

**DRAFT VERSION.**

**From Sheriff's Deputies to Immigration Officers: Screening Immigrant Status in a Tennessee Jail**

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*Abstract.* This paper contributes to emerging literature documenting the devolution of immigration enforcement authority by focusing on the implementation of the 287(g) program in Davidson County, Tennessee. It outlines how deputized immigration officers do their work, as well as the ways they come to think about their roles in the larger immigration bureaucracy. Immigration officers see themselves as objective administrators whose primary responsibilities are to identify and process immigrants for removal, but who are not responsible for their subsequent deportation. While immigration officers never waiver about their obligation to uphold the rule of law, alternate narratives emerge depending on how they feel about the immigrants they encounter. These frames range from pride at identifying “criminal aliens”, to guilt for processing immigrants who were arrested for very minor violations. Ultimately, this work shows deputized immigration officers act as extensions of the federal government, rather than independent agents.

**I. INTRODUCTION**

This article seeks to shed light on the local implementation of a 287(g) program, a federal policy that permits state, county or city officers and employees to perform the functions of federal immigration officers.<sup>1</sup> The 287(g) program is a primary example of the devolution of immigration authority from the federal bureaucracy to county and municipal agencies. Thus, the implementation of 287(g) represents a massive effort, not just on the part of federal bureaucrats who have traditionally controlled immigration, but also by localities across the country where federally deputized officers screen immigration status.

The 287(g) program provides a rich case with which to study policy implementation and contributes to two important areas of research and theory. First, it draws from existing research about how administrative discretion is deployed by frontline immigration personnel (Calavita 1992, 2000; Ellermann 2005, 2009; Fuglerud 2004; Gilboy 1991; van der Leun 2003; Wells

2004). Second, it contributes to the growing body of literature focusing on the rescaling of immigration enforcement away from the federal government and the nation's borders to subnational authorities and the nation's interior (Coleman 2007; Varsanyi 2008). By focusing on the frontline officers to whom enforcement is delegated, we can understand how non-federal bureaucrats produce and reproduce the authority of the state (Blom Hansen and Stepputat 2001). Specifically, how do county employees interpret their roles as deputized immigration officers?

My data come from a variety of sources including interviews, observations of meetings at the Sheriff's office, and news articles. I rely heavily on in-depth interviews with deputized immigration officers in a Tennessee county Sheriff's Office and their supervisors.

The paper is organized as follows. First, I provide an overview of policy changes that allowed for increased local authority in immigration enforcement as well as the specific local context in which my study takes place. Next, I examine how deputized immigration officers explain their work and how they link their roles as local deputies to the goals of the 287(g) program and the larger societal context. I show that immigration officers see themselves as objective administrators whose primary responsibilities are to process and identify immigrants for status, but who are not implicated in the deportation process. While immigration officers never waiver about their obligation to uphold the rule of law, alternate frames emerge depending on how they *feel* about the immigrants they encounter. These frames range from pride at identifying "criminal aliens", to guilt for processing immigrants who were arrested for very minor violations. Ultimately, this work shows that despite the great deal of concern about localities creating de facto policies and implementing laws as they please, the 287(g) program in Davidson County is tightly controlled by the federal government and immigration officers act as extensions of the state, rather than autonomous actors.

## **II. IMMIGRATION ENFORCEMENT GOES LOCAL**

### **A. CHANGES IN THE POLICY AND ENFORCEMENT LANDSCAPE**

Many scholars identify 1996 as a watershed year when the “criminalization” of immigration law began (Miller 2002; Stumpf 2006). That year, the Illegal Immigration Reform and Responsibility Act (1996) made noncitizens who had previously committed misdemeanor crimes eligible for deportation. Changes to immigration law also allowed for greater cooperation between federal immigration enforcement and local and state law enforcement through the 287(g) provision. Although not immediately implemented, 287(g) represented a blurring of immigration enforcement boundaries. Historically, local enforcement agencies enforced only criminal violations of immigration law, while federal agencies enforced both civil and criminal violations.<sup>1</sup> In 2002, reversing their previous position, a Department of Justice memo (US Office of the Assistant Attorney General 2002) announced that states have the “inherent authority” to enforce civil provisions of immigration law. That year, the state of Florida signed the nation’s first 287(g) agreement after officials learned several 9/11 hijackers had lived in the state. The 287(g) program is just one of the initiatives operated through ICE’s Office of State and Local Coordination. ICE also cooperates with local law enforcement agencies through the Criminal Alien Program (CAP) and Secure Communities, both resulting in immigration screenings at state, county, and municipal jails. Post 9/11, the nation’s interior has emerged as a new space to police immigrants, increasingly by local and state actors who previously had no power to enforce immigration law (Coleman 2007)

Through the 1990s and 2000s, there has also been a rapid expansion of immigration detention infrastructure. In addition to for-profit private detention facilities, and their own federal detention facilities, Immigration and Customs Enforcement (ICE) pays municipalities to house

detainees in local jails and transport detainees between detention centers through inter-governmental service agreements. In 2009, an estimated three hundred thousand deportable immigrants were housed in detention facilities nationwide, and over 60% of them arrived in immigrant detention after local arrests resulted in immigration checks at federal, state, or county jails (Schriro 2009). Detainees remain in custody until they are released, bonded and paroled, or deported from the United States (Hernandez 2008).

Concurrent with the devolution of immigration authority from federal to local agencies, we have also seen the emergence of immigration policymaking at multiple levels of government, called immigration federalism (Motomura 1999). Convinced that the federal government is not doing enough to curtail unauthorized migration, attempts to regulate immigration have trickled down to state, county, and municipal governments (Chavez and Provine 2009; Ramakrishnan and Wong 2007). Hopkins (2010) finds that local anti-immigrant policies are most likely in communities that experienced a sudden growth in the immigrant population and when national rhetoric about immigration is most salient and threatening. In Pennsylvania, a town of twenty-two thousand people grabbed national headlines for its Illegal Immigration Relief Act (2006), which sought to punish employers who hire undocumented immigrants and landlords who rent to them. More recently, Arizona's Support Our Law Enforcement and Safe Neighborhoods Act (2010), more commonly known as SB 1070, sought to require Arizona police officers to check individual's immigration status if officers suspected the person might be in the country without status. Courts struck down these local immigration policies because of federal preemption, holding that the federal government has the exclusive authority to control immigration.

