DA and elsewhere, that spotlighted the pandemic's impact on the US immigration landscape. A judge on the panel of speakers, recounting the collective efforts of judges who pushed for immigration courts to adopt COVID-safe precautions, described EOIR's reluctance to adjust its standard procedures to account for public health risks. The panelist reported immigration judges' incredulity at the agency's insistence on business as usual. EOIR reportedly ordered immigration court staff to take down posters from the Centers for Disease Control and Prevention that were intended to slow the virus's spread. Only after significant coordinated pressure from judges, prosecutors, and defense attorneys alike did EOIR finally postpone non-detained hearings as of March 18, 2020 and pursue public health precautions.[4] In the meantime, legal actors and personnel within the US immigration court system found themselves in an untenable position, pushed to continue to appear for hearings despite the risks, all "for the sole purpose of keeping the machine going," as this panelist put it. The panelist's words suggested that EOIR had prioritized adjudicatory efficiency over the well-being of everyone operating within the immigration court system.

This drive to sustain—at virtually any cost—the machine of US immigration law did not become visible spontaneously during the pandemic. The panelist's account emblematized a deeper, enduring dimension of immigration law practice. Asylum lawyers routinely operate with a sense of urgency and pay hypervigilant attention to deadlines, time horizons, and the compounding implications of intersecting procedural timelines. Their habits surely reflect the degree to which schedules and "courthouse chronology" (that is, the timekeeping work of courts) dominate throughout the US legal profession generally (Bloom 2015, 3). However, the way in which asylum lawyers express anxiety around timelines also exposes their heightened wariness of time's proclivity to especially work against them, exacting exceptionally high human costs within the asylum context. For asylum lawyers, time is an acutely adversarial dimension of the law. They self-consciously manage "frenzied time" proactively to avoid violent

4. Note that the Executive Office of Immigration Review did not suspend hearings for detained asylum seekers. For additional background, see American Immigration Council 2020.

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capitalizations on the asylum machine's momentum (Griffiths 2014, 1994)—what Saulo Cwerner (2004, 72) calls the institutional "appropriation" of speed. If asylum lawyers fail to take outsized care, they find that agencies like EOIR, ICE, and CBP, at best, proceed full steam ahead regardless of the human costs and, at worst—though not uncommonly—use their capacity for acceleration and temporal rigidity to eliminate opportunities for due process.

Advocates navigate a spectrum of potential harms arising from various state actors' ability to insist on punctual progress. On one end of the spectrum sits logistical hurdles: moments when a state agency's seemingly automated carelessness or lack of consideration places uncomfortable pressure on immigrants and their lawyers to hustle through tight turnarounds. A case in point: in April 2020, as the attorneys at my field site initially adjusted to the court closures that arose from the pandemic, they already anticipated that things would "start suddenly rolling again in a few months" in such a way as to make them abruptly accountable for a backlog of postponed cases. At the other end of the spectrum sit the graver harms that befall attorneys' clients when state actors prioritize timeliness over migrants' well-being. I uncovered a stark example of this when reviewing lawyers' notes from an immigration hearing. In the case of a woman pregnant with twins, the DHS attorney objected to waiving the woman's appearance at the next hearing despite being informed in court that the appointment fell within days of her due date. The attorneys convinced the immigration judge to waive their client's appearance over DHS's objections (thereby protecting her from an *in absentia* denial), but the judge still insisted that the woman's husband must appear at the hearing, even if his wife was in labor.

To minimize the potentially violent effects of state institutions' power to enforce efficiency, lawyers habitually engage in three core practices: they visualize timelines, proactively operate ahead of deadlines, and buy themselves time to insulate their clients from bad outcomes.

Visualizing Timelines

The routine recurrence of the first of these three practices over the course of each day at my field site underscored its importance. In every meeting I joined, my participants devoted space to temporal mapping exercises, whether by recapitulating the calendar of upcoming litigation milestones, reviewing each team member's urgent priorities, or analyzing the dynamic pipeline of immigration policies to "game out" immediate, medium-term, and long-term advocacy objectives. My participants not only continually visualized timelines, but they also waded into weedy, self-reflexive discussions about how to visualize timelines more effectively. In July 2020, a series of these discussions helped refine a detailed, formal protocol for tracking time horizons. Anyone conducting initial screenings with prospective clients bore responsibility for tracking one-year filing deadlines, visa expiry dates, and hearing dates across shared spreadsheets and legal databases. They bore responsibility for flagging the attention of the managing attorney if she failed to swiftly review client documents. If the prospective client proceeded to the intake stage and underwent an additional interview, that

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interviewer assumed responsibility for deadline management and remained responsible for it until the case's subsequent assignment to a lawyer.

