Chapter 12
Law Enforcement Challenges Along the Mexican-American Border in a Time of Enhanced Migration Control

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Introduction

For more than the past decade, concern over immigration issues has been at the forefront of debate among politicians. While, for some, the issue centers on whether tighter controls should be placed on immigration, especially immigration from Mexico across the southwestern border of the United States, others counter with arguments that most of these initiatives are poorly implemented, ineffective, and that there is an inherent and fundamental contradiction with such policies and the very philosophical foundation of the United States. At the present time, there is a serious backlog in visa process for potential work visas which causes challenges for many businesses in regions where documented immigrant workers are employed. Further, many undocumented immigrant workers are, in order to keep their jobs, willing to work in environments that are dangerous and/or not in compliance with many of the health and safety standards usually expected in work environments. Lastly, the emphasis on deportation tends to ignore the reality that often, families in the southwestern region may consist of legal and illegal migrants, thereby separating familial members in a manner that is detrimental to the social welfare of the family and the community around them. All of these and other issues are of importance when attempting to develop a pragmatic approach to migration control and enforcement, especially when involving local police as agents of migration enforcement.

As a result, several states have clashed with the federal presidential administrations over the use of law enforcement resources in migration policy and procedures.

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These clashes are not limited to the current administration. Consider what was observed in Arizona when Senate Bill 1070 on Immigration, Law Enforcement & Safe Neighborhoods, was called to question in 2010. This bill which eventually did become law, opened police arrest powers such that they can now make arrests solely on the grounds of probable cause that the person has entered the United States illegally, without the need for any other attendant charges or alleged crimes.

Arizona's Senate Bill 1070 legislation *required* police to stop and question potential immigrants upon a reasonable suspicion that they may be illegally in the United States. Arizona's Senate Bill 1070, mandated this for all police within the state and eliminated the discretion that agencies (and officers) had previously possessed on this complicated issue. The concern with this development and others like it had been expressed by high ranking police executives as well as those at the general patrol level. The reasons for this concern were many, but primary among them was the potential damaged agency-community relations. This was especially likely to be true in minority communities that have higher levels of newly migration (Hanser and Gomila 2015).

Regardless, in 2010, the United States Department of Justice (DOJ) filed a lawsuit against the state of Arizona in district court that declared Senate Bill 1070 invalid because it interfered with federal immigration regulations. Specifically, USDOJ attorneys noted that federal preemption existed and that a development of patchwork policies among local and state agencies was likely to be ineffective as it would likely confuse efforts in the future. At the heart of the matter, the USDOJ contended that Congress and the various federal agencies constituted a careful, deliberate, and balanced approach that included law enforcement public safety concerns, foreign relations concerns, and humanitarian concerns, simultaneously. These were concerns that were not likely as important to the state of Arizona but as to the nation as a whole. As a result, the U.S. Justice Department requested an injunction against Arizona to prevent enforcement of the law before it had a chance to go into effect.

Ultimately, in 2012, the United States Supreme Court handed down a ruling that upheld the practice of requiring immigration status checks during routine police stops in a 5–3 majority vote (Barnes 2012). However, the Court cautioned against detaining individuals for prolonged periods of time if they do not have their immigration documents and expressed concern over the potential for racial profiling to occur. This resulted in limits to the use of racial factors in arrests so that police could not use race, color, or national origin beyond what was already established as permissible (Barnes 2012).

The intense disagreement between state and federal priorities in migration control leaves local police departments in a state of uncertainty on the issue. Amidst the legal wrangling, law enforcement is left to make decisions that are tenuous and fraught with peril and uncertainty. This also creates tension between state and federal agents in areas where migration is a hotbed issue because many local agents have more of a political and cultural investment in their locations than do the federal agents assigned to their regions. Lastly, the flip-flop from democratic to republican presidential administrations further exacerbates this uncertainty; with Arizona's

Senate Bill 1070 the debate entailed a democratic presidency and a conservative republican state. More recently, California's Senate Bill 54 is exactly the opposite, involving a conservative republican presidency and a state known for being liberal and progressive.

