

The Long Arm of Liminal Immigration Laws

Cecilia Menjivar*

ABSTRACT: Stumpf and Manning’s Article, Liminal Immigration Law, explains the origin, mechanisms, and persistence of liminal laws in three cases they analyze: DACA, immigration detainers, and administrative closure. Their analysis unearths key similarities across these cases: the “stickiness” and robustness of liminal rules, their transitory nature, and their flexibility in contrast to the inflexibility of traditional law. This Essay expands Stumpf and Manning’s analysis by considering social science scholarship on the legal production of legal statuses. It examines the liminal case of Temporary Protected Status to capture the effects of liminality on the ground for individuals and families, the power of liminal rules as an instrument of immigration control and governance, and the key role of racialization practices in the creation, interpretation, and implementation of liminal rules. The conceptual extension in this Essay exemplifies how the analytic lens that Stumpf and Manning propose will prove generative for legal, sociolegal, and social science scholarship more generally.

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INTRODUCTION

Through an in-depth, thorough, excellent examination of liminal law, Juliet P. Stumpf and Stephen Manning reveal the potency and enduring power of the seemingly temporary legal mechanisms that produce liminal

legality¹ in immigrants' lives.² Relying on three distinct examples of liminal rules, the authors explain the origin, mechanisms, and persistence of liminal laws to unearth key similarities across the examples they analyze. Stumpf and Manning's careful conceptualization has immense generative potential for our understanding of liminal rules and liminal statuses, especially as liminal rules have become increasingly common tools of immigration control. In the United States, these statuses have multiplied as mechanisms to fulfill temporary labor needs through a regular channel.³ Temporary statuses also have expanded significantly as a critical tool to control massive displacements and to extend limited, temporary protection to persons seeking asylum protection in the United States⁴ and other immigrant-receiving countries around the world today.⁵ Revealing the history, small and big bureaucratic decisions, and the political currents within which liminal rules are created, Stumpf and Manning propose novel thinking in sociolegal studies with strong resonance to social sciences in general. With this Article, the authors contribute a key examination poised to inform future sociolegal and social science research on immigration.

Today, hundreds of thousands of immigrants live in in-between legality, more than ever before.⁶ Like Stumpf and Manning rightly observe, "liminal

* Distinguished Professor of Sociology and Dorothy L. Meier Social Equities Chair, University of California-Los Angeles.

1. See generally Cecilia Menjivar, *Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States*, 111 AM. J. SOCIO. 999 (2006) [hereinafter Menjivar, *Liminal Legality*] (exposing the legal gray areas into which many immigrants are classified).

2. See generally Juliet P. Stumpf & Stephen Manning, *Liminal Immigration Law*, 108 IOWA L. REV. 1531 (2023) (highlighting the existence of liminal immigration laws).

3. Examples in this area abound. For instance, although the H-2B visa program already existed in the United States, it is now being used to bring in a wider range of labor for different sectors, such as crab processing. See Thurka Sangaramoorthy, *Liminal Living: Everyday Injury, Disability, and Instability among Migrant Mexican Women in Maryland's Seafood Industry*, 33 MED. ANTHROPOLOGY Q. 557, 557-59 (2019). Similar programs also exist in other parts of the world, such as Zimbabwe, Colombia, Ireland, Tajikistan, and Turkey. See Zvikomborero Maziyanhanga & Mandisi Majavu, *A Critical Review of the Zimbabwe Special Temporary Residence Permits, 2010-2021*, 50 S. AFRICAN J. POL. STUD. 288, 288-89 (2023); Deisy Del Real, *Seemingly Inclusive Liminal Legality: The Fragility and Illegality Production of Colombia's Legalization Programmes for Venezuelan Migrants*, 48 J. ETHNIC & MIGRATION STUD. 3580, 3580 (2022); Fathi Mastoureh, *'My Life is on Hold': Examining Home, Belonging and Temporality Among Migrant Men in Ireland*, 29 GENDER, PLACE & CULTURE 1097, 1101-03 (2022); Diana Ibañez Tirado, *'We Sit and Wait': Migration, Mobility and Temporality in Guliston, Southern Tajikistan*, 67 CURRENT SOCIO. 315, 321-25 (2019).

4. See generally Alisa Hartsell & Sarah A. Blue, *Legal Bordering of Asylum Through Liminality*, POL. GEOGRAPHY, Oct. 2023 (discussing efforts to maintain large numbers of Central American asylum seekers in legal limbo and precarity).

5. See generally ANNIKA LINDBERG, DEPORTATION LIMBO: STATE VIOLENCE AND CONTESTATIONS IN THE NORDICS (R. A. W. Rhodes & Nina Holm Vohnsen ed., 2022) (discussing the legal limbo created in Nordic countries to reconfigure state power over a perceived loss of control).

6. See Muzaffar Chishti and Kathleen Bush-Joseph, *In the Twilight Zone: Record Number of U.S. Immigrants Are in Limbo Statuses*, MIGRATION POL'Y INST. (Aug. 2, 2023), <https://www.migrationpolicy.org/article/twilight-immigration-status> [https://perma.cc/9R9C-UWFC].

rules have powerfully shaped our current immigration landscape.⁷ As immigrant-receiving countries have created more liminal statuses as mechanisms to control immigration,⁸ an ever-increasing number of immigrants are being classified into liminal statuses. And as more individuals are classified into these statuses and the threats to end these protections increase,⁹ scholarly attention to liminal statuses has grown significantly in recent years.¹⁰ Thus, as Stumpf and Manning observe, “[l]iminality in immigration law is at the cutting edge of the new functionalism in immigration scholarship.”¹¹ Hence, more scholars today have turned their attention to the wide range of liminal statuses and their impact on immigrants’ lives.¹²