The stories that my participants told about their work revealed that they paid meticulous attention to case timelines not out of self-imposed perfectionism, nor out of reverence for the law's rituals, but, rather, out of a perception that their failure to do so would cede power to the government actors charged with migration control, positioning those actors to enact temporal violence on clients. A staff attorney, Layla, exposed why lawyers consider proactive attention to timelines so crucial when she recounted the story of a family that entered the United States via the southern border without visas, intending to seek asylum. In October 2019, the family—which included a pregnant mother and her children—presented themselves to US immigration officials, who paroled them into the country. But DHS mysteriously never filed the family's notices to appear (NTAs)—the legal document through which DHS formally initiates the removal process in which defensive applicants assert their asylum claim. Layla, thinking that perhaps this apparent oversight meant she could file the family's asylum applications affirmatively with a USCIS Asylum Office (and thus spare them the more adversarial removal defense process), waited until the family's one-year asylum filing deadline approached to see whether DHS would file the NTAs. At that point, still with no action from DHS, she began to prepare the family's asylum applications for timely affirmative submission to USCIS. Suddenly, as if on cue, DHS filed the NTAs. Most importantly, the officer scheduled the hearing to occur after the family's one-year filing period. Layla identified this as a common trick performed by DHS to get applicants to miss their eligibility cutoff: anyone who assumed—reasonably—the first hearing to be the appropriate time to articulate their asylum claim would automatically disqualify themselves for relief by missing the one-year filing deadline.

At the time, not wanting to mistake cynicism for certainty, I gently pushed Layla on whether she earnestly believed that DHS maneuvered strategically timed court dates to make time work against applicants. Layla affirmed emphatically that the tactic is one routinely observed by lawyers. Later that day, by coincidence, yet in alignment with Layla's comments, a listserv notice appeared in my volunteer email inbox providing details of a successful class action lawsuit filed in June 2016, *Mendez Rojas v. Wolf*, which claimed that the US government "did not provide sufficient notice that asylum seekers generally must file their asylum applications within one year of arrival in the United States and that the Government did not provide them with an adequate mechanism to comply with that deadline."[5] A practice advisory addressing the *Mendez Rojas* settlement affirmed that "many asylum seekers spent months—and, in some cases, years—interacting with DHS officers as part of reporting requirements, believing that they were complying with all necessary steps to pursue their cases, while never receiving any notice from DHS of the one-year deadline" (National Immigrant Justice Center 2021, 2). *Mendez Rojas* made clear why asylum attorneys zealously visualize timelines: if they fail to do so, they may produce opportunities for government officials to work time against unknowing applicants. Advocates therefore adopt a defensively anticipatory stance, orienting themselves vigilantly toward the future.

5. *Mendez Rojas v. Wolf*, Case no. 2:16-cv-01024-RSM, Settlement Agreement and Release (Dist. Ct. 9th Cir., W.D. Washington).

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As a legal volunteer, I soon assimilated my participants' wariness of the state agencies involved in immigration enforcement and began to defensively dwell in the future. It manifested in small ways—for example, for weeks, I routinely entered a new client's A-number (their unique noncitizen identification number) into the Automated Case Information web page of EOIR in the event that EOIR posted the client's next hearing date there. For some time, no updates manifested, until one day: "I think to check [the client's] A-number . . . in case there's been an update and in fact there has: he now has [a master calendar hearing] scheduled." My satisfaction in that moment arose from having proactively elicited from EOIR crucial information that the agency may itself have failed to timely—or ever—convey to the client, placing him at risk of a missed court appointment. Prior to the date's appearance, I had felt considerable worry knowing that, if I forgot to continually check the EOIR page for updates, we might miss a crucial procedural event if the court failed to give the client notice of the hearing. Indeed, lack of notice is a common reason that asylum seekers fail to appear for court hearings, leading them to unfairly receive *in absentia* removal orders (Asylum Seeker Advocacy Project and Catholic Legal Immigration Network 2018). Although the threat of temporal violence here seemed most likely the result of inadvertent technical disorganization, EOIR's baked-in unpredictability and lack of transparency nevertheless had the effect of weaponizing time against those seeking relief.

Attorneys relate to the future as they do to insulate asylum seekers who would not otherwise know to anticipate legally significant time horizons. Lawyers' tendency to visualize timelines in this way affirms Griffiths's framework in that the habit protects against the temporal violence of "frenzied time" and "temporal ruptures"—either or both of which a miscalculated timeline could catalyze. But the habit also demonstrates that these two temporalities—though abrupt in their effect—do not emerge spontaneously. Rather, they have a creeping prehistory: a preceding period of time that appears insignificant but during which lawyers perceive state actors—or, alternatively, the underlying design of the bureaucratic system—to create the conditions for surprise. Even during stretches of apparent stillness, asylum lawyers find that government agencies organize themselves to weaponize efficiency against asylum seekers down the line by failing to adequately inform them of upcoming temporal benchmarks.

