Citizenship Studies
Publication details, including instructions for authors and subscription information:
http://www.tandfonline.com/loi/ccst20

A Kafkaesque state: deportation and detention in South Africa
Rebecca Sutton\textsuperscript{a} & Darshan Vigneswaran\textsuperscript{b, c}
\textsuperscript{a} Faculty of Law, University of Toronto, Toronto, Canada
\textsuperscript{b} Max Planck Institute for the Study of Religious and Ethnic Diversity, Göttingen, Germany
\textsuperscript{c} African Centre for Migration and Society, University of the Witwatersrand, Johannesburg, South Africa

Available online: 24 Aug 2011

To cite this article: Rebecca Sutton \& Darshan Vigneswaran (2011): A Kafkaesque state: deportation and detention in South Africa, Citizenship Studies, 15:5, 627-642

To link to this article: http://dx.doi.org/10.1080/13621025.2011.583794

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: http://www.tandfonline.com/page/terms-and-conditions

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan, sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.
Deportation practices are commonly described through the lens of a ‘state of exception’, a condition where government assumes extra-judicial and near absolute authority over its subjects. Yet, within the contemporary deportation regime, we find examples of state fragmentation and resistance. Individual officials take decision-making power into their own hands, and deportable populations reassert control over their movement and their lives. Hence, deportation is not a ‘bare’ form of politics, but a rich and contested realm, in which officials and deportees struggle for power and freedom. This article attempts to define and describe the unique character of this realm of politics in South Africa’s particularly prolific and harsh deportation system. Drawing on a wide array of survey, interview and ethnographic material, we explore both the inner workings of South Africa’s deportation bureaucracy and deportees’ narrative and emotive responses to detention conditions. To make sense of this material, the article draws on the unique description of state power and authority in Franz Kafka’s classic The Trial. For Kafka, the power of officials in a state of exception stems from an ability to prolong administrative procedures, while individuals seek to retain their capacity to imagine and chart a broader migration story. We show that many anomalies and informal practices in the South African deportation system can be understood as part of this Kafkesque struggle.

Keywords: deportation; immigration policy; state power; South Africa; Kafka

Introduction: deportation and authoritarian power

South Africa deports hundreds of thousands of people each year (Vigneswaran et al. 2010, p. 466). These deportations commonly involve human rights abuses and procedural irregularities. The prolific and callous nature of this deportation system has commonly been explained as a product of the country’s unique history. The apartheid government created a massive enforcement and penal structure to implement its political programme. The African National Congress took charge of this enforcement apparatus in the mid-1990s and began to use it to control immigration flows (Peberdy 1999, Klaaren and Ramji 2001, Vigneswaran 2008, Landau and Vigneswaran 2011, Segatti and Landau 2011, Vigneswaran 2011b). This article will not re-examine this historical lineage. Instead, we attempt to make the South African case speak to broader debates on the nature and meaning of the modern deportation regime (De Genova and Peutz 2010).

Contemporary deportation practices are invariably authoritarian in character. Many governments act with relative impunity towards deportable populations, denying them...
basic rights and the protection of law. This has provoked some scholars to ask whether the contemporary deportation regime represents a new and more pernicious form of state power.

The work of Giorgio Agamben has been particularly influential here (Davidson 2003, Bell 2006, Yasmeen and Nisha 2007, Aitken 2008, Buff 2008, Philip 2008, Salter 2008, Astor 2009, De Genova and Peutz 2010). Agamben describes life and politics in a state of exception, a condition in which a government assumes extra-judicial and near absolute authority to rule. There are at least two dimensions to this absolute power. First, Agamben consistently argues that under a state of exception state authority becomes highly concentrated. For example, in Nationalist Socialist Germany, the entire state became wedded to the will of the ruler and/or the guiding doctrine of the ruling party. Under these conditions, ‘[n]ot only is the law issued by the Führer definable neither as rule nor exception… in this law, the formation of a rule [normazione] and the execution of a rule – the production of law and its application – are no longer distinguishable moments’ (Agamben 1998, p. 173). For Agamben, a state of exception does not only centralise power, but also minimises civilians’ capacity to resist. The state is able to act, often violently, against its subjects because it is unrestrained by law. Here, the paradigmatic example is the concentration camp, a space of exception in which ‘human beings could be so completely deprived of their rights and prerogatives that no act committed against them could appear any longer as a crime (at this point, in fact, everything had become possible)’ (Agamben 1998, p. 171).

Recent efforts to apply Agamben’s ideas to the study of contemporary deportation have questioned these related themes of radically concentrated and uncontested state power. Some have queried whether exceptional deportation practices have helped to consolidate sovereign authority. For example, Landau (2005) suggests that the state of exception may instead lead to the fragmentation of state institutions or the cannibalisation of the state from below. His work shows how immigration policy makers in South Africa signalled, both in rhetoric and law, that junior government officials and members of the public could use extra-legal means to regulate the movement of suspected ‘illegal foreigners’. These declarations of a state of exception did not weld the state apparatus to the command of an elite or single ruler, but rather allowed for the transfer of authority over deportation practices to a range of sub-state actors, including interdepartmental bureaucratic cliques, corrupt networks, private agencies and vigilante groups.

Other scholars have questioned whether deportable populations are docile, noting that deportees resist state oppression. For example, Rob Aitken’s study of the Canadian security certificate programme discovers that contestation ‘is not exterior to the state of exception but a force interior to its practice and form’ (2008, p. 394). Yasmeen Abu-Laban and Nisha Nath’s work on the Mahrer Arar deportation in Canada note that ‘due process and the law afford opportunities for individual resistance’ (Yasmeen and Nisha 2007, p. 94). Antje Ellerman’s study of deportees’ practice of destroying documents reveals similar dynamics. She found that ‘illegal migrants often times succeed in tying the hands of the sovereign who is forced to operate within the constraints of the international legal order that requires the possession of identity documents for repatriation’ (Ellermann 2009, p.1). While deportable populations may not frame their acts of resistance as claims to citizenship or as new formulations of the rights of citizens, they do struggle for freedom of movement against the global deportation regime.

