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Localizing immigration enforcement: “secure communities,” § 287(g) and Arizona law 1070

Jessica Rios

DePaul University, rios1979@hotmail.com

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Localizing Immigration Enforcement: “Secure Communities,” § 287(g) and Arizona Law 1070

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BY JESSICA RIOS

Department of International Studies
College of Liberal Arts and Sciences
DePaul University

Chicago, IL

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Abstract

“Secure Communities” and the similar 287(g) Program of the Immigration and Nationality Act place the U.S. federal government into enforcement relationships with local and state officials. An effect of these relationships is that states acquire more authority over federal immigration policy. In this thesis I explore the history and social effects of such a shift in enforcement law and policy. I conclude with some policy proposals designed to avoid the problems of the recent past.

Chapter 1: Introduction

Research Question

Historically, in the United States, federal immigration laws have been enforced by federal enforcement officers. State and local jurisdictions generally did not have the authority to implement or enforce federal immigration regulations. Local police enforcement officers did not deal with the execution of federal immigration laws. This has been changing recently. In this thesis, I will look at the consequences of using relatively untrained local police departments to enforce federal immigration laws under the government's program, Secure Communities. I explore a pattern that arose when Secure Communities was implemented: the illegal immigrant incarceration rates rose dramatically and racial profiling surfaced as an effect of the law being enforced by local police officers.

Research Methodology

In this thesis, I will be focusing on the Mexican population living in the United States. I will look at the group's historical migration patterns, how the laws changed to accommodate these patterns and the particular controversy around the passing of Senate Bill 1070 (SB1070) in Arizona. I will analyze primary data from different government sources and secondary scholarly literature to explain the historical data regarding Mexican migration to the United States. I will also gather data from different NGOs active in the field to gauge the impact of such enforcement programs on undocumented immigrants. Since Secure Communities was still a new program when I completed my research in 2012, I relied on contemporary reporting on racial

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profiling problems. I hope to draw a line between the shift in immigration policing and the controversial Arizona SB1070. I will reflect on what the new approach is missing and why it should be changed.

Terminology

In this thesis I have generally adopted terminology from U.S. immigration law usage (e.g., “undocumented,” “illegal,” “alien”). I note in particular the debate around the word alien.

According to Kevin Johnson, “the word ‘alien,’ is a term of art used extensively in discussing the legal rights of immigrants in the United States. By definition, aliens are outsiders to the national community. Even if they have lived in this country for many years, have had children here, work and have deep community ties in the United States, noncitizens remain aliens, an institutionalized ‘other,’ different and apart from ‘us’.”¹ When you assign the term “alien” to people it separates them from citizens. Kevin Johnson argues that one of the main reasons that aliens are seen as the “other” is because aliens do not have the same legal rights as U.S. citizens.² Also, “aliens” can be deported while citizens cannot be. Even citizens who commit serious crimes in the U.S. may not be deported but “aliens” may be deported to their birth countries.

Additionally, I will also use the term “criminal aliens.” “Criminal aliens” is a concept developed under the Secure Communities program and is deemed to be a specific subset of the “illegal alien” population determined to have committed a serious crime under federal regulations. Much of the controversy regarding Secure Communities is over who counts as a

¹ Kevin R. Johnson, "Aliens and The U.S. Immigration Laws: The Social and Legal Constructing of Nonpersons," *The University of Miami Inter-American Law Review*, 28 Winter 1996/1997, 263-292.

² Ibid.

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“criminal” versus an “illegal alien.” Overall, this paper shows that there is a pattern that arose when Secure Communities was implemented: the illegal immigrant incarceration rates rose dramatically, and racial profiling surfaced as an effect of the federal law being enforced by local police officers.

Chapter 2: Mexican Immigration Under U.S. Law

Immigration Reform Control Act of 1986 & Immigration Act of 1990

Even after the Bracero labor recruitment program ended in 1964 the United States had a Mexican population that kept growing. With direct consequences for Mexican immigration to the United States, the U.S. government has passed several different immigration laws over the past half century. The law that had the biggest effect was passed in 1986 and it was called the Immigration Reform and Control Act (IRCA). The IRCA included four key elements:

- An increase in resources to the U.S. Border Patrol to limit unauthorized immigration;
- Employer sanctions to punish those who would hire undocumented immigrants;
- An amnesty program for some resident aliens who could prove that they had resided in the U.S. since 1982;
- An amnesty program for immigrants who had worked in U.S. agriculture.

Under IRCA 2.3 million Mexicans acquired lawful permanent residence in the U.S.³ However, this legislation did not work in deterring immigration. Instead, the law may have led some to believe that they could move to the United States and then legalize their residency.

After the Immigration Act of 1990 immigrants could legally enter the United States by obtaining a work visa, though this law generally made it harder for foreigners to obtain visas and implemented tougher “procedures for foreigners seeking temporary work permits.”⁴ The act allowed for immigrants’ families to reunite and for highly skilled workers to obtain visas through employer sponsorship.⁵ According to Durand, et al., during this period illegal migration

³ Jorge Durand, Douglas S. Massey and Emilio A. Parrado, “The New Era of Mexican Migration to the United States,” 518-536.

⁴ Leah Haus, “Openings in the wall: Transnational migrants, labor unions, and U.S. immigration policy,” *International Organization*, 49 Spring 1995, 285-313.

⁵ Ibid.

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increased by a factor of seven to one over legalized migration.⁶ In addition, employers under IRCA were not required to authenticate their I-9 forms with a government agency in order to verify that employees were allowed to work in the United States. Consequently, this did not stop undocumented immigrants from finding employment in the United States.

IRCA had created wage discrimination against undocumented workers because employers were not reporting undocumented workers to any government agencies. As a result, they could even choose to pay their workers lower wages. In addition, employers hired subcontractors to seek undocumented workers to work for them so the employer would not be penalized for hiring undocumented employees. This also caused lower wages, less paperwork and high employment turnovers.⁷

IRCA and the Immigration Act of 1990 are the legal backdrop to the high influx of Mexican immigration to the United States in the 1990s. If we assume it was the goal of the U.S. government to implement IRCA as a deterrent to undocumented immigration of Mexicans into the United States, then the chain migration that resulted defeated the purpose of the law. Both legal immigration through sponsorship of family members and unauthorized immigration that may have been encouraged by the law increased during this period.

Massey and Espinoza argue that increased enforcement of borders under IRCA had no effect on migration patterns; people kept moving back and forth across the border.⁸ The legalization of immigrants through IRCA increased the rates of return migration, as people did not face any

⁶ Jorge Durand, Douglas S. Massey and Emilio A. Parrado, "The New Era of Mexican Migration to the United States," 518-536.

⁷ Ibid.

⁸ Massey, Douglas S. and Kristin E. Espinosa. "What's Driving Mexico-U.S. Migration? A Theoretical, Empirical, and Policy Analysis." *The American Journal of Sociology*. 102 Jan. 1997: 939-999.

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restrictions since they could easily cross the border legally. They also found that permanent settlement was not any different from previous years.⁹

Economic Migration Patterns

IRCA allowed immigrants to become permanent settlers in the United States. However, the question as to why people were migrating is more complicated than response to a single “pull” factor such as legal residency. From my review of the literature 3 kinds of causation are theorized. Two of these derive from different social models for conceiving causation: an economic interest (as affected by family and seasonal factors) model and a cumulative causation model. A third kind of causation involves the deterrent effect of immigrant apprehension by law enforcement.

Considering economic interests, an unstable Mexican economy that is generally unable to provide adequate employment and educational opportunity cannot be expected to retain the effected population within Mexican borders. An economic “pull” factor encouraging immigration is the money that migrants earn in the United States and send as remittances back to Mexico. These remittances aid in subsistence farming, building homes, buying land and livestock, building small businesses, public work projects, building churches and soccer stadiums.¹⁰ Douglas S. Massey and Kristin E. Espinosa state that immigration from Mexico increases the income and capital for immigrant families. Therefore, “economic development

⁹ Jorge Durand, Douglas S. Massey and Rene M. Zenteno, “Mexican Immigration to the United States: Continuities and Changes,” *Latin American Research Review*, 36 (2001), 107-127.

¹⁰ Nicholas De Genova, “Race, Space, and the Reinvention of Latin America in Mexican Chicago,” *Latin American Perspectives*, 25 Sep. 1998, 87-116.

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goes hand in hand with international migration,” suggesting the integration of economics and migration.¹¹

David D. Lindstrom's model argues that migrants from Mexico who have “. . . favorable opportunities for employment and small capital investment have a strong incentive to stay in the United States for longer periods in order to reach a particular long-term savings target as soon as possible.”¹² On the other hand, migrants who have poor employment and investment opportunities in originating communities have short-term income security and stay for shorter periods in the United States. Lindstrom's results show that 19% of the migrants use the income made abroad to invest in capital in Mexico where women have relatively high levels of economic activity.¹³ Only 5% of investment in capital is found in areas with low female economic activity.¹⁴ Those women with high economic activity are more likely to migrate to the United States, which also encourages further family migration and eliminates the emotional costs of separation from family. Family networks abroad generally facilitate migration and decrease return migration. Those migrants with favorable opportunities for employment and capital are thus more likely to become permanent migrants, although they have "the strongest origin economic incentives for return."¹⁵

¹¹ Nicholas De Genova, “Race, Space, and the Reinvention of Latin America in Mexican Chicago,” *Latin American Perspectives*, 25 Sep. 1998, 87-116.