Getting Ahead of Deadlines

My participants' awareness of the looming threat of temporal violence makes itself apparent in their second core practice: their tendency to proactively operate ahead of deadlines. Supervising attorneys' guidance to pro bono teams embraced this approach as they urged volunteer lawyers to file clients' documents well in advance of the implementation date of new restrictive asylum regulations. In one staff meeting, my participants discussed an impending change to employment authorization policy that severely curtailed asylum seekers' ability to work legally. Liz, the managing attorney, articulated her rationale for proactively filing Employment Authorization Document (EAD) applications for every eligible client well ahead of the policy's implementation on August 25, 2020. As captured in my field notes:

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> Liz says it sounds like everyone is on top of EADs. . . . She asks those mentoring cases to please reach out to pro bono attorneys about this. Ideally by the end of this week. Technically things need to be postmarked before the 25th, but *per the new guidance things can be outright rejected if there's an issue—rather than the government simply replying with a request for further evidence*. She says she knows that for pro bono attorneys it's a pain to do things immediately, but this is a huge priority. She asks the team to keep her posted as things come in, or if we have any issues. "Again, part of *my nightmares are not that we won't get [the EAD applications] in [on time] but that USCIS will do what it does and reject lots of them* en masse. . . . *Please get them in early*. Please use FedEx overnight."

Liz's explanation suggests that strict temporal rules operating alongside finnicky procedural requirements give government agents latitude to apply harsh substantive policies to more people. Liz urged staff to submit the EAD applications well before the deadline because she anticipated that USCIS would categorically reject EAD applications filed on time on the basis of minor issues that under better political conditions may simply have warranted a request for additional evidence. These rejections in turn may not have permitted applicants enough time to correct their applications and refile before the deadline, thus leveraging temporal rigidity to translate minor clerical glitches into opportunities to subject more people to state violence.[6] Liz's fear of that nightmare scenario compelled her to file the EAD applications with enough time to allow for swift modifications and resubmission following an outright—and impliedly unfair—dismissal by USCIS on the first attempt.

In another context, as we prepared to bring a case before the Board of Immigration Appeals (BIA), my supervisor, Carrie, anticipated the distress we would experience if we failed to account for the Immigration Court's (that is, the court responsible for the original denial) narrow timeline:

> Carrie advises me on how she would go about this. . . . Read [the client's] Immigration Court brief. Then draft the appeal starting with the facts, since you can pull from the earlier brief for that. She says I should set it up so that we can easily see where we need to drop in citations to the [Immigration] Court transcript or the [Immigration] Judge's decision. The reason for that is that the Court won't send the transcript until they send the briefing schedule for the BIA appeal, at which point we only have 21 days to file the BIA brief so we'll be in a time crunch. . . . She's really trying to get everything ready to go ahead of time.

Court transcripts are lengthy, and the arguments within BIA briefs must orient themselves exclusively to what appears within a transcript's pages. Accordingly, without

6. Unsurprisingly, the new substantive policies themselves also directly weaponized efficiency against immigrants: they made asylum seekers who missed their one-year filing deadline permanently ineligible for work authorization, regardless of whether they ultimately qualified for an exception for their missed deadline. They also empowered the state to deny Employment Authorization Document applications purely because an applicant missed an asylum interview or biometrics appointment. See Immigrant Law Center of Minnesota 2020.

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proactive planning on our part, the courts' internal protocols and timelines made it difficult for us to comply with the temporal rules they imposed on practitioners.

Similarly to when they visualize timelines, lawyers anticipate Griffiths's "frenzied time" when they get ahead of deadlines, seeking to avoid harmful temporal pressures; however, it is more accurate to say that they internalize these pressures, hurriedly rushing themselves along to outpace direct harm from state institutions. In this way, if all goes well, advocates insulate their clients from those instances of temporal violence with substantive repercussions—missed deadlines triggering disqualifications, hastily prepared appeals leading to BIA denials, and so on. Yet attorneys themselves still endure a frenzy, albeit self-enforced. Melanie Griffiths, Ali Rogers, and Bridget Anderson (2013, 20) describe "frenzied time" as "a fast, frenetic sense of time in which little can be anticipated or planned for"; resisting this characterization, attorneys in practice lean in aggressively to the space they do have for anticipation. That lawyers' only way to preempt weaponized efficiency is to internally reproduce its urgency demonstrates the extent to which state agencies exert control through temporal violence—in this case, through the mere specter of temporal violence. Moreover, lawyers are acutely aware of the government's outsized control in this domain. Their verbalized preoccupations about deadlines explicitly attest to time as "a major dimension and resource upon which some agents and agencies deem appropriate to exert power" (Cwerner 2004, 73).