In this article, we take up these critiques by seeking to discover the nature of politics in a state of exception. We do not intend to revive debates over the agency of migrants or state officials, or to question whether contemporary deportation systems are authoritarian, as adherents of Agamben would suggest. Instead, we seek to answer the following
questions: How is power and authority reconstituted in an exceptional realm of state power? If the laws of citizenship are in abeyance, what generative grammar can we use to describe the forms of entitlement and struggle that we find?

Franz Kafka: state power and the struggle over time

The extant literature gives us clues as to how we might answer these questions. Agamben and several of the works that have sought to apply his ideas to the study of deportation have referred back to, but not fully explored the insights of, Franz Kafka’s efforts to depict the conditions of politics in an exceptional state. The Trial (Kafka et al. 1937) describes a world in which the state has become a self-sustaining entity, devoid of function and rationality. While one might choose to read Kafka as a liturgy on the absurdities of a bureaucracy gone wrong, the book also helps us to understand how modern officials utilise arbitrary authority and how the targets of deportation policies experience and respond to this power.

Kafka’s central message is that officials use bureaucratic procedure as a means to generate autonomous and self-sustaining realms of social power. What is meant by ‘procedure’ here is not a series of acts designed to achieve a particular end, but rather a set of physical performances, rituals and speech acts, which extricate individuals from their everyday lives and demand attendance at bureaucratic offices and institutions. The state imagined by Kafka is powerful because officials consistently command members of the public to participate in extensive decision-making processes, labyrinthine operating procedures and interminable case management ceremonies. Officials command this procedural rigour, regardless of whether the processes are justified by principles of justice or fairness and, perhaps more importantly, regardless of whether these processes advance core state objectives of domination or autarchy. The state is enduring because many different actors gain from this collective manipulation and perpetuation of procedure.

The Trial imagines the state as a loose network of self-interested manipulators of law and administrative process. Some officials are lowly police officers implementing orders that have been given from above. These officials prolong their powers of arrest to extract bribes and to steal. Others are high-level judges and lawyers who prolong administrative processes to garner respect and obeisance. The myriad twists and turns of Josef K’s case are determined by officials’ collective need to profit, both materially and in terms of status, from a lengthy process of administration and adjudication. The cumulative impact of the officials’ collective efforts to distort and extend Josef K’s trial is not simply a denial of his rights, but a radical onslaught on his ability to function as a member of society.

In addition to developing a particular rationale for bureaucracy as an end in and of itself, The Trial also attempts to capture an individual’s experience of exposure to such a form of rule. Here, Kafka conceptualises the individual struggle for autonomy in a unique way. This is not a struggle for rights, but a struggle over time. One way in which K resists court officials’ attempts to ensure that he remains permanently attentive to the procedures of his case is by asserting his capacity to manage his daily affairs. In this respect, K oscillates between a life in which he is ineluctably and interminably drawn in to court procedure and a life of where he goes about his work and leisure activities in relatively blissful ignorance of what is happening at the court.

Crucially, in Kafka’s depiction of struggle, deploying a language of rights is not necessarily the best way forward. The bureaucratic apparatus confronting K does not possess the power to decide his case, but only to prolong or shorten it. Hence K’s efforts to insist, through the appropriate channels, that his rights are respected, tend only to result in further delays and administrative trauma. This does not mean that K completely lacks the
means to resist. Here, his principal and most effective strategy is one of imaginative and rhetorical denial. He denies the authority of those who have deemed to make him the subject of investigation and abandons or ridicules seemingly vital court procedures (consultations with lawyers, hearings, etc). By stymieing and short-circuiting court procedure, K is able to limit the degree to which it colonises his daily life and broader life plans. While some other characters in the novel view these attempts as frivolous, this approach is also a way of frustrating and undermining the power of individual officials. K’s approach can be seen as a way of calling the officials’ bluff, by exposing the limits of their power over his everyday life.

Kafka’s fictional allegories have not been adequately fleshed out into a theory of state power, sovereignty or citizenship. Nevertheless, his work resonates strongly with the forms of oppression and struggle that we discovered in our research on deportation in South Africa. More importantly, we believe that our reading of Kafka helps us capture the nature of politics in a condition of ‘exceptional’ rule. We concur broadly with Landau’s (2005) proposition that the legal vacuum in South African immigration control processes has resulted in a fragmentation of political authority. However, we emphasise the manner in which state agents capitalise on these fissiparous tendencies, prolong administrative processes and extract rents. Then, building on Kafka’s personalised line of enquiry, we explore how migrants behave when subject to this condition of bureaucratic suspense. While some deportees become fatalistic and simply give themselves over passively to the deportation process, many deportees waver between (a) denial of the impact of deportation on their life plans; and (b) vigorous manipulation of procedure and law. We explore the similarities between detainees’ experiences and the case of Josef K. We show how an imaginative disengagement from procedure can provide migrants with a potential resource to generate feelings of autonomy and selfhood, while defence of one’s rights can at times exacerbate feelings of subjection to capricious authority.