For instance, when I started pondering the distinct condition in which thousands of Central American immigrants found themselves in the 1990s—not quite “undocumented” but also not documented and instead residing somewhere in between—their statuses were not well known or understood. I based my conceptualization of liminal legality¹³ on the legal limbo in which Guatemalans and Salvadorans lived given the temporariness of their legal predicament that came from Temporary Protected Status (“TPS”) and from the long and uncertain waiting times for adjudication of their applications for regularization through other paths.¹⁴ In my thinking, I emphasized the long-term uncertainty that liminal legality generates, which is distinct from being undocumented.¹⁵ “It is not simply an undocumented status that matters theoretically and analytically,” I argued, “but the . . . *uncertainty inherent in these immigrants’ legal status.*”¹⁶

Except for the liminal statuses that have received increasing public and media attention in the past few years (especially during and after the Trump administration), such as TPS and Deferred Action for Childhood Arrivals

7. Stumpf & Manning, *supra* note 2, at 1531.

8. See Stumpf & Manning, *supra* note 2, at 1532 (observing that “[l]iminal immigration rules—potent mandates that are poised between formal law and informal norms—are central to many of the most impactful developments in immigration law in the last several decades”).

9. See SARAH PIERCE, JESSICA BOLTER & ANDREW SELEE, TRANSATLANTIC COUNCIL ON MIGRATION, U.S. IMMIGRATION POLICY UNDER TRUMP: DEEP CHANGES AND LASTING IMPACTS 2 (2018).

10. See, e.g., Deferred Action for Childhood Arrivals, 8 C.F.R. §§ 106, 236, 274(a) (2018); Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (1990).

11. Stumpf & Manning, *supra* note 2, at 1535.

12. See, e.g., Nina Rabin, *Legal Limbo as Subordination: Immigrants, Caste, and the Precarity of Liminal Status in the Trump Era*, 35 GEO. IMMIGR. L.J. 567, 577 (2021) (conceptualizing legal statuses today along a continuum, as a “spectrum of precarity”).

13. See Menjívar, *Liminal Legality*, *supra* note 1, at 1000.

14. Applications for family reunification, asylum, or relief through the Nicaraguan Adjustment and Central American Relief Act would take years to be reviewed, meaning years of legal limbo for these applicants.

15. See CECILIA MENJÍVAR, TEMPORARY PROTECTED STATUS FOR CENTRAL AMERICAN IMMIGRANTS: ADVANCING IMMIGRANT INTEGRATION DESPITE ITS UNCERTAINTY 2 (2020).

16. See Menjívar, *Liminal Legality*, *supra* note 1, at 1001 (emphasis added).

(“DACA”), many other liminal statuses remain hidden from public recognition (and under the radar of scholarly attention).¹⁷ It is precisely this kind of invisibility that makes individuals living in these statuses more vulnerable to exploitative labor conditions and similar abuses by private actors.¹⁸ Stumpf and Manning’s Article, therefore, is an exceptionally welcome contribution that shines a light on the multiple (and multiplying) liminal rules that exist in the crevices of immigration law as it intersects with criminal law.

Stumpf and Manning examine liminal legal rules by anchoring the analysis on three cases in immigration law. First, they examine “[DACA, the program that] created a form of lawful presence for a class of undocumented noncitizens . . . by establishing a liminal rule.”¹⁹ Second, they turn to “Secure Communities,” the “nationwide practice by Immigration and Customs Enforcement (‘ICE’) agents of issuing immigration ‘detainers’ . . . to prolong [the] custody of targeted arrestees solely for immigration enforcement purposes.”²⁰ Third, and finally, they focus on administrative closure “as a form of relief from removal . . . to stave off deportation . . . [t]hrough . . . the power of an immigration judge to administratively close [an immigration] matter—in the absence of explicit statutory authorization.”²¹ The common thread across these cases is that although individuals in these legal spaces are usually protected from deportation, their lives in the United States are uncertain, and their protection is precarious.²²

This Response proceeds as follows. First, I address a crucial argument about creating the liminal rules as an alternative to established categories of admission because immigrants and asylum seekers today are believed not to fit such formal classifications. Second, Stumpf and Manning’s stimulating discussion invites examination of other liminal rules, which calls for attention to external factors that might factor in the creation of liminal rules. Third, Stumpf and Manning’s conceptualization offers the opportunity to expand the analysis into the effects of liminal rules on the ground, in the families and communities where immigrants in these cases live. Finally, their examination

17. This is the case with the delay created by the backlog of cases in immigration court, where administrative tactics such as case dismissal to address the backlog create “a perpetual state of legal limbo,” which can be understood as part of a historical pattern of denying asylum to Central American asylum seekers. Hartsell & Blue, *supra* note 4, at 1, 8. There are many others, such as Deferred Enforced Departure (“DED”), which also provides temporary relief from removal, as well as the limbo created by the long waits on the backlogs in the application process for any form of permanent relief that can extend for years and include asylum seekers, family- and employment-based visa applications, among others.

18. See Jennifer M. Chacón, *Producing Limited Legality*, 92 DENV. U. L. REV. 709, 730–42 (2015).

19. Stumpf & Manning, *supra* note 2, at 1533.

20. *Id.* at 1534.

21. *Id.*

22. *Id.* at 1533–34.

prompts an expanded conversation about the key role of racialization practices in creating, interpreting, and implementing liminal rules.

