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Policing Bodies at the Border and the Borders within: Immigration Enforcement and  
Detention in San Diego County and North Carolina

A Thesis submitted in partial satisfaction of the requirements for the degree of Master  
of Arts

in

Latin American Studies (International Migration)

by

Kathleen Ann Griesbach

Committee in charge:

Professor Elana Zilberg, Chair  
Professor Dennis Childs  
Professor Kirstie Dorr  
Professor David Fitzgerald

2011

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Chair

University of California, San Diego

2011

*To the ones fighting it*

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ABSTRACT OF THE THESIS

Policing Bodies at the Border and the Borders within: Immigration Enforcement and Detention in San Diego County and North Carolina

by

Kathleen Ann Griesbach

Master of Arts in Latin American Studies (International Migration)

University of California, San Diego, 2011

Professor Elana Zilberg, Chair

This thesis analyzes immigration enforcement and detention in San Diego County and North Carolina, using ethnographic interviews, local media, public records, and other data. It finds that immigration enforcement practices historically confined to the border are in many ways moving into the interior, largely through local law enforcement collaborations with federal immigration officials. This analysis argues that both regions see expanding local law enforcement collaboration with federal

immigration agencies. Secure Communities in both regions, Operation Stonegarden in San Diego County, and 287 g in North Carolina support this argument. It also finds that enforcement in each region occurs as a “patchwork”. The patchwork results in part from varied local responses to immigration and ongoing dialectics between local, state, and federal policy realms. The paper demonstrates this “patchwork” through analyses of contrasting 287 g partnerships in Wake and Durham Counties in North Carolina, varied patterns of local law enforcement referrals to the Border Patrol in San Diego County, and Operation Joint Effort, a unique enforcement collaboration between the Escondido Police Department and Immigration and Customs Enforcement.

The thesis situates enforcement practices in the broader framework of the “disciplinary state”, drawing on the work of Michel Foucault, Rebecca Bohrman and Naomi Murakawa, Rachel Ida Buff, and others. The thesis ultimately argues that enforcement practices are not only disciplinary but also deeply punitive. It concludes by highlighting problems from a policy perspective, strategic resistances, and broader implications for human mobility.

## **Part I: Background**

### **Introduction**

*I've seen a strong presence in North County. I've seen them – for example I've seen immigration officials around the corner from here, on the street – like in their trucks, I've seen them in the gas station, I saw them at the bus station in Oceanside, I saw some officers taking people off a freight – off a passenger truck – also, in the station at Encinitas, I saw them over there checking people over. For example some men who were coming from work, they arrested them and took them away.*

- Juana, a migrant in San Diego County, California

*When you've been arrested, when you get to the office at the jail, they ask you for information – where you live, my address, and they take your fingerprints to figure out who this person is, that he's not lying. Then, you go to the infirmary to get the TB shot...and then ICE takes you [for questioning.]*

*...There are some people that have their tiny charges...there are some people that just for not having a license, are in jail.*

*...But they have to do their job. Because if they don't do it, they get punished. They have their quotas.*

- Pedro, a migrant in Wake County, North Carolina

The quotes above show two perspectives on immigration enforcement: one from a migrant living in the border region of San Diego County and one from one residing in Raleigh, North Carolina. Both were at one point in immigration detention – the one after being stopped at a border checkpoint in San Clemente and the other after his arrest on false charges which were eventually dropped deep in the interior. Taken together, their perspectives show that “inspection” of migrants is most visible at the border – in the extended authority of immigration officials within 100 miles of the international boundary and the particular presence of the Border Patrol –but extends deep into the interior. Juana draws attention to the visibility of the Border Patrol in the terrain of San Diego's North County, while Pedro observes that immigration enforcement on the

interior is driven by a kind of bureaucratic machine, in which immigration officials seek to fill quotas at whatever cost.<sup>1</sup> Pedro also highlights the fact that undocumented migrants booked into county jails on minor charges –or false charges, as he was – are still likely to enter removal proceedings, due to collaborations between local law enforcement agencies and federal immigration officials in the county jail setting.

These observations suggest that the inspection of migrants extends into the interior of the nation. In relation to this, Alejandro Lugo conceptualizes “border inspections” as an analytical tool for unpacking how physical and social borders are largely defined by supervision and scrutiny. He distinguishes “border inspections” from border crossings in order to open up analysis of “the depth and breadth of the many “inspection stations” deployed throughout the social, political, economic, and cultural borders and borderlands” of the turn of the 21<sup>st</sup> century.<sup>2</sup> Lugo’s framework pushes for a particular attention to the ways in which migrants and border peoples face “inspections” on all of these levels, through both cultural borders and government-imposed borders. This work seeks to document and to analyze some of the many “border inspections” which migrants and suspected migrants encounter on the border

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<sup>1</sup> Pedro is right about the quotas. Leaked Immigration and Customs Enforcement (ICE) memos from February 2010 revealed that the head of ICE detention and removal operations set controversial quotas to try and reach the goal of 400,000 in the year and to make up for deportation rates being “behind” the previous year totals. The director, James M. Chaparro, described in the memo how the agency would rack up the numbers: “by increasing detention space to hold more illegal immigrants while they await deportation proceedings; by sweeping prisons and jails to find more candidates for deportation and offering early release to those willing to go quickly; and, most controversially, with a “surge” in efforts to catch illegal immigrants whose only violation was lying on immigration or visa applications or reentering the United States after being deported.” Hsu, Spencer S., Becker, Andrew. “ICE officials set quotas to deport more illegal immigrants.” *The Washington Post*. March 27, 2010. <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032604891.html>. (Accessed May 20, 2011).

<sup>2</sup> Lugo, Alejandro. *Fragmented Lives, Assembled Parts: Culture, Capitalism, and Conquest at the U.S.-Mexico Border*. Austin: University of Texas Press, 2008. p. 148.

and in the interior. Deportation statistics provide evidence of the intensification of enforcement in both spaces in the past decade. Removals have doubled since 2005, when ICE removed 195,066. In the past few years, alongside the increase in ICE ACCESS programs like 287 g and Secure Communities, deportations have risen from 369,221 in 2008 to 389,834 in 2009 and 392,862 by the end of 2010.<sup>3</sup>

This investigation of contemporary immigration enforcement has been informed by the following key questions. How do tactics of immigration enforcement on the interior compare to those on the border? How do contemporary patterns of immigrant policing and detention relate to the broader production of criminality in the disciplinary state? What political and economic circumstances underlie this production of criminality in the United States in recent decades? How does this shift in turn have roots in the historical, legal construction and exclusion of a racialized “Other” from the dominant social body?

This thesis explores immigration enforcement in the border region (San Diego County) and on the interior (North Carolina).<sup>4</sup> I argue that tactics of immigration enforcement at the border, historically at the forefront of restriction, have been reproduced on the interior in current collaborations between local law enforcement and federal immigration officials. Immigration authorities have extended powers to enforce immigration law within 100 miles of the international divide, making San Diego County enforcement necessarily different from North Carolina enforcement in important ways.

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<sup>3</sup> TRAC Immigration. “Current ICE Removals of Noncitizens Exceed Numbers Under Bush Administration.” August 2, 2010. <http://trac.syr.edu/immigration/reports/234/>. (Accessed January 18, 2011).

Yet the bi-regional comparison reveals important parallels in immigration enforcement on the border and on the interior.<sup>5</sup> For example, law enforcement agencies in each region have received grants dedicated to local-federal enforcement in the past 5 years, reflecting an increased investment in devolution in each site. The comparison is also relevant because both regions have been characterized as “laboratories” of sorts for immigration enforcement practices since both have been testing grounds for different strategies of enforcement. Examining these two regions, then, will provide a somewhat representative view of emerging practices of immigrant policing and their ramifications for immigrant rights or, more broadly, human freedom.

Immigration to North Carolina only became widespread in the latter half of the 20th century and beginning of the 21st within a larger wave of Latino immigration to the Southern states. In response to heavy Latino immigration, North Carolina and the greater Southeast have been at the forefront of restrictive legislation toward immigrants in the 2000s. My analysis compares enforcement in the “new south” to enforcement in San Diego County, a region historically at the cusp of heavy immigration flows and restrictive policy.

In the first half of Chapter 1 lay out the theoretical framework for the thesis. I argue that immigration enforcement practices are expanding at the nexus of criminal and immigration law and form part of a broader move toward the “disciplinary state.” I define the disciplinary state in two ways. First, it describes the empirical increase in

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<sup>5</sup> My argument follows along the lines of Eithne Luibhéid’s observation that inspection at the border continues on the interior, as she argues that “inspection at the border is not a one-time experience but it is rather, as Foucault’s image of the carceral archipelago suggests, a process that situates migrants within lifelong networks of surveillance and disciplinary relations.” Luibhéid, Eithne. *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press, 2002.

investment in border and interior enforcement alongside a broader investment in punitive policing and crime control, discussed by Rebecca Bohrman and Naomi Murakawa as “big government re-made”- from the welfare state to the disciplinary state.<sup>6</sup> Border militarization and expanded local-federal interior enforcement reflect this movement toward the disciplinary state. The merging of the criminal justice and immigration civil systems is central to the emergence of the disciplinary state; I adopt Juliet P. Stumpf’s notion of a “crimmigration crisis” wherein those in power use the mechanisms of both criminal and immigration law to exclude an expanding group of outsiders.<sup>7</sup> Local-federal collaborations in North Carolina and in San Diego County manifest and facilitate the “crimmigration crisis”, since immigrants are increasingly processed for removal through the civil immigration system following their engagement with the criminal justice system.

In addition to utilizing it to describe the increased investment in immigration and crime control, I define the “disciplinary state” theoretically as a specific technology of power through which migrants are “disciplined” and ultimately punished by the state. Here, I utilize Foucault’s theorization of “discipline” and his conception of governmentality to frame the different strategies, techniques, and technologies of immigration enforcement. I make a case for immigration enforcement as a *particular* technology of power and describe it as the “deportation terror” following Rachel Ida

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<sup>6</sup> “Remaking Big Government: Immigration and Crime Control in the United States.” From *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*. Sudbury, Julie, ed. New York: Routledge, 2005.

<sup>7</sup> Stumpf, Juliet P. “The Crimmigration Crisis: Immigrants, Crime, & Sovereign Power.” *American University Law Review*. Volume 56. 2006.

My research acknowledges that “those in power” may have competing interests, since immigration enforcement impacts the businesses which profit from the prison industrial complex but also those which benefit from exploitable labor.



Buff (who follows Abner Greene). In addition to “disciplining” migrants, immigration enforcement practices and their common end point – deportation – are deeply punitive. My deployment of the notion of the “deportation terror” aims to capture that reality and to subsequently delegitimize legal definitions of immigration detention and deportation that do not consider them punitive.

In the second half of Chapter 1, I provide a review of immigration enforcement policy historically. I briefly plot the evolution of immigration law from its racist foundations to illuminate the creation of the “illegal alien” and with it the genesis and evolution of immigration enforcement. Finally, I highlight three landmarks leading to contemporary enforcement practices: the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and Anti-Terrorism and Effective Death Penalty Act (AEDPA), the post-September 11, 2001 embrace of the 1996 provisions, and the shift in federal enforcement practices from the Bush to the Obama administrations.<sup>8</sup>

Following Chapter 1’s theoretical framework and policy review, I analyze my main findings in each region in Chapters 2 and 3. I focus primarily on enforcement practices in each region rather than on the structure and conditions of immigration detention. The two sites allow for an examination of emerging practices of local-federal policing. These practices, which have emerged primarily following 9/11, account for

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<sup>8</sup> The 1996 legislation added section 287 g to the Immigration and Nationality Act, which authorized local participation in federal immigration enforcement; however, section 287 g did not become active until after 9/11. Local collaboration in immigration enforcement became steadily more responsible for deportations during the Bush administration as 287 g partnerships spread, while the Obama administration has accompanied the widespread expansion of Secure Communities, which began only at the tail end of the Bush administration with the first jurisdiction being activated on October 27, 2008 in Harris County, Texas.

the rising numbers of people entrapped in the immigration detention regime – but begin with immigrants’ engagement with the criminal justice system. Thus, these patterns of policing are increasingly disciplining and punishing immigrants. Examining them in more detail will allow me to show how border and interior enforcement each support the disciplinary state and the particular technology of the deportation terror.

Methodologically, it was also more feasible for me to interview mainly key informants in the legal, law enforcement, and community sectors with knowledge of immigrant policing practices.

My findings center on two main points. First, I argue that while immigration enforcement practices differ somewhat on the interior and the border, both regions are increasingly characterized by local law enforcement collaborations with federal immigration agencies. Second, immigration enforcement in each region is inconsistent from place to place *within* each region. Thus, enforcement occurs as an inconsistent patchwork from county to county and city to city. This patchwork results from the uneven institutionalization of federal policies across different localities and varied local ideologies and political responses to immigration.<sup>9</sup> The analysis shows that local actors

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<sup>9</sup> This project does not focus on the outcome of enforcement actions –namely, detention and then deportation – though prologues in each chapter gesture to the violence which the broader human experience of detention and deportation contain. It’s important though to acknowledge the differences regionally in the “immigration detention pipeline.” North Carolina lacks a federal detention center while San Diego has both a federal detention and more “efficient” legal mechanisms of removal. Thus one of the major difficulties detained immigrants face in North Carolina is their quick transfer from local jails that contract with ICE to distant federal detention centers, typically in Georgia or in Alabama, in which they have even less potential legal assistance and no familial support. Detained immigrants in San Diego are often held at the nearby Otay Detention Facility, but may also be transferred based on space needs. The proximity to the border also creates the possibility of Expedited Removal. Expedited Removal, codified in 1996’s restrictive IIRIRA as intended only for those arriving at ports of entry, has been steadily expanded and in 2004 it was “expanded to aliens who are present without being admitted or paroled, are encountered by an immigration officer within 100 air miles of the U.S. international

are also significant in shaping the “patchwork” of enforcement. This phenomenon of uneven, enhanced local-federal policing has broad policy implications and broader implications for human freedom (both of which I discuss in Chapter 4).

Chapters 2 and 3 are each preceded by prologues containing narratives. The prologues serve to situate the reader in each region and to bring the human impact of enforcement and detention into focus. The first prologue portrays the particularity of detention in the border space, a “state of exception.” The second juxtaposes fragments of the voices of those detained in North Carolina. The particular narratives do not always relate directly to the policies and practices of enforcement analyzed in Chapters 2 and 3. Rather, they should serve as markers of the terrain, reflecting the human experiences behind the enforcement-detention-deportation pipeline.

In Chapter 2 I focus on San Diego County. I first review local policy contexts, reviewing the turn in the latter part of the 20<sup>th</sup> century toward border militarization and increased immigration enforcement in San Diego County. I then discuss the role of Secure Communities in San Diego County, as the San Diego County Sheriff’s Department participates in this nationwide local-federal partnership. Second, I discuss how the proximity to the border increases local law enforcement participation in immigration law. The presence of the Border Patrol leads to closer collaboration with

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southwest land border, and have not established to the satisfaction of an immigration officer that they have been physically present in the United States continuously for the 14-day period immediately preceding the date of encounter.” The process goes as follows: “An immigration officer can summarily exclude an alien arriving without proper documentation or an alien present in the United States for less than two years, unless the alien expresses an intent to apply for asylum or has a fear of persecution or torture.” (Congressional Research Service Report RL33109. Siskin, Alison. Wasum, Ruth Ellen, Domestic Social Policy Division. “Immigration Policy on Expedited Removal of Aliens.” January 30, 2008. Wiki leaks Document Release. <http://wikileaks.org/wiki/CRS-RL33109>.) Along with potential issues with the enormous discretion given to the officers, the 14-day period seems problematic in a border region where many cross back and forth regularly.

local law enforcement agencies across the county. However, policies and practices differ across cities, with inconsistencies from city to city, contributing to a “patchwork” of enforcement. Finally, I highlight the city of Escondido as an extreme case of local cooperation with immigration official through their unique pilot program, Operation Joint Effort. I also discuss DUI/driver’s license checkpoints, a related policing strategy in the city. The case of Escondido illuminates the “patchwork” of enforcement while revealing the pitfalls of local-federal collaborations taken to their logical extreme. I contextualize Operation Joint Effort in Escondido’s broader political and ideological response to demographic change and situate this in earlier restrictive reactions to community diversification in San Diego. This analysis reveals how the patchwork of immigration enforcement in the San Diego border sector supports the disciplinary state and the deportation terror and how ambiguous policy and practice can be advantageous for immigration enforcement.

In Chapter 3 I move inland and focus on Wake, Durham, and Guilford Counties in North Carolina. I discuss the rise of restrictive immigration policy in North Carolina in the late 2000s within the larger response to increased immigration in the 1990s and 2000s in the Southeast. I analyze a North Carolina Sheriff’s Association “resolution” from 2007 to track the rhetorical practices of the deportation terror. I analyze 287(g) partnerships-- in which local law enforcement agencies help enforce immigration laws in collaboration with Immigration and Customs Enforcement - in Wake and Durham Counties. I contrast the more impactful Jail Enforcement Model (JEO) in Wake County with the limited Task Force Model (TFO) utilized by the City of Durham. The contrasting cases draw out both the increased primacy of local-federal partnerships in

immigration enforcement in the South and inconsistency in policy outcomes from region to region. Wake County is the most “efficient” in executing the deportation terror, while the City of Durham actually implements its 287 g in the way it is intended, resulting in limited removals of the target “criminal aliens.” I also highlight the implementation of Secure Communities in all three counties and analyze the impact of the program using the example of Guilford County. Guilford County’s short-lived 287 g program and replacement of it with Secure Communities pinpoints the increased technical efficiency of local-federal collaboration. The Sheriff’s frank acknowledgement that the program does not target “criminal aliens” illuminates the gap between policy and practice. The analysis of these prominent patterns of local-federal policing on the interior highlights contemporary strategies of the disciplinary state and contextualizes these strategies in the political and economic circumstances which enable them. These local-federal policing partnerships also highlight the increased blurring between undocumented migration and crime.

Why does this matter? Why is increased, though inconsistent, local-federal collaboration problematic from both a policy and a broader human (rights) perspective? And how are these findings pertinent to a critique of the disciplinary state and the deportation terror? I synthesize my analysis of local-federal enforcement in North Carolina and San Diego County in my conclusion (Chapter 4). I then discuss problems with these practices from a policy perspective. I review the gap between stated federal policy and outcomes of local-federal policing partnerships, arguing that these practices and their hodgepodge implementation neglect federal “priorities” and open space for more abuses. Second, I draw attention to some pitfalls of the merging of the criminal

justice and immigration systems in these collaborations. Next, I highlight insufficient training and transparency issues in local-federal collaborations, particularly given the economic interests which often drive enforcement. I then turn to law enforcement perspectives on why local law enforcement should not enforce immigration law. In the next section, I briefly explore strategic resistances on the national and local levels as important interventions in contemporary enforcement. In the final section of this chapter, I situate local-federal enforcement in a broader discussion of human freedom and mobility. This discussion seeks to denaturalize both enforcement and deportation as a natural and inevitable recourse of the state.

In the Afterword, I briefly highlight coalition-building in North Carolina resistance work. By examining several events organized by NC ICE WATCH in summer 2010, I point out how cross-racial, cross-ethnic coalition-building in North Carolina is strategically working within and challenging traditional racial dynamics of the south. I draw out the significance of this coalition-building more broadly in the struggle against “anti-immigration” and “anti-integration” policies, drawing on David Harvey and Ruth Wilson Gilmore to theorize these linkages.

My data includes 32 qualitative interviews with immigration attorneys, advocates, community members, and law enforcement representatives in Guilford, Wake, and Durham Counties in North Carolina and in San Diego County in California, recordings of events, national and local public records, and local media accounts. Another essential source of knowledge for this project came from legal internships for pro bono immigration attorneys in each site: part time in San Diego, California from February 2010 through March 2011 with one lapse, and full time in Raleigh, North

Carolina from July through early September. I gained essential (if basic) understanding of immigration law and useful knowledge from doing research and helping supervising attorneys with case work. I gained touch with several informants through these internships. The internship in Raleigh also connected me to the state-wide immigrant advocacy coalition, NC ICE WATCH. I collaborated with NC ICE WATCH and learned something about the shape and form of the struggle for immigrant justice in the state from this group.

## **1. Framing Enforcement: Theoretical, Historical, and Contemporary Contexts**

In this chapter, I develop a broader theoretical and historical frame for the site-specific investigations of enforcement and detention. I position contemporary patterns of immigration enforcement and detention in the broader shift toward the “disciplinary state”, which I define in two ways. I argue that contemporary immigration enforcement practices, explored in San Diego County and North Carolina in Chapters 2 and 3, discipline but also *punish* migrants and suspected migrants through the technology of the “deportation terror.” These theoretical contexts frame the broader history of immigration enforcement along with the specific practices in focus in each site. In the latter section, I review the evolution of immigration exclusion in US legal and political history, highlighting the construction of the “illegal”, the rise of deportation as a technology of the state, and several recent landmarks to contemporary practices.

### **Contemporary Immigration Enforcement and the Disciplinary State**

The previous excerpts from Juana and Pedro alert us to some characteristics of enforcement in border and non-border spaces. Juana’s description of the Border Patrol’s hyper-visibility in San Diego’s North County reveals that migrants in this region face intense surveillance. Federal immigration officials are undeniably more present on the border than on the “interior”, as the presence of the Border Patrol attests. However, Pedro’s comment that in North Carolina, a migrant can be arrested “just for driving without a license” and face immigration removal suggests that the minutest (local/state) infractions place migrants on the interior under (federal immigration)



surveillance. In these interior spaces, *local* agents become proxies for immigration officials – as in 287 g partnerships. At the same time, local *spaces* like county jails become enforcement machines through database sharing with Homeland Security -as in Secure Communities.<sup>10</sup> Thus, the surveillance of migrants and suspected migrants on the border *and* on the interior reveals that enforcement in both spaces occurs both broadly and minutely: tactics and technologies of enforcement are wide-reaching, while entrapping migrants for the most minor missteps.<sup>11</sup> I theorize this broad and minute system of power in the concept of the “disciplinary state”, which I define in two ways.

*The Disciplinary State as Empirical Investment in Immigration and Crime Control*

First, I utilize the term “disciplinary state” to refer to the empirically expanding investment in immigration enforcement and crime control. I situate contemporary practices of immigration enforcement in Rebecca Bohrman and Naomi Murakawa’s analysis of the transformation from the welfare state to the “disciplinary state” in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries. Bohrman and Murakawa argue that big government has been “remade” through the expansion of immigration and crime control in the context of “welfare state retrenchment.”<sup>12</sup> They describe this transition through three trends: the defunding of welfare agencies and increased funding of disciplinary

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<sup>10</sup> Each of these programs will be explained in more detail later in Part 3 of this chapter.

<sup>11</sup> As informants will reveal in Chapters 2 and 3, sometimes migrants get arrested without committing any sort of “misstep” at all – but, apparently, because they “appear” to be immigrants. This is particularly common within 100 miles of the border, since immigration officials are technically authorized to use appearance as *a* (but not the only) factor in determining who to stop.

<sup>12</sup> Bohrman, Rebecca, Murakawa, Naomi. “Remaking Big Government: Immigration and Crime Control in the United States.” from *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*. Sudbury, Julia, ed. New York: Routledge, 2005. This is not to argue that the various agencies and mechanisms of the welfare system are not themselves “disciplinary”, but to highlight a move toward the *punitive* tactics of immigration enforcement and crime control, as discussed here.

agencies<sup>13</sup>, the merging of increasingly punitive immigration and crime control, and the “colonization” of these social service agencies – through the mandate that they exclude immigrants and those convicted of crimes from the social welfare net and act as proxy agents of immigration and crime control in some cases.<sup>14</sup> These processes have disproportionately targeted people of color, especially through incarceration of African Americans and detention and deportation of Latino immigrants. Mary Bosworth underlines this double targeting of people of color, discussing how the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 cut welfare for vulnerable people of color and restricted benefits from illegal immigrants and their children.<sup>15</sup> Social service trends directly paralleled increasing investment in immigration enforcement.

The merging of the immigration and criminal justice systems is a key trend in the growing investment in punitive immigration and crime control, or the “disciplinary

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<sup>13</sup> These include the Immigration and Naturalization Service (now ICE and CBP within the Department of Homeland Security), the Bureau of Prisons (BOP), and the Drug Enforcement Administration (DEA).

<sup>14</sup> *Ibid.*, p. 110. Ruth Wilson Gilmore’s analysis of the build-up of prisons in California alongside the move away from a Keynesian system in the 1970s in *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* aligns with Bohrman and Murakawa’s analysis of the rise of the “disciplinary state.” Gilmore shows how Keynesianism gave way to a capital-pursuing infrastructure in which the welfare state became increasingly delegitimized, and surplus labor a group in need of “deportation” (in the form of incarceration) in its wake. She traces the economic and political transition of California’s goal for prisons from serving the function of “rehabilitation” (at least in part) to “incapacitation” and shows the necessary turn toward restrictive legislature (in new or reinvigorated draconian drug laws, the 3-strike campaign, and the Street Terrorism Enforcement and Prevention Act, or STEP) in the 1980s and 1990s in order to fill the newly sited prisons. Central to this shift in legislature is the criminalization of working-class African-American and Latino populations, particularly youth. She articulates this transition as the move “from military Keynesianism to post-Keynesian militarism.” See Gilmore, Ruth Wilson. “Globalisation and U.S. Prison Growth: From Military Keynesianism to post-Keynesian Militarism.” *Race Class* 1999 40: 171.

<sup>15</sup> Bosworth, Mary. “Identity, Citizenship and Punishment.” From *Race, Gender, and Punishment: From Colonialism to the War on Terror*. Bosworth, Mary, Flavin, Jeanne, eds. New Brunswick: Rutgers University Press, 2007.

*Ibid.*, pp. 112 – 115. The authors draw out the particular impact crime policy has on African American males, and the disproportionate impact punitive drug policies have on women of color, who are sentenced to prison 41 they are convicted of drug felonies vs. white women, who are sentenced only 24 percent of the time (113), an example of the well-documented racialization of crime control.

state.” To discuss how the two systems have merged in local-federal enforcement practices, I apply legal scholar Juliet P. Stumpf’s formulation of a “crimmigration crisis” to local-federal enforcement practices. Stumpf discusses how immigration laws rapidly incorporated criminal sanctions for immigration infractions, and deportation was prescribed for more noncitizens who committed crimes; meanwhile, criminal penology shifted “from rehabilitation to retribution, deterrence, incapacitation, and the expressive power of the state” – convicted criminals become excluded through heightened incarceration and the loss of basic political and social welfare rights<sup>16</sup>. These increasing intersections between criminal and immigration law create what Stumpf calls a “crimmigration crisis” in which dominant groups use the mechanisms of both criminal and immigration law to exclude an expanding group of outsiders.<sup>17</sup>

The “crimmigration crisis” has resulted in the vast expansion of immigrant detention and deportation. Statistics on criminal prosecutions reflect a visible growth in the criminalization of immigration infractions, particularly since 2005’s Operation Streamline mandated criminal prosecution for illegal entry through multiple border sectors in Texas and Arizona. According to the Transactional Records Access Clearinghouse, yearly federal criminal prosecutions for immigration infractions more

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<sup>16</sup> Stumpf, Juliet P. “The Crimmigration Crisis: Immigrants, Crime & Sovereign Power.” *American University Law Review*. Volume 56. 2006.

As Bohrman and Murakawa stress, “Just as immigration policy now favors border control over service provision, so too crime control policy now favors incarceration over prevention or rehabilitation.” *Op. Cit.*, Bohrman, Murakawa, p. 112.

<sup>17</sup> *Op. Cit.*, Stumpf, Juliet P., p. 28.

Note: While placing this “crimmigration crisis” in the notion of the empirically expanding “disciplinary state”, I will also argue that these macro shifts in criminal penology and in immigration laws *exceed* general definitions of “discipline.” See subsequent articulation of the “disciplinary state”, in which I argue that the particular technologies of immigration enforcement leading to deportation typify a technology of power that is not merely disciplinary but also deeply punitive.

than quadrupled during the Bush Administration.<sup>18</sup> This demonstrates the growing connections between the “civil” immigration and criminal systems. This increase is not limited to border enforcement however, as local-federal collaborations all around the nation account for much of the increase in detention and deportation. These collaborations, such as 287 g and Secure Communities, *rely on* the mergence of criminal and immigration laws, since immigrants processed for removal through them are first engaged with the criminal justice system.<sup>19</sup>

The “cimmigration crisis” is replete with policy problems. Complications associated with 287 g and Secure Communities in North Carolina include collateral consequences of criminal proceedings for immigration proceedings which seriously jeopardize access to justice in either system.<sup>20</sup> Legal scholar Jennifer Chacón outlines some key procedural problems for immigrants in this marriage between “civil” immigration and criminal law. Chacón discusses how the passage of the restrictive 1996 and post-9/11 laws, which incorporate increasing criminal sanctions into immigration laws, has brought a surge in allegations of government misconduct in

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<sup>18</sup> Meanwhile, prosecutions for other federal crimes including white-collar crime have decreased since the end of the Clinton administration. Transactional Records Access Clearinghouse, “Bush Administration’s Immigration Prosecutions Soar, Total of All Federal Filings Reaches New High.” Syracuse University, Jan. 12, 2009, available at <http://trac.syr.edu/tracreports/crim/201/>.

<sup>19</sup> In North Carolina, the main method through which people enter removal is criminal arrests (for whatever infraction) by local law enforcement officers who then take them to jail where the county has a local-federal partnership with ICE (some have 287 g and all have Secure Communities). Once one’s criminal charges are dropped, he or she commonly enters into removal proceedings.

<sup>20</sup> A key example: If someone posts criminal bail and has an ICE “detainer” that person will often enter directly into ICE detention, lose his/her bail money, and probably miss his/her criminal trial while in immigration detention. That person will suffer the consequences of a Failure to Appear and have a warrant issued for arrest, though he/she could not attend criminal court while in ICE detention. He/she might even be penalized in immigration court for the Failure to Appear. (Interview, Lara, immigration attorney, 8/27/10).

apprehending immigrants, but that immigration courts cannot “police the police.”<sup>21</sup> Elana Zilberg points how punitive criminal laws -- including 1994’s Violent Crime Control and Law Enforcement Act of 1994 and 1996’s Proposition 184 – the “Three Strikes and You’re Out” initiative in California -- combined with the anti-immigrant backlash to enable more immigrants with criminal records to be deported (through the INS’ Violent Gang Task Force). Another key law, 1996’s Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) starkly re-defined what was considered an “aggravated felony” for immigration purposes, thus greatly increasing those subject to deportation. IIRIRA and the Anti-Terrorism and Effective Death Penalty Act (AEDPA) united with Proposition 184 in California to make it “considerably more difficult for immigrants to acquire legal permanent residency and citizenship.”<sup>22</sup>

One problem from both a policy and a *human* standpoint with the mergence of criminal justice and immigration systems is that deportation is not seen as punishment and thus immigrants lack many procedural protections. The lack of procedural protections prevents immigrants from remedies in the event of abuses. That deportation is not considered punishment is painfully ironic given the tremendously punitive consequences of immigration enforcement and deportation. Susan Bibler Coutin’s argument that “the immigration system *creates* the very disjunctures that seem to undermine it”, which “can be key to the immigration system’s coherence” is instructive

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<sup>21</sup> Chacón, Jennifer. “A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights.” *Duke Law Journal*, Vol 59, 2010. The lack of procedural protections for immigrants becomes increasingly harmful in the face of policies which by their very nature conflate the immigrant with the criminal or terrorist, such as NSEERS and Operation Community Shield.

<sup>22</sup>Zilberg, Elana. *Space of Detention: The Making of a Transnational Gang Crisis between Los Angeles and San Salvador*. Durham: Duke University Press, Forthcoming.

in making sense of this lack of procedural protections.<sup>23</sup> Coutin’s point encourages an analysis which, while calling out egregious policy disconnects and flaws, ultimately critiques the broader injustices which structure the immigration system. Some of my informants alluded to the “cimmigration crisis” and underscored its political potency. Mary, an immigration attorney in North Carolina, drew an explicit connection between the scapegoating of immigrants and of convicted criminals, both part of an expanding group of the excluded. She explained,

Nobody is going to fault you for being “tough on crime”...because again that’s a very vulnerable population. Many, many criminals are completely disenfranchised because of laws that say you know you can’t vote if you’ve been convicted of certain crimes so again, it’s a disenfranchised population, vulnerable, it’s a very easily exploitable topic for politicians to capitalize on<sup>24</sup>.

Her words gesture to the “cimmigration crisis”, a concurrent movement in criminal and immigration law to expand the excluded. Local-federal enforcement partnerships bridge both systems, leading to the ultimate expulsion of more migrants following their engagement with the criminal justice system.

Diego, an immigrant rights advocate in San Diego, placed the expansion of restrictive immigration policies in a broader punitive turn. He draws our attention to how for the past 30 or 40 years, “border enforcement tends to be framed from the concept of a “war.”

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<sup>23</sup> Coutin, Susan Bibler. *Nations of Emigrants: Shifting Boundaries of Citizenship in El Salvador and the United States*. Ithaca: Cornell University Press, 2007. p. 5.

The weakening of procedural protections and constitutional rights is not limited to the immigration system, but is seen in punitive policing strategies as well, as Elana Zilberg shows in her discussion of zero tolerance policing strategies targeting suspected gang youth. *Op. Cit.*, Zilberg, Elana. *Space of Detention*.

<sup>24</sup> *Op. Cit.*, Interview, 8/27/10, Raleigh, North Carolina.

And you have the '80s, for example, where it was the “war on drugs”. So you have President Reagan then changing policy in order to increase the militarization of the border...the Posse Comitatus Act, which prevents the military from conducting operations on domestic soil, was modified in order for drug interdiction operations to take place. And so that’s what eventually led to the murder of Esequiel Hernandez in Redford, Texas, in ‘97. And so that was directly related to that.

Um, in the ‘90s I would say it would be the War on Criminals, even though...statistics were showing that criminality was decreasing but yet the focus on criminality was increasing in terms of enforcement.

...On September 11, the “war on criminals” suddenly changes to the “war on terror.” And so everything that has to do with immigration is framed in [terms of] how to respond from the vantage point of the war on terror. And that’s already capitalizing on the enforcement practices that were building from the previous two decades.<sup>25</sup>

Diego’s observation here that the “border buildup” of the past decades has been framed in a series of wars reveals the evolving rhetoric of the “disciplinary state” of expanded immigration and crime control through which contemporary local-federal immigration enforcement practices have developed.

*Governmentality, Punishment, and the “Deportation Terror”:* Theorizing “Discipline” and Punishment in Contemporary Immigration Enforcement

Beyond describing the expanded investment in punitive immigration and crime control, enacted through an ongoing “crimmigration crisis” and stymied by subsequent Wars on Drugs, Crime, and Terror, the “disciplinary state” can theoretically inform an analysis of local immigration enforcement practices. Here, I seek to more carefully define how I am deploying the disciplinary state to describe the technologies and tactics

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<sup>25</sup> Interview, San Diego, California, 2/3/11.

of immigration enforcement on both the border and the interior. I also point out the limits of that deployment. Foucault's formulation of discipline and his notion of "governmentality" are useful in describing these particular *technologies* of discipline.<sup>26</sup>

In *Discipline and Punish*, Foucault articulates how

“‘Discipline’ may be identified neither with an institution nor with an apparatus; it is a type of power, a modality for its exercise, comprising a whole set of instruments, techniques, procedures, levels of application, targets; it is a ‘physics’ or an ‘anatomy’ of power, a technology.”<sup>27</sup>

The theorization and description of the particular *techniques* of the disciplinary society applies to tactics of immigration enforcement – such as database classification, traffic stops, and Border Patrol checkpoints. Foucault also observes that “In organizing ‘cells’, ‘places’ and ‘ranks’ the disciplines create complex spaces that are at once architectural, functional, and hierarchical”, which describes how migrants are classified by documentation status, from legal permanent residents to temporary guest workers to “unauthorized” migrants. Finally, his formulation of Panopticism - surveillance and power transmitted through the knowledge that others are watching – describes how migrants are subject to surveillance which becomes palpable with the *visibility* of immigration enforcement, as Juana brings out in her description of the Border Patrol.

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<sup>26</sup> In *Discipline and Punish*, he describes the ‘disciplines’ as “an uninterrupted, constant coercion, supervising the processes of the activity rather than its result...exercised according to a codification that partitions as closely as possible time, space, movement. These methods, which made possible the meticulous control of the operations of the body, which assured the constant subjection of these forces and imposed upon them a relation of docility-utility, might be called ‘disciplines.’” Foucault, Michel. *Discipline & Punish: The Birth of the Prison*. 1975. Reprint. New York: Vintage, 1995. p. 137.

<sup>27</sup> *Ibid.*, p. 215.



As Eithne Luibhéid argues, enforcement strategies on the interior and on the border “situate migrants within lifelong networks of surveillance and disciplinary relations.”<sup>28</sup>

While Foucault’s discussion of disciplinary power in *Discipline and Punish* helps to frame the tactics of immigration enforcement, his broader framework of the “mechanics” of power does not account for the racialized nature of immigration enforcement, or for the fact that enforcement works outside and beyond the state (to the extent that the undocumented occupy “spaces of non-existence”<sup>29</sup>) by identifying what is “Other” and then expelling it.<sup>30</sup> Joy James’ intervention is instructive for this analysis of *racialized* immigration enforcement practices. James argues that by ignoring race,

In respect to U.S. policing and punishment, the metanarrative of *Discipline and Punishment* vanquishes historical and contemporary racialized terror, punishments, and control in the United States; it therefore distorts and obscures violence in America in general.<sup>31</sup>

James asserts that by constructing the “unspecified body”, and neglecting how race and gender structure hierarchies and binaries, Foucault “sanitizes” state repression and argues incorrectly that the “spectacles of violence” have been diminished. Yet, as

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<sup>28</sup> *Op. Cit.*, Luibhéid, Eithne. *Entry Denied: Controlling Sexuality at the Border*.

<sup>29</sup> Coutin theorizes how undocumented migrants occupy “spaces of nonexistence”, being physically present but legally absent. She argues that the space of nonexistence “intrinsically defies a discipline that, according to Foucault (citing *Discipline and Punish*), seeks to ‘eliminate the effects of imprecise distributions, the uncontrolled disappearance of individuals, their diffuse circulation, their unusable and dangerous coagulation; [discipline] was a tactic of anti-desertion, anti-vagabondage, anti-concentration. Its aim was to establish presences and absences, to know where and how to locate individuals, to set up useful communications, to interrupt others, to be able at each moment to supervise the conduct of each individual, to assess it, to judge it, to calculate its qualities or merits.’ Unknowable, unquantifiable, and illicit, the legally nonexistent seem potentially subversive to authorities.” *Legalizing Moves: Salvadoran Immigrants’ Struggle for U.S. Residency*. Ann Arbor: University of Michigan, 2000. pp. 43-44.

<sup>30</sup> I will discuss these issues below.

<sup>31</sup> James, Joy. *Resisting State Violence: Radicalism, Gender, and Race in U.S. Culture*. Minneapolis: University of Minnesota Press, 1996. p. 24.

James points out, “the violent state punishments that Foucault generalizes as past phenomena resurface in our postmodern-era policies.”<sup>32</sup> James points out the continuity of the spectacle of (racial) violence, in practices like law enforcement brutality and crowd control and supervision in black areas (revealing how police turn surveillance into a spectacle). While Foucault’s analysis of discipline applies to the penal setting – where “constant monitoring, bureaucratic documentation and analysis, and interrogation without end are in fact characteristics of American prisons” – the U.S. enacts violence “through its police and its penal executions.”<sup>33</sup>

Racialization is essential to the creation of figures like the “delinquent”<sup>34</sup>, and the absence of race is clearly a shortcoming in Foucault’s genealogy. Since immigration law and enforcement practices are deeply racialized, this analysis needs to be attuned to how race informs the development and implementation of local enforcement practices. Many informants mentioned the salience of race to local immigration enforcement. For example, John, a retired assistant sheriff for the San Diego County Sheriff’s Department, mentioned in his discussion of Escondido’s enforcement climate that “in my view it’s not about illegal or legal immigration. No, it’s not about that. It’s about brown people.”<sup>35</sup>

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<sup>32</sup> *Ibid.*, p. 28.

<sup>33</sup> *Ibid.*, p. 42.

<sup>34</sup> His argument that for the delinquent “it is not so much his act as his life that is relevant in characterizing him” links to the situation of those marked as “gang” members prematurely and thus excluded from belonging to the social compact through discriminatory laws. Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Sheridan, Alan, translation. New York: Vintage Books, 1977. p. 251. Foucault’s theorization of disciplinary power also informs the treatment of “excludable” immigrants, whose lives as immigrants to the US rather than their personal circumstances or the larger forces that brought them here cause their legal expulsion from the nation. In my research, this becomes clear through the use and abuse of 287 g and Secure Communities and through the expanded power of ICE and CBP in the border region to monitor, and sometimes terrorize, suspected undocumented immigrants.

<sup>35</sup> Interview, Escondido, California, 2/2/11.

While the enforcement practices discussed in this analysis undoubtedly impact immigrants from various ethnic backgrounds, my analysis is particularly focused on Latino immigrants, who have been racialized in particular ways throughout the history of migration to the United States. If this thesis seems to conflate “Latino” with immigrant, it does not do so uncritically, just as it does not assume to speak to the experiences of all migrants of any background. However, my focus is on Latino immigration because the majority of migrants in each region are from Latin American countries, and particularly Mexico, because informants subsequently focus on how enforcement and detention practices impact Latino migrant communities, and because the history of migration and enforcement across the U.S.-Mexico border deeply informs this analysis of contemporary enforcement.

Despite Foucault’s failure to account for race and racialization, his conceptualization of “governmentality” also contributes to my theoretical deployment of the “disciplinary state.” The term encapsulates the tactics, technologies, and institutions developed in the late eighteenth century that led to the increasing “geographic management and social control” of populations alongside the rise of the modern state.<sup>36</sup>

In applying “governmentality” to immigration enforcement practices, I draw upon Lisa Sanchez’s notion of the “carceral contract” in the government’s geographic control over “suspected” gang members and terrorist suspects following 9/11. Sanchez connects emerging forms of U.S. governance to Foucault’s concept of

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<sup>36</sup> Foucault, Michel. “Governmentality.” In *the Foucault effect*, Burchell, Graham, Gordon, Colin, Miller, Peter, eds. Chicago: University of Chicago Press, 1991.

