

Punishing Illegality

In 2008, a local independent weekly called the *Nashville Scene* published a story describing the policing philosophy of the MNPd with a flashy headline announcing, “Chief Serpas’ Plan for a Safer Nashville Is to Pull You Over Early and Often.”¹ The article described the MNPd move toward mass vehicle stops as a deliberate strategy. “Talk to almost anyone in town,” the article read, “and you’ll hear stories of being pulled over.”² Indeed, at a city council meeting in 2009, Sheriff Hall quipped that he had been pulled over more times in the previous year than in all his years of residence combined. City council members and meeting attendees laughed in recognition. Latino residents also identified the transformation of policing practices in the city, but unlike the mostly white residents at the city council meeting, they did not consider it a laughing matter. Indeed, Latino residents and immigrant advocates were critical of the police department’s emphasis on proactive policing. Their complaints stemmed from a feeling of omnipresent surveillance; the police seemed to more invested in *patrolling* Latino communities than protecting them. A pastor at a Methodist church with a Hispanic ministry and an immigration legal clinic was convinced that police profiled Latino congregants. “There is *no question* the police are going after immigrants. We call it ‘driving while Hispanic,’” she said.

An accumulating body of research suggests that police policies that rely on making high numbers of stops lead to the disproportionate arrest of black and Latino men.³ Not everyone thinks this is a problem. Police, for example, argue that they focus on minority neighborhoods because their neighborhoods tend to have higher rates of delinquency. While some may think that subjecting (minority) residents to aggressive policing tactics enables officers to find contraband, research suggests

that investigative traffic stops have a low “hit rate” and that officers overstate the amount of contraband they seize.⁴ In addition, this style of policing comes at the cost of police-community relations. Black and Latino motorists experience these “proactive” policing practices as oppressive and deeply unfair.⁵ Latino immigrants’ concerns about policing are also exacerbated by the close connections between the immigration enforcement and criminal justice system.⁶

Latino residents’ perceptions of the police matter. Indeed, the MNPd’s El Protector program started because the police chief understood the importance of cultivating trust and legitimacy among Latino immigrant newcomers. Many police departments across the country explicitly reject enforcing immigration laws and cooperating with immigration enforcement authorities because agencies want unauthorized immigrants and their families to feel safe interacting with police authorities.⁷

Research on procedural justice, the process-based model through which people evaluate their interactions with legal authorities, suggests that when people believe that police enforce laws fairly they are more likely to cooperate with them.⁸ In contrast, when people believe that the police or legal system is unfair, they can develop cynicism that undermines public safety because they will not regulate delinquent behaviors that occur in their neighborhoods or call the police for help.⁹ Perceptions and experiences with the police are key determinants of legal socialization, as these encounters “teach” people about their relationship with state authorities. For example, researchers find that involuntary police contacts teach young minority men that they are objects of heightened surveillance.¹⁰ Perceptions of the police are also influenced through vicarious experiences, such as accounts from friends or police activity that people witness in their neighborhoods.¹¹ Witnessing and experiencing negative police attention makes people feel demeaned; an accumulation of these experiences erodes trust and confidence in police legitimacy. While immigrants tend to hold more favorable perceptions of the police than US-born minority residents, order-maintenance policing strategies and enhanced immigration enforcement threaten police legitimacy in immigrant communities.¹² Moreover, researchers find that although undocumented immigrants articulate the most fear of the police, even US citizens and legal permanent residents of Latino origin report negative perceptions of the police linked to their perceptions of immigration enforcement.¹³

This chapter shifts focus from how local officials and officers understand law enforcement practices as they relate to Latino immigrants, to how Latino residents understand and experience them. As this chapter shows, the convergence of policing and immigration enforcement threatens police legitimacy among Latino respondents. In Southeast Nashville, Latino residents describe a police force preoccupied with making vehicle stops at the expense of residents’ safety. These vicarious and personal experiences with the police teach Latino residents that they

are powerless, subject to the laws of an unfair justice system and at the mercy of individual officers who can stop and arrest them for trivial reasons. I also highlight the stories of two unauthorized Latino immigrants who were arrested and processed through the 287(g) program to illustrate how state laws, aggressive policing, and immigration enforcement collide to produce extraordinarily punitive experiences. I end the chapter by discussing the end of the 287(g) program in Davidson County and the jail's transition to the federal program called Secure Communities.

"WE ARE DROWNING IN PATROLS"

Riding with police officers in Southeast Nashville revealed that officers were almost always on the lookout for vehicles they could pull over. Traffic stops were a feature of the job that officers took for granted. For them, each stop was the opportunity to achieve professionally by finding weapons or drugs. The department reasoned that getting contraband off the street, or finding people with warrants, made the city safer. As I touched on in chapter 4, Latino residents were weary of the department's policing practices. Residents described neighborhoods that were oversaturated with police officers making traffic stops. This was the police department's goal. According to their policing philosophy, lighting up a neighborhood "in blue" deterred delinquent activity by sending a message to lawbreakers that they should go elsewhere. However, business owners complained that police activity also sent this message to their patrons.

Esteban, a Mexican immigrant entrepreneur who owned multiple grocery stores, believed that police practices were disastrous for his businesses. Esteban had lived in Nashville for almost twenty years and had owned stores for over a decade. While relations with the police had always been strained, he believed that things had gotten demonstrably worse because of the MNPd's emphasis on vehicle stops. Esteban's store had been robbed several times, and each time police did not respond to these calls for service as promptly as he would have liked. Esteban felt officers did not care about the damage to his store. Moreover, detectives did not follow up, and Esteban felt he was chasing officers to get status updates about their investigations. When he complained to the police chief at a meeting, the chief explained that officers were overburdened and were not always available to answer calls and respond to requests. This did not make sense to Esteban, who saw that officers were readily available to make traffic stops and that many of these stops resulted in multiple patrol cars on hand to offer backup. Esteban was disgusted by the department's deployment of resources, stating that officers racially profiled Latino motorists while simultaneously ignoring *real* violations and calls for help:

They invite us to all these (El Protector) meetings, but when there's an armed robbery they arrive half an hour, an hour, two hours later—or they simply don't come. The

police chief says it's because they have too few officers, but if you or I committed a traffic infraction out here on Nolensville Road, because of the color of our skin the police would stop us, and within five minutes there would be two or three police cars on the scene. Why are there so many officers available for traffic violations when it's just traffic, but when there is a real danger to our businesses or our lives, they don't appear? I asked the police chief if this was just the police response for our community or if it was that way for everyone, because if it's just happening to us, it's racist, but it's normal. . . . But if they're doing that to everyone then we've got an even bigger problem, because thieves are free to act without the slightest worry that the police will ever arrive. . . . They like to brag about their stats, show that they're bringing down crime and making so many arrests, but those arrests are mostly happening to our people.

