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**Lisa Marie Borrelli, Daniel Hedlund,  
Livia Johannesson, Annika Lindberg**

**Border Bureaucracies:  
A Literature Review of Discretion  
in Migration Control**

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**Lisa Marie Borrelli (HES-SO Valais),  
Daniel Hedlund (Stockholm University),  
Livia Johannesson  
(Stockholm University),  
Annika Lindberg  
(University of Gothenburg)**

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## **Border Bureaucracies: A Literature Review of Discretion in Migration Control**

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nccr – on the move, University of Neuchâtel, Rue Abram-Louis-Breguet 2, 2000 Neuchâtel, Switzerland  
Contact for the Working Paper Series: [info@nccr-onthemove.ch](mailto:info@nccr-onthemove.ch)

## Abstract

This literature review summarizes findings from 63 articles published between 2001 and 2020 that study discretion of frontline workers at migration control. The results demonstrate that discretionary practices in various migration control situations (e.g., border zones, migration agencies, courts, public welfare services, and detention centers) are widespread but share common patterns. Frontline workers' racialized prejudices and perceptions of migrant deservingness were the most dominant patterns found in the data, although there were some disagreements about which were most influential. Discretion of frontline workers was described as foremost detrimental to migrants, as it amplified the migrants' vulnerable situations, even if it occasionally could increase individual migrants' room for agency and strategic maneuvering. Contrary to the assumption underpinning the control gap-thesis in immigration policy literature that governments' capacity to control migration is hampered by the significant discretion at the frontlines, many studies in our sample describe how governments shape the discretionary practices of frontline workers through informal, subtle, and opaque governing strategies. These informal governing strategies enable central governments to deflect responsibility for discriminatory and inhumane policy outcomes.

## Keywords

Discretion, literature review, migration control, Street-Level Organizations, frontline workers, state power, deservingness, racialized suspicion

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## Contacts

[lisa.borrelli@hevs.ch](mailto:lisa.borrelli@hevs.ch)

Institute of Social Work, HES-SO Valais-Wallis, Route de la Plaine 2, 3960 Sierre

[daniel.hedlund@socarb.su.se](mailto:daniel.hedlund@socarb.su.se)

Department of Social Work, Stockholm University, 106 91 Stockholm

[livia.johannesson@score.su.se](mailto:livia.johannesson@score.su.se)

Stockholm Centre for Organizational Research (SCORE), Stockholm University, Frescativägen 14 A, 106 91 Stockholm

[annika.lindberg@gu.se](mailto:annika.lindberg@gu.se)

School of Global Studies, University of Gothenburg, Konstepidemins väg 2B, 41314 Göteborg

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# 1 Introduction

Starting in the 1990s and through the beginning of the millennium, migration control research has largely been concerned with the so called “control gap” between immigration policy objectives and outcomes in liberal democracies (Cornelius, Martin, and Hollifield 1994; Freeman 1995; Joppke 1998; Castles 2004; Hollifield 2004; Wayne et al. 2004; Boswell 2007; Guiraudon and Lahav 2007). Scholars, acknowledging that states seem to lack control over immigration inflows despite efforts to stop them, have formulated different hypotheses to explain this gap. Some scholars suggest that the influence of global economic development and international human rights law on states explains the divergence between the policies aiming for migration control and their outcomes (Hollifield 2004; Soysal 1994; Sassen 1996), while others suggest that domestic factors within liberal democracies best explain the control gap (Freeman 1995; Joppke 1998; Guiraudon 2000; Boswell 2007; Bonjour 2011).

Yet, it was not until migration scholars started using implementation theory to analyze policy that the complexity between migration policy objectives and outcomes was fully acknowledged. It turns out that frontline workers such as border guards (Pratt 1999; Borrelli 2018), immigration officers (Ellermann 2006), local human service workers (Leun 2006), and judges (Köppe 2003; Johannesson 2018) have significant room for discretion. This maneuverable space becomes decisive for the outcome of migration control policies. Since then, the literature on discretion of frontline workers in migration control has grown considerably.

However, the general contours and overall patterns of discretion in migration control remain largely uncharted by research despite the sharp increase in studies that show the significant influence that discretionary decision-making of frontline workers has on migrants and migration control outcomes. In part, this lack of focus could be because the majority of the research on discretion within migration control, as we will show later, has been conducted using qualitative case study designs, which strive for thick descriptions and deep knowledge about how discretion is performed in particular contexts. Although this research has offered valuable insights about decision-making in particular contexts and therefore has provided rich specificity and details, it has made it difficult to abstract the broader patterns and general conclusions about the role of discretion in shaping migration control practices and outcomes.

We find this lack of focus on broader patterns to be an obstacle for knowledge advancements in this research field because what is scholarly appealing with the notion of frontline discretion is not the maneuvering space that individual decision-makers possess per se but how these discretionary practices form patterns and repetitions over space and time. Michael Lipsky’s foundational study ([1980] 2010) of street-level bureaucracy demonstrates that the discretion of frontline workers shares certain commonalities even when their tasks and contexts are very different such as teachers and police. Lipsky also stresses that by exploring shared commonalities, scholars of discretion can increase knowledge about what makes a particular public service delivery unique.

Based on the insights that discretion often plays out in patterned ways and that frontline encounters are important for characterizing the unique complexities of a particular policy area, we believe that the literature on discretion in migration control now is mature and multifaceted enough for scholars to grasp the general patterns and commonalities in the use of discretion across different contexts.