California and Senate Bill 54

In states like California, there has been a longstanding back-and-forth tussle on the issue of involving local law enforcement in immigration policy. Consider Senate Bill 54, known as the "California Values Act," which restricts the type and amount of support that local law enforcement agencies may provide federal Immigration and Customs Enforcement (ICE) officials (Fry 2017). One key feature of SB 54 in California is the prohibition against moving inmates in local jails to immigration detention facilities (Fry 2017). While this does not prevent ICE agents from being present at the time that an offender is released from a jail facility, at which time ICE agents can take the offender into custody, it does limit the use of the jail facility as an additional conduit of migrants for ICE officials, especially if release dates and identities are not specifically sent to ICE in advance (Fry 2017).

The reasons for SB 54 have more to do with the fact that persons in migrant communities still do not contact the police near as frequently as non-migrant community members when a crime is afoot. Fear that ICE will become involved is a key reason for this lack of reporting. In many cases, because crime does tend to be intra-racial, this means that both the offending party and the victim may both be illegally within U.S. borders. In fact, in most criminal incidents, the victim and the assailant know each other, at least remotely. Thus, crime in migrant communities often goes unreported.

In response, the current presidential administration has indicated that it will challenge the new law in court. Indeed, Unites States Attorney General, Jeff Sessions, has recently filed a lawsuit against the state of California over three laws that were passed in California (Fry 2017). Collectively, these laws limit the ability of state and local agents and employers in aiding federal immigration agents (Fry 2017). These laws also give the state of California authority to inspect and review the conditions of care that are provided by federal officials to migrant detainees in facilities where they are kept. The notion that state authorities could have oversight ability over federal services is one that is quite unorthodox and has seemingly struck the ire of the federal government (Fry 2017).

Sanctuary Cities and Sanctuary Laws

The term "sanctuary city" is in informal and non-legal term that has been used during the past few years to discuss several municipalities throughout the United States that are reputed to be in non-compliance with federal immigration law. In essence,

these municipal jurisdictions are thought to both fail in their support of ICE and they reputedly put social impediments in place so as to hamper and thwart the efforts of federal immigration agents (Fry 2017). It is interesting that many of these cities are those that are most affected by immigration and, presumably, would have a better idea of what should or should not be done to address the immigrant population in their areas. The current SB 54 (California Values Act) seeks to prevent disclosure of when immigrants will be released from local jails and/or state prisons and seeks to eliminate the direct transfer of migrant inmates from local or state custody to federal custody (Fry 2017). In addition, SB 54 also prevents employers from providing ICE with access to employee records without a judicial warrant and also limits the employer's ability to provide access for raids in workplace locations. Areas off-limits for such raids are those where there is a reasonable expectation of privacy, such as restrooms or inside vehicles that are on the employer's property (Fry 2017).

At issue with these legal particularities is the distinction between information that falls under civil law as opposed to criminal law. For instance, notifying ICE officials of an inmate's immigration status is mainly a civil or administrative law issue. On the other hand, notification as to when migrant inmates may be allowed early release from jail or prison programs is primarily a law enforcement and corrections issue; the two are not the same. The law enforcement issue is largely one that is owned by the local and state administration because, for the most part, the criminal infractions fall under local or state criminal laws, not federal criminal laws and not under federal jurisdiction. Further still, the issues are dissimilar because issues related to immigration are grounded in civil law whereas issues related to jail and prison sentences originate from violations of criminal law.

The Blurring of Civil Law and Criminal Law

Currently, the deportation process does not have safeguards for individual protections that are provided in our criminal system, ostensibly because it is considered a civil process. Yet, our very Supreme Court, in *Padilla v. Kentucky* (2010) acknowledged that "deportation is a particularly severe penalty…" adding that "…deportation is … intimately related to the criminal process "(p. 1486). The Court, in acknowledging both the increased blurring of distinctions between the civil proceedings of the immigration system and criminal sanctions that sometimes result, determined that noncitizen immigrants should be afforded a criminal defense attorney to provide advice prior to entering into any type of plea agreement (American Immigration Council 2013). The blurring of criminal law issues and civil law issues have also been showcased through prior lawsuits and case law from other researchers. Indeed, consider that in 2012, the United States Supreme Court handed down a ruling that upheld the practice of requiring immigration status checks during routine police stops in a 5–3 majority vote (Barnes 2012). However, this ruling was accompanied by cautionary commentary against detaining individuals for prolonged periods of time if they do not have their immigration documents and also warned against

