

# Electronic Surveillance in Immigration Court: Evidence from the CalGang Database

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## ABSTRACT

This mixed methods study documents how the electronic nature of gang surveillance in California (CalGang) facilitated the connection between data collected by local law enforcement and Immigration and Customs Enforcement (ICE). The low evidentiary standard for inclusion in electronic surveillance databases problematizes their use by adjacent users, like ICE and federal judges, and there is currently scant evidence on the consequences of adjacent user access to these databases for surveilled populations. Our archival analysis of over 4,200 pages of CalGang-related documents identifies quasi-experimental variation in ICE access to CalGang generated by the expiration of an MOU between the State of California and ICE. Based on this variation, we find that immigrants living under high surveillance were more likely to have criminal allegations were filed against them, to be detained, and had shorter case processing times when electronic surveillance is made available to adjacent users. Federal judges do not obviously differentiate between criminal charges stemming from electronic surveillance and those stemming from criminal convictions. Our qualitative analysis revealed little oversight of data sharing agreements between CalGang and immigration authorities, but only limited aggregated information on CalGang is currently available to outside researchers. This imbalance in access limits the ability of policy makers to evaluate the welfare impacts of electronic surveillance.

**Keywords:** *Surveillance, Immigration, Mixed Methods*

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## 1. Introduction

Since the late 1970s, digital technology has facilitated the growth of mass surveillance across multiple institutional realms (Brayne, 2017, 2014; Lum, Koper, Willis, Happeny, Vovak, and Nichols. et al., 2018; Marx 2016). The emergence in the US of a web of interconnected digital gang databases to support the disproportionate surveillance of people of color has potentially far reaching implications beyond the crime and arrest outcomes typically studied by criminologists (Hollis, 2019). In this paper we employ a mixed methods approach, drawing on organizational documents related to the administration of the CalGang Database (hereafter referred to simply as “CalGang”) and multiple administrative data sets from federal and state entities, to ask, *has the growth of electronic surveillance by local criminal justice agencies, with corresponding database interoperability and information sharing, changed how federal agencies operate?*

Based on an extensive archival analysis of over 4,000 pages of written correspondence, legal agreements, and meeting notes, we construct an account of electronic gang surveillance in the state of California to demonstrate how, over time, CalGang has grown to subject broader swaths of people to surveillance and to facilitate information sharing with immigration authorities. Based on our qualitative analysis, we argue first, that CalGang has grown not only in terms of the number of individuals under surveillance but also in the number of what we call *adjacent users* – people who can access CalGang data but were not initially intended as users and who, in pre-digital surveillance eras, would have a much more difficult time obtaining the information. In this paper we focus specifically on adjacent users in the immigration system who determine the detention and deportation of noncitizens.

Second, we leverage quasi-exogenous variation in CalGang access, uncovered by our archival research, to identify the causal effect of electronic surveillance on immigration judges. The 2016 termination of a data sharing agreement between the state of California and Immigration and Customs Enforcement (ICE) constituted a sudden disruption in the ability of ICE agents to use CalGang information when constructing a deportation case. We link available data on CalGang, specifically two publicly released snapshots of aggregate CalGang data from 2015 and 2017, to administrative records from federal immigration court to examine how CalGang affected immigration proceedings via its adjacent users. We find that ICE access to CalGang increased the probability that immigrants were affixed with a criminal label, increased the propensity of judges to detain immigrants, shortened case times, and increased the probability of deportation.

Our qualitative and quantitative analyses consistently demonstrate that immigration adjudicators' access to electronic surveillance increased the number of immigrants facing criminal INA charges, in particular charges that do not necessarily require a formal criminal conviction in state court. We do not find evidence that immigration judges differentiate between criminal charges based solely on CalGang surveillance versus charges based on legal findings of criminal activity. Based on our findings, we suggest that increased oversight of agreements between CalGang and adjacent users could limit the extent to which being subjected to local electronic surveillance is subsequently conflated with a legal finding of criminality. At the same time, the inability of researchers to access disaggregated CalGang data is a hard constraint on the extent to which it's net impact on society can be estimated.

The paper proceeds as follows. In section 2, we provide background on local and state gang databases as well as interoperability initiatives with federal immigration enforcement. In section

3, we describe our data and methodological approaches. We trace the growth and increasing interoperability of CalGang from data obtained through a series of public records requests, and introduce the concept of *adjacent users* in section 4. In section 5, we then empirically test some of the theoretical impacts of electronic surveillance developed during the archival analysis to examine how surveillance technology impacts decision-making by immigration adjudicators pertaining to the detention and deportation of noncitizens. The sixth and last section concludes with a discussion of the implications of our results and suggestions for future research and policy solutions.

## **2. Literature Review and Theoretical Framework**

The expansion of the US criminal justice apparatus since the late 1970s and the emergence of digital surveillance technology has exposed increasing numbers of people to state surveillance and control (Brayne, 2014:370; Lum et al., 2018; Ferguson, 2017; Lyon, 2003, 2009; Marx, 2016). Central to the contemporary expansion of surveillance capacity is the development of mass data repositories including gang databases to store information, accompanied by interoperability initiatives to increase interagency information sharing (Lyon, 2003:88-91; Marx, 2016:50-51). Interoperability refers to “the ability to transfer and render useful data and other information across systems, applications, or components” (Palfrey and Gasser, 2012:5). There are different degrees of interoperability, ranging from seamless real-time data transfer between systems to more limited information sharing arrangements. We situate our analysis within the context of digital surveillance interoperability in which criminal justice data pertaining to gangs potentially influences immigration outcomes. In this section, we review the literature on gang databases and gang allegations in the immigration system.

## 2.1. Gang Databases

Local law enforcement agencies in most major cities have developed internal gang databases to store and analyze information about alleged street gang members, affiliates, and associates (Hufstader, 2015:676; Katz and Webb, 2006). Local police officers often collect gang intelligence information through street-level encounters and traffic stops, commonly through the discretionary completion of Field Interview (FI) cards, in which law enforcement officers document a subject's personal information, associations, clothing, and social media accounts (Van Gennip, Hunter, Ahn, Elliott, Luh, Halvorson, 2013:69; Puente and Winton, 2020). A subject does not have to be arrested or charged with a crime to be documented as a gang member on an FI card (Yoshino, 2008:127-129). In some states, local law enforcement also feed information into statewide gang databases (Greene and Pranis, 2007; Huff and Barrows, 2015; Lapp 2015).

Law enforcement officials maintain that gang databases are an important public safety tool, enabling them to track the movement of gang members and engage in predictive policing and crime prevention (Ferguson 2015:369, 383; Huff and Barrows, 2009:679; Bruder 2008:1697). However, community organizations and civil liberties groups have criticized police use of gang databases to disproportionately track and punish Black and Latinx people (Aba-Onu, Levy-Pounds, Salmen, and Tyner, 2010; Barak, Sebastian León, and Maguire, 2020:565; Winston, 2016; Barrows & Huff 2009:282-283). Scholarship and government audits conclude that the disproportionate effects of gang enforcement originate in overly-broad labeling practices carried out by law enforcement that are based on racial stereotypes and lacking due process protections (Contreras, 2013; Durán, 2008; Garcia-Leys, Thompson and Richardson, 2016:13-17; Muñiz, 2015).

Community and legal challenges have shut down gang databases in Cook County, Illinois; Ramsey County, Minnesota; and Portland, Oregon; and resulted in increased oversight in Rhode Island and California (Dumke 2018; Bernstein 2019; Xiong 2011; List 2020). Police continue to use heavily criticized gang databases in Chicago, New York, Boston, and Baltimore (Sweeney and Byrne 2020; Trujillo and Vitale 2019; Marston 2019; Smith 2018; McDonald 2020). Regarding CalGang in particular, between 2014 and 2018, the California State Legislature passed three major pieces of legislation (SB458 2014; AB2298 2017; AB90 2018) and the California State Auditor (2016) conducted a critical assessment of CalGang. As a result, stronger oversight and transparency mechanisms were instituted, including a requirement that law enforcement notify people of their placement on CalGang and a reduction in the number of law enforcement agencies allowed to enter information into CalGang. Despite reforms, police-worn body camera footage revealed in 2019 that Los Angeles Police Department (LAPD) officers had falsified CalGang information, prompting the California Attorney General to revoke LAPD access to CalGang (Rector, Winton, and Poston 2020).

Gang database inclusion can result in police harassment, increased bail, and enhanced sentencing in the criminal justice system. Information sharing with external law enforcement and non-law enforcement agencies can result in negative immigration, employment, health care, and educational outcomes (Walker and Cesar 2020; Stuart 2020:194; Howell 2019:621,623; Jacobs 2009:705). Allegations of gang membership, including inclusion in CalGang, carry substantial immigration consequences, including extended detention, denial of bond, placement in segregated housing in detention facilities, denial of affirmative status changes, withholding of immigration benefits, and prioritized deportation (Barak et al., 2020:579; Garcia-Leys, Thompson and Richardson, 2016).

The potential consequences and benefits of gang enforcement are well documented. However, due to the official categorization of gang databases as part of ongoing criminal investigations, systematic documentation of the evolution and average impact of this particular law enforcement tool on any broad social outcome is essentially nonexistent.

## **2.2. Local Law Enforcement and Immigration Enforcement**

Unlike in many other developed countries, primary responsibility for enforcing criminal and immigration law in the United States is borne by nominally distinct agencies. Federal immigration authorities therefore depend on local law enforcement to identify and provide up-to-date, localized surveillance information on alleged gang members (Chacón, 2010:1594; Zilberg, 2011:93). As immigration enforcement has become more information driven, resulting in the emergence of a panoptic immigration surveillance state that routinely collects, stores, processes, and disseminates personal information for immigration control and other purposes, databases like CalGang offer ICE valuable information on potential enforcement targets and facilitate detention and deportation (Kalhan, 2014:6-9, 67). Interoperability efforts enable more continuous information sharing between immigration enforcement agents, local police, government agencies, employers, and social service providers (Bump, 2008:400; Chalfin and Deza, 2020; Leerkes, Bachmeier, and Leach, 2013:114; Menjívar and Enchautegui, 2015:108-109). The immigration system has also become more punitive over the past 30 years, resulting in increases in detention rates, criminal prosecutions of immigration violations, and “criminal alien” deportations (Coutin, 2011:300-301; Chacón, 2012:632-634; Kalhan, 2014:25). In the process, criminal history information, accessed by ICE via interoperable databases, has assumed a more central role in immigration detention and deportation decision-making (Noferi and Koulish, 2014:72; Muñoz, 2020:12).