To conduct this analysis of the South African deportation regime, we draw on an ecumenical data-set. This includes two migrant surveys: (1) a survey of 1696 applicants at the country’s nine refugee reception offices in 2008–2009, which aimed to reveal conditions in the permitting process and (2) a survey of 734 detainees at the Lindela detention centre conducted in 2009, which aimed to reveal conditions of arrest, conditions of detention in prisons, police cells and the Lindela detention centre, and official implementation of deportation procedures. The study also draws on 110 observations of police interactions with civilians, which were systematically collected in an inner-city suburb of Johannesburg in 2008–2009. These studies helped us to develop statistical portraits of the deportation regime.

Developing explanations of official behaviour and the responses of foreign nationals to their treatment by officials required more finely grained research strategies. First, we conducted ethnographic studies of immigration enforcement practices across three research sites: (i) the Beitbridge Border Post and its surrounding areas where the majority of Zimbabweans enter South Africa; (ii) the Johannesburg Offices of the Department of Home Affairs; and (iii) the Johannesburg Central and Hillbrow Police Stations and their respective jurisdictions. Our researchers spent a total of 14 months observing everyday work practices in government offices, accompanying police and immigration officers on patrol and holding informal conversations with local officials. Finally, we conducted a series of open-ended interviews lasting one to two hours with 25 individual Lindela detainees over a period of 2 months in 2009; the aim of these sessions was to flesh out some of the findings from the administered surveys and to attend to some of the details and ambiguities that the surveys did not capture. These semi-structured interviews involved specific questions regarding the detainees’ experience of arrest and detention, their
understanding of the nature and status of their case, and an open-ended conversation about their life story, how they arrived in South Africa and where they planned to go next. Respondents were selected from a master list of detainees prepared each morning by Lindela officials. Using the country of origin and length of stay data in these lists, we sought to interview detainees with a diversity of views and experiences of detention.

**Immigration control in South Africa: making migrants wait**

South Africa’s deportation regime is strongly shaped by the following fact: policy makers envisage that foreign migrants will often enter the country informally or as tourists and then subsequently seek to regularise their stay. As with many countries, acquiring a visa to work and remain in South Africa for an extended period of time is difficult. However, many foreign nationals can acquire a visa on arrival at a port of entry. Entry across the land borders has become considerably easier over the last few years following the signing of bi-lateral entry agreements with Zimbabwe and Mozambique. Many migrants cannot take advantage of these or other visa application systems. For example, Zimbabwean nationals and asylum seekers from further abroad often lack valid travel documents, and so they continue to enter the country informally, usually at land borders. Yet, South African immigration and refugee laws provide even these groups with means of regularising their stay. The Refugee Act (no. 130 of 1998) allows asylum seekers to make their claims for status subsequent to an informal entry and the Immigration Act (no. 13 of 2002) allows tourists to apply for a work permit after arrival in South Africa. This system is by no means unique to South Africa, but it is important to recognise how, unlike those European states that have extended controls beyond their borders, the process of differentiation between legitimate residents and deportable populations really begins in South Africa once the majority of migrants have arrived on South African soil.

Many informal migrants do not get far past the border. The majority of deportations in South Africa are repatriations of recent informal entrants in the immediate vicinity of its land borders, and particularly the Northern border with Zimbabwe. In this scenario, border police and immigration officials repatriate foreign nationals quickly, without much deliberation, and *en masse*, i.e. by the truckload. In this article, we are more concerned with the deportation orders initiated in the country’s interior, which tend to involve more considered deliberation of individual cases and are generally more protracted affairs.

The Immigration Act (no. 13 of 2002) and Regulations define the categories of person that are liable to deportation. These documents lay out the considerable prerogatives which government officials possess *vis-à-vis* the deportable population, including powers of investigation, search, arrest, detention and deportation. The legislation also outlines a small set of mandatory procedures for the management of deportation cases, including requirements to issue warrants, to inform suspects of the decision to deport them and their attendant rights, to maintain minimum conditions of detention, and to limit prolonged detention. However, the laws do not explain how and when investigations, arrests, detentions and deportations should be initiated, managed and implemented or who should take responsibility for these tasks. The law allows ‘immigration officers’, including Home Affairs and Police officials, to decide the following issues: whether to conduct inspections of potential suspects’ documents or their premises; whether to arrest; whether to detain and whether to deport (Vigneswaran and Duponchel 2009).

In addition to exercising their legally sanctioned discretion regarding the initiation of a deportation order, officials also exert extra-legal influence over deportation procedures. Procedural irregularities are widespread and multifaceted. At a minimum, they involve:
arrests and detentions of civilians with valid documents; failures to adequately confirm or deny the validity of documents or suspects’ claims regarding their immigration status; failures to inform detainees of their rights or notify them of the decision to deport them; active obstruction of detainees’ attempts to maintain valid documents; prolonged detentions beyond statutorily proscribed limits; denials of detainees’ rights to claim asylum; failures to maintain adequate conditions of detention and the deportation of detainees in violation of international laws on refoulement (Amit 2010a). While these irregularities are systematic, and many cases for the release of detainees have been won on such grounds, there is little evidence to suggest that individual officials are ever reprimanded for such behaviour. In the sardonic words of a South African immigration lawyer ‘often, [offending] individuals are promoted rather than punished’ (Amit 2011).