the potential for racial profiling to occur. As a result, legislation limited the use of racial factors in arrests holding that police may not consider race, color, or national origin beyond what is currently permissible by prior case law. Thus, as with this prior case law (see *United States v. Brignoni-Ponce* 1975), race (and the appearance of having Mexican ancestry) may be considered a relevant factor in enforcing immigration law, but it cannot be the sole basis for making a stop and/or an arrest.

This is an important point that can get complicated, at best, and quite confusing, at worst. While racial characteristics can be used as part of a composite rationale for a stop, it has to be articulated with other observed facts. From a legal perspective, problems quickly emerge because, unless the officer observes some other type of criminal activity, there is no reasonable suspicion (other than the appearance of the individual) to determine that an immigration violation exists. Even more to the point, this also means that there would be no probable cause for criminal activity. Thus, one must ask, why then would the officer have grounds to inquire, in the first place? In most cases, he or she would not have any reasonable grounds for questioning, particularly if the encounter was not very near to the United States and Mexico border (*United States v. Brignoni-Ponce* 1975).

The Racial Profiling Issue

According to the United States Customs and Border Protection (CBP), racial profiling is of the following:

> The invidious use of race or ethnicity as a criterion in conducting stops, searches, inspections, and other law enforcement activities based on the erroneous assumption that a person of one race or ethnicity is more likely to commit a crime than a person of another race or ethnicity (2016, p. unknown).

This definition is a bit deceptive because of the wording that persons of a race or ethnicity are erroneously assumed to be "more likely to commit a crime." This definition does not include the idea of stopping persons, based on the race or ethnicity, to check on their migration status, a civil issue. While the definition provided is certainly accurate in the case of criminal activity, this definition conveniently leaves out erroneous assumptions that a person of one race or ethnicity is more likely to be an illegal migrant than another. Thus, migration issues are not considered part-and-parcel to issues of racial profiling, only criminal ones, according to the CBP.

This distinction becomes relevant due to a legal fine-point. If racial profiling, according to the CBP, is only applicable to criminal issues, then this means that checking for legal migration into the United States (particularly within 100 miles of the U.S. border) is then a non-criminal issue. This means that police should not be engaged in migration checks. While this definition might seem to liberally free federal agents from concerns of profiling when conducting their day-to-day routines, it does not change anything for local law enforcement. This is because contemporary police experts understand that racial profiling is not an accepted practice

when establishing probable cause for a crime. As noted previously, under typical circumstances throughout the United States, local police are considered crime-fighters by trade, not parties tasked with conducting migration stops. (Taylor 2014; Phelps et al. 2014).

To further drive this point home, consider that in December of 2014, the U.S. Department of Justice published a document that clarified parameters for federal law enforcement and other government officials to consider a host of demographic characteristics when engaged in their duties. Among these characteristics were race and ethnicity as a pretext consideration for stops or questioning when conducting law enforcement activities. Importantly, this document also outlined exceptions to these requirements when in the interest of national security and/or border protection. The key point is that for local police and even federal law enforcement, racial profiling is not allowed when considering suspects of criminal activity. In these cases, racial or ethnic characteristics must be attributed to a single individual suspect who is sought, not to an entire demographic group of people. On the other hand, when ICE, BCP, or other agents are conducting border security, particularly when under the auspices of national security, the same prohibition against racial profiling does not apply. Again, because local police are tasked with upholding criminal law, they do not benefit from these exceptions and, therefore, are not equivalent to federal agents who are tasked with migration control functions.