As we will demonstrate, developers did not design interoperability with ICE systems into the original CalGang Database. Rather, interoperability occurred ad-hoc in 2006 as a result of a “function creep” (Ericson and Haggerty, 2006:18-19) dynamic wherein technology developed for one purpose (statewide law enforcement information sharing on alleged gang members and associates) later expanded to encompass another purpose (exchange of immigration-related data with federal immigration authorities). We build upon and synthesize literature on digital surveillance, databases, gang profiling, and immigration enforcement to examine how this type of functional expansion affects the amount of information accessed by and the response of the federal immigration bureaucracy. Moreover, we contribute to multiple areas of literature in illuminating the mechanisms through which new surveillance tactics amplify the spread of questionable allegations that originate on the local level, negatively affecting immigration outcomes at a later point in time.

First using our archival research, we demonstrate how interoperability initiatives, specifically with federal immigration agencies, increased the number of adjacent users with access to CalGang. We then quantitatively examine how the movement of gang allegations, via interoperable digital databases, from local and state law enforcement agencies to federal immigration authorities and adjudicators affects immigration outcomes on average.

### **3. Data and Methodological Approaches**

This study focuses on a cross-sectional design comparing the effect of CalGang surveillance on immigration outcomes for 2015 and 2017, specifically examining how the cancellation of a federal data-sharing agreement influenced how case dispositions differed across high- and low-surveillance defendants. However, understanding the changes in CalGang that occurred between 2015 and 2017 requires a broader historical understanding of the database, about which little is



currently known outside of specific law enforcement communities. Thus, the authors pull upon a variety of archival and quantitative data. First, we analyzed the following documents attained through California Public Records Act (PRA) requests to the California Department of Justice (CA DoJ): (1) CalGang Executive Board and California Gang Node Advisory Committee meeting notes from November 2001 to September 2017 (41 documents); (2) Nine Memorandums of Understanding (MOUs) established between January 1, 1998 and January 1, 2019, between CalGang administrators and nine separate law enforcement agencies (9 documents); and (3) CalGang training materials and technical manuals (10 documents). Organizational documents enabled us to construct a history of the development of CalGang.

Second, the authors analyzed the following documents attained through a Freedom of Information Act (FOIA) request (and ultimately, lawsuit) to United States Immigration and Customs Enforcement (ICE) pertaining to the ICEGangs Database: (1) Materials used to train ICE agents and support personnel on the definition of a street gang and gang membership criteria (4 documents); (2) Documents pertaining to information storage and management of the ICEGangs Database (30 documents); (3) Information pertaining to budgetary expenditures regarding the ICEGangs Database (1 document); and (4) Communications pertaining to the ICEGangs Database (11 documents). Organizational documents from ICE enabled us to trace how ICEGangs was designed to be interoperable with CalGang. The documents from the ICEGangs FOIA also included CalGang technical documents. In total, the authors analyzed 4,233 pages of organizational documents.

For archival data, we conducted an initial round of open-coding by hand to inductively elicit general coding categories (Emerson, Fretz, and Shaw, 2011; Timmermans and Tavory, 2012), and used the topics that emerged from the first round of coding to proceed with a second round

of more directed coding. In analyzing the archival data on the CalGang Database and ICEGangs Database, we specifically looked for indications that there were changes to the CalGang Database concerning the following components: (1) interoperability with other information systems; (2) recording of immigration-related information; (3) collaboration with other agencies; (4) recording of information pertaining to juveniles; (5) restrictions/new procedures imposed by legislation or litigation; and (6) information sharing with employers. We sorted data excerpts and drafted analytical memos through an iterative process that integrated themes drawn inductively from the data set with theory from relevant literature. Archival data is presented primarily in the “Background” section to demonstrate how CalGang was modified over time to share information with ICE, thus increasing what we call “adjacent users” in the immigration system and affecting outcomes for gang-labeled immigrants.

Our archival analysis informs our quantitative, causal, analysis of the social impact of electronic surveillance. Here, we ask, *has the growth of electronic surveillance by local criminal justice agencies, with corresponding database interoperability and information sharing, changed how federal agencies operate?* CalGang was designed as a local law enforcement tool. However, unlike traditional surveillance or criminal justice data, CalGang can be shared with other monitoring agencies. As a result, CalGang can have a first order impact on how other government agencies operate. Our quantitative analysis estimates how CalGang has influenced the operations of federal immigration enforcement on average. We focus on immigration for two reasons. First, the current social and political climate has made understanding how the criminal and immigration enforcement interact particularly important. Second, we are able to leverage the enactment and termination of ICE’s access to CalGang to identify otherwise similar

immigration cases where ICE agents had, and did not have, access to CalGang, allowing us to make credible causal claims about the impact of gang surveillance on immigration enforcement.

We measure the actions of ICE using data on immigration proceedings maintained by Syracuse University's Transactional Records Access Clearinghouse (TRAC). TRAC's immigration records contain proceeding-level information on all immigration cases heard in federal courts, including key court dates, dispositions, country of origin, zip code of residence, and a binary indicator that the individual is charged with a criminal violation of the 1952 Immigration and Nationality Act (INA). A subset of the records also includes information on the age and gender of the immigrant, and whether the immigrant had legal representation for any part of the proceedings. Whether or not these fields are included is based on the court reporter, and is well explained with a court by year-of-court filing fixed effect. We link cases to our CalGang data based on when an individual was first notified by ICE of their potential removal (2015 or 2017), zip code of residence, and identity group. We estimate someone's identity group using country of origin and the self-reported race of immigrants in the 2003-2016 ACS; we label individuals as White, Black, or Latinx if more than 90% of immigrants from that country identify themselves in that way. We are unable to impute the race of 1.6% of people in the TRAC data, primarily because their country of origin is not reported in the court data.

Basic descriptive information about our TRAC sample, based on cases with initial NTAs completed in either 2015 or 2017, are presented in Table 1. The majority of people in our sample is Latinx, and 66% are male with an average age of 26.7 years old. In 60% of cases an attorney for the immigrant is present in at least one court hearing. Just over 10% of cases include a criminal INA charge; 6 % have a charge that alleges an actual criminal conviction, but 4% are based on INA charges that require only an allegation of criminality. An average of 368 days pass

from the federal judge receiving the NTA to initial determination, during which time 47% of people are detained (at some point), and 49% of cases result in a finding of deportability.

Since 2017, the California Office of the Attorney General has made available county level, aggregate information on the number of people included in CalGang by race or ethnicity, at the end of each calendar year. Similar county level data was also released as part of a 2015 report conducted by the California State Auditor. These two snapshots of who is included in CalGang form the central part of our quantitative analysis. We conceptualize the local surveillance rate for each immigrant by calculating the fraction of county residents (of each identity group) that are included in these annual counts. On average, people in our sample live in counties where there are 0.55 people of their race or ethnicity on CalGang per 100 county residents. ICE had access to CalGang for the 68% of cases in our sample that were initiated in 2015, but not for cases filed in 2017.

*< table 1 about here >*

Of course, simply estimating the correlation between CalGang surveillance and social outcomes is unlikely to yield accurate estimates of the causal effect of surveillance. This is due to the fact that variation in law enforcement activity in a particular place and time is likely to be correlated with a wide set of other factors that are also related to things like employment or federal immigration enforcement. We circumvent this problem by building off our historical analysis of the development of CalGang. As we will show, the period during which ICE had access to CalGang presents a “quasi-experiment” wherein a change to the structure of CalGang created variation in its surveillance capacity that is plausibly uncorrelated with other variables that influence the outcomes and processes that we care about. In the following sections, we

structure our quantitative analyses of CalGang in response to the specific characteristics of this quasi-experiment.

## **4. The CalGang Database**

### **4.1. Constructing an Interoperable Surveillance System**

Initially deployed throughout California in 1998, CalGang is a statewide database system that maintains information on alleged gang members and associates (McEwen, Guynes, Wartell, and Pendleton, 2001:CAL/GANG3). Local law enforcement agencies, or “node agencies,” administer the system. Each node is responsible for oversight of the information in its own node repository, and agencies are able to view, but not edit, the records created by other agencies.<sup>i</sup>

From its inception, CalGang has been a multifaceted system. First, CalGang acts as a data repository in which law enforcement enter and store information on allegedly gang-involved people, things (i.e. vehicles, firearms), and locations. Second, CalGang is a surveillance system; law enforcement longitudinally track and build dossiers on database subjects. Third, CalGang functions as an interoperable information sharing mechanism wherein alleged gang members and associates can be surveilled and incapacitated across jurisdictions. As we will describe, it is through this interoperability – much of which was not planned in the initial development of CalGang but rather, accomplished through ad-hoc information sharing agreements – that *adjacent users*, defined here as state actors who can access CalGang as a result of interoperability initiatives but who were not initially intended to access CalGang information, have increased. In pre-digital surveillance eras wherein interoperability was less salient, adjacent users would have had a more difficult time obtaining information that originates in other jurisdictions.

GangNet software constitutes the technical infrastructure for the CalGang Database and allows CalGang to connect to other GangNet systems, facilitating cross-jurisdictional surveillance and increase adjacent users. An undated GangNet Software White Paper envisions the GangNet system serving as “the foundation for a national gang repository,” linking gang databases across at least 15 US states as well as connecting to databases used by US federal agencies, and those used by law enforcement in select regions of Canada (SRA International, N.D.:2).

#### **4.2 Expanding Adjacent Users**

The interoperability initiative on which we focus in this paper was made possible by a 2006 Memorandum of Understanding (MOU) between United States Immigration and Customs Enforcement (ICE), and the CA DoJ (Immigration and Customs Enforcement, 2006). In researching options for the development of an ICE database to track noncitizen gang members in the early 2000s, ICE representatives reached out to the CA DoJ to inquire about the CalGang Database and GangNet software (Department of Homeland Security, 2006). In response, SRA International Inc., the developer of GangNet, developed ICEGangs, a database into which immigration enforcement personnel and other federal law enforcement officers could enter information on suspected gang members and their associates as well as share information with federal, state, and local police agencies (Myers, 2006). An ICE representative subsequently became a voting member of CalGang’s administrative bodies, the CalGang Executive Board and California Gang Node Advisory Committee. This background is important because it illuminates how ICE’s gang surveillance system was a slightly altered replication of CalGang and specifically designed for interoperability with CalGang, thus creating a local to federal pipeline for gang-profiled Californians.

The 2006 MOU granted the CA DoJ read-only access to the ICEGangs Database and in exchange, granted ICE read-only access to CalGang, meaning that each agency could view, but not edit, information in one another's databases. That CalGang was designed to connect with other surveillance systems means that the social impact of CalGang is not limited to the effects on the monitored individuals. Rather, CalGang surveillance may also affect the behavior of other state actors, whom we call adjacent users, by providing them with information on people suspected of having gang connections. The 2006 MOU opened up CalGang to thousands of ICE personnel who used CalGang data to both identify enforcement targets and label apprehended immigrants as gang members. DHS attorneys then presented those gang allegations to immigration judges who decided whether to detain or deport immigrants. Interoperability thus distributed CalGang data to adjacent users in the immigration system who were several orders removed from the local law enforcement officers who initially recorded the information.

