

WOMEN OF COLOR IN IMMIGRATION ENFORCEMENT

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Immigration enforcement agencies are among the most racially diverse in federal law enforcement. More than half of all women holding law enforcement positions within immigration agencies are minorities, though the overall number of female agents is relatively small.

This Essay focuses on women of color in immigration enforcement. It begins with a necessary primer on immigration enforcement. Next, it traces key developments that led to the diversification of immigration enforcement, including analysis of never before published data about the racial and gender diversity of immigration agents. Then, it considers the unique benefits of hiring women of color as enforcement agents and notes barriers to the recruitment and retention of women of color by immigration enforcement agencies.

This Essay is largely descriptive, offering a picture of immigration enforcement and the role that women of color play in it. My hope is that this Essay will serve as a jumping-off point for empirical research regarding a before-now understudied segment of the immigration enforcement workforce.

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INTRODUCTION

Few women work in immigration law enforcement. Despite representing more than half of the U.S. population,¹ female law enforcement officers account for just a fraction of the immigration enforcement workforce: 5.5 percent of Border Patrol (USBP) agents,² 13 percent of Immigration and Customs Enforcement (ICE) agents,³ and 19.6 percent of Customs and Border Protection (CBP) officers.⁴ Of these female immigration enforcement officers, the majority are women of color.⁵

This Essay will consider women of color in immigration enforcement. It will begin with an explanation of the various government agencies involved in immigration enforcement. Then, it will discuss how these agencies have become among the most racially diverse in federal law enforcement. Finally, it will focus in on women of color in immigration enforcement, examining the possible benefits such agents may bring to enforcement agencies and the potential barriers to expanding their ranks.

In sum, this Essay paints a picture of immigration enforcement and shines a particular light on female agents of color. It aims to inspire empirical research into an understudied segment of the federal workforce.

I. A PRIMER ON IMMIGRATION ENFORCEMENT

Before looking at the narrow issue of women of color employed as law enforcement officers within immigration agencies, it is necessary to have a broad understanding of immigration enforcement. This part provides a 30,000-foot view of those agencies charged with immigration enforcement.

The Department of Homeland Security (DHS) is the federal agency in charge of immigration enforcement in the United States.⁶ The work is principally delegated to two agencies under DHS's aegis: U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE).⁷ The work of

¹ *Quick Facts United States: Table*, U.S. CENSUS BUREAU, <https://www.census.gov/quick-facts/fact/table/US/LFE046218> [<https://perma.cc/WAY3-E7DS>] (providing that females comprise 50.8 percent of the U.S. population, according to the 2010 census).

² *See infra* Table 2.

³ *See infra* Table 2.

⁴ *See infra* Table 2.

⁵ *See infra* Table 3.

⁶ 8 U.S.C. § 1103(a)(1) (“The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens . . .”).

⁷ DHS oversees a number of agencies whose work is not specific to immigration, including the Federal Emergency Management Agency (FEMA), U.S. Coast Guard, U.S. Secret Service, and Transportation Security Administration (TSA). *See DHS Organizational Chart*, DEP'T HOMELAND SEC., https://www.dhs.gov/sites/default/files/publications/19_1205_dhs-organizational-chart.pdf [<https://perma.cc/Q35F-ZFNJ>] (Dec. 5, 2019). In addition, DHS oversees U.S. Immigration and Citizenship Services (USCIS) which administers requests for

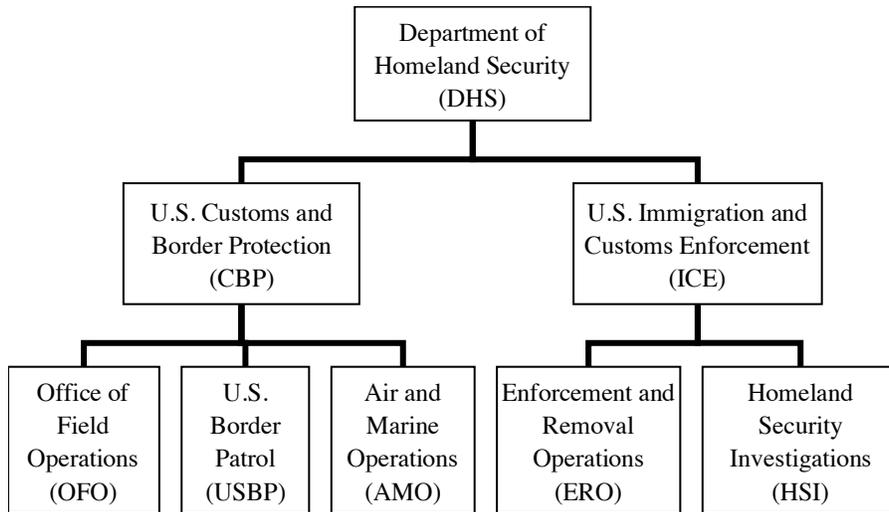
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CBP and ICE are further subdivided into specialized enforcement branches. CBP includes the Office of Field Operations (OFO), U.S. Border Patrol (USBP), and Air and Marine Operations (AMO).⁸ ICE includes Enforcement & Removal Operations (ERO) as well as Homeland Security Investigations (HSI).⁹ Figure 1 shows the hierarchical relationship among these entities.

immigration benefits. *Our History*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/about-us/our-history> [<https://perma.cc/548Z-JMUM>] (Aug. 24, 2020). While subject to some debate, the traditional role of USCIS has not been immigration enforcement. *See, e.g.*, Ming H. Chen & Zachary New, *Silence and the Second Wall*, 28 S. CAL. INTERDISC. L.J. 549, 551, 556 (2019) (discussing the history of USCIS as “the immigrant-serving component of the federal immigration bureaucracy” and the recent shifting of that focus towards “enhanced vetting” and “enforcement operations”). Even accepting that USCIS is engaged in some form of enforcement, it is enforcement with the weapons of pen and paper, not arrest and firearm authority, which distinguishes USCIS from the agencies at the center of this Essay.

⁸ U.S. CUSTOMS & BORDER PROT., SNAPSHOT: A SUMMARY OF CBP FACTS AND FIGURES (2020), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jun/CBP-Snapshot-20200611-web.pdf> [<https://perma.cc/XL5T-UACA>].

⁹ *Who We Are*, U.S. IMMIGR. & CUSTOMS ENF'T, <https://www.ice.gov/about-ice> [<https://perma.cc/BM2X-6B4N>] (Feb. 11, 2021).

FIGURE 1: FEDERAL IMMIGRATION ENFORCEMENT AGENCIES¹⁰

Of these myriad agencies, three are most significant to this Essay: OFO, USBP, and ERO. AMO¹¹ and HSI,¹² while also engaged in immigration enforcement,¹³ are largely focused on other law enforcement concerns—particularly

¹⁰ Figure 1 was constructed using information from the departments' organizational charts. *DHS Organizational Chart*, *supra* note 7; *CBP Organizational Chart*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/document/publications/cbp-organization-chart> [<https://perma.cc/M35Q-F482>] (Oct. 25, 2017); *ICE Organizational Chart*, DEP'T HOMELAND SEC., <https://www.dhs.gov/xlibrary/assets/org-chart-ice.pdf> [<https://perma.cc/99CB-NJA9>] (June 7, 2011).

¹¹ Air and Marine Operations (AMO), as their name suggests, operates vessels such as planes, helicopters, drones, and boats in support of their efforts to thwart terrorism, drugs, and unlawful migration. *What We Do*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/careers/amo-what-we-do> [<https://perma.cc/8Z84-PNQB>].

¹² Homeland Security Investigations (HSI), as its name suggests, is an investigative arm of DHS, focused on “combatting criminal organizations illegally exploiting America’s travel, trade, financial and immigration systems.” *Homeland Security Investigations*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/about-ice/homeland-security-investigations> [<https://perma.cc/S77X-JTJF>] (Jan. 29, 2021).

¹³ As noted, AMO does seek to counter unlawful migration. *See What We Do*, *supra* note 11. HSI, for its part, is also responsible for workplace enforcement, verifying the employment eligibility of noncitizen workers. *See Homeland Security Investigations*, *supra* note 12.

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narcotics¹⁴—and do not deal with the same volume of immigration enforcement work as the other three agencies.¹⁵

A. *Office of Field Operations*

Officers with the OFO, clad in their signature navy blue, work at the 328 ports of entry around the United States.¹⁶ Ports of entry are the locations where individuals and goods can lawfully enter the United States by land, sea, or air.

The focus of the OFO is border security and trade.¹⁷ The agency is responsible for the traditional customs functions of screening cargo and goods: making sure that duties have been paid, inspecting incoming animals and plants, and prohibiting the smuggling of drugs and counterfeit materials.¹⁸ In addition, the OFO is responsible for the traditional immigration functions involved with the screening of individuals entering the United States: verifying identification documents,

¹⁴ See *Air and Marine Operations Statistics*, U.S. CUSTOMS & BORDER PROT., [https://web.archive.org/web/20200626091710/https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/air-and-marine-operations-statistics] (“In Fiscal Year 2019, AMO enforcement actions resulted in the seizure or disruption of 284,825 pounds of cocaine, 101,874 pounds of marijuana, [and] 51,058 pounds of methamphetamine . . .”); see also *HSI 2019 Overview*, U.S. IMMIGR. & CUSTOMS ENF’T, https://www.ice.gov/features/HSI-2019 [https://perma.cc/D5G4-YQ5W] (Feb. 10, 2021) (“HSI seized 145,117 pounds of methamphetamine in [Fiscal Year 2019].”). HSI also highlights its work on document and benefit fraud and child exploitation. *Id.*

¹⁵ Compare *Air and Marine Operations Statistics*, *supra* note 14 (“In Fiscal Year 2019, AMO enforcement actions resulted in . . . 52,036 apprehensions of illegal aliens.”), with *Southwest Border Migration FY 2020*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2020 [https://perma.cc/R4XX-5P5P] (Nov. 19, 2020) (noting USBP apprehended 977,509 undocumented migrants during FY2019—more than eighteen times the number of migrants encountered by AMO). The highlighted work of HSI, in contrast, only tangentially addresses immigration. See *HSI 2019 Overview*, *supra* note 14 (noting the agency’s 2,197 arrests of criminals associated with human trafficking and 3,886 arrests of criminals associated with transnational gangs in Fiscal Year 2019).

¹⁶ *At Ports of Entry*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/border-security/ports-entry [https://perma.cc/CUW3-BMAH] (Sept. 29, 2020). The OFO also staffs preclearance stations at sixteen locations in six countries around the world—Ireland, Aruba, The Bahamas, Bermuda, United Arab Emirates, and Canada—which enable certain international travelers to skip CBP inspection on their arrival in the United States. *Preclearance*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/border-security/ports-entry/operations/preclearance [https://perma.cc/4YK7-W33Q].

