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Deportation Under Obama and Trump: A Contrasting Examination of Immigration  
Legislation and Their Real and Perceived Impact Under Different Administrations

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## ABSTRACT

Deportation Under Obama and Trump: A Contrasting Examination of Immigration Legislation and Their Real and Perceived Impact Under Different Administrations  
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This thesis explores deportation in modern America. With an initial examination of the immigration laws passed in the 1980 and 90s which resulted in the advent of mass deportation, this paper then explore regional responses to a lack of congressional immigration reform and the subsequent federal response. Focusing on the Obama administration and the first year of the Trump Presidency this paper explores the actions and impact that these men have on some of the country's most vulnerable residents.

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## Introduction:

Immigration is divisive and while the creation myth of the United States often touts itself as a country of immigrants, US immigration policy is littered with both explicit and subtle exclusionary methods. The difficulties immigrants face and the receiving nation's obligations weighed against security measures entered the national conversation in the United States when "deportation" and "mass deportation" was delineated and hit mainstream media.<sup>1</sup> "Mass deportation" is a recent phenomenon dependent on the advances in transportation and communication technologies that have supported the expansion of international migration.<sup>2</sup> Today, according to the United Nations Population Fund, three to four percent of the world's population is currently on the move.<sup>3</sup> With roughly 244 million people living outside their country of origin, and the legal sanctity of a country's sovereignty within both national and international politics, the majority of immigration controls focus on regulating entry to a country. However scholarly attention and civil discussions also debate the integration and assimilation of migrants into host communities.<sup>4</sup> This thesis however focuses on those

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<sup>1</sup> Mass deportation in the United States has been tied to the 1996 Illegal Immigration Reform and Immigration Responsibility Act, which will be expanded upon later in this paper.

<sup>2</sup> Stephen Castles, Hein de Haas, and Mark J. Miller PhD, *The Age of Migration, Fifth Edition: International Population Movements in the Modern World*, 5 edition (New York: The Guilford Press, 2013), chap. 1; James F. Hollifield, "The Emerging Migration State," *International Migration Review* 38, no. 3 (2004): 889; Alejandro Portes, "Introduction: The Debates and Significance of Immigrant Transnationalism," *Global Networks* 1, no. 3 (2001): 188.

<sup>3</sup> United Nations Population Fund, "Migration," accessed July 3, 2017, <http://www.unfpa.org/migration>.

<sup>4</sup> Richard Alba and Nancy Foner, *Strangers No More: Immigration and the Challenges of Integration in North America and Western Europe* (Princeton, New Jersey: Princeton University Press, 2015); Castles, Haas, and PhD, *The Age of Migration, Fifth Edition*, 265; Jennifer Lee and Frank D. Bean, "Introduction: Immigration and

expelled, specifically from the United States, and the visibility of deportation in American politics and policy under two different presidential administrations. Beginning with a cursory introduction to immigration restrictions as historical context, this paper begins with a close examination of different legislation passed throughout the late 1980s and into the mid '90s, such as the Anti-Drug Abuse Act (ADA), Anti-Terrorism and Effective Death Penalty Act (AEDPA), and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), that combine to provide the legal foundation for deportation in modern America and the rise of the term “mass deportation.” Then, it analyzes the Obama Presidency: the prioritization of the removal of criminal aliens and the presidential reaction to local immigration initiatives. Next this thesis compares the Obama tenure to the fledgling Trump presidency both in its initial actions in regard to shifting immigration priorities and funding, Trump’s own executive orders as compared to the use of memorandums and policy regarding “DREAMers”,<sup>5</sup> and his subsequent actions in relation to Deferred Action for Childhood Arrivals (DACA).<sup>6</sup> It is important to note that at the time of writing, the Trump presidency had recently just concluded its first year in office. It would be unfair to judge an administration by a quarter (perhaps even an eighth depending on potential reelection in 2020) of its legacy. This thesis does not

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the Color Line in America,” in *Diversity Paradox, The: Immigration and the Color Line in Twenty-First Century America*, Reprint edition (New York: Russell Sage Foundation, 2012), 17; *New Faces in New Places : The Changing Geography of American Immigration* (New York: Russell Sage Foundation, c2008), 347; Kathleen Newland, “The Governance of International Migration: Mechanisms, Processes, and Institutions,” *Global Governance: A Review of Multilateralism and International Organizations* 16, no. 3 (2010): 12.

<sup>5</sup>The DREAM act (Development, Relief, and Education for Alien Minors Act) was introduced to 107<sup>th</sup> Congress by Senator Orin Hatch in 2001 and those who would have been effected are colloquially referred to as ‘DREAMers’

<sup>6</sup> Development, Relief, and Education for Alien Minors Act, S. S1291, 107 Cong. (2001).

intend to be conclusive, rather to examine the emerging trends and schisms as a guide for future analysis and comparison by looking at this first year in combination with announced plans for the remaining term. Finally, this paper concludes by examining whether these two administration's priorities have different tangible, or perceived, impacts and finally how self-image does or does not color our understanding of such.

## Chapter 1: History and Legal Foundation

“But we do not here question the power of Congress to define deportable conduct. We only question the power of administrative officers and courts to decree deportation until Congress has given an intelligible definition of deportable conduct.”<sup>7</sup> –Jordan DeGeorge

All governments enact laws to control the flow of people across national borders. And while immigration, citizenship and belonging are frequent topics of debate, until recently deportation and exclusion have not been. Deportation in America has been noted as unique due to its administrative rather than criminal nature. Defining deportation proceedings as administrative, dates back to two nineteenth century Supreme Court judgments wherein the court decided that deportation is not punishment under the Constitution and consequently the constitutional protections afforded in criminal proceedings, such the right to an attorney, and prohibitions concerning cruel and unusual punishment are not applicable in deportation proceedings.<sup>8</sup> Additionally, deportation is unique in its retroactivity and the “lack of proportionality between the offense and its outcome.”<sup>9</sup> Tracing the legal basis for deportation, its proceedings and characteristics, enables an understanding of the immigration system inherited by the Obama presidency and the potential latitude available to the different presidential agendas, which then allows for a comparison.

Deportation has a long history beginning in 1789 when a nine year old American

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<sup>7</sup> *Jordan v. DeGeorge*, 341 U.S. 233, 245 (1951) (Jackson, J., dissenting) (questioning the constitutional vagueness of “crimes involving moral turpitude”).

<sup>8</sup> “A Second Chance: The Right to Effective Assistance of Counsel in Immigration Removal Proceedings,” *Harvard Law Review* 120, no. 6 (2007): 1548, <https://doi.org/10.2307/40042622>; *Chae ChanPing v. United States*, 130 U.S. 581 (1889); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

<sup>9</sup> Deirdre M. Moloney, *National Insecurities: Immigrants and U.S. Deportation Policy since 1882* (Chapel Hill, N.C.: University of North Carolina Press, 2012), 10.



Congress passed the *Alien Enemies Act* and the *Alien Friends Act*,<sup>10</sup> which empowered the president to expel any non-citizen, deemed dangerous. Since then, a multitude of immigration laws have refined who was considered to belong, who should be excluded, and to judge the threat posed by an individual in order to consider them “dangerous.” For example, the 1882 Immigration Act categorized those deemed undesirable to the new nation, turning away "convicts (except those convicted of political offences), lunatics, idiots, and persons likely to become public charges.”<sup>11</sup> Roughly a decade later, in 1891, the crime of “moral turpitude” was written into law.<sup>12</sup> While still legally used as a basis for a multitude of charges including deportation, the crime of “moral turpitude” is commonly acknowledged as vague and inviting inconsistent and unpredictable judgments.<sup>13</sup>

However it is important to note that while deportation, detention, and dispersal have always been part of a state’s “arsenal of control,” the power was historically rarely used except in reaction to a particular crisis.<sup>14</sup> These crises, like growing economic fears

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<sup>10</sup> 5th Cong., Sections 21-23 (1798) (enacted).

<sup>11</sup> 47th Cong., 377 (1882) (enacted).

<https://www.loc.gov/law/help/statutes-at-large/47th-congress/session-1/c47s1ch376.pdf>

<sup>12</sup> 47th Cong., 377 (1891) (enacted).

<sup>13</sup> Jane Perry Clark Carey, *Deportation of Aliens from the United States to Europe* (Columbia Univ. Press, 1931):104; Mary Holper, “Deportation for a Sin: Why Moral Turpitude Is Void for Vagueness,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 1, 2011): 663-701, <https://papers.ssrn.com/abstract=1936136>; Brian Harms, “Redefining ‘Crimes of Moral Turpitude’: A Proposal to Congress,” *Georgetown Immigration Law Journal* 15, no. 2 (2001): 259–60.

<sup>14</sup> Alice Bloch and Liza Schuster, “At the Extremes of Exclusion: Deportation, Detention and Dispersal,” *Ethnic and Racial Studies* 28, no. 3 (May 2005): 508, <https://doi.org/10.1080/0141987042000337858>. Other recent national crises of note are World War I, the Great Depression, the Cold War, and 9/11 which all saw spikes in deportation and the passage of laws that further restricted the population

in the late nineteenth century, led to explicitly prejudiced legislation such as the Chinese Exclusion Act and the Page Act which limited the ability of Asian immigrants to settle in the United States after crossing the ocean, primarily to the west coast, to build the railroad.<sup>15</sup> Throughout the 20<sup>th</sup> century both immigration and deportation regulations began to use proxy methods such as religious beliefs, economic status, and certain diseases to allow a more refined immigration control that belated the appearance of racial prejudice.<sup>16</sup> This shift is important, but even more so is that the selection process, often discriminatory, continued because, as distinguished deportation scholar and legal expert Daniel Kanstroom noted, deportation politics has always been a “powerful tool of discretionary social control.”<sup>17</sup> However it was a culmination of laws passed primarily in the 1990s that prominently shape and inflamed deportation in modern America.

As noted above, deportation legislation is typically passed in response to a crisis. One such crisis was the “War on Drugs” which ramped up throughout the ‘80s culminating in 1986 when Congress passed the Anti-Drug Abuse Act (ADA).<sup>18</sup> In addition to allocating \$1.7 billion dollars in federal funding and creating mandatory minimums, the ADA added “aggravated felonies” to the list of deportable crimes and made it more procedurally difficult to challenge removal proceedings. While the ADA included murder and many crimes previously under the umbrella of “moral turpitude”

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such as the Espionage Act of 1917, Sedition Act of 1918, and the Alien Law of 1918. These laws, though “directed primarily towards immigrant radicals, created an opening to limited protections to noncitizens following the war.” For a more in-depth analysis, see Moloney, *National Insecurities*.

<sup>15</sup> Moloney, *National Insecurities*, 114.

<sup>16</sup> Moloney, 133.

<sup>17</sup> Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Harvard University Press, 2007), 5.

<sup>18</sup> H.R. 5484, 99th Cong. (1986) (enacted).

introduced in the nineteenth century, it also established drug offenses as cause for deportation. Through the next decade, laws such as the 1990 Immigration act and the Immigration and Technical Corrections Act expanded the definition of “aggravated felony” to include certain types of theft, burglary, and fraud as well as prostitution, tax evasion, and money laundering. However the procedural impact of the ADA was equally significant.

Those facing deportation, prior to the implementation of the ADA, faced a hearing in front of an immigration judge wherein non-citizens were permitted to raise a variety of legal objections to removal proceedings.<sup>19</sup> The ADA, and subsequent laws discussed further in this thesis, removed the judge’s discretionary power, as reflected by Judge James Vandello in 2001 after retiring from a 30 year career. This lack of flexibility often results in a sense of helplessness and frustration on both sides of the bench as judges are unable to grant relief to “someone because of the precise requirements of the statute, even though on a personal level he appears to be worthy of some immigration benefit.”<sup>20</sup> Judge Vandello continues, “life on the bench changes with the vagaries of Congress. One expects changes in immigration law every few years, but since 1983, Congress has produced at least four comprehensive bills that have changed

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<sup>19</sup> Thomas Aleinikoff et al., *Immigration and Citizenship, Process and Policy*, 7 edition (St. Paul, MN: West Academic Publishing, 2011). Provides a comprehensive analysis. Options included: judicial recommendations against deportation wherein a criminal court judge could issue a binding opinion that a conviction for a crime of moral turpitude not result in deportation proceedings; a suspension of deportation issued by an immigration judge for “non-legal permanent residents of good moral character”; and waivers of deportation such as 212(h) and 212(c) which intervened on behalf of legal permanent residents and their families who would suffer extreme hardship.

<sup>20</sup> Vandello, “Perspective of an Immigration Judge,” *Denver University Law Review* 80 (2003 2002): 775.

the substantive law, the procedure and even the basic terminology used in practice... Congress passes immigration legislation that is far reaching and, sometimes, quite unexpected. It results in radical change.”<sup>21</sup> Two other laws passed in the time frame alluded to by Judge Vandello that resulted in radical change for those facing deportation were the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).

The mid-90s saw a shift from the War on Drugs to reacting to terrorism in the form of the 1993 World Trade Center bombings and the Oklahoma City bombings, as well as racial and economic concerns centered around immigration from Central and South America.<sup>22</sup> These events and concerns shaped the legislation of the decade, which saw the passage of both the AEDPA and the IIRIRA in 1996. Together, these bills are widely considered to be the cause of mass deportation from the US.<sup>23</sup> While the human exact impact is explored below, it is important to first understand what they did.

The Anti-Terrorism and Effective Death Penalty Act was first heard in Congress two weeks prior to the Oklahoma City bombings and received criticism due to concerns over due process, free speech, and Fourth Amendment rights. However the Bill was

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<sup>21</sup> Vandello, 774–75.

