

U.C.L.A. Law Review

Immigration Federalism in the Weeds

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ABSTRACT

This Article takes immigration federalism “all-the-way-down” by focusing on two counties in Southern California—Los Angeles County and Orange County—to consider the role that subfederal governmental entities play in immigration enforcement. Part I synthesizes the existing literature on immigration federalism with particular attention to the role of sublocal, local, county and regional actors. Part II maps out local immigration enforcement policies in Los Angeles and Orange Counties from 2015 through 2018 to illustrate the complex and sometimes contradictory policy choices made at the substate level. Part III explores the effects of these regional policy choices, both in terms of their impact on federal immigration enforcement patterns in these counties and—drawing on 150 in-depth interviews with Southern California residents in the period from 2014–2017—how people living in those counties experienced these policies. Part IV explores how this bottom-up view of immigration enforcement policies may inform existing theories of federalism and localism, particularly within the immigration context.

Sustained analysis of immigration enforcement policy choices within a particular local context illustrates the tremendous importance not just of state but also of substate immigration enforcement choices. It also highlights the complexities of local governmental control, demonstrating the ways that specific county and local actors can undercut or enhance state and federal enforcement choices. Finally, this analysis illustrates that noncooperation “sanctuary” policies may serve an important, trust-building signaling function to residents, but also that such policies are not sufficient in and of themselves to generate trust. This is because local officials can and do exploit the vulnerabilities of immigrant populations to target them in ways that increase their costs, decrease their feelings of security and diminish their trust in law enforcement even when those individuals are not actually arrested or sent to jail, let alone referred to immigration agents. Residents, and particularly Latinx residents are policed in the shadow of deportation. Exploring immigration federalism all the way down reveals that building secure communities for these residents will require an end to criminal enforcement practices that rely on markers of race, class and geography to target and leverage the vulnerability of community members.

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Professor of Law, UCLA School of Law. Many thanks to the following for ideas and conversation: Sameer Ashar, Stephen Lee, Susan Coutin, Beth Colgan, Sharon Dolovich, Ingrid Eagly, Maximo Langer, Hiroshi Motomura, Angélica Cházaro, Mario Barnes, Trevor Gardner, Mary Fan, Richard



Boswell, Chimene Keitner, Dave Owen, Michael Churgin, Barbara Hines, Denise Gilman, Sanford Levinson, Joseph Fishkin, Cary Franklin, Daria Roithmayr, Franita Tolson, Justin Driver, Emma Kaufman, David Strauss, Aziz Huq, Kristen Collins, and all of the attendees at faculty workshops at the law schools at UCLA, U.C. Hastings, the University of Chicago, the University of Texas, the University of Washington and the University of Florida. And to my two children and Jonathan D. Glater, who make it all fun.

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INTRODUCTION

Questions of sovereignty lie at the heart of the great immigration debates of our time. The U.S. Supreme Court has often justified its deference to Congress and the president in the immigration sphere by referencing the federal government's sovereign prerogative to defend its borders. This is true even in cases where those policy choices infringe significantly on individual rights and liberties.¹ But sovereignty is not just used to trump individual rights claims. It also serves as a justification for federal preemption of state and local laws that conflict with federal immigration law and policy.² In this context, courts sometimes apply a preemption doctrine that has such a distinctly muscular quality that one scholar has termed it "plenary power preemption."³

Central to both lines of cases is an underlying assumption that an almost unqualified power to exclude noncitizens is essential to the nation's ability to exist. Unacknowledged in both lines of cases are the substantive limitations that international law now places on the migration-control aspects of sovereignty,⁴ and the racist colonial pedigree of limitations on immigration

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1. See, e.g., *Trump v. Hawaii*, 138 S. Ct. 2392 (2018); *Demore v. Kim*, 538 U.S. 510 (2003); *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950); *Yamataya v. Fisher (The Japanese Immigrant Case)*, 189 U.S. 86 (1903); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893), *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581 (1889).
 2. See, e.g., *Arizona v. United States*, 567 U.S. 387 (2012); *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Chy Lung v. Freeman*, 92 U.S. 275 (1876).
 3. Kerry Abrams, *Plenary Powers Preemption*, 99 VA. L. REV. 601, 601 (2013).
 4. Cases in the European Court of Human Rights weigh the nation's right to exclude against individual interests, particularly the right to remain with one's family. See, e.g., *C. v. Belgium*, 1996-III Eur. Ct. H.R., (1996), <http://hudoc.echr.coe.int/eng?i=001-57992> at paragraphs 21–36 (demonstrating that the European Court show that the European Court first considers whether the immigrants establishes that the deportation interferes with the right to family and private life; and, if so, takes that into account when considering the legality of the deportation); *Beldjoudi v. France*, 234, Eur. Ct. H.R. 86 (ser. A) at 36 (1992), <http://hudoc.echr.coe.int/eng?i=001-57767>. The same is true in cases decided by the Inter-American Commission on Human Rights. See, e.g., *Wayne Smith, Hugo Armendariz et al. v. United States*, Case 12.562, Inter-Am Comm'n H.R., Report No. 81/10, 58 (2010) (concluding that the United States' deportation of two long-time permanent residents violated international law in failing to take sufficiently take into account the interests of affected U.S. citizen children.); see also *Stewart v. Canada*, Comm. No. 538/1993, U.N. Hum. Rts. Comm., ¶ 12.10, U.N. Doc. CCPR/C/58/D/538/1993 (Dec. 16, 1996). For a discussion of these cases and other international law limitations on deportation, see David B. Thronson, *Closing the Gap: DACA, DAPA, and U.S. Compliance with International Human Rights Law*, 48 CASE W. RES. J. INT'L L. 127 (2016). U.S. courts have not recognized such a limitation on deportation. For a small handful of immigrants, family ties are taken into account whether the individual is eligible for "cancellation of removal," 8 U.S.C. 1229(a)&(b), but the standard is much more

justified by claims of sovereignty.⁵ The Court has never reexamined systematically the legitimacy of a doctrine that was purposefully designed to facilitate racial exclusions in the nineteenth century and that functionally continues to do so today.⁶

In recent years, at least one Justice has proposed recognizing that states have similar sovereign powers.⁷ Given the origins of the migration-control features of sovereignty, it was fitting that he did so in a case where racism was the primary driver of the state policy in question.⁸ To date, however, courts have denied U.S. states the ability to assert this purported prerogative of the sovereign. Indeed, immigration federalism is characterized by a strong formal commitment to federal exclusivity.⁹

As a practical matter, however, states and localities play an increasingly important role in shaping immigration policy. This is true in part because constitutional jurisprudence recognizes the power of states to regulate their residents—including in ways that draw distinctions between U.S. citizens and noncitizens—as a function of their police powers.¹⁰

But a tolerance for state-level regulation of noncitizens is not the most important part of the story here. The real driver behind increasing state and local power in the immigration sphere is the significant transformation in the structure of immigration enforcement. Over the past two decades, and to a degree unparalleled in U.S. history, state and local law enforcement officers have become the most numerous frontline agents in the U.S. system of

restrictive than under related international law protections. *See, e.g.*, https://scholar.google.com/scholar_case?case=2409198706503972030&hl=en&as_sdt=2006.

And because cancellation of removal does not even apply to an individual who is being removed on grounds of commission of a broadly defined category of “aggravated felonies” (*see* 8 U.S.C. 1229(a)(3)), and is even more restrictive for immigrants who lack at least five years of lawful residency (*see* 8 U.S.C. 1229(b)(1)(c)), in many cases, the statute requires deportation without even this extremely limited consideration of family ties.

5. *See, e.g.*, RADHIKA MONGIA, *INDIAN MIGRATION AND EMPIRE: A COLONIAL GENEALOGY OF THE MODERN STATE* (2018).
6. *Id.*; *see also* E. Tendayi Achiume, *Racial Borders* (work in progress); *cf.* E. Tendayi Achiume, *Migration as Decolonization*, 71 *STAN. L. REV.* 1509 at 27 (forthcoming 2019) (observing the colonial dimensions of migration control and acknowledging the racialized nature of the colonial order.).
7. *See Arizona*, 567 U.S. at 417 (Scalia, J. dissenting).
8. On the racist origins of SB 1070, *see* NAT’L IMMIGRATION LAW CTR., *ALONG RACIAL LINES* (2016), <https://www.nilc.org/issues/immigration-enforcement/along-racial-lines-arizonas-sb1070> [<https://perma.cc/K3JZ-C2R5>].
9. Abrams, *supra* note 3, at 604–05; *see also* David A. Martin, *Reading Arizona*, 98 *VA. L. REV. ONLINE* 41, 42 (2012).
10. *See Ambach v. Norwick*, 441 U.S. 68, 80–81 (1979) (upholding state’s requirement of U.S. citizenship for public school teachers); *see also* *Foley v. Connelie*, 435 U.S. 291, 300 (1978) (same for police officers).

immigration enforcement. Even without a sovereign power to exclude, states and localities have demonstrated their significant capacity to shape patterns of immigration enforcement. Ultimately, control over enforcement discretion is the key to shaping immigration policy, and that control is increasingly exercised at the state and local level.

The current state of immigration federalism thus provides an interesting opportunity to explore “federalism-all-the-way-down,” paying attention to the many substate entities in the United States that shape U.S. federalism even as they lack legal sovereignty.¹¹ Theoretical accounts of “federalism-all-the-way-down” usually include practical examples to illustrate what can be gained by examining substate governmental entities, but they do not stay on the ground in any sustained way.¹² In the context of immigration law, at least one excellent, very granular account of “sanctuary” all the way down is available, but that account pulls examples from a wide cross-section of jurisdictions to demonstrate the networked effect of public and private sanctuary policies.¹³ This Article takes a different approach: focusing on one geographic region, starting on the ground and looking up to see what localities and special purpose institutions have tried to achieve and what they have been able to do to affect immigration enforcement.¹⁴

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11. Heather K. Gerken, *Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 23 (2010).
 12. See, e.g., *id.*; see also Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745, 1748 (2005); Heather K. Gerken, *Second-Order Diversity*, 118 HARV. L. REV. 1099, 1112–17 (2005). Gerken urges scholars to pay attention to the role not only of cities but also of “special purpose institutions (juries, school committees, zoning boards, local prosecutors’ offices, state administrative agencies) that constitute states and cities”, see Gerken, *supra* note 11, at 22, but the article does not examine any particular special purpose institution in any detail, though the article does provide brief, practical examples of their potential relevance. The glancing interactions with the ground also characterize much of the work responding to Gerken. See, e.g., Franita Tolson, *Second Order Diverse in Name Only?: Sovereign Authority in Disaggregated Institutions*, 48 TULSA L. REV. 455, 464–70 (2013) (discussing the power of cities and juries as a theoretical matter).
 13. See Rose Cuison Villazor and Pratheepan Gulasekaram, *Sanctuary Networks*, 103 MINN. L. REV. 1209 (2019). The fact that these authors include both public and private entities and policies in their account of networked sanctuary highlights a significant theoretical question regarding federalism without sovereignty—namely, what is distinctive about the state in the absence of sovereignty? This question is outside the scope of Villazor and Gulasekaram’s analysis, and more generally, scholars purporting to explore “federalism-all-the-way-down” have not tackled it. I certainly do not attempt to resolve this question here, though for pragmatic reasons I do limit my analysis to governmental entities.
 14. This complements other recent, granular accounts of local immigration policy in context. See, e.g., Alex Boon et al., *Divorcing Deportation: the Oregon Trail to Immigrant Inclusion*, 22 LEWIS & CLARK L. REV. 625 (2019) (discussing coordinated efforts in Oregon to increase representation by counsel of immigrants in removal

Taking Southern California—specifically Orange County and Los Angeles County—as a starting point for analysis, this Article identifies the overlapping, sometimes complimentary, sometimes contradictory approaches that various local governments, school boards, public colleges and universities, police departments and county-level departments and officials have staked out on the question of immigration enforcement over the past four years. The Article then moves back the lens, situating these data in the context of broader national policy and enforcement trends. By evaluating immigration policies enacted at the local, county and state level, this Article sheds light on the descriptive dimensions, as well as the efficacy and impact of, subfederal immigration policies.

The federal government's recent policy shifts around interior immigration enforcement, particularly those that affect long term immigrant residents, provide the broader context for these local developments. Congressional changes to immigration law in the mid-1990s largely leached the nation's immigration laws of statutory avenues for unauthorized residents to regularize their status and for deportable noncitizens to obtain discretionary relief from removal.¹⁵ At the same time, Congress has never provided the resources necessary to effectuate the full enforcement of the draconian removal provisions it authored. In recent years, Congress has allocated in excess of \$18 billion a year to immigration enforcement,¹⁶ but this figure is insufficient to achieve full immigration enforcement of the laws as

proceedings); Virgil Wiebe, *Immigration Federalism in Minnesota: What Does Sanctuary Mean in Practice?*, 13 U. ST. THOMAS L. REV. 581 (2017) (providing an in-depth analysis of state and local policies in Minnesota). There are accounts of other substantive areas of law that also truly descend into the weeds. See, e.g., Dave Owen, *Cooperative Subfederalism*, 9 UC IRVINE L. REV. 177, 204–212 (considering environmental law and land use within three particular subfederal contexts). As Virgil Wiebe's study of Minnesota makes clear, differences in federal regional offices also generate variable federal immigration law outcomes across regions, and this is true in other areas of law as well. See generally Dave Owen, *Regional Federal Administration*, 63 UCLA L. REV. 58 (2016) (exploring the ways that federal regional offices generate different regional policy outcomes in environmental regulation).

15. See generally Jennifer M. Chacón, *The 1996 Immigration Laws Come of Age*, 9 DREXEL L. REV. 297 (2017).

16. A 2013 study put the number at just under 18 billion. DORIS MEISSNER ET AL., MIGRATION POLICY INST., IMMIGRATION ENFORCEMENT IN THE UNITED STATES: THE RISE OF A FORMIDABLE MACHINERY 2 (2013), <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf> [<https://perma.cc/NE2G-P8FC>]. That spending has only increased since then. The American Immigration Council found that in fiscal year 2019, the federal budget allocated \$7.6 billion for ICE enforcement and another \$17.1 billion for CBP. <https://www.americanimmigrationcouncil.org/research/the-cost-of-immigration-enforcement-and-border-security>.

written given the breadth of the removal provisions, the hypercriminalization of certain populations within the nation's overheated criminal law enforcement systems, and the sheer size of the immigrant population in the United States. Each successive administration thus faced choices about how best to allocate those enforcement resources.

The two-year period from late 2014 through the end of 2016 was one in which federal executive discretion was leveraged in an effort to constrain more tightly the discretion of the street-level bureaucrats¹⁷—both federal and subfederal—who were enforcing immigration law.¹⁸ In the period from 2017 to the present, federal immigration enforcement initiatives moved in the opposite direction.¹⁹ Against this shifting backdrop of federal enforcement, some states, counties, cities and local government actors have attempted to either cabin or amplify the effects of federal policy on their immigrant residents.²⁰ The resulting policies provide new evidence of how federalism plays out in the context of immigration law and policy. This Article evaluates the evidence from one particular geographic location—Southern California—to determine what doctrinal and theoretical insights these developments might suggest.

Part I synthesizes the existing literature on immigration federalism with particular attention to how this literature has understood the role of sublocal, local, county and regional actors. As this Part reveals, much of the literature has focused explicitly on state-federal dynamics, although it is also clear that substate actors and entities have been an important part of these analyses, albeit often an implicit one. Much of the literature has concerned itself with the question of what political values federalism is designed to protect and what balance of state and federal power over immigration enforcement is best designed to effectuate these values. And much of the literature demonstrates that states and localities have long had the ability to act in significant, albeit legally constrained, ways to moderate or amplify the effects of federal immigration policy on their residents. But little of the existing literature delves into the question of how multilevel policy responses within particular geographic spaces take form in response to federal policies from above and how these layered immigration policies affect immigrant residents on the ground. This Article explores those questions.

17. See generally MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES (1980); see also STEVEN MAYNARD-MOODY & MICHAEL MUSHENO, COPS, TEACHERS, COUNSELORS: STORIES FROM THE FRONT LINES OF PUBLIC SERVICE (Univ. of Michigan Press 2003).

18. See discussion *infra* at Part II, notes 71–76.

19. Chacón, *supra* note 15, at 311; see also discussion *infra* at Part II, notes 73–81.

20. Chacón, *supra* 15, at 313–14.

Part II maps out local immigration enforcement policies in Southern California from 2015 through 2018, first describing the relevant policies at the national level (Part II.A) and state level (Part II.B) before zooming in to analyze various local responses in Los Angeles County (Part II.C) and Orange County (Part II.D). Part II.E engages in a brief comparative analysis of the immigration policies enacted in the two counties. As this granular analysis demonstrates, the immigration policy choices made in Los Angeles County and Orange County differed significantly not only between the counties but within them.

Part III traces out some of the effects of these regional policy developments. Part III.A evaluates the federal immigration enforcement patterns in Los Angeles and Orange Counties in comparison to one another during the relevant period. The data reveal that different local policies generate different enforcement outcomes. Local policy matters, but the full story of how it matters is not a simple one. Part III.B illustrates these complexities, drawing in part on the related, ongoing work of a team of researchers that includes data from 150 interviews conducted with immigrant residents, organizers and immigrant-serving organizations in these two counties from 2014–2017. This Part illustrates how immigrant residents perceived and experienced federal, state and local immigration enforcement policy shifts in this period. These data reveal that residents perceive local law enforcement as deliberately profiling Latinx residents with the goal of penalizing legal vulnerabilities related to immigration status—most notably lack of a driver’s license. Significantly, that appears to hold across jurisdictions, regardless of the existence and nature of noncooperation policies between the states or localities and the federal government.

Part IV explores what the enforcement data and subjective experiences of residents might tell us about immigration federalism. The bottom-up view of immigration policy highlights three federalism dynamics that may inform existing theories of federalism and localism. First, local immigration enforcement policies matter to national enforcement outcomes. Localities have power both to dampen federal enforcement efforts and to circumvent state noncooperation restrictions. Second, this analysis casts a clearer light on the complexities of local governmental control and clearly highlights the need for greater attention to county-level governance. Third, the analysis demonstrates that addressing concerns about fair policing in immigrant neighborhoods requires thinking beyond immigration enforcement noncooperation policies.

This Article appears in a symposium addressing issues relating to the Latinx²¹ community and the criminal legal system, which might seem an odd fit for an article on regional immigration policies and practices. But Latinx immigrant residents in Southern California frequently express the view that their Latinx identity—their appearance, their language, their accents—triggers a particular form of overpolicing at the intersection of criminal and immigration law

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21. Throughout the article, I use the term “Latinx” to refer to individuals whose trace their origin (at least in part) to Mexico, Central and South America and portions of the Caribbean. I do so in keeping with the choice of the symposium organizers, who used the term Latinx in the symposium title. The use of the term raises two questions: first, whether and why one would use the term “Latino” rather than the census term “Hispanic,” and second, whether and why one would use the relatively new and less common term “Latinx” rather than the more common “Latino.” I will address both questions briefly here, though my treatment of the issue will necessarily be cursory and incomplete.

The question of whether to use the term “Hispanic” or “Latino” is unsettled in law and society. See, e.g., *Village of Freeport v. Barrella*, 814 F.3d 594, 603–04, n.21 (2d Cir. 2016) (noting that “[t]he choice between ‘Hispanic’ and ‘Latino’ occasionally provokes anxiety” and opting throughout the opinion to “use ‘Hispanic,’” because it is the term “which Hispanics themselves are more likely to choose (to the extent that they wish to adopt a pan-ethnic identity at all),” and it “sidesteps the need for awkward neologisms, such as ‘Latin@’ or ‘Latinx,’ in the name of ‘gender-neutral’ language”). Preferences between the terms are likely influenced by geography. Judge Cabranes made his choice to use “Hispanic” as a judge living in the Northeast and adjudicating a case in that geographic context. But preferences differ on the West Coast. As Judge Cabranes noted, the Los Angeles Times has preferred “Latino” to “Hispanic” in most contexts for since at least 2011. See *Usage: ‘Latino’ Preferred Over ‘Hispanic’*, L.A. TIMES (July 28, 2011), <https://latimesblogs.latimes.com/readers/2011/07/latino-preferred-over-hispanic-in-most-cases.html> [<https://perma.cc/ZZ7B-426H>]. Spanish-speaking interviewees of Latin American descent whose responses provide some of the underlying data for the discussion in Part III.B of this article also tended to refer to themselves and their co-ethnics as “Latino” or, to a much lesser extent, “Hispano” when they were referring to this diverse national origin group. Given the geographic and social context of this symposium, it seems reasonable to give preference to the term Latino over Hispanic.