¹⁷ The mission statement of CBP is as follows: “Protect the American people, safeguard our borders, and enhance the nation’s economic prosperity.” *About CBP*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/about [https://perma.cc/ZVE3-A8RN] (Dec. 18, 2020). This mission statement was revised in December 2020. Prior to that, the mission statement read: “To safeguard America’s borders thereby protecting the public from dangerous people and materials while enhancing the Nation’s global economic competitiveness by enabling legitimate trade and travel.” *About CBP*, WAYBACK MACHINE, https://web.archive.org/web/20201101052258/https://www.cbp.gov/about.

¹⁸ CONG. RSCH. SERV., R43014, U.S. CUSTOMS & BORDER PROTECTION: TRADE FACILITATION, ENFORCEMENT, AND SECURITY 8 (2015); see U.S. CUSTOMS & BORDER PROT., WELCOME TO THE UNITED STATES: A GUIDE FOR INTERNATIONAL VISITORS 18–19 (2007).

checking authorization to enter the country, and confirming intent to comply with U.S. immigration laws.¹⁹

In terms of their immigration functions, officers with the OFO interact with persons seeking entry into the United States. Such persons might be pedestrians—walking across the border on foot, arriving at the border on busses or cruise ships, or landing in the United States at international airports—or they may be drivers and passengers of cars, trucks, and trains. In addition to individuals declaring their intent to enter the United States, officers encounter those who seek to enter surreptitiously by concealing themselves in vehicle compartments in an effort to evade inspection and enter the United States without authorization.²⁰

Those who declare their intention to enter the United States present paperwork indicating their identity and their permission to enter the country.²¹ Officers with the OFO inspect these documents.²² They make sure that the identification materials match the person presenting them.²³ They assess the authenticity of the documents.²⁴ And they evaluate whether the individual is or is not allowed to enter the United States.²⁵

All of this may happen in a manner of seconds. An officer might scan the passport of a potential border crosser, ask one or two questions, and waive the

¹⁹ See U.S. CUSTOMS & BORDER PROT., *supra* note 18, at 2. The customs and immigration functions of the OFO are those most relevant to this Essay, as they comprise the day-to-day work of immigration enforcement. It is worth noting that the agency also has a Special Response Team—a tactical and special response arm of the OFO—and an Anti-Terrorism Contraband Enforcement Team (A-TCET)—a specialized unit focused on seizing drugs, weapons, currency, and illicit contraband. See *What We Do*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/careers/cbpo-what-we-do> [<https://perma.cc/HLR6-VQDJ>] (Nov. 19, 2020). In addition, the OFO engages in enforcement activities with regard to outbound traffic—those leaving the United States—searching for the unlawful exportation of weapons and currency, which flow out of the nation in response to and in payment for the drugs that flow into the United States. See, e.g., Press Release, U.S. Customs & Border Prot., Outbound Inspection Team Intercepts 18 Assault Rifles, Ammo Bound for Mexico (Apr. 7, 2014), <https://www.cbp.gov/newsroom/local-media-release/outbound-inspection-team-intercepts-18-assault-rifles-ammo-bound-mexico> [<https://perma.cc/9NMB-5GHP>].

²⁰ Elena Gomez, *Man Caught Smuggling People Inside Furniture, Washing Machine at Border Crossing*, NBC 7 SAN DIEGO (Dec. 10, 2019, 3:58 PM), <https://www.nbcsandiego.com/news/local/man-caught-smuggling-people-inside-furniture-washing-machine-at-border-crossing/2228489> [<https://perma.cc/28YQ-SLXD>].

²¹ 8 C.F.R. § 235.1(a) (2020).

²² See *id.*

²³ See *id.* § 235.1(b).

²⁴ See *id.* § 235.1(f)(i) (“proper documents”).

²⁵ 8 U.S.C. § 1182(a), (a)(2)(A)(i), (a)(3)(A), (a)(4)(A), (a)(6)(C)(i) (listing grounds under which individuals are “ineligible to be admitted to the United States” including criminal convictions, national security concerns, likelihood to become “a public charge,” and fraud or misrepresentation, among other grounds). Individuals who request asylum are typically evaluated by special asylum officers from another DHS branch—USCIS—to consider the credibility of their asylum claims. *Questions and Answers: Credible Fear Screening*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening> [<https://perma.cc/QP4Z-S5RN>] (July 15, 2015).

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individual through to the United States.²⁶ Quick action of this kind is considered “primary” screening.²⁷ Sometimes, however, an officer or an inspection dog will flag a potential border crosser as needing more investigation.²⁸ Such individuals will then proceed to “secondary” screening where they face more intense scrutiny and likely a search of their belongings and/or vehicle.²⁹ If the inspecting officer determines that a noncitizen is engaged in misrepresentation or does not have the proper documents required to enter, the OFO has the power to expel the traveler and bar them from reentering the United States for five years.³⁰

B. *U.S. Border Patrol*

Like the OFO, USBP agents focus on border security.³¹ Agents of the USBP operate between ports of entry, along the nearly 2,000 miles of the border between the U.S. and Mexico, the more than 5,500 miles of the border between the U.S. and Canada, and the thousands of miles of U.S. coastal borders.³² USBP operates not just at the border itself, but within 100 air miles of those borders.³³ They are identified by their distinctive olive green uniforms.

²⁶ Leandra Bernstein, *Vehicle Scanning Technology at the Border Is About to Ruin the Drug Trade*, NBC MONT. (Aug. 29, 2019), <https://nbcmontana.com/news/nation-world/vehicle-scanning-technology-at-the-border-is-about-to-ruin-the-drug-trade> [<https://perma.cc/58DD-TAA5>]; see Alexandra Diaz, *Questioning at Ports of Entry: Only Minutes to Separate Truth-tellers from Liars*, LAW PROFESSOR BLOGS NETWORK: IMMIGRATIONPROF BLOG (May 26, 2016), <https://lawprofessors.typepad.com/immigration/2016/05/questioning-at-ports-of-entry-only-minutes-to-separate-truth-tellers-from-liars.html> [<https://perma.cc/PPN7-LV53>].

²⁷ See OFF. INSPECTOR GEN., OIG-17-114, CBP’S IT SYSTEMS AND INFRASTRUCTURE DID NOT FULLY SUPPORT BORDER SECURITY OPERATIONS 8 (2017).

²⁸ *Canine Program*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/border-security/canine-program> [<https://perma.cc/C4R8-VUB2>] (June 18, 2019); Bonnie Berkowitz et al., *Beyond the Wall: Dogs, Blimps and Other Things Used to Secure the Border*, WASH. POST (Feb. 8, 2019), https://www.washingtonpost.com/classic-apps/beyond-the-wall-dogs-blimps-and-other-things-used-to-secure-the-border/2019/02/08/4da50e6a-2b42-11e9-b2fc-721718903bfc_story.html [<https://perma.cc/Y7FF-M7U6>]; Press Release, U.S. Customs & Border Prot., CBP K-9 Retires at International Falls Port of Entry (July 31, 2017), <https://www.cbp.gov/newsroom/local-media-release/cbp-k-9-retires-international-falls-port-entry> [<https://perma.cc/UGW4-NYFU>]; see also OFF. INSPECTOR GEN., *supra* note 27.

²⁹ See OFF. INSPECTOR GEN., *supra* note 27; U.S. CUSTOMS & BORDER PROT., *supra* note 18, at 12.

³⁰ This is called “expedited removal.” 8 U.S.C. §§ 1225(b)(1)(A)(i).

³¹ The focus of Border Patrol is to “safeguard the American people from terrorists and their weapons, drug smugglers, and illegal entry of undocumented aliens.” *What We Do*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/careers/usbp-what-we-do> [<https://perma.cc/T36X-FV9X>] (Nov. 23, 2020).

³² See TODD MILLER, BORDER PATROL NATION: DISPATCHES FROM THE FRONT LINES OF HOMELAND SECURITY 10 (2014); see also CONG. RSCH. SERV., R42138, BORDER SECURITY: IMMIGRATION ENFORCEMENT BETWEEN PORTS OF ENTRY 3 (2016).

³³ 8 U.S.C. § 1357(a)(3) (2018) (“[Agents] shall have power. . . within a reasonable distance from any external boundary of the United States . . . [to] search for aliens . . . [and] patrol[] the border to prevent the illegal entry of aliens into the United States.”); 8 C.F.R. § 287.1(2)

The work of USBP agents is varied and changes with the landscape and geography of each border station. Some agents work in command centers, not interacting with migrants directly but instead reading information gleaned from technology such as motion detectors and feeding that data to agents in the field.³⁴ As for those in the field, some agents hold a fixed and visible position, serving as a deterrent to unauthorized border crossings in potentially high traffic areas such as the tops of hills south of San Diego, California.³⁵ Others man permanent checkpoints on highways near the U.S. border, questioning individuals in cars and trucks about their right to remain in the United States as well as searching for drugs.³⁶ USBP agents also erect temporary checkpoints to check traffic along other border routes³⁷ and conduct roving patrols on roads and highways near the border.³⁸ Agents work in border cities, checking train traffic,³⁹ looking for signs of illegal tunneling,⁴⁰ and identifying unauthorized migrants.⁴¹ They also patrol the thousands of miles of rural U.S. borderlands on boat, horse, ATV, jeep, snowmobile, and on foot, searching for clues about recent unlawful travel and tracking migrants.⁴²

(2020) (“The term *reasonable distance* as used in [8 U.S.C. § 1357(a)(3)], means within 100 air miles from any external boundary of the United States . . .”).

³⁴ Eric Blum, *Further Reflection*, U.S. CUSTOMS & BORDER PROT.: FRONTLINE (JUNE 2, 2015), <https://www.cbp.gov/frontline/frontline-june-az-technology> [<https://perma.cc/99Y6-7437>].

³⁵ Cf. Photograph of Border Patrol monitoring the El Paso border with Mexico, in Kit Johnson, *U.S./Mexico Border Album*, FLICKR (May 20, 2013), <https://www.flickr.com/photos/27757313@N05/8759946176/in/album-72157626855441811> [<https://perma.cc/B4CU-79FV>] (photo of a Border Patrol jeep stationed at a fixed and visible spot on high ground on the Southern border near El Paso).

³⁶ U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-824, BORDER PATROL: CHECKPOINTS CONTRIBUTE TO BORDER PATROL'S MISSION, BUT MORE CONSISTENT DATA COLLECTION AND PERFORMANCE MEASUREMENT COULD IMPROVE EFFECTIVENESS 6–8 (2009), <https://www.gao.gov/assets/300/294548.pdf> [<https://perma.cc/BRP2-H36E>]; *U.S. Border Patrol Interior Checkpoints: Frequently Asked Questions*, ACLU SAN DIEGO: BORDER LITIG. PROJECT (Nov. 20, 2014), <https://www.aclusandiego.org/wp-content/uploads/2014/11/Border-Patrol-Checkpoint-FAQs.pdf> [<https://perma.cc/F5VZ-J22R>].