The aim of this study is therefore to explore how frontline workers “make” migration control policy when encountering migrants (with varied legal status) in their daily work. Specifically, we uncover which patterns and commonalities of street-level encounters between frontline workers and migrants shape migration control policy outcomes as well as the consequences of these patterned practices for migrants as well as how these affect the ability of policymakers to govern. By migration control policies, we mean all public decisions on admission into a host country and all decisions regulating the legal status during a migrants’ stay in the host country, including decisions on removal, deportations, and detentions. We also include decisions on migrants’ access to welfare services and other benefits while residing in a country but without citizenship status in our definition of migration control.

To achieve this aim, we conducted a systematic overview and analysis of selected parts of the existing literature on discretion within migration control. The following questions have guided our analysis of the literature:

- What patterns are presented in the literature regarding the discretionary practices of frontline workers?
- What are the consequences of these practices of discretion for migrants?
- How do these practices of discretion influence the ability of policymakers to govern migration?

Literature reviews can help summarize general conclusions within a research area and enable cumulative knowledge production and consolidation within a research field. Our study is the first systematic attempt to summarize previous research findings on the role of discretion in migration control. Two other literature review studies on similar topics have recently been published (Yeo and Huang 2020; Larrison and Raadschelders 2020), but they both aim to contribute to public administration research by reviewing existing literature on migration from top-ranked public administration journals. Both of these studies found limited coverage of migration-related topics in public administration research. Therefore, there is a need for more public administration researchers to focus their attention on the enforcement of migration policy, especially on the encounters between frontline workers and migrants.

This literature review is broader in scope than the two studies mentioned above, as its focus is not limited to public administration research. That is, this study acknowledges the interdisciplinary character of migration studies and therefore includes all types of academic journals in the sample. Following this inclusive sampling strategy, we identified and assembled the current academic knowledge about the general patterns of discretionary practices within the administration of migration control. Therefore, our study makes several contributions to the scholarship on discretion in migration control. First, we found that the perceptions of frontline workers regarding deservingness and their racialized perceptions of suspiciousness shape discretion in migration control. Second, we found that discretion amplifies the already vulnerable situations migrants are in, although discretion could also benefit individual migrants under certain conditions. Third, we found that state power does not necessarily decrease as a consequence of discretion at the frontlines, which is stipulated in the control-gap literature described above. To the contrary, we found that state power transforms into an opaque and informal form of governance that can select migrants

according to how desirable they are to host states but without codifying this sorting in law. By this move, governments can avoid responsibility when migration control polices turn out to work in discriminatory or inhumane ways. These findings can be useful as a starting point for future studies of discretion in migration control and guide scholars to fruitful inquiries for future studies. We will give suggestions for future studies in the concluding section of this paper.

## 2 Conceptualizing Discretion within Migration Control

Public administration and legal research have a long tradition of studying discretion, including the work by Davis (1969), for whom “[a] public officer has discretion wherever the effective limits on his power leave him free to make a choice among possible courses of action and inaction” (p. 4). This definition acknowledges that rules and discretion are interrelated in the decision-making of frontline workers (Durose 2011; Davis 1972). However, this definition also conceives of discretion as an informal space where subjective judgment enters into the realm of law (Dubois 2016) and risks undermining the rule of law and principles of legality and justice (Handler 1986), a perception that stands in contrast to understandings of discretion as lying within the legal realm of decision-making (see the donut analogy by Dworkin 1963). Yet, both approaches rest on what Anna Pratt calls a “false discretion/law binary,” which considers discretion as something problematic that “can only be effectively addressed through the constraints and checks offered by law” (Pratt 1999, 217).

In Lipsky’s (1980) work on street-level bureaucracy, the relationship between rule-following and subjective judgment in street-level organizations is elaborated in less normative terms. The novelty of Lipsky’s approach resides in how it focuses on frontline workers “by asking not what frontline workers should do, but what they did and why” (Brodkin 2016, 29, italics in original), allowing for a study of how such actors understand discretion and moving away from a purely legal perspective. For Lipsky, discretion does not exist outside or beyond rule-abiding practices. Instead, discretion is an integrated and inevitable element of all decision-making regulated by laws and rules, since frontline workers need to consider each case on its own merits, making it impossible for regulations and guidelines to cover every legal situation or case composition.

Within this tradition, scholars understand discretion as a form of “controlled freedom”—i.e., the middle ground between “total control” and “complete freedom” (Evans and Hupe 2020, 9). Discretion comes as a “boon and bane” since it is what enables individualized answers to clients’ claims while potentially enabling arbitrary decision making (Zacka 2016). This conceptualization of discretion does not perceive it as problematic per se; however, discretion becomes problematic when it affects decision-making in systematic ways to the (dis)advantage of particular groups (see Brodkin 2011b; Pedersen, Stritch, and Thuesen 2018; Cleveland et al. 2018; Parmar 2018; Spire 2020).

Lipsky’s work has inspired a broad literature focused on street level encounters between public officials and individuals (Meyers and Nielsen 2012; Hupe and Hill 2015). The uses of discretion within different public service professions have been investigated, such as teachers (Maynard-Moody and Musheno 2003), social workers (Zacka 2017; Dubois 2016), and police officers (Epp, Maynard-Moody, and Haider-Markel 2014), but also among private actors such as security guards and humanitarian workers (Gammeltoft-Hansen and Sørensen 2013). Studies have demonstrated how professional norms influence discretion in crucial ways and give rise to ethical dilemmas for

frontline workers (Evans 2011). Other studies have been conducted across bureaucratic and organizational fields (Piñeiro, Koch, and Pasche 2019; Watkins-Hayes 2009) to find commonalities between them. As a consequence of managerial trends within public administration, more public services are now conducted by private or semi-private contractors (Brodkin 2012). Therefore, Street-Level Organizations (SLOs) are understood as encompassing a variety of organizations that enact laws, political decisions, and organizational cultures. Frontline workers within these organizations are caught between professional norm expectations and managerial ideas and paradigms (Brodkin 2011a).