¹² David P. Lindstrom, “Economic Opportunity in Mexico and Return Migration from the United States,” *Demography*, 33 Aug. 1996, 357-374.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

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Belinda Reyes studies return migration from data generated by the Mexican Migration Project (MMP), which collected data from 30 Mexican communities between 1982 and 1993. The study includes 5,652 households interviewed in Mexico and 410 interviewed in the United States.¹⁶ Reyes finds that after IRCA 63 percent of females and 73 percent of males are staying permanently in the United States.¹⁷ Reyes also determines that those undocumented immigrants who own some assets such as a house, land or a car are more likely to stay in the United States. Immigrants that find higher paying jobs are more likely to settle in the United States. Females stay for longer periods than males, especially when the household has a higher number of workers than dependents. Reyes also noticed that post-IRCA settlement patterns change in the United States. and that “. . . policies that are meant to decrease the number of immigrants entering the United States may end up increasing the number of immigrants living in the United States.”¹⁸

The study of apprehensions at the U.S./Mexico border shows seasonal migration patterns, corresponding to key sectorial demand swings, correlate with the apprehension of illegal immigrants entering the United States. According to Gordon H. Hanson and Antonio Spilimbergo, there is a seasonal pattern for apprehensions that “. . . are stable from January through August, then decline by 40.0 % between August and December.”¹⁹ Many agricultural

¹⁶ Belinda I. Reyes “Immigrant Trip Duration: The Case of Immigrants from Western Mexico,” *International Migration Review*, 35 Winter 2001, 1185-1204.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Gordon H. Hanson and Antonio Spilimbergo, “Illegal Immigration, Border Enforcement, and Relative Wages: Evidence from Apprehensions at the U.S.-Mexico Border,” *The American Economic Review*. 89 Dec. 1999, 1337-1357.

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workers work both the Mexican and U.S. agricultural fields. Whenever they are not working the Mexican fields, agricultural workers were more likely to migrate to the United States, taking advantage of the staggered growing seasons.

Hanson and Spilimbergo also point out that seasonal variations occur due to year-end refunds granted by the Mexican government to farm workers. The authors explain that a “. . . factor that may account for the end-of-year trough in apprehensions is that Mexican labor law mandates workers receive a year-end bonus, which is paid in December and can be a large fraction of annual earnings.”²⁰

Cumulative Causation Theory

A more socially oriented model as to why people migrate is provided by the cumulative causation theory. Cumulative causation theory suggests that as family members migrate to the settling country more people will eventually follow the same migration pattern in the future due to the help and knowledge of their family and friends. In the case of Mexican immigrants, family and friends provide them with the knowledge of where to cross the border, how to avoid the border patrol, how to acquire a good coyote (smuggler), where to find work and shelter, and a community they could rely on while trying to settle in the United States. Elizabeth Fussell and Douglas S. Massey, using data collected by the Mexican Migration Project (MMP), find that a single migrant could create more migration, though development of “social capital,” thus encouraging family members who had never been part of the migration flow to enter and move

²⁰ Gordon H. Hanson and Antonio Spilimbergo, “Illegal Immigration, Border Enforcement, and Relative Wages: Evidence from Apprehensions at the U.S.-Mexico Border,” *The American Economic Review*. 89 Dec. 1999, 1337-1357.

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to the United States. This process repeats and expands and may, in turn, create a self-sustaining migration pattern.²¹

Once family networks are established it is less likely for migration patterns to be disrupted. Paul Winters, Alain de Janvry, and Elisabeth Sadoulet examine the role of family and community-based migrations from Mexico to the United States. They use the data from the 1994 Office of the Secretary for Agrarian Reform of the Mexican Government. This study looks at 275 ejidos that include 1,543 households.²² Their findings in summary form are:

- Migrant communities and family networks have a positive influence on the decision to migrate and the number of migrants to send;
- Those households that have weak family networks benefit from community networks;
- Where there is a greater potential or likelihood of community investment, it is less likely that the community migrates;
- Finally, migrants from specific communities in Mexico migrate to communities in the U.S. where they have network ties.²³

Durand and Massey conclude that “. . . the earlier the migration began, the more developed a community's networks will be, the more legalizations will have occurred, and the more experience community members will have accumulated in the United States. As a result, the longer a community has been involved in the migration process, the more likely that migrants will come from the poorest segments of the socioeconomic hierarchy, the greater the

²¹ Elizabeth Fussell and Douglas S. Massey, “The Limits to Cumulative Causation: International Migration from Mexican Urban Areas.” *Demography*, 41 Feb. 2004, 151-171.

²² Paul Winters, Alain De Janvry and Elisabeth Sadoulet, “Family and Community Networks in Mexico-U.S. Migration,” *The Journal of Human Resources*, 36 Winter 2001, 159-184.

²³ Jorge Durand and Douglas S. Massey, “Mexican Migration to the United States: A Critical Review,” *Latin American Research Review*, 27 (1992), 3-42.

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participation of women and children, the higher the proportion of documented migrants, and the greater the reliance on settled and recurrent migrant strategies.”²⁴

In a subsequent article Massey, Goldring and Duran test whether migration prevalence ratios differed from a community of limited migration to one of mass migration.²⁵ The authors' study focuses on 19 Mexican communities and samples 3,400 households from 1982-1983 and 1987-1991. Their findings show the prevalence ratios increase as information about migration to individuals' increases. As networks grow, the risks and costs of migration decrease. As knowledge of migration increases among groups, more migrants are encouraged to migrate. Migration becomes an economic mass movement practice as time progresses. When this happens, it is very easy to find someone who has migrated to the United States, and the study shows that levels of work experience increase accordingly.

According to the authors, “. . . the initial stages of migratory development increased dramatically during the intermediate stages, and then stayed constant or fell slightly as a mass level of migration was achieved. Movement strategies and trip durations displayed a pattern of rising and then falling diversity as communities moved from the lowest to the highest prevalence category.”²⁶ The authors agree with Jorge Durand and Douglas Massey's 1992 study that migration arises from among different types of Mexican communities.²⁷ As a result, the authors

²⁴ Jorge Durand and Douglas S. Massey, “Mexican Migration to the United States: A Critical Review,” *Latin American Research Review*, 27 (1992), 3-42.

²⁵ Douglas S. Massey, Luin Goldring, and Jorge Durand, “Continuities in Transnational Migration: An Analysis of Nineteen Mexican Communities,” *The American Journal of Sociology*, 99 May 1994, 1492-1533.

²⁶ Ibid.

²⁷ Ibid.

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call for more research on the prevalence of migratory flows among different communities in Mexico.

Cumulative causation acts as a kind of domino effect for immigrants. Once one immigrant moves to the United States another tends to follow. While IRCA allowed for easy transition for some immigrants to permanent resident status, it and other laws (four additional governmental policies besides IRCA have been put in place to deter immigration to the United States) have also sought to deter immigrants from entering the country. Scholars offer economic and social explanations for the persistence of immigration in the face of such laws. A final area of consideration is the role of enforcement in the creation of migration patterns.

Apprehensions

Several studies examine whether apprehensions at border towns have had a deterrent effect on undocumented immigration into the United States. One would assume that extra protection at the borders would deter illegal border crossings. However, the research does not align with such an assumption. Hanson and Spilimbergo find a correlation between, on the one hand, apprehensions of illegal border crossers by the U.S. Border Patrol and, on the other hand, the wage relative wage rates in the United States and Mexico. The results of their study disprove the popular perception that extra border enforcement drives down undocumented immigration into the United States.²⁸ When wages dropped in Mexico, more immigration (and apprehensions) occurred in the United States. When wages increased in the United States, more

²⁸ Gordon H. Hanson and Antonio Spilimbergo, "Illegal Immigration, Border Enforcement, and Relative Wages: Evidence from Apprehensions at the U.S.-Mexico Border," *The American Economic Review*. 89 Dec. 1999, 1337-1357.

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migration occurred as tracked by the number of increased apprehensions at the border.

According to the authors, “[a]pprehensions rose from an average of 2,400 per month in the 1960’s to 70,100 per month in the 1990’s. The series shows large spikes in 1983, 1986, and 1995, each of which follows a devaluation of the peso and a recession in Mexico. Enforcement hours have grown erratically over time. From a mean level of 182,000 person hours per month for 1980-1986, enforcement rises to 368,000 person hours per month by 1996.”²⁹

A study of illegal border crossings of Mexican immigrants to the United States was conducted by Audrey Singer and Douglas S. Massey. Their findings show that 97% of unauthorized immigrants apprehended ended up signing voluntary departure forms to be returned to Mexico at border towns instead of being held and waiting for a hearing before an immigration judge.³⁰ Once they were dropped at the border many would immediately attempt to cross again, and those who had been apprehended were more likely to be apprehended again.

Several articles examine the question of whether deterrence was achieved after implementation of IRCA and generally conclude that the apprehensions at the border do not deter migration from Mexico. Again, scholars find that migrants make multiple trips until they are able to get into the United States. The research shows that as more people become involved in the migration process, including employers, it is less likely that the U.S. government can stop migration. The studies also demonstrate that migrants do not have to rely more upon smugglers and do not spend more money on cross-border trips after IRCA. So, common sense assumptions

²⁹ Gordon H. Hanson and Antonio Spilimbergo, “Illegal Immigration, Border Enforcement, and Relative Wages: Evidence from Apprehensions at the U.S.-Mexico Border,” *The American Economic Review*. 89 Dec. 1999, 1337-1357.

³⁰ Audrey Singer and Douglas S. Massey, “The Social Process of Undocumented Border Crossing among Mexican Migrants,” *International Migration Review*, 32 Autumn 1998, 561-592.

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aside, more money spent apprehending migrants has not deterred undocumented immigration into the U.S.

Chapter 3: Post-IRCA Immigration and Enforcement

Many legal changes have occurred since IRCA, broadly across the entire Immigration and Nationality Act. Laws arising from the “. . . 1986 and 1996 immigration reforms laid the groundwork for the militarization of the interior and border immigration control, cementing immigration policies to national security, foreign trade and other economic policies. These immigration reforms introduced and institutionalized immigration policing of the workplace and deepened the criminalization of immigration status, making it a crime to work without authorization.”³¹ Later on, the law was changed to provide for more expeditious deportation of “criminal aliens.”³² Initially, criminal aliens were thought of as a group of people that had already been incarcerated and for whom no systematic process existed by which to monitor immigration status. This chapter will look at the different programs being utilized to arrest and identify these so-called criminal aliens.