The next question is whether to use the term Latino or the newer term “Latinx.” The latter term is not without its critics. See Concepción de León, *Another Hot Take on the Term ‘Latinx’*, N.Y. TIMES (Nov. 21, 2018), <https://www.nytimes.com/2018/11/21/style/latinx-queer-gender-nonconforming.html> [<https://perma.cc/W9R5-99DC>] (noting that the term is widely used on college campuses and appears in the Merriam-Webster dictionary, but still draws criticism for being an awkward Anglicization of a Spanish term that is not widely familiar or popular). While I acknowledge the many reasonable criticisms of the term, I adopt its use here. In doing so, I embrace the reasoning of Ed Morales, author of *Latinx: The New Force in American Politics*, that the “X” – which is not Spanish – marks a “new hybrid idea” that “imagin[es] a future of more inclusion for people that don’t conform to the various kinds of rigid identities that exist in the United States.” *Id.* I also share the sense expressed by Dr. Lourdes Torres that, in moving beyond gender binaries, the terms can be more “inclusive of...identities that have had less visibility.” *Id.* In short, I use the term Latinx to reflect an understanding of this imagined community that is reflective of its indigenous and not just its colonial roots, and inclusive of the broad spectrum of gender identities held by those in the community.

enforcement. Their experiences reveal how racial scripts that flowed out of immigration restrictions and enforcement practices in the early twentieth century—scripts that positioned Mexicans and Mexican Americans as racial outsiders and criminal interlopers²²—continue to shape the experience not only of Mexican immigrant residents, but of all Latinx residents whose identities are conflated with those residents.

Given this context of this symposium, the focus of this Article is on Latinx residents. However, they are not the only ones who experience racialized patterns of policing at the intersection of immigration and criminal law. Indeed, the very fact that Latinx residents are treated as interchangeable with undocumented immigrants, and as such, criminalized—a process that Laura Enriquez has described “racialized illegalization”—can only be understood in the context of a broader social array of racial scripts. The illegalization process itself arises out of and draws from a longstanding narrative of criminality deeply rooted in anti-Blackness.²³ Many of the tools of overpolicing and mass incarceration practiced in the immigration enforcement realm grew out of anti-Black practices in the realm of criminal enforcement, where they have long disproportionately targeted Black residents. In the immigration enforcement realm, these practices continue to generate far reaching harms in Black immigrant communities even as they touch Latinx residents in similar ways.²⁴ At the same time, the heightened visibility of Latinx residents as the face of undocumented immigrants means

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22. NATALIA MOLINA, *HOW RACE IS MADE IN AMERICA: IMMIGRATION, CITIZENSHIP AND THE HISTORICAL POWER OF RACIAL SCRIPTS* 16 (2014) (exploring how immigration enforcement and restrictions in the period from 1924 to 1965 gave rise to racial scripts that portrayed Mexicans and Mexican Americans as perpetual racial outsiders); Laura Enriquez, *Border Hopping Mexicans, Law-Abiding Asians, and Racialized Illegality: Analyzing Undocumented College Students' Experiences through a Relational Lens*, in *RELATIONAL FORMATIONS OF RACE: THEORY, METHOD AND PRACTICE*. (Eds. Natalia Molina, Daniel Martinez HoSang, and Ramón A. Gutierrez. 2019) (discussing contemporary stereotypes of Latinx residents as undocumented and criminal); see also MAE NGAI, *IMPOSSIBLE SUBJECTS* (2004) (explaining how immigration enforcement and restrictions in this period gave rise to the conceptualization of Mexicans as the nation's “iconic illegal aliens.”).
 23. See generally KALIL GIRBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME AND THE MAKING OF MODERN URBAN AMERICA* (2010) (tracing the historical origins of contemporary notions associating blackness with danger and criminality and dismantling these myths), Devon W. Carbado, *Racial Naturalization*, 57 *AM. Q.* 633 (2005) (discussing the ways that Blacks—regardless of immigration status—are excluded from equal access to the formal protections of citizenship).
 24. Breanne J. Palmer, *The Crossroads: Being Black, Immigrant, and Undocumented in the Era of #blacklivesmatter*, 9 *GEO. J.L. & MOD. CRITICAL RACE PERSP.* 99, 101–03 (2017) (discussing the disproportionately harsh immigration consequences faced by Black immigrants).

that undocumented immigrants from other racial groups, particularly those racialized as Black or Asian, can be excluded from services, assistance and advocacy on behalf of immigrants.²⁵ Finally, the Latinx racial category itself can include individuals who either identify as or may be perceived by others as Black, Asian, *indigena*, Native American, or white.²⁶ For many people living in the U.S., racism continues to structure differentially the experience of “federalism-all-the-way-down.” This Article tells only a part of that story.

I. IMMIGRATION FEDERALISM AND IMMIGRATION LOCALISM: WHERE THINGS STAND

Scholarship addressing immigration federalism as a specialized field of study is of a relatively recent vintage. Although there are over 450 academic journal articles in the Westlaw database that reference the term “immigration federalism,” the first apparent use of the phrase is a 1997 article by Hiroshi Motomura²⁷ responding to Gerald Neuman’s seminal study of state-level immigration laws in early U.S. history.²⁸ In his article, Motomura expressly disclaims any attempt to “articulate a comprehensive theory of immigration federalism.”²⁹ His article appeared as debates around California’s 1994 Proposition 187 and Congress’s 1996 enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) focused attention on the question of states’ legal ability to regulate

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25. See, e.g., Laura Enriquez, *Border Hopping*, *supra* note 21 (discussing API students’ presumptive exclusion from undocumented student services on campus); Laura Enriquez, et al., *Driver Licenses for All? Racialized Illegality and the Implementation of Progressive Immigration Policy in California*, 41 LAW & POL’Y 34 (2019) (discussing the relatively greater difficulty API immigrants had in accessing driver’s licenses in California after the passage of AB 60 as compared to Latinx immigrants); Breanne J. Palmer, *The Crossroads: Being Black, Immigrant, and Undocumented in the Era of #blacklivesmatter*, 9 GEO. J.L. & MOD. CRITICAL RACE PERSP. 99, 108–09 (2017) (discussing the uniquely harsh ways that immigration policies and policing impact Black immigrants, including, among many other things, limiting access to driver’s licenses under AB 60).
 26. LAURA GÓMEZ, *INVENTING LATINOS: A NEW STORY OF AMERICAN RACISM* (forthcoming 2019) (discussing the sociohistorical construction and complexity of the Latino racial category).
 27. Hiroshi Motomura, *Whose Immigration Law?: Citizens, Aliens, and the Constitution*, 97 COLUM. L. REV. 1567, 1588 (1997).
 28. GERALD L. NEUMAN, *STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS, AND FUNDAMENTAL LAW* (Princeton Univ. Press 1996); Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833 (1993).
 29. Motomura, *supra* note 27, at 1588.

immigration. These events prompted a spate of about thirty articles in the mid- to late-1990s focused on immigration federalism.³⁰

Those articles focused primarily on two questions. First, the 1996 federal welfare reform legislation prompted discussion over the distinct Equal Protection standards that applied to federal and state governments in the alienage context—rational basis review for federal laws that discriminate on the basis of alienage³¹ and strict scrutiny for state legislation³²—a distinction that was justified at least in part by the recognition of Congress’s longstanding plenary power to regulate immigration law. As Congress devolved decisionmaking authority over noncitizens’ access to welfare benefits to the states, scholars writing about immigration federalism in the mid-1990s raised questions about whether Congress could and should devolve its power to distinguish between noncitizens and citizens in the absence of compelling justifications.³³

Second, California’s Proposition 187, a restrictionist ballot initiative approved by California voters in 1994, prompted a reevaluation of assumptions concerning federal exclusivity in immigration law.³⁴ Some scholars argued in favor of delegating greater power over immigration to the states, arguing that allowing states greater latitude to regulate the policing of immigrant residents would not only lead to more effective immigration enforcement,³⁵ but would also serve as a sort of policy steam valve for xenophobic and racist impulses.³⁶ Others remained committed to federal exclusivity in immigration regulation—including as against alienage laws that operated as de facto admissions and removal policies in states—and

30. UCLA Law Review hosted a symposium on the question which generated contributions from Richard Boswell, Kevin R. Johnson, Stephen Legomsky and Gerald Neuman, among others. See generally Symposium, 42 UCLA L. REV. 1425 (1995).

31. Mathews v. Diaz, 426 U.S. 67, 82–84 (1976).

32. Graham v. Richardson, 403 U.S. 365, 371–72 (1971).

33. See, e.g., Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509 (1995); Stephen H. Legomsky, *Immigration, Federalism, and the Welfare State*, 42 UCLA L. REV. 1453 (1995); Michael J. Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 N.Y.U. L. REV. 493 (2001).

34. These developments also raised questions about the continuing legitimacy and viability of *Plyler v. Doe*, the 1982 Supreme Court case that prohibited states from denying undocumented immigrant children access to K–12 education—something that Proposition 187 attempted to do. *Plyler v. Doe*, 457 U.S. 202 (1982).

35. See, e.g., Peter H. Schuck & John Williams, *Removing Criminal Aliens: The Pitfalls and Promises of Federalism*, 22 HARV. J.L. & PUB. POL’Y 367 (1999).

36. See, e.g., Peter J. Spiro, *Learning to Live With Immigration Federalism*, 29 CONN. L. REV. 1627 (1997).

maintained that states should not be allowed to serve as “laboratories of bigotry,” discriminating against their residents on alienage grounds.³⁷

Questions concerning the scope and wisdom of federal preemption in immigration law, and the relationship between that federalism calculus and equal protection concerns, have continued to constitute a significant portion of the immigration federalism literature. Those questions gained new urgency in the wake of proliferating anti-immigrant ordinances and related litigation at the state and local level from the mid-2000s through the early 2010s.³⁸ As states have sought to play a larger role in both immigrant exclusion and immigrant integration, a growing number of scholars have argued for a more capacious vision of the states’ role in regulating various aspects of immigration and integration policy.³⁹ Others have suggested that the theoretical case for immigration localism is misguided because empirical study of immigration localism reveals that very little about immigration policy choices (and particularly restrictionist policy choices) is truly local. Instead, these policies reflect the efforts of national-level issue entrepreneurs

37. See, e.g., Wishnie, *supra* note 33.

38. See Monica W. Varsanyi et al., *A Multilayered Jurisdictional Patchwork: Immigration Federalism in the United States*, 34 *LAW & POL’Y* 138 (2012), for a discussion of the rise of anti-immigrant legislation. Some of the cases that emerged as challenges to this legislation included *Arizona v. United States*, 567 U.S. 387 (2012); *Lozano v. City of Hazelton*, 724 F.3d 297 (3d Cir. 2013) cert. denied 134 S. Ct. 1491 (2014); *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524 (2013); and *Georgia Latino Alliance for Human Rights v. Deal Ga. Latino All. for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1267 (11th Cir. 2012). For a sample of articles discussing federalism and preemption in this context, see, e.g., Abrams, *supra* note 3; Jennifer M. Chacón, *The Transformation of Immigration Federalism*, 21 *WM. & MARY BILL RTS. J.* 577 (2012); Jenny-Brooke Condon, *The Preempting of Equal Protection for Immigrants?*, 73 *WASH. & LEE L. REV.* 77 (2016); Lucas Guttentag, *Immigration Preemption and the Limits of State Power: Reflections on Arizona v. United States*, 9 *STAN. J. CIV. RTS. & CIV. LIBERTIES* 1 (2013); Lucas Guttentag, *The Forgotten Equality Norm in Immigration Preemption: Discrimination, Harassment, and the Civil Rights Act of 1870*, 8 *DUKE J. CONST. L. & PUB. POL’Y* 1 (2013); Kevin R. Johnson & Joanna E. Cuevas Ingram, *Anatomy of a Modern-Day Lynching: The Relationship Between Hate Crimes Against Latina/os and the Debate Over Immigration Reform*, 91 *N.C. L. REV.* 1613 (2013); Kevin R. Johnson, *Federalism and the Disappearing Equal Protection Rights of Immigrants*, 73 *WASH. & LEE L. REV. ONLINE* 269 (2016).

39. See, e.g., Ming H. Chen, *Immigration and Cooperative Federalism: Toward a Doctrinal Framework*, 85 *U. COLO. L. REV.* 1087 (2014); Stella Burch Elias, *The New Immigration Federalism*, 74 *OHIO ST. L.J.* 703 (2013); Bianca Figueroa-Santana, Note, *Divided We Stand: Constitutionalizing Executive Immigration Reform Through Subfederal Regulation*, 115 *COLUM. L. REV.* 2219 (2015); Amanda Frost, *Cooperative Enforcement in Immigration Law*, 103 *IOWA L. REV.* 1 (2017); Cristina M. Rodríguez, *Toward Détente in Immigration Federalism*, 30 *J.L. & POL.* 505 (2015); Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 *MICH. L. REV.* 567 (2008); James Y. Xi, *Refugee Resettlement Federalism*, 69 *STAN. L. REV.* 1197 (2017).

to exploit racism and the national partisan divide to achieve policy victories in easily-captured local contexts.⁴⁰

Changes in federal immigration policy in the early 2010s prompted a new set of inquiries around immigration federalism. The most consequential change was the development of the Secure Communities program—initiated in 2008, the last year of the George W. Bush administration, but largely implemented under President Obama.⁴¹ With a nationwide roll out of the Secure Communities program completed by 2013, the federal government effectively involved all state and local law enforcement agencies in immigration enforcement. Every arrestee's fingerprints were now submitted not only to the FBI database, but also to a DHS database designed to determine whether that person was a noncitizen out of status or otherwise removable. When agents from Immigration and Customs Enforcement (ICE) were interested in removing the individual, the agency would issue a detainer request to the local jail or state prison facility where the individual was held.⁴²

Some jurisdictions sought to opt out of the Secure Communities database screening program. Localities informed by DHS that there was no optout option took steps to disentangle their own policing efforts from interior immigration enforcement. Santa Clara County, for example, tried to opt out of Secure Communities.⁴³ When they were instructed by DHS that opting out was not an option,⁴⁴ the County redesigned its arrest policies,

40. See, e.g., S. KARTHIK RAMAKRISHNAN & PRATHEEPAN GULASEKARAM, *THE NEW IMMIGRATION FEDERALISM* (2015).

41. Sameer Ashar, *Movement Lawyers in the Fight for Immigrants Rights*, 64 *UCLA L. REV.* 1464, 1472 (2017).

42. *Id.* at 1472–73 (citing U.S. Immigration & Customs Enf't, *Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens 1* (2009) [hereinafter *Secure Communities Plan*], https://www.ice.gov/doclib/foia/secure_communities/securecommunitiesstrategicplan09.pdf [<https://perma.cc/9EYS-C7PD>]); see also U.S. Immigration & Customs Enf't, *Secure Communities Program Presentations* (2009–10) [hereinafter *Secure Communities Presentations*], https://www.ice.gov/doclib/foia/secure_communities/securecommunitiespresentations.pdf [<https://perma.cc/Z7AT-PZ7D>]).

43. *County Wants Feds to Keep Hands Off Fingerprints*, ABC7 (Sept. 29, 2010), <https://abc7news.com/archive/7694228> [<https://perma.cc/KHT4-FQKW>].

44. Beau Yarbrough, *Feds Make It Clear: Santa Clara County Can't Opt out of Controversial Immigration Program*, MERCURY NEWS (Nov. 12, 2010, 12:56 PM), <https://www.mercurynews.com/2010/11/12/feds-make-it-clear-santa-clara-county-cant-opt-out-of-controversial-immigration-program> [<https://perma.cc/HSH6-M2XQ>].

declining to comply with ICE detainer requests.⁴⁵ Other jurisdictions followed suit.⁴⁶

Many jurisdictions also made the determination that they would not hold individuals in custody beyond the period for which there was probable cause, regardless of ICE requests for holds.⁴⁷ Some jurisdictions concluded that, in the absence of probable cause, a DHS request for the continued detention of an immigrant violated that individual's Fourth Amendment right to be free from unreasonable seizure. This judgment was later validated by rulings in a number of courts across the country, putting an end to the practice of ICE holds unsupported by judicial warrants in those jurisdictions.⁴⁸ California's Trust Act,⁴⁹ which went into effect in 2014 and prohibited state and substate actors from holding individuals upon DHS or ICE request in the absence of a judicial warrant, was a reaction to the Secure Communities program and related federal enforcement efforts.⁵⁰

In recent years, as state and local efforts to limit immigration enforcement cooperation have both proliferated and become the subject of increasing federal ire, some scholars have turned to a new set of immigration federalism questions relating to immigration "sanctuary" laws. Immigration "sanctuary" jurisdictions take a variety of forms in the United States today,⁵¹ but the term generally refers to a jurisdiction that has enacted laws or policies that limit state or local collaboration with federal immigration enforcement officials. Such policies can significantly impede federal immigration

45. CTY. OF SANTA CLARA, SANTA CLARA CTY. BD. OF SUPERVISORS POLICY MANUAL, Section 3.54 (2011).

46. See Ingrid V. Eagly, *Immigrant Protective Policies in Criminal Justice*, 95 TEX. L. REV. 245, 274–280 (discussing Santa Clara's detainer policy and related detainer restrictions, and examples from other jurisdictions).

47. *Id.* at 275–278.

48. See, e.g., *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *4–11 (D. Or. Apr. 11, 2014) (finding that holds executed pursuant to an ICE request lacked basis in law and constituted a Fourth Amendment unreasonable seizure); see also Christopher Lasch, *The Faulty Legal Arguments Behind Immigration Detainers*, IMMIGR. POL'Y CTR., Dec. 2013, at 2, 4–7, https://www.americanimmigrationcouncil.org/sites/default/files/research/lasch_on_detainers.pdf [<https://perma.cc/G2B2-6QTT>]; Ingrid V. Eagly, *Criminal Justice in an Era of Mass Deportation: Reforms From California*, 20 NEW CRIM. L. REV. 12, 32–37 (2017).

49. Trust Act, 2013 Cal. Stat. 4650 (West Supp. 2014) (codified at CAL. GOV'T CODE §§ 7282–7282.5).

50. See Recent Legislation, *Immigration Law—Criminal Justice and Immigration Enforcement—California Limits Local Entities' Compliance With Immigration and Customs Enforcement Detainer Requests—Trust Act*, 2013 Cal. Stat. 4650 (codified at CAL. GOV'T CODE §§ 7282–7282.5 (West Supp. 2014)), 127 HARV. L. REV. 2593, 2594–95 (2014).

51. Christopher N. Lasch et al., *Understanding "Sanctuary Cities"*, 59 B.C. L. REV. 1703, 1709–1712 (2018).

enforcement efforts because the current immigration enforcement system largely relies on criminal enforcement actors as the frontline initiators of the removal process.⁵² It is important to stress that these jurisdictions are not really sanctuaries in that they do not purport to, nor do they actually, prevent the federal government from actively enforcing immigration law within their jurisdictions.⁵³ This stands in marked contrast to spaces like churches that have operated as sanctuaries by preventing federal immigration enforcement on their grounds.⁵⁴ In this sense, “sanctuary cities” might better be described instead as “limited cooperation jurisdictions.” These jurisdictions have implemented initiatives “declining to honor immigration detainees, precluding participation in joint operations with the federal government, and preventing immigration agents from accessing local jails.”⁵⁵

These policies have raised new kinds of federalism questions and revitalized explorations of the possibilities of immigration localism.⁵⁶ A

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52. See RANDY CAPPS ET AL., MIGRATION POLICY INST., *REVVING UP THE DEPORTATION MACHINERY: ENFORCEMENT UNDER TRUMP AND THE PUSHBACK 2* (2018), <https://www.migrationpolicy.org/research/revving-deportation-machinery-under-trump-and-pushback> [<https://perma.cc/U856-XWEK>] (noting that 85 percent of immigrant removals commenced in state or local jails in the period from 2008–2011 under President Obama, and 69 percent of arrests commenced that way during the first 135 days of President Trump’s presidency); see also Jennifer M. Chacón, *Overcriminalizing Immigration*, 102 J. CRIM. L. & CRIMINOLOGY 613, 643–645 (2012) (discussing the rise of 287(g) agreements and the rollout of Secure Communities as turning points in subfederal immigration enforcement); cf. Hiroshi Motomura, *The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Line*, 58 UCLA Law Rev. 1819, 1848 (noting that state and local arrest authority is also exercised at a point when almost all discretion in the immigration system is no longer available, making their arrest decisions particularly consequential). This explains why state and local law enforcement are now well-positioned to sever the links between their own actions and federal immigration enforcement actions, and why the most recent “sanctuary” debate has centered on law enforcement practices.
 53. See Lasch et al., *supra* note 51, at 1736–39 (2018) (providing a typology of contemporary sanctuary policies, all of which involve limits on immigration enforcement cooperation and collaboration); Rose Cuison Villazor, *What Is A “Sanctuary”?*, 61 SMU L. REV. 133, 148 (2008) (describing prototypical contemporary public sanctuary laws as “noncooperation” or “don’t ask, do tell” laws).
 54. Villazor, *supra* note 53, at 138–42. The immigration sanctuary movement of the 1980s looked very different, and was led by churches. See Hector Perla & Susan Bibler Coutin, *Legacies and Origins of the 1980s US–Central American Sanctuary Movement*, 26 REFUGE 7 (2009).
 55. Lasch et al., *supra* note 51, at 1704.
 56. David J. Barron explains that “localism . . . defines the relations between states and their local governments.” David J. Barron, *A Localist Critique of the New Federalism*, 51 DUKE L.J. 377, 381 (2001). For recent examples of immigration localism analyses, see, e.g., Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954 (2019).

relatively recent wave of scholarship has focused on the extent to which anticommandeering principles and limits on unconstitutional conditions protect states and localities attempting to limit their enforcement cooperation.⁵⁷ Judges are currently addressing these questions in courts across the country.⁵⁸ And as states have enacted legislation requiring their state and local law enforcement agents to maximize cooperation with federal enforcement efforts,⁵⁹ a number of scholars have argued in favor of some degree of local autonomy (distinct from state autonomy) in immigration enforcement policy.⁶⁰ They have suggested that anticommandeering principles that apply to states vis-à-vis the federal government should also apply to local governments in their relations with their states.⁶¹

In short, over the past three decades, the immigration federalism literature has focused on many of the same questions common in federalism scholarship more generally—the relationship between distribution of governmental power and individual rights, the appropriate scope of federal preemption, and the contours and limits of anticommandeering principles under the Tenth Amendment.⁶² Moreover, immigration federalism, often sidelined in broader federalism analyses, is now increasingly playing a role as

57. See, e.g., Spencer E. Amdur, *The Right of Refusal: Immigration Enforcement and the New Cooperative Federalism*, 35 YALE L. & POL'Y REV. 87 (2016); Jessica Bulman-Pozen, *Preemption and Commandeering Without Congress*, 70 STAN. L. REV. 2029 (2018); Trevor George Gardner, *The Promise and Peril of the Anti-Commandeering Rule in the Homeland Security Era: Immigrant Sanctuary as an Illustrative Case*, 34 ST. LOUIS U. PUB. L. REV. 313 (2015); Pratheepan Gulasekaram et al., *Anti-Sanctuary and Immigration Localism*, 119 COLUM. L. REV. 837 (2019).