One way that frontline workers solve these dilemmas is by developing coping strategies in their daily encounters with clients. For example, Tummers et al. propose that coping strategies can be classified into three types: “moving towards clients,” “moving away from clients,” and “moving against clients” (2015). “Moving towards clients” is most common among teachers and healthcare profession (traditionally seen as helping professions) as these professionals tend to bend or even break rules to meet the needs of their clients. When time and organizational resources are sparse, they prioritize among clients to help those in most desperate need and they use personal resources to meet the needs of these clients. “Moving away from clients” uses routines and standardization to keep clients at a distance.

Sometimes these strategies involve activities called “rationing,” which aim to make it harder for clients to access public services. These strategies arise due to heavy workloads and managerial pressure and are found among all professional categories of frontline workers. “Moving against clients” enforces rigid rule-following to control and sanction clients. This category includes aggression and anger towards clients by frontline workers, especially police officers and other frontline workers who have significant discretion when executing law enforcement tasks (Tummers et al. 2015, 1108–1112).

From this brief overview of research that conceptualizes discretion, we can make several conclusions. First, discretion is an inherent part of decision-making and cannot be erased from the implementation of public policies. Second, discretion is exercised by a broad variety of actors, from law enforcement to healthcare professions, and evokes different dilemmas for these actors. Third, discretion is shaped by a complex web of individual, legal, organizational, and structural factors, leading to different patterns of discretionary practices in different policy fields.

## **2.1 Initial coding of Decision-Making Situations within Migration Control: Welfare, Legal Status, and Territorial Control**

Because discretion plays out differently depending on who enforces it and which organizational and structural context it is studied, it becomes important to use a conceptualization of discretion that is sensitive to the particular situation where discretion is exercised, which in this case is the broad policy area of migration control. This policy area has long been characterized by contradictory and ambiguous policy goals (Slaven and Boswell 2018). Migration control policies are also rapidly changing and are influenced by a complex web of international human rights declarations, transnational agreements, national legislation concerning human rights, as well as regional and local policies (Castles 2004; Geddes 2003; Bonjour 2011). The consequence of these contradictory and

ambiguous policies is that discretion has become very broad for frontline workers involved in migration control.

To capture the broad range of actors mobilized to enforce migration control, we build on the expanded notion of Lipsky's (1980) street-level bureaucracy, which encompasses all frontline workers who work either for a state bureaucracy or for non-profit or for-profit organizations performing state tasks and who engage in migration control policy delivery (cf. Brodtkin 2012; Eule et al. 2019). Moreover, we assume that a healthcare worker who decides whether to offer a medical treatment to undocumented migrants and a police officer who decides which border crossers need to present documents have very different professional identities and therefore are confronted with different kinds of ethical dilemmas. They also work within different organizational structures so the organizational goal conflicts they are subjected to are different, which means they develop different coping strategies. Based on our definition of migration control and these insights from discretion research, we identify three main categories of discretionary decision-making situations within migration control: 1) decisions on access to welfare services; 2) decisions on legal status; and 3) decisions on territorial control.

Decisions on welfare services pertain to rights and benefits stemming from the legal status that migrants have been granted or depending on the liminal sites where they are held while waiting for these decisions, such as detention centers or refugee camps. One common feature of these decisions is that they are conducted by frontline workers who are not specialized in or who do not necessarily consider themselves affiliated with migration-related decisions, such as teachers, social service officers, and healthcare workers. These workers are suddenly confronted with the task to offer or deny migrants certain rights or welfare benefits, which can create salient moral and ethical dilemmas for these decision-makers (Borrelli 2022; Ataç and Rosenberger 2018).

We have classified decisions on legal status as decisions where migrants are granted different legal, semi-legal, or illegal statuses. In this category, we also include procedural decisions on legal status, for example, decisions regarding how to apply for citizenship or whether oral hearings are needed to determine asylum claims. These decisions are mainly conducted by public officials and judicial professions working in government agencies, tribunals, or administrative courts. We know from previous studies that these decisions are characterized by legalistic procedures and detailed investigations into the migrant's life history, travel routes, economic situation, and family ties (Gill and Good 2019; Affolter 2021; Thomas 2011).

Territorial decisions pertain to decisions on who has the right to enter and move freely within a territory and who will be expelled from the territory. These kinds of decisions are often made "on the spot" and within short periods, for example, in border zones, on the streets in stop-and-search raids, or at airports. These decisions could also pertain to detention and other forms of confinement policies for migrants to limit their freedom of movement within the state's territory (Persdotter 2019; Evans 2020).

Based on this initial classification of decision situations in migration control, we can explore to what extent there are differences in terms of discretionary patterns as well as the consequences for migrants and for the capacity of governments to govern within these three decision-making situations.

### 3 Methodology: Literature Review and the Resulting Corpus

To produce a representative overview of discretion in migration control, we conducted a systematic review of peer-reviewed articles published in academic journals. The procedure took inspiration from the PRISMA flow diagram, a widely used reporting item for literature reviews (Liberati et al. 2009; Sabbe, Moyson, and Schiffino 2020), which enables high level of transparency and replicability of the used methodology.

Because our ambition with this literature review was not to systematically analyze all research published about discretion in migration control, we used a purposive sampling strategy to narrow our sample to a manageable size for qualitative analysis. To achieve this, we started with the inclusion criteria described below.

