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# The Effects of U.S. Deportation Policies on Immigrant Families and Communities: Cross-Border Perspectives

Jacqueline Hagan

Brianna Castro

Nestor Rodriguez

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# THE EFFECTS OF U.S. DEPORTATION POLICIES ON IMMIGRANT FAMILIES AND COMMUNITIES: CROSS-BORDER PERSPECTIVES\*

JACQUELINE HAGAN, BRIANNA CASTRO & NESTOR RODRIGUEZ\*\*

*Since the mid-1990s, the United States has enacted a series of laws that makes it easier to arrest, detain, and deport noncitizens. These laws, which have been highly criticized for the devastation they have brought to immigrant families, represent an abrupt departure from post-World War II immigration policies, which provided increasing rights to immigrants and their families. In this Article, we examine the implications of changes in enforcement strategies for those deported. Drawing on several studies conducted over a ten-year period, during which federal and local enforcement efforts expanded substantially, we show how U.S. enforcement policies have disrupted family ties and created stress in communities in which immigrants live and work.*

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\*\* Jacqueline Hagan is a Professor of Sociology at the University of North Carolina at Chapel Hill and is the author of *DECIDING TO BE LEGAL: A MAYA COMMUNITY IN HOUSTON* (1994) and *MIGRATION MIRACLE: FAITH, HOPE AND MEANING ON THE UNDOCUMENTED JOURNEY* (2008). Brianna Castro graduated from the University of North Carolina at Chapel Hill in 2008 with bachelor degrees in Public Policy and Spanish. She has conducted extensive migration-related research in North Carolina, El Salvador, Guatemala, and Mexico. Currently, she is working at the Carolina Population Center as a project manager for a study of Latino high school students in North Carolina. Nestor Rodriguez is a Professor in the Department of Sociology at the University of Texas at Austin. His research and publications focus on the areas of international migration, racial and ethnic relations, and global development. The interviews conducted in preparation for this Article were completed on condition of anonymity. Interviewees, fearful of detainment, removal, and other government penalty, revealed their stories only through the understanding that their names would not be revealed in subsequent publications. Therefore, the names included within this Article have been changed to protect the individual identities of the interviewees.

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## INTRODUCTION

Since the mid-1990s, the United States has enacted a series of laws that makes it easier to arrest, detain, and deport noncitizens. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”)<sup>1</sup> and the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”)<sup>2</sup> were signed into law by President Bill Clinton. Five years later, following the terrorist attacks of September 11, 2001, President George W. Bush signed into law the USA PATRIOT Act.<sup>3</sup> These three exclusionary laws, which have been highly criticized for the devastation they have brought to immigrant families,<sup>4</sup> represent an abrupt departure from post–World War II immigration policies, which provided increasing rights to immigrants and their families.<sup>5</sup> The effects of these laws on deportation levels, now strategically called “removals,”<sup>6</sup> have been dramatic. Between 1995 and 2008, deportations (with orders of removal) skyrocketed from 50,924 to 358,886, representing over a six hundred percent increase in just thirteen years.<sup>7</sup> The consequences of deportation can

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1. Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (codified in scattered sections of 8 and 18 U.S.C.).

2. Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified in scattered sections of 8, 18, 22, 28, 40, and 42 U.S.C.).

3. Pub. L. No. 107-56, 115 Stat. 272 (2001) (codified in scattered sections of 8, 15, 18, 22, 31, 42, 49, and 50 U.S.C.).

4. See DANIEL KANSTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* 10-12 (2007); Jacqueline Hagan, Karl Eschbach & Nestor Rodriguez, *U.S. Deportation Policy, Family Separation, and Circular Migration*, 42 INT’L MIGRATION REV. 64, 64-66 (2008); see also RANDY CAPPS ET AL., URBAN INST., *PAYING THE PRICE: THE IMPACT OF IMMIGRATION RAIDS ON AMERICA’S CHILDREN 1-5* (2007), available at [http://www.urbaninstitute.org/UploadedPDF/411566\\_immigration\\_raids.pdf](http://www.urbaninstitute.org/UploadedPDF/411566_immigration_raids.pdf) (discussing the negative impact of the recent increase in immigration enforcement on children and families).

5. Hagan et al., *supra* note 4, at 64.

6. See CONG. BUDGET OFFICE, U.S. CONG., *IMMIGRATION POLICY IN THE UNITED STATES* 3 (2006), available at <http://www.cbo.gov/ftpdocs/70xx/doc7051/02-28-Immigration.pdf>.

7. OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., 2008 YEARBOOK OF IMMIGRATION STATISTICS 95 (2009) [hereinafter IMMIGRATION STATISTICS], available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/ois\\_yb\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/ois_yb_2008.pdf).

be severe. Depending on the reason, deportees are barred from reentry into the United States anywhere from five years to life.<sup>8</sup>

Despite dramatic increases in the number of deportees since 1996, only a few studies have examined the economic, social, and human costs of enforcement activities for deportees and their families.<sup>9</sup> In this Article, we examine the implications of changes in enforcement strategies for those deported. We argue that although the intended goal of contemporary U.S. deportation policy—an end to the migration of undocumented or criminal migrants<sup>10</sup>—remains an empirical question, this policy has had unintended consequences. Drawing on several studies conducted over a ten-year period, during which federal and local enforcement efforts expanded substantially,<sup>11</sup> we show how U.S. enforcement policies have disrupted family ties and created stress in immigrant communities. As such, the expansion of federal and local immigration enforcement efforts since the mid-1990s has raised the human costs for migrants and their families<sup>12</sup> and undermined the post-World War II cornerstone of stated U.S. immigration policy—family reunification.<sup>13</sup>

This Article is organized into three Parts. The first Part provides a brief overview of U.S. immigration policy, focusing on policy changes since the mid-1990s. Among these changes, we focus especially on the extension of immigration enforcement activities from the border to the interior of the United States and the growing role of local law enforcement in regulating immigration. This Part also shows how these changes in immigration policy have influenced the composition and volume of deportations. The second Part introduces several research projects that were launched to assess how recent legislative initiatives affected immigrants, their families, and

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8. See Immigration and Naturalization Act, 8 U.S.C. § 1182(a)(9) (2006).

9. See Hagan et al., *supra* note 4, at 66–67. See generally Scott Phillips, Jacqueline Maria Hagan & Nestor Rodriguez, *Brutal Borders? Examining the Treatment of Deportees During Arrest and Detention*, 85 SOC. FORCES 93 (2006) (exploring the harmful effects of detention laws and their enforcement). This lack of studies reflects, in large part, the difficulty of locating, tracking, and studying deportees, a population whose behavior is regulated by the state.

10. See, e.g., R. Andrew Chereck, Comment & Case Note, *The Deportation of Criminal Immigrants*, 9 LAW & BUS. REV. AM. 609, 609–11 (2003) (concluding that the recent immigration reforms of the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”) and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) made deportation policy more strict, allowing more immigrants to be subject to deportation).

11. See Hagan et al., *supra* note 4, at 66.

12. See *id.* at 83–85.

13. CONG. BUDGET OFFICE, *supra* note 6, at 1.

the communities in which they reside. The third Part addresses study findings and their implications.