Esteban's complaint was not *just* that police disproportionately targeted Latinos for traffic stops because of the color of their skin but that they ignored calls for service in the Latino community. While the police argued that traffic stops deterred crimes, Esteban saw it differently. To him, police were arresting Latinos for minor infractions at the expense of responding to calls where police might find real lawbreakers. He disregarded police claims that "stats" indicated their practices were working, because these arrests were happening to Latinos, or as Esteban described them, "our people." To Esteban, Latinos were being victimized by lawbreakers *and* the police.

Manuel was a thirty-five-year-old legal permanent resident from Colombia who worked in a nonprofit that provided services to Latino immigrants. Since Manuel was legally present, he had a driver's license and could drive freely. Still, he heard people's fears about police encounters regularly and was himself pulled over multiple times for minor violations.

Manuel: It's different than it used to be. *I feel it*. We could feel it when here in South Nashville when we started seeing a lot of police on patrol, even though the police say nothing has changed. The police presence is intensely felt. Maybe in some neighborhoods they say they need more policing, like the police never go there, but here—we are drowning in patrols.

AA: Can you give me an example?

Manuel: Of this type of thing? Yes, examples of how people cannot move around safely, not just those who are, let me tell you, undocumented, people also with documents, because they feel a little like, um, maybe, using me as an example, they've stopped me at least five times, mostly for little things that, including, look, they stopped me twice, they almost, probably in three cases it was routine. The officer told me I ran a stop sign. And I said, "When did I pass it? I didn't see, I don't know what happened," but he told me, "Oh, you didn't realize," and I didn't realize, but he saw my, that I had a license and he let me go. And they stopped me another time for whatever reason, I don't even remember what they

told me, but they've stopped me three times and I never got more than a fine a long time ago. They took my license to see it and then, "Drive carefully." If I had been undocumented they already would have deported me five times.

Alicia, a Mexican American woman who had moved to Nashville from Texas, also described being pulled over multiple times. Alicia worked as an office assistant in an immigration law office. She explained, "In May, I was pulled over six times over a two-and-a-half-week period and every time I was driving my father-in-law's work truck with big rails that go on top." One of the traffic stops was for a seat belt violation and another was for a broken headlight, but Alicia thought it was ridiculous. "It's eight in the morning. I don't need my lights on! They just wanted to pull me over," she said. "They would come up to me and ask, 'Can I see your driver's license,' and I'd say, 'Sure.' I thought—I guess [it's] driving the work truck because it's so loud. All six times—not once did they ask me for registration, not once did they ask me for insurance, all they asked me was for my driver's license." Alicia was frustrated that she had been pulled over multiple times but had never been cited for any violations. To her, this was proof that officers never should have pulled her over in the first place. "I think it's because there was no real reason they pulled me over and because of course—I'm Hispanic. . . . If I didn't have a driver's license they would book me every time, I bet you. They just want to see if I have my driver's license or if I can speak English. It's awful."

Mario, a Guatemalan immigrant who had lived in Nashville for fourteen years, believed that living in the city had gotten more dangerous for Latino residents.

When I got here it was more—how can I explain it, how can I explain it? You didn't hear, you didn't hear about people getting deported for not having a license. They would arrest you and let you out, but they wouldn't give you a deportation order. As opposed to now, they arrest you for no driver's license and they want to deport you. I think it's not fair. That's what I think.

What is remarkable about these various accounts is their consistency across Latino residents of various legal statuses. Esteban and Manuel were legal permanent residents, Alicia was Mexican American, and Mario was unauthorized. Each described a police department that prioritized vehicle stops above other enforcement priorities, each articulated a belief that police singled out Latino residents for enforcement because of their race, ethnicity, or presumed immigration status, and each understood these practices to be deeply unfair. For example, Alicia and Manuel described being pulled over numerous times for minor violations and released, with officers acting polite and professionally during vehicle stops. While neither resident was *afraid* of contact with the police, both objected to the department's

practices because they recognized how these stops would have unfolded differently if they had been present without authorization. Alicia believed that officers stopped her because she was driving her father's work truck and they expected to book her for driving without a license. Manuel said that if he *had* been in the United States without permission, he would have been deported "five times." Residents did not *confuse* police officers with federal immigration enforcement officials, but they saw policing and immigration enforcement as connected in two ways. First, motorists believed that police targeted Latino residents for vehicle stops to identify and punish unauthorized immigrants for driver's license violations. Second, motorists identified deportation as a possible outcome of police interactions. Thus, even when their sense of antipathy did not stem from personal fears of deportation, it stemmed from an acute understanding of how the department's proactive policing tactics amplified Latino immigrants' insecurity. Latino residents believed that police targeted them to enforce unjust laws and that the punishment for violating these laws had grown more severe because of the county's 287(g) program.

It is important to point out that while each of these residents believed that Latinos were collectively subjected to excessive traffic enforcement, none experienced obvious signs of officer disrespect. Residents were frustrated by these repeated intrusions, but they invariably described officers as polite and professional. For example, after Manuel described being pulled over numerous times for no reason, I asked him how police treated him. He paused and said, "Well, up to now, I've had good experiences with the police. We've been conversational. I can't say I've had a bad experience."

In the next section, I turn to the experiences of two residents whose involuntary encounters with the police led to their arrests. In both cases, officers used their discretionary authority to apply harsher punishments then *required*.

