

Local-Federal Immigration Enforcement in North Carolina: Mapping the Criminal-Immigration Overlap

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ABSTRACT

This essay explores local-federal immigration enforcement in North Carolina's Wake, Durham, and Guilford Counties through ethnographic analysis. It situates 287(g) and Secure Communities partnerships in their regional, historical, and structural contexts, namely the broader southern response to immigration, the expansion of local-federal enforcement, and the contemporary U.S. immigration detention pipeline. Section 287(g) and Secure Communities highlight growing linkages between criminal and immigration law with increasingly punitive consequences. Comparing these programs illuminates the gap between policy and practice and subsequent barriers to justice. The article discusses the significance of narrative and coalition-building in contemporary resistance work and concludes with preliminary policy recommendations related to identification and federal detainer usage.

Key words: immigration, interior enforcement, detention, Section 287(g), Secure Communities

RESUMEN

Este ensayo explora la aplicación de las leyes migratorias en los condados Wake, Durham y Guilford, de Carolina del Norte, a través de análisis etnográficos. Ubica los programas 287(g) y Comunidades Seguras en sus contextos regionales, históricos y estructurales, es decir, la respuesta sureña a la inmigración, la implementación local de las medidas previstas en las leyes federales y el proceso actual de detención de inmigrantes. La Sección 287(g) y Comunidades Seguras ilustran los vínculos que se han establecido entre las leyes penales y las leyes de inmigración con consecuencias cada vez más punitivas. Comparar éstos programas revela la brecha que existe entre política y práctica y cómo, por ende, se obstaculiza la justicia. El artículo plantea la importancia que tienen las narrativas y la construcción de coaliciones en las tareas de resistencia. Concluye con algunas recomendaciones preliminares sobre las políticas relacionadas con documentos de identificación y las prácticas de detención de los infractores de las leyes migratorias.

Palabras clave: inmigración, aplicación interior de la ley, detención, Sección 287(g), Comunidades Seguras

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INTRODUCTION: LOCAL-FEDERAL INTERIOR ENFORCEMENT THROUGH THE MIRROR OF ARIZONA'S SB1070¹

Sub-national immigration enforcement strategies flooded the national debate over immigration reform in spring 2010, when Arizona's legislature enacted Senate Bill 1070, the controversial immigration bill surpassing previous state laws in restriction. SB1070 would criminalize immigrants who failed to carry identification documents at all times, authorize police to detain anyone they suspected to be in the country illegally, and crack down on those who sheltered, harbored, or transported unauthorized immigrants. On July 6, 2010, the United States Department of Justice filed a lawsuit against Arizona's SB1070 leading to a federal injunction against its most controversial statutes the day before it was to go into effect on July 29, 2010 (Archibold, 2010).

The government complaint rests on the preemption argument, contending that the "the federal government has preeminent authority to regulate immigration matters," and that SB1070 oversteps those bounds; the lawsuit also predicts several negative outcomes of the law. Considering federal reaction to SB1070 alongside the harsh consequences she has seen from local-federal enforcement partnerships in North Carolina, my supervising attorney in Raleigh, Lara, first raised the question, "What about 287(g)?"² As she read through *U.S. v. AZ*, Lara recognized the government's fearful premonitions for SB1070 as well-observed consequences of the 287(g) program, in which local law enforcement agencies collaborate with Immigration and Customs Enforcement (ICE) to perform certain immigration functions. While 287(g) has received considerable scrutiny for years, the newer and more pervasive Secure Communities program brings with it many of the same problems. In Secure Communities, Department of Homeland Security (DHS) databases are connected to local jails so that all who are booked automatically have their fingerprints run through them. These programs will be explored in more detail in the following pages.

Indeed, at least three of the arguments in *U.S. v. AZ* reveal a contradictory response to sub-national immigration enforcement in light of 287(g) and other local-federal collaborations like Secure Communities: the government's argument that SB1070 would divert resources from the "dangerous aliens" that the government

¹ This article is an expansion of an Op Ed piece I wrote under the guidance of my supervising attorney that was published in the *Raleigh News & Observer* on September 9, 2010, "A Program at Odds with Federal Immigration Powers," <http://www.newsobserver.com/2010/09/09/670729/a-program-at-odds-with-federal.html>.

² Unless otherwise stated, all interviews are by the author and are referenced by pseudonym in a table at the end of the article. Names and identifying details have been changed to preserve subjects' anonymity.

prioritizes, its claim that SB1070 risks causing harassment and detention of “authorized visitors, immigrants, and citizens,” and its argument that constitutional and federal immigration law “do not permit the development of a patchwork” of state and local immigration policies throughout the country (United States District Court for the State of Arizona, 2010). September reports by the Office of the Inspector General (OIG) reveal that less than 10 percent of those placed in removal proceedings through 287(g) fall into ICE’s priority “Tier 1” criminal category, and many who enter removal proceedings through 287(g) programs have minor or no criminal convictions (Office of the Inspector General, 2010). In North Carolina, most immigrants processed for removal in 287(g) counties were arrested for traffic offenses, according to reports from University of North Carolina (UNC) Law School and the UNC Latino Migration Project from February 2009 and 2010 (ACLU North Carolina Legal Foundation, 2009; Gill and Nguyen, 2010). Data on Secure Communities released in summer 2010 show that the majority of noncitizens processed through Secure Communities nationally were neither charged with nor convicted of felonies (Center for Constitutional Rights, 2010). The lawsuit’s second claim, that SB1070 risks the harassment and detention of authorized residents, rings hollow given the lack of necessary training and oversight in 287(g) partnerships reported by the OIG³ and other accounts that citizens and legal residents have been “harassed” and even wrongfully deported under local-federal law enforcement collaborations.⁴ The UNC reports also find wrongful detention and in some cases deportation in 287(g) counties in North Carolina, due to insufficient training by ICE and rampant racial profiling. Finally, the government’s assertion that federal law currently prevents a “patchwork” of state and federal immigration laws belies the expanding but still uneven network of 287(g) counties and Secure Communities coverage from state to state.

Federal concerns about SB1070 thus parallel documented outcomes of North Carolina’s seven 287(g) partnerships and its implementation of Secure Communities. The contradiction in policy hopefully helps to connect the following discussion to broader contemporary debates and concerns around sub-national immigration enforcement, including the debate around SB1070.

This article seeks to expand existing scholarship on problems related to the devolution of federal immigration law in the form of ICE-local law enforcement collaborations, through a site-specific analysis of several North Carolina counties with 287(g) and Secure Communities partnerships. Scholars and policy analysts have

³ According to the March 2010 report, ICE has not established reporting requirements that would allow it to measure or improve its performance.

⁴ 287(g) programs in other southern states particularly have been evaluated and found to exhibit all three of the above claims (e.g., ACLU of Georgia, 2009a and 2009b).

brought to life racial profiling and the negative impact of local-federal enforcement partnerships on community policing and safety, so these issues are not the concern of this article. Instead, it focuses in detail on how the criminal and immigration systems interact with each other in these enforcement collaborations. The discussion aims to shed light on processes that are often poorly explained and understood and to contribute to scholarship illuminating gaps between the policies and practices of local-federal immigration enforcement.

I utilize findings from research conducted in summer 2010 to analyze policies and practices of 287(g) and Secure Communities in North Carolina. During this time I interned for a local nonprofit, performing research and casework for an immigration attorney who represented some detained clients. I conducted around 20 interviews with immigration attorneys, advocates, community members, and law enforcement representatives in Wake, Durham, and Guilford Counties.