### I. A RETURN TO A RESTRICTIVE UNITED STATES IMMIGRATION POLICY?

The United States has long boasted that it is a nation of immigrants.<sup>14</sup> Indeed, before 1875 the country had no federal immigration policy.<sup>15</sup> In that year, Congress barred the entry of convicts and prostitutes.<sup>16</sup> In 1882, the federal government further extended its restrictive regulatory power with the passage of the Chinese Exclusion Act,<sup>17</sup> which was not repealed until 1943.<sup>18</sup> Chinese immigrants were contracted to work in the United States and imported as early as the 1840s to fill labor shortages and help construct the Transcontinental Railroad.<sup>19</sup> However, popular reaction against Chinese immigrants surfaced upon completion of the railroad when some ten thousand Chinese laborers lost their jobs, and especially during the recessionary period from 1873 to 1878.<sup>20</sup> Although difficult to enforce, the Chinese Exclusion Act placed a moratorium on immigration from China, dismantled the Chinese entrants' right to naturalize, and provided deportation procedures for Chinese who were living in the United States without authorization.<sup>21</sup>

The exclusionary position of the federal immigration policy sharpened from 1882 until 1924 when immigration policy expanded to bar other foreign-born groups and limited the entry of persons on qualitative grounds.<sup>22</sup> These qualitative grounds included criminal records, mental illness, and impoverishment.<sup>23</sup> During this era of restriction, national origin quotas were applied to the Japanese in 1907 and then to all Asian immigrants in 1917.<sup>24</sup>

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14. See KANSTROOM, *supra* note 4, at ix.

15. See HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 21, 24 (2006).

16. *Id.* at 25 (referring to the Act of Mar. 3, 1875, ch. 141, §§ 1, 5, 18 Stat. 477, 477 (repealed 1974)).

17. Act of May 6, 1882, ch. 126, 22 Stat. 58 (repealed 1943).

18. MOTOMURA, *supra* note 15, at 25 (citing the Act of Dec. 17, 1943, ch. 344, 57 Stat. 600 as the legislative action that repealed the Chinese Exclusion Act).

19. *Id.* at 17.

20. *Id.*

21. MICHAEL FIX & JEFFREY S. PASSEL, *URBAN INST., IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT* 9–10 (1994), available at [http://www.urban.org/UploadedPDF/305184\\_immigration\\_immigrants.pdf](http://www.urban.org/UploadedPDF/305184_immigration_immigrants.pdf).

22. See MOTOMURA, *supra* note 15, at 39–42, 126–27.

23. See *id.* at 40.

24. See FIX & PASSEL, *supra* note 21, at 10.

In 1924, with the passage of the National Origins Act,<sup>25</sup> the federal government imposed numerical restrictions on immigration.<sup>26</sup> The law placed a cap of 150,000 European immigrants per year and permitted the admission of foreign-born persons based on the proportion of national origin groups that resided in the United States according to the 1890 census.<sup>27</sup> Since the census preceded the great waves of immigration from Eastern and Southern Europe, the Act essentially skewed immigration in favor of persons from Northern and Western Europe.<sup>28</sup> In 1952, existing immigration laws were folded into the Immigration and Nationality Act,<sup>29</sup> which remains the statutory framework for federal immigration law.<sup>30</sup>

The 1965 amendments to the Immigration and Nationality Act<sup>31</sup> abolished the national origin quota system and marked the beginning of a more inclusionary era in U.S. immigration policy, one that would remain in place until the mid-1990s. The 1965 amendments replaced the national origin quota system with a new and more uniform system that placed a yearly limit of 20,000 people per country for all countries outside of the Western hemisphere.<sup>32</sup> The law, in part, shifted where immigrants to the United States were coming from; more immigrants would come from Latin America and Asia than from Europe. Under the amendments, annual quotas were parceled into “‘preferences’ for . . . relatives of citizens and permanent residents, for workers [with human capital], and for refugees.”<sup>33</sup> The 1965 amendments, built on principles of family unity, humanitarian concerns, social integration, and immigrant rights, comprised, until recently, the fundamental structure of U.S. admissions after World War II.<sup>34</sup>

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25. Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952).

26. *Id.* § 11, 43 Stat. at 159–60.

27. See MOTOMURA, *supra* note 15, at 127.

28. See FIX & PASSEL, *supra* note 21, at 10.

29. Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C.).

30. MOTOMURA, *supra* note 15, at 130.

31. Act of Oct. 3, 1965, Pub. L. No. 89-236, § 2, 79 Stat. 911, 911–12 (codified as amended at 8 U.S.C. § 1152 (2006)).

32. FIX & PASSEL, *supra* note 21, at 10.

33. MOTOMURA, *supra* note 15, at 131 (referencing the Act of Oct. 3, 1965, Pub. L. No. 89-236, § 203, 79 Stat. 911, 912–13).

34. See, e.g., Margot Mendelson, *The Legal Production of Identities: A Narrative Analysis of Conversations with Battered Undocumented Women*, 19 BERKELEY WOMEN'S L.J. 138, 141 (2004) (concluding that the 1965 amendments introduced “family reunification as a central principle in immigration law”).

The passage of several exclusionary laws since the mid-1990s represents an abrupt departure from the inclusionary principles of post-World War II immigration policy and a return to the country's restrictive position toward particular groups. The first of the three laws, IIRIRA, increased removals by expanding the categories of noncitizens subject to deportation, by restricting the ability of migrants to appeal deportation, and by increasing the offenses for which noncitizens could be deported.<sup>35</sup> Although aggravated felonies such as murder or drug trafficking have long been a basis for deportation,<sup>36</sup> IIRIRA expanded the definition of aggravated felonies to include all crimes that required a prison sentence of a year or more, even if the convicted felon had completed his or her sentence.<sup>37</sup> Moreover, the 1996 law mandates retroactive punishment.<sup>38</sup> Thus, pre-IIRIRA crimes not defined as aggravated felonies at the time of conviction now become cause for deportation, even when convicted noncitizens have served their prison sentence.<sup>39</sup>

AEDPA further strengthened the enforcement authority of the federal government by largely dismantling judicial review for certain categories of immigrants eligible for deportation.<sup>40</sup> Prior to AEDPA and IIRIRA, an immigration judge had the discretionary authority to cancel the deportation of noncitizens if it would cause "exceptional" hardship for their families.<sup>41</sup> After 1996, the criterion for cancelling a deportation became "exceptional and extremely unusual hardship"

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35. See J. Ryan Moore, *Reinterpreting the Immigration and Nationality Act's Categorical Bar to Discretionary Relief for "Aggravated Felons" in Light of International Law: Extending Beharry v. Reno*, 21 ARIZ. J. INT'L & COMP. L. 535, 536-39 (2004) (noting IIRIRA's expansion of grounds for deportation); Jill M. Pfenning, *Inadequate and Ineffective: Congress Suspends the Writ of Habeas Corpus for Noncitizens Challenging Removal Orders by Failing to Provide a Way to Introduce New Evidence*, 31 VT. L. REV. 735, 743-44 (2007) (describing how IIRIRA limited judicial review).

36. See Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936, 1955, 1959 (2000) [hereinafter Morawetz, *Understanding the Impact*]; see also Nancy Morawetz, *Rethinking Retroactive Deportation Laws and the Due Process Clause*, 73 N.Y.U. L. REV. 97, 107-09 (1998) (reviewing the crimes that would lead to deportation prior to 1996).

37. Morawetz, *Understanding the Impact*, *supra* note 36, at 1939-41 (commenting on the expansion of the definition of "aggravated felonies" following AEDPA and IIRIRA).

38. See *id.*

39. See Hagan et al., *supra* note 4, at 65.

40. See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 505(e)(2), 110 Stat. 1214, 1264-65 (codified at 8 U.S.C. § 1535(e) (2006)).