³⁷ See *United States v. Havier*, 9 F. App'x 694, 695 (9th Cir. 2001) (citing *United States v. Hernandez*, 739 F.2d 484, 485 (9th Cir. 1984)).

³⁸ See *United States v. Hernandez*, 477 F.3d 210, 213 (5th Cir. 2007) (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975)).

³⁹ Nina Bernstein, *Border Sweeps in North Reach Miles into U.S.*, N.Y. TIMES (Aug. 29, 2010), <https://www.nytimes.com/2010/08/30/nyregion/30border.html> [<https://perma.cc/PB2W-ASXA>].

⁴⁰ Jason McCannack, *What Lies Beneath*, U.S. CUSTOMS & BORDER PROT.: FRONTLINE (July 28, 2014), <https://www.cbp.gov/frontline/what-lies-beneath> [<https://perma.cc/H523-QLH6>].

⁴¹ *San Diego Sector California*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/san-diego-sector-california> [<https://perma.cc/SV3L-37Z5>] (Feb. 5, 2021) (noting general immigration law enforcement efforts in San Diego, a border city).

⁴² These are the day-to-day functions of USBP. Like the OFO, the USBP also has some specialized divisions including Border Patrol Search, Trauma and Rescue (BORSTAR) and the agency's Mobile Response Team (MRT). See *What We Do*, *supra* note 31. In the summer of

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The many USBP agents working in isolated parts of the Southern border face a job that can be both boring and scary.⁴³ These agents find themselves searching for signs of border crossings for hours, perhaps finding none during an entire shift. When they do encounter migrants, the agent's job is to apprehend them despite the fact that agents often work alone, with backup many miles away, and may be working to apprehend a group of migrants traveling together, none of whom want to be caught.⁴⁴ In addition to often being outnumbered, agents frequently do not know before the encounter whether the individuals they seek to apprehend are families with young children or drug mules—differences that significantly affect the safety of the agent during apprehension.⁴⁵

C. *Enforcement and Removal Operations*

Unlike the OFO and USBP, which are divisions of Customs and Border Protection, ERO falls under the supervision of Immigration and Customs Enforcement. While OFO operates at ports of entry, and USBP operates along the U.S. border, ERO operates throughout the United States.⁴⁶ As its name suggests, ERO

2020, much of the nation focused on USBP's Border Patrol Tactical Unit (BORTAC), a special tactical unit. That was because BORTAC agents were deployed in Portland in response to George-Floyd-inspired protests near the city's federal courthouse. *See, e.g.*, Kit Johnson, *WTF Is Happening in Portland?*, LAW PROFESSOR BLOGS NETWORK: IMMIGRATIONPROF BLOG (July 19, 2020), <https://lawprofessors.typepad.com/immigration/2020/07/wtf-is-happening-in-portland-.html> [<https://perma.cc/4EW2-W7HX>]; Alicia A. Caldwell & Michelle Hackman, *Elite Border Patrol Unit Is Among Federal Agents Deployed to Portland*, WALL ST. J. (July 25, 2020, 12:33 PM), <https://www.wsj.com/articles/elite-border-patrol-unit-is-among-federal-agents-deployed-to-portland-11595689780> [<https://perma.cc/N8JE-MPBG>].

⁴³ *See* Amanda Ripley, *Federal Law Enforcement Has a Women Problem*, POLITICO (Nov. 14, 2017, 5:04 AM), <https://www.politico.com/story/2017/11/14/women-federal-law-enforcement-t-male-dominated-244649> [<https://perma.cc/FD6E-4U9R>] (“[T]he hardest part of the job was managing boredom.”); Sasha Von Oldershausen, *What It's Like to Be a Female Border Patrol Agent*, MARIE CLAIRE (Dec. 5, 2017), <https://www.marieclaire.com/career-advice/a14011798/female-border-patrol-agent> [<https://perma.cc/D7HL-3VWH>] (noting the mental challenge of “days . . . filled with hours of solitude”).

⁴⁴ Von Oldershausen, *supra* note 43; *see* Molly Hennessy-Fiske, *Q&A: Border Patrol's First Female Chief, Carla Provost, on Border-Crossers, a Wall and Women in Law Enforcement*, L.A. TIMES (Aug. 9, 2018, 1:20 PM), <https://www.latimes.com/nation/la-na-border-patrol-provost-20180809-story.html> [<https://perma.cc/Z9P5-XU9M>] (“You're out in the desert and you can come across armed smugglers at any given time, without backup, 20 minutes or more away from any assistance.”).

⁴⁵ *See* Ripley, *supra* note 43; Ron Nixon, *Woman in Charge at Border Patrol Hopes to See More in Ranks*, N.Y. TIMES (July 27, 2017), <https://www.nytimes.com/2017/07/27/us/politics/woman-in-charge-at-border-patrol-hopes-to-see-more-in-ranks.html> [<https://perma.cc/S8VT-DFWH>] (“It's often solitary duty, with large stretches of time patrolling alone, facing constant threats from dangerous drug and human smuggling organizations.”).

⁴⁶ *Enforcement and Removal Operations*, U.S. IMMIGR. & CUSTOMS ENF'T, <https://www.ice.gov/ero> [<https://perma.cc/64Q3-CF5Q>] (Feb. 11, 2021).

focuses on the enforcement of immigration laws through the arrest and removal of immigration law violators.⁴⁷

The day-to-day work of ERO agents ranges widely.⁴⁸ Some ERO agents work at office desks where they track migrants who are waiting to hear about their petitions for immigration benefits, identify migrants who have been ordered removed from the United States or failed to abide by voluntary departure orders, or send detainer requests to jails and prisons holding potentially-removable migrants.⁴⁹ ERO agents also meet with noncitizens, serving as something akin to probation officers, checking in with individuals as their removal cases proceed through the courts, verifying any necessary immigration bond is in place, or monitoring ankle bracelets.⁵⁰ Some ERO agents work in the field, looking to apprehend migrants identified for removal—whether in custodial settings or at large.⁵¹ Others serve in immigration detention facilities, managing and overseeing both privately- and publicly-run detention centers.⁵² Additionally, ERO agents facilitate the transportation of noncitizens both within the United States—if transferred between detention centers⁵³ or visiting a hospital⁵⁴—and leaving the United States—by working to secure travel documents from consulates⁵⁵ and accompanying repatriated deportees on flights to their countries of origin.⁵⁶

⁴⁷ The stated mission of ERO is to “protect[] the homeland through the arrest and removal of aliens who undermine the safety of our communities and the integrity of our immigration laws.” *Id.*

⁴⁸ See, e.g., *An Average Day in the Life: Enforcement and Removal Operations*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/doclib/news/library/factsheets/pdf/day-in-life-ero.pdf> [https://perma.cc/DZ5Z-97ZV] (listing information collected during the Fiscal Year 2019).

⁴⁹ U.S. IMMIGR. & CUSTOMS ENF’T, FISCAL YEAR 2017 ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT 5, 11, 13 (2017), <https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf> [https://perma.cc/7FCH-WESG].

⁵⁰ CONG. RSCH. SERV., R45804, IMMIGRATION: ALTERNATIVES TO DETENTION (ATD) PROGRAMS 7–8 (2019).

⁵¹ See, e.g., *id.* at 4.

⁵² *Detention Management*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/detention-management> [https://perma.cc/9RWZ-SD7B] (Feb. 24, 2021).

⁵³ Mark Noferi, *Cascading Constitutional Deprivation: The Right to Appointed Counsel for Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 MICH. J. RACE & L. 63, 77 n.59 (2012) (discussing the frequency of transfers); *id.* at 75 (charting the frequency of transfers).

⁵⁴ See, e.g., Kristina Cooke et al., *As Pandemic Rages, U.S. Immigrants Detained in Areas with Few Hospitals*, REUTERS (Apr. 3, 2020, 3:07 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-detention-insi/as-pandemic-rages-u-s-immigrants-detained-in-areas-with-few-hospitals-idUSKBN21L1E4> [https://perma.cc/67PE-GMYV].

⁵⁵ U.S. IMMIGR. & CUSTOMS ENF’T, FISCAL YEAR 2019 ENFORCEMENT AND REMOVAL OPERATIONS REPORT 10 (2019), <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf> [https://perma.cc/WS84-6FST].

⁵⁶ *ICE Air Operations Fact Sheet*, U.S. IMMIGR. & CUSTOMS ENF’T (Aug. 13, 2020), <https://www.ice.gov/factsheets/ice-air-operations> [https://perma.cc/DKH2-ALRC].

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Unlike the members of the OFO and USBP, ERO agents do not have a uniform.⁵⁷ They typically work in plain clothes but can also be seen dressed in khaki tactical pants and a dark polo shirt with an ICE logo on the left breast.⁵⁸

II. THE DIVERSIFICATION OF IMMIGRATION ENFORCEMENT

Federal immigration enforcement began in 1891 with the inspection of migrants seeking admission at the border by a newly-created Immigration Service, a precursor to the OFO.⁵⁹ Some three decades later, Congress created the Border Patrol to prevent unlawful entry of migrants by land.⁶⁰ Then, in 1933, the Immigration and Naturalization Service (INS) was created;⁶¹ it enforced immigration laws for decades until the agency was subsumed by DHS in 2003.⁶²

The early iterations of immigration enforcement agencies were not diverse institutions. Border Patrol was “overwhelmingly Anglo-American”⁶³ and immigration enforcement more generally was “an exclusively-white enterprise.”⁶⁴ Immigration enforcement was also exclusively male.⁶⁵ That changed only in the 1970s with increased hiring of women⁶⁶ and minorities⁶⁷ following federal legislation, presidential orders, and executive rulemaking regarding employment discrimination.

⁵⁷ ICE used to have a uniformed position called “immigration enforcement agent” or IEA, but the agency has been working towards a unified career path for all ICE agents. *See, e.g.*, U.S. IMMIGR. & CUSTOMS ENF’T, OPERATIONS AND SUPPORT: FISCAL YEAR 2019 CONGRESSIONAL JUSTIFICATION 11 (2019), <https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf> [<https://perma.cc/9E7G-C4NM>] (discussing the budget effects of this five-year transition).

⁵⁸ *See, e.g.*, ICE (@ICEgov), TWITTER (July 25, 2019, 12:00 PM), <https://twitter.com/ICEgov/status/1154466350103838720/photo/1> [<https://perma.cc/FYT3-TJ2G>].

⁵⁹ U.S. CITIZENSHIP & IMMIGR. SERVS., OVERVIEW OF INS HISTORY 4 (2012) [hereinafter OVERVIEW OF INS HISTORY], <https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf> [<https://perma.cc/6EHP-FMWR>]. The service’s best-known inspection station, Ellis Island, opened in 1892. *Id.*

⁶⁰ KELLY LYTLER HERNÁNDEZ, *MIGRA!: A HISTORY OF THE U.S. BORDER PATROL 16–17* (2010).