#### 3.1 Inclusion Criteria

- *Original research articles.* We focused on articles because they capture the interdisciplinarity of the field, have undergone peer-review, and are published at a higher speed than books. To only include original journal articles is also a conventional selection strategy for systematic literature reviews, which makes this review more comparable with other literature reviews on similar topics (Larrison and Raadschelders 2020; Yeo and Huang 2020). However, this means that our review does not cover some of the most influential publications within the field of migration studies, as these publications have been published as monographs or edited volumes (e.g., Bosworth 2014; Ellermann 2009; Mountz 2020; Provine et al. 2016). Despite this omission, we believe that this sampling strategy allows us to capture the general patterns of discretionary practices within migration control as it creates a sample consisting of a large variety of studies from different empirical contexts.
- *Studies of discretion as an empirical phenomenon.* We built our sample on studies that investigated discretion as an empirical phenomenon rather than as a normatively undesirable and illegitimate ingredient in public decision-making. Therefore, we only included articles based on empirical work that investigate the contours and functions of discretion in a particular setting.
- *Studies of migration control policies.* Based on our definition of migration control, we included all articles that studied decisions on admission into a host country and decisions regulating the legal status during a migrants' stay in a host country, including decisions on removal, deportations, and detentions. We also included studies of decisions on migrants' access to welfare services while residing in a host country.
- *English language.* Since English is the only language shared among the four authors, we chose English as a language criterion. This was necessary as the selection, filtering process, and analysis of the articles were conducted collaboratively using an inter-rating approach. We are, however, aware that the language criterion entails a significant risk of over-representing research produced in and about the English-speaking Global North (see McNally and Rahim 2020; Vargas-Silva 2019).

– *Time between January 2001 and June 2020.* We know from previous literature reviews on similar topics (Yeo and Huang 2020; Larrison and Raadschelders 2020) that research articles on migration-related topics started to increase after the millennium, so we decided to start the sampling period after 2000. Moreover, 2001 marked an intensified politicization of migration following the September 11 attacks on World Trade Center and the growth of a “research industry” in the field of migration and border studies (Andersson 2014; Amuedo-Dorantes, Puttitanun, and Martinez-Donate 2019).

### 3.2 Identification

Once we identified the relevant inclusion criteria, a comprehensive search of articles via the Scopus database was conducted. Scopus was chosen because it is the largest abstract and citation database of peer-reviewed literature such as scientific journals, books, and conference proceedings. Since we were interested in discretion in migration control, abstracts or keywords needed to mention “discretion” or “discretionary” combined with a second keyword to narrow the sample to migration control policies: “migration,” “asylum,” “refugee,” “immigration,” “border control,” or “detention.” From this initial identification of articles, a list of 261 potentially relevant articles was generated.

### 3.3 Screening

In a second step, all abstracts were read more thoroughly and categorized into “more relevant” or “less relevant” as well as an “uncertain” according to the inclusion criteria. With this collaborative inter-rating approach, which was used to enhance the reliability of the coding, at least two of the four authors read each abstract. The “uncertain” category abstracts were resolved via an open discussion that involved all the authors. After completing this procedure, we had extracted 103 abstracts. As a third step, all 103 articles were read in their entirety, and we decided which articles to include or exclude based on the inclusion criteria. At least two authors discussed each article and decided together if it was eligible for inclusion in the final corpus. At this stage, we excluded articles with a purely theoretical focus or articles without a more substantial discussion on discretion. The result of this exhaustive screening of each article was a final corpus consisting of 63 articles, which were selected for detailed coding.

### 3.4 Quantitative Coding

As for the analysis of the selected 63 articles, we developed a coding scheme, which listed the general information of the articles such as the year of publication, country of study, academic discipline of the authors, journal, research question, and research methodologies. We used two codes to analyze which decision-making situation discretion was exercised: type of decision-making (e.g., decision on detention, visa, asylum, or welfare services) and type of actors studied (e.g., police officers, social workers, or judges). Based on these two codes, we made a collective decision on which of the three decision-making situations (welfare, legal status, or territory) each article best fit. Some articles explored several decision-making situations within one country (Gill 2009; Mourad 2017) or compared two types of decision-making situations with each other (Bastien 2009), which made the categorization difficult. In these cases, we decided which kind of decision situation the articles discussed most in detail.

### 3.5 Qualitative Analysis

After we sorted all 63 articles in one of the three types of decision-making, the qualitative part of the coding process began. We read all articles, looking for answers to our three research questions: a) What patterns are presented in the literature regarding the discretionary practices of frontline workers?; b) What are the consequences of these practices of discretion for migrants?; and c) How do these practices of discretion influence the ability of policymakers to govern migration? When analyzing each of these questions, we searched for similarities in findings between articles, but noted the variations in the articles. Sometimes, we discovered contradictory conclusions as well as debates among different scholars on the same topic. We try to do justice to these differences and debates when presenting the results. We present some articles in more detail than others because we found their conclusions to speak more directly to our research questions than other articles.

## 4 Results: Discretion in Migration Control Research

In the following section, we outline the main results of our analysis, starting with descriptive notes on the content of the sample, followed by a detailed examination of the three decision-making situations. For each situation, we summarize the main findings in the articles in terms of how they answer our three research questions.

### 4.1 Background Characteristics

Our sample showed great variety in terms of the journals where the articles were published, reflecting the multidisciplinary character of migration research. The only major pattern we could identify was a slight concentration of articles in specialized migration-related journals and to some extent within socio-legal journals. In addition, articles were published in sociological journals, public administration journals, and public policy journals and to some extent in journals specialized in criminology. We saw an increase in articles in the second part of our studied period. Before 2012, only 14 articles were published; however, since 2012, 48 articles were published. This confirms the initial assumption we had of a research field that has grown considerably over the last decade.