41. See Sara A. Martin, *Postcards from the Border: A Result-Oriented Analysis of Immigration Reform Under the AEDPA and IIRIRA*, 19 B.C. THIRD WORLD L.J. 683, 701 (1999) (concluding that AEDPA and IIRIRA "significantly curtail[ed] the discretionary power of the immigration judge").

for the noncitizen's family.<sup>42</sup> With the limitations of judicial review, AEDPA and IIRIRA reduced immigrants' likelihood of success on appeal, thereby reducing their chances of relief, even if they had family ties in the United States.

Following September 11, 2001, lawmakers increasingly linked national security concerns to immigration. In October 2001, Congress passed the USA PATRIOT Act, which further expanded the categories of immigrants eligible for deportation by increasing administrative discretion and authority to deport groups of immigrants who are perceived as threats to national security or seen as opposing U.S. foreign policy.<sup>43</sup>

In March of 2003, the Bush administration created the Department of Homeland Security ("DHS"), thereby streamlining the former immigration and border control responsibilities of the Immigration and Naturalization Service and increasing the government's capacity to carry out expanded enforcement operations in the name of national security.<sup>44</sup> With the formation of DHS in 2003 came the creation of Immigration and Customs Enforcement ("ICE"), a new agency dedicated to detaining and deporting noncitizens who violate U.S. immigration laws, especially in the interior United States and often after their arrival.<sup>45</sup> Consequently, as Daniel Kanstroom argues, since 1996, and especially after September 11, 2001, attempts to control undocumented migration have increasingly extended from the border to the interior of the United States.<sup>46</sup> Kanstroom refers to this development as "post-entry social control," in that these new deportation laws "routinely govern conduct for a specific period following the time of admission."<sup>47</sup>

As a result of expanded interior enforcement, the location where immigrants are apprehended and composition of the deportee population have shifted. While most pre-1996 removals included young men removed through expedited removal at ports of entry,

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42. *See id.*

43. Mark B. Salter, *Passports, Mobility, and Security: How Smart Can the Border Be?*, 5 INT'L STUD. PERSP. 71, 78–80 (2004) (commenting on a regime whereby border officials are to make many assessments based largely on appearance).

44. *See* ELIZABETH C. BORJA, U.S. DEP'T OF HOMELAND SEC., BRIEF DOCUMENTARY HISTORY OF THE DEPARTMENT OF HOMELAND SECURITY 2001–2008, at 12 (2008), available at [http://www.dhs.gov/xlibrary/assets/brief\\_documentary\\_history\\_of\\_dhs\\_2001\\_2008.pdf](http://www.dhs.gov/xlibrary/assets/brief_documentary_history_of_dhs_2001_2008.pdf).

45. *See* U.S. Immigration and Customs Enforcement, About, <http://www.ice.gov/about/index.htm> (last visited Apr. 29, 2010).

46. *See* KANSTROOM, *supra* note 4, at 8, 14.

47. *Id.* at 6.



removals now include many men and women who are removed without legal process from many communities across the United States.<sup>48</sup> The interior removal of immigrants, many of whom have strong work and family ties, has been facilitated by a series of interior enforcement initiatives launched by ICE that target immigrant communities and return to the state the power to regulate immigration and enforce policy.<sup>49</sup>

The first of these, the National Fugitive Operations Program (“NFOP”), which was launched in 2003, is intended to advance national security by locating and removing dangerous fugitive aliens, who the NFOP defines as noncitizens who have been ordered deported by an immigration judge but have not departed the country or who have failed to report to DHS as required.<sup>50</sup> According to former Homeland Security Secretary Michael Chertoff, who touted NFOP’s success, the program was also designed as a strategy “to link interior immigration enforcement with national security imperatives.”<sup>51</sup> Despite the program’s rapid and enormous expansion in funds and staff to support the program goals (from \$9 million in fiscal year (“FY”) 2003 to \$218 million in FY 2008), NFOP has failed its mission.<sup>52</sup> To meet mandated quotas in 2006,<sup>53</sup> NFOP teams increasingly began to arrest immigration status violators instead of immigrants with criminal records or outstanding deportation orders.<sup>54</sup> As a result, according to a recent analysis of NFOP practices and

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48. See Brianna Mullis, *Neither Here nor There: An Examination of U.S. Immigration Enforcement Policy and Undocumented Migration* 18, 34–36 (Mar. 31, 2009) (unpublished honors thesis, University of North Carolina) (on file with the North Carolina Law Review); see also CAPPS ET AL., *supra* note 4, at 24–26 (interviewing several individuals who had been deported without “access to a lawyer or an official from their consulate”).

49. See Press Release, U.S. Immigration & Customs Enforcement, Department of Homeland Security Unveils Comprehensive Immigration Enforcement Strategy for the Nation’s Interior (Apr. 20, 2006), [http://www.dhs.gov/xnews/releases/press\\_release\\_0890.shtm](http://www.dhs.gov/xnews/releases/press_release_0890.shtm).

50. MARGARET MENDELSON ET AL., MIGRATION POLICY INST., *COLLATERAL DAMAGE: AN EXAMINATION OF ICE’S FUGITIVE OPERATIONS PROGRAM 1* (2009), available at [http://www.migrationpolicy.org/pubs/NFOP\\_Feb09.pdf](http://www.migrationpolicy.org/pubs/NFOP_Feb09.pdf).

51. Muzaffar Chishti & Claire Bergeron, *Obama Administration Signals It May Review a Number of Bush Immigration Policies*, MIGRATION INFO. SOURCE (Migration Policy Inst., Washington, D.C.), Feb. 18, 2009, <http://www.migrationinformation.org/USFocus/display.cfm?ID=720>; see Press Release, U.S. Immigration & Customs Enforcement, *supra* note 49.

52. MENDELSON ET AL., *supra* note 50, at 1–2.

53. See generally *id.* at 10 (noting the increased goal of one thousand arrests).

54. *Id.* at 11 (finding that the number of arrests of fugitive aliens with criminal convictions constituted only nine percent of total arrests).

accomplishments, nearly three-quarters of those arrested had no criminal record and had never been before a judge.<sup>55</sup>

Another interior enforcement operation that treats immigrants living and working in the United States as criminals is a program that trains state and local police to identify and turn over to ICE any suspect criminal immigrants they encounter during their regular law-enforcement activities. Known as 287(g), after the 1996 IIRIRA provision authorizing its addition to the Immigration and Nationality Act,<sup>56</sup> the program has expanded considerably in recent years, training and certifying close to a thousand officers, who, in 2008 alone, lodged immigration charges against roughly 43,000 immigrants.<sup>57</sup> Community members have expressed concerns with the 287(g) program, worried that some officers are deporting aliens because of “minor traffic violations (e.g., speeding)” and are “racial profiling.”<sup>58</sup>

Increasingly, many immigrants apprehended through border and interior enforcement activities find themselves in federal or local detention facilities for an indefinite period of time and often without access to a lawyer.<sup>59</sup> “The [average daily detention] population increased by 129 percent, from 9,011 to 20,594, between FY 1996, when IIRIRA was enacted, and FY 2006.”<sup>60</sup> A recent study completed by the Associated Press found that of 32,000 persons in detention on January 25, 2008, an ordinary Sunday evening, 18,690 were noncitizens without a criminal conviction of any kind.<sup>61</sup> Even more startling, approximately 400 noncitizens in that group had been incarcerated for over a year even though they had no criminal record.<sup>62</sup> Moreover, because ICE does not have the detention capacity to house the growing detainee population, it regularly

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55. *Id.* (referring to the percent of arrests from 2003 through February 2008).