⁶¹ OVERVIEW OF INS HISTORY, *supra* note 59, at 7.

⁶² *Id.* at 11.

⁶³ Josiah McC. Heyman, *U.S. Immigration Officers of Mexican Ancestry as Mexican Americans, Citizens, and Immigration Police*, 43 CURRENT ANTHROPOLOGY 479, 484 (2002); *see also* David Cortez, *Broken Mirrors: Identity, Duty, and Belonging in the Age of the New La(tinx) Migra* 75 (Aug. 2017) (Ph.D. dissertation, Cornell University), <https://ecommons.cornell.edu/handle/1813/56824> [<https://perma.cc/2GYW-8ZSB>] (noting not one agent in the 1955 class of Border Patrol agents had a Spanish surname nor did any agents in the 1974 celebration of fifty years of Border Patrol).

⁶⁴ Cortez, *supra* note 63, at 73.

⁶⁵ *Women in Law Enforcement*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/features/women-ice> [<https://perma.cc/8Y6V-5JL8>] (Dec. 2, 2020) (noting women were not allowed to hold positions with firearm authority until 1971).

⁶⁶ The first female Border Patrol agents began work in the summer of 1975. IMMIGR. & NATURALIZATION SERV., *Our Newest Border Patrol Agents*, 25 I & N REP. 10, 11 (1976).

⁶⁷ Latinx agents started joining immigration enforcement in significant numbers by 1975. Heyman, *supra* note 63; Cortez, *supra* note 63, at 76–77 (discussing Border Patrol and INS).

Big changes started with Title VII of the Civil Rights Act of 1964,⁶⁸ which forever changed federal employment, including immigration enforcement jobs. The law protected federal employees from discrimination on the basis of race or gender.⁶⁹ In addition, the law established the Equal Employment Opportunity Commission (EEOC),⁷⁰ though the commission did not become the enforcement powerhouse that is today until the passage of the Equal Opportunity Act (EEOA) of 1972, which gave the EEOC its ability to enforce Title VII obligations.⁷¹ These laws paved the way for the diversification of the immigration enforcement workforce.

Since the passage of Title VII, several presidents have also emphasized the importance of diversifying federal employment opportunities. President Lyndon B. Johnson issued an executive order in September 1965, stating that the government would not discriminate on the basis of race and would “promote the full realization of equal employment” in federal positions.⁷² Johnson issued a second order in 1967 adding that discrimination on the basis of “sex” should also be prohibited.⁷³ Three decades later, President Bill Clinton issued an executive order to increase the number of federally-employed Hispanics.⁷⁴ In 2011, President Barack Obama issued an executive order “to promote the Federal workplace as a model of equal opportunity, diversity, and inclusion.”⁷⁵ Each order served as a top-down directive aimed at diversifying the federal workforce, including immigration enforcement positions.

In addition to executive orders and congressional lawmaking, agency rule-making has played a significant role in the diversification of immigration enforcement. Most critically, in 1971, the Civil Service Commission held that women could fill law enforcement positions.⁷⁶ This opened the door for women to hold law enforcement positions within immigration agencies. Another important step took place in 2003 when the Director of the Federal Sector Programs Office of Federal Operations Equal Employment Opportunity Commission issued Management Directive 715, which required—and continues to require—agencies to engage in ongoing assessment of any barriers to employment

⁶⁸ Civil Rights Act of 1964, Pub. L. No. 88-352, § 701, 78 Stat. 241, 253–266.

⁶⁹ *Id.* § 701(b), 78 Stat. 241, 253–54 (codified as amended at 42 U.S.C. § 2000e-16(a)).

⁷⁰ *Id.* § 705(a), 78 Stat. 241, 258–59 (codified as amended at 42 U.S.C. § 2000e-16(b)) (“There is hereby created a Commission to be known as the Equal Employment Opportunity Commission . . .”).

⁷¹ Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 4, 86 Stat. 103, 104 (codified at 42 U.S.C. § 2000e-5(a)).

⁷² Exec. Order No. 11,246, 3 C.F.R. 339 (1964–1965).

⁷³ Exec. Order No. 11,375, 3 C.F.R. 684 (1966–1970).

⁷⁴ Exec. Order No. 13,171, 3 C.F.R. 298 (2000).

⁷⁵ Exec. Order No. 13,583, 3 C.F.R. 266 (2011).

⁷⁶ *Women in Law Enforcement*, *supra* note 65 (noting that women were not allowed to hold positions with firearm authority until 1971).

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opportunities hindering any racial group or gender.⁷⁷ This obligation has led DHS to identify barriers to creating a more diverse immigration enforcement workforce,⁷⁸ which, in turn, has led the agency to actively work to recruit a more diverse workforce by reaching out to minority and female law enforcement organizations⁷⁹ as well as minority and female feeder institutions such as women's colleges, tribal colleges, and HBCUs.⁸⁰ Looking specifically at gender diversity, DHS has authorized two hiring announcements exclusively for women: one for border patrol agents in 2014,⁸¹ one for ICE agents in 2018,⁸² though the first was not a success and data about the second has not been published.⁸³ And ICE, for one, maintains a website that highlights the work of female agents, offering advice to aspiring agents and providing information about what it is like to serve as a female agent.⁸⁴

The efforts to diversify immigration enforcement have been, in many ways, successful. Today, CBP (encompassing OFO and USBP) and ICE

⁷⁷ EEOC MANAGEMENT DIRECTIVE 715, SECTION 717 OF TITLE VII (2003), <https://www.eeoc.gov/federal-sector/management-directive/section-717-title-vii> [<https://perma.cc/PB2F-AQ6E>].

⁷⁸ See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-639, EQUAL EMPLOYMENT OPPORTUNITY: DHS HAS OPPORTUNITIES TO BETTER IDENTIFY AND ADDRESS BARRIERS TO EEO IN ITS WORKFORCE 12 (2009) ("In 2007 . . . DHS identified four barriers [to diversification]: (1) overreliance on the Internet to recruit applicants, (2) overreliance on noncompetitive hiring authorities, (3) lack of recruitment initiatives that were directed at Hispanics in several components, and (4) nondiverse interview panels.").

⁷⁹ U.S. DEP'T HOMELAND SEC., INCLUSIVE DIVERSITY STRATEGIC PLAN: FISCAL YEARS 2016–2019, at 2 (2016) ("[DHS] efforts include a strong DHS presence at high-value recruiting events featuring diverse organizations such as Women in Federal Law Enforcement, National Organization of Black Law Enforcement Executives, National Asian Peace Officers Association and the National Native American Law Enforcement Association."); see also E-mail from Mary Houtmann, Pub. Affs. Specialist, Dep't of Homeland Sec., to Kit Johnson, Professor of L., Univ. of Okla. Coll. of L. (Aug. 20, 2020, 11:31 AM) (on file with author).

⁸⁰ OFF. DIVERSITY & C.R., U.S. CUSTOMS & BORDER PROT., FISCAL YEAR 2012 ANNUAL REPORT 9 (2012), https://www.cbp.gov/sites/default/files/documents/dcr_fy12_ann_rept_2.pdf [<https://perma.cc/WSB3-9Z8L>]. In addition, Border Patrol created a Minority Recruitment Strike Team—eight black agents traveling to high schools, colleges, churches, community centers, radio shows—who are able to engage potential applicants and tout the many benefits that come with federal employment. Randal C. Archibold, *New Outreach to Blacks as Border Patrol Grows*, N.Y. TIMES (June 23, 2008), <https://www.nytimes.com/2008/06/23/us/23border.html> [<https://perma.cc/7VQK-8D7R>]; see also Ripley, *supra* note 43.

⁸¹ Angela Kocherga, *Border Patrol Seeks to Hire More Women*, USA TODAY (Dec. 8, 2014, 6:39 PM), <https://www.usatoday.com/story/news/nation/2014/12/08/border-patrol-seeks-hire-more-women/20113033> [<https://perma.cc/66KE-FBEG>].

⁸² Will Racke, *ICE Posts Women-Only Job Announcement in Push for Gender Equality*, DAILY CALLER (June 27, 2018, 6:58 PM), <https://dailycaller.com/2018/06/27/ice-women-only-job-announcement-gender-equality> [<https://perma.cc/Y89H-MU3E>] (noting that women-only positions were announced for both ERO and HSI).

⁸³ Ripley, *supra* note 43 (stating that 4,800 women applied in response to the Border Patrol advertisement, but only thirty-three, less than 1 percent, were hired).

⁸⁴ *Women in Law Enforcement*, *supra* note 65 (featuring #ICEWomenWork videos, information about the first women in ICE, and historical facts about female ICE agents).

(encompassing ERO) are among the most racially diverse of federal law enforcement agencies.⁸⁵ In fact, according to 2016 data compiled by the Bureau of Justice Statistics, no federal law enforcement agency employs more Latinos than CBP and ICE—by percentage of workforce or in number of employees.⁸⁶ Looking just at the number of employees, CBP employs the highest number of federal agents who identify as female, Asian, Native Hawaiian/Other Pacific Islander, and American Indian/Alaska Native.⁸⁷ CBP and ICE also employ the second and third highest number of Black federal agents, respectively.⁸⁸

TABLE 1: RACE AND GENDER OF FULL-TIME IMMIGRATION LAW ENFORCEMENT OFFICERS, 2016 DATA⁸⁹

Agency	Total Agents	Female	Black	Latinx	Asian	NH/OPI	AI/AN	Two+ Races
CBP	43,724	11.9%	4.9%	39.5%	4.1%	0.4%	0.8%	0.4%
ICE	12,400	12.9%	7.4%	25.5%	5.0%	0.0%	0.7%	0.0%

CBP and ICE recently shared more up-to-date and granular data regarding their agents, detailed in Tables 2 and 3 below.⁹⁰ Comparing the figures in Table 2 to the 2016 data regarding other federal agencies, CBP remains a federal leader in the employment of Latinx, female, Asian, and Native Hawaiian/Other Pacific Islander agents.⁹¹ ICE continues to employ large numbers of Latinx, Asian, and Black agents.⁹² Border Patrol, however, has the third *lowest* percentage of female agents among federal law enforcement agencies.⁹³

⁸⁵ CONNOR BROOKS, BUREAU JUST. STAT., FEDERAL LAW ENFORCEMENT OFFICERS, 2016 – STATISTICAL TABLES 7 tbl.6 (2019), <https://www.bjs.gov/content/pub/pdf/fleo16st.pdf> [<https://perma.cc/KT4P-C6SD>].