<sup>22</sup> Human Rights Watch, “Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses,” April 15, 2009, 18, <https://www.hrw.org/sites/default/files/reports/us0409web.pdf>.

<sup>23</sup> Tanya Golash-Boza and Pierrette Hondagneu-Sotelo, “Latino Immigrant Men and the Deportation Crisis: A Gendered Racial Removal Program,” *Latino Studies* 11, no. 3 (September 2013): 275, <https://doi.org/10.1057/lst.2013.14>; Jodie Michelle Lawston and Martha Escobar, “Policing, Detention, Deportation, and Resistance: Situating Immigrant Justice and Carcerality in the 21st Century,” *Social Justice* 36, no. 2 (116 (2009): 1; Moloney, *National Insecurities*, 203; Aleinikoff et al., *Immigration and Citizenship, Process and Policy*, 7th, chap. 7; Human Rights Watch, “Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses,” 16.

defended by its author, Senator Chuck Schumer who, echoing the nineteenth century standard set by the Supreme Court mentioned above, countered “noncitizens do not, and should not, have rights . . . and that the deportation proceedings are civil proceedings, not criminal trials.”<sup>24</sup> The AEDPA was then subject to a second hearing, this time after the Oklahoma City Bombing where-in, even after admitting that the bombings were acts perpetrated by citizens rather than foreign nationals, it was soon signed into law and protection from “alien terrorists” was codified.<sup>25</sup> These protections came in a number of guises pertinent to this discussion on deportation. First, like many of the laws previously discussed, it expanded the grounds upon which non-citizens could be deported. It did this by extending the legal definitions of both “crimes of moral turpitude” and “aggravated felonies.”<sup>26</sup> However what sets the AEDPA apart is that it also had a tremendous impact on the law of habeas corpus which protects individuals from wrongful detention and imprisonment and streamlined “criminal alien deportations.” Furthermore, it revived earlier bills that also targeted “criminal aliens” which combined to expedite deportations and bypass judicial review.<sup>27</sup> Macías-Rojas summarizes:

“Democratic and Republican lawmakers alike used the Oklahoma City bombing to mobilize national security rhetoric that justified merging controversial, and some would argue, unconstitutional, measures in previous crime bills... Put another way, AEDPA fused “counterterrorism”

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<sup>24</sup> Patrisia Macías-Rojas, “Immigration and the War on Crime: Law and Order Politics and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,” *Journal on Migration and Human Security; New York* 6, no. 1 (2018): 9, <https://search-proquest-com.ezproxy.cul.columbia.edu/docview/1986907036/abstract/70D9478443444C15PQ/1>.

<sup>25</sup> 104<sup>th</sup> Congr. 132 (1996) (enacted).

<sup>26</sup> Criminal Alien Deportation Improvements Act of 1995, H.R. 668, 104<sup>th</sup> Cong. 104-122 (1995).

<sup>27</sup> Ibid.

measures targeting Arab and Muslim immigrant communities in the United States with domestic crime bills disproportionately impacting Blacks and Latinx in the criminal justice system, and “criminal alien deportation” provisions directly affecting mostly Latin American and Caribbean immigrants caught in the drug war.”<sup>28</sup>

Finally, the AEDPA limited access to due process as it authorized detention, wiretapping, secret evidence in removal proceedings and limited potential relief from deportation and possible judicial review. It reclassified un-authorized migrants “found” in the US as to be seeking entry and admission and thus subject to exclusion regardless of the length of time spent in the country. By processing these individuals as new border crossers, it made them ineligible for relief from deportation based on long standing ties and waivers like those alluded to by immigration Judge Vandello. The passage of the AEDPA disproportionately impacted legal permanent residents as is expanded upon later in this thesis. For lawmakers, discussions on ameliorating or intensifying the AEDPA’s immigration provisions turned into a separate bill that same year: the Illegal Immigration Reform and Immigration Responsibility Act.

Shortly after being signed into law, the IIRIRA was described as “the toughest legislation against *illegal immigration* enacted in our lifetimes. A myriad of *provisions that would have been impossible to enact as little as three years ago* are now the law of the land.”<sup>29</sup> In some ways, the IIRIRA followed the now-familiar model of expanding deportable crimes, this time by classifying aggravated felony as convictions accompanied by a sentence of one year or longer. Furthermore, it closed terminology loopholes existing between “deportation,” “removal,” and “return” which had posed various legal

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<sup>28</sup> Macías-Rojas, “Immigration and the War on Crime,” 10.

<sup>29</sup> Lamar Smith and Edward R. Grant, “Immigration Reform: Seeking the Right Reasons,” *St. Mary’s Law Journal* 28 (1997 1996): 913.

meanings over the country's history into a single category thus limiting an immigrant's access to discretionary relief.<sup>30</sup> Additionally the IIRIRA authorized the rescission of legal permanent resident status relying on removals issued by immigration judges in order to determine a non-citizen's legal status while simultaneously fast-tracking deportation proceedings.<sup>31</sup> For those ordered removed, IIRIRA mandated their detention. Simultaneously it authorized the Immigration and Naturalization Service (INS, a precursor to modern day Immigration and Customs Enforcement) for immediate removal of immigrants with convictions, which led to unprecedented numbers of deportations that circumvent the judicial review entirely.<sup>32</sup> Outside of the very real and immediate human impact that the newly empowered INS raids had, IIRIRA authorized funding to classify and identify criminal enforcement priorities through a nationwide fingerprinting of apprehended aliens to be accompanied by an annual report. This cooperation between criminal justice and immigration enforcement was further expanded on by a final IIRIRA provision which authorized formal cooperative agreements between federal, state, and local law enforcement providing and infrastructure and federal funding to identification,

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<sup>30</sup> Moloney, *National Insecurities*, 8; David A. Martin, "A Defense of Immigration-Enforcement Discretion: The Legal and Policy Flaws in Kris Kobach's Latest Crusade," *The Yale Law Journal* 122 (December 20, 2012): 171, <https://www.yalelawjournal.org/forum/a-defense-of-immigration-enforcement-discretion-the-legal-and-policy-flaws-in-kris-kobachs-latest-crusade>.

<sup>31</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996: Hearing before the H. Comm. on the Judiciary, 104th Cong. 70-73 (1996)

<sup>32</sup> Thus making them ineligible for relief from the removal proceedings as explained in Daniel Kanstroom, *Aftermath: Deportation Law and the New American Diaspora* (Oxford University Press, 2012); Human Rights Watch, "Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy" (Human Rights Watch, July 16, 2007), <https://www.hrw.org/reports/2007/us0707/us0707web.pdf>. The eradication of the 212(c) Waivers resulted in no discretionary relief.

detention, and deportation of non-citizens, including those with legal status.<sup>33</sup> As IIRIRA's provisions were retroactive, immigrants convicted of crimes, many long-term permanent and legal residents were identified and faced deportation under the culmination of these laws. These sweeping changes resulted in both a drastic increase in deportations (see table graph below). The corresponding huge upswing in appeals filed with the Department of Justice indicates just how momentous a change had occurred. In the seven years prior to the implementation of IIRIRA 12,043 cases were appealed annually through the Board of Immigration Appeals. In the following seven years, 22,629 cases were contended each year.<sup>34</sup>

While some members of Congress expressed regret over the effects these laws had on deportation in the United States, and bills were proposed to ameliorate the impact. Colloquially known as "fix 96" legislators and advocates alike joined a campaign to "restore a common-sense balance to the nation's immigration policy, which was destroyed... by the 1996 terrorism, welfare and immigration laws."<sup>35</sup> In 1999, during this campaign, ACLU Legislative Counsel Nojeim stated "In just one year, Congress and the President outdid themselves in exploiting the nation's tragic tendency to blame

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<sup>33</sup> Macías-Rojas, "Immigration and the War on Crime," 14; Eleanor Acer and Olga Byrne, "How the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Has Undermined US Refugee Protection Obligations and Wasted Government Resources," *Journal on Migration and Human Security* 5 (2017): 356; Moloney, *National Insecurities*, 258; Human Rights Watch, "Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy," 11.

<sup>34</sup> Human Rights Watch, "Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy," 30.

<sup>35</sup> ACLU, "ACLU Joins "Fix '96" Campaign for Justice for Immigrants," American Civil Liberties Union, July 28, 1999, <https://www.aclu.org/news/aclu-joins-fix-96-campaign-justice-immigrants>.



immigrants for its problems."<sup>36</sup> However these efforts were thwarted by the attack on the World Trade Center on September 11, 2001 when IIRIRA's "criminal provisions became entwine[d] with counterterrorism policies."<sup>37</sup>

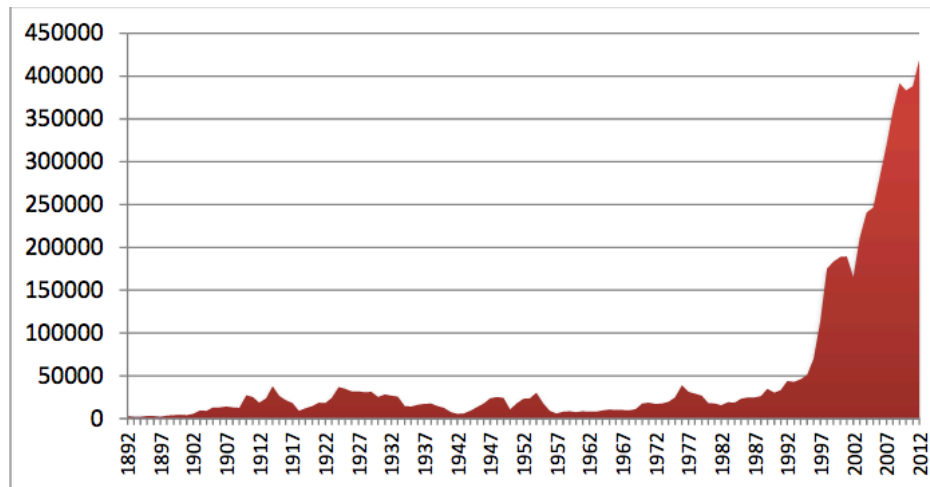
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<sup>36</sup> Ibid.

<sup>37</sup> Macías-Rojas, "Immigration and the War on Crime," 15.

## Chapter 2: Obama

Removals from the US: 1892-2012<sup>38</sup>



Prior to 1997, 1.9 million people had been deported from the United States in the entire history of the nation. That total was more than doubled between 1997 and 2012, during which time the government carried out 4.2 million deportations.<sup>39</sup> Due in part to changing procedure and terminology shortly before his first term in 2008, under Obama people who historically were simply turned back at the border now faced formal deportation charges. Partially as a result of these changes, this administration oversaw an aggregate 2.5 million deportations earning Obama the moniker of “deporter-in-chief.”<sup>40</sup>

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<sup>38</sup> Tanya Golash-Boza, “The Parallels between Mass Incarceration and Mass Deportation: An Intersectional Analysis of State Repression,” *Journal of World-Systems Research* 22, no. 2 (August 16, 2016): 484, <https://doi.org/10.5195/JWSR.2016.616>.

<sup>39</sup> U.S. Immigration and Customs Enforcement, “FY 2016 ICE Immigration Removals,” accessed July 3, 2017, <https://www.ice.gov/removal-statistics/2016>; Golash-Boza and Hondagneu-Sotelo, “Latino Immigrant Men and the Deportation Crisis,” 274.

<sup>40</sup> “Obama Leaves Office As ‘Deporter-In-Chief,’” *Latino USA* (PBS), accessed April 19, 2018, <https://www.npr.org/2017/01/20/510799842/obama-leaves-office-as-deporter-in-chief>.

In this section we examine first the presidential focus on the removal of criminal aliens. Tying these experiences back to the 1996 laws and subsequent increases in deportation proceedings this legacy shapes how Obama is and was perceived. Next, we will look at a regional response to the lack of fulfillment of Obama's campaign promise to pass comprehensive immigration reform and the federal response to such action. Then we begin to contrast the eight years under Obama to the fledgling Trump administration- the actions it has already taken, those it promises to take, and how they do or do not differentiate from his successor. By understanding the impact of deportation prioritization and the executive branch's reaction to regional immigration controls we can better understand the legacy of this presidency, how it is perceived, and how that perception varies between administrations.

