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Matt Bakker PhD

*Department of Sociology, Marymount University, mbakker@marymount.edu*

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**The Detention-to-Deportation Pipeline and Local Politics of Resistance: A Case Study of Santa Clara County, California**

Matt Bakker  
Sociology Department, Marymount University  
2807 North Glebe Road  
Arlington, VA 22207  
mbakker@marymount.edu

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**ABSTRACT**

Deportation has reached record levels in the United States over the last decade. A major reason for this is that the federal government began using integrated databases and biometric surveillance technologies to identify deportable migrants whenever they come into contact with law enforcement officials. Implementing this enforcement technology in all jurisdictions across the country, the federal government undermined local inclusionary policies and brought state and local police into the work of federal immigration enforcement. This article examines efforts in one locality – Santa Clara County, California – to limit cooperation with this federal deportation machine. Drawing on documentary evidence and interviews with key actors, the article aims to identify the main factors accounting for Santa Clara County’s highly effective Civil Detainer Policy and draw out lessons for other localities intent on resisting forced participation in the federal government’s detention-to-deportation pipeline.

## **The detention-to-deportation pipeline and local politics of resistance: A case study of Santa Clara County, California**

Enforcement and deportation activity by United States immigration authorities began to grow substantially in the mid–2000s when “removals” (to use the bureaucratic vernacular) passed the 250,000 mark for the first time. While some observers suggest that this increase is simply a statistical artifact, the result of a change in how the government reports deportations,<sup>1</sup> the increase actually reflects a broader shift in federal enforcement practice (Christi, Pierce, and Bolter 2017). Beginning around 2005 there was a sharp rise in the application of formal deportation orders against migrants apprehended at or near the border, including the notable rise of “expedited removals” that are administered directly by immigration officers and proceed without judicial oversight. In the interior of the country, there was also a significant rise in formal removals. This trend continued throughout much of the Obama administration. Total formal removals (i.e., not including “voluntary departures” and “voluntary returns”) averaged over 300,000 from fiscal year 2009 through fiscal year 2014, up from just over 183,000 in fiscal year 2005 (TRAC n.d.-a). This sustained pattern of large-scale removal is what earned President Obama the derisive moniker of “deporter-in-chief” among advocates of migrant rights.

While there was a significant decline in removals toward the end of the Obama administration as Immigration and Customs Enforcement (ICE) implemented a new set of enforcement priorities and encouraged the use of prosecutorial discretion (outlined in Johnson 2014), deportation numbers appear poised to expand again under the Trump administration. In its most recent official statistics, ICE reports a 17% increase in removals from the interior between fiscal years 2017 and 2018 (ICE 2018:10). With just under 100,000 interior removals in fiscal year 2018, however, ICE is still only removing about half as many migrants from the interior as were removed in the early years of the Obama administration (ICE 2018). This may just be a matter of time, though, as the number of new deportation cases filed by ICE reached a record high of 334,000 in fiscal year 2018 (TRAC n.d.-b) and there was a 22% increase in the number of migrants held in immigration detention between September 2016 and December 2018 (TRAC 2019).

As the federal government again ramps up its deportation efforts, localities around the country are faced with the question of whether and how they should limit their role in this system that so often brutally tears apart families and incites fear in the broader migrant community (Hagan et al. 2011; Cardoso et al. 2015). This article examines local opposition to the federal government’s deportation agenda. Drawing upon documentary evidence and interviews with key actors, the paper presents a case study of one locality — Santa Clara County, California — that adopted a policy in 2011 limiting the local government’s collaboration with ICE’s deportation machinery. Santa Clara County was chosen strategically because this locality has been a national leader in seeking to limit local cooperation with federal deportation efforts — and because the policy it adopted has been quite effective in limiting the number of migrants funneled from local custody into the deportation system. Following an agency-oriented theoretical perspective (Smith 2001), the paper seeks to identify the key factors explaining how and why county officials adopted this important policy protecting the local migrant community. As a politically engaged sociologist, I hope my detailed analysis of the process leading to this policy in Santa Clara County during the earlier peak in deportation activity will resonate beyond the academy; thus, the article also aims to identify lessons that activists and policymakers in other localities might draw upon as they consider how to confront the federal government’s current interior enforcement efforts.

