

# Local Democracy on ICE: The Arizona Laboratory

Judith A. Greene

## Introduction

Driving across a vast expanse of Arizona's natural beauty—the valleys, peaks, and desert that mark the Grand Canyon State—an unnatural landmark disrupts the scene: the prison system. While the USA is the global leader in incarceration, Arizona is the incarceration capital of the American West (Guerino, Harrison, & Sabol, 2011).<sup>1</sup> Arizona ranks fourth highest among all 50 states in the percentage of total general fund expenditures that are spent on corrections: 11 %, compared to just 7 % for the nation as a whole (National Association of State Budget Officers, 2011).

Arizona pioneered many of our nation's harshest penal policies. The first state-level supermax prison was constructed in Arizona. The state was one of the first to reinstate chain gangs. Not only has Arizona been a trendsetter in the delivery of harsh justice, it has also become the national leader in development of harsh measures to criminalize and exclude immigrants.

To this end, Arizona public officials have conspired to melt the line between criminal law and immigration enforcement, expropriating the authority and resources of their entire criminal justice system to augment and—in some areas—displace federal action. A great deal has been written about the effects of their xenophobic campaign on Arizona's immigrant communities. Yet little is known, beyond

---

This paper was initially published as a chapter in a Justice Strategies report, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*, by Aarti Shahani and Judith Greene. It has been substantially revised and updated.

<sup>1</sup>Bureau of Justice Statistics data indicate that Arizona leads Western states with an incarceration rate of 572 prisoners per 100,000 people in the state's general population.

J.A. Greene (✉)

Justice Strategies, 139 Washington Avenue, Brooklyn, NY 11205, USA

e-mail: greenej1@mindspring.com

the state's borders, about the corrosive and abusive effects on the workings of the criminal justice system.

The *Wall Street Journal* has called Arizona a “laboratory for new ways to crack down on illegal immigrants” (Jordon, 2008). The description keys into a basic fact: Arizona is the nation's leader in locally driven immigration enforcement.<sup>2</sup> Every branch of government has engineered different responses to unbridled prison expansion, rapid population shifts, and xenophobic fury over foreigners of color. They are devolving the federal immigration mandate into state and local hands.

The Arizona laboratory provides a window to see how a federal agency can traverse the politics of local democracy, using the local criminal justice system to serve its own ends. At the same time, the sharp contours of Arizona politics have shaped the national debate on immigration issues, as well as many aspects of federal policy and practice.

The mix of political leadership that has created the Arizona laboratory is not especially unique. In 2005, then-Governor Janet Napolitano, a cautiously liberal Democrat, tried to stamp out anti-immigrant zeal by shifting its focus. While nativists complained of all immigrants draining the public coffers, she identified a far smaller pool of undocumented felons in the state prison system as an emerging crisis. To solve it, the Governor brokered Arizona's first 287(g) agreement. It was the first one in the country to deputize state prison guards to perform civil deportation duties. Another contract with ICE to deputize street and highway police in the state's Department of Public Safety soon followed.

The state-level 287(g) program did not assuage anti-immigrant zeal as much as concede a target, and offset other novel public policy solutions. Maricopa County Attorney Andy Thomas, a conservative prosecutor who loves test cases, plowed forward. In March 2005, the State Legislature passed the first state-level human trafficking law in the country, making “the smuggling of human beings for profit or commercial purpose” a felony ([Arizona Revised Statutes §13-2319](#)). Within months, Thomas issued a legal opinion charging that the victims of trafficking were conspirators in the crime. His “conspiracy theory” campaign rounded up thousands of undocumented immigrants, secured their conviction in state courts, and effectively widened the pool of “criminal illegal aliens.”

State Representative Russell Pearce of Mesa, Arizona, an ideological politician and savvy bureaucrat, created a new sanction for immigrants in the criminal courts: pretrial incarceration. In November 2006, he bypassed his colleagues and successfully entreated voters at the ballot to pass Proposition 100. This amendment to the state Constitution denies bail to immigrant defendants charged with serious felonies. His effort, riding the frenzy against “criminal illegal aliens,” spiked the inmate population in county jails and subjugated every public servant in the criminal justice

---

<sup>2</sup>Arizona is notorious for its use of 287G powers by local law enforcement personnel; denial of bail for immigrants arraigned in the local courts; the use of a state-level trafficking law (the first and only in the nation) to prosecute border crossers as conspirators; and for enactment of SB 1070, the “show me your papers” law which serves as the model for “copy cat” laws introduced in numerous other states.

system to two masters: state criminal codes and civil immigration laws. Judicial courts have become prosecutors for immigration purposes.

Maricopa County Sheriff Joe Arpaio, a glutton for media attention, capitalized on each moment. He offered an endless supply of cheap jail beds to aid Governor Napolitano's crackdown. He asked ICE for civil immigration powers that blurred the limits of his executive power. The Maricopa County Sheriff's Office launched the nation's largest anti-immigrant police dragnet, using special powers conferred by the Department of Homeland Security Immigration and Customs Enforcement under Section 287(g) of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act.

Specifically, Section 287(g) states:

The Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law (8 USC, 1357(g)).

Arpaio's "criminal illegal alien" crackdown spilled over rapidly. He formed a special unit to take Thomas' legal maneuvers to the streets for a test drive. He partnered with Pearce to secure state funding for his local anti-immigration campaigns. In just 2 years, racial profiling became the norm in Maricopa County.

The role of ICE in producing the Arizona laboratory remains under-scrutinized. Ironically, Arizona deepened its relationship with ICE through the 287(g) program only because the federal agency was failing in its own duty to deport immigrants in the state corrections system. But once the door was opened, ICE leadership showed extraordinary opportunism in using Arizona's local and state resources to build the federal agency's detention and deportation capacity. Riding the "criminal illegal alien" wave, ICE gave Maricopa County the most robust 287(g) contract in the country, despite widespread concern that Sheriff Joe was fueling a nativist campaign. ICE spokespeople defended Sheriff Joe's use of the 287(g) program when local politicians complained.

The Maricopa County 287(g) program has been terminated. But while operating, it not only served as a national model, but it also acted as a gateway drug, pulling local law enforcement agencies that previously resisted deportation work into the fold, and setting the stage for Arizona's notorious "show me your papers" law, SB1070.

## **Immigration Is a Strategic Site for the White Supremacist Movement in Arizona**

National press coverage made Sheriff Joseph Arpaio of Maricopa County, the poster child of a national anti-immigrant crusade. Sheriff Joe, as Arizonans call him, spent decades building his reputation as a maverick lawman. But as with many epic

stories, the hero was not the driving character, nor is his crusade the central battle. Russell Pearce was the godfather of Arizona's immigration experiments. Elected to the state legislature in 2000, he represented Mesa, the third largest city in Arizona. Pearce stood in stark contrast to the breed of politician who incites anti-immigrant sentiment for political popularity. Pearce is a devout Mormon, but when friends and foes alike call him a "true believer," they are referring to his belief in law and order.

Pearce was a sheriff's deputy in Maricopa County for 23 years. The service shows, physically. A teenager who may have been Mexican shot off the third finger on Pearce's right hand when he was trying to make an arrest for underage drinking (R. Pearce, Personal interview, January 17, 2008).

White supremacists are among Pearce's base.<sup>3</sup> Although he publicly distances himself from the white supremacy movement in Arizona, his documented relations include the White Knights of America, a white nationalist organization that features calls for "national socialism" on its Web site. In June 2007 he spoke at a White Knights rally at the Capital in Phoenix along with J.T. Ready, a neo-Nazi who has served as a Republican precinct committeeman in Mesa for several years, and who apparently shot himself to death in May, 2012, after killing four others in what police called a domestic dispute (Southern Poverty Law Center, 2012).

