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Chapter III

Multiplying Forces in the Homeland Security State

An advertisement for U.S. Senator John McCain's 2010 re-election campaign opens upon a bare stretch of dusty road in the Arizona border town of Nogales. Zooming in, we see Senator McCain and Paul Babeu, the Sheriff of Pinal County, walking together alongside the skeleton of a border fence. As they walk the dusty road, we seem to eavesdrop on their conversation:

McCain: Drug and human smuggling, home invasions, murder.

Babeu: We're outmanned. Of all the illegals [sic] in America, more than half come through Arizona.

McCain: Have we got the right plan?

Babeu: Plan's perfect. You bring troops, state, county, and local law enforcement together...

McCain: ...and complete the danged fence.

Babeu: It'll work this time. Senator, you're one of us.

Political campaigns trade in fears of the unauthorized, particularly the "Latino threat" (Chavez 2008) from South of the U.S.-Mexico border (Lugo-Lugo and Bloodsworth-Lugo 2010; Mariscal 2005). Indeed, Latinx migration is often characterized through imagery reminiscent of invasion, and discourse surrounding the border suggests crisis and anarchy (Chavez 2001). In this regard, McCain is unexceptional in his characterization of the border as the epicenter of violent criminality and his support for the "danged fence" as a necessary tool to protect U.S. citizens from villainous immigrants; his rhetoric may even be considered tame by today's standards. After all, in 2015, Donald Trump announced his presidential campaign by excoriating Mexican immigrants as criminals, rapists, and "bad hombres." Trump's signature campaign pledge was to build a wall, and have Mexico pay.

Fortification of the nation's Southern border has long occupied the political and popular imagination, articulating a combination of both real and fictional stories of unauthorized

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migration. It is certainly true that many unauthorized immigrants enter the United States through Mexico; however, unauthorized entry is on the decline, and has been for some time. In the 1990s and mid-2000s, border patrol agents apprehended an average of more than one million unauthorized entrants per year, the overwhelming majority of whom were caught along the U.S.-Mexico border. Since 2006, border apprehensions have steadily decreased, dropping sharply to 340,000 in 2011 (U.S. Customs and Border Protection 2017c). This decrease is considered to reflect a decline in unauthorized entry (Passel, Cohn, and Gonzalez-Barrera 2012; Sapp 2011), which is largely attributed to global economic conditions that influence the decision structure surrounding migration. Since 2011, apprehensions have increased intermittently, corresponding to an influx of immigrants fleeing violence in the Central American Northern Triangle. In 2017, however, apprehensions fell to 310,500, substantially fewer than any year since 1971, reflecting, on the whole, a downward trend in unauthorized entry (U.S. Customs and Border Protection 2017c, 2017d).

The decrease in unauthorized entrants has not been accompanied by a decrease in resources for “border security.” Since the early 90s, the Border Patrol’s budget has grown exponentially, from \$326 million in 1992 to more than \$3.6 billion dollars in 2016 (U.S Customs and Border Protection 2017b). The border and border communities were heavily militarized during this period, both in terms of the number of personnel who police the boundary and the technology they use to do so. In 1992, prior to intensification of border controls through Operation Hold-the-Line and Operation Gatekeeper, the Border Patrol employed roughly 4,100 agents, 85 percent of whom patrolled the nearly 2,000-mile border region between the United States and Mexico. By 2016, the number of agents had grown to 20,000, an increase of nearly

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four hundred percent; 17,000 of these monitored the Southwest Border (U.S Customs and Border Protection 2017a).¹

Those who romanticize the Border Patrol as agents who travel the border on horseback, signcutting² through the desert in search of unauthorized entrants, are disconnected from present-day reality. The modern Border Patrol engages sophisticated surveillance technology—including infrared night-vision scopes, remotely controlled drones and video cameras, motion sensors, and even a “crowd-sourcing” system³—to aid in the detection and apprehension of unauthorized entrants (Heyman 2014; Koslowski 2011). Though it looms large in our imagination, the “danged fence” is only one tool of many intended to “secure the border” and deter unauthorized migration.

Although the rhetoric may not be exceptional, what *has* changed are the strategies and tools by which the United States mobilizes immigration enforcement powers. In the aftermath of the 2001 attacks on the World Trade Center, immigration enforcement has become a growth industry, expanding beyond the exclusive role of the federal government to emphasize a collaborative approach between federal, state, and local agencies (Coleman 2012; Mittelstadt et al 2011; Waslin 2010). This strategy, articulated by Sheriff Babeu in McCain’s campaign ad, is to bring together “troops, state, county, and local law enforcement” in service of homeland

¹ Rapid expansion in border enforcement personnel comes at the expense of transparency and oversight, a point raised by Gil Kerlikowske, Obama’s commissioner of U.S. Customs and Border Protection. The Border Patrol has faced allegations of systemic abuse, including persistent corruption (Homeland Security Advisory Council 2015), use of excessive force (Macaraeg 2018), sexual abuse of migrants (Graff 2014), and a “culture of cruelty” (No More Deaths 2011). The Trump administration’s call for a hiring surge suggests the possibility of loosening qualification standards for applicants, furthering concerns about the agency’s culture of impunity.

² Signcutting refers to specialized tracking skills used by Border Patrol agents to track unauthorized entrants through footprints, clothing fibers, depressions in the soil, and disturbances in plants and wildlife.

³ In 2008, Texas launched the Texas Virtual Border Watch Program, a virtual surveillance plan that uses existing surveillance technology to enable volunteers to monitor the border from personal computers. Users watch streaming video of the border and report sightings of unauthorized entrants to the Texas Border Sheriff’s Coalition, which refers reports to the Border Patrol (Koskela 2011).

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security, creating a formidable, and critically entangled, immigration enforcement regime (Coleman and Kocher 2011)—a regime that operates not only along the border, but within the nation’s interior as well.

Sheriff Babeu’s proposal may seem unremarkable today, as immigration enforcement is pervasive throughout the country, and enforcement actions large and small are chronicled weekly in every major news outlet. As the resident unauthorized population has risen over the last few decades—in no small part a consequence of border militarization—interior enforcement has emerged as a central effort in protecting and defending the homeland (Capps et al 2011; Coleman 2008; Waslin 2010; Wong 2012). The modern enforcement regime of the “homeland security state” (De Genova 2007) expands the strategy of “prevention through deterrence,”⁴ as articulated by the Border Patrol of the nineties, to one of enforcement through attrition and criminalization of even the most mundane activities of daily life. By linking federal immigration authorities with state and local law enforcement agencies, the modern enforcement regime enables a universal approach to deportation, expanding potential targets to include the nation’s entire resident unauthorized population. In this way, enforcement policies and practices may illegalize unauthorized immigrants not just when they are apprehended along the border, but any time and any place in the United States.