## **2.1: Criminal Aliens**

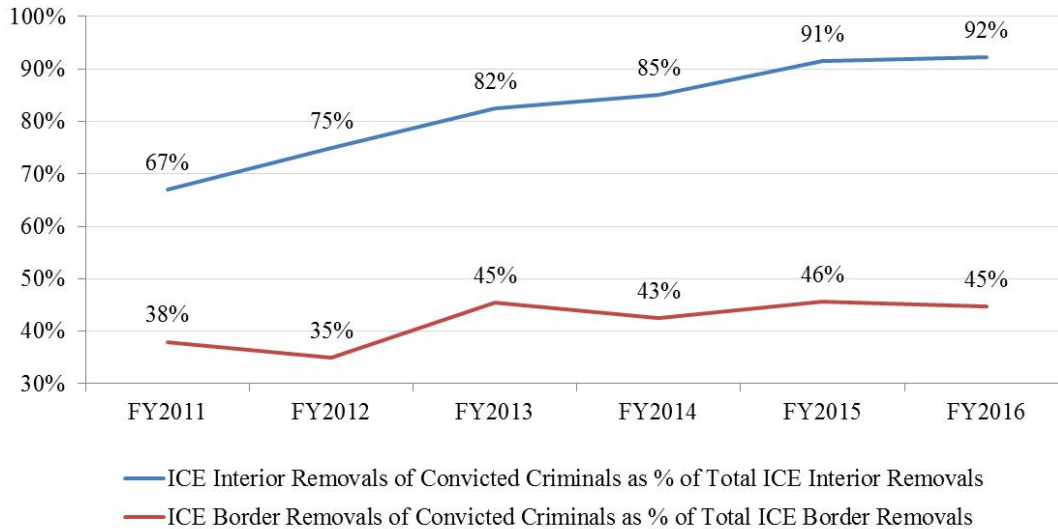
Barrack Obama was sworn into office in 2008 and was reelected for a second term in 2012. During both election campaigns Obama promised to overhaul the immigration system, which he called "broken."<sup>41</sup> While he failed to pass the promised comprehensive immigration reform, the Obama administration began refining its immigration priorities in 2009, with increasing emphasis through 2011 and throughout his second term, to concentrate on removals within three categories of the Department of Homeland Security's guidelines: criminal aliens, immigration obstructionists and recent

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<sup>41</sup> Federation for American Immigration Reform, "President Obama's Record of Dismantling Immigration Enforcement," February 2016, 58, [http://www.fairus.org/sites/default/files/2017-10/ObamaTimeline\\_2016.pdf](http://www.fairus.org/sites/default/files/2017-10/ObamaTimeline_2016.pdf).

illegal entrants.<sup>42</sup> While this has resulted in a steep rise in border removals, it also dramatically increased and subsequently highlighted deportations from the interior of the country. These removals focused on non-citizens who have previously been convicted of a crime - with criminal removals accounted for 80 percent of interior removals in fiscal 2011-2013.<sup>43</sup> This shift, of a growing focus on removing a “criminal element” from within society accounts for the increased interior removals carried out by Immigration and Customs Enforcement (ICE) Officers shown in the graph below:

**ICE Interior and Border Removal Criminal Percentages for FY 2011-2016**



However, as mentioned in the legal section when discussing the AEDPA, criminal removals disproportionately affected long-time permanent legal residents. This is because the AEDPA and IIRIRA were retroactive and made deportation retroactive as

<sup>42</sup> U.S. Immigration and Customs Enforcement, “Fiscal Year 2016 ICE Enforcement and Removal Operations Report” (U.S. Department of Homeland Security, 1-21), 3.

<sup>43</sup> Mark R Rosenblum and Kristen McCabe, “Deportation and Discretion: Reviewing the Record and Options for Change,” October 8, 2014, 3, <https://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>.

well. As a consequence of retroactivity, combined with the expanded definitions of “aggravated felony” “crime of moral turpitude” and other deportable offenses, criminal convictions, including minor drug charges, even those from a decade or more ago, could result in an individual being classified as a “criminal alien.” Additionally, due to Executive Branch’s prioritization of “criminal aliens” and the impact of the 1996 laws, even within the long-term residents affected, mass deportation struck communities and individuals in an asymmetric manner. While the scope of this thesis does not allow for the exploration of ties between mass incarceration and mass deportation, the vast majority, 97 percent, of those deported were ethnically Latin American or Caribbean, and nearly 90 percent were men.<sup>44</sup> As the criminal justice system in the United States has been shown to be racially prejudiced,<sup>45</sup> the focus on “criminal aliens” could be shown to be discriminatory despite that history of removals of those considered “dangerous.” Whether or not that is the case, the framing of “criminal alien” is significant. It draws on the fear of the “other” while simultaneously solving the problem by fast tracking them for expulsion. As those facing deportation, even those residing legally within the United States were not naturalized citizens and the IIRIRA allows for the stripping of residential status, detention, and expedited deportations.

Advocate groups such as Human Rights Watch and the Immigration Policy Center warn that it is a false narrative to believe that the majority of those being deported

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<sup>44</sup> Golash-Boza and Hondagneu-Sotelo, “Latino Immigrant Men and the Deportation Crisis,” 274.

<sup>45</sup> Jon Hurwitz and Mark Peffley, “And Justice for Some: Race, Crime, and Punishment in the US Criminal Justice System,” *Canadian Journal of Political Science* 43, no. 2 (June 2010): 475.

under this categorization represent a dangerous element.<sup>46</sup> The data supports a cautious examination of the threat posed by these individuals. According to reports by these organizations of these criminal aliens facing deportation, between 72- 80 percent of them are perpetrators of non-violent crimes including the illegal entry as a criminal offense and misdemeanor drug charges.<sup>47</sup>

In a series of reports titled *Forced Apart*, Human Rights Watch intersperses interviews with those facing deportation with compelling arguments questioning US Deportation Policy under Obama.<sup>48</sup> Of the cases highlighted, the report mentions the case history of Ricardo S. Ricardo, a Chicago construction worker and long-term resident who married an American citizen in 2001 and has two children. Ricardo was facing deportation due to an aggravated drug conviction wherein his defense attorney advised him to plead guilty in return for which he would pay a fine and serve two years of probation, which was completed without incident.<sup>49</sup> However this conviction classified Ricardo as a “criminal alien” and moreover his deportation proceedings will separate him from his family for a significant amount of time as non-citizens removed from the country are barred from re-entry for five to ten years depending on the

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<sup>46</sup> Human Rights Watch, “Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy”; Human Rights Watch, “Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses”; Macías-Rojas, “Immigration and the War on Crime.”

<sup>47</sup> Human Rights Watch, “Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy,” 2; Immigration Policy Center, 2011.

<sup>48</sup> Human Rights Watch, “Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy”; Human Rights Watch, “Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses.”

<sup>49</sup> Human Rights Watch, “Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy,” 31.

circumstances.<sup>50</sup> Consequently, the focus on criminal removals can permanently split families as spouses and children are often, as in Ricardo’s case, U.S. citizens with strong connections to the extended family, schools, and employment opportunities and are potentially unable to go into exile with their spouse due to limitation of language and considerations of safety. For these split families, aside from the emotional toll, there is a financial consideration as well as those who remain in the States are suddenly dependent on a single income.<sup>51</sup> Ricardo’s situation is not unique, however when envisioning who constitutes a “criminal alien” his is not the propagated example.

Immigrant advocates often stress this particularly forceful point concerning perception, and their warnings echo our exploration above. In his addresses, Obama always presents “criminal aliens” as individuals who live in a vacuum, never mentioning the families separated by deporting a green-card holder or long-term undocumented residents. ICE is similarly careful in its presentations. In one standard press release, rather than disclose all of the offenses that provide the basis for 559 deportations, ICE highlighted the violent crimes such as aggravated assault, drug trafficking, and lewd and lascivious acts on a child while Marc Moore, the San Antonio ICE field office director for detention and removal operations at the time announced: “Our citizens may sleep better knowing that these dangerous criminals no longer pose a threat to our communities. ICE will continue to work to aggressively remove those who have no legal right to remain in the United States, especially those who terrorize our communities.”<sup>52</sup> The use of words such as “terrorize” and the focus on 18-20 percent of crimes that were

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Human Rights Watch, “Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy,” 41.

violent and led to deportation reinforce a perception of the dangerous “other.”

Richard Alba, a migration scholar, pioneered the idea of “bright” and “blurred” boundaries as a continuum migrants face. For some migrants, due to factors such as skin color, or class, and barriers reinforced by negative stereotypes circulated on the political track these boundaries are, and remain “bright” with a sense of separation maintained. Other immigrants however, due to a different combination of elements can be “blurred” as they assimilate into a society.<sup>53</sup> Retroactive immigration laws that target drugs offenses, crimes have repeatedly been shown to be racially biased, reinforce these bright and enduring boundaries. And, given the demographics affected by prioritizing criminal removals, the public perception of the “deporter-in-chief” seems divided along those bright and blurred boundaries.

As a philosophical question it is also worth questioning, at what point does someone become a part of the community and the society become partially responsible for their actions? In his exploration of the ethics of immigration, Carens suggests that after a significant amount of time, and this is particularly relevant when considering those who immigrated as young children whose situation will be discussed more in depth later, a society has to acknowledge its influence on and responsibility for crimes committed by long term residents whether despite their legal status. Furthermore exporting these individuals to a society that had little to no role in their conviction is ethically objectionable behavior.<sup>54</sup> The question then becomes, how do you define a significant

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<sup>53</sup> Richard Alba, “Bright vs. Blurred Boundaries: Second-Generation Assimilation and Exclusion in France, Germany, and the United States,” *Ethnic and Racial Studies* 28, no. 1 (January 2005): 20–49, <https://doi.org/10.1080/0141987042000280003>.

<sup>54</sup> Joseph H. Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013), chap. 7.



amount of time? This is a question the Obama administration attempted to resolve through executive action and the DACA and DAPA programs respectively which are explored in detail in chapter four and in the conclusion. However that Obama wrestled with this question is significant and should be considered when comparing his immigration legacy, and the perception of that legacy, to that of Trump's.

## **2.2: Regional Immigration Legislation and the Federal Response**

While, as examined above, legislation that affects immigrants, both legal and undocumented, has been passed through the 1990s and into the 2000s and had significant impact especially on communities of color, comprehensive immigration legislation stagnated since Ronald Reagan passed the last comprehensive reform, the Immigration Reform and Control Act in 1986.<sup>55</sup> While Congress has proposed comprehensive immigration reform for the past three decades, nothing has passed.<sup>56,57</sup> Due to the resulting frustration at this inaction at a local level, there has been a surge of regional immigration legislation. This inaction is a key factor in the continuing momentum of

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<sup>55</sup> U.S. Citizenship and Immigration Services, "Immigration Reform and Control Act of 1986 (IRCA)," November 25, 2014, <http://www.uscis.gov/tools/glossary/immigration-reform-and-control-act-1986-irca>.

<sup>56</sup> The most successful attempts occurred in 2006 and 2013. In 2006, the Senate passed legislation that would have given a path to citizenship for most undocumented immigrants in addition to creating a new guest worker program. However, the House refused to vote on it. Similarly, in 2013, the "Gang of Eight Bill," sponsored by Phoenix former major Gordon, also gave a path to citizenship for most undocumented immigrants. While it passed through the Senate, the House never brought it to the floor for a vote.

<sup>57</sup> Rachel Swarns, "Senate, in Bipartisan Act, Passes an Immigration Bill," *The New York Times*, May 26, 2006, <http://www.nytimes.com/2006/05/26/washington/26immig.html>; Muzaffar Chishti and Faye Hipsman, "Sweeping Senate Bill Sets the Stage for Fundamental Overhaul of U.S. Immigration System," *Migration Policy Institute*, April 26, 2013.

local initiatives. The National Conference on State Legislatures (NCSL) has documented an increase in state interest in immigration policy since 2005. In 2005, legislators introduced 300 bills. While only 45 have passed and local governors signed in only 37, the number of bills proposed and passed has increased since then. During the first quarter of 2011, 1,538 bills and resolutions were introduced. While 2012 saw the first decrease in proposals with only 865 recommended ordinances,<sup>58</sup> 2012 - 2013 again witnessed an increase. Between these years, there was a 64 percent increase in state enacted legislation related to immigration. From January until June 2013, 45 states and the District of Columbia enacted 184 laws and 253 resolutions.<sup>59</sup> This teeter tottering of proposals and adoptions prove that some immigration legislation is imminently necessary and if left unaddressed more reactionary laws are likely to be signed into law.

What follows is an examination of two regional initiatives: first of Hazelton, PA in 2006 which is often thought of as one of, if not *the* first such legislation which provided a blueprint for the more notorious Arizona Senate Bill in 2010.<sup>60</sup> After understanding the legislation that was passed, we then examine the federal response under the Obama administration. While Obama's focus deporting "criminal aliens" had racial undertones and consequences for long term residents we will examine how these regional responses had similar affects but met with a very different national response and how that response does or does not change public perception of Obama's immigration legacy. Later we compare that response to President Trump's stance on local

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<sup>58</sup> National Conference of State Legislatures, "2013 Immigration Report," January 20, 2014, 1, <http://www.ncsl.org/research/immigration/2013-immigration-report.aspx>.

<sup>59</sup> Ibid.

<sup>60</sup> State of Arizona Senate. 49<sup>th</sup> Legislature. 2<sup>nd</sup> Session. S.B. 1070, Support Our Law Enforcement and Safe Neighborhoods Act. (2010) (enacted).

immigration solutions and the use of police as immigration officials during his first year in office and the message that sends to the public.

In 2006 in Hazleton, Pennsylvania, the local government passed the first municipal Illegal Immigration Relief Act. This piece legislation imposed fines and penalties on landlords who rented to undocumented people.<sup>61</sup> Mayor Lou Barletta, advocating for the bill, vowed to make the city “one of the toughest places in the United States” for illegal immigrants.<sup>62</sup> Introduced following two high profile crimes in May of 2006 involving suspects who were undocumented immigrants, this ordinance reflected a frustration with Congress’s “never ending debate over immigration reform.”<sup>63</sup> This legal framework and local response was quickly mirrored in over 100 different cities and towns throughout the country. However the implementation of the Illegal Immigration Relief Act and its copycat legislation was soon halted due to private lawsuits and their accompanying injunctions.<sup>64</sup>

The American Civil Liberties Union (ACLU) and the Puerto Rican Legal Defense and Education Fund championed the challenge to the Illegal Immigration Relief Act,

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<sup>61</sup> Domenic Vitiello, “The Politics of Immigration and Suburban Revitalization: Divergent Responses in Adjacent Pennsylvania Towns,” *Journal of Urban Affairs* 36, no. 3 (August 2014): 522, <https://doi.org/10.1111/juaf.12052>.

<sup>62</sup> Julia Preston, “Judge Voids Ordinance on Illegal Immigrants - The New York Times,” *The New York Times*, July 27, 2007.