PUNISHING "ILLEGALITY" BY "MISTAKE"

José Estrada moved to Nashville from Houston in 1996. To José, Nashville felt like a step up. Work was easier to come by, the pay was better, and the pace of life was slower. José felt ready to plant roots; he married and had two children. An unauthorized immigrant, José had tried to get a driver's license in the past, when he was (presumably) eligible, but he was rebuffed by employees at the Department of Safety, the office responsible for issuing licenses in Tennessee. According to state employees, José was ineligible for a Tennessee driver's license because he had a suspended license in Illinois. José insisted they were wrong. "It was a different person. It wasn't me. I gave them information to show them I had always been in Tennessee and I've worked, but it didn't help. I couldn't get the license." José left the office with an identification card, which he obtained by showing employees his Mexican birth certificate and passport.

As years passed, José felt less comfortable in his adopted city. While driving without a license had not bothered him when he moved to Nashville, he began to feel more apprehensive about it after being pulled over twice for minor violations. “It’s changed a lot,” he told me. “It’s changed because before the police never bothered me like now. For example, you go to work and for anything, for any little thing, the cops stop you. Before it wasn’t like that.”

José was stopped by the police twice—once in 2006 and a second time in 2008. José described the first stop:

I was driving on Dickerson and there was a pothole, and I guess one of my headlights burned out. The police followed me. He flashed his lights and he stopped me. I asked why, I was driving fine. He told me he stopped me because I had a headlight out. I didn’t have a license, but I gave him my state ID and that’s what helped me. He said he was just going to give me a ticket and that I could pay it and it would be fine. He didn’t detain me or take my car or anything, he just said to pay my ticket and I wouldn’t have a problem.

While José thought this stop was unnecessary, he described his experience as nothing more than an inconvenience. The officer issued José a misdemeanor state citation, and three weeks later José went to the courthouse to go through the state citations docket. According to José, the room was full of other Latino immigrants waiting to be fingerprinted and fined. This traffic stop was expensive. José paid several hundred dollars and lost two days of wages: he missed one day of work to go to the courthouse and another day of work to complete eight hours of community service at a local church.

Two years later, José had another encounter with a Nashville police officer, but with decidedly different results. This time, José was not driving but sitting on a curb outside the laundromat where he worked, waiting for his boss to arrive and unlock the doors. It was 5:45 a.m. on September 2, 2008. A patrol officer saw José sitting on the curb outside the laundromat and decided that José was an appropriate target for the proactive activities the department prizes so highly. José remembers:

He told me, “Stand up!” and I told him, “No, why? I’m not doing anything.” He said, “Stand up!” Then I stood up. . . . “Do you have any identification?” and I said no. It had expired, and I left it to my wife so she could take my son to the hospital. When he saw my ITIN [Individual Taxpayer Identification Number] card he told me, “This is a false social security card that you’re using.” I told him, “No, this number is so that I can pay taxes.” And he said, “Well, for me it’s a social security number, you’re using someone else’s name, using a social security number and name of another person, and I have to arrest you.” I told him, “But I’m telling you the truth!” He put me into the patrol car and told me I was under arrest. . . . “You’re arrested for using false documents. That’s criminal. You’re under arrest and they’ll take care of you over there. They’ll take care of you. They’ll take care of it in the jail. You don’t have to tell me anything.”

José's boss arrived to find José detained in the officer's patrol car. While José's boss and coworkers tried to intervene on José's behalf, the officer rebuffed their attempts and threatened them with arrest. The police officer arrested José for "criminal impersonation," claiming that José's ITIN was a stolen social security number.

In reality, the ITIN is a tax-processing number issued by the Internal Revenue Service to noncitizens without social security numbers so that they may pay and file their taxes. The ITIN program has been in place since 1996. In 2010, over three million ITIN holders paid \$870 million in income taxes and \$9 billion in payroll taxes.¹⁴ While the ITIN card is common in Latino immigrant communities, the officer was not familiar with it. Thus, when the officer entered the ITIN number into his dashboard computer as a social security number, the number came back as invalid. In his arrest report the officer described the ITIN card as a "fake social security card" and indicated that he had made a physical arrest because of uncertainty about Estrada's identity.

To be clear, there was no reason for this officer to arrest José. ITIN cards and social security cards look nothing alike. The most charitable explanation is that the officer made an honest mistake in his zeal to be proactive. Of course, another reasonable explanation is that the officer assumed that José was guilty of document fraud because of stereotypes regarding Latino immigrants' use of "fake papers." However, even if José had been using a fake social security card, the officer did not need to arrest him. As outlined in chapter 3, the inability to provide "satisfactory" identification can be grounds for an arrest, and the officer indicated on his charging documents that he was unsure about who Estrada was. This was a dubious claim in light of the circumstances. A number of people on the scene attempt to verify Estrada's identity and were threatened with arrest. Moreover, during the stop, the police officer used his patrol car computer to determine that Estrada had been issued a Tennessee state identification that had since expired. This record, which included José's picture, could have easily been used as proof of his identity, but it was not. Thus the issue was not that the officer *could not* verify Estrada's identity but that he did not want to. He was unwilling to accept any of the information at his disposal as "satisfactory."

When I discussed José's arrest with Officer Iglesias, of the El Protector program, Iglesias jumped to his colleague's defense. According to Iglesias, it was not the police officer's fault for not knowing about this particular document. Rather, it was the federal government's fault for issuing a document with which local police were unfamiliar:

We're not trained to look at that stuff. Is it our fault that we don't get training on that? If the government is gonna be doing that, then we need to know about it so we know to expect it, but just showing a social security card is not proof of who you are, whether it's a tax ID number or not. What we try to look for is a valid ID, a state-issued ID, because we know that the state has training in proper documentation, so they know you are who you are because you've presented them a passport, a birth

certificate, and they have training to look at that and say, "Yeah, this is good, this is good." We don't have that training. We're not experts in documents.