A decade later, in October 2016, ICE announced the discontinuation of the ICEGangs Database, claiming that the platform was expensive yet underutilized (Edge, 2016). Consequently, the information sharing agreement between ICE and the CA DoJ for mutual read-only access of CalGang and ICEGangs was also discontinued. Although GangNet software enabled interoperability with other law enforcement agencies who also used GangNet, ICE had established an information sharing agreement with only CalGang during the entire lifespan of ICEGangs. Thus, ICEGangs essentially functioned as an information exchange mechanism with California law enforcement, and it is possible that this fact has disproportionate immigration consequences for alleged gang members and associates in Southern California. Specifically, this creates a situation where people living in areas with higher degrees of CalGang surveillance are more likely to have this information used in their immigration cases, but only during the time

period when the ICE and CA DoJ agreement was active (2006-2016). Based on the archival analysis, which has demonstrated the increasing interoperability of CalGang with ICE information systems and consequently, an expansion in adjacent users in the immigration system, we now develop models for measuring the causal impact of CalGang on immigration decisions.

## **5. Estimating the Role of CalGang in Immigration Enforcement**

### **5.1. Graphical Analysis**

We examine the immigration enforcement effects of information sharing between ICE and CalGang administrators during the MOU period of 2006 to 2016, as well as after the discontinuation of the MOU, using the available snapshots of CalGang surveillance from 2015 and 2017. Our qualitative analysis identified multiple dimensions along which ICE access to CalGang could influence how the federal immigration court operates.

#### **5.1.a Criminal Labeling**

First, ICE could use CalGang as a basis for charging individuals as alleged gang members or associates and use this as a justification for removing an individual from the country. Individuals inside the United States learn that ICE has initiated removal proceedings against them when they are served with a form I-862-Notice to Appear (NTA). On this form, ICE must indicate at least one of three things are true: the person is an “arriving alien,” they are an “alien” in the United States who has not been admitted, or that they have been admitted to the United States, but are removable for a specific reason - there is at least one section of the INA that ICE believes they have violated. We refer to this as a “formal charge” of an INA violation.<sup>ii</sup>



There are three sections of the INA that are referenced as “criminal violations” for removing an immigrant: sections 237, 212, and 241. Removal under section 237 requires a criminal conviction. To the extent that CalGang facilitates criminal convictions in state court, this would indirectly generate a positive correlation between CalGang surveillance and criminal allegations made on the NTA. However, this mechanism is not dependent on ICE having access to CalGang directly, as access to state court records would provide the same information.<sup>iii</sup>

In contrast, criminal conviction is not necessarily required for removal under INA sections 212 and 241. Section 212 allows for removal if the immigrant “admits to having committed, or admits committing acts which constitute the essential elements of” a crime. Immigrants are also removable under section 212 if the Attorney General “has reasonable grounds to believe” that the individual entered the United States to engage (incidentally) in unlawful activity. Section 241 also allows for the removal of an alien for whom there are “reasonable grounds to believe that the alien is a danger to the security of the United States.” Sections 212 and 241 of the INA therefore provide a mechanism for CalGang to directly influence ICE charging, as ICE can argue that (1) inclusion on CalGang is reasonable grounds to believe the immigrant is involved in crime, or (2) if the immigrant’s specific CalGang entry includes an assertion that the individual admitted gang activity or membership. Unlike a conviction, if ICE did not have access to CalGang, this “reasonable ground” or “admission” information on gang allegations would not be accessible to the Federal agent preparing the NTA. We refer to cases where an immigrant has been labeled as criminal, based on unadjudicated allegations as “criminal allegations,” distinguishing it from “criminal convictions.”

Immigrants have at least one formal charge related to criminal activity in 11% of the cases in our sample. We hypothesize that individuals who are more likely to be listed on CalGang are

more likely to have a criminal allegation on their NTA, due to a search of CalGang that may take place when ICE assembles a case for removal, prior to an individual being served with the NTA.

*< figure 1 about here >*

Figure 1 provides some support for this hypothesis. Here, we plot the fraction of individuals served with NTAs that contain any criminal allegation in 2015 or 2017, against people under “Highest” or “Lowest” surveillance. For the purposes of these illustrative graphs, we conceptualize surveillance rates by first calculating, in each county, the fraction of all county residents on CalGang in California in 2015 and in 2017. We then compare, for each case, the county and identity-group specific surveillance rate for that immigrant to the distribution of county level CalGang surveillance rates in that particular year. “Highest Surveillance Rate” cases involve people who, based on their identity group and county of residence, were in the 75th percentile of overall CalGang surveillance in the year the NTA was received, and cases in the “Lowest Surveillance Rate” were in the bottom 25th percentile of the same measure.

When ICE has access to CalGang, there are criminal labels assigned to people under low surveillance but, in general, criminal INA violations are more likely to be cited in cases of people under the highest surveillance (11.4% vs 9%) in 2015. When ICE does not have access to CalGang, criminal labels are roughly equally likely in cases where the immigrant, in 2017, was under the highest and lowest surveillance rates (9.4% vs 9.6%). Notably, comparing figures 3 and 4 show that differences in criminal allegations (based on sections 212 or 241 of the INA) are driving this difference, as opposed to differences in criminal convictions (section 237). In 2015 only 1.4% of people under lowest surveillance have criminal allegations, compared to 5.4% for

people under highest surveillance. In 2017, criminal allegations were used in 4.6% of cases against people under low surveillance, and in 3% of cases against people under high surveillance.

*< figures 2 and 3 about here >*

While CalGang data from 2016 is currently not made available to researchers, month to month variation in the 2015 data does not show strong signs of differential trends over time in criminal labelling. This is important for the internal validity of our empirical approach – which assumes that changes in immigration court outcomes for people from low surveillance places are reasonable counterfactuals for immigration processing in cases involving people under high surveillance. We will formally test for differential pre-trends in outcomes in section 5.2.a.

### **5.1.b. Immigration Court Procedure**

A second plausible point when ICE might use CalGang is during the actual immigration proceeding. We focus on three court outcomes highlighted by our archival research and interviews as plausibly impacted by CalGang: detention, deportation, and the length of time from the court being notified of the charge to the final recorded proceeding associated with the case. Our interviews also identify two mechanisms through which CalGang access could affect judicial decision making. The first is through formal charges on the NTA. The second is through communicating an immigrant's inclusion in CalGang to the judge, or an immigrant's attorney, as part of their argument for removal or confinement. Indeed, ICE has maintained that they only file criminal charges against a subset of people they believe to be involved in some form of criminal activity.<sup>iv</sup>

The potential for CalGang to affect both who is accused of criminal violations, and also be used in cases which may or may not include criminal charges introduces complications into how we could simultaneously model court decisions as a function of both CalGang and criminal labeling.<sup>v</sup> In light of this, our quantitative focus will be on estimating the net, reduced form, effect of CalGang on immigration court decisions. However, we will also test how the impact of criminal labeling varies in cases where ICE had access to CalGang information from high surveillance places. This analysis can inform how judges make decisions in cases filed against “marginal criminals” - people who are labeled as criminal only because ICE has access to CalGang. If judges are able to distinguish this group of individuals from those who are, for example, in CalGang and have multiple criminal convictions and previous deportations, we would expect that the average correlation between criminal labeling and case outcomes would be different in the pre- and post- periods.

*< figure 4 about here >*

### **5.1.c. Detention**

People in 47% of the cases in our sample are detained at some point. In figure 4, we show detention rates, by month of NTA receipt, for cases of people under the highest and lowest levels of CalGang surveillance. During the last half of 2015, being under high surveillance was associated with increased detention – something that is less obviously the case in 2017. In figures 5 and 6, we show how detention decisions vary across both surveillance rates and INA charging. In 2015, detention for people with criminal allegations is much more sporadic in low surveillance cases and occurs 50% of the time (versus 83% of the time in high surveillance

places). There is a 10 percentage point difference in the detention rates of people with conviction-based charges in high vs low surveillance places.

*< figures 5 and 6 about here >*

These figures also make clear that the surveillance rate is unrelated to detention probability for people who ICE does not accuse of criminal INA violations, and the same is true in 2017 for people with allegation or conviction-based charges. The increased probability of detention in “allegation” based cases in 2015 is actually contrary to what we might expect; the marginal criminal defendant affected by ICE access to CalGang should be, all else equal, less “risky” than someone who would always have an allegation filed against them regardless of whether ICE could access CalGang. Instead, the aggregate data suggest that people who have a criminal allegation only because of CalGang are at least as likely to be detained than someone who is both in CalGang and has other evidence of criminal activity.

*< figure 7 about here >*

#### **5.1.d. Removal**

If ICE has identified that someone is in CalGang, this might increase the likelihood that a judge will determine that they are removable, which happens 49% of the time in our sample. Relative to our other outcomes, figure 7 does not obviously support this hypothesis. In 2015, people from the highest surveillance places were 12% more likely to be deported than those from low surveillance places, but after ICE's MOU expired, if they had a criminal charge on their NTA, immigrants under high surveillance were 26% more likely to be deported. Dividing cases by the type of INA violation, (figure 8 and 9), suggests that this average effect may mask

differences in outcomes for marginal people with allegation-based charges; people with any criminal charge are always more likely to be deported. However, in high surveillance places, allegations are much more strongly associated with removal when ICE had access to CalGang than when ICE did not. This pattern is less evident for conviction related criminal charges.

*< figures 8 and 9 about here >*

#### **5.1.e. Speed of Case**

*< figure 10 about here >*

Finally, immigration judges may spend less time reviewing a case if the person is included in CalGang. This could be either through devoting less time to considering arguments for granting relief, or through denying requests for appeals of deportation decisions. While increasing the speed of immigration proceedings is not obviously good or bad from a social welfare standpoint, it is likely to increase the probability for errors in the specific case in question. Figure 10 demonstrates that, indeed, people under high surveillance had their cases resolved 27% faster in 2015, and 27% slower in 2017, relative to those under the lowest surveillance. Figure 11 and 12 again demonstrate that differences in case length for people with criminal allegations appear to be driving this; criminal allegations reduce the case length for people under high surveillance more in 2015 than they do in 2017.

*< figures 11 and 12 about here >*

Overall, the graphical evidence points to variation in court outcomes over time, regardless of where in California immigrants lived. The termination of ICE access to CalGang, however, seems to have disproportionately affected people living in the places with the highest rates of

surveillance, specifically those with criminal allegations that do not necessarily require a criminal conviction. Notably, while we might expect that the marginal person affected by an CalGang-based allegation would be more similar to people without any criminal violations, our evidence suggests that CalGang may be used to bolster claims of criminality which may not be otherwise substantiated.