Further proof of this comes through lawsuits that have been successfully filed against local police agencies who have engaged in racial profiling. Hanser (2015) noted several cases where municipal police departments and county level sheriffs were held liable under various Section 1983 lawsuits for engaging in racial profiling within their jurisdiction. This demonstrates a long trend in the field of modern policing to refrain from this practice. Many police chiefs have incorporated changes within their organization's culture to eradicate this practice (Hanser 2015; National Institute of Justice 2013a). Racial profiling negatively affects police-community relations in communities with racial and ethnic populations which naturally makes the job of the police officer all the more difficult in that community (Hanser 2015; National Institute of Justice 2013a, b).

Civil Rights Violations in Immigration Detention Facilities

As noted previously, SB 54 proposes to give California the authority to inspect and review the conditions of care in federal immigration facilities within the state's borders. To some this may seem to be a unusual addition. Consider, however, that in late 2015, the U.S. Commission on Civil Rights conducted an investigation into the actual types of response and conditions of confinement that existed within federal detention facilities holding immigrants. They examined a variety of facilities administrated through the Office of Refugee Resettlement (ORR), which is required to maintain certain standards of care and custody of immigrant children. These standards of care include medical and mental health, education, family reunification efforts, and the provision of recreational activities.

This investigation resulted in the generation of a corrective action plan outlining the needs for providing better medical and mental health services. Further, this plan recommended that programs provide youth care workers with additional communications training when working with unaccompanied immigrant children and to foster nurturing and positive interactions. Keep in mind again, that these are youth who are held without parents, legal guardians, or other adult figures. They are also detained under civil law, not criminal law, themselves not being suspected of criminal activity and, in the United States legal system, being considered juveniles not adults, which implies that they should be provided with added protections due to their age. Children's detention centers are required to provide classroom education taught by teachers with a minimum 4 year college degree. Upon investigation, the Commission found that numerous educational workers did not meet minimal standards for hire. The Commission, in its report, pointed out that educational programming is vital to a child's development and that education for unaccompanied immigrant children gives them better odds of integrating in the American society, as a whole, and into the American job sector, specifically, should they remain in the United States. A failure to provide this essentially ensures that these youth remain in an unstable and disadvantaged status and increases the likelihood that they will not be productive within mainstream American society. This again is counterproductive to the welfare of both these youth and to the United States economy and social dignity.

Detention Facility Housing Conditions

During the past 4–5 years, there has been growing concern that the U.S. Customs and Border Protection (CBP) agency has maintained facilities that are no different than prison facilities designed for common criminals. This includes facilities that house entire families (men, women, and children) who are being detained civilly, not for criminal offenses committed in the United States. It should be emphasized that these concerns are not simply liberal or anti-establishment rhetoric. Indeed, even members of Congress have voiced concerns about the punitive nature of immigration detention facilities. In fact, 136 members of Congress signed and endorsed a letter to the Department of Homeland Security's chief administrator, indicating that:

> We are disturbed by the fact that many mothers and children remain in family detention despite serious medical needs. In the past year, we have learned of the detention of children with intellectual disabilities, a child with brain cancer, a mother with a congenital heart disorder, a 14 day-old baby, and a 12 year-old child who has not eaten solid food for 2 months, among many others. Recently, we learned of a 3 year-old child at the Berks County Residential Center who was throwing up for 3 days and was apparently offered water as a form of medical treatment. It was only after the child began throwing up blood on the fourth day

> that the facility finally transferred her to a hospital. This is simply unacceptable (U.S. Commission on Civil Rights 2015, p. 105).

Naturally, the U.S. Sentencing Commission supported these Congressional concerns, adding that additional concerns included not just family detention centers, but reports of unsuitable conditions in border patrol facilities, and adult-only detention facilities. In particular, the Commission found conditions of extreme cold, overcrowding, and inadequate food to be a common problem throughout numerous CBP facilities (U.S. Commission on Civil Rights 2015). Again, this should not be interpreted as isolated incidents but was, instead, the norm throughout these facilities. Some facilities resembled the conditions of a prison rather than detention. Naturally, while some locations house immigrants convicted of serious crimes, lesser crimes, and those that have failed to appear for immigration hearings, it is important that others held on civil immigration issues not be co-mingled with the criminal population and that their treatment be substantially different. Altogether, the Commission found evidence to conclude that the Department of Homeland Security (DHS) in general and the Customs Border Protection (CBP) in particular detained undocumented immigrants in a manner more akin to prison rather than civil detention, which is a violation of the Fifth Amendment (U.S. Commission on Civil Rights 2015). Prior to this and since this time, other various levels of federal oversight, including federal district courts have had similar decisions and left similar rulings as precedent. This relates to challenges that police agencies may encounter during this period of enhanced migration control because, increasingly, these agencies are asked to house detainees in their local jails due to a lack-of-space in federal detention centers. Because these jails operate under contract with ICE and hold detainees under the authority of ICE, they are required to maintain the same standard of care. This care is different from jail inmates and is considered a different type of custody. For jails in California, this can easily result in similar deficiencies in housing requirements for detained migrants. Naturally, these police and sheriff's departments would then be held liable by the CBP, as has happened before (Hanser and Gomila 2012).