I. LIMINAL RULES AS ALTERNATIVES TO ESTABLISHED CATEGORIES OF ADMISSION

Stumpf and Manning start by defining liminal law and explaining its persistence, or “stickiness”²³ over time. They lay out the origins of liminal immigration law, arguing that liminal rules emerge in the context of inflexible traditional laws when pressure for reform grows louder.²⁴ The authors highlight the seeming contradiction of the persistence of these laws despite their temporariness and delineate the characteristics of the liminal rules that structure their cases—DACA, the detainer, and administrative closure—by drawing comparisons with traditional law to underscore what is different in liminal rules. A key feature of liminal law, the authors point out, is that, in contrast to statutory immigration law, liminal law offers flexibility on the ground. However, this flexibility does not mean liminal rules are fragile or easy to eliminate. On the contrary, “liminal rules have powerfully shaped our current immigration landscape.”²⁵ Liminal rules ultimately share three important characteristics: “They are robust, wielding the power of traditional law. Though appearing vulnerable to rescission, they are sticky in that they resist attempts to snuff them out. Finally, liminal rules operate in a state of transition, moving either toward formalization as traditional law, or toward extinction.”²⁶

I would like to center attention for a moment on the flexibility that liminal rules offer because, in my view, this characteristic has contributed to their expansion. The elasticity and rapidity inherent in liminal rules to extend protection to migrants who are believed to be unable to access other legal paths must be examined critically.

Liminal rules may provide flexibility to extend protection when urgently needed, however, they have been designed precisely to preclude permanent protection. Thus, immigrants seen as having no other legal paths to protection except for temporary statuses are in this predicament because the categories of admission (and the rules and regulations that undergird them to determine eligibility) have been designed to block these immigrants from accessing permanent legal paths.²⁷ In a perverse Catch-22, these immigrants

23. *Id.* at 1569.

24. *Id.* at 1537.

25. *Id.* at 1536.

26. *Id.* at 1545.

27. *See generally* REBECCA HAMLIN, *CROSSING: HOW WE LABEL AND REACT TO PEOPLE ON THE MOVE* (2021) (explaining how immigration categories have been designed to make it nearly impossible for most migrants seeking protection to access legal channels); DAVID SCOTT FITZGERALD, *REFUGEE BEYOND REACH: HOW RICH DEMOCRACIES REPEL ASYLUM SEEKERS* (2019) (explaining the same). For instance, as inscribed in the Act that created it, TPS does not (and cannot) provide a path to lawful permanent residence; thus, by design, TPS holders remain in legal limbo. Individuals outside the United States are not eligible to apply for TPS; by design, they

are then classified as undeserving of formal and more secure protection because they do not meet the criteria devised to block them; they are thus constructed as having no other path to status regularization. It is not, therefore, that these immigrants have no other recourse; it is that the existing categories of admission are narrow by design, based on standards that unwanted immigrants will never be able to meet. The routine usage of such standards to categorize whom to admit naturalizes blocking access to more secure legal paths, making certain immigrants look seemingly ineligible to fit existing categories of admission.²⁸ This normalization, therefore, *creates* the legal fiction that certain immigrants simply do not fit established categories of admission.

II. LIMINAL LEGAL RULES AND TEMPORARY PROTECTED STATUS

I underscore the significant analytical reach of Stumpf and Manning's conceptualization by examining another emblematic case of liminal legal rules, which reminds us that liminal rules are omnipresent as forms of immigration control today. Following their generative thinking, I extend their configuration of liminal legal rules to briefly discuss TPS. Applying the authors' conceptualization to another liminal legal case allows for consideration of some external factors that may impinge on the creation of liminal legal rules and to examine some of the consequences of their liminality.

TPS was codified into the Immigration and Naturalization Act of 1990 as a category to extend temporary relief from removal when country conditions are unsafe for return, as determined by the Secretary of Homeland Security.²⁹ Nationals of countries designated for TPS can live in the United States and obtain employment authorization for the duration of the designation, usually between six and eighteen months.³⁰ The countries designated for TPS have changed over time, but some emblematic cases, such as El Salvador and Honduras, have been redesignated continuously for over two decades.³¹ TPS, therefore, is granted to an entire class of otherwise deportable immigrants. Individuals from redesignated counties must apply for renewal of their permits by paying a fee and re-registering before their work permits expire. Importantly, as TPS provides only temporary relief, by law, it does not offer a

are excluded from even applying. JILL H. WILSON., CONG. RSCH. SERV., RS20844, TEMPORARY PROTECTED STATUS AND DEFERRED ENFORCED DEPARTURE 3 (2023).

28. See generally Cecilia Menjívar, *2022 Presidential Address: State Categories, Bureaucracies of Displacement, and Possibilities from the Margins*, 88 AM. SOCIO. REV. 1 (2023) (arguing that categories of admission are not neutral, objective, or immutable, but that race, class, and gender ideologies are baked into these classifications to make large swaths of populations ineligible for categories of admission).

29. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

30. 8 U.S.C. § 1254a.

31. As of this writing, there are sixteen countries designated for TPS, comprising close to 700,000. JILL H. WILSON., CONG. RSCH. SERV., RS20844, TEMPORARY PROTECTED STATUS AND DEFERRED ENFORCED DEPARTURE 6 (2023).

path to lawful permanent residence. The Department of Homeland Security may use the information collected from individuals on TPS when they re-register for TPS for renewals.³² This means that people on TPS (as well as their family members) have the benefit of living in the United States with legal permission but with the uncertainty of not knowing if or when the status will end (or how it may end).³³ The result is a mixed, complex, and sometimes contradictory existence that has led scholars to question the benefits of TPS. Being registered for the program provides benefits, but it also “makes migrants more susceptible to visibility and surveillance, constrains their mobility, disciplines their working lives, and subjects them to an indefinite state of temporariness.”³⁴ These aspects of TPS constrain and exclude immigrants, characteristics that similar liminal statuses share.