## 5.2. Multivariate Analysis

These patterns support the assumption that the causal impact of CalGang on ICE decision making can be modeled in a Differences-in-Differences (DID) framework. We will specifically compare the difference in immigration outcomes for people under higher and lower surveillance, and then test whether this difference is conditioned by the ability of ICE employees to access CalGang when the NTA was being completed. Mathematically, this DID model is expressed as equation 1:

$$\text{Eq 1: } Outcome_{icyn} = \alpha_c + \gamma_y + \delta_n + \theta X_{icyn} + \mu CalGang_{iny} + \pi Access_i + \beta(CalGang_{iny} \times Access_{iy}) + \varepsilon_{icyn}$$

Here, the unit of observation is an immigration case  $i$ , tried in court  $c$ , where the court was notified of the NTA in year  $y$ , when the immigrant lived in California county  $n$ . We include in matrix  $X_{icyn}$  controls for the immigrant's gender, whether they ever had legal representation in a proceeding associated with that case, a quadratic in their age, and their imputed race. We also include year fixed effects, based on the year the court (rather than the individual) received the NTA, court fixed effects, and county (of residence) fixed effects.  $CalGang_{iny}$  is the ratio of people sharing the same racial or ethnic identity as immigrant in case  $i$ , living in county  $n$ ,

included on CalGang in year  $y$  to the relevant population, and  $Access_{iy}$  is a dummy variable equal to 1 if ICE sent an NTA to the immigrant in case  $i$  when the agency had access to CalGang. Note that the first order effect of ICE access to CalGang is identified off of a small number of cases tried early in 2017, when the NTA in case  $i$  was sent to the immigrant prior to ICE's MOU expiring. Excluding these observations does not change our results, as we will show in appendix tables A1, A2 and A3. We cluster our standard errors at the court level ( $c$ ), as ultimately the immigration judge is responsible for choosing our outcomes based on the information provided to them by ICE. Our estimate of  $\beta$  reflects how information in CalGang affected immigration court proceedings, over and above temporal changes that might have affected all immigration decisions (like the changing presidential administration) or all cases in a particular county (like the average CalGang surveillance rate).

In addition to changing the likelihood that an immigrant is accused of violating a criminal portion of the INA, judges may use information about CalGang directly, enhancing the perceived dangerousness of the immigrant over and above any formal charging. At the same time, the marginal immigrant (someone with a criminal INA charge only because of CalGang access) may appear to be less criminal than immigrants who would be labeled a criminal even in the absence of CalGang data. We estimate the net magnitude of these two effects in equation 2, where we allow for the impact of CalGang access to vary for individuals with criminal charges, differentiating those based on conviction records those based only on allegations. As before, without information on who is in CalGang, these effects will be lower bounds of the true influence of CalGang.



$$\begin{aligned} \text{Eq 2: } Outcome_{icyn} &= \alpha_c + \gamma_y + \delta_n + \theta T_{icyn} + \\ &\beta_1(CalGang_{iny} \times Access_{iy} \times CriminalAllegation_i) + \\ &\beta_2(CalGang_{iny} \times Access_{iy} \times CriminalConviction_i) + u_{icyn} \end{aligned}$$

Equation 2 shows this exploratory model, similar to equation 1, but where  $T_{icyn}$  includes the 1<sup>st</sup> and 2<sup>nd</sup> order effects of CalGang surveillance, ICE access, and allegation and conviction-based charging on the outcome.

### 5.2.a. Testing for Differential Pre-Trends

Our graphical analysis did not reveal evidence of differential trends over time in case outcomes for individuals under relatively high or low rates of surveillance. If it were the case, for example, that places with many people included in CalGang happened to be places where ICE was increasing (or decreasing) enforcement, this would lead our estimates of losing access to CalGang to be under- (or over-) stated. We can more formally test for this by estimating a version of Eq. 1, where we restrict our sample to the “pre” period (when  $Access_{iy} = 1$ ), and replace  $Access_{iy}$  with  $Trend_m$ , which is simply a count of the number of months since January, 2015, that have passed when the NTA sent to the individual. We then allow this linear time trend to vary with our county and race specific measure of CalGang surveillance. This exercise, the results of which are reported in appendix table A1, does not produce evidence consistent with differential pre-trends in court outcomes across places with higher or lower degrees of surveillance for the use of any criminal INA charge, an allegation-based charge, detention, deportation, or length of case. We do observe a substantively small but statistically significant negative correlation between CalGang surveillance and the use of conviction-based criminal

charging. We would therefore expect our estimates of the relationship between CalGang access and conviction-based charging to be biased upwards.

### **5.2.b. Criminal Labeling**

Table 2 reports our estimates of the correlation between gang surveillance and criminal charging on NTAs. We find that one additional person, per hundred, included on CalGang increases the probability of a criminal charge by an average of 9.5 percentage points (over a base of 10.3%). There is a slightly larger impact on the probability that this charge alleges criminal behavior (a 6 percentage point increase over a base of 4%), rather than a criminal conviction (a 4 percentage point increase over a base of 6%). Recall that we expect our estimate of the impact of CalGang on conviction-based charging to be biased upwards. This suggests that CalGang access had a larger impact on criminal charging in immigration court that is based on an allegation of criminal behavior, than on charging based on an actual legal finding of criminal responsibility.

We also find suggestive evidence that people more likely to be included in CalGang simply do not have any criminal INA charges when ICE loses access. Columns (2) and (4) estimate the probability of having (column 2) an allegation-based or (column 4) conviction-based charge relative to either no charge or (column 2) a conviction-based charge or (column 4) and allegation-based charge. Columns (3) and (5) exclude the alternate type of charge, meaning that the coefficients reflect the probability of having the specific type of criminal charge, or nothing at all. Excluding the alternate type of criminal charges does not create a statistically meaningful change our point estimates, which increase in magnitude by roughly 1 percentage point.

*<table 2 about here >*

How large, or plausible, one additional person per hundred, on CalGang is from a substantive perspective varies by identity group. Based on the base rates of surveillance, and criminal allegations, the use of criminal allegations against Black immigrants is highly responsive to access to gang surveillance, with an implied elasticity of criminal charging with respect to surveillance of 2.46 overall, 6.6 for allegations, and 1.3 for conviction-based charges. For Latinx immigrants, a one percent increase in surveillance increases the probability of any criminal charge by 0.5%, an allegation-based charge by 7%, and a conviction-based charge by 3.8%. White immigrants under a 1% more surveillance are 0.05% more likely to have a criminal charge, 0.18% more likely to have an allegation-based charge, and 0.03% more likely to have a conviction-based charge.

### **5.2.c. Court Procedure**

*<table 3 about here >*

Access to CalGang also increases the likelihood that an immigrant was held in federal detention while their case was processed. People in 46.6% of the cases in our sample are detained at some point, and a one person (per 100) increase in general surveillance increases judges' use of federal detention by 8.8 percentage points, roughly 18%. Broken out by identity group, a 1% increase in the surveillance of Black people increases the probability a Black immigrant is detained by 0.26%, and the corresponding increases for Latinx and White immigrants are 0.1% and 0.01%, respectively.

### **5.2.d. Removal**

Ultimately, the most important decision that an immigration judge makes is whether or not to find the immigrant deportable. While we estimate a positive, 5.6 percentage point increase in the probability that a judge finds an immigrant removable when one person (per 100) is added to CalGang, this estimate is statistically imprecise; we cannot rule out any relationship between a 1.6 percentage point reduction in the probability of a removal finding and a 12.8 percentage point increase in the probability of a removal finding.

### **5.2.e. Speed of Case**

Previous research demonstrates that gang allegations can make an immigrant undergoing removal a priority cases, with the removal process expedited as a result. Our quantitative analysis shows that, evaluated at the mean surveillance rate, when ICE has access to CalGang, expanding surveillance by one person per 100 reduces the length of a case by 40%.<sup>3</sup> Again, because surveillance rates vary across identity groups, this implies that the elasticity of case length with respect to surveillance is 0.57 for Black immigrants, 0.22 for Latinx immigrants, and 0.03 for White immigrants.

### **5.2.f. Does CalGang change the meaning of “criminal”?**

*<table 4 about here >*

Finally, in table 4, we test whether the reduced form effects in table 3 vary for people accused of criminal INA violations. Again, a-priori it is unclear whether people labeled as criminal should be treated more or less harshly, on average, when ICE has access to CalGang. On one hand, we would expect that marginal immigrants added by CalGang to be less criminal.

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<sup>3</sup>  $(\exp(-.518)-1 = -0.404)$ .

On the other, CalGang may be used to bolster the perceived safety risk associated with allowing an immigrant to remain in the country. For the most part, we find little evidence that, on average, judges moderate their response to criminal charges filed against immigrants from higher-surveillance areas when ICE has direct access to the surveillance information.

Surveillance is associated with a statistically precise increase in the probability of removal for immigrants with allegation-based criminal charges, relative to average cases when ICE does not have CalGang access. Of course, given that this is one of six interaction terms, in the presence of type 1 error and the absence of more precise data on CalGang, we interpret this finding as suggestive, rather than conclusive. However, it is consistent with CalGang being particularly important in cases where ICE does not have other evidence supporting a criminal charge.

## **6. Discussion and Conclusion**

Late twentieth century technological advances have facilitated the sharing of electronic surveillance data across institutions, broadening the scope of surveillance along two dimensions. First, by allowing local law enforcement to track individuals across jurisdictions, electronic surveillance can increase the value of monitoring, thus increasing the amount of overall surveillance. Second, the ease with which data can be shared across agencies means that the surveillance decisions made by local law enforcement can directly affect the decisions of other agencies, thus increasing the number of adjacent users with potentially broad implications for surveilled populations.

This paper extends the literature on surveillance by documenting the way in which one particular type of electronic surveillance conducted by local law enforcement in California

through the CalGang Database has evolved over time. Using data collected through a series of records requests, we describe how CalGang has connected local law enforcement to federal immigration enforcement, creating a situation where the field interviews conducted by one local law enforcement officer can have implications for how federal immigration judges behave. Using the expiration of an MOU between California and ICE as a source of plausibly exogenous variation in the extent to which CalGang shares its data with other agencies, identified by our archival analysis, we are able to quantify the impact of local electronic surveillance on federal judicial behavior.

After linking data on CalGang surveillance with records from the Transactional Records Access Clearinghouse (TRAC), we show that local electronic surveillance has affected immigration courts in multiple ways. First, immigrants who lived in places with more CalGang surveillance are more likely to be labeled a criminal by ICE, primarily through allegations rather than convictions. Second, immigrants living in high surveillance places are more likely to be detained, and have their cases processed faster. We then compare case outcomes for people formally charged as criminals when ICE does and does not have access to CalGang. We find limited evidence that someone labeled as a criminal only through CalGang is less likely to be detained or have their cases processed slower than other “criminal” immigrants, despite the increased criminal labeling caused by surveillance. Our estimates are consistent with criminal allegations based on CalGang surveillance being more likely to result in a removal finding than criminal allegations from other sources.

Given what is publicly known about the way in which CalGang expands, this result is cause for some concern. When we examine the pipeline from local police to federal immigration enforcement through which gang information travels, we are struck by the multiple points at

which gang labeling and information sharing is characterized by low procedural thresholds. First, there is a low threshold for recording information on Field Interview (FI) cards, which are filled out at an officer's discretion and often document encounters unrelated to criminal events (Van Gennip et al., 2013:69). The California State CalGang audit (California State Auditor, 2016), recent high profile cases (Puente and Winton, 2020), and our interview data highlight that FI cards, which form the basis of information in CalGang, are prone to inaccuracies and even fabricated information.