To be sure, this is no minor issue; housing detainees has become 'big business' for local jails and private facilities (Gomez 2017). This expansion in the use of detention is one of the latest developments in the current administration's efforts to increase efforts to stop illegal migration (Gomez 2017). Currently, ICE is thought to house nearly 40,000 detainees on any given day in a hodge-podge of federal, private, and local jails facilities (Gomez 2017). While certainly may help to keep illegal migrants detained, this comes at a prices that runs hundreds of millions of dollars. In addition, private companies like GEO and CoreCivic were funders of Trump when he ran for president. Since this time, both companies have seen dramatic increases in the value of their stocks, further fueling the support for increased detention. This then will likely increase the length of detentions since the facilities will have little incentive to remove detainees. Further, this will occur with less opportunities for bond (See *Jennings v. Rodriguez* 2018). For asylum seekers and migrants from dangerously violent countries, the excessive waits become a viable option due to fear of returning to their countries of origin where they might be jailed, tortured, and ultimately killed. This is especially true for migrants coming from violent areas of Central America.

Failure to Uphold Legal Requirements

Just last year, in 2017, a class action lawsuit was filed that challenged the practice of turning away asylum seekers who request United States protection at ports of entry along the border between the United States and Mexico (American Immigration Council 2017). Plaintiffs in this case allege that agents of the Customs and Border Protection (CBP) use a variety of tactics – including misrepresentation, threats and intimidation, verbal abuse and physical force, and coercion–to deny bona fide asylum seekers the opportunity to pursue their claims. Complainants in this case note that when the U.S. government refuses to allow asylum seekers to pursue their claims, it is a violation of the Immigration and Nationality Act, the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, as well as the doctrine of *non-refoulement* under international law.

The issue of *refoulement*, in particular, warrants additional attention. Refoulement refers to the expulsion of individuals who have the right to be recognized as refugees. This legal principle was first established by the United Nations Convention of 1954 which, in Article 33(1), holds the following:

> No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Further, it is important to clarify that this principle does not only restrict countries from sending refuges back to their nation-of-origin, it also prohibits the return of those refuges to any other country wherein it would be likely that they would be persecuted or subject to widespread victimization due to their national status, culture, race, or other demographic feature. The only exception to this is when the individual is a potential threat to national security. While the non-refoulment policy has been accepted around the globe, there have been problems with its adoption in some cases, Usually this is due to the fact that immigrants under this stipulation are required to have official refugee status. Further, not all nations around the globe are members of the United Nations Convention on the Status of Refugees and/or have failed to establish official processes to determine who does or does not have refugee status within their borders. This leads to ambiguity and a lack of consistency in these cases.

Issues with turning refugees back and failing to afford protection have been levelled at the United States and rose to a crescendo during the immigration crisis the occurred in 2014. During this time there was a noticeable increase of children from several Central American nations who sought entry into the United States. In 2014, this influx of unprotected and unchaperoned youth numbered in the tens of thousands from El Salvador, Guatemala, and Honduras. To be fair, some of these youth did have adult women who were either mothers or guardians but, for the most part, these youth migrated in droves, of their own accord.