In 1988, as part of the Omnibus Anti-Drug Act, “. . . Congress required mandatory detention and deportation for immigrants convicted of ‘aggravated felonies,’ which were then defined as drug trafficking, murder, and firearms trafficking. Pursuant to the 1988 act, the Immigration and Naturalization Service (INS) established the Institutional Removal Program, which began to review the immigration status of federal prisoners and represented the beginning

³¹ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," *Hurricane: The Human Rights Immigrant Community Action Network-An initiative of the National Network for Immigrant and Refugee Rights*, Sept 2009, 1-46.

³² The term criminal alien seems to have been defined by the government's 3-tier categorization of crimes under the Secure Communities Act. See footnote 53 for a description of the early ICE definition under the categorization system.

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of what became the Criminal Alien Program in 2007. The Criminal Alien Program (CAP) sought criminal aliens in the federal prison system to be turned over to ICE for processing and, if warranted, deportation. The Detention Enforcement and Processing Offenders by Remote Technology Center (DEPORT) program was set up in Chicago to monitor federal prisons in order to identify undocumented prisoners entering the prison system for possible transfer to ICE at the end of their sentences. The Federal Bureau of Prisons (BOP) has five prisons run by two private prison companies (Corrections Corporation of America and GEO Group) where low security risk "criminal aliens" may be detained for drug possession or immigration violations.³³ Indeed, the privatization of these and other facilities leads some to argue that ICE has turned its jails into for-profit enterprises where the well-being of the individuals incarcerated does not matter.

Michael Chertoff, United States Secretary of Homeland Security, in 2005 started to focus on "criminal aliens,"³⁴ and Homeland Security's Operation Return to Sender is an example of a program from the period targeting "criminal aliens."³⁵ However, this was not the only program.

As Tom Barry explains:

Other associated programs that target criminal aliens together with local law enforcement agencies are Operation Community Shield and Operation Stonegarden. In Operation Community Shield, ICE joins with local police to arrest suspected gang members not necessarily for any suspected crimes but for immigration violations. As part of DHS' Border Security Initiative, Operation Stonegarden provides DHS grants to 'support closer

³³ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

³⁴ Ibid.

³⁵ Ibid.

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coordination of state and federal law enforcement agencies at our borders.' Another overlapping ICE operation is the Border Enforcement Security Task Forces (BESTs), which also joins ICE and local law enforcement agencies along the border. These and other criminal alien programs that promote ICE/local 'interoperability' fall under the umbrella program called ICE ACCESS (ICE Agreements of Cooperation in Communities to Enhance Safety and Security).³⁶

According to a recent Migration Policy Institute report, "the National Fugitive Operations Program [NFOP] 'has failed to focus its resources on the priorities Congress intended when it authorized the program. In effect, NFOP has succeeded in apprehending the easiest targets, not the most dangerous fugitives. Furthermore, the program's structure and design appear to encourage officers to jeopardize their own safeties, alienate communities, and misdirect expensive personnel resources."³⁷

Another program targeted at criminal aliens and falling under DHS is Operation Streamline that supports a 'zero tolerance' policy towards "illegal aliens" crossing the border. According to Barry, Operation Streamline is a pilot program that works under Border Patrol. Illegal aliens who are caught crossing the border are criminally charged and turned over to the U.S. Marshals Service (USMS) for custody. These "criminal aliens" are sentenced normally to 15 days in prison and those who are caught for a second time face 10-20 years in prison. Moreover, DHS has not limited its criminalization of immigrants to the border. As part of the expansion of its "interior enforcement" function ICE in 2007 also began treating falsely

³⁶ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

³⁷ Ibid.

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documented or undocumented workers as criminal aliens.³⁸ This means that when a person gets caught in the interior of the United States, the person faces the same criminal charges as those who apprehended at the Border. As of 2009, "ICE ACCESS encompass[ed] 13 separate programs that permit local law enforcement agencies to partner with ICE in immigration enforcement. . . the most significant and widespread of the programs involving states and localities in immigration enforcement: (1) the 287(g) Program, (2) the Criminal Alien Program (CAP), and (3) the Secure Communities Program."³⁹

Section 287(g) and Secure Communities

Gradually, in the period after September 11, 2001, "INS/DHS engaged local law enforcement in immigration enforcement through '287(g) agreements.'"⁴⁰ According to Barry, "287(g) agreements refer to a 1996 change in the Immigration and Nationality Act (INA)."⁴¹ These agreements allow police departments, sheriff departments, and county jailors to enforce federal laws under the INA. Such enforcement agencies may stop suspected immigration law violators as part of their routine activities. The program prioritizes violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling, and

³⁸ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

³⁹ Melissa Keaney and Joan Friedland, "Overview of the Key ICE ACCESS Programs 287(g), the Criminal Alien Program, and Secure Communities," *National Immigration Law Center*, Nov 2009, 1-7.

⁴⁰ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

⁴¹ *Ibid.*

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money laundering.⁴² ICE has trained local officials to search for immigration status of suspected immigrants and to encourage local officials to use the integrated criminal/immigration databases it has established.⁴³ As explained by Keaney and Friedland, in “. . . the 287 (g) program local jurisdictions sign agreements with the U.S. Department of Homeland Security (DHS) to allow local law enforcement officers to enforce federal immigration laws. Under CAP, ICE agents screen inmates in local jails that are foreign-born to determine if they are to be deported. Under Secure Communities fingerprints of arrested individuals at participating jails and prisons are checked against DHS's Automated Biometric Identification System, including Federal Bureau of Investigation (FBI) databases.”⁴⁴ According to Keaney and Friedland, ICE has created a three-part framework within the criminal justice system for immigration enforcement: physical presence in jails (CAP), technological presence (Secure Communities), and actual transfer of authority (287(g)). While each program is separate, the programs often overlap with each other.⁴⁵ A signed agreements under the 287(g) Program is called a Memorandum of Agreement (MOA). According to ICE, as reported by Keaney and Friedland: “More than 1075 officers have been trained and certified through the program under 67 MOAs (61 Mutually Signed; 6 Agreements in Principle).”⁴⁶

⁴² Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

⁴³ Ibid.

⁴⁴ Melissa Keaney and Joan Friedland, "Overview of the Key ICE ACCESS Programs 287(g), the Criminal Alien Program, and Secure Communities," *National Immigration Law Center*, Nov 2009, 1-7.

⁴⁵ Ibid.

⁴⁶ Ibid.

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Despite an ongoing investigation by U.S. Department Of Justice's Civil Rights Division over allegations of racial profiling, Sheriff Joe Arpaio of Maricopa County, Arizona, was allowed to keep his "jail MOA", although his "task force MOA" was not renewed.⁴⁷ ICE has claimed from the start that criminal activity is the emphasis of the program, but race and ethnicity have gotten the most publicity. According to a recent report by Justice Strategies, FBI and census data indicate that the majority (61 percent) of localities running 287 (g) programs had crime rates lower than the national average, while nearly 90 percent had a rate of Latino population growth higher than the national average.⁴⁸

Secure Communities was introduced in 2008 and by November 2008, 67 Jurisdictions had joined the program and 950 officers were trained to enact federal enforcement laws.⁴⁹ ICE hoped to implement Secure Communities fully by 2013 in all local jails in the country. The program uses technology to catch high risk criminal aliens by linking police, sheriff departments and local jails to FBI and DHS biometric databases. It links "DHS U.S. Visit Automated Biometric Identification System (IDENT) . . ." with "the FBI's Integrated Automated Fingerprint Identification System (IAFIS), which contains biometric base criminal records."⁵⁰

The ICE website states that Secure Communities is to focus on prioritizing the deportation of individuals. The focus is further based on 3 priority levels to justify who should be

⁴⁷ Melissa Keaney and Joan Friedland, "Overview of the Key ICE ACCESS Programs 287(g), the Criminal Alien Program, and Secure Communities," *National Immigration Law Center*, Nov 2009, 1-7.

⁴⁸ Ibid.

⁴⁹ Joan Friedland, "More Questions Than Answers about Communities Program," *National Immigration Law Center*, March 2009, 1-5.

⁵⁰ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

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targeted as "criminal aliens" and who should not. The 3 priority levels for Secure Communities were:

- a. Level 1-Individuals who have been *convicted* of major drug offenses and violent offenses, such as murder, manslaughter, rape, robbery, and kidnapping;
- b. Level 2-Individuals who have been *convicted* of minor drug offenses and mainly property offenses, such as burglary, larceny, fraud, and money laundering; and
- c. Level 3-Individuals who have been *convicted* of other offenses⁵¹

However, according to a report by the Government Accountability Office, the Secure Communities program was not focusing on apprehending serious criminals, there was no adequate supervision of the program, no collective data was gathered from the different sites, and there was a lack of performance measures to evaluate the entire program.⁵² Nonetheless, at a time when most of the budgets for government agencies were being cut due to the recession, the Department of Homeland Security saw an increase in its budget. The 287(g) Program is costly, with some costs shifted to local and state governments. Moreover according to Garcia et al., DHS is spending its money on enforcement instead of improving services for those who are jailed. In 2006-2007, DHS spent six dollars enforcement for every one dollar spent on services."⁵³ Barry, Garcia and Edwards argue that the funds given to the Department of Homeland Security are being misused. According to Barry, "ICE alone spends \$1.7 billion a year for immigration detention" and according to Garcia et al.: As of FY 2008, ICE spends \$135

⁵¹ Joan Friedland, "More Questions Than Answers about Communities Program," *National Immigration Law Center*, March 2009, 1-5.

⁵² *Ibid.*

⁵³ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," *Hurricane: The Human Rights Immigrant Community Action Network-An initiative of the National Network for Immigrant and Refugee Rights*, Sept 2009, 1-46.