58. See, e.g., *City & Cty. of S. F. v. Trump*, 897 F.3d 1225 (9th Cir. 2018); *City of Chi. v. Sessions*, 264 F. Supp. 3d 933, 951 (N.D. Ill. 2017).

59. See, e.g., S.B. 4, 85th Leg., Reg. Sess. (Tex. 2017); Ind. Code § 5-2-18-2 (2018); Iowa Code § 825.7 (2018); Miss. Code Ann. § 25-1-119 (2017); H.B. 318, Gen. Assemb., Reg. Sess. (N.C. 2015); H.B. 2315, 110th Gen. Assemb., Reg. Sess. (Tenn. 2018); CAPPS ET AL., *supra* note 43.

60. See, e.g., Barron, *supra* note 56; Lasch et al., *supra* note 51; Christine Kwon & Marissa Roy, *Local Action, National Impact: Standing Up for Sanctuary Cities*, 127 YALE L.J. F. 715 (2018).

61. Gulasekaram et al., *supra* note 57.

62. See, e.g., Jessica Bulman-Pozen, *Executive Federalism Comes to America*, 102 VA. L. REV. 953 (2016); Gerken, *supra* note 11; Bridget A. Fahey, *Consent Procedures and American Federalism*, 128 HARV. L. REV. 1561 (2015); Brian Galle & Mark Seidenfeld, *Administrative Law's Federalism: Preemption, Delegation, and Agencies at the Edge of Federal Power*, 57 DUKE L.J. 1933 (2008); Abbe R. Gluck, *Our [National] Federalism*, 123 YALE L.J. 1996 (2014); Gillian E. Metzger, *Administrative Law as the New Federalism*, 57 DUKE L.J. 2023 (2008); Robert A. Schapiro, *Toward a Theory of Interactive Federalism*, 91 IOWA L. REV. 243 (2005); Miriam Seifter, *Federalism at Step Zero*, 83 FORDHAM L. REV. 633 (2014).

a case study. Even the often-lonely domain of immigration localism⁶³ is the subject of recent scholarly attention. While the theoretical federalism literature might ignore subfederal “special purpose institutions,”⁶⁴ the role of school boards, zoning boards, and other such institutions have played an important role in the scholarly inquiries undertaken by some scholars of immigration localism for some time.⁶⁵

But it is still the case that much of the recent work on federalism and localism operates at a relatively high level of abstraction with respect to immigration law and policy. More information about the nature and scope of state and substate immigration policy choices could usefully inform the theoretical and doctrinal questions at the heart of debates over immigration federalism and localism. Indeed, paying attention to various sites of subfederal immigration policymaking and enforcement reveal important lessons about the loci of immigration enforcement discretion. The following Part uses immigration federalism in Southern California as a case study to explore the realities of immigration federalism and the promises and peril of greater local control in this area.

II. ON THE GROUND: IMMIGRATION FEDERALISM

Local efforts aimed at affecting immigration enforcement have unfolded against a rapidly fluctuating set of federal immigration enforcement policies and California’s own reactive policies. Before delving into the local scene, it is important to lay out this broader context.

A. Shifting National Policies

Under President Obama, the federal government formally removed record numbers of noncitizens.⁶⁶ Central to these efforts was the increased

63. See, e.g., Keith Aoki et al., *(In)visible Cities: Three Local Government Models and Immigration Regulation*, 10 OR. R. INT’L L. 453 (2008); Rick Su, *Police Discretion and Local Immigration Policymaking*, 79 UMKC L. REV. 901 (2011).

64. Gerken, *supra* note 11 at 22 (lodging this critique against federalism scholars).

65. See, e.g., Rick Su, *Local Fragmentation as Immigration Regulation*, 47 HOUS. L. REV. 367, 370–71 (2010) (exploring how “local spatial controls like zoning, and local membership controls like residency” have operated as forms of immigration regulation).

66. As noted by the Migration Policy Institute, this claim is both true and complicated. When formal removal orders and informal returns are aggregated, Presidents Clinton and George W. Bush actually removed and returned many more immigrants than did President Obama. But in the early years of his presidency, President Obama oversaw the issuance of more formal removals each year than in any given year for any of his predecessors. This was the result of the Obama administration’s preference for

involvement of state and local law enforcement. These agencies' arrest data were leveraged through the Secure Communities program,⁶⁷ and some of their jails functioned as temporary immigration detention space when ICE asked local jailers to detain immigrants targeted for removal.

Federal law bars state and local governments from “prohibit[ing], or in any way restrict[ing], any government entity or official from sending to, or receiving from [federal immigration authorities] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”⁶⁸ It does not require (and at least some federal legislators probably did not intend to permit) states and local investigations of immigration status or detentions of noncitizens for immigration violations. It does, however, allow state and local government officials to participate in immigration enforcement when so authorized pursuant to express agreement with and under the supervision of the federal government. Such cooperative agreements are generally known as 287(g) agreements, named after the section of the Immigration and Nationality Act in which they are described.⁶⁹

In the absence of a definitive cooperation mandate from the federal government, and in the face of law enforcement goals and priorities that conflicted with immigration enforcement cooperation, some localities did what they could to limit their cooperation with the federal government.⁷⁰ But other local agencies sought to maximize their immigration enforcement efforts,⁷¹ entering into 287(g) agreements with the federal government and shifting local law enforcement resources toward the policing of Latinx neighborhoods and residents in troubling attempts to compliment federal immigration enforcement.⁷² The result was what Marie Provine, Monica

entering formal removal orders against individuals who crossed the border with authorization (individuals who previously might have been sent back without any formal order). President Obama's enforcement efforts shifted over time to deprioritize longtime residents in favor of a focus on recent entrants. Muzaffar Chistie et al., *The Obama Record on Deportations: Deportee in Chief or Not?*, MIGRATION POLICY INSTITUTE (January 26, 2017), <https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not> [https://perma.cc/J3TB-R3X4].

67. See discussion *supra* at notes 42–43.

68. 8 U.S.C. § 1373(a) (2006).

69. Immigration and Nationality Act § 287(g), 8 U.S.C. 1357(g) (2012).

70. See DORIS MARIE PROVINE ET AL., POLICING IMMIGRANTS: LOCAL LAW ENFORCEMENT ON THE FRONT LINES 40–41 (2016) (describing varied local reactions and responses to Secure Communities and other federal enforcement efforts).

71. *Id.*

72. See AMADA ARMENTA, PROTECT, SERVE, AND DEPORT: THE RISE OF POLICING AS IMMIGRATION ENFORCEMENT 13 (2017) (tracing the adoption and implementation of the 287(g) program in Nashville, Tennessee, and explaining how the agreement led to

Varsanyi, Paul Lewis and Scott Decker call a “multijurisdictional patchwork of enforcement policies and practices” that was largely shaped by local law enforcement choices.⁷³ And although the federal government maintained that it focused its removal efforts on the “worst of the worst,” the reality was that most people deported during this period—disproportionately Black and Latinx residents⁷⁴—posed no threat to the public.⁷⁵

In the two-year period from late 2014 through the end of 2016, the Obama administration made a number of high-profile efforts to reduce some of the wild local variability and punitive excesses of immigration enforcement. The administration expanded and adopted (or attempted to adopt) policies to alleviate immigration laws’ potentially harsh effects on removable immigrant residents with exceptionally strong equities favoring their continued residence.⁷⁶ This included the expanded use of administrative case closures to forestall removal of individuals with strong equities but no path to legal status, and other exercises of prosecutorial discretion aimed at prioritizing the removal of recent entrants and residents with criminal records over longtime residents with little to no contact with the criminal enforcement system.⁷⁷

The efforts to control and limit enforcement discretion also included two formal, large-scale deferred action programs designed by the Obama administration to shield segments of the unauthorized population from removal. First, the administration announced the Deferred Action for Childhood Arrivals program (DACA) in June of 2012 and put it into effect

increased profiling of Latinx residents). See also Mathew Coleman, *The “Local” Migration State: The Site-Specific Devolution of Immigration Enforcement in the U.S. South*, 34 LAW & POL’Y 159 (2012); Mary Romero, *Constructing Mexican Immigrant Women as a Threat to American Families*, 37 INT’L J. OF SOC. OF THE FAM. 49, 54 (2011) (discussing Sheriff Arpaio’s “crime suppression sweeps” targeting poor Latino communities in Arizona after the county entered a 287(g) agreement). For a detailed discussion of the 1997 Chandler Roundups, to which Romero’s article alludes, see Mary Romero, *Racial Profiling and Immigration Law Enforcement: Rounding Up of Usual Suspects in the Latino Community*, 32 CRITICAL SOC. 447 (2006).

73. PROVINE ET AL., *supra* note 70 at 3 (emphasis omitted).

74. TANYA MARIA GOLASH-BOZA, *DEPORTED: IMMIGRANT POLICING, DISPOSABLE LABOR AND GLOBAL CAPITALISM* (2015).

75. See, e.g., Bill Ong Hing, *The Failure of Prosecutorial Discretion and the Deportation of Oscar Martinez*, 15 SCHOLAR 437 (2013); GOLASH-BOZA, *supra* note 74, at 8–9 (explaining that nearly half of immigrants removed in 2013 had no criminal record, and the bulk of those who did were guilty of immigration offenses and minor traffic offenses.).

76. Jennifer M. Chacón, *Immigration and the Bully Pulpit*, 130 HARV. L. REV. F. 243, 250–53 (2017).

77. See *id.* at 243, 250–53; see also CAPPES ET AL., *supra* note 52, at 16–19.

three months later.⁷⁸ Second was the more ambitious but ultimately doomed Deferred Action for Parents of U.S. Citizens and Lawful Permanent Residents (DAPA) and expanded DACA program (hereinafter DACA+).⁷⁹ The combined DAPA and DACA+ program was announced in late 2014, but was enjoined by the courts prior to implementation in early 2015.⁸⁰ Although often characterized as immigration status-altering measures, including by district court that enjoined them, these were really law enforcement programs designed to set transparent and consistent limits on the exercise of enforcement discretion.⁸¹

If 2014–2016 was a period of increasingly centralized control over immigration enforcement discretion, the period from 2017 to the present is largely characterized by federal immigration enforcement initiatives aimed at decentralizing and diffusing immigration enforcement discretion.⁸² President Trump's high profile ban on immigrants from several predominantly Muslim countries captured much of the national attention on immigration matters in the early days of his presidency,⁸³ but many other efforts of his administration were aimed at reversing President Obama's immigration initiatives. Former Attorney General Sessions instructed immigration judges to decide immigration cases quickly, discouraged (and, indeed sought to eliminate) administrative case closure as a means of injecting a degree of enforcement discretion into the immigration laws in

78. *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP & IMMIGRATION SERVS. (last visited Oct. 5, 2019), <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca> [<https://perma.cc/W2DY-F4QN>] (announcing the program); <https://obamawhitehouse.archives.gov/blog/2012/08/15/deferred-action-childhood-arrivals-who-can-be-considered> (announcing the beginning of the application period).

79. Memorandum from Jeh Charles Johnson, Sec'y of Homeland Sec., for Leon Rodriguez et al., *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf [<https://perma.cc/9TKR-4FC2>].

80. For a detailed discussion of the announced program and injunction see Anil Kahlhan, *Deferred Action, Supervised Enforcement Discretion, and the Rule of Law Basis for Executive Action on Immigration*, 63 UCLA L. REV. DISC. 58 (2015).

81. *Id.* at 62–64.

82. Chacón, *supra* note 15, at 313–16.

83. For a discussion of the history of the ban, see *Trump v. Hawaii*, 138 S. Ct 2392, 2399–2400 (2018). The U.S. Supreme Court upheld the ban, which severely restricts immigration from six predominantly Muslim countries and North Korea, and banned some immigrants from Venezuela. *Id.*

individual cases,⁸⁴ and narrowed avenues for relief from removal for asylum seekers.⁸⁵ The Trump administration also shelved DAPA and attempted to rescind DACA.⁸⁶

Under President Trump, the Department of Homeland Security also has revoked or attempted to revoke the legal protections of tens of thousands of Haitians, Salvadorans, Sudanese and Honduran migrants living in the country with Temporary Protected Status (TPS).⁸⁷ And U.S. Citizenship and Immigration Services issued a rule that precludes many immigrants from entering or adjusting their status on economic grounds.⁸⁸

Rather than focusing enforcement resources on immigrants who are identified as a high priority for removal, the current administration has made clear that it plans to treat all immigrants present without authorization, all immigrants with lawful immigration status but in violation of the terms of their admission, and many immigrants with temporary but revocable protections from removal as priorities for removal.⁸⁹ Throughout, President Trump has been clear and consistent about his animosity toward Mexican immigrants, Muslim immigrants and immigrants from countries like

84. See *Matter of Castro-Tum*, 27 I&N Dec. 271, 272 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1064086/download> [<https://perma.cc/3WHX-DBKR>].

85. See, e.g., *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1070866/download> [<https://perma.cc/7QQ3-A6A2>] (limiting avenues for asylum relief).

86. Attorney General Sessions announced the Administration's decision to end the program on September 5, 2017. *Attorney General Sessions Delivers Remarks on DACA*, U.S. DEP'T OF JUSTICE (Sept. 5, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca> [<https://perma.cc/VG42-MYL9>]. Various plaintiffs challenged the legality of the rescission, and the program currently remains operational pursuant to various court orders as the litigation continues. See, e.g., *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018) (order granting preliminary injunction); see also *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018) *aff'd* *Regents of the University of California v. U.S. Department of Homeland Security*, 908 F.3d 476, 492 (9th Cir. 2019) *cert. granted sub nom. Department of Homeland Security v. Regents of the University of California*, 139 S. Ct. 2779 (2019) (order granting requiring the administration to continue to accept DACA renewal applications).

87. Joseph Tanfani & Tracy Wilkinson, *Trump Administration Ending Temporary Status for Hondurans, the Latest Immigrant Group to Have Protections Revoked*, L.A. TIMES (May 4, 2018), <http://www.latimes.com/politics/la-na-pol-tps-honduras-20180504-story.html> [<https://perma.cc/A6PJ-WT29>].

88. U.S. CITIZENSHIP AND IMMIGRATION SERVS., FINAL RULE ON PUBLIC CHARGE GROUND OF INADMISSIBILITY (last updated Oct. 16, 2019), <https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility> [<https://perma.cc/AX44-HTYA>].

89. See *CAPPS ET AL.*, *supra* note 52, at 2–3.

Honduras and Haiti. Immigrants from Latin America and the Caribbean continue to comprise almost all immigrants removed from the United States.⁹⁰

B. California's Evolving Policies

Historically, California has been a leader in anti-immigrant efforts. California's efforts to limit Chinese migration at the end of the nineteenth century provided much of the impetus for the federal Chinese Exclusion Act.⁹¹ California's Proposition 187, a restrictionist ballot initiative approved by voters in 1994,⁹² is sometimes credited as a driver of restrictionist federal legislation in the mid-1990s.⁹³ But changing demographics and politics in California in recent years have resulted in a shift in the state's immigration-related policies.⁹⁴ Beginning in 1996 with the passage of a bill that provided prenatal care for all women in the state, California enacted several laws that have facilitated the inclusion of both authorized and unauthorized immigrants across the domains of health care, higher education, housing and employment.⁹⁵ Karthick Ramakrishnan and Allan Colbern have labeled these laws the "California Package of Immigrant Integration" and argue that these laws have created "a de facto regime of state citizenship, one that operates in parallel to national citizenship and, in some important ways, exceeds the standards of national citizenship . . ."⁹⁶

As federal immigration enforcement efforts increasingly have been channeled through state and local law enforcement under President Obama and President Trump, the State of California also pushed back with a variety

90. See *Latest Data: Immigration and Customs Enforcement Removals*, TRAC IMMIGRATION (Aug. 2018), <https://trac.syr.edu/phptools/immigration/remove> [<https://perma.cc/4E5E-974T>].

91. ANDREW GYORY, *CLOSING THE GATE: RACE, POLITICS, AND THE CHINESE EXCLUSION ACT 1-2* (1998); Erika Lee, *The Chinese Exclusion Example: Race, Immigration, and American Gatekeeping, 1882-1924*, 21.3 J. AM. ETHNIC HIST., 38-39 (2002).

92. For a discussion of the politics surrounding the enactment of Proposition 187, see Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995).

93. Spiro, *supra* note 36, at 1632-33.

94. See generally MANUEL PASTOR, *STATE OF RESISTANCE: WHAT CALIFORNIA'S DIZZYING DESCENT AND REMARKABLE RESURGENCE MEAN FOR AMERICA'S FUTURE* (2018) (describing and exporing root causes of these changes in California politica).

95. See generally S. Karthick Ramakrishnan & Allan Colbern, *The "California Package" of Immigrant Integration and the Evolving Nature of State Citizenship* (July 8, 2015), https://irle.ucla.edu/old/publications/documents/IRLEReport_Full.pdf [<https://perma.cc/5JZ6-AN26>].

96. *Id.* at 2.

of criminal enforcement-related reform measures aimed at reducing the harm of criminal law enforcement on the state's immigrant communities. With the exception of an early and thwarted effort at providing drivers licenses to unauthorized immigrant residents,⁹⁷ these measures came into effect beginning in 2014, just after the nationwide implementation of the Secure Communities program. Several significant measures have been aimed at removing state officials from federal civil immigration enforcement cooperation to the extent permitted by federal law. Most significantly, on January 2, 2014, the California TRUST Act went into effect.⁹⁸ The TRUST Act limits information sharing between state and local police and federal immigration enforcement officials to the extent permitted by federal law,⁹⁹ and outlines limitations on when state, county and local officials can comply with ICE detainer requests.

Since the election of Donald J. Trump as president, the California legislature has enacted additional immigrant-protective measures aimed squarely at short-circuiting state and local participation in federal enforcement efforts. These include AB 450,¹⁰⁰ which limits federal immigration enforcement agents' access to private workplaces, and AB 103,¹⁰¹ an omnibus budget provision which imposes on immigration detention facilities certain requirements concerning conditions of confinement and attorney access. These laws—along with SB 54, discussed below—prompted a lawsuit by the federal government, in which the U.S. Attorney General argued, thus far largely unsuccessfully, that AB 450, AB 103 and SB 54 exceed the state's constitutional power.¹⁰² A number of counties and localities in

97. *Id.* at 9 (explaining that such licenses were authorized by law in 2003, but noting that the authorization was repealed by the legislature under Governor Schwarzenegger).

98. TRUST Act, A.B. 4, 2013 State Assemb., 2013–2014 Reg. Sess. (Cal. 2013).

99. 8 U.S.C. § 1373, as previously noted, prohibits state and local laws that “prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

100. See CAL. GOV'T CODE §§ 7285.1–3 (West 2019); CAL. LAB. CODE §§ 90.2, 1019.2 (West 2019).

101. See CAL. GOV'T CODE §§ 7310–11 (West 2019); see also CAL. GOV'T CODE § 12532 (West 2019). California recently issued its first mandated report under AB 103. Xavier Becerra, Cal. Att'y Gen., *Review of Immigration Detention in California*, CAL. DEP'T OF JUSTICE iii–iv (Feb. 2019), <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf> [<https://perma.cc/A3BG-22CN>] (finding that immigrants in detention in California have “extremely limited freedom of movement,” face “harsh disciplinary practices” and language access barriers, confront “delayed or inadequate medical care” and mental health services, and lack adequate access to legal representation and legal resources).

