Critical Data Methodologies for Studying Up the "Crimmigration State"

Austin Kocher, PhD

TRAC, Syracuse University
Immigration Lab, American University

contact

trac.syr.edu
ackocher@syr.edu
austinkocher.com

Outline

1. What is crimmigration and how do we (TRAC) study it?

2. Federal immigration-related criminal prosecutions.

3. Criminal-related grounds for deportation in immigration court.

4. Other areas of crimmigration data.

5. Expanding this work beyond the United States.

ABOUT TRAC

- Founded in 1989 by Dr. Sue Long, professor at Syracuse University, and David Burnham, the *New York Times* journalist that broke the story that became *Serpico*.

- We use Freedom of Information Act (FOIA) requests and litigation to obtain digital records from the federal government and make those records available to the public and to researchers.

- Research focuses on federal government only, and lines of research include: immigration, federal prosecutions, civil litigation, IRS, FOIA itself, and some other smaller areas.

Crimmigration

Phenomenon — The substantive, enforcement-related, and procedural convergence of criminal law and immigration law.

Purpose — "…to create a population, often identifiable by race and class, that is excluded physically, politically, and socially from the mainstream community."

THE CRIMMIGRATION CRISIS: IMMIGRANTS, CRIME, AND SOVEREIGN POWER

JULIET STUMPF[*]

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IN DEFENSE OF THE
"CRIMINAL ALIEN"

WELCOME
THE
WRETCHED

CÉSAR CUAUHTÉMOC
GARCÍA HERNÁNDEZ

"Most people try to comply with the law most of the time. All of us fail to do so some of the time. Some of us own up to it. Most of us don't." (p.175)

"It is true that communities with migrants tend to be the safest communities in the United States. But to say that migrants commit less crime than people born in the United States isn't to say that migrants are angelic. They are not. Migrants are simply people. Like all people, migrants are complicated and contradictory" (99).

Crimmigration State

The "***crimmigration state***" is the apparatus of power of that uses its hegemony to formulate and legitimize moral and legal categories that create immigrants as populations of governance and control. In practice, the crimmigration state is both the outcome and the process of linking together (while also reconstructing) the criminal system and the immigration system to more effectively incarcerate and exclude migrants.

1. | Key is understanding that the institutional conditions of the criminal legal system and the immigration system must both be understood as *interdependent* phenomena.

2.

Where does FOIA fit in?

TRANSPARENCY MODEL (TRAC APPROACH)

Pre/Ongoing

- gov. data systems analysis
- content area expertise
- institutional analysis

Probing FOIA request ⟶ subset of records

Escalating FOIA request ⟶ larger set of records

litigation?