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million per year to deport people via airplane. The money spent is not to lodge and feed “illegal aliens” in jails or prisons but rather to detect and apprehend them.

Immigration Detention Systems

Demographics

Since the early 2000s Secure Communities has become the pathway to enforce federal immigration laws but in turn has also allowed for racial profiling. Since ICE has criminalized “illegal aliens” the population in jails and prisons has dramatically increased. Before the criminalization of “illegal aliens” no one really knew how many prisoners were “illegal aliens” because their imprisonment was not routed to ICE to check their immigration status. As a new system was put in place to check the status of those incarcerated, the data gathered gives us a rough idea of the prison population. Also, as Congress has broadened the definition of illegal alien, the definition of the prison population has expanded. According to Kerwin: “Since 1994, the immigration detention system has expanded six-fold, from 6,785 beds per night to 33,400.”⁵⁴ Garcia et al. state that “the jail beds have increased by 78 percent between 2005 and 2008.”⁵⁵ Those people who are already arrested and in the immigration prison system, according to the Migration Policing Institute, consist of:

- a. Men, women, families, and unaccompanied children (the latter housed by ORR);
- b. Detainees from 177 nations (as of January 25, 2009);
- c. Unauthorized immigrants, asylum seekers, torture survivors; lawful permanent residents and persons with claims to U.S. citizenship;

⁵⁴ Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?," *Migration Policy Institute*, Sept 2009, 1-40.

⁵⁵ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

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- d. A minority who have criminal records;
- e. A high volume of short-term detainees, and significant numbers of long-term detainees (i.e. those held more than six months);
- f. Persons with different legal statuses and claims to remain in the United States;
- g. Persons who cannot be released, who should be considered for release, and who must be released;
- h. Persons eligible for alternative-to-detention programs and for population-specific custody review programs.⁵⁶

The criminalization of aliens has helped increase the prison population to “seven times higher than it was four decades ago.”⁵⁷ A total of 2.3 million people are in prison, and “America has the highest per capita incarceration rate in the world.”⁵⁸ According to Barry, studies “. . . identified 221,000 aliens in local, state, and federal prisons, who will be remanded to ICE removal. That’s a 40% increase of incarcerated criminal aliens. In 2006, the population of criminal aliens was 67,000 and in 2007 it was 164,000.”⁵⁹ In the future, Barry expects there to be an increase of criminal aliens. According to Kerwin: “Of the 32,000 immigrants in ICE custody on January 25, 2009, 91 percent were male and 9 percent were female.”⁶⁰ These detainees “. . . came from 177 countries, with 37 percent from Mexico, 28 percent from Central America, 7 percent from the Caribbean, and 6 percent from South America.”⁶¹ According to Kerwin, 25% of the prison

⁵⁶ Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?," *Migration Policy Institute*, Sept 2009, 1-40.

⁵⁷ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?," *Migration Policy Institute*, Sept 2009, 1-40.

⁶¹ Ibid.

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population is in jail for less than a day.⁶² However, there are some studies that show criminal aliens stay in prison for longer than 6 months and could stay in prison up to a year before removal. For example, the average length of incarceration in Travis County, Texas in 2007 was 21.7 days and for those held under an ICE detainer the average was 64.7 days.⁶³ According to Keaney and Friedland, immigrants are supposed to be detained for only 48 hours, but clearly that law is being violated.⁶⁴

A "hold" is also known as a "detainer." If the Department of Homeland Security finds a match in its records, a "hold" is enforced on the arrested person. This "hold" asks that the arresting agency keep the individual for a 48 hour time period. If the arresting agency does not want to convict the individual, then ICE may put a hold on the individual until the agency decides whether the individual should be arrested. This causes some problems because in some instances the individual is denied process, not allowed to post a bond or be released.⁶⁵ ICE regulations do not allow the individual to challenge the detainer. ICE usually keeps individuals for longer than the 48 hour period, without allowing for bonded release, or challenge of the arrest.⁶⁶

According to Kerwin and Lin, the Government Accountability Office found in their study that ICE did nothing to actually bring about the prioritizing of criminal aliens, although the law

⁶² Melissa Keaney and Joan Friedland, "Overview of the Key ICE ACCESS Programs 287(g), the Criminal Alien Program, and Secure Communities," *National Immigration Law Center*, Nov 2009, 1-7.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Joan Friedland, "More Questions Than Answers about Communities Program," *National Immigration Law Center*, March 2009, 1-5.

⁶⁶ Ibid.

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directs that it should prioritize them. Also, "illegal aliens" who were arrested by local police had not necessarily committed crimes.⁶⁷ The incarceration of persons for immigration status alone intensifies the already disproportionate incarceration of African Americans, Latinos and other people of color. DHS Immigration and Customs Enforcement (ICE) have hired local, county, state, federal and private jails to hold immigrants. According to Garcia et al., "immigrants are being subjected to some of the most inhumane and abusive detention conditions, including physical and sexual violence and assault. Over ninety deaths have been reported in federal immigration detention since 2003; nearly half were inmates from Cuba and Mexico, . . . 2008 ended with hunger strikes and protests carried out by persons being held in immigration prisons and detention centers in at least three facilities."⁶⁸

Detentions

Statistically, "there are roughly 20 million legal non-citizen residents and 11 million illegal residents in the United States. ICE estimates that there are 300,000-450,000 criminal aliens detained at federal, state, and local prisons and jails."⁶⁹ The Obama Administration has received much support regarding targeting "criminal aliens," but the public has not widely approved of other DHS initiatives, such as workforce raids. Another question raised concerns whether to subject people who are in the United States legally and who commit crimes to being

⁶⁷ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

⁶⁸ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

⁶⁹ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

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arrested, detained and sent back to their home countries. The "criminal alien" program does not only affect the undocumented population in the U.S. but also other categories such as resident aliens.

In the past years, the numbers of deported and detained people have slowly increased: "Between 2003 and 2007, the total number of immigrants detained by ICE rose from 231,500 to 311,213. Although the apprehensions along the border fell by 17% in 2008, deportations increased, rising from 319,382 in 2007 to 349,041 in 2008."⁷⁰ Since the use of the category "criminal alien" began, detention and removal rates have increased. In 2007, "... 99,924 of the 319,041 immigrants deported were "criminal aliens" and in 2008 ICE deported 110,000 criminal aliens."⁷¹ That is an increase of 9% in one year.

According to Garcia et al., a quota has been required of police officers arresting "criminal aliens." "In August 2009, John Morton, Assistant Secretary of Homeland Security for ICE, revealed that in 2004 each DHS ICE fugitive operations team had to arrest at least 125 "fugitive" immigrants per year. In 2006, each ICE team's quota was increased to 1,000 arrests per year. An internal ICE report released earlier in 2009 showed that ICE agents arrested two dozen Latinos at a Maryland convenience store in 2007 after their supervisor told them to boost arrests because they were behind reaching their goal."⁷² According to Garcia et al., "ICE now jails as many as 33,400 people on any given day, solely based on their immigration status, a civil

⁷⁰ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

⁷¹ Ibid.

⁷² Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," *Hurricane: The Human Rights Immigrant Community Action Network-An initiative of the National Network for Immigrant and Refugee Rights*, Sept 2009, 1-46.

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violation. Immigrants in detention for civil violations related to immigration status are currently the third largest group of persons in federal detentions."⁷³

Kerwin presents a detailed statistical account of the incarcerations that happened under ICE authority:

- a. About 60% of the immigrants in ICE custody were waiting to get final removal orders.
- b. Average detention days before final removal orders are in place is 81 days, 74% had been detained less than 90 days, 13% 3 to 6 months, 10% between 6 months to a year, and 3% for over a year.
- c. Average detention days after final removal orders are in place is 72 days.
- d. 58% of detainees did not have criminal records.
- e. 20% of criminal aliens were detained for traffic violations.
- f. 286 facilities are kept in the southern states of California, Arizona, New Mexico, Texas, Arkansas, Louisiana, Alabama, Georgia and Florida.
- g. 70% were held in state and local prisons, 17% in contract detention facilities, 10% in service processing centers, 2% in federal prisons, and 3% in Office of Refugee Resettlement facilities, medical centers, shelters, and other alternative or "soft" detention settings.⁷⁴

Kerwin and Lin note that according to MPI, ICE should maintain information on its detainees to evaluate what or who:

- a. constitutes a risk and why – information which is crucial in determining eligibility for release, for an alternative program, and for placement within the detention system.
- b. meets the criteria for release or parole, even if the detainee otherwise falls within a mandatory detention category.
- c. may have a claim to U.S. citizenship.
- d. has special medical conditions, mental illness, disability, or other humanitarian issues.
- e. has complied with the government's deportation attempts and, if not, what is needed in order to comply.
- f. has been treated in compliance with ICE's national standards.

ICE should, moreover:

⁷³ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," *Hurricane: The Human Rights Immigrant Community Action Network-An initiative of the National Network for Immigrant and Refugee Rights*, Sept 2009, 1-46.

⁷⁴ Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?," *Migration Policy Institute*, Sept 2009, 1-40.