This assertion was also ludicrous. José was not arrested because the ITIN was insufficient proof of identification, he was arrested because the officer decided (with no evidence) that the ITIN was a fake social security card. Moreover, if, as Iglesias suggests, it is unreasonable to expect officers to authenticate documents, then perhaps they should not arrest people for allegedly having false ones. Finally, even Officer Iglesias, an officer who was designated to "build a bridge" with the Latino immigrant community, had never heard of the ITIN before our interview. When I told him the federal government had been issuing them since 1996, he looked surprised and momentarily speechless. Then he continued to refer to ITINs and social security numbers interchangeably.

In the jail, José went through immigration processing via the 287(g) program and deputies discovered he was undocumented. José explains his immigration interview:

They asked how long had I been here, about my family, and I told them that they couldn't deport me because I'm the head of my family and who would pay everything for my kids? They said, "Well, you're already practically deported because whatever you say they're going to send you to Mexico." And I said, "You can't send me. I have my family. I have my kids. My son has autism, and the other one is also sick, he has asthma." And they said they'd see what they could do but that I would probably get deported. I was scared that they'd deport me, and it made me sad because I hadn't done anything. I said, "Why are they doing this to me if I wasn't drunk. I wasn't knocking on doors. I wasn't causing a scene. I wasn't doing anything. My God, I was sitting there just as I am here."

José went to court and pled guilty after a public defender told him (erroneously) that doing so would result in his release from custody. This would have been true if José were a citizen, but as an unauthorized immigrant José remained in the Davidson County Jail on an immigration hold. He stayed in a pod with other Latino detainees awaiting to be transferred to ICE. He described his week in jail:

There it's all about discipline. You go to sleep at a certain time, you eat at a certain time. At night you must not yell. It's just discipline—to maintain order. They treated us okay, but people are suffering. Many are there because they didn't pay for something—their tickets or their fines or their accidents. And some for domestic violence, many for drug addiction or alcoholism. Everyone is together and everything is the same for everyone. People don't have money to pay the immigration bond. Most people can't pay a \$3,500 bond or a \$5,000 bond. And maybe . . . maybe it's better that people leave because either way . . . either way they throw you out. Paying or not paying. At the end, everyone gets deported.

Several days later, José's wife hired a new lawyer who was able to work with the district attorney to get José's guilty plea thrown out. At a new trial, the officer

admitted that he had been wrong about José's use of false documents. The judge dismissed the charges, and his lawyer was able to secure José's release from custody. By this time, José had been in custody for over a week on false charges; his deportation case proceeded even though his case was thrown out. When I interviewed José in 2010, he was waiting for his green card after an immigration judge had granted him a discretionary form of relief called cancellation of removal.

I asked José if his opinion of the police had changed after his arrest, incarceration, and close brush with deportation. He explained:

It's just that I think, well, they're not all the same. It's good that they maintain the peace and everything, and also that they arrest [someone] who is really guilty for drugs or something, for something that's true, but they should be real criminals. They get innocent people sometimes . . . people who don't merit any punishment. The police get confused. That's what happened to me. They stop people. They stop just to check the plates, or they stop just to see what your record is. Or they tell you, "Stand up, let's see who you are, give us your ID." It wasn't like that before. When I got here it wasn't like that.

José's response was more nuanced than I expected, given that he had been arrested and incarcerated on false charges. José accepted the official explanation that the officer had made an honest mistake. He continued to support the police in their pursuit of "real" criminals but objected to their practices of stopping people to check license plates, criminal records, and identification. He believed these practices led officers to arrest innocent people who weren't "real" criminals and who did not merit punishment.

PUNISHING "ILLEGALITY" WITHIN POLICY

When Juana Villegas was arrested for driving without a license, the arresting officer repeatedly asked her about her immigration status, declaring that her consular identification card was insufficient *because* of the county's 287(g) immigration enforcement program. When I interviewed Juana in 2010, she had been interviewed dozens of times by national and international media because of her arrest and incarceration in Davidson County. Unlike the stories in chapters 3 and 4, which draw on ride-alongs and interviews with police officers, this section's story draws on in-depth interviews with Juana and her lawyer, police dash-cam footage of her traffic stop and arrest, and interviews of sheriff's office officials about her incarceration. I include Juana's story because what happened to her exemplifies how a punitive web of laws, policies, and practices work together to punish "illegality" and how the experience of punishment is exacerbated by the callous disregard of law enforcement officials who are technically acting within the law.

Berry Hill is a tiny "city within a city," nestled between two Nashville neighborhoods in Davidson County. Its small police department has two officers on duty at all times; these officers serve the city's five hundred residents and patrol its 0.9 square miles. On July 3, 2008, Officer Tim Coleman, of the Berry Hill Police

Department, pulled Juana over. To Juana, the stop felt unprovoked. The officer claimed that Juana had been driving carelessly.

Juana, who had three US-born children in the car with her, was eight and a half months pregnant. She was ineligible for a Tennessee driver's license, so when Officer Coleman asked for her license and registration, Juana gave him her registration and a Mexican consular identification card, which she had obtained because she knew it was important to have an ID. Officer Coleman went to his patrol car and returned to Juana's truck a few minutes later, instructing her to call a licensed driver. Juana called her brother-in-law, believing that he would arrive to drive her and her children home. However, unbeknownst to Juana, Officer Coleman intended to arrest her and send her children home with her brother-in-law.

The other Berry Hill police officer on duty arrived at the scene and greeted Officer Coleman and Juana cordially. Coleman got back in his patrol car and tested the dashboard camera, making the following statement:

I've got my camera working, I'm on a 93 stop. There were two vehicles. I released the other vehicle for careless driving and stopped this one for careless driving and financial responsibility. Was presented with a Mexican ID only. She could not produce any type of driver's license or anything to show me who they were other than that Mexican license. By talking with her, with the broken language barriers of her being Spanish speaking and myself English, from what I gather she's here illegally. I don't do immigration enforcement, but I will take her downtown so as to not jeopardize my driver's license—required prosecution. We're waiting for a family member to come pick up the children.