## **B. FRONTLINE WORKERS, BUREUACRACY, AND IMMIGRANTS**

Understanding how officials in bureaucratic agencies make decisions has been a topic of import for socio-legal scholars for decades. Rather than focus on the government elites who create policy, Lipsky (1980) famously argued that street-level bureaucrats, although regarded as low-level workers, should also be considered policy makers. According to Lipsky (1980), understanding street-level bureaucrats is important because they are most peoples' point of contact with the government and they "make policy" through their "relatively high degrees of discretion and relative autonomy from organizational authority" (p. 13).

Scholars have examined how frontline workers execute their administrative duties in varied settings including how police officers patrol the streets (Maynard-Moody and Musheno 2003) or how welfare workers provide services to clients after welfare reform (Meyers et al. 1998). Recently, scholars have turned their attentions to how bureaucrats respond to the presence of immigrants (see Jones-Correa 2007; Lewis and Ramakrishnan 2007; Marrow 2009; van der Leun 2003) especially in light of increased local pressure to deny services to the unauthorized. In the Netherlands, van der Leun (2003) describes variability in how employees in different sectors implement national policies toward unauthorized migrants. For example, police officers who worked in immigration enforcement were selective and pragmatic about who to detain and deport. Moreover, workers in education and health sectors found loopholes in the law and provided services to undocumented immigrants, contradicting policy directives.

Others have turned their attention more specifically to the immigration enforcement bureaucracy by examining how administrative discretion is deployed by officials implementing the Chinese Exclusion Act (Calavita 2000), airport inspectors regulating entry (Gilboy 1991), and deportation officers making decisions about who to return to their countries of origin (Ellermann 2005, 2009). While often immigration enforcement is imagined as being executed by

some monolithic state, these studies illustrate how frontline workers apply regulations on entry and exit.

Research suggests that employees in the federal immigration bureaucracy are constrained in their ability to enforce immigration policies. Although U.S. immigration investigators are motivated to do their job because of their strong orientation towards law enforcement (Weissenger 1996), employees in the immigration bureaucracy are ineffective because they are given conflicting and unclear policy directives (Magaña 2003). Wells (2004) shows how informal agreements between city officials and Immigration and Naturalization Service (INS) employees<sup>3</sup> resulted in practices that were less restrictive than mandated federal policies. Specifically, after immigration raids outraged the local community, city officials and INS officers made informal agreements after which INS narrowed its enforcement efforts to those with felony convictions (Wells 2004). Ellermann (2009) documents variation in the capacity of bureaucrats to deport migrants and argues that lack of implementation is a result of incapacity rather than unwillingness. For instance, in Germany, where immigration bureaucrats are more insulated from external pressures than in the United States, deportation officers face fewer hurdles when implementing deportation policy (Ellermann 2009).

The devolution of immigration authority from the federal bureaucracy to non-federal law enforcement agencies necessitates examining immigration enforcement from the bottom-up to understand the numerous actors and their roles in the new enforcement regime. Decker et al. (2009) found police departments reported substantial variation when surveyed about the circumstances under which they would inquire about individual's immigration status. Variation was largest in places where neither the police department nor the city had an official immigration policy for officers to follow (Decker et al. 2009). A study of three cities in the Phoenix area

described how anti-solicitation ordinances (ordinances that prohibit day-laborers from seeking employment) resulted in immigration policing “through the back door” (Varsanyi 2008: 29). Thus, not only are more local law enforcement agencies involved in immigration enforcement through federally authorized programs like 287(g), but the evolving immigration enforcement landscape has also led to de-facto immigration policing.

### **C. BACKGROUND AND METHODS**

This paper focuses on the politics and policy implementation of a 287(g) program in Davidson County, Tennessee. Over the last 20 years, Latino population growth in the South has exploded, with most Latinos in the South concentrated in metropolitan areas (Neal and Bohon 2003). A 2006 estimate placed the Hispanic foreign born population in Nashville-Davidson County at about 4% of the total population, with over 26,500 people (American Community Survey 2005-2007).<sup>4</sup>

In 2006, several high profile drunk driving cases in Davidson brought immigration to the political forefront after it was revealed that the assailants were unlawfully present in the United States. One case that received a great deal of attention occurred in July 2006, when an undocumented drunk driver with fourteen previous arrests killed a Nashville couple after crashing into their vehicle.

By September of 2006, the Sheriff of Davidson County, flanked by the District Attorney, the Police Chief, and other local politicians, announced their intent to participate in the 287(g) program. The Davidson County Sheriff announced, “During 2006, several very serious cases involving criminal illegal immigrants in Nashville prompted the three of us to begin formulating plans to better protect the citizens of Davidson County... It is important for us to emphasize that this program will affect only those illegal immigrants who have a blatant disregard for laws in

Davidson County. If you are in this country illegally and commit a crime, we will process you under the federal authority given to us through 287(g)” (Crocker 2006). After a meeting in Washington D.C. where Tennessee’s elected officials pressed the federal government to approve Davidson County for the program, Davidson was approved for participation by the end of the year.

After 287(g) approval, the Davidson County Sheriff’s Office was charged with assembling a team of fifteen employees who would receive training to be deputized ICE officers. For employees to be eligible for ICE deputization they had to have been DCSO employees for at least two years and they had to be United States citizens. After the team was selected, these employees completed a federal training program that prepared them to be deputized ICE officers. While most agencies involved in 287(g) send their employees to the Federal Law Enforcement Training Center in Charleston for training, in this instance, ICE sent instructors directly to Nashville. Training lasted for four weeks during February and March of 2006, and occurred at the Davidson County Sheriff’s Office training facility. Deputies describe the program as especially rigorous or harder than they expected.