In the following pages, I first use several case studies to introduce how the immigrant community perceives the way 287(g) and Secure Communities work. I next review contemporary data related to Secure Communities and 287(g) partnerships nationally and map their rise in North Carolina within a broader southern response to increased immigration. I contextualize the rise of these partnerships theoretically in Juliet P. Stumpf's formulation of a "crimmigration crisis" and related scholarship revealing that increasing linkages between immigration and criminal law form part of a broader move toward a "disciplinary" state from the 1970s onward. I next analyze 287(g) and Secure Communities in Wake and Durham Counties, contrasting the adjacent counties' implementation of the program to draw out contradictions between policy and practice. I bring in Guilford County's replacement of its short-lived 287(g) program with Secure Communities to pinpoint the increased sophistication of local-federal collaboration. I then discuss problems relating to contradictions between stated policies and outcomes, focusing on barriers to legal representation. Through anecdote, I identify coalition-building and the use of narrative as important strategies in state-wide advocacy. I conclude by discussing identification and the use of ICE detainers and noting possible challenges to the gap between policy and practice.

NARRATIVES OF ARREST AND THE GEOGRAPHY OF IMMIGRATION DETENTION IN NORTH CAROLINA

Pedro was trapped between two legal systems. For over a year he had been dodging his ex-partner's physical attacks, stalking, and threats to "have his ass deported," a common tactic of domestic abuse when the abuser is documented and the victim

is not.⁵ With Pedro's help, a Raleigh police detective had been gathering a case against his ex when she filed a false report against him. Pedro waited for the detective to arrive at his job one morning and peacefully accepted arrest. He was booked into the Wake County Jail, and immediately came to the attention of Immigration and Customs Enforcement (ICE) through Wake County's Secure Communities partnership.⁶ That the false charges against him in state court were eventually dropped did not matter; once he entered the Wake County Jail; he simultaneously was ushered into immigration removal proceedings.

Pedro remembers being funneled into ICE's system immediately. He recalls, "When you've been arrested, when you get to the office at the jail, they ask you for information—where you live, my address—and they take your fingerprints to figure out who this person is, that he's not lying. Then, you go to the infirmary to get the TB shot...and then ICE takes you [for questioning]."

Pedro's case illustrates some of the challenges of the merging of the criminal justice and civil immigration system in counties with local-federal immigration enforcement collaborations. Unlike the vast majority of people processed for removal, Pedro qualified for immigration relief and found an attorney. However, despite concerted efforts between his criminal and immigration attorneys to coordinate his release from state custody with an immigration bond, there was a one-week gap between when his state charges were dropped and his immigration bond hearing occurred. ICE took custody, transferring him first to Alamance County Jail for a few days.⁷ Though he was granted bond at a hearing at Alamance several days later, his family was unable to pay it quickly enough to stop his transfer to Stewart Detention Center in Lumpkin, Georgia, nine hours away by car.

His rapid transfer shows how quickly those in North Carolina are moved through the system, most often to remote detention centers in Georgia or Alabama since North Carolina lacks its own federal detention center. Sam, an immigration attorney, finds that one of the biggest problems with the geography of detention is trying to get an immigration bond. He recalls clients being moved from Wake County to Stewart as soon as 48 hours after their arrest on state charges. Lara, another immigration attorney, adds that this rapid transferring is "terrorizing," "especially for family mem-

⁵ Pedro also commented that his case was much less common than domestic violence against women. He added, "The jail is full of people who have domestic violence charges. Lots of people. It's difficult because for the first time, a man in my case [is the victim], they don't believe me. Because for the majority it's the opposite: they [the men] do the abuse."

⁶ Wake County also has an active 287(g) Jail Enforcement model, but apparently Pedro was processed through Secure Communities. The distinction is explained below.

⁷ Alamance County Jail, like many local jails in 287(g) counties, has a contract with ICE (an Intergovernmental Service Agreement) to hold immigrant detainees temporarily in their facilities.

bers. A detained person doesn't know where they're being taken or why. They're just told, 'You're going to Atlanta, to get deported,' is what most people are told."

Statistics show that often immigrants processed for removal through local-federal collaboration are not charged with serious crimes (OIG, 2010; ACLU of North Carolina Legal Foundation, 2010; Center for Constitutional Rights, 2010), and anecdotes suggest they are sometimes not charged with any offense at all.⁸ One migrant, Alejandra, told of an acquaintance who was driving in Raleigh when an officer saw him drinking something and suspected it was alcohol. Once he pulled him over and saw it was *Jarritos*, a Mexican soda; "the cop went on to say, you know, like 'Are you illegal? What's your legal status?' And the guy just freaked out, he didn't know his rights, and was just like, 'Yeah.' Totally turned himself in....He got arrested and you know – he's probably already been deported."

Sam had a client who was arrested for swerving too close to the yellow line and another who was taken into state custody for being an "accessory" to a DWI (Driving While Impaired); both were flagged for removal following their arrests. Frank, a Greensboro advocate, recalled a case where someone "was in a car parked in a parking lot of a public park, he was a passenger." He was asked for his driver's license but could only present his Mexican ID, "and so they took him into custody and he was then taken into custody and issued an immigration detainer." In Lara's experience, common removal cases begin as traffic violations, noise violations, and DWIs, but "the worst situations are those domestic violence ones where the victim...gets picked up." She recalls a case where

this woman had been abused by the father of her children for years and years. And the time she finally got it in her to hit him back, she got arrested....Once the abuser saw what was happening...that she was in the jail, and she wouldn't be able to get out...he was all apologetic, but it was too late...She was already in the system, she already had that detainer and was going to get removed.⁹

⁸ Alamance County, one of the first 287(g) counties in the state whose Sheriff's Office is currently under investigation by the Department of Justice, has faced scrutiny for practices of racial profiling. In one case, several people were arrested (and eventually deported) for fishing without a permit. Interview, 8/24/10, Raleigh, North Carolina. Another well-known case involves a mother being arrested for a traffic infraction at night and forced to leave her children on the side of the interstate for eight hours in June 2008. Interviews, 7/22/10 and 8/24/10 (TimesNews.com, 2008).

⁹ The Violence Against Women Act of 1994 (reauthorized in 2006) provides for relief for immigrants who are victims of domestic violence, since immigration status is recognized as a common reason for remaining in an abusive relationship (for fear of being reported). People in removal proceedings can apply for Cancellation of Removal under VAWA. However, they must have the legal knowledge to do so.

These stories detail “criminal” arrests which then funnel people into “civil” removal proceedings. Once someone is booked into a county jail that participates in 287(g), Secure Communities, or both, he or she receives an ICE “detainer” after being flagged as potentially unauthorized. This is a request that the county sheriff hold the person after his or her state charges are resolved (something they can legally do for up to 48 hours) so that ICE can put the person into immigration detention. Thus, the implementation of 287(g) and Secure Communities has caused a surge in deportations of immigrants for many minor infractions, contrary to their stated intent.¹⁰ As Lara puts it, “You get a detainer lodged on you; after that...it doesn’t matter. You just get ground through the system and put into removal with everybody else.”

287(G) AND SECURE COMMUNITIES IN NORTH CAROLINA: HISTORICAL, SOUTHERN, AND STATE CONTEXTS

The implementation of 287(g) and Secure Communities partnerships in North Carolina began in the late 2000s. This surge in local-federal collaborations in the state parallels a national shift toward such practices and, when the Obama administration took office in 2008, a decrease in more high profile enforcement practices like workplace raids. The implementation of 287(g) and Secure Communities in North Carolina counties can also be tied to a punitive response to immigration in the South in the late twentieth and early twenty-first centuries.

287(g) partnerships, under Section 287 (g) of the Immigration and Nationality Act, are agreements wherein local law enforcement agencies enter into Memoranda of Agreement (MOA) with Immigration and Customs Enforcement (ICE) to deputize certain local law enforcement officers to perform immigration functions after receiving around four weeks of training (U.S. Immigration and Customs Enforcement, n.d.). There are two types of 287(g) models: the Jail Enforcement (JEO) model, in which certain officers are deputized to interview noncitizens after they are booked into jail, and the Task Force (TFO) model, in which certain officers are trained to perform immigration enforcement functions within felonious field investigations. The Immigration and Nationality Act is part of 1996’s Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).¹¹ Despite becoming law in 1996, the first 287(g)

¹⁰ This instance seems to qualify as “driving while brown” (Muchetti, 2005).