Immigration Enforcement Meets Homeland Security

In the aftermath of two national disasters—the 2001 attacks on the World Trade Center in New York City and the 2004 post-Hurricane Katrina flooding of New Orleans—Congress and the George W. Bush administration commissioned reports to examine weaknesses and failures of

⁴ “Prevention through deterrence,” a framing strategy, emphasizes entry prevention, rather than alleviation of push factors.

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U.S. institutions to prevent and respond to catastrophes (c.f., National Commission on Terrorist Attacks 2004; Executive Office of the President 2006). Analyses indicated that the intelligence community and emergency responders had been hindered by insufficient communications infrastructure and inadequate coordination across federal, state, and local agencies. The reports also acknowledged a breakdown in agencies' capacities to respond to a new era of risk, and specifically implicated lack of shared radio frequencies, access to medical records between state and local agencies, and intelligence-sharing across government agencies at all levels. As dangers to the nation's security broadened, the reviewers argued that the nation's inter-agency coordination procedures and communications infrastructure must adapt to the changing nature of threats.

The reports also recommended that the federal government spearhead an "information sharing revolution" across governmental agencies at all levels as a tool of emergency preparedness. It was thought that efficient access to information would improve the efficacy of public safety organizations in the event of another national emergency. In theory, widespread information sharing would also strengthen the capacity of federal agencies to identify and assess potential threats to national security, enabling the United States to prevent catastrophes before they happen.

In practice, information sharing functions as *interoperability*. This term has come to be used by the federal government to articulate cooperative partnerships between federal agencies and state and local public health and safety departments through implementation of extensive information sharing networks and interagency communication. Many community-based first responders, including law enforcement, fire fighters, and emergency medical providers, view interoperability as logical and beneficial. According to their reasoning, agencies that are

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interoperable, or able to collaborate with one another, are better equipped to strategically organize and deploy services, especially during times of crisis. Ideally, interoperability promotes a rapid and effective response to community safety concerns.

The origins of interoperability are instructive for understanding the contemporary manifestation of immigration enforcement in the United States. By 2003, the investigative functions of the INS—the federal agency formerly tasked with the administration of immigration policy—and the enforcement arm of the U.S. Customs Service—the federal agency formerly tasked with processing goods and people at ports of entry—had been largely reorganized as Immigration and Customs Enforcement (ICE) under the Department of Homeland Security (DHS), a massive institution dedicated to preventing and responding to terrorist attacks and other threats to the United States by reducing the nation’s vulnerabilities, especially in terms of immigration-related security. The momentum for interoperability arose in coordination with federal departmental changes, and the now ubiquitous nature of police-ICE collaboration—a relatively new phenomenon—was inspired by the repercussions of the 2001 attacks on the World Trade Center.

Empowered to address national security threats, ICE appeared to take seriously the “importance of intelligence analysis that can draw on all relevant sources of information,” as articulated in the *9/11 Commission Report* (National Commission on Terrorist Attacks 2004: 416). Previously untapped sources of information included state and local law enforcement agencies (LEAs). Institutionalization of cooperative partnerships—under the label of ICE ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) programs—would allow local jurisdictions to “combat specific challenges in their communities”

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(U.S. Immigration and Customs Enforcement 2010a) and assist the federal government in identifying national security threats. According to ICE:

Terrorism and criminal activity are most effectively combated through a multi-agency/multi-authority approach that encompasses federal, state and local resources, skills and expertise. State and local law enforcement play a critical role in protecting our homeland because they are often the first responders on the scene when there is an incident or attack against the United States. *During the course of daily duties, they will often encounter foreign-born criminals and immigration violators who pose a threat to national security or public safety.* (U.S. Immigration and Customs Enforcement 2010a; emphasis added)

The restructuring of immigration matters under the Department of Homeland Security and the institutionalization of police-ICE collaboration are motivated in part by two assumptions. First, local law enforcement officers are more likely than ICE agents to have routine interactions with immigrants, including those who are unauthorized. This assumption is reasonable, given the sheer quantity of police officers (in comparison to the smaller number of ICE agents), their presence in communities, and the routine tasks embedded in their positions. When measured as the capacity to identify and apprehend unauthorized immigrants, involvement of state and local LEAs in immigration enforcement increases the overall efficiency of the Department of Homeland Security.

In this sense, local law enforcement serves as a *force multiplier* for DHS. Force multiplication, an expression derived from military terminology, is the process of increasing an

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entity's capabilities—such as through the additional use of technology or tactics—to increase the entity's effectiveness at completing its mission. As articulated in McCain's campaign advertisement at the beginning of this chapter, state and local law enforcement agencies—even federal agencies generally unrelated to immigration matters—are force multipliers aiding the Border Patrol and Immigration and Customs Enforcement in the enforcement of federal immigration law for the protection of the homeland. If the mission of federal immigration authorities is to identify and remove all unauthorized immigrants from the country, partnership with these other agencies increases capacity to accomplish this goal.

Perhaps more important to understanding fundamental changes in enforcement activity, however, is the second assumption—the idea that immigrants, particularly those who are unauthorized, pose a distinct risk to national security. Grounded in the conflation of unauthorized migration with “terrorism”—or “criminal” activity more generally—this assumption underlies the transfer of immigration matters to the Department of Homeland Security and inspires the apparent need for involvement of multiple levels of law enforcement in matters of immigration enforcement. In this rationale, individuals who violate immigration laws will inevitably violate non-immigration related criminal laws, justifying the role of state and local law enforcement in immigration enforcement to prevent community harms. Police-ICE collaboration is, therefore, a “common sense” tool for protecting the homeland. Thomas Homan, Acting Director of ICE, articulated this precisely:

By partnering with ICE... counties will be able to identify criminal aliens in their jails and turn them over to ICE... *It is common sense partnerships like these that help law enforcement achieve our mutual*

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goals, and I'm encouraged by the increased interest from law enforcement professionals who seek to join this program and protect public safety. (U.S. Immigration and Customs Enforcement 2017a; emphasis added).⁵

Police-ICE collaboration is therefore marshalled in service of “mutual goals,” conceived here as the protection of public safety. The belief that such collaboration is necessary and desirable is only “common sense” inasmuch as we assume that unauthorized immigrants—“criminal” or otherwise—constitute a threat to the homeland.