⁸⁶ *Id.* Indeed, the Latino workforce at ICE is more than 11 percent larger than the next-highest Latino workforce, which is at the U.S. Postal Inspection Services (14.2 percent Latino), an agency that employs only a fraction (15 percent) of the number of agents (1,891 compared to ICE’s 12,400). *Id.*

⁸⁷ *Id.* Consider just that last group—American Indian/Alaska Native. While such agents represent only 0.4 percent of the CBP workforce, because that workforce is far larger than most other agencies (43,724 agents), that 0.4 percent exceeds the workforce of the Bureau of Indian Affairs despite the fact that 95.5 percent of BIA agents identify as American Indian/Alaska Native. *Id.*

⁸⁸ *Id.* This, again, is a function of the number of agents employed by these agencies. If looking at Black agents as a percentage of the workforce, CBP and ICE rank nineteenth and twenty-second among federal law enforcement agencies. *Id.*

⁸⁹ *Id.* In this and the following tables, “NH/OPI” represents Native Hawaiian/Other Pacific Islander, and “AI/AN” represents American Indian/Alaska Native.

⁹⁰ See *infra* Tables 2, 3.

⁹¹ Compare BROOKS, *supra* note 85, with *infra* Table 2.

⁹² Compare BROOKS, *supra* note 85, with *infra* Table 2.

⁹³ Compare *infra* Table 2 (showing that just 5.5 percent of USBP agents are female), with BROOKS, *supra* note 85, at 7 (noting only the National Nuclear Security Administration, with 0 percent of its 302 agents, and the Federal Emergency Management Administration, with 3.8 percent of its 78 agents, have a greater gender gap among their employees).

Spring 2021] *WOMEN OF COLOR IN IMMIGRATION ENFORCEMENT* 1011TABLE 2: RACE AND GENDER OF FULL-TIME IMMIGRATION LAW ENFORCEMENT OFFICERS, 2020 DATA⁹⁴

Agency	Total Agents	Female	Black	Latinx	Asian	NH/OPI	AI/AN	Two+ Races
CBP	25,585	19.6%	8.7%	30.9%	6.7%	0.6%	0.7%	0.6%
USBP	19,920	5.5%	1.8%	48.3%	1.1%	0.2%	0.6%	0.2%
ICE	12,683	13.0%	7.3%	25.3%	4.4%	0.3%	0.7%	0.3%
ERO	6,137	12.4%	9.6%	32.5%	5.1%	0.5%	0.8%	0.4%

Focusing on gender alone for a moment, we can compare the above statistics to those of local police departments, where 12.6 percent of full-time police officers, roughly one in eight, are female.⁹⁵ About one in ten first-line supervisors⁹⁶ in local police departments are female.⁹⁷ The proportion of female officers in larger communities is nearly twice as high as for smaller communities.⁹⁸ So, in terms of national averages, female CBP officers, at 19.6 percent, are well above that average, and female USBP agents, at 5.5 percent, are far below.⁹⁹

CBP and ICE have not previously published data regarding the breakdown of their law enforcement agents by gender *and* race. Table 3 sets out this newly-acquired data.

⁹⁴ On file with author. The CBP numbers represented in this table exclude USBP and include OFO. The ICE numbers represented in this table include ERO.

⁹⁵ *2018 Crime in the United States: Full-Time Law Enforcement Employees by Population Group*, FBI: UCR, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-74> [<https://perma.cc/W9N5-PLU5>].

⁹⁶ See O*NET ONLINE, SUMMARY REPORT FOR: 33-1012.00 - FIRST-LINE SUPERVISORS OF POLICE AND DETECTIVES (2020), <https://www.onetonline.org/link/summary/33-1012.00> [<https://perma.cc/A5CK-JHR2>].

⁹⁷ BUREAU JUST. STAT., No. NCJ 252835, LOCAL POLICE DEPARTMENTS, 2016: PERSONNEL (2019), <https://www.bjs.gov/content/pub/pdf/lpd16psum.pdf> [<https://perma.cc/EJZ6-MELE>].

⁹⁸ *Id.* (“The proportion of female officers in jurisdictions with 250,000 or more residents (16 percent females) was twice as high as in jurisdictions with less than 25,000 residents (8 percent).”).

⁹⁹ See *supra* Table 2.

TABLE 3: RACE AND GENDER OF FULL-TIME IMMIGRATION LAW ENFORCEMENT OFFICERS, 2020 DATA¹⁰⁰

Agency	Total Agents	Black	Latinx	Asian	NH/OPI	AI/AN	Two+ Races
Females							
CBP	5,013	12.6%	34.3%	6.2%	0.5%	0.7%	0.8%
USBP	1,088	2.0%	50.1%	0.9%	0.2%	0.4%	0.5%
ERO	764	15.4%	36.1%	5.0%	0.1%	0.7%	0.7%
Males							
CBP	20,572	7.8%	30.0%	6.8%	0.6%	0.7%	0.6%
USBP	9,075	1.7%	48.2%	1.1%	0.2%	0.6%	0.2%
ERO	5,373	8.8%	32.0%	5.2%	0.5%	0.8%	0.4%

Table 3 makes clear that the majority of female immigration enforcement agents identify as women of color: 55.1 percent of CBP officers, 54.1 percent of USBP agents, and 58 percent of ERO agents. In addition, a greater percentage of female law enforcement officers working for CBP, USBP, and ERO identify as Black, Latinx, and multi-racial than male officers working for those agencies.

Because the data in Table 3 has not been previously available, researchers have not focused on the fact that the majority of female immigration agents are women of color. There has been exploration of the experience of women in Border Patrol,¹⁰¹ and Latinos across immigration enforcement agencies,¹⁰² but no specific consideration of the experience and effects of women of color in immigration enforcement. I begin an exploration of this topic below.

III. BENEFITS AND BARRIERS TO EMPLOYING WOMEN OF COLOR IN IMMIGRATION ENFORCEMENT

This part focuses on female agents of color in immigration enforcement, exploring the benefits of and barriers to hiring such women. It is an initial foray that I hope will inspire empirical research about women of color in immigration enforcement.

A. *How Immigration Enforcement Agencies Benefit from Female Agents of Color*

In a 2006 article concerning local law enforcement, Professor David Alan Sklansky set forth a rubric for discussing the effects of a diverse enforcement workforce on the agency employing them.¹⁰³ Sklansky identified three areas for

¹⁰⁰ On file with author. The CBP numbers represented in this table exclude USBP and include OFO.

¹⁰¹ See *supra* notes 43–45.

¹⁰² See *supra* note 63.

¹⁰³ David Alan Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209, 1211–12 (2006).

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evaluation: (1) *competency effects*, meaning the skills and abilities of the workers, (2) *community effects*, meaning the consequences for the relationship between the agency and the community it works with, and (3) *organizational effects*, meaning the ways in which employees affect their workplace.¹⁰⁴ This rubric is helpful in assessing the benefits that female agents of color have on immigration enforcement.

First, with regard to *competency effects*, women of color bring many competencies to immigration enforcement. Latina agents, in particular, may enter immigration enforcement with Spanish language fluency, a requirement for immigration enforcement officers.¹⁰⁵ Spanish fluency is not only a job requirement, it is a skill that can greatly enhance the work of an immigration enforcement agent. As one scholar has noted: Spanish-fluent Latinx officers “were more effective at reducing the tension in interactions with immigrants than officers for whom Spanish was a second language.”¹⁰⁶ The benefits of a Spanish-fluent workforce are enhanced further when the agents are able to speak dialect-specific Spanish.¹⁰⁷

Women of color also benefit immigration enforcement agencies by virtue of their gender. Women are needed for pat downs and strip searches.¹⁰⁸ Consider just those migrants in detention. In 2019, there were some 7,700 women in immigration detention and another 4,500 in jails heading to immigration detention.¹⁰⁹ Women are also detained in short-term facilities at ports of entry by the OFO and in processing centers by USBP, and female agents are needed to search these individuals.

Language and gender may seem like obvious competency effects. What is likely less known is how gender can play a role when it comes to use of force. Studies show that female officers are less likely to use force than their male

¹⁰⁴ *Id.* at 1223.

¹⁰⁵ *Do I Have to Speak Spanish to Join the U.S. Border Patrol?*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/faqs/do-i-have-speak-spanish-join-us-border-patrol> [https://perma.cc/4E7E-JJK5]; *Spanish Language Training Program*, OFF. DET. & REMOVAL OPERATIONS, https://www.ice.gov/doclib/about/offices/ero/pdf/spanishlangtraininginfo1_2.pdf [https://perma.cc/6NBG-WZFZ].

¹⁰⁶ Heyman, *supra* note 63, at 486.

¹⁰⁷ *Compare Cortez*, *supra* note 63, at 144 (“I’m just communicating with them. . . . Every time I talk to [the immigrants in custody], I talk to them with respect; and I also talk to them in their lingo. I say words that nobody would probably say and they’re like, ‘oh, wow’—and right away, they feel at home. ‘¿Qué onda, cabrón?’ [‘What’s up, asshole?’], or something like that. . . . and right away they [open] up.” (alterations in original)), *with id.* at 137–38 (discussing the language difficulties that Puerto Rican, Cuban, and Dominican agents had in communicating with Mexican migrants).

¹⁰⁸ Ripley, *supra* note 43 (“[F]emale agents are needed to do invasive searches of women. . . .”).

¹⁰⁹ Aleks Kajstura, *Women’s Mass Incarceration: The Whole Pie 2019*, PRISON POL’Y INITIATIVE (Oct. 29, 2019), <https://www.prisonpolicy.org/reports/pie2019women.html> [https://perma.cc/7VC3-GD3L].

counterparts,¹¹⁰ less likely to use a weapon,¹¹¹ have a lower rate of suspect injury,¹¹² and cost less money than men in civil liability payouts.¹¹³ While the studies that underlie those statements have focused on traditional policing, the findings are analogous to the immigration context. Indeed, the first female chief of USBP, Carla Provost, summed up her experience with female agents in similar terms: “Quite often in stressful situations, if a female agent comes in, it has a calming effect if things are getting out of control.”¹¹⁴

This data suggests that greater success in the hiring and retention of female agents might have positive effects on use-of-force culture in the federal immigration enforcement context, which has been plagued by excessive force incidents.¹¹⁵ Indeed, CBP has acknowledged a need for agents to de-escalate

¹¹⁰ Ripley, *supra* note 43 (noting studies in Madison, Wisconsin and New York City); Cara E. Rabe-Hemp, *Female Officers and the Ethic of Care: Does Officer Gender Impact Police Behaviors?*, 36 J. CRIM. JUST. 426, 431 (2008) (“[W]omen [are] much less likely than men to use extreme controlling behavior, such as threats, physical restraints, searches, and arrests.”).