¹¹ The statute empowers ICE to train local and state law enforcement agents to perform certain immigration functions pursuant to the formation of MOAs with the agencies.

agreement was not signed until July 2, 2002 (U.S. Immigration and Customs Enforcement, n.d.) Thus, 287(g) was not an active component of federal immigration enforcement until after 9/11, and the expansion of 287(g) since then is often understood in the context of a broad expansion of immigration enforcement under the guise of national security interests.¹²

In contrast to 287(g) partnerships, which occur on the county or city level, Secure Communities is signed on the state level. George, a Durham County Sheriff's Office representative, clarified that Secure Communities is basically administered by the North Carolina Sheriff's Association, which enters into an agreement with ICE and decides the order in which to implement it by county. He adds that since the agreement has been reached, the program "is required." Counties with Secure Communities merge the fingerprints of those arrested at local jails with Department of Homeland Security (DHS) databases, so that any immigrant who has had prior encounters with DHS will be identified. Reports also indicate that even if the fingerprints do not match, ICE can investigate a suspected noncitizen further at the jail (Campoy, 2010). Secure Communities is a newer initiative than 287(g), with the first activations occurring in 2008 (U.S. Immigration and Customs Enforcement, 2011a). Controversy over whether the program is mandatory or certain counties can "opt out" made headlines throughout 2010 and 2011, as the Department of Homeland Security made seemingly conflicting statements but ultimately suggested that opting out is not possible (Vedantam, 2010). On May 4, 2011, Illinois Governor Pat Quinn announced that he was withdrawing his entire state from Secure Communities because the program has not met the terms of its 2009 agreement that it would focus on identifying and deporting immigrants "who have been convicted of serious criminal offenses" (Preston, 2011). Meanwhile, the Office of the Inspector General announced an investigation into the program (Romney, 2011).¹³ According to its website however, ICE plans to have Secure Communities activated throughout the country by 2013 (U.S. Immigration and Customs Enforcement, 2011b).

287(g) and Secure Communities are prominent components of the Obama administration's shift away from high profile workplace raids more characteristic of the Bush administration. As Lara acknowledged, "The vast numbers [of removals] are coming through the local enforcement programs now." Despite their relative subtlety, these and other ICE ACCESS partnerships have helped produce an even greater number of deportations, up from 369 221 in 2008 to 389 834 in 2009 and 392 862 by

¹² Scholarship discussing post-9/11 transformations and expansion of immigration enforcement includes the following, among others: Welch, 2007; Sanchez, 2007; Brotherton, and Kretsedemas, eds., 2008.

¹³ The investigation is to include the extent to which ICE uses it for its stated purpose, its accuracy, and how ICE officials portrayed it to states and counties.

the end of 2010 (TRAC, 2010).¹⁴ The stated focus of both 287(g) and Secure Communities is to prioritize “the arrest and detention of criminal aliens” (U.S. Immigration and Customs Enforcement, n.d.; 2011b). Yet again, government and outside reports have established that neither program meets these stated priorities in practice.

The increase in 287(g) and Secure Communities in North Carolina has occurred alongside a recent wave of immigration to the Southeast and with it a backlash in legislation and public perceptions. Unlike other regions of the country, large-scale immigration to the South did not occur until the 1980s and 1990s. Scholars relate a convergence of factors to the wave of immigration to the South in the late twentieth century. These include the effects of legalization under the Immigration Reform and Control Act of 1986 and stricter border enforcement, both leading to more permanent settlement nationally; economic recession in more traditional immigrant destination states and a resulting anti-immigrant backlash and migration to new destinations; economic globalization and the southern states’ generally pro-business policies; the North American Free Trade Agreement’s effect of economic destabilization in many Latin American countries; and political unrest in countries like El Salvador and Guatemala spurred by U.S. interference and/or support of repressive regimes (Odem and Lacy, eds., 2009; Smith and Furuseth, eds., 2006).

In the 1990s, southeastern states recruited migrant workers in the carpet, food-processing, and construction industries, first from Texas and California but later directly from Mexico and Central America. They did this through both temporary work visa programs and recruiters (Smith-Nonini, 2005; Odem and Lacy, eds., 2009). Demand for cheap labor in the meatpacking industries brought Latino immigrants to towns across North Carolina and Georgia, as companies actively recruited them (Parrado and Kandel, 2008; Lippard and Gallagher, 2010: 4). A lack of native-born interest in “dirty” jobs combined with threats of unionization and higher wages to bring Latinos to the meatpacking and construction industries (Lippard and Gallagher, 2010: 5). As Odem and Lacy point out, the late 1990s saw chain migration and enhanced employer recruitment. As migrants began settling in the Southeast, migration streams developed, and the corresponding resources and social networks stimulated migrant settlement across the region (2009: xvi).

As the Latino immigrant population in the South increased in the late 1990s and 2000s, the tone toward immigrants began to shift in the region. Building backlash linked to demographic change and the economic recession of the late 2000s stoked anti-immigrant sentiments, political rhetoric, and a widespread rise in restrictive

¹⁴ However, reports found that ICE used “unusual” mathematics in the effort to reach a record-setting quota (see Becker, 2010).

legislation and policies. These restrictive laws typically aim to discourage undocumented immigrants from coming to a region and to push current unauthorized immigrants out, though some impact authorized immigrants and other community members as well. Local anti-immigrant ordinances, stemming from frustrations with slow action on the state and federal level, have also appeared throughout the South.¹⁵

As part of the wave of anti-immigrant policies in the South, North Carolina passed House Resolution 2692 in mid-2006, which creates a new immigration court in the state to speed deportations (currently operating in Charlotte, North Carolina), supports local law enforcement-ICE collaboration, and pressures Congress to make driving while impaired a deportable offense for both legally present and undocumented immigrants. In 2006 North Carolina also restricted driver's licenses to those who can provide a valid social security number, which has had a tremendous impact on undocumented migrants' mobility and undoubtedly enables more minor arrests that lead into deportation.¹⁶ North Carolina leads the southern states with the most 287(g) partnerships in the region, with the exception of Virginia (U.S. Immigration and Customs Enforcement, n.d.). In North Carolina, Senate Bill 229 may also come into play in local-federal immigration enforcement collaboration impacting immi-

¹⁵ State laws with similar provisions have been enacted in Georgia, South Carolina, and North Carolina with this goal, beginning in 2006 with the Georgia Security and Immigration Compliance Act, or Senate Bill 529, which restricts social services, requires that everyone arrested for DUIs (driving under the influence) and felonies be checked for legal status, encourages local law enforcement collaboration with Immigration and Customs Enforcement, and restricts undocumented labor.

¹⁶ The prohibition of licenses for undocumented drivers was impacted by federal pressures. Prior to 9/11, Governor Jim Hunt's administration saw the issue of undocumented drivers as a safety problem and expanded access to driver's licenses, accepting utility bills and lease agreements as proof of residency. After 9/11, the state changed the law to require Individual Taxpayer Identification Numbers, which migrants could still generally obtain. After dealing with claims of identity theft and fraud and with heavy pressure from the Department of Homeland Security, the Department of Motor Vehicles (DMV) stopped accepting the *matrícula consular* and other foreign documents. Then, in 2006, lawmakers passed Senate Bill 206, which prohibited the DMV from accepting taxpayer ID numbers and thus restricted undocumented immigrants from obtaining state driver's licenses. These changes were encouraged by pressure to apply to the REAL ID Act (Raleigh NewsObserver.com, 2008; Riggsbee Denning, 2009).

Colin, an advocate who runs a local Catholic Worker House, traced a connection between the driver's license law and other immigration policies and sees the DMV issue as a precursor to 287 g and Secure Communities, saying,

I would say that that to me was ... absolutely shameful, that North Carolina would pass anti-immigration - integration laws. I mean, anti-immigration and anti-integration. To me, it was the same thing: white people in power passing laws to restrict the liberties of people of color.