The absolute majority of articles about discretion employed qualitative methods in particular ethnography or semi-structured interviews. This finding reiterates the results in the literature review on migration-related research within public administration journals, where the majority of the articles used qualitative methods (Yeo and Huang 2020). This is not surprising as SLO research originates from a qualitative research tradition relying on participant observations and interviews to capture the daily practices of public officers and decision-makers.

Most articles focused on North America and Europe and a few on Australia, Africa, South America, and East Asia. This bias is at least partly explained by our focus on studies published in English. However, the strong dominance of single case studies from North America and Europe also reflects the long criticized Northern-centric bias in migration research (Chimni 1998; Lee, Carling, and

Orrenius 2014), which ignores the fact that migration between south-south regions is more common than migration from the global south to the global north (Fiddian-Qasmiyeh 2020).

As seen in Table 1, the three decision types we initially coded the data for were distributed into two larger groups and one relatively smaller group. Yet, all three types include enough articles to answer our research questions. Below, we will report the results of this analysis, beginning with welfare decisions, then discussing legal status decisions, and finally discussing findings from the territorial decision category.

Table 1. Types of decision situation.

<i>Type of decision</i>	<i>Number (%)</i>	<i>Examples</i>
<i>Welfare decisions</i>	13 (20%)	Education, health care, economic support, housing
<i>Decisions on legal status</i>	27 (43%)	Asylum, work permit, visa, temporary residence permit
<i>Territorial decisions</i>	23 (37%)	Deportation, detention, border control
<i>Total number</i>	63 (100%)	

## 4.2 Decisions on Access to Welfare Services

In the Welfare Decisions category, we found 13 articles. The articles pertain to diverse situations where access to welfare services is decided, for example, housing, education, employment, healthcare, integration programs, and legal advice. Six articles deal specifically with migrant children and their rights to welfare services (Dunkerley et al. 2005; Ottosson, Eastmond, and Schierenbeck 2013; Glenn - Levin Rodriguez 2016; Meloni et al. 2017; Ní Raghallaigh and Thornton 2017; Svensson 2019), which could reflect an increased recognition of children's rights within research in asylum destination countries in general (Brittle and Desmet 2020). Apart from having a special focus on children's rights, asylum seekers were another common group in this sample (Dunkerley et al. 2005; Rosenberger and König 2012; Ottosson, Eastmond, and Schierenbeck 2013; Ní Raghallaigh and Thornton 2017).

The results we found regarding patterns of discretion indicated that migration control gives rise to various ethical dilemmas for welfare frontline workers. These studies emphasize the ethical dilemmas that arise for frontline workers when they are delegated policy tasks they are not trained to do and might not find morally justified. This was expressed as an ethical conflict between obedience and compassion in the case of Dutch integration coaches and teachers (Belabas and Gerrits 2017), as a conflict between the best interest of the child and organizational demands of efficiency among Swedish immigration officers (Ottosson, Eastmond, and Schierenbeck 2013), and as a conflict between professional norms and the policy task of controlling immigration imposed on Swedish teachers (Svensson 2019) and Swedish social workers (Cuadra and Staaf 2014). One

article described this pressure to implement migration control policies as a criminalization of solidarity among frontline workers who encounter undocumented migrants in their daily work (Barberis and Boccagni 2014).

In relation to the second research question (What are the consequences of these practices of discretion for migrants?), we found that the discretion of frontline workers amplified migrants' already vulnerable situations, for example, the mental health of migrant children in foster care in Ireland (Ní Raghallaigh and Thornton 2017) or the invisibility among undocumented students in Canada (Meloni et al. 2017). However, some articles also discussed instances where individual migrants benefitted from discretionary decision-making, which depended on the willingness of individual frontline workers to go “the extra mile” (Belabas and Gerrits 2017) for their clients. This willingness corresponds to the coping strategy of moving towards clients, which was seen primarily among teachers and healthcare workers (Tummers et al. 2015).

For example, in a study focusing on the experiences of frontline workers in the asylum reception system in Wales, the authors found that the frontline workers sometimes turned “a blind eye” to the letter of the law by letting rejected asylum seekers remain in the system (Dunkerley et al. 2005, 649). Similarly, in a study of Finnish reception centers, the authors found that frontline workers inside the reception facilities ensured that unsuccessful asylum seekers who stayed in Finland illegally received basic support from the local authorities when the reception services terminated even if this assistance was not required of them (Okkonen and Takala 2019).

One study (Belabas and Gerrits 2017) in this sample not only found support for frontline workers' willingness to help clients but also investigated which conditions lead to these supportive discretionary decisions being taken. They found that if the client was highly motivated to integrate in society, if the client was under extreme personal distress, or if the policy were perceived to have negative outcomes for the client in a particular situation, frontline workers became more inclined to use their discretionary power to the benefit the individual client. Consequently, the authors conclude that immigration policies are shaped by the individual perceptions of clients' “deservingness” among frontline workers, which is also supported by studies on welfare support outside the field of migration (e.g., Volckmar-Eeg and Vassenden 2022; Assouline and Gilad 2022).

In terms of how discretion influenced policymakers' capacity to govern, several articles highlighted the multilevel character of migration policy implementation. One study (Rosenberger and König 2012) showed local variation in the case of minimum standards of reception of asylum seekers in Austria. Another study (De Graauw 2014) investigated municipal resistance to restrictive national immigration policies in the case of local authorities' decision to implement municipal identification cards for undocumented migrants in San Francisco despite federal resistance.