“governmentality.” She argues that crime control has become integral to American life, as the body is policed - along racial lines - through urban planning strategies, public space ordinances, law enforcement practices, and increased reliance on classification systems like the census, health and insurance records, and criminal histories and databases.<sup>37</sup> Sanchez argues that this type of governance reached a new peak in the late 1980s, and has continued to rise since – following the decline of the welfare state and the rise of the ideology of personal responsibility and neoliberalism. Sanchez conceptualizes gang-loitering ordinances as a “carceral contract” of confinement and “forced consent”, because the laws force people to “disperse” on the authorities’ commands, even though they have not committed a crime. Such ordinances manage populations by pushing people into specific regions, therefore “disciplining the movements of racialized bodies in public space.”<sup>38</sup> Elana Zilberg emphasizes the

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<sup>37</sup> This occurs in tandem with the decline of the welfare state and rise of the ideology of personal responsibility and neoliberalism.

Sanchez, Lisa E. “The Carceral Contract: From Domestic to Global Governance.” From *Race, Gender, and Punishment: From Colonialism to the War on Terror*. Bosworth, Mary, Flavin, Jeanne, Eds. New Brunswick: Rutgers University Press, 2007. She cites Jonathan Simon’s work on Western societies “governing through crime and punishment” from the 1980s.

The discussion of the reliance on databases links with the central significance and agency of DHS databases in the era of Secure Communities, which I explore through my research in North Carolina – through Secure Communities, immigrants and categorized as “excludable” upon arrest for any minor infraction upon booking, and the system is arguably more efficient than even the policing through trained 287 g officers in the jail setting – the immigrant has no agency in this setting, for if a match is found, the person will receive an ICE detainer immediately. This has led to a majority of removals for noncriminal or minor infractions, despite the stated target of “criminal aliens” (A Sheriff who recently acquired the program among many other informants acknowledged that Secure Communities leads to this occurring much more frequently. Interview, Sheriff BJ Barnes, 8/9/10, Greensboro, North Carolina). It’s important for me to think about the agency of the database technology, and how it restricts the actions of officers to begin with.

<sup>38</sup> *Op. Cit.*, Sánchez, Lisa E. p. 173. She argues discriminatory processes of policing and apprehension occur – those deemed a “threat” to those officers enforcing a law are already racially coded (174). The move from the first step (requiring dispersal in the zones) to the second (arresting those who don’t obey for a crime) marks the transition from a “civil procedure” (the request to disperse) to a criminal offense (if one does not obey). This meshes interestingly with the processing of immigrants after a criminal arrest in North Carolina or San Diego, where the transition often is the reverse: someone might be picked up for driving without a license (in North Carolina) or shoplifting (in San Diego), and the minor

tremendous exercise of disciplinary power which law enforcement officers have over suspected gang members, who, if they are out of status, are subject to the “double punishment” of incarceration and deportation. Speaking specifically of the gang injunction passed in the Pico-Union district of Los Angeles in 1997, Zilberg argues that it

Leveraged public nuisance and loitering laws to legally enshrine and formalize severe restrictions on the freedom of movement and the right to free association between gang members, thereby criminalizing behavior which to others is a guaranteed civil right. This gave LAPD’s special CRASH unit a very nearly idealized exercise of disciplinary power over the rebuild environment in question.<sup>39</sup>

The restriction on the freedom of movement that is concretized in the gang injunction is a recurring feature of the disciplinary power exercised in immigration enforcement.

I argue migrants are “disciplined” through spatial production practices of governmentality as certain counties become threats to immigrants through programs like 287 g and other local-federal agreements. These lend themselves to racially coded policing and inhibit the freedom of movement of migrants from county to county and city to city.<sup>40</sup> Secure Communities, now fundamental to enforcement in both San Diego County and North Carolina, exemplifies “governmental rationality,” as bodies are policed through database classification. The program links DHS databases with local

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offense will be dismissed while the local agency connects the person to Immigration and Customs Enforcement (in North Carolina, through Secure Communities or 287 g) or to the Border Patrol (in San Diego County, as is common protocol after an arrest). For undocumented immigrants, this transition from the “criminal offense” (minor in the above examples) to the “civil procedure” is of course what leads to immigrants going into removal.

<sup>39</sup> Zilberg, Elana. “A Troubled Corner: The Ruined and Rebuilt Environment of a Central American Barrio in Post-Rodney King Riot Los Angeles.” In *City and Society* IVX(2): 31-55 (2002).

<sup>40</sup> In North Carolina, this occurs spatially as 287 g counties, particularly those known for abusing their immigration authority, become spaces of threat for undocumented immigrants. Interview, Sara, 9/1/10, Raleigh, North Carolina. Interview, Alejandra, 9/6/10, Raleigh, North Carolina. In San Diego County, “DUI/drivers’ license” checkpoints in Escondido known to target unlicensed drivers arguably “discipline” bodies through space in a similar way. Interview, Escondido, California, 2/2/11.

jails, so that everyone booked into jail and fingerprinted is screened for immigration status.<sup>41</sup> Secure Communities typifies governmentality, as it categorizes, classifies, and ultimately sorts migrants for removal. The program also demonstrates the “crimmigration crisis” – since migrants are only flagged for immigration removal following their engagement with the criminal justice system.

Emerging practices of governmentality which entrap migrants on the border and the interior domestically relate to U.S. global governance in the War on Terror. Immigrants, like suspected gang members or terrorists, are marked and policed racially; the legal system which punishes even legal permanent residents for minor crimes as deportable for “aggravated felonies” – through the “crimmigration crisis” – renders them in a sense perpetually on probation. Sanchez connects the “domestic” gang subject to the “global suspect” of terror post-9/11. The “global suspect” is seen in the detention of suspected “enemy combatants” in the US and in the tactics of confinement and abuses in Iraq (as seen in Abu Ghraib). Sanchez suggests that “parallel languages and strategies of war and regulation are reconfiguring global and domestic relations.”<sup>42</sup> The government’s labeling of suspected terrorists like José Padilla “illegal combatants” and confinement of them to places like Abu Ghraib functions as a type of conviction, just like gang suppression laws in the U.S.<sup>43</sup> Both groups are racialized as criminal

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<sup>41</sup> These databases are known as IDENT. Anyone flagged as a noncitizen through IDENT receives an ICE detainer, also known as an ICE “hold”, which is a request to hold one in local custody following the resolution of his criminal charges so that ICE can pick the person up within 48 hours.

<sup>42</sup> *Op. Cit.*, Sanchez, Lisa. p. 178.

<sup>43</sup> As Zilberg points out, many gang abatement policing strategies and laws rely on the “state of exception” (theorized by Giorgio Agamben), just like the legislation and practices of the War on Terror. This supports her claim that “The state of exception... is a working paradigm of, not an anomaly in, the democratic sovereign state.” Zilberg, Elana. “Gangster in Guerilla Face: A Transnational Mirror of Production between the USA and El Salvador.” *Anthropological Theory*. 2007 7:37. DOI: 10.1177/1463499607074289.

“suspects” in advance. Zilberg points out the explicit links made between juvenile crime and terrorism in post-9/11 Los Angeles, including Police Chief William Bratton labeling gang crime “homeland terrorism” and unsubstantiated media insinuating links between the MS-13 and Al Qaeda.<sup>44</sup> These links support the connection Daniel Hernandez, Diego, and others draw between the expanding “war on terror” and intensified immigration enforcement and detention, as all become linked to national security. This “terror context” is supported by public opinion and the political capital it provides politicians and pundits.<sup>45</sup> I argue that this post-9/11 “terror context” catalyzes local-federal policing partnerships which operate through another conflation – the domestic criminal justice system with the civil immigration system.

While Foucault’s formulations of disciplinary power and governmentality have useful applications to immigration enforcement practices, the “deportability” of migrants distinguishes the policing and detention of migrants from other types of “discipline.” The legal vulnerability of undocumented migrant labor is, De Genova argues, “above all, materialized in its deportability.”<sup>46</sup> Talavera, Núñez-Mchiri, and

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<sup>44</sup> Zilberg, Elana. “Refugee Gang Youth: Zero Tolerance and the Security State in Contemporary U.S.-Salvadoran Relations.” In *Youth, Globalization and the Law*. Sudhir Venkatesh and Ronald Kassimir, eds. Stanford: Stanford University Press, 2007.

<sup>45</sup> Hernandez, David Manuel. “Pursuant to Deportation: Latinos and Immigrant Detention.” *Latino Studies* 2008, 6, (35-63). p.59. See also Welch, Michael. “Immigration Lockdown before and a/after 9/11: Ethnic Constructions and their consequences” from *Race, Gender, and Punishment: From Colonialism to the War on Terror*. Bosworth, Mary, Flavin, Jeanne, eds. New Brunswick: Rutgers University Press, 2007. Welch points out that though most of the more than eighty two thousand people who registered were not linked to terrorism, the Justice Department used the databases to initiate deportation proceedings for as many as thirteen thousand Arab and Muslim men whose immigration status had expired (pointing to the merging of the “war on terror” with a “war on immigrants”, an expansion of “crimmigration” to the terror context. Chacón also analyzes in detail the forced registration of certain foreign nationals, and several of my interviews revealed both the drawing of such connections (one sheriff) and the recognition that such confluences are occurring (several immigration attorneys).

<sup>46</sup> De Genova, Nicholas. “The Deportation Regime: Sovereignty, Space, and the Freedom of Movement.” In *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Durham: Duke University Press, 2010. P. 47.

Heyman discuss “deportability as *a presence*: a constant possibility for people precariously living inside the United States.” Patterns of border policing – such as highway checkpoints and border policing stops – are “processes of entrapment in which local and state agencies impose constant and significant risk to the movement of undocumented populations.”<sup>47</sup> Enforcement practices shape peoples’ movement geographically and limit their freedom of movement on the border and on the interior, as Chapters 2 and 3 will demonstrate.

Thus, while Foucault’s genealogy in *Discipline and Punish* suggests that discipline eventually supersedes punishment, this analysis contends that immigration enforcement is deeply punitive. Practices of “civil” immigration enforcement and the endpoints of detention and deportation clearly *punish* migrants. The *presence* of deportability that unauthorized migrants face every day, but also the harsh *realities* of enforcement -- in which people can be torn from their families, displaced from their only homes - renders contemporary practices of enforcement deeply punitive. Indeed, some point out that for “criminal aliens” it is double punishment – incarceration and deportation. Thus, immigration enforcement practices must be distinguished as a *particular* technology of power exercised by both state and non-state actors. One detained migrant in North Carolina, who had worked in the state for 8 years, captured the deeply punitive nature of immigration detention. He wrote, “I’m not a bad person, I

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<sup>47</sup> Talavera, Victor, Núñez-Mchiri, Guillerma Gina, Heyman, Josiah. “Deportation in the U.S.-Mexico Borderlands: Anticipation, Experience, Memory.” In *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. De Genova, Nicholas, Peutz, Nathalie, ed. Durham: Duke University Press, 2010. P. 169.



just came to work - it feels like my American Dream has become an American Nightmare.”<sup>48</sup>

To theoretically inscribe this deeply punitive nature of contemporary enforcement practices, I utilize the concept of the “deportation terror.” The phrase was coined by Abner Green, who was the executive secretary of the American Committee for Protection of the Foreign Born in the 1940s and 50s. Green wrote an essay called “The Deportation Terror: A Weapon to Gag America, 1950” at the height of the Cold War’s deportations of suspected “subversives.”<sup>49</sup> Rachel Ida Buff re-articulates the term in the post-9/11 era. Buff links the deportations of these suspected “subversives” and the massive deportation of mainly Mexican workers during the same era with the deportations of suspected “terrorists” and widespread raids of mainly Mexican workers at her writing (September 2008). Both eras see the enactment of “the deportation terror”, defined as “the mergence of the U.S.-Mexico border as a contested and racialized zone across which migrants and racialized U.S. citizens have been deported en masse at particular moments.”<sup>50</sup> The shape, form, and targets of the deportation

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<sup>48</sup> Letter, 11/26/09.

<sup>49</sup> Green, Abner. “The Deportation Terror: A Weapon to Gag America, 1950.” Published by The American Committee for Protection of the Foreign Born. 23 West 26<sup>th</sup> St., New York 10, N.Y. January, 1950. Reprinted in *Immigrant Rights in the Shadows of Citizenship*. Ida Buff, Rachel, Ed. New York: New York University Press, 2008. pp. 363- 382. In this essay, Green discusses the harassment and deportation the Justice Department was carrying out against foreign born leaders with progressive opinions (former members of the Communist party). Many of his points are relevant today: the conflation of immigration and crime (“The Justice Department is...trying to make the non-citizen who is arrested in deportation proceedings feel like a criminal and guilty before he is tried”); the rhetorical arm of the “deportation terror”, the requirements that all non-citizens agree to report “*In person* once a week to the local office of the Immigration and Naturalization Service or local police station” (a parallel to NSEERS).

<sup>50</sup> Buff, Rachel Ida. “The Deportation Terror.” *American Quarterly*, Vol 60, No. 3, September 2008, pp. 523-551.

terror shift based on political, social, and economic contexts.<sup>51</sup> But across time, Buff argues, “the deportation terror imposed on immigrant communities...is a crucial technology of the state.”

I argue that in San Diego County and in North Carolina as in other regions with similar policies, increasing local-federal collaborations are becoming an integral part of the “deportation terror”, by increasing the numbers and means through which people are deported “en masse” but also through the individualizing entrapment of local-federal enforcement. These collaborations operate on a lower key, more insidious than full score raids. Yet they are increasingly *efficient*, targeting migrants for removal through the mechanisms of local policing.<sup>52</sup> Local-federal enforcement practices work alongside the Border Patrol and ICE’s own tactics as a “crucial technology of the state.” These local-federal partnerships, many subsumed under the ICE ACCESS umbrella, were popularized under the Bush administration and are expanding under Obama’s watch, largely replacing the large scale raids of years prior.

ICE’s National Fugitive Operations Program (NFOP) is an apt example of how the “deportation terror” operates through contemporary enforcement practices. ICE’s website describes the program as one which “identifies, apprehends and removes aliens from the U.S. who have failed to surrender for removal or comply with a removal order”, and prioritizes “the public safety concerns of criminal alien cases.” Yet the program in reality often targets people who never even knew they had a removal order.

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<sup>51</sup> The interplay of these differing spheres in shaping immigration enforcement may best be understood in a Gramscian sense, where social domination occurs through a tense equilibrium of the “relations of force” between the State and civil society, as articulated by Stuart Hall. Hall, Stuart. “Gramsci’s relevance for the study of race and ethnicity.” *Journal of Communication Inquiry*. June 1986 10. p. 418.

<sup>52</sup> I will demonstrate this particularly in the discussion of Secure Communities later in this chapter.

As Mary points out, “All they did was, they applied for something, to Immigration, and they were denied, and referred to court. But they never realized it” – maybe they moved, or it got send to the wrong address. In any case,

They get ordered removed [in abstentia], and they have no idea. They have no clue. And then Fugitive Ops comes to their house and scoops them away.

In that case, it’s even more frightening because they just had no idea that um they were supposed to be in court, that they were ordered deported... it just completely blindsides them, and the family...and they have no sort of criminal history, and so the family just cannot understand why their loved one got picked up...usually at 3, 5 am.

I mean what does that sound like to you? That sounds like the Gestapo to me. Where people just get scooped up in the middle of the night, and they don’t even know why.<sup>53</sup>

One migrant family in western North Carolina got “scooped up by ICE” when ICE entered their home at 6 am. The parents and 3 sons were sleeping. ICE knocked on the door, claimed to be the “police”, and told them to open the door. Once they did so, the police forced the family down on the floor and accused them of being gangsters. The agents declared that they were looking for a Honduran; while the family was from another Latin American country, ICE still arrested the two adult sons and the father, and gave the mother a court date. The arrested family members were taken to Charlotte and then to Atlanta.<sup>54</sup> This case shows that the deportation terror casts a wide net even in individual operations, indiscriminately detaining migrants who may not even have been the intended target of the operation.

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<sup>53</sup> *Op. Cit.*, Interview, 8/24/11.

<sup>54</sup> Field Notes, 8/31/11, from phone conversation with informant close to the family.

The deportation terror catches suspected immigrants, suspected terrorists, and citizens of color in punishment which often forever marks them and often eliminates potential reincorporation into the social body – in the bars expelled immigrants received from returning to the U.S. This disincorporation parallels the increased disenfranchisement of convicted criminals in the disciplinary state more broadly.<sup>55</sup> The deportation terror is also fueled by disciplinary power beyond the state, in parallel with Foucault’s later formulation of disciplinary power as “multiplicity.”<sup>56</sup> Chapters 2 and 3 point out the role of vigilante groups and other local actors along with the state.

### *How Neoliberalism and the Disciplinary State Go Hand in Hand*

This formulation of the disciplinary state must address a seeming contradiction: the intensification of neoliberalism with its free market, de-regulation emphasis alongside the turn toward punitive immigration and crime control and the endurance and intensification of the deportation terror. Indeed, Zilberg points out that this juxtaposition of increasingly punitive practices and neoliberalism belies Foucault’s

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<sup>55</sup> Joan Dayan maps how the law has both concretized and perpetuated such “rituals of exclusion” which have been crucial in maintaining racial division and persecution in US history, through the recourse of “civil death”, or “the incapacity to exercise the rights attached to persons. Dayan traces the civil death of the “convict” from the roots of slavery and then convict leasing to current incarceration practices. The creation of the felon as “civilly dead”, or a *human* who is no longer a *person* under law, connects to the practice of immigration detention in the U.S immigration enforcement regime. The case I encountered of one detained immigrant from a country in Africa unable to arrange his travel documents for his deportation, and thus unable to repatriate himself and caught in a sort of statelessness, seems to exemplify this. Dayan also draws an informing parallel between the reduction of the slave to a body to be protected against “unnecessary” torture and the criminal who becomes nothing but a physical entity with his/her bare physical needs, which are only recognized if he is either mentally impaired or physically damaged by the conditions of confinement. In the same way, the immigrant detention system has only recently come under scrutiny, largely following the discovery of multiple deaths under the government’s (or a privately-contracted prison company’s) watch. (83)

Dayan, Joan. “Legal Slaves and Civil Bodies.” From *Materializing Democracy: Toward a Revitalized Cultural Politics (New Americanists)*. Durham and London: Duke University Press, 2002.

<sup>56</sup> Foucault, Michel. *The History of Sexuality. Volume 1: An Introduction*. New York: Random House, 1978.

prediction that neoliberalism would yield a more tolerant criminal penology.<sup>57</sup> She makes sense of this in her concept of the “neoliberal securityscape.” Zilberg first adapts the notion of “securityscape” from Hugh Gusterson, in its reference to how national security impacts local life transnationally and brings militarism into local spaces. She stretches the concept

beyond the overtly militaristic, to include the patterns of circulation that result from the efforts of states to police and control the spatial mobility of subjects considered to be dangerous, in this case gang youth and immigrants.<sup>58</sup>

This “securityscape”, however, is deeply embedded in the neoliberal order. Zero-tolerance policing strategies are part of the “neoliberal logics of deregulation and individual responsibility”, as they bring “fast-track justice” --- cutting through protections like probable cause, judicial discretion and access to legal representation. This “fast-track justice” ushers poor minority youth into the criminal justice system (through policies like gang injunctions) and moves “immigrants into the deportation pipeline.”<sup>59</sup> Further, this “fast-track justice” can help to “grow” the economy through industries such as private prison corporations which manage many immigration detention facilities. The “neoliberal securityscape”, then, incorporates the ideology of neoliberalism into the turn toward punitive immigration enforcement and crime control.

Nicholas De Genova and Nathalie Peutz lend insight to the intensification of punitive immigration and crime control in the globalized world. They argue that

deportation practices and the sociolegal production of deportable populations...[is] a global response to a world that is being actively

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<sup>57</sup> *Op. Cit.*, *Space of Detention*. P. 12.

<sup>58</sup> *Ibid.*, p. 7.

<sup>59</sup> *Ibid.*, p. 12.

remade by transnational human mobility, in which state power can only perceive the freedom of movement as the index of a planetary social order that is ever more woefully “out of control” and insecure.

Here, they situate the turn toward punitive immigration enforcement in the U.S. and elsewhere – the build-up of the disciplinary state - as a *reaction* to neoliberal globalization and the resulting (apparent) irrelevance of borders. The global “deportation regime”, they argue, is “as much about the freedom of movement as it is about border control and the ostensible exclusion of “undesirable” foreigners.” De Genova points out that the legal vulnerability of undocumented migrant labor “plainly serves to radically enhance the preconditions for its routinized subordination within the inherently despotic regime of the workplace.”<sup>60</sup>

The regulation of undocumented labor then becomes a primary target of the neoliberal management of populations. The broader argument that these practices are about the freedom of movement parallels Zilberg’s point that the “neoliberal securityscape” has as a central focus the effort to “police and control the spatial mobility of [certain, racialized] subjects.”<sup>61</sup> Supporting this, Philip Kretsedemas points out that in addition to the free market agenda of expanded trade and de regulation, neoliberalism also “comprises an array of strategies and techniques that are used to actively create new kinds of political and economic subjects.”<sup>62</sup> These insights show

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<sup>60</sup> *Op. Cit.*, De Genova, Nicholas.

<sup>61</sup> *Op. Cit.*, *Space of Detention*, p. 12.

<sup>62</sup> Kretsedemas, Phillip. “Immigration Enforcement and the Complication of National Sovereignty: Understanding Local Enforcement as an Exercise in Neoliberal Governance.” *American Quarterly*. Volume 60, Number 3, September 2008. p. 559.

Kretsedemas discusses that even as restrictive laws in recent decades has greatly limited the access of nonimmigrants, unauthorized migrants, and legal permanent migrants to legal, social and political rights, these groups have found a steady niche in the U.S. workforce. He argues that these changes suggest a sovereignty that is “characterized by a loosening relationship between rights, legal status, and

how tactics of immigration policing and crime control can expand alongside globalization and the seeming irrelevance of the state— in other words, how the allegedly “declining” state can also be the “disciplinary state.” Also, understanding immigration enforcement in a hegemonic sense -- maintained through a tense equilibrium of forces, whose struggles play out differently across time – allows for a broader vision of the deportation terror. From this Gramscian vantage point, immigration enforcement practices across time are deeply informed by, but in no way completely determined by, the economic order.<sup>63</sup>

### **The Legal Construction of “Illegal”**

The contemporary disciplinary state follows deeply set historical trends of ethnic and racial exclusion in immigration law and practice. This context informs how the deportation terror has been enacted on different racialized migrant populations across

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territoriality”, in which the population includes “an assemblage of different legal categories”, not all on the way to citizenship. Neoliberal strategies manage these populations.

<sup>63</sup> Gramsci sees the relationship between the “intellectuals” and the world of production as a field in which two major “superstructural levels correspond on the one hand to the function of “hegemony” which the dominant group exercises throughout society and on the other hand to that of “direct domination” or command exercised through the State and “juridical” government” (Gramsci, Antonio, *The Prison Notebooks*. New York: Columbia University Press, 1992-2007.) This conception of the “structure” and “superstructure” of control, consisting of the cultural hegemony exercised through society with the help of institutions which forge consent and of the “direct domination” of the State exercised through force or the threat of force, “recasts” classical Marxism’s model of the superstructure and the base (Lears, T.J. Jackson. “The Concept of Cultural Hegemony: Problems and Possibilities.” *The American Historical Review*, Vol. 90, No. 3. June, 1985, p. 570). In that extension, Stuart Hall argues, Gramsci moves beyond the “reductionist approach which would ‘read off’ political and ideological developments from their economic determinations.” He expands understanding of how social domination occurs from the “one –way determination” of economic reductionism to a vision of social domination as a tense equilibrium of the “relations of force” between the State and Civil Society (*Op. Cit.*, Hall, Stuart, p. 418). Gramsci argues that there are different levels and historical moments within these “relations of force.” Thus, the “the problem of the relations between structure and superstructure . . . must be accurately posed” to properly determine the relations of force [and the complex levels of struggle within those relations] working within a particular period (*Op. Cit.*, Gramsci, Antonio, *The Prison Notebooks*.)

history. Daniel Kanstroom traces the growth of “social control deportation” in the US through the history of deportation law. He distinguishes between extended border control and post-entry social control, defining the latter as laws that govern conduct for a specific period following admission, and which can proscribe criminal or political conduct in the US indefinitely.<sup>64</sup> In the 19<sup>th</sup> century deportation laws mostly extended border control laws, but the early 20<sup>th</sup> century brought the rise of post-entry social control laws, which drew strength from the “war on crime” and then the “war on terror.” Kanstroom acknowledges that criminal deportation laws “aim permanently to cleanse our society of certain people, many of whom have lived here for years”<sup>65</sup>, and traces current deportation practices to their roots in the earliest form of federal “post entry social control”: the 1798 Aliens Act and its highly discretionary executive deportation power against “noncitizen dissidents”.

Kanstroom shows how the same racist ideas used to defend the 1798 Aliens Act and subsequent racist policies (like the Chinese Exclusion Act of 1882 and the Palmer Raids of 1919 and 1920) are rooted in the ideas earlier used to justify the brutal removal of American Indians from their land and the horrific fugitive slave laws<sup>66</sup>. He underlines the legal ambiguity of deportation, pointing out that the Citizenship Clause

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<sup>64</sup> Kanstroom, Daniel. *Deportation Nation: Outsiders in American History*. Cambridge, Mass.: Harvard University Press, 2007.

<sup>65</sup> *Ibid.*, p. 19. Elana Zilberg points out the failure of these laws to do so in her investigations of the impact of zero-tolerance policing on “gang-affiliated, -alleged, and-impacted youth.” She shows how the importation of zero-tolerance gang abatement strategies to El Salvador from the U.S. fuels the undocumented migration and illegal reentry of these youth to the United States, “thereby reproducing and exacerbating the ongoing circulation of violence between the United States and El Salvador.” *Op. Cit.*, “Refugee Gang Youth: Zero Tolerance and the Security State in Contemporary U.S.-Salvadoran Relations.” P. 81.

<sup>66</sup> *Op. Cit.*, Kanstroom, Daniel, beginning p. 63.



of the Constitution does not explicitly mention admission and deportation<sup>67</sup>. The plenary power doctrine has been applied to get around these constitutional vagaries since 1882's Chinese Exclusion Act. The plenary power doctrine gives the executive and legislative branches of government basic power to regulate immigration issues with little juridical interference.<sup>68</sup> This long-set use of the plenary power doctrine to get around the ambiguous legal status of deportation *denaturalizes* the practice.

The legal construction of race with the formation of race-based immigration law in the 20<sup>th</sup> century foregrounds the creation of the “illegal alien” targeted in contemporary enforcement practices. Lisa Lowe points out that Chinese Exclusion Act developed from the tension between “the needs of capital and the needs of the state”. In the late 19<sup>th</sup> century, as the U.S. responded to the needs of capital for a subordinated labor force but sought to produce a “whiteness” in its citizenry, the “contradiction between the economic and the political spheres was *sublated* through the legal exclusion and disenfranchisement of Chinese immigrant laborers.”<sup>69</sup> Tracing the same fixation on constituting “whiteness”, Ian Haney Lopez analyzes the early 20<sup>th</sup> century

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<sup>67</sup> “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

<sup>68</sup> Victor C. Romero discusses how the Constitution and the Supreme Court are the two primary sources used to interpret the federal government's jurisdiction over immigration law, as opposed to the courts and also as opposed to states and localities. The constitution, while not explicitly giving congressional power to regulate the “voluntary movement of noncitizens into and out of the country”, states that the House and Senate are responsible for “drafting laws that allow qualified noncitizens to attain full U.S. citizenship.” The Constitution also appears to limit state power over noncitizens. The Supreme Court has historically given deference to the federal government over noncitizens. However, Romero points out that in recent years the Supreme Court has seemed to give more control to state and local government in other matters and might soon allow more state control over immigration laws. Romero, Victor C. “Who Should Manage Immigration –Congress or the States? An Introduction to Constitutional Immigration Law.” In *Immigrant Rights in the Shadows of Citizenship*. New York: New York University Press, 2008. The Department of Justice lawsuit against Arizona's SB1070 in 2010 and the federal court ruling against many of its more controversial provisions is an important re-affirmation of the authority of the federal government.

<sup>69</sup> Lowe, Lisa. *Immigrant Acts: On Asian American Cultural Politics*. Durham: Duke University Press, 1996. p. 13.

immigration laws following the Chinese Exclusion Act. Haney Lopez highlights the racial prerequisite Supreme Court cases of the early 1900s and racial restrictions in naturalization laws, showing that race is not only socially constructed, but legally constructed. A string of court cases from 1790 set “Whiteness” as a prerequisite for citizenship, which remained in effect to some extent until 1952. These cases defined “non-Whiteness” in a purely negative and obscure way.

This legal construction of race precedes the National Origin Act of 1924, which sought to control the racial mixture of immigrants to the US to favor Northern and Western Europeans.<sup>70</sup> Mai Ngai argues that the quota restrictions of the 1924 Act created “a new class of persons within the national body – illegal aliens – whose inclusion in the nation was at once a social reality and a legal impossibility.”<sup>71</sup> Thus, the 1924 quota restrictions in effect created the “illegal alien.” Beyond restricting Southern and Eastern European immigration, the National Origins System split

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<sup>70</sup> Haney Lopez, Ian F. *White by Law: The Legal Construction of Race*. New York, NY, USA: NYU Press, 1996. Lopez analyzes traces the succession of immigration laws to ultimately argue that “‘race’ is ‘a fluctuating, de-centered complex of social meanings that are formed and transformed under the constant pressures of political struggle’”, paraphrasing John Calmore (p. 9).

See also Nevins, Joseph. “The Ideological Roots of the ‘Illegal’: The ‘Other as Threat and the Rise of the Boundary as a symbol of Protection.” in *Operation Gatekeeper: The Rise of the ‘Illegal Alien’ and the Making of the U.S.- Mexico Boundary*. New York: Routledge, 2002. Nevins also points out that justification for exclusion of Asian immigrants and southern and Eastern European immigrants in the early 20<sup>th</sup> century was justified by labeling them “criminal aliens”, a term that has become re appropriated in recent restrictive immigration policy and distilled throughout larger society.

Lisa Lowe points out that laws specifically targeting individual Asian groups in 1882, 1917, 1924, and 1934, along with the laws that repealed the exclusionary laws, produced a radical categorization for Asians which relied on “consistently racializing each national-origin group as “nonwhite.” Racial exclusion of Asians was upheld in cases that addressed questions of citizenship, from the 1790 naturalization act to the early 1920s Supreme Court ruling that upheld a bar to citizenship for Takeo Ozawa, a Japanese immigrant educated in the U.S., and Baghat Singh Thind, an Indian and World War I veteran. *Op. Cit.*, Lowe, Lisa. *Immigrant Acts: On Asian American Cultural Politics*. Durham: Duke University Press, 1996. p. s19.

<sup>71</sup> Ngai, Mai. *Impossible Subjects: Illegal Aliens and the Making of Modern America (Politics and Society in Twentieth Century America)*. New ed. Princeton: Princeton University Press, 2005. p. 57. She stresses that the contradiction challenged notions of sovereignty by bringing a new focus to controlling the national borders – while this notion of border control at the same time ignored the fact that the “production” of illegal aliens went into the interior of the nation.

European immigration from non-European immigration; under the quota system, the “non-Europeans” known as the “colored races” were understood to lack a country of origin altogether.<sup>72</sup> The Act expanded the grounds for deportation, criminalizing for the first time long-time residents in the US who had entered without inspection but settled in the United States. Thus, deportation of long-term residents only took off with this racist national origins law. This fact sheds new light on contemporary practices of deporting long-term residents, denaturalizing these deportations and challenging the ideologies of citizenship and belonging used to justify them.

Immigration control throughout the 20<sup>th</sup> century penalized different ethnic groups as the evolution of “illegal” followed political and economic exigencies that often existed in tension.<sup>73</sup> An illustrative example is the ineligibility of Filipino U.S. residents for U.S. citizenship in the mid-1920s - even as the U.S. had colonized the Philippines - and US attempts to repatriate Filipinos and force incarcerated criminals to the Philippines after 1934.<sup>74</sup> As Lisa Lowe points out, these historical patterns of racialization reveal immigration legislation to be

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<sup>72</sup> *Ibid.*, p. 27. Ngai describes how while white Americans and immigrants had “national origins” in the quota system (they were identifiable by a country of birth or by their ancestors’ birth), the “colored races” “lay outside the concept of nationality and, therefore, citizenship. They were not even bonafide immigrants.”

See also Nevins, Joseph. *Operation Gatekeeper: The Rise of the “Illegal Alien” and the Making of the U.S.-Mexico Boundary*. Routledge: New York, 2002. Nevins discusses how the Quota Act of 1921 justified exclusion of Asian immigrants and southern and Eastern European immigrants by labeling them “criminal aliens” (a term that has been re appropriated in recent restrictive immigration policy and used to justify most ICE-local law enforcement collaborations). Nevins argues that the quota laws of 1921 and 1924, which banned Asian immigration except from the Philippines, “effectively created fixed concepts of “race, which the legislation effectively conflated with the concept of the “nation” (102).

<sup>73</sup> This tension parallels the contemporary juxtaposition of neoliberalism and the intensified immigration enforcement of the disciplinary state.

<sup>74</sup> *Ibid.*, p. 124. Ngai argues that the change to Commonwealth reflected the US desire to erase its colonial history.

the site for the resurgence of contradiction between capital and the state, between economic and political imperatives, between the “push-pull” of markets and the maintenance of civil rights and is riddled with conflicts as the state attempts to control through law what is also an economically driven phenomena.<sup>75</sup>

The contradiction between these economic and political pulls is clear in the racialized trajectory of immigration law. It is also manifest in the tension between neoliberal globalization and the expansion of the “disciplinary state” in which contemporary local-federal enforcement practices exist.

Economic forces were instrumental in shaping deportation trends from the mid-20<sup>th</sup> century. Deportation became a primary means of controlling immigration for economic means from 1954’s Operation Wetback onward.<sup>76</sup> Kitty Calavita shows how the Bracero program of Mexican contract labor to the United States from 1942 to 1964 coincided with the use of punishment to fuel and control immigration from Mexico<sup>77</sup>. Deportation became a tool for encouraging growers to use the Bracero program.<sup>78</sup> Despite the emergence of the deportation regime, many employers still preferred to hire undocumented immigrants. Calavita argues that the Bracero Program eventually produced a symbiotic relationship between Mexican workers and U.S. growers, one “stoked by formal and informal government policies”, in the mixed employment of undocumented and contract labor, of economic exploitation and control of workers

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<sup>75</sup> *Op. Cit.*, Lowe, Lisa. p. 20.

<sup>76</sup> *ibid.*

<sup>77</sup> Calavita, Kitty. “Immigration, Social Control, and Punishment in the Industrial Era.” from *Race, Gender, and Punishment: From Colonialism to the War on Terror*. Bosworth, Mary, Flavin, Jeanne, eds. New Brunswick: Rutgers University Press, 2007.

<sup>78</sup> The INS high profile raids in Operation Wetback were ridden with violence and harassment. The Bracero program itself was of course ridden with exploitation and arguably the legacies of slavery and indentured servitude, arguably paralleling the less prolific H2A agreements today to some degree.

through the selective use of punishment.<sup>79</sup> Joseph Nevins supports this when he reviews the failure of restrictive immigration bills in the 1970s due to the political pull of agribusiness interests.<sup>80</sup> The constant give-and-take between the recruitment of labor and its regulation through suppressive enforcement and deportation illustrates De Genova's point that "in order to maintain a captive and tractable workforce, labor subordination tends to require its more or less enduring immobilization."<sup>81</sup>

The legacy of punitive policy applied unevenly across racial and ethnic lines and selective employer enforcement based on economic demand underpins the contemporary enforcement and detention regime in the United States. Once again, the criminalization of immigrants is also located in the economics of globalization. U.S. neoliberal economic policies often displace local economies and drive people toward the US, particularly since the passage of the North American Free Trade Agreement in 1994.<sup>82</sup> However, the US simultaneously sculpts criminalizing policies to control entry and exit on the border and on the interior which feed into neoliberalism. The link

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<sup>79</sup> *Ibid.*, p. 126. Calavita also explores how the construction of this immigrant labor force was strictly gendered.

<sup>80</sup> *Op. Cit.*, p. 65.

<sup>81</sup> *Op. Cit.*, "The Deportation Terror: Sovereignty, Space, and the Freedom of Movement." p. 58. He elaborates on the relationship between the mobilization of capital and the regulated immobilization of human movement: "The unbounded (effectively global) mobility of capital, then, demands that the parallel freedom of movement of laboring humanity – once emancipated from various forms of subjection to precapitalist authority and spatial containment – thereafter be more or less regulated, when not inhibited altogether. Whether mobilized or captive, however, the mobility of labor tends in either case to be more or less stringently encircled and disciplined by the tactics of state power. Deportation reminds us that the radical chains forged of a freedom without rights or protections may serve not simply to confine and fetter us in place but also to drag us mercilessly to the ends of the earth and back again." [my underlines]. P. 58.

<sup>82</sup> Feagin, Joe R. "Old Poison in New Bottles: The Deep Roots of Modern Nativism." From *Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States*. Perea, Juan F., ed. New York: New York University Press, 1997. Feagin connects the process of globalization and the nature of exclusion/incorporation of different immigrant groups throughout US history, pointing out that "recent immigrants have mostly come from countries that have been substantially influenced by imperialistic efforts by U.S. corporations and by the U.S. government around the globe. p. 17.

between Arizona's Senate Bill 1070 and private prison corporations and the economic incentives local law enforcement agencies often have for enforcing immigration law and housing federal detainees discussed in Chapters 2 and 3 exemplify the productive tension between neoliberalism and the "disciplinary state."<sup>83</sup>

Alongside the economic interests informing enforcement, detention, and deportation practices, the perception that immigration enforcement initiatives target "criminal aliens" bolsters support for them. Kanstroom shows how the "criminal alien" category developed beginning in the mid-20<sup>th</sup> century. It arose with the confluence of restrictive anti-crime legislation and punitive immigration laws. While the 1965 Immigration Act ended the national origins quota laws, it created a huge backlog of Western Hemisphere migration. The Immigration Reform and Control Act of 1986 (IRCA) legalized those who had resided consistently but unlawfully since 1982, and thus further encouraged illegal immigration for family reunification. The 1988 Anti-Drug Abuse Act created the "aggravated felony" category, while the Immigration Act of 1990 expanded the definition of the category to include money laundering and nonpolitical "crimes of violence", which now carried at least 5 years of imprisonment. In 1994 the Attorney General was granted the authority to bypass regulations in the deportation process and for certain aggravated felons who were not legal permanent residents<sup>84</sup>.

All of these changes point to the increased intertwining of criminal and immigration law and growing punitive consequences at their nexus. The 1996 laws

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<sup>83</sup> As Zilberg argues, "fast-track justice" in the "neoliberal securityscape" can be economically fruitful for private industry and government.

<sup>84</sup> *Op. Cit.*, Kanstroom, Daniel. P. 228.

disproportionately allowed retroactive detention and deportation for minor crimes for legal permanent residents as well as other categories of noncitizens, solidifying the category of “criminal alien.”<sup>85</sup> The convergence of crime and immigration control – within what Kanstroom calls the “post entry social control” system - became the “perfect vehicle for politicians to demonstrate toughness on crime at virtually no political cost”, while the turn toward “criminal aliens” became an easy way to seem to be doing something about the problem of undocumented immigration.<sup>86</sup>

These roots of the “criminal alien” are extremely important in how the government frames enforcement today, as seen in ICE’s enduring claims that local-federal collaborations like 287 g and Secure Communities target “criminal aliens.” Statistics consistently show the majority of those processed for removal under these programs do not even fit the category. For example, 63 percent of those processed for removal through ICE’s “Secure Communities” program in San Diego County have no criminal record, though the program has sold itself as one which is “transforming the way criminal aliens are identified and removed from the United States” and “prioritizing resources toward the greatest threats.”<sup>87</sup> In North Carolina, only 298 of 3,012 noncitizens (or about 1/10) of those “processed” for removal through 287 g or Secure Communities were considered “criminal”, though both programs claim to target

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<sup>85</sup> The Real ID Act of 2005 and three strikes laws coincide with the criminalization of immigration.

<sup>86</sup> *Ibidim*.

<sup>87</sup> Nationwide, an average of 26 percent of all Secure Communities deportations were of non criminals, compared to 63 percent in San Diego County. Immigration and Customs Enforcement, National Interoperability Statistics, by Jurisdiction, ICE FOIA 10-2674.000087 – ICE FOIA 10 – 2674.000094. See Center for Constitutional Rights, NDLO. “Briefing Guide to “Secure Communities.” [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/NDLON\\_FOIA\\_Briefing%20guide.final.pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/NDLON_FOIA_Briefing%20guide.final.pdf). (Accessed May 1, 2011). Immigration and Customs Enforcement. “Secure Communities.” [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/). (Accessed: May 19, 2011).

the most “dangerous” criminal aliens.<sup>88</sup> Despite overwhelming statistics disproving ICE’s claimed focus on removing “criminal aliens”, the terminology is powerful and makes these programs sound less objectionable.

A conversation with a “pro-immigrant” lobbyist demonstrated how the “criminal alien” label has become an effective rhetorical practice of the deportation terror. At a conference, I had the chance to speak with a lobbyist who represents the interests of pro-immigrant and Latino interest groups in D.C. I asked her a question about No Operator’s License (NOL) arrest policies, which account for many municipal arrests that lead people into immigration removal proceedings through local-federal collaboration. This attorney expressed her disapproval of the struggle, intensifying among advocates in her own state and nationally, against programs like Secure Communities and 287 g: she told me, very firmly, that “There’s no political capital in advocating for criminals.”<sup>89</sup>

### **Landmarks to Contemporary Immigrant Policing: 1996 Legislative Changes and**

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<sup>88</sup> Wake County Sheriff’s Office, Raleigh Sheriff’s Office. “Arrest Processing Summary – Custom. 7/14/2008 – 08/03/2010.” Tuesday, August 3, 2010. Received from Wake County Sheriff’s Office, paper copy.

<sup>89</sup>This advocate’s conflation of these programs with immigrant criminality, and dismissal of any attempts to advocate for the perceived “criminals” whom the program claims to (but actually doesn’t) entrap, emphasizes the divide identified by several advocates - between those who seek a more full-scale overhaul of a system and those who have a more limited version of “reform” and tacitly endorse the removal of “criminal aliens.” However, since the statistics so clearly show that the local-federal partnerships like 287 g and Secure Communities which impact North Carolina migrants do *not* target criminal aliens, NC ICE WATCH stood out uniformly against the program. In any case, this lobbyist’s comment emphasizes that there is a certain spectrum of legality/illegality in which migrants are classified and judged, even within the advocate community – from those with some form of legal status, to those without documents, those who are arrested for a crime and lack legal status, those who are charged with crimes and lack legal status, and so forth. As Dennis Childs pointed out, migrants charged with crimes approach “civil death” beyond those with some form of legal status. This advocate’s failure to recognize these migrants arrested for crimes as worthy civil subjects *of* advocacy seems to concretize this movement toward “civil death.”



