

Policing Immigrants

*Local Law Enforcement
on the Front Lines*

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Introducing the Conflicted Politics of Localized Immigration Control

On April 23, 2010, after signing SB 1070, Arizona's precedent setting "show me your papers law," Governor Jan Brewer immediately shook hands with Mark Spencer, president of the Phoenix Law Enforcement Association and a vocal supporter of the new law. Spencer's boss, Phoenix Police Chief Jack Harris, had taken the opposite position on SB 1070, which includes a variety of sanctions to achieve "attrition through enforcement."¹ Giving local police power to routinely inquire about the immigration status of people they encounter, he argued, would threaten the core crime-fighting mission of policing by promoting racial profiling, undermine community policing in neighborhoods with large numbers of immigrants, and dilute police resources at a time when budgets had been slashed and the number of officers had been reduced. Although many leaders in policing agreed with Harris, his opposition to SB 1070 may have cost him his job.² He was dismissed by the Phoenix city council a few months later, ending a thirty-nine-year career of service with the department.

This local scenario surrounding a controversial Arizona law contains many of the elements of a broader drama playing out in communities across the United States. This shift represents a sharp deviation from the past. During most of the twentieth century, US immigration enforcement occurred nearly exclusively in the borderlands. Now, as Angela Stuesse and Mathew Coleman observe, initiatives focused on local police and interior enforcement "have transformed immigration enforcement from a federally managed and outward-looking power, located at the territorial margins of the U.S. into an operationally diffuse and inward-looking power focused on resident immigrant populations deep within the country's heartlands."³

The contemporary context includes federal efforts to enlist local police and sheriffs as junior partners in the effort to detect and remove resident immigrants who lack, or have lost, the legal right to remain in the country. Federal authorities have sought to cast local law-enforcement officers as “force multipliers” to bring suspected unauthorized immigrants to their attention, while maintaining control of resource allocations, timing, and deportation decisions at the federal level. SB 1070 represented a challenge to this framing, demonstrating a new assertiveness by a few states determined to prioritize their own enforcement goals, essentially turning the tables on the federal government. Not surprisingly federal lawsuits were successful in blocking implementation of crucial provisions of Arizona’s and similar “copycat” state laws in Alabama, Georgia, Indiana, and elsewhere.

What does immigration enforcement look like from the local level? Why, for example, do municipalities and police departments run the gamut, from eagerness to enforce federal law to active resistance, with most falling quietly in between? What are the implications of the federal executive’s frequently changing initiatives—from loose supervision of local participation in immigration enforcement to near-mandatory participation and, most recently, to attempting a more nuanced approach? How are police departments and sheriffs’ offices dealing with the complex political environment in which they find themselves? Is community activism having an effect on local law-enforcement policies? Can local law enforcement ever reasonably become the unproblematic “force multipliers” the federal government desires? Should it be? These questions suggest a link to more fundamental concerns about the role of law enforcement in a democratic society.

We respond to these questions with much-needed empirical data and analysis. Our research is based on three national surveys of local law-enforcement executives and in-depth case studies of seven carefully selected cities. The surveys of chiefs and sheriffs give us a basis from which to speak broadly about immigration enforcement at the local level, while the case studies add depth and richness to our analysis and allow us to hear from those who feel the impact of policies as well as those responsible for creating them.

We locate this study within the broader context of justice policy in a federal system. The division of powers between the national level and the states has always been a source of tension in the United States and a space where contradictions and controversy play out. Disagreements over the *substance* of American public policy often quickly turn into battles over *jurisdiction* between the national government, the states, and sometimes,

local governments.⁴ This is inevitable because the interests, resources, and vision at each level are not necessarily aligned, as generations of scholars have pointed out.⁵ While the bloody Civil War is an extreme example of cross-level conflict, contemporary examples are plentiful and include major controversies over civil rights, education, labor, and crime policy. The potential for conflict among levels of government is clear in immigration policy, which, though claimed by the national level as its own exclusive domain, nevertheless has profound local and state-level effects. It should not be surprising that the federal government's failure to enforce its own law against people who have bypassed its requirements has opened this issue to hot political debate and to a variety of responses among states, municipalities, and law-enforcement organizations.