Through his anti-immigration crusades, Pearce's extremist views on race were normalized in Arizona. He publicly advocated the revival of "Operation Wetback," a 1950s program that deported more than 130,000 Mexican nationals, with an unknown number of US citizens and Native Americans among them, mostly on the basis of their skin color (Follow City Council's Lead, 2006). But Pearce's long-term vision did not cloud his short-term traction. He was the original drafter of Proposition 200, a sweeping initiative approved in November 2004 by 56 % of all state voters, including 47 % of Hispanic voters. The initiative required that people who register to vote or apply for public benefits prove that they are US citizens, even when citizenship was not a requirement for the benefit sought. It also moved to turn state employees into immigration police by requiring them to report suspected "illegal immigrants." Public servants failing to do so could be slapped with lawsuits, criminal charges, and penalties including a fine of \$750 or a jail term of 4 months (Proposition 200, 2004).

Prop 200 had political and financial backing from hate groups (Riley, 2004), including a half million dollars from the Federation for American Immigration Reform (FAIR) (American Immigration Lawyers Association, 2005).<sup>4</sup> FAIR founder

---

<sup>3</sup>Arizona's Stephen Lemons writes extensively on Pearce's connections to White Supremacist groups in his blog for the *Phoenix New Times*. See <http://blogs.phoenixnewtimes.com/bastard/>. For example, a blog containing video footage of Pearce and J.T. Ready at [http://blogs.phoenixnewtimes.com/bastard/2008/08/russell\\_pearce\\_applauds\\_alread.php](http://blogs.phoenixnewtimes.com/bastard/2008/08/russell_pearce_applauds_alread.php). Accessed on October 7, 2012.

<sup>4</sup>The Southern Poverty Law Center lists FAIR on its Hate Groups Map. See: <http://www.splcenter.org/intel/map/hate.jsp#s=DC>. For a historical account of FAIR, see Fernandes, Deepa. *Targeted: Homeland Security and the Business of Immigration*. New York: Seven Stories Press, 2007. For FAIR's documented connections to the racist Council of Conservative Citizens, which describes Black people as "a retrograde species of humanity," see: Center for New Community. *Special Report: FAIR*. Chicago: Center for New Community, 2004. Available at [www.buildingdemocracy.org/reports/fair2004.pdf](http://www.buildingdemocracy.org/reports/fair2004.pdf).

John Tanton urges vigilance in the wake of a multicultural society: “As whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion?” (Volpe, 2009). FAIR president Dan Stein posed a rhetorical question, “Should we be subsidizing people with low IQs to have as many children as possible?” (Carlson, 1997).

Jen Allen observed: “Arizona has been the incubator for many immigration policies passed through the ballot or the legislature. We started the sad trend that caught on nationwide years later” (J. Allen, Personal interview, 2008). Allen is the founder of the Border Action Network, a Tucson-based organization that has monitored state-level immigration bills.

Prop 200 was one battle in an ongoing war between Pearce and Arizona Governor Janet Napolitano. She had a history of vetoing bills he supported. A year earlier, she vetoed a voter-identification bill passed by the legislature (Arizona House, 2345, 2003). Prop 200 resuscitated that measure and expanded on it. Napolitano was among Prop 200’s staunchest opponents. She campaigned against it at public rallies. She successfully blunted the initiative’s intended impact by challenging it procedurally (Fischer, 2008). In 2005 the governor vetoed S.B. 1118, a bill intended to implement Prop 200, a move that Jan Brewer, then serving as the Arizona secretary of state, said set back the implementation of the voter ID provisions of Prop 200 (Brewer, 2005).

Almost immediately after voters approved Prop 200, proponents charged that the Governor was dragging her feet to avoid implementation. Arizona Attorney General Terry Goddard had quickly issued an opinion that interpreted the measure narrowly to apply only to a handful of state benefits (e.g., rental and housing assistance) under the state Welfare Code, and not to broader state programs such as health insurance for the poor. By early 2008, Prop 200 proponents were *still* battling in court to force state agencies to demand proof of legal residency in the state before approving benefits. Pearce claimed that the Governor’s narrow implementation of the initiative amounted to a “back-door veto” (Fischer, 2008).

## **Governor Napolitano Triangulated the Anti-immigrant Agenda**

Principled opposition to the extreme measures in Prop 200 cost Napolitano precious political capital. To recover, she sought to insulate herself from opponents’ attacks by taking credit for their ideas while at the same time blunting the sharpest edges of their agenda.

In 2005, Napolitano turned the political focus from public benefits to law and order. Border Patrol “crack down” operations in California and Texas were pushing migrants to enter through Arizona. She entreated both ICE and the Border Patrol to conduct joint operations with Arizona’s Department of Public Safety to catch human traffickers at the border, as well as in the interior city of Phoenix, the state capital. Both agencies seemed disinterested, so the governor called a state of emergency and took her protests straight to the top. In a harshly worded letter to Homeland Security Secretary Michael Chertoff, she charged: “This bewildering resistance is a further example of ICE’s inattention to Arizona” (Fears, 2005).

The short history between ICE and Arizona had been rocky. ICE offices around the country are each headed by a Special Agent in Charge (SAC). Phoenix ICE could not retain leadership. Haunted by instability, it went through six SACs in its first 2 years (Stern, 2006). Early in 2005 officials at the Arizona Department of Corrections complained that they could not get ICE to take 544 immigrant inmates who had completed their criminal sentence from the state prison system into the civil deportation system. The administration charged that it cost \$223,000 daily to incarcerate undocumented immigrants (Carroll, 2005).

## **Governor Napolitano Brokered the Initial 287(g) Agreement in Arizona, Deepening Her State's Relationship with ICE**

Napolitano circumvented Phoenix ICE and wrote directly to Secretary Chertoff in July 2005, arguing for use of 287(g) powers in Arizona to detain traffic violators: "Local law enforcement officers often come into contact with large numbers of UDAs [undocumented aliens] during routine traffic or other law enforcement activities" (Napolitano, 2005).

Plans were laid to deputize two state agencies to perform civil arrest and detention duties: the Department of Corrections and the Department of Public Safety. The former took off first. In September 2005, ICE signed a 287(g) Memorandum of Agreement (MOA) with the Arizona Department of Corrections.

The MOA gave ten deputized corrections officers the civil authority to issue an immigration warrant (or "detainer") for any prisoner suspected of being a noncitizen—legal or undocumented. It was the first time in the country that corrections officers became deportation agents. After receiving ICE training on immigration laws and procedures, the deputized officers interview any foreign-born prisoner to determine whether there is probable cause for an immigration violation. Their duties include fingerprinting; preparing documentation to place such individuals in deportation proceedings concurrent with their prison term; and preparing documentation to deport them following their prison term.

Under federal immigration reforms passed in 1996, most felony convictions result in mandatory deportation. One's length of residency in the US, American-born children and proof of rehabilitation are irrelevant. Yet the matter is not always so straightforward. For example, an immigrant inmate may have a claim to US citizenship, acquired or derived from a citizen parent, even without knowing it. If an immigrant has a well-documented fear of persecution back home, it could lead to a claim to remain in the USA under the internationally binding Convention Against Torture. Also the interplay between state criminal convictions and the federal grounds of deportability is dynamic, with instances of a state crime being deportable in one moment and not in another.