...And it was a horrifying thing for the General Assembly to pass that law. Not only was it idiotic in terms of not being practical, making the roads more dangerous, increasing the likelihood that people would drive without valid licenses, without insurance. Not only was it just impractical, but it was...it was just incredibly racist...and cruel and unfair. It was very sad to me, like that was a ...a real low point. But it got lower. I mean, ICE and 287 g, you know, when that kind of stuff happened, it got worse.

The parallel Colin draws between anti-immigrant and anti-integration policies informs coalition-building work between African-American and immigrant communities in the state, discussed below.

grants with encounters with law enforcement. The 2008 law requires that North Carolina jails check citizenship status of all DWI and felony arrests but implicitly allows them to check for other arrests.

As of April 9, 2011, a number of restrictive bills impacting immigrants were pending before the North Carolina General Assembly. House Bill 343B is the state's "copycat" version of Arizona's SB1070. It would make it a state crime to not carry identification documents and would crack down on "transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States," require law enforcement to investigate anonymous citizen complaints, and restrict public benefits, among many other provisions (North Carolina General Assembly, 2011a). House Bill 11, "No Post-Secondary Education/Illegal Aliens," would prohibit undocumented immigrants from attending North Carolina community colleges and universities (North Carolina General Assembly, 2011b). Assembly House Bill 33 would prohibit consular documents as an acceptable form of identification, erasing the recent advance in Durham to approve the *matrícula consular* as an acceptable form of ID (North Carolina General Assembly, 2011c). House Bill 744, the "Safe Student Act," introduced late in the legislative session, would require that students registering for public school present certified copies of their birth certificates to prove their citizenship. It would require school principals to determine the immigration status of every child in the public school system, to be used for "fiscal analysis" (North Carolina General Assembly, 2011d). Other restrictive bills have been introduced as well. This pending legislation echoes the introduction of restrictive immigration bills during the 2011 congressional sessions in other southern states like Alabama, Georgia, and South Carolina (Severson, 2011).

Thus, North Carolina's embrace of restrictive immigration enforcement has occurred alongside a national and southern trend toward punitive policies on both state and local levels. Restrictive immigration policy and political rhetoric by the close of the 2000s can also be linked to the failure of comprehensive immigration reform in 2007.

LOCAL-FEDERAL ENFORCEMENT COLLABORATIONS AND THE "CRIMMIGRATION CRISIS"

The merging of criminal and immigration law evident in 287(g) and Secure Communities partnerships points to a greater convergence of the two systems in recent years. It seems necessary to theorize why, in North Carolina and elsewhere, criminal and immigration law have become increasingly intertwined and what problems

underlie local-federal immigration partnerships. Juliet P. Stumpf proposes that membership theory, in which individual rights are limited to “members of a social contract between the government and the people,” can help explain how the two systems have merged (2006). After the 1970s, immigration laws rapidly incorporated criminal sanctions for immigration infractions, and more noncitizens who committed crimes faced deportation.¹⁷ Meanwhile, criminal penology shifted “from rehabilitation to retribution, deterrence, incapacitation, and the expressive power of the state”: convicted criminals became excluded through heightened incarceration and the loss of basic political and social welfare rights. The term “cimmigration” can describe the increased connections between these two types of law, and a “cimmigration crisis” results when those in power use the mechanisms of both criminal and immigration law to exclude an expanding group of outsiders (2006: 28).

Rebecca Bohrman and Naomi Murakawa similarly map a punitive shift in both criminal and immigration law since the 1970s. They frame this phenomenon as part of the “remaking” of big government from the welfare state to the disciplinary state (2005).¹⁸ In what serves as an example of this “cimmigration crisis” in the disciplinary state, Mary Bosworth discusses how the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) simultaneously cut welfare for vulnerable people of color and restricted benefits for illegal immigrants and their children (2007). Legal scholar Jennifer Chacón sketches some key procedural problems for immigrants in the marriage between “civil” immigration and criminal law in local-federal enforcement collaboration (2010).¹⁹ Further, statistics on criminal prosecutions reflect a visible growth in the criminalization of immigration infractions, particularly since 2005’s Operation Streamline mandated criminal prosecution for illegal

¹⁷ The restrictive 1996 Illegal Immigration Reform and Immigrant Responsibility Act exemplifies the shift toward exclusion of more immigrants, as it redefined many crimes as “aggravated felonies” and retroactively mandated the deportation of many legal permanent residents.

¹⁸ While the notion of the “disciplinary state” merits a more thorough theoretical definition and application to patterns of immigration policing and enforcement elsewhere, this text is concerned with following the “criminal-immigration” overlap within the empirical move toward more punitive policies in both systems as shown by Bohrman and Murakawa. This article frames this increased overlap between the two systems, largely through punitive policies, in Bohrman and Murakawa’s notion of the disciplinary state to encapsulate the broader punitive shift in which the “cimmigration crisis” exists. Thus, the deployment of the word “disciplinary” in this article to describe this state is meant only to reflect the broader move toward punitive policies.

¹⁹ Chacón discusses how the passage of restrictive federal immigration laws in 1996 and after 9/11 has begotten numerous allegations of government misconduct in the apprehension of immigrants, but immigration courts by design cannot “police the police.” Chacón and others outline many problems resulting from the fact that deportation cases are not seen as “criminal” proceedings, because deportation is not viewed as “punishment.” Thus, those who enter removal proceedings—which in North Carolina often begins with arrest for a criminal infraction, no matter how minor—lack the due process protections afforded people in criminal proceedings and often become enmeshed in a lack of communication between systems. See also Kanstroom, 2007.

entry in certain border sectors. According to the Transactional Records Access Clearinghouse (TRAC), yearly federal criminal prosecutions for immigration infractions more than quadrupled during the Bush administration, while at the same time federal prosecutions of other crimes greatly decreased (TRAC, 2009). This highlights the nexus of the “civil” immigration and criminal systems as an essential site of the expansion of the disciplinary state.

Many informants trace the rise of restrictive immigration enforcement partnerships in North Carolina to a backlash against the immigrant population in recent years, nationally and in the South. Sara, an advocate, suggests that government actors, “motivated by racism, [and] xenophobia...not liking the changes they’re seeing in their communities,” fuel the rise of ICE –local law enforcement immigrant policing. Mary, an immigration attorney, believes that “mostly it’s because we have one of the fastest-growing Latino populations in the country ...anything that...visual...is gonna make people nervous. In times of economic and social turbulence, long-term settlers get nervous, and so that creates this political atmosphere where immigrants become an easy target, a scapegoat,” something that politicians exploit. Lara adds that since sheriffs are elected officials, they often run on 287(g) as a “scapegoat, fear issue” to get elected. On this point, Mary draws an explicit connection between the scapegoating of immigrants and of convicted criminals, both part of an expanding group of the excluded. She explains,

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

Here, Mary alludes to a broader “cimmigration crisis,” a concurrent movement in criminal and immigration law to expand the ranks of the excluded. Local-federal immigrant enforcement partnerships bridge both systems, leading to the ultimate expulsion of more immigrants through the increasingly fluid pipeline between criminal arrest and immigration removal.

IMMIGRATION ENFORCEMENT IN WAKE AND DURHAM COUNTIES: LOCAL AND FEDERAL INTERFACE

Wake County

Downtown Raleigh's Wake County "Public Safety Center" is the site of the Wake County Sheriff's Office's 287(g) Jail Enforcement model (JEO) with ICE, signed in July 2008. Under Wake County's Jail Enforcement 287(g), every person determined to be a possible noncitizen at booking is interviewed by one of four deputized officers who also do initial ICE detainer paperwork. If these officers suspect the person is illegally present, Wake County Sheriff Donnie Harrison stresses, "ICE decides what to do." The 287(g) officers are not sworn officers, but detention officers, meaning that they do not have arrest powers. Sheriff Harrison explains that prior to implementing 287(g), he was concerned he might be letting serious criminals out and wanted access to ICE's database.