Complicating this situation is the narrow and somewhat ambiguous basis for the federal government's claim of exclusive power to make and enforce immigration policy. Although the courts have consistently upheld the national government's claim of sole or plenary power, immigration enforcement has always involved power sharing with locals and sensitivity to regional differences.⁶ This is particularly true in recent years, as the federal government has reached out directly to law-enforcement agencies in cities and counties to assist in its enforcement mission. The national-to-local focus of our research distinguishes it from most of the available literature on immigration federalism, and federalism generally, which tends to focus on the state/federal relationship.⁷ We have nevertheless benefited from scholarly discussion of the potential for conflict and cooperation that exists across levels of government in a robust federal system.

In highlighting the central role that city and county governments and their law-enforcement units are playing in this emerging landscape, we find it helpful to describe the overall pattern as a *multijurisdictional patchwork* of enforcement policies and practices. Localities play a key role in immigration enforcement, both through formal devolution of responsibilities, and, more generally, through their discretion and power to affect implementation. State-level policies give the appearance of uniformity, but the reality is submerged variety. In effect, despite claims to the contrary, the United States has no consistent, uniform ability to enforce its immigration laws within the nation's interior.

The patchwork that is immigration enforcement presents serious challenges to transparency and consistency in law enforcement. As we discuss in chapter 2, two cities that share a jurisdictional border can have diametrically opposed immigration-enforcement policies. The street dividing East

Haven and New Haven, Connecticut, became ground zero for enforcement by East Haven police (which locals refer to as “border patrol”), while on the other side of the street in New Haven immigrants were welcomed with a municipal identification card to facilitate their integration. In the city of Mesa, Arizona, the county sheriff thwarted the city’s effort to focus its enforcement efforts on criminal activity rather than immigration enforcement. Not long after this standoff, the state legislature backed the sheriff with SB 1070, which preempted all local policy on immigration policing throughout the state.

Attempts to maintain welcoming approaches toward unauthorized immigrants tend to be threatened from every direction. Aggressive local law-enforcement efforts tend to “bleed” across jurisdictional lines, creating fear of police even where there are efforts to build or maintain trust. The result is an enforcement-oriented race to the bottom, with restrictive localities tending to undermine the approaches of more receptive localities, and thus frustrating the long-held right of communities to chart their own course on public safety and policing matters.

Helping to maintain a variety of approaches, however, is the tension between enforcement of immigration laws against law-abiding, but undocumented, residents and the principle of community policing based on trusting relationships with all residents in a community. Local perspectives, relatively insulated from federal controls, tend to resolve this tension in ways that suit local needs.⁸ As Sally Falk Moore argued in a seminal article, groups develop their own norms, practices, and routines that filter policies from above, creating what are, in effect, “semi-sovereign fields” of law and policy that may not be consistent with prescriptions from outside authorities.⁹

We also suggest that in immigration enforcement there is a significant “gap” between the supposedly uniform federal law and local action. Such “gaps” have intrigued scholars since the legal realist movement began over a century ago.¹⁰ Our study focuses on *how* local action has come to deviate so greatly from any single national mandate. We consider, in some detail, the law “in between,” where local bureaucrats and professions make important decisions about how and when enforcement will take place.¹¹ Valerie Jenness and Ryken Grattet introduced this term in the context of a police department’s implementation of a state hate-crime law, but its utility is much broader and applies helpfully to the informal and formal devolution of federal immigration enforcement authority to municipalities and counties and their law enforcement agencies.

The attempt to engage local police and sheriffs in immigration enforcement is part of a broader trend toward harsher policies regarding unauthorized immigrants and legal permanent residents who have committed crimes, and the “punitive turn” in American society.¹² Relevant changes include a growing number of grounds for deportation, lessened due-process protections, long terms of imprisonment for border crossers, fewer exceptions to removal decisions, and weakened judicial discretion to offer relief from removal.¹³ More active involvement of federal immigration authorities with law-enforcement agencies, jails, and courts in the nation’s interior is an important part of this trend, which legal scholars have dubbed “crimmigration.”¹⁴ Crimmigration appears to be a worldwide trend in immigrant-receiving nations, reflecting deeper changes in social and economic relationships at a global level.¹⁵