Davidson County performs the jail model of 287(g), meaning that immigration checks occur in the jail, after foreign-born people are arrested and incarcerated. In Davidson County, the DCSO does not have the authority to make arrests; arrests are made by officers from the Metropolitan Nashville Police Department, which does not have a 287(g) agreement. When individuals are arrested, police officers fill out an arrest report that indicates the arrestee’s place of birth. If this information indicates the person is foreign born, when they are booked in to the DCSO jail, a red stamp that says “ICE” is placed on their paperwork and dropped into a box for deputized officers to retrieve and the person is placed on an “ICE Hold”. The deputized ICE

officers then conduct an administrative interview where they determine the arrestee's immigration status. If the person has legal status, the individual's ICE Hold is removed but if the person is found to be illegally present, the ICE Hold remains.

When the individual is on an ICE hold, he or she may be eligible for an immigration bond. Immigration bonds range from \$5,000 to \$20,000 and must be paid in full in Memphis, Tennessee. If the individual does not qualify, or cannot pay the immigration bond, he or she is transferred to ICE custody after serving the local time for the crime for which he or she was arrested. The DCSO has an inter-service government agreement to hold individuals for Immigration and Customs Enforcement, so although technically in ICE Custody, the individual is still housed in the Davidson County jail. DCSO is reimbursed \$63 a day by the federal government for housing ICE Holds. Twice a week, agents from the Office of Detention and Removal pick up ICE Holds to take them to the local ICE office, after which they are transported to a detention facility in Oakdale, Louisiana.

Data from this paper comes from in-depth interviews and observations with administrative actors from the Davidson County Sheriff's Office (DCSO). While DCSO employs over 500 people, but only a small number of its employees are directly involved in the 287(g) program. DCSO employees involved in 287(g) include the Sheriff, the ICE Supervisor, the Communications Director, the ICE Services Coordinator, and the 10-12 deputized ICE officers. I conducted interviews with these employees in addition to the ICE agent from the Office of Detention and Removal charged with overseeing 287(g) in Davidson County. Interviews were conducted inside offices at the Sheriff's Office or in the jail during work hours. Each interview lasted approximately one hour, and was audio-recorded and subsequently transcribed. I coded these interviews for analytic themes that came up repeatedly in the interviews.

Observations include two years of attendance at Sheriff's Advisory Council meetings, which are held quarterly at the Sheriff's Office. Sheriff's Advisory Council meetings are meant to serve as a conduit of information between the Sheriff's Office and interested parties (police officials, the public defender, and immigrant advocates) with respect to the operations of the 287(g) program.

### III. CASE STUDY ANALYSIS

When the Sheriff's office announced it would select a team that would be trained as immigration officers, over two hundred people (one-fourth of all Sheriff's office employees) applied for the available positions. Consequently, upper level management refers to the group as "the cream of the crop." Those ultimately selected included men and women, they have between five and nineteen years of experience, and they came from different positions from within the jail—including guards, booking officers, and one employee from the maintenance department.

This section highlights the work that deputized immigration officers do, and how they interpret this work. Primarily, immigration officers see themselves as objective implementers of immigration law, a role I characterize as the **by-the-books administrator**. Immigration officers think of themselves in these terms because they identify and process immigrants for removal, but they have no discretion. Other narratives that emerge to describe how immigration officers do the work they do include the **public protector**, the **reluctant regulator**, and the **benevolent gatekeeper**. For example, the immigration officer's role as a public protector emerged when the officer discussed cases where the immigrant screened for removal was arrested for a serious offense. In contrast, officers spoke about themselves as reluctant regulators when immigrants they screened could not be easily characterized as criminal aliens and were sympathetic or deserving. In a few cases, officers described themselves as people who bestowed legal

immigration status, a role I've described as the benevolent gatekeeper. Below, I present each narrative in more detail.

### **The by-the-books administrator**

When generalizing about their jobs, deputized immigration officers emphasized their professionalism and the federal training they received. Overwhelmingly, Sheriff's office deputies cited this federal training as one of their reasons for applying for 287(g) positions. Employees described 287(g) as an opportunity to participate in something unique, and saw the position as a promotion even if they received no pay increase. Instead of interacting with large segments of the inmate population, they interviewed foreign born arrestees one by one. DCSO immigration officers had the use of two furnished offices that contained several desks, rolling office chairs, and multiple computers with internet access. A picture of the deputized officers hung on the wall in one of the offices, a picture that officers frequently pointed to as I interviewed them. Below, DCSO employees explain their motivations to become deputized immigration officers:

Look at the picture on the wall [points to picture with team of immigration officers]. All these individuals there were the ones who started this and no one else, whether they come to replace (us) or not, they can't say they were at ground level when it got started. (Interview Officer 3)

My number one reason was I kind of felt like it was cutting edge law enforcement. You know, it was kind of what was coming. You could see it coming across the board in the entire nation. (Interview Officer 2)

DCSO immigration officers described their participation in the 287(g) program as something special. They saw themselves as pioneers—among the first to be trained for a cutting edge law enforcement program.

They had a strong sense of identity as officers of the law. When describing their jobs and various cases, officers using the by-the-books administrator frame usually highlighted their strict

interpretation of the law and their lack of discretion. They would speak of the law in black and white terms often saying “the law is the law” or, when referring to foreign born arrestees’ immigration statuses, “illegal is illegal.” Officers did not make moralistic statements or judgments about those who lacked status, but emphasized that those without immigration status violated the law:

Most of these people are good hardworking people, but they're violating some kind of law. Two laws, I know one's a civil immigration law but the other one is a criminal law. It might happen to be a misdemeanor but it's the law and that's an apolitical statement. That's just the law. (Interview Officer 8)

While some research highlights how immigration laws *create* immigration status (Calavita 1998; DeGenova 2002, Ngai 2004), to immigration officers, the law as unambiguous. As the quote above demonstrates, the immigrants he screens may be “good hardworking people” but they have violated both federal immigration law and state criminal law. Similarly another officer said, “If you’re here illegal, you’re illegal and that’s just how it is.”