The reason for this spike in undocumented immigration has to do with the extreme violence that erupted throughout Central America. These youth have fled poverty and excessive violence from gangs, extremist groups, and drug organizations, alike (Dart 2014). The murder rates in these countries also increased and were among the highest in the international community, with Honduras having the highest murder rate in the world (Park 2014). While it was true that these youth fled their home countries due to danger, many also fled so as to reunify with other family members who had not been deported in the United States. The perception among many Central Americans was that the United States was, as a general policy, allowing immigrant children to remain in the United States.

These perceptions developed because these youth were seldom quickly deported and, even though immigration proceedings were promptly started, they took a long period of time during which these youth would be allowed to stay with a family member or sponsor in the United States. The grounds for this were related to anti-trafficking laws that prohibited the immediate deportation of youth from Central America until a court-hearing is provided. In the meantime the Department of Health and Human Services provides health screenings and immunization shots, while assigning an average shelter stay of 35 days or more, when necessary.

The key point is that the United States, due to its own statutory requirements regarding safeguards against the potential victimization and trafficking of immigrant youth (known as the *Trafficking Victims Protection Reauthorization Act* or the TVPRA) and due to the obvious dangers that exist to these youth who are returned to their own countries (especially Honduras), has a legal obligation under international non-refoulment policies, to treat these youth as refugees. Despite this, the current Trump administration has proposed to draft policy that will deport over 150,000 of these youth who came without adult supervision, once they turn 18 years of age. Such a process would essentially dump thousands of youth into a dangerous region without the benefit of protection, essentially making the United States a culpable and contributory party to their future victimization, regardless of whether they are classified as adults, or not (Lanktree 2017). Further, such policy is considered while there is clear evidence from Senate-level investigations that many of these youth are at risk of being trafficked in the labor market in the United States and abroad (Greenberg 2016).

In a very recent case, the United States Supreme Court ruled in *Jennings v. Rodriguez* that migrant detainees, including those who have permanent legal status and even asylum seekers, can be held indefinitely within detention facilities without the benefit of bond hearings. This is largely in reaction to the various complications with the process of sorting through immigration cases, including asylum seekers. This case originated as a class-action suit that challenged lengthy immigration detentions, often averaging from 12 to 14 months, where detainees are not provided periodic review for bond. In this case, the vast majority of litigants for the plaintiff's side have either petty misdemeanor crimes or are seeking asylum. But, more to the point, is the fact that this ruling further reinforces the notion that immigration proceedings are civil in nature, not criminal. Were they based upon criminal law, a right to counsel, bond, and other features would become obligatory. Because they are not

and because these proceedings are not grounded in criminal law, it would seem that law enforcement should not be compelled to be involved in these cases. It is a civil matter and law enforcement deals in criminal matters. Thus, police should be spared the burden of reporting migration status of persons leaving jail and they should also be spared the responsibility for verifying such status within the communities that they serve.

Back to the Future: How Confusing Objectives Became Today's Quagmire

Perhaps, in order to make sense of what has become a confusing system with a number of unconstitutional outcomes and consequences, we should not just understand that the criminal law and civil law are different. Rather, we must note that immigration proceedings and determinations are civil in nature due to historical etiology that can explain this development. As it turns out, the basis for these distinctions extend back to the late 1800s, when the Supreme Court held, in Fong Yue Ting v. United States (1893), that deportation was a *civil* rather than a *criminal* sanction. In other words, deportation, in and of itself is not punishment, per sè, but is instead an administrative proceeding intended to simply return immigrants to their native countries of origin. At this time, the High Court reasoned that:

> The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation … has determined that his continuing to reside here shall depend (Fong Yue Ting v. United States 1893, p. 730).

The reasons for this ruling warrant that some context be given. During this time, Chinese laborers were immigrating into the United States in record numbers. In an effort to curtail the excessive numbers of immigrants, the Chinese Exclusion Act and the Geary Act restricted and/or delayed the immigration of additional Chinese into the United States. One of the key aspects of the Geary Act was that the burden of proof for demonstrating the right to be in the United States was placed upon the Chinese resident. During this time, Chinese immigrants were required to possess a "certificate of residence" which was proof of legal entry into the United States. Those without such a certificate, for whatever reason, was considered unlawfully in the United States and could be arrested, forced into hard labor for up to a year, and could be automatically deported thereafter.