It was a brutally hot day, and Juana, her children, and Coleman waited for her brother-in-law to arrive. He arrived and apologized for taking so long; he had been at work. Coleman took his license and quickly explained what was going to happen:

Look, she's got all those kids in the car, but she's going to jail with me. I don't want those kids to be upset, that's why I called you to pick the kids up. I can take the kids to the Department of Children's Services if I want. She doesn't have a license, she doesn't have anything to show me who she is other than a Mexico ID. That doesn't count. She has to have a driver's license, so to verify that I'm going to take her down and book her on a driver's license required. If she's here legally, she's okay. She can show them proof of that and Immigration won't hold her, and if not Immigration will deport her to Mexico.

Her brother-in-law responded to Officer Coleman, telling him he was certain that Juana had an identification card from Mexico. Coleman shook his head, indicating that this ID was insufficient:

She gave me that. She gave me that. That doesn't count for me because Nashville has an ICE office, an Immigration and Customs Enforcement office. She's got to show me something like what you've got. Something that says she's here legally. If she can't

show me that, then she goes to jail. They'll interview her down there. If she's here illegally, I can promise you, she's going back to Mexico.

As this statement makes clear, Officer Coleman did not arrest Juana because he could not verify her identity, he arrested her "because Nashville has an ICE office." Officer Coleman clearly considered a driver's license proof of legal presence, stating that she would need to show him "something that says she's here legally" to avoid arrest.¹⁵

Juana's brother-in-law began to ask a question and Coleman interrupted him. "Is she here legal or illegal?" Coleman asked. Juana's brother-in-law evaded Coleman's question, suggesting that Juana had more identification at her house.

Coleman held up his hand and called to the other officer, "Run his DL. I'm done with him."

Coleman returned to Juana's car and instructed her to get out of the passenger seat. "Give your baby a kiss. Kiss your baby. You've got to go with me to jail. You don't have a driver's license. Do you want to give your baby a kiss?" Coleman told her.

Juana started to cry and whimper, which upset Coleman. "No ma'am," he told her, "You can do this the easy way. I don't have a choice, come on."

"No, please," Juana whispered at him.

He looked at her unsympathetically and gestured to the truck, again suggesting that she say good-bye to her children. Juana approached the back door and looked at them through the window. Her daughter screamed from her child safety seat, and her son, who was in the front seat, moved.

Officer Coleman wagged his finger at him and barked, "Stay in the vehicle."

Coleman looked at Juana and said slowly, as if explaining to a child, "You have to go to jail, you don't have a driver's license. You have no insurance. No license." Coleman opened the door of her truck and directed her inside. "Get in there and give your baby a hug."

Her daughter screamed from the back seat.

Coleman turned to Juana's brother-in-law and shook his head, saying, "I was trying to avoid this. This is what I was trying to avoid. I realize she's a mother and I realize she's a person, but she has to follow the rules. She's a nice person, I like her. . . . I don't do immigration, that's the federal government. All I'm doing is my DL required. It's jeopardized because I don't know anything about her."

Juana's son, who looked to be about ten, asked Officer Coleman when Juana was going to get out of jail.

Coleman's voice changed as he addressed her son. He spoke to him kindly, saying, "I'll find out. I don't know, it's a driver's license charge. I don't want to lie to you, but I'll treat her right, okay? I just have to take her. I don't have a choice."

Juana's daughter continued to wail and scream.

"You ready? We gotta go," Coleman told Juana. Looking pointedly at Juana's brother-in-law, Coleman asked him, "Can you go comfort the children, please?"

The other officer on the scene smiled at Juana and pointed to her pregnant belly. "How many days?" he asked.

"Three," answered Juana in Spanish, after her brother-in-law translated.

The officer, still smiling, continued talking to Juana conversationally. "Three days? They're not getting you home in three days. It'll be born here."

Juana stared at him vacantly, and her brother-in-law looked at the officer with disgust.

Coleman turned to Juana's brother-in-law and said, "I want to give her that choice if she wants to hug her baby, but we've got to go. I'm going to put her in handcuffs. Tell her to do it if she wants to. Tell her to hug her baby if she wants to hug her baby, if not she's going to jail. Can you tell her that?"

Juana's brother-in-law translated and then asked Coleman if he could just take her home.

Coleman angrily retorted, "THAT'S NOT GOING TO HAPPEN, SIR! She's going to come to the car with me. I'm done. I'm fixing to put her in the car. I would rather have her walk like a person, but she's going to jail, and it's going to happen in two seconds. Tell her to say goodbye to her children and we're going."

He looked to the other officer and shrugged, saying to him, "I've been as nice as I can be."

"Where are you taking her?" Juana's brother-in-law asked.

"Downtown. Metro Jail. What you need to do is go down there and try to bail her out. It's a misdemeanor charge, it's driver's license required. The sooner I get her in there, the sooner you've got a chance to try to get her out before INS [Immigration and Naturalization Service] looks for her. Okay? That's all I can do." Coleman held his hands up in exasperation. Then he tapped Juana on the shoulder, saying, "Let's go."

Juana's daughter was still screaming and wailing in the back seat. Juana got into the car, and Coleman drove her to jail. The probable cause for arrest that the officer provided at the time of booking reads as follows:

Defendant was operating a 2001 Ford F-150 on a public roadway. Defendant was stopped for careless driving and issued a citation. Defendant could not produce a license. Defendant said she could not get a license. Defendant was charged for a d/l required and taken to CJC [the Criminal Justice Center] for processing.

If Juana had not been eight and a half months pregnant, this arrest would not have made the news. Juana would have been one of thousands of Nashville's Latino residents who were detained at the county jail after driver's license arrests and

transferred to ICE custody. However, Juana went into labor. Although she was not charged with a serious offense, the jail classified her a security risk because of her immigration status. At the time, the county designated all inmates on ICE holds as medium-security risks. As a result, when Juana went into labor, Davidson County officials treated her as a medium-security inmate, transporting her to the hospital in handcuffs and with her ankles in shackles. At the hospital, she was placed on a gurney and moved into a hospital room with her hands and legs still restrained. After placing her on the hospital bed, an official handcuffed her left ankle and right wrist to the hospital bed. Despite repeated requests from hospital staff to remove the restraints, sheriff's officials denied their requests. Later, a new guard on duty removed the shackles, and Juana gave birth to a baby boy. After she gave birth, DCSO guards cuffed her to the bed once again. Any time Juana left the bed to walk, shower, or use the restroom, her mobility was constrained by these punitive restraints. A guard remained close by to monitor her movements.