As discussed in the next section, the federal government's expansion and nationwide extension of its deportation activity in the late-2000s came as something of a surprise, as trends over the previous decade seemed to indicate a move towards the *localization* of immigration policy. Those localizing trends came to an abrupt end, however, when the federal government began implementing nationwide an integrated enforcement system using biometric databases and surveillance technologies to identify "removable aliens" taken into custody by state and local law enforcement agencies. This marked the federal government's reassertion of authority over immigration policy and enforcement. These biometric surveillance technologies were the foundation for the federal enforcement initiative known as the Secure Communities (S-Comm) program begun during the Bush administration and its short-lived successor, the Priority Enforcement Program (PEP), unveiled in the latter part of the Obama administration. This biometric enforcement system constitutes a detention-to-deportation pipeline connecting local policing directly to federal immigration enforcement, as any encounter with local law enforcement agents, no matter how routine, can lead migrants to be transferred into the federal immigration detention system and removed from the country.

Like other policies operating at the federal-local interface (Rodriguez 2013), the detention-to-deportation pipeline requires significant levels of coordination and cooperation if it is to be effective; the flip-side is also true: opponents of federal policies can undermine the effectiveness of these by undermining coordination and withholding local cooperation (Conlan 2017). In recent decades, migrant-friendly localities have challenged federal efforts in myriad ways, seeking to limit the local impact of enforcement policies as part of broader efforts to more fully incorporate migrants within local social, economic, and political life (Wells 2004; Varsanyi 2007; Walker and Leitner 2011; de Graauw 2014). This was facilitated by "state structural complexity" – the "multifaceted, ambiguous, and internally contradictory structure" of the federal government system in the United States (Wells 2004: 1311). According to Wells (2004), state structural complexity enabled local actors in migrant-friendly communities to pressure federal officials into interpreting their enforcement mandate in contextually-specific ways that protected migrants' rights at the local level. The current federal enforcement initiatives built upon highly integrated biometric surveillance technologies and routinized information sharing among law enforcement agencies across geopolitical scales have undermined these earlier settlements. Today, confronted by the federal reassertion of authority over immigration enforcement, migrant-friendly local governments must strategize anew how they can take advantage of state-structural complexity to minimize the impact of federal deportation policies within their jurisdiction.

In this context, some localities have found new ways to challenge federal enforcement policies operating through their jails and law-enforcement officials. This article presents a case study of one of those localities: Santa Clara County, California. Tracing the political process leading to the adoption of the county's "Civil Detainer Policy" in 2011, the article seeks to illustrate how this suburban county became a national leader in challenging the detention-to-deportation pipeline and to identify what other localities can learn from its example.

### **THE SHIFTING CONTOURS OF IMMIGRATION ENFORCEMENT: FROM LOCALIZATION TO THE FEDERAL REASSERTION OF AUTHORITY**

The current involvement of local law enforcement in federal immigration policing – and the possibilities for local communities to resist this – must be understood within a broader historical context. For most of the twentieth century, legal traditions and judicial interpretations in the United States sharply delineated the jurisdictions and immigration-related competencies of political

authorities at different scales of government. A clear division of labor emerged whereby federal authorities were tasked with determining who could enter the nation's territory and its polity while state/local officials dealt exclusively with integrating those who were allowed in. However, this clean demarcation of authority between federal and state/local governments began to blur by the mid-1990s, ushering in a new period involving the "localization" of immigration policy formation, implementation, and enforcement (Varsanyi 2008:888-90).