The logic that defines unauthorized immigrants as “criminal aliens” is validated through implementation of laws that prohibit unauthorized immigrants from engaging in mundane activities like driving and working, and that further criminalize those who participate in these activities. In the United States, it is illegal to drive without a license, and many unauthorized immigrants experience a chain reaction of immigration enforcement consequences when they are arrested on this charge. Just so, in 2018, I was contacted by a man whose father was arrested for driving without a license, then processed for deportation, after a police officer witnessed another driver rear-end the father's car. The police report of the incident confirms the son's story, but it reveals nothing about the fact that the father had lived in Knoxville for more than a decade prior to this arrest, quietly building a life to sustain his family.

It is worth noting that the proximate cause of this man's arrest—driving without a license—is itself a consequence of policy decisions by the Tennessee legislature. Like many states, Tennessee denies driver's licenses to unauthorized immigrants. This wasn't always true:

⁵ Homan is referencing 18 Texas jurisdictions that, in 2017, received 287(g) authority for police-ICE collaboration.

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from 2001 until 2004, the state issued driver's licenses regardless of immigration and citizenship status, thanks in part to a dedicated campaign by immigrants and advocates (Ansley 2010).

However, state implementation of federal standards invoked in the REAL ID Act—which mandates that state agencies verify an applicant's immigration and citizenship status prior to issuing driver's licenses and non-driver identification—prohibits those who cannot prove authorized residence from obtaining federally approved documents. States may issue separate identification documents to unauthorized immigrants, including driving certificates, but these must be specially marked as invalid for federal identification purposes (such as for voting, obtaining public benefits, or boarding a plane); only a handful of states do this. Tennessee initially complied with this two-tier system; however, the legislature eliminated this option in 2007. Today, in the majority of states, including Tennessee, unauthorized immigrants are criminalized by the routine act of driving, even as broader policy decisions (around mass transportation, for example) shape the extent to which driving is necessary in order to accomplish daily tasks of life, especially in the “car-based economy” of the New South (Stuesse and Coleman 2014).

Similarly, unauthorized migrants may be charged with “identity theft” or “criminal impersonation” for soliciting employment with falsified documents. Since unauthorized immigrants are legally prohibited from entering into formal employment relationships, they must often use a false name and false social security number to solicit employment. This is exacerbated by universal implementation of employment eligibility verification documents (Form I-9), as well as widespread implementation of E-Verify, an electronic verification program that confirms the identify and employment eligibility of newly hired employees. As a sociopolitical condition, there is nothing inherent to unauthorized status that requires the denial

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of driver's licenses or work authorization. Instead, laws are deployed to create and justify the condition of illegality, and some have documented the perverse ways that introduction of immigration enforcement into the workplace and routine traffic stops can produce exploitation and racial profiling (Smith, Avendaño, and Martínez Ortega 2009; Stuesse 2016). If legal permission to drive and work is unavailable to unauthorized immigrants, the unauthorized must, as Coutin (2003) argues, engage in unlawful practices as a condition of survival. In this way, criminalization of the circumstances and actions required to survive naturalizes the involvement of state and local law enforcement agencies in easing the detection, apprehension, and removal of unauthorized immigrants. It is therefore "common sense" to involve state and local police in the identification of unauthorized immigrants, who will necessarily become criminals.

As "homeland security" has become tantamount not just to border security, but also to interior enforcement, the collaboration (or interoperability) of law enforcement agencies and federal immigration authorities is naturalized as a reasonable solution to the manufactured threat of unauthorized immigrants. With regard to immigration enforcement, interoperability refers to cross-agency cooperation between DHS, ICE, and federal, state, and local law enforcement agencies. Cooperative mechanisms present in various ways, from delegation of immigration authority to routine sharing of biometric data across local, state and federal agencies. In the following sections, I highlight two programs—287(g) and Secure Communities—that play starring roles in collaborative immigration enforcement partnerships.

287(g) Delegation of Immigration Authority: The Story of Juana Villegas

On July 3, 2008, Juana Villegas was driving home from an appointment with her doctor when she was stopped by a police officer for careless driving. According to the officer, Villegas

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failed to come to a complete stop before continuing through an intersection. The officer soon discovered that Villegas lacked a valid driver's license, registration, and car insurance, and further suspected that she was undocumented. Juana Villegas, nearly nine months pregnant at the time of the stop, was arrested and taken to jail. Because she was stopped in Davidson County, Tennessee, a jurisdiction that participated in 287(g), which deputizes local police to function as immigration agents, the jail was able to determine that Villegas was, indeed, undocumented, and moreover that she had ignored a prior order of removal from 1996—a felony immigration violation; Villegas was held in custody and processed for ICE.

“I was in jail when my water broke,” Juana Villegas later shared in an interview with a global women's rights organization. “They took me in an ambulance and cuffed my hands and feet. When we got to the hospital, they moved me to the bed and cuffed [my] hand and foot to the bed” (quoted in Breakthrough 2009). Villegas remained handcuffed to the bed throughout her labor, a common practice for incarcerated women regardless of immigration status; her handcuffs were temporarily removed while she gave birth. After the birth, she was re-cuffed to the bed, making it difficult to hold and nurse her newborn son. Three days later, her infant was taken from her, and Villegas was transported back to the county jail to await further processing by immigration officials. She was given no information about her newborn's whereabouts, nor was she permitted to contact her husband and family. Unable to nurse her child, and denied access to adequate medical care—such as a breast pump, cold compresses, or anti-inflammatory medications—Villegas developed a painful breast infection.