<sup>63</sup> Eric L’Heureux Isadore, “Is Immigration Still Exclusionary a Federal Power-A Preemption Analysis on Legislation by Hazelton, Pennsylvania Regulating Illegal Immigration,” *Vill. L. Rev.* 52 (2007): 333.

<sup>64</sup> Cecillia Wang, “What’s Next for Arizona’s SB 1070 and Other Copycat Laws,” June 28, 2012, <https://www.aclu.org/blog/immigrants-rights/whats-next-arizonas-sb-1070-and-other-copycat-laws>.

questioning its constitutionality.<sup>65</sup> In late July 2007, a federal judge struck down Hazelton’s anti-immigrant ordinance.<sup>66</sup> Federal District Judge James Munley, ruled that the law violated the due process rights of employers, landlords and illegal immigrants. In his decision, Judge Munley wrote, ““Whatever frustrations officials of the City of Hazleton may feel about the current state of immigration enforcement, the nature of the political system in the United States prohibits the city from enacting ordinances that disrupt a carefully drawn federal statutory scheme.”<sup>67</sup> Emphasizing that regardless of their status immigrants were guaranteed the same civil liberties as naturally born citizens, Munley stated “Hazleton, in its zeal to control the presence of a group deemed undesirable, violated the rights of such people, as well as others within the community.”<sup>68</sup> While Munley upheld federal law and the rights of immigrants within Hazelton to access housing, his judgment did not resolve the issue for Major Barletta. At a news conference on the steps of City Hall, Barletta promised to appeal the decision, stating, “I will not sit back because the federal government has refused to do its job.”<sup>69</sup> While the Supreme Court officially decided not to review Judge Munely’s decision in March of 2014,<sup>70</sup> Barletta’s statement underscores the idea that regional responses to illegal immigration are born out of frustration with the lack of national action. Hazelton

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<sup>65</sup> ACLU, “Federal Judge Blocks Hazleton Anti-Immigrant Ordinance,” American Civil Liberties Union, October 31, 2006, 14, <https://www.aclu.org/news/federal-judge-blocks-hazleton-anti-immigrant-ordinance>.

<sup>66</sup> Preston, “Judge Voids Ordinance on Illegal Immigrants - The New York Times.”

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Muzaffar Chishti and Claire Bergeron, “Hazleton Immigration Ordinance That Began With a Bang Goes Out With a Whimper,” *Migration Policy Institute*, March 28, 2014, <http://www.migrationpolicy.org/article/hazleton-immigration-ordinance-began-bang-goes-out-whimper>.

established an important precedent by offering a local response addressing this perceived gap in immigration control. Even though it was eventually struck down as discussed above, this initiative impacted the larger debate concerning what level of government should create and maintain immigration control.

In 2010, following similar irritation with the lack of federal action regarding immigration, now during Obama's tenure, Arizona passed Senate Bill (SB) 1070. Entitled the "Support Our Law Enforcement and Safe Neighborhoods Act" the bill, among other provisions, required police to determine the immigration status of any person they deemed as "reasonably suspicious" of not being a U.S. citizen. According to the statement of legislative intent, SB 1070's design would make "attrition through enforcement" the official policy of all Arizona State and local agencies. A strategy promoted by individuals and organizations such as Kansas Secretary of State Kris Kobach and the Federation for American Immigration Reform. Supporters espouse the belief that "aggressive enforcement of the immigration laws will make life so difficult for unauthorized immigrants that they will choose to "self-deport"."<sup>71</sup> However, as in Hazelton, Arizona's politically conservative state legislature violated the rights of immigrants as well as the greater Latino community.

At its inception, SB 1070 consisted of ten provisions aimed at addressing perceived federal gaps in national policy and enforcement against illegal immigration. Most notoriously, SB 1070 requires state and local law enforcement to "reasonably attempt to determine the immigration status of a person involved in a lawful stop,

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<sup>71</sup> Ben Winograd, "Q&A Guide to Arizona v. United States," *Immigration Policy Center*, July 2012, 1, [http://mail.immigrationpolicy.org/sites/default/files/docs/winograd\\_-\\_supreme\\_court\\_qa\\_guide\\_040212.pdf](http://mail.immigrationpolicy.org/sites/default/files/docs/winograd_-_supreme_court_qa_guide_040212.pdf).

detention or arrest in the enforcement of any other local or state law or ordinance where reasonable suspicion exists that the person is an alien and is unlawfully present, except if it may hinder or obstruct an investigation.”<sup>72</sup> The bill pays lip service to national and state antidiscrimination statutes by stipulating that law enforcement cannot “consider race, color or national origin when implementing these provisions, except as permitted by the U.S. or Arizona Constitution.”<sup>73</sup> However citizens and police across the country, and many within Arizona itself, spoke out against the bill, wondering what basis would then be employed? Martin Escobar, an officer in Tucson argues, “There are no race-neutral criteria or basis to suspect or identify who is lawfully in the United States.”<sup>74</sup> In practice, SB 1070 primarily affects individuals who physically resemble those it was written to target, and its provisions are not limited to checking the immigration status of those stopped or detained for other reasons.

In brief, SB 1070 aggressively enforces immigration laws to the detriment of the larger communities. In addition to the above provision, colloquially known as the “show me your papers” law, the bill requires the federal verification of the immigration status of anyone who is arrested or detained. While the bill stipulates that the duration of detention while making this determination not be “unreasonable,” this has led to multiple incidents of prolonged detention. It also creates the “willful failure to complete or carry an alien registration card” into a state violation complete with fines and a jail sentences; it

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<sup>72</sup> Ann Morse, “Analysis of Arizona’s Immigration Law,” National Conference of State Legislatures, July 28, 2011, <http://www.ncsl.org/research/immigration/analysis-of-arizonas-immigration-law.aspx>.

<sup>73</sup> Ibid.

<sup>74</sup> Mahwish Khan, “Police Speak Out Against Arizona Immigration Law,” America’s Voice, May 4, 2010, [http://americasvoice.org/content/police\\_speak\\_out\\_against\\_arizona\\_immigration\\_law/](http://americasvoice.org/content/police_speak_out_against_arizona_immigration_law/).

“makes it a class one misdemeanor for an occupant of a motor vehicle to hire on a street, roadway or highway if the vehicle blocks or impedes the normal movement of traffic; or to enter a vehicle to be hired and transported; or for an unauthorized alien to knowingly apply for work, solicit work in a public place, or perform work as an employee or independent contractor.”<sup>75</sup> Additionally provisions criminalize employers, make it illegal to transport or harbor undocumented people, and protect the transfer of information from schools in the pursuit of determining the immigration status of students and their families. Finally SB 1070 allows local residents to sue the state or any local body that restricts the enforcement of federal law.<sup>76</sup> In practice, enacted in a state positioned along the United States’ southern border, SB 1070 primarily affects those facing Alba’s brighter borders: those phenotypically or linguistically associated with the negative image of a migrant, namely Hispanics.

Sponsor of the bill, State Senator Russell Pearce stated, “I will not back off until we solve the problem of this illegal invasion. Invaders, that’s what they are. Invaders on American sovereignty and it can’t be tolerated.”<sup>77</sup> This declaration comes in a state with the largest Latino population and in an era where, according to the Population Reference Bureau, while perceived mainly as immigrants, the majority of Latinos in the United States are naturally born citizens.<sup>78</sup> Further more, the demographic balance is shifting rapidly within the U.S., especially in Arizona. Saenz, speaking of national trends, reports

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<sup>75</sup> Morse, “Analysis of Arizona’s Immigration Law.”

<sup>76</sup> State of Arizona Senate. 49<sup>th</sup> Legislature. 2<sup>nd</sup> Session. S.B. 1070, Support Our Law Enforcement and Safe Neighborhoods Act. (2010) (enacted).

<sup>77</sup> Sophia J Wallace, “Papers Please: State-Level Anti-Immigrant Legislation in the Wake of Arizona’s SB 1070,” *Political Science Quarterly* 129, no. 2 (2014): 261.

<sup>78</sup> Rogelio Saenz, “Latinos in the United States 2010,” Population Reference Bureau, December 2010, 2–3, <http://lawprofessors.typepad.com/files/latinos-update20101.pdf>.

that while the population as a whole grew by 36 percent between 1980 and 2009, the Latino population more than tripled, increasing from 14.6 million to 48.4 million. Today, while Latinos are often viewed as immigrants, the majority are born within the United States and this trend is likely to continue when considering relative birth rates between Caucasians and Hispanic families as well as decreasing migration from Mexico and other Central and South American countries. As such, the provisions of SB 1070 increasingly falsely target not only legal immigrants, but naturally born citizens. While this might be a reaction to these shifting demographics, the discriminatory nature of SB 1070 was legally challenged soon after it was passed.

As in Hazelton, the ACLU and other organizations claimed that the bill was discriminatory.<sup>79</sup> Suing the state, they claimed that the bill legitimized racial profiling and echoed Officer Escobar and others by asking what criteria, if not language or ethnicity, police would use to decide whom to question. The ACLU filed a lawsuit against the bill. As of 2016 the ACLU has continued filing individual suits addressing the violations of individual rights as a result of the implementation of SB 1070. The organization has not however been able to strike down this controversial provision.<sup>80</sup>

However the ALCU was not alone, the Obama administration, through the

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<sup>79</sup> ACLU, "The American Civil Liberties Union Annual Report 2013," 2013, 15, [https://www.aclu.org/sites/default/files/assets/aclu\\_annual\\_report\\_2013.pdf](https://www.aclu.org/sites/default/files/assets/aclu_annual_report_2013.pdf); Wang, "What's Next for Arizona's SB 1070 and Other Copycat Laws"; "ACLU Files First Lawsuit Challenging Officers' Use of SB 1070 'Show Me Your Papers' Law," American Civil Liberties Union, September 25, 2014, <https://www.aclu.org/news/aclu-files-first-lawsuit-challenging-officers-use-sb-1070-show-me-your-papers-law>.

<sup>80</sup> "ACLU Files First Lawsuit Challenging Officers' Use of SB 1070 'Show Me Your Papers' Law."



Department of Justice (DOJ), also sued the state of Arizona.<sup>81</sup> In a statement issued in the White House Rose Garden, President Obama acknowledged that SB 1070 was rooted in failure at a federal level. However, he also criticized the bill, saying that it threatened, “to undermine the very notion of fairness which we cherish as Americans. As well as the trust between police and their communities that is so crucial to keeping us safe.”<sup>82</sup> When the DOJ filed charges, they claimed that four<sup>83</sup> of the ten provisions were inconsistent with federal regulations and did not recognize that state legislature was preempted by federal law.<sup>84</sup> Jan Brewer, the Arizona governor who signed SB 1070 into law, upon hearing of the government’s lawsuit stated “It is wrong that our own federal government is suing the people of Arizona for helping to enforce federal immigration law. As a direct result of failed and inconsistent federal enforcement, Arizona is under attack from violent Mexican drug and immigrant smuggling cartels. Now, Arizona is under attack in federal court from President Obama and his Department of Justice.”<sup>85</sup> However the Supreme Court ruled in favor of the Department of Justice, declaring three of the four contended

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<sup>81</sup> Arizona v. United States, 567 U.S. 387 (2012).

<sup>82</sup> “President Obama Regarding Arizona’s SB 1070” (White House Rose Garden: C-Span 3, April 23, 2010), [https://www.youtube.com/watch?v=\\_JdyhbVIErQ](https://www.youtube.com/watch?v=_JdyhbVIErQ).

<sup>83</sup> The federal suit challenged Section 2(b) the provision requiring police to check the immigration status of anyone whom they arrest or detain; Section 3 which made it a crime to be in Arizona without valid immigration papers; Section 5(c) which made it illegal to apply for or hold a job without immigration papers; and Section 6 which allowed officers to “to arrest someone, without a warrant, if the officer believes that he has committed – at some point in time – a crime that could cause him to be deported.” Morse, “Analysis of Arizona’s Immigration Law.”

<sup>84</sup> Isadore, “Is Immigration Still Exclusionary a Federal Power-A Preemption Analysis on Legislation by Hazelton, Pennsylvania Regulating Illegal Immigration,” 336; Supreme Court of the United States, “Arizona Et Al V. United States,” June 25, 2012, 1, [http://bakulaji.typepad.com/are\\_we\\_there\\_yet\\_oops\\_201/2012/06/](http://bakulaji.typepad.com/are_we_there_yet_oops_201/2012/06/).

<sup>85</sup> Jan Brewer’s Statement on the Federal Lawsuit Challenging Arizona SB 1070 (2010), 2014, Gale Virtual Reference Library, [http://go.galegroup.com/ps/i.do?id=GALE%7CCX3160000796&v=2.1&u=columbia\\_u&it=r&p=GVRL&sw=w&asid=e9a61890bc337ae451ac66c52aef526e](http://go.galegroup.com/ps/i.do?id=GALE%7CCX3160000796&v=2.1&u=columbia_u&it=r&p=GVRL&sw=w&asid=e9a61890bc337ae451ac66c52aef526e).

provisions were in contradiction with federal law. While the court did not find against the notorious “show me your papers” aspect, Justice Kennedy, in writing for the majority, warned “Arizona may have understandable frustrations with the problems caused by illegal immigration, but the state may not pursue policies that undermine federal law.”<sup>86</sup> This result echoes the verdict in the Hazelton case; both underscored the primacy of the federal government in creating and enforcing immigration law.