56. Pub. L. No. 104-208, § 133, 110 Stat. 3009-546, 3009-563 to -564 (1996) (codified at 8 U.S.C. § 1357(g) (2006)).

57. See U.S. GOV'T ACCOUNTABILITY OFFICE, IMMIGRATION ENFORCEMENT: BETTER CONTROLS NEEDED OVER PROGRAM AUTHORIZING STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS 5-6 (2009), available at <http://www.gao.gov/new.items/d09109.pdf>.

58. *Id.* at 6.

59. See AMNESTY INT'L, JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA 6 (2009), available at <http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf>.

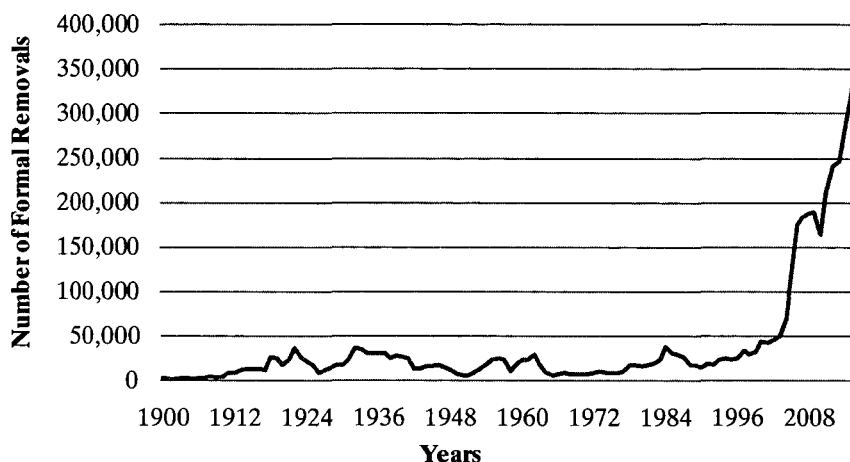
60. CONG. RESEARCH SERV., REPORT FOR 109TH CONG., IMMIGRATION ENFORCEMENT WITHIN THE UNITED STATES, at CRS-22 (2006).

61. Michelle Roberts, *Immigrants Face Detention, Few Rights*, FOX NEWS PHOENIX, Mar. 16, 2009, [http://www.myfoxphoenix.com/dpp/news/immigrants\\_detention\\_rights\\_031609](http://www.myfoxphoenix.com/dpp/news/immigrants_detention_rights_031609).

62. *Id.*

contracts with local jails, where detainees are often placed in cells alongside criminals and remain in custody for months, often without access to a lawyer.<sup>63</sup>

Figure 1: Formal Removals from United States, 1900–2008<sup>64</sup>



The increase in the number of detentions correlates with elevated levels of deportations. As Figure 1 shows, between 1920 and 1990, the number of removals remained fairly consistent, averaging around 20,000 removals per year. After 1990, the number of removals began to inch up, reflecting the expanded legal powers of the federal government and local police to arrest, detain, and deport noncitizens. Between 1990 and 1995, removals averaged approximately 40,000 each year.<sup>65</sup> In 1996, the number of removals surged. From 1996 through 2005, yearly removals averaged around 180,000 and then began increasing until peaking with the removal of 358,886 noncitizens in 2008.<sup>66</sup>

63. See AMNESTY INT'L, *supra* note 59, at 29.

64. IMMIGRATION STATISTICS, *supra* note 7, at 96–104.

65. Hagan et al., *supra* note 4, at 66.

66. IMMIGRATION STATISTICS, *supra* note 7, at 95.

*Table 1. Removals by Country of Origin in FY 2008*<sup>67</sup>

<b>Country of Nationality</b>	<b>Total Number Removed</b>	<b>% Criminals</b>
Mexico	246,851 (68.8%)	29%
Honduras	28,851 (8.0%)	17%
Guatemala	27,594 (7.7%)	15%
El Salvador	20,031 (5.6%)	24%
Nicaragua	2,250 (0.6%)	22%
Other Countries	33,309 (9.3%)	36%
Total	358,886 (100.0%)	(97,133)

Although the federal government claims that its deportation campaign is designed to target immigrants who have committed serious violent crimes,<sup>68</sup> most of the removals are noncriminal and target immigrants from Mexico and Central America.<sup>69</sup> As Table 1 shows, in FY 2008, 358,886 noncitizens were removed from the United States. Of these, almost sixty-nine percent (246,851) were from Mexico and nearly twenty-two percent (78,726) were from Central America. As the table also shows, a small percentage of the Latin American deportee populations were removed for criminal violations.<sup>70</sup> Our current *de facto* immigration policy—deportation—represents a return to the pre-World War II restrictive position of federal immigration policy that barred the entry and limited the settlement of particular categories and groups of immigrants.<sup>71</sup>

Despite dramatic increases in the deportee population in recent decades, only a few studies have examined the implications of increased enforcement for the deportees themselves, reflecting, in large part, the difficulty of doing research on a population that is closely monitored by the state.<sup>72</sup> In this Article, we examine how deportation policy has disrupted family ties and created stress in U.S. communities where immigrants are concentrated. We address the effects of deportation over a ten-year period, from 1998 to 2008, a

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67. Mullis, *supra* note 48, at 6–7.

68. See U.S. Immigration & Customs Enforcement, National Fugitive Operations Program, <http://www.ice.gov/pi/dro/nfop.htm> (last visited May 4, 2010).

69. See *supra* Table 1.

70. See IMMIGRATION STATISTICS, *supra* note 7, at 102–04.

71. See *supra* notes 14–28 and accompanying text.

72. See Phillips et al., *supra* note 9, at 93. See generally Hagan et al., *supra* note 4 (assessing the social lives of three hundred El Salvadorans who were deported from the United States).

period during which national and local enforcement efforts expanded substantially, especially in the interior United States.

## II. METHODOLOGY, STUDY SITES, AND SAMPLES

This study draws on findings from face-to-face interviews with immigrants and their families in several Texas communities in 1998, immigrants and their families in one North Carolina community in 2008 and 2009, and deportees in El Salvador in 2002 and 2008. Collectively, these data sets from both sides of the border paint a portrait of fear, stress, family separation, and economic hardship as a result of current U.S. deportation policy.

In 1997, two of the authors, Rodriguez and Hagan, launched a study to explore the effects of IIRIRA and the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”)<sup>73</sup> on immigrants and the communities in which they live. PRWORA reduced or eliminated eligibility for social welfare programs for legal immigrants during their first five years of residence in the United States.<sup>74</sup> The study involved interviews with immigrants and community leaders in five research communities in Texas—El Paso, Hidalgo, Laredo, Houston, and Fort Worth. The three border cities of El Paso, Hidalgo, and Laredo were selected because they are major migrant crossing corridors with significant Border Patrol activity.<sup>75</sup> In contrast, the two interior cities of Houston and Fort Worth were selected because of their large, established immigrant populations and “remoteness from areas of intensified border enforcement.”<sup>76</sup>

In each of these five sites in Texas, we interviewed community leaders and immigrant residents.<sup>77</sup> From service providers,

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73. See Pub. L. No. 104-193, § 408(a)(7), 110 Stat. 2105, 2137–38 (1996) (codified at 42 U.S.C. § 608(a)(7) (2006)).