Nonetheless, once an individual's information has been entered into CalGang, it may be shared with other agencies, without clear caveats of the underlying source of information. Between 2006 and 2016, information was regularly accessed by adjacent users in immigration enforcement agencies and immigration courts. The combination of low procedural protections for documentation on FI cards and subsequently, information maintenance in gang databases, is particularly concerning when brought into the realm of immigration law wherein key due process protections are at best restricted or altogether absent. For example, in immigration court, people are not entitled to defense counsel, Fifth Amendment protections against self-incrimination do not apply, hearsay and illegally obtained evidence is admissible, and the right to question witnesses and examine evidence is limited compared to criminal proceedings (Artola, 2012:864; Chacón, 2010:1605).

Previous research demonstrates that immigration judges may deny bond to immigrants based on Department of Homeland Security (DHS) attorneys' claims that immigrants were gang affiliated, often with little evidence to support those claims (Hlass and Prandini 2018:3,7; Garcia-Leys, Thompson and Richardson, 2016:15-16). Consistent with this, we estimate that on average adding one person to CalGang (per 100 people), when shared with ICE, is associated

with a 130-149% increase in the probability of an allegation-based criminal charge being filed against someone in immigration court. CalGang surveillance also increases the rate of conviction-based criminal charging, but by 66-84%. At the same time that CalGang seems to substantially widen the scope of who is a criminal in immigration court, we find little evidence that judges adjust their decision making in “criminal” cases in response to this compositional change. Much of how CalGang operates, and how this electronic surveillance influences both adjacent users and surveilled populations, has yet to be documented. That said, our analysis does lead to several policy recommendations that span the criminal justice and immigration systems.

First, while CalGang has existed as a statewide system since 1998, legislative and administrative CalGang oversight has only occurred relatively recently, after substantial public outcry and repeated findings of egregious errors and misconduct by local officers who input data. CalGang appears to have had no preemptive oversight for the MOU process that enabled local law enforcement intelligence gathering to directly influence federal court outcomes. Independent oversight bodies with the authority to review requests for interoperable information sharing might be positioned to ensure that the surveillance information does not transform into legal facts as it moves further and further from its source of origin.

Oversight of MOUs between adjacent users of sensitive data is critical in a broader context (e.g. sharing medical data across hospital systems), and it is particularly important in the context of CalGang. Previous research (Yoshino, 2008), government audits (California State Auditor, 2016), recent investigations (Puente and Winton, 2020) have revealed that officers’ documentation of gang membership via FI Cards allows for widespread and invasive intelligence gathering without probable cause, arrest, or charging and without opportunities for appeal by those whose information is documented in FI Cards. Individuals who are notified of their



ultimate placement on CalGang can appeal, but are not entitled to legal representation during the appeal process.

In the absence of a mechanism to ensure data accuracy and due process in the CalGang data, it is not obvious that this information should be given the same deference in immigration proceedings as legal findings determined in an adjudicative setting, where both due process and legal representation was afforded to all parties. Third party oversight of data sharing agreements between adjacent users could help ensure that the use of shared information is reasonable, given the quality of the underlying data.

Second, in addition to increasing data access for people added to gang databases, data access and transparency should be increased for the general public and academic researchers. Our results represent a reduced form impact of ICE access to CalGang on immigration court decisions on average, and not the impact of a specific individual being included in CalGang. To date, we are aware of no instances in which researchers have been provided access to disaggregated data that would allow for a more precise picture of who is included in CalGang. These reduced form estimates do provide evidence that the interoperability of CalGang has changed the behavior of adjacent users. Without a more complete picture of the scope of electronic surveillance, policy makers are left with a less clear estimate of how the creation and maintenance of these databases have changed society.

Lastly, aspects of the immigration system, the final step in our mapping of cross-jurisdictional interoperability, need to be addressed as well. The increasingly punitive nature of immigration enforcement, in which people can be detained or deported for progressively broader reasons, has been a political choice. Restricting ICE and immigration judge's access to local and

state data is ultimately of little long-term help if political actors and immigration officials continue to criminalize immigration and dehumanize immigrants and alleged gang members.