While this federal suit against the state of Arizona was premised on federal jurisdiction, by not overturning the requirement that police ascertain the immigration status of individuals within Arizona, the Supreme Court essentially ruled that this policy was not outside of “the carefully drawn federal statutory scheme” Judge Munley alluded to. In a legal opinion piece, Peter Spiro, an American legal scholar and professor, argues that Section 2(b), the “show me your papers” provision of SB 1070, “lacks teeth.”<sup>87</sup> Spiro contends that 2(b) requires police to send information to the federal government, but that no further action is *required*. He also highlights that the Supreme Court decision left room for a separate appeal addressing the discriminatory nature of 2(b). However, while 2(b) might not lead directly to deportations, and may not be actively enforced due to police led objections to the racial profiling inherent to the bill, there is a larger impact on communities and their relationships with state and local authorities.

Police chiefs and law enforcement associations, in Arizona and around the country, have spoken out against SB 1070, citing the seeding of distrust within at risk communities, inciting racial profiling, and putting migrants in vulnerable situations as

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<sup>86</sup> Arizona v. United States, 567 U.S. 387 (2012).

<sup>87</sup> Peter Spiro, “Supreme Court (Mostly) Guts S.B. 1070,” SCOTUSblog, June 25, 2012, <http://www.scotusblog.com/2012/06/supreme-court-mostly-guts-s-b-1070/>.

problems that conflict with their enforcement of the provisions.<sup>88</sup> Chief George Gascon of San Francisco, in April of 2010 stated “It would have a negative impact on community policing and public safety. Neighbors [in Hispanic neighborhoods] would be more hesitant to report crimes if they think their neighbors and family are here without authority.” Three days following Gascon’s statement, Chief Robert Davis, Preside of the Major Cities Chiefs Association, echoed the position that police officers acting as immigration agents would “likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities.”<sup>89</sup> This impact is evident in two high profile cases in Rhode Island and Maryland.

In 2003, a Guatemalan immigrant testified in a murder case in Providence, Rhode Island. While preparing for the case, the state attorney general discovered that Danny Sigui was undocumented. While Sigui’s testimony was critical to the conviction, his status was reported to the Department of Homeland Security (DHS), and he was deported following the trial. “When asked whether he would have come forward again, knowing that doing so would lead to his deportation, Sigui replied: ‘If I had known they would take my liberty, that they would take my children away from me, that they would put me [in immigration detention], I would not do this.’”<sup>90</sup> Sigui’s testimony and subsequent deportation were highly publicized and had a noticeable impact on the cooperation between immigrant communities and law enforcement. However movements such as community policing have worked to counter this growing distance.

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<sup>88</sup> Khan, “Police Speak Out Against Arizona Immigration Law.”

<sup>89</sup> Ibid.

<sup>90</sup> Lynn Tramonte, “Debunking the Myth of ‘Sanctuary Cities,’” *Immigration Policy Center*, 2011, 4, [http://www.immigrationpolicy.org/sites/default/files/docs/Community\\_Policing\\_Policies\\_Protect\\_American\\_042611\\_update.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/Community_Policing_Policies_Protect_American_042611_update.pdf).

In Austin Texas, following a wave of violent robberies and in an effort to combat similar trends of immigrant communities distancing themselves from law enforcement, police engaged in community policing activities.<sup>91</sup> These efforts revolved around emphasizing that the police were not immigration officers and would not take note of people's immigration status. Following this initiative, armed robbery reports increased by 20% and more than 150 serial criminals were incarcerated.<sup>92</sup>

While specifically allowed for under the 1996 immigrations laws, immigrant advocates also argue that the distinction between Immigration and Customs Enforcement and police roles are critical not only in encouraging community participation, but in protecting vulnerable populations. Leslye Orloff, Director of the Immigrant Program of Legal Momentum (formerly the Legal Defense and Education Fund), while testifying before the House Judiciary Subcommittee on Immigration and Border Security, argues that the “fear of being reported to [immigration authorities] and of subsequent deportation is one of the most significant factors preventing immigrant victims of domestic violence from seeking help from legal and social service systems.”<sup>93</sup>

María Bolaños, a victim of domestic abuse case in Maryland highlights the precarious position of victims of crime as well as witnesses such as Sigui. In December of 2009 Bolaños called the police for protection. However when they arrived, she was accused of illegally selling phone cards and was also detained by police. According to activists, police often arrest both victims and perpetrators, especially if the couple doesn't

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<sup>91</sup> Tramonte, “Debunking the Myth of ‘Sanctuary Cities.’”

<sup>92</sup> Tramonte, 7.

<sup>93</sup> New York City's ‘Sanctuary’ Policy and the Effect of Such Policies on Public Safety, Law Enforcement, and Immigration, 2003, <https://www.gpo.gov/fdsys/pkg/CHRG-108hhr85287/html/CHRG-108hhr85287.htm>.

speak English and there is confusion about the course of events. While ICE is not supposed to pursue these cases, Bolaños and others like her find themselves in deportation proceedings, undermining their ability to rely on police.<sup>94</sup>

These two cases highlight some of the fears immigrant communities balance as both witnesses and victims of crime. These cases highlight the importance of separating immigration control from local policing and its mitigating impact. Instances of community policing such as in Texas provide a standard activist Orloff would like see repeated nationwide as an integral part of “sanctuary cities.” These tangible repercussions of what is at risk when communities are distanced from a beneficial relationship with law enforcement bears new light on Sprio’s contention that SB 1070 “lacks teeth.” An initiative such as the “show me your papers bill,” has a larger impact on community relationships. Reflecting on these relationships and the erosion of the division between police officer and immigration official, an Austin American-Statesman, in May of 2010 stated “Ultimately, we will all suffer from Arizona’s foolhardy and shortsighted approach to dealing with illegal immigration. Arizona has essentially declared open season for criminals to target illegal immigrants and their families.”<sup>95</sup> When investigating the broader impact of local immigration policies such as those in Hazelton and Arizona, it is also important to examine the longevity of such ordinances and their impact.

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<sup>94</sup> Pilar Marrero, “Abused and Deported: Immigrant Women Face Double Disgrace - New America Media,” trans. Elena Shore, *La Opinión*, March 17, 2011, <http://newamericamedia.org/2011/03/abused-and-deported-immigrant-women-face-double-disgrace.php>; Shankar Vedantam, “Call for Help Leads to Possible Deportation for Hyattsville Mother,” *The Washington Post*, November 1, 2010, sec. Metro, <http://www.washingtonpost.com/wp-dyn/content/story/2010/11/01/ST2010110106818.html?sid=ST2010110106818>.

<sup>95</sup> Khan, “Police Speak Out Against Arizona Immigration Law.”

In 2015, Hazleton's major lost his reelection campaign to a candidate that printed election materials in English and Spanish. This election's results, by targeting the greater, more diverse population of Hazleton to engage in the political process simultaneously recognized the vibrant Hispanic community; this community that has revived the economy of this former coal town.<sup>96</sup> Home of the first anti-immigrant local legislature to be signed into law, this bill was overturned within a year and the influx of migrants, primarily Hispanic, revived the economy of the formerly flagging town and the population appears not to suffer from the legacy of the local immigration ordinance. Arizona however offers a different model and different questions concerning the life cycle of local initiatives.

Hazleton's Illegal Immigration Relief Act was one dimensional, addressing housing and over crowding concerns and the entire law was overturned approximately one year following its signing. Arizona's Senate Bill however addressed a wider range of concerns, was only partially negated, and was enacted at the state rather than the city level with the stated goal of making life uncomfortable enough to force individuals and families to "self deport." This last difference is critical when examining local immigration laws. Since the notorious passage of SB 1070 and the following lawsuits, cities within Arizona have tried to overhaul the remaining provisions of Support Our Law Enforcement and Safe Neighborhoods Act.

Within the American political spectrum, Arizona is politically very conservative with a Republican majority Senate, a Republic majority House of Representatives, and a

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<sup>96</sup> Eleanor Klibanoff, "The Immigrants It Once Shut Out Bring New Life To Pennsylvania Town," News, National Public Radio, October 16, 2015, <http://www.npr.org/2015/10/14/448681982/the-immigrants-it-once-shut-out-bring-new-life-to-pennsylvania-town>.

Republican governor. Article 13 of the Arizona constitution discusses the creation of cities and towns, and it dictates the primacy of state legislature. In other words, cities and towns are considered legal subsidiaries of the state. This causes tensions between state and local responses or limitation to immigration laws in cities such as Phoenix. The largest city near the southern U.S. border, Phoenix is home to large undocumented populations. Phoenix's population is 20.6 percent foreign born, and majority of the immigrants are from Mexico or other Latin American countries.<sup>97</sup> This is statistically higher than the statewide average of 13.4 percent.<sup>98</sup> While statewide statistics falsely inflates this difference by not including an additional six percent of undocumented immigrants to the total Arizona population, Phoenix is home to an even larger number of foreign-born residents than typical in Arizona. Critics of the primacy of state laws over local ordinances claim that Phoenix is suffering from over-legislation at the state level. This is particularly evident when examining political attitudes towards immigration.

Phoenix's previous two mayors, Phil Gordon and Greg Stanton have been in full support of federally exclusive pro-immigration reform. They have also advocated for restricting the power of individual states to pass immigration legislation. Mayor Gordon spoke out against SB 1070 as an example of why immigration control should be restricted to a federal level "We're trying to withstand this flood that is coming by, really, people that have hijacked the political system in Arizona."<sup>99</sup> He pleaded for the federal

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<sup>97</sup> United States Census Bureau, "State and County Quickfacts: Phoenix, Arizona," 2013.

<sup>98</sup> "State Immigration Data Profiles: Arizona," *Migration Policy Institute*, November 25, 2014, <http://www.migrationpolicy.org/data/state-profiles/state/demographics/AZ>.

<sup>99</sup> Phil Gordon and Michelle Martin, "Phoenix Mayor Lashes Out Against Immigration Bill," *Tell Me More* (National Public Radio, May 3, 2010).

government to intervene since SB1070 "won't secure the border, won't make the city of Phoenix safe" and instead "...people are suffering, people are afraid."<sup>100</sup> While Mayor Stanton also organized to support federal jurisdiction, both mayor's legal options to countermand SB 1070 were effectively limited to appeal for federal support as local initiatives are hamstrung by the legal primacy of the *state* under the Arizona constitution. SB 1070 has faded from the national news cycle and many people outside of Arizona are uncertain of the result of the court cases brought against the measure and are unaware of the cases still pending. While sporadic enforcement and general outcry against the discriminatory aspects of the bill gained national infamy, the law is still in action. Moreover, local immigration initiatives have a ripple effect and more local solutions are proposed annually.

Some might argue that whether or not they support these types of ordinances, that they are isolated and local events. However following Hazelton's immigration act, copycat legislature was enacted in over 100 cities and towns. SB 1070 inspired 23 different states to consider similar provisions and six states actually enacted similar measures (and faced similar legal injunctions).

Obama's insistence on the primacy of the federal government in immigration legislation, his stated desire to maintain trust in the police force while utilizing the machinery of immigration control stemming from the IIRIRA and AEDPA, shows a deliberate policy of supporting non-criminal aliens and the communities in which they live. As Texas Congressman Charles Gonzalez, in reaction to the Supreme Court

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<sup>100</sup> "Phoenix Mayor Asks Feds to Challenge Arizona Migrant Law," *Latin American Herald Tribune*, May 14, 2010, <http://www.laht.com/article.asp?CategoryId=12395&ArticleId=356960>.



overturning part of SB 1070 concludes, "Today's ruling recognizes that state-by-state immigration laws will only add more chaos and will not help solve the root of the issue. Immigration is not an Arizona issue only, but it's one that affects our entire nation and we must work for a comprehensive solution that works in the best interest of our country."<sup>101</sup>

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<sup>101</sup> "Gonzalez Applauds Ruling on Arizona's SB 1070, Calls for Comprehensive Immigration Reform: Rep. Charlie A. Gonzalez (D-TX) News Release" (Lanham, United States: Federal Information & News Dispatch, Inc., July 28, 2010), 1, <http://search.proquest.com/docview/858352894/citation/D76AEDF9A58B41A9PQ/1>.

## Chapter 3: Trump

Much of the rhetoric in support of SB 1070 seemed almost prescient in regard to the campaign run by then presidential candidate Trump and the statements subsequently made by now President Trump. In infamous tweets and in front of large rallies Trump has called Mexicans rapists and drug dealers, all Muslims terrorists, and vowed to solve illegal immigration. While the Trump administration has not long been in office, it already contrasts sharply with the Obama administration. In an attempt to contrast this new administration, this thesis first examines the Trump presidency and its use of executive orders to expand the deportation priorities of Immigration and Customs Enforcement. An expansion not only in policy, but also in personnel and budget as promised during the campaign and recently partially realized in the federal budget sign in late March of 2018.<sup>102</sup> After this analysis, we then contrasts the regional immigration enforcement of Georgia by its participation in 287(g) with the events that unfolded in Arizona around S.B. 1070 and the divergent federal positions.

### 3.1: Executive Orders

"You see what's happening at the border, all of a sudden for the first time, we're getting gang members out, we're getting drug lords out. We're getting really bad dudes out of this country, and at a rate that nobody's ever seen before."<sup>103</sup> –President Trump

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<sup>102</sup> Eric Katz, "Congress Rejects Trump's Bid for More Immigration Enforcement and Border Patrol Agents," *Government Executive*, March 26, 2018, <https://www.govexec.com/management/2018/03/congress-rejects-trumps-bid-more-immigration-enforcement-and-border-patrol-agents/146978/>.

<sup>103</sup> Donald Trump, *Trump: Removal Of Gang Members And Drug Lords "Is A Military Operation,"* 2017, [https://www.realclearpolitics.com/video/2017/02/23/trump\\_removal\\_of\\_bad\\_dud\\_esillegal\\_alien\\_gang\\_members\\_is\\_a\\_military\\_operation.html](https://www.realclearpolitics.com/video/2017/02/23/trump_removal_of_bad_dud_esillegal_alien_gang_members_is_a_military_operation.html).