74. See generally Jacqueline Hagan & Nestor Rodriguez, *Resurrecting Exclusion: The Effects of 1996 U.S. Immigration Reform on Communities and Families in Texas, El Salvador, and Mexico*, in *LATINOS: REMAKING AMERICA* 190 (Marcelo M. Suárez-Orozco & Mariela M. Páez eds., 2002) (researching the implications of IIRIRA and the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) on communities in Texas, El Salvador, and Mexico).

75. See U.S. GEN. ACCOUNTING OFFICE, *INS’ SOUTHWEST BORDER STRATEGY: RESOURCE AND IMPACT ISSUES REMAIN AFTER SEVEN YEARS* 2, 4, 8 (2001), available at <http://www.gao.gov/new.items/d01842.pdf> (detailing border patrol strategies along the U.S.-Mexico border in El Paso and Laredo); Nestor Rodríguez & Jacqueline Maria Hagan, *Fractured Families and Communities: Effects of Immigration Reform in Texas, Mexico, and El Salvador*, 2 *LATINO STUD.* 328, 332 (2004).

76. Rodríguez & Hagan, *supra* note 75, at 333.

77. *Id.* at 333–34.

government officials, educators, and leaders of community-based organizations, we solicited views concerning the implementation of IIRIRA and PRWORA and the effects of the Acts on the migrant client populations.<sup>78</sup> The study also included interviews with the head of the household or the spouse of one hundred immigrants in mixed status households.<sup>79</sup> The interviewees included both undocumented and legal residents.<sup>80</sup>

By 2008, when the study launched a second series of community interviews to gauge the effects of expanded enforcement policies, enforcement efforts had devolved to the local level. More than one thousand police officers in twenty-four states had signed on to the 287(g) program and were cooperating with ICE in the apprehension, detention, and deportation of immigrants.<sup>81</sup> We selected North Carolina because it is a leading state in the implementation of the 287(g) program.<sup>82</sup> In 2007 alone, 3,100 immigrants in North Carolina were placed in deportation proceedings through 287(g); more than 1,200 of those were detained due to traffic violations.<sup>83</sup>

Within North Carolina, we selected Johnston County as our research site because it is home to a diverse Latino population and its sheriff's office supports the 287(g) program.<sup>84</sup> In fall of 2008 and spring and summer of 2009, Brianna Castro interviewed fifty Latino residents in the community, most of whom were long-term residents and business owners, to explore how the Latino community was navigating local enforcement efforts.

South of the border, we focused on the deportee population in El Salvador because it remains one of the few countries that has established programs to resettle return migrants deported from the United States. The program, *Bienvenido a Casa* ("BAC"), or

78. *Id.*

79. *Id.* at 334.

80. *Id.*

81. Office of State & Local Coordination, U.S. Immigration & Customs Enforcement, Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act (2010), [http://www.ice.gov/pi/news/factsheets/section287\\_g.htm](http://www.ice.gov/pi/news/factsheets/section287_g.htm).

82. *See id.* (showing that only Virginia has more participating agencies, nine, than North Carolina, eight); DEBORAH M. WEISSMAN, REBECCA C. HEADEN & KATHERINE LEWIS PARKER, AM. CIVIL LIBERTIES UNION, *THE POLICIES AND POLITICS OF LOCAL IMMIGRATION ENFORCEMENT LAWS: 287(g) PROGRAM IN NORTH CAROLINA* 17 (2009), available at <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>.

83. Benjamin Niolet, *Sheriffs Line Up 3,100 to Deport*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 19, 2008, at 1B.

84. *See* WEISSMAN ET AL., *supra* note 82, at 29–30; U.S. Census Bureau, State & County Quickfacts, Johnston County, North Carolina, <http://quickfacts.census.gov/qfd/states/37/37101.html> (last visited May 4, 2010).

“Welcome Home,” provides researchers relatively easy access to a population that is generally difficult to locate and track.<sup>85</sup> Initially implemented with the support of Catholic Relief Services, the International Organization for Migration, and the U.S. Department of State, the mission of BAC has been to ease the reintegration of deportees into Salvadoran society.<sup>86</sup> The mission was compromised in 2004, when the Salvadoran Ministry of Justice and Security assumed partial responsibility for the program’s directorship.<sup>87</sup> Since then, the program has slowly transformed from a reintegration program to a regulatory program aimed at monitoring the location and behavior of the deportee population in El Salvador.<sup>88</sup> From 2004 through March 2008, BAC processed 68,074 deportees from the United States.<sup>89</sup>

In 2001, two of the authors, Hagan and Rodriguez, met with the then BAC director and agreed to collaborate with BAC to collect in-depth data on a random sample of Salvadoran deportees. Rodriguez and Scott Phillips, a criminologist, traveled to El Salvador to design the sample and train interviewers. From June through December of 2002, a total of three hundred Salvadoran deportees were interviewed. Six years later, in 2008, the authors attempted to conduct a follow-up study with a subsample of the Salvadoran deportees interviewed in 2002. One of the authors, Castro, traveled to El Salvador during the summer of 2008 to further investigate the viability of this research strategy.

Unfortunately, for practical and administrative reasons, the original plan to reinterview in 2008 the three hundred interviewees interviewed in 2002 was not feasible. By summer 2008, BAC was part

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85. Hagan et al., *supra* note 4, at 68.

86. *Id.*

87. *Id.*

88. See Mullis, *supra* note 48, at 61–63 (commenting on the transition of the BAC from an independent organization to a government-run operation).

89. Ministry of Justice & Security, *Salvadoreños Deportados 2008* (Dec. 8, 2009), [http://www.seguridad.gob.sv/index.php?option=com\\_content&view=article&id=128&Itemid=146](http://www.seguridad.gob.sv/index.php?option=com_content&view=article&id=128&Itemid=146) (reporting 20,203 deportees from the United States in 2008); Ministry of Justice & Security, *Salvadoreños Deportados 2007* (Dec. 8, 2009), [http://www.seguridad.gob.sv/index.php?option=com\\_content&view=article&id=127&Itemid=146](http://www.seguridad.gob.sv/index.php?option=com_content&view=article&id=127&Itemid=146) (reporting 20,111 deportees from the United States in 2007); Ministry of Justice & Security, *Salvadoreños Deportados 2006* (Dec. 8, 2009), [http://www.seguridad.gob.sv/index.php?option=com\\_content&view=article&id=126&Itemid=146](http://www.seguridad.gob.sv/index.php?option=com_content&view=article&id=126&Itemid=146) (reporting 14,295 deportees from the United States in 2006); Ministry of Justice & Security, *Salvadoreños Deportados 2005* (Dec. 8, 2009), [http://www.seguridad.gob.sv/index.php?option=com\\_content&view=article&id=125&Itemid=146](http://www.seguridad.gob.sv/index.php?option=com_content&view=article&id=125&Itemid=146) (reporting 7,117 deportees from the United States in 2005); Ministry of Justice & Security, *Salvadoreños Deportados 2004* (Dec. 8, 2009), [http://www.seguridad.gob.sv/index.php?option=com\\_content&view=article&id=124&Itemid=146](http://www.seguridad.gob.sv/index.php?option=com_content&view=article&id=124&Itemid=146) (reporting 6,248 deportees from the United States in 2004).

of El Salvador's Ministry of Migration and Foreign Affairs and, in its charge, access to BAC records was denied. The research strategy was altered to respond to these new conditions. Although BAC denied access to the records of previously processed deportees, Castro was granted permission to interview current and recently arrived deportees, but only in the government facility that housed BAC and only under the supervision of the government official that directed the program. Under these restricted conditions and using a government interview guide and a supplemental schedule that included some of the questions from the 2002 study, fifty-nine deportees were interviewed during the summer of 2008.