Department of Corrections Director Dora Schriro described the swift deportation process in the state prisons: "They begin deportation literally the first day that they are admitted... We have individuals trained by ICE who are bilingual. As part of the intake process, they go through this ICE procedure. Once [immigrants] are

identified, their status is ascertained... For many it's resolved in a mere matter of days" (D. Schriro, Personal interview, October 25, 2008). For its complexity, US immigration law is likened to the tax code. It appears that corrections officers deputized under 287(g) play the role of prosecutor, taking citizenship status itself as proof of deportability. A deportation respondent does not receive a public defender because the process is civil. Few, if any, Arizona prisoners are in a position to obtain a lawyer to raise claims such as derivative citizenship or documented fear of persecution.

Without legal safeguards, there are many disincentives to seek a court hearing to challenge deportation. On the other hand, the state's early parole program provides one great incentive to sign off on self-deportation. Under Arizona law, an inmate convicted of low-level drug and property crimes may qualify for release under parole after serving half of the prison sentence. A noncitizen, legal or undocumented, can gain release early by signing up for deportation. Arizona prisoners are undoubtedly eager to gain release from prison, even if it means expulsion from the USA.

DOC officials say the 287(g) program is a money saver, saving Arizona taxpayers nearly \$9 million by March 2007 by accelerating ICE's removal of eligible state inmates (Arizona Department of Corrections, 2007). Director Schriro added another benefit to the list:

From my perspective, forget about cost savings for the moment. As an administrator of state prisons I need to know as much as I possibly can about inmates as individuals for the classification decisions I make. If I don't know that someone is amenable to deportation, I might place them in a custody level or assign them a job that might increase the possibility of escape. I think 287(g) is important for the fundamental classification processes we pursue (D. Schriro, Personal interview, October 25, 2008).

In March 2007, Arizona opened the first "ICE unit"—an office headquarters in a trailer set up with ICE technology for 287g staff—located within a state prison and deputized seven more officers (Arizona Department of Corrections). The program was designed to reduce population pressures and save substantial sums by seamlessly moving deportable inmates from state criminal custody into federal civil custody. Schriro explained: "We provided staff. I did a balancing act and decided for all the reasons I mentioned, it was advantageous to us to provide the resources that were necessary. It would be nice if we were reimbursed for it."

## **Rather than Defuse the Anti-immigrant Agenda, Napolitano Shifted Its Focus**

The public target of Prop 200 was the immigrant who wanted to vote or receive welfare benefits. Napolitano's interior enforcement campaign shifted the crosshairs to a lower common denominator: "criminal illegal aliens." Napolitano met with no resistance to deputizing state corrections officers as immigration enforcers. But she received virtually no praise (Fischer, 2005; Robb, 2005; Scutari, 2005). To Representative Pearce, the state's first 287(g) agreement was a step backward because: "This question of inherent authority is crazy. They've done several programs to incentivize local enforcement. 287(g) is not needed. It is meant to be a



carrot, not a permission slip” (R. Pearce, Personal interview, January 17, 2008). The few media articles to document the program took no notice of the legal significance in grafting civil enforcement duties into criminal justice process. They instead assessed it as a political concession from the liberal governor. The faint praise offered by rightwing restrictionist Mark Krikorian, director of the Center for Immigration Studies, was foretelling. “This effort by the governor is not a bad idea, but it shouldn’t be over-hyped....It’s one step in the right direction, but only one step” (Carroll, 2005).

## **As the State’s Top Executive Strategized with the Feds, the Arizona Legislature Raised the Ante**

Nearly a century ago, Arizona passed a measure that required employers to hire Americans instead of immigrants, and punished violators with jail. Fearful of prosecution, a local restaurant owner fired his Austrian cook. The cook sued. The US Supreme Court ruled in his favor, striking down the state law because it denied noncitizens the equal protection guaranteed by the Fourteenth Amendment. Also affirming principles of preemption and the plenary power doctrine, the Justices wrote: “[t]he authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government” (Truax v. Raich, 1915).

In 2005, Arizona flirted with the Constitution’s limits once more when the legislature passed the first state-level human trafficking law in the country ([Arizona Revised Statutes §13-2319](#)). It made “the smuggling of human beings for profit or commercial purpose” a state-level class 4 felony. The bill emulated yet contradicted the federal Trafficking Victims Protection Act of 2000.<sup>5</sup> That comprehensive scheme not only provided for prosecution of traffickers, but also required the feds to secure appropriate services for victims from social service agencies in the USA, as well as from counterparts in the victims’ home countries. Arizona legislators brought in victims to testify during their deliberations, but the law they enacted glossed over the victims’ rights and international relations aspects of human trafficking (K. Sinema, Personal interview, January 17, 2008). It also failed to properly define “smuggling.” Coming 1 year before a nationwide spike in state-level immigration legislation, Arizona was blazing the trail in a movement to devolve immigration controls.

## **One County Prosecutor Creatively Interpreted the State Statute to Test Executive Power Against the Intent of the Legislature and the Checks of the Judiciary**

Maricopa County is not a border town. Many miles from Mexico, it is home to the state capital of Phoenix. This bustling metropolis has seen its population double in 10 years, reaching 3.1 million and making it the nation’s fifth largest city (Jordan).

---

<sup>5</sup>Pub. L. no. 106-386, Division A, 114 Stat 1464 (2000).



In January 2005, Andrew Thomas became Maricopa County Attorney, serving as its chief prosecutor. An elected leader, Thomas built a reputation on his Harvard law degree, his marriage to a Latina, and relentless prosecution. While his jurisdiction's murder rate remained constant, Thomas doubled the number of capital punishment cases and turned Maricopa County into the nation's new death penalty capital. With 135 capital cases in 2006, Maricopa County exceeded Harris County, Texas—the former US county leading in the death penalty—with 17 pending cases. Maricopa County also dwarfed Los Angeles County, which is more than twice its size but has 36 pending capital cases (Berry, 2007; [Blog for Arizona](#); Steinhauer, 2007).

Thomas ran for office in 2004 with a campaign pledge to end illegal immigration. Soon after Napolitano spearheaded the state-level 287(g) program, he convened his own law enforcement summit featuring nativist leadership from around the country (Thomas, 2005).<sup>6</sup> He wrote to the governor: “Given the state of emergency you have appropriately called, the anti-coyote law is too important a tool to sit and gather dust because of concerted nonenforcement” (Thomas, 2005).

Thomas eagerly politicized the trafficking law. At the scene of a crime, it is often difficult to know the difference between the victim and the perpetrator. Thomas developed a legal premise that made the difference irrelevant by asserting that any individual who pays a trafficker (or “coyote”) is a felony conspirator in the trafficking act. He published his “conspiracy theory” of immigrant smuggling in his agency's 2005 annual report (Thomas, 2006). Sheriff Joe formed an antismuggling unit. Together, they took the novel idea for a test run.

## **Maricopa's Conspiracy Theorists High-Jacked a Constitutional Battle with a Political Campaign**

Arizona's new law—the nation's first state-level international human trafficking law—was a constitutional test in its own right. Any legal practitioner could anticipate the judicial battle ahead. But the Conspiracy Theory, by inciting politics, created an unanticipated extreme. Kristen Sinema, a Democratic representative who had sponsored the legislation because she believed it supported trafficking victims, was indignant: “As soon as it passed, it was perverted by Thomas and Sheriff Joe” (K. Sinema, Personal interview, January 17, 2008).

The first sweep brought in 54 immigrants (Kiefer, 2005). Thomas indicted them for the class 4 felony of Conspiracy to Commit Human Smuggling. He offered pleas to the lesser offense of Solicitation to Commit Human Smuggling, a Class 5 felony, and probation with a condition that they agree to leave the country. Nearly 30 took the plea bargain in order to get out of jail. A dozen cases were dismissed. The remaining defendants went to trial before Arizona Superior Court Judge Thomas O'Toole.