In the American context, the merging of traditional crime-fighting responsibilities with immigration enforcement has proven to be a game changer in the public mind. Being found in the country without authorization is not currently a crime, but it is increasingly regarded as such because of the merging of law-enforcement responsibilities with immigration enforcement. Policies beget attitudes, as Suzanne Mettler and Joe Soss have cogently observed.¹⁶ In this case the result of current policies is greater fear of immigrants and a general hardening of attitudes toward them.¹⁷

Partnering with local law enforcement cedes most control over enforcement to the local level and in a nontransparent way. While public debate has focused on the failure of federal lawmakers to reform immigration law, life-changing decisions are occurring daily at the local level at the hands of local law-enforcement officers. The majority of encounters between the government and potentially deportable individuals begin on the street in these exchanges. In immigration law, as law professor Hiroshi Motomura observes, “the discretion to arrest has been the discretion that matters.”¹⁸ Post arrest, a case can easily move toward deportation. Yet the federal level has little to say about when such arrests will occur and under what conditions.

Individual discretion is a basic characteristic of law-enforcement work, making it difficult to establish realistic, transparent policies for local-level immigration enforcement. The emphasis that has been placed on detecting unauthorized immigrants has led observers to note the inevitability of racial bias based on vague, potentially ad hoc standards. The impact of this law-enforcement approach falls particularly on Latinos, for in the United States the face of an illegal immigrant is, in many minds, poor and

Mexican or Central American.¹⁹ Frequent changes in policy and emphasis at the federal level also complicate the situation.²⁰

Every day, police and sheriffs face challenges created by this shifting terrain. The uncertainty and lack of controls in this highly dispersed system place immigrants with problematic or nonexistent legal status in a permanent condition of deportability, attempting to avoid any contact with legal authorities. The economic impact of a population consigned to living largely outside the legal system is significant, with its consequence of exploitation by employers, unscrupulous businesses, and individuals.²¹ Also significant is the impact on public security of a policy that puts part of its resident population at risk of deportation for any contact, voluntary or not, with law-enforcement authorities.²²

The stakes are high. Nearly 41 million immigrants reside in the United States, about 13 percent of the total population, and that number is rising.²³ About 11.3 million of those immigrants lack legal status. In addition there are unknown numbers of legal permanent residents who may be subject to deportation because of past or pending criminal convictions.²⁴ When a police officer or sheriff encounters a person that the officer suspects might be unauthorized, there is a range of options. Will the officer look for opportunities to stop and question individuals who “look” undocumented? What form of identification will be accepted as sufficient, once an officer’s suspicions have been aroused? Will an officer ignore legal status in minor cases, either to avoid the burdensome paperwork or for more principled reasons? Such street-level decisions, with their potentially disastrous consequences for the immigrants involved, must be made by officers in the field with limited guidance from law-enforcement agencies. Written policies and training programs for officers regarding encounters with immigrants are relatively rare, perhaps because such explicit direction could go viral in the tense political atmosphere over unauthorized immigration.

The federal government has avoided critically examining how local law-enforcement agencies identify and process the suspected unauthorized immigrants they turn over to federal immigration agents. Generally, only the most extreme and notorious cases draw their attention. By its passivity, federal authorities have insulated themselves from charges of racial profiling and other forms of overzealous enforcement at the intake point in the process. Federal concern has focused, not on the means by which suspected unauthorized immigrants are brought into the system, but on the deportation outcomes the government achieves. Since the mid-1990s the goal appears to have been to increase, by any means possible,

the number of deportations that the Department of Homeland Security and Immigration and Customs Enforcement (ICE) can report. Initiatives during President Obama's second term in office appeared to change that trajectory in small ways, but even these changes provoked loud complaints, lawsuits, and a series of bills in Congress designed to reduce executive discretion to prevent deportations.

How We Investigate Local Immigration Policing

We surveyed police chiefs from large and medium-sized cities in 2007–8, and in 2009–10 we completed two similar surveys of county sheriffs and of police chiefs in smaller municipalities. The large-city survey was sent to 452 police chiefs in cities that were listed in the American Community Survey of 2005 as falling into the category of municipalities that had sixty-five thousand or more residents. These 452 represented the universe of chiefs in cities of this size that employ their own police departments. We received 237 survey responses, a response rate of 52 percent.