### **4.3 Decisions on Legal Status**

Decisions on legal status comprised 27 articles, making it the largest category in the data set. Many of the articles studied decision situations pertaining to asylum and refugee status (e.g., Saltsman 2014; Miaz 2017; Poertner 2017; Magalhães 2018; Gill et al. 2018); however, some articles studied discretion of decisions pertaining to visa applications (e.g., Alpes and Spire 2014; Satzewich 2015; Jenny Lee, Paulidor, and Mpage 2018), citizenship (e.g., Kapoor and Narkowicz 2019; Sredanovic

2020), family migration (e.g., Dörrenbächer 2018), and work permits (e.g., Cyrus and Vogel 2003; Triandafyllidou 2003).

In this sub-sample, we found two patterns of discretionary practices. On the one hand, some authors argued that frontline decisions on the legal status of migrants were shaped by racialized perceptions of the frontline workers. For example, one article (Kapoor and Narkowicz 2019) examined the concept of “bad character” in citizenship applications in the UK. As this concept lacks legal definition, frontline workers can decide when to withdraw citizenship status for immigrants. The authors found that the discretionary assessment of “bad character” to refuse or withdraw citizenship status for non-white populations “functions as a way of sustaining the racialised dynamics of the nation-state, creating a durability to the precarious status of ‘non-citizens’ while also enhancing the armoury of disciplinary practices available to the state for potential use against ‘failed citizens’” (Kapoor and Narkowicz 2019, 667).

On the other hand, some articles questioned the assumption that racial biases influence the decisions frontline workers make pertaining to migrants. In one of the few quantitative studies in our sample, the author (Satzewich 2015) examined whether racial biases shaped visa applications for skilled workers and family/partner applications in Canada. The author found inexplicable disparities in granting rates, but that the pattern of variation did not support the view that visa officers favor “white” applicants over “visible minority” applicants. The same author (Satzewich 2014b), in a qualitative study of the discretionary decisions of visa officers in Canada, concluded that “deservingness” was an informal categorization made by frontline workers, which made them scrutinize some applicants more than others. This work argued that the sorting mechanism was actualized via a technical and administrative logic rather than via institutional racism or racial discrimination.

Our analysis shows that the consequences of patterned discretionary practices aimed at migrants result in negative consequences. Many articles discussed unequal treatment, ambiguity, uncertainty, precariousness, and discrimination. However, a few articles also mentioned beneficial consequences for individual migrants (Jordan, Stråth, and Triandafyllidou 2003; Abarca and Coutin 2018). One of these articles (Abarca and Coutin 2018) explored the consequences of rapid changes in migration control policies for undocumented migrants in the US. The authors concluded that US migration control policy “produces extreme uncertainty in the lives of noncitizens, who must collect check stubs, bills, medical records, and other documents in hopes of eventually being able to submit them as part of a legalization case,” but this unpredictability also enabled migrants to occasionally “speak back to the state in its own language, thus exploiting opportunities to challenge illegalization” (Abarca and Coutin 2018, 8).

Many articles in this sub-sample argued that discretion at the frontlines created possibilities for governments to exercise informal power to sort out “undesirable” and “undeserving” migrants without codifying discriminatory sorting mechanisms in formal laws and policies (Köppe 2003; Moffette 2014; Satzewich 2014b; Saltsman 2014). In an article about discretion within decisions on migrants’ admission to Canada, the authors claimed that the important decision about who should be let into Canada is “being made literally by the people at the gate” (Bouchard and Carroll 2002, 254) rather than by democratically elected representatives. This finding indicates that governments deliberately transfer power from themselves to frontline workers to avoid being blamed for these

decisions. An article (Magalhães 2018) studying asylum officers in Brazil argued that discretion was used by frontline workers as a rhetorical tool to justify refusals of asylum claims, which deflected personal responsibility for these decisions. According to these two articles, discretion facilitated blame-avoidance for both central governments and frontline workers.

Two articles in this sub-sample theorized the opaque and informal governance strategies by coining the phrases “the discretionary state” (Coutin et al. 2017) and “the presentational state” (Gill 2009). The notion of “presentational state” draws on Foucauldian theorizations of state power and describes how the central government in the UK attempts to externalize their responsibilities for asylum decisions to intermediators while exercising influence over asylum decision-making in subtle and opaque ways by the strategic geographical positioning of asylum seekers. This was made by speeding up the asylum procedure, increasing the frustration of decision-makers with complicated or resource-intensive asylum claims, and by moving asylum seekers between accommodations and detention centers, which hampered continuity and the development of personal ties between asylum seekers and frontline workers. Gill concluded that “it is necessary to recognise that alongside coercive (legal) and manipulative (financial) forms of state power, states also command powers that are capable of engendering the will to act in accordance with state objectives, rather than simply generating the necessity or imperative to do so” (2009, 219).

By introducing the concept of “the discretionary state” (Coutin et al. 2017), the authors made similar claims as Gill (2009) about the opaque yet persuasive form of state governance through discretion. However, they made their claims based on anthropological theories of state power. The authors describe the notion of “the discretionary state” in relation to liberal democratic ideal of “the contractual state.” In contrast to the contractual state, which guarantees rights and acts in a transparent and predictable fashion, the discretionary state is “omnipresent, brought into being through the exercise of discretion (which affirms its sovereignty), fragmented (in that there may be internal dissension), unstable (in that its programs can be suspended or ignored), and law-like but differentiated from formal law” (Coutin et al. 2017, 953). This configuration of the state also creates a particular kind of migrant subject—one who is not recognized as a rights holder nor on a path to citizenship but one who is a “transitory subject” with quasi-legal status, disappearing and reappearing through documentation, living with a high degree of uncertainty (Coutin et al. 2017, 955).