---

<sup>6</sup>Among the featured speakers was Congressman Tom Tancredo, founder of the Congressional Immigration Reform Caucus. Tancredo played a vital role among policymakers in moving immigration into a national security framework following September 11, 2001.

Judge O'Toole was an appointed judge on the verge of retirement. He had little to lose professionally, but he walked a tightrope. He, and everyone else, knew that these were test cases in a raging battle over immigration enforcement and the criminal justice system. The public defenders for the remaining defendants moved to dismiss, arguing that the law was preempted by the federal Constitution; that the conspiracy theory of smuggling was legally impossible and contradicted the state legislatures' intent; and that the court lacked jurisdiction (*Arizona v. Antonio Gonzalez Alvarado* (033), 2006).

The judge overruled the defense's arguments. His written decision put the burden on lawmakers to clarify their intent if the Maricopa team was violating it. But O'Toole blunted the prosecution's victory when he divided the defendants into two groups. He distinguished between those who simply paid the smuggler, and those who paid less by offering a service: "Just because you buy a ticket on the Underground Railroad doesn't mean you operate it...but some guy who drives the van to get a reduced rate can be convicted for smuggling" (T. O'Toole, Personal interview, January 17, 2008). O'Toole also ruled against Thomas on evidence. Before a jury could convict two men who drove for a reduced fee, the judge terminated proceedings because the prosecution failed to present a body of evidence to suggest a crime actually took place. He ruled that the defendants' confessions alone could not prove guilt.

The Conspiracy Theory faced resistance from two disparate quarters: an immigrant rights coalition and ICE. Pro-America, a coalition formed in response to immigration enforcement in Phoenix, was the lead plaintiff in a lawsuit alleging that Sheriff Joe and Thomas violated the US Constitution in a public relations stunt to "garner local and national media attention and further their political fortunes."<sup>7</sup>

ICE passively resisted Sheriff Joe's force. After two men were acquitted of all conspiracy charges in O'Toole's court, Sheriff Joe tried to get ICE to deport them. ICE officers did not respond positively. Flabbergasted, Sheriff Joe ordered his own deputies to drive the immigrants beyond Maricopa County's jurisdiction, to hand them over to US Border Patrol agents. Again Representative Sinema, who supported the trafficking statute, was horrified: "That's totally illegal. It's kidnapping" (K. Sinema, Personal interview, January 17, 2008). But Arpaio must have confused these acquitted men with "criminal illegal aliens" when he reasoned to the media: "When a guy gets convicted, I have to do something with him...I made my own personal decision. We transport them to the border or to the Border Patrol" (Kiefer, 2006b, August). In 1 month, his deputies made 19 trips to the border to deport 53 immigrants.

---

<sup>7</sup>The lawsuit was filed in US District Court in Phoenix in November 2006 by the Center for Human Rights and Constitutional Law. Sheriff Joe termed it a stunt by the Mexican government because Mexico is among the clients of the legal group's director, Peter Schey. See: *We Are America/ Somos America Coalition of Arizona v. Maricopa County Board of Supervisors*, WL 2775134 (D. Ariz. 21 Sept. 2007).

## The Campaign Left Its Targets with a Lifelong Punishment

In the first months of the campaign, some 250 people were arrested, typically undocumented immigrant males in their 20s, who planned to find work in California (Kiefer, 2006a, July). Most of those charged under the Arizona Conspiracy Theory quickly entered a plea of guilty. The state criminal immigration statute and Maricopa's prosecution have added to the pool of criminal illegal aliens, turning undocumented laborers into top-priority law enforcement targets.

Federal immigration law stretches the concept of felony disenfranchisement into the civil arena. Virtually any crime, even a misdemeanor, bars the undocumented person from becoming legal; and the lawful permanent resident from naturalizing. Once a noncitizen has a criminal record, there is no path to citizenship. Thomas explained that his Conspiracy Theory intentionally sought to capitalize on these collateral effects:

The policy of requiring a felony conviction for any plea agreement is an important one... That conviction will harm their ability to immigrate here legally and become a citizen... In a sense, it is this office's attempt to enforce a no-amnesty program. It's hard for somebody with a felony conviction to receive amnesty down the road for citizenship purposes, so it serves that additional purpose. All the better, as far as I'm concerned (Kiefer, 2008).

## Another State Immigration Measure Spiked the County Jail Population

Putting his pen to paper once more, Russell Pearce wrote another state-level immigration bill. While the human-trafficking statute created a new category of crime, Proposition 100 created a new *pretrial* punishment for immigrants charged with crimes. Pearce took Prop 100 straight to the voters in the November 2006 elections. They approved it by a whopping 78 %.

Prop 100 added immigrants to the list of criminal defendants who cannot apply for bail. The Arizona Constitution designates that criminal defendants facing certain charges, while innocent until proven guilty, do not have the right to seek bail because they are categorically a flight risk or threat to society. Those charged for capital offenses were stripped of bail when the Arizona Constitution was first established. People charged with serious sex offenses were added by lawmakers later, as were those arrested while already out on bail for a prior felony charge, and those deemed to pose a danger to the community (Arizona Constitution). Prop 100 amended the state Constitution to create a new no-bail category:

For serious felony offenses as prescribed by the legislature if the person charged has entered or remained in the United States illegally and if the proof is evident or the presumption great as to the present charge (Proposition 100, 2006).

The term “serious felony” had no clear legal meaning in Arizona statutes, so lawmakers promptly amended the criminal code to define it as Aggravated Driving Under the Influence, and any felony in classes 1 through 4—including the charge of conspiracy to smuggle. “Proof evident, or presumption great”<sup>8</sup> is a standard of evidence higher than probable cause (typically required to arrest a suspect), but lower than proof beyond a reasonable doubt (the standard needed to convict). Pearce saw the legislated parameters as a compromise. “We passed the initiative at the ballot to ensure the handcuffs are off law enforcement. My position is if you are here illegally and jaywalking, you should not be released” (R. Pearce, Personal interview, January 17, 2008).

## Prop 100 Set Off Chaos in the Courts

No data source indicates that immigrants commit more crimes than citizens. In fact, the opposite appears to be true (Wadsworth, 2010). But the volume of arrestees who are foreign-born exceeded that of prior no-bail categories and overwhelmed the courts. So did the vague language of Prop 100. Maricopa County became the implementation battleground, not only for Prop 100 but also for radical changes to criminal court procedure.

Within 24 h of arrest, every defendant receives a hearing before the Initial Appearance Court, a subset of the Arizona Superior Court (Ariz. R. Crim. P 7.4(a)). The court informs a defendant of the charges against him or her, appoints counsel if a defendant is indigent, and makes the initial determination concerning conditions of release.<sup>9</sup> No defense attorney is required to be present and the proceedings do not produce an official record. Historically, immigration status was simply a factor in the court’s assessment of flight risk and community ties.

Under Arizona law, any person faced with a denial of bail under the Constitution is entitled to a “Simpson Hearing” (Simpson v. Owens, 2004). In this full and adversarial evidentiary hearing, the prosecution carries the burden of convincing the court that the evidence against the defendant rises to the level of “proof evident, or presumption great.” The defendant is represented by counsel and has the right to testify, to cross-examine the state’s witnesses and to dispute the evidence presented.

Maricopa County Attorney Thomas began assigning prosecutors to the Initial Appearance Court to argue that immigrant defendants be denied bail. But he took the position that court officials, and not just local law enforcement, were obligated to provide evidence about whether a defendant lacked legal immigration status

---

<sup>8</sup>“Proof Evident, Presumption Great” is a standard established in Simpson hearings. 207 Ariz. 261, 274 ¶ 40, 83 P.3d 478, 491 (App. 2004). See Simpson v. Owens, 207 Ariz. 261, 85 P.3d 478 (App. 2004).