102. Complaint at 1–3, *United States v. California*, 314 F. Supp. 3d 1077 (E.D. Cal. 2018) (No. 18–264). The federal district court dismissed the challenges to AB 103 and the

California joined in the lawsuit on the side of the federal government, and one city filed its own lawsuit challenging the legality of SB 54.¹⁰³

Other state legislative measures have been aimed at further decoupling state criminal process from immigration enforcement. This includes the aforementioned SB 54, which imposes more limits than the 2014 TRUST Act on state officials' coordination with federal immigration enforcement efforts and applies to a broader array of officials than the TRUST Act.¹⁰⁴ Other important legislative efforts have received less attention and have not been the subject of federal lawsuits. On July 21, 2014, Governor Brown signed SB 1310, a revision to the California Penal Code limiting misdemeanor sentences to 364 days.¹⁰⁵ Although this operates as a broad criminal law reform, one of the main effects of enacting this policy is avoiding the previously-existing situation under which California misdemeanor sentences were triggering the numerous negative consequences (including deportation and a lifelong ban on return) associated with an "aggravated felony" in immigration law.¹⁰⁶ A second law aimed at mitigating the immigration consequences of criminal justice contact required prosecutors to take into account the immigration

noncommunication provisions of SB 54. *United States v. California*, 314 F. Supp. 3d 1077 (E.D. Cal. 2018). The district court preliminarily enjoined AB 450's consent and access restrictions on DHS access to workplaces and its reverification requirements, but not its requirement that employers notify employees of ongoing ICE inspections of I-9s. *Id.* The Ninth Circuit affirmed most of the district court's ruling, but found that AB 103's provision requiring inspection of the circumstances surrounding the apprehension and transfer of immigrant detainees (but not its other inspection provisions) violated the intergovernmental immunity doctrine. The court therefore enjoined that provision as well. *United States v. California*, 921 F.3d 865 (9th Cir. 2019).

103. See discussion *infra* at Parts II.C–II.D, notes 167–271.

104. See CAL. GOV'T CODE §§ 7282, 7282.5 (West 2019); see also CAL. HEALTH & SAFETY CODE § 11369 (West 2007).

105. Patrick McGreevy, *Gov. Brown Signs Bill to Reduce Deportations for Minor Crimes*, L.A. TIMES (July 21, 2014, 7:29 PM), <https://www.latimes.com/local/crime/la-me-pol-brown-364-days-20140722-story.html> [<https://perma.cc/CLS9-CVXE>]; see CAL. PENAL CODE § 18.5 (West 2014).

106. Some common criminal convictions will only qualify as aggravated felonies if they carry a possible sentence of a year or more. See, e.g., 8 U.S.C. § 1101(a)(43)(F) (crimes of violence) & (G) (theft offenses). For a discussion of the full immigration consequences of committing an "aggravated felony," see DANIEL KANSTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* 227–28 (2007); Teresa A. Miller, *Blurring the Boundaries Between Immigration and Crime Control After September 11th*, 25 B.C. THIRD WORLD L.J. 81, 83–85 (2005); Nancy Morawetz, *Rethinking Retroactive Deportation Laws and the Due Process Clause*, 73 N.Y.U. L. REV. 97, 108 n.48 (1998).

consequences of plea bargains.¹⁰⁷ A third, AB 60, allowed for the issuance of driver's licenses to individuals present in the state without legal immigration status,¹⁰⁸ potentially removing a significant source of police stops of immigrant drivers on the streets of California. Although immigrant-protective measures initially evolved as rather understated efforts to decouple state policing efforts from federal civil immigration law enforcement, over the past three years the state actors involved in promoting and enforcing these policies have intentionally styled themselves as the resistance to federal immigration enforcement efforts that they present as overreaching manifestations of racist, white nationalist ideology.¹⁰⁹

C. Los Angeles County

Notwithstanding the popular resistance narrative, local and regional activism gave rise to subfederal governmental commitments to immigrant-protective measures in California long before President Trump took office. Many came into being during President Obama's unprecedented expansion of interior enforcement,¹¹⁰ as Southern California activists pressured governmental officials to offer immigrant residents more security and stability through local policy. These efforts had a notable, if uneven, effect on law enforcement policies in Los Angeles. Various governmental entities in Los Angeles County began enacting or reaffirming existing immigrant-protective policies. At the same time, some frontline law enforcement agents continued to exercise enforcement discretion in ways that did not square neatly with policies and statements made by Los Angeles officials. A closeup look at how limited cooperation policies have been implemented reveals that these local policies are not always as protective as public rhetoric might suggest.

107. For a discussion of this and other previously mentioned reforms, *see generally* Eagly, *supra* note 46.

108. *AB 60 Driver License*, STATE OF CAL. DEP'T OF MOTOR VEHICLES, <https://www.dmv.ca.gov/portal/dmv/detail/ab60> [<https://perma.cc/A9RL-XS47>].

109. *See, e.g.*, Marie Sacchetti, *Defiance, Resistance: The Front Lines of California's War Against the Trump Administration*, WASH. POST (March 18, 2018) https://www.washingtonpost.com/local/immigration/defiance-resistance-the-front-lines-of-californias-war-against-the-trump-administration/2018/03/11/45e7833e-2309-11e8-86f6-54bfff693d2b_story.html.

110. *See* discussion *supra* at note 61.

1. Demographics

As of 2018, Los Angeles County was home to just over 10 million residents, almost 4 million of whom lived in the City of Los Angeles.¹¹¹ Long Beach was the county's second largest city with a population of about 460,000.¹¹² The other 86 incorporated cities in the county had fewer than 215,000 residents.¹¹³ About half of the city and county population was Hispanic.¹¹⁴ Just over 15 percent of the county's population (and 11.7 percent of the city's population) identified as Asian, and about 9 percent of both city and county populations were Black. Non-Hispanic Whites made up 26.1 percent of the county and 28.4 percent of the city population. Less than 5 percent of city and county residents were American Indians, Alaska Native, and Hawaii Native, other Asian and Pacific Islanders (APIs), and those identifying as "two or more races."

About 34.4 percent of the county residents and 37.6 percent of the city residents were foreign born.¹¹⁵ Using 2012–2016 census data, the Migration Policy Institute estimated that approximately one million of the residents of the county at that time—about 10 percent of the total population—were unauthorized migrants.¹¹⁶ Sixty percent of these individuals were Mexican nationals, 10 percent were Salvadoran and 9 percent were Guatemalan. In all, Mexicans and Central Americans make up 82 percent of the unauthorized population in Los Angeles County.¹¹⁷

111. *QuickFacts Los Angeles County, California; Los Angeles city, California* [hereinafter *QuickFacts LA*], U.S. CENSUS BUREAU (2018), <https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,losangelescitycalifornia/PST045217> [<https://perma.cc/A4HS-M42U>].

112. *QuickFacts Long Beach City, California*, U.S. CENSUS BUREAU (2018), <https://www.census.gov/quickfacts/fact/table/longbeachcitycalifornia/PST045218> [<https://perma.cc/6367-NC5P>].

113. *Most Populous Cities Los Angeles County*, LOS ANGELES ALMANAC, <http://www.laalmanac.com/population/po32.php> [<https://perma.cc/RT9D-FBRP>].

114. *QuickFacts LA*, *supra* note 111.

115. *Id.*

116. *See Profile of the Unauthorized Population: Los Angeles County, CA*, MIGRATION POLICY INST., <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/6037> [<https://perma.cc/X2XB-3FTV>]; *see also Estimates of U.S. Unauthorized Immigrant Population, by Metro Area, 2016 and 2007*, PEW RESEARCH CTR. (Mar. 11, 2019), <https://www.pewhispanic.org/interactives/unauthorized-immigrants-by-metro-area-table> [<https://perma.cc/QA5X-Z78G>] (estimating a population of 925,000 unauthorized immigrants in the Los Angeles-Long Beach-Anaheim metro area, but not providing a number for the full county).

117. *Profile of the Unauthorized Population: Los Angeles County, CA*, *supra* note 116. Nationals of the Philippines and China round out the top 5 list, comprising 4 percent and 3 percent of the population respectively. *Id.*

2. Key Governmental Entities

Los Angeles County is a charter county, so it can create and enforce local ordinances as long as those ordinances do not conflict with state law.¹¹⁸ The county government is run by a five-member board of supervisors, a relatively powerful entity that is responsible for the county budget and has executive, legislative and quasijudicial roles.¹¹⁹

The county's top law enforcement officer is the sheriff, who is directly elected. The Los Angeles County Sheriff's Department (LASD) is the largest sheriff's department in the country with more than 18,000 employees, and it provides general law enforcement services to hundreds of facilities in the county, 141 unincorporated communities and 42 cities.¹²⁰ The Los Angeles County Sheriff's Department is one of the most important enforcement intermediaries between immigrants and the federal government, not because it has policing jurisdiction in unincorporated areas of the county (though it does), but because it runs the county's massive jail system, and therefore controls access to what is perhaps the most important funnel from local law enforcement into federal immigration enforcement efforts. Los Angeles County jails hold about 18,000 inmates a day across 7 facilities, making it the largest jail system in the country.¹²¹

118. CAL. CONST. art. XI, §§ 3–4. *Local Governments*, GEORGETOWN LAW LIBRARY, <https://guides.ll.georgetown.edu/california-in-depth/local-governments> [<https://perma.cc/87M9-KM6H>].

119. The board's website explains that in unincorporated areas, the board functions similarly to a mayor. Furthermore, "[i]n its legislative role, the Board may adopt ordinances and rules, both to control the administration of County government and to regulate public conduct" in unincorporated areas. And "[a]cting in a quasijudicial capacity, the Board acts as an appeals board on zone exception cases of the Regional Planning Commission" and "sits for hearings on county improvement districts and on appeals in licensing matters." *Responsibilities of the Board of Supervisors*, COUNTY OF LOS ANGELES (last visited Oct. 5, 2019), http://file.lacounty.gov/SDSInter/lac/1031549_BoardResponsibilities.pdf [<https://perma.cc/MAX2-YLH6>].

120. *About Us*, L.A. CTY. SHERIFF'S DEP'T, http://lasd.org/about_us.html [<https://perma.cc/9KV9-FV3E>].

121. *Id.* (providing the current population of the jail); Breeanna Hare and Lisa Rose, *Pop. 17,049: Welcome to America's largest jail*, CNN.com, September 26, 2016 (<https://www.cnn.com/2016/09/22/us/lisa-ling-this-is-life-la-county-jail-by-the-numbers/index.html>); see generally KELLY LYTTLE HERNÁNDEZ, CITY OF INMATES (2016) (discussing the historical origins of the nation's largest jail system and its adjacent carceral facilities).

The county is also home to twenty-two public community colleges, including ten in the City of Los Angeles.¹²² There are six California State University campuses in the county,¹²³ and one University of California campus.¹²⁴

The county's largest city, by far, is Los Angeles. Los Angeles is a charter city¹²⁵ that has the authority to enact local laws that expand city authority beyond the requirements of the state's general law.¹²⁶ "The [city's] charter establishes a city council made up of 15 members, elected to four-year terms by individual geographic districts of nearly equal size."¹²⁷ Lawmaking authority lies with the city council.

The elected officials of Los Angeles "include three citywide office holders elected at large (by all the city's voters). They are the mayor, the city attorney and the city controller."¹²⁸ The mayor appoints the members of the city's commissions, as well as the heads of departments (subject to the approval of the city council).¹²⁹ The chief of police for the Los Angeles Police Department (LAPD) is appointed by the mayor, subject to the approval of the city council.¹³⁰ The chief of police "has jurisdiction within the City of Los Angeles and line command authority over 10,354 sworn and 3,640 civilian employees."¹³¹ The LAPD perform the law enforcement functions of the city (though management of the jail facilities is performed by LASD,¹³²) and the

122. *Public Community Colleges Los Angeles County*, LA ALMANAC, <http://www.laalmanac.com/education/ed38.php> [<https://perma.cc/6BRA-3FGT>].

123. *Cal State Campuses*, CAL STATE ONLINE, <https://www.calstateonline.net/Cal-State-Campuses> [<https://perma.cc/BPX2-RV5C>].

124. On the importance of considering colleges and universities as sites of immigration policy, see Laura Enriquez et al., *Mediating Illegality: Federal, State, and Institutional Policies in the Educational Experiences of Undocumented College Students*, 44 *Law & Social Inquiry* 679–703 (2019) (exploring the ways that college campus policies impact the lived experience of undocumented students).

125. *Charter Cities*, CA CITIES, http://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Charter_Cities-List [<https://perma.cc/B7EE-Q37E>].

126. *Local Governments*, *supra* note 118.

127. RAPHAEL J. SONENSHEIN, *THE LEAGUE OF WOMEN VOTERS OF LOS ANGELES, LOS ANGELES: STRUCTURE OF A CITY GOVERNMENT* 21 (2006), <https://my.lwv.org/sites/default/files/leagues/los-angeles/structureofacity.pdf> [<https://perma.cc/26TW-XPL9>].

128. <https://my.lwv.org/sites/default/files/leagues/los-angeles/structureofacity.pdf>.

129. *Forms of Government*, CITY OF LA, <https://www.lacity.org/your-government/government-information/form-government> [<https://perma.cc/VHZ8-VG82>].

130. *Office of the Chief of Police*, LA POLICE DEP'T, http://www.lapdonline.org/inside_the_lapd/content_basic_view/834 [<https://perma.cc/QZ6Z-G8VD>].

131. *Id.*

132. *About Us*, L.A. CTY. SHERIFF'S DEP'T, http://lasd.org/about_us.html [<https://perma.cc/9KV9-FV3E>].

Los Angeles County Probation Department has jurisdiction over certain law enforcement functions).¹³³

The Los Angeles Unified School District is the largest school district in the county. It is run by a seven-member board of education and a superintendent appointed by the board. The school district consists of Los Angeles and all or portions of twenty-six adjoining Southern California cities and unincorporated areas.¹³⁴ It serves almost three quarters of a million students, 74 percent of whom are Latinx, 9.8 percent of whom are White, 8.4 percent of whom are Black and 6 percent of whom are Asian.¹³⁵ It has its own police force, the Los Angeles School Police Department (LASPD).

Most of the other cities in Los Angeles County are not charter cities and therefore lack the more expansive home rule powers of Los Angeles, but several of the larger cities in the county, including Long Beach, are charter cities.¹³⁶ Some, like Long Beach, also have their own police departments. Others charter with the LASD.

3. Immigration Policies in Los Angeles County

Los Angeles has a longstanding reputation as an immigrant-protective jurisdiction but the reality has always been more complicated. Some of the city's reputation as immigrant friendly arises out of the LAPD's adherence to Special Order 40 since November 27, 1979. This was one of the early "don't ask, don't tell" policies that instructed police officers not to investigate immigration status or "initiate police actions with the objective" of discovering an individual's citizenship status.¹³⁷ The policy also limited the occasions on which LAPD officials could communicate an arrestee's immigration status with federal immigration enforcement.

The realities of the city and county's immigrant-protective stance have always been more mixed. As Rick Su noted, the Rampart scandal of the late 1990s that "rocked the LAPD" involved "incidents of corruption,

133. For a description of the Probation Department's authority see <https://probation.lacounty.gov>. [<https://perma.cc/GSG6-FYMU>].

134. *Fingertip Facts* 2018–2019, LA UNIFIED SCH. DIST., https://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=47248&dataid=68431&FileName=Fingertip%20Facts2018-19_EnglishFinalDS.pdf. [<https://perma.cc/GH3N-5SWK>].

135. *Fingertip Facts* 2016–2017, LA UNIFIED SCH. DIST., https://achieve.lausd.net/cms/lib08/CA01000043/Centricity/Domain/32/Fingertip%20Facts2016-17_FINAL.pdf. [<https://perma.cc/Z76L-2HMY>].

136. *Charter Cities*, *supra* note 125.

137. Los Angeles Police Dept., Special Order No. 40, Undocumented Aliens (Nov. 27, 1979) http://assets.lapdonline.org/assets/pdf/SO_40.pdf [<https://perma.cc/6VVU-2NMV>].

intimidation and other police misconduct” that often included “exploitation of the legal vulnerabilities created by federal immigration regulations.”¹³⁸ As Su explained, the special report commissioned in the wake of the scandal found that individual officers were able to work around the dictates of Special Order 40 “by either working closely with federal agents stationed around their field office, or simply calling in federal agents when they wished to intimidate a witness or make them ‘disappear.’”¹³⁹ And recent research suggests that some members of the LAPD continued to exploit certain vulnerabilities created by immigration status in the period from 2014 through 2018 in spite of the proliferation of immigrant-protective policies.¹⁴⁰

County-level policies, and particularly those of the Los Angeles County Sheriff’s Department, further complicate the picture of “sanctuary” Los Angeles. Beginning in 2005, the LASD entered into a 287(g) agreement with ICE that allowed ICE agents to screen inmates in county jails for immigration violations. That policy remained in place through the initial roll out of Secure Communities and was only rescinded when the Los Angeles County Board of Supervisors voted 3–2 on May 12, 2015, to end the county’s contract with ICE.¹⁴¹ In September 2015, the sheriff’s department’s manual of Policies and Procedures was updated to ensure compliance with the state’s TRUST Act and other county-level restrictions on civil immigration cooperation.¹⁴² But the Los Angeles Board of Supervisors continued to allow ICE to access county jails in order to identify individuals who were priorities for removal under the Obama administration’s Priority Enforcement Program (PEP).¹⁴³ The policy changes left ample room for LASD collaboration with ICE. Only as the federal enforcement pendulum swung away from the PEP program back to Secure Communities did the board announce an end to this cooperation.¹⁴⁴

138. Rick Su, *supra* note 63, at 907.

139. *Id.* at 914–15.

140. See discussion *infra* Part III.B at notes 280–282 (discussing the RSF and NSF-funded study I have undertaken as part of a research team).

141. Kate Linthicum & Joseph Tanfani, *L.A. County Ends Contract with ICE, then Oks Future Collaboration*, L.A. TIMES (May 12, 2015, 9:00 PM) <http://www.latimes.com/local/lanow/la-me-ln-ice-los-angeles-287g-20150512-story.html>. [<https://perma.cc/W8XX-ZN42>].

142. See L.A. Cty. Sheriff’s Dep’t, Manual of Policies and Procedures, § 05-09/271.00 (Sept. 21, 2015), http://libguides.law.ucla.edu/ld.php?content_id=19104938 [<https://perma.cc/QH57-QRA5>].

143. LOS ANGELES COUNTY SHERIFF’S DEPARTMENT REPORT BACK REGARDING THE PRIORITY ENFORCEMENT PROGRAM, September 22, 2015, http://file.lacounty.gov/SDSInter/bos/bc/233871_PEPICEReportBack09-22-15OrigLtr.pdf.

144. See MAX HUNTSMAN, OFFICE OF INSPECTOR GENERAL COUNTY OF LOS ANGELES, IMMIGRATION: PUBLIC SAFETY AND PUBLIC TRUST 13–14 (2017), <https://oig.lacounty.gov/>

Beginning in late 2016, the state and county were implementing protective measures in anticipation of the Trump administration's likely intensification of immigration enforcement, but LASD's implementation of these measures was imperfect. In December 2016, the board of supervisors passed¹⁴⁵ a motion¹⁴⁶ entitled "Protecting Los Angeles County Residents Regardless of Immigration Status" to address postelection fears in the immigrant community.¹⁴⁷ As a result of this measure, the sheriff's department was asked to assess its policies, including any changes that might need to be made in response to mass deportation efforts pursued by the federal government.¹⁴⁸ Following LASD's January 2017 written response, the board asked the Office of the Inspector General of the County of Los Angeles (OIG) to evaluate LASD's policies and recommend changes.¹⁴⁹

The resulting report from the Office of the Inspector General identified several instances of LASD information and resource sharing with ICE that violated county policy and the LASD's own stated policies. The OIG's report found, for example, that ICE continued to occupy space in an LASD-run jail, notwithstanding the policies to the contrary that had been enacted by the board of supervisors in 2015.¹⁵⁰ Office of the Inspector General staff also observed LASD officials communicating with ICE regarding release dates, contrary to written policy and the LASD's public statements about its policy.¹⁵¹ The office recommended better training and compliance with existing immigrant-protective policies.¹⁵²

Portals/OIG/Reports/Immigration_Public%20Safety%20and%20Public%20Trust.pdf [https://perma.cc/S2HP-VP3S].

145. The vote on the motion can be found at L.A. BOARD SUPERVISORS, THE MEETING TRANSCRIPT OF THE LOS ANGELES COUNTY BOARD OF SUPERVISORS 310-11 (2016), https://docs.google.com/gview?url=https%3A%2F%2Flacounty.granicus.com%2FDocumentViewer.php%3Ffile%3Dlacounty_7d1a8011bad9b60796dbc5f15c471b41.PDF%26view%3D1&embedded=true [https://perma.cc/Q8B4-44MK].
146. Hilda L. Solis & Sheila Kuehl, *Protecting Los Angeles County Residents Regardless of Immigration Status*, L.A. COUNTY (Dec. 6, 2016), <http://file.lacounty.gov/SDSInter/bos/supdocs/109929.pdf> [https://perma.cc/4C4N-PTKM].
147. On October 17, 2017, the Los Angeles County Board of Supervisors also adopted a "Sensitive Locations Policy" that prohibited county officials from voluntarily allowing federal civil immigration enforcement agents access to "non-public areas of County properties" in the absence of a judicial warrant. This effort was directly responsive to increased ICE presence in county courthouses—purportedly in response to their decreased access to county jails.
148. HUNTSMAN, *supra* note 144, at 1.
149. *Id.*
150. *Id.* at 10.
151. *Id.* at 12.
152. *Id.* at 17-19.