Slowing the Machine

Asylum lawyers' proclivity to act proactively feeds into a third tactic. Asylum lawyers' efforts to buy themselves more time foregrounds most starkly the way in which they reconfigure their own behavior to defend against the potential harms of the forward drive of state procedures. The cascade of major new restrictive asylum regulations that pummeled lawyers over the summer of 2020 set the backdrop for numerous examples of this as lawyers scrambled to delay—if not prevent—the enforcement of new policies against their clients. For example, asylum advocates collectively mobilized to challenge a Notice of Proposed Rulemaking (NPRM), issued on June 15, 2020, which sought to eviscerate the US asylum protection regime by heightening the standards for asylum eligibility. The NPRM eliminated eligibility for those fleeing gender- and gang-based violence, weakened due process rights, and empowered adjudicators to more swiftly deny asylum applications, among other things. In response to the proposed reforms, asylum lawyers defensively leveraged a window of opportunity created by the Administrative Procedure Act, which ensures a thirty-day comment period during which members of the public can submit responses to any NPRM.[7] At the close of the thirty-day comment period, the government bears a legal obligation to review every comment submitted. Thus, as DHS and EOIR attempted in one swift, fell swoop to obliterate a well-established infrastructure of protections, the advocacy community poured itself into slowing the whole thing down by flooding the agencies with an overwhelming wave of public comments—in effect, crowdsourcing to jam the gears of the machine.

7. Administrative Procedure Act, June 11, 1946, 60 Stat. 237.

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Liz emphasized to her team that everyone—staff, interns, volunteers, pro bono attorneys, and anyone else we could recruit—should individually submit a comment. Liz explained that comments delay regulations because the government must read through each and every one before finalizing and implementing the new laws, giving advocates more time to develop a countervailing litigation strategy. She encouraged her staff to make comment submission a required assignment for interns because "the more we get the better." "No excuses; we all have to do this," asserted one advocate at a virtual training, hosted by another nonprofit legal organization, on how to submit public comments protesting the NPRM. The leaders of the training implored their colleagues to infuse their comments with as much detail as possible from their own professional experiences since more unique comments would defy the algorithms the government uses to batch similar comments together and accelerate the review period. If agency officials collapsed too many similar comments together, the speakers warned, it would undermine our efforts because "the whole point is to slow them down."

Although the temporal rules of the policy-making process give the impression of a neutral procedural superstructure refereeing how advocates and government policy makers interact, the sweeping content of these reforms as well as lawyers' constrained response to them reveal an imbalance of power. The proposed reforms threatened to roll back, within a matter of months, protective legal precedents developed over decades of persistent advocacy. Under these conditions, temporary delay frequently constituted advocates' only immediate hope for resistance to substantive restrictions. In other words, while DHS and EOIR enjoyed the power to act with abrupt decisiveness against long-established standards, asylum advocates could not effectively defend against such change without first innovating to buy themselves more time. Here, advocates had virtually no way to anticipate the proposed changes and could only react under pressure after the fact. Notably, since this example describes a system-wide administrative process rather than that of a single person's case, it shows that the temporal tensions of the asylum system operate at multiple levels, structuring policy advocacy as well as individual casework.

Whether striving to slow down the gears of the machine or to anticipate and outrun its unforgiving pace, asylum lawyers adapt their practices to respond to government actors' periodic weaponization of efficiency. Speed enables state agencies to exert control over legal advocates—both indirectly, as when it threatens their clients' interests (for example, interfering with their due process rights or circumscribing their eligibility for rights) and directly, as when it defines policy backslides that threaten the underlying protection principles of the asylum system. Lawyers recognize efficiency as a mechanism of state migration control. In weekly meetings and in external presentations, lawyers lamented new policies that condoned the quick pretermission of asylum claims without a hearing and that required asylum seekers to make their full case during a single brief initial screening interview. During the NPRM training, an asylum attorney from another organization critiqued sharply the government's insistence that its policy reforms emerged from a desire to make the asylum process more efficient. As the lawyer pointed out, the government made little effort to balance efficiency with due process concerns. Moreover, the very complexity and the sheer extent of the proposed rules' impact created so much confusion around previously settled legal issues that procedure under the new regime could not possibly proceed

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swiftly without sacrificing the quality and stability of protection. Given these practical implications of the proposed regulations, the attorney concluded, the government clearly wanted simply to deny as many claims as possible as early as possible. "This," she asserted, "is what it meant by 'efficiency.'"