comprehensive FOIA request ⟶ comprehensive records received on regular basis

FOIA litigation/negotiation
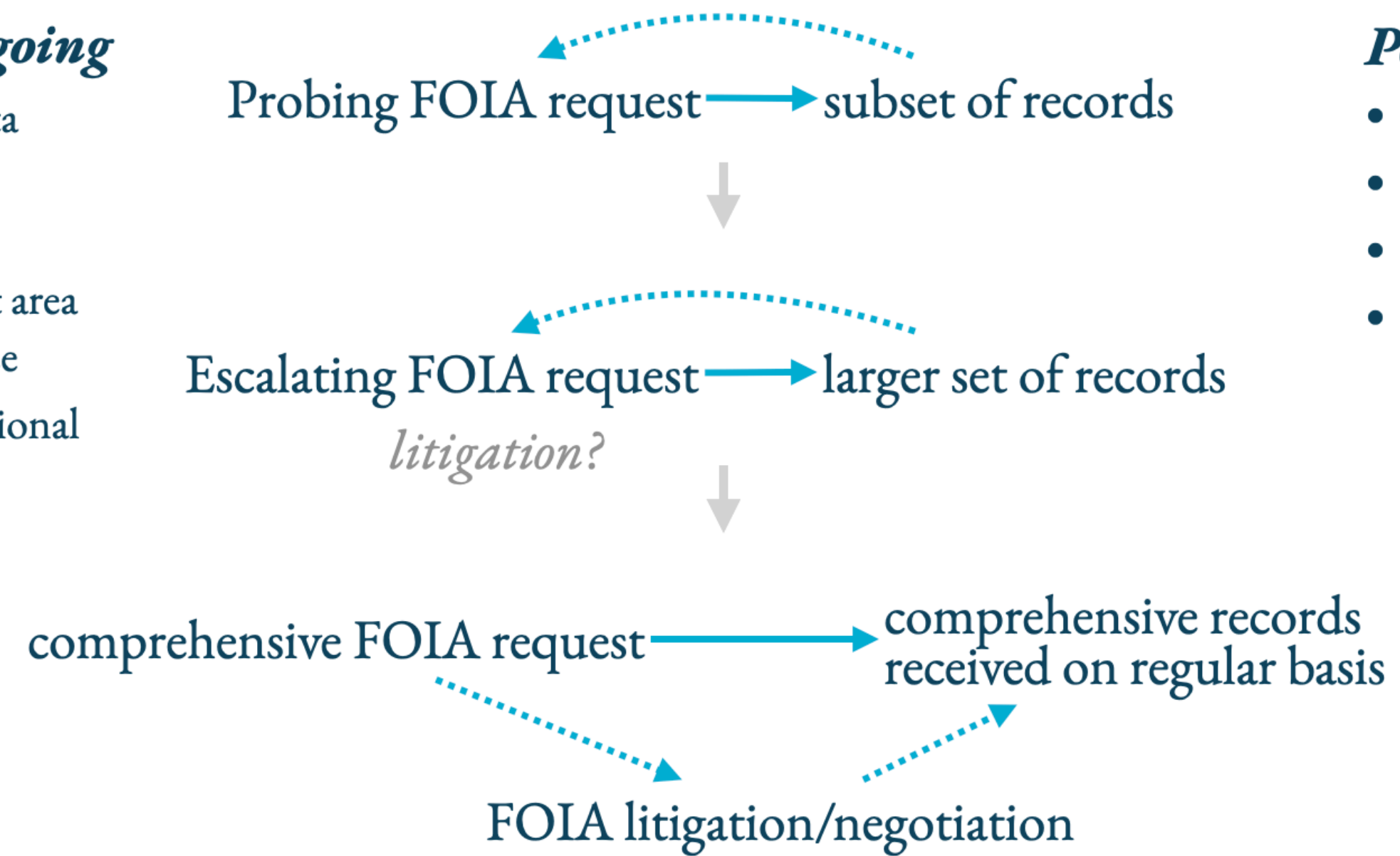
Post/Ongoing

- storage
- validation
- analysis
- publication (reports/tools)

FOIA-TRAC-Report.zip
2.7 GB

ZIP

3.

Data can help us understand the trends and magnitude of crimmigration as part of our broader efforts to analyze and critique the <u>crimmigration state</u>.

1. *Federal Immigration Prosecutions*

What is the federal court system?

1. 8 USC 1324 – Harboring
2. 8 USC 1325 – Unlawful Entry
3. 8 USC 1326 – Unlawful Re-Entry ←———

"Undesirable Aliens Act of 1929" was conceived, drafted, and enacted by white supremacists who sought to keep the country's blood "white and purely Caucasian" by targeting the "Mexican race" for exclusion. – NIJC

Immigration-Related Prosecutions in December 2023

Table 2 shows the top lead charges recorded in the prosecutions of immigration matters filed in U.S. District Court during December 2023.

Lead Charge	Count	Rank	1yr ago	5yrs ago	
08 USC 1326 - Reentry of deported alien	1,185	1	1	1	More
08 USC 1324 - Bringing in and harboring certain aliens	288	2	2	2	More
08 USC 1325 - Entry of alien at improper time or place; etc.	19	3	4	4	More
18 USC 1001 - Fraud/false statements or entries generally	12	4	5	15	More
18 USC 1546 - Fraud and misuse of visas, permits, and other documents	11	5	3	3	More
18 USC 911 - False personification - Citizen of the US	3	6	9	18	More
18 USC 922 - Firearms; Unlawful acts	3	6	10	10	More
18 USC 758 - High speed flight from immigration checkpoint	2	8	15	23	More
18 USC 1425 - Procurement of citizenship or naturalization unlaw	2	8	19	14	More
18 USC 3 - Accessory after the fact	1	10	12	7	More
18 USC 371 - Conspiracy to commit offense or to defraud US	1	10	8	17	More
18 USC 1542 - False statement in application and use of passport	1	10	16	11	More
18 USC 1544 - Misuse of passport	1	10	7	5	More

Judicial District	Count
Texas, W	548
Arizona	343
Texas, S	317
Cal, S	110
N Mexico	55
Fla, S	19
N. Y., N	13
Texas, N	13
Puer Rico	8
Fla, M	7
Ga, N	7
Okla, N	7