In the meantime, LASD was exerting political pressure on California's legislature to narrow state-level noncooperation legislation. Following the 2016 presidential election, as the state legislature sought to enhance protections for immigrant residents through SB 54,¹⁵³ Los Angeles Sheriff Jim McDonnell actively opposed the broadly protective legislation originally proposed, and pushed for carveouts to the legislation's noncooperation policies that would allow for greater collaboration with federal immigration enforcement agents. That law went into effect on January 1, 2018, with many of the carveouts advocated by McDonnell and other county sheriffs; McDonnell issued a public statement of support for its passage.¹⁵⁴ On March 8, 2018, the Los Angeles County Sheriff's Department circulated a memo detailing the changes of practices necessary to comply with the terms of the new law.¹⁵⁵ The sheriff's department still faced regular criticism from advocacy groups for failing to adhere to its written policies.¹⁵⁶

Immigrant rights activists' opposition to McDonnell may have cost him reelection in 2018,¹⁵⁷ but the procooperation legacy lives on. A March 2019 statewide study found that at that time, the LASD's written policies fail to comply in full with the requirements of SB 54; officers relying on the department's written policies would have been misinformed about state law

153. See discussion *supra* at note 93 (describing SB 54).

154. See Statement, Sheriff Jim McDonnell, Statement Regarding the Passage of Senate Bill 54: Final Bill Reflects Law Enforcement Mission Already Underway (September 16, 2017), http://libguides.law.ucla.edu/ld.php?content_id=41925223 [<https://perma.cc/V6R8-X8SR>] [hereinafter McDonnell Statement].

155. See Newsletter, L.A. Cty. Sheriff's Dep't, Immigration Policies, Protocols, and Procedures (Mar. 8, 2018), https://coc.lacounty.gov/LinkClick.aspx?fileticket=RhgFzQh_7qs%3D&portalid=35 [<https://perma.cc/FWK8-CF63>]. The Los Angeles sheriff opposed earlier versions of SB 54, but when the law was enacted, his department issued a statement in support of the measure as enacted. See McDonnell Statement, *supra* note 154. The Los Angeles county police chiefs also played an active role in reshaping and narrowing the protections of the bill prior to passage. See, e.g., Memorandum from Bob Guthrie, President, L.A. Cty. Police Chiefs' Ass'n & Kevin L. McClure, Chairman, L.A. Cty. Police Chiefs' Ass'n, to Assemblyman Anthony Rendon, Speaker of the Assembly, Cal. State Assembly (Apr. 20, 2017), <https://lachiefs.com/wp-content/uploads/2017/05/Oppose-Proposed-SB54.pdf> [<https://perma.cc/5YDY-D5KH>].

156. See, e.g., COALITION ICE OUT OF LA, THE HUMAN RIGHTS CONSEQUENCES OF LASD-ICE COLLABORATION: A TOXIC ENTANGLEMENT 4, <http://iceoutofla.org/wp-content/uploads/2017/01/ICEoutofLA-UCLA-HR-Clinic-1-12-2017.pdf> [perma.cc/22SF-J6R2].

157. Maya Lau, *In Historic Upset, Alex Villanueva Beats Incumbent Jim McDonnell in Race for Los Angeles County Sheriff*, L.A. TIMES, (Nov. 26, 2018, 9:25 PM), <https://www.latimes.com/local/lanow/la-me-sheriff-election-20181126-story.html> [<https://perma.cc/R56Q-DT89>] (“The immigrant community was not happy about the way the department was dealing with its relationship with ICE,” said former Los Angeles County Supervisor Zev Yaroslavsky, who supported McDonnell in both his campaigns.”).

restrictions on communications with federal enforcement agents.¹⁵⁸ As of January 2019, the LASD continued to circumvent SB 54's restrictions on sharing release dates with ICE by making all release dates public¹⁵⁹ and facilitated county-to-federal transfers of immigrants by holding individuals beyond their release dates.¹⁶⁰ Advocates and public officials have noted that under Sheriff Villanueva, there has been a change in transfer practices, but those most strongly opposed to cooperation stress the need for further limitations on transfers to ICE.¹⁶¹

4. Immigration Policies in the City of Los Angeles

The City of Los Angeles has long professed a tolerant and integrative stance in its public immigration policies, and such policy efforts visibly increased after the 2016 election. On March 21, 2017, in direct response to the restrictionist policies and rhetoric of President Trump, Mayor Eric Garcetti issued Executive Directive No. 20 with the subject "Standing with Immigrants: A City of Safety, Refuge, and Opportunity for All," in which he noted that "1.5 million residents of our city are foreign-born, and nearly two of every three Angelenos are either immigrants or the children of immigrants."¹⁶² The Executive Directive lists many of the existing immigrant-protective measures operative in the city, including the LAPD's Special Order 40, a 2014 LAPD directive of noncompliance with ICE detainer requests in the absence of judicial warrants (issued in anticipation of the TRUST Act) and the LAPD policy against participation in the 287(g) program.¹⁶³ The mayor's March 2017 directive called upon the LAPD to reaffirm these orders, and also upon the "Fire Chief, the Chief of Airport Police, and the Chief of Port Police" to issue consistent policies and procedures.¹⁶⁴ The directive also made clear that city employees acting in

158. ASIAN AMS. ADVANCING JUSTICE-ASIAN LAW CAUCUS, UNIV. OF OXFORD CTR. FOR CRIMINOLOGY, BORDER CRIMINOLOGIES, TURNING THE GOLDEN STATE INTO A SANCTUARY STATE: A REPORT ON THE IMPACT AND IMPLEMENTATION OF THE CALIFORNIA VALUES ACT (SB 54) 17 at 27 (2019).

159. *Id.* at 18 n.28.

160. *Id.* at 17 n.17.

161. Maya Lau, *ICE Still Playing Role In L.A. Jails Despite Sheriff Villanueva Kicking Agents Out*, LA TIMES (June 25, 2019), <https://www.latimes.com/local/lanow/la-me-sheriff-ice-jail-20190625-story.html> [<https://perma.cc/H7NH-T83B>].

162. Los Angeles, Cal., Exec. Directive No. 20 (Mar. 21, 2017), at 1 <https://www.lamayor.org/sites/g/files/wph446/f/page/file/Exec.%20Dir.%20No.%2020-Standing%20with%20Immigrants.pdf> [<https://perma.cc/TDD4-VH9M>].

163. *Id.* at 2.

164. *Id.* at 3.

their official capacity are prohibited from cooperating with, or using city resources or dollars to assist, civil federal immigration enforcement.¹⁶⁵ All managers and department heads are required to report on any efforts by CBP, ICE or USCIS to enforce federal civil immigration laws with city support.¹⁶⁶ The order prohibits the unnecessary collection of immigration status information, directs city department heads to make available community resources created by the city's Office of Immigrant Affairs, and requires each general manager and department or office head to designate an "Immigrant Affairs liaison."¹⁶⁷

Nevertheless, the actions of the LAPD did not always consistently reflect the city's or the department's official stances of noncooperation. For example, on June 24, 2016, after the LAPD conducted a controversial joint operation with ICE targeting underground nightclubs supposedly suspected of involvement in human trafficking, the department issued a memo requiring that any coordinated enforcement with ICE receive prior approval from the bureau commanding officer and clarifying that all such cooperation (with the exception of existing joint task forces governed by written agreement and emergency efforts) "must be limited to the investigation of criminal activity, not immigration violations."¹⁶⁸ After the passage of SB 54, the LAPD issued a memo describing how their policies comported with the elements of the new, broader noncooperation law.¹⁶⁹ While implementation may be imperfect, generally speaking, immigrants' rights advocates do not express the same concerns about collaboration with ICE in the case of the LAPD as they do with regard to the LASD.¹⁷⁰ It is not clear that ordinary residents are similarly attentive to distinctions between the agencies

5. Immigration Policies in Other Cities in Los Angeles County

A number of other cities in Los Angeles County followed the City of Los Angeles in enacting immigrant-protective measures, especially after 2016.

165. *Id.*

166. *Id.*

167. *Id.* at 4.

168. Memorandum from Michael R. Moore, Assistant Chief Dir., Office of Operations, L.A. Police Dep't, to Geographic Bureau Commanding Officers (June 24, 2016), http://libguides.law.ucla.edu/ld.php?content_id=25214160 [<https://perma.cc/DAV4-62XY>].

169. See generally Memorandum from Charlie Beck, Chief of Police, L.A. Police Dep't, to All Dep't Pers. (Dec. 29, 2017), <https://scng-dash.digitalfirstmedia.com/wp-content/uploads/2018/02/immigrationocop.pdf> [<https://perma.cc/3AR4-Y5AR>].

170. See discussion at Part II.E.

Culver City enacted a sanctuary ordinance requiring judicial warrants to hold residents for civil immigration enforcement, restating policies of nondiscrimination, limiting data collection and interrogation on immigration status, and prohibiting the voluntary use of city resources toward immigration enforcement efforts.¹⁷¹ Glendale issued a resolution declaring the district a safe and welcoming place for immigrants, following up on a March 31, 2017 resolution affirming the police chief's statement that the Glendale Police were charged with enforcing local criminal law, not federal immigration law.¹⁷² The Long Beach City Council enacted a Long Beach Values Act Resolution that affirmed the City's support for California's SB 54 and the earlier California TRUST Act.¹⁷³ The Pomona City Council also enacted an ordinance in support of SB 54.¹⁷⁴

Some cities reversed courses set earlier, terminating prior agreements with ICE. On February 7, 2018, the City of San Gabriel did so in spite of a great deal of local controversy,¹⁷⁵ and also issued statements in support of diversity and the protection of civil rights.¹⁷⁶ The Santa Monica City Council also voted to terminate the agreement between its police department and ICE on March 14, 2017.¹⁷⁷

But not every city in Los Angeles County followed this approach. The Beverly Hills City Council opposed SB 54 prior to passage on the grounds

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171. Culver City, Cal., Res. No. 2017-R025 (Mar. 27, 2017) [hereinafter Culver City Resolution], <https://www.culvercity.org/home/showdocument?id=7666> [<https://perma.cc/FH6Z-EWNQ>].
 172. Glendale, Cal., Res. No. 17-32 (Mar. 28, 2017), <https://www.glendaleca.gov/home/showdocument?id=36766> [<https://perma.cc/59D2-9WBC>]; see also Bradley Zint, *Glendale City Council Reaffirms Police Policy, Not Federal Immigration Law*, L.A. TIMES (Mar. 31, 2017 6:17 PM), <http://www.latimes.com/socal/glendale-news-press/news/tn-gnp-me-glendale-council-immigration-20170331-story.html> [<https://perma.cc/YCS6-AXB7>].
 173. Long Beach, Cal., Res. No. 17-0110 (Oct. 3, 2017), <http://longbeach.legistar.com/View.ashx?M=F&ID=5504470&GUID=7993BBE6-C809-4390-9E37-03F600188F88> [<https://perma.cc/3GCG-98DY>].
 174. See Pomona, Cal., Ordinance No. 2017-4244 (Dec. 18, 2017), <https://www.ci.pomona.ca.us/mm/police/pdf/Ord.%204244%20Comply%20with%20Requirements%20of%20CA.%20Values%20Act%20in%20Order%20to%20Preserv.pdf> [<https://perma.cc/8ZXZ-6WX8>].
 175. See *Council Terminates Agreement with Homeland Security Investigations*, CITY OF SAN GABRIEL: NEWS FLASH (Feb. 7, 2018), <https://www.sangabrielcity.com/CivicAlerts.aspx?AID=1039> [<https://perma.cc/F9JP-LB93>].
 176. See San Gabriel, Cal., Res. No. 18-15 (Apr. 3, 2018), <https://ca-sangabriel2.civicplus.com/DocumentCenter/View/9340/Item-6A-Resolution-No-18-15?bidId> [<https://perma.cc/8FAX-S5V8>].
 177. Letter from Rick Cole, City Manager, Santa Monica, Cal., to Joseph Macias, Special Agent in Charge, ICE/Homeland Sec. Investigations (Mar. 14, 2017), <http://www.santamonicanext.org/wp-content/uploads/2017/03/Cole-Letter.pdf> [<https://perma.cc/N6ML-HHTN>].

that it subverted local control on immigration enforcement issues.¹⁷⁸ After passage, the counsel aired concerns about its exposure to indirect financial harm as a result of the requirements of SB 54 despite the fact that it was not one of the jurisdictions singled out by the United States Department of Justice for audit.¹⁷⁹ Other cities that expressed opposition to SB 54 in 2017 and support for the federal government's lawsuit suing California for this and other immigrant-protective resolutions included the City of Glendora¹⁸⁰ and the City of West Covina.¹⁸¹

More insidiously, newly-adopted city policies may have been undercut by contradictory written policies that guide city police practices. This is the case, for example, in Culver City, which enacted a sanctuary ordinance in March 2017,¹⁸² but which nevertheless had a police department policy on the books months later that not only failed to inform officers of all of the restrictions on data sharing required by SB 54, but also explicitly endorsed the use of factors like "lack of English proficiency" as suggested legitimate bases for immigration-related investigative stops.¹⁸³

Culver City addressed this problem, but out-of-date policies that fail to properly inform police officers about changing state law restricting their authority continue to be a statewide problem. A recent examination of publicly disclosed documents from 169 California law enforcement agencies (LEAs) found that:

178. Memorandum from Cindy Owens, Senior Mgmt. Analyst, Beverly Hills, Cal., to City Council Liaison/Legislative/Lobby Comm. (Jan. 30, 2018), <http://www.beverlyhills.org/cbhfiles/storage/files/5110042581157616558/Legislative.PDF> [<https://perma.cc/9TY9-7YN9>].

179. *Id.* at 2–3.

180. Letter from Gary Boyer, Mayor, Glendora, Cal., to Kevin De Leon, Senate President Pro Tempore, Cal. State Senate (Apr. 13, 2017), <http://www.cityofglendora.org/home/showdocument?id=18298> [<https://perma.cc/ZWK5-N94A>].

181. See Christopher Yee, *Pandemonium in West Covina Over Challenging Sanctuary State Law*, SAN GABRIEL VALLEY TRIB. (Apr. 4, 2018, 9:11 AM), <https://www.sgvtribune.com/2018/04/04/pandemonium-breaks-out-in-west-covina-council-considers-joining-lawsuit-challenging-sanctuary-state-law> [<https://perma.cc/U2GY-BBDM>].

182. *Culver City Becomes a Sanctuary City*, WESTSIDETODAY.COM (April 5, 2017), <https://westsidetoday.com/2017/04/05/culver-city-becomes-a-sanctuary-city> [<https://perma.cc/6GNA-RAN2>].

183. James Quealy, *Police Departments Say They Don't Enforce Immigration Laws. But Their Manuals Say Something Different*, L.A. TIMES, (Apr. 12, 2017), <https://www.latimes.com/local/lanow/la-me-ln-california-police-immigration-enforcement-20170412-story.html> [<https://perma.cc/L3Z6-FGM9>]. The department has since asked Lexipol to revise its policies. A posted policy from January 2019 appears to reflect official policies. See *Immigration*, CULVER CITY POLICE DEP'T POLICY MANUAL, Policy No. 438, <https://www.culvercitypd.org/home/showdocument?id=16117> [<https://perma.cc/5QXM-5MP4>].

23 use out-of-date, pre-SB 54 immigration enforcement-related policies or post-SB 54 policies that nonetheless include out of date provisions or which omit major new prohibitions. Also, 40 additional LEAs use policies primarily drafted for them by a private company, Lexipol, which are not in compliance with the law. Finally, 5 LEAs have no immigration enforcement-related agency policies. In total, 68 out of 169 LEAs, about 40%, were out of compliance with SB 54.¹⁸⁴

6. School Districts

School districts have been among Southern California's most responsive governmental entities in addressing questions of the role of local government officials in immigration enforcement, and the public policy enactments of the school boards of Los Angeles County have uniformly expressed a commitment to educating all students without regard to immigration status.

On February 9, 2016, the Los Angeles Board of Education unanimously adopted a resolution declaring the Los Angeles Unified School District (LAUSD)—a district that enrolls more than 640,000 students—a “safe zone” and “resource center” for immigrants.¹⁸⁵ The board's resolution notes that district officials are not required by law to assist in federal immigration enforcement and declares LAUSD schools “safe zones” for both students and their families (a combined population that is larger than several U.S. states).¹⁸⁶ The resolution also “encourages the Superintendent to increase and enhance partnerships with community-based organizations and legal services organizations that provide resources for families facing deportation” and calls for the creation of a “rapid response network” to “assist children whose family

184. ASIAN AMS. ADVANCING JUSTICE-ASIAN LAW CAUCUS, *supra* note 158, at 3.

185. L.A. UNIFIED SCH. DIST., MOTIONS/RESOLUTIONS TO THE LOS ANGELES CITY BOARD OF EDUCATION FOR CONSIDERATION, (2016), <https://achieve.lausd.net/cms/lib08/CA01000043/Centricity/Domain/582/LA%20Unified%20Campuses%20as%20Safe%20Zones%20and%20Resource%20Centers%20for%20Students%20and%20Families%20Threatened%20by%20Immigration%20Enforcement.pdf> [https://perma.cc/T66Y-S3S6]; THELMA MELENDEZ ET AL., LAUSD CAMPUSES AS SAFE ZONES AND RESOURCE CENTERS (2017) https://d3n8a8pro7vhm.cloudfront.net/ypiusa/pages/1026/attachments/original/1487390349/Resource_4_%E2%80%94REF-6767.1.pdf?1487390349 [https://perma.cc/WTC9-QJXV].

186. L.A. Unified Sch. Dist., Res. No. 032-15/16 (Feb. 9, 2016), <https://achieve.lausd.net/cms/lib08/CA01000043/Centricity/Domain/582/LA%20Unified%20Campuses%20as%20Safe%20Zones%20and%20Resource%20Centers%20for%20Students%20and%20Families%20Threatened%20by%20Immigration%20Enforcement.pdf> [https://perma.cc/C8KD-M829].

members have been detained.”¹⁸⁷ The board reaffirmed its stance on May 9, 2017, following an incident where the father of an LAUSD student was arrested after dropping his child off at school.¹⁸⁸

A number of other school districts in Los Angeles County enacted similar protective resolutions and policies. Long Beach Unified Board of Education adopted a resolution that its schools were “Safe Zones” for all students regardless of immigration status and that school officials “will not participate in potential federal enforcement actions based upon immigration status, religion, or nation of origin” and generally affirmed its commitment to the protection of its students regardless of immigration status.¹⁸⁹ The resolution also ensured the continuation of district policy to refrain from collecting information about students’ immigration status.¹⁹⁰ Similar measures were enacted by the Alhambra School District on January 10, 2017,¹⁹¹ the Azusa School District on January 17, 2017,¹⁹² the Bassett School District on December 6, 2016,¹⁹³ the Burbank Unified School District on February 2, 2017,¹⁹⁴ and the Culver City Unified School District on November 22, 2016.¹⁹⁵ Around the same time, statements of inclusion were issued by El Rancho Unified School District,¹⁹⁶ the Glendale Unified School District,¹⁹⁷ the

187. *Id.*

188. *L.A. Unified Board Reaffirms Its Commitment to Schools as ‘Safe Zones’ for Immigrant Students and Families*, L.A. UNIFIED SCH. DIST. (May 9, 2017), <https://1.cdn.edl.io/awcbDGPBA1NYgkGRUr723HpzkkJEoTG8lZuMzwY31KkZ6hv4.pdf> [<https://perma.cc/8NV9-6RJP>].

189. Memorandum from Bd. of Educ., Long Beach Unified Sch. Dist., to Parents, Students and Staff (Feb. 16, 2017) [hereinafter Long Beach Memorandum], http://www.lbschools.net/Asset/Files/District/immigration_Letter_EN.pdf [<https://perma.cc/QJ6G-RPWX>]; Long Beach Unified Sch. Dist., Res. No. 021517-A (Feb. 15, 2017), http://www.lbschools.net/Asset/Files/District/immigration_Letter_EN.pdf [<https://perma.cc/3GCG-98DY>].

190. Long Beach Memorandum, *supra* note 189.

191. *See, e.g.*, Alhambra Unified Sch. Dist., Res. No. 16-17-16 (Jan. 10, 2017), <http://www.calschoolnews.org/safe-haven-districts> [<https://perma.cc/3KQK-4LR9>].

192. *See, e.g.*, Azusa Unified Sch. Dist., Res. No. 16-17:44 (Jan. 17, 2017), <http://www.calschoolnews.org/safe-haven-districts> [<https://perma.cc/FS65-HFT4>].

193. *See, e.g.*, Bassett Unified Sch. Dist., Res. No. 17-17 (Dec. 6, 2016), <http://www.calschoolnews.org/safe-haven-districts> [<https://perma.cc/73C3-NBF8>].

194. *See, e.g.*, Burbank Unified Sch. Dist., Res. No. 15 (Feb. 2, 2017), https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/48295/Resolution_15_Reaffirming_a_Safe_Nondiscriminatory_Environment_020216.pdf [<https://perma.cc/CCD4-6TUF>].

195. *See, e.g.*, Culver City Unified Sch. Dist., Res. No. 4—2016/2017 (Nov. 22, 2016), https://www.aclunc.org/docs/ccusd_resolution_safety_for_all.pdf [<https://perma.cc/24Z3-C2MT>]; *see also* Culver City Resolution, *supra* note 171.

196. El Rancho Unified Sch. Dist., Res. No. 30—2016/2017 (Feb. 21, 2017), <http://www.calschoolnews.org/safe-haven-districts> [<https://perma.cc/F5GF-KYJZ>].