## the post-9/11 Intensification of Local-Federal Policing

Contemporary immigration enforcement is deeply informed by punitive developments in immigration law in the 1990s and 2000s. Michael Welch traces how the passage of IRCA in 1986<sup>90</sup> led to growing fears in the 1990s, reflected in public and political discourse, of non-white immigrants “invading” the U.S. economy and culture and endangering public safety. Welch argues that public and political pressures in the 1990s led to the passage of the punitive 1996 immigration laws. These pressures took form both locally and nationally, and Zilberg points out that 1996’s Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) borrowed directly from California’s Proposition 187, the “save our state” ballot initiative which was declared unconstitutional.<sup>91</sup> Welch explains how the 1996 acts manifested the evolving “War on [drugs, crime, and terrorism]” discourse. The laws turned away from previous legislation’s focus on labor needs and family reunification and “issued a forceful criminal justice mandate driven by moral panic and an undifferentiated fear of crime, terrorism, foreigners, and people of color.”<sup>92</sup>

Three restrictive laws passed in 1996 severely restricted immigrants’ rights through the “crimmigration crisis” and the “terror context.” The Antiterrorism and

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<sup>90</sup> The passage of the Immigration Reform and Control Act of 1986 (IRCA) brought the legalization of around two million formerly undocumented immigrants, whose new status gave them freedom to settle in other states and led more women to migrate to the U.S., often to join spouses. Simultaneously, stricter border enforcement under IRCA discouraged undocumented immigrants from circular migration, leading to more permanent settlement in the US.

<sup>91</sup> See Chapter 2 for more information.

<sup>92</sup> Welch, Michael. “Immigration Lockdown before and after 9/11: Ethnic Constructions and Their Consequences.” from *Race, Gender, and Punishment: From Colonialism to the War on Terror*. Bosworth, Mary, Flavin, Jeanne, eds. New Brunswick: Rutgers University Press, 2007.

Effective Death Penalty Act (AEDPA) drastically limited the rights of those suspected of criminal activity or terrorism. AEDPA also enacted an alien-terrorist removal court which streamlined the process of removing “criminal aliens.” The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) constrained undocumented immigrants’ access to basic public services. Finally, the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA) expanded the spectrum of crimes for which immigrants could be deported, increased criminal penalties for immigration-related offenses, restricted immigrants’ due process rights, enhanced INS presence on the interior and border, and created expedited removal for people arriving in the US without the right documents<sup>93</sup>. One key element of IIRIRA eliminated “212(c)” waivers which had previously allowed noncitizens to argue that they deserved to remain in the US despite their criminal records.<sup>94</sup> Another significant piece of IIRIRA is Section 287 (g). Section 287 (g) authorizes the federal government to enter into voluntary agreements with local, county, and state law enforcement agencies to deputize local officers to enforce immigration law. Despite becoming law in 1996, the first 287 g agreement was not signed until after 9/11. IIRIRA and the Anti-Terrorism and Effective Death Penalty Act (AEDPA),<sup>95</sup> along with the Violent Crime

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<sup>93</sup> Saunders, Jessica, Lim, Nelson, Prosnitz, Don. “Enforcing Immigration Law at the State and Local Levels: A Public Policy Dilemma.” Issues in Policing Series. RAND Center on Quality Policing. 2010. [http://www.rand.org/content/dam/rand/pubs/occasional\\_papers/2010/RAND\\_OP273.pdf](http://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP273.pdf).

<sup>94</sup> *Op. Cit.*, Coutin, Susan Bibler. *Nations of Emigrants*. P. 21.

<sup>95</sup> Bohrman and Murakawa discuss how AEDPA was supposedly in response to a *domestic* terrorist attack., the Oklahoma City bombing, but that it had key provisions aimed at immigrants including a ban on “foreign” groups with terrorist connections and the “summary exclusion” provision allowing the Border Patrol to turn away those without proper documentation – “disregarding the possibility that a refugee fleeing persecution might rely on false papers.” *Op. Cit.*, p. 118.

Welch points out that the media assumed that the Oklahoma City bombing was caused by a Middle Eastern terrorist until investigators found the bombing was the work of Timothy McVeigh. He cites the publication of books like Peter Brimelow’s *Alien Nation*, the propaganda of groups like FAIR, as

Control and Law Enforcement Act of 1994, all rely on the justification of “immigration restrictions in criminological terms and criminal penalties in anti-immigrant terms”<sup>96</sup>, marking the intensification of the “crimmigration crisis.”<sup>97</sup>

As Coutin points out, the 1996 immigration laws along with the militarization of the U.S. Mexico border led to the criminalization of undocumented immigration – a civil infraction. This criminalization has caused a tremendous surge in the prosecution and incarceration of noncitizens for immigration violations as well as a huge rise in the number of noncitizens “expelled.” For example, ICE databases showed that of 32,000 total immigrants in detention on January 25, 2009, 18,690 had no criminal conviction, even for illegal entry. 400 of those without convictions had been in detention for at least a year.<sup>98</sup> The rise in persecution of noncitizens for violations like entry without inspection and illegal reentry can also be rooted in the increasingly sophisticated practices of governmentality. Josiah Heyman points out that improved technologies of

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context for the “moral panic” and fear of immigrants as bearers of crime and lawlessness leading to the legislature. *Op. Cit.*, p. 150.

<sup>96</sup> *Op. Cit.*, p. 117.

<sup>97</sup> Christian Parenti roots the anti-immigrant movement of the 1990s in global economic restructuring from NAFTA which pushed many people in the Global South to migrate while the profit crisis of the seventies had produced an era of political economic restructuring. He believes that the intensification of policing of the immigrant “Other” connects to the post-seventies environment of political economic restructuring. Parenti, Christian. *Lockdown America: Police and Prisons in an Age of Crisis*. Chapter Seven: “Repatriating *La Migra’s* War: The Militarized Border Comes Home.” London, New York: Verso, 1999.

<sup>98</sup> These figures were reported by the Associated Press and were taken from ICE data released to the reporter through a Freedom of Information Act request. Roberts, Michelle. “Immigrants Face Long Detention, Few Rights.” March 16, 2009. Associated Press. Published in Deseret News. <http://www.deseretnews.com/article/705291116/Immigrants-face-long-detention-few-rights.html>. (Accessed May 19, 2011).

record-keeping and apprehension are resulting in larger numbers of undocumented border crossers acquiring immigration and criminal records.<sup>99</sup>

The events of September 11, 2001 catalyzed a broader investment in the disciplinary state. The Patriot Act, signed on October 26, 2001, enabled blatant ethnic profiling of those from countries considered to be linked to terrorism and greatly reduced restrictions on law enforcement surveillance. The Homeland Security Act of 2002 created the Department of Homeland Security into which all immigration matters were subsumed. The previous Immigration and Naturalization Service (INS), which handled both affirmative immigration cases and immigration enforcement actions, was eliminated and its functions divided among several new arms of DHS. The enforcement arms became Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). The creation of DHS was arguably the most significant government merger since the Cold War. It incorporated 22 governmental agencies under its broad umbrella.<sup>100</sup>

Following 9/11 and the creation of DHS, the War on Terror transformed the landscape of “post-entry social control” and the shape and form of the deportation terror. The implementation of the National Security Entry-Exit Registration System (NSEERS) in December 2002 exemplifies the drastic profiling of Middle Eastern males and others under the guise of national security interests.<sup>101</sup> NSEERS mandated registration by all males over 16 who had entered the United States at ports of entry

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<sup>99</sup> Heyman, Josiah McC. “United States Surveillance over Mexican Lives at the Border: Snapshots of an Emerging Regime.” *Human Organization* 58, no. 4:430-38. Also cited in Coutin, Susan Bibler, *Nations of Emigrants*, p. 22.

<sup>100</sup> *Op. Cit.*, Zilberg, Elana. *Space of Detention*. P. 62

<sup>101</sup> It parallels the intensification of surveillance and expulsion of immigrants more broadly, as seen in the ICE ACCESS program.

from certain countries with alleged links to terrorism. It also required mandated registration for those who had entered the United States before September 30, 2002 from a larger list of countries.<sup>102</sup> This “high risk” group was subject to FBI interviewing, photographing, fingerprinting, and periodic registration of their location.<sup>103</sup> The Justice Department initially detained about one thousand people, but charged only 15 with criminal violations and did not charge any with a terrorism-related crime. Most were charged with immigration infractions, mainly overstaying their visas. The registration of more than eighty-two thousand people did not net any links to terrorism, but the Justice Department still moved to deport up to thirteen thousand Arab and Muslim men whose legal immigration status had expired, despite these men’s full cooperation with the program. On April 27, 2011 DHS announced that it was indefinitely suspending the NSEERS program. In more than eight years, the program did not lead to even one person being charged with terrorism.<sup>104</sup>

NSEERS categorized “ethnic threats” and treated them outside the limits of regular law. In this sense, the program exemplified the type of disciplinary power which Foucault argues “undermine the limits that are traced around the law.”<sup>105</sup> As a technology of governmentality, the program sought “geographical control” of a racialized population. NSEERS ultimately led to the deportation of immigrants with no

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<sup>102</sup> *Op. Cit.*, Welch, Michael, p. 157.

<sup>103</sup> *Op. Cit.*, Chacón, Jennifer, p. 1587.

<sup>104</sup> American Civil Liberties Union. “DHS Announces Indefinite Suspension of Controversial and Ineffective Immigrant Registration System. April 27, 2011. <http://www.aclu.org/immigrants-rights/dhs-announces-indefinite-suspension-controversial-and-ineffective-immigrant-regist>. (Accessed: May 20, 2011).

Warikoo, Niraj, Detroit Free Press. Montreal Gazette, re-print. “U.S. ends registration program targeting men from Muslim countries.” May 16, 2011. <http://www.montrealgazette.com/news/ends+registration+program+targeting+from+Muslim+countries/4792096/story.html>. (Accessed: May 20, 2011).

<sup>105</sup> *Op. Cit.*, Foucault, Michel. *Discipline and Punish*. p. 223.

connection to terrorism, demonstrating how the “War on Terror” rhetorically supported the expansion of immigration enforcement.<sup>106</sup> The legal response to 9/11, which suspended certain legal rights and freedoms in the name of “national security” through laws like the Patriot Act – is often characterized as a “state of exception”, following Giorgio Agamben’s formulation of the term. Agamben argues that the government’s suspension of laws in a “state of emergency” or response to a crisis, like 9/11, can become an enduring condition of the state. In this prolonged “state of exception”, the government can strip individuals of their legal status.<sup>107</sup> Kretsedemas points out that in the case of the Patriot Act, “an effect similar to a state of emergency was created by the law, rather than through a suspension of the law.”<sup>108</sup>

The “state of exception” climate post-9/11 saw the immigration enforcement devolution and intensification more broadly. The “terror context” which enabled blatant profiling against those perceived as potential terrorists informs the emergence of increased local-federal collaborations in immigration enforcement. Jennifer Chacón

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<sup>106</sup> Abira Ashfiq notes that the proceedings in the “post-9/11 [immigration] courtroom” are firmly tied to perceptions of ethnicity – for example, for example, knowing the defendant is Muslim and from Pakistan, the DHS attorney at a hearing asked if he had supported terrorism. She\*s points out that “when such assumptions and attitudes toward Muslims and other noncitizens are codified into law, the bureaucrats, judges, jail guards, and trial attorneys feel even more emboldened in their profiling.” Ashfaq, Abira. “Invisible Removal, Endless Detention, Limited Relief: *A Taste of Immigration Court Representation for Detained Noncitizens*. From Brotherton, David C.; Kretsedemas, Philip, ed. *Keeping Out the Other: A Critical Introduction to Immigration Enforcement Today*. New York: Columbia University Press, 2008.

<sup>107</sup> Agamben discusses the military order issued on November 13, 2001 in these terms, saying that President Bush’s order “radically erases any legal status of the individual, thus producing a legally unnamable and unclassifiable being. Not only do the Taliban captured in Afghanistan no enjoy the status of POW’s as defined by the Geneva Convention, they do not even have the status of people charged with a crime according to American laws.” Many of these deemed “enemy combatants” were held at Guantanamo Bay without trial. Agamben, Giorgio. *State of Exception*. Chicago: University of Chicago Press, 2005. p. 3.

<sup>108</sup> He finds a parallel in the way that neoliberal strategies for privatizing and deregulating public sector industries use new laws to weaken or eliminate the rights and guidelines that prior laws upheld. *Op. Cit.*, Kretsedemas, Philip. p. 563.

provides insight to this post-9/11 rise in restrictive local-federal collaboration. She argues that following 9/11, “the role of state and local law enforcement in enforcing immigration laws, particularly civil immigration laws, became increasingly murky.”<sup>109</sup> First, the Justice Department claimed in a memo revision that state and local law enforcement had “inherent authority” to detain immigration violators, including civil violators. A 2002 letter issued by the White House Counsel took a more moderate stance, arguing that local and state law enforcement agencies had the authority to detain those in violation of immigration laws only if their names had been placed in the National Crime Information Center (NCIC). But since the NCIC included civil violators of immigration law, this marked a broadening of state and local authority. Chacón roots the state and local participation in immigration enforcement which followed in this “confusion.”<sup>110</sup>

Kretsedemas claims that this devolution occurred under the conditions of the “state of exception”, a “policy climate that allows the law to be applied in different ways under different conditions, and where the people charged with the responsibility of implementing these laws are granted more discretionary authority” to interpret them. Here, the exceptional measure moves beyond merely suspending the law, and ‘becomes a tool for making and shaping laws.’<sup>111</sup> This is often justified, as Agamben points out, through the assertion that the legal changes are consistent with the existent law’s intentions. We see this in the White House memo revision affirming the “inherent authority” of local police to enforce immigration law, which reversed more than 20

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<sup>109</sup> *Ibid.*, p. 1581.

<sup>110</sup> *Ibid.*, p. 1581.

<sup>111</sup> *Op. Cit.*, Kretsedemas, Philip. P. 563.

years of legal precedent on the role local police should play in immigration law and led to the swift enactment of local laws.<sup>112</sup>

Local law enforcement agencies gained a foothold in federal immigration enforcement through several prominent initiatives, including 287(g) and Secure Communities (which figure prominently in the regions of focus). 287 g partnerships, under Section 287 (g) of the Immigration and Nationality Act, are agreements wherein local law enforcement agencies enter into Memoranda of Agreements (MOA) with Immigration and Customs Enforcement (ICE) to deputize certain local law enforcement officers to perform certain immigration functions.<sup>113</sup> Though they received disproportionate attention from media and policy makers, Chacón argues that 287 g agreements are “the most transparent form of state-local involvement in immigration enforcement”, since the MOAs govern the scope of the cooperation and the local officers receive training in immigration law.<sup>114</sup> However, the program still opens up the pathway for enhanced human rights abuses in the marriage between criminal and immigration law.<sup>115</sup>

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<sup>112</sup> *Ibid.*, p. 564. Kretsedemas argues that while immigration restrictionists encouraged devolution by claiming the inherent authority of local governments, the federal government’s support for local enforcement seemed rooted in the need to walk the line between Bush’s expansion of immigrant labor markets and U.S. economy liberalization and the need to appease/prevent the divisionary immigration restrictionists. He argues the White House thus took a contradictory approach, adapting its position on immigration enforcement to the restrictionist right, but at the same time trying to expand the guestworker program. Thus again, neoliberalism is key to the support and justification for local enforcement of immigration laws, as the Bush White House perspective is “guided by neoliberal concerns for crafting immigrant labor markets” (566).

<sup>113</sup> U.S. Immigration and Customs Enforcement. “Fact Sheet: Delegation of Immigration Authority Section 287 g Immigration and Nationality Act.” <http://www.ice.gov/news/library/factsheets/287g.htm>. (Accessed January 11, 2011.) 287 g will be discussed in more detail in Chapter 3.

<sup>114</sup> *Op. Cit.*, Chacón, Jennifer, p. 1583.

<sup>115</sup> After analyzing several 287 g partnerships in North Carolina in Chapter 3, I will highlight some of the problems these pose from a policy perspective. In terms of changing policy, it can be important to point out some of the concrete problems which these collaborations pose from the standpoint of the policies themselves and their stated goals. Of course, when each agency sticks to its own turf – local police



287 g is one component of a much larger program of local-federal collaborations. Chacón points out that other programs under the ICE ACCESS umbrella, such as Fugitive Operations, Operation Absconder, and the Criminal Alien Program, allow for greater discretion – and thus greater abuses – of local law enforcement.<sup>116</sup> The Criminal Alien Program (CAP) in theory focuses on identifying “criminal aliens” already incarcerated in prisons and jails and preventing their release by placing a removal order on them. However, Chacón points out that in practice police officers can target those they believe to be undocumented for arrest and then process them through CAP.<sup>117</sup>

The Criminal Alien Program’s strategy of “intergovernmental cooperation to target immigration offenders with criminal records” is becoming widespread through Secure Communities, the database connectivity program which plays an important role in immigration enforcement in both San Diego County and North Carolina. In contrast to 287 g partnerships, which occur on the county or city level, Secure Communities is signed on the state level. Counties with Secure Communities merge the fingerprints of those arrested at local jails with DHS databases, so that any immigrant who has had prior encounters with DHS will be identified. Reports also indicate that even if the fingerprints do not match, ICE can investigate a suspected noncitizen further at the

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enforce municipal and state laws while ICE and CBP agents enforce immigration law - this doesn't prevent these respective agencies from racialized enforcement. We will see this in Chapter 2, with Juana's narrative.

<sup>116</sup> For a more detailed discussion of these programs and their lack of transparency and procedural guarantees, see Chacón, Jennifer.

<sup>117</sup> *Op. Cit.*, Chacón, Jennifer. p. 1592.

jail.<sup>118</sup> Secure Communities is a newer initiative than 287 g, with the first activations occurring in 2008.<sup>119</sup> Through Secure Communities, criminal and immigration databases become “interoperable.” This technology of governmentality epitomizes the “crimmigration crisis”, as both systems work in confluence to ultimately exclude more people through “removal.”<sup>120</sup> According to its website, ICE plans to have Secure Communities activated throughout the country by 2013.<sup>121</sup> However, controversy over whether the program is mandatory or whether certain counties can “opt out” made headlines throughout 2010, as the Department of Homeland Security made seemingly conflicting statements but ultimately suggested that opting out was not possible.<sup>122</sup>

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<sup>118</sup> Campoy, Ana. “Deportation Program Grows: Texas Fully Adopts Much-Debated Federal Plan Aimed At All Counties by 2013”. The Wall Street Journal. October 18, 2010. <http://online.wsj.com/article/SB10001424052748704518104575546212615541500.html>.

<sup>119</sup> Immigration and Customs Enforcement. “Secure Communities: Activated Jurisdictions.” PDF. Accessed from [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/). (Accessed January 17, 2011).

<sup>120</sup> Chacón predicts in her article that Secure Communities might “obviate the need for those 287 (g) agreements that focus solely on immigration enforcement in prisons and jails”, since it screens all arrestees automatically at booking – which is often more efficient than the 287(g) officers screening them in person. Indeed, in Chapter 3 Guilford County’s elimination of their 287 g partnership after getting Secure Communities indicates the truth of that prophecy.

Another program of local-federal enforcement beneath the ICE ACCESS umbrella (alongside 287g and other programs) that ICE has pushed and which is indicative of the conflation of immigrants and criminality is “Operation Community Shield”, an initiative launched in 2005 targeting “violent transnational street gangs” as per ICE’s website. U.S. Immigration and Customs Enforcement. “Operation Community Shield.” <http://www.ice.gov/community-shield/> (accessed May 5, 2011). Chacón argues that this program is flawed legally, in part because it provides no legal definition for the “criminal street gangs” or “associates” the program purports to target. The task of identifying these groups is given to state and local law enforcement, and once they make an arrest ICE can initiate removal proceedings. She points out that this increases the risk of racial profiling while also empowering local police to take the lead in enforcing civil immigration laws against identified gang members as well as associates of gang members – even if they have no criminal record and no gang affiliation (*Op. Cit.*, Chacón, Jennifer, p. 1593-4.) Zilberg points out that the program truly is “transnational”, as ICE agents work together not just with state and local law enforcement in the U.S., but with “attaché offices in Latin America and foreign law enforcement counterparts in the region.” (*Op. Cit.*, *Space of Detention*, p. 66.)

<sup>121</sup> U.S. Immigration and Customs Enforcement. Secure Communities. “Secure Communities Brochure.” <http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf>. (Accessed January 31, 2011).

<sup>122</sup> See Vedantam, Shankar. “No opt-out for immigration enforcement.” Washington Post. Friday, October 1, 2010. <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/30/AR2010093007268.html>. (Accessed January 31, 2011).

The shift from the Bush to the Obama administration in 2009 mainly saw the continuation and intensification of enforcement policies begun under the Bush administration. 287 g and Secure Communities are prominent components of the Obama administration's shift away from high profile, workplace raids more characteristic of the Bush administration. As Lara, a pro bono immigration attorney in North Carolina, acknowledged, "the vast numbers [of removals] are coming through the local enforcement programs now"<sup>123</sup>. Diego added that "perhaps they don't need to [conduct raids] because people are being funneled through Secure Communities" in San Diego County.<sup>124</sup> Despite their relative subtlety, these and other ICE ACCESS partnerships have helped produce an even greater number of deportations, up from 369,221 in 2008 to 389,834 in 2009 and 392,862 by the end of 2010<sup>125</sup>. The stated focus of both 287 g and Secure Communities is to "prioritize[] the arrest and detention

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<sup>123</sup> *Op. Cit.*, Interview, Raleigh, North Carolina, 8/27/10.

<sup>124</sup> *Op. Cit.*, Interview, 2/3/11.

<sup>125</sup> *Op. Cit.*, TRAC Immigration. "Current ICE Removals of Noncitizens Exceed Numbers Under Bush Administration." August 2, 2010. <http://trac.syr.edu/immigration/reports/234/>. (Accessed January 18, 2011).

However, reports found that ICE used "unusual" mathematics in the effort to reach a record-setting quota. Becker, Andrew. "Unusual Methods Helped ICE Break Deportation Record, Emails and Interviews Show." Center for Investigative Reporting. December 6, 2010. <http://www.centerforinvestigativereporting.org/articles/unusualmethodshelpedicebreakdeportationrecord>. (Accessed January 18, 2011).

of criminal aliens<sup>126</sup>. Yet government and outside reports have established that neither program in practice meets these stated priorities.<sup>127</sup>

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<sup>126</sup> *Op. Cit.*, U.S. Immigration and Customs Enforcement. “Fact Sheet: Delegation of Immigration Authority Section 287 g Immigration and Nationality Act.” <http://www.ice.gov/news/library/factsheets/287g.htm>. (Accessed: January 30, 2011). According to ICE’s Secure Communities brochure, “ICE prioritizes the removal of criminal aliens by focusing efforts on the most dangerous and violent offenders. This includes criminal aliens determined to be removable and charged with or convicted of crimes such as homicide, rape, robbery, kidnapping, major drug offenses, or those involving threats to national security.” *Op. Cit.*, U.S. Immigration and Customs Enforcement. Secure Communities. “Secure Communities Brochure.”

<sup>127</sup> See, for example, the following national report on 287 g: Office of the Inspector General. “The Performance of 287(g)Agreements.” March 2010. [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_10-63\\_Mar10.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_10-63_Mar10.pdf). The following data pertains to Secure Communities: Center for Constitutional Rights. Synopsis, “National Day Labor Organizing Network (NDLON) v. US Immigration and Customs Enforcement Agency (ICE). Attached documents. <http://www.ccrjustice.org/secure-communities>. September 1, 2010.

## **Part II: The Border**

### **Prologue: Narratives of Detention in the “State of Exception”**

Juana forgot that her freedom of movement was conditional, so she didn't bring her border crossing card to Los Angeles. Her penalty for this was detention and removal through voluntary departure.<sup>128</sup> In her short journey from “temporary” detention in San Clemente to “repatriation” on the San Diego-Tijuana border, she encountered several moving narratives of arrests. These arrests and detentions support the argument that immigration officials “discipline” migrants at the border and that the routine methods of detention and removal are in themselves a deep form of punishment. They render the legal reality that deportation is not “punishment” a cruel joke.

Born into poverty in Mexico City, Juana managed to become an attorney, but the only job offers she could attain were “in exchange for sexual favors”. She witnessed a kidnapping, which was “very painful for me, my two children were 1 and 4 years old, and the city became too unsafe.” She had applied for a visa to come to the United States, and when it came through she decided to bring her family over. “I came to the United State with a tourist visa, I stayed a few months and after I decided that yes, I wanted to stay.” In her six years in the US, she studied English, helped her children navigate the school system, volunteered at a community clinic, and become involved in community organizing for immigrants' rights, “wanting a better country” for everyone.

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<sup>128</sup> Fortunately, she was able to re-enter several days later using the same Visa. It was a risk because they might have had a record of the departure and not admitted her.

On the day she was detained, Juana was riding with several community organizers to a voter's registration training. "I was on the way to Los Angeles, and I was at the checkpoint in San Clemente", she recalled. She had adjusted to living in the United States, such that "in my mind I forgot that I had a tourist visa so I went to Los Angeles." Juana wasn't thinking about the international border, because she was far north of it. She forgot that the border extends 100 miles into the interior.<sup>129</sup> At the San Clemente checkpoint, a Border Patrol official asked if she was a citizen or resident. "I got scared and I told him that I was a resident, he asked me for the residency and I told him "ooh, I forgot it", so immediately he told me 'get out of the car.'"<sup>130</sup>

Eventually, the officials learned she had a tourist visa. The problem, they told her, was "that you didn't bring your border crossing card", a violation that meant she needed to leave the country.<sup>131</sup> She told them she was afraid to return to Mexico. They informed her that if she wanted to apply for political asylum, she would have to wait ten days in detention for a date with the judge. She couldn't imagine being locked up for 10 days and apart from her family, so she took the voluntary departure. Still, "I got scared because I don't know Tijuana...I was very afraid, but they told me that they had to do it according to the law." After signing the voluntary departure form, "I asked them if they could give me a pill for my headache, and they told me 'later.'" They never ended up giving her that pill; one official informed her that "for your security I cannot give you pills. Because if I give you medicine and something happens to you,

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<sup>129</sup>Immigration officials have greatly expanded powers within 100 miles of the land or coastal borders. Thus, San Clemente and other checkpoints within this region are an extension of the international border, within the same "state of exception" of narrowed constitutional rights.

<sup>130</sup> Interview, 1/7/11, San Marcos, CA.

<sup>131</sup> Juana has a tourist visa which technically is valid for 10 years. However, by remaining continuously in the United States she was violating the terms of her visa.

it's our responsibility." Liability concerns are a recurring justification for not providing detainees with adequate medical treatment; several reports have shed light on the dangerously inadequate health care system in immigration detention.<sup>132</sup>

Juana was detained for one night at the same station in San Clemente with three other women.<sup>133</sup> The only thing she could bring to the small cell was her Bible. She recalled that night and the conditions vividly, reflecting that

Up to that moment, I can tell you that it was a disagreeable experience but bearable. I mean, when I entered that little room....when I entered and when I heard the bolt of the door when they closed it, in that moment I felt detained. It's a terrible experience, I mean you're deprived of your freedom. Whether it's for a good or bad reason, it is a very strong trauma to be deprived of your freedom.

When I entered that room, there were three women, totally hopeless, lying down on the floor...

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<sup>132</sup>For example: Human Rights Watch. "Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention. March 17, 2009. <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed-0>. Barciela, Susan and Little, Cheryl. "Dying for Decent Care: Bad Medicine in Immigration Custody." Florida Immigrant Advocacy Center. <http://www.fiacfla.org/reports/DyingForDecentCare.pdf>. Priest, Dana and Goldstein, Amy. "Careless Detention: Medical Care in Immigrant Prisons. The Washington Post. <http://www.washingtonpost.com/wp-srv/nation/specials/immigration/index.html>.

Mary, an attorney I interviewed in North Carolina, described a client held in mandatory immigration detention after a prison sentence. He had broken his arm before he was put into prison, got convicted and was incarcerated. But his arm wasn't healing properly; he wasn't allowed to see a regular doctor and the Department of Corrections figured he was going to get out of jail soon. So they just gave him pain medicine to control the pain. Once he was in immigration detention, in the Atlanta jail because his case was supposed to be coming up soon, he still didn't get treated. She recounted the following: "Well, immigration is also saying, "You're only here for a limited amount of time. We're not gonna touch that arm, because" I mean it's basically a liability issue too. They don't want to touch someone else's injury that they had nothing to do with in the first place. So, the prison won't – the prison won't help – they just give him pain meds. And then once he gets into ICE custody, ICE isn't doing anything except for giving him pain medication. And there's, there's no way for him to um, to get it properly looked at and fixed. They're just band – it's just band-aid measures.

And that's actually legal. Um, the standard for what kind of care you need while you're incarcerated is, as long as it's not deliberate indifference, you know whatever sort of care they provide is gonna be considered sufficient. So giving him –so giving him pain medication is actually – it's *enough* under the law. And so he basically had to spend almost 20 months ...no one would do anything for his arm except for give him pain medication." Interview, 8/24/10, Raleigh, North Carolina.

<sup>133</sup> The van which transports people did not arrive; the two countries have a policy that the US does not drop women at the border after 5 pm.

Well, in that room there were two leather benches. The girls were lying down on the floor with a...green blanket the color of the officials' uniform, the blankets are that same tone, and I sat on a bench and in that moment I began to feel a terrible chill, I mean keep in mind that everything that was in this room, all of it – I don't know, maybe a spiritual matter, a matter of the Bible, I don't know how to explain to you, but in that room, that room was full of hopelessness, it was full of pain...you could feel, perhaps all the people that had crossed through this place, as though spiritually all of that remained there, right?

A security camera faced the room's open bathrooms. Whenever one of the women used the bathroom, the others shielded her from the camera's gaze. Juana recalled that though no one wanted to have to go, "with such cold [in the room], your organs ask for it."

Juana heard the stories of the other three women who were detained with her that night, which reflect the tactics of the deportation terror in the border region. Two of the girls "had been caught one night earlier, they had come from cleaning offices in Oceanside." At two or three in the morning, "[the immigration officials] followed their car, the two...totally Hispanic looking, brown skin, the two of them." The officers had stopped the car and asked for their papers. As Juana commented, it was a pure case of racial profiling. One of the women had been in the US for 13 years, another 20, Juana recalled. One of them

had a little boy, and her husband had been deported two years earlier to Guatemala, and so she didn't have a husband, she was a single mother. The other girl had 3 children and didn't have a husband either. And so she had to take care of her family by herself.

The other girl, Juana recounted, "had suffered domestic violence, her husband had hit her and she later had been in a shelter". She had fled to Santa Ana after her abusive husband found out where she was and had also found work cleaning at night. Several



days later, “she got lost...at two, three in the morning...looking for how to get out of a street” when officers followed her and stopped her. As Juana remembered,

She said that they asked her, ‘Why are you lost?’ ‘Well it’s that I don’t know my way around here.’ ‘How long have you been in this country.’ ‘Well, thirteen years.’ ‘...Thirteen years in this country and you’re lost?’ She tells us that they scolded her, that they dealt her psychological warfare, that they told her ‘You’re going to return to your country’, they told her, ‘the government’s going to keep your children’, now you’re not going to continue taking advantage of the government.’

She says that they took away her things, they threw in the trash some thing, that she had brought a little book where she carried all her children’s medical cards, their Medical cards, food stamps, because well, mother of 5 kids, single mom, that’s why she used the benefits that she was able to access like Medical and food stamps...the immigration officials, they humiliated her, they treated her badly, she says they laughed at her...arriving at the station of San Clemente she asked them for her papers and they told her that they didn’t have them...that when they had detained her with her car, there was nothing there.

In transit the next day from San Clemente to Tijuana, Juana met another woman who had experienced the deep punitive consequences of “illegality.” The two rode the van together to the border, which Juana reflected felt “like kennels, they call them kennels – have you seen how they carry the dogs, how they carry them separated like by cages?” The girl joined her in the unmarked van on the way to the border. “I remember the girl in sandals, and she said that a night before they had gotten her...she had dropped her nephew off at school, and arriving back at her apartment there were officials there. They took her.” She recalled that

She had a baby of six months inside her house, I mean she got there, she couldn’t even open her door. And they took her to the station, I mean she couldn’t even enter. Her baby was left all alone.

So they took her, and they didn’t let her use her telephone and so not until she arrived at the detention center where they brought her, maybe

two, three hours later, could she speak with someone and tell them that her baby of six months was alone.<sup>134</sup>

These stories, which Juana heard during her own deprivation of liberty, highlight the severe “disciplinary” nature of enforcement in the region; more centrally, they reveal the deep *punishment* which enforcement and detention inflicts on migrants. The enhanced legal authority immigration officials enjoy within 100 miles of the border is essential context for these narratives. While physical characteristics are not supposed to be the only reason for what is known as a “detentive stop”, racial profiling is regularized in Border Patrol checkpoints across the southwest and the Border Patrol is allowed to use racial appearance as a contributing factor in making a stop.<sup>135</sup> When people do suffer abuses, even egregious ones, there are virtually no avenues of relief, only a complicated procedure in which complaints “get lost in the bureaucracy” as one advocate put it.<sup>136</sup> Even if the person has an egregious case, said Hannah, a San Diego immigration attorney, very few attorneys would have the time or inclination to file a lawsuit with little chance of success.<sup>137</sup> Particularly on the border, many people are deported without a court hearing through legal means like Expedited Removal and

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<sup>134</sup> *Ibid.*

<sup>135</sup> The United States Border Patrol, the Drug Enforcement Administration, and some “local police” are authorized to use race as a contributing factor in deciding when to stop someone. Kennedy, Randall. “Race, the Police and “Reasonable Suspicion.” National Criminal Justice Reference Service. <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=169609>. (Accessed May 21, 2011).

<sup>136</sup> Interview, 1/26/11, El Cajón, CA.

<sup>137</sup> Repeated conversations between 2/2010 and 4/2011.

Several informants mentioned the egregious of Anastasio Hernández Rojas, who was struck with a baton and shocked with a stun gun by the Border Patrol after he resisted being deported and died shortly afterward in early June 2010. Witnesses saw officers kick and beat Hernández Rojas. Archibold, Randal C. “San Diego Police Investigate the Death of a Mexican Man Resisting Deportation.” June 1, 2010. New York Times. <http://www.nytimes.com/2010/06/02/us/02border.html>. (Accessed April 30, 2011). Diego commented that “he had his leg injured when he demanded to have medical treatment, essentially Border Patrol said, ‘Okay, we’re going to deport you. That way we don’t have to treat you.’” Then, when he continued to protest, they “beat him up.” *Op. Cit.*, Interview, 2/3/11.

Reinstatement of Removal<sup>138</sup>, making the complaint procedure even more useless. It's particularly difficult to challenge these abuses from a legal standpoint, Hannah emphasized, since "DHS has more freedom to...you know, violate peoples' rights under the guise of National Security within 100 miles of the Border."<sup>139</sup>

One case illustrating how this extended authority enables right violations involves David, a bi-national citizen whose name is a false match with someone on a Most Wanted List.<sup>140</sup> As he said, "I have to tell every time that I cross the border that I have a mismatched A& D, they can believe me or not...And if they're not going to believe me they can take me to Secondary Revision. But I don't like that every time they have to take me, they have to put the handcuffs and all the procedure."<sup>141</sup> As a binational citizen, one would imagine David would face less scrutiny at the border, that his citizenship would translate into relative mobility and immunity to the disciplinary state. The fact that his identity is constantly questioned, and he is put under deep suspicion, shows that the disciplinary tactics of enforcement, particularly in the border region, "discipline" citizens as well as noncitizens.

David recounted one time when he was crossing the border and "discipline" gave way to physical assault. This time, officials forced him to the "back room." He did not want to be handcuffed, and verbally objected. He described what happened:

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<sup>138</sup> In expedited removal, if you can't prove you've been in the U.S. for more than two weeks, you can be expedited out of the country. In reinstatement of removal, if a person was previously deported, ICE can just reinstate that removal order rather than giving that person his/her day in court – even if, as Hannah, and immigration attorney in San Diego, pointed out, the person signed the removal order 20 years ago, for example. Reinstatement of removal was enacted into law as part of the 1996 changes, but Hannah observed that DHS has been "increasing how often they use it" in the last 3 to 5 years. Interview, 6/9/2010, San Diego, California.

<sup>139</sup> *Ibid.*

<sup>140</sup> He has tried to solve the problem with various government agencies, but they all say there is nothing he can do. Changing his name to try to prevent the mismatch would make him look more suspicious.

<sup>141</sup> Interview, 12/2010, San Diego, California.

I crossed the border and I told the officer that I have a mismatched A&D, and he didn't believe me like, 'Oh well I have to take you to second revision', probably he was new, and he took me to a second revision. I went to that desk, and there was an officer that told me, 'Oh, he has a A&D match, can you fix it?' and the officer, 'Oh, you have to take him to the back room.'

And I told him, 'Sometimes I came here and some officer just fixes it, checks it, let me go.' 'Oh, well you have to go to a back room.' And then an officer came for a bag, and pulled my hand in the bag, and I told him, 'Hey, I'm not going to the back room, probably you can fix it here because I'm going to school.' 'And he said, 'Well, we have to take you to the back room, it doesn't matter.' And I said, 'Hey, calm down. Don't pull my hands that hard, I can go by myself, I can follow you.' 'Oh, we have to put you in the handcuffs.' 'Why? I'm not doing nothin' wrong. I'm not running.' And he said, 'Well, we have to take you back.' And I told him, 'I'm not going back there.'

But I told him 'I'm not going back there' not that I don't want to go because I don't want to; just because I don't want to go back with the *handcuffs*. I was mad and I didn't know what to say. And I hear a voice in my back, 'Well, drop him.' And they dropped me. And I can feel some officers, four or three, pull me down, and they just to my, my legs [*motions*], and [*motions*] to my back, and I said, 'Oh, this hurts', and they said, 'It doesn't matter. It was your problem for not doing what we say.'

And when I pulled my, I wanted to twist my hand to see the officer's name, and then I could feel my elbow and my arm pulled to the floor, and then I told the officer, 'Hey, my hand is hurting', and he just said, 'I don't care.' And I tell him, 'Well, it's hurting.' And he was just like, 'Stop talking.' And then when I didn't talk because he was... a little bit tougher. And what climbs into my mind then when I was in the floor, because I saw a case in the news that a guy was killed by some Border Patrols, and my fear was like, 'Well, probably if I did this, they can take me back and kill me.' In my mind was like, 'Well, if they killed that guy. He didn't do nothing. He just told us, 'Let him go', and they were just -- So I was trying to look for names and they were saying, 'Don't look back, don't look back.'<sup>142</sup>

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<sup>142</sup> Interview, 12/2010, San Diego, CA. He is referring to the case of Anastasio Hernández Rojas. (see footnote 7).

In attempting to resist the domination of the Customs officials, David fought the disciplinary power of the state – perhaps because as a binational citizen he felt confident of his “rights.” Still, as the officers became more oppressive David felt the possibility of *death*. This awareness demonstrates the potency of the “deportation terror” as a deeply punitive technology of power.

Juana and David’s narratives provide a glimpse of what deprivation of liberty looks like and shatter any illusions that detention and deportation are not “punishment”. Returning to Juana’s story and the cases she recounted from detention, we see the “deportation terror” takes on specific contours in the border region, pushing the notion of the “disciplinary state” past discipline and into punishment. The racialized arrests of the women Juana met, their forced “temporary” detention in the cage like, frigid room for 10 days to fight their cases in court, and the neglect of human rights evident in leaving a young child or infant alone in an apartment for hours, reflect an exercise of state power beyond “discipline.” Tearing people away from their children evokes the constant “state of exception” in the “border region”, defined as within 100 miles of the border. David’s story reveals that in the border zone of enhanced surveillance and suspicion, documentation and status may become less relevant (though they remain matters of life and death for some), as citizens and legally present immigrants are not immune from the technologies of power exercised at the border.

## **2. The Border as Boundary: Immigration Enforcement in San Diego County**

In this chapter I show how federal inspection, surveillance, and disciplining of migrants in San Diego County is increasingly bolstered by local law enforcement participation. I first give an overview of how enforcement in the border region is “different” than other spaces. Next, I analyze a telling case of local-federal collaboration to illuminate several major components of local-federal enforcement. I then review the history of local border enforcement and recent immigration policies in the county and state. Next, I analyze Secure Communities and Operation Stonegarden, two recently initiated formal local-federal partnerships that highlight the expanding role of local law enforcement in federal immigration law. I then show how policies of informal local-federal collaboration are uniform across the county, but actual *practices* are a “patchwork.” Finally, I use the case of Escondido as a clear example of the patchwork phenomenon and its implications for contemporary immigration enforcement. This analysis of local-federal enforcement highlights the geographically uneven but increasingly important role of local participation in immigration enforcement.

### **San Diego County: An Overview of the Terrain**

Immigration enforcement in San Diego County is defined by the region’s proximity to the border. The County exists within 100 miles of the international boundary, a “state of exception” wherein immigration officials have extended legal authority. Under Section 287 of the Immigration and Nationality Act, added by 1996’s

IIRIRA, immigration officials are authorized “to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States” and

to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.[287.5 (B)(c)].<sup>143</sup>

They have this authority within a “reasonable distance” from the border, defined by the Code of Federal Regulations<sup>144</sup> as within 100 air miles from any external boundary of the United States...<sup>145</sup>

After 9/11, border officials gained even broader authority. On August 10, 2004 the Department of Homeland Security announced it would give Border Patrol agents extended powers to deport “illegal aliens” without giving them a chance to fight their case in immigration court.<sup>146</sup> The rule applies to migrants apprehended within 100 miles of the border who have spent up to 14 days in the United States. This policy

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<sup>143</sup>“INA: ACT 287 – Powers of Immigration Officers and Employees.” Sec. 287. [8 U.S.C. 1357]. <http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9493.html>. (Accessed: April 30, 2011).

Code of Federal Regulations. “8 CFR 287.5 – Exercise of power by immigration officers.” <http://cfr.vlex.com/vid/287-5-exercise-immigration-officers-19608305>. (Accessed: April 30, 2011)

<sup>144</sup> This is where congressional statutes are interpreted and elaborated on by and for the government.