These findings beg an important question: How do ordinary officials use this combination of legislative and extra-legal power? More specifically, what sort of power relationships are created by their collective exercise of this authority? Much like the officials in The Trial, South African immigration officers do not possess the final authority to exonerate suspected illegal foreigners. Their primary power is in deciding whether to initiate a deportation order and in determining how long it will take. They deploy this power in at least three ways. First, they can offer temporary suspensions in the application of deportation law. By deferring their legal prerogative to issue a deportation order or arrest a confirmed illegal foreigner, they can allow a suspect to continue to work and reside in the country unofficially. Crucially, officials cannot offer freedom of movement to the suspect, in the form of a blanket exemption from deportation. They can only offer a temporary freedom that is punctuated by the fear of the next encounter with an immigration or police official. In South Africa, this fear is difficult to ignore. The police maintain a heavy street presence and consistently run invasive operations (raids, road blocks and cordon and search procedures) in areas of high migrant concentration. The first thing a police officer typically does when questioning a civilian is to ask them for their identification documents. Of course, through the exercise of extra-legal powers, officials can offer greater protection, particularly if they provide foreigners with forged documents or fraudulent identities. The Department’s anti-corruption unit has uncovered a variety of scams involving the production of fraudulent identities, complete with South African identification numbers and birth certificates; these offer the holder almost complete immunity from detection as well as crucial rights to core social services and entitlements. However, even in these cases, an individual’s capacity to mitigate their exposure to detection and arrest remains dependent on the skills, reliability and probity of their official benefactor, to whom one remains constantly indebted, long after the illicit transaction is complete.

The second way that officials use their power is to extend or prolong periods of detention. Despite the fact that suspected illegal foreigners are supposed to be immediately transferred to the Department of Home Affairs after arrest, on average they are held for just under two weeks (12.8 days (95% confidence interval [8.5, 17.3])) in police and prison cells before being transferred to the Lindela repatriation centre. While officials cannot legally detain a foreigner for longer than 30 days without confirming their deportation order in court, our survey revealed that detainees spent more than a month at the centre on average (37.7 days [28.9, 46.6]). These prolonged detentions had rarely been confirmed by the court. Finally, many detainees are held for longer than the statutorily determined limit of 90 days (Amit 2010a, p. 44).

Numerical measures of detention periods capture one direct outcome of the manner in which officials artificially prolong deportation procedures. Officials adopt a range of more subtle techniques to ensure that these objectively long waiting periods are fraught with
feelings of uncertainty for detainees. Take for example the stark power relations generated by a scenario in which a police officer at a road block asks a suspected illegal foreigner to wait on the curb, while the officer decides whether to initiate a deportation order. What is at issue here is not the mere length of time that the potential detainee is made to wait, but the element of uncertainty: the officer’s (practiced) uncertainty as to how to deal with the case and the suspect’s (genuine) uncertainty as to how the case will be decided. This practice of keeping suspects ‘on their toes’ is widespread. About half of the Lindela detainees (46.7\% n = 689) arrive at Lindela without being formally notified that they are going to be deported and very few of (16.5\% n = 322) these receive notification after arrival. A very small proportion of detainees (5.8\% n = 730) receive notifications of their rights relating to the deportation process, and so only a minority (36\% n = 725) know that they are allowed to appeal. These conditions of uncertainty are compounded by the fact that many of the detainees are arbitrarily and illegally denied access to the outside world. Many detainees (30.3\% n = 729) do not have access to a phone and of those that do, most (76.6\% n = 509) do not have sufficient money to make a call.

There is a third way in which officials prolong the deportation experience. Here, we are referring to the way they extend the adjudicative processes to determine whether an individual has a right to remain in the country. The refugee reception system offers a useful example. Given the difficulties that we have already mentioned in securing one’s right to work and remain in South Africa, and the fact that informal entrants can apply for asylum in urban centres, the asylum system has become an attractive mode of regularisation. Yet, the average applicant waits 640 days before sitting an interview with a Refugee Status Determination Officer. For some, the period of limbo and waiting does not end here. About 1 in 6 applicants waits a further year before receiving a decision on their status. Many then wait further periods in the appeals process (Vigneswaran 2009). This power to prolong the process of deciding on an asylum case has varying implications for migrants. One of the reasons why an asylum seeker permit is attractive to many foreign migrants is that in South Africa asylum seekers are allowed to work and study. Hence, in certain respects, asylum seeker status is equivalent to a work permit. Those who do not have strong claims for asylum may benefit, in terms of an extended period in which they can work legally, from glacially slow processing procedures.

The potential advantages of a long wait are offset by officials’ efforts to ensure that the waiting period is utterly perplexing and arduous. Officials rarely provide applicants with any instructions regarding how to complete their application forms. Nor do they assist with the provision of interpreters. They provide applicants with little information as to when their case will be heard. Many applicants have travelled to the office for a renewal and been immediately handed their deportation order, arrested and transported to Lindela. Finally, the written decisions themselves often bear little or no correlation to the substance of the application (Amit 2010b). Hence, applicants for asylum are not merely uncertain of what decision the officials will make and fearful that they might soon be deported, they are also completely disoriented by the process and struggle to understand the inner-logic of the ‘system’ which decides their fortune. Officials also deliberately try to ensure that applicants are compelled to return and remain at the offices of Home Affairs. New applicants at the offices wait an average of 29 days between first arriving and first entering the reception office. Due to long queues and difficulties of acquiring entry, about 1 in 4 applicants return to the offices six times before gaining entry and more than a third spend at least one night outside the office to increase their chances of moving to the front of the queue. We contend that these are not the outcomes of mere bureaucratic inefficiency, but often the direct result of the exercise of administrative discretion. Although permit
processing officers can give asylum seekers permits for three-month periods, they commonly limit the length of asylum permits so that applicants must return to renew on a monthly basis (Vigneswaran 2009).

Thus far, we have suggested that officials in the South African government possess significant discretionary authority regarding the application of deportation laws. While these officials are not empowered to make final decisions on many cases, they are capable of prolonging bureaucratic procedures, whether this entails prolonging periods of deportability, extending periods of detention or elongating processes of adjudication. Crucially, officials deploy these powers in a fashion that creates a qualitatively suspenseful experience of waiting, during which the deportable population is fearful of when an arrest might (re)occur, anxious about what an official’s decision might be and utterly confused as to how a decision is made. We may say that officials hold deportable populations’ hostage, taking control over their life trajectories.