Despite the fact that Chinese laborers could be given hard labor up to a year prior to deportation the Supreme Court continued to support the rationale that immigration proceedings were civil rather than criminal in nature. However, the true underlying reason for this has more to do with the fact that the Court also maintained that immigration policy and the enforcement of that policy were issues of the legislative

and executive branches of government. Along the way, the Court upheld broad federal powers and, in recognizing that certain minimal levels of due process were required in immigration and deportation proceedings, the Court gave nearly unfettered power to Congress to define the standards, burdens of proof, and rules that applied. In the process, by making immigration proceedings civil in nature, a much lower burden of proof was required by the state (preponderance of the evidence rather than proof beyond a reasonable doubt), fewer protections were afforded the Chinese immigrants because the 'loss of liberty' standard was irrelevant since they were being removed from the United States, and (at the same time) requiring additional measures (such as forced labor) were considered payment for the cost of proceedings, not punishment for a wrong done.

Thus, by classifying deportation as a "civil" penalty, the Court held that immigrants facing removal are not entitled to the same constitutional rights provided to defendants facing criminal punishment. It is for this reason that immigrants facing deportation today are not read their rights after being arrested, are not provided an attorney if they cannot afford one, and are not permitted to challenge an order of removal for being "cruel and unusual punishment." While undocumented immigrants are not required to do forced labor (this dropped out of usage several decades ago), the requirement to provide the protections afforded to someone charged in criminal court do not exist, yet at the same time, their experience while being detained may actually be similar to that of someone who has been charged with a criminal offense. Thus again, as with the late 1800s, it would seem that the blurring of these two legal systems allow the government to vacillate between one and/or the other so as to maximize deportation goals while also maintaining a covert punitive flavor despite overt comments to the contrary. In short, it is a farce that allows the U.S. government to straddle both sides of the fence, to its advantage, and in violation of what is constitutional.

State Rights Versus Federal Rights in Responding to the Migrant Issue

At the heart of this issue is that fact that any responsibility over migration or national status begins and ends within the United States government, not state governments. Further, the United States may be in need of re-examining responses to migration, national status, and the rights of states to govern their own police resources within their borders. As it stands, states are entitled to exercise jurisdiction over criminal law and civil law within their borders as they see fit, so long as that activity ensures that no Constitutional rights are violated in doing so. Further still, states are allowed to broaden rights of individuals within their borders beyond what the Constitution permits, but they cannot restrict those rights to less than what the U.S. Constitution provides. Theoretically, this should mean that states like California are within their right to extend protections of individuals within their borders, whether citizens or not.

It is the federal government that is responsible for protecting the nation's borders and for regulating international issues that impact those borders. However, it is very

unlikely that the United States will be able to effectively impact the systemic origins of the illegal migration issues. The reason is simple, citizens leaving Honduras, Guatemala, El Salvador, and Mexico are doing so because of the pervasive of these national governments. Indeed, most Central American nations experience problems with excessive political and economic corruption. It is because of this simple fact that the United States is largely powerless to provide stability. In addition, there are resentments toward the United States among many Latin nations for past military involvement into the affairs of these nations (UN News Centre 2013). It is clear that, for better or worse, many leaders of various Latin American countries have negative views of the United States.

Given this, it seems that the United States should take heed of what its neighbors are saying. This then means that Latin American nations will have to bail themselves out of the doldrums in which they find themselves. However, the nation of Bolivia has seen numerous gains by bringing people out of poverty, expanding its coverage for maternal health, boosting literacy and investing in water and sanitation (UN News Centre 2013). Indeed, President Evo Morlaes Ayma stated that "we live in sovereignty and dignity; no longer dominated by the North American empire… no longer being blackmailed by the International Monetary Fund" (UN News Centre 2013, pg. 1). This example shows both that these countries are capable of improving their condition and, just as important, they tend to resent involvement by the United States. This is an important observation when trying to actually resolve this problem at its origin rather than simply attendant symptoms of that problem.