Delegation of authority under 287(g) enables state and local law enforcement agencies to collaborate with federal immigration authorities to enforce federal immigration laws. Named for its section in the Immigration and Nationality Act (INA), 287(g) was codified as an amendment

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to the INA through the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The amendment states:

The Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to extent consistent with State and local law. (Sec. 287(g)(1). [8 U.S.C. 1357])

Under 287(g), Immigration and Customs Enforcement may enter into memoranda of agreement (MOAs) with state and local law enforcement agencies to confer enforcement authority for certain provisions of federal immigration law. Specifically, the 287(g) program deputizes specially trained law enforcement officers, including police officers, correctional facilities staff, and state troopers, to perform the duties of immigration officials. These duties may include identifying and interrogating unauthorized immigrants or “criminal aliens,” serving immigration arrest warrants, detaining immigrants for civil immigration violations, and initiating removal proceedings. Deputized officers are trained and supervised by ICE, but they are employed and salaried by state and local jurisdictions. Signed agreements last for two years and may be renewed.

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287(g) was originally conceptualized as three programmatic models: task force, jail enforcement, and hybrid. In the task force model, designated officers may interrogate people about their immigration status during the course of regular law enforcement duties, such as stops for minor traffic violations, and make arrests based on immigration status. In the jail model, designated officers in state and local correctional facilities may interrogate people about their immigration status once they are arrested and booked on criminal charges, regardless of the severity of charges, and they may detain those determined to be in violation of civil immigration laws above and beyond the time allowed to process criminal charges; correctional facilities officers may also prepare charging documents, such as the “Notice to Appear,” to initiate the process of removal, more commonly referred to as deportation. The hybrid model permits designated officers to perform both functions, serving as immigration officers in the streets and in the jails.

Even though 287(g) was organized as three distinct models, powers designated specifically for officers operating under the task force model often seep into the jail model (Kee 2012; Nguyen and Gill 2010). In other words, jurisdictions with jail enforcement authority may nevertheless see police officers patrolling differently in the streets, despite the fact that those officers have no legal authority to enforce immigration laws. Just so, when Juana Villegas was arrested, the Davidson County Sheriff’s Office (DCSO) operated exclusively under the jail enforcement model, and not the task force or hybrid model. Yet, as Armenta (2017) makes clear in her examination of Juana Villegas’s 2008 traffic stop by a police officer, Villegas was arrested not because she lacked a driver’s license (even though that was the official charge on the arrest report), but rather because she was undocumented. In dashboard camera footage of the incident, the officer is overheard explaining the arrest to Villegas’s brother-in-law, who arrived at the

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scene of the traffic stop to collect Villegas's three young U.S.-born children, who were in the car at the time:

Nashville has an ICE office... She's [Villegas] got to show me... something that says she's here legally. If she can't show me that, then she goes to jail. They'll interview her down there. If she's here illegally, I can promise you, she's going back to Mexico. (quoted in Armenta 2017: 139-140)

If Juana Villegas had been able to demonstrate authorized presence in the United States, the police officer might have released her with a citation for reckless driving or driving without a license. Since she could not prove authorization, per the officer, "she goes to jail." After asking the brother-in-law if Villegas was "here legal or illegal [sic]," the officer also said, "I don't do immigration, that's the federal government" (Armenta 2017). And yet, during this traffic stop, the officer assumed authority to interrogate both Villegas and her brother-in-law about Villegas's immigration status. That the police officer felt comfortable raising the question of Villegas's immigration status during a misdemeanor traffic stop, and discussing immigration consequences, suggests that police in 287(g) jail enforcement jurisdictions do not always recognize the existence of a firm boundary between the streets and the jail, despite the language of the MOA.

The first MOA for 287(g) authority was signed with the state of Florida in 2002,⁶ but the 287(g) program as a whole did not gain momentum until after 2006 (Capps et al 2011). Even so, relatively few law enforcement agencies across the United States have implemented 287(g);

⁶ Salt Lake City, Utah considered 287(g) in the late 90s but ultimately declined due to concerns over racial profiling (Capps et al 2011).

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during the Bush and Obama administrations, there were never more than seventy to eighty signed MOAs at any one time. In part, this may be because some jurisdictions have other means to engage with ICE, such as through the Criminal Alien Program (CAP), which allows ICE officers to enter jails and interrogate inmates. Other jurisdictions decline to participate because of limited local resources and the program's potentially high fiscal cost to local governments. State and local governments that participate in 287(g) are primarily responsible for covering expenses associated with the program, including start-up costs and the salaries and benefits of officers who receive 287(g) delegation of authority. In Prince William County, Virginia, start-up costs for the county's 287(g) program were estimated at more than one million dollars, with a projected cost of 26 million dollars to the county over the first five years of operation (Singer, Wilson, and DeRenzis 2009).

For the most part, these costs accrue to local jurisdictions, although there are variations. In North Carolina, for example, the state legislature has granted additional funding to local sheriffs interested in pursuing immigration enforcement authority. Jurisdictions also cover the majority of costs associated with detaining unauthorized immigrants. Even though these costs are partially reimbursable through the State Criminal Alien Assistance Program (SCAAP), the program has been consistently underfunded, to the extent that its budget has been recommended for elimination at various times due to its ineffectiveness.

Beyond these expenses, local jurisdictions are liable for civil rights violations related to the 287(g) program, a problem with no small cost. Just so, in 2011, a federal judge ruled that Davidson County officers had demonstrated "deliberate indifference" to Juana Villegas's suffering and medical needs. The court case stemming from Villegas's treatment by the DCSO resulted in a judgment of nearly half a million dollars in damages against the county. At the

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urging of the judge, Villegas eventually received a U-visa, a special visa available to noncitizen victims of crime who aid the government in the investigation and prosecution of criminal activity; in Villegas's case, the perpetrator was the Davidson County Sheriff's Office.

Knox County, Tennessee: The Fall and Rise of 287(g)

The case of Knox County, Tennessee is instructive for understanding the fall and eventual rise of 287(g) under successive federal administrations. The Knox County Sheriff's Office (KCSO) originally applied for 287(g) jail enforcement authority in 2009. At the time, the program was expanding nationally: 29 jurisdictions had MOAs for delegation of authority, and the Obama administration announced its intention to authorize 11 new agreements. Yet, a report by the Government Accountability Office (GAO), also released in 2009, identified significant concerns with the program. The GAO noted that the program's stated purpose—"to enhance the safety and security of communities by addressing *serious criminal activity*" (Governmental Accountability Office 2009: 10; emphasis added) did not align with how the program functioned in some 287(g) jurisdictions. To the contrary, the report found that several jurisdictions appeared to use the program to process noncitizens for removal based on minor violations, including traffic offenses. Of course, the GAO was not taking issue with the *legality* of removing people on minor offenses, but rather with the practicality and expense of doing so. The report suggested clarification of the program's purpose and stronger supervision over existing and future 287(g) programs.

