

Problems Beyond Deportation

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Nathalie Martin, [Survival in the Face of Scarcity: The Undocumented Immigrant Experience](#), 58 *Ariz. L. Rev.* 103 (2016).

For undocumented immigrants, deportation is a constant looming threat. Given the [harsh and broad categories](#) of things that an immigrant can do to become deportable, the [unfairness](#) of the deportation adjudication system, and the [devastating consequences](#) of deportation, it makes sense that immigration law scholars focus on the phenomenon of deportation. [Nathalie Martin](#), whose primary scholarly focus is not immigration law, reminds immigration law scholars that, unfortunately, there are many problems to explore beyond deportation.

Martin explores themes of scarcity by reporting on what she learned through a qualitative study of 50 undocumented immigrants in New Mexico. The [study](#), funded by the National Conference of Bankruptcy Judges, investigates the banking and credit habits of undocumented immigrants through a [snowball sampling](#) technique. In *Survival in the Face of Scarcity*, Martin uses data from the study to explore how issues of scarcity are compounded for a population without legal status. As Martin explains, her findings “show a perfect storm” (P. 109) where individuals with limited rights are fearful to assert any legal rights they have.

Scarcity means having less than one needs. Martin adopts Sendhil Mullainathan and Eldar Shafir’s work on scarcity theory to help frame her study results. In her study population, Martin recognizes the bandwidth tax (P. 111) discussed by Mullainathan and Shafir. The “drastic economic scarcity” (P. 114) of her subjects clearly was taking its toll, mentally and emotionally, especially in terms of the ability to cope with unplanned expenses. This economic scarcity itself was not surprising; , more surprising to Martin was the discovery that her subjects categorized unplanned expenses differently than she did. To her subjects, job loss was an expected event. Martin concluded that creating a budget as an undocumented immigrant “just doesn’t work.” (P. 119.)

After exploring how scarcity affects her study population, Martin argues strict immigration laws that allow no hope of regularizing status, the threat of deportation, and ineffective consumer protection laws create a scarcity tornado that is difficult to escape. Martin’s subjects know that they are vulnerable. They know that their lack of legal immigration status means they do not have a level hand in economic transactions or in employment relationships. This makes them hesitant to exercise any legal rights they may have outside of immigration law, either informally (for example, complaining about a billing error) or more formally through the courts.

Participants in the study were asked “if they feel comfortable using the court system to right a wrong.” (P. 130.) Only 32% answered yes. For 42% of the study participants, court was not an option, and 26% were not sure if they would use the court system. Participants expressed fear of deportation or an acceptance that a lack of legal status means one should not expect fair treatment as reasons not to pursue a legal claim. This means that fear of deportation (even if wholly unrelated to a potential legal claim) and a general sense of second-class status keep the individuals in Martin’s study from vindicating the legal rights that they do have in the employment, contract, and landlord-tenant contexts.

Interestingly, despite the scarcity in which they live, participants in Martin’s study expressed reluctance to accept government benefits. Undocumented immigrants are ineligible for most kinds of government aid. Even when an individual or someone in the individual’s mixed status family might be eligible for a benefit, Martin reports that the

study participants expressed a strong preference to make it on their own.¹

Martin's study reminds us that being an undocumented immigrant is not easy. This may seem like a simple lesson, but it is one that bears repeating. While Martin's study group is only a small slice of the undocumented population, Martin's study helps to rebut misleading political discourse that promotes a narrative that it is uncomplicated to be undocumented in the United States. Of all the challenges identified by Martin, the one that perhaps should be most disconcerting to law professors is a grudging acceptance that the vindication of legal rights is not practical. This is a major problem beyond deportation. Martin's study prompts us to ask whether this is an acceptable status quo.

And here is where immigration advocates, policymakers, and scholars will step in with their expertise. The immigration laws of the United States are badly in need of reform. That reform must include a path to legalization for undocumented immigrants. Only then will Martin's study participants be able to begin to escape the scarcity and vulnerability that negatively impacts their lives and the lives of their U.S. citizen relatives.

1. Nathalie Martin, [Giving Credit Where Credit is Due: What We Can Learn from the Banking and Credit Habits of Undocumented Immigrants](#), 2015 Mich. L. Rev. 989, 1022-24 (2015). [?]

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