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## Figures

Figure 1: CalGang and Criminal Charging

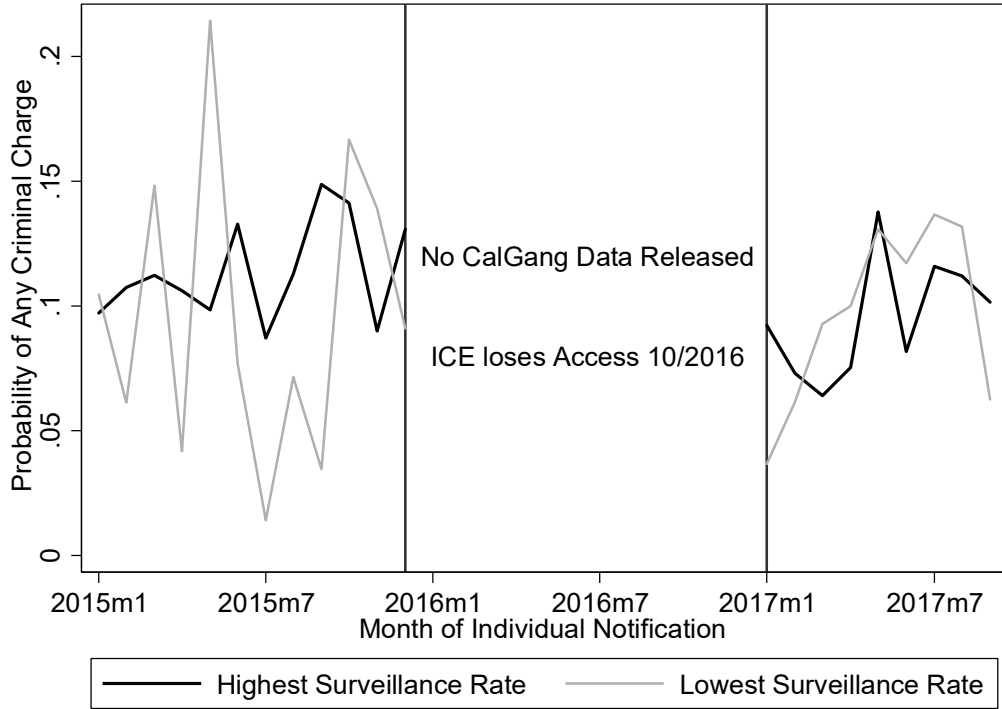


Figure 2: CalGang and Criminal Allegations

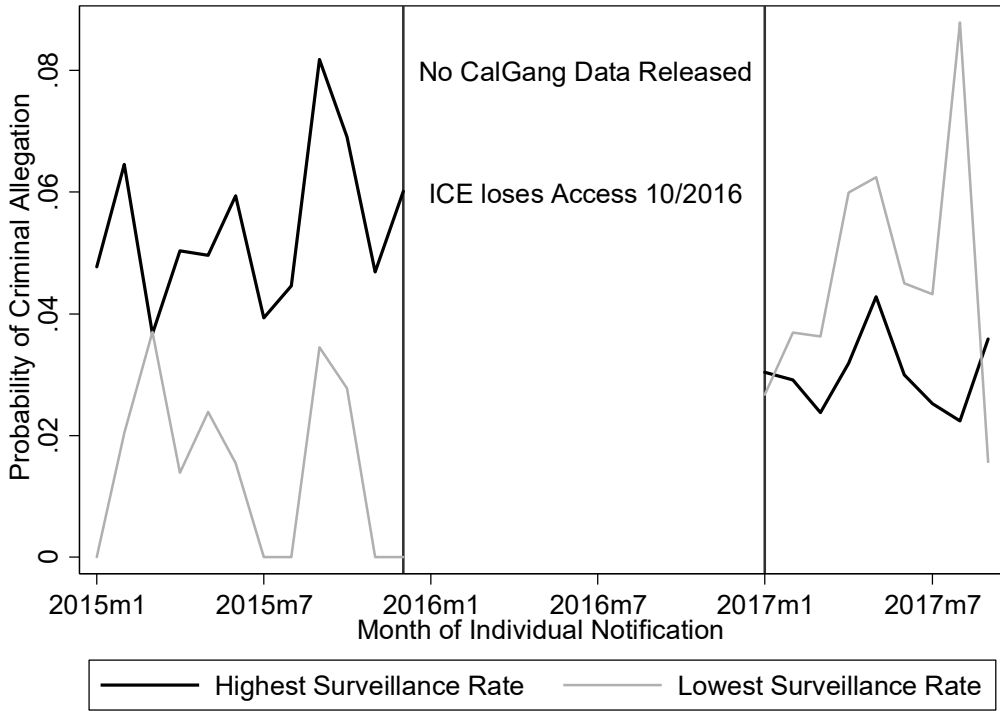


Figure 3: CalGang and Criminal Convictions

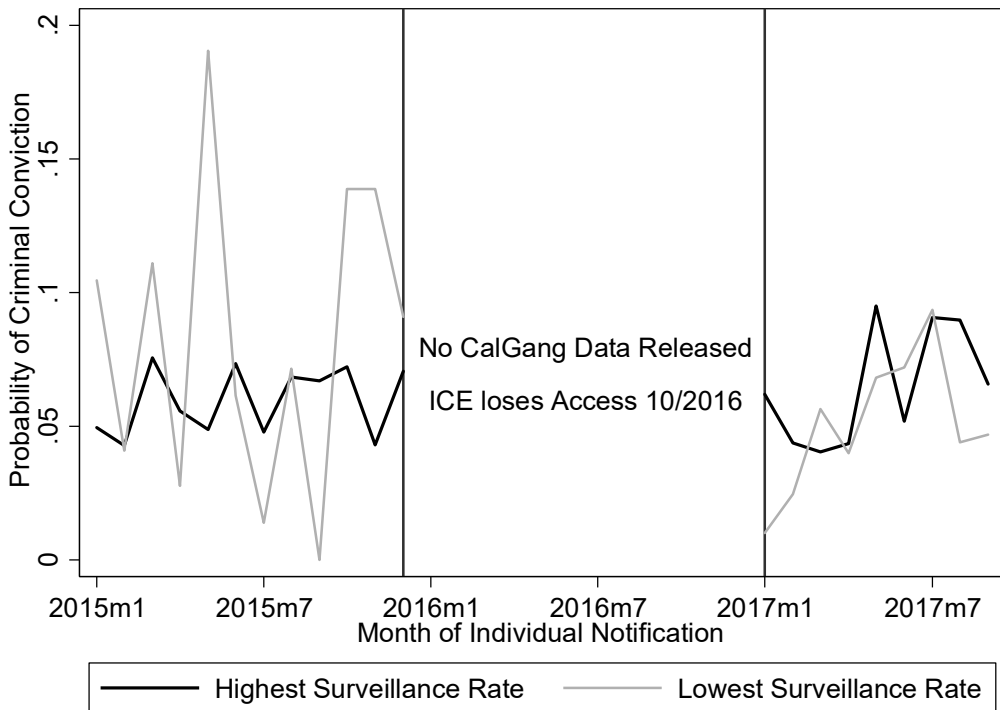


Figure 4: CalGang and Detentions

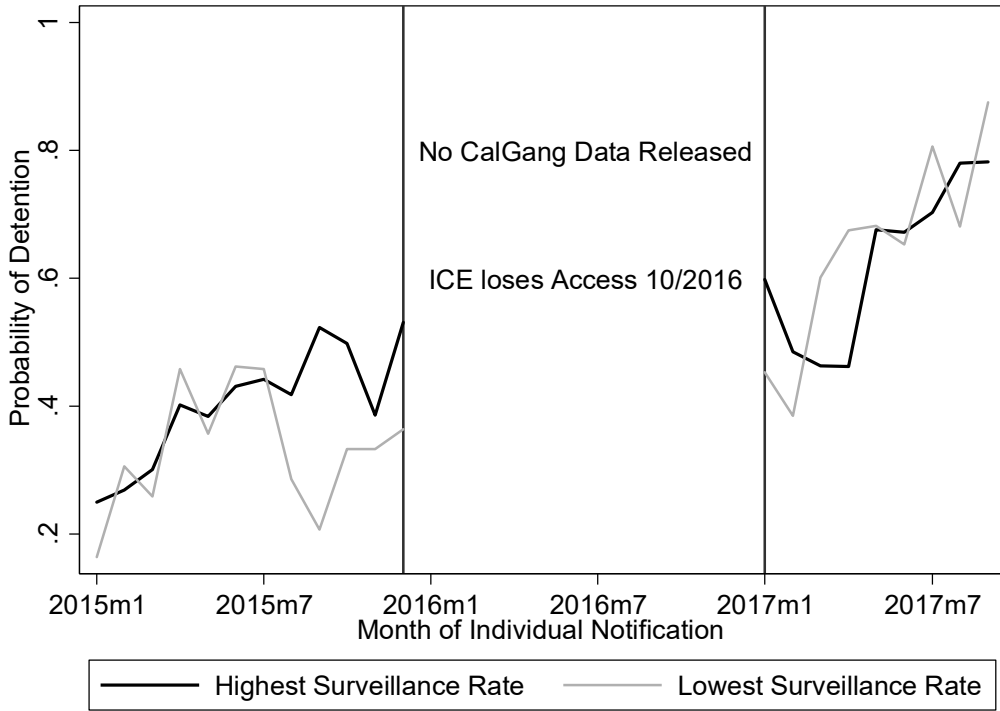


Figure 5: CalGang and Detentions – Allegations

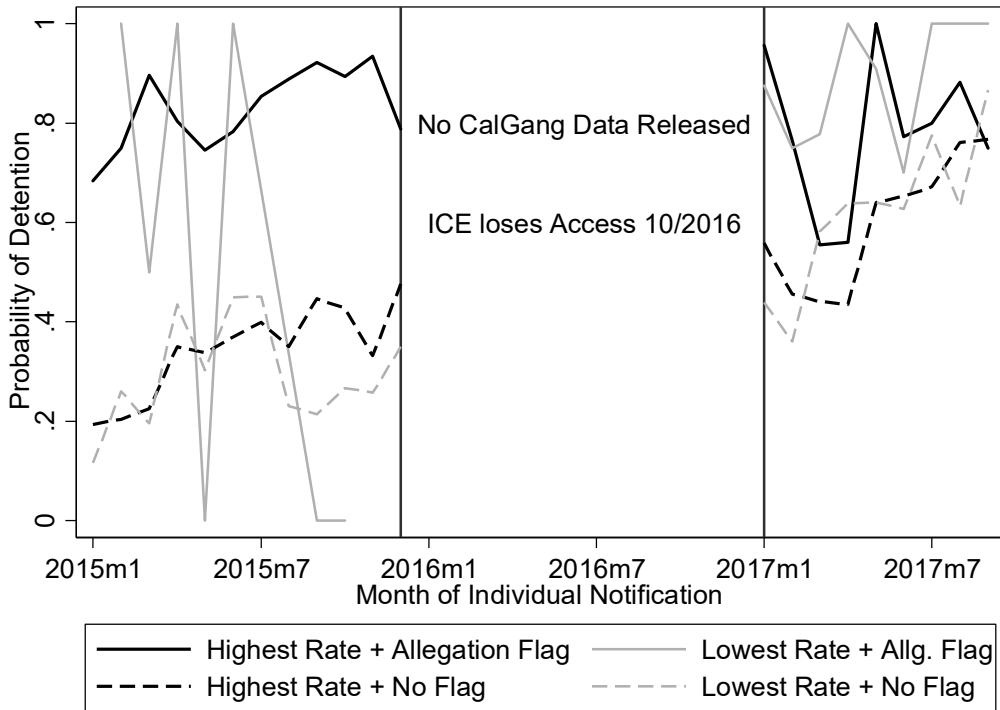


Figure 6: CalGang and Detentions – Convictions

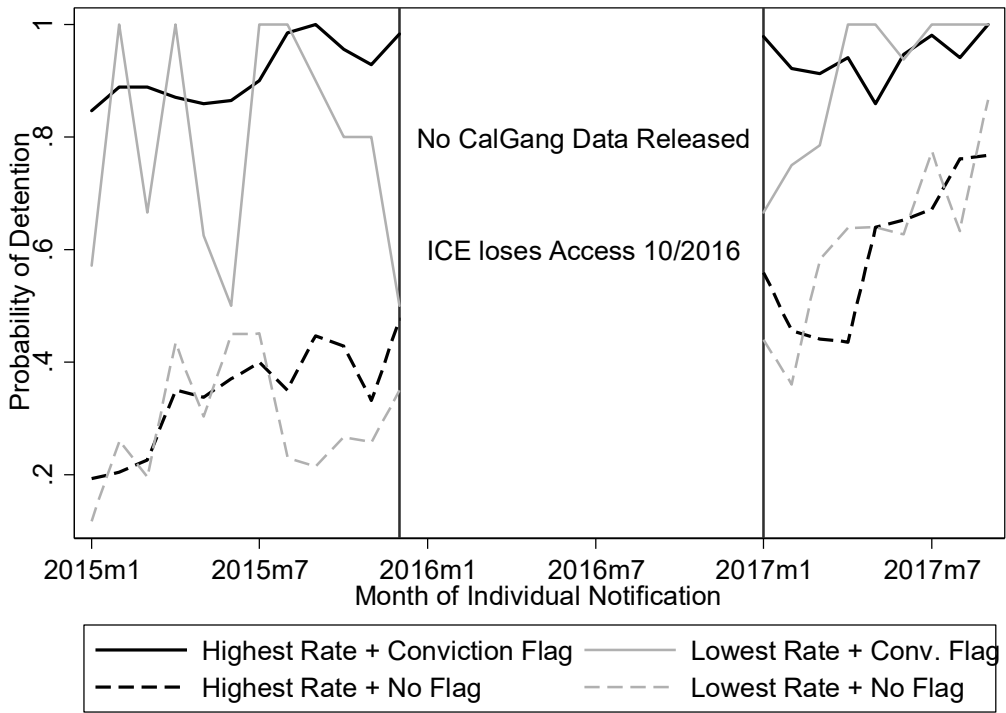


Figure 7: CalGang and Deportations

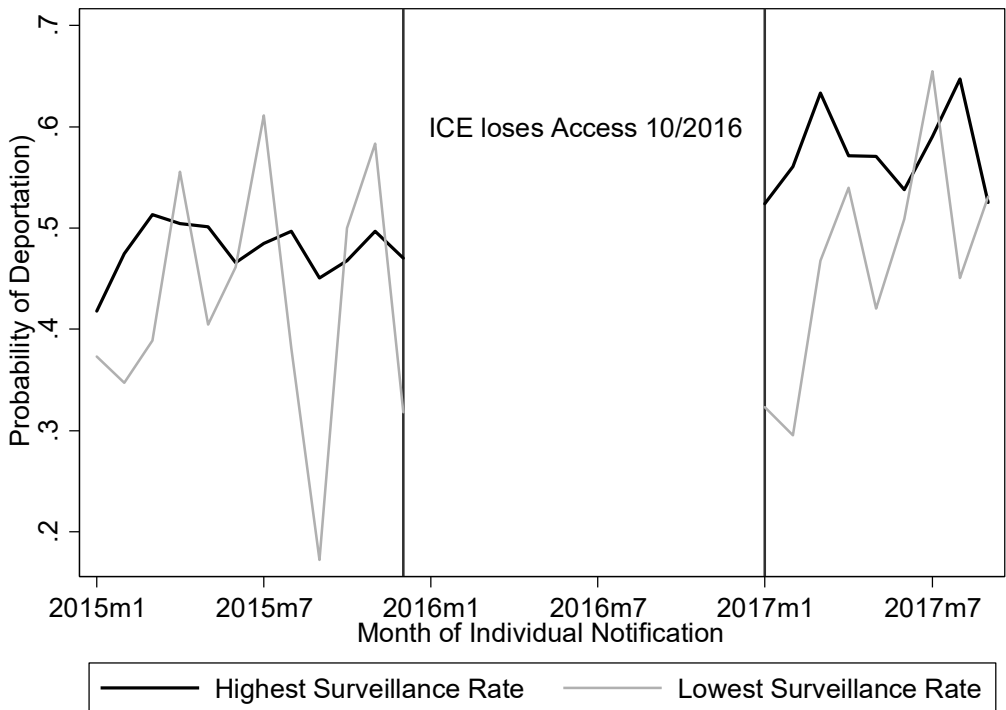


Figure 8: CalGang and Deportations – Allegations

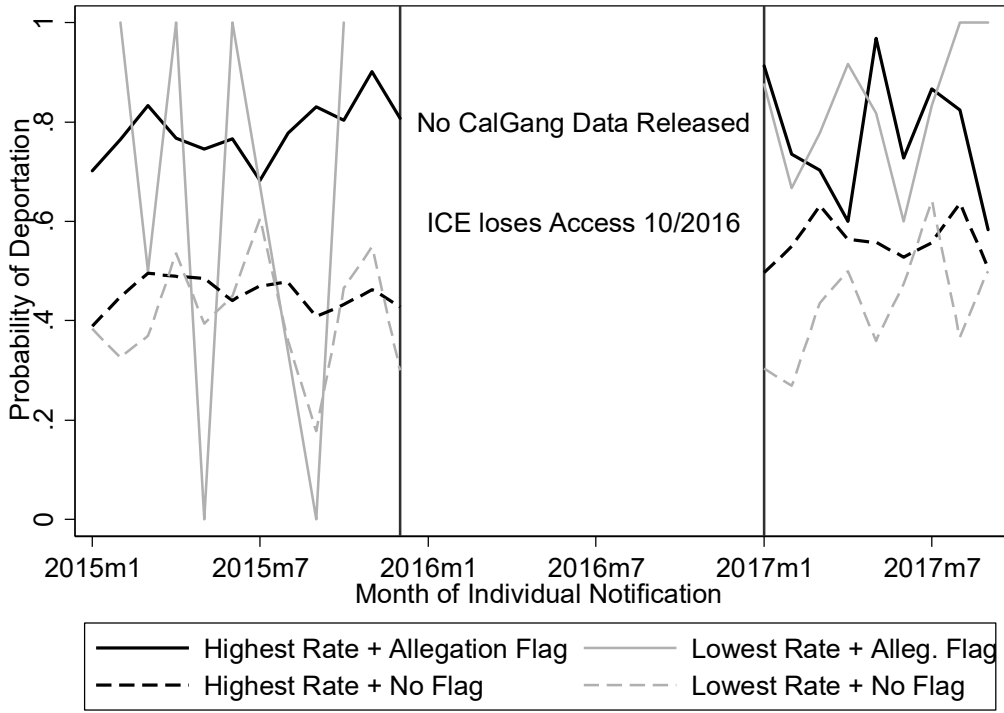


Figure 9: CalGang and Deportations – Convictions

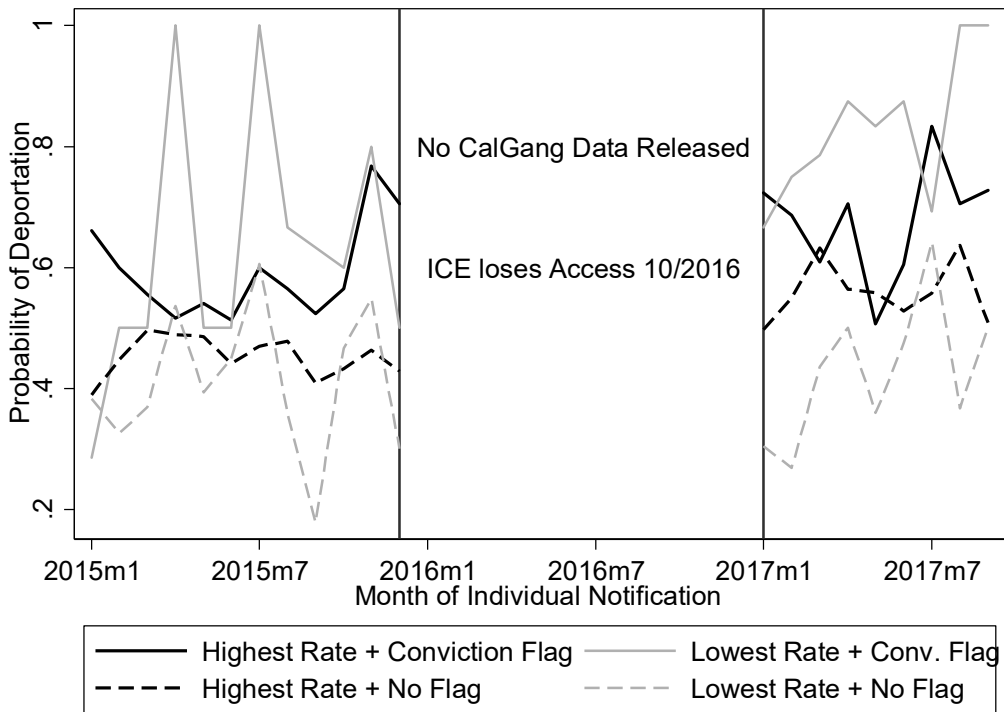


Figure 10: CalGang and Case Length

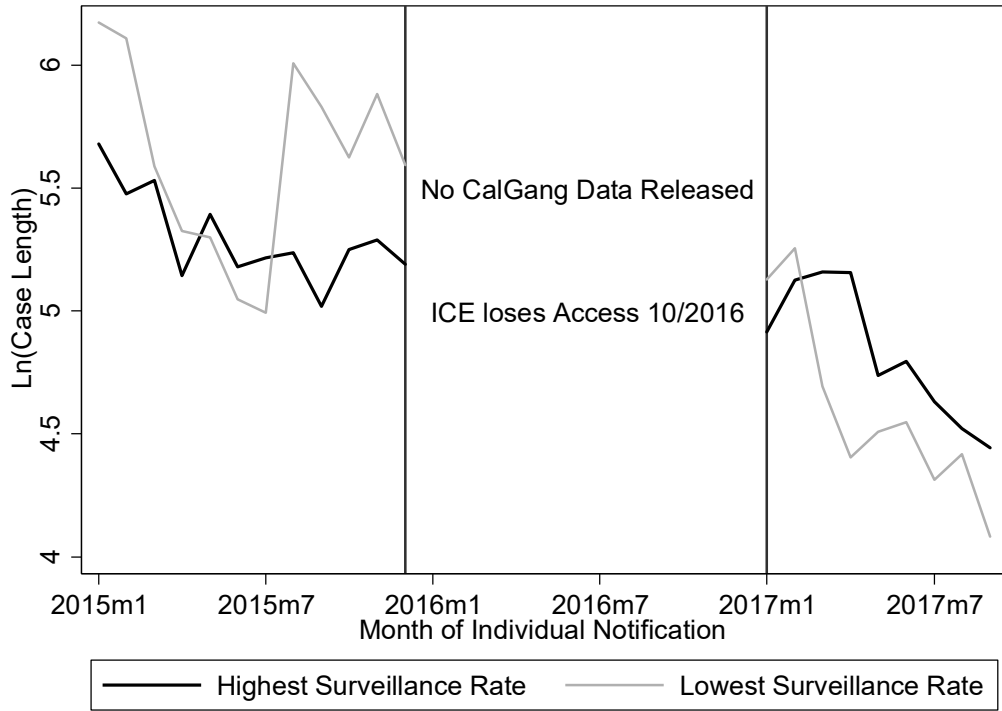


Figure 11: CalGang and Case Length – Allegations

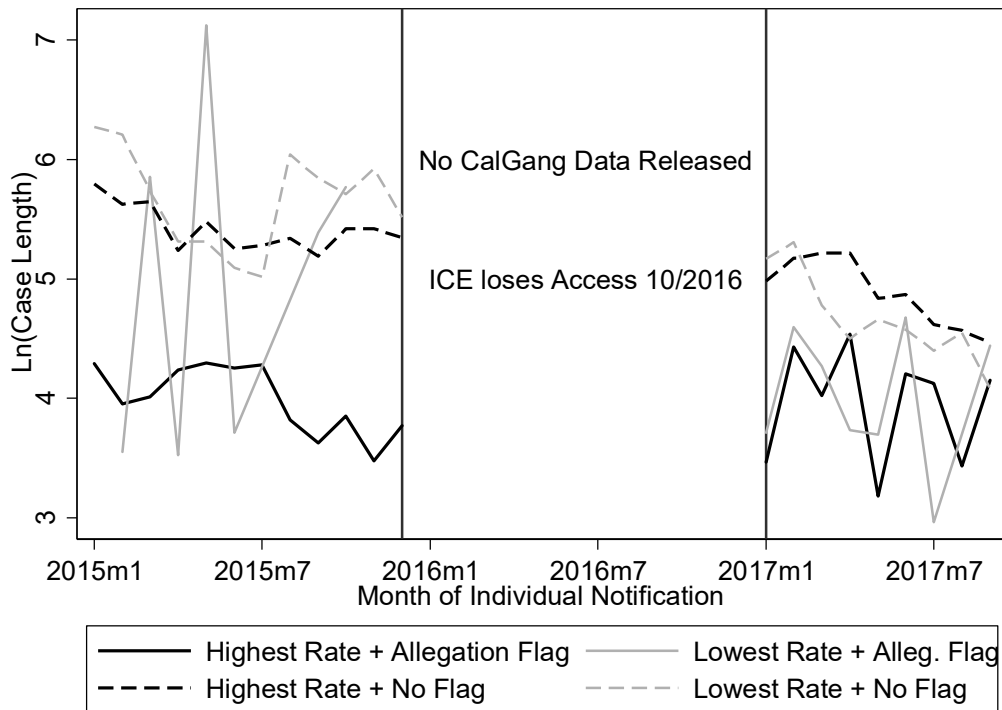
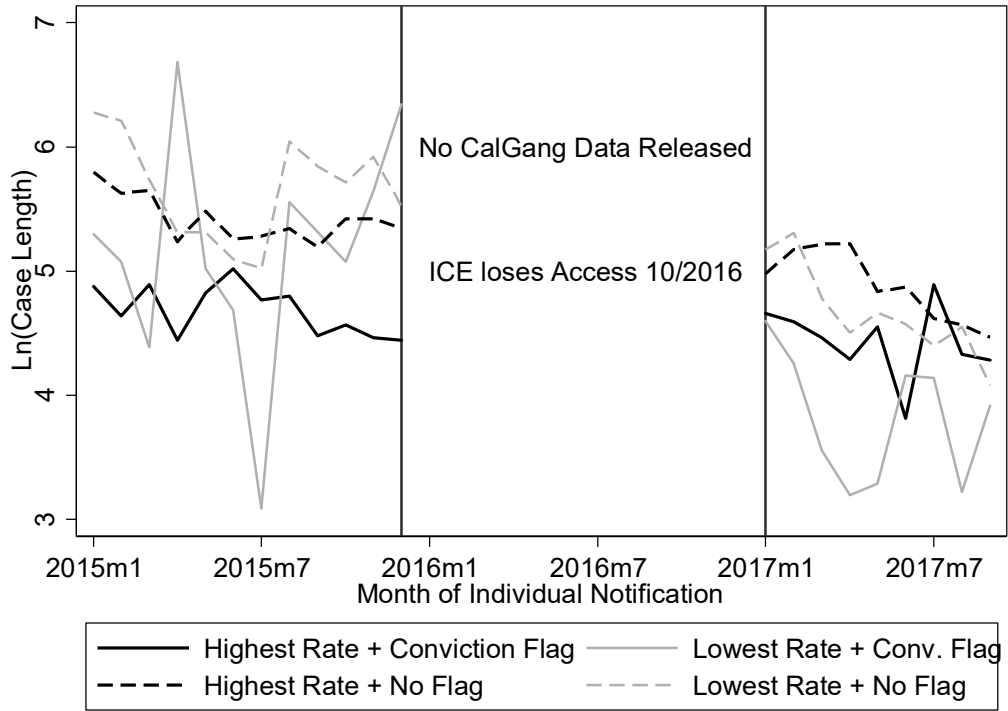


Figure 12: CalGang and Case Length – Convictions





## Tables

Table 1: CalGang Surveillance, Identity, and Case Outcomes in Immigration Court, 2015 and 2017

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% Latinx	0.930