Several days later Juana was discharged from the hospital and transferred back to the Davidson County Jail without her newborn son. She pled guilty to the state charge of driving without a license, and immigration agents released her while her deportation case proceeded. Within days, her case began generating a media firestorm as people began questioning her arrest, the 287(g) program, and the jail's practice of shackling pregnant women during labor.

Several months later, I asked Timothy, a supervisor at the DCSO, to explain what had happened with Juana's case. I was surprised he responded to my question, given the pending litigation, but he gazed to the right and shook his head, saying:

That was a perfect storm right there. What doesn't get written or said is that when she came in on that Thursday, July 3, she came on Thursday, we called ICE, we said, "This girl, she's pregnant, she's eight months pregnant," I think she said she was. "What do we do?" Here's what the ICE guys said, he said, "After she goes to court, release her on her own recognizance." Now she was previously deported, and those people don't get released on their own recognizance. They don't even get to see a judge, they get deported, so he was trying to be fair. He said, "She's pregnant, we'll release her." Well, the next day was July 4, so she didn't get to go to court to get released. Well, Saturday they usually have a small court too, one of our officers called the ICE guys and said, "What do you want to do with her? She's not going to be able to go to court," he said, "Let's ROR her," and he said okay. By the time we got to her she was on her way to the hospital. We were about to release her. We were trying to do the right thing, ICE was trying to do the right thing by releasing her, but by then she had already gone to the hospital and I think Sunday she had the child and it was just, everything happened. You're right, the [ICE] hold did elevate her to medium security, which any medium-security person would be—restrained in the vehicle, and it wasn't any different from a medium-security person—female, I'd say. Now, some of the details in there that

were written about what happened were not correct. They used the word *shackled* a lot—but she was restrained. You know? *Shackles* sounds meaner. That’s some of the stuff we fight against. We changed our policy because of that, but it wasn’t an immigration issue, it was how we handle pregnant female issue, but it was made into an immigration issue.

Timothy characterizes Juana’s incarceration as a perfect storm, a bad situation caused by a rare combination of unpredictable circumstances. He objects to the idea that the jail was “mean” to Juana, preferring the euphemism of “restraints” over shackles and pointing out that they treated Juana the way they would have treated any medium-security inmate. Indeed, no one in the sheriff’s office questioned Juana’s classification as a medium-security inmate or their decision to shackle her. They believed they had treated her fairly because they had treated her according to their policies. Within weeks, the sheriff’s office announced new policies for handling pregnant inmates.

In August 2008, a group of about forty people piled into the Berry Hill Courthouse’s traffic court, to accompany Juana on her traffic citation charge. It was the largest crowd the small courthouse had seen for traffic court: the group included reporters, television news crews, immigration advocates, and Mexican consular officials who had driven in from Atlanta. That afternoon, Officer Coleman testified that Juana had told him during the stop that she was undocumented and pregnant, pointing to her belly and saying “bambino” (the Italian word for baby). Coleman also said that there was no footage of the traffic stop because the video in his patrol car was not working. Later that month, the *Tennessean* published the dash-cam video of Juana’s stop and arrest on its website after an anonymous source e-mailed the video to a local reporter. On the tape, Juana neither spoke Italian nor indicated that she was in the country without permission. Indeed, the only person preoccupied with Juana’s legal status was Officer Coleman.

Juana’s case demonstrates how the intersection of laws, policies, and practices punish unauthorized immigrants. Federal and state law made Juana “illegal” and arrestable. Officer Coleman arrested Juana *because* he hoped that doing so would result in her deportation. While officers are trained to be cool and collected, Coleman was clearly agitated during this encounter. He repeatedly demanded to know Juana’s immigration status, and he suggested that he could take Juana’s children to social services. He was imperious and controlling, repeatedly ordering Juana to say goodbye and hug her children, and then yelling at her when she did not do so fast enough or stoically enough. According to the Berry Hill Police Department, the officer’s arrest was within policy. A department spokesperson described Juana’s arrest and transfer to county custody as safe and humane. The sheriff’s office shackled her because, in their view, Juana’s immigration status made her a security risk. As a result of this arrest, the federal government put Juana in deportation

proceedings. Through it all, law enforcement officials normalized her treatment as routine. The federal ICE office said that they did not know Juana was detained and pointed out that she had not been in federal custody when she went into labor. The sheriff's office defended itself, saying they had treated Juana just as they would have treated any other woman under similar circumstances. In other words, everyone was just doing their jobs.

The experience was extremely traumatic for Juana and her children. Years later, she cried as she recounted the pain and humiliation of being hauled away in front of her children, then shackled like a dangerous criminal. Ironically, Juana's suffering paved the way for her to regularize her status. After a federal judge found that the sheriff's office had violated Juana's civil rights, she qualified for a U-visa, a special visa for immigrant victims of crime. In addition, after a protracted legal battle, Davidson County paid Juana and her lawyers a six-figure settlement. Juana continues to live in Davidson County with her family.

FROM 287(G) TO SECURE COMMUNITIES

On October 8, 2012, the DCSO ended its participation in the 287(g) program by declining to renew the memorandum of understanding authorizing the agency to run the 287(g) program. By that time, the program was highly controversial, generating years of negative press coverage, critical evaluations, and costly litigation. Nationally, reports issued by the Government Accountability Office and the DHS Office of Inspector General concluded that the federal government did not provide sufficient oversight, essentially allowing local law enforcement agencies to dictate immigration enforcement priorities.¹⁶ Critics argued that 287(g) programs encouraged widespread racial profiling. As a result of these allegations, the DOJ launched separate investigations into the Maricopa County Sheriff's Office (Arizona) and the Alamance County Sheriff's Office (North Carolina). Investigative findings revealed that both agencies engaged in discriminatory policing, fostering a culture of bias and encouraging officers to disproportionately target Latino drivers for traffic stops and arrests.¹⁷ The 287(g) program in Davidson County was also criticized for the severe punishments the program levied on Latino immigrants with minor violations. For example, newsman Chris Echegaray reported that twenty-five Latino immigrants had been processed for removal after arrests for fishing without a license.¹⁸ Lawsuits over the DCSO's treatment of Juana Villegas, its detention of US citizens for immigration violations, and challenges to its authority to conduct immigration enforcement dragged on for years. Ultimately, the DCSO's termination of 287(g) corresponded with the national phaseout of this formal federal-local partnership for the federal government's Secure Communities program.