Arguably, TPS was designed to extend protection to immigrants “who may not meet the legal definition of refugee but are nonetheless fleeing. . .”—or reluctant to return to—“potentially dangerous situations.”³⁵ Given the factors considered for designating a country for TPS, it is difficult to ignore various external forces behind the creation of this protection.³⁶ Although the status is often framed as humanitarian protection, links to foreign policy interests, development aid, and considerations beyond extending protection to those in need have shaped designations of this status since its inception.³⁷ For instance, El Salvador was the first country designated for TPS when this status was created in 1990. During this time, the twelve-year Salvadoran civil

32. *Id.* at 3.

33. See generally Cecilia Menjivar, Victor Agadjanian & Byeondong Oh, *The Contradictions of Liminal Legality: Economic Attainment and Civic Engagement of Central American Immigrants on Temporary Protected Status*, 69 SOCIO. PROBLEMS, 678 (2022) (discussing how living with TPS mirrors the limbo of the law itself. TPS brings benefits to its beneficiaries but because of the limited time of each designation, it does not constitute a path to integration).

34. Miranda Cady Hallet, *Temporary Protection, Enduring Contradiction: The Contested and Contradictory Meanings of Temporary Immigration Status*, 39 LAW & SOCIAL INQUIRY, 621, 622 (2014).

35. RUTH ELLEN WASEM & KARMA ESTER., CONG. RSCH. SERV., RS20844, TEMPORARY PROTECTED STATUS: CURRENT IMMIGRATION POLICY AND ISSUES 2 (2011).

36. See generally Peter C. Diamond, Comment, *Temporary Protected Status Under the Immigration Act of 1990*, 28 WILLAMETTE L. REV., 857 (1992) (discussing the roots of TPS as an attempt to rectify the Immigration and Naturalization Service’s (“INS”) discriminatory adjudications of Salvadoran asylum applicants in the 1980s).

37. The status was established in response to the discrepancy created on the one hand, by the asylum and refugee system and, on the other, the need for protection for Salvadorans fleeing the violence of the civil war in their country. Thus El Salvador was the first country designated for this protection. JILL H. WILSON., CONG. RSCH. SERV., RS20844, TEMPORARY PROTECTED STATUS AND DEFERRED ENFORCED DEPARTURE 4 (2023). Since then, several countries have been designated, redesignated, and undesignated under this statute. *Temporary Protected Status*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> [<https://perma.cc/F3LS-WYHN>]. Usually, countries with strategic importance for U.S. foreign interests with a few designations related to natural disasters. Diana Roy & Claire Kloubucista, *What Is Temporary Protected Status?*, COUNCIL ON FOREIGN RELS. (Sept. 21, 2023, 1:15 PM), <https://www.cfr.org/backgrounder/what-temporary-protected-status> [<https://perma.cc/2KDY-6BPE>]; see Eva Segerblom, *Temporary Protected Status: An Immigration Statute that Redefines Traditional Notions of Status and Temporariness*, 7 NEV. L.J. 664, 655 (2007).

war was raging, but Salvadorans fleeing the violence were not extended asylum protection upon arrival in the United States. Instead, they were classified as “economic migrants” and, because they could not secure a visa to travel from their war-torn country, they were also categorized as undocumented.³⁸ Recognizing these *de facto* refugees with *de jure* recognition would have contradicted U.S. policy in El Salvador as the U.S. government was supporting with exorbitant amounts of foreign and military aid the Salvadoran regime that was creating the violence people were fleeing³⁹ in the quest to fight communism in the Hemisphere.⁴⁰ Considering foreign policy interests and situating a case within the arena of international relations elucidates how liminal statuses fit the argument that while wealthy countries invest significant resources in keeping away most people seeking asylum protection they also dedicate some effort to keeping a semblance of humanitarianism.⁴¹

As TPS has been tied to foreign policy and considerations beyond the provision of humanitarian protection, some economists have argued that TPS, as a tool of immigration control, can be used as a form of foreign aid. For instance, if Honduran and Salvadoran potential migrants (not currently in the United States)⁴² were allowed to apply for TPS from their home countries, they would have access to better-paying jobs in the U.S. labor market, allowing them to earn higher wages to remit to their families.⁴³

An important aspect of liminal statuses such as TPS is that they often do not conform to conventional notions of “temporariness.” For instance, El Salvador and Honduras have been redesignated for TPS fifteen and sixteen times, respectively, eighteen months at a time, essentially indefinitely (or until an administration in Washington halts these redesignations).⁴⁴ The liminal statuses Stumpf and Manning examine share this feature with TPS. Thus, the very meaning of “temporary” in Temporary Protected Status has been questioned.⁴⁵

Importantly, although Stumpf and Manning examine U.S. cases, it is worth remembering that the United States is not alone in creating liminal, precarious statuses; other immigrant-receiving countries worldwide,

38. CECELIA MENJÍVAR, FRAGMENTED TIES: SALVADORAN IMMIGRANT NETWORKS IN AMERICA 6 (2000).

39. *Id.*

40. See generally YAJAIRA M. PADILLA, FROM THREATENING GUERRILLAS TO FOREVER ILLEGALS: US CENTRAL AMERICANS AND THE CULTURAL POLITICS OF NON-BELONGING (2022) (detailing how foreign-policy considerations translate into unwelcome policies and the consequent misclassification of asylum seekers as undocumented immigrants, with serious consequences for these *de facto* refugees' lives).