Much of the work on the street-level bureaucrats focuses on the role of discretion in the implementation of policy. For example, street-level bureaucrats exercise discretion based on their judgments about the worth of the client, rather than the written rules or procedures they are directed to follow (Maynard-Moody and Musheno 2000). In contrast, immigration officers describe a strict adherence to immigration law, and make few judgments regarding immigrants’ worth. One immigration officer mentioned it might feel better to process a gang member than someone who was arrested for driving without a license but she made no distinctions because “it’s not my responsibility to carry that burden.” Thus, the statements made by officers as they describe their adherence to laws and rules shows, as Ellermann (2009) suggests, that immigration bureaucrats are driven by mandate fulfillment, and a desire to enforce the law.

Research on street-level workers has demonstrated that often workers have wide latitude in exercising discretion; workers ignore or bend the rules to cope with a stressful working environment (Lipsky 1980) or to help deserving clients (Maynard-Moody and Leland 1999). In contrast, immigration officers describe their roles in the 287(g) program as very limited. Immigration officers question every foreign born arrestee about his or her immigration status and verifies immigration status by taking fingerprints and using federal databases. If the person is amenable to removal, the immigration officer begins prepares the paperwork for an order of removal or a reinstatement of deportation (if the person has been ordered deported before). Below, officers explain the extent of their authority:

Well of course my powers are the power to question someone as to their admissibility or inadmissibility (for deportation) and beyond that my powers are none. I get all the guys, you can let me go, and you can let me go. And I said, 'You don't understand. I'm not the man. (Interview Officer 6)

We have nothing to do with them getting arrested. We get called heartless, we're cold, we're breaking up families, but they don't understand we don't go out and get these folks. They get dropped off to us.... All my job is, once they get brought in here, I just have to find out their legal status. So all this that we go out and we're breaking up families and we're arresting people for- I mean, we have nothing to do with that. That's not our job. (Interview Officer 9)

These statements demonstrate that although the DCSO immigration officers determine one's admissibility for removal, officers do not see themselves as participants in removal proceedings. Almost every officer emphasized that he or she did not deport anyone. When deploying the frame of a by-the-books administrator, immigration officers describe their jobs in terms of categorizing status and processing paperwork, rather than removing people. In fact, immigration officers take offense to any claims that they are responsible for breaking up families. As one officer states, "I'm not the man." Indeed, although local officers prepare charging documents so that ICE can proceed with removal, a supervisor from ICE's Detention and Removal Operations

reviews and signs off on the document again. Consequently, officers describe ICE as ultimately responsible for removal. For example, in those instances where a person's immigration status is more difficult to determine, officers rely on an ICE supervisor to make the determination regarding how to proceed. In contrast to work by Ellermann (2009) and Wells (2004) that illustrates how immigration officials avoid implementing some immigration laws; DCSO officers do not have prosecutorial discretion.

Over and over officers described their jobs in very narrow terms and emphasized their objectivity. For example, one said, "We kind of do what is directed from the top. It depends on the Feds; I don't know why they change their mind on what they do. We have to go with whatever they recommend for us... I don't take it personal." Further reinforcing their interpretation that they are not participants in removal proceedings, immigration officers do not know if the people they initiate proceedings against are ultimately removed. One explains their role in the following terms:

We're *helping*, I think this gets lost a little bit, we're *helping* the federal government with their immigration issues so we're a force multiplier so there are more ways for us to get people to immigration court. I don't know what happens to them when they go to immigration court. I don't know if they get deported, I don't know if they come back. I don't know what happens (Interview Officer 7).

The by-the-books administrator then, emphasizes one's limited authority, and deference to the federal government. While officers are proud of their training as law enforcement officers, they speak about their jobs in neutral terms. They emphasize the importance of following rules and laws, and describe implementing them because "the law is the law", and not because they are right or wrong. Officers lack discretion, and see their job in narrow terms. Immigration officers process people and filter paperwork to assist in due process; they do not break up families or deport people.

## **The Public Protector**

By-the-books administrators emphasize their limited discretion when applying the law and argue that although they are immigration officers, they are not responsible for or participants in deportation. In contrast, when using the public protector frame, officers speak proudly about identifying immigrants for removal and keeping the public safe. For public protectors, immigrants must be removed not necessarily because they are in violation of immigration laws, but because they are a threat to the public. Their statements closely mirror the initial justifications for the 287(g) program because they talk about immigrants as criminal aliens.

So what we do when we screen people, we got rid of some... pretty bad, pretty rough people- gang members... I think we're doing the community a service by having this program. (Interview Officer 5)

It's a tool to help our community to try to make it safer... actually, it's a service for the community (to) try to document some of these individuals if they're, let's say a threat to the community, we'll deal with it. (Interview Officer 8)

Unlike the by-the-books administrator, who is "just enforcing the law", the public protector relishes his or her role as an immigration officer. In the statements above, officers highlight their roles in getting rid of or dealing with "bad people" who pose a threat to the community. Moreover, they describe identifying immigrants for removal as a form of service to the community. Officers are most likely to emphasize their role in the deportation process when immigrants are arrested for serious charges such as drunk driving, drug charges, and crimes against people.

When immigrants commit crimes, they are viewed as having committed multiple violations, one of which is violating the way guests should behave in the country (Sayad 2004).

Some days you're more than happy to do your job because you have a real criminal. A child rapist or all the horrible people that we get in here... I'm just

like yes we've got to get them out of here and a lot of these ones that are criminal, an *illegal* criminal... (Interview Officer 2)

This officer describes getting pleasure from his job, particularly when identifying “real” criminals to remove. This quote demonstrates that being an “illegal” criminal makes one even more deserving of removal. Indeed, the Illegal Immigration Reform and Responsibility Act (1996), of which 287(g) is a part, imposed “stunningly harsh control measures” on criminal offenders because few interest groups were willing to lobby on the behalf of undocumented immigrants who committed crimes (Ellermann 2009: 67). Ellermann (2009) argues that Congress focused on tightening restrictions for criminal offenders because they were “a migrant group much different from undocumented workers” (p. 67).