TABLE 1 Immigration detainees per year in Davidson County

	Year		Detainers
LESC	2004		140
	2005		170
	2006		181
	2007	Jan-Mar	62
287(g)	2007	Apr-Dec	2333
	2008		2707
	2009		2303
	2010		1636
	2011		1289
	2012	Jan-Sep	909
S-COMM	2012	Oct-Dec	290
	2013		638
	2014		574
PEP	2015		603
	2016		723

LESC = protocol of Law Enforcement Support Center; S-Comm = Secure Communities Program; PEP = Priority Enforcement Program. Source: Data supplied by the Davidson County Sheriff's Office.

During the 287(g) program tenure in Davidson County, the sheriff's office processed 11,177 foreign-born residents for removal. As shown in table 1, this represented a dramatic escalation of immigration enforcement in the county. Before the county implemented the 287(g) program, local officials sent information about foreign-born arrestees to the federal Law Enforcement Support Center (LESC). ICE responded by issuing an average of ten to twenty detainers per month, requesting that the DCSO hold immigrant inmates for the federal government to assume custody. With delegated immigration enforcement authority, the DCSO no longer had to wait for ICE to *request* to assume custody. Instead, DCSO immigration officers conducted immigration interviews with foreign-born arrestees themselves, preparing the charging documents that ICE would use to pursue their removal. Under this new model, immigration detainers increased significantly, averaging over two hundred detainers per month in the program's first two years.

In the program's first year, half of arrests came from routine traffic stops.¹⁹ Over 80 percent of those arrested were charged with misdemeanors; only 3 percent were charged with the most serious violent felonies of homicide, rape, aggravated assault, or robbery.²⁰ The majority of arrestees were in jail for the first time, and only 6 percent had previous arrests for violent crimes. Thus, although the program was initially sold to the public as a way to protect the residents of Davidson County by identifying serious criminals, as it continued, the logic of Davidson County officials changed. That is, the boundaries of criminality expanded to include any non-citizen who had been arrested, because that person was a "criminal" who *might* commit a more serious violation someday. For example, during a heated debate at a Sheriff's Advisory Council (SAC) meeting between the sheriff and a SAC member who worked in the public defender's office, the sheriff shared his view that anyone arrested by the police was a "criminal" who should be subjected to an immigration interview:

Sheriff: What is a criminal?

Public defender: A criminal is someone who has been convicted of a criminal offense.

Sheriff: Well, that's your view. Thanks for that. You'd be surprised at how many people answer that question that if they're in jail they're criminals. I would say that if you boil it down to that, if you say okay, if someone is pulled over for no driver's license then they've committed a crime. They're a criminal.

Asked to account for the program's implementation in the local paper, the sheriff said it would be "irresponsible" to wait until someone committed a serious crime to deport them, saying, "The person didn't follow immigration laws, driving laws and criminal laws, and that's reason enough to believe they will continue to not follow our laws."²¹

A study by the Migration Policy Institute in 2011 revealed that Davidson County was home to one of the most active 287(g) programs in the country. In its first two years, over 5,000 immigrants were identified for removal. In 2010, the DCSO issued 1,636 immigration detainers, down significantly from previous years. To put this number in perspective, the Las Vegas Metropolitan Police Department logged a similar number of detainers during the same period, with a Latino population almost ten times larger than Davidson County's.²² Although both agencies ran jail enforcement models, the programs ran very differently. For example, in 2010, only 13 percent of detained immigrants in Davidson County were arrested for major drug and/or violent offenses; in contrast, more than half of detainers in Las Vegas were issued for noncitizens with serious violations.²³ Similarly, 57 percent of noncitizens arrested for traffic violations were detained in Davidson County, compared to less

than 20 percent in Las Vegas. Thus, while Davidson County detained every unauthorized immigrant eligible for removal, the Las Vegas agency *chose* not to refer thousands of unauthorized inmates to ICE because they had no criminal history or had been arrested for minor charges.²⁴ Throughout 287(g)'s tenure, misdemeanor arrests for driving without a license topped the list of charges for immigrants processed for removal. The other top charges included driving under the influence and failing to appear for traffic and citation court.²⁵ The overwhelming majority of people processed through 287(g) were Latino, with most removable immigrants hailing from Mexico, Guatemala, Honduras, and El Salvador.²⁶

After the 287(g) program concluded in Davidson County, officials continued to cooperate with the federal government through Secure Communities (S-Comm). S-Comm ensures that fingerprints for every person booked into jail are compared against federal immigration databases so that ICE officials can choose whether they wish to issue immigration detainers. While S-Comm resulted in significantly fewer people being identified for removal compared to the 287(g) program, it still represented a dramatic escalation compared to ten years prior. Like the 287(g) program, S-Comm targeted immigrants with minor offenses or no criminal convictions. For example, an analysis of ICE deportation records revealed that nationally, half of deportees identified through S-Comm in 2013 were convicted of traffic or immigration violations.²⁷ In 2014, after years of criticisms that S-Comm did not focus on high-priority immigrants for removal, the federal government replaced it with the Priority Enforcement Program (PEP), promising enforcement that would be more narrowly targeted. While PEP operated much like S-Comm, enforcement priorities dictated that ICE should seek to take custody only of individuals *convicted* of high-priority offenses. In 2017, a presidential executive order restored S-Comm nationwide.

