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Theatrical Justice: The Use of Mass Hearings in Operation Streamline

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Abstract

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This thesis aims to address whether the number of individuals heard in the same hearing affects an individual's ability to exercise their voice in the courtroom. Using first-hand observations of hearings in Tucson, Arizona, as well as interviews with public defenders and court watchers from across the country, I evaluate the relationship between the number of defendants in a hearing and individual voice utilization in the context of mass hearings of migrants accused of entering the United States unlawfully. I propose two theoretical mechanisms that explain why migrants may be less likely to speak up in mass hearings, considering the literature on the importance of defendants having adequate knowledge of legal processes for using their voices and social-psychological studies that analyze how individuals behave differently in group settings. My research suggests that mass hearings could jeopardize an individual's ability to use their voice in the legal setting. These findings generate important insights regarding the use of prosecutorial resources, access to asylum, and threats to due process rights.

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I. Introduction

"It's a script…it's a theater. Everyone is just playing their roles."

- Jon Sands, Federal Public Defender in Tucson, Arizona

In 2018, a leaked photo from a courthouse in Texas showed 37 people lined up in handcuffs and orange prison jumpsuits. The image captured a mass hearing of immigrants, all accused of entering the country unlawfully. Defendants in the hearing were asked a series of questions by the judge: "Are each of you satisfied with the help of your lawyer?" "Do you understand the charge against you?" "Are you accepting a guilty plea voluntarily?" Instead of individually responding, the immigrants were expected to address the judge in unison. A chorus of voices affirmed a one-word answer. The judge then sentenced everyone to prison time and deportation (Ma 2018). The entire process took no more than a couple of hours, but it could be even shorter. In 2014, former Magistrate Judge Bernardo P. Velasco boasted, "My record is 30 minutes," referring to a hearing where he oversaw 70 migrants accused of unlawfully entering the country (Santos 2014).

The primary goal of this research study is to probe normative concerns about the exercise of voice in the courtroom and address whether the number of individuals being heard simultaneously affects the ability of individuals to utilize their voices successfully. In this context, "voice" refers to whether an individual pleads innocent, responds to a judge's question with an answer different from the others in the hearing, requests more

time with an attorney, puts an asylum claim on the record, attempts to describe their immigration story, or speaks prior to sentencing. I theorize that if heard individually, there would be a greater likelihood the defendants would engage in these actions. I study this relationship in the context of Operation Streamline and the "flip-flop" hearings of migrants. As I discuss extensively below, there is literature on how individuals broadly behave in a group setting and separate research that focuses on the mass prosecutions of immigrants. Scholars point out complications for individual self-advocacy but do not explore theoretical mechanisms in detail. My paper seeks to bridge the literature on mass hearings with social-psychological explanations for the behavior of immigrants in this unique setting.

Operation Streamline (also referred to as "Streamline") was implemented by the Bush administration in 2005, ushering in a new era of border enforcement programs. Known for its rapid resolution of criminal immigration cases, Operation Streamline is summarized by one public defender as "a criminal case with prison and deportation consequences resolved in two days or less" (Williams 2008). Before Streamline, when Department of Homeland Security (DHS) Border Patrol agents apprehended a migrant attempting to cross the border unlawfully for the first time, the migrant was either voluntarily returned to their[1] home country or processed through the civil immigration system and administratively removed. The U.S. Attorney's office typically saved

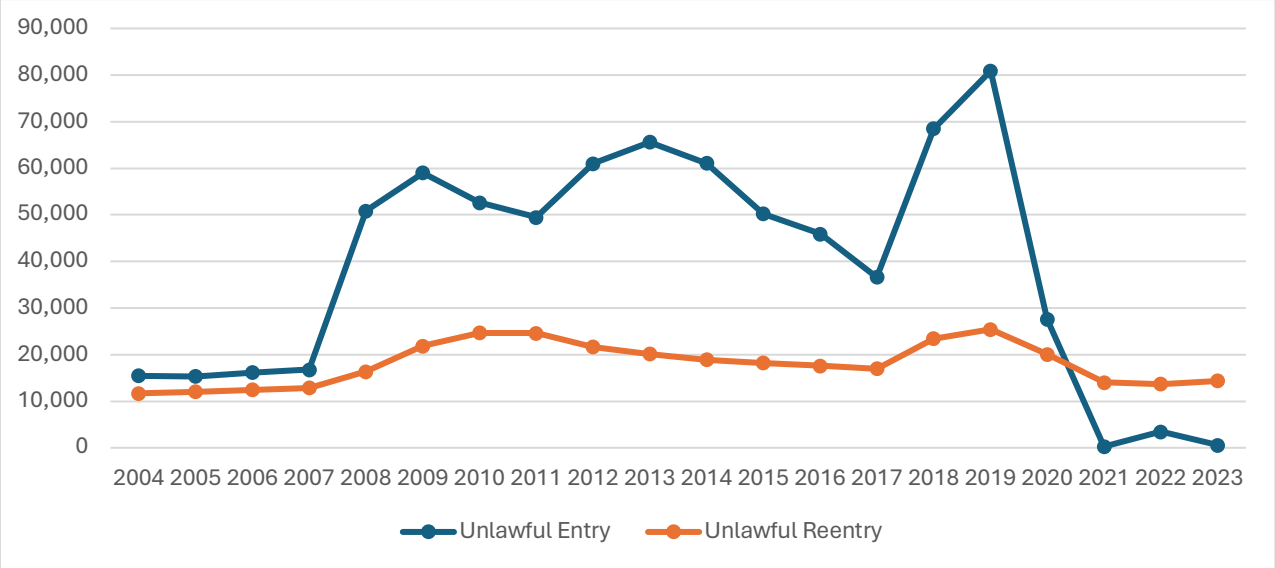
[1] I refer to unspecific individuals as "they" at times throughout this paper. I do not believe this creates any confusion regarding the subject of my writing.

prosecution for migrants who entered with serious felony convictions or made repeated attempts to cross. Breaking from this pattern, Operation Streamline required a substantial increase in the number of migrants attempting to cross unlawfully subject to criminal prosecutions and detention time (Rocha 2011). The shift in the processing of criminal immigration cases was initially rolled out in Texas in the Western and Southern Districts, then adopted in the District of Arizona and the District of New Mexico and was later expanded to the federal courts in the Southern District of California (Williams 2023).

The charges brought against more migrants carry distinct legal consequences. Most migrants are charged with "unlawful entry" (under 8 U.S.C. §1325) or "unlawful reentry" (under 8 U.S.C. §1326). Under federal law, those caught making a first unlawful entry attempt may be prosecuted for a misdemeanor which carries a maximum sentence of six months in prison. Those who reenter after deportation are prosecuted for a felony, which carries a two-year maximum penalty but can involve up to twenty-five years in prison. Those found guilty of reentry may further be deemed illegible for asylum in the future (Angeles 2024). Most criminal cases are resolved by guilty pleas, obtained through plea bargaining where a deal is extended to the defendant. If a defendant chooses to plead "not guilty," a trial is conducted to determine their innocence. The implications of "unlawful entry" and "unlawful reentry" charges put into perspective the high-stakes nature of immigration-related proceedings in criminal court.

From 2005-2020, mass hearings were frequently used in criminal immigration proceedings through Operation Streamline. Operation Streamline dramatically increased the number of cases on the docket, as indicated below in Figure 1. In 2008 alone, 50,804 defendants were charged with improper entry in contrast to the 15,461 defendants charged before Streamline's introduction (Department of Justice 2019). Importantly, the sharp rise in prosecutions opened the door to the use of mass hearings in the federal criminal court setting for immigration-related proceedings. Embraced by proponents who value efficiency above all else, mass hearings purport to save time and resources. Consequently, in a single hearing, up to 80 defendants could be heard at once. In Texas, that number might even be closer to 100 (Rau 2023). By 2018, mass hearings happened twice a day, five days a week across several federal district courts.

Figure 1. Number of individuals charged with unlawful entry and unlawful reentry, FY 2004-2023.



Data Source: Department of Justice, 2004-2023

Despite pushback from progressives and immigration activists, Operation Streamline was utilized throughout the Obama administration. In a 2011 Congressional hearing on securing the border, then-Secretary of Homeland Security, Janet Napolitano described Operation Streamline as a "geographically focused operation that aims to increase the consequences for illegally crossing the border by criminally prosecuting illegal border-crossers." She celebrated that just between April 1, 2010, and March 31, 2011, more than 30,000 prosecutions occurred across the border under Operation Streamline (Napolitano 2011). Given the high number of prosecutions in this period, mass hearings were used to process cases.

The use of mass hearings received greater attention under the Trump administration, which devoted substantial resources to addressing unlawful crossings at the southern border. In 2017, the administration directed the DHS and the Department of Justice (DOJ) to increase prosecutions of unauthorized entry and reentry (NIJC 2020). A 2018 memorandum sent to the United States Attorney's offices along the border by then-Attorney General Jeff Sessions stated, "You are on the front lines of this battle" and affirmed that prosecutors must prosecute all unlawful bordering crossings. In a Congressional hearing regarding family separations and U.S. Customs and Border Patrol short-term custody, Brian S. Hastings, then-Chief of Law Enforcement Operations at U.S. Border Patrol, confirmed that the Trump administration's policy aimed "to increase our total overall prosecutions" (2019). Accordingly, mass hearings were used to assist in the enforcement of tougher deportation policies.

The Southern District of California did not initially implement Operation Streamline. There was significant pushback from that district's federal public defender's office (Davis 2024; Williams 2023; Srikrishnan 2019). Migrants who entered unlawfully but without a criminal record were channeled through the civil immigration system to be detained and removed (Lydgate 2010). Criminal prosecution was saved for the most serious offenders under this model (Davis 2024). However, in 2018, California federal courts implemented Operation Streamline. This shift was in response to skyrocketing caseloads resulting from the Trump administration's "zero-tolerance" policy requiring federal prosecutors to prosecute all unlawful entries. At this point, all federal district courts were conducting mass hearings of immigrants (Irvine et al. 2019). Not every migrant who was arrested, though, was prosecuted through Streamline. Throughout the district courts, the selection of defendants seemed random at best (Schumacher 2024).

Common criticisms of Operation Streamline range from its potential trade-off in prosecutorial resources to the burden placed on court support staff. Several judges have commented on the latter concern, stating that the associated expansion in work largely falls on their support staff (Lydgate 2010). The hearings themselves are only a couple of hours long, but the support staff of the court must still create and maintain a new case file for each immigrant processed, managing a significant amount of paperwork. Judges fear their employees are experiencing burnout as a consequence (Lydgate 2010).

Another issue raised in the Operation Streamline research relates to its impact on finite prosecutorial resources. By 2018, a majority of all federal criminal prosecutions

were immigration-related (National Immigration Forum 2020). Given the increase in the volume of prosecuted cases from Operation Streamline, prosecutors must spend significantly more time building cases against migrants than they did before. This focus trades off with time and resources that would otherwise be spent prosecuting individuals accused of smuggling drugs or engaging in human trafficking. One study finds that in the first year in which mass hearings were used in Tucson, there was a 26% drop in the prosecution of marijuana cases, 28% in other drug-related cases, 21% in firearms and explosives, and 17% in violent offenses (Brink 2012). These statistics, while not necessarily causal evidence, highlight a potential trade-off in the resources used to prosecute immigrants that could be otherwise utilized to address crimes that fuel violence along the U.S. southern border.

The expanding docket in Arizona became such a problem that in 2011, Chief District Judge Roslyn O. Silver declared a judicial emergency (Brink 2012). This move suspended the time limit required by the Speedy Trial Act for bringing the accused to trial. The emergency lasted for 13 months. The court's Public Information Office explicitly referred to Operation Streamline as responsible for fueling the rise in criminal filings (Madden & Weare 2011). Although the government doubled the number of federal prosecutors working in the Tucson office, no additional judicial resources were extended to grapple with the emergency (Williams 2023).

Proponents of Operation Streamline argue the program has an advantageous deterrent effect, whereby migrants are less likely to engage in unlawful behavior if the

punishment is severe. One public defender who participated in the early Operation Streamline implementation meetings in Arizona explains, “Border Patrol said that the goal of Operation Streamline was to enact a zero-tolerance policy for undocumented immigrants so that they would not come back into the United States” (Williams 2023). This goal was maintained throughout Streamline. In a resolution introduced in the U.S. Senate in 2015, Operation Streamline was lauded as a key step in border security gains and preventing future entry (Flake et al. 2015).