41. HAMLIN, *supra* note 27, at 21; FITZGERALD, *supra* note 27, at 9–10.

42. TPS applicants must be on U.S. soil to apply for TPS. WILSON, *supra* note 27, at 3.

43. Benjamin Helms & David Leblang, *Labor Market Policy as Immigration Control: The Case of Temporary Protected Status*, INT'L STUD. Q., Sept. 2022, at 2–13.

44. Menjívar, Agadjanian & Oh, *supra* note 33, at 682.

45. Segerblom, *supra* note 37, at 683.

including Turkey, the European Union's Temporary Protection Directive,⁴⁶ Zimbabwe,⁴⁷ Colombia,⁴⁸ and others⁴⁹ have turned to using this legal tool as a form of immigration control. Thus, Stumpf and Manning's conceptualization reaches far beyond the United States to shed light on similar cases around the world today.

III. IMPACTS BEYOND THE SYSTEM AND INSTITUTIONS

Stumpf and Manning detail the inner workings of liminal rules and their impact on the ground within the immigration system and adjacent institutions, such as law enforcement agencies. They also observe that “[l]iminal rules act like formal legal rules, with the strength and vitality to have a substantial effect in the real world.”⁵⁰ And since legal statuses are not created nor exist in a social vacuum, TPS is connected to multiple forces externally and domestically. Like the links between TPS to external forces such as foreign policy considerations, living in liminal statutes has spillover effects beyond the internal system and institutions to affect the lives of immigrants, their families, and communities.

Thus, liminal rules profoundly impact the individuals living in the uncertainty that liminal rules create, their families, and communities. The effects in the real world mirror the key characteristics that Stumpf and Manning identify for liminal legal rules: effects on the ground are durable (or “sticky”) as they persist across time, wield the power of traditional law, and create a sense of living in a state of perpetual transition. This depiction captures how liminal rules are lived on the ground. And just as the liminal rules are precarious, so are the “states of being” and the lives of those whose lives these rules govern.⁵¹

The legal ambiguity of these rules and the liminal statuses they produce are reflected in everyday life contradictions for immigrants who are partially included but simultaneously excluded formally as members of society, especially as workers.⁵² Insecure immigration statuses produce such life-altering consequences in the lives of those who live in this condition that new conceptual categories may be needed to capture these effects, especially as

46. See Marco Scipioni, *Failing Forward in the EU Migration Policy? EU Integration After the 2015 Asylum and Migration Crisis*, 25 *J. Eur. Pub. Pol'y*, 1357, 1358 (2018).

47. See Maziyanhanga & Majavu, *supra* note 3, at 288–89.

48. See Del Real, *supra* note 3, at 3595–3598.

49. See generally JENNIFER HYNDMAN & WENONA MARY GILES, *REFUGEES IN EXTENDED EXILE: LIVING ON THE EDGE* (2017) (examining the effects of the protracted conditions that temporary humanitarian interventions create).

50. Stumpf & Manning, *supra* note 2, at 1558.

51. See *id.* at 1592–94.

52. Miranda Cady Hallett, *Temporary Protection, Enduring Contradiction: The Contested and Contradictory Meanings of Temporary Immigration Status*, 39 *L. & SOC INQUIRY* 621, 621–42 (2014).

insecurity of life emerges in gender dynamics.⁵³ Each new announcement for renewal or the suspense and fear that a delay in an announcement generates reverberates through families and communities where TPS holders live, with each policy shift impacting individuals' identity formation.⁵⁴ The uncertainty of waiting can have profound effects on the individual status holder but also on their family members across generations.⁵⁵ For instance:

A TPS Alliance leader once explained that when his son was born in the United States, he and his wife were advised to open a bank account to save for the boy's college tuition. They inquired whether they could withdraw their savings in case their temporary status ended, but the bank said no, so they did not risk opening the account. The boy is now 18 and college-ready but faces multiple challenges to finance his college education without parental savings.⁵⁶

Similar ripple effects across families and generations may be seen with the liminal rules that Stumpf and Manning examine.

Importantly, liminal statuses are not always legible in the real world, where employers and street-level bureaucrats or gatekeepers across institutions check documents to ascertain eligibility for employment or to receive a social benefit. These individuals are more likely to understand immigrant legal statuses through the binary of undocumented and documented.⁵⁷ In such cases, a liminal status can be mistaken for undocumented. For instance, a Honduran woman at a Phoenix hospital was going to be sent back to Honduras because the hospital personnel could not understand that her TPS documentation authorized her to live in the United States.⁵⁸ Accustomed to thinking in binaries when dealing with immigrants, the hospital personnel could not classify her as "documented" because she could not produce a "green card." The woman was rushed to surgery but went into kidney failure and never regained consciousness. Given her insufficient health insurance and confusing legal status the hospital was going to send her,

53. See generally Alexandria Innes, *Migration, Vulnerability, and Experiences of Insecurity: Conceptualising Insecure Migration Status*, 12 SOC. SCI., Sept. 2023 (arguing that to better understand immigration insecurity and violence, gender dynamics should be considered).

54. Alison Mountz, Richard Wright, Ines Miyares & Adrian J. Bailey, *Lives in Limbo: Temporary Protected Status and Immigrant Identities*, 2 GLOB. NETWORKS, 335, 335-56 (2002).

55. See generally Caitlin Patler, Erin R. Hamilton & Robin L. Savinar, *The Limits of Gaining Rights While Remaining Marginalized: The Deferred Action for Childhood Arrivals (DACA) Program and the Psychological Well-being of Latina/o Undocumented Youth*, 100 SOC. FORCES 246 (observing the uncertainty inherent in the DACA program may erode some of the benefits of DACA to recipients, even to their U.S.-born children).