Executive orders, mandates signed by the president and carrying the force of law, were often derided by Trump prior to his election. He criticized Obama's use of this tool on multiple occasions, including one remark made on February of 2016 when he stated, "Obama goes around signing executive orders. He can't even get along with the Democrats. He goes around signing all these executive orders. It's a basic disaster. You can't do it."<sup>104</sup> However following his own admission into the oval office, Trump has used this discretionary power on multiple fronts, including to expand the priorities of the both Immigration and Custom Enforcement and Customs and Border Patrol.

As mentioned in the previous chapter, Obama focused the Department of Homeland Security to establish three categories for immigration enforcement:

"1) national security threats, convicted felons or "aggravated felons," criminal gang participants, and illegal entrants apprehended at the border; 2) individuals convicted of significant or multiple misdemeanors, or individuals apprehended in the U.S. interior who unlawfully entered or reentered this country and have not been continuously and physically present in the United States since January 1, 2014, or individuals who have significantly abused the visa or visa waiver programs; and 3) individuals who have failed to abide by a final order of removal issued on or after January 1, 2014."<sup>105</sup>

By the end of 2016, according to ICE's year-end report, 83.7% of those deported belonged to the first, their primary, category and with less than one percent aligning with either an unknown priority or federal interest. Trump however quickly expanded that mandate and five days after being sworn into office, President Trump issued Executive

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<sup>104</sup> Christopher Ingraham, "Six Times Trump Said Executive Orders Were Bad Before He Decided They Were Actually Good," *Washington Post*, April 25, 2017, <https://www.washingtonpost.com/news/wonk/wp/2017/04/25/six-times-trump-said-executive-orders-were-bad-before-he-decided-they-were-actually-good/>.

<sup>105</sup> U.S. Immigration and Customs Enforcement, "Fiscal Year 2016 ICE Enforcement and Removal Operations Report," 3.

Order 13,768 *Enhancing Public Safety in the Interior of the US*.<sup>106</sup> Approximately one month later DHS publish an implementation memorandum *Enforcement of the Immigration Laws to Serve the National Interest* which enumerated how to enact the policies described in the Executive Order.<sup>107</sup> These two documents expanded ICE's purview to include seven main categories. First, in alignment with previous priorities, to identify and remove those convicted of any criminal offense; next those who have been *charged* with a crime whether or not those charges have been resolved as well as those who have committed act that would allow them *to be charged*. Next these expanded priorities go beyond the limited scope under Obama to include individuals who have "engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency."<sup>108</sup> Additionally, "those who have abused any program related to receipt of public benefit" and "those who are subject to final orders of removal and have remained in the United States" and finally, those deemed a public safety or national security risk by an immigration officer are at the forefront of ICE's deportation mandate.<sup>109</sup>

The first year under this expanded directive has seen a significant increase in arrest, detention, and deportation. Defined as the arrest of an alien for a civil violation of the immigration laws which is subsequently adjudicated either by an immigration judge or an administrative process, administrative arrests increased 30 percent in the first year

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<sup>106</sup> Exec. Order No. 13768, 3 C.F.R. (2017).

<sup>107</sup> Janet McCament, "Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA)," Department of Homeland Security, September 5, 2017, <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

<sup>108</sup> U.S. Immigration and Customs Enforcement, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report" (U.S. Department of Homeland Security, n.d.), 1.

<sup>109</sup> *Ibid*

of the Trump presidency while arrests of criminal aliens increased by a less drastic but still significant twelve percent.<sup>110</sup> While the overall deportation numbers still have Obama outpacing Trump numerically, the difference is due to the lowest number of border removal seen since the 1971,<sup>111</sup> due, in part, to a decreased desire to cross the southern border by migrants. This has been a noted trend for the past few years but was particularly striking during Trump's first year in office.

The demographics of removal under the Executive Order and ICE are also noteworthy. By focusing on Criminal Aliens, Obama deported primarily Hispanic men as mentioned previously. While these Latin American countries are still represented in 90 percent of removals, deportation of other nationalities rose by 24 percent. While only 300 Haitians were deported in 2016 more than 5,500 were deported this year. On a smaller scale, Somali deportations almost doubled, Chinese and Brazilian removals saw notable jumps, as did a few West African countries.<sup>112</sup>

One place that has seen significant regional change has been Atlanta and the surrounding area. While many police chiefs and migrant advocates nationally expressed fear about alienating communities from local law enforcement following Arizona's S.B. 1070 and the ensuing lawsuits, the AEDPA created the foundation for both federal training and cooperation in immigration matters. Under Trump and his vocal

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<sup>110</sup> U.S. Immigration and Customs Enforcement, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 3.

<sup>111</sup> Customs and Border Patrol, "Nationwide Illegal Alien Apprehensions Fiscal Years 1925-2017," n.d., 1, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Total%20Apps%20FY1925-FY2017.pdf>.

<sup>112</sup> U.S. Immigration and Customs Enforcement, "Fiscal Year 2016 ICE Enforcement and Removal Operations Report," 16-21; U.S. Immigration and Customs Enforcement, "Fiscal Year 2017 ICE Enforcement and Removal Operations Report," 15-18.

declarations to “get the bad ones, the really bad ones out of the country” some parts of the country have worked to enact sanctuary laws to protect their residents while other locations have embraced a partnership with ICE.<sup>113</sup>

### **3.2: Atlanta**

Immigration is, as stated at the beginning divisive. Trump’s Executive Order discussed above, additionally called upon states to partner with the federal government in its efforts to accelerate immigration controls: “the purpose of this order is to direct executive departments and agencies to employ all lawful means to enforce the immigration laws of the United States.”<sup>114</sup> Simultaneously it threatened municipality’s access to federal funding if they did not comply. While this threat was eventually deemed unconstitutional, the Order seemed to act as a lightning rod, polarizing locations such as New York, Los Angeles, and Chicago into declaring their sanctuary status while other’s such as Atlanta have morphed into “pioneers of immigration enforcement.”<sup>115</sup>

While not a perfect comparison, contrasting Arizona, the passage of S.B. 1070 under Obama with the example of Atlanta and its enthusiastic participation in 287(g) under the direction of Trump might be illuminating towards our goal of comparing and contrasting the impact of presidential priorities and the public perception of the two

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<sup>113</sup> Donald Trump and Justin Trudeau, “Remarks by President Trump and Prime Minister Trudeau of Canada in Joint Press Conference” (The White House Office, February 13, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-prime-minister-trudeau-canada-joint-press-conference/>.

<sup>114</sup> Exec. Order No. 13768, 3 C.F.R. (2017).

<sup>115</sup> Joel Rose, “How Metro Atlanta Became A ‘Pioneer’ Of Immigration Enforcement,” *Morning Edition* (PBS, February 13, 2018), <https://www.npr.org/2018/02/13/585301595/why-atlanta-embraces-trump-administrations-immigration-crackdown>.

administrations.

Current day Georgia, like Arizona in 2010, is politically conservative with a growing Hispanic population. Historically, the greater Atlanta area can attribute its high volume of migrants to the 1996 Olympic games when it became of mecca for undocumented workers contracted to build up the infrastructure. Since then, the low cost of living combined with agricultural and construction jobs have resulted in Georgia outpacing both Arizona and New Mexico in sheer number of undocumented workers in the state. As of 2015, one million foreign-born immigrants comprised ten percent of the state's overall population. Of these, over a quarter are from Mexico. And 428,570 of them, 41.9 percent, are naturalized citizens.<sup>116</sup> That said, as in Arizona, immigrant communities are often comprised of mix status households and neighborhoods. While the histories vary, these demographics provide some common ground as a basis for comparison.

When Jan Brewer passed S.B. 1070, it was controversial and ultimately elicited both private and federal civil cases. State legislation objected to the federal government suing the states for helping enforce federal laws and they objected to the private law suites alleging racial profiling (among other complaints). In modern day Georgia, local police forces participate in 287(g), the program created by IIRIRA to facilitate the collaboration between federal and local law enforcement. It too has been accused of racial profiling and been the subject of civil rights litigation.<sup>117</sup> The main difference

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<sup>116</sup> "Immigrants in Georgia" (American Immigration Council, October 13, 2017), <https://www.americanimmigrationcouncil.org/research/immigrants-in-georgia>.

<sup>117</sup> Ajmel Quereshi, "287(g) and Women: The Family Values of Local Enforcement of Federal Immigration Law Enforcement," *Wisconsin Journal of Law, Gender & Society* 25, no. 2 (2010): 262.

between these instances then becomes clear: that of the federal response. Obama expressed caution and concern while Trump is an enthusiastic supporter. The effects, in just the first year, can be seen in the high percentage of those caught in ICE raids in the Atlanta area as compared with the rest of the nation.

In early March 2017, ICE executed a national raid, which led to the detention of more than 680 unauthorized immigrants. Of those, 190 were in detained in the Atlanta operations area, which includes Georgia and the Carolinas.<sup>118</sup> ICE provided limited information about those arrested emphasizing the criminal histories of a few as was the agency's habit under the previous president. Then in August of last year during another raid, 336 people were apprehended. Of those, 127 were in the Atlanta district, and roughly 60 percent (77 people) were expediently deported. This efficiency of resources returns is in contrast with other ICE districts, such as Miami where the next largest cluster was located: 44 people. However the majority of administrations arrests resulted in the single digits.<sup>119</sup> Georgia has embraced this federal partnership, and, in a state where you can be deported for driving without a license, this foundation of nationalist policies with little discretionary room makes it an ideal partner as evident when a closer look shows that many of the surrounding counties are the most cooperative with the national agenda.<sup>120</sup>

And while ICE officials say that criminal alien's remain their priority, Trump's

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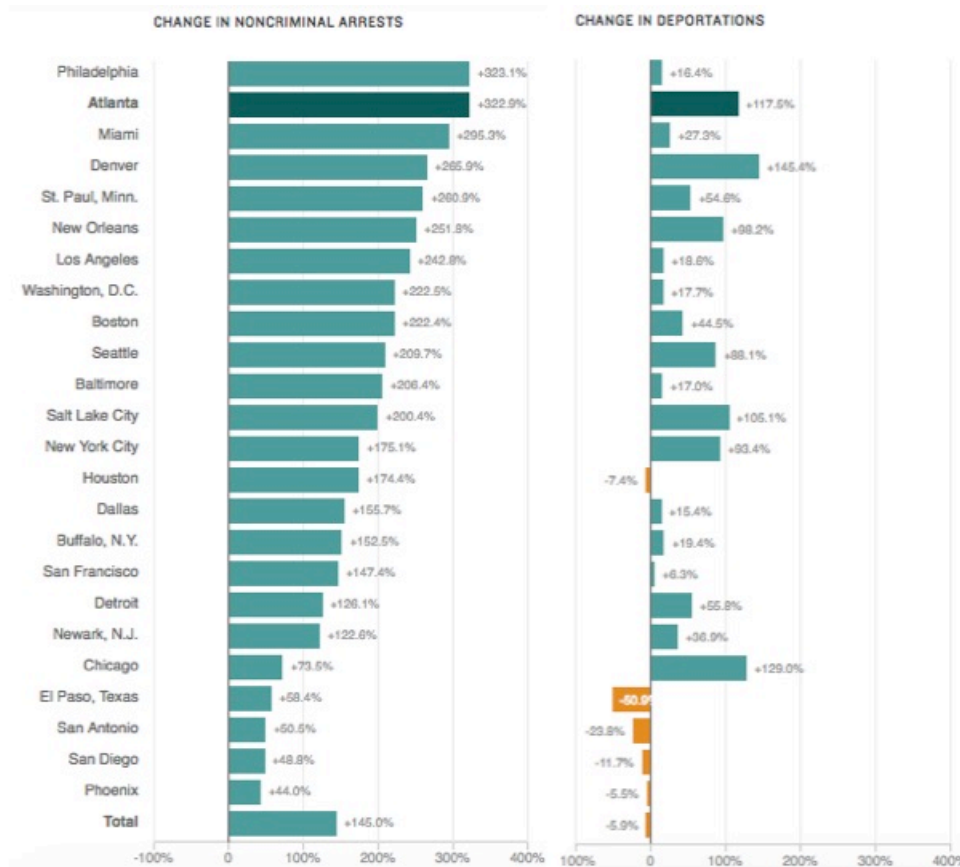
<sup>118</sup> Redmon, "Nationwide Immigration Enforcement Operation Snares 87 in Georgia."

<sup>119</sup> Redmon, "Atlanta Field Office Tops ICE Arrests amid Immigration Crackdown."

<sup>120</sup> Yee, "Please, God, Don't Let Me Get Stopped"; Joel Rose, "How Metro Atlanta Became A 'Pioneer' Of Immigration Enforcement," *Morning Edition* (NPR, February 13, 2018), <https://www.npr.org/2018/02/13/585301595/why-atlanta-embraces-trump-administrations-immigration-crackdown>.



broader categories introduced at the onset of his tenure in office allow immigration officers to arrest anyone they see someone who is undocumented. According to a recent report, “arrests of immigrants with no criminal record more than tripled last year in the Atlanta region, from 1,050 to 4,440,” constituting the biggest jump in the entire country.



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These numbers are cause for concern among immigrant advocates who see the growing gap between these communities and law enforcement as threatening to an already vulnerable group. For example, echoing Orloff’s testimony in front of the House Judiciary Subcommittee on Immigration and Border security in relation to SB 1070,

<sup>121</sup> Rose, “How Metro Atlanta Became A ‘Pioneer’ Of Immigration Enforcement,” February 13, 2018.