<sup>145</sup>“or any shorter distance which may be fixed by the chief patrol agent for CBP, or the special agent in charge for ICE.”

GPO Access. Electronic Code of Federal Regulations. “Title 8: Aliens and Nationality. Part 287 – Field Officers; Powers and Duties. 287.1 Definitions.” <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=f0777141c0e6e310b82a15e98629fc83&rgn=div8&view=text&node=8:1.0.1.2.57.0.1.1&idno=8>. Current as of April 28, 2011. (Accessed April 30, 2011).

Or any shorter distance which may be fixed by the chief patrol agent for CBP, or the special agent in charge for ICE

<sup>146</sup> Swarns, Rachel L. “U.S. to Give Border Patrol Agents the Power to Deport Illegal Aliens.” The New York Times. August 11, 2004. <http://www.nytimes.com/2004/08/11/politics/11immig.html>. (Accessed April 30, 2011).

Before this point, the border patrol typically brought migrants to immigration court custody. Deportation without judicial oversight was authorized in IIRIRA in 1996 – though prior to this date in 2004 it had only been allowed at seaports and airports.

change was justified through the War on Terror, as DHS official Asa Hutchinson cited the concern that there would be “more effort made by terrorists to enter our country through our vast land borders.”<sup>147</sup> This development marks the continued conflation of immigration and terrorism to justify broader official discretion, which lends itself to additional abuses.

Beyond Border Patrol and Immigration and Customs Enforcement activities, immigration enforcement in the county occurs through several types of local collaborations. These include Secure Communities, which alerts ICE to the presence of noncitizens in County jails; Operation Stonegarden, wherein local law enforcement agencies provide personnel support to the Border Patrol; and informal, case-by-case referrals from local government agents to the Border Patrol or ICE.

### **Local Officials as De Facto Immigration Agents: A Telling Case**

On August 5<sup>th</sup>, 2010, Minerva Santos, her 9-year old daughter, and her mother were deported from the United States after being stopped by a San Diego County Sheriff’s Department deputy for making an illegal turn. Santos was driving her daughter Nadia to the doctor on that morning when she was stopped by Deputy Laura Wyland. Wyland asked Santos for her driver’s license, vehicle registration and insurance proof. Santos informed her that she did not have a license. The deputy then asked everyone in the car for a green card. As North County Times journalist Edward

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<sup>147</sup> *Ibid.*



Sifuentes reported, “less than one hour later, Santos, her daughter, and her mother were turned over to U.S. Border Patrol agents and were deported.”<sup>148</sup>

According to Lieutenant Mike Cea, the deputy acted properly and within the department’s policy for dealing with “illegal immigrants.” The San Diego County Sheriff’s Department policy allows deputies “to detain suspected immigrants for up to an hour while waiting for immigration agents to arrive.” Nadia Santos, the 9-year old girl, was patted down and her hands put behind her back before she was turned over to the Border Patrol. Her mother and grandmother were handcuffed. All of this, too, is standard practice before transfer to another agency, according to Cea.<sup>149</sup> Following her deportation, Minerva Santos commented that “In an instant, your life changes because of one mistake.”<sup>150</sup>

This case emphasizes several points about local participation in immigration enforcement in San Diego County. First, the fact that the minor traffic offense of one mother triggered her deportation and that of her family suggests that local law enforcement can be integral in the technology of the deportation terror. Furthermore, the Sheriff Department’s assertion that it acted according to policy shows that in San Diego County local law enforcement has formally endorsed this participation. At the same time, the disagreement over whether the deputy actually followed the San Diego County Sheriff’s Department policy highlights a larger

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<sup>148</sup>Sifuentes, Edward. “Rights Group Decries Deportation of Family.” North County Times. November 20, 2010. [http://www.nctimes.com/news/local/escondido/article\\_4fb596a0-3486-544f-bf9f-58b009b214d8.html](http://www.nctimes.com/news/local/escondido/article_4fb596a0-3486-544f-bf9f-58b009b214d8.html).

Details were not given in the article about the legal circumstances of the deportations. It might have been through expedited removal or reinstatement of removal.

<sup>149</sup> *Ibidim.*

<sup>150</sup> *Ibidim.*

ambiguity in these policies across the county. This ambiguity is productive for the deportation terror, since it enables fear and leaves more space for “fast-track” enforcement and, consequently, abuse. Finally, Minerva’s comment that one’s “life changes because of one mistake” reflects the internalization of the disciplinary state, wherein the minutest infraction can result in one’s expulsion. Minerva’s words suggest that migrants internalize the threat of the deportation terror enacted locally and federally. This awareness may explain why studies show immigrant communities have lower crime rates and rates of violent crime than U.S.-born citizens.<sup>151</sup> The devolution of immigration enforcement to local law enforcement officers evokes the “panopticism of every day”, utilized in the service of the deportation terror.<sup>152</sup>

Migrant communities may also react to the punishment inflicted routinely on their community. Jorge, a community college professor at San Diego City College, reflected that “around 2008, 2009 – I began to notice a more active participation of the Border Patrol, of *la migra*, and of San Diego police collaborating with the Border Patrol.”<sup>153</sup> He commented that his students, many of whom have undocumented relatives and friends or are themselves undocumented, feel extremely targeted, sharing that

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<sup>151</sup> See, for example, Sampson, Robert J. “Rethinking Crime and Immigration.” *Contexts* 7 (2008): 28-33. [http://contexts.org/articles/files/2008/01/contexts\\_winter08\\_sampson.pdf](http://contexts.org/articles/files/2008/01/contexts_winter08_sampson.pdf). Rumbaut, Rubén G., Gonzales, Roberto G., Komaie, Golnaz, Morgan, Charlie V. “Debunking the Myth of Immigrant Criminality: Imprisonment Among First- and Second-Generation Young Men.” *Migration Information Source* (June 2006). <http://www.migrationinformation.org/USfocus/display.cfm?ID=403>.

<sup>152</sup> “Although the universal juridicism of modern society seems to fix limits on the exercise of power, its universally widespread panopticism enables it to operate, on the underside of the law, a machinery that is both immense and minute, which supports, reinforces, multiplies the asymmetry of power and undermines the limits that are traced around the law. The minute disciplines, the panopticism of every day...” *Op. Cit.*, Foucault, Michel, *Discipline and Punish*. p. 223.

<sup>153</sup> Interview, 2/11/11, San Diego, CA.

In this community in general what I perceive is like *una rabia* really - just like a fury and a feeling that they are being – attacked in the most fundamental way – it’s the response that you have when the police attack you, they beat you...they do things to you and you know that you are not doing absolutely anything that is illegal.

I mean – no, from how I see it, they don’t feel that they are doing anything illegitimate to be here working...so they feel profoundly humiliated, and...very terrorized by the situation, I mean it’s like the police have decimated you – do you know that word? [*Diezmado*]. Like they have decimated you. Yes, it really has hit the community hard.<sup>154</sup>

Jorge’s description of the immigrant community’s reaction to contemporary practices of policing and deportation reveals that those in the community do not believe crossing the border without documents, or overstaying a visa, is a criminal act. This matches Willem van Schendel and Itty Abraham’s assertion that “Persons involved in moving objects, people, and practices across state borders may or may not share the state’s categorization of their activities as criminal.” Van Schendel and Abraham draw a distinction between “legal” and “licit”, wherein socially sanctioned movements, while “illegal”, are “licit.”<sup>155</sup>

Why do migrants not consider it a crime “to be here” working? Here, “the contradictions between state ideology and border praxis” are instructive: the U.S. criminalizes human mobility through enforcement, while not seriously intervening in industries that maintain a niche for unauthorized, exploitable labor. Crossing the border to work then is a natural and necessary action for people who have no other choice,

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<sup>154</sup> *Ibidim*.

<sup>155</sup> Van Schendel, Willem, and Abraham, Itty. *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*. Bloomington: Indiana University Press, 2005. p. 25. van Schendel and Abraham de-center the state as the point of departure for analyzing transnational “illegal” flows. Consequently, they distinguish between “what states consider to be legitimate (“legal”) and what people involved in transnational networks consider legitimate (“licit”). p. 4.

pushed by the forces of globalization, the U.S. market, and economic need.<sup>156</sup> In this sense, it is “licit”, acceptable and socially sanctioned.

### **Local Contexts**<sup>157</sup>

#### *Border Enforcement*

A historical examination of the San Diego-Tijuana region denaturalizes the current boundary between them. Joseph Nevins discusses how as San Diego and Tijuana grew as cities in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, they became more closely economically, socially, and culturally integrated. The construction of “a physical line of surveillance and control” occurred slowly and in tandem with local and national circumstances. As this transformation took place in the 20<sup>th</sup> century, the region saw

a shift from the divide being a border, or a zone of transition within which there is a common culture, to a boundary that represents a stark, linear demarcation between “us” and “them” – both territorially and socially.<sup>158</sup>

Several key moments help to highlight the evolution of the divide from a “border” to a “boundary.” Kelly Lytle Hernández unpacks the political and economic contexts of the U.S. Border Patrol formation in the California borderlands in 1924 and demonstrates

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<sup>156</sup> The history of border enforcement, in which heightened deportations occur alongside market demand for exploitable labor, reminds us that this has productive (of fear, subordination, low wages) tension has always existed.

<sup>157</sup> The history of border enforcement in San Diego County informs contemporary practices of local-federal policing. Immigration authorities have extended authority within 100 miles of the U.S.-Mexico border, and while local law enforcement authorities do not share this extended power, they cooperate and collaborate with federal immigration authorities in significant ways. Thus, they participate by proxy in the heightened surveillance and policing of suspected undocumented migrants in the border region. Since interior enforcement in the region is bound up in federal immigrant policing practices in this way, I review below the historical militarization of the U.S.-Mexico border in the San Diego-Tijuana region. Next, I discuss the recent evolution of immigration policies state-wide and locally.

<sup>158</sup> *Ibid.*, p. 93.

how immigration enforcement evolved (and evolves) through competing interests that include and exceed the state itself. She shows how the Border Patrol emerged in response to concerns about an Asian immigrant “invasion.” Many Asian immigrants had found work in northern Mexico after the 1882 Chinese Exclusion Act and its attendant anti-Asian “hysteria” drove them from California. In 1924, the Border Patrol was created in the midst of state fears of an impending Japanese “invasion.”<sup>159</sup>

Lytle Hernandez highlights the tension between competing interests in border enforcement practices. While the Border Patrol’s creation helped to quell the fears of Asian immigrant invasion, U.S. agribusiness interests north of the border were concerned it would restrict their access to Mexican labor, and indeed this tension did exist. Yet the small Border Patrol could not stem the thousands of Mexican laborers who crossed the border seasonally.<sup>160</sup> Still, the Imperial Valley farmers used their influence in the Department of Labor – where the Border Patrol was originally housed – to prompt the creation of a registration system for Mexican workers. This system protected Mexican workers from the U.S. Border Patrol until the onset of the Great Depression “changed the political economy of policing Mexicans.” Mexicans became the main targets of policing in the California borderlands by the late 1930s, though this was in constant tension with their desirability to local agribusiness.<sup>161</sup> Border enforcement, then, has served to regulate migrant labor since it originated.

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<sup>159</sup> Lytle Hernandez, Kelly. *Migra! A History of the U.S. Border Patrol*. Berkeley: University of California Press, 2010. p.71.

<sup>160</sup> *Ibid.*, p. 75.

<sup>161</sup> *Ibidim*. Lytle Hernández also explores how the dire financial straits of the early Border Patrol made it more economically expedient to concentrate their enforcement efforts on Mexican nationals, whom they could speedily give Voluntary Return, as opposed to Asian and European immigrants, whose repatriation was much more costly. This stood in tension to the political economy of southern California at the time,

Early policing of the San Diego-Tijuana border occurred alongside the criminalization of undocumented immigration. Unauthorized immigration outside official points of entry became a misdemeanor in 1929, while illegal reentry became a felony under the Immigration Act of March 4, 1929. This led to the incarceration of hundreds of Spanish-surnamed immigrants yearly in the 1930s in the Southern California region,<sup>162</sup> in an early example of “crimmigration.” Another landmark to the bounding of the divide was San Diego’s participation in mass deportation of Mexicans and Mexican-Americans during the Great Depression beginning in 1929<sup>163</sup> - a reminder that the deportation terror has orchestrated the discipline and punishment of U.S. citizens as well.

Drug prohibition contributed to the “bounding” of the U.S.-Mexico border locally, as the legal cross-border trade in marijuana, opiates, and coca-based products in the 1800s gave way to prohibition and the conservative-led “war on crime and drugs” in the 1960s. This led to militaristic efforts on the border like the Nixon-era Operation Intercept in 1969, which included the use of pursuit planes, extended fences, and dogs, as well as searches of every person and vehicle entering the country. Though not effective in deterring illegal drug smuggling, the Nixon administration’s border enforcement initiatives helped to link “law and order” issues with the U.S.-Mexico

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and illuminates the same tension between competing interests with which immigration policy and practice is imbued. When in the 1930s Asian immigrants became the targets of massive discrimination and deportation from Mexico, Lytle Hernandez shows how the “streamlining” of Mexico deportation (through Voluntary Departure) served to finance the more costly deportation of the Chinese. Here again we see the selective enforcement – in a sense the selective “illegalization” of immigrants based on political and economic needs.

<sup>162</sup> *Ibid.*, p. 92.

<sup>163</sup> This nationality-based expulsion highlights San Diegans’ sense of difference from their Mexican neighbors, according to Nevins. *Op. Cit.*, Nevins, Joseph, p. 56.

boundary, including unauthorized immigration.<sup>164</sup> The forged connections here precede contemporary links between terrorism and unauthorized migration.<sup>165</sup>

Timothy Dunn argues that boundary “militarization” and immigration enforcement began during the Carter presidency and continued during the Reagan administration’s drug war and with the passage of the Immigration Reform and Control Act of 1986. This militarization became manifest in intersections between border enforcement and different types of criminal enforcement. The Border Patrol began fighting drug smuggling. The INS participated in a Department of Justice program of the mid-1980s, The Alien Border Control Committee, which reviewed “contingency plans for removal of selected aliens from the U.S. and sealing off the borders,”<sup>166</sup> which demonstrates the conflation of immigrants and criminality.<sup>167</sup> The “war on drugs” also stoked border enforcement in the Bush era and encouraged the conflation of the boundary with criminal activity.

Fallout from the amnesty provisions of the Immigration Reform and Control Act of 1986 and increased unauthorized immigration from Mexico in the mid-1980s after the country’s economic downturn fueled strong “pro-boundary-enforcement activism” in the late-1980s and early 1990s. Nevins argues that this activism reflects the “increasingly dialectical relationship between the local and the national scales in

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<sup>164</sup> *Ibid.*, p. 58. However, it’s important to point out that the last thing a “law and order” society” wants is for drug smuggling to stop, as our continued “failure” at drug prohibition and increased investment in the “drug war” stimulates increased law enforcement – while much less effective than deregulation would be.

<sup>165</sup> This link is evident in the origins and evolution of Operation Stonegarden discussed in this chapter.

<sup>166</sup> *Ibid.*, p. 68.

<sup>167</sup> See Dunn, Timothy J. *The Militarization of the U.S.-Mexico Border, 1978 -1992: Low-Intensity Conflict Doctrine Comes Home*. UT Austin: CMAS Books, 1996. The Reagan administration explicitly connected unauthorized immigration to political and social instability in Central America in the 1980s and feared similar consequences if such unrest were to develop in Mexico.

constructing and reproducing “the American nation” (as discussed in Chapter 1), the increased integration of San Diego into the national political-ideological core, and the growing “normalization” of the boundary.<sup>168</sup> California’s mainstream was not focused on restriction until the Democrats won the White House in 1992 and the state experienced an intensive recession which particularly impacted southern California. Governor Pete Wilson and other politicians launched an intensive campaign against unauthorized immigration that ultimately led to the passage of Proposition 187 in 1994.

This shifting political rhetoric highlights the deportation terror as an evolving “rhetorical practice.”<sup>169</sup> Nevins argues that the militarization of the border in 1994’s Operation Gatekeeper struck a balance between trying to appease the anti-immigrant movement pushing for Proposition 187 and supporting free trade by controlling the flow of goods and economic labor.<sup>170</sup> Through transformed fencing infrastructure, enforcement technology, and increased personnel, Gatekeeper pushed unauthorized immigration flows away from the heavily populated San Ysidro/San Diego area to more remote, dangerous areas. One significant effect of Gatekeeper was the introduction of the IDENT computerized identification system. IDENT exemplifies governmentality, allowing the INS to better identify repeat unauthorized crossers and “criminal aliens” through categorized exclusion.<sup>171</sup> In 1996, Gatekeeper also expanded partnerships with

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<sup>168</sup> *Ibid.*, p. 74.

<sup>169</sup> *Op. Cit.*, Ida Buff, Rachel, p. 529.

<sup>170</sup> Proposition 187 was of course not itself a border enforcement ordinance, but the measure’s proponents nonetheless surely supported border militarization. The provisions of Proposition 187 would have brought the border to the interior in making social service providers proxy immigration agents.

<sup>171</sup> It also added an Immigration Court at the San Ysidro Port of Entry to hold expedited administrated hearings for people who attempted to enter with false documents or “oral misrepresentation.”



local law enforcement, an important precedent to contemporary local-federal collaboration.

The events of 9/11 also stimulated border militarization and the increased investment in the “disciplinary state.” The Homeland Security Act of 2002 included provisions to enhance border enforcement as it incorporated Customs and Border Patrol into the Department of Homeland Security. 2005’s Secure Border Initiative, “a comprehensive multi-year plan to secure America’s borders and reduce illegal migration”, resulted in an initial investment of seven billion dollars for Customs and Border Protection<sup>172</sup>. According to Border Patrol spokesperson Steven B. Pitts, under the SBI the Border Patrol expanded its workforce and “increased our tactical infrastructure.” This included strengthening their fence from “Vietnam era bandy-mat” to “ballard fence...allow[ing] us to see through the fence”, incorporating more sophisticated cameras, secondary fence in some areas, and creating “roads where we can get to places where in the past we were unable to access.”<sup>173</sup> These landmarks highlight an increasing *investment* in border enforcement, which marks the build up of the disciplinary state as “big government re-made.”<sup>174</sup>

### *Immigration Policy*

Immigration policies enacted on the state and county level in past decades reflect a shifting policy climate. In the 1990s, California passed several high profile restrictive measures. 1996’s Proposition 209 eliminated affirmative action and forbade

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<sup>172</sup> U.S. Department of Homeland Security. “Fact Sheet: Secure Border Initiative.” November 2, 2005. [http://www.dhs.gov/xnews/releases/press\\_release\\_0794.shtm](http://www.dhs.gov/xnews/releases/press_release_0794.shtm) (Accessed: April 7, 2011).

<sup>173</sup> Interview, 2/9/11, San Diego, California (phone).

<sup>174</sup> *Op. Cit.*, Bohrman, Rebecca and Murakawa, Naomi.

public institutions from taking race, sex, or ethnicity into consideration in admissions decisions. 1998's Proposition 227 banned bilingual education programs in public schools.<sup>175</sup> Proposition 187 of 1994 would have limited undocumented immigrants' access to health care and public education and made social service providers and local law enforcement proxy immigration agents. While most of it was struck down in federal court, two provisions were upheld, including the one that made the use or manufacture of false documents a state felony. Also, it became a model for 1996's IIRIRA<sup>176</sup>, demonstrating again the "dialectical relationship between the local and national scales" in sculpting the nation's immigration policies and, thus, the idea of the "American nation."<sup>177</sup>

In the 2000s, California turned away from restrictive state legislation.<sup>178</sup> Assembly Bill 540 of 2001 made higher education more accessible to undocumented students by allowing those who complete at least three years of high school in California to pay in-state tuition.<sup>179</sup> Senate Bill 1534 of 2006 extended health care services to many noncitizens that were denied access to federal public assistance in the Personal and Work Opportunity Reconciliation Act.<sup>180</sup> Finally, Assembly Bill 976 of 2007 prohibited local governments from requiring landlords to inquire into renters'

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<sup>175</sup> García, Angela, Griesbach, Kathleen, Andrade, Jessica, Gonzales, Cristina, Yrizar, Guillermo. "Pressure from the Inside: the Subnational Politics of Immigration." In *Recession Without Borders: Mexican Migrants Confront the Economic Downturn*. FitzGerald, David Scott, et al, ed. Lynne Reiner 2011.

<sup>176</sup> *Op. Cit.*, Zilberg, Elana. *Space of Detention*. p. 49.

<sup>177</sup> *Op. Cit.*, Nevins, Joseph. p. 68.

<sup>178</sup> In this sense, California diverged from the national path of immigration policy following 9/11.

<sup>179</sup> State of California. 2001. Assembly Bill 540. Official California Legislative Information (OCLI). Online. [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=ab\\_540&sess=0102&house=B&author=firebaugh](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_540&sess=0102&house=B&author=firebaugh).

<sup>180</sup> State of California. 2006. Senate Bill 1534. Official California Legislative Information (OCLI). Online. [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sb\\_1534&sess=0506&house=B&author=ortiz](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1534&sess=0506&house=B&author=ortiz).

immigration status, thus protecting immigrant tenants from official renting discrimination.<sup>181</sup> In fact, AB 976, the law prohibiting rental discrimination, was a direct response by state government to attempts in Escondido to pass its rental ban.<sup>182</sup> This state response to a restrictive move in San Diego County reveals how state and local scales have their own dialectic.<sup>183</sup>

Despite the state-level move away from restrictive immigration policies in the 2000s, San Diego's North County has advanced restrictive, "attrition-through-enforcement" policies, which informants root in rising inter-ethnic tensions.<sup>184</sup> An early battleground for restrictive immigration policies, Vista, California passed a "day labor ordinance", Ordinance 2006-9, in June of 2006. The ordinance requires employers to

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<sup>181</sup> State of California. 2007. Assembly Bill 976. Official California Legislative Information (OCLI). Online. [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=ab\\_976&sess=PREV&house=B&author=charles\\_calderon](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_976&sess=PREV&house=B&author=charles_calderon).

<sup>182</sup> Escondido's ordinance would have sanctioned landlords who rent to undocumented immigrants Esbenshade, Jill, Wright, Benjamin, Cortopassi, Paul, Reed, Arthur, Flores, Jerry. "The "Law and Order" Foundation of Local Ordinances: A Four-Locale Study of Hazleton, PA, Escondido, CA, Farmers Branch, TX, and Prince William County, VA." From *Taking Local Control: Immigration Policy Activism in U.S. Cities and States*. Varsanyi, Monica, ed. Stanford: Stanford University Press, 2010. p. 260.

<sup>183</sup> In another example, pro-restriction activists fought for a proposed ballot initiative in 2005 called the "California Border Police Initiative", which would have "establish[ed] a state law enforcement agency dedicated to protecting our homeland security and assisting the federal government in the enforcement of federal immigration laws".

Haynes, Ray. "Re: Request for Title and Summary of Proposed Initiative." May 25, 2005. <http://www.caag.state.ca.us/initiatives/pdf/SA2005RF0079.pdf>.

The ballot initiative asserted that California had suffered a disproportionate financial burden from the federal government's failure to enforce immigration law, that state and local law enforcement had "sovereign authority" but lacked resources to enforce the law. Its logic centered on the conflation of immigration with terrorism, stating that "unchecked illegal immigration threatens our ability to protect our homeland from the threat of terrorism." "In essence what that measure would have done is to create a California Border Patrol agency", commented John, a retired assistant Sheriff of the San Diego County Sheriff's Department. He identified "red flag number one" that the city of Escondido was moving toward a punitive response when the City Council of Escondido endorsed the initiative.

Interview, 2/2/11, Escondido, CA.

<sup>184</sup> These are policies aimed at discouraging illegal immigration by creating unfavorable conditions for undocumented people to live in a region. They are lauded by groups on the right like the Center for Immigration Studies and NumbersUSA.

get a registration certificate from the city in order to hire day laborers, to display a certificate in their car windows, and to provide workers with a written explanation of their employment.<sup>185</sup> The ordinance was not the only sign of tension directed toward the migrant community. John, a retired assistant sheriff who was one of the only Latino deputies when he joined the Sheriff's Department back in the early 1970s, recognized racially targeted law enforcement practices within the Department, with which Vista contracts for law enforcement services. He recalled that

there was a 5 day period in the summer of '06 where there were three deputy-involved shootings where young, Latino males were shot and killed, all three were unarmed... within a five-day period. All shot by white deputies. And when we looked into it a little further we found that the Patrol Bureau that was assigned to police Vista was entirely white males. No diversity. But then we took a step back and looked at it even closer, and within a 24-month period there were 6 deputy-involved shootings, all white male deputies, all young Latino male victims, all unarmed. But then if you include -within that 24-month period, there was 2 deaths caused by Tasers applied by deputies, white deputies.<sup>186</sup>

John situated these events in a broader move toward discrimination on the institutional level in North County, alongside the “presence of extremist groups including the San Diego Minutemen.” The Minutemen gained momentum from political debates around

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<sup>185</sup> Ross, Cigi. “Vista: City not actively enforcing day labor law.” North County Times. November 27, 2010. [http://www.nctimes.com/news/local/vista/article\\_76b94a99-69da-5516-9cb7-ff3f383a8189.html](http://www.nctimes.com/news/local/vista/article_76b94a99-69da-5516-9cb7-ff3f383a8189.html). (Accessed April 20, 2011). The protection for workers here might signal a compromise made with immigration advocates and restrictionists.

According to the mayor at the time, the ordinance was primarily intended to “bring some order” to a shopping center in the city where day laborers would regularly gather, which had triggered complaints by customers and businesses. Michael S. Danielson argues that the ordinance was triggered by both national and local factors. Local factors included tensions caused by decades-long demographic change in Vista due to increased immigrant settlement, strong Minutemen activism and vigilance, and a general economic downturn since 2006 in the county. These factors combined with responses to the national immigrant rights marches of 2006, which fueled increasingly heated politics on both sides of the debate. (Danielson, Michael S. “All Immigration Politics Is Local: The Day Labor Ordinance in Vista, California.” In *Taking Local Control: Immigration Policy activism in U.S. Cities and States*. Varsanyi, Monica, ed. Stanford: Stanford University Press, 2010. p. 241.)

<sup>186</sup> *Op. Cit.*, Interview, 2/2/11.

restriction, “demonstrating right at the areas where the day laborers congregate”, intimidating and threatening them and inciting various incidents.<sup>187</sup> Miguel, a San Diego-based attorney, took several cases around this time involving conflicts where Minutemen had provoked Latinos and instigated fights.<sup>188</sup> The confluence of state and non-state reactions to the immigrant community in Vista reveals disciplinary power as “multiplicity”<sup>189</sup>, perpetuated within and beyond the disciplinary state.

Escondido’s state actors embarked on a more sustained campaign of restriction, interpreted by informants as a response to demographic change.<sup>190</sup> Escondido’s City Council passed a rental ban ordinance on October 18, 2006, modeled after the one in Hazleton, Pennsylvania, which would sanction landlords who rented to undocumented migrants.<sup>191</sup> After a U.S. District Court judge granted a temporary restraining order to prevent the enforcement of the law after constitutional challenges, the City Council decided to drop the matter due to legal costs. As Miguel recalled,

they wound up paying, I think \$400,000 in legal fees for the rental ban...they took a bath. I mean, \$400,000. And they can’t afford to keep their libraries. I mean, that’s - that’s pretty sad.<sup>192</sup>

The deep local investment reflects the prioritization of “disciplinary” tactics over other expenses that would contribute to the “welfare state”, such as libraries.

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<sup>187</sup> *Ibidim.*

<sup>188</sup> Such conflicts occurred in the shopping mall where the group was protesting the day laborers and at a church where the Minutemen would protest because the priest would serve day laborers. Miguel recalled that the Minutemen had even interrupted a funeral and a First Communion. Interview, 1/21/11, San Diego, California.

<sup>189</sup> *Op. Cit.*, Foucault, Michel. *The History of Sexuality.*

<sup>190</sup> I.e., a major increase in the city’s foreign-born and Latino residents

<sup>191</sup> *Op. Cit.*, Esbenshade et al. “The “Law-and-Order” Foundation of Local Ordinances: A Four-Locale Study of Hazleton, PA, Escondido, CA, Farmers Branch, TX, and Prince William County, VA. In *Taking Local Control: Immigration Policy activism in U.S. Cities and States.* Varsanyi, Monica, ed. Stanford: Stanford University Press, 2010. p. 260.

<sup>192</sup> *Op. Cit.*, 1/21/11.

After dropping the rental ban, council Member Marie Waldron introduced a “New Year Resolution”, that the city was committed to handling illegal immigration.<sup>193</sup> Their next attempt was a parking permit ordinance, which required people to get a permit to park their cars on a public street. The ordinance was crafted to exclude undocumented migrants from parking, as it would have required residents to produce a driver’s license at City Hall in exchange for a permit. However, that ordinance failed, in part due to its potential impact on white residents.<sup>194</sup> City Council still intended to still push forward with the measure, but then, John explained, local politics shifted.

There was an election in 2008, where Olga Díaz, the first Latina ever in the city’s 126 year history, was elected to the city council. So, the dynamic had changed. So this parking permit idea, get it off the table. So, actually Olga unseated one of the three councilmen that was so... anti-immigrant.<sup>195</sup>

Following the failure of the parking ordinance, Escondido tried unsuccessfully to pass a day labor ordinance.

The proposed rental ban, day labor ordinances, and parking ordinance are attempts at crafting practices which exclude through categorization and classification systems like licenses and documents, practices of governmentality. Though these measures did not pass, the strength thrown behind them by local actors again demonstrates that disciplinary power is exercised beyond law enforcement and local politicians; restrictive policies and practices often have the tacit or open support of

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<sup>193</sup> *Ibidim.*

<sup>194</sup> The area the Council chose “also had white homeowners who lived in this area too” and protested. Also, the City Council hired an auditing firm to study the parking situation, which determined that Escondido did not in fact have a parking problem.

<sup>195</sup> *Op. Cit.*, 2/2/11 interview.

communities. Juana shared that she felt “an anti-immigrant feeling” in Escondido, “a feeling that they judge you for the color of your skin.” She continued,

I was at a City Council meeting in Escondido...At the hearing we asked [for the City of Escondido] to oppose SB1070...Olga Díaz put forward that proposal. And the rest of them opposed it; they didn't even let the girls who had a presentation prepared speak.

They made one girl cry [for speaking Spanish with her mother on the telephone.] This big white woman came over and said ‘What kind of language are you speaking here, this is the United States.’ I mean, it made her cry – I could see it. In that room there was so much intolerance that they wouldn't even let her speak her language. And she said ‘I'm speaking with my mom, my mom speaks English but emotionally we're going to connect in our language.’ And they told her that she shouldn't speak that language.<sup>196</sup>

The woman's scolding of the girl for speaking Spanish, and the City Council's refusal to allow Maribel's group to speak, demonstrate that both state and non-state actors engage in the exclusionary practices which bolster restrictive enforcement. Restrictive policies tap into public fears and support; hence, “rhetorical practices” are integral to the deportation terror. In this sense, state power is legitimated by citizen intolerance - from the Minutemen to subtler tactics of exclusion.<sup>197</sup>

Informants argue that at its core, the surge in localized restriction is not about immigration, and emphasize the centrality of race and racialization in the rise in restriction, supporting Joy James's argument. John related the City Council's zealous campaign to fears of the “browning” of the community and a subsequent loss of political power. He asserted that

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<sup>196</sup> *Op. Cit.*, Interview, 1/7/11.

<sup>197</sup> However, this same power can also work against citizen intolerance and against these practices (See Chapter 4).

...many people think that it's an immigration issue, but that's *not* what it is. It's a brown issue. Just too many brown people...taking over. And we've got to stop 'em. And, and the easiest segment of that brown population are the immigrant workers. The undocumented immigrants. Those are the ones that are the easiest for us to attack right now.

So that's where the focus of attention had been. But make no mistake, in my view it's not about illegal or legal immigration. No, it's not about that. It's about brown people.<sup>198</sup>

Miguel finds a parallel between the contemporary environment in North County and explosive, racist reactions to diversification in National City during his childhood:

...as I was growing up in National City I saw the same thing that I see in North County. This feeling that our property values and our quality of life are dropping because of those brown people in our midst. And they're taking our jobs, they're taking our daughters. [*laughs*].

...that's what I see in North County is that same fear of the unknown . What is gonna happen, to my house? What is gonna happen to my street? What's gonna happen to my neighborhood? What's gonna happen to my school?<sup>199</sup>

Thus, informants root the surge in local policing to local responses to demographic change more rather than an actual "immigration problem." As Amada, an advocate and community leader, put it, "This is not an immigration issue, this is a racism issue."<sup>200</sup>

Politicians capitalize on peoples' fears, "using the immigration debate as the most

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<sup>198</sup> *Op. Cit.*, Interview, 2/2/11. John also emphasized that part of the City Council's drive to enact restrictive policies is its realization that their power is in jeopardy. He said, "If you want to see who the voters are gonna be 15 years from now, just stick your head in any kindergarten classroom' -- right? And in Escondido, eighty percent of those faces are brown. Even the city councilmen, as stupid as they behave, they're smart enough to see what the voters look like, which means they're gonna be voted out." Interestingly, research conducted with the Mexican Migration Field Research Program on local enforcement in Oklahoma indicates that migrants are very much aware of the central role of local political actors in enacting restrictive legislation and place the majority of the blame on the politicians who craft and push for those measures. The same research also found that the restrictive measures did *not* cause the intended attrition – migrants were staying put, and they knew who to blame. (*Op. Cit.*, Garcia, Angela, et al). These findings, if applied to the case of Escondido, would suggest that the City Council members who push these restrictive, impracticable policies are paving an even quicker route out of power.

<sup>199</sup> *Op. Cit.*, Interview, 1/21/11.

<sup>200</sup> *Op. Cit.*, Interview, 1/26/11, El Cajón, California.



important strategy for their political agenda, for their political career.”<sup>201</sup> Echoing this, Juana asserted, “This isn’t a question of the undocumented. It’s a question of skin color.”

### **Formal Local-Federal Enforcement Collaborations in San Diego County**<sup>202</sup>

#### *Secure Communities*

San Diego County was one of the first in the country to implement Secure Communities, in May 2009.<sup>203</sup> ICE representative Lauren Mack describes the program as

A database really. It’s a...technology that was after a lot of agreements and a lot of negotiation...put into the county jail so that when the deputies...book somebody into jail, they’re able to identify any immigration warrants or any immigration arrests or anybody who may be – who gets put in there with a hit under immigration. And it automatically sends that information to ICE officers who work in the jail too. So, they would then put a detainer on that person so that the individual doesn’t get released to the street and then we’re called and we pick them up.<sup>204</sup>

While ICE consistently claims that the program targets Level 1 “high threat” immigrants convicted of serious crimes, Mack’s description reveals that the technology

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<sup>201</sup> Interview, 1/26/11.

<sup>202</sup> San Diego County local law enforcement participates in several local-federal collaborations. These include Secure Communities, in which DHS databases are connected to local jails to identify unauthorized immigrants booked into them, and Operation Stonegarden, a border enforcement collaboration in which local law enforcement officials support federal border enforcement efforts in overtime hours. Each partnership demonstrates the increasing insertion of local police into federal immigration enforcement. This in turn forms part of the expansion of the disciplinary state and the broadening the state apparatus of punishment.

<sup>203</sup> Sifuentes, Edward. “Region: Jail Screening Program Under Fire. Lawmaker Seeks to Make Immigration Checks Optional.” North County Times. April 16, 2011. [http://www.nctimes.com/news/local/sdcounty/article\\_4d9b8d41-6eab-5a75-add6-57eed2b437ee.html](http://www.nctimes.com/news/local/sdcounty/article_4d9b8d41-6eab-5a75-add6-57eed2b437ee.html).

<sup>204</sup> Phone Interview, 3/9/11, San Diego, CA.

brings immigrants booked in on *any* type of charge to ICE’s attention. This is borne out nationally in ICE’s own statistics. In San Diego County, 63 percent of those processed through Secure Communities were “non-criminals.” While across the nation Secure Communities fails to target who it claims to, San Diego County has one of the worst track records. Nationwide, an average of 26 percent of all Secure Communities deportations were of “non-criminals.”<sup>205</sup>

Secure Communities highlights the policy-practice divide in local-federal enforcement. Diego, director of a leading immigrant and border advocacy group, stresses that Secure Communities has been disingenuously “sold to the general public that it’s targeting hardened criminals, people with criminal histories.” It’s hard to measure the impact of the program though, since

we just don’t have access to their testimonies or their experiences, because they get funneled in and they get deported and you know they have to make the decision of whether they’re going to return or not, right?<sup>206</sup>

He adds that “it’s difficult for us to assess how detrimental it is, because it is, but...we have to base ourselves on figures that ICE puts out.” Despite not knowing the precise impact of Secure Communities, anecdotes provide clues. Diego recalled that

We had a case of – I think a 17 year old kid who’s been living in the country for 15 years, doesn’t have contact with his parents, they live somewhere in Mexico, and he was accused of attempted homicide, went to court, the jury found him innocent, the person who accused him later recanted and said she lied. And the day that he was going to be released

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<sup>205</sup> These statistics were released in response to a lawsuit by the National Day Labor Organizing Network and the Center for Constitutional Rights. Immigration and Customs Enforcement, National Interoperability Statistics, by Jurisdiction, ICE FOIA 10-2674.000087 – ICE FOIA 10 – 2674.000094. See Center for Constitutional Rights, NDLO. “Briefing Guide to “Secure Communities.” [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/NDLON\\_FOIA\\_Briefing%20guide.final.pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/NDLON_FOIA_Briefing%20guide.final.pdf). (Accessed May 1, 2011).

<sup>206</sup> Interview, 2/3/11, San Diego, CA.

to his aunt, the police department forwarded him or referred him to ICE, and ICE detained him and sent him to some sort of secret detention facility south of Chicago.<sup>207</sup>

Fortunately, Diego's organization found counsel for him. If they hadn't, "he was going to be deported to a country that he has absolutely no connection to. And so it was Secure Communities that began that process for him."<sup>208</sup>

San Diego County oversaw the development of local-federal database technology that enabled Secure Communities, thus serving as a "laboratory" for technologies of governmentality. John was in charge of all the booking jails then, and remembers

we were establishing a computerized link with the—at that time it was the INS – Immigration and Naturalization Service –with their computer system...and so we were one of the first agencies in the country to establish this computer link so that when a person would be booked into San Diego County jail system, if they gave a response to the question 'Where were you born?' if that response was anywhere outside of the United States, that booking information was sent electronically to INS.

What they would do was check the immigration status of that person. If they had no record, chances are they're probably in the country illegally, and they would send out an agent to interview this person...since then [2001], now they have agents actually stationed at the jail.<sup>209</sup>

This history demonstrates that San Diego County has also functioned as a "laboratory" for enforcement innovation. The County's early work with INS foreshadows Secure

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<sup>207</sup> *Ibid.*

<sup>208</sup> *Ibid.* The ability to hold migrants in "secret detention facilities", temporary spaces with egregious reputations, has undoubtedly been facilitated by the "terror context" of 9/11. Hannah shared a story of a client who was claiming asylum and went through a similar trajectory of transfer and detention in "temporary" facilities: "They put him into the detention center – it was at the Border Patrol office...they literally called it 'the burrito' and it was where they hold people temporarily and it was sort of like this group of mobile home type looking things...he was told that he was just going to be temporarily there and then transferred to CCA and then we could just immediately get his release once he was checked in. But instead they held him in this things they called 'the burrito' for five days and then transferred him to Texas." *Op. Cit.*, Interview, 6/9/10.

<sup>209</sup> *Op. Cit.*, Interview, 2/2/11, San Diego, CA.

Communities. As Diego commented, “border communities tend to be a laboratory for these sorts of operations I think...that later get replicated in other parts of the country.”<sup>210</sup>

### *Operation Stonegarden*

Operation Stonegarden is a Department of Homeland Security grant to increase border “security.” The program first formed with the Department of Homeland Security’s creation in 2003. Policy analyst Tom Barry argues that the program has evolved “from a “first-responder” to terrorism program to a border security program focused on drugs and illegal immigrants”, which again marks the translation of anti-terrorism efforts into intensified immigration enforcement.<sup>211</sup>

San Diego received a grant, overseen by the Sheriff’s Department, of \$5.5 million for a 4 year period in 2008. The stated focus of the grant is “crime prevention, detection and suppression in areas impacted along the Mexico, U.S. border.” Stonegarden provides “additional resources to local law enforcement so they can more effectively prevent and suppress border-related crimes.”<sup>212</sup> The grant specifically funds local law enforcement work along the border, supporting these local agencies’ “operation costs and equipment purchases that contribute to border security.”<sup>213</sup> In an

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<sup>210</sup> *Op. Cit.*, Interview, 2/3/11.

<sup>211</sup> Barry, Tom. “Operation Stonegarden’s “Friendly Forces” At the Border.” *Border Lines: Reporting from the TransBorder Project of the Center for International Policy*. April 21, 2009. <http://borderlinesblog.blogspot.com/2009/04/operation-stonegardens-friendly-forces.html>. (Accessed April 23, 2011).

<sup>212</sup> San Diego County Sheriff’s Department.

<sup>213</sup> DHS Office of the Press Secretary. “DHS Announces \$12 Million for Operation Stonegarden to Support Local Border Security Efforts.” December 15, 2006. [http://www.dhs.gov/xnews/releases/pr\\_1166216119621.shtm](http://www.dhs.gov/xnews/releases/pr_1166216119621.shtm). (Accessed April 23, 2011.)

announcement about Stonegarden’s renewal in 2006, Homeland Security Secretary Michael Chertoff stated that “Our ultimate success at the border is going to require close coordination with local authorities and sustained commitments to remedying a security challenge that has been decades in the making.”<sup>214</sup> The framing of local-federal collaborations in terms of a growing “security challenge” again emphasizes the growing association between border enforcement and national security – and in parallel, immigration and terrorism.<sup>215</sup>

Border Patrol Spokesman Steven Pitts stressed that Operation Stonegarden funds local law enforcement support of federal enforcement, enabling these local officers to “work that extra day and be available in case something immigration related comes up, they can respond to it.”<sup>216</sup> Pitts confirmed that the Border Patrol collaborates with local law enforcement agencies. The program bridges the divide between local and federal players, as

federal funds are made available for local law enforcement and stakeholders...if there’s a nexus to the border, where we find somebody living in a house and then... an alien smuggler, we work with the Code Enforcement to get that house condemned. They take the...house out of operation. We work with uh, Sheriff Department, California Highway Patrol, they all have access to funds...They perform their primary mission of CHP or Sheriff’s Department...it’s just that we make funds available for them to work that extra day and be available in case something immigration related comes up, they can respond to it.<sup>217</sup>

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<sup>214</sup> *Ibid.*

<sup>215</sup> The San Diego County Sheriff’s Department grant agenda to the Board of Supervisors from 2008 stresses the grant’s focus on local and federal collaboration along the border, listing the objective of the program as the following: “to increase coordination and local law enforcement capabilities in support of the Department of Homeland Security’s goals including those of the U.S. Customs and Border Protection outlined in the National Border Patrol strategy.” (County of San Diego Agenda Item Board of Supervisors. “Operation Stonegarden Grant Form. September 23, 2008. pdf. [www.co.san-diego.ca.us/bos/supporting\\_docs/092308ag02t.pdf](http://www.co.san-diego.ca.us/bos/supporting_docs/092308ag02t.pdf).)