Weaponized Inefficiency

Lawyers' daily experiences suggest that state actors also weaponize inefficiency. The circumstances produced by the pandemic brought into relief the challenges that lawyers confront when government actors drag their feet. Over the course of the pandemic—and particularly during the early, critical weeks of the crisis's escalation in the United States—multiple government agencies took insufficient action to protect migrants, their legal representatives, and others operating within the asylum infrastructure from the risks of contagion (see Loweree, Reichlin-Melnick, and Ewing 2020). The pandemic made it apparent that state efficiency and state inefficiency comprise two sides of the same coin: EOIR's fixation with "keeping the machine going," for example, looked from another angle like complete obstinacy, as the window of opportunity to take health precautions disappeared. A speaker at the April 2020 briefing on the pandemic's impact on the immigration field lamented that ICE had simply "stuck its head in the sand," refusing to accept the necessity of six feet of distance and instead "describing it as an ideal that doesn't have to be held—at a time when everyone is doing this." Lawyers across the country criticized ICE's slowness to take precautions to protect people in detention (see, for example, Amnesty International 2020; Human Rights Watch 2020; Falcone 2021). Litigation on behalf of detained asylum seekers led to some individual releases but no systemic release (see Brennan Center for Justice 2022). By mid-April, advocates expressed dismay as the coronavirus outbreaks that experts warned would come indeed broke out at detention facilities in San Diego and elsewhere. To bolster public awareness of these failures, advocates even produced a timeline illustrating the progression from the first warnings of possible coronavirus outbreaks in detention facilities, to concerned letters from non-governmental organizations, to whistleblower reports to Congress, and, finally, to the initial reports of coronavirus infections amongst detainees, followed by rising rates of infection in immigration detention facilities (Human Rights First 2020). The core message: look at all the missed opportunities when the government had time to act yet failed to do so.

Lawyers also highlighted instances when state actors unnecessarily exacerbated harms originally caused by those actors' own delays. One lawyer on a policy-related call that I joined recounted reports that migrants deported by ICE had tested positive for coronavirus upon arrival in Guatemala, suggesting that ICE had failed to test the migrants in their custody before sending them back across the US border. This affirmed suspicions that the existence of the coronavirus in US detention facilities might be more pronounced than officially reported not only because ICE hesitated to release people but also because officials failed to adopt any basic interim protocols that might mitigate the harms of their reluctance to release people. In another instance of what my participants perceived as government underperformance, when EOIR finally did take

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preventative action to protect people operating within immigration courts, it did so with the bare minimum of communication: many lawyers and judges first learned via a tweet that EOIR would tentatively postpone non-detained hearings (American Immigration Lawyers Association 2021).

Research that focuses on asylum seekers' experiences of detention, procedural snags, and deferred decision making understandably foregrounds the ultimate effects of these delays; in contrast, lawyers' perspectives expose the who and how driving weaponized inefficiency. Without this elucidation, the authors of the "directionless stasis" that some asylum seekers experience enjoy anonymity and more easily shirk accountability (Griffiths 2014, 1996). Asylum lawyers' characterizations of obstructions within the legal system help concretize the widely accepted notion that, following Bourdieu (2000), making people wait comprises a technique of state power. In these attorneys' experiences, seemingly small or passive decisions on the part of state actors accumulate to produce unnecessary cruelties.

The pandemic amplified patterns of sluggishness and halfhearted effort on the part of government agents with which my participants were deeply familiar and exasperated. Here, they enjoyed fewer opportunities to curtail the effects of temporal violence. Whereas adjusting their own professional activities could to a degree ward off weaponized efficiency, advocates had few means in their day-to-day practice to directly mitigate routine incapacitations of the protection system. Instead, lawyers adapted by working around these obstructions to the extent possible. This labor of adaptation occurred continuously. And it produced both reaffirmations and reconfigurations of what it means to be an asylum lawyer. Attorneys' responses to weaponized inefficiency thus also expose how the infusion of state migration control tactics into lawyers' work impacts their professional identity, goals, inclination toward certain toolkits or habits of practice, and relationship to both the state and their marginalized clients. In the following subsections, I address three particular ways in which lawyers respond to weaponized inefficiency: rejecting government underperformance, pushing beyond ineffective government agency communication, and working around standstills.

Rejecting State Underperformance

In court, asylum lawyers witnessed government agents engage in delays or obstructions that the lawyers interpreted as seemingly willful or at least senseless. Although the pandemic precluded me from attending immigration court myself, my participants routinely recounted their court experiences during staff meetings or in personal exchanges. Staff attorneys often delivered colorful narratives of asylum victories, highlighting the government incompetence they overcame along the way to success. These success stories often hinged on a clear binary structure, with the state—most typically personified in the DHS attorney, the adjudicator, or both—framed as a villain and the attorney presented as its heroic foil. In this way, the ritual of sharing out legal victories—especially those in which state actors reportedly created obstacles to protection—became an opportunity to affirm shared understandings of the asylum advocate ethos. Lawyers affirmed their identity, values, and habits by setting them in direct contrast to those of the government.