There is mixed evidence regarding whether Operation Streamline deters future entry. In support of this claim, Congressional Research Service data finds that among migrants deported under Operation Streamline in 2012, the recidivism rate was 10%, whereas the rate for migrants who agreed to a voluntary return was 27% (Argueta 2016). On the other hand, a different study tracks 1,200 people deported from Streamline and finds that there is no statistically significant difference in terms of reentry for individuals who went through Streamline and those who did not (ACLU 2013). Moreover, data from Customs and Border Patrol suggests that apprehensions at the borders did not drop significantly after 2005. Researchers attribute any changes in apprehensions to a longer-term downward trend in immigration and short-term volatilities (Corradini et al. 2018). Another study found from discussions with lawyers and judges involved with the hearings that few believe Operation Streamline created any deterrent. If anything, it may have prompted a shift to more dangerous migration paths (Burridge 2019).

Operation Streamline was suspended in March of 2020 amidst the COVID-19 pandemic. The program gathered dozens of people in a single courtroom, which posed obvious challenges for officials attempting to curb the spread of the highly contagious coronavirus. Laura Conover, a representative for private lawyers representing Streamline defendants, stated that "Streamline was literally the epitome of a massive gathering of people" (Devereaux 2020). Consequently, there was a reprieve in federal prosecutions of those accused of unlawful entry, but civil penalties were still imposed on immigrants who crossed without authorization. Consistent with Title 42 of a 1944 public health law, pandemic-era administrative changes enabled border officials to deport migrants without a hearing or opportunity to request asylum. From March 2020 to May 2023, the policy was used to expel people from the southern border 2.8 million times (Isacson 2023).

Title 42 has since expired, but Operation Streamline has yet to be fully reinstated. Some lawyers are anticipating its reemergence in criminal court (Williams 2023), while others are not so sure it will return in full force (Rau 2023). In the meantime, the court is charging migrants who have previously been formally deported from the United States with a "flip-flop." Flip-flops still utilize mass hearings and are similar in the charging structure of Operation Streamline, but they are slightly different in the processing of cases (Rau 2023). In flip-flops, groups of people are charged with unlawful reentry after deportation (a felony) and unlawful entry (a misdemeanor) and are then offered a standard plea offer: "plead guilty to the lesser illegal entry with a stipulated sentence of 30 days to six months and the felony charge will be dismissed" (Williams 2008). These

migrants will have a group hearing usually two weeks after their initial appearance, which includes no more than 30 defendants at the same time (Rau 2023). By contrast, in Operation Streamline defendants were arrested and typically brought to court within the next day. They would be deported shortly after their hearing.

The remainder of this paper proceeds as follows. The next section discusses existing research on the use of mass hearings, individual behavior in groups, and what it means to effectively exercise voice. After, I propose explanations for why increasing the number of individuals in a hearing undermines the ability to advocate for oneself, which leads me to hypotheses. I then offer an innovative research design, where I collect data from first-hand observations of mass hearings in Tucson, Arizona, and interviews with public defenders and court watchers. After, I share my results, discuss the potential limitations of my design, offer areas for future research, and evaluate the implications of my findings for American immigration policy and the due process of law.

II. Literature Review

Operation Streamline's Use of Mass Hearings

Existing literature highlights how mass hearings could undermine the legal rights of immigrants. Like everyone under the jurisdiction of the United States, immigrants in criminal proceedings are entitled to Fifth Amendment due process rights, or certain guarantees as they go through the court system (U.S. Const. amend V), which Operation Streamline may challenge. Martha Vazquez, a senior judge in the U.S. District Court for

the District of New Mexico, summarizes high-stakes due process concerns related to mass hearings.

> "You line them up in a courtroom that is intimidating even to American citizens, and we ask them to waive their constitutional rights. It is a difficult atmosphere in which to waive important constitutional rights and to ask them if they understand their rights. Defendants in other parts of the country do not have to give up critical rights in this atmosphere, only in the border districts because of this exploding caseload" (Lydgate 2010).

Defendants in Operation Streamline hearings typically plead guilty. In fact, defense attorneys estimate that Streamline defendants plead guilty 99 percent of the time (Lydgate 2010). One public defender with years of Streamline experience has never even heard of an Operation Streamline case going to trial (Williams 2023). There are several short-term incentives the literature argues might drive this plea. For one, attempting to fight the charges could result in significant time in federal prison if convicted (Brink 2012). Migrants are instructed of this consequence by their attorney and encouraged to accept deals whether they are guilty or not (Burridge 2009). In Del Rio, Texas, public defenders justify their advice to first-time entrants to accept a guilty plea on the grounds that the migrant will receive fewer days in prison because if they contest their charges, they will spend time detained while the government prepares for trial (Lydgate 2010).

Another short-term incentive for pleading guilty under the Trump administration was the possibility of being unified with family members more quickly. Given the Trump administration's "zero-tolerance" approach, parents accused of unlawful entry were separated from their children to be prosecuted (Sessions 2018). Many had no idea where

their children were sent. In the mass hearing setting, public defenders told immigrants that a guilty plea was the quickest way to potentially reunite with their families. If they were to fight their charges, they would be separated for a longer period. One author, working with law students and an immigration non-profit, spoke with many fathers who agreed to a guilty plea under these conditions (Gilbert 2019). Once united with their families, they were deported.

Court-appointed lawyers who represent the defendants play an important role in mass hearings. The literature describes the difficulties inherent to representing many individuals at once. In mass tort claim trials, plaintiffs sacrifice a close working relationship with their lawyers (Mullenix 1993). This is especially true in the context of Operation Streamline, where one lawyer might represent 90 individuals in a hearing. This system was initially resisted by many federal public defender offices for related reasons. In Tucson, the Federal Public Defender Office first claimed that it could not participate in the programs because their lawyers "caseloads were at a maximum" (Williams 2008).

Given time and resource constraints, it is typical for attorneys to have very little time with each defendant before their hearing. A single lawyer would often meet with a group of defendants in a holding cell instead of meeting with the immigrant individually (Rocha 2011). Even when meetings occur one-on-one, a study finds that in Tucson and El Paso, a defense attorney might have spent a maximum of 30 minutes with each defendant. In Del Rio, defendants received even less than that, only getting five to ten

minutes with the lawyer before their hearing (Van Dyke & Daza 2018); Lydgate 2010). These cases identify a clear trend in the time allotted for Operation Streamline defendants and their attorneys. An American Civil Liberties Union (ACLU) issue brief on Streamline argues, "allowing little time to consult with an attorney to understand the charges and plea offers, consequences of conviction, and potential avenues for legal relief. Because a single attorney can represent dozens of defendants at a time, he or she might not be able to speak confidentially with each client or might have a conflict of interest among clients" (2013).

The effects of mass hearings also pose unique considerations concerning the judges tasked with ensuring that criminal hearings are procedurally fair. After one hearing, Judge Ronald G. Morgan announced he dealt with 35 defendants at once. The actual number was 40 (Nathan 2018). Mass hearings might make it difficult for a judge to discern whether someone has affirmatively responded to questions when answers are expected in unison. For example, a judge may struggle to gauge whether the defendants understand they are giving up critical rights by pleading guilty when 40 other people respond at once to the judge's questions.

Case law from the Ninth Circuit addresses the use of mass hearings in immigration-related proceedings. The Court reasoned in *United States v. Roblero-Solis* that "no judge, however alert, could tell whether every single person in a group of 47 or 50 affirmatively answered her questions when the answers were taken at the same time" (Noonan 2009). According to Rule 11 of the Federal Rules of Criminal Procedure, a judge

taking a guilty plea must find that the plea is entered knowingly, voluntarily, and intelligently (Williams 2008). The defendant must be addressed "personally." However, this decision was simply ignored by many judges and met with pushback (Rocha 2023). Later in *United States v. Escamilla-Rojas*, the Ninth Circuit held that collective advisement followed by individual questioning was sufficient for the judge to make individual determinations. The issue has never touched the Supreme Court.

There are a few potential claims of innocence in criminal immigration proceedings. If someone is a U.S. citizen, they could be found innocent. If someone's parent was a naturalized U.S. citizen, they hold derivative citizenship and may then be innocent (Rau 2023). If someone is a juvenile, they will not be prosecuted (Williams 2008). If someone unknowingly crosses the border or crosses the border against their own free will, they might be innocent (Rocha 2023). Operation Streamline's use of group proceedings, however, could complicate the ability of a defendant to raise such a claim. Given the "rapid resolution of Streamline cases," missed issues include incompetency, actual or derivative citizenship, asylum claims, juveniles, and a primary language other than Spanish or English (Williams 2008).

The mass nature of Operation Streamline proceedings could have important consequences for an immigrant who may hold a potential asylum claim. According to the 1951 United Nations Convention Related to the Status of Refugees and its 1967 Optional Protocol, asylum-seekers have a fundamental right to seek protection from persecution when crossing an international border. Enforced by the United Nations High

Commissioner's Office for Refugees (UNHCR), signatory states have legal obligations to provide refugee protection and services. The U.S. passed the Refugee Act in 1980 to comply with these international laws (Wennerstrom 2008). For decades, the right to asylum has been enshrined in U.S. immigration laws. To obtain asylum, migrants can file an application with U.S. Citizenship and Immigration Services, request asylum as a defense against deportation, or participate in an expedited process whereby upon interview after crossing the border, a migrant is found to have credible fears of persecution (Roy 2023). Mass hearings may uniquely implicate the ability of a migrant to request asylum, as will be further discussed.

Individual Behavior in Group Settings

Social and psychological research explores how individuals broadly behave in a group setting. The formation of groups creates a sort of inter-dependency that has a bearing on how individuals act, as the "adjustment" of one individual affects the adjustments that others make, which then requires the readjustment of the others (Thibaut and Kelley 1959). The thoughts and actions of an individual might diverge from behavior that is otherwise expected when around other individuals. Groups are powerful. They can induce individuals to "shift their decisions and convictions in almost any desired direction" (Asch 1956).

Early psychological research ties the unique behavior of individuals in a group setting to a conformity bias. Conformity occurs when an individual takes a behavioral cue from others and aligns their actions or opinions with those expressed by a majority.

Importantly, conformity is a more common response when an individual experiences any initial uncertainty or confusion. When an individual is put into a new situation with other individuals, a pioneering study finds that norms tend to converge (Sherif 1936). Uncertainty then makes an individual more dependent on the majority's opinions or actions because of the desire to determine the correct response (Sherif 1936).

Building on early conformity bias work, one scholar finds that even when there is no ambiguity, an individual can be incentivized to adopt majority positions. This is especially true when the majority is unanimous (Asch 1956). When placing a minority of one against a wrong and unanimous majority, the individual ultimately aligns with the judgment of the majority. To explain this general pattern of behavior, another scholar's work shows that individuals are inclined to conform because the alternative might invite social costs, like ridicule and ostracism (Schachter 1951). The desire to conform may also arise to gain approval from peers and feel inwardly worthy of such approval (Bose et al. 2023). Psychological research broadly finds that an individual's opinion can be "established by the fact that other people hold similar opinions" (Schachter 1951).

The presence of a conformity bias has not been thoroughly explored in the legal setting. Existing research maintains a focus on the experiences of judges and lawyers instead of defendants. For example, one paper that explores judicial decision-making argues that conformity bias might make judges more likely to exclude unconstitutionally obtained evidence than in other jurisdictions due to the location-specific legal culture (Penney & Yahya 2021). Another study applies conformity bias in the context of lawyers'

"ethical fading," whereby lawyers seeking to please their superiors fail to notice when they are asked to do something unethical. A conformity bias causes them to replicate the behavior of others (Prentice 2015). Conformity bias has also been applied in intellectual property cases to explain anti-innovation norms. Conformity aids "group membership and solidarity," which might drive an individual away from creative, new paths (Buccafusco 2018). While applied to very distinct legal settings, all suggest that a bias towards conformity can seep into the decision-making of individuals.

A separate, contrasting body of the literature argues that group settings enable collective advocacy (Driver 1968). If an attitude or belief is tethered to a group of people with a similar attitude or belief, an individual might perceive their belief as valid. Associations and advocacy organizations exemplify this relationship, where individuals might be empowered to speak up when they know they are not the only ones with a particular idea. Their collective voice is used to convey their interests. Collective behavior is also found in early studies to emerge in situations "in which changes are perceived as occurring in the normative order, the social structure, or the flow of information" (Turner & Killian 1957). Collective self-advocacy, however, is not what scholars are finding in the context of mass immigration-related hearings (Brinks 2019; Brink 2012; Rocha 2011; Lydgate 2010).

Individual behavior in the context of groups has important implications for the use of voice. Group climate is highly predictive of whether someone speaks up or utilizes their voice in a group setting. If group members believe they can use their voice

effectively, they are more likely to do so (Morrison et al. 2011). Perceptions of voice utilization have not been thoroughly studied in the context of mass hearings. Studies are generally limited to employees in the workplace or membership-based organizations.