Hacienda La Puente Unified School District,¹⁹⁸ the Lynwood School District,¹⁹⁹ the Montebello School District,²⁰⁰ the Palmdale School District,²⁰¹ the Paramount School District,²⁰² the Pasadena School District,²⁰³ and the Santa Monica–Malibu Unified School District (which affirmed the right of all students to an education regardless of immigration status²⁰⁴ and later reaffirmed its support of DACA).²⁰⁵ No school districts went on the record with statements in support of federal enforcement policies or in opposition to state or local sanctuary policies.²⁰⁶

D. Orange County

Despite their neighboring status, Orange County and Los Angeles County have taken different approaches to immigration enforcement cooperation. On balance, city and county governments and agencies in Orange County sought to preserve enforcement cooperation to a much

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197. Glendale Unified Sch. Dist., Bd. Policy 5145.13 (June 19, 2018), https://www.gusd.net/cms/lib/CA01000648/Centricity/shared/ar_bp_folder/BP-5145.13-RspnsImgrtnEnfrmnt.pdf [<https://perma.cc/W4HB-RSE3>].
 198. Hacienda La Puente Unified Sch. Dist., Res. (Jan. 26, 2017), [https://www.boarddocs.com/ca/hlpusd/Board.nsf/files/AHT2DE01A98E/\\$file/Resolution-Sanctuary%20and%20Safe%20Zones-Resolution%201.26.17.pdf](https://www.boarddocs.com/ca/hlpusd/Board.nsf/files/AHT2DE01A98E/$file/Resolution-Sanctuary%20and%20Safe%20Zones-Resolution%201.26.17.pdf) [<https://perma.cc/3RCR-JW8Y>].
 199. Lynwood Unified Sch. Dist., Res. No. 16–17/26 (Jan. 24, 2017), https://gallery.mailchimp.com/b169e07cd01d4a10c2c4670ec/files/5810decc-dc28-4b0b-af0e-298da891634c/Lynwood_Unified_2017.01.24.pdf [<https://perma.cc/6PU9-CWPH>].
 200. Montebello Unified Sch. Dist., Res. No. 21 (2016–2017) (Dec. 15, 2016), <http://montebellousd-ca.schoolloop.com/file/1294471603772/1295706265378/3378228099639783614.pdf> [<https://perma.cc/25T9-ACVK>].
 201. Palmdale Sch. Dist., Res. (May 16, 2017), https://gallery.mailchimp.com/b169e07cd01d4a10c2c4670ec/files/3727a1e5-aae1-4871-85f8-3beab3c39b91/Safe_Haven_Resolution_5.16.17.pdf [<https://perma.cc/K33Q-VKSM>].
 202. Paramount Unified Sch. Dist., Res. 16–28 (Feb. 15, 2017), <https://1.cdn.edl.io/sa91wXWwhdvS1lesd1yWuD4MmvSUH3H1BOArFCeMkO8i2SP.pdf> [<https://perma.cc/6UGX-DC54>].
 203. Pasadena Unified Sch. Dist., Res. 2386 (Dec. 22, 2016), http://pusd.granicus.com/Viewer.php?view_id=15&clip_id=605&meta_id=94840 [<https://perma.cc/PU24-W2CQ>].
 204. Santa Monica–Malibu Unified Sch. Dist., Res. No. 16–15 (Dec. 15, 2016), <http://www.smmusd.org/board/pdf/Resolution-Immigration.pdf> [<https://perma.cc/MY72-LVCX>].
 205. Santa Monica–Malibu Unified Sch. Dist., SMMUSD Superintendent’s Statement Regarding DACA (Sept. 7, 2017), <http://www.smmusd.org/superintendent/pdf/DACAstatement09-17.pdf> [<https://perma.cc/M644-AJ5A>].
 206. Here again, I use the term “sanctuary policies” cautiously, as the term has no fixed legal meaning and stands in for an array of integrationist and enforcement noncooperative policies and strategies. See Lasch et al., *supra* note 51 (providing a detailed typology of sanctuary policies and providing examples).

greater extent than those in Los Angeles. Although a growing and vocal immigrant community has increasingly pushed policy toward greater degrees of noncooperation, conservative communities have resisted those efforts from below, and have pushed back on the efforts of the state to control their enforcement discretion from above. Even more than in Los Angeles County, in Orange County, overlapping and adjacent jurisdictions have taken significantly different approaches to the question of cooperation with federal immigration enforcement.

1. Demographics

Orange County is home to about 3.2 million residents, approximately 30 percent of whom are foreign born.²⁰⁷ Non-Hispanic Whites make up about 40.5 percent of the population, Hispanics are 34.2 percent of the population, Asians make up 21 percent of the population, and Blacks make up a mere 2 percent.²⁰⁸ Again, fewer than 5 percent are American Indians, Alaska Natives, Hawaii Natives, APIs or two or more races.²⁰⁹

About 270,000 Orange County residents are unauthorized migrants, and 79 percent of those individuals are from Mexico (72 percent) and Central America (7 percent, of which 3 percent are from El Salvador).²¹⁰ Koreans make up 4 percent of the unauthorized population in Orange County, Vietnamese 3 percent and nationals of the Philippines 3 percent.²¹¹

2. Key Governmental Entities

Like Los Angeles County, Orange County is a charter county governed by a five-member board of supervisors with legislative and executive

207. *QuickFacts Orange County, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/orangecountycalifornia/PST045218> [<https://perma.cc/K8FG-WNPA>].

208. *Id.* For a history of the anti-Black racism in Orange County, see, e.g., Elyse Joseph, *Sundown Towns in Orange County*, L.A. REV. BOOKS (May 3, 2018), <https://blog.lareviewofbooks.org/essays/sundown-towns-orange-county> [<https://perma.cc/9WP2-XT8B>].

209. *QuickFacts Orange County, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/orangecountycalifornia/PST045218> [<https://perma.cc/K8FG-WNPA>]. For a discussion of settler attempts to eliminate the Native American presence in Southern California, see, e.g., HERNÁNDEZ, CITY OF INMATES, *supra* note 121.

210. *Profile of the Unauthorized Population: Orange County, CA*, MIGRATION POLICY INST., <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/6059> [<https://perma.cc/5SKF-QG68>].

211. *Id.*

authority.²¹² The county's top law enforcement officer is the county sheriff, who has responsibility for the Orange County Sheriff's Department (OCSD), an agency of 3,800 sworn officers and 800 reserve personnel.²¹³ OCSD provides investigative services to unincorporated areas and to contract and task force partners at the city and county level.²¹⁴ The OCSD has multiple points of contact with federal immigration enforcement agents, including in joint task force operations, and OCSD's operation and management of the Orange County jail system.²¹⁵

The county is home to nine public community colleges,²¹⁶ the California State University, Fullerton,²¹⁷ and the University of California, Irvine.

Orange County encompasses thirty-four incorporated towns and cities of medium and small sizes.²¹⁸ The four largest cities, in descending order, are Anaheim (population 346,780), Santa Ana (population 333,610), Irvine (population 246,990) and Huntington Beach (population 198,720).²¹⁹ All other cities have populations of less than 175,000.²²⁰

The Santa Ana Unified School District is the largest in Orange County, educating approximately 48,000 K–12 students, 96 percent of whom are Latinx.²²¹ The Irvine Unified School District educates about 36,000 students.²²² About 17,000 of those students are Asian, 9,500 are White, 3,900 are Latinx and about 3,200 are mixed race.²²³ The Anaheim Union High

212. See *Orange County, California—Board of Supervisors, About the Board*, OCGOV.COM, <https://board.ocgov.com/about-board>.

213. *Orange County, California—About OCSD*, OCGOV.COM, http://www.ocsd.org/about_ocsd [<https://perma.cc/7M4Q-5Q8N>].

214. *Id.*

215. *Id.*

216. See <https://villapark.co/colleges-universities-orange-county>; see also *Find a College*, CAL. CMTY. COLLS. CHANCELLOR'S OFFICE, <https://www.cccco.edu/Students/Find-a-College> [<https://perma.cc/5RKR-YCUW>].

217. <https://villapark.co/colleges-universities-orange-county>; see also *Campuses*, CAL. STATE UNIV., <https://www2.calstate.edu/attend/campuses> [<https://perma.cc/UVD3-9ZKN>].

218. *Orange County Cities*, OCGOV.COM, <http://www.ocgov.com/about/infooc/links/oc/occities> [<https://perma.cc/96QT-ZUTK>].

219. *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/gardengrovecitycalifornia,huntingtonbeachcitycalifornia,irvinecitycalifornia,santaanacitycalifornia,anaheimcitycalifornia/PST045218> [<https://perma.cc/58QF-Y48Y>]; *Population of Orange County, California (County)*, Statistical Atlas, <https://statisticalatlas.com/county/California/Orange-County/Population> [<https://perma.cc/6TA5-P5XU>].

220. *Id.*

221. *Quick Facts*, SANTA ANA UNIFIED SCH. DIST., <https://www.sausd.us/domain/3> [<https://perma.cc/6QM7-FUPZ>].

222. *About IUSD*, IRVINE UNIFIED SCH. DIST., <https://iusd.org/about/our-district/about-iusd> [<https://perma.cc/7FQ7-ZNCK>].

223. *Id.*

School District serves a similar number of students, nearly 70 percent of whom are Latinx.²²⁴ The Huntington Beach Union High School District does not make its demographic information easy to find, but of the district's six high schools, three have student bodies that are more than 49 percent White,²²⁵ one has a student body that is majority Asian²²⁶ and the two schools with the student body with the lowest socioeconomic indicators are majority Hispanic, and plurality Hispanic and Asian.²²⁷

3. Immigration Policies in Orange County

County-level actors in Orange County generally have favored policies that maximize immigration enforcement cooperation. The county entered into a 287(g) agreement in 2006.²²⁸ Although the county sought broad policing authority, the federal government limited the scope of the agreement to a small number of officers in the county jail.²²⁹ In 2017, when SB 54 passed, Orange County was the only California county that still had its 287(g) agreement in place.²³⁰

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224. *District Profile*, CAL. DEP'T EDUC., <https://dq.cde.ca.gov/dataquest/dqcensus/enrethlevels.aspx?aggllevel=District&year=2018-19&cds=3066431> [<https://perma.cc/G6G7-A6VE>].
225. See EDISON HIGH SCHOOL ACCOUNTABILITY REPORT CARD 2017–2018 3, 15 (2018–2019), <https://4.files.edl.io/bca0/01/31/19/160158-a6ae57e4-2e5f-4d5a-bde4-436c86c4c712.pdf> [<https://perma.cc/T8C8-SXMG>] (63.8 percent white and 43.94 percent SES disadvantaged); HUNTINGTON BEACH HIGH SCHOOL ACCOUNTABILITY REPORT CARD 2017–2018 2 (2018–2019); <https://4.files.edl.io/ec74/01/31/19/160158-048b5d3b-eefe-4808-bc65-0a2afd9fe498.pdf> [<https://perma.cc/7G68-LSYX>] (58.6 percent white and 18.6 percent SES disadvantaged). Marina High School is 49.1 percent white and 19.9 percent Asian with only 27.8 percent of students SES disadvantaged. See MARINA HIGH SCHOOL ACCOUNTABILITY REPORT CARD 2017–2018 3 (2018–2019), <https://4.files.edl.io/1c61/01/31/19/160158-0254268e-748a-4c7b-a582-8ac517057cbe.pdf> [<https://perma.cc/PBG2-A4GX>].
226. FOUNTAIN VALLEY HIGH SCHOOL ACCOUNTABILITY REPORT CARD 2017–2018 2 (2018–2019), <https://4.files.edl.io/2b6c/01/31/19/160158-114d76b2-457a-4a4f-8d11-51f3ac1774b5.pdf> (53.2 percent Asian and 33.1 percent SES disadvantaged).
227. See OCEAN VIEW HIGH SCHOOL ACCOUNTABILITY REPORT CARD 2017–2018 2 (2018–2019), <https://4.files.edl.io/be14/01/31/19/160158-cedea06f-d492-4fe2-94a8-92e768279784.pdf> (60.6 percent Hispanic or Latino, 60.8 percent SES disadvantaged); WESTMINSTER HIGH SCHOOL ACCOUNTABILITY REPORT CARD 2017–2018 3 (2018–2019), <https://4.files.edl.io/57ef/01/31/19/160158-68dc82f1-fcc3-41b0-8830-1c684ef1896e.pdf> [<https://perma.cc/HV6S-JMJJ>] (47.1 percent Hispanic, 44.2 percent Asian, and 80.4 percent SES disadvantaged).
228. KRSNA AVILA ET AL., IMMIGRANT LEGAL RESOURCE CENTER, THE STATE OF ORANGE COUNTY: AN ANALYSIS OF ORANGE COUNTY'S POLICIES ON IMMIGRATION AND A BLUEPRINT FOR AN IMMIGRANT INCLUSIVE FUTURE 8 (2019), <https://resilienceoc.org/wp-content/uploads/2019/01/State-of-OC-Report.pdf>, [<https://perma.cc/72RL-8NV4>].
229. *Id.*
230. Cindy Carcamo, *Orange County Quits Program That Exemplified Its Stance to Illegal Immigration*, L.A. TIMES (Jan. 8, 2018), <https://www.latimes.com/local/california/la-me->

As California passed successive laws limiting enforcement cooperation, the county largely attempted to resist these restrictions. For example, while detainer holds in the county dropped after the passage of the TRUST Act, those numbers began to tick back up after 2015.²³¹ After California enacted SB 54, the Orange County Board of Supervisors initially passed a resolution stating that it would comply with federal law and encouraging cities in Orange County to do the same. But several months later, the board did an about-face, voting to direct county counsel to intervene in the federal lawsuit against the State of California on the side of the federal government.²³²

The sentiments of the board of supervisors, which favors immigration cooperation and opposes the state's efforts to decouple state law enforcement from immigration enforcement, has been mirrored and amplified by the Orange County Sheriff's Department (OCSD). Like the LASD, the Orange County Sheriff's Department (OCSD) polices a number of the county's cities under contract. Between those contracts and its policing of unincorporated areas, this means that OCSD patrols almost half of the geographic areas of the county, including almost all of the southern part of the county.²³³ OCSD also has jurisdiction over the Central Men's and Women's jails, the minimum security Musick facility and the maximum-security Theo Lacy facility. The latter two facilities also housed ICE detainees pursuant to a contract with the federal government well into 2019.²³⁴ The OCSD has a long history of collaboration with ICE and has tended to favor maximizing federal immigration enforcement cooperation whenever possible. Because this approach aligns with that of the majority of the Orange County Board of Supervisors, the board does not serve the same institutional check on unlawful collaboration as the Los Angeles County Board of Supervisors over the LASD.

The procooperation views of these key county actors are also mirrored in the policy responses of many of the cities in the county. On the other hand,

orangecounty-halts-immigration-program-20180103-story.html [https://perma.cc/2VKU-GQJH].

231. AVILA ET AL., *supra* note 228, at 9.

232. Spencer Custodio, *OC to Join Federal Lawsuit Against California Sanctuary Laws*, VOICE OF OC (Mar. 28, 2018) <https://voiceofoc.org/2018/03/oc-to-join-federal-lawsuit-against-california-sanctuary-laws> [https://perma.cc/MKC6-3V7U].

233. See *Orange County, California—Patrol Areas*, ORANGE COUNTY SHERIFF'S DEP'T., CA., <http://www.ocsd.org/patrol> [https://perma.cc/4ETS-5KWK].

234. In late March 2019, OCSD announced its plans to terminate these agreements to comply with state law. <https://voiceofoc.org/2019/03/orange-county-sheriffs-department-ends-its-immigrant-detention-contract-with-ice>.

a few cities have pursued policies that are diametrically opposed to the county's procooperation stance.

4. Immigration Policies in Orange County Cities

Cities in Orange County have not been shy about joining the immigration enforcement fray. In early 2018, the City of Los Alamitos responded to California's enactment of SB 54 and related measures by adding section 9.30 to its municipal code, which reads, in part: "The City of Los Alamitos, a Charter City, does hereby exempt the City of Los Alamitos from the California Values Act, Government Code Title 1, Division 7, Chapter 17.25 and instead will comply with the appropriate Federal Laws and the Constitution of the United States."²³⁵ The city council also voted to prepare an amicus brief in support of the federal government in its lawsuit challenging the constitutionality of SB 54. And the city's police department policies do not currently reflect the limitations imposed on the police by state law.²³⁶

Other cities that voted to join the federal lawsuit included: Aliso Viejo,²³⁷ Westminster, Orange, Fountain Valley, Dana Point, Laguna Niguel, Lake Forest, Newport Beach,²³⁸ Yorba Linda,²³⁹ and San Juan Capistrano.²⁴⁰

Villa Park passed a resolution opposition SB 54.²⁴¹ The City of Mission Viejo also passed a resolution stating that the Council "supports the City Council of the City of Los Alamitos' adoption of their Ordinance[]." ²⁴²

235. LOS ALAMITOS MUN. CODE § 9.30.010 (2018).

236. ASIAN AMS. ADVANCING JUSTICE-ASIAN LAW CAUCUS, *supra* note 158, at 15.

237. Ashley Ludwig, *Aliso Viejo Joins Lawsuit Against Sanctuary State Law*, PATCH (Apr. 5, 2018, 6:48 PM), <https://patch.com/california/alisoviejo/aliso-viejo-joins-lawsuit-against-sanctuary-state-law> [<https://perma.cc/EHB7-SERB>]; Spencer Custodia, *Three More OC Cities Oppose State Sanctuary Law*, VOICE OF OC, (April 20, 2018) <https://voiceofoc.org/2018/04/three-more-oc-cities-oppose-state-sanctuary-law> [<https://perma.cc/TZ8J-RA8M>].

238. Custodia, *supra* note 237. Newport Beach also expressed its opposition to the law in another resolution. Newport Beach, Cal., Resolution No. 2018-23 (Apr. 10, 2018), <http://ecms.newportbeachca.gov/Web/DocView.aspx?id=1280330&searchid=beabe6c0-d510-4927-98ca-ebb0a2272c61&dbid=0> [<https://perma.cc/V3CA-Y6LQ>] (symbolic resolution declaring opposition to SB 54).

239. Custodia, *supra* note 237; *see also City Council Votes to Join an Amicus Brief in Support of Federal Lawsuit*, CITY OF YORBA LINDA: NEWS FLASH (Mar. 26, 2018), <https://www.yorbalindaca.gov/CivicAlerts.aspx?AID=28&ARC=86> [<https://perma.cc/WLM6-35DZ>].

240. Custodia, *supra* note 237; *see also San Juan Capistrano, Cal., Resolution No. 18-04-03-xx* (Apr. 3, 2018), http://sjc.granicus.com/MetaViewer.php?view_id=3&event_id=1638&meta_id=99843 [<https://perma.cc/CY8J-972L>].

Huntington Beach went above and beyond. Not only did the mayor condemn SB 54,²⁴³ (something that also occurred in Tustin²⁴⁴) but the city filed its *own* lawsuit against the state in opposition to the bill.²⁴⁵ The city won the first round against the state in September of 2018 when Orange County Superior Court Judge James Crandall agreed with Huntington Beach’s argument that SB 54 violates local control.²⁴⁶

In contrast, on December 6, 2016 2016, the City of Santa Ana passed a resolution declaring itself a sanctuary city.²⁴⁷ The resolution stated that Santa Ana “is a sanctuary for all its residents, regardless of their immigration status.” Under the terms of the ordinance, city officials, including law enforcement, were instructed that they “shall not administer federal immigration law which is the exclusive authority of the federal government” and that they “shall not take any direct action against an individual solely because of his or her immigration status.”²⁴⁸ The ordinance outlines various policies the city will implement regarding immigration. One controversial

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241. Villa Park, Cal., Resolution No. 2018-3425 (Mar. 24, 2018), <http://villapark.org/DesktopModules/DnnSharp/SearchBoost/FileDownload.ashx?file=2630&sb-bhvr=2> [<https://perma.cc/8HDA-JBLR>]. The Villa Park website has the vote breakdown with links to the documents at <https://villapark.co/villa-park-california-values-act-oppose>.
242. <https://cityofmissionviejo.org/news/mission-viejo-city-council-votes-support-us-constitution-state-constitution-and-traditional>.
243. *Mayor’s SB54 Message—Sanctuary State Law*, CITY OF HUNTINGTON BEACH, CAL., CITY NEWS, (Mar. 23, 2018), <https://www.huntingtonbeachca.gov/announcements/announcement.cfm?id=1203> [<https://perma.cc/D2LW-A8TK>].
244. Letter from Allan Bernstein, Mayor, Tustin, Cal., to Kevin de Leon, Senate President Pro Tempore, Cal. State Senate (Mar. 22, 2017), <http://www.tustinca.org/documents/SB%2054%20Oppose.pdf> [<https://perma.cc/A28G-QJRZ>].
245. Petition for Writ of Mandamus & Complaint for Declaratory Relief and Injunctive Relief at 3, *City of Huntington Beach v. California*, No. 2018–80002876–CV (Cal. Apr. 5, 2018), https://www.huntingtonbeachca.gov/government/elected_officials/city_attorney/city-of-huntington-beach-vs-state-of-california-ref-sb54.pdf [<https://perma.cc/HX2E-GDF5>].
246. Priscella Vega, *State Not Backing Down After Huntington Beach Wins in Court Challenge to ‘Sanctuary’ Immigration Law*, L.A. TIMES: DAILY PILOT (Sep. 28, 2018, 5:10 PM) <https://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-hb-sb54-folo-20180928-story.html> [<https://perma.cc/6N8H-MK99>].
247. Santa Ana, Cal., Resolution No. NS-2016-086 (Dec. 6, 2016) https://santaana.granicus.com/MediaPlayer.php?view_id=2&clip_id=937&meta_id=40722 [<https://perma.cc/FLC8-WNPK>]. The resolution was amended on January 17, 2017. CITY OF SANTA ANA, REQUEST FOR COUNCIL ACTION (2017), https://santaana.granicus.com/MetaViewer.php?view_id=2&clip_id=971&meta_id=42408 [<https://perma.cc/T9QT-74E7>].
248. Santa Ana, Cal., Resolution No. NS-2016-086 (Dec. 6, 2016) as amended January 17, 2017, https://santaana.granicus.com/MetaViewer.php?view_id=2&clip_id=971&meta_id=42408.

consequence of the ordinance and related activism was that the City of Santa Ana phased out its jail contract with ICE.²⁴⁹

Less boldly, and facing internal criticism for taking action of uncertain legal significance,²⁵⁰ the City of Anaheim declared itself an immigrant welcoming city in 2017.²⁵¹

5. School Districts, Colleges and Universities

School boards in Orange County have been far less vocal about their views on immigration enforcement than boards in their neighboring county to the north. The Santa Ana Unified School District has declared its support for immigrants.²⁵² Anaheim Union High School District also affirmed its support for providing all students with equal access to education.²⁵³ No such public statements were entered by either the Irvine Unified School District or Huntington Beach Union High School District, although Huntington Beach's district does have an official resource page for undocumented students.²⁵⁴

Because much of the county has reacted to increased federal enforcement in ways more likely to enhance than mitigate federal enforcement efforts, the work of the University of California, Irvine, the local California State Universities and the local California Community Colleges—all of which have enacted immigrant-protective measures—may be of particular importance to student residents of the county. These campuses are all part of statewide systems that have state policies of limiting voluntary enforcement

249. Cindy Carcamo, *Immigration Officials Abruptly Announce End to Controversial Contract at Santa Ana Jail*, L.A. TIMES (Feb. 24, 2017) <https://www.latimes.com/local/california/la-me-immigration-contract-santa-ana-jail-20170224-story.html> [<https://perma.cc/HZ76-AR7E>].