For our sample of county sheriffs, considerations of cost and relevance meant we needed to narrow our sample well below the roughly three thousand counties in the United States. Many counties have tiny populations and few immigrants. Rather than trying to survey them all, we chose to limit our contact to sheriffs in counties that met two criteria: (a) a foreign-born percentage of the population of at least 6 percent, as of the 2000 census; and (b) at least twenty thousand total residents. To this set we added seven additional counties that were slightly below the 6 percent threshold but that had at least twenty-five thousand foreign-born residents as of 2000. Of the 449 counties thus selected (roughly the same number as of big-city chiefs), 252 provided usable responses, a response rate of 56 percent.

Finally, the survey of smaller municipalities—primarily suburbs, but with a smattering of rural towns and small central cities—was undertaken to learn about immigration policing practices in communities that are often outside the public eye on immigration issues, but that have witnessed a growing in-migration. The 450 municipalities we contacted all were below the sixty-five thousand–population threshold used in the first survey and were sampled from among the communities located in the counties that met our relevance criteria above. To ensure that the sample was nationally representative of this set of localities, we stratified the sample both by population size and by region of the country.²⁵

We selected seven cities for in-depth study based on their demographics, form of local government, location, and enforcement patterns, using data from our surveys to help us cluster results into case types. A basic requirement was the presence of an immigrant population sufficiently large to produce some kind of local political and social response. Lacking the resources to examine megacities like Chicago and Los Angeles, we focused on medium-sized cities. We sought to maximize the diversity of the local arrangements we encountered. The resulting mix, which took us from the Southeast to the Northwest and points in between, represents a highly varied set of responses to the flow of immigrants into the community. The cities included in the case studies were Allentown (PA), Dodge City (KS), El Paso (TX), Mesa (AZ), New Haven (CT), Raleigh (NC), and Salem (OR).

Plan of the Book

In the six chapters that follow we attempt to unpack the most salient issues that arise from the multijurisdictional patchwork of immigration enforcement in the interior of the United States. Together these chapters offer a comprehensive analysis of the intergovernmental relationships that have emerged and are evolving as the nation moves more aggressively toward a comprehensive approach to enforcing federal immigration law. Our concluding chapter discusses best policy options in the contemporary context.

In chapter 2 we lay the groundwork for the current multijurisdictional patchwork with a brief historical account of the evolving role of local law enforcement in immigration control. In the first hundred years of the nation's existence, states and localities were the active agents in immigration control. Only gradually and sometimes hesitatingly did the federal government begin to assert authority to control entry and enforcement. Favorable judicial decisions and the federal government's growing capacity to regulate helped consolidate its power. States and localities were increasingly consigned solely to the task of integrating immigrants into local communities, assisting in enforcement only when called on by federal authorities. This division of labor was never entirely satisfactory. Daniel Tichenor and Alexandra Filindra describe the federal government historically as "reluctant and lethargic" in addressing the challenges of immigration, noting that: "States have often been among the first to enter the void—proposing, enacting, and implementing policy innovations and

controls amidst inertia at the national level.”²⁶ The claim to plenary power at the national level has proven particularly unstable in recent decades. In 1996 Congress began to devolve enforcement responsibility downward through various partnering programs. Shortly thereafter, states and localities began to assert authority to assist, and sometimes to resist, federal enforcement initiatives. Often this has involved states and localities fashioning their own responses to unauthorized immigration, as evidenced by an explosion of state and local immigration-related legislation that began around 2005.²⁷

Chapter 3 focuses in detail on the patchwork of approaches to immigration enforcement that subnational governments are taking, even within particular metropolitan areas. States and cities that seek to discourage unauthorized immigrants from settling within their boundaries are seizing opportunities provided by the federal government’s devolution of immigration enforcement authority to police unauthorized migrants in their communities. In contrast, places where immigrants are valued as essential to the local economy are finding ways to accommodate and incorporate these immigrants into their communities. From a local perspective, federal intervention, necessarily spread thin in nonborder areas of the country, has become a resource that can to some extent be managed by local decision makers in the service of their own goals. As this chapter demonstrates, law-enforcement organizations and the political subdivisions they protect have a good deal of control over how actively they cooperate with federal enforcement efforts. The situation is more complex, of course, when states, counties, and municipalities disagree among themselves about the desirability of welcoming immigrants, especially those without authorization. The goal of this chapter is to explore the patchwork of immigration-enforcement policies, both nationally, drawing on our survey data, and locally, with accounts of several of our case studies.