In addition to their 287(g) program, Wake County has had Secure Communities since fall 2009. According to Harrison, since the program's implementation four or five immigrants who were not sent to the 287(g) floor because they "faked us all out" at booking have been identified through Secure Communities." Pedro's recollection of being identified as unauthorized through Secure Communities before going up for questioning suggests that in Wake County perhaps the two programs are utilized in different circumstances and not uniformly.

The Memorandum of Agreement between ICE and the Wake County Sheriff's Office, like 287(g) MOAs signed across the country, states that the program's purpose is "to enhance the safety and security of communities by focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community" (Immigration and Customs Enforcement and Sheriff's Office of Wake County, 2009); this was when all MOAs were standardized. According to ICE, Secure Communities has the same focus on identifying serious criminals. However, data from the Wake County Sheriff's Office shows a majority of immigrants booked into the Wake County jail and subsequently processed for removal do not fit the programs' target populations. Of the total 3 012 noncitizens "processed" through Wake County from July 14, 2008 to August 3, 2010, only 298 were considered criminal (Wake County Sheriff's Office..., 2010).²⁰ Of the 1 485 "processed" in the year 2010, 154 were considered criminal (Wake County Sheriff's Office..., 2011).

²⁰ ICE statistics on Secure Communities alone released in January 2011, running from November 12, 2008 (the activation date ICE lists for Secure Communities in Wake County) through November 30, 2010, state

Durham County

The Durham County Sheriff's Office does not participate in a 287(g) program, but the City of Durham Police Department has a Task Force 287(g) with one trained officer. Chief José López of the Durham Police Department stresses that the Task Force 287(g) is limited to "felonious investigations." If there is a homicide and the individual involved as a witness, suspect, or victim is undocumented, the 287(g) officer can access ICE databases to "identify people and find family members." López says it helps immensely to have someone connected to ICE on site to put detainers on these people. Apparently the 287(g) has helped his department solve several homicides, track witnesses, and work with victims and family members. Supporting López's description of the partnership, Sam asserts that the Durham Police Department's 287(g) is a rare example of a program that is actually run as intended, to target people implicated in serious crimes. Data also suggest that their 287(g) is indeed targeted. The statistics provided by the Durham City Police Department show that yearly totals of immigrants processed for removal through the 287(g) program were 32 in 2008, 27 in 2009, and 14 as of August 19, 2010 (Taylor, 2010).²¹

George, the Durham County Sheriff's Office representative, confirmed that Secure Communities is being set up at the Durham County Jail as of August 2010.²² According to ICE's website, Durham has officially operated Secure Communities since February 2009 (U.S. Immigration and Customs Enforcement, 2011c). According to George, the program "is required," but is not meant to "send somebody away for driving without a license." Again, ICE decides who to put a detainer on. George also acknowledged that the Sheriff's Office must act under SB229 to check the citizenship of anyone arrested in the state for a DWI or a felony.

The sheriff's representative stressed that Secure Communities targets serious criminals. When I showed him the Monthly Arrest Processing statistics the Wake County Sheriff's Office had given me, which break down the criminal charges of those who receive ICE detainers, he peered at the data and commented, "This is a lot of zero percents here. Murder, zero; rape, zero; robbery, zero." A quiet moment pre-

that, of 1 112 total removals and returns of immigrants occurring through Secure Communities in Wake County, 229 were Level 1 offenders; 327, Level 2 offenders; 152, Level 3 offenders; and 404, noncriminal (U.S. Immigration and Customs Enforcement, 2011c).

²¹ However, their yearly total detainees lodged did increase from 29 in 2008 to 64 in 2009 –there were 18 as of August 19, 2010 for the year 2010).

²² Chief López commented, "As I understand it, they don't have much choice." According to Sam, at a community forum, the Durham County Sheriff's Office (DCSO) wasn't aware that they had Secure Communities until they checked with their lawyer. Apparently, "No one bothered to tell the sheriff." This example demonstrates how increasingly pervasive and yet often unknown the program is.

ceded the continuation of our conversation. The representative's surprise at the low numbers of serious offenders processed through 287(g) and Secure Communities pinpoints the tremendous disconnect between the policy of Secure Communities and the program in practice, which often results in the removal of noncitizens with minor charges, contrary to its stated goals.²³

ENFORCEMENT IN FLUX IN GUILFORD COUNTY: PHASING OUT 287(G) FOR SECURE COMMUNITIES

The Guilford County Sheriff's Office began a 287(g) Task Force Model on October 15, 2009, but announced its suspension in December 2010. In our August 2010 interview, Sheriff BJ Barnes attested like Sheriff Harrison that his main reason for wanting 287(g) was because it "gives us access to the computer; that's all I wanted was access, to get into that computer to check these folks to make sure we know who they are," and avoid unwittingly releasing those illegally in the country with criminal records who might evade their charges. Barnes stressed that the Task Force Model, in contrast to the Jail Enforcement Model, only affects someone who has committed a Tier 1 crime, like "murder, assault with a deadly weapon with intent to kill, burglary, kidnapping, rape, large amounts of drugs, those type are Tier 1 crimes. Those are the crimes that once they're committed...if someone has committed those, then we do a check to see if they are here legally or illegally."

If they are found to be illegally in the country, he added, his officers work with ICE to place people into removal proceedings. The statistics Barnes's office released reveal the 287(g) Task Force model was indeed targeted: in the year the 287(g) agreement was active, the program's two trained officers conducted eight investigations leading to the processing of eight persons for removal by ICE. Those under investigation had prior state and federal charges including "human smuggling, weapons possession, drug trafficking, drug possession, drug sales, drug manufacturing, identity theft, [and] fraud" (Guilford County Sheriff's Office, 2010).

In our August interview, Sheriff Barnes reported that Guilford County did not yet have Secure Communities, which coincided with ICE's public information at the time. Barnes reflected, "I suspect that every county in this state within the next six months will be hooked up with Secure Communities." He conjectured that "that's

²³ In Durham County, according to ICE statistics on Secure Communities alone, 165 removals and returns have resulted from the program since its February 2009 implementation, of which 36 were Level 1 offenders; 45 were Level 2; 20, Level 3; and 60 were noncriminal (U.S. Immigration and Customs Enforcement, 2011c).

where those issues have come in that you're talking about with things such as drivers driving while impaired and stuff like that." Under Secure Communities, he said, people arrested for something like "No Operator's License" "will be caught." Those arrested for such minor infractions will be placed in removal if they are found through the database to be out of status, because "that's what Secure Communities does."

Barnes's comments illuminate a nationwide fact: Secure Communities does focus on serious "criminal aliens," since people can be arrested on any number of minor and possibly false charges depending on the county and the arresting officer. Barnes's prediction that Secure Communities would quickly spread across other corners of the state proved true, and Immigration and Customs Enforcement announced in a November 16 News Release that Guilford County would benefit from Secure Communities (U.S. Immigration and Customs Enforcement, 2010). ICE has since announced the implementation of Secure Communities in all 100 counties of North Carolina (Cowell, 2011).

In a December 9, 2010 news post in Greensboro's *YES! Weekly*, Sheriff Barnes confirmed that Guilford County had withdrawn their 287(g) agreement in November, after processing just eight immigrants for removal since January 2010 through its targeted program (Green, 2010).²⁴ In the article, Barnes stated that his agency had enrolled in Secure Communities the previous month, and that the program would probably "cast a wider net" than the limited task force 287(g) model. An article by Adolfo Briceño in the December 16-22 edition of North Carolina's Spanish language newspaper *Qué pasa* confirmed that Guilford County had suspended its 287(g) program (2010).