¹¹¹ Renee Stepler, *Female Police Officers’ On-the-Job Experiences Diverge from Those of Male Officers*, PEW RSCH. CTR. (Jan. 17, 2017), <https://www.pewresearch.org/fact-tank/2017/01/17/female-police-officers-on-the-job-experiences-diverge-from-those-of-male-officers> [<https://perma.cc/KSA8-KYJD>] (stating that, in a nationwide survey, 11 percent of female officers reported ever firing their weapon while on duty, in contrast to 30 percent of male officers); Peter B. Hoffman & Edward R. Hickey, *Use of Force by Female Police Officers*, 33 J. CRIM. JUST. 145, 149 (2005) (noting that while female officers had a lower rate of weapon use when all types of weapons were used, they did not when different types of weapons were considered individually and further that while statistically significant, the difference was small in absolute terms).

¹¹² P. Colin Bolger, *Just Following Orders: A Meta-Analysis of the Correlates of American Police Officer Use of Force Decisions*, 40 AM. J. CRIM. JUST. 466, 484 (2014) (“Male officers are more likely to use force than their female colleagues.”); Amie M. Schuck & Cara Rabe-Hemp, *Women Police: The Use of Force by and Against Female Officers*, 16 WOMEN & CRIM. JUST. 91, 101–02 (2005) (“[F]emale officers . . . were less likely to use physical force than were their male counterparts.”); Hoffman & Hickey, *supra* note 111 (noting that while female officers had a lower rate of suspect injury, there was no difference in the rate of suspect hospitalization and that while statistically significant, the difference was small in absolute terms); see also KIM LONSWAY ET AL., *HIRING & RETAINING MORE WOMEN: THE ADVANTAGES TO LAW ENFORCEMENT AGENCIES 2–4* (2003), [<https://web.archive.org/web/20190203224704/http://womenandpolicing.com/pdf/NewAdvantagesReport.pdf>] (finding women are less prone to use excessive force, more skillful at “defusing and de-escalating potentially violent confrontations,” better at securing the “cooperation and trust,” and more effective in responding to incidents of domestic violence). *But see* Sklansky, *supra* note 103, at 1226–27 (indicating that studies about female officers and use of force are “equivocal” with some studies finding women equally or more prone to use of force).

¹¹³ Ashley Fantz & Casey Tolan, *Want to Reform the Police? Hire More Women*, CNN (June 23, 2020, 10:38 AM), <https://www.cnn.com/2020/06/23/us/protests-police-reform-women-policing-invs/index.html> [<https://perma.cc/6WBM-NCZD>].

¹¹⁴ Amanda Ripley, *America’s Top Border Cop*, POLITICO MAG. (Nov./Dec. 2017), <https://www.politico.com/magazine/story/2017/11/03/carla-provost-head-us-border-patrol-interview-profile-215773> [<https://perma.cc/6GG6-27AU>].

¹¹⁵ See, e.g., Garrett M. Graff, *The Green Monster*, POLITICO MAG. (Nov./Dec. 2014), <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>

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encounters on the border by taking cover, moving out of range, or using less lethal weapons, particularly when responding to individuals who throw rocks at Border Patrol agents from across the U.S.-Mexico Border.¹¹⁶ Thus, immigration enforcement agencies should take heed when the former police chief of Newark, New Jersey, recently noted: “[W]e need more women in policing. Statistically, they do not escalate; they de-escalate.”¹¹⁷

When Sklansky talks about *community effects* with regard to local police, he is referencing the relationship between police officers and the communities that have hired them to police. In such circumstances, “the community has a right to expect that its aspirations and problems, its hopes and fears, are fully reflected in the police.”¹¹⁸

That same relationship does not exist in the context of immigration enforcement. Immigration officers do not represent the communities they police (noncitizens) in the same sense as local law enforcement. Immigration officers represent the United States and the nation’s citizens in opposition to noncitizens.¹¹⁹ Thus, those noncitizens would seem not to have a right to expect that immigration agents “fully reflect” their realities. Nevertheless, immigration enforcement agencies can benefit from hiring agents who do reflect—whether through race or gender or both—the noncitizens they are policing.

One benefit of a diverse police force is the ability to increase the odds that an officer will be able to connect with someone they need to speak with, be it a criminal suspect, victim, or witness.¹²⁰ Immigration agents also need to talk to people. Consider the USBP agent who locates a group of migrants in the Southwestern desert. One of the most critical pieces of information that a USBP agent may want to know is whether, and who, in this group might be a professional *coyote* or *pollero*, paid to guide the migrants across the border. Having the ability to get that information is important as USBP would very much like to prosecute transporters as part of their ongoing efforts to slow unauthorized migration.

[<https://perma.cc/758Y-BHJH>] (noting Border Patrol is facing hundreds of excessive force complaints and is the deadliest federal law enforcement agency by number of fatal shootings); Jennifer G. Correa & James M. Thomas, *The Rebirth of the U.S.-Mexico Border: Latino/Enforcement Agents and the Changing Politics of Racial Power*, 1 SOC. RACE & ETHNICITY 239, 248 (2015) (discussing the 2010 murder of Anastacio Hernandez Rojas by CBP agents and the “steady increase in the number of border patrol shootings across the border”); Teo Armus, *ICE Officers Shot a Man in the Face as He Tried to Intervene in an Arrest*, WASH. POST (Feb. 7, 2020, 4:19 AM), <https://www.washingtonpost.com/nation/2020/02/07/ice-shooting-brooklyn> [<https://perma.cc/Q6G7-4WMM>].

¹¹⁶ Correa & Thomas, *supra* note 115, at 249.

¹¹⁷ Fantz & Tolan, *supra* note 113.

¹¹⁸ Sklansky, *supra* note 103, at 1228 (quoting PRESIDENT’S COMM’N ON L. ENF’T & ADMIN. JUST., *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 107 (1967)).

¹¹⁹ One could argue that immigration enforcement officers, like police officers, should represent the communities where they police.

¹²⁰ See, e.g., Ripley, *supra* note 43 (“It’s very important to have a lot of different people to make eye contact with.” (quoting Paige Valenta, Detective Lt., Madison Wis. Police Dep’t)).

Female agents of color might be better able to gain information from female migrants of color because they are in a superior position to establish rapport than their white male counterparts.¹²¹ As one female agent told *Politico*: “They’re more willing to open up to us as females, to tell us things they probably wouldn’t divulge to a male agent.”¹²² Agents of color, in particular, are in a position to “make more of a connection culturally,”¹²³ to the extent they are encountering a population whose background in any way mirrors their own. Part of that connection can come from what one researcher called “imaginative awareness”—the ability to understand the lives and stories of migrants apprehended because of the resonance those stories have with the agent’s own lived experience.¹²⁴

The final category that Sklansky analyzes is *organizational effects*: how changes within a police department result from the daily, one-on-one interactions between minority/female officers and other officers;¹²⁵ the power exerted by organizations representing minority/female officers; the overall decline of a monolithic enforcement culture; and the growth of “identity-based bridges to groups outside of law enforcement.”¹²⁶

There is little empirical data from which to draw conclusions about how the diversification of immigration enforcement agents has affected immigration enforcement agencies. Nonetheless, Sklansky’s identification of this category gives

¹²¹ Alfredo Corchado, *Faces from the Border: Choosing Friends*, NEW YORKER (Nov. 25, 2015), <https://www.newyorker.com/news/news-desk/faces-from-the-border-choosing-friends> [<https://perma.cc/6DVV-DZ3Z>] (“‘As a female, other females feel more comfortable with you,’ [one agent] said, recalling one group of mothers who were reluctant to talk to male agents about what they needed. ‘A few moments later, they call me over just to ask for a diaper.’”).

¹²² Ripley, *supra* note 43 (quoting Erika King, Agent, U.S. Border Patrol); *see also* Von Oldershausen, *supra* note 43 (“A lot of females don’t want to talk to male agents, so they’ll keep their head down or just be super-quiet. It’s important to have a female who can relate to them, talk to them, get more information out of them if they’re willing.” (quoting Chloe Beecher, Agent, U.S. Border Patrol)); Alan Neuhauser, *Border Patrol Has a Problem with Women*, U.S. NEWS (Aug. 3, 2018, 6:00 AM), <https://www.usnews.com/news/the-report/articles/2018-08-03/for-women-border-patrol-is-a-hostile-place-to-work> [<https://perma.cc/X2WN-ZG3R>] (“Female officers are generally found to be more empathetic by victims reporting domestic violence, sexual assault and rape. A report in 2014 found that 4 out of 5 women who enter the U.S. illegally from Mexico were victims of sexual assault or rape.”); Sklansky, *supra* note 103, at 1226 (noting studies indicating female police officers as “significantly more helpful to victims of domestic violence”).

¹²³ James Pinkerton, *Hispanics Hold 52 Percent of Border Patrol Jobs*, HOUS. CHRON. (July 21, 2011, 4:16 PM), <https://www.chron.com/news/article/Hispanics-hold-52-percent-of-Border-Patrol-jobs-1528577.php> [<https://perma.cc/5UFC-JUQQ>].

¹²⁴ Heyman, *supra* note 63, at 489 (discussing, as one example, how one Latinx officer believed a migrant who did not change the name on his electric bill due to the understood bureaucratic difficulties of doing so in Mexico); *see also* Sklansky, *supra* note 103, at 1227 (“[M]inority [police] officers tend to believe that they do in fact have special competencies—specifically, understanding of their communities and credibility in their communities . . .”).

¹²⁵ Sklansky, *supra* note 103, at 1230 (“[T]he experience of working together across lines of social division . . . though not untroubled by prejudice and hostility, tends to reduce prejudice and hostility.” (quoting CYNTHIA ESTLUND, *WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY* 84 (2003))).

¹²⁶ *Id.* at 1231–34.

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future researchers a methodology to follow in considering the effects of diversifying immigration enforcement. Female agents of color can be asked about how their one-on-one interactions have changed the workplace culture. Scholars could look at whether advocacy by national identity-based organizations such as Women in Federal Law Enforcement (WIFLE)¹²⁷ have had an effect on immigration agencies. And one could study the extent to which there is a monolithic agency identity — “CBP,” “Border Patrol,” “ICE” — and whether any such identity is eroding. Looking at these questions might have serious real-world effects on immigration enforcement. For example, would increased diversification of immigration enforcement change the fact that Latinx migrants account for 95 percent of deportations yet only half of the undocumented population in the United States?¹²⁸ Would increased diversification result in fewer “collateral” arrests by immigration authorities — arrests of those noncitizens incidentally discovered during the course of seeking to apprehend a target, typically a criminal, noncitizen?¹²⁹ These are questions for future research.

B. Barriers to the Recruitment and Retention of Women of Color into Immigration Enforcement

There are many barriers to the recruitment and retention of women of color into immigration enforcement positions. In this section, I consider barriers related to training, the work, and workplace culture.