% Black	0.022
% White	0.048
% Male	0.663
Age	26.8
	(14.17)
Any Legal Representation	0.60
Criminal Flag	0.103
Non-Conviction Flag	0.043
Conviction Flag	0.061
Length of Case	368
	(364.1)
Detained	0.466
Deportable	0.493
CalGang Access	0.685
Surveillance Rate	0.555
	(0.350)

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Notes: Standard deviations in parentheses. N=25,297

Table 2: CalGang and Criminal Charging

	Any Criminal Charge	Allegation-based		Conviction-based	
Surveillance Rate	-.122 * [.055]	-.08 *** [.029]	-.094 *** [.036]	-.043 [.028]	-.061 [.038]
Surveillance Rate x ICE Access	.095 ** [.039]	.056 ** [.023]	.067 * [.03]	.04 * [.019]	.053 * [.03]
N	25,297	25,297	23,763	25,297	24,220
R2	.16	.06	.08	.11	.13
Other criminal charges excluded			X		X
Mean of DV	.103	.043	.045	.061	.063
Surveillance Rate: Black Immigrants	1.426	1.426	1.421	1.426	1.426
Surveillance Rate: Latinx Immigrants	.559	.559	.558	.559	.558
Surveillance Rate: White Immigrants	.075	.075	.07	.075	.075

Standard errors in brackets allow for arbitrary correlation in outcomes within 48 courts. Additional controls include age and age<sup>2</sup>, and dummy variables indicating the presence of legal counsel at any point, race, gender, court, county of residence, and year the court received the NTA.