<sup>216</sup> *Op. Cit.*, Interview, 2/9/11.

<sup>217</sup> *Ibidim.*

In other words, “It’s like overtime for those guys.”<sup>218</sup> As Jorge pointed out, federal enforcement programs that funnel funds into local law enforcement agencies “Can give them an important economic support”, particularly in troubling economic times.<sup>219</sup>

Local police departments discussed their participation in the program. Chula Vista Police Department representative Bernard Gonzales stated that the Chula Vista Police Department participates in Operation Stonegarden.<sup>220</sup> The Carlsbad Police Department representative confirmed Carlsbad’s participation through its Maritime branch. He explained that “our basic function is to watch the coastline in collaboration with – with the other participating agencies and watch for criminal activity.” He added that “it’s not just – people landing on the beach, it’s also drugs and all sorts of other stuff.”<sup>221</sup> However, federal officials began enacting harsher penalties for undocumented immigrants attempting to enter the country by sea.<sup>222</sup> Thus, we see an increase in immigration restriction on the border, with local law enforcement agencies providing overtime support for the federal crackdown.

Operation Stonegarden will incorporate the National City and San Diego Police Departments for the first time, according to National City Police Chief Adolfo

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<sup>218</sup> *Ibidim.*

<sup>219</sup> *Op. Cit.*, Interview, 2/11/11.

<sup>220</sup> Email correspondence, 3/3/2011.

<sup>221</sup> Phone Interview, 3/21/2011.

<sup>222</sup> A person caught entering illegally a second time may face felony charges resulting in possible prison sentences of two to 20 years as well as a fine of up to \$250,000. The policy follows a doubling of the number of undocumented immigrants captured on San Diego County Beaches in 2010 (from 400 the previous year to 867. Before, these people were given a voluntary departure and quick release back to their home country, just like those caught crossing land borders. Now, “all illegal immigrants who try to come in by sea will face formal deportation procedures” and will not have the voluntary departure option according to Border Patrol spokesperson Scott Simon). Simon said the federal government wants to call attention to the dangerousness of trying to enter illegally by sea. Sifuentes, Edward. “REGION: Illegal immigrants caught at sea to face tougher penalties.” North County Times. Thursday, March 24, 2011. (Accessed April 27, 2011).

Gonzales. Gonzales explained that “2 or 3 years ago when [Stonegarden] first started, it was mostly focused on enforcement.” At that time,

I told ‘em, ‘we can’t participate. We’re not gonna be doing immigration enforcement because we’re not trained, that’s not our role, I have to respond to calls for service or emergency, I don’t have the training or the staff to do immigration enforcement.’<sup>223</sup>

However, Gonzales said, “Now it’s different. Now it’s focused more on criminal activities in our cities.”<sup>224</sup> The grant pays for the overtime for two or three officers to come in at certain times “looking at real crime time stats, to put on certain locations in certain times to control the crime or violence.” Gonzales stressed that the immigration enforcement is incidental to the criminal investigation. For example, “if there is someone who’s committing for example drug smuggling, and happen to be undocumented, than yes they’re going to go to jail, put immigration hold, they’re going to take over.” But local officers are not to participate in immigration enforcement outside of these criminal investigations. Still, he said his agency would be monitoring the program.

While Gonzales suggests Stonegarden is now more focused on criminal border activity, we have seen from Secure Communities how policy and practice often conflict. Also, while Stonegarden also highlights an increased investment in local participation in federal immigration enforcement, justified through the rhetoric of the War on Terror, it is difficult to track where the money goes. Barry points out that in Stonegarden, “as in all DHS federal/local programs, [] funding is not accompanied with internal regulations

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<sup>223</sup> Interview, National City, California, 3/22/11.

<sup>224</sup> He explained that “what we’re looking at is any kind of drug smuggling at our pier, any kind of criminal activity particularly focusing on gang activity in our streets or in the malls. Those are our three main focus areas.” *Ibid.*

specifying exactly what the homeland security funds can be used for.”<sup>225</sup> The program lacks a consistent focus. Since Stonegarden is no longer “couched in counterterrorism rhetoric”,

...it functions as one of the many ICE and Border Patrol programs aimed at increasing cooperation with local police forces...As such, complaints about Operation Stonegarden reflect the kind of criticism leveled against such ICE programs as Operation Community Shield, the 287(g) Program, and Secure Communities, namely that involving local police in immigration enforcement leads to racial profiling and increasing community distrust of law enforcement.<sup>226</sup>

### **Informal Law Enforcement Referrals and the Patchwork Effect**

Local law enforcement agencies have a specific protocol for referring people to the Border Patrol. Leaders developed a general county-wide policy through the Chiefs and Sheriff’s Association, a county-wide coalition of law enforcement leaders.<sup>227</sup> Chief

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<sup>225</sup> *Op. Cit.*, Barry, Tom.

<sup>226</sup> *Ibidim.*

<sup>227</sup> . Through this forum, Chief Gonzales explained, “we meet every month and...once a year we get together and we go out of the County and we talk about policies that are regional”, and develop uniform policies around various issues. *Op. Cit.*, Interview, 3/22/11.

One policy developed through the Chiefs and Sheriff’s Association involves the use of the Mexican *matricula*, or consular identification. All local law enforcement agencies in the county recognize this consular ID as a valid form of identification. Chief Gonzales explained that

if you stop somebody for driving without a license, you use that as a form of ID and give them a ticket for no license, because they have to have a license...if you stop somebody for shoplifting and they have their *matricula* card, you use that as a form of identification, you can cite and release a person, if not they’ll go to jail for not having any identification. So that’s recognized county-wide.<sup>227</sup>

As Gonzales reflected, accepting the *matricula* as a valid form of ID may prevent undocumented migrants from going to jail for minor infractions. Since San Diego County jails utilize Secure Communities, arrest often means being flagged for removal by ICE. However, the officer still has discretion to arrest the person for a bookable offense, and the use of discretion seems to vary by city In chapter 3 I will discuss North Carolina’s political battle over the recognition of the *matricula*. . After Durham County passed a measure recognizing it as a valid form of identification, a bill to prohibit its use as a form of ID was created and is currently pending before the North Carolina General Assembly. Thus, in terms of identification, San Diego County has a more accommodating stance than North Carolina.



Gonzales provided National City’s policy. He stressed that “it’s a county-wide policy, so it’s what most of the agencies in the county follow, it’s pretty similar.” A comparative analysis of the National City Police Department’s policy, “Undocumented Persons and Foreign Nationals”<sup>228</sup>, and the San Diego County Police Department’s “Adult Undocumented Persons”, shows that the policies *are* similar, but have some slight differences in emphasis.<sup>229</sup>

Both policies assert that officers are responsible “for the enforcement of all laws, Federal, State, and local, and for the safety and protection of all persons. Therefore, officers have a duty to contact any person(s) when there is a “reasonable suspicion” to believe they are involved with criminal activity.” If after investigation probable cause to arrest exists “unrelated to the person’s immigration status,” officers may make an arrest.. Both policies then establish the need for a reason to arrest besides immigration status.

The wording in the “Procedures” section differs slightly between the SDPD and the NCPD however. The SDPD policy emphasizes that

Officers are authorized to release subjects to DHS/Border Patrol if there is no “probable cause” to arrest but there is “reasonable suspicion” as defined in Department Procedure 4.01, Stop/Detention and Pat-Down Procedures, that criminal activity unrelated to immigration status still exists. If the investigation determines the detainee(s) is/are in violation of Title 8 United States Code, Section 1304 (e), officers are authorized to notify DHS/Border Patrol and release the detainee(s) at the scene of contact within a reasonable time.<sup>230</sup>

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<sup>228</sup> The other police departments with whom I corresponded - Chula Vista, Carlsbad, and Oceanside – and the San Diego County Sheriff’s Department – did not release their policies.

<sup>229</sup> It’s important to note that both San Diego and National City are known for less restrictive in the county by advocates than, for example, Escondido, Oceanside, or Carlsbad.

<sup>230</sup> Title 8 1304 (e) reads: **Personal possession of registration or receipt card; penalties**  
Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to

The policy then states that the detention “should ordinarily be no longer than twenty minutes”, and that Officers generally are prohibited from arresting “detained undocumented persons” for the “sole” purpose of transferring them to DHS/Border Patrol, unless they voluntarily consent in order to complete or further an investigation. In contrast to the SDPD policy, the NCPD section “C” begins by saying

If, after investigation, it is determined the person(s) is/are not involved in criminal activity unrelated to immigration status, the person should be released.

The policy then lists the following points:

1. Officers may, however, notify CBP/Border Patrol of suspected undocumented status but the duration of the stop or detention prior to the detainee’s release shall be in accordance with Department Procedure. Such detentions should ordinarily be no longer than twenty minutes.
2. Officers are generally prohibited from transporting detained undocumented persons to a police facility for the sole purpose of releasing them to CBP/Border Patrol, as this would constitute an arrest.

Thus, the emphasis of the SDPD policy is on the fact that officers *are* authorized to notify the Border Patrol if they determine that a person does not have the proper immigration documents. In a subtle variation, the NCPD policy stresses that if the person is not involved in criminal activity unrelated to immigration status, “the person should be released.” National City’s policy, then, stresses more emphatically that local law enforcement should not be concentrated on enforcing immigration law, but on

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subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.

preventing and responding to “criminal activity unrelated to immigration status.”<sup>231</sup>

The slight variations illuminate a larger *ambiguity* in the policies which only produces more space for officer discretion and, potentially, abuse.

Chief Gonzales asserted that generally the NCPD only makes the immigration referral with felony arrests. If officers come across somebody involved in criminal activity in an investigation and find out the person is undocumented, “we put an immigration hold and immigration deals with that.” But “short of honestly a criminal – a felony offense – if it’s a misdemeanor offense, generally they don’t go to jail. A misdemeanor you’ll get a ticket and that’s it. A felony they’re probably gonna go to jail”, where they will get a hold.<sup>232</sup>

However, the Santos case shows that the Sheriff’s Department, for one, does *not* limit referrals to felony offenses, suggesting the distinctions between the NCPD and SDPD policies reflect a broader divergence of practices, enabled by ambiguity.<sup>233</sup> The San Diego County Sheriff’s Department Public Affairs Director, Jan Caldwell, stated in a two-line email that

The San Diego County Sheriff’s Department does not enforce federal immigration laws.

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<sup>231</sup> However, both National City and San Diego are known have the most lenient policies, along with Chula Vista, in the county, according to Diego, which means that cities with less accommodating reputations like Escondido, Carlsbad, and Oceanside likely have more restrictive tones. *Op. Cit.*, Interview, 2/3/11.

<sup>232</sup> *Op. Cit.*, Interview, 3/22/11. Gonzales added that “Most of the time we come across people who are undocumented mainly for a traffic offense or for a misdemeanor. I think most of the people that are involved in criminal activity who are undocumented...they’re gonna do it no matter what, whether they’re here or somewhere else. That behavior will be the same. For most hard-working, honest people that’s not the case. You’re not gonna find that.”

<sup>233</sup> Or, alternatively, local law enforcement officers take matters into their own hands.

IF during the course of a routine local law enforcement action, it becomes apparent an individual is not in the United States legally, the deputy may detain the person up to one hour and notify Border Patrol.<sup>234</sup>

The short response confirms that the San Diego County Sheriff's Department has a slightly longer time frame to hold suspected unauthorized immigrants than the police departments, one hour rather than twenty minutes. The curt response also hints at a paradox in local-federal collaborations: though the plenary power doctrine has been interpreted to restrict law enforcement authority to enforce federal immigration law, local officers *are* enforcing civil immigration law when they "notify the Border Patrol" in "routine" policing.

Other local police department representatives shared their interpretations of their agencies' policy. A Chula Vista Police Department lieutenant explained that the CVPD policy "leaves it mostly up to the officer's discretion." He stated that

...our officers...are not [authorized] to seek out individuals solely for the basis of their immigration status. So, stopping a group of people because they are suspected immigrants is not allowed. However, if you make a traffic stop and discover somebody is undocumented, it would be up to the officer's discretion whether they would refer them to the Border Patrol or not.<sup>235</sup>

Again, discretion enables individual officers to determine whether to collaborate with the Border Patrol. However, "many of our officers do not make that referral unless there's other more severe criminal activity." He used the example of someone being stopped for speeding or running a red light. "If they don't have a driver's license more often than not they're issued a citation." He added that the car might be impounded if

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<sup>234</sup> Email correspondence, 2/16/11. I was not able to receive any other information or responses to my questions from this department.

<sup>235</sup> Phone Interview, 2/23/11. His term "suspected immigrants" interestingly captures the conflation of being an immigrant with being a criminal ("suspect"). The word choice also depicts how racialized populations might be "suspected immigrants."

the person is not the owner of the car or doesn't have a license. The person may "walk[] away with a ticket, and we don't even get into whether they're legal or illegal."<sup>236</sup> In contrast, if someone is arrested for a crime – anything from "shoplifting...to domestic violence to drugs or something like that" and is found to be undocumented, "it's common to call the Border Patrol."<sup>237</sup> In that case, the Border Patrol would come to the station, talk to the person, and determine the person's identity. The officer would then place a "referral" on the person for Border Patrol custody after the resolution of their state case.

In the event of a very minor charge, however, the person might be transferred to federal custody immediately, marking the quick passage from the criminal to the immigration system. The Chula Vista lieutenant explained that "if it's a misdemeanor they'll often walk out of here with basically a Notice to Appear in court...if they're going to go with the Border Patrol, we would give them that promise to appear, and then...the Border Patrol would take them."<sup>238</sup> The most recent example he remembered

Was a shop lifter, and they basically...took them right back down to the border and said, "Do you want to go back to Mexico?" And the person said, 'Yes, I am', and they said 'Okay,' and they drove him down to the border and let him out at the gate and he walked through the pedestrian gate right back to Mexico.<sup>239</sup>

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<sup>236</sup> *Ibid.*

<sup>237</sup> Domestic violence is a common means through which *victims* enter removal, according to informants in San Diego County and in North Carolina. Miguel shared that "I've had instances where people call me and say, 'I called because my husband beat me up. And I got deported. And they never got him. They didn't care.'" *Op. Cit.*, Interview, 1/21/11. Such cases have appeared in the media as well. The Violence Against Women Act of 1994 (reauthorized in 2006) provides for relief for immigrants who are victims of domestic violence, since immigration status is recognized as a common reason for remaining in an abusive relationship (for fear of being reported). People in removal proceedings can apply for Cancellation of Removal under VAWA (as the DV victim Juana was detained with seemed to be doing). However, they must have the knowledge and the ability to do so.

<sup>238</sup> *Ibidim.*

<sup>239</sup> *Ibidim.*

He also stressed that the Border Patrol sometimes gives the migrants a VR, or Voluntary Return. In those cases,

They take them down to the gate and say you know ‘Here you go, you’re back in your own country’ ...those people usually come back the next day...maybe if they’re a felon and were here illegally and are now not supposed to be here they could be charged federally but we have very little to do with that.<sup>240</sup>

Here, the CVPD hints at the endurance of what Josiah Heyman in 1995 calls the “voluntary departure-complex”: high levels of Border Patrol arrests alongside the understanding that those released into Mexico “can and do repeat their attempts to evade border enforcement until they finally succeed in entering.” This “combination of formal and tacit policies” supports labor market demand for extra-legal migration.<sup>241</sup> While the stakes of illegal re entry have increased greatly since 1996’s IIRIRA and border militarization, the representative’s comment suggests Heyman’s analysis is still relevant.

Other police department representatives expressed similar policies to San Diego, National City, and Chula Vista. The Carlsbad Police Department representative stated that the Carlsbad PD has “turned people over to the Border Patrol on occasion when they’re detained for a criminal offense and we find they’re an undocumented person.” He stressed that “it’s primarily the people involved in criminal activity that we suspect of being undocumented that we refer to the Border Patrol.” He also gave “shoplifting” as an example.<sup>242</sup> Oceanside Police Department Public Lieutenant Leonard Mata

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<sup>240</sup> *Ibidim.*

<sup>241</sup> Heyman, Josiah. “Putting Power in the Anthropology of Bureaucracy: The Immigration and Naturalization Service at the Mexico-United States Border.” Heyman, Josiah McC. *Current Anthropology*, Vol. 36, No. 2. (Apr., 1995), pp. 261- 287.

<sup>242</sup> *Op. Cit.*, Phone Interview, 3/21/2011.

explained that “We have a policy of not enforcing immigration laws as the sole charge. We have worked with immigration officials on criminal investigations that result in deportations.”<sup>243</sup> The Escondido Police Department’s policy states that while officers should not detain people whose only violation is unlawful presence in the country, they may question those arrested about their immigration status. Escondido’s policy also states that officers must make “every effort to identify the subject” during a citation and are authorized to inform immigration authorities.<sup>244</sup>

These law enforcement perspectives suggest variability in Border Patrol referrals across the county. A common theme in all of them is officer discretion, which enables a broad “patchwork” of enforcement. Also, each agency has a different reputation for Border Patrol collaborations. Diego gauged that “the most progressive policy is the city of Chula Vista”, with whom his organization had worked “to include some provisions where if anyone is referred to Border Patrol that they will...track those sorts of referrals...[to] have a much better accounting system for why people were referred to the Border Patrol.”<sup>245</sup> However, there still have been cases of collaboration. He commented that National City and the San Diego Police Department also have “non-collaboration” policies.<sup>246</sup> Then, “We go to the other extreme where you have the City of Escondido, and the Sheriff’s Department that openly collaborate with Border Patrol.”<sup>247</sup> Miguel emphasized that “the County Sheriffs don’t seem to have a very well

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<sup>243</sup> Email correspondence, 3/9/2011.

<sup>244</sup> *Op. Cit.*, Sifuentes, Edward. “Escondido: Rights Group Decries Deportation of Family.”

<sup>245</sup> *Op. Cit.*, Interview, 2/3/11.

<sup>246</sup> This isn’t exactly the case according to the law enforcement representatives.

<sup>247</sup> *Ibidim.*

defined policy”<sup>248</sup> and is pushing them to develop one, particularly since the Santos deportation.

County advocates note increasing referrals. Jorge recalled an increase in collaboration since 2008 and 2009 between San Diego law enforcement and the Border Patrol. Diego said that around the end of 2010, “we were receiving increased cases of general collaboration, including from agencies that should not be collaborating like the San Diego Police Department.” He recalled that

we had one case where a couple of brothers, young brothers, 20 and 22 I think, drove home after having volunteered at the church...and they were stopped by San Diego PD, questioned about their status and the San Diego officer took one of the brothers and drove him to the Border Patrol station in Chula Vista and dropped him off there. Now he’s in deportation proceedings.

As Diego commented, “That’s just a horrendous case. It shouldn’t have got to that level.”<sup>249</sup> The inconsistency in referrals reveals a patchwork of enforcement from city to city, agency to agency and individual officer to individual officer.

### **The “Patchwork” Effect: Local Police Enforcing Immigration Law in Escondido**

#### *Checkpoints*

In the past several years, the Escondido Police Department has taken an unprecedented role in immigration enforcement. John recalled that as the City Council attempted to pass punitive policies, the Escondido Police Chief, Jim Maher, began to

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<sup>248</sup> *Op. Cit.*, Interview, 1/21/11.

<sup>249</sup> *Op. Cit.*, Interview, 2/3/11.



plot his own agency's role. In 2006 the Escondido PD started conducting driver's license checkpoints 3 to 4 times a month. The checkpoints

funnel all the traffic...with cones, so there's no escape route, one minute you're going down the street, all the sudden, all the traffic is funneled in...and you get stopped by an officer, and there's signs that say 'Driver's License Checkpoint Ahead. Have Your License Ready to Show the Officer'...the driver comes up, rolls his window down, holds his license up. The officer looks at the license, makes sure the picture's the same as the person driving. And that it's not expired. Off you go. So it takes 2, 3 seconds maybe...

Off he goes. Except – undocumented people are not allowed to get a driver's license. So those people get moved over to Secondary, there's a law in California which allows officers to impound a car driven by an unlicensed driver for 30 days without a hearing, without anything...and it costs between twelve and fifteen hundred dollars to get it out after the 30 days.<sup>250</sup>

That fee doesn't include the fine for the ticket. In 2 years of operating the driver's license checkpoints, "they would tow between 50 to 65 cars and in one particular checkpoint they towed 77 cars in a...three hour checkpoint." In that two year period "the city made more than 2 million dollars in fines and fees", while tow companies netted more than 8 million.<sup>251</sup> By fining undocumented migrants for not having licenses they cannot obtain, the municipality profits from the undocumented by "disciplining" them.<sup>252</sup> The translation of disciplinary power from the political sphere (City Council) to the police department highlights its multidirectionality, supporting

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<sup>250</sup> *Op. Cit.*, Interview, 2/2/11.

<sup>251</sup> *Ibid.* "Money from the pockets of the poorest people in town."

<sup>252</sup> The investment in the disciplinary state here functions to produce local profits through the enactment of the deportation terror: the Office of Traffic Safety's funding of the checkpoints gives way to *local* profits from unlicensed drivers. Here, the municipality is making money off the deportability of migrants (in the sense that they are unlicensed drivers).

Foucault's point that disciplinary power "traverses all points and supervises every instant...compares, differentiates, hierarchizes, homogenizes, excludes."<sup>253</sup>

Despite the profitability of the Driver's License checkpoints for state and industry, the Police Department was forced to modify its procedure. The North County-based advocacy group El Grupo, in which John and Miguel both participate, discovered a California law that prohibits law enforcement from stopping motor vehicles for the sole purpose of checking licenses.<sup>254</sup> The Escondido PD then incorporated additional checks, including insurance and registration and common safety concerns such as child safety seats and broken taillights.<sup>255</sup> However, these modified "Traffic Safety Checkpoints" held up traffic. John explained that the police chief began receiving "complaints from the white community, so they don't do these anymore."<sup>256</sup> Now, they conduct DUI-Driver's License Checkpoints funded by the Office of Traffic Safety.

John stressed that Escondido's DUI-driver's license checkpoints are both ineffective and divisive for law enforcement-community relations.<sup>257</sup> From 30 years in

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<sup>253</sup> *Ibidim.*

<sup>254</sup> The law reads that "a peace officer shall not stop a vehicle for the sole reason of determining whether the driver is properly licensed." California Department of Motor Vehicles. V C Section 14607.6 Impoundment and Forfeiture of Motor Vehicles. Impoundment and Forfeiture of Motor Vehicles. [http://dmv.ca.gov/pubs/vctop/d06/vc14607\\_6.htm](http://dmv.ca.gov/pubs/vctop/d06/vc14607_6.htm). (Accessed April 26, 2011). In December of 2009 El Grupo and the American Civil Liberties Union (ACLU) of San Diego and Imperial Counties sent the Escondido PD and the City Attorney a letter informing them that the checkpoints were illegal. Though Maher and the city attorney, Jeff Epp, maintained that the checkpoints were legal, they agreed to change their operations.

<sup>255</sup> Sifuentes, Edward. "Exclusive: Escondido Ends Drivers' License Only Checkpoints. Facing Criticism, Police Will Broaden Operations." Friday, June 18, 2010. [http://www.nctimes.com/news/local/sdcounty/article\\_9a4d0cae-0eaf-5808-9b76-4293083ca1b5.html](http://www.nctimes.com/news/local/sdcounty/article_9a4d0cae-0eaf-5808-9b76-4293083ca1b5.html). (Accessed April 26, 2011).

<sup>256</sup> *Op. Cit.*, Interview, 2/2/11.

<sup>257</sup> These observations are also reflected in a Letter to the Editor from May 2010 written by attorney and advocate Torres, Victor Manuel. Spokesperson, El Grupo. "Escondido's Checkpoints." San Diego Union Tribune. Letter to the Editor. May 1, 2010.

law enforcement, John has learned that checkpoints are an inefficient and ineffective manner of law enforcement whose primary purpose and design is public relations, “to let the public know... ‘We’re concerned about DUIs.’” Checkpoints require 10 to 15 officers, but only yield “3, maybe 4 [drunk drivers], after a 6 hour checkpoint.”<sup>258</sup> In contrast, individual patrols are more efficient. As John asserted,

Give me 4 cops, on an 8-hour shift, they will make 2 drunk driving arrests, and that’s an easy night. Each of these cop cars. So that’s 8 drunk drivers...give me 5 officers, they’ll make 10 arrests. And...that’s an easy night. If they really want to work, they’ll make 3 drunk driving arrests. That’s 15.

And, he pointed out,

That’s stopping people *with* probable cause, as opposed to this which is without. Which runs counter to our idea of freedom of movement and you know that kind of thing.<sup>259</sup>

The restriction of freedom of movement is an important aspect of immigration enforcement.<sup>260</sup> The inefficiency of the checkpoints suggests the DUI element is a façade, enabling police to target undocumented immigrants while receiving state funds. Further evidence exists in the scheduling of the checkpoints, from 6 to 11 pm. As John explained, “Most DUI checkpoints are conducted between the hours of 9 pm and 3 am”, a more logical time frame for targeting drunk drivers since bars close at 2 am. By

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<http://www.signonsandiego.com/news/2010/may/01/escondidos-checkpoints/>. (Accessed April 26, 2011).

<sup>258</sup> The checkpoints also carry risks of litigation in their constitutional ambiguity. One victim of the checkpoints, who lost his truck when it was impounded through a checkpoint and he could not afford to pay to get it back, sued the City of Escondido in August of 2010 and is considering the possibility of a class action lawsuit “on behalf of all the people whose cars were impounded over the last six years.” Guidi, Ruxandra. January 18, 2011. “Escondido May Face Class-Action Lawsuit Over Checkpoints.” <http://www.kpbs.org/news/2011/jan/18/escondido-may-face-class-action-lawsuit-over-check/>. (Accessed April 26, 2011).

<sup>259</sup> *Op. Cit.*, Interview, 2/2/11.

<sup>260</sup> For a discussion of the freedom of movement and mobility and the enforcement practices discussed here, see Chapter 4.

running the checkpoints at 6 pm, the earliest possible under Office of Traffic Safety rules, Escondido is “aiming at unlicensed drivers...that’s their real purpose.”<sup>261</sup> Miguel added that El Grupo finds the “placements [of the checkpoints] fairly suspicious”, as they are “mainly in areas where there’s a lot of traffic going to these Spanish language markets, that kind of thing” – emphasizing the “patchwork” of enforcement *within* Escondido’s city limits. In his experience going through the checkpoints, they aren’t looking for drunk drivers. He commented, “What I see is they keep impounding cars for 30 days from unlicensed drivers, and who are the unlicensed drivers, the undocumented residents of Escondido.”<sup>262</sup>

Through these strategically placed checkpoints, the City of Escondido profits from immigrants through their exclusion.<sup>263</sup> Checkpoints on the interior work as an extension of inspections on the border, which as Alejandro Lugo argues “inspect and monitor what goes in and out in the name of class, gender, race, and nation.” Lugo shows how migrants face “inspections” at multiple borders – “international, cultural, racial, or industrial.”<sup>264</sup> The checkpoints exemplify the “inspection” of racialized migrants that occurs broadly through political measures, policing, and non-state activism, as in vigilante groups. The checkpoints illustrate Eithne Luibhéid’s point that “inspection at the border...[and on the interior] situates migrants within lifelong networks of surveillance and disciplinary relations.”<sup>265</sup> A recent article revealed that

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<sup>261</sup> *Ibidim.*

<sup>262</sup> *Op. Cit.*, Interview, 1/21/11.

<sup>263</sup> As demonstrated by Calavita, Lytle Hernandez, and so forth and synthesized in Chapter 1. s

<sup>264</sup> *Op. Cit.*, Lugo, Alejandro. *Fragmented Lives, Assembled Parts: Culture, Capitalism, and Conquest at the U.S.-Mexico Border*. Austin: University of Texas Press, 2008. pp. 8, 149.

<sup>265</sup> *Op. Cit.*, Luibhéid, Eithne. *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press, 2002.

levels of impoundment are very inconsistent across cities in the County, which highlights the “patchwork” of the disciplinary state in general.<sup>266</sup> This patchwork is itself productive of the deportation terror, since it enables widespread fear and clears space for more abuses.<sup>267</sup>

*“Operation Joint Effort”*

Operation Joint Effort is Escondido’s partnership with Immigration and Customs Enforcement, initiated in May 2010. ICE representative Lauren Mack explained that “They asked us” to work more closely with them with “some enforcement that was beyond Secure Communities.” So, she explained,

We sat down and worked it out and developed that particular program. And what it did was – we’ve got ICE agents assigned to the Escondido Police Department...they’re in the Gang Unit...they work side by side...so– well, at least in the office arena – they’re able to share you know their Intel, their information...<sup>268</sup>

John remembered the origins of the partnership differently. He recalled ICE coming to a monthly Chiefs and Sheriff’s Association meeting and pitching the program to the law enforcement leaders:

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<sup>266</sup> Sifuentes, Edward. “Region: Impound Law Enforcement Varies By Department.” North County Times. April 2, 2011. [http://www.nctimes.com/news/local/sdcounty/article\\_d0cb172d-80e6-5a08-bf6d-26638cd7d281.html](http://www.nctimes.com/news/local/sdcounty/article_d0cb172d-80e6-5a08-bf6d-26638cd7d281.html). (Accessed: April 26, 2011). This article discusses how some law enforcement agencies in the state are moving away from strict enforcement of the state law which allows them to impound the cars of unlicensed drivers for 30 days. Many say the move is connected to criticisms that law enforcement DUI checkpoints unfairly target illegal immigrants. The article uses the contrasting cases of the Escondido Police Department, which strictly enforces the law, and the San Diego County Sheriff’s Department, which apparently allows those caught driving without a license 20 minutes to call a licensed driver to take it away. The Carlsbad Police Department gives the officer the discretion to decide whether to impound the car or allow the person to call a licensed driver.

<sup>267</sup> These checkpoints also support devolved immigration enforcement, as local police become de facto enforcers of immigration law when they call ICE out to the scene through Operation Joint Effort, below.

<sup>268</sup> *Op. Cit.*, Phone interview, 3/9/11.

ICE comes to this meeting...they said, 'Have we got a deal for you. We're willing to put agents at your headquarters and work shoulder-to-shoulder beside your cops and target these *criminal aliens* and stuff...

And every single agency said... We don't want you guys around us... That's gonna alienate the Latino population ...and we've worked so hard to build a relationship...every agency said 'Thanks but no thanks.' Except one.<sup>269</sup>

That was Escondido, working off the City Council's restrictionist momentum.

Regardless of whose idea it was, Joint Effort represents an unprecedented marriage between the federal and the local. Mack explained that the partnership extends beyond the office arena. If the Escondido PD finds an individual who's a "target",

we may go out in the field in Escondido and get them. Other times Escondido Police Department if they make a –a vehicle stop and they determine that an individual is deportable, they contact us. Um, and then we go out and talk to the individual and...if they're not gonna charge them criminally, we take them.<sup>270</sup>

She then provided the following example:

[L]: Like, let's say someone's driving their car and their headlights are out and they pull them over. And they run the person's name...and they find out the person has a warrant by immigration for being ordered deported and failing to leave, or they may see in their criminal record the person is a prior deport and has come back – and has a big old criminal record. Well, they're not gonna criminally charge that individual 'cause their headlights are out.

[K]: Right

[L]: But they can contact ICE, because that's someone you know that we would want to find...you know we'd want to deport an individual like that.<sup>271</sup>

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<sup>269</sup> *Op. Cit.*, Interview, 2/2/11.

<sup>270</sup> *Ibidim.*

<sup>271</sup> *Op. Cit.*, Phone interview, 3/9/11.

Here, Mack explicitly describes how Joint Effort links deportation through minor traffic violations, a common complaint about local-federal collaborations like Secure Communities. Her comment reveals how the “crimmigration crisis” leads to the punishment of migrants for very minor infractions. Highlighting this criminalization migrants, Jorge shared that “at every moment my students tell me of cases where the police stops them...yes, they have papers but the police stops them, bothers them.”<sup>272</sup>

Mack emphasized that Operation Joint Effort is “a very special program, it’s unique, I’m not aware of another like that in the nation.”<sup>273</sup> Yet the program seems a logical extension of more widespread forms of local-federal policing like 287 g partnerships (discussed in Chapter 3) and Secure Communities. It takes local collaboration to its logical next level, befitting in a County with a legacy as a “laboratory” of enforcement. Joint Effort marks the increasing efficiency of the deportation terror through the arm of the local: A March 22, 2011 news release on the Escondido PD website lauded the program for bringing “over 406 undocumented foreign nationals” into ICE custody since it began in May 2010.<sup>274</sup>

San Diego County informants characterized the Escondido-ICE collaboration as an extreme example of local law enforcement participation in immigration enforcement. Diego commented that “ICE actually rides along with the Escondido Police Department, they have 2 agents assigned, it’s...the only city I can think...in the country

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<sup>272</sup> *Op. Cit.*, Interview, 2/11/11.

<sup>273</sup> *Ibidim.*

<sup>274</sup> Escondido Police Department. “Over 406 Arrested During Operation Joint Effort.” March 22, 2011. <http://police.escondido.org/over-406-arrested-during-operation-joint-effort.aspx>. (Accessed April 26, 2011.)

that's done something like that."<sup>275</sup> Miguel echoed this observation, remarking that "the Escondido PD is the only police department that I know of in the country...that have ICE agents, not just in the station – there's other I'm sure places that have ICE agents in their stations – they have them going on patrol with them."<sup>276</sup> John recounted that "they started out with two ICE agents, now there's four ICE agents"<sup>277</sup> who patrol with Escondido PD officers.

Mack asserted that as an outcome of Joint Effort, ICE is expanding collaboration with other local law enforcement agencies in the county through a task force. Although the program started as a pilot,

It's now gone to a permanent arena where we utilize – rather than...those agents are still working with Escondido and helping the gang unit, but they're also working and expanded with the Sheriff and a couple other police stations but as part of the North County Gang Task Force. So they've kind of just been put onto that Task Force...so spread out a little bit more, and doing different things on that task force...with the different police departments...it's still unique what they're doing with Escondido.<sup>278</sup>

This "North Gang Task Force" shows how gang suppression as used as a vehicle for immigration enforcement.<sup>279</sup>

Operation Joint Effort works in concert with Escondido's "DUI-Drivers' license" checkpoints in enacting the deportation terror. Mack declared that she was "not aware of any other police department...calling us to the traffic stops like they do," suggesting that Joint Effort is a mechanism for which Escondido's local police officers

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<sup>275</sup> *Op. Cit.*, Interview, 2/3/11.

<sup>276</sup> *Op. Cit.*, Interview, 1/21/11.

<sup>277</sup> *Op. Cit.*, Interview, 2/2/11.

<sup>278</sup> *Op. Cit.*, Interview, 1/21/11.

<sup>279</sup> For an analysis of the criminalization of immigrant populations through gang suppression policies, see *Op. Cit.*, Zilberg, Elana. *A Troubled Corner*; *Op. Cit.*, Zilberg, Elana. *Space of Detention*.



engage directly in enforcing immigration law. John says that checkpoints also funnel migrants into Joint Effort, explaining that

What happens is that at the checkpoints they come across a person who – it’s a DUI checkpoint, but they always check for driver’s license . So they say, ‘Have you had any thing to drink tonight?’ ‘No.’ ‘Do you have a driver’s license?’ ‘*No, por favor. Perdoname.*’ Go to Secondary, we’re gonna take your car, we’re gonna write you a ticket, and off you go. So they let ‘em go.

But they take this ticket to the ICE agents and they say, ‘Hey. Why don’t you go to this guy’s house. Check it out.’

John’s comments suggest the deportation terror in Escondido operates through a particular form of cross-agency policing that does not even on the surface target “criminal aliens” – unlike other local-federal partnerships like Secure Communities which make this claim. John also stressed that it is unclear exactly what the goals of the program are, because they do not have a Memorandum of Agreement.<sup>280</sup> Once again, the ambiguity of local-federal enforcement is productive for the enactment of the deportation terror: a lack of clear guidelines enables *more* collaboration with less oversight. In its uniqueness in San Diego County and nationally, Operation Joint Effort produces a prominent “patch” of immigration enforcement in San Diego County.

## Conclusion

Let’s return to the case of Minerva Santos, her nine-year old daughter, and her mother. Their expedited deportation through the concerted efforts of a San Diego

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<sup>280</sup> As former police manager, he found this very bizarre. He explained that in the MOA, “the roles that each agency is going to play are articulated. So that there’s no confusion in terms of who does what and how they do it.” Not having an MOA opens both ICE and the Escondido PD up to liability.

County deputy and the Border Patrol after an illegal turn no longer appears an egregious case, an exception to the norm. Instead, this chapter has shown that ambiguous referral policies produce the conditions for this type of incident. Formalized collaborations like Secure Communities, Operation Stonegarden, and, in Escondido, Operation Community Effort solidify local participation in immigration enforcement. The case of Escondido reveals the importance of local politicians, law enforcement, and reactions to demographic change. This chapter has also shown how contemporary practices of enforcement and detention in San Diego County are deeply informed by border enforcement – which has itself been sculpted by the rhetorical and physical Wars on Drugs, Crime, and Terror.

Local participation in federal immigration enforcement in San Diego County, despite and in a way *because of* its geographical inconsistency, “undermines the limits that are traced around the law” and “multiplies the asymmetry of power” of the state and its actors over immigrants. Ambiguity in policy is productive of the deportation terror, providing local law enforcement more discretionary wiggle-room. Just as federal immigration officials push the law to its limits – as Juana and David’s narratives tell us – local law enforcement is empowered with an increasing role in the deportation terror. For undocumented migrants in San Diego County, expulsion can occur “with one mistake”, as minor as a traffic infraction.

### **Part III: The Interior**

#### **Prologue: Voices from the Inside: Snapshots of Detention in North Carolina**

The following passages provide glimpses of the “deportation terror” in North Carolina local-federal immigration enforcement from the perspectives of those individuals implicated in these practices: detained migrants. These redacted letters, addressed as requests for help or more information, provide insight to their experiences within the immigration detention pipeline. They also reveal alternate articulations of belonging that contradict the legal disciplinary systems (criminal and immigration) in which the writers are engaged.<sup>281</sup>

Writing while detained at a North Carolina County Jail, Justin articulates a claim to belonging, a right to remain, and the fundamental injustice of the system in which he is held:

*I am a permanent resident who has been living in U.S.A. since [ ] 197[ ]...I am educated in the States, I've yet to hear such a horrible thing. When I was arrested the sheriff told me that he was going to make sure that I would be deported to my dismay what he said has almost come true. I know for a fact that there is a process that I must go through, in order for them to do so. I own properties here in the States, and have [ ] children who are American born. And my parents are American citizens. I posted bond in another case which is misdemeanor. For some reason the magistrate here in [ ] County doesn't want to take it. I don't see why, such an oppressive move, on behalf of this country against a legal person. Most of my charges are derived from traffic violations. So that doesn't constitute a dangerous criminal, I am the sole support for my family. I am very scared for them, at the time, I have no money, the economy is bad...*<sup>282</sup>

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<sup>281</sup> These letters are redacted to remove any potentially identifying information about their authors. Thus, the authors' names, the particular county where they lived and/or were held, their country of origin, and any other descriptive details are all removed to eliminate any potential identification. Brackets [ ] indicate all places where I have removed information.

<sup>282</sup> Letter, August 2009.

Here, Justin alludes to the “crimmigration crisis” in which minor traffic infractions facilitate deportation.<sup>283</sup> He frames his indignation in terms of his own “legal” status and his family’s and establishes a sense of belonging to United States. He recognizes the refusal of [] County to release him on bond as “horrible” and “oppressive”, and alludes to the fact that he does not match the “serious criminal alien” profile ICE claims to target.<sup>284</sup>

Another detainee, José, highlights the disciplinary tactics of the immigration detention regime from his cell in Georgia, writing that

*Soon immigration is going to move me and they’re going to ask me to sign my voluntary deportation, which I haven’t signed. Well... see, I possess neither information nor guidance about my problem and from the little that I have been able to know, it seems that a person spends many months in the prison in [], waiting for a court date with immigration and as though a person is deported without a single other opportunity, much less being heard.*<sup>285</sup>

Here, José expresses the isolation within the system. He reflects on the long term detention that immigrants often face as they await their court date in detention, recognizing the deportation terror as deeply punitive. In a countermove to this system,

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<sup>283</sup> Justin’s case seems deeply informed by the 1996 legislative changes which greatly expanded and redefined what constitutes an “aggravated felony” for immigration purposes. These changes have profoundly impacted the cases of many legal permanent residents with non-violent felonies or an accumulation of misdemeanors. Justin’s case recalls one on which I worked in San Diego which also involved a very young, former refugee-turned-legal permanent resident fighting deportation removal proceedings for a criminal record of non-violent offenses, who was from a country which it is very difficult to get deported *to* because of its lack of a functioning government, and whose entire family is in the United States. For several specific examples of the deportation of LPRs because of the 1996 legislative changes, see: Brotherton, David C. “Exiling New Yorkers.” In Brotherton, David C.; Kretsedemas, Philip, ed. *Keeping Out the Other: A Critical Introduction to Immigration Enforcement Today*. New York Columbia University Press, 2008. Northern Manhattan Immigrant Rights Coalition in Cooperation with New York University School of Law Immigrant Rights Clinic. “Deportado, Dominicano, y Humano: The Realities of Dominican Deportations and Related Policy Recommendations” (April 30, 2009). Text in: Northern Manhattan Immigrant Rights Coalition, <http://www.nmcir.org/>; Accessed: April 30, 2009.

<sup>284</sup> Particularly in the rhetoric deployed around 287 g and Secure Communities along with other local-federal programs.