Traditionally, the federal Immigration and Nationality Act had been understood as a "complex and comprehensive regulatory scheme" and, thus, the exclusive purview of federal enforcement officials (Wells, 2004:1316). State and local involvement in enforcement took off in the aftermath of 9/11 (Coleman 2007). This was fueled in part by shifting legal opinions within the Bush administration's Department of Justice (DOJ). Reversing earlier opinions within DOJ, that agency's Office of Legal Counsel penned a memorandum in early 2002 suggesting that state/local authorities had "inherent authority" to enforce federal immigration laws. However, the origins of localization can be traced back even further, to immigration law reforms in the mid-1980s or 1990s (Gulasekaram and Ramakrishan 2015). Federal statutes approved in 1996 gave state and local police the explicit authority to enforce federal immigration law under certain circumstances. The Antiterrorism and Effective Death Penalty Act of 1996 expressly granted state and local law enforcement officials the authority to arrest migrants previously deported because of a felony conviction who had unlawfully re-entered the country (codified at 8 USC 1252(c)); with this federal statute, local law enforcers came to play an important role in the increasing "criminalization" of migration and migrant communities (Macías-Rojas 2016). In addition, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 reformed federal immigration law to allow law enforcement officials from state and local government agencies to act as immigration officers and enforce the federal law's civil provisions, upon written agreement with the federal government. The result of this reform, commonly referred to as the 287(g) program, has been to increase dramatically the "direct involvement of non-federal law enforcement officers in immigration control" (Coleman and Kocher 2011:230; Coleman 2012; Armenta 2012, 2017). While section 287(g) was little used in the first decade after the passage of IIRIRA (Délano Alonzo 2007), by 2010 some sixty-nine agreements had been enacted between federal and state/local authorities, granting the latter expanded powers to investigate individuals' immigration status (DHS/OIG 2011).

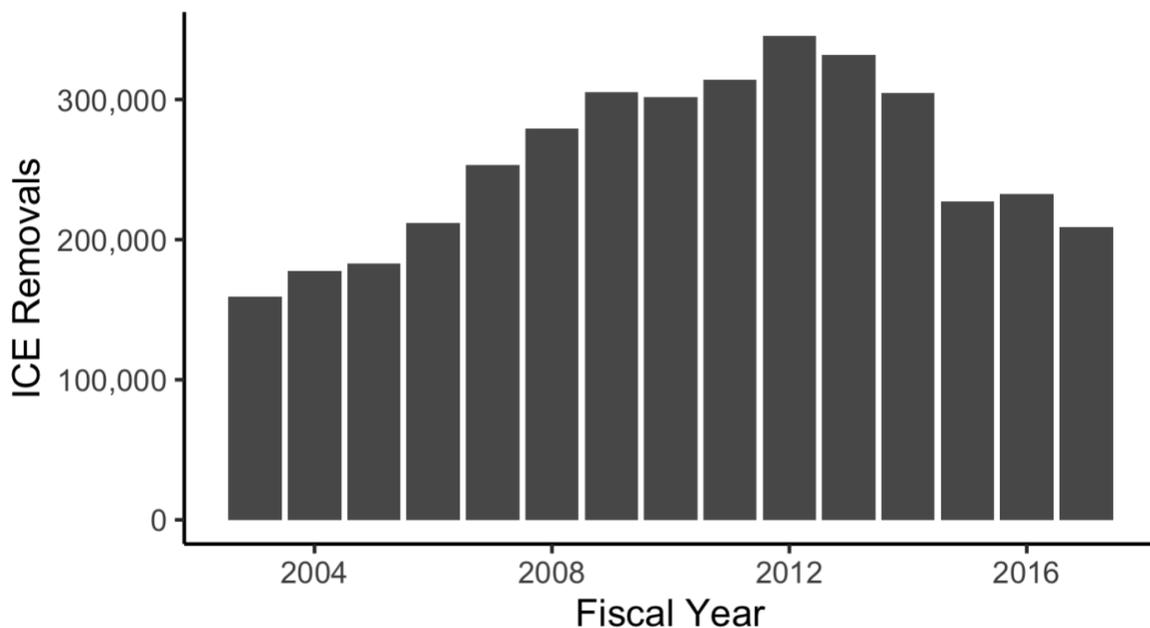
When the federal government's Secure Communities program became fully operational in 2013, the 287(g) program became somewhat superfluous. S-Comm constituted a significant expansion of the state/local role in enforcement. The operation of the 287(g) program had been restricted to those state/local law enforcement agencies that voluntarily sought out the authority to enforce federal immigration law and entered a Memorandum of Agreement with ICE to do so. S-Comm, by contrast, was eventually implemented in every county across the country.