+ =  $p < 0.1$ , \* =  $p < 0.05$ , \*\* =  $p < 0.01$ , \*\*\* =  $p < 0.001$

Table 3: CalGang and Immigration Court Decisions

	Detention	Ln(Case Length)	Deportation
Surveillance Rate	-.048 [.047]	.355 *** [.103]	-.045 [.05]
Surveillance Rate x ICE Access	.088 *** [.027]	-.518 *** [.059]	.056 [.037]
N	25297	25297	25297
R2	.58	.43	.37
Mean of DV	.466	367.665	.493
Surveillance Rate: Black Immigrants	1.426	1.426	1.426
Surveillance Rate: Latinx Immigrants	.559	.559	.559
Surveillance Rate: White Immigrants	.075	.075	.075

Standard errors in brackets allow for arbitrary correlation in outcomes within 48 courts. Additional controls include age and age<sup>2</sup>, and dummy variables indicating the presence of legal counsel at any point, race, gender, court, county of residence, and year the court received the NTA.

+ =  $p < 0.1$ , \* =  $p < 0.05$ , \*\* =  $p < 0.01$ , \*\*\* =  $p < 0.001$

Table 4: CalGang and Immigration Court Decisions, with Charging

	Detention	Ln(Case Length)	Deportation
Surveillance Rate	-.014 [.043]	.301 ** [.123]	-.035 [.046]
Non-Conviction Charge	.082 *** [.023]	-.542 *** [.081]	.05 [.037]
Conviction Charge	.311 *** [.052]	-.988 *** [.264]	.153 ** [.065]
Surveillance Rate x ICE Access	.191 *** [.07]	-.414 + [.249]	.05 [.04]
Surveillance Rate x ICE Access x Allegation Flag	.175 [.237]	.088 [.507]	.173 * [.079]
Surveillance Rate x ICE Access x Conviction Flag	-.045 [.074]	.02 [.187]	-.081 [.064]
N	25297	25297	25297
R2	.59	.44	.37
Mean of DV	.466	367.665	.493
Surveillance Rate: Black Immigrants	1.426	1.426	1.426
Surveillance Rate: Latinx Immigrants	.559	.559	.559
Surveillance Rate: White Immigrants	.075	.075	.075

Standard errors in brackets allow for arbitrary correlation in outcomes within 48 courts. Additional controls include all relevant 2<sup>nd</sup> order interactions terms, age and age<sup>2</sup>, and dummy variables indicating the presence of legal counsel at any point, race, gender, court, county of residence, and year the court received the NTA.

+ =  $p < 0.1$ , \* =  $p < 0.05$ , \*\* =  $p < 0.01$ , \*\*\* =  $p < 0.001$

## Appendix

Table A1: CalGang and Monthly Trends in Immigration Outcomes, 2015

	Any Criminal Charge	Allegation -based	Conviction -based	Ln(Case Length)	Detention	Deportatio n
Monthly Time Trend	.0014 [.0019]	.0013 [.0014]	.0001 [.0008]	-.0101 [.01]	.0117 *** [.0027]	-.0041 [.0042]
Surveillance Rate x Monthly Time Trend	-.0016 [.0013]	-.001 [.0011]	-.0006 * [.0003]	.0085 [.0107]	-.0012 [.0024]	.0062 [.0049]
N	17,318	17,318	17,318	17,318	17,318	17,318
R2	.2	.08	.13	.43	.55	.39
Mean of DV	.103	.046	.058	428 days	.373	.47

Standard errors in brackets allow for arbitrary correlation in outcomes within 48 courts. Additional controls include age and age<sup>2</sup>, and dummy variables indicating the presence of legal counsel at any point, race, gender, court, county of residence, and year the court received the NTA. Mean Case Length, in days, not Mean of Ln(Case Length) reported for comparison.

+ =  $p < 0.1$ , \* =  $p < 0.05$ , \*\* =  $p < 0.01$ , \*\*\* =  $p < 0.001$

Table A2: CalGang and Criminal Charging, excluding early 2017 cases

	Any Criminal Charge		Allegation-based		Conviction-based	
Surveillance Rate	-.126 *	-.126 *	-.086 ***	-.1 ***	-.041	-.059
	[.056]	[.056]	[.031]	[.038]	[.028]	[.038]
Surveillance Rate x ICE Access	.095 *	.095 *	.053 *	.064 *	.042 *	.056 *
	[.042]	[.04]	[.025]	[.03]	[.019]	[.03]
N	23909	23909	23909	22387	23909	22844
R2	.16	.16	.06	.08	.11	.13
Mean of DV	.108	.108	.045	.048	.064	.067
Surveillance Rate: Black Immigrants	1.441	1.441	1.441	1.437	1.441	1.441
Surveillance Rate: Latinx Immigrants	.566	.566	.566	.566	.566	.566
Surveillance Rate: White Immigrants	.077	.077	.077	.072	.077	.077

Standard errors in brackets allow for arbitrary correlation in outcomes within 48 courts. Additional controls include age and age<sup>2</sup>, and dummy variables indicating the presence of legal counsel at any point, race, gender, court, county of residence, and year the court received the NTA.

+ =  $p < 0.1$ , \* =  $p < 0.05$ , \*\* =  $p < 0.01$ , \*\*\* =  $p < 0.001$

Table A3: CalGang and Immigration Court Decisions, excluding early 2017 Cases

	Detention	Ln(Case Length)	Deportation
Surveillance Rate	-.038 [.045]	.333 *** [.113]	-.044 [.055]
Surveillance Rate x ICE Access	.096 *** [.024]	-.549 *** [.07]	.041 [.044]
N	23909	23909	23909
R2	.570	.44	.37
Mean of DV	366.194	.488	.492
Surveillance Rate: Black Immigrants	1.441	1.441	1.441
Surveillance Rate: Latinx Immigrants	.566	.566	.566
Surveillance Rate: White Immigrants	.077	.077	.077

Standard errors in brackets allow for arbitrary correlation in outcomes within 48 courts. Additional controls include age and age<sup>2</sup>, and dummy variables indicating the presence of legal counsel at any point, race, gender, court, county of residence, and year the court received the NTA.

+ =  $p < 0.1$ , \* =  $p < 0.05$ , \*\* =  $p < 0.01$ , \*\*\* =  $p < 0.001$

Table A4: CalGang and Immigration Court Decisions, with Charging, excluding early 2017 cases

	Detention	Ln(Case Length)	Deportation
Surveillance Rate	-.003 [.041]	.274 * [.136]	-.032 [.05]
Non-Conviction Charge	.095 *** [.022]	-.588 *** [.095]	.033 [.046]
Conviction Charge	.156 [.254]	.124 [.573]	.182 * [.081]
Surveillance Rate x ICE Access	-.068 [.072]	.085 [.184]	-.062 [.073]
Surveillance Rate x ICE Access x Non-Conviction Flag	23909 .58	23909 .45	23909 .37
Surveillance Rate x ICE Access x Conviction Flag	.488	366.194	.492
N	1.441	1.441	1.441
R2	.566	.566	.566
Mean of DV	366.194	.488	.492
Surveillance Rate: Black Immigrants	1.441	1.441	1.441
Surveillance Rate: Latinx Immigrants	.566	.566	.566
Surveillance Rate: White Immigrants	.077	.077	.077

Standard errors in brackets allow for arbitrary correlation in outcomes within 48 courts. Additional controls include age and age<sup>2</sup>, and dummy variables indicating the presence of legal counsel at any point, race, gender, court, county of residence, and year the court received the NTA.



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<sup>i</sup> Personal correspondence between author and Shayna Rivera, CalGang Unit Manager, California Department of Justice, October 24, 2019. As of 2018, nodes consisted of: (1) Los Angeles County Sheriff's Department, Los Angeles Police Department; (2) San Bernardino County Sheriff's Department; (3) Riverside County Sheriff's Department, Riverside Police Department, Riverside County District Attorney's Office; (4) Orange County District Attorney's Office; and (5) San Diego Police Department. Nodes are regional and can include more than one law enforcement agency.

<sup>ii</sup> The US Department of Justice Executive Office for Immigration Review (EOIR) has identified 90 (of 250) different codes listed on NTAs that it views as criminal charges, e.g. "212(a)(01)(A)(iv)" - described as "Drug Abuser or Drug Addict" and "212(a)(02)(B)" - Multiple Criminal Convictions." We identified an additional 14 reported codes in the TRAC data where we believed the descriptions to be closely related to gang activity, including smuggling, security and related grounds, and engagement in violation or evasion of law related to prohibited goods. Being previously deported is not coded by EOIR as criminal, nor are most types of fraud to procure a visa. Most non-criminal violations are related to overstaying a visa (e.g. violating conditions of entry).

<sup>iii</sup> Further, ICE also maintains that the presence of a criminal record does not require a criminal allegation to be included on an NTA - there is some discretion on the part of the ICE agents working the case. Personal correspondence between author and Susan Long, TRAC Director, October, 17, 2019.

<sup>iv</sup> Personal correspondence between author and Susan Long, TRAC Director, October, 17, 2019.

<sup>v</sup> If CalGang affects criminal charging, then it is what is called a "bad control" in estimates of CalGang on other outcomes. Two otherwise observationally equivalent individuals under different levels of CalGang, but with the same criminal charging must be more different on unobservable characteristics – otherwise they would have different criminal charges.