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- b. a. undertake an intensive analysis of its information systems, particularly its detention database and case tracking system, in light of its legal mandates, management imperatives, and detention transformation initiative. Comprehensively review its contracts for detention space, with the goal of maximizing the cost savings realized by expanding alternative-to-detention programs.
- c. gather information that would allow it to adhere to its national standards, including information on when and how the agency has complied with the standards, U.S. residence of detainees, their family members, and legal counsel.
- d. collect information related to detainee medical needs, interventions, treatment and causes of death.
- e. initiate an exhaustive analysis of its information systems to examine how ENFORCE relates to other databases within the Department of Homeland Security (DHS) and other federal agencies; how ICE collects the information that populates ENFORCE; the fields that ENFORCE contains; and time-series data on all ICE detainees since ENFORCE went into effect.⁷⁵

One of the problems raised by Kerwin and Lin is that 58% of detainees under ICE's jurisdiction do not have a history of criminal records. However, these detainees are held in jail, detained for long periods of time and then deported because they were "criminal aliens." Why are these "criminal aliens" being deported when they have no criminal record?⁷⁶

Kerwin and Lin discuss three overlapping alternative-to-detention programs that are less restrictive than detention. These programs include ISAP, ESR, and EM. The first program, "ICE's Intensive Supervision Appearance Program (ISAP) includes electronic monitoring, curfews, in-person reporting, and unannounced home visits. As participants demonstrate compliance with the program, ICE eases and gradually eliminates some of these restrictions. Its Enhanced Supervision Reporting (ESR) program includes many of the same features, including electronic monitoring, home visits, in-person reporting, and other requirements. ICE also offers

⁷⁵ Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?," *Migration Policy Institute*, Sept 2009, 1-40.

⁷⁶ Ibid.

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a stand-alone Electronic Monitoring (EM) program.”⁷⁷ According to Kerwin and Lin, these alternative-to-detention programs would be a more “humane alternative to detention.”⁷⁸ As

Kerwin and Lin note:

Based on partial and incomplete data, ICE estimates that its three alternative programs cost far less than hard detention and enjoy relatively high rates of success as measured by the percentage of participants who abscond. In particular, ICE reports that 87 percent of ISAP participants, 96 percent of ESR participants, and 93 percent of EM participants appear for their removal hearings. Direct program costs, not including ICE staff time, are estimated to be \$14.42 per day (ISAP), \$8.52 per day (ESR), and between 30 cents and \$5 per day (EM). ICE plans to develop a more viable database by the beginning of FY 2010 and will subsequently produce a comprehensive cost study on standard detention and alternative program costs.⁷⁹

The Department of Homeland Security knew that they had to change their detention standards and had started drafting new national detention standards back in 2000 but ICE had never implemented them. These would “. . . cover security, the exercise of religion, medical care, visitation, telephone access, legal access, and transfers. Developed in conjunction with the American Bar Association, the standards respond to the unique needs of immigrants in civil custody. In January 2010, ICE will implement ‘performance-based’ standards that set forth the outcomes that the national standards were intended to enforce. It will also add standards related to media interviews and tours, detainee searches, sexual abuse and staff training.”⁸⁰ However, the Obama Administration in July 2009, refused to codify the detention standards as federal

⁷⁷ Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?," *Migration Policy Institute*, Sept 2009, 1-40.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

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regulations amid reporting that deaths and violations of standards were happening.⁸¹ The “report was based on an exhaustive review of previously confidential reports and portions of reports by the American Bar Association, the United Nations High Commissioner for Refugees, and ICE.”⁸² Kerwin and Lin raise the issue of whether “the agency’s information systems (particularly ENFORCE) contain sufficient data that allow ICE to comply with its existing detention standards or with new standards that may be developed as part of the transformation of its detention system.”⁸³

Deaths

Since ICE has contributed to the militarization of the Mexico-U.S. border, undocumented immigrants are crossing through some of the most dangerous areas in the Sonoran desert. DHS calls this "prevention through deterrence."⁸⁴ The “border fence” is not a completed barrier across the whole border of the U.S. and Mexico. There are some regions of desert and mountainous regions along the border that are not fenced. ICE has effectively funneled the immigrants through these parts because it is a very dangerous area to cross through. Coyotes or smugglers, who charge money for leading people across the border without inspection, use these regions to cross since there is little policing of the border. Crossing the border in these regions

⁸¹ Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?," *Migration Policy Institute*, Sept 2009, 1-40.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

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has resulted in the deaths of 5,000 people since 1994.⁸⁵ Due to the harsh weather conditions, for the “first six months of fiscal year 2009 (October 2008-March 2009) the remains of some 69 individuals were recovered on the U.S. side of the Arizona-Sonora border.”⁸⁶ Not only are migrants being exposed to harsh weather conditions, once they are apprehended by ICE they face harsh conditions in jail as well. According to Garcia et al., “Over 104 immigrants have died in federal custody since 2003, including deaths of persons seeking asylum or who faced deportation for non-violent civil immigration violations; one-third of those who died in detention were being jailed in privately run facilities.”⁸⁷

Tracking Systems

According to Garcia et al.: “Six thousand new Border patrol agents were hired in FY 2008, doubling the number of agents since 2000, continuing the build-up of the militarization of immigration and border control.”⁸⁸ In FY2008, “6,000 new Border Patrol agents were hired...and by the end of FY 2009, the Border Patrol will have 20,000 agents – a record number in the agency's history.”⁸⁹ Many believe that there should be a better system put in place to track "criminal aliens." MPI recommends “. . . that ICE initiate a thorough inventory and review of its

⁸⁵ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

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information systems, including ENFORCE, to ensure that they allow for informed decisions related to the substance and timing of:

- a. Who ICE must detain and who it must consider for release, with a particular focus on when 'mandatory' detainees become eligible for release;
- b. Which detainees must be allowed to participate in ICE's two post-removal orders, custody review processes;
- c. Who should be placed in ICE's alternative-to detention programs; and ICE's adherence to its national detention standards."⁹⁰

Once this information is available there would be a better understanding of who is being detained, incarcerated, and released through Secure Communities. According to the Transactional Records Access Clearinghouse (TRAC), "prosecutions in 2008 were 70% higher than in 2003 Out of all the cases in December 2008, 55% were new immigration violations, while drug offenses were 16%."⁹¹ These statistics show that there is more emphasis being placed on immigration violations than ever before.

Concerns Over Secure Communities

Raids

In recent years, ". . . ICE has involved local law enforcement officials in joint raids. Local police and sheriff deputies joined, in theory, not to enforce immigration law but to enforce criminal law, since the priority targets were "criminal aliens." In practice, more than a third and

⁹⁰ Donald Kerwin and Serena Yi-Ying Lin, "Immigrant Detention Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?," *Migration Policy Institute*, Sept 2009, 1-40.

⁹¹ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

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often more than half of those immigrants arrested in such raids are what ICE calls “collateral” arrests—not criminals, not fugitives, but simply immigration violators.”⁹² While ICE uses worksite raids, these only constitute 2% of all “criminal alien” arrests. In 2008, ICE deported 6,287 people (from a yearly total of 356,739) as a result of worksite raids.⁹³ ICE conducted raids with the goal of trying to apprehend “criminal aliens.” When ICE carries out these raids, however, it sends fear into whole communities of people. Parents stop sending their children to school, to stores, church, and they stop going to their jobs. ICE hopes that this fear will send them back to their home countries.⁹⁴

ICE’s procedure is to seek the collaboration of the employer where the raid will often take place in lieu of charging the employer a penalty. Employers “... who collaborated fully with ICE during a ‘worksite enforcement operation,’ or raid, deceived workers into attending a phony ‘staff meeting’ or ‘mandatory training’ where the workers are then turned over to ICE, in order for that employer to avoid prosecution for ‘knowingly hiring unauthorized workers.’ Immigrant workers in Asheville, North Carolina and King of Prussia, Pennsylvania, and several others were arrested this way.”⁹⁵ These raids have led to concerns about racial profiling (workers being targeted as a group due to physical and linguistic difference.) Even permanent legal residents of the United States who fit the group profile have been picked up and incarcerated by ICE during these raids.

⁹² Tom Barry, “Immigrant Crackdown Joins Failed Crime and Drug Wars,” *CIP’s Americas Program: International Policy Report*, April 2009, 1-12.

⁹³ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, “Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008,” 1-46.

⁹⁴ Ibid.

⁹⁵ Ibid.

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Racial Profiling

Immigration officials have incarcerated people not necessarily due to commission of a crime but because they have been detected as “criminal aliens.” According to ICE a “criminal alien” is: “... an individual... unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE takes enforcement action – prioritizing the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors – as well as those who have repeatedly violated immigration laws.”⁹⁶ What explains cases of incarceration where no criminal record exists? Scholars have considered the possibility that racial profiling in immigration enforcement is in fact being committed across the United States by local police departments and is premised on federal but also state law. Barry, Keaney and Friedland, Garcia et al. and Friedland have concluded that Secure Communities and the 287(g) Program operate to the disadvantage of particular ethnicities.

As mentioned before, immigration raids have affected ‘collateral’ immigrants not just criminal or fugitive aliens.⁹⁷ There have been several programs that focus on returning deportable immigrants to their homelands; “‘Operation Return to Sender,’ which was launched in 2006 under Director Michael Chertoff’s direction, was one of a flurry of new programs and operations that hunted down criminal aliens.”⁹⁸ Operation Community Shield and Operation

⁹⁶ U.S. Immigration and Customs Enforcement, "Secure Communities," U.S. Immigration and Customs Enforcement, http://www.ice.gov/secure_communities/, accessed January 12, 2014.

⁹⁷ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

⁹⁸ Ibid.

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Stonegarden were similar programs. In Operation Community Shield, ICE joins with local police to arrest suspected gang members not necessarily for any suspected crimes but for immigration violations. DHS works with grant money from Operation Stonegarden to bring together local, state and federal agencies to arrest "criminal aliens." When Secure Communities was put into effect its goal was to apprehend "criminal illegal aliens," people who were seen as posing a threat to society. However, the apprehension of these criminal aliens turned out to involve potentially "all" "illegal aliens."