The decision to disband the 287(g) program, then, relates to the greater efficiency of Secure Communities, which does not include deputizing local law enforcement agents but simply connects jail databases directly to ICE. Sheriff Barnes's acknowledgement that deportations of people with minor charges would increase in Guilford County with the arrival of Secure Communities suggests that Secure Communities is the new, more sophisticated and more far-reaching face of local-federal enforcement. Like the jail enforcement 287(g) model seen in Wake County, Secure Communities engages with everyone booked into jail. Therefore, it cannot target ICE's top "priorities." As the American Immigration Council's Immigration Policy Center has commented,

²⁴ The article helpfully lists the differing numbers of deportations since January 2010 for the neighboring 287(g) counties, of which all but Durham and Fayetteville (which have task force models like Guilford) have jail enforcement models: "Alamance County has deported 293. The state's two most populous counties, Mecklenburg and Wake, have respectively deported 2 037 and 1 703. Durham has deported 44. Only Fayetteville County has notched a lower number: seven."

ICE has, in effect, outsourced the identification of immigrants for enforcement actions to local police agencies and jails. However, programs such as Secure Communities and 287(g) undermine ICE's priorities because they are designed in such a way that leads to the deportation of immigrants with minor criminal offenses or no criminal history at all. (2010)

PROBLEMS WITH THE CRIMINAL-IMMIGRATION OVERLAP IN LOCAL-FEDERAL ENFORCEMENT

Several major policy problems with the actual practices of 287(g) and Secure Communities emerged from my interviews. First, interviews and data in each county reveal a recurring disjuncture between the targeted "criminal aliens" of the policies and the actual immigrants processed through the programs, often for minor infractions. Also, many legal experts argue that the five week training 287(g) officers receive from ICE is not enough to navigate complex immigration law. In Mary's opinion, "immigration law is not straightforward" and takes more than a couple of weeks of training. Because of its complexities, Mary adds, local 287(g) officers "cast a wider net, which in turn makes people who are lawfully present have to go through that kind of screening." Mary has career experience working on post-conviction cases involving legal permanent residents whose convictions render them deportable, and she and another attorney each shared instances of clients who were actually unknowing derivative U.S. citizens and thus not deportable. She reflects that "derivative citizenship is another pretty complicated area of law....It's not an easy thing for any average person to be able to figure out necessarily." As a result of its "lack of expertise," local law enforcement will often "err on the side of picking people up who probably are here lawfully." Lara similarly argues that 287(g) officers are not knowledgeable about immigration law, as compared to ICE officers who are "very experienced."

Another issue with the rise in local-federal enforcement relates to transparency. The North Carolina Sheriff's Association (NCSA) has played a huge role in implementing both 287(g) and Secure Communities, principally through its Illegal Immigration Project. The project was allocated US\$750 000 by the North Carolina General Assembly in 2007 to be used by sheriff's offices around the state to apply for and enter into 287(g) agreements. The move followed the passage of House Resolution 2692 in 2006, which supports local law enforcement-ICE collaborations.²⁵ The money

²⁵ According to a PowerPoint presentation made before the North Carolina Association of County Commissioners by Tony Queen, the Director of Special Projects for the North Carolina Sheriff's Association (who joined to oversee this project and whose salary was paid by the NCSA funds), the project's goals were to "provide technical assistance and advice" to sheriffs related to ICE, to provide technical assistance

passed directly to the NCSA and included no reporting requirements. An allocation of US\$600 000 was made to the NCSA in 2008, though with some reporting requirements, and US\$150 000 during the 2009 session despite tremendous budget cuts (Preston, 2009). As Mary, a *pro bono* immigration attorney, commented, this funding process had enormous transparency issues, since “there was no way to really track what happened to that money after the Sheriff’s Association got it.”

A final problem in focus here which relates directly to the “crimmigration crisis” is the lack of communication between the two legal systems, which hinders immigrants’ access to justice in both. In the criminal system, people generally get bail set. The problem, Lara says, is that if someone pays state bail but has an ICE detainer, then “the bail is worthless to youYou get turned over to ICE custody immediately, and then you don’t have a chance to fight your state charges at all. Plus, you get a Failure to Appear, Called and Failed, and an order is issued for your arrest.”

Not appearing for your state charges because you are in immigration detention might even be counted against you in an immigration bond hearing. Ultimately, the systems do not communicate, but have interwoven legal consequences for immigrants caught between them. Lara concludes that “the systems have their own problems, and then you throw them together, and it’s a disaster.”

“LOS DERECHOS SON PARA TODOS”: COALITION BUILDING IN NORTH CAROLINA

Local-federal enforcement and other restrictive practices impacting immigrants in North Carolina are a major focus of immigrant rights advocacy in the state. As Greensboro advocate Cindy comments, the Latino community in North Carolina, “even though it grows so much, like 400 to 600 percent in the past 10 years,” is “still a transitional population,” in contrast to settled regions like Miami, New York, and California. The community has felt “bombarded” by recent restrictions. However, the relative newness of this community activism also leaves room for community advocates to develop strategic alliances with other impacted groups from the beginning.

In recent years, human rights documentation has been utilized with this conscious goal of alliance-building in mind. NC ICE Watch, a state-wide advocacy coalition working against ICE abuses, has utilized the Hurricane Human Rights Documentation Project of the National Network of Immigrant and Refugee Rights (NNIRR).

to sheriffs wanting to enter into in a 287g agreement, and to “reimburse Sheriffs for training costs and replacement personnel to participate in training” (Queen, 2008).

This national project is aimed at documenting abuses related to immigrant policing for strategic media, academic, and political use and to create a national repository of true narratives that often remain outside official government records (National Network for Immigrant and Refugee Rights, n.d.)

A “Story Night” was held in November 2010 to share accounts of human rights and dignity abuses arising mainly, but not exclusively, from immigration enforcement. The event’s strategic venue at the Muslim American Freedom Society was meant to invite more members of the Muslim-American community who have experienced abuses to participate and to draw Latino community members together with other impacted groups. Around 25 Latino immigrants, Muslim Americans, and white allies attended. One organizer stressed the importance of coalition-building across racial and ethnic lines to combat racism and rights abuses. She argued that

without real coalition-building we’re not going to be able to overcome the hassles of the future and provide a society for our children in which every person is respected by, you know, by...their personalities, by their basic value system. And not ... judged by the color of their skin or their religious dress. (NC ICE Watch, 2010)

“Story Night” included several pre-identified testimonials, small group discussions and brainstorming, larger group discussion, and finally the collection of individual stories for Hurricane.

Part of the point of people sharing their stories, another event organizer explained, is to talk about rights and dignity violations occurring as a community, to name the abuses and draw out similarities among different experiences. She stressed that

as part of this process, we get together and we look at all the stories and maybe part of that is seeing that, “Oh, maybe the thing I went through is similar to what Gisela went through, or it has some little pieces of what Mohammed went through. And maybe some of the same systems are causing the things that are making us suffer.” And so we decide together as a community what we want to do about it. (NC ICE Watch, 2010)

This theme of drawing out similarities among differences connects to the wider goal of coalition-building among diverse groups, without denying the particularities of the struggles within, for example, the African-American community as opposed to the Latino community in North Carolina.²⁶ The notion of finding similarity in dif-

²⁶ Ruth Wilson Gilmore’s argument for the need to “stretch” a question or problem so that it reaches “further than the immediate without bypassing its particularity” may be useful in addressing the “immediate”

ference, of “relating the universal to the particular,”²⁷ is essential in thinking through alliances between African-Americans and Latinos, about whom much about horizontal racism has been written but who face similar vertical racism, manifested in racial profiling and criminalization (Jackson, 2010).