Conceptualizing Voice

Having a voice means expressing one's opinion to have some form of participation in decision-making (Folger 1977). In the context of the legal system, voice is considered a process of negotiating dialogue throughout the legal process between court officials and participants (Pennington & Farrell 2019). Past research measures voice by asking individuals agree-disagree statements like, "I was able to say what was on my mind" (Tyler & Huo 2002). In the context of a legal setting, questions might include, "How much of a chance or opportunity did the members of the courts give you to describe your problem to them before making any decisions about how to handle it?" (Baker et al., 2015). More recent research attempts to measure voice by looking at whether individuals expressed their concerns, even when they strongly disagreed with the case presented to them (Pennington & Farrell 2019).

The capacity to utilize one's voice has important implications grounded in scholarship on justice and procedural fairness. Procedural fairness refers to the idea that people care about the process by which legal decisions are made. Judgments of the fairness of the procedures in the courtroom influence how satisfied people are with an outcome and how they evaluate legal authorities. Many scholars in the psychology of law literature have linked voice to justice (Folger 1977; Lind & Kulik 2009). A series of

studies as early as the 1970s found that when people have “their say” before a decision is made that affects them, they have a stronger sense of just treatment and procedural fairness (Thibaut & Walker 1975; Lind 1975). Feelings of unfairness are magnified when a disputant lacks control over the process and lacks voice.

The relationship between procedural fairness and acceptance of outcomes is so pronounced that the perception of procedural fairness matters more than whether people agree with a decision or regard it as substantively fair (Thibaut & Walker 1975). A crucial implication of this is that people are more willing to accept unfavorable legal outcomes if they perceive the procedure to be fair. The inverse is also found to be true: if disputants do not perceive procedures to be fair, they do not ascribe them legitimacy and do not outwardly accept the outcomes (Lind & Tyler 1988).

Voice can be especially powerful for historically alienated communities. Besides promoting perceptions of procedural fairness, voice is also important because it promotes one’s inclusion in a group. Having a voice is a way to affirm identity while experiencing a lack of voice can have inverse effects. One study in the context of participants in the criminal justice process found that a lack of voice affirms fears of not belonging (Pennington & Farrell 2019). The legal system’s complexity and continuous message of neglect indicate to communities of disadvantage that they are not valuable members of society.

This Study's Contributions

This law and social science study makes several contributions to the existing literature. I offer two theoretical frameworks by which I conceptualize the utilization of voice by migrants in mass hearings. No study has focused exclusively on the unique mechanisms that challenge a defendant's ability to raise a valid defense or claim in mass proceedings. I then formulate an innovative, comprehensive research design to test my hypotheses, whereby I interview federal public defenders and court watchers in addition to traveling to Tucson, Arizona to observe current mass proceedings first-hand. My findings offer insights into due process concerns that can inform American immigration policy debates. While Operation Streamline was suspended during the COVID-19 pandemic, it could reemerge in future immigration enforcement programs. Evaluating the value of mass hearings in the context of the treatment of defendants is of the utmost importance.

III. Theoretical Framework & Research Hypotheses

Inadequate Knowledge Theory

When individuals have inadequate knowledge about the legal process to which they are subject, their ability to effectively use their voice is undermined. Scholars find that a limited understanding disempowers someone from speaking throughout the legal process (Pennington & Farrell 2019). In this context, "voice" refers to whether an individual pleads innocent, responds to a judge's question with an answer different from the others in the hearing, requests more time with an attorney, puts an asylum claim on

the record, attempts to describe their immigration story, or speaks prior to their sentencing. Knowledge could relate to defendants' legal rights, the implications of pleading innocent or guilty, and possible legal avenues available. Absent such knowledge, individuals are unequipped to object to their poor treatment or persuasively contest the charges brought against them because they do not know when mistreatment arises and feel discouraged by their confusion.

Immigrants are more likely to enter a courtroom lacking formative knowledge about American legal processes. Navigating a legal system is more challenging when it is a foreign system that is notoriously complex. For one, the language of American lawyers is inherently convoluted. This complexity may mask simple content (Tiersma 2011). In the courtroom, immigrants encounter an unfamiliar language, which makes deciphering the highly stylized legal jargon more difficult. Different cultural norms of communication and translation devices further complicate immigrants' effective self-advocacy (Wennerstrom 2008).

Poor knowledge can be improved by third parties who take care to instruct an individual about their rights, the implications of a guilty or innocent plea, and available legal avenues. However, as discussed in the Literature Review section of this paper, Operation Streamline defendants are afforded minimal time with an attorney because of the high number of defendants. This limited time for migrants in mass hearings to meet with their attorneys undermines the opportunity for legal confusion to be clarified. As one public defender writes, "Explaining American legal terms to a defendant from

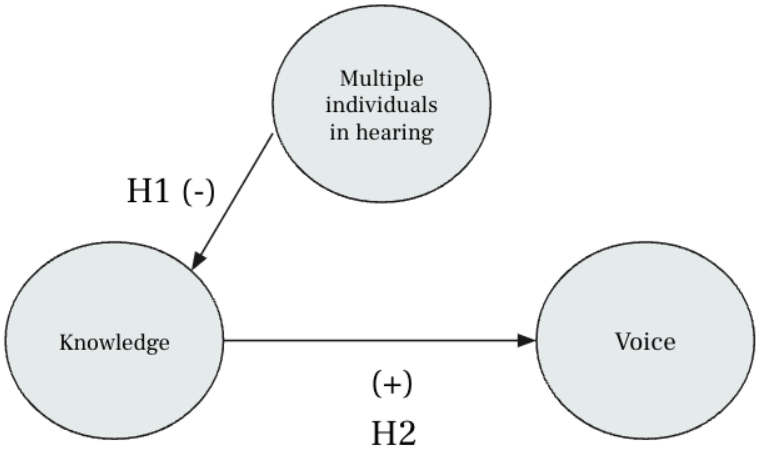
another country who has little if any, formal education is a Herculean task. Legal English is difficult to translate into Spanish, and explaining legal concepts in one morning to someone from another country is complicated, to say the least" (Rocha 2011). There is a time-bound cap on how many questions a migrant can ask and how much detail they can present in their migration story. The limited time with an attorney is a practical constraint inherent to mass hearings, one that facilitates problems of inadequate knowledge. In written testimony submitted to Congress, a public defender explains these challenges.

> "In the brief 3 to 30 minutes (depending on which court) Streamline gives the defense lawyer to meet and educate the Client and herself, the lawyer must decide whether the Client is competent, whether there is a defense of citizenship or duress, a lack of intent, a pretrial motion to suppress evidence or statements due to constitutional violations. The lawyer must learn personal information which might mitigate a sentence. The lawyer must consider not just the options in the criminal case, but also any immigration consequences or opportunities the Client may have, such as asylum. And without any time to do investigation or research, with usually one CBP Report of Removable Alien as disclosure, the lawyer must advise the Client whether to plead guilty or go to trial, when either decision could result in the Client spending up to 6 months in prison and likely giving up the chance ever to be in the United States legally" (Williams 2008).

The effect of knowledge of the American immigration system on an individual's voice is more pronounced when the number of people being heard simultaneously with the individual increases. Specifically, when a few people are being processed at the same time, the effect is weak. The effect is stronger as the number of migrants processed together increases. If the pre-existing knowledge of the American legal system as well as an individual's utilization of voice throughout the processing of the Streamline defendant

could be measured, one would see less utilization of voice as the number of defendants in one hearing increases. This is because of the associated, inherently limited time with an attorney that defendants in mass settings receive. After being detained, immigrants processed through Streamline courts are read scripts of information and set to meet with an attorney (Irvine et al. 2019). Still, a report found that of 46 interviewed defendants, only 19.6% understood they would get a conviction upon pleading guilty, 37% understood they would be deported after pleading guilty, and 15.2% understood their guilty plea would result in foregoing their option to claim asylum. 45.7% of respondents did not recall being asked at least one of the standard plea questions during court. Strikingly, over half of the respondents did not understand they were renouncing their rights as a result of their plea (Irvine et al. 2019).

Figure 2. Inadequate knowledge model.

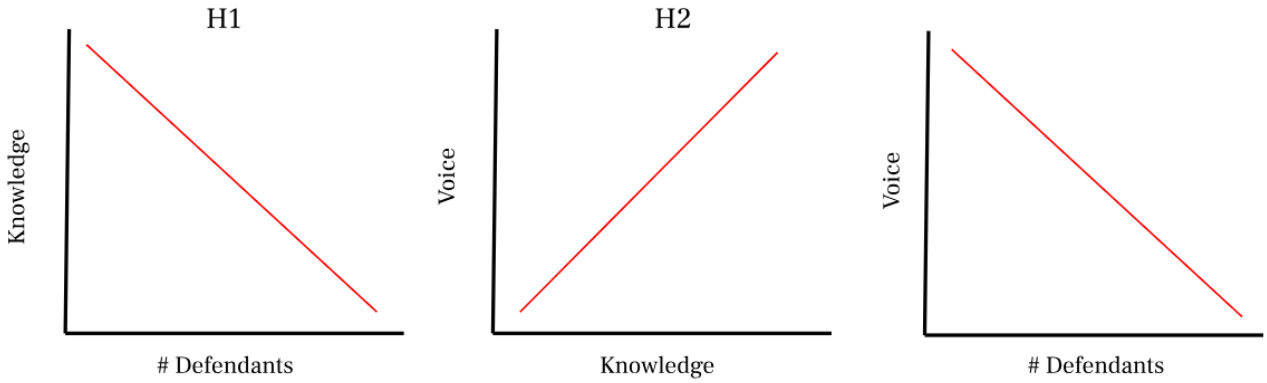


To test this theory about the importance of knowledge in the utilization of voice, my two "inadequate knowledge" hypotheses, as demonstrated by Figures 2 and 3, are:

H1: As the number of individuals being heard simultaneously increases, a defendant's time with an attorney, and thus their knowledge of American legal processes, decreases.

H2: Defendants who are less knowledgeable of American legal processes utilize their voice before and during the hearing less than more knowledgeable defendants.

Figure 3. H1 and H2 graphs.



The consequence of the relationships described in H1 and H2 is that the relationship between number of defendants heard and voice is negative, as demonstrated by the third graph. That is, a higher number of people in a hearing decreases knowledge, and this decrease in knowledge undermines voice.

Social Pressure to Conform Theory

When multiple defendants are in the same hearing, social pressures to conform to the behavior and responses of others further undermine an individual's ability to utilize their voice (Boyce & Lanius 2013). This argument is asserted in the Operation Streamline

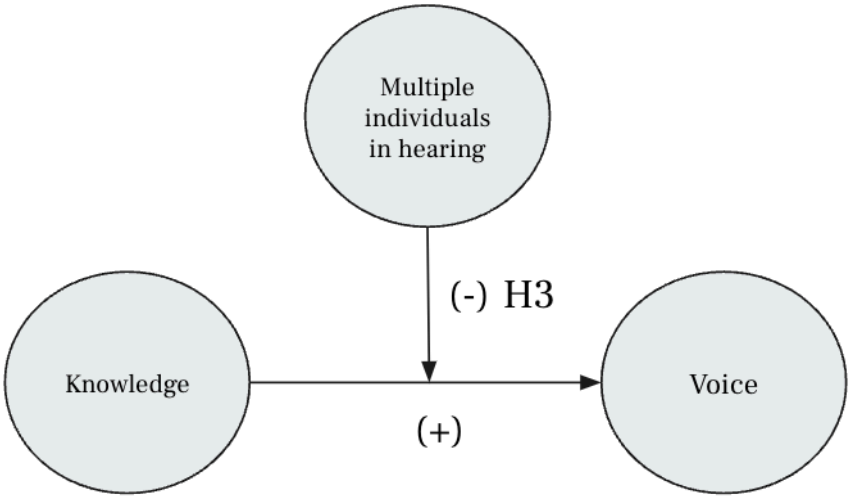
literature, but not explored in-depth. Surrounded by others, it is less likely that an immigrant will offer a response in their defense, even when they are knowledgeable about American legal processes when those around them are pleading guilty and affirming that they understand their plea and its legal implications. When 60 others are responding "sí" to having their rights waived, it is more difficult to speak opposite those voices (Brinks 2019). This could be because of a conformity bias, which induces individuals to conform to the actions and opinions of others in a group setting (Asch 1956). The courtroom is a uniquely intimidating space, one that does not lend itself to empowerment when other defendants are pleading their guilt and otherwise remaining silent.