Many immigrants processed for removal through the 287(g) program, however, have not committed serious crimes. Half of those identified for removal were arrested for misdemeanor crimes such as driving without a license or failing to appear in court (Davidson County Sheriff's Office 2009). In addition, twenty-five immigrants have been processed for removal after being arrested for fishing without a license (Echegaray 2010). Although it may not be clear why processing immigrants for removal after non-violent misdemeanor offenses contributes to public safety, to the public protector, today's misdemeanor violator is tomorrow's drunk driver. An officer says, “ If I determine that that person's a good person and I'm gonna let him go and he goes out and gets a DUI and kills someone than I have to answer to that and than people say why'd you let him go?” To the public protector, misdemeanor violators could turn out to be a threat to public safety someday. Therefore, it is more desirable to remove them before they commit a serious crime, because if they go on to commit more serious offense, the public will have already been threatened.

Since even those arrested for misdemeanors could commit more serious crimes in the future, public protectors believe the best way to keep the public safe is to process all of those without status for removal. As one officer said, “We have to be consistent and the only way to be consistent is to process everyone.” This statement illustrates how the secondary frame of the public protector converges with the primary frame of the by-the-books administrator. Processing everyone identically appeals to by-the-books administrators’ interest in fairness and the public protectors’ interests in removing potential threats.

### **The Reluctant Regulator**

Inevitably, officers encounter cases where, even though immigrants have been arrested, they are not perceived as criminals. By-the-books administrators justify their removal because they have violated the nation’s civil immigration laws and public protectors argue they may commit more dangerous crimes in the future. However, sometimes immigration officers face a moral dilemma—they must treat everyone identically, even those who they believe should not be processed for removal. In these instances, officers become reluctant regulators.

As the implementation of 287(g) demonstrates, although its purpose may have been to identify criminal aliens, in practice it results in removal proceedings for people who are hard to label as criminals. When asked to explain the range of crimes for which people are arrested and then processed for removal, several officers recalled, in detail, cases that bothered them months or years later. For example, an officer explained a case where a young man had been arrested by mistake:

One of my very first ones, he was, I don’t know, probably 23, had been in the country since he was 15, had never been arrested, had never been charged with anything, hadn’t been caught at the border, nothing. He was here with his older brother and I think one of his cousins, they all lived together. Metro served a warrant at his house and he came and turned himself in. Like I said, the program was new, so he probably didn’t know much about it. Turned himself in, ended up

getting processed because he was here illegally, and then it turned out the next day they had served the warrant at the wrong house. It wasn't even for him. So I felt horrible. I mean, there was nothing I could do. But I felt so bad for that guy because he had not done anything wrong. (Interview Officer 7)

In the case this officer described, the young man she processed for removal was taken into custody after the police department served an arrest warrant at the wrong house. The officer emphasized the young man had spent eight years in the country with a clean record and took the fact that he turned himself in as more evidence of his good character. The next day, criminal charges against the young man were dropped. However, because immigration screening occurs upon booking, the young man was screened even though "he had not done anything wrong." Once the young man was identified as having committed a civil immigration violation, there was nothing the immigration officer could do but process him for removal. Although she processed hundreds of people for removal after this case, she remembered this case as one she wished had never happened.

Most officers shared stories about immigrants who they processed for removal to whom they were especially sympathetic. An officer told me about a Honduran man who was arrested for driving without a license. The officer described the man as a "little old farmer guy working tobacco" and he explained that the man came to the United States to pay for his daughters' college tuition in Honduras. The immigration officers' description of the immigrant as a *worker* is notable because it highlights the tensions between immigration control and labor, a primary dilemma in contemporary immigration enforcement (Calavita 1992). Early versions of the Illegal Immigration Reform and Immigrant Responsibility Act introduced provisions for worksite enforcement, but legislators dropped these plans because of public opposition (Ellermann 2009). Instead, Congress focused on tightening restrictions for criminal offenders because they were "a

migrant group much different from undocumented workers” (Ellermann 2009: 67). However, statements from immigration officers charged with processing jailed immigrants for removal demonstrate how these categories are not always easily distinguishable.

While the Davidson County Sheriff points out that immigrants are eligible for immigration screening because they are incarcerated, statements from officers demonstrate how undocumented workers *become* criminals. Indeed, when the Sheriff’s Office shares its statistics regarding the number of immigrants processed for removal, these reports do not specify whose charges were dropped or those arrested by mistake. Instead, the Sheriff emphasizes that all those screened for immigration status were arrested for committing crimes in Davidson County. He therefore implies that all those identified for removal are criminals, something that is easy for him to do as the elected head of the agency, and as someone who rarely interacts with immigrants during immigration screening.

In contrast to the Sheriff, who can gloss over the cases where “deserving” immigrants were processed for removal, an immigration officer explained that although he liked his job, “some days it’s bad.” Officers expressed the most reluctance at processing immigrants who were arrested by mistake or whose arrest was bad luck, such as those arrested for fishing without a license or loitering. Moreover, officers recognized that immigrants came to work and several said that lacking other options, they might do the same thing to provide for their family. Some of the immigrants processed for removal had lived in the U.S. for years, had U.S. citizen children, and owned property. One officer explained she was sometimes frustrated when immigrants signed voluntary departure orders when they might be eligible for relief, if they fought their deportation in court. She shrugged and explained that by law, they were not allowed to give legal advice.

As this data demonstrates, Davidson County 287(g) immigration officers do not have the authority to choose not to process people for removal. Usually, the best they can do to help “deserving” immigrants is to recommend to the federal ICE officer stationed at the jail regarding people’s immigration bond, possible humanitarian release, or releasing people on their own recognizance. Often, the federal ICE officer follows the recommendations of 287(g) immigration officers and 287(g) officers.

When removable immigrants get out of jail on an immigration bond, humanitarian release, or when they are released on their own recognizance, this does not mean their immigration charges go away. Instead, immigrants can go through the adjudication process from home, rather than from detention facilities. And, since immigration officers do not know the outcomes of immigration court, this allows them to imagine that deserving immigrants will have a positive outcome and will be able to legally remain in the country.