While in no way without its challenges, coalition-building among diverse groups with similarities in their experiences of oppression is emerging through partnerships and participation among differing groups with a stake in immigrants’ rights in North Carolina. Efforts to “relate the universal to the particular” might begin by theorizing immigrants’ rights as human rights. Tamara, an immigrant who shared a testimonial of being stalked by an immigration official and the successful prosecution of the agent through her own cooperation and courage, made this connection seamlessly. She stressed that “a person has to fight for what they want, and not let that...because they don’t have papers, or something that says you are from here, you don’t have rights. Rights are for everyone...no one can take them away.”

CONCLUSION: CHALLENGING THE DISCONNECT BETWEEN POLICY AND PRACTICE

In this last section, I discuss several preliminary policy directions within a discussion of identification and ICE detainers. Unauthorized immigrants’ inability to obtain identification (such as a valid driver’s license) and the lack of utilized discretion on all law enforcement levels in the lodging and honoring of ICE detainers each play into the detention and removal of non-criminals and immigrants charged with minor crimes in North Carolina, contrary to ICE priorities. Thus, potential remedies exist related to identification and detainer usage that could address the gap between policy and practice.

problems of criminalization and subsequent deportation of Latinos in North Carolina through targeted interior enforcement practices in a longer trajectory of criminalization and racial oppression of blacks in the state, for example, without dismissing the particular moment of anti-immigrant discrimination (Gilmore, 2008).

²⁷ David Harvey discusses the importance of “relating the universal to the particular” struggles of different groups in order to pursue social justice. Harvey maps weakening working class politics in the United States along a postmodern “shift from universalism to targeting of particular groups.” He explores how a large fire at a chicken processing plant in Hamlet, North Carolina revealed horrendous conditions in the factory, but attempts at class mobilization in the wake of the fire failed because impacted groups split along racial and special interest lines. Harvey argues that basic gains toward social justice require that different impacted groups find “the similarities that can provide the basis...to understand each other and form alliances” while still recognizing difference. He argues that “the task...is to find an equally powerful, dynamic and persuasive way of relating the universal and the particular in the drive to define social justice from the standpoint of the oppressed” (1993: 45).

Identification

Statistical and anecdotal evidence demonstrates that local-federal enforcement collaborations impact immigrants for minor offenses, with No Operator's License (NOL) arrests (a criminal misdemeanor) clogging the detention pipeline. Law enforcement representatives all express the need to properly identify subjects, but differ somewhat in NOL arrest practices. Legally, the decision to arrest someone for NOL, a misdemeanor, is discretionary. Sheriff Harrison of Wake County states that if a person driving without a license seems dishonest, the officer may consider him a flight risk and arrest him. If many NOL arrests lead to removal, he adds, "That's still keeping our country safe." On the other hand, Mary argues that these arrests are clear evidence of racial profiling, since "there's really no way an officer can know that someone is driving without a license until they stop them and ask them for their license." She adds,

So then the question is, why do they get stopped in the first place?...Maybe they may have violated some sort of traffic violation that triggered the officer to want to stop them. But if that's the case, why haven't the clients been charged with that also? Like, passing the center line...that's a ticket. So the officer could very well give them a ticket if that's what prompted them to stop them in the first place. So, we're not seeing that. We're not seeing, you know, Speeding *and* No Operator's License. We just seem to be seeing No Operator's License.

Regardless of the reason for No Operator's License arrests, they undeniably conflict with ICE's stated enforcement priorities.

Durham County seems to differ slightly from Wake County in its arrest practices for No Operator's License. Though Chief López confirms that his officers do not ask for immigration documents in traffic stops, he adds that after verifying documentation, "we may or may not write a citation for driving without a license, and in some cases we will make an arrest." However, legal and community informants report that Durham law enforcement officers typically do not make NOL arrests. Supporting this, the Durham County Sheriff's Office representative was "not familiar with anyone that's been arrested by the Sheriff's Office for driving without a license." Officers do not want to arrest someone for a traffic charge, he explained; they have better things to do than getting "tied up...before the magistrate" for that.

The geography and reputation of 287(g) partnerships in particular counties impact unauthorized immigrants' mobility, in part based on the fear of arrest for minor offenses like NOL. Sara observes that "people are sometimes making travel

decisions, based on the need to drive through...a 287(g) county like Alamance that's known for profiling and other abuses." According to Alejandra, who has been living in North Carolina since she was a young child, people are more afraid of being pulled over in 287(g) counties. She adds that people outside 287(g) counties are less afraid, but "there's still that burden of you know, 'I'm driving without a license, so if something happens I'm screwed.'" Unauthorized migrants must negotiate the terrain of local- ICE collaborations without the means to legal identification. Since the state restricted drivers' licenses in 2006, the situation Alejandra describes has become common.²⁸

A possible solution to NOL arrests and subsequent ICE processing is to expand accepted forms of identification. On November 15, 2010, the Durham Bill of Rights Defense Committee successfully passed a resolution to make the City of Durham formally recognize the Mexican *matrícula consular* (Gronberg, 2011). The resolution states that a person who presents the *matrícula* when driving without a license should only receive a ticket when consistent with the policy for presenting a valid form of ID but not a driver's license (Gronberg, 2010). However, Durham's comparatively accommodating climate and Chief López's support undoubtedly helped the resolution to succeed, and such conditions do not exist in many counties. Also, if House Bill 33, pending in the 2011-2012 legislative session, passes, it will make this resolution void: the bill prohibits consular documents as an acceptable form of identification. Another possibility for preventing people from entering immigration removal proceedings after NOL arrests is reclassifying NOL as an infraction to eliminate arrest powers for that offense alone. North Carolina Indigent Defense Services considered this possibility in an impact study released in 2011 (North Carolina Office of Indigent Defense Services, 2011).²⁹

ICE Detainers

The ICE detainer, or ICE "hold," refers to ICE's formal request to a local jail that the agency in charge hold an immigrant for up to 48 hours after his or her state charges have been dropped. Sheriff Harrison confirmed that in Wake County, ICE puts a hold

²⁸ Of course, community safety is endangered when a population of community members cannot obtain the legal means to drive to work, yet still must get there, as my interviews and the UNC reports show.

²⁹ The study considered the impact of reclassifying 31 misdemeanors as traffic infractions, including No Operator's License. Its main goals were to "identify misdemeanor statutes that could be reclassified as infractions without negatively impacting public safety" and to "quantify potential cost savings to indigent defense that would result from reclassifying a statute."

on anybody who is flagged as potentially removable through 287(g) questioning or a match with Secure Communities. After the 287(g) officer questions someone, the ICE agent decides to either put a detainer on him/her for transfer to ICE custody after his/her state charges are resolved (or after he/she posts state bond) or to release him/her on his/her own recognizance. According to Lara, the problem with ICE's discretion is that

they don't use it...I've been told by the ICE officer, "Well, what am I supposed to do? If I know this person is illegal, even if they didn't commit the crime that they were picked up for, I know they're illegal, and so I can't just let them go." But the truth is, they can. That's what they're supposed to do, at least according to the stated priorities.

For this reason, she adds, the Obama administration's claim to be prioritizing criminals is not even "remotely true, and the system is set up so that it can't be true. [You can't prioritize] if you're lodging detainers on everyone that comes in, regardless of conviction, regardless of whether the charges are dropped." Sam makes the same observation, adding that ICE's general philosophy is that "'if a person is removable I'm gonna remove them'," regardless of the person's criminal record or lack of one. So, he argues,

quote- unquote "prioritizing" people who've committed felonies doesn't protect the people who are here for 15 years, have four U.S. citizen kids, pay their taxes, own their home, go to work every day, and get picked up for driving without a license. Doesn't help them!

The lack of discretion in detainer usage extends to the local sheriffs administering the jail. As far as Sam knows, "No county sheriff has ever ignored an ICE detainer. Ever," though it is supposed to be voluntary. The result is the widespread use of the detainer on anyone determined to be out of status through Secure Communities or 287(g).