<sup>9</sup>For a statutory provision that identifies immigration status as a factor in assessing risk and community ties, see Release on Bailable Offenses Before Trial; definition. A.R.S. § 13-3967(11).

(Welch, 2007). Defense attorneys, on the other hand, charged that Prop 100 turned the bail system into a regimen for pretrial punishment. They raised issues about the standard of evidence required to determine whether a defendant had “entered or remained in the United States illegally.” They charged that any inquiry by court officials about legal status would violate both the defendants’ right not to incriminate themselves, and the Separation of Powers doctrine.

Court officials struggled to understand the new situation they found themselves in. Sheila Madden, an Initial Appearance Court Commissioner, issued a memo advising that the staff of the Superior Court’s Pretrial Services Agency who interview defendants to determine bail suitability should cease asking immigration questions, for fear of violating the fifth Amendment protections against self-incrimination. Commissioners were not familiar with federal immigration law and remained puzzled over what evidence would be sufficient to serve as a basis for denying bail. A detainer placed by ICE was thought to be insufficient because, as one court officer noted, “immigration holds get taken off and put on all day long” (Anonymous employee of the Arizona Unified Court System, Personal interview). Neither police nor prosecutors submitted sufficient evidence in Simpson hearings regarding the immigration charge to meet the standard of evidence. Therefore, the court set bail for most immigrant defendants.

This situation erupted in a media circus when one of the undocumented immigrants subject to Prop 100 was granted a \$10,000 bail because prosecutors failed to present sufficient evidence regarding his immigration status. The immigrant was released from criminal custody directly to ICE officers, who deported him to Mexico. Eleven days later he returned to Maricopa County and was arrested for the murder of his cousin (Wingett & Kiefer, 2007). Pearce blamed the liberal bench (R. Pearce, Personal interview, January 17, 2008).

Previously criticized for not doing his job, Thomas turned the tables and claimed that judges were to blame because, he claimed, 94 % of defendants subject to Prop 100 had been given an opportunity to post bail (ignoring the fact that many did not possess the means to do so). He charged: “The judiciary of Maricopa County is openly defying the will of the people and creating a crisis of public safety. It is only a matter of time before illegal immigrants wrongly released by these judicial officers commit additional crimes, including violent crimes” (Kiefer, 2007). An *Arizona Republic* columnist followed suit, with a column entitled, “Judges who ignore no-bail law may as well give you the finger” (Roberts, 2007).

Chief Justice Ruth McGregor of the Arizona Supreme Court responded. In April 2007, she issued an order outlining new Initial Appearance procedures in Prop 100 cases. If the court found probable cause to believe that a defendant had committed a crime, and “if the allegation involves A.R.S. § 13–3961.A.5, the court shall then determine whether probable cause exists to believe that the defendant entered or remained in the USA illegally and that the proof is evident or the presumption great that the defendant committed the charged serious felony,” then a full evidentiary hearing as to whether bail should be denied should be held within 24 h. The defendant would be represented by counsel, and could present evidence, testimony and witnesses. Any testimony presented by the defendant would not be admissible on

the issue of guilt at later proceedings. At the hearing, the standard of evidence would be “proof evident and presumption great” for both of the issues at hand—commission of the crime, and immigration status (Arizona Supreme Court Administrative Order No, 2007-30).

McGregor’s order was rescinded just three months later, when the legislature passed an emergency bill to “clarify” Prop 100 (Arizona Senate, 1265, 2007). As drafted by Russell Pearce, Prop 100 had been stunningly inattentive to the impact of weaving immigration law into criminal court proceedings. In the aftermath, Pearce saw a window of opportunity to codify the extremes. His clarification bill lowered the evidentiary standard for determining immigration status to probable cause and required that the determination be made at Initial Appearance. The bill set forth a menu of different items of proof to be accepted by the court, including an ICE hold, “an indication by a law enforcement agency that a person is in the United States illegally,” the defendant’s confession, or court-collected information. When Governor Napolitano signed HB 1265, she reprimanded the courts for seeking an evidentiary standard higher than the policeman’s probable cause.

The Chief Justice duly acquiesced. New court rules formulated in the wake of the clarification bill eliminated the requirement for an evidentiary hearing within 24 h. A determination about bail eligibility would now be made at Initial Appearance.

## **Under Prop 100 and Public Pressure, Arizona’s Criminal Process Has Morphed into a Hybrid Immigration Proceeding**

Before Prop 100, the Arizona Constitution denied bail to high-risk defendants, with categories that implicated small numbers of people. But Prop 100 broke the system by overwhelming it with nearly every immigrant arrested—including those taken through the newly created self-smuggling crime. The state’s immigration enforcement law may be the only unfunded mandate that Pearce ever liked.

Pearce distrusted the state’s urban judiciary: “These damn appointed judges won’t respect the law... Elected judges in rural areas are good” (R. Pearce, Personal interview, January 17, 2008).<sup>10</sup> Prop 100 did not only tie the hands of judges, but subverted their foundational mission to be the neutral arbiter of justice. The bill distorted the court’s bail process. The criminal court has become schizophrenic, legally speaking. For a criminal charge, the judge treats the defendant as innocent until proven guilty. But in a Prop 100 case, the court acts as arbiter of immigration status with power to deny defendants’ fundamental liberty interests by application of federal civil law.

---

<sup>10</sup>The Arizona Constitution provides for merit selection and retention of judges only in counties with populations of 250,000 or greater. Currently, this includes Maricopa and Pima Counties, which contain the state’s two largest cities, Phoenix and Tucson.

Throughout the months of controversy over implementation of Prop 100, open warfare had erupted time and again between the Maricopa County Attorney and the Superior Court. Presiding Judge Barbara Rodriguez Mundell charged that Prop 100 was being used as a weapon in a political attack on the court. Private attorney Dennis Wilenchik, appointed by Andrew Thomas to act as special counsel, filed motions to remove Judge Timothy Ryan—then serving as the criminal court’s Associate Presiding Judge—from handling *all* cases brought by the prosecutors’ office because he had ruled against prosecutors on cases of immigrants denied bail under Prop 100 (Rubin, 2007). Commissioner Madden’s application for appointment to a judgeship in the Superior Court was vigorously opposed by Russell Pearce. She remains a commissioner.

The courtroom atmosphere changed radically. Maricopa County Sheriff’s deputies physically blocked public defenders from seeing their clients before the court could document immigration status (T. Friddle, Personal interview, January 18, 2008). Previously the Maricopa County Adult Probation Department had reported the names of foreign-born probationers to ICE, but got no response from the agency. To protect staff against charges of negligence, Probation proactively hired the private security firm Transunion to increase its capacity to identify foreign-born inmates and dedicated personnel to work more closely with ICE (K. Waters, Personal interview, January 17, 2008).

## ICE Took the Handcuffs Off Law Enforcement

Factually speaking, Russell Pearce’s laws and Andrew Thomas’ tactics did not take the handcuffs off law enforcement. ICE did. It showed extraordinary opportunism when it went to Maricopa County—Ground Zero in the Arizona laboratory—to introduce the most powerful 287(g) contract in the nation. Sheriff Joe spoke candidly about the added value of civil powers: “Now when we stop a car for probable cause, we take the other passengers too.”

Given Sheriff Joe’s public record, ICE should have been cautious. Unlike his ex-chief deputy Russell Pearce, the True Believer, Sheriff Joe issued press releases to announce his every move. He was already the target of jail lawsuits, and media criticism for racial profiling in the Conspiracy Theory arrests.