### III. STUDY FINDINGS AND IMPLICATIONS

#### A. *Community Impacts*

The findings from the immigrant household surveys in the five Texas communities paint a picture of anxiety, stress, and confusion as a result of increased enforcement through IIRIRA and the uneven implementation of PRWORA, the latter of which denied health services to some groups of immigrants.<sup>90</sup> Over sixteen percent of the 510 respondents reported that they or a household member had been stopped by immigration officials and questioned about their citizenship status.<sup>91</sup> Some were stopped while driving; others, while carrying out daily life, such as walking to work, strolling in the park, or collecting children at school.<sup>92</sup> Moreover, thirty-nine percent of those questioned were arrested for an immigration violation.<sup>93</sup> Of those stopped by an immigration official, approximately two-thirds of the respondents were stopped in one of the U.S. border cities that straddle the U.S.-Mexico border: Hidalgo, Laredo, and El Paso.<sup>94</sup> In these border cities, the presence of Border Patrol agents intensified during the mid- to late-1990s, when a series of enforcement campaigns (Operations Gatekeeper, Hold-the-Line, and Rio Grande) were launched in urban crossing areas along the U.S.-Mexico border.<sup>95</sup>

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90. Rodríguez & Hagan, *supra* note 75, at 337–41.

91. *Id.* at 340.

92. *Id.*

93. *Id.*

94. *Id.*

95. Jacqueline Hagan et al., *The Effects of Recent Welfare and Immigration Reforms on Immigrants' Access to Health Care*, 37 INT'L MIGRATION REV. 444, 457 (2003); see Susan Lieberman Goodwin, *Conservation Connections in a Fragmented Desert Environment: The U.S.-Mexico Border*, 40 NAT. RESOURCES J. 989, 997–1001 (2000) (discussing Operation Gatekeeper and Operation Rio Grande and their role in preventing



Service providers, such as teachers and health care workers, in all the Texas sites expressed concern that immigrants might voluntarily withdraw from services for which they were entitled because they feared that the use of public services could place them at greater risk for deportation or jeopardize future opportunities to naturalize or sponsor the migration of family members.<sup>96</sup> Their fears proved prescient: “[Staff] in county and city health clinics that provide preventive and nutritional services, such as pre-natal care, immunizations, and Women, Infants, Children dietary supplements,” reported a decline in their immigrant clients.<sup>97</sup> According to several health workers, immigrants were withdrawing from any government-funded services for fear of deportation.<sup>98</sup>

Educators reported that families of students had mixed reactions to increased immigration enforcement. At the Fort Worth and Houston research sites, school administrators documented enrollment declines in some district schools that they believed were due to new immigration enforcement measures.<sup>99</sup> In El Paso, the decline in student enrollment had started with the “increase of border enforcement.”<sup>100</sup> In the other border communities of Hidalgo and Laredo, school personnel noticed increased “Border Patrol visibility on streets near their schools.”<sup>101</sup> At the Houston site, an administrator of a school in an immigrant neighborhood believed that fear among undocumented immigrant families resulted in the observed decline in parent attendance at school meetings.<sup>102</sup> That was Texas in 1998, only two years after implementation of IIRIRA.

By 2008, ten years later, enforcement efforts had moved to communities in the interior United States and local police were now heavily involved in enforcement efforts.<sup>103</sup> The research conducted in Johnston County, North Carolina, documents the devastating economic, social, and psychological effects of expanded interior

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illegal immigration into the United States); David A. Martin, *Two Cheers for Expedited Removal in the New Immigration Laws*, 40 VA. J. INT'L L. 673, 684 (2000) (noting the development of Operations Hold-the-Line and Gatekeeper and commenting on their shifting strategy from detecting illegal immigrants in the United States to preventing the entry of illegal immigrants into the United States).

96. Hagan et al., *supra* note 95, at 457.

97. *Id.*

98. *Id.*

99. Rodríguez & Hagan, *supra* note 75, at 338.

100. *Id.*

101. *Id.*

102. *Id.*

103. See Press Release, U.S. Immigration & Customs Enforcement, *supra* note 49.

enforcement on immigrant families and the communities where they live.

In Johnston County, immigrants reported that they were particularly concerned about local police acting as ICE agents through the 287(g) program. Latinos in Johnston County reported being afraid to contact the police when they had a problem.<sup>104</sup> Immigrants in North Carolina are unable to obtain a driver's license, but they still need to drive in order to work. Thus, on a daily basis they risk being cited by police for driving without a license, which in turn leads to deportation.<sup>105</sup> The alternative is not working, which is not a viable option. Several respondents reported that they were regularly followed by police and pulled over for no apparent reason.<sup>106</sup> In one case, a mechanic and legal immigrant reported that he was arrested and detained for several days for not having a driver's license when he was moving a car from the parking lot into the garage of his mechanic shop.<sup>107</sup> The fear of driving without a license has become so severe that posted on bulletin boards in some Latino businesses are flyers advertising for-profit driving services by Latinos with driver's licenses for unlicensed drivers who need to get to and from work.<sup>108</sup>

Immigrant fears are well-founded. More than half of the fifty persons interviewed in Johnston County knew of someone who had been arrested by a local police officer and was subsequently deported. Some Latino immigrants felt that they had been singled out by police officers as an attempt to force them out of town.<sup>109</sup> This feeling of exclusion is reinforced through changes in immigrant behavior in the community, which result from a fear of apprehension. Many immigrants withdrew from the community.<sup>110</sup> Some reported that they no longer attended community events or visited the library, and some avoided public places, like parks, altogether.<sup>111</sup> Others went so far as

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104. See, e.g., Interview by Brianna Castro with anonymous source, undocumented immigrant, in Selma, N.C. (June 1, 2009).

105. See WEISSMAN ET AL., *supra* note 82, at 24 (commenting on how current legislation prevents a number of undocumented immigrants from obtaining driver's licenses, leading to increased arrests).

106. See, e.g., Interview by Brianna Castro with anonymous source, *supra* note 104.

107. Interview by Brianna Castro with anonymous source, undocumented immigrant, in Smithfield, N.C. (June 11, 2009).

108. Interviews by Brianna Castro with anonymous sources, undocumented immigrants, in Johnston County, N.C. (conducted between June 2009 and December 2009).

109. See, e.g., Interview by Brianna Castro with anonymous source, *supra* note 107.

110. Interviews by Brianna Castro with anonymous sources, *supra* note 108.

111. *Id.*

to state that they spent most of their non-working hours in their homes because it was the safest strategy to avoid detection by the police.<sup>112</sup>

Local economies are also suffering as a result of community policing, and businesses that cater to Latino clients have been especially hard hit. Business owners reported that their sales had plummeted between thirty and ninety percent in the past year, and they attributed most of this decline to the loss of the Latino clientele.<sup>113</sup> Restaurant managers and owners, in particular, complained that their sales have declined significantly because Latino customers fear driving to their establishments.<sup>114</sup>

Recognizing that they could be deported at any moment, some immigrants stopped investing in a long-term future in North Carolina and started sending most of their earnings to family in Latin America.<sup>115</sup> Immigrants reported that they stopped eating out at restaurants and shopping on a regular basis for clothes, furniture, cars, and other expenditures that tied them to life in the United States.<sup>116</sup> This way, they reasoned, they would not lose their hard-earned dollars if they were suddenly arrested but would have savings waiting for them if they were deported home.<sup>117</sup>

Immigrant and nonimmigrant residents alike readily identified local law enforcement who had taken enforcement into their own hands, vigilantly monitoring immigrants in the community and needlessly harassing them. A former business owner's story particularly highlights well-founded concerns about the proper role of local law enforcement in immigration matters and the economic consequences of the 287(g) program. Juan is a Honduran immigrant who has lived more than ten years in North Carolina and is a permanent resident.<sup>118</sup> After thinking for years that Latinos in

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112. *Id.*

113. *See, e.g.*, Interview by Brianna Castro with anonymous source, undocumented immigrant, in Smithfield, N.C. (Feb. 2, 2009).