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One asylum win involved an applicant held in detention for almost five months who finally obtained release after his lawyer overcame DHS's needless extensions of his detention. A member of the legal team uplifted her colleague's victory to the entire staff, describing how the latter traveled all the way across state lines donned "in her PPE [personal protective equipment]" only to find that "the judge, appearing in person, did not wear a mask." "Worse yet," the DHS attorney had somehow not received the evidence that the lawyer had hand served. Due to this fumble, the judge postponed the hearing by three weeks, during which time DHS required the asylum seeker to remain detained. Fortunately, his lawyer "had of course, put together an irrefutable case," such that the client ultimately won asylum at the rescheduled hearing (underscoring the senselessness of those three additional weeks of detention). This victory tale presented the staff attorney's professional prowess (her reliable compilation of an airtight argument) against the unexcused and concretely harmful disorganization of DHS. It further implicitly elevated her moral status by contrasting her undeterred dedication to thorough coronavirus protective measures against the judge's refusal to even wear a mask.

Layla invoked similar juxtapositions when she recounted a frustrating experience at an August 2020 hearing at Adelanto Detention Facility. Layla made it all the way through the direct examination of her client only for the DHS attorney, who was participating remotely, to state that her computer would not load properly and that she could not therefore conduct cross-examination "without prejudicing her 'client'" (this "client" being the government, Layla pointedly clarified). "No mention of how this would prejudice our client, a real person, who had to remain locked in a jail during a pandemic for three extra weeks," Liz wrote when announcing to the team Layla's eventual victory at the rescheduled hearing in September. The client, who had by then spent over seven months in detention, finally won release the day before Adelanto cancelled all hearings due to a coronavirus outbreak at the facility. Over a minor—and presumably preventable—technological issue, the DHS attorney had not only denied the client's liberty but also inadvertently placed him at an acute risk of contracting the virus. Here, Layla's preparation and performance at trial set her apart from the floundering DHS attorney. And in deriding the DHS lawyer's reference to her own "client," the team sharply underscored the inhumanity of their adversary, utterly illegible as an entity warranting legal protection—especially compared to their own very human, very vulnerable client.

When an assignment at my field site required me to read through hundreds of pages of pro bono lawyers' notes from court, they corroborated this picture of stark government ineptitude precipitating friction and stalling proceedings. The notes attested to DHS attorneys appearing wholly unprepared for cases, not having read the case documents. They described DHS attorneys preoccupied mid-hearing with their phones or email. They reported DHS attorneys making legal and factual errors—for example, misstating the client's nationality and having to get hints from the judge before finally landing on the correct nationality. The chronic carelessness of government advocates stood in sharp contrast to the hours of preparation and meticulous attention to detail that I witnessed in the habits of public interest asylum lawyers preparing for trial.

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Lawyers contended with moments of underperformance by state actors not only in the midst of hearings but also throughout the wider hum of activity taking place around hearings. A poignant example of this occurred in the context of two parallel court cases concerning the release of detained immigrant families during the pandemic. The first case focused on the release of children and the second case encompassed the families in full. The judge in the first case ruled in favor of the children's release, ordering the government to comply by July 17, 2020. But because ICE refused to release the children and parents together (and since the judge in the first case did not have jurisdiction over the families at large), this seemingly positive decision placed the detained parents in the position of choosing by July 17 to either release their young children alone or keep their families together in detention. Advocates at my field site expressed not only outrage over ICE's unwillingness to relieve the parents of this choice by agreeing to release the families but also exasperation that the judge in the second case declined to act with more urgency to reach a decision ahead of the July 17 deadline, which could have resolved the conflict. By vocally acknowledging disappointing behavior on the part of other legal actors, advocates implicitly affirmed their own values and professional commitments.

In other situations, poor coordination on DHS's part further delayed asylum seekers' release from detention following their victories in court. One client won release on bond from Adelanto but did not actually depart the facility until two weeks later in part because ICE had closed half of its Enforcement and Removal Operations Field Offices due to the pandemic, hamstringing attorneys' attempts to pay the client's bond. When the BIA dismissed one of Liz's cases, it delayed sharing the judge's written decision, which Liz required for her appeal to the Ninth Circuit. When Liz called the BIA to inquire, the clerk said they could not provide any information over the phone and that Liz would have to wait until the decision arrived by mail. Liz asked them to fax the decision, but they refused. Liz bridled: "I'm like, lady, I need the document for my deadline for the Ninth Circuit!" Liz's frustration notwithstanding, the courts' exercise of temporal control squeezed her from both sides, blocking her progress even as it held her under pressure to meet the next court deadline. Although these instances largely reflected incompetence and bureaucratic realities rather than willful obstruction, this did little to diminish the tangible temporal harms they enacted on people navigating the system. These situations left lawyers little space to resist temporal violence other than through their verbalized disappointment.