His tactics had made the local ICE office uneasy, as evidenced by their initial unwillingness to deport his Conspiracy Theory arrestees. The sheriff remains angry about this resistance. “I had big problems with ICE prior to the new agent in charge. I had to put aliens in my vehicles and I had to take them down to the border” (J. Arpaio, Personal interview, January 18, 2008). But at the federal level, ICE decided to replace its unwilling local leadership. The experiment to merge civil and criminal power in Arizona forged ahead with many variables, and no apparent controls.

Yet in other respects, Sheriff Joe was an ideal partner. He was politically popular and resourceful. His autobiography is entitled *America’s Toughest Sheriff*. He believes that limits to police power are handcuffs on justice, and he has built an



international profile by testing these limits. Opting out of the County's affordable offices, he leased luxury space in the Wells Fargo high rise in Downtown Phoenix. At the same time, he established a "Tent City Jail," warehousing 10,000 inmates (including youth) in tents in the blazing desert sun. He started the first women's chain gang on earth. He dyed male inmates' boxer shorts pink in a grandstanding show of control through emasculation. He replaced three meals a day with two meals featuring oxidized green bologna sandwiches—not to save money but to punish his inmates, all of whom are either pretrial defendants or convicted of offenses that warrant sentences of less than one year (Manning, 2008). Roberto Reveles of Somos America, an outspoken critic of Maricopa's immigrant raids, observed: "There was not much public outrage when Sheriff Arpaio started the Tent City and the chain gangs. People talked about it like a fraternity prank" (R. Reveles, Personal interview, March 27, 2008).

## **ICE Gave Sheriff Joe the Largest and Most Comprehensive 287(g) Contract in the Nation**

In January 2007, the Maricopa County Board of Supervisors approved a partnership between the Maricopa County Sheriff's Office and ICE. One month later, ICE added 160 Maricopa officers to the 200 officers already deputized nationwide (Immigration and Customs Enforcement, 2007). It was the first time that ICE gave local law enforcement officers both the power to arrest on the streets and to issue detainers in jail.<sup>11</sup>

## **With Support from Conservative Media, Anti-immigration Activists Above and Below, and Funding from State Coffers, Sheriff Arpaio Deployed 287(g) Powers to Conduct Raids That Are Proscribed by ICE Propaganda, If Not the ICE Agreement**

In 2005, the Phoenix Police Department used trespassing and traffic rules to regulate day laborers. But diplomatic negotiations between city officials and immigrant communities, as well as the creation of a day labor center, led police to end their public patrol (Muench, 2005). In 2006, however, some Phoenix officers returned to policing day laborers, this time as private security guards for a local business. Pruitt's Home Furnishings is located in East Phoenix—an overlapping jurisdiction for the Maricopa County Sheriff and the Phoenix Police Department. The store neighbors a Home Depot where immigrants searching for work congregate, waiting for business

---

<sup>11</sup>ICE describes two types of 287(g) deputies, the Task Force Officer and the Jail Enforcement Officer.

owners to hire them for short-term projects. In 2006, Pruitt's owners hired off-duty Phoenix police to patrol the front of the store and keep away day laborers.

Pruitt's private police force incited controversy when, immigrant proponents charged, the off-duty officers used skin color, language and accent as the sole measures to stop and arrest community members. American Freedom Riders, an anti-immigrant motorcyclist organization, brought in leather-clad protesters shouting obscenities at immigrants congregated there (Wingett, 2006). Maricopa sheriff's deputies soon began moonlighting at Pruitt too. Frustrated immigrant advocates threatened to orchestrate a boycott of the store. Pruitt's owners yielded. According to organizer Salvador Reza, "The owners wanted our money more than they hated our skin. We had an unspoken agreement to stop using off-duty officers sometime around the Christmas holidays" (S. Reza, Personal interview, 2008).

But the ceasefire never materialized, thanks to agitation by a Washington-based organization. Judicial Watch is a 15-year-old think tank that describes itself as "a conservative, non-partisan American educational foundation that promotes transparency, accountability and integrity in government, politics and the law." Funded by prominent critics of President Bill Clinton, including more than \$7 million from conservative billionaire Richard Mellon Scaife, the group is best known for filing a raft of lawsuits against members of the Clinton administration.

In October 2007, Judicial Watch filed a complaint with the Maricopa County Sheriff's Office on behalf of "frustrated Phoenix business owners, organized as the '36th and Thomas Coalition'" (Judicial Watch, 2007b, August 15, 2012). That is the location of Pruitt Furniture. The complaint indicted the Phoenix Police and Mayor Phil Gordon for preventing off-duty officers from arresting immigrants. Asserting the widely refuted Inherent Authority Doctrine, Judicial Watch wrote: "Every local police officer is empowered to uphold the rule of law and ought to cooperate with federal officials on immigration matters" (Judicial Watch, 2007a, October 19).

On-duty officers, deputized by ICE and on the public dime, replaced the private security force. They claimed full legal authority under civil immigration law to conduct sweeps. They brought along volunteers from the Sheriff's "posse"—a wing of the office that enlists community members to support the deputies. It includes outspoken members of groups including FAIR and the American Freedom Riders. The same activists who months before were hurling insults at the immigrants standing by Pruitt could today—as volunteers of a force that was volunteering for ICE—assist with civil immigration arrests. Law enforcement leaders assume that the posse may include members of extremist groups. For example, Buckeye Police Chief Dan Saban, who ran against Sheriff Joe in the November 2008 race, remarked: "I wouldn't be surprised if there are members of extremists groups involved in the posse. It's very possible" (D. Saban, Personal interview, 2008).

Fox News commentator Sean Hannity sounded a national alarm to promoting the crack-down campaign sparked by Judicial Watch. In lurid terms he painted a picture of havoc and mayhem in Phoenix:

Mexican drug cartels are waging an increasingly bloody battle for control of smuggling routes into the United States.... The violence does not stay south of the border.... Two

hundred miles north of the Sonora.... It's a scene that plays over and over again in Phoenix, where the kidnapping problem is exploding (Biggers, 2012).

The Department of Public Safety in Arizona has long promoted an anti-gang enforcement program, the Gang Intelligence and Team Enforcement Mission (GITEM). In March 2006, the Arizona legislature voted to add immigration enforcement into the agency's mandate. Inserting an extra "I" for immigration into the acronym, the program was reborn as GIITEM (Arizona House, 2582). One year later, Russell Pearce championed an appropriations bill to fund the new immigration mandate at nearly \$10 million, with large increments in following years.

GITEM/GIITEM appropriations: summary table<sup>12</sup>

Fiscal year	Amount of funding	Fiscal year	Amount of funding
1994	\$5,892,000	2004	\$4,271,700
1995	\$6,944,100	2005	\$4,641,200
1996	\$5,500,000	2006	\$9,022,700
1997	\$6,175,000	2007	\$26,544,100
1998	\$6,159,000	2008	\$31,799,700
1999	\$6,199,000	2009	\$31,799,700
2000	\$6,349,000	2010	\$17,678,700
2001	\$6,349,400	2011	\$20,911,300
2002	\$5,712,700	2012	\$23,391,700
2003	\$4,244,100		

GIITEM became a fiscal pass through for state monies to go to the Maricopa deputies. At a news conference announcing the funding, while flanked by Pearce, House Speaker Jim Weiers and Senate President Tim Bee, Sheriff Joe announced: "My part of this GIITEM task force is we will go after illegal immigration" (Ruelas, 2007). The state funding directly supported the Maricopa "conspiracy campaign" and increased Arpaio's day labor sweeps.