According to Barry, Secure Communities did not prioritize capturing dangerous or actual criminal aliens but ended up arresting all types of aliens. In Irving, Texas, a suburb of Dallas, the Secure Communities Program was implemented in March 2009 and the police department arrested 1,675 immigrants, of whom 60% were arrested for level 3 misdemeanors, mainly driving violations. The Mexican consul had to warn the Mexican community in the U.S. to avoid Irving, Texas due to such practices. According to Barry, *The Dallas Morning News* reported, that "Many Hispanics are afraid to leave their homes or send their children to schools in a suburb where one-third of the population is foreign-born".⁹⁹

These enforcement efforts by ICE and especially its 287 (g) program have "led to widespread concerns about racial profiling, reduced community trust, inadequate prioritization of dangerous criminals, and misplaced law enforcement resources."¹⁰⁰ Barry argues that the program in North Carolina was used to purge 'unwelcome' immigrants.¹⁰¹ The Congressional

⁹⁹ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

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Hispanic Caucus (CHC) joined 521 other groups in opposing the program telling President Obama that the misuse of the 287(g) program by its current participants rendered it ineffective and dangerous to community safety: "It is our opinion that no amount of reforms, no matter how well-intentioned, will change this disturbing reality."¹⁰²

Garcia et al. agree with Barry that a "vast majority of those targeted for deportation are immigrants, non-citizens and citizens of color, or those who 'look or sound' foreign. There is mounting evidence that DHS-led immigration policing is fueling widespread racial, ethnic/nationality and religious profiling and criminalization, one of the central pillars of the new immigration enforcement regime. And immigrant and non-immigrant members of our communities are paying a severe price, ending up in prison and being deported in droves."¹⁰³ Aliens are being arrested whether or not they have a criminal record.

According to Garcia et al., "federal immigration law enforcement is fueling immigrant profiling and emboldens local police to participate in immigration enforcement using profiling that violates the rights and protections of individuals against racial and other types of discrimination."¹⁰⁴ Garcia et al., also assert that "police collaboration fuels racial, ethnic/nationality and religious profiling, targeting anyone who looks or sounds 'foreign'."¹⁰⁵ Immigrants fear getting caught and therefore hide to avoid detection, arrest, and deportation. They will not report any criminal activity in their neighborhoods because they distrust the police.

¹⁰² Melissa Keaney and Joan Friedland, "Overview of the Key ICE ACCESS Programs 287(g), the Criminal Alien Program, and Secure Communities," *National Immigration Law Center*, Nov 2009, 1-7.

¹⁰³ Arnoldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹⁰⁵ Ibid.

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Secure Communities gives police the power to identify and remove “criminal aliens” as part of enforcing immigration laws. According to Garcia et al., this then leads to the exploitation of communities because no real policing of these neighborhoods occurs. Racial animus against undocumented immigrants is also evident in the ways many local communities pass xenophobic and anti-immigrant laws. Even the FBI reported a significant and steady increase in hate crimes against Latinos since 2004.¹⁰⁶ Garcia et al. also mention that Latinos are being targeted in their communities by ICE where there are high population rates of Latinos and low crime rates of Latinos.¹⁰⁷

According to Keaney and Friedland, the ACLU of North Carolina and the Immigration and Human Rights Policy Clinic at the University of North Carolina found that 287(g) partnerships were used to remove unwanted immigrants. During the month of "May 2008, 83 percent of the immigrants arrested in Gaston County, North Carolina were charged with traffic violations suggesting a pattern of unjust enforcement."¹⁰⁸ Racism feeds into the negative effects of the 287(g) program. Johnson County Sheriff Steve Bizzel, acknowledged that his goal was to reduce, if not eliminate, the immigrant population in Johnson County through the 287(g) program. Bizzel maintained that everywhere he goes, people ask, “Sheriff, what are we going to do about all these Mexicans?”¹⁰⁹

¹⁰⁶ Arnoldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹⁰⁷ Ibid.

¹⁰⁸ Melissa Keaney and Joan Friedland, "Overview of the Key ICE ACCESS Programs 287(g), the Criminal Alien Program, and Secure Communities," *National Immigration Law Center*, Nov 2009, 1-7.

¹⁰⁹ Ibid.

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Although there have been many claims of racial profiling ICE seems to keep growing and increasing their budgets to fund more personnel. According to Keaney and Friedland, "Congress has appropriated about \$200 million to the program for fiscal year 2010 alone."¹¹⁰ The budget did not contain any regulations as to how to use the money and it did not mention how it would deter racial profiling. According to ICE racial profiling is not an issue because all arrested persons' fingerprints are checked against FBI and DHS databases. However, that statement does not address how a person initially got arrested.

ICE has not been focusing on Level 1 criminals as Congress had intended, but instead it has focused on "easier" targets as the Migration Policy Institute states in its report. According to Friedland, The American Civil Liberties Union of North Carolina Legal Foundation and the Immigration and Human Rights Clinic at the University of North Carolina at Chapel Hill, found in their report that towns are getting rid of "unwelcomed immigrants." Friedland states plainly: "Traffic violators and day laborers are the program's central targets."¹¹¹ Although ICE does not recognize that its policies do or could involve racial profiling, there have been complaints of racial profiling in Maricopa County around Phoenix. Mayor Phil Gordon of Phoenix asked the U.S. Attorney General to order the FBI and the Department Of Civil Rights Office to conduct an investigation into racial profiling by Sheriff Joe Arpaio. The Sheriff was allegedly allowing traffic stops to occur to investigate the immigration status of the stopped individuals. On March 2009 the Department of Justice ordered an investigation to be conducted on this matter.¹¹²

¹¹⁰ Melissa Keaney and Joan Friedland, "Overview of the Key ICE ACCESS Programs 287(g), the Criminal Alien Program, and Secure Communities," *National Immigration Law Center*, Nov 2009, 1-7.

¹¹¹ Joan Friedland, "More Questions Than Answers about Communities Program," *National Immigration Law Center*, March 2009, 1-5.

¹¹² Ibid.

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In Gaston County, North Carolina, local law enforcement officers are stopping drivers of specific races for traffic violations so the officers can check the individual's immigration status. According to Friedland, in ". . . May 2008, 83% of the immigrants arrested by Gaston County ICE-authorized officers pursuant to the 287(g) program were charged with traffic violations Mecklenburg and Alamance Counties were targeting Hispanics for traffic offenses for the purposes of a deportation policy."¹¹³ In some instances ICE has required people to wear ankle detection bracelets, GPS devices or otherwise be electronically monitored. People have reported severe emotional and psychological trauma due to being under constant surveillance.¹¹⁴ The states ". . . have been tackling immigration issues at an unprecedented rate since 2005. No less than 1,305 immigration-related pieces of legislation were introduced in 2008 alone, with at least one law or resolution enacted in 41 states. Laws passed related to employment, ID's/driver's licenses and law enforcement are among the most punitive."¹¹⁵

Abuses of Constitutional Rights

The following statement by a Pakistani doctor jailed at Piedmont Regional Jail in Virginia, (held in ICE custody for 8 months, falsely accused of visa fraud and coerced by ICE and CBP officials to withdraw an application to enter the U.S.) provides some insight into the treatment of the detained.

¹¹³ Joan Friedland, "More Questions Than Answers about Communities Program," *National Immigration Law Center*, March 2009, 1-5.

¹¹⁴ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹¹⁵ *Ibid.*

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I saw people in the jail who suffered from serious injuries. One person fell from top bunk and dislocated his shoulder. He asked for medical attention and jail officials did not offer any help - all they gave him was a bandage and painkillers. I argued with them, and they said they couldn't afford it. People had hernias, chest infections, heart and spinal problems; people who were not mentally stable who were beaten by other detainees.

I myself suffered from a severe chest infection; I knew I needed antibiotics, not painkillers. They refused and stopped responding to my sick calls. The nurse said any person who makes any noises or complaints is categorized as 'low-priority' in terms of medical attention, and labeled as a troublemaker.

One detainee who witnessed the death of another detainee was punished with one month of solitary confinement for calling 911. The other detainee had been ill for over a week and jail officials ignored it; he suffered of cardiac arrest and fell when he tried to get up and walk. There were no Spanish-speaking nurses although 80 percent of detainees are Spanish-speaking. At times they outright refused any medical attention to detainees.

Jail authorities are extremely abusive to detainees; we don't have rights in there.¹¹⁶

According Garcia et al. there has been an increase of arrests of non-white immigrants, legal permanent residents and U.S. citizens of color. Jails and policing are being expanded primarily to catch immigrants. Secure Communities and Community Shield have increased criminal prosecutions in federal courts for minor immigration-related offenses. "Over 50% of all persons in deportation proceedings do not have legal representation or counsel."¹¹⁷ Barry notes that a March 2008 report by Justice Strategies, "Local Democracy on ICE" by Aarti Shahani and Judith Greene, warned that civil immigration and criminal law are fundamentally incompatible due to the fact that the "Constitution's protection against arrest without probable cause, indefinite detention, trial without counsel, double jeopardy, and self-incrimination, as well as the statute of

¹¹⁶ Arnoldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹¹⁷ Ibid.

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limitations, do not apply equally (or in some cases at all) in the civil immigration context.”¹¹⁸

However, the authors do not explain in detail the differences between criminal law and civil law.

For instance, the authors do not mention that immigration removal handled by the U.S. Attorney

General or an immigration judge falls under civil law; therefore, if an immigrant is undergoing

removal proceedings, that immigrant does have the “privilege” of a lawyer. According to the

Immigration and Nationality Act of 1996 SEC. 292. [8 U.S.C. 1362]: “In any removal

proceedings before an immigration judge and in any appeal proceedings before the Attorney

General from any such removal proceedings, the person concerned shall have the privilege of

being represented (at no expense to the Government) by such counsel, authorized to practice in

such proceedings, as he shall choose.”¹¹⁹ Immigrants are not provided counsel free of charge by

the government because removal proceedings fall under civil law; however, they do have the

“privilege” to hire counsel on their own.

According to Barry, immigrants do not have the same constitutional rights as U.S. citizens. One major difference is that if an immigrant cannot afford a lawyer, then a one may not be provided, while U.S. citizens generally would have a right to an attorney when confronting the state's criminal enforcement power. Also, “criminal aliens” are not protected by the criminal process rights in the Fourth, Fifth, and Sixth Amendments; immigrants as “aliens are defined and treated as outsiders with few of the rights and guarantees of citizens.”¹²⁰ In order to restore their rights and to treat “criminal aliens” as citizens Garcia et al. have recommended the following:

¹¹⁸ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

¹¹⁹ INS General Counsel's Office, *Immigration and Nationality Act: Reflecting Amendments through September 30, 1996*, Version 1 March 1997, 248.