When the Knox County Sheriff's Office applied for 287(g), it submitted a needs assessment for the program, a standardized document that outlines the jurisdiction's perceived enforcement challenges. In this assessment, KCSO noted a "large number of illegal [sic] persons

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arrested in our jurisdiction” and a “need to investigate and process illegal [sic] persons on [a] daily basis.”⁷ The assertion that the Knox County jail processes a “large number” of unauthorized immigrants is somewhat perplexing. Certainly, Tennessee is a new destination for immigrants, but Knox County does not have a large foreign-born population, unauthorized or otherwise. In 2009, the county boasted a scant 16,000 foreign-born residents—3.7 percent of the county’s total population—more than a third of whom were naturalized citizens.^{8 9}

At the time of the 287(g) application, the Knox County jail reportedly housed 30,000 inmates per year, roughly five percent (1575) of whom were foreign-born,¹⁰ indicating that immigrants were overrepresented in the jail in comparison to their proportion of the county population. The number certainly stood out to one of Tennessee’s U.S. Senators, Lamar Alexander, who wrote a letter of support on behalf of KCSO’s application, noting that the jurisdiction “arrests an average of 1575 illegal [sic] immigrants each year,” and that “approval of this application would allow Knox County to expedite the investigation and processing of illegal [sic] immigrants and lead to more successful deportations.”¹¹ Senator Alexander’s reference to the jail’s population of unauthorized immigrants appears to be taken from the KCSO’s estimate of the total number of *foreign-born* inmates per year. To be sure, an inmate’s country of birth reveals nothing about his or her immigration and citizenship status; after all, temporary visa holders, lawful permanent residents, and naturalized citizens are all foreign-born. The Senator’s use of foreign-born as a proxy for “illegal” reveals more about his perceptions of belongingness than it does the illegality—or, more generously, the deportability—of those inmates.

⁷ KCSO Needs Assessment, 2009. Via records request.

⁸ American Community Survey 5-Year Estimates, 2005-2009, place of birth by nativity and citizenship status

⁹ The ACS does not gather data on immigration status other than naturalization. Presumably, many of the remaining noncitizens were authorized, including lawful permanent residents.

¹⁰ KCSO Needs Assessment, 2009. Via records request.

¹¹ Correspondence between L. Alexander and J. Napolitano, 2010. Via records request.

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Still, what to make of the fact that the foreign-born population of Knox County was overrepresented in the jail? One way of interrogating this issue is by analyzing differences in criminal charges for U.S.-born and foreign-born inmates. For the U.S.-born, the top five charges included driving on a suspended license, public intoxication, possession of drug paraphernalia, simple possession/casual exchange, and criminal trespass. In contrast, the top five charges for foreign-born inmates included three license-related charges—driving without a valid license, driving without a license in possession, and failure to provide evidence of insurance—as well as public intoxication and driving under the influence.¹² In states that deny driver’s licenses to unauthorized immigrants, license charges are de facto status offenses; thus, many of the Knox County jail’s foreign-born inmates may be unauthorized. In the logic of “common sense” enforcement via police-ICE interoperability, they are also criminals and threats to public safety.

For nearly three years, 287(g)-related communications between KCSO and ICE included little more than periodic check-ins between the two agencies. By 2012, when KCSO’s application for 287(g) came up for consideration, some jurisdictions around the nation had already begun to abandon their agreements. Davidson County—facing ongoing pressure from Nashville-based immigrant rights groups and elected officials over the program’s targeting of immigrants with low level offenses and civil rights violations, such as the abuse of Juana Villegas—decided not to renew its 287(g) program (the Sheriff announced that the program was no longer necessary, since it had been so successful at removing unauthorized immigrants).

The federal government had also ended 287(g) task force programs in Maricopa County, Arizona and Alamance, North Carolina, due to allegations of racial profiling and racially biased policing practices. Multi-year investigations of these jurisdictions found that officers disregarded

¹² Correspondence between T. Wilshire and S. Flores, 2011. Via records request.

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constitutional policing practices by explicitly targeting Latinx communities (U.S. Department of Justice 2011; 2012b). In 2011, the Department of Homeland Security terminated Maricopa County's 287(g) agreement, citing reasonable suspicion that the Maricopa County Sheriff's Office had engaged in discriminatory policing practices against Latinx residents, including unlawful stops, detentions, and arrests, as well as the differential treatment of Latinx inmates. The following year, DHS terminated a 287(g) agreement between Alamance County and ICE, citing a pattern of biased policing that included differential treatment for Latinx people during traffic stops and checkpoints.

By 2013, 287(g) was on the decline nationwide. The Department of Homeland Security announced that it would discontinue MOAs for task force jurisdictions that were "least productive" in apprehending "criminal aliens," noting that another program—Secure Communities—had become "more consistent, efficient and cost effective" (U.S. Department of Homeland Security, 2013: 16). That same year, DHS announced that it would consider no new requests for 287(g), even when jurisdictions expressed interest in the jail model. Although 287(g) was never entirely phased out under Obama, DHS requested substantially less in budget appropriations for 287(g), signaling the administration's lack of commitment to the program.

Within this context, the federal government declined to approve Knox County's application, issuing its formal decision in 2013. State and local immigrant rights groups, which had actively opposed the program's implementation, learned of the rejection before the Knox County Sheriff. When the Sheriff learned, via the media, that ICE declined to approve Knox County's MOA, he released the following statement on the KCSO website:

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Once again, the federal government has used sequestration as a smokescreen to shirk its responsibilities for providing safety and security to its citizens by denying Knox County the 287(g) corrections model. An inept administration is clearing the way for law breaking illegal [sic] immigrants to continue to thrive in our community and ultimately be allowed to reside in the United States. Hopefully, the denial of this program will not create an influx of illegal [sic] immigrants who think that without this program they will be able to break the law and then be less likely to be deported.