Quereshi warns specifically about the impact of 287(g) and domestic violence cases, where a recent study found that overall, only about half of those suffering domestic violence report the crime.<sup>122</sup> Amongst immigrant communities for women with stable statuses, the report rate is lower but comparable at 43%. However undocumented women who report the abuse rate at a mere 19 percent.<sup>123</sup> The isolation indicated in these statistics is not restricted to domestic violence, but is rather indicative of the polarizing effects conflating police with immigration officers especially when they are encouraged by the presidential administration.

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<sup>122</sup> Quereshi, "287(g) and Women," 283.

<sup>123</sup> Quereshi, 287.

## Chapter 4: DACA and Perceptions

In reflecting on the passage of S.B.1070, Obama acknowledge the underlying federal fault in not passing an immigration act.<sup>124</sup> While he made efforts throughout his presidency, Obama eventually resorted to a combination of executive orders and executive policy announcements aimed at regularizing the position of immigrants in the United States. The most well-known of these efforts is the Deferred Action for Childhood Arrivals program (DACA). DACA filled a similar, yet substantively different role than the long postponed DREAM ACT.

The Development, Relief, and Education for Alien Minors Act (DREAM Act) was introduced to the 107<sup>th</sup> Congress by Senator Orin Hatch in 2001 and amended in 2002 with the stated intent of amending the IIRIRA in order to “repeal the denial of an unlawful alien's eligibility for higher education benefits based on State residence unless a U.S. national is similarly eligible without regard to such State residence.”<sup>125</sup> For those meeting a variety of requirements the DREAM Act provided a path to conditional and permanent resident status. Those requirements included that they entered the United States as a minor of 16 years old or younger and following their arrival they maintained minimum of four consecutive years of residency since. The age of those eligible to be considered a DREAMer was further restricted to apply only to those who were between the ages of 12 and 35 when the bill itself passed, and they had to have graduated from either high school or higher education and be of “good moral character”. For those qualified, the paths to legal residency status was time consuming but exciting opportunity

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<sup>124</sup> “President Obama Regarding Arizona’s SB 1070.”

<sup>125</sup> Development, Relief, and Education for Alien Minors Act, S. S1291, 107 Cong. (2001).

to regularize the status of these individuals who had not chosen to flee their homeland and many of whom had been raised as Americans and assimilating into American culture.<sup>126</sup> The potential doors the DREAM Act could open received a lot of attention over the years as the bill was raised, filibustered, and repeatedly defeated.

In 2010, the middle of his first term, President Obama pledged to introduce the Act to the House by the end of the year. However this too failed to reach the required vote threshold. In 2012 Obama refined his deportation priorities with ICE to exclude some who would have qualified as DREAMers<sup>127</sup> and two months later Janet Napolitano, then-Secretary of the Department of Homeland Security, issued a memorandum entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* to the U.S. Customs and Border Protection Acting Commissioner, the U.S. Citizenship and Immigration Services Director, and the Immigration and Customs Enforcement Director.<sup>128</sup> This memo then became the foundation for the Deferred Action for Childhood Arrivals (DACA) *Program*. While there are many similarities between the DREAM Act and DACA, the later is a prosecutorial discretion program administered by United States Citizenship and Immigration Services (USCIS) that provides temporary relief from deportation rather than a law that offers no path to a normalized status. Instead it is a temporary solution requiring participants to apply and renew their status every two years. However DACA does allow childhood arrivals to

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<sup>126</sup> Carens, *The Ethics of Immigration*, 24.

<sup>127</sup> Tom Cohen, "Obama Administration to Stop Deporting Some Young Illegal Immigrants," *CNN Politics*, June 16, 2012, <https://www.cnn.com/2012/06/15/politics/immigration/index.html>.

<sup>128</sup> Janet Napolitano, "Memorandum: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," June 15, 2012, 1, <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

obtain work permits, travel internationally without fear that they would be unable to return, and attend higher education. While studies on the economic impact alone have shown increased participation in the labor market and the balancing decrease in unemployment rates,<sup>129</sup> DACA was, and is, controversial. Due to its manner of implementation, questions concerning its constitutionality, and legal injunctions against implementation and then against cancelling the program, DACA has been plagued from its inception.

All this came to a head on September 5 of 2017 when the Trump administration announced that it would be rescinding the program following the formal rescission of the inciting memorandum by Department of Homeland Security Acting Secretary Elaine Duke.<sup>130</sup> The president and his administration presented an orderly shut down of the provisions of DACA with different deadlines for those enrolled in the program. However he confirmed that it was slated for termination.<sup>131</sup> Leading up to the conclusion of renewals in March of 2018, the president then gave Congress a six-month timetable in which to come up with a permanent solution for the roughly 800,000 individuals enrolled in the program. Former US President Jimmy Carter reflected soon thereafter that despite remarks to the contrary, Trump had not ended DACA yet and the time he had given Congress was long overdue. Carter reminded the students he was addressing at the time that Obama, democrats and republicans had all failed to pass the DREAM Act or any other

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<sup>129</sup> Nolan G. Pope, "The Effects of DACAmentation: The Impact of Deferred Action for Childhood Arrivals on Unauthorized Immigrants," *Journal of Public Economics* 143 (November 1, 2016): 106, <https://doi.org/10.1016/j.jpubeco.2016.08.014>.

<sup>130</sup> McCament, "Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA)."

<sup>131</sup> Miriam Valverde, "What Did Donald Trump Mean in His Tweet about DACA Recipients?," *PolitiFact*, September 7, 2017, <http://www.politifact.com/truth-o-meter/article/2017/sep/07/what-did-trumps-tweet-about-daca-recipients-mean/>.

major legislation and that this is not “a hopeless cause.”<sup>132</sup>

Hopeless or not, following this announcement, fifteen states and the District of Columbia filed suit against the President and his government alleging that DREAMers are being targeted due to their country of origin.<sup>133</sup> About 80% of those enrolled in DACA are Mexico and Central American countries. In defense of DACA and this suit New York Attorney General Eric Schneiderman contends, "This is a massively successful program. There is no good reason to shut it down. There's no legitimate reason to shut it down. No court has held it unconstitutional."<sup>134</sup>

Citing numerous campaign trail comments and tweets disparaging Mexicans, Washington State Attorney General Bob Ferguson stated, “We allege the president’s own statements make clear that DREAMers are being targeted based on their national origin.”<sup>135</sup> While this case is still under review, U.S. District Court Judge Alsup of the Ninth Circuit Court weighed in in January of 2018. Alsup, when considering whether to

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<sup>132</sup> Bill Barrow, “Strange Bedfellows: Jimmy Carter Defends Trump,” *US News & World Report*, September 14, 2017, <https://www.usnews.com/news/best-states/georgia/articles/2017-09-13/jimmy-carter-defends-trump-on-immigration-decision>.

<sup>133</sup> States of New York, Massachusetts, Washington, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia, plaintiffs, v. Donald Trump, in his official capacity as President of the United States; U.S. Department of Homeland Security; Elaine C. Duke, in her official capacity; U.S. Citizenship and Immigration Services; U.S. Immigration and Customs Enforcement; and the United States of America, Defendants (United States District Court Eastern District of New York September 6, 2017).

<sup>134</sup> Miriam Valverde, “What Have Courts Said about the Constitutionality of DACA?,” *PolitiFact*, September 11, 2017, <http://www.politifact.com/truth-o-meter/statements/2017/sep/11/eric-schneiderman/has-daca-been-ruled-unconstitutional/>.

<sup>135</sup> Reid Wilson, “States File Suit to Block Trump’s DACA Action,” *The Hill*, September 6, 2017, <http://thehill.com/homenews/state-watch/349467-states-file-suit-to-block-trumps-daca-action>.

issue an injunction against plans to terminate DACA or dismiss the lawsuit, examined presidential tweets as well as the implication for DACA recipients if the deadline expires prior to the conclusion on the civil suit. In issuing his opinion and an injunction Judge Alsup wrote ““Plaintiffs have clearly demonstrated that they are likely to suffer serious irreparable harm absent an injunction...Before DACA, Individual Plaintiffs, brought to America as children, faced a tough set of life and career choices turning on the comparative probabilities of being deported versus remaining here. DACA gave them a more tolerable set of choices, including joining the mainstream workforce.”<sup>136</sup>

While the future of DACA is unclear, Trump published a tweet during these proceedings which is concerning. During his time in office Obama experienced frustration with an administrative branch that did not seem interested in bi-partisanism. Eventually, he used executive orders and ploys like the memo authorizing the DACA Program to circumvent these hurdles. As mentioned previously, at the time of writing Trump has been in office a little over one year. Like the beginning of Obama's presidency, Trump and his Republican control of both the House and the Senate. However there is growing concern that immigration enforcement efforts would go too far. While Internet polls are inherently skewed, a series of polls conducted by different organizations throughout 2017 paint the majority of the public's views on immigration and deportation as divergent from those priorities adhered to by the President.<sup>137</sup> While there is an increasing schism along political party lines, a majority of respondents to one

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<sup>136</sup> Maria Sacchetti, “Federal Judge Gives Respite to ‘dreamers’, Says DACA Can’t End While Lawsuit Is Pending,” *The Washington Post*, January 10, 2018.

<sup>137</sup> “Polling Update: Public Attitudes on Immigration and Trump Administration Immigration Initiatives” (Immigration Forum, July 2017), 1–2, [https://immigrationforum.org/wp-content/uploads/2017/06/Polling-Update-Attitudes-on-Immigration-Spring\\_Summer-2017-Final.pdf](https://immigrationforum.org/wp-content/uploads/2017/06/Polling-Update-Attitudes-on-Immigration-Spring_Summer-2017-Final.pdf).

poll, 58 percent, indicated concern that deportation efforts would go too far under Trump, while another poll showed that 90 percent of respondents were in favor of legislation that provided an eventual path to citizenship.<sup>138</sup> Despite this public momentum towards the Amnesty the Obama tried to champion, when pressed about finding a solution for DACA recipients and taking advantage of the opportunity president Carter spoke of, Trump writes, “The Democrats have been told, and fully understand, that there can be no DACA without the desperately needed Southern Border and an END to the horrible Chain Migration & ridiculous Lottery System of Immigration etc. We must protect our Country at all cost!”<sup>139</sup> Despite continued promises of a physical wall to increase the security of the border with Mexico, the and despite Trump’s attempts to leverage the position of DACA recipients, in the federal budget pass in late March 2018, the border wall project received \$1.6 billion dollars in funding versus the requested \$23 billion.<sup>140</sup>

While politics are a series of trades the public manner is which Trump barter DACA recipient’s futures against a border wall despite public opinion and the lack of consistent Congressional support leads back to the original question of how these administrations are perceived. Or perhaps more relevantly for this government, how they perceive themselves and how that affects the policies that they promote.

### **Conclusion:**

During the third presidential debate, Trump impassionedly claimed, “President

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<sup>138</sup> “Polling Update: Public Attitudes on Immigration and Trump Administration Immigration Initiatives,” 7.

<sup>139</sup>Erik Larson, “Trump Tweet May Undermine U.S. in ‘Dreamers’ Deportation Suit,” *Bloomberg.com*, January 3, 2018, <https://www.bloomberg.com/news/articles/2018-01-03/trump-tweet-may-undermine-u-s-in-dreamers-deportation-suit>.

<sup>140</sup> U.S. Government Publishing Office, *Budget of the U.S. Government* (Washington, DC, 2018), 16, accessed April 3, 2018, <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.



Obama has moved millions of people out. Nobody knows about it, nobody talks about it. But under Obama, millions of people have been moved out of this country.”<sup>141</sup> While it is inaccurate to say that deportations and removals were not covered by the media during Obama’s presidency as evident by his moniker “deporter-in-chief” it is perhaps accurate to say that communities not directly impacted by immigration enforcement found that removals were overshadowed by other news and the underlying feeling on both sides of the political isle was that Obama’s position as a democratic automatically conferred a “pro-immigrant” “weak on crime” position in an increasingly partisan government. This provided Obama with a perceived legacy that does not exactly align with the reality.

Obama was sworn into office following a campaign that promised immigration reform and support for amnesty. As early as February 18 2008, during a radio address, the president reasserted his backing for granting amnesty to undocumented aliens while simultaneously acknowledging that politically, this would be difficult to bring about.<sup>142</sup> During the first two years of his administration, Obama pushed for amnesty more than a dozen times in speeches, internal memos, and proposed legislation.<sup>143</sup>

During those first two years in office, the democratic Obama administration also had a democratically controlled House and Senate. This majority, and the lack of

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<sup>141</sup> Donald Trump and Hilary Clinton, PolitiFact’s annotated transcript of the third presidential debate, interview by Chris Wallace, October 19, 2016, <https://medium.com/@PolitiFact/politifacts-annotated-transcript-of-the-third-presidential-debate-f9655566fb37#.qg78ahpa3>.

<sup>142</sup> Federation for American Immigration Reform, “President Obama’s Record of Dismantling Immigration Enforcement,” 3.