Why have immigration officials developed this sort of power over deportable populations? Is it, as Agamben might suggest, part of a process whereby the sovereign power of a unified state is expressed? We could certainly marshal some evidence in support of this narrative, perhaps by pointing to the manner in which the Minister of Home Affairs has consistently defended the human rights abuses perpetrated by her officials in court. This could be interpreted as evidence that the behaviour of junior officials is part of a broader elite strategy of exclusion. However, our data lends greater support to Landau’s (2005) narrative of state fragmentation.

Individual officials have largely selfish reasons for delaying/holding/detaining deportable populations for long periods of time. In terms of material interests, government officials stand to profit more from making migrants wait than from speedily moving cases through the system. The power to act in ways that prevent an individual from resuming their daily lives creates demand for services to circumvent such actions. In this respect, queues, physical powers of arrest and detention all function in similar ways, as potential means at officials’ disposal, which they can either use to halt an individual’s daily life or allow them to proceed upon receipt of a payment or bribe. If administrative processes are not lengthy, or more importantly, are commonly known to be brief and/or hassle free, then the incentives to seek illegal means of circumvention are considerably reduced.

Corruption is endemic in the South African immigration system. About 1 in every 4 observed interactions between police officers and civilians in high-density migrant areas involved policy bribery or theft (25% \( n = 110 \)) (Vigneswaran 2011a). Despite the incentives to deny involvement in corruption, a significant proportion of applicants at the refugee reception offices (9% \( n = 960 \)) report having paid an official or agent to speed up the process of getting their papers. A similar number (9% \( n = 771 \)) report that they had paid a bribe to avoid arrest or get out of jail. About 1 in every 6 detainees at Lindela who had been in the company of colleagues/friends at their time of arrest (17% \( n = 53 \)) reported that one or more of these colleagues/friends had secured their release by paying a bribe.

In many cases, officials have a less pecuniary rationale for making migrants wait. More specifically, officials seek to garner attention and respect. South Africa has a long history of resistance to everyday forms of movement control and a long-standing tradition of suspicion of Police and Home Affairs officials. As a result, officials in these Departments have an acute sense of the fact that civilians often despise them. They are particularly sensitive to displays, which might be taken as signs of disrespect, curtness or disdain, and often use their powers of discretion to garner civilians’ respect and deference. Many officials will tell you that they are less interested in the guilt or innocence of civilians and more concerned with the sort of attitude that the latter display towards authority. Take for
example, a scene from our study of a team of Johannesburg Metropolitan Police Department officers conducting roadblocks in an inner-city migrant suburb:

After spending an hour at the road block, stopping vehicles and questioning various drivers about their identification documents and roadworthiness of their vehicles, the officers climbed back into the police van and each of them offered glosses on the various cases that they had handled. A female constable said ‘you see how some people have a bad attitude. Like that one Nigerian (a well-dressed man in a sports coat and crocodile skin shoes); he was saying “You are wasting my time. I’m in a big hurry.”

On cue her colleague pointed to her wrist watch.

The female constable continued ‘And then he is saying: “I know your senior officers. I work with them and I’m going to call them and tell them you’re wasting my time”. So I said “Call them, why not call them?”’

‘You see you must show the police some respect.’

This notion that the power of the immigration official is designed to bend the will or change the attitude of the potential deportee plays out in a variety of ways in our field research with government officials. For example, a group of officers held a young man in their vehicle after he started joking around with them, but then released him once he had turned the jokes around into a self-deprecating diatribe. A powerfully built officer patrolling the streets in his van drove at high speed towards a group of migrants gambling illegally on the roadside, until they sprang from their game and ran in separate directions. Once they had visibly acknowledged the threat that he posed, the officer slowed down, turned around and allowed them to get back to their game. A permit processing officer assiduously avoided eye contact with an applicant at his desk, until the latter sat down and waited to be called. A young Ghanaian national being held on immigration charges at Home Affairs Inspectorate did not seem perturbed at the fact that his documents were fraudulent. So an inspectorate official sought to intimidate him by telling him that he would be held at Lindela for 3 months before being deported.

In and of themselves each of these incidents is petty; a minor effort on the part of the officials to keep the subjects of state power in awe. The acts each had little to do with any urge to change the overall reputation of their profession, and more to do with their individual desire to create a sense that they are important, feared or respected members of society. As we show in the next section, the effects of such strategies on the deportable population itself are not uniform, as deportees adopt various means of mitigating officials’ capacity to influence their situation or at least their own perception of it. What is significant in these findings is that officials appear to most consistently use their discretionary power to shore up their own sense of self-worth or position of authority. The power to prolong procedure is not consistently deployed to evoke allegiance to the supreme leader or state, or to compel workers to accept unfair conditions at work. Rather, it is more commonly used by everyday officials to command capital and respect for themselves.

Experiences of detention: a captive audience

The remainder of this article shows how detainees at Lindela respond to prolonged procedures. Broadly, detainees experience state power as a threat to control their time, whether it is with reference to an amount of time available to detainees in the cumulative sense, or rather their personal sense of time as it relates to control of their life trajectory. As mentioned above, the approach of K in The Trial was to alternate between getting drawn into the procedure and disengaging from the process completely. Detainees at Lindela were
found to respond to their condition of detention in myriad ways, but most responses could be grouped with relative ease under these broad definitions of compliance or resistance.