As discussed at length in the Literature Review section, conformity bias scholarship suggests that group settings induce individuals to shift their decisions in any direction (Asch 1956). Individuals can learn norms from observing the behavior of others. They take cues from group members and align their opinions and actions with the majority to fall in line (Sherif 1936; Bose et al. 2023). While explanations in the literature related to "ridicule" and "exclusion" (Schachter 1951) and feelings of "approval" (Bose et al. 2023) do not obviously apply in the criminal immigration proceeding setting because it seems unlikely that someone who made an arduous journey to cross the border stakes their case on unlikely ridicule or acceptance from their peers, it is still possible that immigrants are experiencing an implicit pressure to behave similarly to the dozens of their peers lined up next to them.

A social pressure to conform moderates the effects of knowledge on voice. Amongst people being processed with others, the effect of knowledge on voice is expected to be weak because the number of people around the individual breaks the connection between knowledge and voice. An individual may have received sufficient time with an attorney to understand their legal rights and how they might want to proceed in the hearing but still do not feel empowered to use their voice because their behavior implicitly seeks to align with the actions of the majority. While it is less intuitive for an individual to conform to behavior that is clearly in opposition to the individual's best interests, scholars in social-psychological literature find this to be entirely possible.

The effect of social pressures to conform on an individual's voice in an immigration proceeding depends on whether multiple people are being heard simultaneously with the individual. When in an individual hearing, the effect is weak. When there are multiple people in the same hearing, the effect is stronger. If feelings of social pressure to conform as well as an individual's utilization of voice throughout the processing of the Streamline defendant could be measured, one would see less utilization of voice when there are multiple defendants in the same hearing. Figure 4 demonstrates this relationship.

Figure 4. Social pressure to conform model.



Unlike the "inadequate knowledge" theory, the effect of social pressure to conform should not necessarily strengthen as the number of individuals in the hearing increases because any group, no matter the size, should induce social pressures to conform. Moreover, if my conformity argument is true, one should expect to observe nearly everyone using their voice or no one using their voice because of the expectation that individuals mirror the behavior of those around them in a group.

To test this theory about the importance of conformity as it relates to the utilization of voice, my "social pressure to conform" hypotheses are:

H3: Knowledge will be strongly related to voice when an individual is subject to a hearing alone. When there are multiple people in the same hearing with this individual, the effect of knowledge on voice will be reduced because of a social pressure to conform.

H4: When individuals are in a mass hearing, either several people are using their voices or very few.

Figure 5. H4 hypothetical curve.

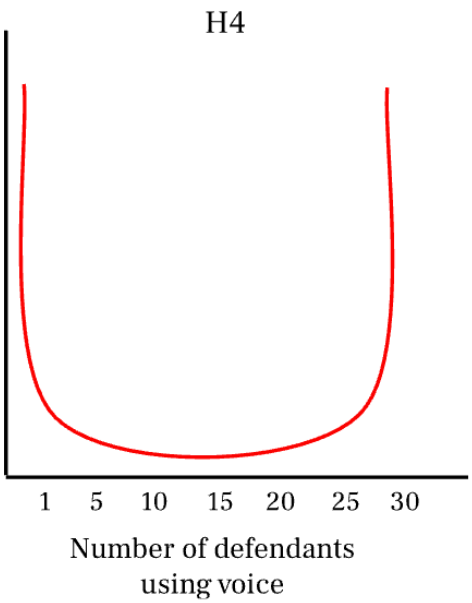
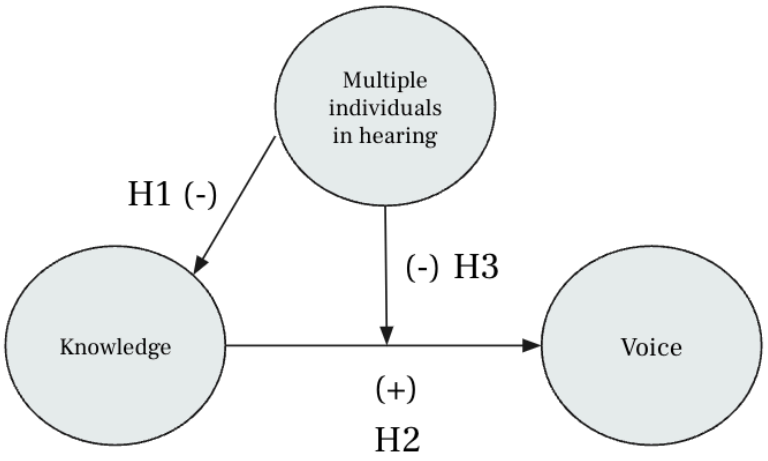


Figure 5 visualizes my fourth hypothesis. The numbers on the x-axis would change depending on how many defendants are in a particular hearing. Regardless, I predict that in a given hearing, either very few or very many defendants will use their voice and there will not be many in-between.

Figure 6 demonstrates the relationship between knowledge, the number of people heard, and voice. Importantly, both of my theories on "inadequate knowledge" and "social pressure to conform" could be true simultaneously. Conformity bias scholarship has long suggested that an individual's inclination to conform is stronger when there is any confusion or ambiguity in a setting (Sherif 1936). This is especially applicable in Operation Streamline proceedings, where I have established individuals are exposed to new, complex legal processes. The uncertainty makes it more likely that immigrants look to others in their position for cues on how to behave and engage. The vast majority plead

guilty and fail to raise their voice in this context, which may induce others to accept a similar plea and remain silent otherwise.

Figure 6. Inadequate knowledge and social pressure to conform model.



In sum, theories about what undermines an individual's ability to use their voice in a hearing offer possible ways in which we can understand why an individual who may otherwise raise their innocence, articulate a valid asylum claim, or seek further legal assistance fails to effectively do so in the mass hearing setting. Mass hearings uniquely undermine an individual's ability to receive effective assistance of counsel, a right enshrined in the Sixth Amendment of the U.S. Constitution, which contributes to a lack of knowledge that will alternatively help equip defendants with the ability to contest their charges if they have the desire. Moreover, the mass nature of Operation Streamline hearings could create social pressures to conform, whereby individuals mirror the statements and behavior of others, which undermines individuals' ability to use their voices when the collective fails to speak.

IV. Research Design

Court Observations

To conduct original, empirical research on mass hearings, I engage in both a quantitative and qualitative approach. Given Operation Streamline's mass hearings of up to 100 individuals were suspended amidst the COVID-19 pandemic, I observed the current practice of flip-flop hearings that process multiple defendants at the same time. These hearings address the same immigration-related crimes as Streamline and can sufficiently inform my analysis of individual behavior in group settings. I attended mass hearings in Tucson, Arizona to gather data on individuals' utilization of voice in the courtroom. Tucson is home to a U.S. District Court for the District of Arizona.

Although the district courts vary in their Streamline practices, the U.S. District Court in Tucson is a worthwhile case to study in-depth. The District of Arizona could be described as the "average" of the other district courts in terms of the number of defendants heard en masse and the amount of time allotted to attorney-client meetings (Williams 2008). Texas may be considered more "extreme" in its use of mass hearings. Attorneys received less than ten minutes with each client or addressed them as a group and upwards of 100 migrants would be processed simultaneously (Del Rio 2024; Rau 2023). California, on the other hand, was incredibly resistant to adopt Streamline proceedings (Davis 2024; Williams 2023). When Streamline proceedings were utilized under the Trump administration, there would be around ten to 20 migrants in a mass hearing (Angeles 2024; Davis 2024).

Tucson has historically been at the center of hundreds of thousands of Border Patrol apprehensions and prosecutions (Lydgate 2010). In 2008, Border Patrol made 317,696 apprehensions in the Tucson Sector. For comparison, in the El Paso Sector, Border Patrol made 30,312 apprehensions. Not all cases, though, were processed through Streamline. In the first six months of 2008, there were 5,838 Streamline cases in Tucson (Williams 2008). There has been significant migration to the Tucson Sector even recently. In October of 2023 alone, Border Patrol had 55,224 encounters in the Tucson Sector, a 140% increase from the previous October (CBP 2023). Moreover, the Tucson Sector has not only been regarded as the busiest corridor across the entire southern border but also the deadliest (Burridge 2009). Migrants crossing into this area must contend with dangerous desert conditions, extreme heat, wild animals, and remote routes.

I observed three days of Plea and Sentence hearings in Tucson. Each hearing included around 20 defendants, three or four public defenders, two prosecutors, and a magistrate judge. The magistrate judges alternate which weeks they cover flip-flop proceedings, so the same judge presided over all the hearings I watch. Figure 7 shows the court calendar for one of the hearings I observed, where over 20 individual cases were processed at the same time. The calendar is made public at the start of each week and includes the names of all relevant parties and types of hearings that are on the docket.

Figure 7. Tucson court schedule example.

9:30 AM	USA v Jose Luis Murillo-Gomez	Honorable Maria S Aguilera	CR 24-00345-01-TUC-EJM (MJ 24-00126-MAA)	Detention Hearing
9:30 AM	USA v Gaspar Juan-Montejo	Honorable Maria S Aguilera	CR 24-00292-01-TUC-EJM (MJ 24-05604-MSA)	Plea and Sentence
9:30 AM	USA v Adrian Camacho-Lemus	Honorable Maria S Aguilera	CR 24-00296-01-TUC-JR(MJ 24-00109-JR)	Plea and Sentence
9:30 AM	USA v Adrian Santiago-Martinez	Honorable Maria S Aguilera	CR 24-00297-01-TUC-LCK(MJ 24-00110-AMM)	Plea and Sentence
9:30 AM	USA v Erik Zermeno-Hernandez	Honorable Maria S Aguilera	CR 24-00298-01-TUC-LCK(MJ 24-00111-EJM)	Plea and Sentence
9:30 AM	USA v Juan Carlos Hernandez-Tovar	Honorable Maria S Aguilera	CR 24-00299-01-TUC-JR(MJ 24-00117-EJM)	Plea and Sentence
9:30 AM	USA v Lorenzo Longoria-Roman	Honorable Maria S Aguilera	CR 24-00270-01-TUC-LCK (MJ 24-02863-BGM)	Plea and Sentence
9:30 AM	USA v Rodolfo Sanchez-Urias	Honorable Maria S Aguilera	CR 24-00310-01-TUC-BGM(MJ 24-00113-AMM)	Plea and Sentence
9:30 AM	USA v Ramon Carbajal-Murrieta	Honorable Maria S Aguilera	CR 24-00311-01-TUC-LCK(MJ 24-00114-JR)	Plea and Sentence
9:30 AM	USA v Lamberto Hernandez-Adan	Honorable Maria S Aguilera	CR 24-00308-01-TUC-JR(MJ 24-00112-MAA)	Plea and Sentence
9:30 AM	USA v Manuel Cruz-Lugo	Honorable Maria S Aguilera	CR 24-00301-01-TUC-LCK(MJ 24-00119-BGM)	Plea and Sentence
9:30 AM	USA v Javier Mendez-Polo	Honorable Maria S Aguilera	CR 24-00300-01-TUC-MAA(MJ 24-00118-MAA)	Plea and Sentence
9:30 AM	USA v Adelaido Bautista-Bautista	Honorable Maria S Aguilera	CR 24-00336-01-TUC-LCK (MJ 24-00125-LCK)	Plea and Sentence
9:30 AM	USA v Sherlyn Ochoa Vazquez	Honorable Maria S Aguilera	CR 24-00346-01-TUC-EJM(MJ 24-00127-AMM)	Plea and Sentence
9:30 AM	USA v Julio Javier Perez-Arista	Honorable Maria S Aguilera	CR 24-00351-01-TUC-JR (MJ 24-00108-MSA)	Plea and Sentence

My observations of mass hearings in Tucson generate data on how often voice is utilized in the courtroom. I noted every time a defendant or the lawyer spoke counter to the group or engages in self-advocacy. This could range from rejecting a guilty plea and attempting to raise a valid asylum claim to simply asking questions of the judge or lawyer. The details I captured are organized in the format of Table 1.

Table 1. Hearing observation data collection.[2]

Hearing Group #	Affirms Competence (Y/N)	Affirms Voluntary Plea (Y/N)	Understands Rights Giving Up (Y/N)	Understands Plea Agreement (Y/N)	Affirms Correct Charge (Y/N)	Other Use of Voice (Y/N)
Defendant 1						

[2] See *Appendix A* for completed tables.

Defendant 2						
Defendant 3						

Elite Interviews

While my observations of mass hearings can generate data on the utilization of voice in relation to the number of individuals in a hearing, they cannot necessarily provide information on how knowledgeable defendants are or how their voice may have been utilized pre-hearing. Additionally, I could only witness a limited number of hearings that are not necessarily representative of those held throughout Operation Streamline and in other district courts. So, to better understand the effects of knowledge on voice, I also conduct more qualitative research, which includes interviewing public defenders who have played a direct role in mass hearings and court observers who have frequently watched the mass hearings that occur in district courts along the southern border.