114. *See, e.g.*, Interview by Brianna Castro with anonymous source, undocumented immigrant, in Selma, N.C. (Feb. 23, 2009); Interview by Brianna Castro with anonymous source, undocumented immigrant, in Smithfield, N.C. (Feb. 9, 2009).

115. *See, e.g.*, Interview by Brianna Castro with anonymous source, undocumented immigrant, in Angier, N.C. (July 23, 2009).

116. Interviews by Brianna Castro with anonymous sources, *supra* note 108.

117. *Id.*

118. Interview by Brianna Castro with anonymous source, undocumented immigrant, in Smithfield, N.C. (Aug. 13, 2009). To avoid unnecessary redundancy related to citations, the North Carolina Law Review is omitting *id.* citations when referring to an interview that was previously cited and where there is a minimal chance of confusion regarding which interview provided the information. When such omission occurs, there will be an *id.*

Johnston County needed somewhere to relax and have fun on the weekends, he opened a small nightclub in Johnston County. During the first few months Juan's nightclub was open, things went well. He had many customers and started making a little profit as his club quickly became a hotspot for the Latino immigrant community on the weekends. It was not long, however, before local police set up license checkpoints on Friday and Saturday nights on the street right in front of his club. Police also began frequently coming into the club and walking around to "observe" to make sure no illegal activity was taking place inside. The combination of license checkpoints and the police presence inside the club scared off the majority of Juan's customers in a community already very afraid of the police.<sup>119</sup>

Juan's second obstacle was complying with the constantly changing regulations of the town manager. According to Juan, American-owned bars were not bothered with the same changing requirements that the town manager imposed on his establishment. First, he was not required to serve any food. This changed, and he was required to serve food to stay open. By the end, he was required to have a full kitchen and dinner menu in order to serve alcohol. Eventually, Juan had to close his club because he could not add a full kitchen and dinner menu. Juan fought the closure for six months with the aid of an attorney on the local town council, claiming that the request was discriminatory and unreasonable. It looked as though Juan would win his case, but, unfortunately, his attorney was later arrested for charging Latino clients for legal services that he did not provide.<sup>120</sup>

Other studies have documented concerns about racial profiling and intimidation by local police as a result of 287(g).<sup>121</sup> According to a recent nationwide investigation of the program by the United States Government Accountability Office, some local police have used their authority under the 287(g) program to process removals for immigrants stopped for minor violations, such as speeding, and to go to people's homes and question the legal status of the household

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citation included at the end of the paragraph to refer readers back to the relevant interview.

119. *Id.*

120. *Id.*

121. See WEISSMAN ET AL., *supra* note 82, at 27–32; U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 57, at 6.

residents.<sup>122</sup> As implemented, the 287(g) program can lead to the disregarding of basic constitutional rights.<sup>123</sup>

Throughout the country, immigrants' fear as a result of expanded immigration enforcement is also well-documented. In a 2007 nationwide survey of Latinos, the Pew Hispanic Center found that concerns over immigration enforcement were substantial.<sup>124</sup> The survey found that over half of all Latinos (fifty-three percent) worried "a lot" or "some" that they or a family member or a close friend could be deported.<sup>125</sup> In addition, Latino attitudes concerning specific enforcement measures reflected more concern than the non-Latino attitudes.<sup>126</sup> Although seventy-five percent of Latinos in the survey disapproved of workplace raids, forty-two percent of non-Latinos disapproved of this measure.<sup>127</sup> While seventy-nine percent of Hispanics disapproved of local police taking an active role in immigration enforcement, forty-nine percent of non-Hispanics disapproved of this measure.<sup>128</sup>

*B. Family Separation and Subsequent Psychological and Economic Hardship*

Most international migration involves some form of temporary family separation, but for deportees and their families, the process is especially complicated and the consequences are especially severe. If deportees have a spouse or child in the United States, then they could find themselves in a situation in which they are separated indefinitely from loved ones who may have depended on the deported family member's earnings. Moreover, under current U.S. enforcement

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122. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 57, at 11.

123. The Fourth Amendment establishes "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. "The home 'is accorded the full range of Fourth Amendment protections,' [because] there exists a justified expectation of privacy against unreasonable intrusion." 1 WAYNE R. LAFAVE, *SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT* § 2.3(b), at 565 (4th ed. 2004) (quoting *Lewis v. United States*, 385 U.S. 206, 211 (1966)). If law enforcement officials approach homes without warrants and demand proof of citizenship status, this "expectation of privacy" is lost.

124. PEW HISPANIC CTR., 2007 NATIONAL SURVEY OF LATINOS: AS ILLEGAL IMMIGRATION ISSUE HEATS UP, HISPANICS FEEL A CHILL 1 (2007), available at <http://pewhispanic.org/files/reports/84.pdf> (summarizing a survey revealing that over half of Hispanic adults fear that they or someone close to them will be deported from the United States).

125. *Id.* at 19.

126. *Id.* at 2.

127. *Id.*

128. *Id.*

policy, this separation could last anywhere from five years to life.<sup>129</sup> On the other hand, for those deportees who left a spouse or child or both in their home country, ironically, deportation may lead to family reunification. However, it is very possible that this reunification may not be welcomed by family members since the deportee may no longer be able to remit earnings or find work in the home country to support them.

These complex family ties, separations, and reunifications are characteristic of the deportees and their families in both the 2002 and 2008 samples in El Salvador. Among the three hundred deportees interviewed in El Salvador in 2002, “about half of the sample (147) reported being married.”<sup>130</sup> “Among these, 58 percent reported that their spouses lived in the United States, while 39 percent reported that their spouses resided in El Salvador.”<sup>131</sup> The study also documented separation of deportees from children born in the United States. “Among the 165 deportees [who reported that they did have children], a large majority (73 percent) reported that they had a child under the age of 18 living in the United States.”<sup>132</sup> Moreover, “90 percent of these children were born in the United States.”<sup>133</sup> Another 11 percent “reported [having] a child in El Salvador.”<sup>134</sup> The remaining deportees with children “did not report where their children lived.”<sup>135</sup>

More than three-quarters of the fifty-nine deportees interviewed in 2008 in El Salvador had been living and working in the United States for less than five years; thus, their work and family ties were not as established as those found among the 2002 sample. Nonetheless, one in every seven of the fifty-nine deportees interviewed reported leaving behind either a spouse or child in the United States.

Deportation poses economic hardship for family members on both sides of the border. Almost eighty percent of the deportees in the 2002 and 2008 samples in El Salvador were working at the time of their arrest and subsequent deportation.<sup>136</sup> Because deportation severs the migrant from the labor force and, thus, from income-

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129. See Immigration and Naturalization Act, 8 U.S.C. § 1182(a)(9) (2006).