In chapter 4 we seek to explain *why* the immigration-enforcement patchwork exists. What accounts for the sharp differences among municipalities in their response to the almost unprecedented flow of immigrants into the United States in recent decades? Prior research has come to somewhat varying conclusions about what motivates state and local legislators to enact restrictive or welcoming laws, or no laws at all. Our study takes this question to the street level: What makes some local police agencies more enforcement oriented than others? Some local governments have left this matter to the discretion of their law-enforcement leaders, whereas others have attempted to encourage more or less aggressive policing of

unauthorized immigrants. We consider a number of “suspects” in the intensification of local immigration policing, such as rapid demographic change, crime rates, economic vulnerability, and the political leanings of local voters. Examining these contextual factors alongside our survey-based measures of local immigration-policing practices, we describe which of this panoply of influences are most likely to shape the response of local police.

Local engagement in immigration enforcement raises the question of how these agencies operate. What are their operational priorities and professional commitments, and how does their organizational culture and structure affect what they do? Chapter 5 steps inside local law-enforcement organizations to examine how they approach encounters with suspected unauthorized immigrants. This involves a careful look at the role of individual discretion in police work and the institutional structures that attempt to guide its exercise. Although police departments display a military-style organization and command structure, the reality is that it is difficult to effectively control the on-the-street-behavior of police officers and sheriff’s deputies. Individual discretion cannot be expunged from law enforcement: it is fundamental to the work. We draw on findings from previous research on policing, as well as from our case studies and survey data, to examine the role of discretion in immigration policing and the steps that some law-enforcement organizations are taking to avoid excessively zealous enforcement. This exploration of discretion in immigration enforcement has only become more salient as the federal government has continued to extend its immigration enforcement reach to the local level through programs such as Secure Communities, and its more recent replacement, the Priority Enforcement Program. Both programs rely on local jails to inform the federal government about the immigration status of arrestees, which in turn, relies on the discretion and arrest powers of local law-enforcement agents.

The remaining piece of this puzzle is communities and the activists who seek to influence local policy toward immigration enforcement. Chapter 6 looks at the micropolitics of local immigration enforcement, finding wide variety in local responses. As the nation has shifted to an enforcement-oriented agenda, some localities are concluding that their interests are better served by rejecting that trend and fashioning a more welcoming approach to immigrants, including immigrants without documentation and those who have lost legal status because of past, sometimes minor, convictions. It has also become evident that it is impossible to single out immigrants for deportation without disrupting families, some of which include American citizens. Vulnerability to deportation also poses an ob-

vious threat to public safety when fears of deportation reduce a witness or victim's willingness to come forward with information the police need. As political and law-enforcement leaders absorb the reality that local police and sheriffs are not, and cannot be, the simple "force multiplier" that the federal government and some state legislatures desire, communities find it beneficial to develop more nuanced policies. Many of these policies build on long-established professional commitments within law enforcement to community policing.²⁸ This chapter brings our study full circle, to the democratic principles that justify a multilevel system of government.

We conclude in chapter 7 by suggesting how we as a nation might move forward in designing and implementing a more just and effective approach to immigration enforcement. This must, at a minimum, involve separating the community-engaging function of local policing from assistance in enforcing federal immigration law, except in serious criminal cases where local police would necessarily be making an arrest and recommending confinement before trial. Our study shows that the context in which local police and sheriffs work, and the operational and professional goals to which they are committed, are incompatible with immigration enforcement. While federalism has much to recommend it as a method of managing conflict in controversial areas of law and policy, its application in the enforcement of immigration law involves hazards and pitfalls that compromise public safety and create a space where democratic controls do not and cannot exist. Policies also influence the way Americans regard each other, framing those targeted by a punitive policy as less deserving than others.²⁹ The merging of local policing and immigration control carries dangers for the inclusion of minorities who might look "foreign" as full members of American society. We hope this book will contribute to a needed conversation about this issue by providing evidence of what is happening at the local level of law enforcement, which is really where the action is on the immigration issue.