We have found the concept of a ‘migration story’ to be a useful device for capturing these patterns. By ‘migration story’, we mean the set of narratives, anecdotes, chronological benchmarks and personal relationships that migrants use to represent their history of migration up until the present and to forecast their future life trajectories. Simply put, many detainees viewed their migration story as starting when they entered South Africa and being cut short by their deportation. This group tended to be devastated by their detention. Whether they battled to be afforded more rights and respect in detention or meekly succumbed to the conditions in detention, this group always tacitly accepted the inner logic of the deportation system and played according to the designated rules. Contrastingly, those detainees who had a much broader conceptualisation of their migration story found ways of challenging the irrational system that they were being subjected to, paying little heed to its apparent rules and asserting their own interpretations and plans as paramount. Even if this latter group were unable, in the final analysis, to contest the capacity of the state to deport them, they were able to retain a sense of autonomy and independence. In short, they found ways to prevent the state from undermining their ability to imagine the future.

Acceptance of the authority of detention–deportation procedures took a number of forms. First, there were those who acknowledged their status as illegal foreigners and sought to update themselves about the status of their case. Indeed, a major element of the detainee experience at Lindela seemed to be attempting to discern what the rules were and how the system worked. Many detainees were worried by what the place stood for, and the fact that they might be forced to remain there for a long time. Comments from a Namibian detainee who had been at Lindela for 5 months were representative of this widespread sentiment. He asked himself ‘Why am I here? What’s going on? What’s happening?’ (c.o.o Namibia, at Lindela 5 months). While some respondents remained quiet and grappled with these questions on their own, others looked to fellow detainees, immigration officials and visitors for information. The same Namibian detainee was vocal in his efforts to stay informed and figure out how the system works. He asked questions and sought out information so that he ‘wouldn’t stay dumb’. This recalls K’s initial reaction to being accused in his own home, where he responded indignantly, ‘I want to see who that is in the next room, and why it is that Mrs Grubach has let me be disturbed in this way’.

To some extent, ignorance about their condition is something that was imposed upon detainees. Some detainees launched appeals while in a holding facility or Lindela and waited months or years to learn the outcome (c.o.o. Pakistan, 1.5 months). Some were simply told that they were an illegal foreigner and that they would be deported, but they had no idea when (c.o.o Kenya, at Lindela 2 weeks). Many were relatively passive about their lack of understanding of their situation. As one detainee from Pakistan who had been at Lindela for 5 months said: ‘We are stuck here, stressed. But nothing can be helped.’ It is not uncommon for detainees who understand little of the specifics of their case to simply give up and resign themselves to their fate. A smaller number of detainees claimed to know about the status of their cases. For example, they were told they would be deported as soon as enough of their fellow nationals arrived at Lindela (so that they could be sent home as a group).

Many of these detainees demonstrated fatalistic passivity in the face of the confusing bureaucratic maze of procedures that confronted them. The overall tone of their story was one of defeat and submission – they were simply waiting for their inevitable expulsion from South Africa. They had effectively reached the end of their migration story. These detainees presented themselves as passive objects that were to be moved from street, to police station, to bus, to Lindela, etc. A Kenyan detainee reported having visited the doctor
at Lindela and taking the pills he was given even though he had no idea what type of medication it was (c.o.o. Kenya, at Lindela 2 weeks). A detainee from Sudan and Tanzania complained about the food at Lindela but then said: ‘Whatever poison they give us, we have to take it’ (c.o.o. Tanzania, at Lindela 1 month).

Some detainees seemed to view their stay at Lindela as having a punitive (rather than purely administrative) purpose. They accepted being labelled as ‘illegal’ and described themselves as having been ‘taught a lesson’. The most extreme example of this came from a Congolese detainee who explained, ‘It is we who are illegal. They gave us the opportunity to be here legally but we broke it. There is nothing we can say against them, it is our fault we are here’ (c.o.o. Congo, at Lindela 3 days). For a small number of respondents, the experience of detention at Lindela shaped their perspective of past actions. While this perspective was somewhat rare, these respondents accepted that their past actions were wrong and viewed detention as an appropriate punishment. Some even pointed out how the advantages of ‘regular’ prison would be a firm charge and a clear sentence, two things many were lacking at Lindela. This has echoes in The Trial, where K says ‘If you’re arrested in the same way as a thief, then it’s bad, but an arrest like this... It seems to me that it’s something very complicated’. In a variation on this theme, some detainees said they did not maintain contact with family and friends from inside Lindela – even if granted access to a phone – because they did not want anyone to know what had happened to them. The shame that such detainees expressed shows that they had, at least to some extent, internalised the deportation discourse that positioned them as deportable and soon-to-be excluded.

When placed in the condition of limbo, some individuals were uncomfortable with such passivity and they instead made an effort to manipulate the deportation–detention process to their advantage. While some sought to do so while conforming to deportation procedure (knowingly or unknowingly), others sought ways around it. The former group seemed to feel that they had been unfairly targeted in South Africa. One such detainee from Zimbabwe said: ‘If only I had the chance to show the police my passport’ (c.o.o. Zimbabwe, time at Lindela unclear). In some cases, detainees believed that officials might act leniently towards them. For example, a Namibian detainee believed he might be given a chance to renew his visa or pay a fine, because his papers had only been expired for a short time when he had been stopped by the police (c.o.o Namibia, at Lindela 5 months). A number of detainees had used hunger strikes to challenge their labelling as ‘illegal foreigners’ and to get the attention of officials at Lindela. As many as 20 detainees at the centre were on hunger strikes at the time of interviews, protesting the fact that they had not been released and wanted the DHA to expedite their case.