Pushing beyond Ineffective State Communication

Another dimension of the state's selective inefficiency reared its head in the chronic failure to communicate key information to stakeholders in an effective or timely fashion. State agencies' consistent failure to communicate around procedural issues compromised any hope for streamlining the asylum process. As much as asylum lawyers stretched themselves to keep up with the unrelenting pace of bureaucratic procedures, they also regularly contended with delayed, last-minute, or nonexistent announcements about significant operational shifts on the government's side. Again, it became apparent that the state's insistence on efficiency often went hand in hand with its selective inefficiency: lawyers must uphold a high standard of timeliness precisely as government actors reciprocate with sluggishness.

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This dynamic showed powerfully within the context of immigration courts. Tweets from "Fake EOIR," a Twitter account parodying EOIR and popular amongst immigration attorneys, capture the patterns of communication that lawyers cynically expect from the courts: "Surprise! All individual hearings are now rescheduled for tomorrow. Hearing notices are in the mail," read one Fake EOIR tweet from July 2020. Another widely retweeted Fake EOIR quip: "As previously announced, some courts have resumed hearings, some never stopped hearings, some will be opened and closed and opened again on an arbitrary basis, and if anything gets lost in the shuffle while this is happening, it's the respondent's fault." The reality of asylum lawyering is tragically not far off from the sinister world conjured by the Fake EOIR account. The real EOIR continued to list certain hearings on its calendar even when it had postponed those hearings. As court dates approached, my participants prepared for their hearings while simultaneously devising fallback plans in case of a last-minute cancellation.

Notably, delinquency on the part of government agencies pushed lawyers to sleuth out critical information on their own when possible—in effect, externalizing the costs of information sharing to advocates (compare Longazel 2018). The need for this additional labor coercively expands the investigatory work that asylum lawyers must perform. It also demands that lawyers undertake efforts to develop both domestic and cross-border advocacy networks since they must increasingly share local insights to inductively piece together the thrust of emergent, but unannounced, state policies. Throughout the pandemic, my participants largely relied on unofficial rumors about when courts may or may not close or reopen. In one meeting toward the start of stay-at-home orders, an attorney reported that court clerks had said the courts might close and that someone had seen a closure sign posted at the courthouse but that they still lacked certainty because the court offered no formal announcement. In mid-May 2020, Liz heard on a call that DHS attorneys had received directions to prepare for imminent re-openings, prompting our team to proactively make plans for the resumption of hearings, but, of course, in the end, most courts did not restart hearings until late September 2020.

Detention centers similarly failed to communicate about their shifting court protocols and left it up to advocates to make educated guesses as to what rules would govern. To account for the pandemic, Adelanto Detention Facility developed new criteria around who would be allowed to enter the facility but did not share these new criteria with lawyers. In advance of one detained docket hearing, Carrie tried in vain to get answers about the new protocol. The most she could decipher was that the facility may turn away anyone who had recently traveled overseas. Since Carrie had recently returned from a work trip to Mexico to advance MPP-related advocacy, this meant she might be blocked from attending the hearing. Unable to confirm this, however, Carrie resigned herself to "driving six hours into the desert at 6 am tomorrow only to maybe not be let in." If the Adelanto detention officers did not let her in, her remaining option would be to beg them to let her participate in the hearing by phone from outside the facility.

My participants saw in the courts' poor communication the potential for heightened confusion and stress for their clients, and they accordingly made an effort to disseminate reliable information themselves. Particularly toward the start of the pandemic, lawyers feared that the government's failure to deliver timely and unequivocal updates on court closures would leave asylum seekers doubtful about whether to appear for hearings. One lawyer pointed out that people likely would not

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feel safe not showing up to court simply because a friend of a friend who happened to be a lawyer told them about the closure. Another noted that asylum seekers may show up to a court only to find it closed, leaving them unsure what to do next. Since EOIR had failed to resolve this confusion for the public, lawyers took up the additional work of devising ways to get accurate information out to immigrant communities swiftly via social media, community education, and other channels.

Working around Standstills

Finally, my fieldwork revealed the extent to which lawyers contend with the government's selective tolerance toward systemic standstills. People lobbying in support of more restrictive asylum policies often frame the US asylum system's profound backlogs as a worrisome loophole that gives fraudulent applicants the ability to legally remain in the United States for long periods. Yet my observations demonstrated that backlogs often serve the interests of restrictive migration policy while producing harmful precarity for immigrants. Asylum lawyers had to place whole areas of their professional portfolio on hold while they waited for the government to lift procedural suspensions. Most notably, in the context of the Remain in Mexico program—a program that required asylum seekers seeking entry to the United States via the southern border to wait indefinitely in Mexico to present their US asylum claim—lawyers waited and waited some more for the government to announce the recommencement of MPP hearings. But, eventually, even as hearings in US courts restarted, it became clear that the Trump administration had no plan to restart MPP hearings anytime soon.