Elite interviews are useful in developing a narrative and tracing the role of elites in a given political process. They "can give substance and meaning to prior analyses of institutions, structures, rule-making, or procedural controls" (Hochschild 2009). The knowledge that was previously developed from third and fourth-hand accounts of a particular situation can be confirmed or challenged based on the lived experiences of subjects with first-hand accounts. In the context of my research, elite interviews can

better situate Operation Streamline throughout the past couple of decades and its implications for defendants' use of voice.

In my interviews, I asked a series of open-ended questions that aimed to understand what participants have experienced in the mass hearing setting. The broad nature of my questions attempted to set aside my preconceived notions about how mass hearings operate and allow elites to engage in wide-ranging discussions (Aberbach and Rockman 2002). Still, given my research focus, I intended to gauge how much time attorneys spend with their clients, how relevant parties perceive the behavior of defendants in the mass hearing setting, and what it looks like for migrants to raise asylum claims or use their voices throughout the Streamline process. The initial list of questions for each category of participants is included below. Of course, some of the questions I asked depended on the other answers the interviewees provided. I also attempted to strike a more conversational tone instead of listing off questions.[3]

Questions for public defenders:

- What percent of the time would you estimate Streamline defendants plead guilty? Why do you think that number is so high?
- On average, how much time do you spend with a Streamline defendant prior to their hearing? What are those interactions or meetings like?
- Can you talk a little bit about the advice you typically give your clients? Do you often advise your clients to accept a guilty plea or contest the charges?
- Is there variation in the way your clients interact with you?
- Have you discerned anything that helps you explain why some are more communicative?

[3] See *Appendix B* for the consent form all participants signed.

- Have you ever had a client raise a valid asylum claim or valid defense in the context of a Streamline proceeding? What was that part of the process like?
- Is there anything else you would like to describe about Operation Streamline and the use of mass hearings in immigration proceedings?

Questions for court watchers:

- Do you notice variations in the way defendants behave or speak in court?
- Have you discerned anything that helps you explain why some are more communicative?
- Have you ever witnessed a defendant raise a valid asylum claim in the context of a Streamline proceeding? What was that part of the process like?
- What is the most surprising thing you have witnessed in mass hearings?
- Is there anything else you would like to describe about Operation Streamline and the use of mass hearings in immigration proceedings?

V. Results & Discussion

Inadequate Knowledge Hypotheses

H1 Results

My first hypothesis, H1, predicts that as the number of individuals being heard simultaneously increases, a defendant's time with an attorney, and thus their knowledge of American legal processes, decreases. Many of my interviewees report sentiments consistent with what I was expecting. In speaking with public defenders, I expected to learn that as the number of defendants in a given hearing increases, the public defenders have less time to speak with each client. I also anticipated hearing that their clients express feelings of confusion but if the lawyers have sufficient time with the defendants, that improves their client's knowledge of Streamline processes.

Public defenders report receiving very little time with their clients before their hearings. Those in Texas have less time with their clients than those practicing in Arizona and California. One attorney from McAllen, Texas, tells me that defenders in her office would have two to five minutes before court started to talk to each client. A single lawyer could be tasked with defending 70+ people. She states, “It was unbearable, how many felonies we had. I mean, our lawyers in McAllen were carrying more than 100 felonies, which is way more than they should” (2023). Public defenders in Arizona and California report having closer to 30-45 minutes with each client, depending on how many they were assigned at once under Operation Streamline (Davis 2024; Rau 2023; Rocha 2023; Williams 2023).

Several public defenders speak about the difficulties inherent to the limited time they received with their clients before their hearings. Heather Williams, a Federal Public Defender who worked in Tucson, Arizona, describes the complexities of explaining criminal immigration law to defendants. For example, she says, “It was a challenge to explain that immigration proceedings are administrative proceedings. It is very different from the criminal proceedings that they are in right now. So, that was a challenge for people to understand because that's not what exists in their countries” (2023). Other public defenders echo that most defendants do not know they are in a criminal proceeding or what the immigration consequences of removal entailed (Angeles 2024; Davis 2024; Rocha 2023; Rau 2023).

The public defenders I interview describe the range of questions they need to cover with defendants in the limited period. Eric Rau, a Federal Public Defender in Tucson, Arizona, says that defense lawyers discuss defendants' rights, charges, potential punishments, the facts of the case, and what the client wants to do. In the older Streamline structure, the public defenders would have five people in a visitation cell and time with each client. Notably, Rau reports that "if you had somebody who had a lot of questions or a more complicated situation that you had to spend more time with, unfortunately, it cut into the time that you had with the other people before they had to be taken back cellblock" (2023). Bianca Del Rio, a Federal Public Defender in Del Rio, Texas had a similar experience. If there were more defendants, it would be taxing on the time she spent to get client interviews done and see if the client was ready to proceed with a guilty plea for their sentencing (2023).

Consistent with the second component of my first hypothesis, public defenders report a positive relationship between the time they spend with their clients and the client's knowledge level. Juan Rocha, a Federal Public Defender in Yuma, Arizona, describes, "Most people who come from Mexico or Central America, have this idea that I already paid for those 15 days already. I came back and why am I getting 45 days? [. . .] You don't have the time to explain all of these things, because you have three hours" (2023). If defendants are charged with unlawful reentry, they are sentenced to more detention time than they were in their prior sentencing. This is confusing to defendants, who think they already paid the price for the first crime. Importantly, Rocha explains that

if he was able to spend more time with defendants, he could have more effectively communicated that if they returned unlawfully, they would receive a harsher sentence. This could potentially more effectively deter future unauthorized reentry.

Benjamin Davis, a Federal Public Defender in San Diego, California, tells me that it takes time to get to know a client such that they trust his legal advice. He wants to ensure that the defendant feels comfortable so they can share personal details that could meaningfully impact their case. Operation Streamline's quick and complex nature, however, undermines this process. Davis was only able to spend 20-30 minutes with each client in a converted garage. Often, the defendants had just been arrested shortly before meeting with him. Davis explains that his office did not think defendants' pleas were voluntarily given the "super time-pressed timeframe" (2024).

My interviews further reinforce the importance of the lawyer's role in minimizing defendant uncertainty. Leslie Carlson, a court observer, states, "Lawyers in the court were in the best positions to try to protect people and to assist them [if . . .] they needed to speak to about asylum and to prevent things falling through the cracks. Because it seems to us that the whole system was almost designed to result in this falling through the cracks and denying people their access to asylum" (2023). Compared to U.S. Marshals, judges, the prosecutors, or any other party, a defendant's lawyer is uniquely suited to enable their utilization of voice. This is consistent with my first hypothesis, which predicts that time with an attorney is crucial for defendants.

While responses related to my first hypothesis are generally consistent with my expectations, they are certainly not uniform. For one, Rau finds that generally, there is enough time to discuss everything with his clients. He does not believe that mass hearings prevent defendants from voicing their needs but also acknowledges that this was not true for all defendants. He tells me, “Sometimes we have people who have no education whatsoever, who have absolutely no familiarity or understanding with the criminal justice system. And that's a whole different situation, and so is half an hour, 45 minutes enough for somebody like that, possibly not” (2023). Del Rio also reports that there were sufficient preparations with clients before the hearing, such that they would understand their plea colloquy (2024).

Based on my interviews, it seems that the public defenders who describe having enough time with their clients find that their clients just want to get home as soon as possible and avoid further jail time. In the context of flip-flops, Rau explains to his clients that they were being charged with a felony but offered a misdemeanor and reports that almost everyone wanted to take the misdemeanor (2023). Similarly, Jon Sands, a Federal Public Defender from Tucson, Arizona, tells me, “You can get through it. Everyone speaks Spanish [. . .] Most of the time they’re going to say they want to go home. Therefore, in many ways, you become the tour guide to get them home as quickly as possible” (2024).

Overall, my interview results suggest that public defenders’ challenges not only relate to the limited time they have with their clients but also stem from the incentive

structure of plea bargains. Rocha describes both factors, asking, “Where's the presumption of innocence? That just doesn't exist, just because you're under such time constraints. And then they sweeten the pot by giving you 15 days or 10 days or something, that a person is going to be like 10 days versus 30 days [. . .] So those are the disincentives for defense counsel to really effectively represent” (2023). Even if public defenders were afforded more time with their clients, it might not change the fact that the incentives in the plea bargain are so strong that a defendant feels compelled to plead guilty and accept the charges brought against them. The responses of public defenders provide more nuance than what was originally captured in my first hypothesis.

H2 Results

My second hypothesis, H2, predicts that defendants less knowledgeable of American legal processes utilize their voice before and during the hearing less than more knowledgeable defendants. Admittedly, measuring a defendant’s knowledge level and voice utilization is difficult, but in speaking with public defenders, I expected them to express that defendants who received limited time and were in larger mass hearings used their voices less. I also expected to observe minimal use of voice in the hearings I could watch in Tucson. My results are mixed based on both my interviews and observations of hearings. Public defenders speak to other factors that might influence the defendant's utilization of their voices.

Consistent with my hypothesis, public defenders report that when defendants are less understanding of legal processes, they echo the responses of others. For example,

when the judge asks defendants a series of questions, such as “Do you understand the rights you are giving up and the consequences of pleading guilty?” and “Do you understand your plea agreement?” the judge instructs the defendant to respond with a yes or no answer. It is common for all defendants to respond the same way. When observing hearings in Tucson, I notice that all 57 defendants answered each plea colloquy question with a yes. Only one defendant in a group of ten called forward by the judge spoke up to explain why he immigrated to the U.S. and to say he was sorry. When up to 80 defendants were processed at once at the height of the mass hearings, Katrina Schumacher, a court watcher who has observed hundreds of hearings in Tucson since 2016, found that very few people spoke up (2023).

Moreover, the uniform “yes” in response to the judge’s questions and lack of voice utilization in court could be explained by defendant’s lack of knowledge. Williams tells me that “because ‘yes’ comes first, everybody thinks that's what they're supposed to say” (2023). Had a defendant better understood the processes to which they were subject, perhaps they would have been able to answer questions with a different answer. Of significant consequence, Rocha believes that given time constraints and the consequent lack of information, defendants are likely to recycle through the Streamline process. If they do not understand that attempted reentry will result in a longer prison sentence, they are more likely to try to cross unlawfully again (2023).

One external factor that might affect the relationship between knowledge and voice is the behavior of the judge presiding over the hearing. Davis reports that one

judge would count down over the attorneys while they spoke on behalf of their client (2024). Schumacher also describes the judge-specific nature of voice utilization. She tells me, “Some judges make a point of saying, ‘Does anyone have something to say?’ And that's part of the part of the drill, but some judges would sort of skip over that. Or they would say it once at the beginning and never repeat it, but some do every time” (2023). In my experience attending hearings, I find that the judge asks if anyone has anything to say before the sentencing at the end of the hearing but does not afford much time for anyone to speak up before moving on with the individual punishments. Perhaps a defendant who is knowledgeable and wants to utilize their voice does not do so because of the limited opportunities afforded by the judge. Carlson tells me that sometimes defendants are discouraged from speaking by the judge because the judge wants the proceeding to go as quickly as possible (2023).

Another factor that might influence the relationship between knowledge and voice is the level of stress a defendant is experiencing. Schumacher tells me that during the Trump administration’s period of child separations, more people spoke up than normal because “they were so distressed” (2023). From the court observation documents she provides, I find that in a hearing of 75 defendants, eight migrants voiced they had been separated from their children, expressing confusion and fear. In another hearing of 75 defendants, nine migrants voiced they had been separated from a child. Complicating my original hypothesis, a defendant may be less knowledgeable but use their voice more because they are experiencing severe distress and consequently feel a stronger desire to

speak up. Typically, the benefits of speaking are low and the cost of speaking by yourself might feel higher. However, during child separations, the perceptual benefit of speaking dramatically increases when it could increase the chances that a defendant is reunited with their children.

There are other ways voice can be restricted or promoted in the courtroom unrelated to knowledge. For instance, Sands points out that if a defendant is shackled, it restricts a means of communication, such as raising your hand (2024). This is true of the hearings I observed, where defendants' wrists were shackled. Strikingly, Schumacher reports that a particular judge in Tucson asks defendants to raise their hands if they do not understand anything regarding their hearing, which they cannot physically do when shackled (2023). Sands also points out that a defendant could be using their voice more before the hearing as opposed to when they are in the courtroom, which is not something I can gather from simply observing hearings in the courtroom (2024).