Table 2. Top Charges Filed

Prosecutions — https://trac.syr.edu/tracreports/bulletins/immigration/monthlydec23/fil/
See convictions — https://trac.syr.edu/tracreports/bulletins/immigration/monthlydec23/gui/

Top 5 US District Courts for Harboring Prosecutions
As Percent of Total Harboring Cases Nationwide in February 2020

LEGEND
District Name
Prosecutions

California South
18%

Arizona
12%

New Mexico
6%

Texas West
20%

Texas South
30%

All Other Districts
14%

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Immigration Prosecutions by Fiscal Year

Legend:
- unlawful re-entry (§ 1326)
- unlawful entry (§ 1325)
- harboring (§ 1324)

Fiscal Year

Immigration Prosecutions Per Month

Legend:
- unlawful re-entry (§ 1326)
- unlawful entry (§ 1325)
- harboring (§ 1324)

Timeline bands: Dec 03 – Jan 08 | Jan 08 - May 2018 | June 18 - Mar 20 | Apr 20 – Dec 23
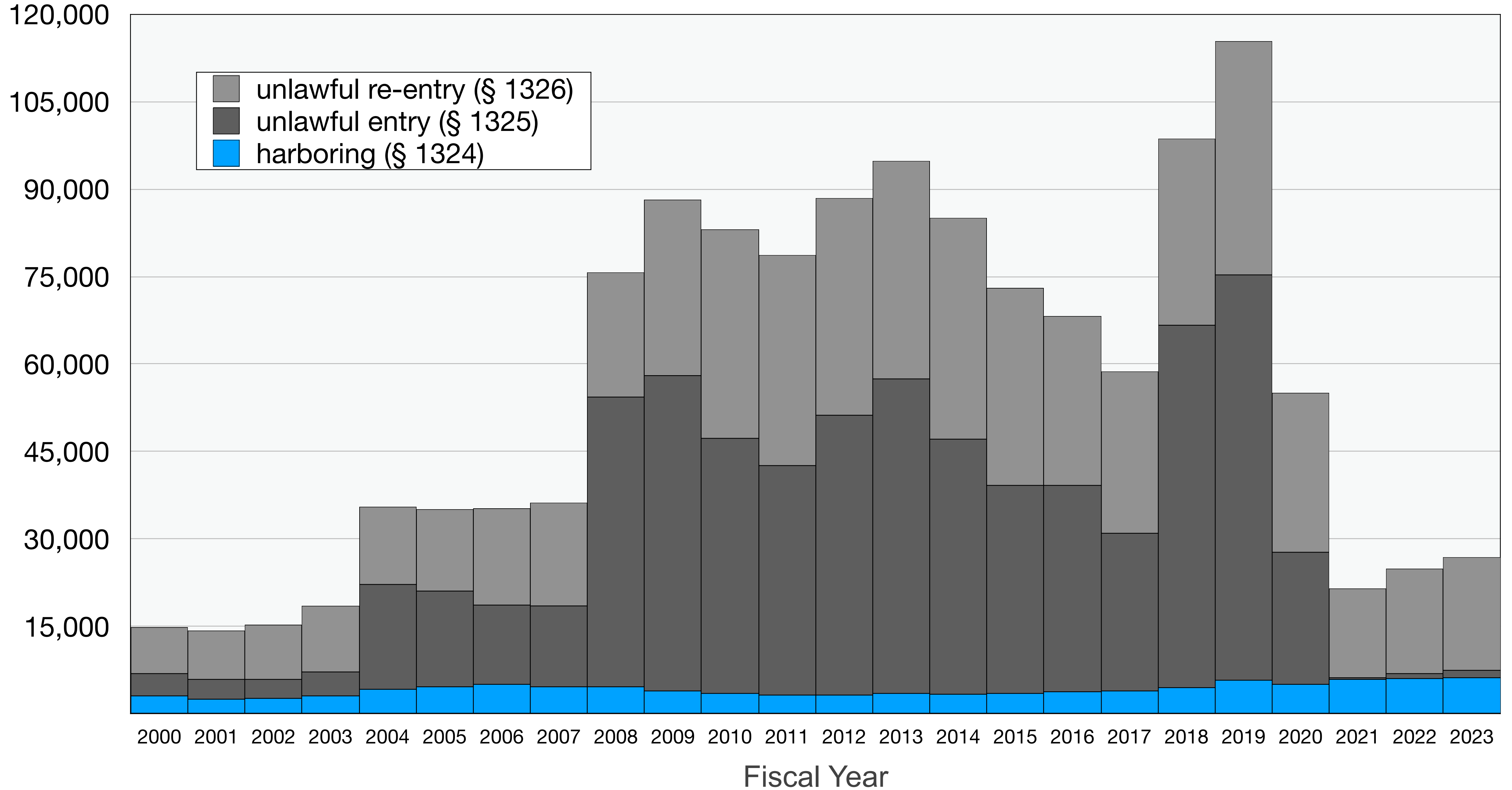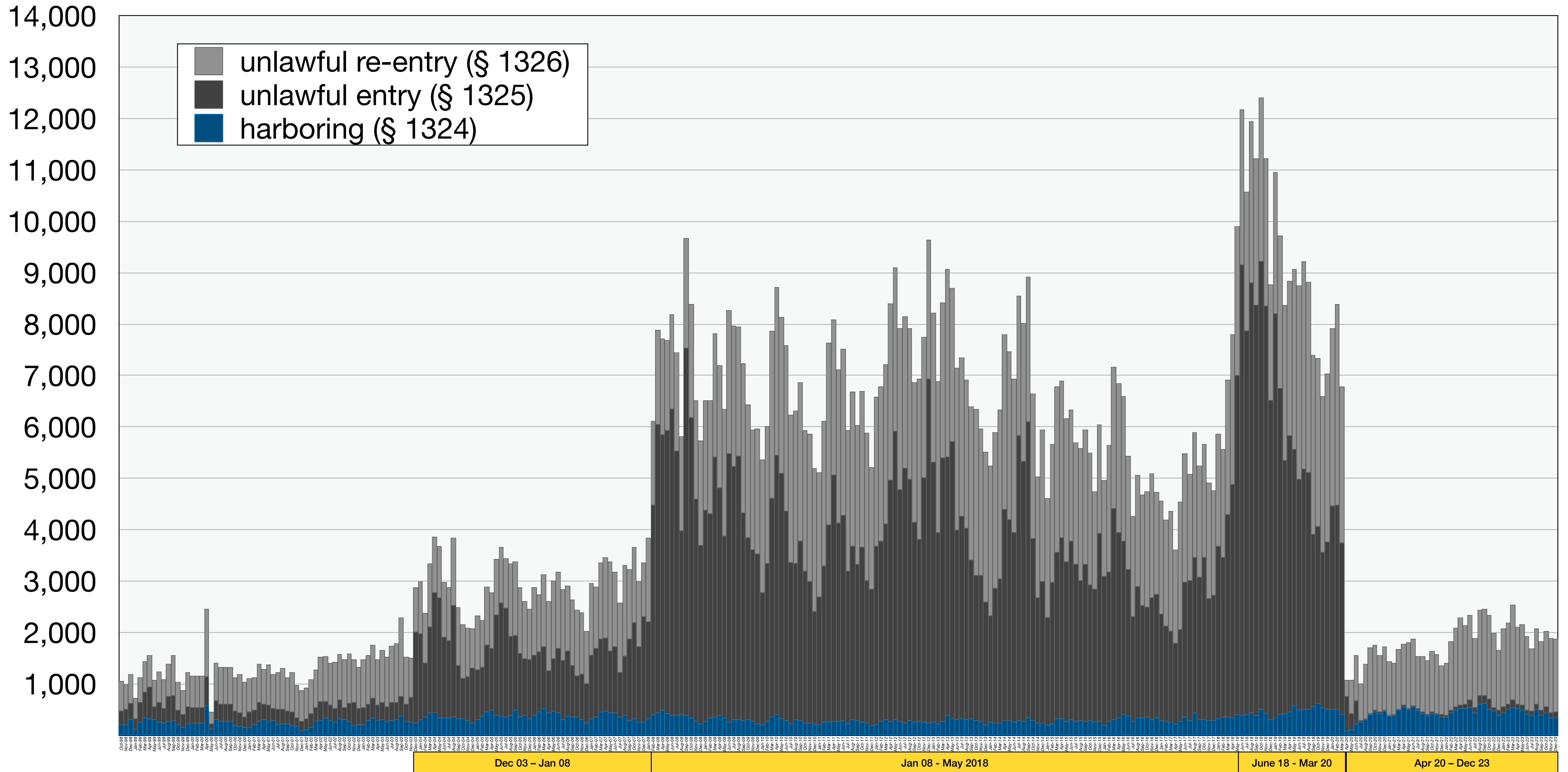
Percent Immigration Prosecutions Each Month Out of Total