130. Hagan et al., *supra* note 4, at 77.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* at 72.

generating activities, the separation poses huge economic costs to the families in U.S. households who ironically may become reliant on U.S. taxpayers and government assistance in the absence of the breadwinner. The consequences of deportation also affect the well-being of family members in El Salvador, who were often dependent on remittances from the breadwinner. Indeed, close to three quarters of the deportees in the 2002 sample reported sending a median monthly remittance of roughly \$200 to their spouses and parents, who used the funds for daily subsistence expenses such as “food, clothing, and health care.”<sup>137</sup>

Deportation also poses huge emotional and psychological consequences for deportees and their families. The physical removal of parents can have long-lasting traumatic effects on children and spouses left behind in the United States.<sup>138</sup> Returning migrants also experience multiple traumas as they attempt to reintegrate into a country, culture, and society that they may have left years before.<sup>139</sup> The trauma of reintegration, coupled with the loss of work and separation from family, has major implications for the future settlement intentions of many Salvadoran deportees, as the case of Miguel demonstrates.<sup>140</sup>

Because Miguel was envious of the watches, clothes, and cars that his Salvadoran friends brought back with them from the United States, he decided to follow the dream of many of his friends and head north when he turned sixteen. He traveled directly to New York City where he located a room in a crowded apartment with other new migrants. Working at minimum wage as a dishwasher he feared he might never attain the American Dream, but nonetheless, he persevered. With time, things improved: Miguel located better jobs and opened a savings account; applied for and received permanent resident status under the 1986 legalization program; and five years

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137. *Id.* at 81.

138. See CAPPS ET AL., *supra* note 4, at 1 (“There are approximately five million U.S. children with at least one undocumented parent. The recent intensification of immigration enforcement activities by the federal government has increasingly put these children at risk of family separation, economic hardship, and psychological trauma.”); Robert J. Lopez, Rich Connell & Chris Kraul, *Gang Uses Deportation to Its Advantage to Flourish in U.S.*, L.A. TIMES, Oct. 30, 2005, at A1 (documenting how increased deportation leads to an uptick in Latino and Latina gang violence).

139. Hagan et al., *supra* note 4, at 83–84.

140. See Interview by Brianna Castro with anonymous source, undocumented immigrant, in Santa Tecla, El Salvador (June 25, 2008).

after his arrival, met and fell in love with his future wife. They married and had five children.<sup>141</sup>

All was well until the day in 2008 when Miguel was in a car accident in which the other driver died. Miguel was not drinking or driving recklessly, but his license had expired. He was charged with manslaughter and driving with an expired license. He served time for manslaughter, but ironically, it was the expired license charge that resulted in his deportation.<sup>142</sup>

Miguel would return to the United States to be with his family if he could, but as a convicted criminal re-entering without authorization, getting caught could result in a jail sentence of twenty years.<sup>143</sup> Since Miguel's deportation, his wife has married someone else who will not allow Miguel to have contact with any of his children.<sup>144</sup> Miguel cannot even figure out where his family lives since they changed their phone number and moved to North Carolina. Miguel says the only thing that keeps him going is the hope that he will see his children again.<sup>145</sup> Unfortunately, Miguel's chances of reuniting with his family are slim. He thinks that if he waits ten years and reapplies for permanent residency it will be approved,<sup>146</sup> but the sad reality is that his application will most likely be denied because of his criminal record.

Miguel's life in El Salvador has been challenging. He has no family there, and his finishing and painting skills are not useful in San Salvador where the same person does carpentry, finishing, and painting in most houses. He is surviving through the generosity of a migrant shelter that allows him to live there as long as he works for the shelter. Miguel's future there, however, is also insecure because funds for the shelter have been cut off, and it is on the brink of closing down. If that happens, Miguel explained, he would have no idea where to go.<sup>147</sup>

The devastating effects of deportation on families extend to those left behind in the United States as well. In North Carolina, Veronica and her family own a restaurant that serves Honduran

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141. *Id.*

142. *Id.*

143. See Immigration and Naturalization Act, 8 U.S.C. § 1326(b)(2) (2006) (providing a potential twenty-year punishment for those convicted of "aggravated felonies").

144. Interview by Brianna Castro with anonymous source, *supra* note 140.

145. When he learned that his interviewer lived in North Carolina, he desperately gave her his name, phone number, and e-mail address as well as the names of his daughters in case she should ever run into them.

146. Interview by Brianna Castro with anonymous source, *supra* note 140.

147. *Id.*



food.<sup>148</sup> With Latinos eating out less and less, however, business has been way down, and the restaurant has stopped turning a profit. Early in the spring of 2008, Veronica was at a loss for words when the sister of one of her customers came in with a serious request. Veronica barely recognized the sister and could hardly remember who the customer was that the sister was talking about. The woman had a nine-year-old boy and a baby with her. She explained that the mother of those children, Veronica's customer, had been arrested while driving to work a few weeks before and been deported. She was a single mother and her children were left in the care of her sister who was unable to care for them because she was unemployed and living with a friend.<sup>149</sup>

When this woman asked if Veronica could take the children in until their mother could save up enough money to return to the United States (once again without documents) or to fly the children to Honduras, Veronica knew she had to do something. She decided to take in the nine-year-old boy but not the six-month-old baby. She just could not keep an infant in the restaurant and there would be no one at home to care for him. The boy is still living with Veronica's family and is depressed, shy, and constantly cries for his mother and baby brother. So far, his mother has not been able to get back to the United States. The baby was taken from the sister by the Department of Social Services and entered into the foster system. No one from the family has heard anything about the baby since.<sup>150</sup>

### CONCLUSION

The expansion of border and interior enforcement operations by the U.S. government and the movement of regulatory power over immigration to local governments since the mid-1990s have had dramatic economic, social, and psychological effects on immigrants, their families, and the communities where they live and work. Business owners report economic hardship due to the loss of immigrant customers who fear apprehension and arrest if they leave the safety of their homes. Trust between the police and the community is eroding, and accusations of racial profiling and civil rights violations seem to be on the increase. Fearing apprehension and deportation, undocumented and legal immigrants are afraid to

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148. Interview by Brianna Castro with anonymous source, undocumented immigrant, in Selma, N.C. (May 17 & July 27, 2009).

149. *Id.*

150. *Id.*

leave home, drive their cars, or go out in public. Their fears are well-founded. In small towns and large cities throughout the United States, local officials, frustrated by failed attempts to reform immigration at the federal level, are taking the regulation of immigration into their own hands and in the name of local security. Caught in this dragnet are immigrant status violators who have been recategorized as “criminal aliens,” “immigration fugitives,” and “absconders.”<sup>151</sup>

As our studies in Texas, North Carolina, and El Salvador have demonstrated, the removal of these immigrants, many of whom have established work and family ties to the United States, is devastating for their spouses and children in the United States and abroad. Given the disruptive economic and psychological effects that deportation has on families, it should not be surprising that close to half of the deportees in the 2002 and 2008 samples intended to return to the United States to work and reunite with their spouses and children. “In other words, [U.S. deportation] policy does not end the migration of [undocumented] or criminal migrants; it simply raises the human costs for migrants and their families” and undermines the cornerstone of stated U.S. immigration policy—family reunification.<sup>152</sup>

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151. Alicia Schmidt Camacho, *Hailing the Twelve Million: U.S. Immigration Law Enforcement and the Politics of Denial and Expulsion* 18 (Nov. 14, 2009) (unpublished manuscript, on file with the North Carolina Law Review).

152. Hagan et al., *supra* note 4, at 89.