In refutation of my second hypothesis, it is possible that instead of a lack of voice reflecting poor knowledge, poor utilization of voice in the courtroom suggests a defendant may actually understand everything that is happening quite well. During Operation Streamline years, defendants were arrested, accepted a plea bargain, and deported within a couple of days. Now that Operation Streamline is temporarily no longer in effect, Schumacher notices people speaking up less than ever. She explains that now, "because people have been arrested two weeks before this procedure, they have had time to talk to their attorney. So now, they don't have the kind of confusion and questions that

we had with Streamline because they have had it explained to them more fully" (2023). Perhaps, a lack of voice can be a sign of knowledge instead of an indication that a defendant is confused. This idea still supports my first hypothesis, that time with a lawyer is vital for defendant knowledge but contradicts the idea that less knowledgeable defendants inherently use their voice less in court.

Moreover, there are limited instances where not having a voice can be quite beneficial for the defendant. For example, Sands tells me that among defendants, there may be a range of dialects spoken. If the government does not have a translator available who speaks the same dialect as the migrant, the government might end up just dismissing the case. According to Sands, this demonstrates that "a voice that is not understood sometimes has a benefit" (2024). Sands' response highlights one way that not being heard actually enables defendants to get an even better deal. Of course, these situations comprise a smaller percentage of the total number of Streamline cases.

Moreover, not all non-Spanish speakers have their cases dismissed. Some may be part of a multi-phase translation where multiple translators aid with communications (Srikrishnan 2018). There are concerns, though, that given the rushed nature of Operation Streamline, individuals who are non-Spanish speakers may have their voices lost in the shuffle and go through proceedings without others knowing they need access to different translation services. As the American Immigration Council writes, "accommodations are not made for indigenous language speakers to receive needed interpretation to communicate with a public defender or to meaningfully participate in a

court hearing, resulting in a lack of understanding of the proceedings or the implications of a criminal conviction" (2021).

Social Pressure to Conform Hypotheses

H3 Results

My third hypothesis, H3, predicts that knowledge will be strongly related to voice when an individual is subject to a hearing alone, but when there are multiple individuals in the same hearing, the effect of knowledge on voice is weakened because a defendant experiences a stronger social pressure to conform to the responses (or lack thereof) of the other individuals in the hearing. Based on social-psychological literature, I expected to learn that the behavior of other defendants is influential for the use of voice in the courtroom. My interviews with public defenders and first-hand court observation support my hypothesis. Responses related to H3 are more uniform than those regarding my other hypotheses.

There is a "huge psychological component" to the behavior of individual defendants in the mass hearings. According to Williams, "There's this group emphasis and the feeling that if I say, 'No, I don't understand,' everything seems to be going really smoothly for everybody else. I don't want everybody else to dislike me, because all of a sudden, I'm saying 'No, I'm asking you a question.' I'm interrupting the flow that I think is probably going to get all of us out of this situation sooner" (2023). Her comment is notable, as it addresses the source of motivation behind a migrant actively countering their interests by conforming to the responses of others. When lined up before a judge

with peers who want to get out of the courtroom as quickly as possible, there could be an implicit pressure to avoid disrupting the "flow" of the hearing. Sands and a CJA (Criminal Justice Act) attorney I interviewed also perceive peer pressure to play a role in the behavior of defendants (2024).

Importantly, Lee Tucker, a Federal Public Defender in Tucson, Arizona, reports that she believes if defendants were not in a mass hearing with 50 people in the room, they would be more willing to talk. Another public defender agrees and tells me, "You lose something significant from the individual participation, and the ability to find out if the defendant really wants to do this" (2024). She offers an anecdote about a client from Nicaragua with a potential asylum claim. Public defenders wanted to take this client's case to trial, but when the defendant saw everybody else plead guilty and get time served, he did not want to wait in prison for 30 days as the trial was prepared by the government. These public defenders' responses are consistent with the social-psychological literature I draw from that finds individuals seek to conform to the behavior of others in a group setting, even if that conformity is counter to their long-term interests.

Conformity may be even more likely in this setting given that often, immigrants travel to the U.S. in groups. Michelle Angeles, a Federal Public Defender in San Diego, California describes how when advising clients before their hearing, they might point to someone else, a family member or friend, sitting in the room they would all meet in. Her client would say, "If my cousin pleads guilty today and I don't, we'll get separated. I need to know what my cousin is doing" (2024). Although attorneys advise their clients

individually, the risk of separation might encourage defendants to plead the same way as others who traveled with them.

Consistent with my expectations, Williams finds conforming behavior in small and large group settings. She reports, “Whether it's a group of three, or it's a group of 30, nobody wants to be the sore thumb. And so, they will go ahead and say yes, whether they understand it or not” (2023). My third hypothesis anticipates that greater group size does not necessarily play a role in whether the social pressure to conform was present, given that simply being around others should be sufficient to induce feelings of conformity if my hypothesis is true. This is further generally reflected in the hearings I observed, where groups of 9-10 defendants answer questions similarly.

H4 Results

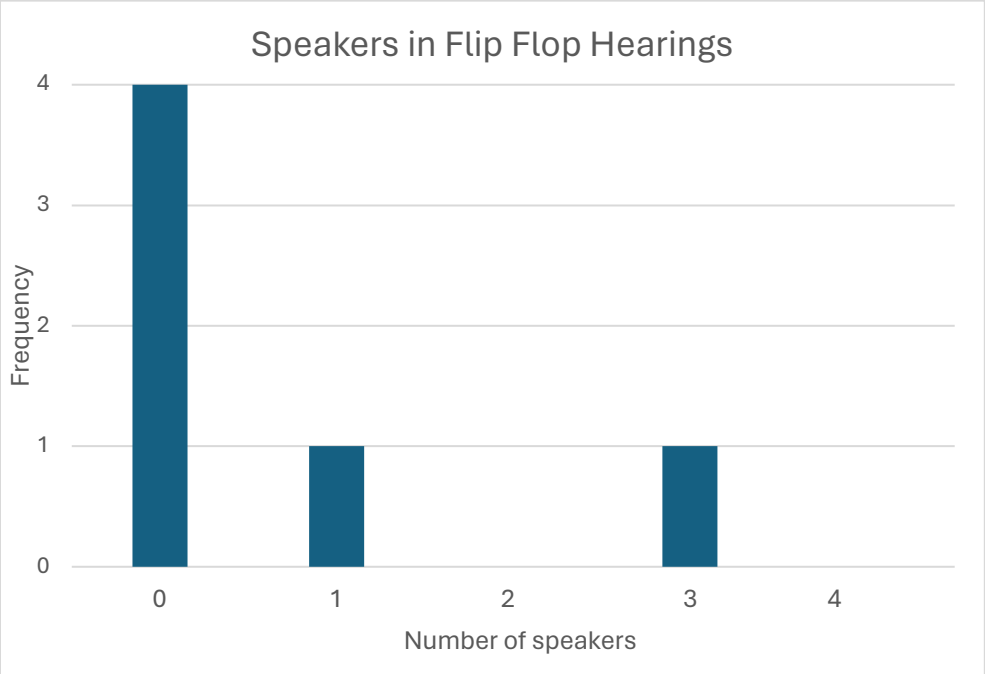
My fourth hypothesis, H4, predicts when individuals are in a mass hearing, either several people use their voices or very few. This hypothesis further explores the existence of social pressure to conform in mass criminal immigration proceedings. If conformity does play a role, then I would expect if some defendants start to use their voices, then others conform to that behavior and use their voices as well. In speaking with public defenders, I paid attention to whether they notice very many or very few defendants speaking or a number that seems more random and in the middle of the total number of defendants in a given hearing. My interviews with public defenders find support for my hypothesis, but my hearing observations offer mixed results.

Notably, several public defenders report that whether many or no defendants use their voice depends in large part on the behavior of the first person who has a chance to speak in the mass hearing. If the first person responds in the affirmative to a question asked by the judge, everyone can reasonably be expected to do the same. According to Sands, "You will find it's very important if the first person being sentenced when the judge says have you anything to say, and he says 'no,' everyone will follow. If he says, 'I'm sorry, I want to go home,' everyone will say that" (2024). This is consistent with the literature about how individuals conform to the acts of others when in a group. Psychological research speaks to the existence of a "cue" that directs people how to behave. Individuals are more likely to look for a cue when they are confused. In this complex and confusing mass hearing setting, that cue might then be how the first person, in a similar position to the rest of the defendants, behaves.

Not only do my interview results suggest that if one defendant responds in the affirmative to the judge's questions in the hearing then everyone else will, but also that if one defendant responds in the negative or uses their voice, then others will too. On this point, Williams tells me, "If one person has the guts to go ahead and speak up and say no, and just start asking questions of the judge, that can empower some of the others to go ahead and do the same thing" (2023). It is possible that a group setting is more empowering and enables others to advocate for themselves. If the first person uses their voice, others could be influenced such that they use their voice too. This, however, is a less common outcome according to my interviews and court observations.

My limited hearing observations offer mixed results. In support of my hypothesis, I found that in a hearing where the first defendant responded to the judge's questions, "Yes ma'am," the others who followed also said, "Yes ma'am." In other hearings where the first defendant to respond said "Yes," the others only answered "Yes" as well. In refutation of my hypothesis, I observed one person speak up at the end of a hearing and share more personal details about their immigration story. No other defendants in that group then used their voices. Figure 8 shows how frequently defendants (I refer to them as "speakers") used their voice in the flip-flop hearings I observed.

Figure 8. Defendant voice utilization in observed hearings.



Asylum Considerations

One goal of this paper is to explore whether the use of mass hearings undermines the ability of an individual with a valid defense or asylum claim to raise such a defense or

claim. This is important, given the United States' international obligations to accept asylum seekers. My research finds mixed results. Some public defenders view the asylum and criminal law processes as completely divorced from one another, while others articulate the roles that they can play to support a client's potential asylum claim and further describe how Operation Streamline undermines the ability of migrants to advance such a claim (Angeles 2024; Davis 2024; Sands 2024; Williams 2023). On the latter point, Davis tells me that the "quick and abbreviated manner" of Operation Streamline deters people from pressing their asylum claims (2024).

Importantly, asylum claims cannot be directly addressed in criminal court. Asylum is dealt with in an entirely different, immigration-focused bureaucracy. Rocha clearly explains, "If a person entered the country because Peru is going through civil instability, and they do so without inspection, that is not a defense to the crime" (2023). If a migrant thinks they might have a valid asylum claim, they must navigate legal channels to properly seek legal authorization to stay in the U.S. If they enter unlawfully, they are still eligible for prosecution for the crime of unlawful entry. This distinction leads some of my interviewees to argue that the Streamline system has no bearing on asylum opportunities (Del Rio 2024; Rocha 2023; Rau 2023).

Still, other public defenders raise that it is meaningful for a client to be able to voice an asylum claim in the criminal setting. Sands reports that changes can be made to the plea agreement to preserve the option for asylum. He says, "I tell [my client with a potential asylum claim], 'don't agree to be deported. Raise your hand.' You also look at

the plea agreement and make sure it doesn't say we agree to be removed. Go to the government and say, 'We are not agreeing to that.' The government says, 'Fine we'll take it out, but you'll serve another 15 days.' We say, 'Fine, 15 days to preserve the claim'" (2024). It seems, then, that sufficient time with an attorney and utilization of voice could be vital to ensuring the migrant who may have a credible asylum claim is not immediately deported and appropriate changes are made to the plea agreement. Angeles also argues that even though these hearings not taking place in immigration court, the details of a client's immigration story are relevant (2024).

The contrasting answers I received from publics defenders suggests this topic is one that lacks clarity even among legal experts. Questions about how mass hearings affect asylum claims are unsettled. Importantly, if there is confusion among lawyers as to what asylum opportunities are afforded to their clients, it is reasonable to assume defendants are even more confused about what opportunities they have in the American criminal system.

Asylum concerns were present in one of the hearings I observed in Tucson. In one of the flip-flop hearings, a group of nine people was called forward by the judge. Before sentencing, the judge asked the defendants' lawyers if they had anything to say. Normally, the lawyers respond "No" in unison, but in this instance, two brought asylum claims forward for their clients. A total of three claims were to be put on the record. I find it interesting that of the five other groups I observed, no asylum claims were raised. One public defender in the last group told the judge that his client's U visa (visa for victims of

criminal activity) application has been pending for five years. While the judge could not directly do anything about this, the lawyers exercise voice on behalf of one-third of the defendants in this particular group.