"Zero Tolerance Policy"

Title 42 starts

Title 42 ends

Stumpf publishes "crimmigration crisis"

CBP Apprehensions May 2018

Prosecuted

Not Prosecuted

© 2018 TRAC

80%
70%
60%
50%
40%
30%
20%
10%

Oct-98 Mar-99 Aug-99 Jan-00 Jun-00 Nov-00 Apr-01 Sep-01 Feb-02 Jul-02 Dec-02 May-03 Oct-03 Mar-04 Aug-04 Jan-05 Jun-05 Nov-05 Apr-06 Sep-06 Feb-07 Jul-07 Dec-07 May-08 Oct-08 Mar-09 Aug-09 Jan-10 Jun-10 Nov-10 Apr-11 Sep-11 Feb-12 Jul-12 Dec-12 May-13 Oct-13 Mar-14 Aug-14 Jan-15 Jun-15 Nov-15 Apr-16 Sep-16 Feb-17 Jul-17 Dec-17 May-18 Oct-18 Mar-19 Aug-19 Jan-20 Jun-20 Nov-20 Apr-21 Sep-21 Feb-22 Jul-22 Dec-22 May-23 Oct-23

Federal Immigration Prosecutions Per Month During Trump Admin

Legend:
- unlawful re-entry (§ 1326)
- unlawful entry (§ 1325)
- harboring (§ 1324)

"Zero Tolerance Policy"

Title 42 Begins

Title 42 Ends
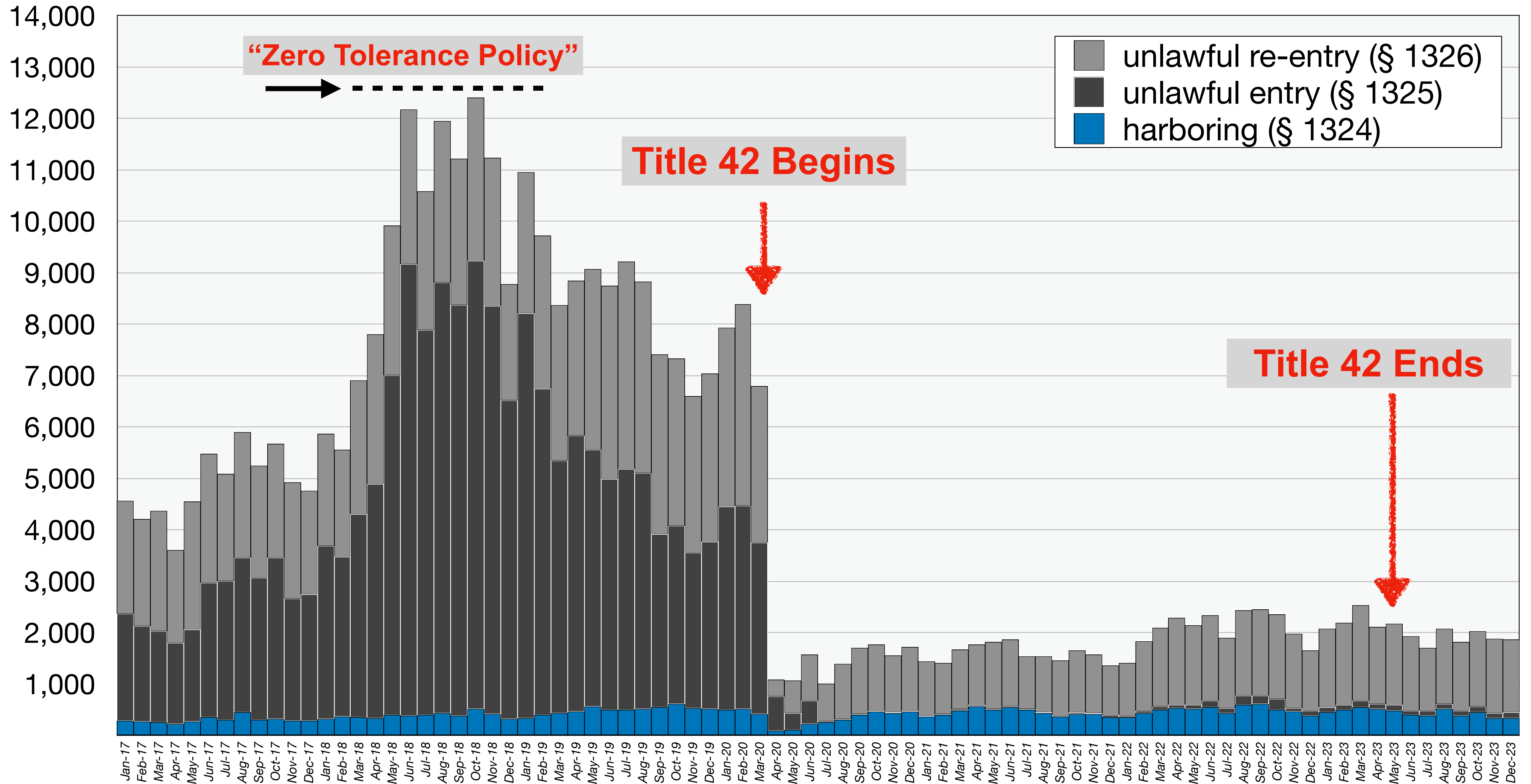
Federal Criminal Prosecutions Rebound Except for Immigration After COVID Starts