Many detainees, following in the footsteps of Josef K, instead became disillusioned with the officials and their situation more generally. Some detainees claimed that they had not been made aware of the rules upon arriving in South Africa. As a Kenyan who had been at Lindela for two weeks said, ‘I did not know that my passport had to be stamped upon arrival at the airport in Joburg’ (c.o.o Kenya, at Lindela 2 weeks). A detainee from Pakistan had been charged with fraud for illegal documents in the past, and blamed DHA for failing to cancel those documents once it was discovered they were fraudulent. In addition to this he said: ‘So many other people keep four or five IDs, it’s what foreigners do’. From this point, it was often a short step towards questioning the relevance of the system itself. Other respondents, such as those newly arrived at Lindela from China, admitted paying money to someone to obtain their DHA documents for them; most of them claimed they thought the documents were legitimate until the DHA officials arrested them and told them otherwise.
Amongst the group of detainees who questioned their deportation, there were those who saw the procedures of deportation as important in and of themselves and those who merely saw them as strategic obstacles in the way of the pursuit of a broader migration plan. Several detainees from the latter group tried to outwit the system by playing up particular aspects of their identity. For example, one man had been at Lindela three times, presenting himself variously as a Sudanese or a Tanzanian; as he explained, he selected which identity to use with the DHA officials based on his perceptions of what outcome it might help him secure (c.o.o Tanzania/Sudan, at Lindela 3 times). Upon his arrival for the first time at Lindela he had identified as Sudanese, because he had known they would not deport him to Sudan given the nature of the conflict in Sudan at the time. Upon his arrival for his most recent stay, he identified himself as Tanzanian because he decided it would be better to be deported than to stay at Lindela.

Detainees commonly maintained that they would simply do things differently next time. One Chinese detainee who had been caught with fraudulent papers said that next time he would not pay a middleman to obtain his documents for him, leaving it unclear whether this was because he had accepted the ascribed criminality, or because he planned to not get caught next time (c.o.o Pakistan, time at Lindela unclear). A detainee from Pakistan was more definitive. He blamed Home Affairs for not cancelling his fake documents saying he had learned his lesson, ‘I will not do this again’ (c.o.o Pakistan, at Lindela 1.5 years). He regretted that he had made a tactical error by showing the immigration officer his fake drivers licence, rather than viewing his past actions as blameworthy.

We may contrast the above responses, which all in some way recognise the logic of the detention–deportation process, with the responses of detainees who developed strategies of resistance. The key example here is those detainees who conceptualised their detention as a mere pause in their migration story or broader life trajectories. For these detainees, the various setbacks associated with deportation could be viewed as simply interrupting or even adding a stage to the respondent’s personal history rather than ending it. Perhaps the boldest variant of this approach was adopted by the many detainees at Lindela who simply noted that they would return to South Africa (though it may take days, weeks or months for them to gather the necessary resources and make arrangements). While interviewing a Namibian detainee at Lindela, the interviewer witnessed the deportation of approximately 100 Malawians. As the deportees passed the Namibian detainee, many smiled at him and said goodbye. ‘It doesn’t matter’, the Namibian detainee said, ‘they’ll just come right back’ (c.o.o. Namibia, at Lindela 5 months). A group of Chinese interviewees – despite pointing out the existence of a rule that the Chinese government does not allow Chinese citizens who have been deported from another country to leave China for several years following their return – said they would make every effort to return to South Africa simply because they had invested so much financially in the country (c.o.o. China, at Lindela for various durations).

Through misperceptions and misinformation – typically from other detainees or the media – many detainees also constructed an imaginary model of the deportation system and the way it works. Then, they simply updated their case with their own (real or imagined) understanding of the situation as it evolved. For example, one detainee did not want his case to go to court because he believed it meant he would have to stay at Lindela even longer; this was grounded in his doubts and suspicions about the efficiency and fairness of the justice system in South Africa (c.o.o Malawi, at Lindela 3 weeks). In a similar vein, it was common for detainees at Lindela to develop their own theories about the implications of random events for their own case. For example, many believed that a visit from one’s ambassador meant that one’s deportation was imminent (c.o.o Malawi, at Lindela 3 weeks) or that if their name was called on the speaker at Lindela, it meant they
were going to be released (c.o.o Namibia, at Lindela 5 months). It was also common for detainees to compare themselves with their fellow nationals and to use what happened to their fellow nationals as a way of guessing what the outcome of their own case might be. For example, a Kenyan detainee who had been at Lindela for 2 weeks met another Kenyan at Lindela who has been at Lindela for 1.5 years. The first Kenyan believed he would not meet the same fate as the other because he had a passport, while the Kenyan who had been at Lindela longer did not (c.o.o Kenya, at Lindela 2 weeks). These detainees maintained some modicum of assuredness, because they created a position from which they could evaluate the status of their case on their own terms without paying heed to administrative rules. Yet, ultimately this illusory world offered cold comfort from the reality of their condition and ultimate deportation.

Another, more powerful approach was to simply devote little attention to the progress of their case, choosing instead to focus on ‘life outside’. Although many such detainees were aware on some level that they would almost certainly be deported following their detention, they tended to focus on the status of the life that they had built in South Africa prior to their arrest. Even where this life outside was associated with stress, these reflections allowed them to retain a sense that they remained a part of this world and not trapped in an administrative prison and system. Some worried about falling behind at school and work. Those who had started their own businesses in South Africa were particularly worried that they would no longer have a livelihood as their businesses could not run in their absence. Some detainees – often those who had been more prosperous outside – were more worried about what might happen to their things, and particularly their property, while they were being held at Lindela. For example, one detainee was worried that when people saw he was not at work for several weeks, they would think they could steal his things from his house (c.o.o Malawi, at Lindela 3 weeks). Another detainee who was a hairdresser in South Africa worried that others would think they could take his equipment (brushes, etc.) once he didn’t return to work (c.o.o Burundi, at Lindela 1 month).