In July 2008, the Phoenix newspaper *East Valley Tribune* released a multimedia expose that unearthed key details (Gabrielson & Gibling, 2008). Government reports indicate that the first 287(g) sweep occurred against day laborers, using one of the human smuggling teams created during the "conspiracy theory" campaign. The reports that deputies sent to ICE, in accordance with the MOA, consistently lacked any probable cause ground for the arrest or simply stated that the arrest occurred in response to business owners' complaints. It remains unknown how many day laborers were taken.

The Maricopa units also used the 287(g) powers to enhance their antismuggling operations. By June 2008, Sheriff Joe announced his 1,000th arrest on state

<sup>12</sup>Information compiled from governmental documents: *GIITEM Appropriations History FY 2001 thru FY 2012*. Joint Legislative Budget Committee. Arizona State Legislature; and *GIITEM Historical Perspective*. Gang Enforcement Bureau. Arizona Department of Public Safety. September 11, 2006. Both documents on file with authors.

smuggling charges. Every arrestee was either driving a vehicle or riding in it. No human trafficking bosses were captured. When asked to report a reason for stopping a vehicle, arresting officers typically strained to remember what the probable cause may have been. ICE captured the information about day laborer and traffic arrests, but did nothing to stop the actions.

The immigration raids divided Arizona internally, and polarized the state from the rest of the nation. While the USA elected the first African-American president in its history in November 2008, Sheriff Joe easily won reelection to his fifth term in office with the support of over 55 % of Maricopa County voters. He remained a celebrity with a mandate. Few politicians risked challenging him. Salvador Reza, perhaps his most outspoken critic, described the intensification of the sheriff's tactics: "Now he's going to Mesa, he's going after corn vendors with M-16s. Whenever we did a demonstration, he would start arresting people on the way there. Sheriff's officers with ski masks, assault rifles."

Puente, Reza's human rights organization, laid siege to Arpaio's office, protesting every day at noon in front of the Wells Fargo office tower in downtown Phoenix that houses the headquarters of the Maricopa County Sheriff's Office. In February 2009, a protest march called by Puente drew thousands of people to mass in front of the Sandra Day O'Connor federal building.

As protests continued to mount, Russell Pearce upped his ante, introducing SB 1070, a broad anti-immigrant measure in the 2010 legislature. Chris Kobach, currently serving as Kansas Secretary of State, contributed to the drafting of SB 1070. Prior to his election, Kobach was a long-time activist law professor affiliated with FAIR, who has represented local governments that have enacted ordinances designed to exclude undocumented immigrants by preventing landlords from renting to them and punishing employers who hire them. (Preston, 2009).

SB 1070 made it a state crime for an immigrant to be in Arizona without proper documentation, required law enforcement officers to determine an individual's immigration status during any "lawful stop, detention or arrest" when there is reasonable suspicion that the individual is an illegal immigrant, barred state or local officials or agencies from restricting enforcement of federal immigration laws, and prohibited sheltering, hiring and transporting illegal aliens. The bill was signed into law in April 2010.

Tens of thousands protested the law across the country, while Arizona organizers called for an economic boycott of the state. By May 2011, more than 18,000 signatures had been collected on a petition to recall Russell Pearce, who faced a resounding defeat in a special election the following November.

A Federal Court judge blocked key features of SB 1070 from taking effect, including the requirement that police attempt to determine the immigration status of those they stop or arrest on the streets. But on June 25, 2012, the US Supreme Court issued a ruling that held that while certain sections of the law were preempted by federal law (those that would have made it a state misdemeanor for an immigrant not to be carrying documentation of lawful presence in the country; that would have allowed state police to arrest without a warrant in some situations: and that made it unlawful for an individual to apply for employment without federal work

authorization), they upheld the “show me your papers” section that allows Arizona police to investigate the immigration status of an individual stopped, detained, or arrested if there is reasonable suspicion that individual is in the country illegally (Liptak, Cushman, & Adam, 2012). Although the author of SB 1070 has been severely rebuked by the voters in Mesa, racial profiling continues in Arizona, and Russell Pearce’s magnum opus has spawned copycat legislation across the nation.

Sheriff Arpaio had already found himself swamped with hot water from the US Department of Justice, which had launched an investigation three years earlier of complaints of racial profiling. In December 2011, DOJ officials released findings that scoured the Sheriff’s Office with charges that discriminatory bias against Latinos had permeated the agency from top to bottom (Billeaud, 2011). Janet Napolitano revoked the agency’s powers under 287g. Arizona’s human rights activists were jubilant.

On May 10, 2012, US Department of Justice filed suit against Arpaio, alleging that “[t]he Maricopa County Sheriff’s Office (MCSO) and Sheriff Joseph M. Arpaio have engaged and continue to engage in a pattern or practice of unlawful discriminatory police conduct directed at Latinos in Maricopa County and jail practices that unlawfully discriminate against Latino prisoners with limited English language skills” (Horwitz, 2012).

## Conclusion

Arizona as a whole stands as a cautionary tale. By targeting “criminal illegal aliens,” as the lowest common denominator of immigrant enforcement, the state’s political leaders set off a domino effect that is transforming the very fabric of law enforcement and the criminal justice system.

In Arizona, every element of the criminal justice system has been mobilized to wage a relentless campaign to expel immigrants from the state. The basic roles and functions of criminal justice officials—from law enforcement, to judges and correctional officials—have been distorted and stretched to the breaking point, sacrificing basic principles of fairness and due process.

The legitimacy of the entire law criminal justice system is badly tarnished as fears of “polimigra” justice pervade Latino communities across the state. And Arizona-style “crimmigration” has inflamed the national political debate, and brought calls for comprehensive immigration reform to a halt.

## References

- 8 USC 1357(g) Performance of immigration officer functions by State officers and employees. American Immigration Lawyers Association. (2005, February). *Restrictionist Watch*, Washington, DC (vol. 2, no. 1).
- Arizona Constitution. Article II, Section 22, Relating to Bailable Offenses.