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https://trac.syr.edu/tracreports/crim/626/
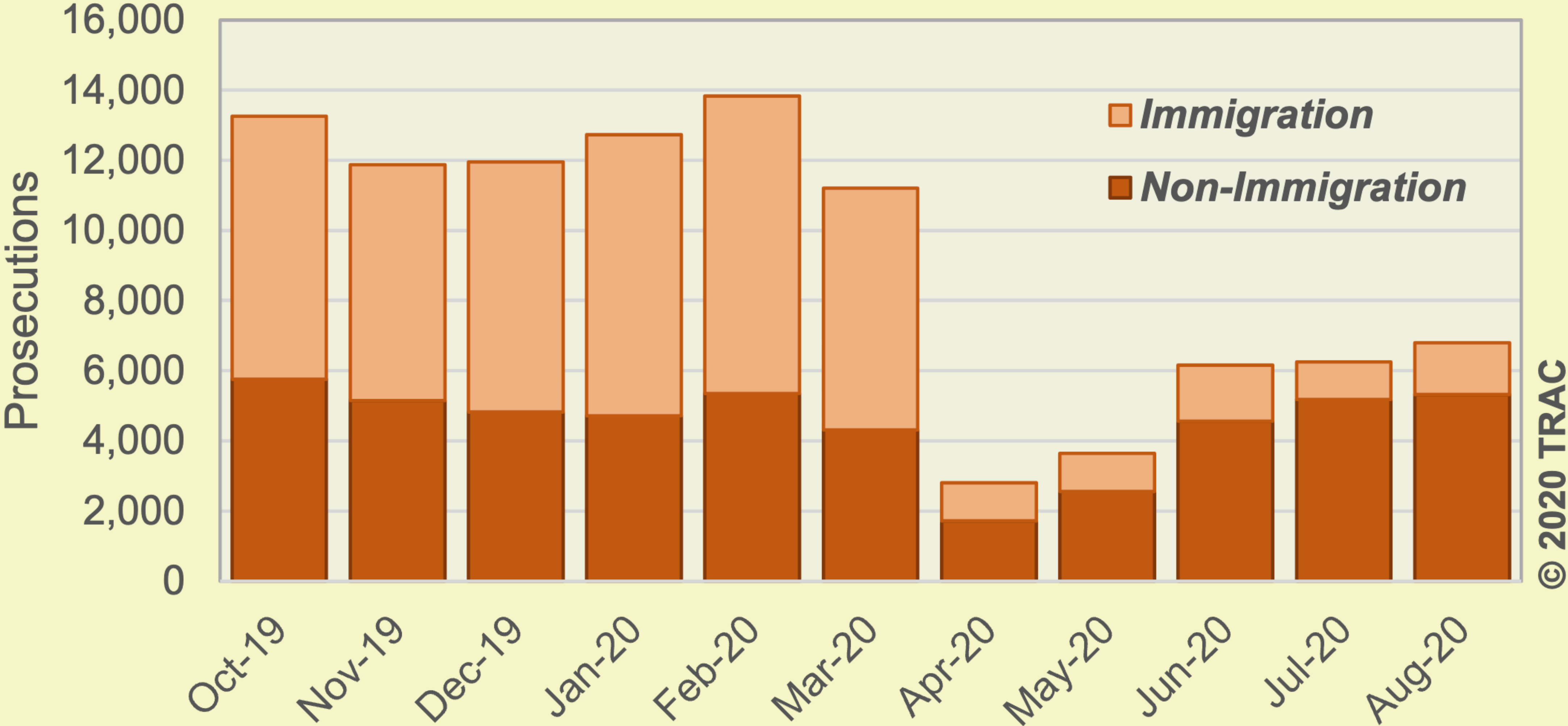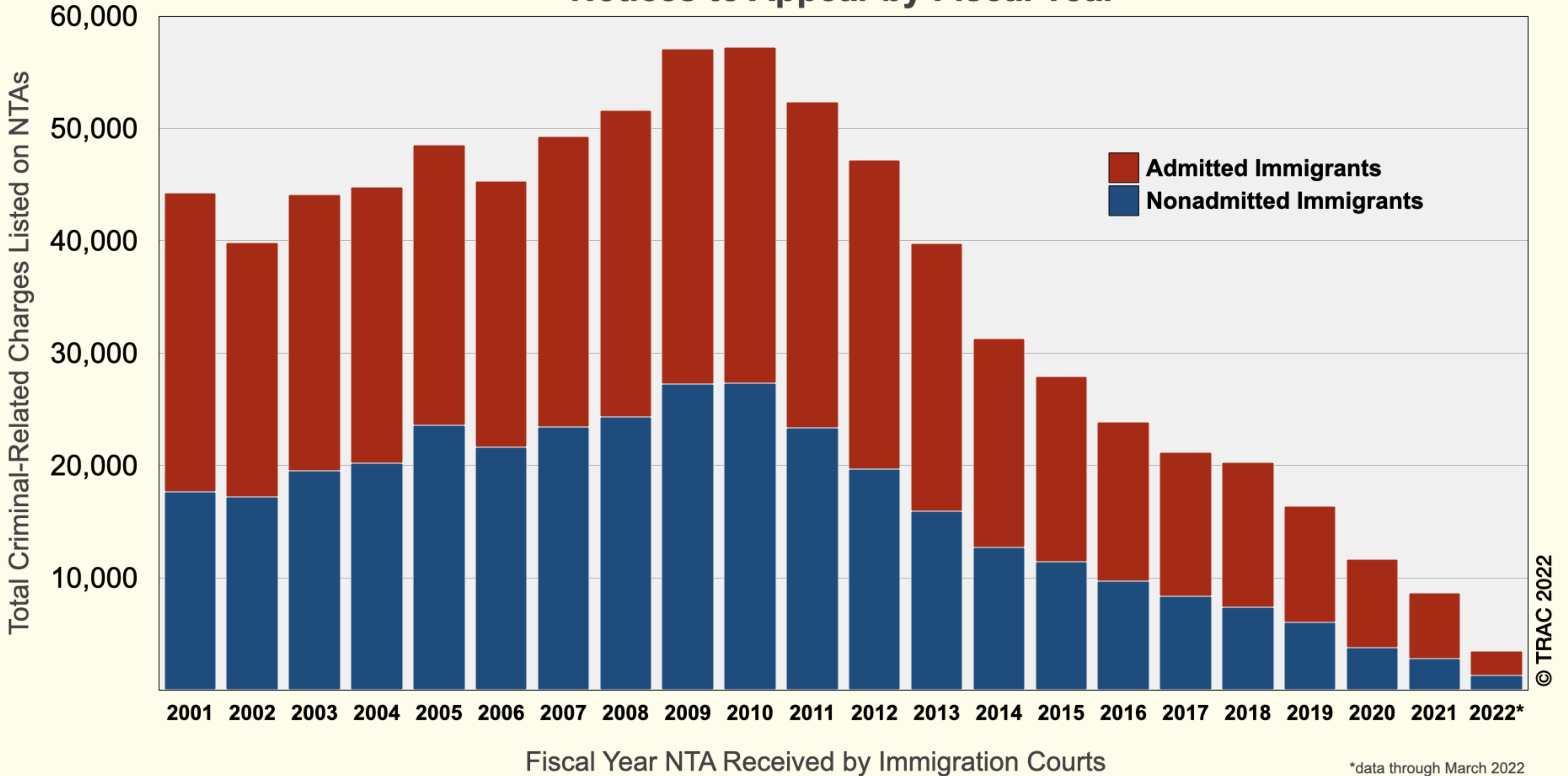
2. Criminal Grounds of Removal in Immigration Court