The vast majority of Knox County citizens feel just as I do when it comes to the issue of illegal [sic] immigration. I strongly support the 287(g) program and will continue to make every effort to pursue its implementation. *I will continue to enforce these federal immigration violations with or without the help of U.S. Immigration and Customs Enforcement (ICE). If need be, I will stack these violators like cordwood in the Knox County jail until the appropriate federal agency responds.*

(emphasis added)

The callousness of the Sheriff's comments garnered widespread attention, as the graphic visualization of bodies stacked "like cordwood" evoked histories of mass atrocities. As Lawrence Downes (2013) of the *New York Times* noted, "That's brutal imagery, befitting a violent demagogue, not a sworn peace officer." In Knox County, immigrants and allies rallied

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outside the Sheriff's Office, piling wood on the ground in protest of the Sheriff's statement about human bodies. The Knox County Sheriff dismissed the public outcry, noting that his comment was a common colloquialism from his childhood.

Like others, I was deeply disturbed about the Sheriff's comparison of unauthorized immigrants to cordwood. I was also concerned by his declared intention to violate due process protections: in his statement, the Sheriff had threatened to enforce immigration laws "with or without the help of U.S. Immigration and Customs Enforcement" and to indefinitely detain people based solely on immigration status "until the appropriate agency responds" (Knox County Sheriff 2013). Since the Knox County jail had not received 287(g) authority, attempts by county officers to enact immigration consequences would violate federal laws and constitutional protections. It is worth noting that the Sheriff easily won reelection in 2014, despite ongoing outcry from local immigrant rights groups.

By the end of the Obama administration, just 32 agencies had 287(g), down from more than 70 in 2010. All of these operated under the jail enforcement model. Shortly after taking office, however, the Trump administration immediately expanded collaborative partnerships between federal, state, and local law enforcement agencies. In January 2017, the administration noted its goal of reinvigorating the 287(g) program to "empower State and local law enforcement agencies... to perform the functions of an immigration officer... to the maximum extent permitted by law" (Executive Order 13491 2017). By June 2018, 78 agencies, nearly half in the U.S. Southeast, had 287(g) authority.¹³

It came as no surprise that Knox County was one of the first jurisdictions to apply for, and receive, 287(g) authority under the Trump administration. In a new application, submitted

¹³ Most of the remaining MOAs were concentrated in Texas, which had 25 287(g) jurisdictions, mostly signed in 2017.

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before Trump’s inauguration, KCSO expressed its hope to partner with ICE through 287(g) in order to “combat illegal [sic] immigration, especially illegal aliens [sic] committing criminal acts with prior criminal records” and to “assist with identification and removal proceedings of those criminal aliens [sic] who have deportation proceedings and are arrested for local crimes.”¹⁴

Although the Knox County jail’s justification for 287(g) had changed since the 2009 application—which mainly referred to the need to process a “large number of illegal [sic] persons,”¹⁵ rather than unauthorized immigrant residents with criminal records, it is notable that the jail’s self-reported top five charges for foreign-born inmates in the Knox County jail prior to implementation of 287(g) had not changed considerably. Once again, the top five charges for foreign-born inmates included three different license-related charges (driving without a valid license, driving without a license in possession, and driving on a suspended license¹⁶), public intoxication, and driving under the influence.¹⁷ The number of foreign-born inmates in the jail also remained relatively static, at 1600 per year—roughly 5.9 percent of the inmate population—presumably not all of whom were unauthorized or deportable.

Surprisingly, KCSO signaled its expectation to use 287(g) to identify, process, and turn over to ICE approximately 150 inmates per month—a total of 1800 per year—higher even than

¹⁴ KCSO Needs Assessment, 2016. Via records request.

¹⁵ KCSO Needs Assessment, 2009. Via records request.

¹⁶ Readers may wonder how unauthorized immigrants are charged with driving on a suspended license if they are ineligible to obtain a license in Tennessee. The Tennessee Department of Safety auto-generates license numbers to track people who lack driver’s licenses when they are charged on license charges. To unsuspend a license and reinstate driving privileges (even though they may be ineligible for such privileges), the individual must pay fines associated with the original charge and provide proof of car insurance. Thus, unauthorized immigrants may be charged with driving on a suspended license if they are convicted for driving without a license, fail to pay associated fees, and are stopped again on a license charge. Of course, since the Knox County jail’s measure uses “foreign-born” (rather than unauthorized), this number may include naturalized citizens or authorized noncitizens whose suspended licenses are unrelated to immigration status.

¹⁷ KCSO Needs Assessment, 2016. Via records request.

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the total yearly average of foreign-born inmates in the jail. If KCSO actually intends to identify 1800 deportable noncitizens each year, it may be that the only way to reach this goal is if officers on patrol—those without 287(g) authority—target anyone and everyone perceived to be unauthorized, opening the jurisdiction to racial profiling allegations. Another strategy to boost numbers of foreign-born inmates is to process noncitizens arrested elsewhere: in 2018, the Knox County Jail contracted with ICE to become a hub for immigrant detainees from surrounding counties. Preliminary analyses¹⁸ of those with ICE holds in the Knox County jail reveal that ninety percent of those arrested between September 2017 and May 2018 were charged with misdemeanor offenses, including driving without a license, public intoxication, and simple possession of marijuana. These findings suggest that the Trump administration’s iteration of 287(g) continues to primarily impact people with low-level offenses, just as 287(g) functioned throughout the Southeast under Obama prior to implementation of targeted enforcement practices (Kee 2012; Nguyen and Gill 2010; Shahshahani 2009, 2010).

Secure Communities: The Story of Alejandro Guizar Lozano

It’s true that Alejandro Guizar Lozano had been drinking.

Just eighteen years old, Alejandro Guizar had spent the evening with friends celebrating his recent graduation from high school. His life had changed considerably in the last few years, and he had much to celebrate. Eight years earlier, Guizar had arrived in the United States speaking no English whatsoever; by graduation, he had mastered the language, developed a love for writing, and aspired to higher education. Enrollment at a four-year university was out of reach for the moment, both financially and as a result of his immigration status—undocumented

¹⁸ Data available upon request.

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students are prohibited from receiving federal financial aid, and Tennessee bars unauthorized residents from receiving state financial assistance as well as in-state tuition, regardless of their length of residency in the state. Still, Guizar intended to sustain his commitment to learning by taking a few credit hours per semester at the local community college.