- Arizona Department of Corrections. (2007, March 28). ADC opens first ice unit inside a state prison—first for the United States [press release].
- Arizona House Bill 2345. (2003, June 26). *Arizona State Legislature*. 46th Leg., 1st regular session. Voter Identification bill vetoed by Janet Napolitano. Retrieved October 7, 2012, from [www.azleg.state.az.us/alispdfs/46leg/1R/Senate/BillStats.pdf](http://www.azleg.state.az.us/alispdfs/46leg/1R/Senate/BillStats.pdf)
- Arizona House Bill 2582. (2006). *Arizona State Legislature*. 47th Leg., Second regular session. To expand the existing gang intelligence team enforcement mission into a gang and immigration intelligence team enforcement mission. Retrieved December 3, 2012, from [www.azleg.state.az.us/legtext/47leg/2r/bills/hb2582p.pdf](http://www.azleg.state.az.us/legtext/47leg/2r/bills/hb2582p.pdf)
- Arizona Revised Statutes §13-2319 Smuggling; classification; definitions.
- Arizona Senate Bill 1265. (2007). An act amending Sections 13–3906 and 13–3961, Arizona Revised statutes; relating to bail. Arizona Senate. 48th Legislature, 1st regular session.
- Arizona Supreme Court Administrative Order No. 2007–30. Retrieved October 7, 2012, from <http://www.supreme.state.az.us/orders/admorder/Orders07/2007-30.pdf>
- Arizona v. Antonio Gonzalez Alvarado (033). (2006, June 9). CR2006-005932-033 DT (Ariz. Super.). Retrieved October 7, 2012, from <http://www.courtminutes.maricopa.gov/docs/Criminal/062006/m2257277.pdf>
- Berry, J. (2007, February 22). Death-penalty backlog strains justice system. *The Arizona Republic*.
- Biggers, J. (2012). *State out of the union: Arizona and the final showdown over the American dream*. New York: Nation Books.
- Billeaud, J. (2011, December 15). Feds say Arpaio violated civil rights. *Associated Press*.
- Blog for Arizona. Retrieved October 7, 2012, from <http://arizona.typepad.com/blog/2007/07/the-andrew-thom.html>
- Brewer, J. (2005, April 15). *U.S. Attorney General disagrees with Napolitano on voter I.D. at polls* [press release]. Phoenix: Arizona Secretary of State.
- Carlson, T. (1997, October 2). The intellectual roots of nativism. *The Wall Street Journal*.
- Carroll, S. (2005, July 13). DPS plan welcomed at Migrant Summit; 12 state officers would help feds. *The Arizona Republic*.
- Fears, D. (2005, August 24). U.S. to beef up border force ICE to help more in areas with high illegal immigration. *The Washington Post*.
- Fischer, H. (2005, September 21). AZ prison workers to speed deportations. *The Arizona Daily Star*.
- Fischer, H. (2008, March 4). Lawsuit accuses Napolitano of failing to enforce Prop 200. *East Valley Tribune*.
- Follow City Council's Lead. (2006, October 7). *The Arizona Republic* [editorial].
- Gabrielson, R., & Gibling, P. (2008, July 8). "Reasonable doubt." *East Valley Tribune*. Retrieved 9 July, 2008, from [http://www.eastvalleytribune.com/page/reasonable\\_doubt](http://www.eastvalleytribune.com/page/reasonable_doubt)
- Guerino, P., Harrison, P. M., & Sabol, W. J. (2011). *Prisoners in 2010*. Washington, DC: Bureau of Justice Statistics.
- Horwitz, S. (2012, May 10). Justice sues Ariz. sheriff Joe Arpaio, saying he violated Hispanics' rights. *The Washington Post*.
- Immigration and Customs Enforcement. (2007, February 26). ICE to train Maricopa County Sheriff's deputies to enforce immigration law. ICE and Sheriff's office sign agreement to work together to combat illegal immigration [news release].
- Jordan, M. (2008, February 1). Arizona seizes spotlight in U.S. immigration debate. *The Wall Street Journal*.
- Judicial Watch. (2007a, October 16). Illegal immigration arrests and crackdown follow judicial watch complaint [Press Release]. Retrieved October 7, 2012, from <http://www.judicialwatch.org/press-room/press-releases/illegal-immigration-arrests-and-crackdown-follow-judicial-watch-complaint/>
- Judicial Watch. (2007b, October 27). From the desk of Judicial Watch President Tom Fitton: JW complaint leads to illegal alien arrests.
- Kiefer, M. (2005, August 21). Law agencies cool to new 'Coyote' law—units say they will abide by federal, not state, requirements. *The Arizona Republic*.
- Kiefer, M. (2006a, July 11). Smuggling trial may come to an abrupt end. *The Arizona Republic*.
- Kiefer, M. (2006b, August 18). 'Coyote' Law still untested by a jury. *The Arizona Republic*.

- Kiefer, M. (2007, June 16). Supreme court ruling sought on migrant bail. *The Arizona Republic*.
- Kiefer, M. (2008, March 16). IDs unequal across the board. *The Arizona Republic*.
- Liptak, A., Cushman, J. H., Jr., & Adam, H. (2012, June 25). Supreme court rejects part of Arizona immigration law. *The New York Times*.
- Manning, M. (2008). *Jail white paper on Maricopa County Sheriff's office jail investigations and recommendations*. Phoenix: Michael Manning (private attorney).
- Muench, S. (2005, September 30). Day-labor center use up 50%. *The Arizona Republic*.
- Napolitano, J. (2005, July 1). Letter to Michael Chertoff, Secretary, US Department of Homeland Security.
- National Association of State Budget Officers. (2011). *State expenditure report: Examining Fiscal 2009–2011 state spending*. Washington, DC: National Association of State Budget Officers.
- Preston, J. (2009, July 20). Lawyer leads an immigration fight. *New York Times*.
- Proposition 100. (2006). *House concurrent resolution 2028 proposing an amendment to the constitution of Arizona*, Amending Article II, Section 22, Constitution of Arizona; relating to bailable offenses. State of Arizona Ballot Propositions, 2006. Retrieved October 7, 2012, from <http://www.azsos.gov/election/2006/info/pubpamphlet/english/Prop100.htm>
- Proposition 200. (2004). *The Arizona taxpayer and Citizen Protection Act*. State of Arizona Ballot Propositions, 2004. Retrieved October 7, 2012, from <http://www.azsos.gov/election/2004/info/pubpamphlet/english/prop200.pdf>
- Riley, J. A. (2004, March 21). Repudiating reagan. *The Wall Street Journal*.
- Robb, R. (2005, September 14). Governor is focused on immigration. *The Arizona Republic*.
- Roberts, L. (2007, March 21). Judges who ignore no-bail law may as well give you the finger. *The Arizona Republic*.
- Rubin, P. (2007, December 6). Power play. *Phoenix New Times*.
- Ruelas, R. (2007, March 14). "State money for Sheriff Joe's smuggling operation." *Arizona Republic*.
- Scutari, C. (2005, September 6). Will recent immigration moves help Napolitano? *The Arizona Republic*.
- Simpson v. Owens. (2004). 207 Ariz. 261, 85 P.3d 478 (App. 2004).
- Southern Poverty Law Center. (2012). Profile of J.T. Ready. Retrieved October 7, 2012, from <http://www.splcenter.org/get-informed/intelligence-files/profiles/jt-ready>
- Steinhauer, J. (2007, March 5). Policy shift on death penalty overwhelms Arizona court. *The New York Times*.
- Stern, R. (2006, November 16). Meltdown: The Phoenix branch of the U.S. Immigration and Customs Enforcement Bureau is exhibit A of this country's failed border policies. *Phoenix New Times*. Retrieved October 7, 2012, from <http://www.phoenixnewtimes.com/2006-11-16/news/meltdown/2>
- Thomas, A. (2005, August 30). *County Attorney urges enforcement of anti-coyote law. Announces fall conference on illegal immigration, border security and crime* [news release]. Phoenix: Maricopa County Attorney's Office.
- Thomas, A. (2006). *Maricopa County Attorney annual report 2005*. Phoenix: Maricopa County Attorney's Office.
- Truax v. Raich. (1915). 239 U.S. 33, 41 (1915)
- Volpe, P. (2009, September 9). New immigration ads stir the melting pot. *The Washington Post*. Retrieved October 7, 2012, from [http://voices.washingtonpost.com/sleuth/2008/09/new\\_immigration\\_ads\\_stir\\_the\\_m.html](http://voices.washingtonpost.com/sleuth/2008/09/new_immigration_ads_stir_the_m.html)
- Wadsworth, T. (2010). Is immigration responsible for the crime drop? An assessment of the influence of immigration on changes in violent crime between 1990 and 2000. *Social Science Quarterly*, 91(2), 531–553.
- Welch, D. (2007, April 3). County courts refuse to check immigration status. *East Valley Tribune*.
- Wingett, Y. (2006, December 26). Day-labor dispute simmers—immigrants soliciting work seek center where they could avoid wrath of businesses on Thomas. *The Arizona Republic*.
- Wingett, Y., & Kiefer, M. (2007, April 4). 4 legislators seeking inquiry on county release of migrant. *The Arizona Republic*.



Outside Justice

Immigration and the Criminalizing Impact of Changing  
Policy and Practice

Brotherton, D.C.; Stageman, D.L.; Leyro, S.P. (Eds.)

2013, XXII, 280 p., Hardcover

ISBN: 978-1-4614-6647-5