<sup>285</sup> Letter, December 2009.

he reiterates an argument of belonging that transcends documentation status, and reaches for a possibility to state in the country, when he says, *Well, I have spent thirteen years living in [] North Carolina, and it has cost me...to bring my family here and in Mexico my parents depend on the little that I am able to send them. All I ask is for the opportunity to remain here, where I have my [] trade.*<sup>286</sup>

Another testimonial reveals the particular workings of the “deportation terror.” Samuel, detained at Stewart Detention Center in Lumpkin, Georgia, entered the United States as a refugee when he was three years old. *My grandmother brought my mother, father and my family here as refugees. We fled during the war in late 80’s.* His path to detention reveals the “crimmigration crisis” and the disorientation caused by the bureaucratic technologies of the deportation terror. *I was on probation, and my P.O. called me to his office to sign off probation because I had completed my probationary term. When I went to sign out he had ICE waiting on me. I did nothing wrong they said that my papers expired. If I would had know my papers expired I would had went to renew it.*

Samuel asserts his deep-set ties to the local and the national, delegitimizing the bureaucratic mechanics of power. *I have a fiancé and a daughter at home, back in North Carolina. I wish you may help me because I’m depressed not being able to support my family.* He has lived more than 20 years in the United States. Deportation, he argues, would endanger his life: *it is a death trap for deportees from America to go back to []. I’m scared to get deported because my uncle been deported and they killed him in [].* Samuel felt such a strong membership to the United States that he never

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<sup>286</sup> *Ibid.*

realized that he *wasn't* a citizen: *I've been here my whole life and lived as a citizen so I thought I was a citizen. I pay my taxes and never thought I would leave America.*

Samuel's admission undermines static categories of citizenship and belonging.

Samuel's next words show the internalization of disciplinary power discussed by Foucault. *I made some bad decisions in my life, and I paid the price for everything I did.* He asserts that *I'm a change man with a daughter I have to raise, and a Fiancé who needs me.* But Samuel's professed rehabilitation means nothing for his immigration case. Nor is the "deportation terror" concerned with the familial relations it rips apart.<sup>287</sup>

Another detained migrant's reflections also emphasize the internalization of the technologies of power, in his efforts to live according to the law and without drawing attention in the past years.

*...I arrived in this country with the goal of moving forward with my family almost [] years ago now, I've never had problems with the authorities, I've always tried to live on the fringes of the law...I learned English because I figured it was a requirement in order to be legal in this country, I tried to live a health and peaceful life...yes I came here to work not to do harm to this country to which I am so grateful...I believe it isn't fair that they treat me like a criminal, I am not one...I am not a bad person, I only [] to work...it seems that my American Dream has become the American Nightmare.<sup>288</sup>*

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<sup>287</sup> However, the *control* of the composition of the family – as in women's reproduction - has been an important part of the literal construction of the nation. As Eithne Luibhéid points out, and others have shown, "Immigration control is not just a powerful symbol of nationhood and people but also a means to *literally* construct the nation and the people in particular ways. This fact has been compellingly documented through analyses of how immigration exclusions [explored in Chapter 1 here] have produced particular racial, ethnic, and class compositions in the United States." (*Op. Cit.*, Luibhéid, Eithne. p. xviii.) A literal example of the control of racialized immigrant (or proxy) families through limiting their reproduction is explored in the film *Más Bebés*, which documents allegations of forced sterilizations of Mexican American women at Los Angeles County – USC Medical Center in the 1960s and 1970s – which were part of family planning programs in the United States and abroad during the period. (Tajima-Peña, Renée. Trailer, *Más Bebés*. University of California Center for New Racial Studies Conference. April 22, 2011.)

<sup>288</sup> Letter, November 2009.

Other excerpts also reflect a sense of national belonging, construed through one's familial attachments, economic contributions, long-term presence in the United States, and cultural leanings. These articulations challenge the categorical exclusion of noncitizens from the nation. One detainee writes, "*According to my social security records, I have been in America for [more than 20] years now. I attended schools in [several US cities]. I've worked for several businesses under my social security name, I've paid taxes as well. I speak English very well, as well as reading and writing. Throughout my life I've well adjusted to the American lifestyle.*"<sup>289</sup> Another asks the reader to recognize this belonging, stressing that *Above all I would like for you to know who I am...I am a person who has worked since I was ten years old. I'm [], years ago I decided to turn to the American Dream.*"<sup>290</sup> Another detainee establishes his presence in the US temporally and culturally:

*I have been in the U.S. since I was approximately eight months old. I was born in Mexico...19[], and was brought to the United States by my parents...19[]. I have not gone back to Mexico ever since. My father was a U.S. born citizen...My mother was born in Mexico... She is a permanent resident of the U.S., working on getting her citizenship. All of my siblings are U.S. born citizens, I also have two small children, which are U.S. born citizens...I do not have any known family in Mexico, nor do I have any contacts what so ever in Mexico. My Spanish is very limited, including the ability to read or write in Spanish.*<sup>291</sup>

Yet another noncitizen in detention articulates his membership to the US in clear terms:

*I really don't want to be deported because all I know is the American way of life...I don't know anybody in [country]. I barely speak the language. This is my home. The United States is my home.*<sup>292</sup> Another discusses his desire to embrace American

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<sup>289</sup> Letter, August 2010.

<sup>290</sup> Letter, April 2010.

<sup>291</sup> Letter, October 2009.

<sup>292</sup> Letter, April 2010.

citizenship alongside his susceptibility to exclusionary strategies of governmentality, writing, *I would like to be a U.S. citizen. I signed the papers because I can't read English. I'm trying to understand how I can stay over here with my family.*

These claims deny the legitimacy of the “deportation terror”, the technology of power which seeks to exclude them from the nation. Noncitizens articulate their right to remain in the United States, expressing their own particular identities *vis a vis* the state. In doing so, they challenge conventional notions of citizenship and belonging and render the “deportation terror” all the more terrorizing and irrational. These letters challenge the legal and social construction of immigrants as alien “Other.”

These excerpts are redacted from letters written by detainees in county jails of North Carolina and federal detention centers in Georgia and Alabama.<sup>293</sup> These voices from “inside” – inside the county jails and federal detention centers where immigrant bodies are held – aim to contextualize the following discussion of enforcement practices in North Carolina. These human perspectives on detention and the presence of deportability should help keep into focus the broader trajectory of the deportation terror, from enforcement to detention to deportation. Since North Carolina lacks a federal detention center, immigrants placed in removal proceedings by ICE eventually end up in Georgia or Alabama, most often Stewart Detention Center in Lumpkin, Georgia. I want to focus on these narratives to inject –albeit in fragments – voices of those experiencing the outcome of such practices.

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<sup>293</sup> Chapter 3 discusses the “detention pipeline” for immigrants put into removal from North Carolina.



### **3. The Borders Within: Immigration Enforcement in North Carolina**

In this chapter I move from the San Diego County border region to the interior of the United States through an examination of immigration enforcement in North Carolina. I first introduce the terrain by analyzing narratives of local-federal enforcement. Next, I review the rise of 287 g and Secure Communities in North Carolina and analyze the rhetorical practices supporting this rise through a close reading of a North Carolina Sheriff's Association resolution. I then contextualize the rise of local-federal enforcement in North Carolina in the broader shift toward restriction in the U.S. Southeast. I examine the evolution of state laws in North Carolina dealing with immigration, drawing out further evidence for the expansion of the disciplinary state. I then analyze 287 g and Secure Communities in Wake, Durham, and Guilford Counties, demonstrating through the comparison how enforcement in North Carolina too is a "patchwork." I argue that these local-federal collaborations support the "bordering" of interior space, through governmentality as seen in categorization, classification, and spatial policing practices. In turn, this reproduces the "deportation terror", as local law enforcement perform the preliminary work of federal immigration officials and "extend the gatekeeping work performed at the border deep into the interior."<sup>294</sup>

#### **The Perils of "Crimmigration" in Local-Federal Collaborations: Voices from the Ground**

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<sup>294</sup> *Op. Cit.*, Buff, Rachel Ida. p. 525.

Pedro<sup>295</sup> was trapped between two legal systems. For over a year he had been dodging his ex-partner's physical attacks, stalking, and threats to "have his ass deported", a common tactic of domestic abuse when the abuser (Pedro's ex-wife in this case) is documented and the victim (Pedro) is not.<sup>296</sup> With Pedro's help, a Raleigh police detective had been gathering a case against his ex, when she filed a false report against him. Pedro waited for the detective to arrive at his job one morning and peacefully accepted arrest. He was booked into the Wake County Jail, where he immediately came to the attention of Immigration and Custom Enforcement (ICE) through Wake County's Secure Communities partnership.<sup>297</sup> That the false charges against him in state court were eventually dropped didn't matter; once he entered the Wake County Jail, he simultaneously was ushered into immigration removal proceedings.

Pedro remembers being funneled into ICE's system immediately. He recalls that

When you've been arrested, when you get to the office at the jail, they ask you for information – where you live, my address, and they take your fingerprints to figure out who this person is, that he's not lying. Then, you go to the infirmary to get the TB shot...and then ICE takes you [for questioning].<sup>298</sup>

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<sup>295</sup> Names and identifying details have been changed to preserve the anonymity of subjects and as per the IRB protocol for this project.

<sup>296</sup> Interview, 9/9/2010, Raleigh, North Carolina. Pedro acknowledged that his case was much less common than domestic violence against women. He commented that "The jail is full of people who – have domestic violence charges. Lots of people. It's difficult because for the first time, a man in my case [is the victim], they don't believe me. Because for the majority it's the opposite, they [the men] do the abuse."

<sup>297</sup> Wake County also has an active 287(g) Jail Enforcement model, but apparently Pedro was processed through Secure Communities. How each one works in Wake County is explained below..

<sup>298</sup> Interview, 9/9/10, Raleigh, North Carolina.

Pedro's case illustrates some of the challenges of the merging of the criminal justice and civil immigration system in counties with local-federal immigration enforcement collaborations. Unlike the vast majority of people processed for removal, Pedro qualified for immigration relief – a U-Visa for crime victims<sup>299</sup> - and found an attorney. However, despite concerted efforts between his criminal and immigration attorneys to coordinate his release from state custody with an immigration bond, there was a one-week gap between when his state charges were dropped and his immigration bond hearing occurred. ICE took custody, transferring him first to Alamance County Jail for a few days.<sup>300</sup> Though he was granted bond at a hearing at Alamance several days later, his family was unable to pay it quickly enough to stop his transfer to Stewart Detention Center in Lumpkin, Georgia, nine hours by car.

His rapid transfer shows how quickly those in North Carolina are moved through the system, most often to remote detention centers in Georgia or Alabama since North Carolina lacks its own federal detention center. Sam, an immigration attorney, finds that one of the biggest problems with the geography of detention is trying to get an immigration bond. He recalls clients being moved from Wake County to Stewart as

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<sup>299</sup> U-Visas allow victims of “qualified criminal activity” and their family members temporary immigration benefits (i.e., up to temporary residence and a work permit) and the chance to adjust to legal permanent residence after 3 years. The U-Visa (and the T-Visa for victims of human trafficking) came to be through the 2000 Victims of Trafficking and Violence Protection Act of 2000. A federal, state, or local law enforcement agent has to certify that an investigation or a prosecution would be damaged without the help of the immigrant. National Immigration Law Center. “Congress creates new “T” and “U” visas for victims of exploitation.” *Immigrant's Rights Update*, Vol. 14, No. 6, October 19, 2000. <http://www.nilc.org/immlawpolicy/obtainlpr/oblpr039.htm>. (Accessed May 24, 2011).

<sup>300</sup> Alamance County Jail, like many local jails in 287(g) counties, has a contract with ICE (Intergovernmental Service Agreement) to hold immigrant detainees temporarily in their facilities.

soon as 48 hours after their arrest on state charges.<sup>301</sup> Lara, another immigration attorney, adds that this rapid transferring is “terrorizing”,

especially for family members. A detained person doesn’t know where they’re being taken or why. They’re just told, ‘You’re going to Atlanta, to get deported,’ is what most people are told.<sup>302</sup>

The rapid transfer of noncitizens through the detention pipeline, from North Carolina outward, relies on the “interoperability” of several bureaucratic systems, criminal justice and immigration. It reflects the “geographic management and social control” of populations through the techniques of governmentality: noncitizens in North Carolina are processed for removal on the interior through the interplay of the “institutions, procedures, analyses, and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power.”<sup>303</sup>

Statistics show that often immigrants processed for removal through local-federal collaboration are not charged with serious crimes,<sup>304</sup> and anecdotes suggest they are sometimes not charged with any offense at all. For example, in Alamance County, several people were arrested (and eventually deported) for fishing without a permit.<sup>305</sup> Another well-known case in Alamance County involved a mother being arrested for a traffic infraction at night and forced to leave her children on the side of the interstate for

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<sup>301</sup> Interview, 7/22/10, Raleigh, North Carolina.

<sup>302</sup> Interview, 8/27/10, Raleigh, North Carolina.

<sup>303</sup> Foucault, Michel. Faubion, James D., ed. “Governmentality.” *Power. Essential Works of Foucault 1954-1984*. Paul Rabinow, Series Ed.

<sup>304</sup> See *Op. Cit.*, Office of the Inspector General, UNC Immigration / Human Rights Policy Clinic and the American Civil Liberties Union of North Carolina, UNC Latino Migration Project, Center for Constitutional Rights reports.

<sup>305</sup> Interview, 8/24/10, Raleigh, North Carolina. Alamance County, one of the first 287 g counties in the state whose Sheriff’s Office is currently under investigation by the Department of Justice, has faced scrutiny for practices of racial profiling.

eight hours in June of 2008.<sup>306</sup> Alejandra, a young adult whose parents brought her to the United States when she was 7 years old from Mexico, told of an acquaintance that was driving in Raleigh – Wake County - when an officer saw him drinking something and suspected it was alcohol. Once he pulled him over and saw it was *Jarritos*, a Mexican soda,

the cop went on to say, you know, like ‘Are you illegal? What’s your legal status?’ And the guy just freaked out, he didn’t know his rights, and was just like, ‘Yeah.’ Totally turned himself in...he got arrested and you know – he’s probably already been deported.<sup>307</sup>

Sam had a client who was arrested for swerving too close to the yellow line and another who was taken into state custody for being an “accessory” to a DWI; both were flagged for removal following their arrests. In Lara’s experience, common removal cases begin as traffic violations, noise violations, and DWI, but “the worst situations are those domestic violence ones where the victim...gets picked up.” She recalls a case where

this woman had been abused by the father of her children for years and years. And the time she finally got it in her to hit him back, she got arrested.

...Once the abuser saw what was happening...that she was in the jail, and she wouldn’t be able to get out...he was all apologetic but it was too late...She was already in the system, she already had that detainer and was going to get removed.<sup>308</sup>

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<sup>306</sup> Interviews, 7/22/10 and 8/24/10. TimesNews.com. “Mom Arrested By Alamance Deputies While Children Stranded on Interstate.” July 23, 2008. <http://www.thetimesnews.com/articles/alamance-15853-sheriff-county.html>.

<sup>307</sup> Interview, 9/6/10, Raleigh, North Carolina.

<sup>308</sup> *Ibidim*.

Colin, who runs a local Catholic Worker House which hosts many Latina immigrants, also mentioned victims being arrested and then processed for removal through local-federal collaborations. He reflected that

what 's happening with ICE and 287 g and Secure Communities is, that you're making them even more vulnerable, because these women now are afraid to call the police for any reason, because if the police come because their car got stolen they're afraid they'll be arrested because they're not citizens, or if they get beat up by somebody, they don't want to report a crime. If they get robbed, they don't want to report a crime. They're afraid to, they're afraid to turn to the government for *anything*, for help – because they think that they're going to be deported.<sup>309</sup>

Alejandra described the same fear of local law enforcement. She remembered some acquaintances getting pulled over, “and the cop [was] behind them. And they – they freaked out and they were so freakin’ scared that they just jumped out of their car and ran into the woods. Ran into the woods.” She stressed that “things like that happen every day...People are *afraid*.” In their descriptions of the fear felt in the migrant community, Colin and Alejandra reveal how migrants internalize the disciplinary state as they experience deportability as a presence and a “constant possibility”, since local authorities collude with ICE in the deportation terror. Because of this phenomenon, local and national reports have demonstrated that local participation in federal immigration enforcement undermines community policing and safety.<sup>310</sup>

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<sup>309</sup> Interview, 8/24/10, Raleigh, North Carolina.

<sup>310</sup> See UNC Immigration / Human Rights Policy Clinic and the American Civil Liberties Union of North Carolina. “The Policies and Politics of Local Immigration Enforcement Laws.” February 2009. [www.law.unc.edu/documents/.../287gpolicyreview.pdf](http://www.law.unc.edu/documents/.../287gpolicyreview.pdf). See also UNC Latino Migration Project. “The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities.” Mai Thi Nguyen and Hannah Gill, February 2010. [isa.unc.edu/migration/287g\\_report\\_final.pdf](http://isa.unc.edu/migration/287g_report_final.pdf).

The trivial infractions that lead migrants into removal proceedings through local-federal collaborations show that noncitizens are subject to discipline and the punishment through the “panopticism of every day.” As in the space of the border, local law enforcement officers may detain noncitizens and suspected noncitizens for the most minor infractions -or, according to the anecdotes above, for no infraction, and for being a *victim* of domestic violence -- and usher them into removal proceedings. The difference on the interior is that this occurs almost exclusively through the mechanisms of formal local law enforcement collaborations with ICE.

The “deportation terror” thus operates through the “crimmigration crisis”, as ostensibly “criminal” arrests funnel people into “civil” removal proceedings. Once someone is booked into a county jail that participates in 287(g), Secure Communities, or both, he or she gets an ICE “detainer” after being flagged as potentially unauthorized. This is a request that the county Sheriff hold the person after his or her state charges are resolved (something they can legally do for up to 48 hours), so that ICE can put the person into immigration detention. Thus, the implementation of 287(g) and Secure Communities has caused a surge in deportations of immigrants for many minor infractions, contrary to their stated intent.<sup>311</sup>

Local-federal collaborations bring the racialized enforcement sanctioned in the space of the border into the interior by tacitly enabling local law enforcement to bring people into immigration proceedings, simply by arresting them. This opens space for abuses, as we see in the ethnic profiling of the person arrested for drinking the *Jarritos*.

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<sup>311</sup> This instance seems to qualify as “driving while brown.” Muchetti, Anthony E. “Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities.” *Harvard Latino Law Review*, Volume 8, Spring 2005. <http://www.law.harvard.edu/students/orgs/llr/vol8/mucchetti.php>. (Accessed October 18, 2010).

Once booked into jail, noncitizens are immediately flagged through 287 g or Secure Communities; the state charges that were the pretext for their arrest have no impact on their immigration proceedings. As Lara puts it, “you get a detainer lodged on you, after that...it doesn’t matter. You just get ground through the system and put into removal with everybody else.”<sup>312</sup>

## **Local Contexts**

### *The Rise of 287 g and Secure Communities in North Carolina*

The implementation of 287(g) and Secure Communities partnerships in North Carolina began in the late 2000s. This surge in local-federal collaborations in the state parallels a national shift toward such practices since the Obama administration took power in 2009, alongside a decrease in more high profile enforcement practices like workplace raids. The implementation of 287(g) and Secure Communities in North Carolina counties can also be tied to a broader punitive response to immigration in the Southern region in the late-20<sup>th</sup> and early 21<sup>st</sup> centuries.

As mentioned, 287(g) partnerships are agreements wherein local law enforcement agencies enter into Memoranda of Agreements (MOA) with Immigration and Customs Enforcement (ICE) to deputize certain local law enforcement officers to perform immigration functions after they receive around four weeks of training by

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<sup>312</sup> Interview, 8/27/10. Raleigh, North Carolina.



ICE.<sup>313</sup> There are two types of 287(g) models, the Jail Enforcement (JEO) model (in which certain officers are deputized to interview noncitizens after they are booked into jail) and the Task Force (TFO) model (in which certain officers are trained to perform immigration enforcement functions within felonious field investigations). 287(g) partnerships were authorized through section 287(g) of the Immigration and Nationality Act, part of 1996's Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).<sup>314</sup> Despite becoming law in 1996, the first 287(g) agreement was not signed until July 2, 2002.<sup>315</sup> Thus, 287(g) was not an active component of federal immigration enforcement until after 9/11, and the expansion of 287(g) throughout the Bush administration and into the Obama administration is often understood in the context of a broad expansion of immigration enforcement under the guise of national security interests.<sup>316</sup>

In contrast to 287(g) partnerships, which occur on the county or city level, Secure Communities is signed on the state level. A Durham County Sheriff's Office representative clarified that Secure Communities is basically administered by the North Carolina Sheriff's Association, which enters into an agreement with ICE and decides the order in which to implement it across the state. He adds that since the agreement

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<sup>313</sup> *Op. Cit.*, U.S. Immigration and Customs Enforcement. "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act." <http://www.ice.gov/news/library/factsheets/287g.htm>. (Accessed January 11, 2011.)

<sup>314</sup> The statute empowers ICE to train local and state law enforcement agents to perform certain immigration functions pursuant to the formation of MOAs with the agencies.

<sup>315</sup> *Ibidim*. This was the Florida Department of Law Enforcement Task Force model.

<sup>316</sup> Out of 69 current active 287 g partnerships, only 7 were enacted during the Obama administration. Immigration and Customs Enforcement. "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act." <http://www.ice.gov/news/library/factsheets/287g.htm#signed-moa>. (Accessed: May 25, 2011).

This decrease likely reflects both the rapid expansion of Secure Communities and the fact that 287 g has drawn sustained criticism in the late 2000s, as Chacón points out.

has been reached, the program “is required.”<sup>317</sup> Just like in California, counties with Secure Communities merge the fingerprints of those arrested at local jails with DHS databases to identify unauthorized migrants.

North Carolina has taken a leading role in adapting 287 g agreements and Secure Communities in the state and in the nation, and has emerged as a “laboratory” for local participation in federal immigration enforcement through the Illegal Immigration Project of the North Carolina Sheriff’s Association. As of May 7, 2011, the state had 7 active 287 g partnerships – more than any other state in the nation except for Arizona and Virginia (each with 9).<sup>318</sup> Since mid-March 2011, Secure Communities is activated in all 100 counties of North Carolina. This development occurred soon after California activated the program in its 100 counties in late February 2011, reflecting the two states’ concurrent adoption of this particular technology.<sup>319</sup>

The North Carolina Sheriff’s Association has played a huge role in the implementation of these policies, helping the state to emerge as a testing ground for the development of new technologies of the “deportation terror.” It has done this

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<sup>317</sup> Interview, 8/19/10. Durham, North Carolina.

<sup>318</sup> *Op. Cit.*, US Immigration and Customs Enforcement. “Fact Sheet: Delegation of Immigration Authority Section 287 (g) Immigration and Nationality Act.” <http://www.ice.gov/news/library/factsheets/287g.htm#signed-moa>. (Accessed: May 7, 2011).

<sup>319</sup> Cowell, Rebekah L. “Controversial Immigration Enforcement Program Goes Statewide in North Carolina.” Institute for Southern Studies, Facing South.

<http://www.southernstudies.org/2011/03/controversial-immigration-enforcement-program-goes-statewide-in-north-carolina.html>. March 21, 2011. (Accessed: May 7, 2011).

U.S. Immigration and Customs Enforcement. “Secure Communities’ information-sharing capability now activated across California.” February 24, 2011.

<http://www.ice.gov/news/releases/1102/110224losangeles.htm>. (Accessed: May 7, 2011). However, as of May 2011, California legislators were formulating a bill that would only let localities participate in Secure Communities if they choose through a resolution to do so. The San Francisco Sheriff has sought to opt out of the program along with several other jurisdictions. See Associated Press. “Calif May Let Locals Opt Out of Immigration Checks.” April 30, 2011. <http://www.google.com/hostednews/ap/article/ALeqM5hNAwU8ELrlnEgo76B9ktB115rRNQ?docId=8aa8749b6bd64570a3ef764bf94edb7d>. (Accessed: May 7, 2011).

principally through the Illegal Immigration Project. The project was allocated \$750,000 by the North Carolina General Assembly in 2007 to be used by sheriff's offices around the state to apply for and enter into 287 g agreements. The money passed directly to the NCSA and had no reporting requirements included. \$600,000 was allocated to the NCSA in 2008, though with some reporting requirements, and \$150,000 during the 2009 session despite tremendous budget cuts.<sup>320</sup> As Mary, a pro bono immigration attorney, commented, this funding process had enormous transparency issues, since "there was no way to really track what happened to that money after the Sheriff's Association got it."<sup>321</sup>

Why was this money allocated, and why at this time? The move followed the passage of House Resolution 2692 in 2006, which supports local law enforcement- ICE collaborations. According to a PowerPoint presented to the North Carolina Association of County Commissioners by Tony Queen, the Director of Special Projects for the North Carolina Sheriff's Association (who joined to oversee this project and whose salary was paid by the NCSA funds), the project's goals were to "provide technical assistance and advice" to Sheriffs related to ICE, to provide technical assistance to Sheriffs wanting to enter into in a 287 g agreement, and to "reimburse Sheriffs for training costs and replacement personnel to participate in training."<sup>322</sup>

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<sup>320</sup> Preston, Sarah. "Current and Future Legislation in the Area of Immigration." North Carolina Advocates for Justice. 2009. [http://www.ncatl.org/file\\_depot/0-10000000/0-10000/9208/folder/87324/PrestonWolf\\_Legislation.pdf](http://www.ncatl.org/file_depot/0-10000000/0-10000/9208/folder/87324/PrestonWolf_Legislation.pdf). (Accessed: May 8, 2011). See also North Carolina Sheriff's Association. "Illegal Immigration Project." Pdf. <http://www.bluelineradio.com/sheriffsdole.pdf>. (Accessed: May 7, 2011).

<sup>321</sup> Interview, Raleigh, North Carolina, 8/24/11.

<sup>322</sup> Queen, Tony. "North Carolina Sheriff's Association Illegal Immigration Project." PowerPoint. North Carolina Association of County Commissioners. North Carolina Sheriffs Association. [http://www.ncacc.org/annualconf/2008-b1\\_queen.ppt#256.1](http://www.ncacc.org/annualconf/2008-b1_queen.ppt#256.1). (Accessed: May 8, 2011).

The 2008 presentation to the county commissioners (who have shown extreme support for the expansion of local-federal policing) reveals North Carolina emerging as a site for innovation in local-federal collaboration. The presentation discussed an “Executive Steering Committee” including senior ICE officials, 10 of North Carolina’s sheriffs, and NCSA staff. The presentation explains that this Committee configuration is “First in the nation and is a model that ICE plans to use nationwide,”<sup>323</sup> establishing the state as a “testing ground” for innovation in local-federal immigration enforcement. Further, the PowerPoint stresses that the 287 (g) Jail Enforcement Model “only applies to **Criminals** who also happen to be illegal aliens” and asserts that people identified through the program “**self select**” by committing a crime and being arrested..<sup>324</sup> The anecdotes above and case studies below prove these claims to be erroneous.

Finally, the PowerPoint predicts the transformative impact of Secure Communities.<sup>325</sup> In a slide discussing enforcement in counties without 287 g programs, it outlines a cruder process of checking the backgrounds of those arrested for felonies and/or DWI who claim a foreign place of birth, the “Illegal Alien Query.” The same slide declares that “Interoperability will change the landscape,”<sup>326</sup> when Secure Communities starts being implemented across the nation in October 2008. This “interoperability” indeed has changed the “landscape” of local-federal enforcement, since it enables *every* jurisdiction to link up with ICE through the database and alerts

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<sup>323</sup> *Ibid.*, Slide 3.

<sup>324</sup> *Ibid.*, Slide 5.

<sup>325</sup> Secure Communities did not begin anywhere in the nation until October 2008.

<sup>326</sup> *Ibid.*, Slide 8.

ICE to anyone booked into local custody that is potentially “removable.”<sup>327</sup> The PowerPoint then outlines how “Interoperability” will occur in three phases, beginning in September 2006 with limited users and access to limited data, and following up with the “initial rollout” in October 2008 with the full use of the IDENT (DHS) database.<sup>328</sup>

State advocates also perceive North Carolina as a “laboratory” of sorts for restrictive immigration enforcement collaborations. Sara, an advocate who organizes the immigrant rights groups in the state and also participates in national coalitions, commented that

I’ve heard people at the national level say that ICE actually sees North Carolina as one of the places to test new programs, and that’s why we were approved for more 287 g MOUs, and for more Secure Communities pilot programs, just because the relationships that they’ve built have been longer than some of the other states, so they see it as a place to roll out new programs.<sup>329</sup>

Thus, North Carolina seems to be an intentional site of emerging technologies of the “deportation terror.” To understand why, a closer look at the rhetoric of the North Carolina Sheriff’s Association will be instructive – reminding us of the importance of local political actors in shaping discourse and crafting policies. An examination of the broader political, economic, and social contexts of the shift toward restriction in the Southeast in general also informs North Carolina’s position as a “laboratory” of enforcement.

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<sup>327</sup> Though it does not engage local officers in actual immigration paperwork like 287 g – and thus might be considered less efficient in the actual process of putting people into removal—it enables *every* county, not just ones that have the will and resources for 287 g, to play a role in immigration enforcement. As national and local findings reflect, the program is bringing more and more people into removal proceedings through the arm of local policing.

<sup>328</sup> *Ibid.*, Slide 13.

<sup>329</sup> Interview, 9/1/10, Raleigh, North Carolina.

*Rhetorical Practices of the “Deportation Terror” and the “Bordering” of the Interior*

Ida Buff points out that “the deportation terror, in addition to being a technology of the state, is an ongoing rhetorical practice”<sup>330</sup>; the North Carolina Sheriff’s Association’s rhetoric around illegal immigration, advanced at the same time as the formation of the Illegal Immigration Project, contextualizes and contributes to the “deportation terror” in the state. A January 26, 2007 NCSA resolution sent to North Carolina Congressman Paul Luebke reveals the degree to which the Sheriff’s Association relied on the justification of the “terror context”, the perception of unprotected and lawless borders, and the conflation of immigrants with crime in their analysis of illegal immigration and embrace of local-federal collaborations. The resolution also contains a series of negative assertions – not founded on facts – regarding U.S. immigration.

The resolution asserts that the federal government has failed “in several significant ways.” It states that

Whereas, statistics show that many illegal aliens in the United States, including those in North Carolina, do not pay taxes, commit crimes against North Carolina citizens and others in this country lawfully, place tremendous strain on the social, economic, and natural resources in North Carolina, all of which result in spiraling costs and permanent loss of resources and opportunities for North Carolina citizens.<sup>331</sup>

The resolution expands its baseless claims, arguing that the lack of immigration law enforcement “drain[s] the resources of North Carolina at an alarming pace, jeopardizing the health, welfare, and most significantly, the safety of current and future generations

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<sup>330</sup> *Op. Cit.*, Ida Buff, Rachel, p. 529.

<sup>331</sup> North Carolina Sheriff’s Association. “Resolution by the North Carolina Sheriff’s Association.” Sent January 26, 2007. Received, 9/14/2010, Email attachment. From Katy Parker, American Civil Liberties Union of North Carolina, Director.

of North Carolina citizens.” It then links the majority of illegal drugs in North Carolina to the “porous southern borders of the United States” and blames the federal government for not dealing with Mexican and other drug cartels. Next, it argues that “reliable documented evidence indicates that terrorist groups...are entering the United States across its porous and essentially unprotected southern borders”, again, primarily due to the federal government’s refusal to acknowledge and “deal with” the threat and take “whatever steps are necessary to protect and control such borders”. Thus, the Sheriff’s Association couches its argument against illegal immigration in the language of the “War on Drugs”, the “War on Terror”, and the (enduring) war against welfare.<sup>332</sup> The rhetoric deployed by the NCSA, then, reveals the same conflation of illegal immigration with terrorism which underlies border enforcement programs like Operation Stonegarden. Further, the proposition couches its argument in similar discourses to those around California’s Proposition 187 of 1994, particularly in its argument that undocumented immigrants leech social services and its conflation of immigrants with criminality. We can also see similarities to the rhetoric supporting Arizona’s Senate Bill 1070 of 2010, in the depiction of “unprotected” borders and rampant crime.

The resolution reaches a crescendo when it asserts itself as a voice for other North Carolinians:

**Whereas**, the vast majority of North Carolinians are now demanding that the federal government, as well as their state and local governments and law enforcement agencies, immediately take whatever steps are

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<sup>332</sup>The war on welfare was already in many ways fought and won with 1996’s welfare reform bill, as Bohman and Murakawa also discuss. However, even though (they argue) we’ve moved from the “welfare state” to the “disciplinary state”, anti-welfare rhetoric remains an extremely important rhetorical tactic for anti-immigrant groups.

necessary to address the invasion of illegal aliens into North Carolina and are further demanding that all illegal aliens must be held accountable for breaking the laws of the United States and promptly deported or held for deportation after serving sentences imposed in the United States [my underlines].

The resolution then calls for all levels of government in the state to formally make “pleas” to the federal government, to “continue to address the growing crisis created by illegal aliens” in the state, to allow local and state agencies and law enforcement to “enforce all laws regarding detention and deportation of illegal aliens in North Carolina”, to work to establish additional immigration courts and adequate infrastructure for detention facilities, and so forth.

The resolution sends a strong message, not just against undocumented immigration to the state, but against immigration in general. It urges North Carolina government to request that the federal government “immediately simplify and significantly reduce the number and different types of Visas permitting entry into the United States.” Sara commented that “in that resolution you see that the Sheriff’s Association in North Carolina doesn’t even support *legal* immigration... they want Visas and channels for *legal* immigration to be lowered as well”, and concluded that “I think that they’re acting out of a very white supremacist and xenophobic place”, as evidenced in the “othering language and the – dehumanizing language they use.”<sup>333</sup>

Through its conflation of immigrants with drug smuggling, terrorism, and crime, its assertion of a “porous” and uncontrolled border, and its call for enhanced local-federal enforcement collaborations on the interior “to take a firm stance” against the

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<sup>333</sup> *Op.Cit.*, Interview, 9/1/10.



“illegal alien invaders” in the state who presumably cross that border, the North Carolina Sheriff’s Association resolution indexes the movement of border enforcement *into* the interior. The Sheriffs’ Association seems to be saying that since the federal government is not controlling the border and all its ills, its role will be to serve as gatekeepers of the nation by policing the border within. By collaborating with ICE in 287 g partnerships and later Secure Communities, the NCSA intensifies the surveillance and apprehension of undocumented migrants that previously was confined to border regions, in a sort of “bordering” of the interior space. Secure Communities also uses the IDENT database system that was first developed in San Diego, marking the literal transport of technologies developed on the border into the interior. Also, following this resolution and through the Illegal Immigration Project funds, North Carolina gained 5 additional 287 g partnerships<sup>334</sup> and began implementing Secure Communities.

The rhetoric of the resolution itself is a significant component of the deportation terror. In associating immigrants with crime, drugs, and terrorism, the resolution epitomizes Lisa Flores’ argument about the construction of “rhetorical borders.” Flores demonstrates the significance of rhetorical practices, alongside local and federal state forces, in shaping and justifying massive deportations.<sup>335</sup> She points out that immigration and criminality are so frequently linked rhetorically that “the slippage from

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<sup>334</sup> These are in addition to Guilford County’s short-lived 287 g program, discussed below.

<sup>335</sup> Flores, Lisa. “Constructing Rhetorical Borders: Peons, Illegal Aliens, and Competing Narratives of Immigration.” *Critical Studies in Media Communication*. Vol. 20, No. 4, Dec 2003, pp. 362-387. <http://www.uky.edu/~addesa01/documents/ConstructingRhetoricalBorders.pdf>. (Accessed: May 8, 2011).

Flores argues that the deportation and repatriation campaign of the 1930s functioned to create a rhetorical border between Mexico and the United States, between “Americans” and Mexican Americans. She uses Ono and Sloop’s argument (2002) that nations and borders are constructed through rhetorical processes.

immigrant to criminal seems almost natural.”<sup>336</sup> In the post-9/11 era and a period of Mexico’s raging drug war, one might argue that the slippage has extended to terrorist and drug trafficker as well, in some contexts. Such rhetorical practices both reflect and shape discourse around immigration and immigrants.

*The Southern Context: Immigration and Restriction in the US Southeast*

The increase in 287(g) and Secure Communities in North Carolina has occurred alongside a recent wave of immigration to the Southeast and with it a backlash in legislation and public perceptions. Unlike other regions of the country, large-scale immigration to the South did not occur until the 1980s and 1990s. Scholars relate a convergence of factors to the wave of immigration to the South in the late 20<sup>th</sup> century. These include the effects of legalization under the Immigration Reform and Control Act of 1986 and stricter border enforcement, both leading to more permanent settlement nationally, as well as economic recession in more traditional immigrant destination states like California, a resulting backlash against immigrants in these states, and subsequent migration to new destinations.

Economic globalization made the South a particularly appealing destination for immigrants. When the Southeast first started receiving immigrant workers, the region had a relative absence of anti-immigrant sentiment.<sup>337</sup> Although global competition led to the decline of certain Southern industries, Southern states appealed to many domestic

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<sup>336</sup> *Ibid.*, p. 363.

<sup>337</sup> Odem, Mary E., Lacy, Elaine. “Introduction.” In *Latino Immigrants and the Transformation of the U.S. South*. p. xvi. This contrasted to the growing sentiments in California at the time leading into Proposition 187. Meanwhile, in the 2000s California state policy shifted toward accommodation while recently southern legislation has shifted toward restriction, as discussed below.

and global corporations by offering lower taxes, little unionization, and business incentives. The arrival of these businesses brought a demand for additional low wage workers. Simultaneously, free trade and the North American Free Trade Agreement (NAFTA) caused destabilization in many Latin American economies in the 1990s. Neoliberal restructuring in countries like Mexico led to the displacement of many workers, especially farmers, which stimulated migration to the U.S. in general. Political unrest in Central American countries like El Salvador and Guatemala in the wake of Civil Wars and US intervention combined with this economic instability to drive many North.<sup>338</sup>

In the 1990s, southeastern states recruited migrant workers in the carpet, food-processing, and construction industries, first from Texas and California but later directly from Mexico and Central America. They did this through both temporary work visa programs and recruiters.<sup>339</sup> Demand for cheap labor in the meatpacking industries brought Latino immigrants to towns across North Carolina and Georgia, as companies actively recruited them.<sup>340</sup> A lack of native-born interest in “dirty” jobs combined with threats of unionization and higher wages to bring Latinos to the meatpacking and construction industries.<sup>341</sup> As Lacy and Odem point out, the late 1990s saw chain

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<sup>338</sup>See Odem, Mary E., and Lacy, Elaine, ed. *Latino Immigrants and the Transformation of the U.S. South*. Athens: University of Georgia Press, 2009; Smith, Heather A., and Furueth, Owen J. *Latinos in the New South: Transformations of Place*. Aldershot, England; Burlington, VT: Ashgate, 2006.

<sup>339</sup>Smith-Nonini, Sandy. “Federally Sponsored Migrants in the Transnational South.” In *American South in a Global World*. Peacock, James et al ed. Chapel Hill: UNC Press, 2005. *Op. Cit.*, Odem, Lacey. p. xvi.

<sup>340</sup>Lippard, Cameron. Gallagher, Charles. “Immigration, the New South, and the Color of Backlash.” p. 4. In *Being Brown in Dixie: Race, Ethnicity, and Latino Immigration in the New South*. Lippard, Cameron D., Gallagher, Charles A., ed. Boulder: FirstForum Press, 2011.

Citing Parrado, E. and Kandel, W. “New Hispanic Migrant Destinations: A Tale of Two Industries.” In *New Faces in New Places*. Massey, Douglas, ed. New York: Russell Sage Foundation, 2008.

<sup>341</sup>*Ibid.*, p. 5.

migration and enhanced employer recruitment. As migrants began settling in the southeast, migration streams developed, and the corresponding resources and social networks stimulated migrant settlement across the region.<sup>342</sup>

As the Latino immigrant population in the South increased in the late 1990s and 2000s, the tone toward immigrants began to shift in the region. Building backlash linked to demographic change<sup>343</sup> and the economic recession of the latter 2000s stymied anti-immigrant sentiments, political rhetoric, and ultimately restrictive legislation and policies.<sup>344</sup> These restrictive laws typically aim to discourage undocumented immigrants from coming to a region and to push current unauthorized immigrants out, though some impact authorized immigrants and other community members as well. Local ordinances, stemming from frustrations with slow action on the state and federal level, have also appeared throughout the South.<sup>345</sup> Thus, North Carolina's embrace of

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<sup>342</sup> *Op. Cit.*, "Introduction." P. xvi.

<sup>343</sup> Below, I will briefly mention the significance of immigration to the south in reconfiguring or disrupting racial binaries (as some argue) in the specific context of North Carolina. Unfortunately this discussion merits much more space than it is receiving here.

<sup>344</sup> However, there are localized exceptions to the general move toward a unilaterally restrictive approach. For example, William E. Baker and Paul Harris analyze Dalton, Georgia's response to immigrants working in its carpet industry and a subsequent need for bilingual teachers in its schools. The city organized a task force in 1995 and dedicated three-quarters of a million dollars to "The Georgia Project", a nonprofit organization dedicated to supporting Latino education that connected the city with the University of Monterrey. However, the city police chief later joined the INS in the first Joint Immigration Task Force (JITF) in the nation. In response, the Chamber of Commerce, the community college, and several church groups stepped in to develop programs to support the immigrant community. The authors argue that the two-pronged strategy of "law enforcement and needs response" indicates a "successful balanced approach", though this is debatable. "Success Stories: Proactive Community Responses to Immigration." In *Being Brown in Dixie: Race, Ethnicity, and Latino Immigration in the New South*. Lippard, Cameron D., Gallagher, Charles A., ed. Boulder: FirstForum Press, 2011. Odem and Lacey mention that DeKalb County, Georgia, part of the Atlanta metropolitan area, has aimed to accommodate the increasing immigrant community through school programs designed for foreign-born students and hiring Latino law enforcement officers. "Popular Attitudes and Public Policies." In *Latino Immigrants and the Transformation of the U.S. South*. p. 157.