The whole initial premise for the MPP itself stood on the idea that the US asylum system could not handle more incoming applicants. The migrant camps that developed on the Mexico side of the border made visible the extent of the underlying procedural delays. But in the view of progressive immigration lawyers, under cover of the pandemic, the government delayed the resumption of MPP hearings beyond any reasonable time frame—in this way, further exacerbating backlogs to deny people their day in court. Moreover, the program's paralysis left lawyers utterly unable to provide meaningful legal support to would-be asylum seekers waiting in MPP. In one staff meeting, Liz identified the "heartbreaking" circumstances facing those "who are stuck in Mexico with no end in sight" as a concern that "[kept her] up at night." Ultimately, lawyers elected to work around this situation: they adapted their priorities to attend instead to adjacent populations they could realistically assist immediately, such as those who had already filed their cases and now sought to appeal a decision. Here, advocates adjusted themselves by shifting their short-term attention to a new client base while still drawing upon their legal toolkit—in this case, appellate representation.

The government's long-term suspension of processing could also push lawyers to reconfigure their purpose within the context of a blocked case. Where standstills made meaningful legal progress virtually impossible, attorneys necessarily related to their clients in new ways: the day-to-day work of those cases became more about compassionately witnessing or accompanying clients than about actively advancing their legal interests. In an effort to help clients cope with the stress produced by the seemingly unending delays, lawyers sometimes undertook legal work at clients'

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direction, even knowing that a particular avenue would unlikely lead to a change in circumstances. Their efforts amounted more to an emotional labor of affirming hope and resistance than to a legal labor that could actually change the client's material circumstances. For example, I once helped Layla prepare humanitarian parole and nonrefoulement interview applications for a client stranded in MPP—two Hail Mary-type mechanisms for winning entry into the United States that, at the time, had a practically nonexistent success rate with adjudicators. Layla emphasized to me multiple times—I suspect because she wanted to manage my expectations—that she had little to no hope that these petitions would actually get the client across the border. But she wanted to do something for him because he contacted her desperately every day, reiterating that he did not feel safe in Tijuana. Layla explained that he regularly called her to say that he was getting in line to enter the United States, and every time she replied the same: "I don't think that's going to work out for you, but do let me know if you make it in." Rather than leave her client alone to habitually practice this likely futile—but completely understandable—insistence on justice, Layla affirmed his attitude by embracing an ethos of persisting against all odds over the conventional logic of her technical legal training (compare Longazel 2018).

CONCLUSIONS

Time is a deeply salient issue for people operating within the US asylum system. By spotlighting the day-to-day experiences of public interest lawyers in Los Angeles, this article shows that the temporal rules of US asylum procedure constitute a highly effective vehicle of state control. Government actors and institutions weaponize time in two directions, mobilizing efficiency to strengthen state power and leveraging inefficiency to undermine asylum seekers' rights. Temporal violence is made more insidious by the fact that it does not require intent on the part of state actors. It is frequently produced by the normal operations of the legal and bureaucratic systems. Moreover, external conditions of crisis, uncertainty, or chaos—like those precipitated by the pandemic—can further intensify the weaponization of time.

This article also contributes to ongoing examinations of how lawyering matters. Some of the most meaningful work of asylum advocates revolves around preventing temporal violence. When possible, advocates anticipate and get out ahead of weaponized efficiency; alternatively, they collaboratively delay its enactment to buy themselves more time. In addition to saving their clients' time, which arguably goes some way toward counterbalancing the state's disregard for asylum seekers' time, the extent to which lawyers can insulate their clients from temporal violence is likely to increase their clients' sense of legal empowerment, procedural justice, and systemic fairness—all of which contribute to lawyers' overall value (Albiston and Sandefur 2013). With regard to the longitudinal impact lawyers have over the duration of cases (Ryo 2018, 526), this article shows how temporal violence—which presents in different forms depending on a case's current procedural posture—may either curtail or create opportunities for lawyers' interventions over the lifetime of a case. Although this study does not directly correlate lawyers' efforts to their impact, it does illuminate the extent to which procedural issues preoccupy advocates, often even over substantive matters.

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My findings demonstrate the degree to which temporal violence overextends public interest lawyers' resources, pushes the limits of their professional toolkit, and threatens their efforts at quality representation. Given the very real struggles documented in my observations, these findings raise concerns about how temporal violence might diminish the effectiveness of other immigration lawyers with less time, training, expertise, or competence than my participants possess.

In the face of emerging obstacles, lawyering must evolve to continue to ensure access to justice (see Ardalan 2015). The weaponization of time in the asylum space transforms the demands of legal representation. The lawyers who I observed were constantly iterating new approaches to representation in a constricted environment. Yet since state actors generally maintain the upper hand in controlling the tempo of the legal process, the lawyers sometimes failed to find effective ways to wholly resist temporal violence. My study shows the places where innovation in legal practice is most necessary to delivering access to justice as well as places where it is most difficult to achieve. Mapping these areas is essential to ensuring that legal representation reliably protects and advances the rights of asylum seekers.

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