With S-Comm, ICE put in place nationwide an integrated surveillance apparatus involving biometric scanners, digital information transmission, and inter-operable databases to scrutinize migrants and identify those in local custody who the federal government deemed "subject to removal." Rolled out in the final years of the Bush administration, this "biometric interoperability" project was operational nationwide by early 2013. This meant that even fingerprints drawn from detainees in inclusionary, pro-migrant localities would be run against the Department of Homeland Security's IDENT database to check for immigration violations and potential grounds for removal from the country. Having integrated all counties in the country within this surveillance apparatus, from the perspective of inclusionary localities, S-Comm signified the federal reassertion of

authority over immigration enforcement, seemingly putting an end to the previous era of localized and contextually-specific enforcement practices negotiated between government officials across the federal-local divide.

From its very beginnings, S-Comm was the object of consternation from many quarters, including migrant rights advocates, immigration lawyers, state and local governments, law enforcement officials, and even some federal legislators. Across this spectrum, the program was criticized because it did not appear to live up to its stated objectives (Preston 2011; Waslin 2011), as the early evidence indicated that, despite the claim that it was narrowly targeted at “criminal aliens,” most of those caught up in its detention and deportation dragnet had never been charged with, let alone convicted of, serious criminal activity. This criticism eventually made its mark. Responding to growing pressure, in late 2014 the Secretary of the Department of Homeland Security (DHS), Jeh Johnson, announced that S-Comm was being shuttered and would be replaced by a new “Priority Enforcement Program” (PEP). Recognizing that “DHS ... [could not] respond to all immigration violations or remove all persons illegally in the United States,” that program redefined ICE’s enforcement priorities to focus primarily on those migrants deemed “threat[s] to national security, border security, and public safety” or otherwise “criminal” (Johnson 2014, 2–4). With PEP in place, formal removals declined sharply beginning in 2015 (see Figure 1).

**Figure 1: The Rise and (Brief?) Fall of Deportations from the US**



Source: Author's calculation of all ICE removals from records gathered by Transactional Records Access Clearinghouse (TRAC) at Syracuse University Available at: <https://trac.syr.edu/phptools/immigration/remove/>  
 Note: The calculation of removals excludes voluntary departures and voluntary returns.

This policy shift sought to bolster the legitimacy of the federal government's interior enforcement efforts by more closely aligning enforcement priorities with stated goals; that is, the introduction of PEP was a direct response to critics who attacked the program because it was not going after "the worst of the worst," as promised. By emphasizing enforcement priorities, the move to PEP encouraged activists and advocates to embrace a "pragmatic compromise" (Rodriguez 2017:527) and accept that some migrants, tagged with the "criminal" label, deserved to be permanently excluded from the nation, their communities, and their families. This policy move further reinforced what the political theorist Alfonso Gonzales terms an "anti-migrant hegemony" involving widespread acceptance and internalization of the criminalization of migrants and the need for novel, authoritarian solutions to the "immigration crisis" (Gonzales 2013:5). The shift of the discursive emphasis onto "bad," "criminal aliens" solidified a conceptual distinction between "good" and "bad" migrants (ibid.) and constituted a daunting challenge for movements aimed to eliminate local cooperation with the federal deportation agenda.

Given the strength of the anti-migrant hegemony, in recent years, even pro-migrant social movements have sometimes accepted and reinforced the terms of this good migrant-bad migrant binary. For instance, early in its history, the "DREAMers" movement was able to generate support and sympathy for undocumented youth by presenting a "frame of migrant legal deservingness" (Chauvin and Garcés-Mascareñas 2014) built around assertions that these young migrants came to the United States "through no fault of their own" and that they had been fully incorporated within American social and educational institutions, making them not just Americans but "the best and the brightest" (Nicholls 2014). DREAMers are not alone in seeking to portray themselves on the right side of the good migrant-bad migrant binary; migrants regularly deploy strategies to present themselves as "less illegal" and make the case that they are deserving of rights and recognition because of their good behavior (Chauvin and Garcés-Mascareñas 2014). Employing strategies like this, which are akin to what Yukich (2013) terms a "model movement strategy," might be useful in developing sympathy for particularly appealing migrant groups, but they risk undermining the claims to rights, recognition, and deservingness from other undocumented migrants who are unable to boast of extraordinary academic success, unparalleled economic potential, or clean criminal records.