Training for any immigration enforcement position requires uprooting one’s life and moving to a training facility for a significant period of time. Those looking to join the USBP must attend a sixty-six-day training program at the CBP Border Patrol Academy in Artesia, New Mexico, with an additional forty days of Spanish training for those who do not enter with Spanish-language fluency.¹³⁰

¹²⁷ WIFLE: WOMEN IN FEDERAL LAW ENFORCEMENT, <https://www.wifle.org> [<https://perma.cc/ZD96-8QW5>].

¹²⁸ See Kevin R. Johnson, *Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals*, 66 CASE W. RES. L. REV. 993, 998 (2016) (“[M]ore than 95 percent of the noncitizens removed annually from the United States are from Mexico and Central America. That . . . percentage represents a much larger percentage than the Latina/o composition of the nation’s overall immigrant—both legal and unauthorized—population.”); Jynnah Radford & Luis Noe-Bustamante, *Facts on U.S. Immigrants, 2017*, PEW RSCH. CTR. (June 3, 2019), <https://www.pewresearch.org/hispanic/2019/06/03/facts-on-u-s-immigrants> [<https://perma.cc/VTF4-EN9R>] (noting 50.4 percent of undocumented population in 2017 was Latinx, with 25.3 percent from Mexico and 25.1 percent from other Latin American Countries).

¹²⁹ See Cortez, *supra* note 63, at 151–52 (discussing one Latinx agent’s distaste for collateral arrests).

¹³⁰ Ron Nixon, *‘We Can’t Just Pull Out Our Gun’: Border Patrol Alters Training*, N.Y. TIMES (Aug. 18, 2017), <https://nyti.ms/2vKu6hZ> [<https://perma.cc/DX7Z-ZWES>] (noting the change in training from 117 days to sixty-six days as an effort “to move new agents into the field faster”); *Are Trainees Required to Learn the Spanish Language?*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/faqs/are-trainees-required-learn-spanish-language> [<https://perma>

Those looking to join the OFO must attend a eighty-nine-day training program at the CBP Field Operations Academy in Glynco, Georgia.¹³¹ ICE Academy is also in Glynco, Georgia, and would-be agents need twenty weeks of basic training.¹³² These lengthy, off-site, training programs are barriers preventing many otherwise interested individuals from joining immigration enforcement agencies. They pose a particular barrier for mothers who may be unable or unwilling to be apart from their children for several months of training,¹³³ though, notably, the Glynco training center utilized by OFO and ERO offers onsite daycare for trainees,¹³⁴ something that is unavailable at the Artesia training center used by USBP.¹³⁵

For those women who are able to spend months in New Mexico or Georgia, unnecessary physical fitness requirements and training biases can also pose barriers to undertaking work in immigration enforcement. The physical fitness standards for male and female trainees are the same. In ICE, this means completing an obstacle course within one minute and forty-five seconds and running 1.5 miles in fourteen minutes and thirty seconds.¹³⁶ For the OFO, this means completing a 220 yard run in forty-five seconds or less, twenty-four or more push-ups in one minute,¹³⁷ and a 1.5 mile run in less than fifteen minutes.¹³⁸ Border Patrol, however, includes something different: scaling a 6.5 foot wall.¹³⁹ This

.cc/YX6H-GCWF] (“Trainees who do not pass the Spanish Language test will complete the basic training and will also attend an additional 8 weeks of Spanish language training.”).

¹³¹ *The Field Operations Academy: What to Expect*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/careers/cbpo-basic-training-academy> [<https://perma.cc/ZXC6-Z7PA>] (Sept. 30, 2020).

¹³² Press Release, U.S. Immigr. & Customs Enf’t, *ICE OTTP Operations Glynco, Georgia: ICE Academy Prepares Next Generation of Officers* (June 13, 2017), <https://www.ice.gov/news/releases/ice-ottp-operations-glynco-georgia-ice-academy-prepares-next-generation-officers> [<https://perma.cc/U86E-9785>].

¹³³ Ripley, *supra* note 43 (noting this type of residential boot-camp-style training is something other law enforcement agencies have moved away from in an effort to diversify their ranks).

¹³⁴ U.S. DEP’T HOMELAND SEC., STUDENT HANDBOOK: GLYNCO FACILITY 31 (2015), https://www.fletc.gov/sites/default/files/imported_files/files/glyncohandbook.pdf [<https://perma.cc/4D8F-S448>] (noting that daycare at “Little Rookies” child development center is available “for [trainees] to use while attending training”).

¹³⁵ See generally U.S. DEP’T HOMELAND SEC., STUDENT HANDBOOK: ARTESIA (2015), <https://www.fletc.gov/sites/default/files/Artesia%20Student%20Handbook-new.pdf> [<https://perma.cc/ZG9L-GE3X>] (containing no reference to children or childcare).

¹³⁶ IMMIGR. & CUSTOMS ENF’T ACAD., BASIC IMMIGRATION LAW ENFORCEMENT TRAINING PROGRAM (ICE-D): PRE-ACADEMY ORIENTATION 1–2 (2008), https://www.ice.gov/doclib/about/offices/ero/pdf/ice_d_handbook.pdf [<https://perma.cc/7YJH-TQWQ>].

¹³⁷ Maureen McGough, the Chief of Staff for the Policing Project at New York University Law School, has noted that such tests of upper body strength have “nothing to do with how good a cop you’re going to be.” Fantz & Tolan, *supra* note 113; see also NAT’L INST. JUST., WOMEN IN POLICING: BREAKING BARRIERS AND BLAZING A PATH 16 (2019), <https://www.ncjrs.gov/pdffiles1/nij/252963.pdf> [<https://perma.cc/7G6F-G869>] (“I’ve made more than 1,000 arrests and not once did I have to do 24 push-ups before putting handcuffs on someone.”).

¹³⁸ *The Field Operations Academy: What to Expect*, *supra* note 131.

¹³⁹ Ripley, *supra* note 43.

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USBP-unique requirement has been criticized as “not necessarily match[ing] up to the actual job tasks.”¹⁴⁰ And, given that USBP agents never have to pass this test again in their careers it “may be as much a hazing ritual as it is a test of job readiness.”¹⁴¹ Hazing during training can go beyond the physical requirements. As one female agent told a reporter: “The instructors target you because you’re a female, and I would get comments like, ‘Women shouldn’t be in the Border Patrol.’”¹⁴² Such experiences are another deterrent to women in immigration enforcement.

Work location can also be a barrier to increasing the ranks of females in immigration enforcement, particularly for USBP. Unlike the OFO and ICE, which frequently work in major metropolitan areas,¹⁴³ USBP agents are required to serve on the Southwest border before seeking jobs elsewhere.¹⁴⁴ They end up working in places like Big Bend in Western Texas. While stunningly beautiful, Big Bend temperatures routinely top 100°F from June to September, and agents work outdoors in that heat for eight to ten hour shifts in thick uniforms.¹⁴⁵ Not only that, but a woman who stays hydrated on the border will have a hard time finding a private place to urinate on shift.¹⁴⁶ In addition to the on-the-job challenges of location, agents assigned to remote locations frequently live far from family, daycare options, good schools, job opportunities for spouses, and even grocery stores.¹⁴⁷ Ambitious women who make a home in such remote locales cannot stay for long; moving up in the ranks requires moving to different posts.¹⁴⁸

¹⁴⁰ *Id.*; see also Nixon, *supra* note 130.

¹⁴¹ Ripley, *supra* note 43.

¹⁴² Neuhauser, *supra* note 122.

¹⁴³ See 2021 *ERO Field Offices*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFieldOffices.pdf> [<https://perma.cc/7KAA-DQQ5>] (showing ERO’s twenty-four field offices in cities around the United States).

¹⁴⁴ Archibold, *supra* note 80.

¹⁴⁵ Von Oldershausen, *supra* note 43.

¹⁴⁶ Ripley, *supra* note 43 (“There are few places for a woman to go to the bathroom discreetly on the El Paso border without a camera watching, and agents are not allowed to leave their posting.”).

¹⁴⁷ Von Oldershausen, *supra* note 43 (discussing USBP Agents who live “where the nearest hospital is 90 miles away and the closest Walmart is a 200-mile drive”); Ripley, *supra* note 114 (“You’re asking people to pick up and move from—for me, Kansas—down to a little border town that maybe doesn’t have good school systems, health care, just picking up and moving your whole family. We’re not located in a lot of prime cities that people want to be in.” (quoting Carla Provost, the first female chief of USBP)); Neuhauser, *supra* note 122 (discussing how BPAs live “far from family, day care, schools and hospitals”); see also Hennessy-Fiske, *supra* note 44 (noting that majority of BP agents work in “very remote” small communities on the Southwest border). Even the official CBP website acknowledges this problem. *I Am the Spouse of an Applicant. What Will My Life Be Like at the New Duty Station?*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/faqs/i-am-spouse-applicant-what-will-my-life-be-new-duty-station> [<https://perma.cc/4EAH-PC7X>] (“You may have to drive a long distance to get reasonable grocery prices and selection. . . . Employment for you may or may not be available . . .”).

¹⁴⁸ Ripley, *supra* note 43.

Of course, the work itself can be a barrier. Not every woman finds the idea of a law enforcement job appealing.¹⁴⁹ Then again, not everyone finds the idea of working as a teacher or doctor appealing. The question is, for those women who would consider law enforcement, why are they not considering immigration enforcement. Here, the numbers indicate that USBP faces greater challenges in hiring women than the OFO or ERO.¹⁵⁰ One reason for the gender gap at USBP might be because female USBP agents can find themselves working “night shifts in the desert, by themselves, tracking groups, not necessarily knowing what they’re coming into.”¹⁵¹ In contrast, jobs with ICE and the OFO do not require working alone in dangerous situations; colleagues are always nearby.

Shift work can also be problematic for women with children.¹⁵² Consider this statement from Border Patrol’s website geared towards prospective hires:

A Border Patrol Agent is required to work overtime and may work long hours. Sixty-hour weeks and 10 to 16-hour days are not that uncommon. An Agent works irregular rotating shifts every two to four weeks. These shifts are subject to change, often on short notice.¹⁵³

It is incredibly difficult to arrange for necessary childcare that would extend over such long hours, much less when the hours rotate frequently and change rapidly.

Another problem with the work itself can be the disapprobation that comes with immigration enforcement as opposed to other law enforcement positions.

¹⁴⁹ Cf. NAT’L INST. JUST., *supra* note 137, at 13–14 (“Women apply to law enforcement agencies at a much lower rate than men.”).

¹⁵⁰ See *supra* Table 2.

¹⁵¹ Ripley, *supra* note 114. As explained in Section I.B above, this does not have to be the case. USBP has jobs that do not require agents to work alone in remote locales. Agents who work at permanent checkpoints, for example, do not work alone. Yet, instead of making these jobs available to women, female BPAs complain that they have been “shunted to supposedly ‘women’s roles’ like administrative work or public relations details.” Neuhauser, *supra* note 122.

¹⁵² Ripley, *supra* note 43.