56. Menjívar, *supra* note 28, at 14.

57. Menjívar, *Liminal Legality*, *supra* note 1, at 1010-16.

58. See generally Cecilia Menjívar, *Spaces of Legal Ambiguity: Central American Immigrants, 'Street-level Workers', and Belonging*, in WITHIN AND BEYOND CITIZENSHIP: BORDERS, MEMBERSHIP AND BELONGING (Roberto G. Gonzalez & Nando Sigona eds., 2017) (examining interactions between immigrants in legal limbo and non-state actors where immigrant legality is salient).

in a nearly comatose state, back to Honduras. An immigration lawyer was hired to explain to hospital administrators that this woman was indeed “documented” in the country and not deportable. Given experiences with service providers unfamiliar with liminal statuses, liminal status holders sometimes refrain from contacting institutions, including the police, for protection.⁵⁹

Whereas TPS (as well as DACA and some other liminal statuses) provides work authorization and holders of the status have benefited from the opportunity to earn higher incomes, research also has found that the uncertainty of extended waiting can be detrimental to individuals’ employment prospects as well as to public expenditures.⁶⁰ Thus, liminal statuses in the real world provide benefits that come wrapped in the tentacles of the uncertainty of their temporary condition.

When considering the social context where these liminal statuses are lived and the broader reverberations of liminal laws, it is significant that the very condition of legal insecurity that characterizes these statuses has become an engine for organizing. For instance, it was mainly in response to demands from organized youth that the Obama administration released the memorandum that created DACA, and it is their continued activism that has kept it alive in the face of threats to end it.⁶¹ Honduran and Salvadoran beneficiaries of TPS since 1999 and 2001 respectively responded to threats to end their countries’ TPS designation during the Trump administration by organizing and creating the National Temporary Protected Alliance.⁶² This Alliance, an umbrella organization for immigrants from countries currently designated for TPS, has provided them with a platform to fight in the streets and in the courts for a permanent solution to their liminal condition but also to advocate for the continuation of their respective TPS designations. A common message across these organizational efforts is to show the harmful effects of the temporariness of these statuses for the individuals who hold them and their families. They argue, as does the social science scholarship that has examined these statuses, that the insecurity inherent in liminal

59. Cecilia Menjivar, *Precarious Legal Status*, in *MIGRATION, DISPLACEMENT, AND DIVERSITY: THE IRIS ANTHOLOGY* 261–64 (Laurence Lessard-Phillips, Anna Papoutsi, Nando Sigona & Paladia Ziss eds., 2023).

60. See generally Jens Hainmueller, Dominik Hangartner & Duncan Lawrence, *When Lives Are Put on Hold: Lengthy Asylum Processes Decrease Employment Among Refugees*, *SCI. ADVANCES*, AUG. 5, 2016, at 1 (finding that a longer asylum waiting period reduces refugee employment rates).

61. See generally WALTER J. NICHOLLS, *THE DREAMERS: HOW THE UNDOCUMENTED YOUTH MOVEMENT TRANSFORMED THE IMMIGRANT RIGHTS DEBATE* (2013) (chronicling the immigrant youth movement from its start, focusing on its transformation and strategies over time); see also Luis Cortes Romero, *Activism Leads, the Law Follows: DACA and Its Fate at the Supreme Court*, *AM. BAR ASS’N* (Apr. 27, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/immigration/activism-leads-the-law-follows [<https://perma.cc/S59X-AR5T>].

62. NATIONAL TPS ALLIANCE (last visited May 23, 2024), <https://www.nationaltpsalliance.org> [<https://perma.cc/M46G-H9MS>]; see Menjivar, Agadjanian & Oh, *supra* note 33, at 679, 682, 693.

statuses is reproduced among family members across generations, amplifying existing inequalities, thus constituting structural inequality.⁶³

Living in liminal statuses such as TPS and DACA (and similar liminal statuses)⁶⁴ can be constraining for immigrants' integration and advancement,⁶⁵ but the liminal nature of these statuses also creates a sense of hope that things can change. This has served as an engine for the political engagement of these groups. As DACA and TPS continue to bounce between termination and continuity, between their legal stickiness and vulnerability,⁶⁶ immigrants in these statuses (and family members and supporters) have responded from their positions as members of civil society by mobilizing across multiple contexts. Thus, while a liminal status creates vulnerability across spheres of life, in keeping with the original conceptualization of the term liminality, immigrants holding this status today maintain the hope that it is a transitory stage to a more stable and permanent status.⁶⁷

V. RACIALIZATION

Stumpf and Manning's observation about the increasing use of liminal rules in different contexts of the immigration system is well taken, as liminal rules exist "from the top of the executive branch . . . to the accretion of enforcement practices . . . to the judicial context."⁶⁸ This argument is clearly substantiated in the Article, especially for two of the examples the authors provide. However, I see the mandatory detainer as different in nature, with a different origin and goal, and thus not as tight a fit conceptually, especially in contrast to the strength of the other two cases examined. Although all three examples (e.g., DACA, administrative closure, and the mandatory detainer) that Stumpf and Manning provide share characteristics that the authors identify as key to liminal rules (e.g., these rules are robust, sticky, and "operate

63. See Menjívar, *supra* note 28, at 4–5, 13–14.

64. See *supra* note 17 and accompanying text.

65. See generally THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, THE INTEGRATION OF IMMIGRANTS INTO AMERICAN SOCIETY (Mary C. Waters & Marisa Gersetin Pineau eds., 2015) for an extended discussion of how the insecure statuses that liminal laws produce can hamper immigrant integration, including across generations; see *supra* note 16 and accompanying text.