#### **4.4 Decisions on Territorial Control**

In the third category of decision-making situations, we found 23 articles. These articles explored the role of discretion in the decisions of frontline workers at border zones (e.g., Romero 2006; Heyman 2009; A. Pratt 2010; van der Woude and van der Leun 2017; Brouwer, van der Woude, and van der Leun 2018; Armenta 2016), in decisions on detention of migrants (e.g., Weber 2003; Martin 2011; Molnar 2017; Borrelli 2018; Cleveland et al. 2018; Sipos 2019), and in decisions on deportation of migrants from the territory (e.g., Fischer 2013; Zatz and Rodriguez 2014; Asad 2019; Chand 2020). The most common category of frontline worker within this sample were police officers and border guards, but there were also studies of judges (Martin 2011; Asad 2019), civil servants at detention centers and at asylum centers (Weber 2003; Sipos 2019), lawyers (Zatz and Rodriguez 2014), and activists (Barsky 2005).

In contrast to the disagreements over the extent that racialized prejudices played a role in discretion found in the legal decision category, articles in this sub-sample agreed that racialized prejudices structured discretionary practices. A common decision-making situation explored in these articles were so called “stop and search” activities at border zones or on the streets in the local communities. Such activities involve significant room for discretion of the frontline workers, who can decide who to stop and control for residence status or presumed criminal activity. Studies on this topic discussed racial profiling and found ample evidence for racial profiling in their empirical observations (Brouwer, van der Woude, and van der Leun 2018; Pratt 2010; Heyman 2009; Romero 2006). For example, in a study (Brouwer, van der Woude, and van der Leun 2018) of border police in the Netherlands, the authors found that the police officers blended the task of searching for criminalized individuals with the task of preventing illegal entry of migrants. This resulted in racial profiling, as people with “foreign appearance” were stopped more often than people who were racialized as white. A study of Canadian border controls (Pratt 2010) further demonstrated how “low-level” racialized knowledge about who is suspicious at the border translates into “objective” knowledge at later stages during court proceedings.

Several articles also found that class and nationality were also decisive indicators of suspiciousness at the border (Brouwer, van der Woude, and van der Leun 2018; Heyman 2009). Consequently, the authors pointed to the privilege of invisibility that white middle-class bodies experience at the border: “being the beneficiary of non-action thus can be a distinct privilege in an unequal society” (Heyman 2009, 389). This benefit protects them from being humiliated and delayed by police on the streets, fostering a perception of state power as invisible and benevolent rather than repressive and discriminatory.

In this sub-sample, like in the two others, discretion was described as detrimental for migrants, severely amplifying the vulnerability and uncertainty of migrants (Cleveland et al. 2018; Molnar 2017; Gaibazzi 2017; Weber 2003). One of the few studies of discretion at the frontline in countries in the Global South (Gaibazzi 2017) also made it clear that discretion in the hands of corrupt police officers can lead to brutal harassments for particular groups of migrants, in this case West African migrants in Angola. In contrast to the other two sub-samples, this sub-sample of articles does not discuss discretionary practices leading to benefits for individual migrants. This supports findings from Tummers et al. (2015) about frontline workers in law enforcement being more likely than other frontline professions to use coping strategies marked by anger, aggression, and rigid rule-following—i.e., moving against clients.

In this sub-sample, we found several articles discussing how discretion facilitates the same kinds of informal and opaque governing techniques described in the sub-sample on legal decisions. By deliberately making large room for discretion at the frontlines, the state can obscure but still use sorting mechanisms built on racialized suspicions (Pratt 2010) and class-based and nationality-based stereotypes (Heyman 2009). Moreover, several articles in this sub-sample argued that discretion deflected the responsibility for discriminatory practices and unequal treatment of migrants from policy makers as well as individual decision-makers (Borrelli 2018; Dekkers, van der Woude, and Koulis 2019; Sipos 2019). In addition to conclusions from the sub-sample on legal status decisions, articles on territorial decisions demonstrated that the consequences of this not only target noncitizens but also citizens racialized as non-white and ethnic minorities inside the territory

by disciplining them, controlling them, and discriminating against them (Armenta 2016; Romero 2006).

## 5 Concluding Discussion

This paper searched for patterns in the discretionary practices of frontline workers when implementing migration control policies. We did this by conducting a literature review of original research articles published in a 20-year period. We reported the results by dividing the sample of 63 articles into three thematic sub-samples according to type of decision-making situation: welfare decisions, legal decisions, and territorial decisions. In this concluding section of the paper, we compare the findings from each sub-sample and discuss the overall conclusions to be drawn from this analysis. We also point to future avenues for research that could advance research on discretion in migration control.

### 5.1 Patterns of Discretionary Practices: Between Perceptions of “Deservingness” and Racialized Suspicions

Our first research question asked what types of discretionary patterns were found in the research articles of our sample. We found slightly different answers to this question depending on what type of decision-making situation we analyzed. In welfare decisions, we found that frontline workers were crouched between the norms and ethos of their professions and the policing and monitoring tasks imposed on them by migration control policies. This created ethical dilemmas for them. Some handled this by choosing to grant support to migrants who they perceived to be more deserving than others. We also found that perceptions of deservingness shaped discretionary decisions on legal status together with racialized perceptions of who is suspicious. Racialized suspicion also heavily influenced the patterns of practices among frontline workers who make decisions about territorial control. Here, race, class, and nationality significantly structured the discretionary practices of frontline workers, with severe discriminatory implications for migrants as well as for citizens belonging to ethnic minorities and other groups racialized as non-white.