### **The Benevolent Gatekeeper**

When officers used the public protector frame, they explained their job in terms of serving the community by keeping the community safe. In contrast, the benevolent gatekeeper frame emerged when officers described how they have been able to help immigrants while simultaneously screening them for immigration status.

Most officers described helping immigrants by being compassionate during the immigration screening process. For example, officers mentioned they tried to tell jokes to put immigrants at ease because they understood it was a tenuous situation. In addition, officers described answering questions, letting immigrants use the phone to call family, and listening to immigrants’ stories during the interview process, even when these stories included much more detail than was necessary. In addition, some officers believed that by getting unauthorized

immigrants an immigration court date, they were giving immigrants the opportunity to regularize their immigration status.

When using the frame of the benevolent gatekeeper, officers described admitting people who “belonged” in the country. Belonging in the United States was not described in terms of language or culture, but immigration status:

I hate the fact that people feel like we’re profiling. If you have somebody who comes in and they say, “I was born in Utah.” Ok. And they speak Spanish. Ok, you’re a Spanish-speaking person that was born in Utah. If you have a social security number and we know it’s a good number, by all means, you belong here, you’re an American. (Immigration Officer 1)

In over three years of screening, immigration officers screened two foreign-born arrestees who thought they were undocumented, but discovered they had derived citizenship. A DCSO immigration officer described this discovery as giving people immigration status: “That was a situation that when they came to us they were illegal and when they left they were legal. We cut them loose.” Although those cases were clearly the exception, other officers relied on those examples as evidence of their good work. An officer said, “What I’m trying to do is basically I’m trying to help people and inform people and make sure they are legal because if you’re legal you get more benefits than if you’re illegal.”

In another case, an officer described interviewing a Mexican woman who had been smuggled to the United States to engage in prostitution. The woman was arrested during a prostitution sting. Listening to her story made the officer sick to his stomach, because the woman had already been victimized. The officer believed that incarcerating her while she was in the process of removal was akin to additional punishment. After explaining her case to the federal ICE officer, the ICE office declined to prosecute her civil immigration violation. The woman was released, provided information about the prostitution ring to federal authorities, and was

approved for a “visa for victims.” The officer who brought her case to the attention of the ICE office described being proud of the outcome of that case.

It is clear that an addition to indifferently applying the law (the role of the by-the-books administrator), immigration officers sometimes see themselves as benevolent gatekeepers. On a few occasions, immigration officers have been able to intervene on behalf of immigrants, after which a few have adjusted their status. Although these cases are the exception, officers can rely on them as proof of the ways immigration officers help immigrants. Moreover, all officers claim to help immigrants by being kind to them during the immigration screening process. In this sense, officers see themselves as ambassadors or gatekeepers of information.

#### **IV. DISCUSSION**

Research on federal immigration officers shows that officers exercise discretion regarding whether or not to pursue deportation, particularly when faced with public opposition (Ellermann 2009; Wells 2006). In contrast, this paper shows that deputized immigration officers in Davidson County, Tennessee have a narrow mandate and virtually no discretion. Their lack of discretion is not a result of being tightly monitored or controlled; in fact, a report issued by the Government Accountability Office (2009) criticized the federal government for not supervising deputized immigration officers closely enough. Although immigration officers deputized through the 287(g) program technically have the authority of any federal ICE officer, in practice they do not have prosecutorial discretion and characterize making decisions as above their pay grade. Deputized immigration officers determine who is eligible for removal, and then they create the charging documents for the federal government to pursue that person’s deportation. It is up to federal immigration officers, however, to intervene and decline to prosecute.

The picture of immigration control that emerges in Davidson County is not one where local actors are enforcing immigration laws however they deem necessary. Instead, immigration officers have a very narrow role in immigration enforcement. The 287(g) program is an example of devolution, in the sense that county officers are processing people for removal rather than federal officers. However, as it is implemented, county immigration officers are acting as extensions of state authority, rather than independently. Thus, incorporating non-state actors in immigration control represents a consolidation of state power, rather than a weakening of federal authority (Lahav 1998; Lahav and Guiraudon 2006). In this particular context of interior immigration enforcement, deputized immigration officers are policy implementers, but not policy makers, as Lipsky (1980) describes street-level bureaucrats.

This paper, then, explains how deputized officers understand their roles in the federal immigration bureaucracy, given their very limited authority. Primarily, in what I have characterized as the by-the-books administrator frame, immigration officers in the Davidson County jail see themselves as objective implementers of federal immigration law. In this role, officers do what is directed by the federal government, and express few opinions regarding the merits of the 287(g) program. To them, screening immigrants for immigration status is just a job, and one where they lack discretion and their role is limited to administrative processing. Under these circumstances, processing everyone identically for immigration violations, regardless of their suspected crimes, is a way to ensure fairness. To the by-the-books administrator, the law is not interpreted, it is applied; all immigrants can be categorized as either legally present or removable. Moreover, because immigration officers lack prosecutorial discretion, they are incredibly efficient at processing immigrants for removal—between April of 2007 and 2009, county immigration officers identified 5,300 immigrants for removal (DCSO 2009).

To the Sheriff, the 287(g) program is successful because it results in the identification and eventual removal of thousands who were arrested for local criminal charges. Deputized immigration officers speak of the immigrants they process as criminals when they have been arrested for serious charges. In these instances, immigration officers talk about performing a service to the community by getting rid of bad people.

While it is easy for officers to feel proud of protecting the public they identify a drunk driver for removal, it is more difficult to explain why removing non-violent misdemeanor offenders serves the public's interests. Some officers justify their removal by arguing that it is preventative—misdemeanor offenders could commit more serious crimes in the future.