¹⁵³ *Frequently Asked Questions*, U.S. CUSTOMS & BRODER PROT., <http://web.archive.org/web/20191230113222/https://nemo.cbp.gov/borderpatrol/faqs.html> (the original website used at the time of this writing was removed sometime in the summer of 2020). When CBP experienced a significant staffing shortage in 2018, its officers were similarly “routinely asked to work back-to-back eight-hour shifts.” Nick Miroff, *U.S. Customs Agency Is So Short-Staffed, It’s Sending Officers from Airports to the Mexican Border*, WASH. POST (Jan. 19, 2018, 5:23 AM), https://www.washingtonpost.com/world/national-security/us-customs-agency-is-so-short-staffed-its-sending-officers-from-airports-to-the-mexican-border/2018/01/18/44420a94-fc77-11e7-a46b-a3614530bd87_story.html [<https://perma.cc/QRB2-WGPY>].

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Families do not always support immigration enforcement work.¹⁵⁴ Nor do communities.¹⁵⁵

Beyond training and the work itself, workplace culture can also be a significant barrier to the retention of female agents. There is no question that immigration enforcement is “male-dominated,”¹⁵⁶ given the statistics explored above.¹⁵⁷ How does that translate in the workplace? A survey of female federal law enforcement agents, including immigration enforcement officers, found “lack of respect” for female agents to be a significant problem.¹⁵⁸ At Border Patrol specifically, female agents have reported that lack of respect can translate into real world crises: “[A] constant fear that male agents wouldn’t provide backup when

¹⁵⁴ Marjorie Valbrun, *For Hispanics on U.S. Border Patrol, Job Pits Heritage Against Their Home*, WALL ST. J. (Oct. 22, 1998, 12:01 AM), <https://www.wsj.com/articles/SB90900628190417500> [<https://perma.cc/YK8M-V6U9>] (“My U.S. relatives feel threatened by what I do.” (quoting Gilcet Garvey, Agent, U.S. Border Patrol)); Esther J. Cepeda, *Border Patrol: When Work Is a Family Matter*, NEWS TACO (Apr. 17, 2012), <https://newstaco.com/2012/04/17/border-patrol-when-work-is-a-family-matter> [<https://perma.cc/UC46-C53D>] (“[I]magine the minefield a Hispanic employee of DHS has to walk through when attending family get-togethers where someone might give you the evil eye—or a full-on tongue-lashing—for working for ‘la migra.’”); Isaias Alvarado, “¿Por Qué Deportas a Tu Propia Gente?: un Día con Agentes de ICE en California”, UNIVISION (July 11, 2017, 6:53 PM), <https://www.univision.com/local/los-angeles-kmex/por-que-deportas-a-tu-propia-gente-un-dia-con-agentes-de-ice-en-california> [<https://perma.cc/2A3H-DUWG>] (quoting one Latino agent as saying even his family will ask: “¿Por qué estás deportando a tu propia gente?”, which translates as “Why are you deporting your own people?”). *Contra* Alfredo Corchado, *Faces from the Border: We Could Be Them*, NEW YORKER (Nov. 12, 2015), <https://www.newyorker.com/news/news-desk/faces-from-the-border-we-could-be-them> [<https://perma.cc/YJ7B-Q456>] (quoting a father telling his USBP Agent son, “La migra needs people like you to humanize Mexico and its people.”).

¹⁵⁵ Heyman, *supra* note 63, at 489 (discussing one agent, on leaving a local law enforcement job for Border Patrol, being asked by colleagues: “Why chase our own people?”); *see also* Manny Fernandez et al., “People Actively Hate Us’: Inside the Border Patrol’s Morale Crisis”, N.Y. TIMES (Sept. 24, 2019), <https://www.nytimes.com/2019/09/15/us/border-patrol-culture.html> [<https://perma.cc/YP93-ZRYK>] (“[P]eople actively hate us, it’s difficult.” (quoting Chris Harris, former Agent, U.S. Border Patrol)).

¹⁵⁶ Von Oldershausen, *supra* note 43.

¹⁵⁷ *See supra* Table 2.

¹⁵⁸ Ripley, *supra* note 43. Jenn Budd, a former Border Patrol Agent, described that lack of respect as in-built during training when male and female recruits were separated, and male recruits:

[W]ere instructed to be careful with female agents because we would file a complaint against them if they made sexual advances towards us. They were further instructed to always have another male agent present for witness purposes whenever female agents were around. *Women were not to be trusted and did not belong.*

Jenn Budd, *My Experience in the Border Patrol: Sexual Assault, Corruption, and Moral Failure*, CROOKS & LIARS (Apr. 29, 2017, 6:30 AM) (emphasis added), <https://crooksandliars.com/2017/04/confessions-former-border-patrol-agent> [<https://perma.cc/652R-HWG5>].

called.”¹⁵⁹ Sexual harassment¹⁶⁰ and sexual assault¹⁶¹ are also significant problems for female agents. The pervasiveness of immigration enforcement’s sexist culture was made evident in 2019 when ProPublica broke the news of a secret Facebook group for Border Patrol agents that mixed jokes about migrant deaths with sexually explicit memes about national figures like U.S. Congresswoman Alexandria Ocasio-Cortez.¹⁶²

Some women have responded to these stressors by leaving immigration enforcement.¹⁶³ For those who stay on the job, these stressors may lead to significant mental health consequences.¹⁶⁴

¹⁵⁹ Neuhauser, *supra* note 122; *see also* Budd, *supra* note 158 (documenting other real-world consequences: “not being given a vest for the first year, being left on the top of a mountain in the middle of the night, agents refusing to answer the radio when I called for backup, live rattlesnakes being left in my truck and being forced to lay in the snow for supposed drug smugglers for 15 hours at a time”).

¹⁶⁰ Ripley, *supra* note 43; Neuhauser, *supra* note 122 (“Current and former agents say they’ve found panties left in their station mailboxes and discovered graphic notes scrawled on bathroom walls. Lewd jokes, comments and unwanted compliments are pervasive.”); Budd, *supra* note 158; *cf.* NAT’L INST. JUST., *supra* note 137, at 8 (“[M]any women police officers reported that they had not experienced sexual harassment but reported that they *had* experienced specific behavior that would constitute harassment.”).

¹⁶¹ Chantal Da Silva, *Exclusive: Border Patrol Knew About Harrowing ‘Game Of Smiles’ Sexual Assault Claims, but Did Not Take Action, Former Official Says*, NEWSWEEK (Nov. 29, 2019, 6:27 AM), <https://www.newsweek.com/border-patrol-game-smiles-sexual-assault-1447434> [<https://perma.cc/4GFD-7VX7>] (discussing allegation that senior male agents got a female trainee drunk and then sexually assaulted her; also noting thirty sexual misconduct incidents in an eighteen-month span); *see also* Budd, *supra* note 158 (“It was common for male trainees to seek a new, trusting female trainee, buy her drinks until she was drunk and use her for a ‘circle blow.’ A group of guys would force the female to give them blow job after blow job, then dump her off at her living quarters when they were done.”).

¹⁶² Da Silva, *supra* note 161; *see also* A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, PROPUBLICA (July 1, 2019, 10:55 AM), <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes> [<https://perma.cc/R6QJ-P5MY>].

¹⁶³ Budd, *supra* note 158 (former Border Patrol agent discussing her choice to leave the agency and her experience with others leaving, including during basic training); Neuhauser, *supra* note 122 (agents discussing Border Patrol contend: “the workplace culture for women has remained a significant and persistent factor . . . in their own decisions to leave the agency”); IMMIGR. & CUSTOMS ENF’T, ICE ANNUAL EEO PROGRAM STATUS REPORT: FISCAL YEAR 2019, EXECUTIVE SUMMARY 1 (2019), <https://www.ice.gov/doclib/about/offices/dcr/pdf/md715.pdf> [<https://perma.cc/4UGE-ANT2>] (discussing retention at ICE: “women voluntarily separated from the agency at higher rates than their overall representation in the workforce for the 5th year in a row”); U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-487, U.S. CUSTOMS AND BORDER PROTECTION: PROGRESS AND CHALLENGES IN RECRUITING, HIRING, AND RETAINING LAW ENFORCEMENT PERSONNEL 42–43 (2018), <https://www.gao.gov/assets/700/692832.pdf> [<https://perma.cc/M8B8-KLK3>] (noting the OFO has a lower attrition rate than either USBP or ICE, but not identifying the rate at which women, in particular, leave the agency); NAT’L INST. JUST., *supra* note 137, at 18 (noting the need for empirical data regarding why women leave law enforcement academies and jobs).

¹⁶⁴ Justin Rohrlich, *US Border Officers Die by Suicide 30% More Often than Other Cops*, QUARTZ (Oct. 31, 2019) (citing U.S. CUSTOMS & BORDER PROT., CBP EMPLOYEE SUICIDE

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CONCLUSION

Immigration enforcement agencies do not employ large numbers of female agents. The majority of female agents, however, are women of color. This is consistent with the remarkable diversity of immigration enforcement agencies.

Women of color have the potential to benefit immigration enforcement agencies. Such agents have unique skills and abilities that can enhance their work, their engagement with the migrants they police, and the growth of agencies they operate within. Yet women of color also face barriers to their recruitment and retention that tie to their training, work, and workplace culture.

DHS has been taking steps to diversify its law enforcement ranks.¹⁶⁵ But it can do more. Just looking at the issues outlined in this Essay, the agency could: establish a daycare at the Artesia training center; eliminate training requirements that rest on upper-body strength if not a necessary component of immigration enforcement work; actively oversee training to expose and eliminate any sexist behavior by trainers; and aggressively work to end misogynist culture within the agency. All would make immigration enforcement agencies more welcoming to women of color, and that, in turn, could benefit the agencies.

Finally, this Essay has led me to conclude that there is a real need for empirical focused on women of color in immigration enforcement, particularly within the OFO and ICE.¹⁶⁶ It is my hope that this Essay may spark further investigation.

REPORT (2019), <https://www.documentcloud.org/documents/6534877-Suicide-Summary-20190911-1.html> [<https://perma.cc/5FJ3-XMUT>] (discussing the mental trauma of immigration enforcement work generally, the paucity of services to assist struggling officers, and the fact that CBP officers, including women, die by suicide at a rate 28 percent higher than that of any other law enforcement agency)), <https://qz.com/1738901/us-border-officers-die-by-suicide-30-percent-more-often-than-other-cops> [<https://perma.cc/R3LN-R8WR>]; see also NAT'L INST. JUST., *supra* note 137, at 17 (noting a need for research regarding the mental health and wellness, stress, burnout, post-traumatic stress disorder, and suicide of female law enforcement officers).

¹⁶⁵ See *supra* Part II.

¹⁶⁶ Cf. NAT'L INST. JUST., *supra* note 137, at 5 (“[I]ssues affecting women in policing are understudied . . .”).

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