66. Stumpf & Manning, *supra* note 2, at 1571–74.

67. In Victor Turner's conceptualization (based on Arnold Van Gennep's original thinking about this concept, ARNOLD VAN GENNEP, THE RITES OF PASSAGE (Univ. Chi. Press 2010)), liminality, even when the uncertainty produces anguish and fear, is a transitory and short-lived stage, with positive outcomes. Victor W. Turner, *Betwixt and Between: The Liminal Period in Rites de Passage*, in THE PROCEEDINGS OF THE AMERICAN ETHNOLOGICAL SOCIETY 4–20 (1964). Here is where I diverge with Turner's unequivocally positive meaning. Although I deploy the term liminality to convey an in-between condition for immigrants in temporary statuses, for them this "stage" can go on indefinitely as is the case of the Central Americans on whose case I based my conceptualization. In these cases, the anxiety of a liminal stage that Turner identifies extends much longer and the more positive "next stage" remains uncertain. It is this indefinite and uncertain situation that creates the condition of liminal legality.

68. Stumpf & Manning, *supra* note 2, at 1545.

in a state of transition, moving either toward formalization as traditional law, or toward extinction),”⁶⁹ I see the mandatory detainer as fundamentally different.⁷⁰

To be sure, Stumpf and Manning already recognize that the detainer differs from the other two cases in a significant way: in contrast to DACA and administrative closure, “[t]he detainer is [principally] an enforcement tool, directing state and local law enforcement to continue custody of an individual that ICE suspects of violating immigration law.”⁷¹ The detainer also differs in how it impacts individuals beyond the confines of law enforcement institutions. For instance, with DACA (or TPS) and administrative closure, the effects on an individual’s family members, contacts with institutions, access to society’s goods and benefits, and general experiences of integration and community belonging (or exclusion) are more visible and tangible. This is less so with the detainer, even when the detainer ends in deportation. Perhaps this happens because individuals on liminal statuses or administrative closure already live in families, communities, neighborhoods, and workplaces; in doing so, they interact with myriad people, social spaces, and institutions in their daily lives.⁷² The detainer on the other hand, removes people from those private and public spaces thus creating a different experience for the individuals in these situations and those close to them.

Importantly, the detainer reveals racialization processes that inform the intersection of criminal and immigration law, as “the detainer was a request and not a mandatory rule.”⁷³ However, officers on the ground understood it as a mandate because “[t]he original detainer form exuded federal authority: a signature block for a federal immigration official and the seal of the federal Department of Homeland Security . . . [t]hat show of authority was powerful enough to establish nationwide police cooperation with the detainers despite strong counterpressure from advocates.”⁷⁴ This misalignment between what the detainer was meant to be and how it was understood and implemented on the ground raises an important question about how racialization practices percolate to enforcement practices. Stumpf and Manning perceptively observe that “[t]he origin of the detainer’s mandatory nature was not the statute or regulation governing detainers but the practices of law enforcement and immigration officials and the language of the form”⁷⁵ as “[h]abits and practices of joint enforcement rose up around detainer use”⁷⁶ and “[t]he

69. *Id.*

70. Although the case of the mandatory detainer does not fit with the other two cases of liminal rules, the inclusion of mandatory detainer does not in any way dilute or diminish the strength of the concept of liminal law that Stumpf and Manning articulate here.

71. Stumpf & Manning, *supra* note 2, at 1562.

72. See *supra* note 58 and accompanying text.

73. Stumpf & Manning, *supra* note 2, at 1572.

74. *Id.* at 1565.

75. *Id.* at 1581.

76. *Id.* at 1585.

widespread use of the detainer led to the normalization of police detention of noncitizens for administrative immigration violations.”⁷⁷ These observations could have opened a discussion at the heart of why the detainer became a tool of enforcement to target specifically Latina/o immigrants, as the authors also note that the intertwined nature of immigration and criminal law “conflated the unlawfully present noncitizen with the ‘criminal alien,’”⁷⁸ and this association is racialized and “strongly associated with Latinos.”⁷⁹

Thus, I would like to expand on the authors’ observations with evidence from social science research that sheds light on how racialization practices imbued in the entire immigration system—from laws to practices at all levels—shape the interpretation and implementation of the detainer on the ground. The authors do point to the importance of race and call attention to the key intersection between immigration and crime, as they argue that, “Police work was re-envisioned as immigration enforcement work . . . melded into crimmigration law enforcement.”⁸⁰ The authors also observe “that liminal law segregates law itself in racial ways.”⁸¹ Still, since liminal rules in the three cases the authors examine, “provide only a half-step liminal status largely relegated to noncitizens of color,”⁸² I would have expected a racialization analytic lens, perhaps as it intersects with a gender lens, to be more central to the discussion.

One of the most consistent findings in social science research is that immigration law, and liminal laws in particular, do not apply evenly across groups.⁸³ Latinas/os, especially men, are the preeminent targets of enforcement today.⁸⁴ This targeting results from the strong association between a noncitizen status and identifying as Latina/o,⁸⁵ which is based on the racial

77. *Id.* at 1594.

78. *Id.* at 1542. (quoting Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 419 (2006)).

79. *Id.* at 1542.

80. *Id.* at 1585.

81. *Id.* at 1595.

82. *Id.*

83. *Id.* at 1594–95.