THE POSSIBILITY IS THE (RACIALIZED) PUNISHMENT

Chapters 3 and 4 explained the logics and techniques that officers employed to implement the MNPd's brand of "proactive" policing, which relied on making large numbers of investigative traffic stops and community contacts. Chapter 5 examined how DCSO immigration officers made sense of their work as they processed removable immigrants for deportation. This chapter highlights how Latino residents interpreted shifting local developments in policing and immigration enforcement and demonstrates how Davidson County's 287(g) program intensified the effects of police contacts.

In her seminal article on "crimmigration," Juliet Stumpf argues that the convergence of immigration and criminal law is a new mode of social control designed to exclude and punish noncitizens, casting them as outsiders in the nation's imagined community.²⁸ The point of this exclusionary system is not to banish all

noncitizens but to include some as subordinate insiders whose presence is formally unsanctioned by law, even as it is tacitly accepted.²⁹ This subordinate inclusion, or “inclusion through exclusion,” ensures that the United States has a reserve of cheap and vulnerable laborers.³⁰ The immigration enforcement regime, which is unprecedented in size and scope, ensures that living in the United States with the ever-present *possibility* of deportation becomes its own form of punishment.³¹ This is a punishment that disproportionately falls on Latinos, since three-fourths of undocumented immigrants in the country are of Latino origin. Moreover, the presumption of “illegality” or “deportability” spills over to legal residents and US citizens of Latino descent.³²

Legal and justice systems *teach* people about their relationship with the state and their social standing in American society. As Charles Epp, Steven Maynard-Moody, and Donald Haider-Markel powerfully show in their book *Pulled Over*, there are two worlds of police stops. In one world are people for whom police stops are a minor inconvenience; these residents tend to be white. In the other world are people for whom police stops are intrusive examples of their repeated surveillance and legalized racial subordination; these residents tend to be black and Latino.³³ For those in the first group, encounters with the police teach residents that the police are respectful and fair. Since these stops are infrequent and they end quickly, (white) residents learn that they are full and equal members of American society. In contrast, for residents in the latter group, police stops reaffirm residents’ subordinate and second-class status. These ongoing and pervasive inquiries send a clear message that minority residents are second-class citizens, treated like potential criminals even when they have done nothing wrong.³⁴

While intentionally targeting minority drivers for stops is illegal, encouraging officers to make large numbers of stops for minor technical infractions is not. Across the country, this “race-neutral” policy produces racial disparities: for example, researchers consistently find that street stops disproportionately target black and Latino young men, producing racial disparities in arrests.³⁵ Police may claim that stopping people reduces crime, but researchers find little evidence that the mass deployment of police stops actually does so.³⁶ Moreover, they find that officers exaggerate and overstate the amount of contraband they seize during stops.³⁷ Officers may not *intend* to target motorists by race, but they inevitably do so because police often draw on implicit negative stereotypes about whom they regard with suspicion.³⁸ Thus, when officers are instructed to conduct stops *en masse*, they tend to stop minority residents of modest means.³⁹

These aggressive policing practices rob Latino immigrants of their liberty and mobility. Discussing this phenomena in Atlanta, Angela Stuesse and Mathew Coleman observe that “the risk involved in driving is simultaneously one that undocumented men and women cannot afford to take and one they must endure,” given that driving is a necessary part of daily life.⁴⁰ Indeed, a number of studies

identify a “driving to deportation” pipeline and argue that traffic enforcement plays a central role in depositing unauthorized immigrants into the deportation system. In an analysis of immigration enforcement in Wake County, North Carolina, researchers discovered that about half of immigration detainees originated from traffic stops.⁴¹ In her study of deportees, Tanya Golash-Boza reveals that the majority of respondents were deported after an initial encounter with law enforcement. For example, she finds that many Dominican and Jamaican deportees were arrested through aggressive policing tactics deployed as part of the War on Drugs in New York City.⁴²

In Nashville, Latino residents of various backgrounds described their neighborhoods as oversaturated with traffic enforcement. They believed traffic stops were driver’s license checks, directed at them because of the presumption that they were unauthorized and therefore unlicensed. After the state restricted driver’s license eligibility for unauthorized residents, lack of ID became a mark of suspicion that officers could use to justify making custodial arrests. For example, a police officer arrested José on the basis of his mistaken understanding of the ITIN card. As a result of this arrest, José was incarcerated for over a week and placed in deportation proceedings; since this mistake was “reasonable” it did not affect the officer. In Juana’s case, the emotionally agitated police officer announced that her consular identification card was insufficient because of the immigration screening program at the jail; the officer also berated Juana and her children, aggressively telling her to hug them goodbye since she would probably be deported. Later, this same officer lied in traffic court by claiming that the dashboard camera was not working. The Berry Hill Police Department steadfastly supported his decisions, describing his comportment as “humane” and within policy. Thus personal and vicarious experiences with the police and criminal justice institutions taught Latino residents that the system was unfair and arbitrary. This has important implications for procedural justice, legitimacy, and whether Latino immigrants can place their trust in police authorities. Indeed, it is uncertain if undocumented immigrants can see the American justice system as procedurally just when the cost of police contact is possible deportation, particularly for breaking laws that one cannot obey.

Arrests fueled the sheriff’s office immigration enforcement program, providing deputized officers with a supply of noncitizens whom they could interrogate and process for removal. It did not matter if immigrant residents were *actually* arrested or convicted of serious violations because local officials consistently expanded the boundaries of “criminality” to include them by suggesting that any noncitizen *arrested* by local police was a criminal who should be processed for removal. Of course, not only does this logic ignore the basic tenets of the American criminal justice system (the presumption of innocence until one is proven guilty), but it assumes that people like José, who are arrested because the officer is wrong, are also “criminals.” This suggests that the point of 287(g) was not actually to remove

people who pose a danger to Davidson County but to remove everyone whose removal could be justified. Part of this justification relied on constructing immigrants as “criminals.” The majority of noncitizen arrestees were Latino. In jail, these Latino immigrant arrestees were classified as “medium-security” inmates who were processed and treated according to these risk designations, further punishing “illegal” status.