The court watchers I interviewed argue that Operation Streamline jeopardizes opportunities for potential asylees. According to Carlson, "This fast, streamlined process does potentially deny not only people's voice but people's rights to access asylum. And this was this is a lot of it has to do with these systems, asylum being in one system and prosecution being in another. And the opportunities for these systems not to talk to each other" (2023). She describes how if someone is an asylum seeker, they are told to speak up once they are back in the custody of ICE. However, migrants do not always know whose custody they are in given the "shuffle" and confusion inherent to the process. Even if they speak up at the right moment, it could get lost in all the paperwork and chaos of the system.

Other studies that interview migrants substantiate the argument that the quick and complex nature of Streamline jeopardizes an asylum claim. Researchers find that Border Patrol agents may not be advising apprehended immigrants on how to exercise their rights to ensure those with valid asylum claims are not returned to their home country (Corradini et al. 2018; NIJC 2020). 90% of migrants interviewed said that the CBP never asked them questions about whether they were afraid to return to their home countries or would face persecution upon doing so (NIJC 2020). If the answer to these questions is yes, then the individual is supposed to be referred to an asylum officer for a

credible fear interview. This informational failure would affect migrants regardless of the mass hearing setting but is magnified in a mass hearing setting because of the challenges the environment creates for valid claims to be resolved. If a Border Patrol agent fails in their earlier obligations to migrants, then the rest of the removal process ought to offer opportunities to rectify previous failures.

Limitations

My research design has several methodological limitations. For one, I do not interview current or former defendants. This is especially a challenge given my paper focuses on the individual defendants in the hearing and how they utilize their voice, but my interview evidence draws from a different group of people. However, criminal defendants are a vulnerable population, and I did not want to risk any harm in this first cut at the study. To best grapple with this challenge, I attended hearings in Tucson, Arizona which offered direct insights into defendant self-advocacy. It is important to not exclusively rely on third parties who may have a personal agenda through which they understand how a vulnerable group behaves in a high-pressure setting. Observing hearings allowed me to confirm what I heard from public defenders and court observers.

Another challenge is generalizing the perspectives of public defenders from certain districts to all districts along the southern border. Operation Streamline was adopted in different years in the different districts, and the program's details were negotiated at the district level, contributing to variations in processes (Williams 2023; Rau 2023). To address this concern, I interviewed public defenders in multiple districts,

asking them the same questions to get a sense of the similarities and differences in their Streamline processes. Specifically, I spoke with public defenders who have worked in the Southern District of California, the Southern District of Texas, the Western District of Texas, and both the Tucson and Yuma divisions of the District of Arizona. This variety offers a range of perspectives and experiences.

One of the more considerable limitations in conducting my first-hand research is the hearings I observed in Tucson are not Operation Streamline hearings, but rather flip-flops. Instead of 80 or more defendants processed at once, there are around 20 per hearing. Instead of prosecuting migrants accused of unlawful entry and unlawful reentry, most of the cases are unlawful reentry cases where the government dismisses the felony charge and prosecutes the defendant on the misdemeanor. In many ways, this is a much better system for the migrants who are guilty of illegal reentry, given the felony is dropped and they receive comparatively less harsh penalties (Tucker 2024; Del Rio 2023). Still, a lot of the mechanics and structure of the hearings are the same for Operation Streamline hearings and flip-flops. The lawyers who participated and judges who presided over the hearings generally remain the same as well. Given their similarities, flip-flops can certainly offer insights into how individuals behave in a group setting.

Another limitation of the court observation component of my research design is that I cannot generalize my observations from court watching. I was only able to watch three days of hearings. There was one hearing scheduled per day. Of course, given this

small number, I cannot draw any broader conclusions from my first-hand experiences alone. It could be that the judge who presided over the hearings during the week I observed behaves differently than other judges typically behave. Perhaps there were fewer or more defendants in the hearings than normal. However, the other component of my research design, interviews with public defenders and court watchers, helps address this challenge. I spoke with people who (combined) have been in thousands of mass hearings. From this, I can discern the extent to which what I observed is typical of mass hearings and evaluate what occurred throughout Operation Streamline. Future research would benefit from observing and comparing a greater number of hearings.

With all these limitations in mind, my study still offers new insights. By using both interviews and first-hand observations, I can more comprehensively evaluate the effect of mass hearings on defendants' ability to utilize their voices. Most of the public defenders I interviewed have worked in their positions as a federal public defender for several years. Many have even worked in their current job for several decades. They experienced pre-Streamline conditions, served clients at the height of the mass hearings, and now represent defendants in flip-flop hearings. The public defenders' extensive experience and consequent comparative perspective make their interview insights uniquely useful.

Future Research

There are several avenues for future research on the use of mass hearings in criminal immigration proceedings. In the context of how mass hearings affect migrant voices, it could be useful to further consider how lawyers can be vehicles for a voice for

defendants. In one of my later interviews, Sands tells me, "I always say, 'Judge, my client came here because of poverty. What he did was illegal, but it wasn't immoral. He came here to make a better life for himself. He realizes what he did was wrong. However, he did this to help his family.' I'm doing that not for the judge, but I'm doing that for my client. That's part of a voice too. You try to give him some dignity and respect" (2024). In the hearings I observed, the judge allowed the lawyers to address whether they believed their client was in a proper emotional state and made their plea voluntarily. Lawyers were also asked if they had anything to say before their clients' sentencing. A lawyer who speaks up could be exercising voice on behalf of their client. It is unclear, though, how this vehicle for voice would affect perceptions of procedural fairness and benefit due process rights.

Relatedly, it would be worthwhile to further explore the social pressure to conform not only among the defendants but also in the context of the lawyers. Carlson, a frequent court observer, reports that there is a social contagion effect that can also happen with the lawyers themselves (2023). Sands, a public defender himself, agrees that lawyers can feel a sort of peer pressure to use their voice (2024). Based on my observations, the judge presented the lawyers with the opportunity to speak in defense of their clients just as much as the defendants were provided the chance to speak for themselves. When the judge asked the lawyers if they had anything to say before sentencing, in five of the six groups I observed, all the lawyers responded "No," in unison, except for the sixth group where two lawyers brought up three asylum claims.

Finally, it seems some districts have only used mass hearings in immigration cases, whereas others have utilized mass proceedings in various criminal cases. A public defender in Tucson tells me that the District of Arizona only uses mass hearings for immigration-related offenses (Tucker 2024). In contrast, a public defender from the Southern District of California reports that the district uses mass proceedings in other criminal cases given high volumes of defendants (Angeles 2024). It would be interesting to compare mass hearings where the defendants are not immigrants to see the extent to which the percentage of guilty pleas change and how much more or less defendants use their voice. It could be that the challenges offered by mass hearings are most acute when the defendants are not familiar with the legal system and want to go back to their home country as soon as possible.

VI. Conclusion

My research seeks to address whether the number of individuals being heard in the same hearing affects the ability of individuals to effectively utilize their voice in the courtroom. This paper evaluates this question in the context of criminal immigration hearings. To "utilize voice" refers to requesting more time with an attorney, pleading innocence, countering the answers of others, attempting to explain one's immigration story, seeking to establish an asylum claim on the record, or speaking prior to sentencing. To understand the relationship between larger hearing sizes and voice utilization, I forward a comprehensive research design that collects information from

interviews with federal public defenders and court watchers, as well as first-hand observations of criminal immigration proceedings in Tucson, Arizona. My research bridges the existing literature on mass hearings with social-psychological explanations of individual behavior in group settings to establish new theoretical mechanisms.

I find general support for my hypotheses but also learn about other factors that complicate the relationships I predict. There is certainly evidence from my interviews for H1, that as the number of individuals being heard simultaneously increases, a defendant's time with an attorney, and thus their knowledge of American legal processes, decreases. Many public defenders report that they receive less time with their clients given large group numbers (Rau 2023; Del Rio 2024), describe the inherent complexities of the criminal immigration system that contribute to the confusion of migrants (Rocha 2023; Williams 2023), and emphasize the lack of time they receive with their clients being a factor that contributes to poor knowledge of the American legal system and greater recidivism rates (Rocha 2023). However, some public defenders find there is enough time to explain everything to their clients in this system (Rau 2023; Sands 2024). The attorneys I interview explain that strong incentives to plead guilty, such as getting home as quickly as possible, can override all other considerations for defendants. The differences among districts may be relevant for evaluating this hypothesis, given public defenders in Texas had significantly less time with their clients than those in California and Arizona (Rau 2023; Del Rio 2024).

My findings indicate that the Streamline system creates major challenges for effective client-attorney relationships. While no court has ever determined the legality of the limited time with attorneys afforded to Streamline defendants, there have been cases that generally regard ineffective assistance of counsel. The Sixth Amendment of the U.S. Constitution guarantees the right to the "assistance of counsel" in one's defense (U.S. Const. amend VI). Several decades ago, the Louisiana Supreme Court found that if an attorney is experiencing an excessive caseload and thus providing insufficient support, defendants "are generally not provided with the effective assistance of counsel that the constitution requires" (Calogero 1993). Effective assistance of counsel means "the lawyer not only possesses adequate skill and knowledge but also that he has the time and resources to apply his skill and knowledge to the task of defending each of his individual clients" (Calogero 1993). Mass hearings could jeopardize a lawyer's ability to devote necessary time and resources to their client's defense because they have such limited time with each defendant (Williams 2008). This could then make it difficult to address defendant confusion and improve their knowledge about the system they are navigating (Angeles 2024).

I find less support for H2, that defendants who are less knowledgeable of American legal processes utilize their voice before and during the hearing less than more knowledgeable defendants. This hypothesis is the most difficult to test given absent interviewing defendants, others are unsure what the defendant's knowledge levels are and what motivates their use of voice. Importantly, other factors, such as severe distress,

the behavior of the judge presiding over the hearing, and voice utilization pre-hearing could affect whether a defendant uses their voice in the courtroom (Davis 2024; Schumacher 2023; Leslie 2023; Sands 2024). Still, I find some support for this hypothesis. My court observations point to minimal use of voice and public defenders attribute the similarities in defendant's responses to a poor understanding of the Streamline system (Williams 2023; Rocha 2023).

I find support for H3, that when multiple individuals are in the same hearing, a defendant experiences a stronger social pressure to conform to the responses (or lack thereof) of the other individuals in the hearing. This moderates the relationship between knowledge and voice. Consistent with the social-psychological literature about individual behavior in group settings, public defenders report that there is a group emphasis, where their clients do not want to diverge from the answers of others and interrupt the flow of the quick mass hearing (Williams 2023). One lawyer even suggests that if defendants were in an individualized setting, they would be able to use their voices more (Tucker 2024). This finding is important for law and policy considerations about the efficacy of mass hearings relative to more individualized hearings.

I find mixed support for H4, that when individuals are in a mass hearing, either several people use their voices or very few. Multiple public defenders report that the answers and voice utilization of defendants can in large part depend on the responses and behavior of the first defendant to be asked questions by the judge. They notice that if the defendant is quiet and only answers with a yes, the other defendants will respond and

behave similarly (Sands 2024; Tucker 2024). If, however, some defendants speak up, others might be empowered to use their voices as well (Williams 2023). My limited hearing observations provide some examples in support of my hypothesis, where individual behavior mirrored that of other defendants in the hearing. However, my observations also afford some examples in refutation of my hypothesis, where one or two individuals behaved differently which did not prompt changes in the behavior of others. This hypothesis could be more comprehensively examined with data from thousands of hearings.

Several of my hypotheses are admittedly difficult to test. There is no obvious way to prove the counterfactual that if someone was in a hearing alone, they would have offered a different answer to a judge's question or used their voice more than when they were in the mass hearing setting. There is also no accessible method to test the knowledge level of defendants and attribute poor understandings to the limited time they receive with an attorney or to connect their poor voice utilization to that poor knowledge. However, upon interviewing a dozen individuals who have combined been in thousands of hearings and after confirming some of their insights by attending court hearings myself, I am confident that there are valid concerns related to the relationship between the rising number of individuals in a hearing and their ability to effectively exercise their voice in the courtroom.

Although the goal of this paper is not to offer an alternative to Operation Streamline or policy recommendations, my research makes clear that more

individualized hearings and time with an attorney could enable greater voice utilization in the courtroom. This could be achieved in a manner consistent with the government's stated goals if more resources are allocated to the different actors involved with these processes. California's pre-Streamline system and the current flip-flop proceedings also offer different approaches to prosecuting unlawful entry and reentry cases. Both save prosecutorial resources for what they consider to be more serious offenses. They prosecute individuals accused of unlawful reentry or attempting to smuggle someone into the U.S. People found to be entering unlawfully but have no criminal history are deported instead of prosecuted. The DOJ could also direct the U.S. Attorneys to avoid pursuing criminal charges against individuals seeking to apply for asylum or against other vulnerable groups, such as the elderly (ACLU 2013).