84. Latino/a (primarily Mexican, Guatemala, Salvadoran, and Honduran) immigrants make up close to seventy percent of the immigrant population classified as undocumented; however, they comprise close to ninety percent of the population in detention and over ninety percent of removals. Cecilia Menjivar, *The Racialization of “Illegality,”* 150 DAEDALUS 91, 97 (2021). See also Emily Ryo & Ian Peacock, *A National Study of Immigration and Detention in the United States*, 92 S. CAL. L. REV. 1, 23 (2018), for an in-depth examination that also looks at gender. The reverse holds true for Asian immigrants, whose undocumented population is rising rapidly but is underrepresented in detention and deportation statistics. Cecilia Menjivar, *The Racialization of “Illegality,”* 150 DAEDALUS 91, 97 (2021); *Population Estimates*, U.S. DEP’T HOMELAND SEC. (Nov. 17, 2023), <https://www.dhs.gov/ohss/topics/immigration/population-estimates> [<https://perm.a.cc/8PAM-Y39E>]; U.S. IMMIGR. CUSTOMS ENFORCEMENT, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT FISCAL YEAR 2019 ENFORCEMENT AND REMOVAL OPERATIONS REPORT 17–18 (2019).

85. Leo R. Chavez, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* 5 (2nd ed. 2013). See generally Amada Armenta, *Racializing Crimmigration: Structural*

profiling of Latino men as criminals and as undocumented.⁸⁶ The resulting enforcement patterns that place Latinos as the preeminent targets of enforcement practices underscore the centrality of racialization practices that then inform how agents of the state, including police and enforcement officers, see the Latinos who come to their attention.⁸⁷ In today's context, therefore, liminal rules are not neutral regulations because they are interpreted through a lens that fuses being Latina/o with a noncitizen or undocumented status and with criminality,⁸⁸ an association that has deep historical roots.⁸⁹ This association is so ubiquitous and deeply ingrained in the immigration system that social scientists have observed that the immigration system today affects Latinas/os in similar ways as the criminal justice system has impacted Blacks.⁹⁰ Thus, racialization ideologies and practices permeate the immigration system beyond enforcement and inform why and how liminal rules are written and interpreted, and undergird their intended goal.⁹¹

CONCLUSION

Stumpf and Manning have produced an excellent, meticulous analysis of the liminal laws that produce the liminal legal statuses that have become ubiquitous tools of immigration control in the United States and other

Racism, Colorblindness, and the Institutional Production of Immigrant Criminality, 3 SOCIO. RACE & ETHNICITY 82 (2016) (arguing that criminalization of deportation has racialized the process); San Juanita García, *Racializing 'Illegality': An Intersectional Approach to Understanding How Mexican-origin Women Navigate an Anti-Immigrant Climate*, 3 SOCIO. RACE & ETHNICITY 474 (2017) (documenting the experience of documented Mexican-origin women); Juan Herrera, *Racialized Illegality: The Regulation of Informal Labor and Space*, 14 LATINO STUDS. 320 (2016) (analyzing how racialized forms of difference shape workers' hiring zones); Doris Marie Provine & Roxanne Lynn Doty, *The Criminalization of Immigrants as a Racial Project*, 27 J. CONTEMP. CRIM. JUST. 261 (2011) (arguing that three federal policies reinforce racialized anxieties); Elizabeth Aranda & Elizabeth Vaquera, *Racism, the Immigration Enforcement Regime, and the Implications for Racial Inequality in the Lives of Undocumented Young Adults*, 1 SOCIO. RACE ETHNICITY 88 (2015) (arguing that colorblind immigration policies only further and reflect the nation's racial and racism problems); Tanya Golash-Boza & Pierrette Hondagneu-Sotelo, *Latino Immigrant Men and the Deportation Crisis: A Gendered Racial Removal Program*, 11 LATINO STUD. 271 (2013) (discussing the causes of heightened, racialized deportation in the United States).

86. See Menjívar, *supra* note 84, at 91.

87. See *id.* (explaining how the Sheriff of Maricopa County unquestioningly viewed areas of the county with Latino neighborhoods as more likely to be sites of crime and illegal activity).

88. See Armenta, *supra* note 85, at 83; CHAVEZ, *supra* note 85, at 2; Provine & Doty, *supra* note 85, at 264.

89. See generally EDWARD ESCOBAR, RACE, POLICE, AND THE MAKING OF POLITICAL IDENTITY: MEXICAN AMERICANS AND THE LOS ANGELES POLICE DEPARTMENT, 1900-1945 (1st ed. 1999) ("During the riots, the LAPD enforced the law selectively. Officers allowed servicemen to beat and strip the zoot suiters; only after servicemen left the scene did the police take action—arresting the Mexican American youths for disturbing the peace.").

90. See generally BOSWORTH, PARMAR, & VÁSQUEZ, RACE, CRIMINAL JUSTICE, AND MIGRATION CONTROL (2018) (examining the punitive measures with which mass arrivals from the Global South have been met, in the United States and Europe, reflecting the "enduring disproportionality within the immigration and criminal justice systems").

91. See Menjívar, *supra* note 28, at 14.

immigrant-receiving countries around the world today. Their conceptualization, discussion of the history and characteristics of liminal rules, and the contrasts they establish with traditional law offer a formidable analytical lens to examine the many other cases of liminal law. Liminal law is widespread and the statuses it creates need much scholarly attention. Social science scholarship could contribute to this line of inquiry by explaining when, how, and why political and economic forces create these statuses. I see the sharp lens Stumpf and Manning provide as immensely generative for legal and sociolegal scholarship and social science scholarship.

My Response built on Stumpf and Manning's contribution to complement their rich analysis with social science research insights to highlight the effects of liminal laws on the lived experiences of immigrants in liminal statuses. Thus, this Response is intended to expand on their analysis and complement their central argument. It is also intended to broaden conceptually Stumpf and Manning's significant observations regarding the intricate connections among three critical factors: an undocumented or noncitizen status, being Latina/o, and the criminalization of immigrants. Attention to experiences of liminal laws on the ground and how and why they affect certain immigrant groups more than others is necessary for any consideration of reform to both the enforcement and administrative sides of the immigration system.