What is the role of criminal grounds in removal proceedings?

Admitted vs Non-Admitted Immigrants

1. INA § 212: grounds of inadmissibility (not admitted into the country)

2. INA § 237: grounds of deportability after being admitted into the country

Number of Criminal-Related Grounds for Deportation Listed on Notices to Appear by Fiscal Year

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*data through March 2022

Criminal Grounds for Deportation

Published Jul 29, 2022

Criminal-Related Charges Listed on Notices to Appear (NTAs) Received by the Immigration Court by Date of NTA

Statute	Description	All	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
INA § 212(a) (2)	**Nonadmitted Immigrants in Removal Proceedings — All Criminal Charges**	**29,653**	**8,349**	**7,418**	**6,015**	**3,754**	**2,799**	**1,318**
212(a)(2)	Criminal and related grounds *	85	1	1	32	17	20	14
212(a)(2)(A)	Conviction of certain crimes **	23,881	6,904	5,929	4,848	3,028	2,149	1,023
212(a)(2) (A)(i)(I)	Crimes involving moral turpitude	13,687	3,892	3,313	2,756	1,743	1,325	658
212(a)(2) (A)(i)(II)	Controlled Substance Violation	10,194	3,012	2,616	2,092	1,285	824	365
212(a)(2)(B)	Multiple criminal convictions	1,222	292	324	241	146	154	65
212(a)(2)(C)	Controlled substance traffickers	4,215	1,096	1,117	852	530	436	184
212(a)(2)(D)	Prostitution and commercialized vice	71	19	12	14	6	10	10
212(a)(2)(E)	Certain aliens involved in serious criminal activity who have asserted immunity from prosecution	4	0	0	2	0	0	2
212(a)(2)(G)	Foreign government officials who have committed particularly severe violations of religious freedom	1	0	0	0	0	0	1
212(a)(2)(H)	Significant traffickers in persons	16	1	3	5	1	2	4
212(a)(2)(I)	Money laundering	155	36	32	21	26	28	12
212(a)(...)	Other/Misc	3	0	0	0	0	0	3

Criminal Grounds for Deportation

Published Jul 29, 2022

INA § 237(a)(2)	Admitted Immigrants in Removal Proceedings – All Criminal Charges	51,926	12,799	12,834	10,360	7,875	5,895	2,163
237(a)(2)(A)(...)	General crimes **	33,462	8,044	8,034	6,506	5,053	4,318	1,507
237(a)(2)(A)(i)	Crimes of moral turpitude	4,133	990	1,060	870	649	408	156
237(a)(2)(A)(ii)	Multiple crimes of moral turpitude	5,034	1,354	1,302	1,042	765	404	167
237(a)(2)(A)(iii)	Aggravated felony	24,292	5,700	5,671	4,594	3,639	3,504	1,184
237(a)(2)(A)(iv)	High speed flight	3	0	1	0	0	2	0
237(a)(2)(B)	Controlled substances **	11,454	2,974	3,139	2,343	1,714	900	384
237(a)(2)(B)(i)	Conviction	11,395	2,961	3,126	2,330	1,704	893	381
237(a)(2)(B)(ii)	Drug abusers and addicts	59	13	13	13	10	7	3
237(a)(2)(C)	Certain firearm offenses	1,835	459	455	410	252	184	75
237(a)(2)(E)	Crimes of domestic violence, stalking, or violation of protection order, crimes against children	5,175	1,322	1,206	1,101	856	493	197
Total	All Criminal Charges	81,579	21,148	20,252	16,375	11,629	8,694	3,481

* Although 212(a)(2) is not typically charged by itself since it represents the general section of criminal charges rather than a specific charge. However, the immigration court data represents this as a stand-alone category and so we represent it here.

** This row is subtotal of the charges that fall under this category, which are inset below it.

Internationalizing TRAC

Understanding crimmigration beyond the United States from a critical data studies perspectives requires:

1. ...exploiting freedom of information legal frameworks abroad (e.g., Mexico, Canada, beyond).

2. ...mapping the data architectures of government agencies in order to contradict official narratives about crimmigration.

3. ...develop more careful comparative crimmigration analysis at level of institutional practice to understand divergent trajectories of multiple **crimmigration states** (plural).

Visit
trac.syr.edu

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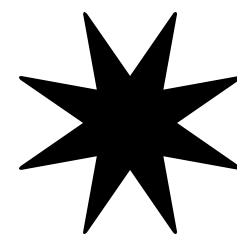
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