Sometimes, however, officers express reluctance at having to process especially deserving immigrants for removal. This is most likely to happen when immigrants are not easily categorized as criminals—people the 287(g) program was designed to remove. While research on bureaucracy shows that front-line bureaucrats go out of their way to help deserving immigrants (Maynard-Moody and Musheno 2000), immigration officers cannot choose to ignore immigration violations. Instead, the best officers can do is recommend humanitarian release so that immigrants can go through the removal process from home rather than from a detention center.

In addition, since immigration officers do not know the outcome of immigration cases, they imagine that deserving immigrants have the opportunity to adjust their legal status. Officers imagine that by giving immigrants an immigration court date, they are helping them by putting them on a path to legal status, rather than deportation. Immigration courts, however, are reluctant to overturn the decisions of the immigration officers because administrative agencies such as the

Department of Homeland Security are politically accountable to the executive branch of government, and therefore not subject to judicial oversight (Ellermann 2009).

Immigration officers could only recall one case in which an immigration officer intervened on the behalf of a removable immigrant. A woman who had been smuggled to the United States to engage in prostitution was able to get a visa after a deputized officer brought her case to the attention to federal authorities. The deputized officer who intervened was proud he helped the woman adjust her status. In addition, officers mentioned two cases where immigration officers discovered foreign born arrestees had derived citizenship. Thus, in isolated cases, immigration officers have acted as benevolent gatekeepers whereby a lucky few achieve legal status.

## **V. CONCLUSION**

This article sheds light on the devolution of immigration enforcement by examining the local implementation of a 287(g) program. It shows that, as a result of their limited discretion, deputized immigration officers have developed overlapping and contradictory ideas about their jobs. Most often, they rely on a law enforcement ethos and think of themselves as objective implementers of the law. In their role as by-the-books administrators, they process everyone who violates civil or criminal immigration laws identically. However, depending on the particular cases that officers encounter, they also believe they protect the public by identifying criminals for deportation *and* they help immigrants adjust their status by giving them an immigration court date.

Deputized immigration officers identify incarcerated immigrants for removal and process their paperwork, work formerly performed by ICE officers. In this context then, devolution entails transferring tasks, but not authority, from federal to local bureaucracies. Local actors are

acting as extensions of state power (Lahav 1998; Lahav and Guiraudon 2006). Consequently, subnational immigration enforcement is a powerful political tool. Locally elected officials take credit for processing criminal aliens for removal because they are instrumental in *adopting* local immigration enforcement programs. At the same time, they deflect criticism by arguing that they have no say in the program's implementation.

### NOTES

1. In 1996, Congress added subsection (g) "Performance of Immigration Officer Functions by State Officers and Employees" to section 287 of the Immigration and Nationality Act (8 USC § 1357) through the Illegal Immigration Reform and Responsibility Act (Pub L 104-208, Div C, 110 Stat 3009-546). Although signed into law in 1996, no state or local law enforcement agencies received training to enforce immigration laws until 2002.
2. Civil violations of immigration law include unauthorized presence or overstaying a visa. Criminal immigration violations include illegal re-entry to the United States after a prior deportation or "willfully" refusing a deportation order.
3. The Immigration and Naturalization Service, formerly under the Department of Justice, was the agency in charge of enforcing immigration laws before the creation of the Department of Homeland Security in 2002.
4. The actual size of the Hispanic immigrant population is likely significantly higher, as surveys tend to undercount immigrants, particularly if they are undocumented.

### LAWS CITED

Antiterrorism and Effective Death Penalty Act of 1996, Pub L No 104-132, 110 Stat 1214.

Illegal Immigration Reform and Immigrant Responsibility Act, Pub L 104-208, Div C, 110 Stat 3009-546 (1996).

Illegal Immigration Relief Act (Hazleton, PA Ordinance 2006-18)

Performance of Immigration Officer Functions by State Officers and Employees, 8 USC § 1357 (g) (1996).

Support our Law Enforcement and Safe Neighborhoods Act (Arizona SB 1070).

## REFERENCES

Blom Hansen, Thomas, and Finn Stepputat (eds.). 2001. *States of Imagination: Ethnographic Explorations of the Postcolonial State*. Durham, NC: Duke Univ. Press.

Calavita, Kitty. 1992. *Inside the State: The Bracero Program, Immigration, and the INS*. New York: Routledge, Chapman and Hall.

Calavita, Kitty. 1998. "Immigration, Law and Marginalization in a Global Economy: Notes from Spain," *Law and Society Review* 32(3): 529-566.

Calavita, Kitty. 2000. "The Paradoxes of Race, Class, Identity, and "Passing": Enforcing the Chinese Exclusion Acts, 1882-1910," *Law & Social Inquiry* 25: 1-40.

Chavez, Jorge, and Doris Marie Provine. 2009. "Race and the Response of State Legislatures to Unauthorized Immigrants," *The ANNALS of the American Academy of Political and Social Science* 623: 78-92.

Coleman, Mathew. 2007. "Immigration Geopolitics beyond the Mexico-US Border," *Antipode* 39: 54-76.

Crocker, Karla. 2006. *Sheriff's Immigration Advisory Council Meets for the First Time*. Press Release 1130060019, Nashville TN: Davidson County Sheriff's Office.