250. Thy Vo, *Anaheim Leaders Criticized for Muddled Approach to Sanctuary City Issue*, VOICE OF O.C. (Jan. 9, 2017), <https://voiceofoc.org/2017/01/anaheim-leaders-criticized-for-muddled-approach-to-sanctuary-city-issue> [<https://perma.cc/G35U-EZL6>].

251. Anaheim, Cal., Resolution No. 2017-158 (Oct. 24, 2017), <http://www.anaheim.net/DocumentCenter/View/20613/Welcoming-Anaheim-Resolution?bidId> [<https://perma.cc/CB8K-5EAZ>]; Orange, Cal., Resolution No. 11074 (Apr. 10, 2018), http://cityoforange.granicus.com/Viewer.php?view_id=2&clip_id=329&meta_id=28035 [<https://perma.cc/4XRW-NE5F>].

252. Santa Ana Unified Sch. Dist., Resolution No. 16/17-3157 (Dec. 13, 2016) <https://www.sausd.us/cms/lib5/CA01000471/Centricity/Domain/1/Safe%20Haven%20District%20Resolution.pdf> [<https://perma.cc/VW2U-YFEU>].

253. Anaheim Union High Sch. Dist., Res. No. 2016/17-BOT-05 (Mar. 7, 2017), <http://www.auhsd.us/district/media/files/BOT%20Meeting%203-7-2017.pdf> [<https://perma.cc/C5X8-EUXX>].

254. *See Student Services, Undocumented Students*, HUNTINGTON BEACH UNION HIGH SCH. DISTRICT, https://www.hbuhd.edu/apps/pages/undocumented_students [<https://perma.cc/9JTT-NWVC>].

cooperation on campuses.²⁵⁵ To varying degrees, these campuses also have set aside resources to assist undocumented students and their families in navigating the financial, personal and legal challenges associated with their immigration status.²⁵⁶

E. Distilling the Local Experience

While integrationist policies seeking to minimize federal enforcement cooperation are much more common in Los Angeles County, and restrictionist, procooperation policies are more common in Orange County, policy differences within the counties are almost as significant as the differences between them. In both counties, the sheriffs' departments have tended to favor broad cooperation with federal immigration enforcement efforts, including cooperation over and above what is permitted by state law. This is consistent with the survey data of Provine et al., revealing that sheriffs' departments nationally tend to be more uniform, and more uniformly procooperation than police chiefs, who have policy preferences that are more closely tied with the policy preferences of the local governing boards in the jurisdictions they police.²⁵⁷ The relative political insularity of sheriffs, who are

255. For the UC policy that covers UC Irvine, see UNIV. OF CAL., STATEMENT OF PRINCIPLES IN SUPPORT OF UNDOCUMENTED MEMBERS OF THE UC COMMUNITY, <https://www.universityofcalifornia.edu/sites/default/files/Statement-of-Principles-in-Support-of-Undocumented-Members-of-UC.pdf> [<https://perma.cc/MX9D-Z6Q4>]. For the CSU policy that covers Cal State Fullerton, see Jason Ruiz, *CSU Chancellor Drafts Letter Supporting Immigrants, Assuring Welcoming Environment*, LONG BEACH POST: NEWS, <https://lbpost.com/news/csu-chancellor-drafts-letter-supporting-immigrants-assuring-welcoming-environment> [<https://perma.cc/XW74-KFED>]. The CCCs have a policy of “not release[ing] personally identifiable student information related to immigration status unless required by judicial order.” See *Undocumented Students*, CAL. CMTY. COLLS. <https://www.cccco.edu/Students/Support-services/Special-population/Undocumented-Students> [<https://perma.cc/AWF2-RDTH>].

256. See, e.g., *Undocumented Students*, CAL. CMTY. COLLS., <https://www.cccco.edu/Students/Support-services/Special-population/Undocumented-Students> [<https://perma.cc/AWF2-RDTH>] (noting that “many of our campuses have created Dreamer Resource Centers and hosted ‘know your rights’ clinics”); *Undocumented Student Resources*, UNIV. OF CAL., <http://undoc.universityofcalifornia.edu> [<https://perma.cc/ZH5U-KXUD>] (discussing resources available at UC campuses).

257. See generally PROVINE ET AL., *supra* note 70. To be clear, in some local contexts, this may mean that the local police are procooperation, and might even favor cooperation more than the local sheriff. What Provine et al. find to be consistent is that sheriff's offices tend to be less responsive to local political attitudes and generally do tend to favor some degree of cooperation.

elected, as opposed to police chiefs, who are appointed by local elected officials, may help to explain this difference.²⁵⁸

In Los Angeles County, however, the procooperation tendencies of the Los Angeles Sheriff's Department were sometimes checked by the Los Angeles County Board of Supervisors, including through inspection by the Office of the Inspector General, as well as by the general electorate. Orange County currently lacks such checks. The majority of the Orange County Board of Supervisors, like the OCSD, favors enforcement cooperation and has not served as a check on the sheriff's discretionary choices. It has fallen to nongovernmental organizations to review and report on OCSD collaborations with ICE.

In Los Angeles, the majority of the county's residents also live in cities that have signaled an intent to protect their longtime immigrant residents from cooperative enforcement practices. Cities that have aligned their policies against the state and in favor of enforcement have tended to be smaller, whiter and more politically conservative. In Orange County, two of the largest cities are majority-Latinx, and therefore more likely to feel the brunt of immigration-focused local policing.²⁵⁹ Those two cities have attempted to generate locally protected spaces through their own policies. The most notable such effort is Santa Ana's expansive sanctuary policy, although Anaheim's more symbolic immigrant city resolution signals the extent to which demographic shifts in Anaheim have moved the city away from its historical inclination to embrace the conservative, proenforcement policies and practices of the county as a whole.²⁶⁰ The cities that have aligned

258. See *id.* at 68–69.

259. See Amada Armenta, *Racializing Crimmigration: Structural Racism, Colorblindness, and the Institutional Production of Immigrant Criminality*, 3 Soc. of Race & Ethnicity 82, 82–83 (2017) (noting that Latinos “bear the burden” of immigration control efforts and that “local law enforcement agents racialize Latinos and punish illegality through their daily practices.”); see also Yolanda Vazquez, *Constructing Crimmigration: Latino Subordination in a Post-Racial World*, 76 Ohio St. L.J. 599, 646–47 (2015) (discussing the racially disproportionate effects of cooperation policies). For the historical origins of these practices, see Molina, *supra* note 22; Ngai, *supra* note 22.

260. ANGELA S. GARCÍA, *LEGAL PASSING: NAVIGATING UNDOCUMENTED LIFE AND LOCAL IMMIGRATION LAW* (2019) 70–71 (describing the restrictionist approach of Anaheim local governing bodies, including the school board, in the 1990s). The police adopted a basic noncooperation policy in the mid-2000s, although they continued to assist in enforcement efforts at ICE requests. Vern Nelson, *Is Anaheim Already a “Sanctuary City”?*, ORANGE JUICE BLOG (Mar. 15, 2017) <http://www.orangejuiceblog.com/2017/03/is-anaheim-already-a-sanctuary-city> [<https://perma.cc/B3VF-26D2>]. Prior to that time, the department did cooperate fully and voluntarily with federal immigration enforcement officials, sometimes to the detriment of the city's residents. *Id.* For a deeper dive into Anaheim's racist past and its influence on the present, see James Queally & Shelby

with the federal government against the state are relatively more numerous in Orange County than in Los Angeles County. They are notably whiter, wealthier and more politically conservative than Santa Ana and Anaheim, and, with the exception of Huntington Beach, much smaller as well. For conservative cities like Huntington Beach and for the fourteen cities in the southern part of the county that contract with OCSD for policing services, the state's protective policies are mediated heavily by procooperation county-level law enforcement agencies.

In both counties, community college districts and public college and university campuses have articulated inclusive, immigrant-protective policies; school districts have either done the same or have remained largely silent. For students on college campuses like UC Irvine in Orange County or UCLA in Los Angeles, each of which have their own police forces, such protective policies have generated a sense of relative security for students while on campus. These students also have access to legal services and health care coverage by virtue of their student status, increasing the integrative effect of these policies.²⁶¹ Other college students, particularly nonresidential students, do not benefit from the same layer of policing insulation, and have fewer services available to them, rendering them relatively less protected as against collaborative practices of law enforcement officials in the areas they reside and work, and on their routes to and from school.

The picture at the level of K-12 education is also fairly homogenous across counties. The Supreme Court's landmark decision in *Plyler v. Doe* prohibited public school districts in the United States from discriminating against students on the basis of their immigration status in providing access to education.²⁶² The *Plyler* decision subsequently has been interpreted and applied broadly to protect undocumented students' access to public K-12 schools.²⁶³ The promise of *Plyler* may not be fully realized in all of these districts, but the protective powers of *Plyler* are evident in the lack of any

Grad, *The Ku Klux Klan's Ugly, Violent History in Anaheim*, L.A. TIMES (Feb. 27, 2016, 3:34 PM), <https://www.latimes.com/local/lanow/la-me-ln-the-ku-klux-klan-ugly-violent-history-in-anaheim-20160227-story.html> [<https://perma.cc/J93M-ETTF>]. For a discussion of criticisms of Anaheim's welcoming city stance, see Vo, *supra* note 250.

261. See Enriquez, *Mediating Illegality*, *supra* note 22 (discussing the services available to undocumented UC students)

262. See *Plyler v. Doe* 457 U.S. 202, 230 (1982).

263. MICHAEL A. OLIVAS, *Chapter 3*, in NO UNDOCUMENTED CHILD LEFT BEHIND (2012) (discussing the protective application of the case in litigation involving states' efforts to limit educational access).

public policies of enforcement cooperation, even in vocally restrictionist cities like Huntington Beach.

III. ON-THE-GROUND EFFECTS OF LOCAL POLICY

Referencing the synthesis of local conditions in Part II, this Part analyzes the effects of the local policies described above. Part III.A evaluates the federal immigration enforcement patterns in Los Angeles and Orange Counties in comparison to one another during the relevant period. Part III.B considers the lived experiences of county residents during the period.

A. Federal Enforcement Data

This Part examines patterns of federal immigration enforcement during the relevant period to determine what effects—if any—local policies have on federal enforcement efforts. Overall, the federal enforcement data suggest two important developments. First, noncooperation policies shape federal enforcement outcomes. ICE arrests through the Secure Communities program have decreased in noncooperating jurisdictions, notwithstanding increased ICE arrests nationwide. At the same time, patterns of enforcement variation may suggest a complex local story about whose discretion matters in shaping outcomes. Hiroshi Motomura has identified the decision to arrest for immigration crimes—a decision often made by state or local law enforcement agents—as the “discretion that matters” when it comes to immigration enforcement.²⁶⁴ Motomura was interested in the question of who ought to be legally empowered to conduct immigration arrests, and his identification of the moment at which the greatest enforcement discretion exists with regard to immigration arrests is undoubtedly correct. But it is also worth thinking about the broader law enforcement context in which immigration enforcement is situated. While state and local law enforcement agents do make arrests for immigration crimes, they conduct many more of their arrests for a range of non-immigration crimes that are collaterally, not directly, related to immigration enforcement. These are not immigration crimes, but the vast array of state crimes that can trigger immigration consequences. Whether and how agents make such arrests, how they handle arrestees’ information, and how prosecutors process and charge these cases, all constitute discretionary moments that shape immigration enforcement. A

264. Motomura, *supra* note 52 at 1548.

look at subfederal enforcement practices reveals that not just the individual line officer, but the policies of police departments and sheriff's offices, the work of private companies, and the practices of county-level officials play significant roles in shaping immigration enforcement discretion. And the analysis of the two counties studied here suggest that in California at least, the policies and practices of county-level actors are particularly important in determining who is placed in the deportation pipeline.

Second, the enforcement data suggest there may be something of a hydraulic effect between certain state and local immigrant-protective policies and federal enforcement efforts. As states and localities refuse to cooperate with ICE, ICE appears to be concentrating more of its own resources into making at-large arrests—which are carried out by ICE agents and therefore do not rely on state and local arrest screenings or detentions—in noncooperating jurisdictions. This has implications for the relative efficacy of local enforcement choices. Localities and local government actors that favor enforcement cooperation can successfully achieve their agendas through their own actions, by optimizing the arrest and detention of immigrants potentially subject to removal and by liberally sharing information with ICE (including through informal channels when formal communications run afoul of state law). But jurisdictions and agents who oppose immigration enforcement collaboration may be partially stymied in achieving their goals. Even as they seek to protect immigrant residents from actions taken by their own officials, they cannot control the actions of federal agents conducting investigation and enforcement activities in their jurisdictions. In short, while local policies and practices clearly matter, and generate significant local differences in the landscape of enforcement discretion, federal enforcement choices still constrain local policy choices significantly.

1. Noncooperation Policies Do Shape Federal Immigration Enforcement—Somewhat

In California, noncooperation policies at the state level have resulted in significantly lower numbers of removals stemming from Secure Communities transfers.

When comparing the first five months of SB 54 implementation in 2018 with the immediately preceding five months—August to December 2017—arrests at local jails in California dropped by 1536 arrests (a 41% decrease) from the previous five months or 54% of the total decrease in this period. This stands in stark

contrast to an *increase* of 347 ICE arrests (a 4% increase) at local jails in anti-sanctuary state Texas.²⁶⁵

This trend is also evident at the county level; indeed, even before SB 54, under the somewhat narrower protections of the TRUST Act, California's policies were making a difference. Federal data from 2017 show that El Paso County, Texas, Maricopa County, Arizona, and Harris County, Texas—all of which are located in states that have favored more robust cooperation with federal enforcement efforts than California—have a higher number of Secure Community removals than California counties with comparable immigrant populations.²⁶⁶ A 2018 report by the Migration Policy Institute found that “the California share of overall ICE arrests fell after the state enacted policies limiting cooperation . . . dropp[ing] from 23 percent in FY 2013 to 14 percent in FY 2017.”²⁶⁷ In a period when ICE arrests rose nationally by 30 percent, arrests in ICE's Los Angeles and San Francisco offices increased only 9 percent.²⁶⁸ At the same time, the State of Texas enacted legislation (SB 4) to require state and local cooperation with federal immigration enforcement efforts, and the share of ICE arrests originating in Texas grew from 25 percent of all national arrests to 28 percent of all arrests.²⁶⁹ Clearly, state laws are having some impact on federal enforcement efforts.²⁷⁰

Of course, it is important to note that Los Angeles, Orange County, Imperial County and Kern County still make the top ten list for Secure Communities removals, meaning that four of the ten counties topping the list of sources of Secure Communities removals today are in purportedly

265. ASIAN AMS. ADVANCING JUSTICE-ASIAN LAW CAUCUS, *supra* note 158, at 13.

266. See *Where ICE Secure Communities Removals Now Occur*, TRAC IMMIGRATION (Nov. 13, 2018), <http://trac.syr.edu/immigration/reports/537> [<https://perma.cc/Y4HT-X6WX>] [hereinafter *Secure Communities Removals*].

267. See CAPPS ET AL., *supra* note 52, at 2.

268. *Id.*

269. *Id.*

270. *Id.* The report goes on to note that: Even as ICE is issuing significantly more detainers, book-in rates are not keeping pace because of policies limiting cooperation, including in California, New York City, and Chicago. ICE issued 70 percent more detainers nationwide during the first 104 days of the Trump administration than during the same period in 2016, but the number of people booked into ICE custody through detainers rose just 20 percent The number of detainers that state or local law enforcement agencies officially declined more than quadrupled. In California, the numbers transferred to ICE fell in Los Angeles, Orange, Ventura, Riverside, Alameda, and Kern counties, even though the number of detainers issued increased in all of them.

Id. (internal citations omitted).

sanctuary California.²⁷¹ Los Angeles County is a relatively immigrant-protective county within an immigrant-protective state, but it is still sixth on this list of Secure Communities removals for the first half of 2018, with about 1500 Secure Communities removals during that period.²⁷² This reveals the extent to which sanctuary carveouts have ensured the continuation of state-federal cooperation around immigration enforcement despite the state’s “sanctuary” label. The point here is not that removals are disproportionately high in Los Angeles relative to the rest of the country; they are not. And given the large immigration population in the county, one would expect to see a significant number of at large ICE arrests in the county given existing federal policy.²⁷³ It is revealing, however, to see that there are still so many transfers of immigrants from county law enforcement to ICE. Even as SB 54 has pushed the numbers of transfers lower, the carveouts won by law enforcement agencies, combined with creative cooperation efforts that skirt the edges of state law, allow for significant ongoing enforcement collaboration.

Among California cities, Los Angeles had the second highest number of total ICE arrests (including transfer arrests, at large arrests and other arrests) for the period from 2015–2018 with 10,739 total.²⁷⁴ Given that most of this period was prior to SB 54, that some enforcement cooperation is still legally tolerated after SB 54, and that additional cooperation appears to be occurring in fact, this number is perhaps not surprising in a city with such a substantial immigrant population. The majority of the arrests in Los Angeles were local incarceration arrests made through the Criminal Alien Program—including PEP (2014–2016) and Secure Communities (2017 onward), for a total of 6,237 arrests during the four-year period.²⁷⁵ Located arrests—those carried out by ICE agents without relying on transfer—account for 2,550 of the arrests made in Los Angeles during this period,²⁷⁶ although some of these may reflect informal transfers not recorded as such by LASD.²⁷⁷ Arrests arising

271. See *Secure Communities Removals*, *supra* note 266.

272. *Id.*

273. See discussion *supra* notes 106–112 (discussing LA county demographics). On the other hand, the Kern County numbers do look disproportionate, providing further fodder for the claim that local policy matters. Evaluation of Kern County immigration policies, however, is beyond the scope of this Article.

274. *Immigration and Customs Enforcement Arrests*, TRAC IMMIGRATION, <https://trac.syr.edu/phptools/immigration/arrest/> [<https://perma.cc/5AM8-GTE3>] [hereinafter *ICE Arrests*].

275. *Id.*

276. *Id.*

277. For example, the LA OIG report notes that after the passage of the TRUST Act, LASD continued to share immigrant release date informally with DHS in violation of the law.

out of transfers from federal incarceration arrests account for only 162 of the total arrests.²⁷⁸

The overall trends of federal enforcement in Los Angeles do not neatly track federal and state policy changes. Local arrests made under “Criminal Alien Program” (CAP) policies—mainly PEP and, later, Secure Communities—stood at 2,236 in 2015, fell to 1,285 in 2016, rose slightly to 1,570 in 2017 and then fell to under 1,146 in 2018.²⁷⁹ Clearly, the TRUST Act changed practices over the course of 2015. Furthermore, although it is early to gauge the effects of SB 54, the 2018 number would seem to signal the efficacy of SB 54 and county leadership’s relatively firm effort to improve LASD adherence to the state’s noncooperation laws.

The story looks a bit different for Orange County. In the period from 2014–2018, Orange County ranked fifth in the state for immigration arrests, with 4,741.²⁸⁰ Notably, this is about 44 percent of the number of arrests made in Los Angeles County in the same period, despite the fact that the immigrant and undocumented immigrant populations in Orange County are only about 20 percent of Los Angeles County’s comparable population.²⁸¹ Local differences do matter.