It would therefore appear that the official governments of these countries are not aligned with the United States and prefer, instead, to go it alone without the help of the United States. While there is a possibility that these government leaders are themselves, corrupt, this only serves to further restrict the United States in responding. Indeed, aside from some act of overt or covert warfare, there is little else that the U.S. can do to counter regimes of corruption, drug cartels that paralyze entire governments, and cultures that have developed around a 'have' and 'have not' mentality. Naturally, to engage in any form of armed intervention is both desperate and counter-productive, having the potential to further victimize and harm those persons whom the United States would be liberating so as to have better access to economic and social autonomy. Thus, the issue is complicated due to the perceptions touted by Latin American governments. This means that the arguments for, or against, the use of local and state level police in migration enforcement is rooted in a problem that goes beyond the borders of that respective state and beyond the borders of the nation.

Though international issues that influence migration impacts individual states, it is primarily the state's job to regulate and respond to issues affecting its own jurisdiction. So long that this is done in a manner that does not contradict Constitutional safeguards, the state's responsibility therein begins and ends. Therefore, states have the right to adopt more liberal approaches within their own borders to the migration issue. Further, they may, ironically, have a better understanding of the complications involved with migration issues within their borders than the federal government would like to admit. This then means that, on the whole, the United States government

must grapple with the international considerations that impact migrant influxes (whether legal or illegal) within its borders, as federal resources are intended for such actions. On the other hand, the business of internal governance should be left to the individual states to regulate. Should a state, as a whole, wish to engage in more vigorous expulsion of illegal migrants, then so be it. Should that state wish to not utilize their own resources for such efforts, so be that as well. In essence, part of the problem becomes a state rights versus federal rights issue. In this case, states have a right to determine their own codes, statutes, and laws on the matter, once the issue falls within their borders.

Concluding Comments

It is clear that this issue complicated due to a number of considerations that go beyond the day-to-day world of local police. Indeed, the issue is an international one that local agencies are not equipped to handle. This issue also goes beyond the scope-of-duty attributed to local and even state level law enforcement. Rather, local and state agents engage in their rightful duties of the detection and apprehension of crime and criminals because this is their actual function, regardless of the national status of the individual. Further, most law enforcement agencies discourage the personnel from becoming involved in civil matters because theirs is the criminal jurisdiction, exclusively. Generally, police do not engage in divorce law, suits related to debt between creditors and debtors, malpractice litigation, or breaches of contract, unless there is probable cause that some type of criminal issue afoot. Even in these cases, the police response is most always restricted to the elements of the criminal offense, not the civil law aspects of an incident. In fact, it is not uncommon for criminal charges to be dropped though civil litigation continues between two parties.

There is also concern that the federal government does not actually have a good track record of addressing the migration issue in the United States. Violations of Constitutional rights by federal agents have been found throughout the long and troubled history of migration enforcement. In addition, conditions within some detention facilities have been called to question. Given that the federal government exercises the right to review the operations of local law enforcement and state correctional agencies, it would seem plausible that state governments should be allowed to observe and critique the operations of federal detention facilities within their borders (as proposed under California's SB 54). Resistance to this notion by the federal government does not seem to smack of true transparency or fundamental fairness. If local and state police are to work in true partnership with federal agents, it would seem that those federal agents should not be opposed to allowing the local and statewide communities to engage in some degree of oversight of their operations within those jurisdictions. Indeed, these communities already do so with local and state agents in their region through civilian review boards and other such mechanisms. There seems to be no logical reason for excluding federal agents and federal detention centers from similar forms of oversight.

Lastly, in states where laws are favorable to communities with migrant populations (whether legal or illegal) the police response will often be aligned with those sentiments. In fact, some of the police agents themselves may be drawn from these communities. This is reflective of a culturally competent police agency, which fosters cooperation between police agencies and the community they serve. Placing mandatory requirements to become involved in deportation activities does not allow police nor state governments the ability to mitigate the social, political, and cultural concerns of populations within their jurisdiction. In some cases it will likely ruin the rapport, trust, and the sense of community that is required to engage in effective governance, in general, and effective policing, in particular, for those same communities. This is something that both state and federal agents should avoid, regardless of the political or philosophical ideologies to which they subscribe.

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