¹²⁰ *Ibid.*

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- a. Restore due process rights and other Constitutional protections, while expanding access to the Courts.
- b. End the practice of jailing persons solely for immigration status violations, except where there is a particularized finding of high risk to public safety.
- c. Suspend all detentions and deportations, prohibiting high profile raids and enforcement operations, investigate the abuses and place a moratorium on the expansion of the immigration detention facilities.
- d. End the policies and practices of selective enforcement programs including Operation Streamline and other programs that perpetrate the criminalization and demonization of immigrants.¹²¹

On the other hand, Garcia et al. differ from Barry in that they would like to see the end of “inter-agency and police collaboration with immigration authorities” and “all local, county and state government and police participation” in immigration enforcement.¹²² This means that Garcia et al. would not allow for police enforcement officers to act on enforcing immigration law.

Additionally, according to Keaney and Friedland, The Warren Institute on Race, Ethnicity and Diversity recently reported arrest data obtained from the operation of CAP in Irving, Texas. The report concluded that ICE was not deporting only "criminal aliens" with serious criminal records. In Irving, Texas, "felony charges accounted for only 2 percent of ICE detainers issued, while 98 percent of detainers were issued for misdemeanor offenses."¹²³ This report shows that immigrants are being arrested for less serious violations from what Congress originally intended. Kerwin also pointed out that ICE does not charge "criminal aliens" and does

¹²¹ Arnoldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹²² Ibid.

¹²³ Melissa Keaney and Joan Friedland, "Overview of the Key ICE ACCESS Programs 287(g), the Criminal Alien Program, and Secure Communities," *National Immigration Law Center*, Nov 2009, 1-7.

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not allow for bond hearings. Therefore, immigrants could sit in jail for months when in fact they were not mandated to serve time in jail. If allowed bond hearings, they could be released from jail once the bond is met.

According to Garcia et al., raids, detentions and deportations were being handled without a warrant and were being called "collateral" arrests in an attempt to justify their violations of due process and Constitutional rights. In 2008, ". . .in Van Nuys (CA) ICE agents raided Micro Solutions Enterprise, unlawfully arresting and detaining workers based on their perceived immigration status, including legal permanent residents who later filed a lawsuit citing excessive use of force and due process rights violations. "In New Jersey, members of ICE's 'fugitive operations' team forced their way into several homes and arrested persons without a judicial warrant, including the homes of U.S. citizens and legal permanent residents. ICE agents, at gunpoint, threatened a nine-year-old boy in his own home. In Texas, just days after ICE raided Pilgrim's Pride, a poultry-processing plant; ICE agents raided the home of an employee and unlawfully arrested him after wrongfully accusing him of using a false social security number."¹²⁴ These are just some of the examples regarding treatment of "criminal aliens."

Deportations

In 2007, ICE introduced the Criminal Alien Program (CAP), designed to facilitate the transfer of "criminal aliens" in the federal prison system to ICE for processing and deportation. The Detention Enforcement and Processing Offenders by Remote Technology Center (DEPORT) program was started in Chicago to monitor the Federal Bureau of Prisons (BOP) and identify

¹²⁴ Arnoldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

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federal prisoners eligible for transfer to ICE for processing and possible deportation at the end of their sentences. BOP has five prisons run by two private prison companies (Corrections Corporation of America and GEO Group) to hold low security criminal aliens for drug possession and immigration violations.¹²⁵ According to Barry “. . . the central problem is ICE operates under a mandate to arrest and deport not only criminal aliens but all immigrants without the proper documentation. This is a problem when Secure Communities is supposed to only deport ‘criminal aliens’ who have violated major offenses not traffic stops. Whether it is its Fugitive Operations Teams, Return to Sender initiatives, or its new Secure Communities program, ICE’s interior enforcement operations cast a wide net.”¹²⁶ Garcia et al. break down the deportations: “In 2007, DHS deported over 285,000, persons, documented and undocumented, with only 4,007 deported through workplace enforcement. In fiscal year 2008, DHS increased deportations over 20%, deporting some 349,041 persons; less than 6,000 were through workplace raids. This does not include the tens of thousands who are detained, jailed and deported from the U.S. Southwest border regions.”¹²⁷

According to Garcia et al., the U.S. government “has deported nearly 100,000 people since 2003 through the use of stipulated removal orders.”¹²⁸ It has been reported that “ICE used harmful chemicals and medication to sedate and forcibly deport 384 immigrants since 2004, an

¹²⁵ Tom Barry, "Immigrant Crackdown Joins Failed Crime and Drug Wars," *CIP's Americas Program: International Policy Report*, April 2009, 1-12.

¹²⁶ Ibid.

¹²⁷ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹²⁸ Ibid.

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average of 64 per year, with nearly 40 percent from Africa.”¹²⁹ Children are also being deported, “[a]n average of 97 Mexican children on any given day. Over a quarter are younger than 12 years old, and some 50% are unaccompanied by an adult.”¹³⁰

¹²⁹ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹³⁰ *Ibid.*

Chapter 4: Arizona Senate Bill 1070 Case Study

Arizona is known as the state that has implemented some of the harshest immigration policies in the United States. In recent years, there has been an increase of unauthorized crossings at the Arizona border. This does not only include immigration crossings but also drug and human trafficking as well. Federal law enforcement officers have found many underground tunnels that have aided the transportation of human and drug trafficking. This recent increase in immigration may be in part due to the Mexican government declaring war on the drug cartels at the beginning of Mexican President Felipe Calderon's term in office. The drug cartels are not only making money off drugs but recently have become active in aiding Mexican undocumented immigrants to cross over the border. According to different authors the fee to cross with assistance is as high as \$3,500. In the past, coyotes were the people aiding Mexicans to cross the border; however, now drug smugglers have added immigrant smuggling to their enterprise.

Crossing the border has become more dangerous than ever before. If an immigrant does not have the money to pay the coyote then the smuggler will hold them hostage and demand money from their families in Mexico until the immigrant is able to pay. Mexican families do not know how to contact the hostage so they usually call the Mexican Police. The Mexican Police contact U.S. Customs, which works with local police enforcement officers on the U.S. side of the border to find the hideout where the hostage is being kept in the United States. Some public figures such as Sheriff Joe Arapaio of Maricopa County claim that undocumented immigration is costing counties too much money and therefore demand the state find a solution to its "immigration problem." Since border states may feel they spend too much money keeping the

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border towns safe, these states, e.g., Arizona, may decide to assert a harsher state immigration law to deter undocumented immigration. However, in framing an "immigration problem" such discourse does not see that the high influx of illegal immigration may be due to factors such as the war on drugs in Mexico.

The human costs are high as well. According to Garcia et al., "in 2008, the remains of 183 people were recovered on the U.S. side of the Arizona border. Human rights advocates and community organizations report that at least 50% of all deceased migrants at the border are recovered in Arizona."¹³¹ Since there is a high influx of immigrants at the Arizona border, the current governor, Jan Brewer signed Senate Bill 1070 (also known as SB1070). The law seeks to deter more immigrants coming into the state from Mexico. The implementation of SB1070 has brought about much controversy.

Some of the main elements of SB1070, as claimed by the law's supporters:

- A. Declares attrition through enforcement to be the official policy of state and local government agencies in Arizona.
- B. Prohibits local police agencies from adopting sanctuary-type policies that limit or restrict enforcement of federal immigration laws.
- C. During a lawful stop, directs law enforcement officers to determine immigration status of individuals who they reasonably suspect to be "illegal aliens", and for all persons who are arrested.
- D. Provides that persons who present any federal, state or local identification documents that require verification of lawful status (i.e., an Arizona driver's license) when issued are presumed to be lawfully present.
- E. Authorizes law enforcement agencies to securely transfer verified "illegal aliens" into federal custody.
- F. Prohibits state officials and agencies from imposing bans or restrictions on sending, receiving, or maintaining information relating to an individual's immigration status, or exchanging it with any other federal, state, or local governmental entity for these purposes.
 1. Determining eligibility for any public benefit, service, or license provided by the state.

¹³¹ Arnoldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

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2. Verifying a claim of residence or domicile if such determination is mandated by law or judicial order.
3. Confirming the identity of any person who is detained.
4. Determining whether and alien is in compliance with federal registration laws under the INA.¹³²

The authors also stated that SB1070 is very similar to federal immigration laws in that it asks immigrants to carry their visas; employers are not allowed to give or solicit work to illegal immigrants, and must keep E-Verify up to date; illegal immigrants may not seek work.¹³³ SB1070 differs from federal law in that it does not punish people for transporting illegal immigrants; law enforcement is allowed to arrest a person without a warrant; the rights to vehicles used by “illegal aliens” are annulled; and it also puts in place the Gang and Immigration Intelligence Team Enforcement Mission Fund, funded by assets seized in the arrests of gangs or illegal immigrants.¹³⁴ On its face, SB1070 does not leave many rights to “illegal aliens” and this was done intentionally. Many immigrants, even legal aliens, have started to leave the state of Arizona because they see this law as very restrictionist and racist in nature. However, many more states are following suit to implement similar laws to those of SB1070.

President Obama, having been informed of the civil rights violations that could result from the Arizona law, wrote to the Governor asking her to not implement SB1070. In June 2010, Governor Jan Brewer, wrote back to President Obama asking that national guards be sent to her state to aid in capturing “criminal aliens.” She also asked for help to finish off the border fence, requesting \$150 million dollars to incarcerate “criminal aliens” and ended her letter by

¹³² "Support Our Law Enforcement and Safe Neighborhoods Act: Summary of Arizona SB 1070 as Enacted, *Federation for American Immigration Reform*, 27 April 2010, 1-2.