That night, barely a month after high school graduation, Alejandro Guizar found himself in an unfamiliar part of town, separated from his friends, when he was stopped by a police officer. Slightly drunk, his footing uncertain in the darkness, Guizar stumbled into the street in the wee hours of the morning. Perhaps he seemed suspicious. “So I got arrested,” he explained. “And this didn’t... this didn’t red flag in my head while it was happening, but looking back at it, it red flags now. While I was getting arrested, the police officers were asking me about my status. And looking back on it,” he continued, “I don’t know if it was because of my intoxication, or if this really happened, but I don’t remember them reading my Miranda rights to me. I was talking to them, and I thought that if I answered everything that they asked me, that they would eventually just let me go. And that was not what happened. They arrested me. And I went down to the county jail.”

With little ceremony, Guizar was handcuffed and ushered into the police cruiser. The officers transported him to the Knox County jail, nicknamed “Maloneyville” after its street address, where he was booked and his fingerprints were taken. Guizar noted, “It all went by very fast because I was sleeping the whole time. But once I woke up and was sobered up, I was just... it just hit me, and I was like, ‘Oh wow, I’m in here.’ And I don’t know what was going through my head, but I honestly did not think about my status, that factor of it, until somebody told me that I was gonna get picked up by ICE... I don’t know how I did such a great job at ignoring that

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part of my life, to the point where I was in jail and I didn't even think about that. And when I found out about it, it was mind-crippling.”

In a matter of hours, Guizar transitioned from celebrating his graduation to painfully confronting his immigration status, something he had worried about before primarily in terms of how it would impact his ability to drive or attend college. After more than a decade of living in the United States without authorization, Guizar was illegalized when he was arrested for public intoxication and interrogated about his immigration status.

Like many undocumented immigrants, Alejandro Guizar had never heard of Secure Communities, a federal program that enables local jails to share arrest information with the Department of Homeland Security. Debuting in 2008 with just fourteen activated jurisdictions, the Secure Communities program proliferated rapidly, becoming one of the nation's preeminent tools of interior immigration enforcement. By 2013, Secure Communities functioned in more than 3000 law enforcement jurisdictions across the United States.

Secure Communities facilitates the interoperability of two national fingerprint databases, one operated by the Federal Bureau of Investigation, the other by the Department of Homeland Security. When Guizar was arrested and booked into the Maloneyville jail, his fingerprints and booking information were submitted to IAFIS—the Integrated Automated Fingerprint Identification System—a national database operated by Criminal Justice Information Services (CJIS), a division of the FBI. IAFIS is renowned as the largest biometric database in the world; it compiles criminal histories, fingerprints, mug shots, aliases, and outstanding warrants to aid criminal investigations and apprehensions. Since Guizar had no outstanding warrants—in truth, this was the first time he had gotten into trouble of this nature—ordinarily he might have sobered

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up in jail overnight and been released from jail the next morning with little more than a court date and an admonition of the legal drinking age.

However, Knox County—Alejandro Guizar’s home for more than a decade—had activated the Secure Communities program in the summer of 2010. By January 2011, just a few months prior to Guizar’s encounter with the police, the Secure Communities program functioned in every law enforcement jurisdiction across the state of Tennessee. Accordingly, Alejandro’s fingerprints were automatically transmitted from IAFIS to IDENT—the Automated Biometric Identification System—an immigration database maintained by the Department of Homeland Security through the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program. Precisely as intended by Secure Communities, his fingerprints were transmitted to the Department of Homeland Security as soon as he was booked into jail. By the time Guizar was flagged as unauthorized, he had neither spoken to his family nor seen a lawyer; he had been convicted of no crime whatsoever. The entire process—from his arrest, through booking, to the revelation of his immigration status—took only a matter of hours.

The process of connecting the DHS’s immigration database with the FBI’s criminal database is referred to as IDENT/IAFIS interoperability. Its purpose is to streamline how law enforcement agencies identify the immigration and criminal status of arrestees. However, the system of database interoperability enabled through Secure Communities does more than promote information sharing between federal, state, and local law enforcement agencies. In many cases—as in Guizar’s—IDENT/IAFIS interoperability prompts additional involvement from immigration authorities. When the IDENT database identifies an arrestee as foreign-born—whether authorized or unauthorized—the Department of Homeland Security automatically notifies Immigration and Customs Enforcement, its interior enforcement arm. ICE then

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determines whether the person arrested is removable due to immigration violations, criminal charges, or criminal convictions. ICE may issue an immigration *detainer*—a request that the local jail voluntarily detain the arrestee for up to forty-eight hours, not including weekends and holidays, until ICE can assume custody.

It took far less time for ICE to determine Alejandro Guizar's fate. Guizar explained, "They called my name. And they said, 'You're leaving.' And so I thought that I was *really* leaving. Like, I thought that I was gonna get to go home. And, you know, I got my box of stuff, and I walked down the aisle all the way up to the office where they gave me my clothes back. So I was like, 'Okay, I'm going home. This is cool.'" Dressed in his regular clothes, Guizar was impatient to leave. "I'm just like, 'Okay, what's going on? I'm ready to go.' And I wait for, like, five minutes, and this guy shows up. And he's talking to a lady, and she says, 'We've only got one for you today.'" Guizar shrugged, then, shaking his head. "I was just... not knowing what was happening. And then he started talking to me, and then he put me in cuffs from hands and feet, and I was just like, wow. Because I had honestly—just five minutes ago—I honestly thought that I was going home."

To my surprise, Guizar's eyes glistened with tears as he recounted the details of his story. When we first talked about this incident, more than a year had passed since he had been arrested for public intoxication and subsequently detained by ICE, yet it was evident that the shock was still fresh in his mind. I offered Guizar a tissue, and he gently dabbed at his eyes. His voice cracked, heavy with memories, as he recalled, "He was taking me to his office [which] was very close to [my parent's house]. I didn't know what was going on." After a long pause, Guizar continued, "For some reason I kept getting hopes." He smiled ruefully, then, recalling his impressions at the time: "He's gonna do something, and I'm just gonna... I'm gonna get to walk

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home. Cause I can [walk home] from here.” Guizar shook his head, then, seemingly incredulous at his own naiveté, as he coiled the tissue into a dense spiral. In the end, he was not released that day, and it would be weeks before he would see his family again. That day, Alejandro Guizar boarded a bus heading for a federal immigration detention center in Jena, Louisiana, more than 600 miles from his home.