In our sample, we found a disagreement among scholars as to the extent racialized biases (e.g., Kapoor and Narkowicz 2019; Pratt 2010; Heyman 2009) or perceptions of deservingness of individual migrants (e.g., Belabas and Gerrits 2017; Satzewich 2015; Satzewich 2014b) influenced discretion. However, we do not want to overemphasize this disagreement. In our view, perceptions of deservingness and racialized perceptions of suspiciousness are often highly intertwined. For example, socio-legal studies have pointed out that administrative practices are underpinned by and sustain racism on a structural level without individual frontline workers having racist agendas (van Oorschot 2021).

Studies have even shown that, paradoxically, discretionary practices justified by legalistic principles aimed to counteract discrimination, such as the equal treatment principle, can become the structuring principles that lead to discrimination of non-citizens (Johannesson 2022). Therefore, we see a need for more theoretically informed discussions about the relationship between racial suspicions and perceptions of deservingness and how such perceptions shape policy outcomes. We believe that such clarifications would advance the scholarship on structural racism in public service

delivery as well as the scholarship on racial biases in public decision-making in migration control and beyond.

Apart from racialized suspicion and perceptions of deservingness, we found a few studies in our sample that discussed increased demands of effectiveness under managerialism as a force that shapes how frontline workers use their discretion (Ottosson, Eastmond, and Schierenbeck 2013; Satzewich 2014a). Considering the agreement among public administration scholars of the enormous impact neoliberal reforms such as new public management and managerialism have had on public services over the last decades (Brodkin 2011a; Power 1997; Hood 1995), it was surprising that this was not a more salient discussion within our sample of articles.

There is also ample evidence from comparative migration research outside of our sample of the influence neoliberalism has had on national migration policies. For example, Boucher and Gest (2018), in an analysis of migration regimes in 30 countries, found that a shared feature between these regimes is that they turn towards a market model. That is, these states increasingly use migration to achieve their economic interests and goals, which could also create particular imperatives for discretionary practices. With this as a background, we suggest that future research investigate in more detail how public managerial reforms influence the practices of frontline workers when implementing migration control policies.

## **5.2 Consequences for Migrants: Precariousness, Uncertainty, and Liminal Legality**

In our sample of articles, there was overwhelming agreement that discretion among frontline workers in migration control amplified the already vulnerable situation of migrants. Discretion created more uncertainty in already uncertain situations and augmented unpredictability for migrants regarding their access to rights, justice, and safety. In the sub-sample on territorial decisions, it was also discussed how discretionary practices directed at migrants sometimes spilled over to groups of citizens who do not pass as white and middle-class. This observation about the radiating effects of arbitrary border control practices needs to be investigated in more detail in future research to determine more precisely how migration control measures and discrimination of minority citizens are related.

However, some articles in the sample also discussed discretion's tendency to open for hopes and aspirations among migrants for welfare services, access to legal rights, or work. In our sample, these instances of beneficial decisions for migrants were more common in welfare decisions than in legal decisions or territorial decisions. One explanation for this could be that frontline workers in welfare services are more likely to employ moving towards coping strategies as a result of their professional ethos than other frontline workers. However, in our sample these helping strategies seemed to consist primarily of different forms of inaction, for example, "turning a blind eye" to rules (Dunkerley et al. 2005). However, it is unclear whether this is a general tendency or just a result of our sampling strategy.

There are a few studies outside the scope of our sample that demonstrate that frontline workers in migration control agencies sometimes actively resist and obstruct the implementation of repressive migration control measures due to ethical commitments (Borrelli and Lindberg 2018; Andretta 2022; Vettors 2022). Therefore, we would like to see more research on different forms of strategies

among frontline workers who support migrants in precarious situation. It also seems crucial to investigate what role frontline workers have in democratic societies, notably in fields such as migration control, where policies are in tension with or directly jeopardizing the fundamental rights of migrants. In addition, we see a need for more systematic studies of the conditions where discretion is used in favor of migrants, similar to the study by Belabas and Gerrits (2017).

### **5.3 Consequences for Governments: From Limited Control to Opaque Power**

We started this paper by describing the control gap-thesis: governments lack capacity to fully implement migration policies according to their goals and ambitions. Based on the findings of previous studies, we conclude that discretion at the frontline of public administration could be seen as the answer to this puzzle. That is, research on discretion in migration control challenges the simplistic idea of states as coherent entities that produce unambiguous policy objectives that smoothly trickle down from the policymakers to the frontline workers through coherent and hierarchical bureaucratic organizations.

In the studies presented here, a distinctly bottom-up conception of the state appears that imagines states as configurations of practices that form complex webs of power relationships. We would like to point to the notion of “presentational state power” (Gill 2009) and the notion of “the discretionary state” (Coutin et al. 2017) discussed above as illustrative examples of alternative conceptualizations of the state. Both concepts assume that state power is a configuration of power relations that can take different forms depending on who is being targeted.

In the case of the discretionary state, it is the undocumented migrant who is confronted with this configuration of the state as an opaque yet omnipotent form of arbitrary power that mostly prevents but sometimes enables access to temporary rights. In the case of the presentational state power, the intermediators between the central government and the asylum seekers are targeted. To them, state power takes the form of a subtle governmental strategy, presenting asylum seekers in unflattering and defamatory ways, making it easier to discriminate against them. In both these interactions, state power works in informal and tacit ways, so it is difficult to hold anyone accountable or to put blame on formal representatives of the state for the arbitrary and discriminatory consequences of migration control policies.

These two examples of theorizations of state power are welcoming attempts to push the research on discretion in migration control further. We wish to see more theoretical advancements of this sort because what this literature review shows is that we have a lot of detailed, nuanced, and carefully crafted descriptions of how discretion works in migration control, but we still lack theoretical elaborations of how discretion is related to broader questions of state power, structural inequality, accountability, democracy, and the autonomy of frontline worker. Our hope is that this literature review encourages scholars in migration control to explore some of these avenues.

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