The narratives of these detainees lend credence to arguments that deportation does interrupt the ‘everyday lives’ of deportees. However, the manner in which various detainees navigate the waiting process seemed closely linked to their beliefs (sometimes accurate, sometimes misguided) of how being deported would affect life plans. For example, acknowledging the reality of his eventual deportation, one detainee from Rwanda who had been at Lindela for almost two years said ‘It is so sad for me to go home. No home. No parents’ (c.o.o Rwanda, at Lindela 2 years). His frame of mind while at Lindela was understandably quite different from those individuals who had decided they would just turn around and come right back to South Africa once expelled.

Many detainees at Lindela complained of being tired out by the waiting process. For them, anything would be preferable to being in detention, to being in limbo. As one detainee who had been at Lindela three times explained, ‘Whatever will happen, it doesn’t stress me. As long as I’m outside I can solve it’ (c.o.o Tanzania/Sudan, at Lindela 3 times). A Zimbabwean detainee echoed this sentiment, saying that he felt he could reassert control of his destiny once he had left Lindela (c.o.o Zimbabwe, at Lindela 3 months). Still others seemed to view the deportation process as merely a step or even a turning point in their broader life story. As one Sudanese detainee optimistically said: ‘I’m just looking for a better life. I would like to be free. Maybe I can push my life’ (c.o.o Sudan, time at Lindela unclear). At the more unrealistic end of the spectrum, some detainees seemed to refrain completely from factoring their current detention into their broader life plans. For example, one Namibian detainee asked the interviewer to go on a date with him in Cape Town the next weekend, although he had already been at Lindela for 5 months and was not to be
released any time soon (c.o.o. Namibia, at Lindela 5 months). A detainee from Liberia wanted to continue to pursue her dream of being a pop singer and making a name for herself in South Africa (c.o.o. Liberia, at Lindela 5 months).

Another important way in which detainees contested the procedures they were being subjected to was by refusing to acknowledge the authority of the state, specifically the deportation discourse. Some detainees ignored their case, refusing to provide a defence or counter-narrative to the story being told about them because they worried that in doing so, they might implicitly or explicitly acknowledge the state’s authority. Since they did not view the state as having any power to label them as ‘illegal’, there was nothing to contest and no need to persuade. While these same individuals were no doubt keenly aware that they would almost certainly be removed from South Africa and deported to their country of origin in the near future, the implications of the expulsion event were less catastrophic for them because according to their own perception their migration story did not start and end with entry and exit from South Africa.

Concluding remarks

This exploratory case study has sought to clarify the meaning and significance of the South African deportation system. While accepting that this system can be broadly interpreted as an instance of what Agamben has dubbed a ‘state of exception’, we have questioned the extent to which the power of the exceptional state is centralised and absolute. Officials utilise their discretion to their own advantage, not that of elites. Members of the deportable population often refuse to acknowledge the authority and sovereignty of the state, even when they might be viewed as powerless to resist. By opening up this realm of fragmentation and contestation, we have sought to add depth and detail to a rather ‘bare’ description of the state that exists beyond the pale of the rule of law.

The interactions between officials and civilians in Kafka’s work are markedly absurd. Never-ending procedures are not just frustrating. Kafka presents an image of the state that is difficult to countenance, because it seems so utterly devoid of rationality and function. Yet, seemingly absurd forms of state power are all around us. Indeed, maddeningly slow administrative procedure is the precise pejorative meaning we often intend to evoke when we use the term ‘bureaucracy’. Further, the absurdity of Kafka’s portrait should not blind us to the fact that there is a more familiar politics, composed of purposes, profits and contestations of legitimacy, which can sustain or undermine Kafkaesque states. In this paper, we have specifically emphasised the manner in which South African officials’ quest for profit and prestige help explain prolonged deportation procedures and how the migrants caught up in these procedures attempt to rescue their sense of empowerment and destiny.

The morbid conclusion of our article may be disappointing to those who see grander structures of oppression behind seemingly arbitrary forms of state power (De Genova and Peutz 2010). Nonetheless, we contend that ordinary officials’ need for satisfaction accounts for some of the more pernicious elements of the contemporary deportation regime. While officials have the power to make people wait and to constrain their movement, the subjects of these processes have the option of aligning their imaginary world or migrant story with the objective reality of their case, or not. Therein lies their limited power.

Acknowledgements

This research was made possible by the generous support of the Atlantic Philanthropies, the Open Society Foundation for South Africa and the American Society for International Law. The authors
would like to thank the editors, Roni Amit and two anonymous reviewers for their comments on previous drafts.

Notes
1. There is no sense in which the accused citizens in *The Trial* are treated poorly because of their lack of citizenship, political affiliation, class, gender or ethnicity: they are not paragons of Agamben’s hypothesized ‘bare life’. The ostensible ‘victim’ of state power in the novel, Josef K is a citizen and a bigoted banker. Nor is there any sense that some higher power, ruler or clique profits from the outcome of his case.
2. Herein referred to in the text as ‘c.o.o.’
3. The ‘n’ figure varies from question to question because of non-reporting and because both our surveys ‘split’ the sample population into sub-groups at various points (not everyone has the opportunity to answer every question).
4. This is also reflected at the Lindela repatriation centre, where the private company that owns it, Bossasa, is paid per head, per day by Home Affairs.
5. The Department Home Affairs was created formed out of the remnants of the now defunct Departments of Internal Affairs and Cooperation and Development, which were charged with immigration and internal (influx) control respectively during the apartheid era.
6. In contrast to earlier reports by human rights agencies, many detainees say that the food, water and sleeping arrangements are not so bad at Lindela: the place itself is not terrible.

References
Amit, R., 2011. Personal communication with the author.