<sup>345</sup> State laws in Georgia, South Carolina, and North Carolina have been enacted with similar provisions toward this goal, beginning in 2006 with the Georgia Security and Immigration Compliance Act, or Senate Bill 529 which restricts social services, requires that all arrested for DUIs and felonies be checked

restrictive immigration enforcement has occurred alongside a national and Southern trend toward punitive policies on both the state and local levels. Restrictive immigration policy and political rhetoric by the close of the 2000s can also be linked to the failure of Comprehensive Immigration Reform in 2007. The southern states' tacit embrace of migrant labor in the South alongside a growing formal and symbolic exclusion of migrant bodies (through the enactment of restrictive local and state policies) parallels the San Diego-Tijuana border's legacy of regulating exploitable migrant labor through controlling bodies at the border in the "deportation terror."<sup>346</sup>

*State Laws in North Carolina: Moving Toward Restriction in the 2000s*

Along with implementing 287 g programs and Secure Communities, North Carolina has also enacted state laws addressing immigration in the past several years. The majority have restricted immigrants' rights. Perhaps one of the most significant legislative changes was the restriction of driver's licenses. In the late 1990s, Governor Jim Hunt's administration had worked with Latino leaders to remedy safety issues resulting from undocumented migrants driving on state roads without driver's licenses. The administration had ultimately expanded migrant access to driver's licenses. Utility bills and lease agreements became acceptable proof of residency for obtaining a driver's license from the North Carolina Division of Motor Vehicles. However, after 9/11 lawmakers changed the policy to require the Individual Taxpayer Identification Number to obtain a license. However, since everyone working in the United States receives an

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for legal status, encourages local law enforcement collaborations with Immigration and Customs Enforcement (ICE), and restricts undocumented labor.

ITIN, undocumented migrants could still receive a license. In the three years which followed, the DMV issued around 179,000 licenses to people who presented only the taxpayer ID numbers.<sup>347</sup> In 2004, after dealing with claims of identity theft and fraud and with heavy pressure from the Department of Homeland Security, the DMV stopped accepting the *matricula consular* and other foreign documents. Then in 2006, lawmakers passed Senate Bill 206, which prohibited the DMV from accepting taxpayer ID numbers and thus restricted undocumented immigrants from obtaining state driver's licenses.<sup>348</sup> Undocumented migrants who obtained licenses prior to the prohibition are unable to renew them when they expire.

The shift in driver's license policy related to federal legislative shifts along with local circumstances. North Carolina General Assembly Representative and scholar Paul Luebke noted that federal policy and national anti-immigrant groups both pushed the driver's license debate. Luebke points out that beginning in the 2003 legislative session, "anti-immigrant activists" linked to national organizations like the Federation for American Immigration Reform (FAIR) focused on the driver's license issue and helped push for the legislative changes.<sup>349</sup> Apparently, FAIR used the War on Terror as a pretext to push its agenda, arguing that the state driver's license policy was "a

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<sup>347</sup> Raleigh News & Observer. "A brief history of the N.C. driver's license." "Under the Dome" blog. June 13, 2008.

[http://projects.newsobserver.com/under\\_the\\_dome/a\\_brief\\_history\\_of\\_the\\_n\\_c\\_drivers\\_license](http://projects.newsobserver.com/under_the_dome/a_brief_history_of_the_n_c_drivers_license). (Accessed: May 8, 2011).

<sup>348</sup> General Assembly of North Carolina. Session 2005. "Session Law 2006-264. Senate Bill 602." <http://ncleg.net/Sessions/2005/Bills/Senate/PDF/S602v6.pdf>. (Accessed May 8, 2011).

<sup>349</sup> Luebke, Paul. "Anti-Immigrant Mobilization in a Southern State." In *Being Brown in Dixie: Race, Ethnicity, and Latino Immigration in the New South*. Lippard, Cameron D., Gallagher, Charles A., ed. Boulder: FirstForum Press, 2011. p. 265.

source of easy and fraudulent ID cards for potential terrorists.” However, North Carolina’s then-Democratic governor, Mike Easley, and the then-Democrat-controlled Senate had no incentive to change the law. Then, the Department of Homeland Security pressured Easley to make the Mexican *matricula consular* invalid as the only official proof of personal identification for obtaining a driver’s license, a move also linked to the “terror context.” Thus, effective February 1, 2004, the *matricula* was invalid at the DMV offices<sup>350</sup>, beginning the process of restriction that culminated in Senate Bill 206’s prohibition of granting undocumented people licenses in 2006.

The federal REAL ID Act passed in 2005, in response to the 9/11 Commissions finding that many of the hijackers had obtained driver’s licenses allowing them to board planes, has also played a role in North Carolina’s move toward restricting driver’s licenses. Among other things, the REAL ID ACT that requires states issuing REAL ID driver’s licenses “incorporate certain information and security features into the cards, require proof of the identity and the U.S. citizenship or the legal status of the applicant, verify the source documents provided by the applicant, and establish specified security standards for officers who issue licenses and identification cards”<sup>351</sup>, exemplifying increasing practices of governmentality. Many political actors, including DHS Secretary Janet Napolitano, have made moves to repeal or amend the REAL ID Act due to its cumbersome technological requirements, privacy concerns, and high costs, and DHS has granted the 50 states continual extensions in meeting the requirements to

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<sup>350</sup> *Ibidim.*

<sup>351</sup> Riggsbee Denning, Shea. “The Impact of North Carolina Driver’s License Requirements and the REAL ID Act of 2005 on Unauthorized Immigrants.” *Popular Government*. Vol. 74, No. 3. p. 2. <http://sogpubs.unc.edu/electronicversions/pg/pgspsm09/online2.pdf>.

produce “tamper-free” driver’s licenses.<sup>352</sup> However, Shea Riggsbee Denning finds that North Carolina has met nearly all of the 18 benchmarks of compliance set forth in the Act,<sup>353</sup> suggesting that North Carolina’s restriction of driver’s license relates to a convergence of federal as well as local factors.

Colin discussed the legislative restriction of driver’s license for undocumented drivers as a turn toward the low points of restriction to come and an example of people in power restricting the rights of people of color. He saw a parallel to earlier times of segregation, sharing that

I would say that that to me was, as absolutely shameful, that North Carolina would pass anti-anti-immigration - *integration* laws. I mean, anti-immigration and anti-integration. To me, it was the same thing: White people in power passing laws to restrict the liberties of people of color. So what I saw happening was just a, sort of a retooling of the races and look of the...times of segregation in this country to apply to Hispanics, to Latinos. And it was the same kind of thing.

And it was a horrifying thing for the General Assembly to pass that law. Not only was it idiotic in terms of not being practical, making the roads more dangerous, increasing the likelihood that people would drive without valid licenses, without insurance. Not only was it just impractical, but it was - it was just incredibly racist...and cruel and unfair. It was very sad to me, like that was a - a real low point. But it got lower -I mean, ICE and 287 g. You know, when that kind of stuff happened, it got worse.<sup>354</sup>

The parallel Patrick draws between anti-integration and anti-immigration policies is a potent one in a southern state with a legacy of slavery and anti-black discrimination, and also of civil rights and resistance work. As Lipsitz and Gallagher point out, race relations in the south – in their current and historical contexts – and immigration “can be two separate entities”; the hardships faced by Latinos recently cannot be equated to

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<sup>352</sup> Hall, Mimi. “States get ‘Real ID’ extensions.” USA Today. April 2, 2008. [http://www.usatoday.com/news/nation/2008-04-02-realid\\_N.htm](http://www.usatoday.com/news/nation/2008-04-02-realid_N.htm). (Accessed May 25, 2011).

<sup>353</sup> *Op. Cit.*, Riggsbee Denning, Shea. p. 6.

<sup>354</sup> *Op. Cit.*, Interview, 8/24/11.



what African Americans have faced and continue to confront in the region.<sup>355</sup> Yet scholars have shown that Mexican Americans and immigrants alike “have endured the violence and degradation of white racism when facing the same lynching parties and *de jure* segregation” that African Americans faced in South and throughout the United States.<sup>356</sup> In strategic ways, then, “Blacks and Latinos find themselves in the same struggle.”<sup>357</sup> The link Patrick makes is an important one for resistance and coalition-building in the South.

Alejandra described the impact of the driver’s license policy shift on herself for her and her community. She is undocumented, but was able to obtain a driver’s license in 2004, prior to the crackdown. However, even that process made her very aware of her undocumented status. She recalled that “it was a little tough because the only types of IDs that I had to show was like school IDs, like transcript or whatever...So there were several DMVs that I had to go to, because one of them [said they couldn’t take] two of the same type of ID.” She eventually did obtain one (it expires in 2011), but navigating that bureaucracy made her realize, “Okay, this is real. I’m undocumented.” Her sister and parents, she said, currently drive with expired licenses; “it’s just gotten progressively more and more difficult.”<sup>358</sup> She added that when her license does expire, especially in 287 g counties, “I will go at the speed limit all the time, yeah. But– you know, you never know.”<sup>359</sup>

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<sup>355</sup> *Op. Cit.*, Lipsitz, Cameron, Gallagher, Charles. P. 8.

<sup>356</sup> *Ibidim.* See, for example, Orozco, Cynthia E. *No Mexicans, Women, or Dogs Allowed: The Rise of the Mexican American Civil Rights Movement*. Austin: University of Texas Press, 2009.

<sup>357</sup> *Ibidim.* See the Afterword for a discussion of coalition-building in North Carolina resistance work.

<sup>358</sup> *Op. Cit.*, Interview, 9/11/11.

<sup>359</sup> *Ibidim.*

Alejandra acknowledged that undocumented migrants with expired licenses or without licenses feel more afraid to drive through 287 g counties than other regions. Outside of those counties, “they’re not as afraid. But they’re aware – you know they’re still – there’s still the burden of you know, ‘I’m driving without a license, so if something happens I’m screwed.’” Her father has been stopped several times in the county where he works (which does not have 287 g), and “it’s not right...and it takes a toll on people somehow.”<sup>360</sup> Alejandra’s comments about identification and peoples’ fears of being stopped reveal how governmentality functions to exclude migrants from social incorporation, as their inability to obtain a driver’s license makes them more susceptible to deportability. Migrants thus internalize the deportation terror as they navigate the “patchwork” of local-federal enforcement.

Several laws passed in the late 2000s accommodated certain groups of migrants while various others restricted migrants’ rights. Senate Bill 1079 of 2007 makes non-residents who were victims of human trafficking eligible for state benefits.<sup>361</sup> 2007’s Senate Bill 1466 improves standards for migrant farm worker housing and authorizes civil penalties for noncompliance.<sup>362</sup> Restrictive laws passed at this time include State Bill 1955 of 2008, which allows for the limited release of certain prisoners into the

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<sup>360</sup> *Op. Cit.*, Interview, 9/6/11.

<sup>361</sup> National Council of State Legislatures Immigrant Policy Project. “2007 Enacted State Legislation Related to Immigrants and Immigration.” <http://www.ncsl.org/Portals/1/documents/immig/2007Immigrationfinal.pdf>. (Accessed May 9, 2011). North Carolina HB 1896, passed in 2006, makes trafficking a felony. National Council of State Legislatures. “2006 State Legislation Related to Immigration: Enacted and Vetoed. October 31, 2006.” <http://www.ncsl.org/Default.aspx?TabId=13137#Trafficking>. (Accessed May 9, 2011).

<sup>362</sup> National Council of State Legislatures.

custody of immigration officials for deportation.<sup>363</sup> North Carolina passed the aforementioned House Resolution 2692 in the middle of 2006, which approves a new immigration court in the state to speed deportations (currently operating in Charlotte, North Carolina), supports local law enforcement-ICE collaborations (funding the Illegal Immigration Project), and pressures Congress to make driving while impaired a deportable offense for both legally present and undocumented immigrants.<sup>364</sup> In North Carolina, Senate Bill 229 may also come into play in the local-federal enforcement context. The 2008 law requires that North Carolina jails check citizenship status of all DWI and felony arrests but implicitly allows them to check for other arrests.<sup>365</sup>

As of April 9, 2011, a number of restrictive bills impacting immigrants were pending before the North Carolina General Assembly. House Bill 343 is the state's "Copycat" version of Arizona's SB1070. Among other provisions, the bill would make it a state crime to not carry identification documents, crack down on "transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States", require law enforcement to investigate anonymous citizen complaints, and

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<sup>363</sup> National Council of State Legislatures. "State Laws Related to Immigrants and Immigration in 2008." <http://www.ncsl.org/Portals/1/documents/immig/StateImmigReportFinal2008.pdf>. (Accessed: May 9, 2011).

General Assembly of North Carolina. Session 2007. "Senate Bill 1955." <http://www.ncga.state.nc.us/Sessions/2007/Bills/Senate/PDF/S1955v5.pdf>. (Accessed: May 9, 2011).

<sup>364</sup> The largely symbolic provision encouraging Congress to make DWI a deportable offense for *legally* present residents as well as undocumented migrants shows the state legislature wanting to crack down not just against undocumented migrants but also those legally present. This expression against legal immigrants matches the NCSA Resolution's endorsement of lower numbers of legally admitted migrants. Like the 1996 laws which greatly expanded the grounds through which LPRs could be deported, this provision makes a push for policies which hold legally present migrants in a constant state of probation, liable to be removed from the country for increasingly minor infractions.

<sup>365</sup> American Civil Liberties Union of North Carolina. "Quick Look at ICE ACCESS and Related Programs." Updated October 2008. <http://acluofnc.org/files/ICE%20ACCESS%20Handout.doc>. (Accessed: May 10, 2011).

restrict public benefits.<sup>366</sup> House Bill 11, “No Post-Secondary Education/Illegal Aliens” would prohibit undocumented immigrants from attending North Carolina community colleges and universities.<sup>367</sup> House Bill 33 would prohibit consular documents as an acceptable form of identification, erasing the city of Durham’s recent approval of the *matricula consular* as an acceptable form of identification.<sup>368</sup> Other restrictive bills have been introduced as well. This pending legislation echoes the introduction of restrictive immigration bills in other southern states during the 2011 legislative season in states like Alabama, Georgia, and South Carolina.<sup>369</sup> The prevalence of restrictive laws which seek to limit migrants’ freedom of movement and access to social services like education attests to the growing political popularity of immigrant restriction in the Southeast – a broader push to enact the “deportation terror” through “legal” means.

*Local Insights: Making Sense of the Move toward Restriction*

Many informants situate the rise of restrictive immigration enforcement partnerships in North Carolina in the broader backlash against the immigrant population in recent years in the South and find local actors have catalyzed restrictive policies. Sara suggests that government actors “motivated by racism, xenophobia...not liking the changes they’re seeing in their communities” fuel the rise of local-federal immigration

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<sup>366</sup>General Assembly of North Carolina. Session 2011. House Bill 343.” <http://www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H343v1.pdf>. (Accessed April 9, 2011).

<sup>367</sup>North Carolina General Assembly. 2011- 2012 Session. “House Bill 11.” <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=HB11>. (Accessed April 9, 2011.)

<sup>368</sup>North Carolina General Assembly. 2011 -2012 Session. “House Bill 33.” <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=HB33>. (Accessed April 9, 2011). I discuss the move to make the *matricula* an acceptable for of identification below.

<sup>369</sup> See Severson, Kim. “Southern Lawmakers Focus on Illegal Immigrants.” The New York Times. March 25, 2011. <http://www.nytimes.com/2011/03/26/us/26immig.html>.

enforcement.<sup>370</sup> Lara adds that since Sheriffs are elected officials, they often run on 287(g) as “scapegoat, fear issue” to get elected.<sup>371</sup> Amy, a professor and advocate living in Alamance County, also emphasized the role of local players in the enactment of restrictive policies. She observed that some politicians gain political capital locally while networking nationally, commenting that

I think you have to look at the role of individuals who are savvy and capitalize on opportunities in federal law. And star movement...in North Carolina...you’ve got people talking behind the scenes, and when you take a look at...what happened in Alamance County, and the role of... one of the county commissioners there, Tim Sutton. Finding out, being in touch with national networks, like, the Numbers USA is his favorite place. These are places that he’s tapped into, these sort of national networks that are looking for cracks and ways to push their anti-immigration agendas...and so 287 (g) was just this perfect opportunity...And so you’ve got this opportunity and...once it was discovered as a strategy, it’s sort of taken off with the push of some critical players...you infiltrate the sheriff’s associations, and it starts to gain political currency.<sup>372</sup>

Here, Amy locates local politicians with strong links to national restrictionist groups as underwriters to the North Carolina Sheriff’s Association’s agenda. In parallel, Sara described how Jim Pendergraph, the former Sheriff of Mecklenburg County, is implicated in punitive immigration policies on the local and federal levels. She mentioned that

Our own Charlotte-Mecklenburg person, Pendergraph, was hired by ICE to run this program [Office of State and Local Coordination] at the national level, before he picked a fight with a Congressman and was sent home to spend more time with his family. Um, so he’s now running for [County Commissioner] in Charlotte.<sup>373</sup>

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<sup>370</sup> Interview, 9/1/10, Raleigh, North Carolina.

<sup>371</sup> *Op. Cit.*, Interview, 8/27/10, Raleigh, North Carolina.

<sup>372</sup> Interview, 7/22/10, Chapel Hill, North Carolina. Tim Sutton

<sup>373</sup> *Op. Cit.*, Interview, 9/1/11.

Pendergraph was elected in fall 2010, and now serves as County Commissioner in Mecklenburg County. His role as the first law enforcement leader in the state to implement 287 g, his brief stint working for ICE, and his subsequent election as County Commissioner show how “star movement” around the immigration issue can catapult local officials. His cross-agency employment also provides insight to the cozy relationship between ICE and the North Carolina Sheriff’s Association through which North Carolina became a “laboratory” for enforcement innovation: it seems the state has forged lasting connections with ICE. Pendergraph has undoubtedly helped to refine the technology of the deportation terror both locally and federally. His rhetoric attests to this role. While he was Director of the Office of State and Local Coordination, Pendergraph notoriously commented at a conference of police and sheriffs, “If you don’t have enough to charge someone criminally but you think he’s illegal, we can make him disappear.”<sup>374</sup>

Politicians, though, are only elected on such views if those views net them votes. Mary, an immigration attorney, believes that some North Carolina residents have endorsed restrictive policies and a climate of intolerance in large part “because we have one of the fastest-growing Latino populations in the country ... anything that ... visual ... is gonna make people nervous.”<sup>375</sup> In times of economic and social turbulence, long-term settlers get nervous, “And so that creates this political atmosphere where immigrants become an easy target, a scapegoat”, something that politicians exploit.

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<sup>374</sup> Stevens, Jacqueline. “America’s Secret ICE Castles.” *The Nation*. December 16, 2009. <http://www.thenation.com/article/americas-secret-ice-castles> (Accessed May 5, 2011).

<sup>375</sup> Interview, 8/24/10, Raleigh, North Carolina.

Echoing this interpretation, Colin suggested changing patterns of migrant settlement partially explain the move toward the restrictive rhetoric and policies. Having run the Catholic Worker House for 19 years, he noted a transition in Latino migration from a more temporary, seasonal presence to a more permanent one. Twenty years ago, he recalled, only a few hundred or a thousand Latinos would come to the state “on a seasonal basis” to work in agriculture, “and they were out of sight, the people didn’t see them”, except perhaps to “pity” them and feel some empathy. Once migration streams grew stronger and migrants started settling in the state, some North Carolinians “were starting to get angry,” resenting having to wait in line behind people at the grocery store who only spoke Spanish. Such personal experiences “built up hatred.” However, Colin gauged that the contemporary rhetoric only gained force in the past ten years. At that point “it started getting in the newspapers, and people writing letters to the editor saying, ‘We should adopt English as the national language.’”<sup>376</sup> This transition in public perception also seems to have supported the rise of restrictive legislation.

Some link the turn toward the rhetorical and concrete technologies of the deportation terror to the shift in race relations resulting from migration to the Southeast. Amy frames the rise of restrictive policies like 287 g in the fracturing of deep-set race relations locally alongside inaction federally, explaining that

North Carolina has been predominantly a black and white state for a long time. You know, you’ve got this incredible surge in population and you’ve got communities not really knowing how to handle these newcomers and you have people and then of course reform is, it doesn’t happen so people are let down with their government. I mean this is...the

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<sup>376</sup> *Op. Cit.*, Interview, 8/24/10.

same story you hear everywhere, this is the case in North Carolina. It's just this population surge, lack of federal dealing with it...<sup>377</sup>

Amy's comment highlights the significance of demographic shifts and racial tensions in North Carolina, which parallels the role of demographic change in fomenting the restrictionist agenda in San Diego's North County. In both regions, informants link the surge in restrictive local enforcement to a sort of identity crisis and a knee-jerk reaction to the racial and ethnic diversification. The convergence of political opportunism and local intolerance seems integral to the empowerment of local leaders to push restrictive policies.

### **Immigration Enforcement in Wake and Durham Counties: Geographical Difference in Local-Federal Interface**

#### *Wake County*

Downtown Raleigh's Wake County "public safety center" is the site of the Wake County Sheriff's Office's 287(g) Jail Enforcement model (JEO) with ICE, signed in July of 2008. Under Wake County's Jail Enforcement 287(g), every person determined to be a possible noncitizen at booking is interviewed by one of four deputized officers who also do initial ICE detainer paperwork. If these officers suspect the person is illegally present, Wake County Sheriff Donnie Harrison stresses, "ICE decides what to do." The 287(g) officers are not sworn officers, but detention officers, meaning that they do not have arrest powers. Sheriff Harrison explains that prior to

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<sup>377</sup> *Op. Cit.*, Interview, 7/22/11.



implementing 287(g) he was concerned he might be letting serious criminals out and wanted access to ICE's database.<sup>378</sup>

In addition to their 287(g) program, Wake County has had Secure Communities since fall 2009. According to Harrison, since the program's implementation four or five immigrants who were not sent to the 287(g) floor because they "faked us all out" at booking have been identified through Secure Communities."<sup>379</sup> Pedro's recollection of being identified as unauthorized through Secure Communities before going up for questioning suggests that in Wake County perhaps the two programs are utilized in different circumstances and not uniformly.

The Memorandum of Agreement between ICE and the Wake County Sheriff's Office, like 287(g) MOAs signed across the country, states that the program's purpose is "to enhance the safety and security of communities by focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community."<sup>380</sup> Secure Communities according to ICE has the same focus on identifying serious criminals. However, data from the Wake County Sheriff's Office shows a majority of immigrants booked into the Wake County jail and subsequently processed for removal do not fit the programs' target populations. Of the total noncitizens "processed" through Wake County from July 14, 2008 to August 3,

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<sup>378</sup> Interview, 7/22/10, Raleigh, North Carolina.

<sup>379</sup> *Ibidim*.

<sup>380</sup> U.S. Immigration and Customs Enforcement and Sheriff's Office of Wake County. "Memorandum of Agreement." October 15, 2009 (Date on which all MOAs were standardized). [www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r\\_287gwakecountyso101509.pdf](http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r_287gwakecountyso101509.pdf). (Accessed October 20, 2010).

2010, only 298 of 3,012 were considered criminal.<sup>381</sup> Of those “processed” in the year 2010, 154 of 1,485 were considered criminal.<sup>382</sup>

### *Durham County*

The Durham County Sheriff’s Office does not participate in a 287(g) program, but the Durham Police Department has a Task Force 287(g) with one trained officer. Chief José Lopez of the Durham Police Department stresses that the Task Force 287(g) is limited to “felonious investigations.” If there is a homicide and the individual involved as a witness, suspect, or victim is undocumented, the 287(g) officer can access ICE databases to “identify people and find family members.” Lopez says it helps immensely to have someone connected to ICE on site to put detainers on these people.<sup>383</sup> Apparently the 287(g) has helped his department solve several homicides, track witnesses, and work with victims and family members. Supporting Lopez’s description of the partnership, Sam asserts that the Durham Police Department’s 287(g) is a rare example of a program that actually is run as intended, to target people

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<sup>381</sup> *Op. Cit.*, Wake County Sheriff’s Office, Raleigh Sheriff’s Office. “Arrest Processing Summary – Custom. 7/14/2008 – 08/03/2010.” Tuesday, August 3, 2010. Received from Wake County Sheriff’s Office, paper copy.

ICE statistics on Secure Communities alone released in January 2011, running from November 12, 2008 (the activation date ICE lists for Secure Communities in Wake County) through November 30, 2010, of 1,112 total removals and returns of immigrants occurring through Secure Communities in Wake County, 229 were Level 1 offenders, 327 Level 2 offenders, 152 Level 3 offenders, and 404 are listed as noncriminal. U.S. Immigration and Customs Enforcement. FOIA Reading Room. Secure Communities. “Secure Communities Nationwide Interoperability Statistics: November 2011.” [http://www.ice.gov/doclib/foia/secure\\_communities/nationwide\\_interoperability\\_conviction-nov10.pdf](http://www.ice.gov/doclib/foia/secure_communities/nationwide_interoperability_conviction-nov10.pdf). (Accessed January 29, 2011).

<sup>382</sup> Wake County sheriff’s Office, Raleigh Sheriff’s Office. “Arrest Processing Summary – Yearly. 2010.” Thursday, January 06, 2011. Received from the Wake County Sheriff’s Office, paper copy.

<sup>383</sup> Interview, 8/11/10, Durham, North Carolina.

implicated in serious crimes.”<sup>384</sup> Data suggests that their 287(g) is indeed targeted. The statistics provided by the Durham City Police Department show that yearly totals of immigrants processed for removal through the 287(g) program were 32 in 2008, 27 in 2009, and 14 as of August 19, 2010.<sup>385</sup> The drastic contrast between the impact of Durham’s 287 g and adjacent Wake County’s 287 g highlights the “patchwork” of uneven enforcement through which migrants must navigate.

A Durham County Sheriff’s Office representative confirms that Secure Communities is being set up at the Durham County Jail as of August 2010.<sup>386</sup> According to ICE’s website, Durham has officially operated Secure Communities since February of 2009.<sup>387</sup> According to the Sheriff’s Office representative, the program “is required”, but is not meant to “send somebody away for driving without a license”.<sup>388</sup> Again, ICE decides who to put a detainer on.<sup>389</sup> The representative also acknowledges that the Sheriff’s Office must act under SB 229 to check the citizenship of anyone arrested in the state for a DWI or a felony.<sup>390</sup> Thus, we see several different levels of policy – state and local-federal - converging in the jail setting.

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<sup>384</sup> U.S. Immigration and Customs Enforcement and Durham City Police Department. Memorandum of Agreement. October 15, 2009 (Date on which all MOAs were standardized).

[http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r\\_287gdurham101509.pdf](http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/r_287gdurham101509.pdf).

<sup>385</sup> However, their yearly total detainers lodged did increase from 29 in 2008 to 64 in 2009 (there were 18 as of August 19, 2010 for the year 2010). Taylor, Captain M.R. Durham Police Department. “ICE TFO Numbers 8/19/10.” pdf. E-mail. Received August 19, 2010.

<sup>386</sup> Chief Lopez commented that “As I understand it, they don’t have much choice.”<sup>386</sup> According to Sam, the DCSO wasn’t aware that they had Secure Communities at a community forum, until they checked with their lawyer. Apparently, “No one bothered to tell the Sheriff.” This example demonstrates how increasingly pervasive and yet often unknown the program is.

<sup>387</sup> *Op. Cit.*, U.S. Immigration and Customs Enforcement FOIA Reading Room. Secure Communities. “Secure Communities Nationwide Interoperability Statistics.”

[http://www.ice.gov/doclib/foia/secure\\_communities/nationwideinteroperabilitystatsbyconviction.pdf](http://www.ice.gov/doclib/foia/secure_communities/nationwideinteroperabilitystatsbyconviction.pdf).

(Accessed January 29, 2011.)

<sup>388</sup> Interview, 8/19/10. Durham, North Carolina.

<sup>389</sup> *Ibidim.*

<sup>390</sup> *Ibidim.*

The Sheriff's representative stressed that Secure Communities targets serious criminals. When I showed him the Monthly Arrest Processing statistics the Wake County Sheriff's Office had given me, which break down the offenses which those who receive detainers were charged with, he peered at the data and commented, "This is a lot of zero percents here. Murder, zero, rape, zero, robbery, zero."<sup>391</sup> A quiet moment preceded the continuation of our conversation. The representative's surprise at the low numbers of serious offenders processed through Secure Communities pinpoints the tremendous disconnect between the policy and practice that facilitates the removal of noncitizens with minor charges.<sup>392</sup> The insidious nature of the program, along with its purported goal of targeting top "criminal aliens" (making communities more "secure"), contributes to the efficiency of the database system in enacting "the deportation terror"—at times perhaps even under the noses of those who work in law enforcement.

### **Enforcement in Flux in Guilford County: Trading 287(g) for Secure Communities**

The Guilford County Sheriff's Office began a 287(g) Task Force Model on October 15, 2009 but announced its suspension in December 2010. In our August 2010 interview, Sheriff BJ Barnes attested like Sheriff Harrison that his main reason for wanting 287(g) was because it "gives us access to the computer, that's all I wanted was access, to get into that computer to check these folks to make sure we know who they

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<sup>391</sup> *Ibidim.*

<sup>392</sup> In Durham County, according to ICE statistics on Secure Communities alone, 165 removals and returns have resulted from the program since its February 2009 implementation, of which 36 were Level 1 offenders, 45 were Level 2, 20 were Level 3, and 60 were noncriminal. *Op. Cit.* U.S. Immigration and Customs Enforcement. "Secure Communities Nationwide Interoperability Statistics."

are” and avoid unwittingly releasing those illegally in the country with criminal records who might evade their charges.<sup>393</sup> Barnes stressed that the Task Force Model, in contrast to the Jail Enforcement Model, only affects someone who has committed a Tier 1 crime, like

murder, assault with a deadly weapon with intent to kill, burglary, kidnapping, rape, large amounts of drugs, those type are Tier 1 crimes. Those are the crimes that once they’re committed if someone has committed those, then we do a check to see if they are here legally or illegally.

If they are found to be illegally in the country, he added, his officers work with ICE to place people into removal proceedings. Indeed, the statistics Barnes’ Office released reveal the 287(g) Task Force model was indeed targeted: in the year the 287(g) agreement was active, the program’s two trained officers conducted eight investigations which led to 8 persons being processed for removal by ICE. Those under investigation had prior state and federal charges including “human smuggling, weapons possession, drug trafficking, drug possession, drug sales, drug manufacturing, identity theft, [and] fraud.”<sup>394</sup>

In our August interview, Sheriff Barnes reported that Guilford County did not yet have Secure Communities, which coincided with ICE’s public information at the time. However, Barnes reflected at the time that “I suspect that every county in this state within the next six months will be hooked up with Secure Communities.”<sup>395</sup> He

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<sup>393</sup> Interview, 8/9/10, Greensboro, North Carolina.

<sup>394</sup> Briceño, Adolfo. “Fin de 287 g: Condado Guilford Deja Polémico Programa.” *Que Pasa*. Greensboro, Winston Salem. Local A3. December 16-22, 2010. Accessed through correspondence with Briceño, Adolfo.

Guilford County Sheriff’s Office Statistics. “287Title 19.” Accessed through correspondence with Briceño, Adolfo.

<sup>395</sup> *Op. Cit.*, 8/9/10, Greensboro, North Carolina.

conjectured that “that’s where those issues have come in that you’re talking about with things such as drivers driving while impaired and stuff like that.” Under Secure Communities, he said, people arrested for something like No Operator’s License “will be caught.”<sup>396</sup> Those arrested for such minor infractions will be placed in removal if they are found through the database to be out of status, because “That’s what Secure Communities does.”<sup>397</sup>

Barnes’ comments illuminate a nationwide fact: Secure Communities does not focus on serious “criminal aliens,” since people can be arrested on any number of minor and possibly false charges depending on the county and the arresting officer. Barnes’ prediction that Secure Communities would quickly spread across other corners of the state proved true, and Immigration and Customs Enforcement announced in a November 16<sup>th</sup> News Release that Guilford County would benefit from Secure Communities.<sup>398</sup> ICE has since announced the implementation of Secure Communities in all 100 counties of North Carolina.<sup>399</sup>

In a December 9, 2010 news post in Greensboro’s *YES! Weekly*, Sheriff Barnes confirmed that Guilford County had withdrawn their 287(g) agreement in November, after processing the 8 immigrants for removal since January 2010.<sup>400</sup> In the article

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<sup>396</sup> *Ibidim.*

<sup>397</sup> *Ibidim.*

<sup>398</sup> Immigration and Customs Enforcement News Release. “9 North Carolina counties to benefit from ICE strategy to use biometrics to identify and remove aliens convicted of a crime.” November 16, 2010. Concord, NC. <http://www.ice.gov/news/releases/1011/101116concord.htm>. (Accessed December 6, 2010).

<sup>399</sup> *Op. Cit.*, Cowell, Rebekah L. “Controversial Immigration Enforcement Program Goes State-wide in North Carolina.”

<sup>400</sup> Green, Jordan. “Guilford County Sheriff’s Office Drops 287 g.” *The YES! Weekly Blog*.” Posted December 9, 2010. [http://www.yesweekly.com/triad/article-11076-guilford-county-sheriffuffffds-office-drops-287\(g\)-program.html](http://www.yesweekly.com/triad/article-11076-guilford-county-sheriffuffffds-office-drops-287(g)-program.html) (Accessed December 10, 2010). The article helpfully lists the differing numbers of deportations since January 2010 for the neighboring 287(g) counties, of which all but Durham

Barnes stated that his agency had enrolled in Secure Communities the previous month, and that the program would probably “cast a wider net” than the limited task force 287(g) model.<sup>401</sup> An article in North Carolina’s Spanish language newspaper, *Que Pasa*, by Adolfo Briceño in early January 2011 confirmed that Guilford County had suspended its 287(g) program.

The decision to disband the 287(g) program, then, relates to the broader impact of Secure Communities, which does not deputize law enforcement agents but simply connects jail databases directly to ICE. Sheriff Barnes’ acknowledgement that deportations of people with minor charges would increase in Guilford County with the arrival of Secure Communities suggests that Secure Communities is the new, more sophisticated and wider-reaching face of local-federal enforcement. Like the Jail Enforcement 287(g) model seen in Wake County, Secure Communities engages with everyone booked into jail. Therefore, it cannot target ICE’s top “priorities.” As the Immigration Policy Center has commented,

ICE has, in effect, outsourced the identification of immigrants for enforcement actions to local police agencies and jails. However, programs such as Secure Communities and 287(g) undermine ICE’s priorities because they are designed in such a way that leads to the deportation of immigrants with minor criminal offenses or no criminal history at all.<sup>402</sup>

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and Fayetteville (who have Task Force models like Guilford) have Jail Enforcement models: “...Alamance County has deported 293. The state’s two most populous counties, Mecklenburg and Wake, have respectively deported 2,037 and 1,703. Durham has deported 44. Only Fayetteville County has notched a lower number: seven.”

<sup>401</sup> *Ibidim*.

<sup>402</sup> American Immigration Council Immigration Policy Center. “ICE’s Enforcement Priorities and the Factors that Undermine Them.” November 9, 2010. <http://www.immigrationpolicy.org/special-reports/ice%E2%80%99s-enforcement-priorities-and-factors-undermine-them>. (Accessed January 31, 2011).

## Conclusion

This chapter has explored how local-federal enforcement practices and a restrictive climate extend the deportation terror far into the interior of the United States. Through local-federal collaborations including 287 g and Secure Communities and, to a lesser extent, restrictive state laws, migrants are increasingly arrested and then funneled into removal proceedings. These arrests often occur on minor or zero grounds, as in the case of the man drinking the *Jarritos* soda. That such an act (drinking a soda) can bring someone into removal proceedings recalls Foucault's notion of the "panopticism of every day"; the surveillance of migrants is multiplied when local law also enforces immigration laws. Such practices demonstrate the "bordering" of the interior, and in many ways local-federal enforcement is also enabled by the "state of exception" that defines border enforcement.<sup>403</sup> The investment in these enforcement initiatives in North Carolina seen in the NCSA's Illegal Immigration Project demonstrates the move toward the punitive "disciplinary state." This chapter has also highlighted the importance of

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<sup>403</sup> Kretsedamas applies Agamben's description of the "state of exception" form of sovereignty "being manifest in the form of a decision –a discretionary privilege that allows the executive to reinterpret or suspend the law" while often justifying the authority by saying it's consistent with the intentions "implicit within the law". He reviews how in 2002 the White House and the Department of Justice affirmed the "inherent authority" to reinforce immigration laws, "reversing more than 20 years of legal precedent on the role of local police" in immigration laws – thus suspending that legal precedent through re-interpreting the law. This affirmation preceded the enactment of local "illegal immigrant" laws (and also the implementation of the first 287 g partnerships, though they were authorized in 1996's IIRIRA). So, the "state of exception" created *through* legislation in 9/11 like the Patriot Act produced a policy climate wherein the law became not accountable to its own precedent so much as to "the challenges arising from emergent, extralegal phenomena." *Op. Cit.*, Kretsedamas, Philip. Pp. 563-4. More generally, the "state of exception" rhetoric and policies of the War on Terror clearly sculpted immigration laws post-9/11 that impact enforcement on the interior of North Carolina – such as the REAL ID Act.



local actors, local reactions to demographic change, local-national dialogues, and rhetorical practices in the enactment of the deportation terror in North Carolina.

Enforcement in North Carolina, as in San Diego County, occurs as a “patchwork.” This becomes manifest in the case study of local-federal enforcement in Durham, Wake, and Guilford Counties, and in ethnographic evidence that undocumented (and unlicensed) migrants internalize fear of the “deportation terror” differently across space – they experience the presence of deportability distinctly from county to county, depending on each region’s perceived enforcement policies and practices. The patchwork is facilitated by governmentality, as seen in the exclusion of undocumented migrants from access to driver’s licenses and in the “geographic management and social control of populations” through spatialized policing.<sup>404</sup>

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<sup>404</sup> *Op. Cit.*, Foucault, Michel. “Governmentality.”

## **Part IV: Synthesis**

### **4. Conclusion**

In this chapter I conclude analysis of immigration enforcement practices in San Diego County and North Carolina. I bring both sites together in a synthesis of my argument throughout this text. I argue the following: that enforcement practices historically confined to the border have moved into the interior, each region is a “laboratory” for enforcement practices, and enforcement in each region occurs as a “patchwork”, and local-federal enforcement is increasing in each space. I also review evidence of the “disciplinary state” in each region. I then discuss several major policy problems related to local-federal enforcement and identify the importance of strategic resistances from a policy standpoint. Finally, I place enforcement practices in San Diego County and North Carolina in dialogue with the broader issue of the freedom of movement.

### **Synthesis: Immigration Enforcement in San Diego County and North Carolina**

This project has examined the policies, practices, regional and historical contexts of immigration enforcement in San Diego County and in North Carolina. I have argued that immigration enforcement techniques historically confined to the border have moved into the interior in significant ways. The inward expansion of border enforcement is borne out quite literally in the exportation of the IDENT database technology from San Diego County to North Carolina and other states through Secure Communities. It plays out rhetorically in the inflammatory language of the North

Carolina Sheriff's Association resolution, wherein the Sheriffs assert their resolve to enforce immigration laws within the territory of the state in light of the federal government's failure to "secure the border." Most obviously perhaps, the expansion of enforcement into the interior through the increasing foothold of local-federal collaborations is seen in the overall increase in deportations in the past decade.<sup>405</sup> A lawsuit by the Center for Constitutional Rights (CCR) and National Day Labor Organizing Network (NDLON) revealed that in 2010, Secure Communities alone accounted for 49,839 removals and returns nationally.<sup>406</sup> These statistics pinpoint the increasing role of local-federal enforcement.

This text has also argued that local participation in federal immigration enforcement has been increasing in both regions in recent years, and that such enforcement creates a "patchwork" of inconsistent enforcement. The increase in local participation in federal immigration enforcement becomes clear in the implementation of Secure Communities, Operation Stonegarden, and Operation Joint Effort in Escondido, all since 2008. It is evident in North Carolina in implementation of Secure Communities and 287 g partnerships within the past few years and in the passage of restrictive state laws that further local participation in federal immigration law, like 2008's SB 229. The "patchwork" of immigration enforcement also emerges in

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<sup>405</sup> As mentioned in the introduction: removals have doubled since 2005, when ICE removed 195,066. In the past few years, alongside the increase in ICE ACCESS programs like 287 g and Secure Communities, deportations have risen from 369,221 in 2008 to 389,834 in 2009 and 392,862 by the end of 2010. *Op. Cit.*, Transactional Records Access Clearinghouse. "Current ICE Removals of Noncitizens Exceed Numbers Under Bush Administration."

<sup>406</sup> U.S. Immigration and Customs Enforcement. "Secure Communities. IDENT/IAFIS Interoperability. Monthly Statistics through February 28, 2011." [http://ccrjustice.org/files/nationwide\\_interoperability\\_stats-fy2011-feb28.pdf](http://ccrjustice.org/files/nationwide_interoperability_stats-fy2011-feb28.pdf). (Accessed May 15, 2011).

contrasting enforcement in Wake and Durham Counties and in the case of Escondido in San Diego County.

The preceding pages have also shown how San Diego County and North Carolina are “laboratories” of enforcement. San Diego County emerges as such in its development of the IDENT database technology that has since spread to the interior. Escondido’s Operation Joint Effort is another example of “unique” technologies of power developed at the border. More generally, San Diego County emerges historically as a heavily militarized border through which new technologies of enforcement have been consistently deployed, through such initiatives as Operation Gatekeeper and the Secure Borders Initiative. North Carolina became a testing ground for local-federal enforcement and “interoperability” with the “Illegal Immigration Project.” This program funded and oversaw an increase in 287 g partnerships and Secure Communities deployment at a rapid pace and juxtaposed local Sheriffs and ICE officials in an innovative configuration that ICE saw as a “model.”

Enforcement in San Diego County and North Carolina also reflects the significance of policy climates and local actors to the deportation terror. The restrictive backlash in the late 2000s in North Carolina, leading to the myriad of restrictive bills pending in the 2011-12 legislative session, parallels the climate of intolerance in California in the 1990s that brought the passage of Proposition 187. In this way, North Carolina’s era of restriction parallels California’s past, which implies that perhaps North Carolina can learn from California’s evolution (despite their differing histories of migration and race relations). Immigration enforcement as it has evolved in the two regions locally also highlights the importance of local political actors, who often

network on the federal and state levels for funding and influence. We see this funding stream in the Escondido Police Department's funding by the Office of Traffic Safety for checkpoints. In North Carolina, Jim Pendergraph's career trajectory and strong relationship with ICE and the North Carolina Sheriff's Association receipt of over a million dollars for their Illegal Immigration Project from the state also reflect the investment in the disciplinary state. The significance of local actors and local contexts more broadly again suggests that analyses of enforcement practices may best be read from a Gramscian perspective.