Defense attorneys and judges in the Southern District of California successfully adopted changes within the Streamline processes that offer more opportunities for defendant voice utilization. A couple of months after Operation Streamline's initial roll-out, the Court suspended same-day pleas. Diverging from the practices of Texas and Arizona, guilty pleas could no longer be given on the same day as an individual first appearance in court. This change (also found in current flip-flop practice) intends to give defendants more time to consider potential defenses (Rivlin-Nadler 2018). Moreover, of great relevance to the differences in California Streamline procedures, public defenders were able to get their clients released from custody before their trials (Davis 2024; Angeles 2024). As my interviews indicate, many defendants plead guilty because they do

not want to spend more time detained. However, if they are able to be released on bond, the incentive to immediately plead guilty is reduced. Judges typically set bonds with a financial component, so to help migrants awaiting their proceedings, the Bail Project and the Federal Defenders of San Diego assisted people in paying their bond (Srikrishnan 2018).

Jon Sands, a Federal Public Defender in Tucson, Arizona, describes the mass hearing setting as a "theater," where the roles and outcomes are pre-determined (2024). Walking into the special proceeding's courtroom in Tucson, I understood what he meant. I saw two rows of defendants lined up in orange jumpsuits with shackles around their wrists and translation devices around their neck. The prosecutors were in a corner hunched over their laptops in nice suits. The public defenders chatted amongst themselves or briefly with their clients. We rose when the judge entered and watched as she sentenced everyone within the course of an hour. Everything happened quickly, with little deviation from the script recited by the different actors.

Criminal immigration proceedings are high-stakes settings where the use of voice could be of immense value. Plea and sentence hearings end with the assignment of severe punishments such as detention time and deportation. What is said or not said in a hearing can have long-term implications for an individual's immigration and criminal future. Importantly, an individual may have a valid asylum claim that falls through the cracks in the mass hearing process. Issues with raising a valid asylum claim are, of course, not limited to mass court procedures but compounded by the confusing and

quick nature of Streamline proceedings, making it more difficult for someone to speak up. As Angeles tells me, "Judges wanted this to be a systematic, assembly line system of justice where they kept people moving and didn't want to come to terms with the individuals that made up that assembly line" (2024).

Even if the use of voice does not tangibly change the outcome of someone's hearing, the inability to use voice and perceived lack of control over the process undermines conceptions of fairness (Thibaut & Walker 1975; Lind 1975). Defendants are less likely to accept an outcome if they do not view the process by which the outcome was determined to be procedurally fair. Moreover, voice can create feelings of empowerment and inclusion for historically alienated communities (Pennington & Farrell 2019).

This is all not to suggest that punishment should not be prescribed for individuals in violation of U.S. law, but rather that the process by which that punishment is assigned matters. Some of the United States' most important and valued political and legal documents make a commitment to everyone under the jurisdiction of the U.S. that they will be provided a fair opportunity to make their case when they are accused of a crime. Many people accused of a crime encounter a system where this commitment is made meaningful by the fact that they are provided with a lawyer who takes the time to understand the details of their case and advocate for their client. It is further made meaningful by a judge who upholds their commitment to a fair hearing or trial and evaluates all the evidence before them. Complexities of the system are clearly stated, and all the defendant's questions have been asked and answered.

However, in the context of Operation Streamline and flip-flop hearings, the due process expectations of the American legal system are undermined. The need for speed hamstrings the amount of time allotted to attorney-client meetings and rushes judges who preside over the hearing. The mass nature of the proceedings might induce social pressures to conform among defendants, which would otherwise be absent from an individual hearing. While American legal culture purports to value due process given its centuries-old tradition of rights for the criminally accused, this crucial feature of our system is sorely missing from the criminal immigration system.

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VIII. Appendices

Appendix A

January 30, 9:30 am Plea and Sentence Hearing

Hearing Group 1	Affirms Competence (Y/N)	Affirms Voluntary Plea (Y/N)	Understands Rights Giving Up (Y/N)	Understands Plea Agreement (Y/N)	Affirms Correct Charge (Y/N)	Other Use of Voice (Y/N)
Defendant 1	Y	Y	Y	Y	Y	N
Defendant 2	Y	Y	Y	Y	Y	N
Defendant 3	Y	Y	Y	Y	Y	N
Defendant 4	Y	Y	Y	Y	Y	N
Defendant 5	Y	Y	Y	Y	Y	N
Defendant 6	Y	Y	Y	Y	Y	N
Defendant 7	Y	Y	Y	Y	Y	N
Defendant 8	Y	Y	Y	Y	Y	N
Defendant 9	Y	Y	Y	Y	Y	N

Hearing Group 2	Affirms Competence (Y/N)	Affirms Voluntary Plea (Y/N)	Understands Rights Giving Up (Y/N)	Understands Plea Agreement (Y/N)	Affirms Correct Charge (Y/N)	Other Use of Voice (Y/N)

Defendant 1	Y	Y	Y	Y	Y	Y
Defendant 2	Y	Y	Y	Y	Y	N
Defendant 3	Y	Y	Y	Y	Y	N
Defendant 4	Y	Y	Y	Y	Y	N
Defendant 5	Y	Y	Y	Y	Y	N
Defendant 6	Y	Y	Y	Y	Y	N
Defendant 7	Y	Y	Y	Y	Y	N
Defendant 8	Y	Y	Y	Y	Y	N
Defendant 9	Y	Y	Y	Y	Y	N

January 31, 9:30 am Plea and Sentence Hearing

Hearing Group 1	Affirms Competence (Y/N)	Affirms Voluntary Plea (Y/N)	Understands Rights Giving Up (Y/N)	Understands Plea Agreement (Y/N)	Affirms Correct Charge (Y/N)	Other Use of Voice (Y/N)
Defendant 1	Y	Y	Y	Y	Y	N
Defendant 2	Y	Y	Y	Y	Y	N
Defendant 3	Y	Y	Y	Y	Y	N

Defendant 4	Y	Y	Y	Y	Y	N
Defendant 5	Y	Y	Y	Y	Y	N
Defendant 6	Y	Y	Y	Y	Y	N
Defendant 7	Y	Y	Y	Y	Y	N
Defendant 8	Y	Y	Y	Y	Y	N
Defendant 9	Y	Y	Y	Y	Y	N
Defendant 10	Y	Y	Y	Y	Y	N

Hearing Group 2	Affirms Competence (Y/N)	Affirms Voluntary Plea (Y/N)	Understands Rights Giving Up (Y/N)	Understands Plea Agreement (Y/N)	Affirms Correct Charge (Y/N)	Other Use of Voice (Y/N)
Defendant 1	Y	Y	Y	Y	Y	N
Defendant 2	Y	Y	Y	Y	Y	N
Defendant 3	Y	Y	Y	Y	Y	N
Defendant 4	Y	Y	Y	Y	Y	N
Defendant 5	Y	Y	Y	Y	Y	N
Defendant 6	Y	Y	Y	Y	Y	N

Defendant 7	Y	Y	Y	Y	Y	N
Defendant 8	Y	Y	Y	Y	Y	N
Defendant 9	Y	Y	Y	Y	Y	N
Defendant 10	Y	Y	Y	Y	Y	N

February 1, 9:30 am Plea and Sentence Hearing

Hearing Group 1	Affirms Competence (Y/N)	Affirms Voluntary Plea (Y/N)	Understands Rights Giving Up (Y/N)	Understands Plea Agreement (Y/N)	Affirms Correct Charge (Y/N)	Other Use of Voice (Y/N)
Defendant 1	Y	Y	Y	Y	Y	N
Defendant 2	Y	Y	Y	Y	Y	N
Defendant 3	Y	Y	Y	Y	Y	N
Defendant 4	Y	Y	Y	Y	Y	N
Defendant 5	Y	Y	Y	Y	Y	N
Defendant 6	Y	Y	Y	Y	Y	N
Defendant 7	Y	Y	Y	Y	Y	N
Defendant 8	Y	Y	Y	Y	Y	N

Defendant 9	Y	Y	Y	Y	Y	N
Defendant 10	Y	Y	Y	Y	Y	N

Hearing Group 2	Affirms Competence (Y/N)	Affirms Voluntary Plea (Y/N)	Understands Rights Giving Up (Y/N)	Understands Plea Agreement (Y/N)	Affirms Correct Charge (Y/N)	Other Use of Voice (Y/N)
Defendant 1	Y	Y	Y	Y	Y	Y
Defendant 2	Y	Y	Y	Y	Y	Y
Defendant 3	Y	Y	Y	Y	Y	N
Defendant 4	Y	Y	Y	Y	Y	N
Defendant 5	Y	Y	Y	Y	Y	N
Defendant 6	Y	Y	Y	Y	Y	N
Defendant 7	Y	Y	Y	Y	Y	N
Defendant 8	Y	Y	Y	Y	Y	N
Defendant 9	Y	Y	Y	Y	Y	Y

Appendix B

Emory University
Electronic Consent

For a Research Study

Title: Prosecuting the Persecuted? The Use of Mass Hearings in Operation Streamline

IRB #: 00007072
Principal Investigator: Grace Kessler
Faculty Advisor: Jeffrey Staton

Introduction and Study Overview

Thank you for your participation in our research study. We would like to tell you what you need to think about before you choose whether or not to join the study. It is your choice. If you choose to join, you can change your mind later on and leave the study.

The purpose of this study is to determine whether mass hearings undermine an individual's ability to use their voice. The study is funded by Emory University's Department of Political Science. This study will take about 30 minutes to complete.

If you join, you will be asked to answer a few questions about your experience with Operation Streamline and mass trials of immigrants.

Risks to participants might include social costs of speaking against a government program while working for the government, the loss of privacy or breach of confidentiality for participants who wish to remain anonymous, psychological discomfort when recalling difficult situations, and inconveniencing participants by taking up their time that could be otherwise devoted to their work or personal matters.

Data will be banked for possible future use, but it will be done in a secure manner that removes identity cues upon request.

You may not benefit from joining the study. This study is designed to learn more about Operation Streamline and the implications of mass trials on the voice utilization of defendants. The study results may be used to help others in the future.

Confidentiality

Certain offices and people other than the researchers may look at study records. Government agencies and Emory employees overseeing proper study conduct may look at your study records. These offices include the Office for Human Research Protections, the Emory Department of Political Science, the Emory Institutional Review Board, the Emory Office of Compliance. Study funders may also look at your study records. Emory

will keep any research records we create private to the extent we are required to do so by law. A study number rather than your name will be used on study records wherever possible. Your name and other facts that might point to you will not appear when we present this study or publish its results.

People Who will Use/Disclose Your Information:

The following people and groups will use and disclose your information in connection with the research study:

- The Principal Investigator and research staff will use your information to ask questions to help conduct the study.

The following people and groups will use your information to make sure the research is done correctly and safely:

- Emory offices that are part of the Human Research Participant Protection Program and those that are involved in study administration and billing. These include the Emory IRB, the Emory Department of Political Science, and the Emory Office for Clinical Research.
- Research monitors and reviewer.
- Accreditation agencies.
- Sometimes a Principal Investigator or other researcher moves to a different institution. If this happens, your information may be shared with that new institution and their oversight offices. Information will be shared securely and under a legal agreement to ensure it continues to be used under the terms of this consent.

Storing and Sharing your Information

Interviews may be recorded, unless participants request otherwise. We will store all the data that you provide using a code. We need this code so that we can keep track of your data over time. This code will not include information that can identify you (identifiers). Specifically, it will not include your name or initials. We will keep a file that links this code to your identifiers in a secure location separate from the data. All data will be stored in a password protected Dropbox.

We will not allow your name and any other fact that might point to you to appear when we present or publish the results of this study, unless you don't want to remain anonymous. We may share the data, linked by the study code, with other researchers at Emory. We will not share the link between the study code and your identity.

Contact Information

If you have questions about the study procedures, questions, or concerns about the research or your part in it, contact Grace Kessler at (785) 250-1250.

This study has been reviewed by an ethics committee to ensure the protection of research participants. If you have questions about your rights as a research participant, or if you have complaints about the research or an issue you would rather discuss with someone outside the research team, contact the Emory Institutional Review Board at 404-712-0720 or 877-503-9797 or irb@emory.edu.

To tell the IRB about your experience as a research participant, fill out the Research Participant Survey at
https://tinyurl.com/ycewgkke.

Consent

Do you have any questions? Were there any parts that seemed unclear? Do you agree to take part in the study?
Participant agrees to participate: Yes No

If Yes:

_____
Name of Participant

_____ _____
Signature of Participant Date Time

_____ _____
Signature of Person Conducting Informed Consent Discussion Date Time

_____
Name of Person Conducting Informed Consent Discussion