<sup>143</sup> Federation for American Immigration Reform, 3–9.

tangible progress on immigration, garnered Obama a lot of criticism.<sup>144</sup> However Obama was also sworn into office during an economic crisis and by the midterm elections in 2010 the Republican Party, bolstered by a public frustrated by the economic depression, retook control of the House.<sup>145</sup> Within this new Congress Obama faced “an unprecedented, highly personalized opposition” according to Janet Murguia, the president of immigration advocacy group the National Council of La Raza.<sup>146</sup> Murguia, when reflecting on how she views the Obama administration as failing immigrants, states, “We fault him, I believe correctly, for failing to recognize soon enough this intransigence by Congress and failing to use his authority sooner.”<sup>147</sup> However as we have seen, Obama did eventually recognize that he would be unable to pass amnesty relief through Congress leading him to initiate immigration reform through executive action and policy. The most well known example of this was the DACA program, however roughly two years following its implementation in November of 2014 Obama again tried to expand immigration protections through executive orders. He did this by issuing a series of orders that would have expanded DACA, and created the Deferred Action for Parental Accountability (DAPA) protecting an estimated additional five million residence.<sup>148</sup> DAPA, also a prosecutorial discretion program administered by USCIS is similar to

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<sup>144</sup> Kathleen Hennessey, “Immigration Stands as Obama’s Most Glaring Failure,” *PBS NewsHour*, July 4, 2016, <https://www.pbs.org/newshour/nation/immigration-stands-as-obamas-most-glaring-failure>.

<sup>145</sup> Paul Kane, “Resurgent Republicans Take Back Control of the House,” November 3, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/03/AR2010110308842.html>.

<sup>146</sup> Hennessey, “Immigration Stands as Obama’s Most Glaring Failure.”

<sup>147</sup> *Ibid.*

<sup>148</sup> “Fact Sheet: Immigration Accountability Executive Action” (The White House Office of the Press Secretary, November 20, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/fact-sheet-immigration-accountability-executive-action>.

DACA in that it allows for both the temporary relief from deportation and work authorization to unauthorized parents of U.S. citizens or Lawful Permanent Residents.<sup>149</sup> Following these Executive Actions, a coalition of 26 states, led by Texas, filed suit against the federal government claiming that it had abused the power of the office of the president by attempting to circumvent Congress and that “One person, even a president, cannot unilaterally change the law.”<sup>150</sup> While a tied Supreme Court ruling failed to allow DAPA to go into effect, Obama’s history of strict deportation priorities within immigration enforcement coupled with executive orders pushing for the amnesty promised in both his campaigns and stated concerns while in office offer a nuanced immigration legacy that allowed for more blurred boundaries.<sup>151</sup>

The Trump administration, while still young, has some glaring differences from Obama. Like the beginning of Obama’s presidency, Trump’s Republican party controls all legislative branches, with a majority of seats in both the House and the Senate. However the administration itself is tenuous, with hundreds of positions, both those requiring presidential appointment and the staff supporting for various offices sitting empty.<sup>152</sup> In addition to the lack of over two hundred appointments as of the end of

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<sup>149</sup> American Immigration Council, “A Guide to the Immigration Accountability Executive Action,” November 30, 2014, <https://www.americanimmigrationcouncil.org/research/guide-immigration-accountability-executive-action>.

<sup>150</sup> Adam Liptak and Michael D Shear, “Supreme Court Tie Blocks Obama Immigration Plan,” *The New York Times*, June 23, 2016, sec. U.S., <https://www.nytimes.com/2016/06/24/us/supreme-court-immigration-obama-dapa.html>.

<sup>151</sup> *Ibid.*

<sup>152</sup> “Hundreds of Top Government Jobs under Trump Are Unfilled. So Who’s Running Things?,” *PBS NewsHour*, January 29, 2018, <https://www.pbs.org/newshour/show/hundreds-of-top-government-jobs-under-trump-are-unfilled-so-whos-running-things>; James Hohmann, “Analysis | The Daily

2017, more than 70,000 federal employees quit or retired during the first six months of the Trump Presidency.<sup>153</sup> Compared with Obama, this shows a 42 percent increase<sup>154</sup> and many critics wonder about the ability of such a devastated administration to govern.

While observers are concerned about how informed policy, immigration or otherwise, can be with such limited infrastructure, Trump states that he is the only truly important appointment: “Let me tell you - the one that matters is me. I'm the only one that matters because when it comes to it, that's what the policy is going to be. You've seen that, and you've seen it strongly.”<sup>155</sup>

It could be argued that Obama, by issuing executive orders and attempting to bypass Congress pushed his agenda at the expense of everything else. However recent polls consistently show that the American public wants immigration reform and the de-prioritization of deportation as the main solution despite the agenda set forth in Congress and in the White House.<sup>156</sup> As such, claiming that Obama’s use of executive action

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202: Trump Has No Nominees for 245 Important Jobs, Including an Ambassador to South Korea,” *Washington Post*, January 12, 2018, <https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2018/01/12/daily-202-trump-has-no-nominees-for-245-important-jobs-including-an-ambassador-to-south-korea/5a57cce830fb0469e8840085/>; Brian Naylor, “Trump Administration Has More Than 250 Unfilled Jobs,” *All Things Considered* (NPR), accessed May 4, 2018, <https://www.npr.org/2017/11/22/566098660/trump-administration-has-more-than-250-unfilled-jobs>.

<sup>153</sup> “Hundreds of Top Government Jobs under Trump Are Unfilled. So Who’s Running Things?”

<sup>154</sup> *Ibid.*

<sup>155</sup> Naylor, “Trump Administration Has More Than 250 Unfilled Jobs.”

<sup>156</sup> “CNN Poll: 88% of Americans Support Immigration Reform with a Path to Citizenship,” *America’s Voice*, September 7, 2016, [https://americasvoice.org/press\\_releases/cnn-poll-88-americans-support-immigration-reform-path-citizenship/](https://americasvoice.org/press_releases/cnn-poll-88-americans-support-immigration-reform-path-citizenship/); “Polling Update: Public Attitudes on Immigration and Trump Administration Immigration Initiatives”; “Overall U.S. Desire to Decrease Immigration Unchanged in 2017,” Gallup, June 27, 2017.

equates him with Trump's megalomania is unrealistic, as we have seen throughout this thesis when examining some notable examples of his immigration policy. However Trump is mirroring Obama's frustration with Congress and the political process. While Obama initially tried to work with the legislative branch of the government before relying more and more heavily on executive actions, Trump during his first year in office is often decrying the lack of action being taken to support his priorities.<sup>157</sup> This schism is something to note and follow, as the executive branch and the legislative branch seem to continue to struggle to work together. This will be particularly crucial to future analysis and following the potential redistribution of the Republican to Democratic balance in the House and the Senate in the next election. Will there be a future crisis that will prompt immigration legislation as we have seen happen over and over throughout history? Or have we already seen the beginning of a crisis with both the creation and the attempted dismantling of DACA?

This thesis has tracked how immigration laws, passed in response to varying definitions of crisis resulted in an unintended legal juggernaut poised to steamroll not only undocumented immigrants, but also legal residents. We have noted how the continued lack of comprehensive immigration reform has led to regional responses that

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<sup>157</sup> Donald Trump, "Since Congress Can't Get Its Act Together on HealthCare, I Will Be Using the Power of the Pen to Give Great HealthCare to Many People - FAST," Tweet, @realdonaldtrump (blog), October 10, 2017, <https://twitter.com/realdonaldtrump/status/917698839846576130?lang=en>; Donald Trump, "Congress, Get Ready to Do Your Job - DACA!," Tweet, @realdonaldtrump (blog), September 5, 2017, <https://twitter.com/realdonaldtrump/status/905038986883850240?lang=en>; Jonathan Easley, "Trump Blasts Congress for Sending Him Omnibus Bill That 'Nobody Read,'" *The Hill*, March 23, 2018, <http://thehill.com/homenews/administration/379969-trump-blasts-congress-for-sending-him-omnibus-bill-that-nobody-read>.

threaten to further isolate communities of color and vulnerable populations by conflating immigration officers with law enforcement. Both presidents have, frustrated by an the inability to address the lack of immigration reform in Congress, resorted to Executive Orders and Policies that have embroiled them in law suites. While these men's agenda's overlap, we have also explored a few significant ways in which they differ. Obama oversaw the most deportations in history and prioritized the removal of criminal aliens, which a high percentage of the time, overlapped, with nonviolent criminal removals of long term legal residents. However he also pushed for immigration reform and faced with an intransigent Congress pushed forward immigration policies that make the United States more livable for childhood arrivals and worked to ensure that the enforcement of immigration laws and the securing of the national border did not also result in the isolation and victimization of communities of color. Trump on the other hand, in his first year in office, has embraced the juggernaut and threatened the federal funding available to sanctuary cities due to the measures that they have taken since his inauguration to maintain ties to immigrant communities.<sup>158</sup> In a tweet reminiscent of the Obama era criminal removals Trump claims, "California's sanctuary policies are illegal and unconstitutional and put the safety and security of our entire nation at risk. Thousands of dangerous & violent criminal aliens are released as a result of sanctuary policies, set free to prey on innocent Americans. THIS MUST STOP!"<sup>159</sup> And in a follow up roughly a

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<sup>158</sup> Jasmine L Tyler, "Trump Administration Threatens 'Sanctuary Cities,'" Human Rights Watch, February 2, 2018, <https://www.hrw.org/news/2018/02/02/trump-administration-threatens-sanctuary-cities>.

<sup>159</sup> Donald Trump, "California's Sanctuary Policies Are Illegal and Unconstitutional and Put the Safety and Security of Our Entire Nation at Risk. Thousands of Dangerous & Violent Criminal Aliens Are Released as a Result of Sanctuary Policies, Set Free to Prey on Innocent Americans. THIS MUST STOP!," Tweet,

month later, while the Ninth Circuit Court of Appeals was reviewing the legality of restricting federal funds,<sup>160</sup> Trump continued to publish his opinion via Twitter about the dangerous element threatening the public due to these policies: “Sanctuary Cities released at least 142 Gang Members across the United States, making it easy for them to commit all forms of violent crimes where none would have existed. We are doing a great job of law enforcement, but things such as this make safety in America difficult!”<sup>161</sup>

While Obama’s numerical deportation legacy was perhaps partially veiled by his executive actions and the implementation of DACA he was also much more reserved in his speeches and his use of social media. Trump has embraced the other side of the spectrum where everything he does is colored by the rhetoric he publishes regularly, rhetoric that is often overtly racial. This trend is evident in the use of tweets and campaign promises as evident of intent in the court cases already plaguing the administration.<sup>162</sup>

But perhaps the most notable difference between Obama and Trump and how they are perceived, is in how they perceive themselves. Before his upset democratic

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@realdonaldtrump (blog), March 13, 2018,

<https://twitter.com/realdonaldtrump/status/973581274215473153?lang=en>.

<sup>160</sup> Josh Gerstein, “Justice Department Appeals Block on Trump’s Sanctuary City Executive Order,” *Politico*, September 18, 2017, <http://politi.co/2hcs3vB>; Josh Gerstein, “Trump’s Words Complicate Feds’ Arguments in Sanctuary-City Case,” *Politico*, April 11, 2018, <https://politi.co/2IMIQ4M>.

<sup>161</sup> Donald Trump, “Sanctuary Cities Released at Least 142 Gang Members across the United States, Making It Easy for Them to Commit All Forms of Violent Crimes Where None Would Have Existed. We Are Doing a Great Job of Law Enforcement, but Things such as This Make Safety in America Difficult!,” Tweet, @realdonaldtrump (blog), April 19, 2018,

<https://twitter.com/realdonaldtrump/status/987096152892944389?lang=en>.

<sup>162</sup> Larson, “Trump Tweet May Undermine U.S. in ‘Dreamers’ Deportation Suit”; Valverde, “What Have Courts Said about the Constitutionality of DACA?”; Gerstein, “Trump’s Words Complicate Feds’ Arguments in Sanctuary-City Case.”

nomination for the presidency Obama was a former legal scholar turned senator and politician. Trump however was a businessman and entertainer. A reality TV star and frequent talk show guest contributor, Trump marketed himself as an outsider during his campaign in order to then “drain the swamp”- that is Washington D.C.<sup>163</sup> Seeming to live by the maxim that no press is bad press, Trump routinely makes inflammatory remarks and embraces twitter and the technology that allows him to enter the daily lives of all Americans in an unprecedented manner. And these comments color our perception of his intent as well as our understanding of his thought process and changing views.<sup>164</sup>

This thesis compared and contrasted a few notable immigration and deportation controversies during the Obama administration and compared them to situations still developing under the auspices of Trump. It contrasted the federal reaction and different presidential priorities and concludes by questioning if it is not a question of how these men are perceived by the general population but rather how they perceive, and present, themselves.

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<sup>163</sup> Hughes, “Trump Calls to ‘drain the Swamp’ of Washington,” *USA Today*, October 18, 2016, sec. Politics, <https://www.usatoday.com/story/news/politics/elections/2016/2016/10/18/donald-trump-rally-colorado-springs-ethics-lobbying-limitations/92377656/>; Noah Bierman, “Donald Trump Wants to ‘Drain the Swamp’ in Washington by Putting Term Limits on Congress,” *LA Times*, accessed May 4, 2018, [/nation/politics/trailguide/la-na-trailguide-updates-donald-trump-proposes-congressional-1476820631-htmlstory.html](http://nation/politics/trailguide/la-na-trailguide-updates-donald-trump-proposes-congressional-1476820631-htmlstory.html); Peter Overby, “Trump’s Efforts To ‘Drain The Swamp’ Lagging Behind His Campaign Rhetoric,” *NPR*, April 26, 2017, sec. Politics, <https://www.npr.org/2017/04/26/525551816/trumps-efforts-to-drain-the-swamp-lagging-behind-his-campaign-rhetoric>.

<sup>164</sup> Lapowsky, “We Asked Lawyers to Vet Trump’s Most Controversial Tweets,” *WIRED*, June 1, 2017, <https://www.wired.com/2017/06/asked-lawyers-vet-trumps-controversial-tweets/>.



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