Secure Communities, even more so than 287(g), is described as a “simple and common sense” method of immigration enforcement in assisting state and local law enforcement agencies in removing “threats” to their communities (U.S. Immigration and Customs Enforcement 2018a). Because the system is automated at the point of booking, it requires no additional investigative work regarding the arrestee’s immigration status on the part of the arresting officer or local jail. The ICE Enforcement and Removal Operations (ERO) Field Office Director who oversaw operations in several southern states, including Tennessee, explained the program’s benefits:

We want to make sure that our local law enforcement partners know as much as possible about the people in their custody... By using sophisticated biometrics, the Secure Communities initiative allows us to quickly and accurately identify aliens [sic] *who pose the greatest threat* to our communities. And the program requires no additional costs to the local law enforcement agency. (Immigration and Customs Enforcement 2010b; emphasis added)

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It is hard to imagine how Alejandro Guizar’s story fits this narrative. With his open demeanor and easygoing smile, Guizar seems like a far cry from the “greatest threat” to his East Tennessee community. Yet, people like Guizar—non-violent offenders who are arrested, though not necessarily convicted, for minor misdemeanors—have been persistently identified and detained because of the indiscriminate nature of the Secure Communities program. Between 2008 and 2014, the program processed more than 42 million submissions, resulting in more than 2.1 million matches in the IDENT database. Of those, more than 375,000 people were subsequently removed or returned to their countries of origin. Less than a third of the 375,000 had been convicted of “high priority” criminal offenses like murder, kidnapping, and aggravated assault; 28 percent had been convicted of low-priority offenses, primarily misdemeanors. (U.S. Immigration and Customs Enforcement 2014). Another 18 percent were immigration violations—for example, people who had overstayed a visa or entered without inspection, or who had been ordered to leave and failed to do so.

{Figure 3.1 here}

In justifying the mandatory implementation of Secure Communities, the Obama administration argued that the program was an important tool in identifying and apprehending “criminal threats” to the community. Yet, the program acted less like a precision instrument and more like a vacuum, sucking up all noncitizens who came into contact with state and local law enforcement for any reason whatsoever, even as a result of minor misdemeanors (Thompson and Flagg 2016). In 2010, a year before Alejandro Guizar was arrested for public intoxication and flagged under Secure Communities, ICE developed priorities for apprehending, detaining, and

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removing noncitizens. The memo, written by ICE Director John Morton, gave top priority to noncitizens who presented a risk to national security and public safety, including those suspected of terrorism, gang involvement, and criminal activity. Noncitizens who were “criminal offenders” were further prioritized based on the severity of the crime they had committed: high priority “level one” offenders were those who had been convicted of an aggravated felony, low priority “level three” offenders were those who had been convicted of a misdemeanor. Still, ICE’s application of “criminal offenders” has always deserved further scrutiny: at the time, level one offenses leading to deportation included traffic violations, disorderly conduct, obstruction of justice, possession of marijuana, and possession of liquor (Transactional Records Access Clearinghouse 2012). Apparently, ICE’s priorities were not as straightforward as they appeared.

In the Southeast, and across the country, immigrant rights groups mobilized to highlight Secure Communities as a funnel into the deportation pipeline. Activists started referring to the program as “Insecure Communities,” suggesting that it functioned to destabilize communities, rather than make them safer. Then, in 2014, DHS announced its decision to discontinue the program, acknowledging widespread criticism:

The goal of Secure Communities was to more effectively identify and facilitate the removal of criminal aliens [sic] in the custody of state and local law enforcement agencies. But the reality is the program has attracted a great deal of criticism, is widely misunderstood, and is embroiled in litigation; its very name has become a symbol for general hostility toward the enforcement of our immigration laws. (U.S. Department of Homeland Security 2014a)

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To be sure, the Obama administration had not backed away from the intent of Secure Communities—the identification and removal of “criminal aliens” through police-ICE interoperability. Instead, the DHS memo outlined a replacement—the Priority Enforcement Program (PEP)—which would provide a “fresh start” (ibid) to reflect the administration’s enforcement priorities as they shifted toward “criminal offenders.” The program was designed to function in much the same way as Secure Communities, through the sharing of biometric data between state and local law enforcement agencies, the FBI, and the DHS. However, ICE was directed to take custody of noncitizens held in local jails only under specific circumstances. Noncitizen inmates who were suspected of terrorism, who had been apprehended while attempting to enter without authorization, or who had been convicted of felonies, gang activity, or significant misdemeanors (like domestic violence or driving under the influence), were priorities (U.S. Department of Homeland Security 2014b). Those who had been convicted of minor offenses were not.

The deportation pipeline through state and local jails was immediately impacted by the Obama administration’s termination of Secure Communities and implementation of the Priority Enforcement Program. The percentage of interior arrests leading to detention and deportation, which declined during Obama’s second term in office, continued to fall relative to the numbers of unauthorized entrants removed from the border (this also corresponded to increased apprehensions along the border). Moreover, the share of people removed from the interior with “serious” criminal convictions increased to 90 percent of those removed (Chishti, Pierce, and Bolter 2017).

{Figure 3.2 here}

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As with 287(g), the Secure Communities program gained new life under the Trump administration. In his first days in office, Trump directed the Department of Homeland Security to abandon the Priority Enforcement Program and reinstate Secure Communities. The administration also outlined new enforcement goals, thoroughly upending Obama's priority categories. Under Trump, guidelines for enforcement included noncitizens who had been convicted of any criminal offense; had been charged but not yet convicted; had committed an offense but had not been charged; had committed fraud or misrepresented themselves to a governmental agency; had "abused" public benefits; had failed to depart after ordered removed; or who, "in the judgment of an immigration officer, otherwise pose[d] a risk to public safety or national security" (Executive Order 13491 2017).

Following the Trump administration's expansion of enforcement priorities, and its reinstatement of police-ICE collaboration programs like Secure Communities, interior removals increased rapidly. The increase is especially notable because a growing number of noncitizens have been deported following misdemeanor charges (Immigration and Customs Enforcement 2017b; Nowrasteh 2018). In essence, the Trump administration prioritized all removable noncitizens for enforcement. In the words of the administration's Acting ICE Director, Thomas Homan, "If you're in this country illegally and you committed a crime by entering this country, you should be uncomfortable... You should look over your shoulder, and you need to be worried" (quoted in Foley 2017). Homan continued, "Most of the criminal aliens [sic] we find in the interior of the United States, they entered as a non-criminal... If we wait for them to violate yet another law against a citizen of this country, then it's too late. We shouldn't wait for them to become a criminal" (ibid).