Legal challenges to ICE detainers render their usage in federal-local enforcement partnerships problematic. In July 2009, the Florida ACLU sent a letter to Florida law enforcement officials, urging them to stop using ICE detainers unlawfully (ACLU, Florida, 2009),³⁰ and in June 2010 various immigration nonprofits sent a coalition

³⁰ The letter referred to the practice of holding individuals with ICE detainers at local jails for up to 48 hours after their criminal charges are resolved so that ICE can move them to immigration detention. The letter brought up several legal issues which Christopher Lasch (2008) outlines in more detail.

letter to Assistant Secretary John Morton urging ICE to consider how far the detainers have “become unmoored” from their authority (ACLU, 2010).³¹ A 2008 lawsuit against the Sonoma County, California Sheriff and ICE alleges racial profiling and the detention of young Latino men without reasonable suspicion for an unreasonable period. The lawsuit charges that ICE agents abused the limited authority of ICE detainers, the sheriff honored the invalid detainers, and both parties conspired to remove these men from the community without criminal procedural due process protections. This case reflects the problematic entrenchment of the criminal into the immigration legal context, to deny suspected gang members due process rights (United States District Court, District of Northern California, 2008). Another lawsuit was filed by the ACLU of Colorado on behalf of a man who was held under an ICE detainer for 47 days without any formal charges being filed. The suit charges false imprisonment and constitutional violations, since the legal authority of the detainers expires after 48 hours (United States District Court, District of Colorado, 2010). According to Sam, the 48 hour rule is also typically ignored in North Carolina, and immigration attorneys are forced to “go to court to file a *habeas*, in order to get somebody out...if you call and say, ‘You need to let my client out, the 48 hours have passed,’ most detention centers require you to file a *habeas*.”

The legal history of detainers sheds light on the tenuous legal authority on which many ICE detainers rest. Christopher Lasch traces the detainer statute to its origins and finds the federal government greatly expanded the authority Congress gave to issue detainers when they interpreted the statute in the Code of Federal Regulations (2008).³² The only time Congress explicitly granted statutory authority to issue immigration detainers was in the Anti-Drug Abuse Act of 1986 (ADAA), which clearly limits the authority to issue detainers to noncitizens arrested for violating controlled-substance laws.³³ Apparently, in practice, the government had been issuing immigration detainers long before the detainer authority was narrowly defined in the ADAA, and continued to issue them beyond the controlled-substance requirement after 1986. To justify this, it implemented wider interim regulations, citing the authority of the 1986 Immigration Reform and Control Act (IRCA), which dictated

³¹ This coalition letter demands ICE stop issuing detainers to people arrested or charged with crimes and prioritize convicted ones; only issue detainers in accordance with its own standards in its regulations for warrantless arrests; listen to the regulations’ requirement to only issue a detainer if the person is in the agency’s custody on an independent basis; and give detainees who are issued detainers full advisories based on the requirements for warrantless arrests and a procedure to contest the detainer.

³² Congress gives authority to agencies like DHS to promulgate regulations based on the statutes they pass. These go into the Code of Federal Regulations. Regulations that exceed a given agency’s statutory authority are called *ultra vires*.

³³ This is the content of INA 287(d)(3) and 8 U.S.C. 1375(d).

that the Attorney General quickly begin deportation proceedings against any removable alien.³⁴ When the INS (Immigration and Naturalization Service) finalized the statutes, they removed specific references to the enabling statutes.³⁵ Thus, 8 C.F.R. 287, which used to be tied to the Anti-Drug Abuse Act of 1986 and the narrow authorization of detainers for controlled-substance arrests, is much broader. According to the government, it codifies the “general authority” of detainers prior to 1986 (Lasch, 2008). This background depicts an instance of “crimmigration,” where the Anti-Drug Abuse Act led to the convergence of criminal with immigration law. It also illuminates the logic of legal challenges to detainer practices, particularly when neither ICE nor local officials use discretion in practice.

The attorneys I spoke with argue that detainer usage must change to a system more aligned with federal priorities. Lara says that reform is needed, if only because “the courts can’t possibly handle...every person driving without a license coming through the system.” A memo released by ICE Director John Morton in August 2010 pointed to a move toward prioritization (2010).³⁶ However, Lara feels that the people trained on the ground—either poorly trained 287(g) officers or “career ICE people”—are already set in their ways. They will not use discretion, so “the only way you’re going to change that is if from above, the policy gets implemented as rules. As in, ‘There will not be detainers issued for this level of offense.’ Not, ‘We are not required to issue detainers,’ or ‘These are our priorities.’”

Sam expresses the same view, that ICE “need[s] to have clear guidelines that [they] *will* not put someone into deportation proceedings unless they were either currently convicted of a felony or had been convicted of committing one in the past.” He adds that “as long as it’s discretionary, as long as it’s voluntary, as long as it’s based on the priority system,” nothing will change.

This article discussed some practical problems with local-federal 287(g) and Secure Communities collaborations, grounding its review in current debate around sub-national immigration enforcement and critical scholarship on increasing intersections between criminal and immigration law with punitive consequences and three case studies of 287(g) and Secure Communities in North Carolina. It analyzed several practical and legal problems regarding how 287(g) and Secure Commu-

³⁴ So the INS put their regulations, granting much broader authority to use detainers beyond the controlled-substance situation, into 8 C.F.R. 242. They then put the specific, narrow statute created by Congress with the controlled-substance case into 8 C.F.R. 287.

³⁵ And the language of the detainer regulations became identical to the language of 287.

³⁶ The memo, released by Assistant Secretary John Morton on August 20, 2010, outlines a new policy of dismissing removal cases of people who have been detained for not having legal status but who have pending applications for adjustment. The Houston court’s dismissal of non-priority cases has already backfired politically (Carroll and Powell, 2010).

nities are implemented. It highlighted the use of narrative and coalition-building in advocacy work to expose problematic consequences of these programs. It concluded with some preliminary policy possibilities related to identification and the use of ICE detainees.

In a political landscape where eliminating programs like 287(g) and Secure Communities seems improbable, seeking root causes of their inconsistencies and problems is hopefully a viable first step toward change. As long as ICE continues to operate from a quota-driven platform (Hsu and Becker, 2010), it seems unlikely that even a move to turn “priorities” into practice will come without immense political pressure. Amy, a professor and advocate in North Carolina who is part of a group pushing for more transparency in her county’s 287(g), emphasized the importance of such strategic resistance, working within an unjust system for incremental change. She explains,

I think we have to work within, we have to have realizable goals. And I think we’re pragmatic and I think we understand that...that’s just the goal that we think we can get to at the moment.

...We also have to take into mind, you know, the community that we live in. You know, we don’t live in –I don’t know– we don’t live in, like, San Francisco or somewhere like that [*laughs*]. And it’s –you know– you have to do the best you can do with where people live.

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List of Interviews Referenced			
Pseudonym or Official	Location of Interview	Type of Informant	Date of Interview
Pedro	Raleigh, North Carolina	Migrant	9/9/2010
Sam	Durham, North Carolina	Attorney	7/22/2010
Lara	Raleigh, North Carolina	Attorney	8/27/2010
Alejandra	Raleigh, North Carolina	Migrant	9/6/2010
George	Durham, North Carolina	Law Enforcement	8/19/2010
Sara	Raleigh, North Carolina	Advocate	9/1/2010
Mary	Raleigh, North Carolina	Attorney	8/24/2010
Sheriff Donnie Harrison	Raleigh, North Carolina	Wake County Sheriff	8/04/2010
Chief	Durham, North Carolina	Durham Chief of Police	8/11/2010
José López			
Sheriff	Greensboro, North Carolina	Guilford County Sheriff	8/09/2010
BJ Barnes			
Colin	Raleigh, North Carolina	Advocate	8/24/2010
Frank	Raleigh, North Carolina (phone)	Advocate	8/16/2010
Cindy	Raleigh, North Carolina (phone)	Advocate	8/18/2010
Amy	Chapel Hill, North Carolina	Advocate	7/22/2010

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