CAP local incarcerations—again, primarily transfers from county jails to the federal government under the auspices of PEP and Secure Communities—constitute the bulk of Orange County immigration arrests (3,300).²⁸² Adjusting for the immigrant population, this arrest rate doubles

HUNTSMAN, *supra* note 144, at 12. These informal practices might be recorded differently by county and federal agents.

278. *Ice Arrests*, *supra* note 274. In Southern California, there are nine federal Bureau of Prisons facilities clustered in six locations. None are in Orange County, but there are two in Los Angeles County: MDC in Los Angeles County is an administrative detention center that houses 624 inmates and FCI Terminal Island is a low security prison in Los Angeles County that houses 1142 total inmates. See *MDC Los Angeles*, FED. BUREAU OF PRISONS, <https://www.bop.gov/locations/institutions/los> [<https://perma.cc/B7FT-NUMM?type=image>] (last visited Oct. 6, 2019) [<https://perma.cc/B7FT-NUMM?type=image>]; *FCI Terminal Island*, FED. BUREAU OF PRISONS, <https://www.bop.gov/locations/institutions/trm> (last visited Oct. 6, 2019). [<https://perma.cc/JG9X-3KNR?type=image>]. These spaces, uncontrolled by state law, are another limit to sanctuary.
279. *Ice Arrests*, *supra* note 274.
280. *Id.* To view data, select California in the first dropdown menu and Orange County in the second.
281. Compare *QuickFacts LA*, *supra* note 111 (34.4 of Los Angeles’s 10.1 million residents are foreign born) with *QuickFacts Orange County*, *supra* note 207 (30.3 percent of Orange County’s 3 million residents are foreign born).
282. *Immigration and Customs Enforcement Arrests, ICE Data through May 2018, Orange County CAP Local Incarcerations*, *supra* note 280. To see the total number of CAP

that of Los Angeles County. Located arrests account for 912 of the total number of arrests, and noncustodial arrests account for 157.²⁸³

A recent report on Orange County immigration enforcement practices also notes discrepancies between county-level data on immigrant transfers and federal data.²⁸⁴ Some of these discrepancies may stem from the fact that informal transfer practices that do not comply with SB 54 are not counted by OCSD as transfers but are counted by ICE as such.²⁸⁵ Alternatively, some of these transfers may be happening at the level of local police, bypassing the sheriff's office entirely.²⁸⁶

2. State and Local Policies Also (Re)Shape the Use of Federal Enforcement Resources

A second observation that flows from this tale of two counties is that local immigration policy influences federal enforcement policies and practices. In 2017, the Trump administration apparently attempted to ramp up federal enforcement resources in noncooperating jurisdictions.²⁸⁷ In that year, three of the top ten counties with the most "ICE community arrests" were located in California.²⁸⁸ The remaining seven were widely dispersed in other states, but high profile sanctuary jurisdictions appear to be overrepresented on this list.²⁸⁹ The federal government thus deployed resources in ways that partially compensated for lost Secure Communities arrest opportunities and also served to remind localities of the limits of their control. This is consistent with the Trump administration's statements about its intention to deploy enforcement resources in sanctuary cities. Stepped-up at large arrests have provided a means for the federal government to fill some of the enforcement reductions created by local noncooperation; at large arrests now also form a larger overall percentage of ICE arrests.²⁹⁰ This, to a certain extent, undercuts the purported protective function of the noncooperation sanctuary policies.

Local Incarcerations, select California under "state", Orange County under "County/Surrounding Area," and see the total number in the third column.

283. *Id.*

284. See generally KRSNA AVILA ET AL., *supra* note 228.

285. See discussion *supra* at note 57 (noting this possibility in Los Angeles County).

286. See KRSNA AVILA ET AL., *supra* note 228, at 7.

287. At large arrests were up nationwide in 2017, but the increases were greater in high profile sanctuary jurisdictions. See CAPPS ET AL., *supra* note 52, at 39–40.

288. See *Ice Arrests*, *supra* note 274.

289. *Id.*

290. *Id.*

There are some limits to the federal government's capacity to reallocate resources in this way, however. Indeed, after high profile and public efforts to conduct raids in sanctuary cities in 2017, the Trump administration appeared to pull back on community arrests in those areas.²⁹¹ The refusal of local officials to facilitate ICE raid activities further complicates federal efforts, requiring the federal government to assume responsibility for activities that once might have been performed by local law enforcement.²⁹² This puts new demands on federal enforcement capacity. Still, the administration has announced plans for more high-profile raids in major cities. At large arrest numbers therefore may rise again in the near future.²⁹³

B. Immigrants' Experience of Overlapping Enforcement Policies and Practices

What does immigration sanctuary feel like on the ground? This Part illustrates the complexity of the answer to that question, drawing on the related, ongoing work of a team of researchers that includes interview data from 150 interviews with immigrant residents and immigration activists and organizers in these two counties in the 2014–2018 period.²⁹⁴ The interviews reveal how local immigrant residents perceived and experienced federal, state and local immigration enforcement policy shifts in this period.

Before even turning to that research, it should be immediately clear from the data above that local immigration enforcement policies are situated in

291. See discussion *supra*, Part III.A, citing track data for at large arrests in 2018 in Los Angeles and Orange County. The number of such arrests declined in both.

292. See, e.g., *Chicago Police May Not Facilitate ICE Raids, Mayor Lightfoot Says*, NPR (July 2, 2019, 5:07 AM), <https://www.npr.org/2019/07/02/737919093/chicago-police-may-not-facilitate-ice-raids-mayor-lightfoot-says> [<https://perma.cc/3YWP-4SPM>] (interviewing Chicago Mayor Lightfoot as she indicates that Chicago police will not provide any logistical support for ICE raids).

293. See *id.* (noting President Trump's "threat to begin immigration raids in major cities"); see also Christal Hayes, *Trump Says ICE Raids Will Happen After July Fourth Holiday 'Unless We Do Something Pretty Miraculous'*, USA TODAY (July 11, 2019, 12:50 PM), <https://www.usatoday.com/story/news/politics/2019/06/29/trump-ice-raids-immigrants-planned-july-4/1607395001> [<https://perma.cc/LQ92-PGFU>].

294. The bulk of the research and analysis has been funded by the National Science Foundation Senior Advisory Panel for the Law and Social Sciences Grant for the project "Executive Relief and the Roles of Mediating Institutions in Immigration Law and Policy" (with Sameer Ashar, Susan Bibler Coutin (PI) and Stephen Lee) (Grant Award Number 1535501) (2015–2018). Data collection from 2014–2015 was funded by Russell Sage Foundation Presidential Authority Grant for the project "Liminal Legalities along Pathways to Citizenship: The Role of Brokering Organizations" (with Sameer Ashar, Susan Bibler Coutin and Stephen Lee) (2014–2015).

physical spaces that are the site of overlapping and abutting jurisdictions. Although Gulasekaram and Villazor convincingly illustrate the possibilities for strong, networked forms of sanctuary created by the mutually reinforcing protective policies and practices of governmental and nongovernmental actors,²⁹⁵ it is also the case that networked sanctuaries are far from perfectly protective.

Residents of any city or town are subject to multiple (and sometimes competing) enforcement policies and practices that overlap in the same physical space. The Orange County Board of Supervisors' restrictionist preferences govern in the same geographic space as the city of Santa Ana's sanctuary ordinance. Community college districts and state colleges and universities are public spaces that have their own immigration enforcement policies in place, and these policies are often much more immigrant-protective than the policies of the surrounding cities and county, as the Orange County case illustrates. But police and federal law enforcement can and do access campuses at times; in fact, the Los Angeles Sheriff's Department provides law enforcement services in the Los Angeles Community College District.²⁹⁶ The Los Angeles Police Department has long maintained official policies of noncooperation around enforcement (although the policies have sometimes been breached). But people who live in Los Angeles routinely have to pass through cities with more restrictionist policies and practices.

Some cities within both Orange County and Los Angeles County have their own police forces with their own laws to administer and policies to follow, and as the discussion above makes clear, the approaches of these cities to immigration enforcement is varied. Written local policing policies are sometimes at odds with state law and sometimes at odds with the approaches of the sheriff of the county in which they sit. Meanwhile, some cities within these counties contract out their policing to the county sheriff, thus broadening the reach of the comparatively restrictionist policing practices of the sheriffs' departments, whether intentionally or not. Moreover, county sheriffs in both counties generally exercise jurisdiction over arrestees coming from a variety of cities because they run most of the jails. County jails and county courts thus exercise jurisdiction over residents from sanctuary cities and anti-sanctuary cities at the same time. And in Orange County, the OCSD

295. See Villazor & Gulasekaram, *supra* note 13.]

296. *Campus Safety*, LOS ANGELES CITY COLLEGE, <https://www.lacitycollege.edu/Campus-Life/Campus-Safety/Sheriffs-Office> [<https://perma.cc/DV6C-P2V5>].

also polices county transit by contract, giving it jurisdictions over buses regardless of whether they are in sanctuary cities or not.²⁹⁷

In short, some small spaces of sanctuary can be found even in more restrictionist localities and even individuals in the most protective of sanctuaries can be vulnerable to the effects of cooperative enforcement policies. That vulnerability may be increased or decreased by factors beyond their control—whether they have deferred action status, whether they have criminal convictions, their own race and phenotype, and a given officer’s propensity to engage in racial profiling.

In light of the complex realities of immigration policy on the ground, it is unsurprising that the experiences of immigrant residents do not neatly track the labels on their state and cities. Some of the findings in the interview data logically track the general storyline of Los Angeles and Orange Counties as anti-enforcement cooperation and pro-enforcement cooperation, respectively. Unsurprisingly, for example, Orange County residents that we interviewed were more likely than Los Angeles County residents to express concern that their encounters with local police would lead to their deportation²⁹⁸ or that of a loved one. Fewer Los Angeles County residents expressed concern about the possibility that interactions with the police would lead to their deportation.

But the story is also more complicated than the one suggested by exclusive focus on enforcement cooperation. The fact that Los Angeles residents did not fear that police would collaborate with ICE does not mean that they did not worry about the police. During the 2014–2017 period in which we conducted our interviews, a substantial number of Los Angeles County residents that we interviewed explained that LAPD officers racially profiled Latinx drivers in order to run license checks on them.²⁹⁹ The goal as

297. *Mass Transit Bureau*, ORANGE CTY SHERIFF’S DEP’T, <http://www.ocsd.org/divisions/fieldops/security/mtb> [<https://perma.cc/3XWD-YN8Y>].

298. Here, I am using the term colloquially because it accords with the term used by our respondents. As a legal matter, individuals who are present in the United States after formally being admitted (whether or not they still have legal status) would, indeed, be subject to deportation if they have triggered any of the grounds identified in 8 U.S.C. § 1227. But those who were never lawfully admitted would be subject to “exclusion” and subject to the inadmissibility grounds of 8 U.S.C. § 1182. Removal proceedings for some individuals who lack a prior admission can be much more streamlined than those for individuals who are deportable. Compare 8 U.S.C. § 1225 (expedited removal proceedings for recent arrivals and entrants) with 8 U.S.C. § 1229a (outlining the general removal procedures applicable to individuals not subject to more expedited processes).

299. JENNIFER M. CHACÓN & SUSAN BIBLER COUTIN, *Racialization Through Enforcement, in RACE, CRIMINAL JUSTICE, AND MIGRATION CONTROL: ENFORCING THE BOUNDARIES OF BELONGING* 169–70 (Mary Bosworth et. al. eds., 2018). See also Jennifer M. Chacón,

they perceived it was not to effectuate the deportation of unauthorized residents, but rather, to use their lack of a driver's license as a basis for impounding their vehicles as a revenue-generating mechanism.³⁰⁰ Some respondents were hopeful that the passage of AB 60, authorizing drivers licenses for unauthorized residents, would tamp down on this practice.³⁰¹

Consistent with the policies and practices described in Part II, lawyers and organizers in Los Angeles County viewed the Los Angeles Sheriff's Department as much less immigrant-friendly than the LAPD, less likely than the LAPD to work with them to develop immigrant-protective policies, and more likely to turn residents over to ICE. In Orange County, the concerns regarding ICE-Sheriff collaborations are even greater. More surprisingly, given the varied approaches of local governments to enforcement cooperation, immigrant residents and the organizers and activists that work alongside them did not see local police departments—including those in sanctuary jurisdictions—as potential sources of immigrant protection. They continued to express the view that police engaged in harsh policing practices and racial profiling in their communities.

Attitudes toward local governments were also complicated. Orange County and Los Angeles County residents had strongly held views on the question of which cities were safer for immigrant residents. The distinctions drawn by Orange County residents bear some relationship to formal enforcement cooperation policies. So, for example, several Orange County residents identify “south county” as particularly dangerous terrain for immigration enforcement. This could be easily explained by the fact that the OCSO polices much of the southern part of the county through its contracts with south county cities. Students on the U.C. Irvine campus in Orange County spoke of the campus as a space relatively protected from immigration

Citizenship Matters: Conceptualizing Belonging in an Era of Fragile Inclusions, 52 U.C. DAVIS L. REV. 1, 63–65 (2018). Sameer Ashar, Susan B. Coutin, Stephen Lee and I are currently documenting systematically the number of times our Los Angeles based immigrant respondents reference these license and seizure policies. We will expand upon and refine this analysis, as well as the other general claims drawn from the data at Part IV of this article, in a forthcoming Stanford University Press book, scheduled for publication in 2020.

300. CHACÓN & COUTIN, *supra* note 299; Chacón, *Citizenship Matters*, *supra* note 299, at 63.
301. See Chacón, *Citizenship Matters*, *supra* note 299, at 30–31, n.99 (citing examples from respondents' transcripts expressing the sense that AB 60 helped protect them from this practice). At least one study also has demonstrated the positive social spillover effects of AB 60: The number of hit and run accidents have decreased since the implementation of the Act. See generally Hans Leuders et al., *Providing Driver's Licenses to Unauthorized Immigrants in California Improves Traffic Safety*, 114 PROC. NAT'L ACAD. SCI. 4111 (2017).

enforcement and as a relative safe haven in Orange County—something that is also consistent with formal policies. But Anaheim, which has enacted an immigrant welcoming ordinance, was singled out by some Orange County residents as an area “dangerous” for immigrants. (Its long and tainted racial past may help to explain this.³⁰²) And Santa Ana, which enacted a sanctuary ordinance at the end of 2016, was also viewed by some respondents as having a police department hostile to Latinx immigrants and as a trouble spot for being racially profiled if Latinx.

The views of residents suggest that protective immigration policies may be a necessary but insufficient condition for inspiring community trust among immigrants. To the extent immigrants still feel targeted for unnecessary enforcement actions on the basis of race, or are concerned that such targeting may happen to their friends and families, noncooperation policies are not a panacea for insecurity and distrust of the police. And underlying distrust is likely aggravated when the practices of beat officers fail to align with formal policies.

It is important to underscore this reality, because it has implications for research and policy design. Discussions of immigration enforcement efforts often assume that trust in immigrant communities is dependent largely on the formal degree of cooperation or noncooperation between local law enforcement and federal immigration enforcement efforts. A closer look at residents’ own experiences suggests two problems with this assumption. The first is that the formal cooperation policy is often an imperfect proxy for the degree of actual enforcement cooperation in particular places, either because formal policy is subverted by informal workarounds or because the existence of overlapping yet distinct formal regimes means that some governmental actors can will undercut the cooperation policies of other governmental actors in the same geographic space.

But the second problem with assuming a simple relationship between trust in police and immigration cooperation policies is that trust between the police and Latinx residents—including individuals who are, in fact, undocumented—is based on an interplay of factors that relate in complex ways to immigration status. Often, trust is lacking not because these residents fear that interactions with law enforcement will lead to deportation (although many people certainly do have that fear, too), but because they believe that their immigration status and their racial identity will subject them to unfair

302. See *supra* notes 202, 254 (discussing the history of anti-Black racism and the Ku Klux Klan in Anaheim).

treatment by the police having nothing to do with the goal of deportation, even as it is tied to the precarity they experience because of their racialized immigration status.³⁰³

IV. PRACTICAL AND THEORETICAL IMPLICATIONS

A bottom-up view of immigration enforcement policies reveals certain dynamics that may inform existing theories of federalism and localism, particularly within the immigration context.

First, not just state but also local immigration enforcement policies have an effect on federal immigration enforcement outcomes. Now that the Secure Communities program and other federal enforcement cooperation initiatives have converted local police into frontline immigration agents, line officers at the local level have the power both to dampen federal enforcement efforts and to circumvent state noncooperation restrictions. Sheriffs' departments, which serve as critical liaisons between ICE and state criminal enforcement systems, possess a great deal of leverage in shaping local immigration outcomes, including through reliance on and sanctioning of informal practices that run afoul of state laws. Counties acting in concert with the federal government—or even simply cooperating informally with federal officials in their neighborhoods—can limit the protective effects of competing state (and substate) policy choices. These nonsovereign jurisdictions clearly are exercising voice by narrowing state noncooperation policies through muscular legislative advocacy; but in a very real way, they are also exiting noncooperation regimes through continued collaboration with federal officials in various forms.

Nor is the possibility of exit limited to restrictionist cities and counties in immigrant-protective states. Moving away from the Southern California case for the moment, the national data suggest that where a state's enforcement policies are aligned with, rather than compete with, federal policies, federal enforcement efforts will be amplified.³⁰⁴ And as a doctrinal matter, localities' preemption claims against procooperation state governments have thus far been an unsuccessful mechanism for creating spaces for formal local policy

303. This is consistent with findings made by Armenta, *supra* note 259. Cf. Amada Armenta & Rocio Rosales, *Beyond the Fear of Deportation: Understanding Unauthorized Immigrants' Ambivalence towards the Police*, 63 AM. BEHAV. SCIENTIST 1350 (2019).

304. See discussion *supra* at notes 266–269 noting ICE arrest differences between certain Texas and California counties.

control, as have anticommandeering arguments.³⁰⁵ But just as recalcitrant localities have found ways of circumventing immigrant-protective state governments' policies, local differences in removal patterns in restrictionist states suggest that informal enforcement choices at the county (and perhaps city) level still affect outcomes. While formal local enforcement policies succeed best when aligned with those of the federal government, the state government, or both, it is also the case that local agents can affect enforcement outcomes even without these alignments.

Second, this analysis casts a clearer light on the complexities of local governmental control and highlights the need for greater attention to county-level governance in general and to sheriffs' departments in particular. In any jurisdiction-specific analysis, it is important to consider the ways that various aspects of systemic reform interact. So, for example, California's realignment efforts, designed to deal with state prison overcrowding, have intentionally pushed more residents into the jurisdiction of county sheriffs.³⁰⁶ The efforts were unrelated to (and, indeed, a precursor to) many of the immigrant-protective measures enacted by the state. But it is worth noting that one policy puts more residents in the control of local sheriffs' departments at a time when those departments are key nodes of interaction with federal immigration enforcement agents and, consequently, sites where noncooperation policies can be and are sometimes circumvented.

Third and finally, analysis of ground-level developments in Orange County and Los Angeles County suggest that noncooperation policies may be an important means of increasing the security of immigrant residents, but they are not sufficient in and of themselves to accomplish this goal. Individuals are subjected to a host of discriminatory policing practices that arise out of their real or perceived immigration status vulnerabilities. Katherine Beckett and Heather Evans wrote in 2015 about "criminal case processing in the shadow of immigration enforcement."³⁰⁷ Focusing on the case of Kings County, Washington, the authors observed that residents who were foreign nationals experienced longer jail time than their similarly situated citizen counterparts. Investigating local criminal justice practices,

305. See, e.g., *City of El Cenizo v. State of Texas*, 890 F.3d 164, 176–82 (2018) (rejecting preemption claims as well as Fourth and Fourteenth Amendment claims and most First Amendment claims).

306. See Magnus Lofstrom & Brandon Martin, *Public Safety Realignment: Impacts so Far*, PPIC (Sept. 2015), <https://www.ppic.org/publication/public-safety-realignment-impacts-so-far> [<https://perma.cc/2YDM-BNVJ>].

307. Katherine Beckett & Heather Evans, *Crimmigration at the Local Level: Criminal Justice Processes in the Shadow of Deportation*, 49 *LAW & SOC. REV.* 241 (2015).

they found that criminal justice policies took immigration status into account in detrimental ways in setting bail, determining access to diversionary programs and setting sentences.

The evidence from Southern California suggests that not only are criminal cases processed in the shadow of deportation; individuals are *policed* in the shadow of deportation, too. Street police can and do target Latinx residents in ways that increase the costs and decrease the security of these residents regardless of immigration status, even when those individuals are not actually arrested or sent to jail, let alone referred to immigration agents. This remains true for residents who lack citizenship even when immigration enforcement is explicitly off the table as a policing goal.

Ultimately, every resident's ability to take advantage of local noncooperation policies is constrained. In the course of daily life, residents traverse multiple jurisdictions—sometimes adjacent and sometimes overlapping—in ways that make it impossible to take full advantage of the protective efforts of subfederal policies. Federal enforcement agents can be deployed in ways that can mitigate the effects of subfederal noncooperation policies. And law enforcement can target populations for distinctive policing practices based upon perceived immigrant vulnerabilities even when immigration enforcement is not the ultimate goal.

Even in their most robust forms, subfederal noncooperation policies aimed at protecting immigrants are limited vehicles for ensuring freedom of movement, freedom from fear and trust in government. Building truly secure communities will require an end to criminal enforcement practices that target and leverage immigration status vulnerabilities. No federal policy bars that kind of reform, and no community can be truly secure without it.