¹³³ Ibid.

¹³⁴ Ibid.

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stating she was not asking for a standoff but rather was looking to develop a solution along with the federal government.¹³⁵

After much discussion and heated arguments SB1070 was implemented on July 29, 2010. The public outside Arizona reacted harshly to the implementation of SB1070 since it was being viewed as racist. Right wing groups pushed for the bill to be implemented, while leftist groups not only in Arizona but all over the United States opposed it and did not want to see it go through. Even the police department, sheriffs, and police officers of Maricopa County wrote to President Obama to prevent implementation of the bill. Several different lawsuits are pending against SB1070. The courts will ultimately decide whether Arizona's and similar state laws are constitutional.

One of the policy questions that remains has to do with whether cities and states may opt out of the program. ICE did publicly state that those cities or states that want to opt out of the program can e-mail, call, or fax ICE a statement as to why they want to opt out. However, states and cities know that it may be disadvantageous to opt out of Secure Communities, so they have instead started to counteract the effects of federal law at the state and city level by passing legislation prohibiting discrimination against any races.

Some of the states and cities that are trying to opt out of Secure Communities are: New York, Illinois and the City of San Francisco. In June 2011, Zoe Lofgren of California called for an IG investigation to find out how Secure Communities is being run. Additionally, the Congressional Hispanic Caucus on May 13, 2011, called for a moratorium on action by the Obama Administration under Secure Communities. The controversy with Secure Communities

¹³⁵ "Arizona Governor Wants Commitment to Border," *CBS5AZ.com*, June 24, 2010, <http://www.kpho.com/news/24028094/detail.html>, accessed June 25, 2010.

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has brought about federal litigation against Secure Communities from civil rights groups.¹³⁶

Recently, Joe Arpaio, Maricopa County Sheriff, was informed that the U.S. Justice Department is planning on suing him on grounds of racially profiling Hispanics, punishing Hispanic inmates for speaking Spanish, and disregarding their basic constitutional rights.¹³⁷

¹³⁶ William Fisher, "Hispanic Caucus Blasts 'Secure Communities' Demands a Moratorium from Obama," *The Public Record*, May 13, 2011, <http://pubrecord.org/politics/9358/hispanic-caucus-blasts-secure/>.

¹³⁷ "U.S. government plans to sue Arizona sheriff" *USA Today*, 9 May 2012, 1-3, <http://usatoday30.usatoday.com/news/nation/story/2012-05-09/arizona-sheriff-civil-rights/54864856/1U.S.governmentplanstosueArizonasheriff>, accessed April 28, 2013.

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Chapter 5: Policy Proposals

Garcia et al. propose formal hearings to air the grievances of people who have been impacted in the communities abused by immigration enforcement and services.¹³⁸ The authors present a number of categories that warrant attention in order rid the system of abuses:

A. Systemic abuses include:

1. ICE enforcement operations and raids are used as a deliberate tool and strategy to intimidate and stabilize communities and often leave local and regional economies in shambles.
2. ICE enforcement operations reinforce rampant workplace abuses and labor violations against immigrant workers.
3. The detention of persons solely for immigration status is at an all-time high.
4. Deportations separate and devastate families, traumatize communities, trample and violate due process rights.
5. Inter-agency and police collaboration in immigration control undermine community safety and make immigrants more vulnerable to abuse and exploitation.
6. The unrelenting militarization of immigration enforcement and border control is causing deaths and deliberately violates the rights of Indigenous people, workers, migrants and communities of color at the border.
7. Local, county and state xenophobic and anti-immigrant legislative, policy proposals and ordinances across the country fueled a climate that has promoted and condoned hate violence against immigrants and propelled police and government abuses with impunity.¹³⁹

To correct the aforementioned problems, Garcia et al. recommend the following:

1. Restore due process rights and other Constitutional protections, while expanding access to the Courts.
2. End the practice of jailing persons solely for immigration status violations, except where there is a particularized finding of high risk to public safety.

¹³⁸ Arnolando Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹³⁹ Ibid.

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3. Suspend all detentions and deportations, prohibiting high profile raids and enforcement operations, investigate the abuses and place a moratorium on the expansion of the immigration detention facilities.
4. End the policies and practices of selective enforcement programs including Operation Streamline and other programs that perpetrate the criminalization and demonization of immigrants.
5. End inter-agency and police collaboration with immigration authorities and end all local, county and state government and police participation and policy-making in immigration enforcement.¹⁴⁰

The authors conclude that “. . . it would be hard to stabilize people's opinions on immigration enforcement because so much damage has already taken place. The entire immigration system will have to be rethought to be able to instill trust in enforcement.”¹⁴¹ In their words, “the promise of immigration reform, particularly the central provision to regularize the status of undocumented immigrants, will be severely undermined without the suspension of the kinds of enforcement actions that have instilled fear and caused horrible hardships for immigrant workers and their families.”¹⁴²

Friedland goes further in calling for ICE to conduct internal audits to provide a more responsive enforcement ethic that checks and balances any wrongdoing by the Department against illegal immigrants. Friedland points out that ICE currently avoids:

- a. Any requirements for audits and oversights.
- b. Ensuring that DHS databases contain accurate information.
- c. Providing redress for arrested persons who have been wrongly identified by DHS databases or against whom ICE detainers have been wrongly issued.

¹⁴⁰ Arnoldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," 1-46.

¹⁴¹ Ibid.

¹⁴² Ibid.

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- d. Making a complaint procedure available for persons who have been wrongly arrested.¹⁴³

It is important to ensure that victims of crimes such as domestic violence can file criminal complaints without their complaints leading to negative immigration consequences.¹⁴⁴ Friedland calls ultimately to disintegrate the immigrant caste structure in the labor market to address the underlying problems, as employers use harassment, lay-offs, non-payment of wages, substandard wages and dangerous working conditions to instill fear in workers.¹⁴⁵ Immigration enforcement and “policing is pervading all aspects of community life: local, county and state governments, to solve a worsening financial crisis, introduce and pass ordinances, policies and laws that focus on immigration status to deny or limit access to public services. More counties are resorting to ICE contracts to jail persons for immigration status violations. States, like Georgia and Arizona, have implemented some of the most draconian laws, criminalizing immigration and initiating schemes to reduce and eliminate public services, scapegoating immigrants for their fiscal woes.”¹⁴⁶ All Hispanics are affected by restrictionist policies. According to Garcia et al., “they are also ‘funneled’ into certain industries, subjected to extensive policing where they live and work, are exploited and forced to work under inhumane conditions. Being an ‘immigrant’ means

¹⁴³ Joan Friedland, "More Questions Than Answers about Communities Program," *National Immigration Law Center*, March 2009, 1-5.

¹⁴⁴ Joan Friedland, "More Questions Than Answers about Communities Program," *National Immigration Law Center*, March 2009, 1-5.

¹⁴⁵ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," *Hurricane: The Human Rights Immigrant Community Action Network-An initiative of the National Network for Immigrant and Refugee Rights*, Sept 2009, 1-46.

¹⁴⁶ Ibid.

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having certain jobs, wages, inadequate or no services, limited educational and economic opportunities and living under the constant threat of jail and removal.”¹⁴⁷

¹⁴⁷ Arnaldo Garcia, Laura Rivas and Catherine Tactaquin, "Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families, workers and communities in 2008," *Hurricane: The Human Rights Immigrant Community Action Network-An initiative of the National Network for Immigrant and Refugee Rights*, Sept 2009, 1-46.

Chapter 6: Conclusion

Mexican immigration has changed dramatically from the Bracero Program of the mid-twentieth century to the Immigration and Nationality laws that were implemented in 2008. I focused on the literature that has been written since 1987, the year after the implementation of the Immigration Reform and Control Act (IRCA) up to 2012. When Secure Communities was implemented the illegal immigrant incarceration rates rose dramatically and racial profiling surfaced as an effect of the changes in this law being enforced by local police enforcement officers.

Researchers are either calling for immigration reform or a change in Secure Communities to prohibit local enforcement officers from enforcing federal immigration laws. To explain this concerns, my thesis examines problems with the implementation of Secure Communities. Under current conditions it very difficult for a Mexican undocumented family to live in the United States; whereas, in the past, “undocumented aliens” could move about more freely. Historically, Mexican farm laborers were hired for seasonal labor and crossed and re-crossed the border cyclically. Through the years their offspring would likewise follow their parent’s itinerant lifestyle, but somewhere along the way Mexican seasonal workers decided to stay and their family ties deepened in the United States. No longer were their family members in Mexico but in the United States as well.

It is important now to give “illegal aliens” a way to normalize their lives such that they may form and contribute to communities. Eventually, it will be best for the U.S. government to address such people as legal citizens of the United States. The United States, through the past

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decade, has made it more difficult for undocumented immigrants to become U.S. citizens. The U.S. government has given out limited visas, hired more border patrol agents, built a wall, stepped up drug enforcement, and used military tactics such as helicopters and raids to capture “illegal aliens.” These changes continued under the Bush administration, when raids and police stops were taking place in the interior of the U.S. to deport “illegal aliens,” a situation passed on to the Obama administration.

People, who have been here for years working at decent jobs, earning a living, were taken from their families and sent to Mexico. Some of these raids removed the parents or guardians of children who were literally left at school guardianless. Some of these children were incarcerated separately so their parents could not find them. Customs also moves inmates around to different states without informing their immediate families of their relocation. Legal counsel is not offered to these aliens as would be required for U.S. citizens similarly deprived of their freedom. It is time to put an end to all of these aliens being mistreated and being misused by the legal system. They are now considered “criminal aliens” under immigration law when their only offense was to cross the border to make ends meet, feed their families, and seek a future for their children. I believe that a less restrictive immigration policy and a more responsive and fair enforcement policy should be combined so “aliens” are not being criminalized for coming into a country to seek a better chance at life.

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