- Davidson County Sheriff's Office. 2009. 287(g) *Two-Year Review*. Retrieved August 5, 2010.  
[http://blackburn.house.gov/UploadedFiles/287g\\_Two\\_Year\\_Review.pdf](http://blackburn.house.gov/UploadedFiles/287g_Two_Year_Review.pdf)
- Decker, Scott H., Lewis, Paul G, Provine Doris M., and Monica W. Varsanyi. 2009. "On the Frontier of Local Law Enforcement: Local police and Federal Immigration Law. In *Immigration, Crime and Justice*, edited by William F. McDonald, 261-76. Bingley UK: Emerald.
- De Genova, Nicholas. 2002. "Migrant 'Illegality' and Deportability in Everyday Life," *Annual Review of Anthropology* 31: 419-447.
- Echegaray, Chris. 2010. "Immigrants Jailed after Fishing without a License," *The Tennessean*, 23 August: A1.
- Ellerman, Antje. 2005. "Coercive Capacity and the Politics of Implementation: Deportation in Germany and the United States," *Comparative Political Studies* 38: 1219-1244.
- Ellermann, Antje. 2009. *States against Migrants: Deportation in Germany and the United States*. New York: Cambridge Univ. Press.
- Emerson, Robert and Blair Paley. 1992. "Organizational Horizons and Complaint Filing." In *The Uses of Discretion*, edited by Keith Hawkins, 231-247. Oxford: Clarendon Press.
- Fuglerud, Ovind. 2004. "Constructing Exclusion. The Micro-Sociology of an Immigration Department," *Social Anthropology* 12: 25-40.
- Gilboy, Janet A. 1991. "Deciding Who Gets In: Decisionmaking by Immigration Inspectors," *Law & Society Review* 25: 571-600.
- Hasenfeld, Yeheskal. 1983. *Human Service Organizations*. New York: Allyn & Bacon.
- Hernandez, David. 2008. "Pursuant to Deportation: Latinas/os and Immigrant Detention," *Latino Studies* 6 (Spring/Summer): 35-63.

Hopkins, Daniel J. "Politicized Places: Explaining Where and When Immigrants Provoke Local Opposition," *American Political Science Review* 104: 40-60.

Jones-Correa, Michael. 2007. "Race to the top? The politics of immigrant education in suburbia." In *New Faces in New Places*, edited by Douglas S Massey, pp 308-42. New York: Russell Sage Foundation.

Lahav, Gallya, and Virginie Guiraudon. 2006. "Actors and Venues in Immigration Control: Closing the Gap between Political Demands and Policy Outcomes," *West European Politics* 29: 201-223.

Lahav, Gallya. 1998. "Immigration and the State: The Devolution and Privatisation of immigration control in the EU," *Journal of Ethnic and Migration Studies* 24: 675-694.

Lewis, Paul G. and S. Karthick Ramakrishnan. 2007. "Police Practices in Immigrant-Destination Cities," *Urban Affairs Review* 42: 874-900.

Lipsky, Michael. 1980. *Street Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.

Marrow, Helen B. 2009. "Immigrant bureaucratic incorporation: The dual roles of professional missions and government policies," *American Sociological Review* 74: 756-76.

Magaña, Lisa. 2003. *Straddling the border: Immigration Policy and the INS*. Austin, TX: Univ. of Texas Press.

Maynard-Moody, Steven, and Michael Musheno. 2003. *Cops, Teachers, Counselors: Stories from the Front Lines of Public Service*, Ann Arbor, MI: Univ. of Michigan Press.

Motomura, Hiroshi. 1999. "Federal, International Human Rights, and Immigration Exceptionalism," *University of Colorado Law Review* 70: 1361-1394.

- Miller, Teresa A. 2002. "The Impact of Mass Incarceration on Immigration Policy." In *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, edited by Marc Mauer and Meda Chesney-Lind, 214-38. NY: New Press.
- McCubbins, Mathew D., Roger G. Noll, and Barry R. Weingast. 1987. "Administrative Procedures as Instruments of Political Control," *Journal of Law Economics and Organization* 3: 243-77.
- Meyers, Marcia K., Glaser, Bonnie and Karin MacDonald. 1998. "On the Front Lines of Welfare Delivery: Are Workers Implementing Policy Reform?" *Journal of Policy Analysis and Management* 17(1): 1-22.
- Neal, Micki, and Stephanie A Bohon. 2003. "The Dixie Diaspora: Attitudes Towards Immigrants in Georgia," *Sociological Spectrum* 23: 181-212.
- Ngai, Mae M. 2004. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton: Princeton University Press
- Ramakrishnan, S. Karthick and Tom Wong. 2007. *Immigration Policies Go Local: The Varying Responses of Local Governments to Undocumented Immigration*. Working Paper for the Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity. Berkeley, CA: Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity.
- Sayad, Abdelmalek. 2004. *The Suffering of the Immigrant*. Cambridge, UK: Polity.
- Schriro, Dora. 2009. *Immigration Detention Overview and Recommendations*.  
[http://www.ice.gov/doclib/091005\\_ice\\_detention\\_report-final.pdf](http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf) (accessed August 1, 2010)
- Spiro, Peter J. 1997. "Learning to Live with Immigration Federalism," *Connecticut Law Review* 29:1627-1646.

- Sudnow, David. 1965. "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office," *Social Problems* 12: 255-276
- Stumpf, Juliet. 2006. "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 56: 367-419.
- United States Government Accountability Office. 2009. "Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws." Washington DC: GAO. <http://www.gao.gov/new.items/d09109.pdf> (accessed June 5, 2010)
- United States Office of the Assistant Attorney General. 2002. *Memorandum for the Attorney General Re: Non-preemption of the authority of state and local law enforcement officials to arrest aliens for immigration violations*. Washington, DC: Department of Justice. <http://www.aclu.org/files/FilesPDFs/ACF27DA.pdf> (accessed September 25, 2010)
- Van der Leun, Joanne. 2003. *Looking for Loopholes: Processes of Incorporation of Illegal Immigrants in the Netherlands*. Chicago: Univ. of Chicago Press.
- Varsanyi, Monica W. 2008. "Rescaling the 'Alien', Rescaling Personhood: Neoliberalism, Immigration, and the State," *Annals of the Association of American Geographers* 98: 877-896.
- Varsanyi, Monica W. 2008. "Immigration Policing Through the Backdoor: City Ordinances, the 'Right to the City,' and the Exclusion of Undocumented Day Laborers," *Urban Geography* 29: 29-52.
- Weissinger, George. 1996. *Law Enforcement and the INS: A Participant Observation Study of Control Agents*. Lanham, MD: Univ. Press of America.

Wells, Miram J. 2004. "The Grassroots Reconfiguration of U.S. Immigration Policy,"  
*International Migration Review* 38(4): 1308-1347.

Zúñiga, Victor and Rubén Hernández-Leon (eds.). 2005. *New Destinations: Mexican  
Immigration in the United States*. New York: Russell Sage.