Theoretically, this study has framed immigration enforcement practices in San Diego County and central North Carolina in a broader move toward the "disciplinary state", defined in two ways. First, I use the term to encapsulate the growing investment in punitive immigration and crime control; as Bohrman and Murakawa argue, this trend provides evidence that big government has not shrunk with the decline of the welfare state but instead is being remade through expensive and interventionist immigration and crime control. Within this expansion, we see the "crimmigration crisis" wherein both criminal and immigration law work to exclude racialized outsiders from the nation.<sup>407</sup>

We see the empirical expansion of the disciplinary state in both San Diego County and North Carolina. In San Diego County, the militarization of the border reflects increased investment in immigration control. Increased local-federal enforcement collaborations in San Diego County, including Operation Stonegarden, Secure Communities, and Operation Joint Effort, and tacit, informal referrals of local

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<sup>407</sup> This occurs, of course, even as undocumented labor is simultaneously and selectively recruited and utilized within the nation as it has been throughout its history.

law enforcement agents to the Border Patrol also reflect the move toward the “disciplinary state” and the specific mechanism of the “crimmigration crisis.” Similarly, we see the confluence of immigration with criminal law enforcement in 287 g and Secure Communities in North Carolina. These emergent forms of local-federal policing are increasingly significant to the disciplinary state. Federal and state funding streams – as mentioned in Escondido’s checkpoints and North Carolina’s Illegal Immigration Project- also manifest this move.

This study has also argued that immigration enforcement practices – particularly the local-federal ones in focus in this study – form part of a particular technology of disciplinary power that is also deeply punitive for migrants. Migrants are “disciplined” through their deportability in specific ways. Enforcement practices on the border and now on the interior form part of the “deportation terror.” This technology disciplines, but also *punishes* migrants and their loved ones, often in extremely traumatic ways.<sup>408</sup>

Thus, while contemporary enforcement practices, such as checkpoints, 287 g interviews at county jails and DHS database checks, clearly fall within Foucault’s definition of governmentality, these practices are part of the *particular* “crucial technology of the state” that is the deportation terror. Ida Buff points out that “deportation...has long been used to secure and enhance borders, and to extend the gatekeeping work performed at the border deep into the interior.”<sup>409</sup> In parallel, I have argued that the recent expansion of immigrant policing in North Carolina through local-federal collaborations represents the extension of the technology of the deportation

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<sup>408</sup> Again, this diverges from Foucault’s genealogy of the spectacle of punishment dissipating into a more generalized discipline and contradicts the legal status of detention and deportation as civil remedies that are not considered punishment.

<sup>409</sup> *Ibid.*, p. 525.

terror into the interior. This analysis has also acknowledged that race and racialization are essential factors in understanding the practices of governmentality through which the deportation terror is carried out -- something painfully clear in Juana's accounts of the arrests of the women she shared a cell with and in Alejandra's recollection of the man arrested for drinking *Jarritos*.

The anecdotes in the preceding chapters reveal the deportation terror as a technology of the state in the border region and on the interior. The deportation terror is seen in the stories of Juana and David, who were caught up in the "inspections" of the border (and the extended border, in San Clemente) – one was able to pass through, and one was forced to depart – but both were entangled in it, even though David is a citizen. Their stories reveal the "state of exception" of the border space. Its racialized nature is revealed in the stories of the women Juana met while in detention, flagrantly stopped and detained by immigration officials due to their physical appearance as "*morenitas*."<sup>410</sup> Evidence that the deportation terror has moved to the interior is found in Pedro's arrest in Raleigh on false charges and immediate transport through the detention pipeline. The deportation terror appears in the fragmented voices of immigrant detainees apprehended in North Carolina who articulate the terrifying nature of their movement through detention from North Carolina county jails to immigration detention centers in Georgia and Alabama. These letters call out the machinations of the deportation terror, decrying the disciplinary state's disregard for their social, cultural, and familial ties to the United States.

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<sup>410</sup> *Op. Cit.*, Interview, 1/7/11.

## Local-Federal Immigration Enforcement: Problems from a Policy Perspective

Several major problems with contemporary local-federal policing partnerships merit acknowledgement from a policy standpoint. First, my research reveals a recurring disjuncture between the targeted “criminal aliens” of the policies and the actual immigrants processed through the programs, often for minor infractions. The statistics for Secure Communities in San Diego County exemplify this disconnect, since again 63 percent of those processed for removal through the program have no criminal record. Wake County, a prime example of local-federal collaboration on the interior -- with a 287 g Jail Enforcement model since July 2008 and Secure Communities since fall 2009 -- clearly reveals the policy-practice disconnect as well. Again, only 298 of 3,012 noncitizens - or about 1/10 - of those “processed” for removal through 287 g or Secure Communities were considered “criminal.” In North Carolina as a whole, most immigrants processed for removal in 287(g) counties were arrested for traffic offenses, according to reports from UNC Law School and the UNC Latino Migration Project from February 2009 and 2010.<sup>411</sup> Once again, results from the two regions match national findings.<sup>412</sup> The Durham County Sheriff’s representative’s surprise at seeing

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<sup>411</sup> (Which undocumented migrants cannot obtain). *Op. Cit.*, UNC Immigration / Human Rights Policy Clinic and the American Civil Liberties Union of North Carolina. “The Policies and Politics of Local Immigration Enforcement Laws.”

*Op. Cit.*, UNC Latino Migration Project. “The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities.” Mai Thi Nguyen and Hannah Gill.

<sup>412</sup>Data on Secure Communities released in summer 2010 show that the majority of noncitizens processed through Secure Communities nationally were neither charged with nor convicted of felonies. *Op. Cit.*, Center for Constitutional Rights. Synopsis, “National Day Labor Organizing Network (NDLON) v. US Immigration and Customs Enforcement Agency (ICE).”

Several reports by the Office of the Inspector General, the most recent one from March 2010, reveal that less than 10 percent of those placed in removal proceedings through 287(g) fall into ICE’s priority “Tier 1” criminal category, and many who enter removal proceedings through 287(g) programs have minor or



the many “0”s in front of serious crimes in the data reveals that local law enforcement officers may well have normalized the assumption that the program makes communities more “secure”, which in turn pinpoints the importance of communication and dialogue *with* local police.

Another problem with local-federal enforcement from a policy standpoint is that the mergence of the criminal justice and immigration legal systems often inhibits migrants’ access to justice in either realm. According to Lara, a lack of communication between the two legal systems hinders migrants’ access to justice in both. In the criminal system, people generally get bail set. The problem, Lara says, is that if someone pays state bail but has an ICE detainer, then

the bail is worthless to you ... you get turned over to ICE custody immediately, and then you don’t have a chance to fight your state charges at all. Plus, you get a Failure to Appear, Called and Failed, and an order is issued for your arrest.”<sup>413</sup>

Not appearing for your state charges because you are in immigration detention might even be counted against you in an immigration bond hearing. And of course, the state bail money is not returned since migrants cannot appear for their state charges while in detention. Ultimately, the systems don’t communicate, but have interwoven legal consequences for immigrants caught between them. Lara concludes that “the systems have their own problems, and then you throw them together, and it’s a disaster.”

However, John, speaking from a law enforcement perspective, asserted that the law enforcement agencies involved “know exactly what they’re doing” and benefit from

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no criminal convictions. *Op. Cit.*, Office of the Inspector General. “The Performance of 287(g)Agreements.”

<sup>413</sup> *Ibidim.*

such confusion. Discussing this issue of migrants paying state bail and then getting shepherded into ICE custody, John stated that “They know exactly what they’re doing. It’s not disjointed!” He added that

They talk to each other frequently... Absolutely. And it’s a money-making operation for the local governments. Yeah! Pay us bail money. And they get released [to ICE]. They know exactly what they’re doing.<sup>414</sup>

John’s perspective shows how the flawed merge of the criminal justice and immigration systems facilitates the removal of more people. Such legal interactions between the systems then, are *productive* for the deportation terror. This reveals how apparent “policy” problems may not be problems at all from the standpoint of the state – which problematizes an analysis that focuses solely on “policy” relevance.<sup>415</sup>

Nonetheless, these and several other policy problems do merit acknowledgement from a critical standpoint. Training is another issue with local-federal collaborations cited by legal experts. Attorneys argue that the five week training 287(g) officers receive from ICE is not enough to navigate complex immigration law. As Mary

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<sup>414</sup> *Op. Cit.*, Interview, 2/2/11. He added, “Now, are they screwing these guys over? Yes...is it ethical? No.” He reiterated that the two systems communicate regularly and as long as their regulations do not conflict, such incidents are of no concern to them. However, “Now if this law somehow, if this - the regulations governing this agency conflict somehow with the laws regulating this agency, if they conflict, well then they try to – they could try to work it out. That’s why I’m saying – that collaboration is ongoing. Continual. And they’re very familiar with each other’s processes. So they can iron out whenever the conflict arises. They fix it right away.”

<sup>415</sup> As De Genova points out “the concern of such researchers with policy-relevance, now as then, entails presuppositions through which research is effectively formulated and conducted from the standpoint of the state, with all of its ideological conceits more or less conspicuously smuggled into tow.” De Genova, Nicholas. “Migrant “Illegality” and Deportability in Everyday Life.” *Annual Review of Anthropology*. Vol 31. <http://www.annualreviews.org/doi/pdf/10.1146/annurev.anthro.31.040402.085432>. p. 421. John’s point also brings us back to Coutin’s argument that “the immigration system *creates* the very disjunctures that seem to undermine it”, which “can be key to the immigration system’s coherence.” *Op. Cit.*, Coutin, Susan Bibler. *Nations of Emigrants: Shifting Boundaries of Citizenship in El Salvador and the United States*. P. 5. In the “crimmigration” context of local-federal collaboration, we see the criminal justice and immigration systems together creating disjunctures which undermine migrants’ access to justice.

asserted, “immigration law is not straightforward” and takes more than a couple weeks of training. Because a few weeks is not enough to learn the complexities of immigration law, Mary added, local 287(g) officers “cast a wider net which in turn makes people who are lawfully present have to go through that kind of screening.” Mary has career experience working on post-conviction cases involving legal permanent residents whose convictions render them deportable, and she and another attorney each shared instances of clients who were actually unknowing derivative U.S. citizens and thus not deportable. Mary reflects that “derivative citizenship is another pretty complicated area of law... it’s not an easy thing for any average person to be able to figure out necessarily.” As a result, U.S. citizens are sometimes deported inadvertently through local-federal collaborations.<sup>416</sup> Lara similarly argues that 287(g) officers are not knowledgeable of immigration law, as compared to ICE officers who are “very experienced.”<sup>417</sup>

Transparency issues are another problem identified with local-federal collaborations. As Chapters 2 and 3 identify, funds for local federal enforcement programs may lack a specific focus and/or reporting requirements. Operation Stonegarden is one such case, as it evolved from a counter-terrorism tool to an immigration enforcement program in the absence of oversight --- an apt example of the impact of the “terror context” in expanding the disciplinary state more broadly. Again, as Barry reports, Stonegarden lacks internal regulations to dictate what the funding is to

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<sup>416</sup> *Op. Cit.*, Interview, 8/24/10, Raleigh, North Carolina.

<sup>417</sup> Interview, 8/27/10, Raleigh, North Carolina.

be used for.<sup>418</sup> The funding which the North Carolina Sheriff's Association received for its Illegal Immigration Project in 2007, 2008, and 2009 from the North Carolina General Assembly is another striking example of the transparency issue -- particularly in regards to the \$750,000 allocated in 2007 without *any* reporting requirements.<sup>419</sup>

Diego observed that such a lack of transparency has characterized the enforcement terrain since 9/11. He has noticed that the government can more easily say “‘Because of national security concerns, we’re not going to release this information’”, making it harder for the general public to understand how the government operates, particularly around enforcement issues. Another consequence of 9/11 is that “‘since the creation of DHS in 2003, there have not been “appropriate accountability measures”, to help ensure follow up when problems occur.”<sup>420</sup> Amada concurred with this, adding that her organization had recently been trying to work with DHS to establish a universal procedure for complaints, because “‘sometimes when we do complaints...it just gets lost in the bureaucracy.’”<sup>421</sup> Diego shed light on the convoluted nature of this bureaucracy, recalling that “‘The Office of Civil Rights and Civil Liberties in D.C. – we’ve met – they have actually said, ‘How DHS operates is not a transparent process. At best it’s an opaque process.’ Because of this lack of connection between the agencies.’” According to Diego, part of the lack of communication is because they often compete for funding. As an example, he recalled that

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<sup>418</sup> *Op. Cit.*, Barry, Tom.

<sup>419</sup> *Op. Cit.*, Preston, Sarah.

<sup>420</sup> *Op. Cit.*, Interview, 2/3/11.

<sup>421</sup> *Op. Cit.*, Interview, 1/26/11.

for many years we would see during this early spring months, the Border Patrol would conduct newer operations on the ground to put their trainees – you know, gain experience in the field. And that was also the time when Congress was deliberating on appropriation of funds. So it's a way for them to boost up their numbers and say, 'Look. Look at the job we're doing. You know you need to fund us this amount of money.'<sup>422</sup>

Such transparency issues, stymied by competition among agencies for funding and poor oversight, have been exacerbated by the “terror context.” Diego roots the lack of transparency in a “backdrop of noncompliance” and a “culture of impunity” which he and other advocates face when meeting with DHS and other government officials to seek change. He reflected that change is difficult to achieve when working against “career officers that have been working on this for a long time”, who are “set in their ways” and thus resistant to efforts “to change the culture that promotes violence versus one that would promote transparency and trust in how the government operates.”<sup>423</sup>

Lara made a similar observation, stressing that 287 g and Secure Communities cannot change to actually work as they are intended to according to their policies, given that the people on the ground are “these untrained 287 g people or these career ICE people - who are already set in their ways”, and have no interest in using discretion.<sup>424</sup>

Several local law enforcement leaders discussed their perspectives on why local officers should not enforce immigration law, focusing on the impact on community policing and public safety. John raised the question, “How close do we want local law enforcement agencies working with *any* federal agency?” He pondered,

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<sup>422</sup> *Ibid.*

<sup>423</sup> *Op. Cit.*, Interview, 2/3/11.

<sup>424</sup> *Op. Cit.*, Interview, 8/27/11.

For example, why don't we have IRS agents working at Escondido Police headquarters so that anybody who's arrested has their taxes audited just to see if they owe the government any money. And maybe they can impound their car and keep the car if they're...indebted to the IRS. Or if they have a wad of cash cause the guy just paid, fine, the IRS will take that because they owe the government money. I mean why not?

Is that how close we want to work with federal agencies? Do we want to start enforcing – I mean we hear a lot of people saying that 'Yeah, the police should enforce *all laws*.... 'What is it about illegal that you don't understand?' Okay, let's enforce *all laws*. Let's enforce EPA laws. So whenever there's a company that's I don't know violating any health and safety ordinances, fine, let's start writing them tickets and taking a few of those guys to jail. Why are we only enforcing immigration laws?<sup>425</sup>

Chief Gonzales suggested the difference is in the division of labor. "You wouldn't go to a mechanic to help you with your taxes, right? But here you come to police officers to help you with immigration laws. We don't do that. That's two different things."<sup>426</sup>

He added that what his agency *does* enforce is "the state crime, the municipal crime ordinances, the vehicle code, public health and safety, business and professional code, a-b-c laws"; in short, "things that we're trained in", as opposed to immigration law.

Chief Lopez of the Durham Police Department added that though much is left to officer discretion, "your immigration status is not something that we are actively investigating on a day to day basis. It's not our function." He added that

Quite frankly, I view it a lot like having a hole in a ship, and while the water's flowing in someone hands me a little bucket to bail water. Wasting my time...<sup>427</sup>

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<sup>425</sup> *Op. Cit.*, Interview, 2/2/11.

<sup>426</sup> *Op. Cit.*, Interview, 3/22/11.

<sup>427</sup> *Op. Cit.*, Interview, 8/11/10.

These law enforcement leaders support the assertions of attorneys, advocates, and migrants themselves. Informants clearly establish that from the community perspective *and* a public safety one, such “cross-fertilization” does great harm.

### **Moving Forward: Strategic Resistances**

Given the policy problems associated with the expansion of local-federal enforcement, it seems important to interrogate briefly how strategic resistance to the most damaging policies might occur – while acknowledging that policy “reform” can never “solve” the broader technologies through which the state enacts the deportation terror (and has since the beginnings of border enforcement.<sup>428</sup> Strategic resistance to the dynamic, expanding role of local-federal enforcement has become an important tactic against the expansion of local-federal enforcement. These strategic resistances illustrate Foucault’s argument in *The History of Sexuality* that a “plurality of resistances” exists in the strategic field of power relations.<sup>429</sup>

Strategic resistances have emerged in the national struggle against Secure Communities. Recent developments have seen the strategic resistance to Secure Communities through coalition-building between advocates and community leaders, including politicians and law enforcement leaders. As the previous section showed, many local law enforcement leaders believe that local law enforcement has no place

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<sup>428</sup> In other words, reforming how local law enforcement enforces federal immigration law will not undermine the broader flawed logic through which the state “disciplines” and punishes migrants through enforcement, detention, and deportation.

<sup>429</sup> *Op. Cit.*, Foucault, Michel. *The History of Sexuality: An Introduction*. p. 95-6.

enforcing immigration law.<sup>430</sup> San Francisco Sheriff Hennessey and the Arlington County, Virginia Sheriff and Chief of Police among others have spoken out against the program in concert with community members rallying against it. While these regions attempted unsuccessfully to opt out in 2010,<sup>431</sup> inconsistency in DHS' response to the opt-out issue and the continued momentum of such coalitions helped to pave the way for a resounding note of *refusal* in Illinois. On May 4, 2011, Illinois governor Pat Quinn announced that he was withdrawing his entire state from Secure Communities on because the program has not met the terms of its 2009 agreement that it would focus on identifying and deporting immigrants "who have been convicted of serious criminal offenses."<sup>432</sup> This catalyzed the subsequent opposition of the governors of New York and Massachusetts.<sup>433</sup> Meanwhile, the Office of the Inspector General announced an investigation into the program.<sup>434</sup> The momentum against Secure Communities that preceded Quinn's move was built through concerted efforts of local and national groups

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<sup>430</sup> The Major Cities Chiefs Police Association has been an important critic of the impact of local-federal collaborations like 287 g. Their June 2006 report pointed out some of the negative impacts of local-federal enforcement, including the undermining of community trust and cooperation, a *lack* of local resources to even begin to enforce immigration law, the complexity of federal immigration law, the risk of civil liability and the lack of local authority to enforce immigration law since "the government has clear federal authority over immigration and immigration enforcement." Major Cities Chiefs. "M.C.C. Immigration Committee Recommendations. For Enforcement of Immigration Laws by Local Police Agencies." [http://www.majorcitieschiefs.org/pdf/MCC\\_Position\\_Statement.pdf](http://www.majorcitieschiefs.org/pdf/MCC_Position_Statement.pdf). (Accessed May 26, 2011).

<sup>431</sup> *Op. Cit.*, Vedantam, Shankar.

<sup>432</sup> Preston, Julia. "States Resisting Program Central to Obama's Immigration Strategy." *The New York Times*. May 5, 2011 (Accessed May 6, 2011).

<sup>433</sup> Preston, Julia. "Immigration Program is Rejected by Third State." *The New York Times*. June 6, 2011 (Accessed June 8, 2011).

<sup>434</sup> The investigation is to include the extent to which ICE uses it for its stated purpose, its accuracy, and how ICE officials portrayed it to states and counties. Romney, Lee. "U.S. to investigate Secure Communities deportation program." *Los Angeles Times*. May 18, 2011. <http://www.latimes.com/news/nationworld/nation/la-na-secure-communities-20110519,0,3087175.story>. (Accessed May 12, 2011).



against the program (alongside DHS' notably conflicting public position on opting out).<sup>435</sup>

These recent moves suggest that state and non-state actors can mobilize against particularly damaging policies, by cultivating strategic discourses that resonate with a multiplicity of actors. The release of national statistics from Secure Communities by ICE after a Freedom of Information Act lawsuit filed by the National Day Labor Organizing Network and the Center for Constitutional Rights in August 2010, which revealed the large percentage of people removed through Secure Communities with minor crimes or no criminal record, stimulated such a discourse, undoubtedly helped to foment a strategic coalition of resistance comprised of community advocates, law enforcement, and political actors.

In a local parallel to the strategic movement against Secure Communities, Amy described localized strategic resistance to 287 g in Alamance County. Amy is part of a nonprofit organization that formed after the case of the mother being arrested for her immigration status while her children were left on the side of the road. Rather than seeking an overhaul of the program, the organization's main line is that Alamance County's 287 g "should be implemented in the way it's supposed to be." Amy reflected that

I think we have to work within, we have to have realizable goals. And I think we're pragmatic and I think we understand that...that's just the goal that we think we can get to at the moment.

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<sup>435</sup> Localized protests have combined with national efforts by groups including the Center for Constitutional Rights, the National Immigration Law Center, and countless others, stimulating outspoken criticism by politicians including Representative Zoe Lofgren of California, Quinn, and the Congressional Hispanic Caucus.

...we also have to take into mind you know the community that we live in. You know we don't live in, I don't know, we don't live in like San Francisco or somewhere like that [*laughs*]. And it's, you know, you have to do the best you can do with where people live.<sup>436</sup>

She added that “just for asking for oversight and asking questions, the sort of vitriolic... response that we've had has been overwhelming”, including death threats and intimidation at county meetings. Amy seems to be engaged in a strategic resistance, seeking realizable goals within conditions of deep-set injustice.

### **Immigration Enforcement and the Freedom of Movement**

This research has identified problems with local-federal enforcement collaborations that support contemporary policy arguments. Communities recognize the need to engage in strategic resistances against programs like Secure Communities and 287 g to obtain the most realizable goals, and this research hopes to be relevant those struggles. Yet these policy implications fall short of problematizing the broader technologies of immigration enforcement— including local-federal collaborations but also the practices of federal agents like ICE and the Border Patrol.<sup>437</sup>

The different narratives of detention discussed in the Prologues to Chapters 2 and 3 and the analyses of enforcement policies and practices all relate to the freedom of movement. Nicholas Genova and Nathalie Peutz theorize freedom as what is more

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<sup>436</sup> *Op. Cit.*, Interview, 7/22/11.

<sup>437</sup> Their pervasive presence enacts a “state of exception” at the border and informs the experiences of David, Juana, and countless [uncounted] others. This “state of exception” also can be applied to interior enforcement actions like Fugitive Operations, which bust into peoples' homes in the middle of the night and, as informants discussed, seem to operate outside of the law's intent (tricking people in order to enter their homes without warrants, etc).

broadly at stake in contemporary practices of enforcement that lead to deportation.

Drawing on scholars from Marx to Giorgio Agamben, De Genova argues that freedom is best understood not as a “right”, since rights tend to refer to how liberty is “stipulated and determined within state power.”<sup>438</sup> Citizenship is the primary way in which life is inscribed into the state order, and so the legal vulnerability of undocumented labor is most of all “materialized in its deportability”, which impedes the freedom of movement. Coutin lends further insight to how deportability constricts movement. She charts how “the unauthorized movement of the undocumented renders them immobile....when they enter a space of nonexistence, the undocumented are confined to social and territorial nonlocations.”<sup>439</sup> Through the disciplinary tactics of the state, legal “nonexistence” immobilizes the undocumented – though this state contains space for resistance.

The conscription of the freedom of movement may seem paradoxical with the impact of globalization. Zilberg shows how globalization is characterized by “a dialectic of mobility and immobility” in her study of transnational “gang” youth deportees and policing strategies between San Salvador and Los Angeles.<sup>440</sup> De Genova also highlights this tension between mobility and immobility in the globalized world. He argues that in the effort to uphold “a captive and tractable workforce, labor subordination tends to require its more or less enduring immobilization – an effective suppression of working peoples’ freedom to “escape” their particular predicaments” and

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<sup>438</sup> *Op. Cit.*, De Genova. “The Deportation Regime: Sovereignty, Space, and the Freedom of Movement.”

<sup>439</sup> *Op. Cit.*, Bibler Coutin, Susan. *Legalizing Moves: Salvadoran Immigrants’ Struggle for U.S. Residency*. P. 35.

<sup>440</sup> She also illuminates how deportation and policing -the neoliberal securityscape – also enable “the globalization of violence” (through both transnational gangs and the globalization of US zero-tolerance policing strategies). Thus, “securityscapes not only constrain but also fuel mobility – legal and illegal, licit and illicit.” *Op. Cit.*, *Space of Detention*. P. 8.

seek better options in other places. Thus, the mobility of labor tends to be “stringently encircled and disciplined by the tactics of state power.”<sup>441</sup> I argue that increasing local-federal enforcement makes these immobilizing tactics more ubiquitous.

The deprivation of the freedom of movement is a central consequence of enforcement practices on the border and on the interior. Colin articulated this deprivation. He describes how local policing practices limit migrant mobility, as

You’re just in your day-to-day activities; you’re not committing any crime. Driving your kid to the school bus, and you could encounter a roadblock, and they could take your mother away. You’re a child, they could take your mother away. You’re a mother, they could take you away from your children.

... so I mean – the fear of what might happen to you, is just raw all the time, cause there’s really no escaping it, you’re always afraid of what this government might do to you. It’s a terrible, terrible chill that goes through the whole community, so...one of the things I worry about with my good friend Amanda who’s undocumented is, if they have roadblocks set up in Garner, the family’s always scrambling to get her on the cell phone to tell her, ‘There’s a road block on Van Neus Springs Road’, ‘There’s a road block on Garner Road’, don’t drive. ‘Stay out, or don’t drive and I’ll come pick up the baby or bring you to school.’<sup>442</sup>

Colin’s comments highlight the conscription of the freedom of movement across the interior space through local tactics of the deportation terror.

Juana glosses the restriction of migrant movement on the border, stressing the *visibility* of immigration officials:

Yes, I have seen immigration officials driving police cars. And the police driving immigration cars. I have seen a lot – checkpoints, many checkpoints...for example, in Escondido...here in the north of San

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<sup>441</sup> *Op. Cit.*, De Genova, *The Deportation Regime*. p. 56. However, I am not making the argument that migrant (im)mobility is *only* determined by capitalism or the needs of labor. Again, situating enforcement practices in the Gramscian notion of competing forces accounts for the interwoven political and social forces that shape enforcement policies and practices alongside economic ones. As I have shown as well, these different forces interact with each other on local, state, and national scales.

<sup>442</sup> *Op. Cit.*, Interview, 8/24/11.

Diego County – Escondido is like a little Arizona. Where they don't let the day laborers find work on the corner.

...Over Freeway 78 I've seen them a lot...the times I have seen them have been between 5 and 7 in the morning, when it's almost dark out I've seen them. They stop there on the edge of the freeway and well, I've seen the profile they have – they locate the [pick up] trucks– like the construction worker ones. And the cars that are old, the ancient ones. I've seen them there above the freeway...

...One time I saw ICE officials doing an investigation of some apartment...My daughter was coming from school, and I went with her on the bus, and that day I remember that [some mothers and their kids] didn't get off at their stop because the people were frightened because they were checking the apartments...<sup>443</sup>

Here, Juana describes the surveillance of the Border Patrol and Immigration and Customs Enforcement as a haunting presence, a specter that constrains the movement of migrants through space.

Colin and Juana's comments illuminate how fundamentally immobilizing enforcement practices are. Their comments support Genova's point that both state and non-state actors "effectively transform the entirety of the interior of any territorial space of "national"<sup>444</sup> community into an unrelenting regulatory sphere for migrants, a "border" that is implosive, infinitely elastic, and, in effect, truly everywhere *within* the space of the nation-state." This "unrelenting" regulation can itself be read as a violation of the fundamental freedom of movement.<sup>445</sup> Jorge asserted this point in his remark that

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<sup>443</sup> *Op. Cit.*, Interview, 1/7/11.

<sup>444</sup> *Op. Cit.*, De Genova. "The Deportation Regime." P. 52.

<sup>445</sup> Perhaps the most extreme manifestation of the *immobilization* of migrants through the deportation terror is seen in cases of indefinite detention. Though I am out of time and space to discuss this, research highlighted indefinite detention as something quite frequent. One set of letters came from a man who was detained and had served a criminal sentence, and had been trying to help ICE arrange for his

I part from the idea that – well –the right to migrate is a human right. So I feel that the current policies right now are totally violations of the most basic rights that we have as human beings.<sup>446</sup>

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“repatriation.” The country he was from is notorious for not being cooperative with this. This person cites the *Zadvydas* Supreme Court case which ruled that indefinite detention is unconstitutional. An attorney working for the Federal Defenders of San Diego County said that these cases are quite common.<sup>446</sup> *Op. Cit.*, Interview, 2/11/11. Here he highlights De Genova’s point that “The freedom of movement is inseparable in practice from the movement of “free” people, the mobility of free labor.” *Op. Cit.*, De Genova, *The Deportation Regime*.

## **Afterword: Coalition Building in North Carolina Resistance Work**

His voice rose and fell in syncopated beats and he paused after each line, as the translator echoed each line of the message in an overlay of Spanish.

We have been mistreated for over 400 years.  
We want to say to the news,  
We want to say to the so-called “conservatives”  
We want to say to the Tea Party  
“The Native Americans should have asked Christopher Columbus for his papers.”  
If we would have asked Christopher Columbus for his papers, he could not lie and say he discovered America.

The crowd of approximately 250 immigrant workers, youth and allies cheered loudly. Curtis Gatewood, the vice-president of the North Carolina “N-A-A-C-P”, continued. His community, he stressed, stands with the immigrant community “against racial profiling, we stand with you against racist police officers, we stand with you against 1070, *we stand with you because we are your Brothers and Sisters and we love you.*”<sup>447</sup>

Gatewood joined the AFL-CIO president of North Carolina, Alejandra of the North Carolina DREAM Team, a female activist from the Muslim American Society, and others to deliver the crowd in front of the state capitol in downtown Raleigh on July 29<sup>th</sup>, 2010. The event, “From Arizona to North Carolina: March for Immigrant Justice,” began at Nash Square in downtown Raleigh as participants marched to the state capitol for the short rally. The evening focused on channeling steam from nationwide resistance to Arizona’s SB1070, whose remaining provisions<sup>448</sup> went into effect on the 29<sup>th</sup>, into struggles against increasingly restrictive immigration enforcement in North

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<sup>447</sup> “From North Carolina to Arizona: March for Immigrant Justice. Rally at the Capitol building. Raleigh, North Carolina. July 29<sup>th</sup>, 2010.

<sup>448</sup> Besides the parts that were struck down by federal Judge Susan Bolton in a preliminary injunction on July 28<sup>th</sup>, 2010.

Carolina largely through 287 g and Secure Communities. Alejandra summed up the connections being forged as she called, “*NO to SB1070. NO to SJI349* [a proposed Arizona-inspired bill that would make it a crime “to carry or complete an alien registration document”].<sup>449</sup> *NO to 287 g. NO a Comunidades Seguras, NO a la 287 g, NO a la discriminación racial. NO a la (laughter, catching breath) – NO a la discriminación PUNTO!*”

The July 29th march, organized by NC ICE Watch and supported by numerous other organizations including those of the speakers<sup>450</sup>, brought together diverse ethnic and racial justice groups and allies, manifesting the conscious efforts of NC ICE Watch (among others) to form coalitions across racial and ethnic lines. Sara, the statewide organizer of immigration advocates and member of NC ICE Watch<sup>451</sup>, traces efforts at building Latino and African American alliances and relationships with Muslim and Arab Americans in the post-9/11 profiling to early in the decade, as long as she has held her position.

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<sup>449</sup> North Carolina General Assembly. 2009-2010 Session. “Senate Joint Resolution 1349”. <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=S1349>.

<sup>450</sup> Such as: Workers for Justice, the Father Charlie Mulholland Catholic Worker House, North Carolina DREAM Team, North Carolina Justice Center, the Farm Labor Organizing Committee, Pueblo Unido, the Southern Coalition for Social Justice, Student Action with Farmworkers, the Umbrella Coalition, the NAACP, United Electrical Workers Local 150.

<sup>451</sup> NC ICE Watch formed in response to raids but has shifted (with the Obama administration) to respond to 287 g, other ICE ACCESS programs, and now Secure Communities.<sup>451</sup> From a policy and legal bent, NC ICE ACCESS “shifted into a group that sort of had less attorneys and had more community activists and organizers and educators involved”<sup>451</sup>, and this group decided to focus on two strategies: Direct Action and human rights documentation. In both arenas, it has sought to build coalitions beyond the Latino population to other groups that experience racial and ethnic discrimination within and beyond the realm of immigration enforcement. The July 29<sup>th</sup> event demonstrates the successful symbolic unity (through the presence and participation of leaders) of the African-American, labor, and Muslim-American communities with Latino communities; of course this symbolism has its limits.



The union between immigrant rights and racial justice in the Southeast felt particularly urgent during a spring that saw blatant attacks against both. Nine days prior to the July 29<sup>th</sup> March for Immigrant Justice, 1,000 people had taken to the streets to protest the Wake County School Board's vote to dismantle the district's Diversity Policy, in which students are assigned to schools based on economic diversity, for neighborhood schools.<sup>452</sup> Numerous groups and members of the community rallied against the decision (made by a newly elected conservative majority), which pointed to the de facto re-segregation of schools. Wake County has had a long-standing reputation for commitment to integration since the era of the Civil Rights movement.<sup>453</sup> After courts prohibited using race-based criteria in 2000 to integrate, Wake County switched to the economic integration policy, which was so successful that it became a model for other school districts nationally. Momentum against the School Board's plan moved civic leaders to develop a proposal for "integration by achievement", wherein no school would have an over high number of failing students. All parties expressed approval for pursuing this possibility further, and the County is working to develop a plan that hopefully all will approve.

As a participant in both marches, I felt the salience of each protest to both immigrant and racial justice issues. Recall the parallel Colin drew between "anti-immigration" and "anti-immigration" policies in his reaction to the prohibition of driver's licenses to the undocumented. This parallel is borne out in the significance of

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<sup>452</sup> Blythe, Anne, Goldsmith, Thomas. "Hundreds Rally against Wake schools plan." The Raleigh News & Observer. July 20, 2011. <http://www.newsobserver.com/2010/07/20/589712/hundreds-rally-against-wake-schools.html>. (Accessed May 26, 2011).

<sup>453</sup> Winerip, Michael. "Seeking Integration, Whatever the Path." New York Times. February 27, 2011. <http://www.nytimes.com/2011/02/28/education/28winerip.html>. (Accessed May 26, 2011).

the issues addressed in the marches to both groups. The issue of educational re-segregation addressed in the July 20<sup>th</sup> March is pertinent to immigrant rights issues, particularly in the struggles of undocumented youth. Not only has the DREAM ACT failed to pass, but North Carolina's proposed House Bill 11, "No Post-Secondary Education/Illegal Aliens," would prohibit undocumented immigrants from attending North Carolina community colleges and universities. This proposed bill alone suggests that segregation is very relevant in the discussion of immigrant rights. As well, the march against SB1070 highlighted not only the ills of that bill, but the parallels between SB1070 and current 287 g and Secure Communities partnership, which have been linked to racial profiling and pose many of the same problems that the federal government decried in its lawsuit against SB1070.<sup>454</sup> The struggle against racial profiling by law enforcement is obviously relevant to ongoing discrimination against blacks in the South. Thus, the struggles for immigrant rights and racial justice seem to be particularly strategically aligned.

NC ICE Watch members also organized a November 20<sup>th</sup> "Story Night" to share stories of human rights and human dignity abuses arising mainly but not exclusively from immigration enforcement. The event's strategic location at the Muslim American Freedom Society was meant to invite more members of the Muslim-American community who have experienced abuses to participate and to draw Latino community members together with other aggrieved groups. Around twenty-five immigrants and

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<sup>454</sup> See Griesbach, Kathleen. "A program at odds with federal immigration powers." The Raleigh News & Observer. September 9, 2010. <http://www.newsobserver.com/2010/09/09/670729/a-program-at-odds-with-federal.html> (Accessed May 26, 2011).

some white allies attended from both ethnic groups. As one organizer from MAS argued at the event,

without real coalition-building we're not going to be able to overcome the hassles of the future and provide a society for our children in which every person is respected by, you know by...their personalities, by their basic value system. And not by, and they're not judged by the color of their skin or their religious dress.<sup>455</sup>

“Story Night” was intended as a way to identify potential interviewees for the National Network of Immigrant and Refugee Rights’ “HURRICANE” human rights documentation project and discuss how to move forward after a few pre-identified testimonials, small group discussions and brainstorming, and larger group discussion. The event in general seemed successful, though afterward there was agreement among organizers that we had seen too much “speaking for” in the group setting, which seemed mainly due to “too many white allies”<sup>456</sup>.

Part of the point of people sharing their stories, one organizer explained that evening, is to talk about rights and dignity violations occurring as a community, to name the abuses and draw out similarities among different experiences. She stressed that

as part of this process, we get together and we look at all the stories and maybe part of that is seeing that “Oh – maybe the thing I went through is similar to what Gisela went through, or it has some little pieces of what Mohammed went through. And maybe some of the same systems are causing the things that are making us suffer. And so we decide together as a community what we want to do about it.”<sup>457</sup>

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<sup>455</sup> “Story Night” transcription. November 20, 2010, Raleigh, North Carolina.

<sup>456</sup> The problem of “speaking for” emerges within Latino advocacy as well, of course. Alejandra, who spoke at the rally, explored in an interview some of the problems of top-down organizing and how she and several others decided to form the NC DREAM Team after disenchantment with top-down politics of organizing.

<sup>457</sup> “Story Night” Recording. November 20, 2010. Raleigh, North Carolina.

This theme of drawing out similarities among differences connects to the wider goal of coalition-building among diverse groups, without denying the particularities of different struggles within, for example, the African American community as opposed to the Latino community in North Carolina. Ruth Wilson Gilmore's argument for the need to "stretch" a question or problem so that it reaches "further than the immediate without bypassing its particularity"<sup>458</sup> seems useful in thinking through the "immediate" problems of criminalization and subsequent deportation of Latinos in North Carolina through targeted interior enforcement practices in a longer trajectory of criminalization and racial oppression of blacks in the state, for example, without dismissing the particular moment of strong anti-Latino discrimination. Along the same lines, David Harvey discusses the importance of "relating the universal to the particular" struggles of different groups in order to pursue social justice. Harvey maps weakening working class politics in the United States along a postmodern "shift from universalism to targeting of particular groups." He explores how a large fire at a chicken processing plant in Hamlet, North Carolina revealed horrendous conditions in the factory, but attempts at class mobilization in the wake of the fire failed because impacted groups split along racial and special interest lines. Harvey argues that basic gains toward social justice require that different impacted groups find "the similarities that can provide the basis...to understand each other and form alliances" while still recognizing difference. Harvey argues that

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<sup>458</sup> Gilmore, Ruth Wilson. "Forgotten Places and the Seeds of Grassroots Planning." p. 37. from *Engaging Contradictions: Theories, Politics, and Methods of Activist Scholarship*. Hale, Charles, ed. Berkeley: UC Press, 2008.

The task...is to find an equally powerful, dynamic and persuasive way of relating the universal and the particular in the drive to define social justice from the standpoint of the oppressed.<sup>459</sup>

This notion of finding similarity in difference is essential in thinking through alliances among African Americans and Latinos, for example, about whom much about horizontal racism has been written but who face many of the same struggles of vertical racism in forms of racial profiling and criminalization.<sup>460</sup>

While in no way without its challenges, coalition-building among diverse groups with similarities in their experiences of oppression is emerging through partnerships and participation among differing groups with a stake in immigrants' rights in North Carolina. Efforts to "relate the universal to the particular" might begin by theorizing immigrants' rights as human rights. Tamara, an immigrant who shared a testimonial of stalking by a USCIS agent and the successful prosecution of the agent through her own cooperation and courage, made this connection seamlessly. She stressed that

Tiene que luchar uno por lo que quiere, y no dejar que, que porque no tiene papeles, o algo que diga que eres de aquí, no tienes derechos, los derechos son para todos, y...nadie puede quitarlos.<sup>461</sup>

The coalition-building occurring in North Carolina resistance work has important ramifications for the broader immigrant justice movement. The importance of "stretch" and of relating "the universal and the particular" is particularly relevant in the current policy climate of immigrant restriction and intolerance, emphasized by the

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<sup>459</sup> All above, Harvey, David. "Class Relations, Social Justice and the Politics of Difference." From Pile, Steve, ed. *Place and the Politics of Identity*. New York: Routledge, 1993. p. 45.

<sup>460</sup> This is discussed in detail in Jackson, R.O. "The Shifting Nature of Racism." from *Being Brown in Dixie: Race, Ethnicity, and Latino Immigration in the New South*. Boulder: First Forum Press, 2010.

<sup>461</sup> *Op. Cit.*, "Story Night" Transcription.

passage of SB 1070 in Arizona and by legislative assaults on immigrant rights throughout the nation.

**Appendix: List of Referenced Interviews**

<b>Pseudonym or Official</b>	<b>Location of Interview</b>	<b>Type of Informant</b>	<b>Date of Interview</b>
<b>San Diego County</b>			
Juana	San Marcos, California	Migrant	1/7/2010
David	San Diego, California	Community member	12/2/2010
Jorge	San Diego, California	Advocate	2/11/2011
Steven Pitts	Phone	Border Patrol spokesperson	2/9/2011
John	Escondido, California	Advocate	2/2/2011
Miguel	San Diego, California	Attorney, advocate	1/21/2011
Amada	El Cajón, California	Advocate	1/26/2011
Lauren Mack	Phone	U.S. Immigration and Customs Enforcement representative	3/9/2011
Diego	San Diego, California	Advocate	2/3/2011
Chief Adolfo Gonzales	National City, California	National City Chief of Police	3/22/2011
N/A	Phone	Carlsbad Police Department officer	3/21/2011
N/A	Phone	Chula Vista Police Department officer	2/23/2011
Public Lieutenant Leonard Mata	E-mail	Oceanside Police Department representative	3/9/2011
Public Information Officer Bernard Gonzales	E-mail	Chula Vista Police Department representative	3/3/2011

<b>North Carolina</b>			
Pedro	Raleigh, North Carolina	Migrant	9/9/2010
Sam	Durham, North Carolina	Attorney	7/22/2010
Lara	Raleigh, North Carolina	Attorney	8/27/2010
Alejandra	Raleigh, North Carolina	Migrant	9/6/2010
George	Durham, North Carolina	Law Enforcement	8/19/2010
Sara	Raleigh, North Carolina	Advocate	9/1/2010
Mary	Raleigh, North Carolina	Attorney	8/24/2010
Sheriff Donnie Harrison	Raleigh, North Carolina	Wake County Sheriff	8/04/2010
Chief José Lopez	Durham, North Carolina	Durham Chief of Police	8/11/2010
Sheriff BJ Barnes	Greensboro, North Carolina	Guilford County Sheriff	8/09/2010
Colin	Raleigh, North Carolina	Advocate	8/24/2010
Frank	Raleigh, North Carolina (phone)	Advocate	8/16/2010
Cindy	Raleigh, North Carolina (phone)	Advocate	8/18/2010
Amy	Chapel Hill, North Carolina	Advocate	7/22/2010



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