While the dominance of this good migrant-bad migrant binary is a significant obstacle for movements struggling to eliminate local cooperation with federal deportation policies, there are discursive openings for movements to challenge the broad criminalization of the undocumented and fight for the rights and recognition of *all* migrants — even those with a criminal record, as Schwartz (2016) emphasizes in his analysis of later developments in the DREAMer movement (for a similar account about transformations in the DREAMer movement, see Seif 2016). As we will see below, this is what activists did in the Santa Clara County case by introducing a novel public safety frame that highlighted the need for policies offering safety to and protecting the fundamental rights of all the county's residents.

Another effect of the shift to PEP was to deflect attention away from the underlying technological infrastructure that S-Comm put into place — the assemblage of optical scanners, biometric databases, and information sharing across the federal-state/local divide. As attention turned to the recalibration of priorities and ensuring that ICE (at least temporarily) stayed faithful to the program's stated goals, this technological infrastructure remained in place. No matter how it is configured, as S-Comm or PEP,<sup>2</sup> this biometric enforcement system relies upon the cooperation of state and local governments and law enforcement agencies in both submitting fingerprints to federal authorities and transferring custody of migrants deemed "removable" by

ICE agents. This system of biometric surveillance technologies and data sharing across all levels of government clearly resonates with the dreams and aspirations of anti-migrant politicians and policymakers like Kris Kobach, who envision involving the hundreds of thousands of law enforcement officers patrolling local communities in immigration enforcement, making them into “quintessential force multipliers” for an intensified deportation project (Kobach 2005). But S-Comm’s dependence on the cooperation of state and local authorities also constitutes its major vulnerability. When local actors recognize and exploit the program’s vulnerabilities — effectively challenging the federal reassertion of authority over immigration enforcement — they can stunt the local effects of the federal government’s detention-to-deportation pipeline. The following case study of Santa Clara County, California illustrates how this can happen.

### **CONTESTING THE FEDERAL REASSERTION OF AUTHORITY**

Santa Clara County is a large suburban county in the South Bay region of Northern California. Located in the very heart of Silicon Valley, the county’s economy centers around the high-tech “information” sector, manufacturing, and services (Auerhahn, et al. 2012). The county is home to over 1.9 million people, nearly 39% of whom are foreign-born — the highest percentage of all California counties (County of Santa Clara 2019). This migrant population is not only large, but also diverse with significant concentrations of migrants from Mexico (7.3% of the county population), India (6.2%), China (6.0%), Vietnam (5.5%), and the Philippines (3.1%), among others (United States Census Bureau 2019).

Given the significant presence and importance of migrants within the economic and social structure of Santa Clara County, local governments have consistently adopted migrant-friendly and inclusionary policies over recent decades. Santa Clara County has a long-standing and well-institutionalized set of “immigrant integration” policies that, among other things, provide direct services to the migrant community, promote citizenship acquisition, and help develop cultural competency across the region (Pastor, Rosner, and Tran 2016). In addition, the county Board of Supervisors adopted a local membership policy in the early 2000s recognizing the Mexican government’s *matrícula consular* ID card as a valid form of identification for use in encounters with any county agency (Bakker 2011). The city of San José, which lies within the county, has also adopted a number of inclusionary positions and policies, including a 2010 resolution denouncing anti-migrant legislation recently approved in the State of Arizona (City of San José 2010).

As details of the S-Comm program started to surface and its implications for migrant communities became clear, local activists in Santa Clara County campaigned for the local government to reject the implementation of the program within its jurisdiction. In the following pages, I explain why Santa Clara County officials initially opposed S-Comm, how they came to resist their forced cooperation with the program, and why they could sustain their non-cooperation policy even in the face of opposition from local law enforcement officials. In short, County officials opposed S-Comm because they linked it to other odious forms of social injustice and they saw it as federal government overreach into local community affairs. County officials adopted a policy of total non-cooperation with ICE detainer requests because they were angered that ICE had misrepresented the program as voluntary and they refused to expend local resources subsidizing a federal program. Their policy withstood attack from law enforcement officials because the local jail facility was controlled by members of the elected Board of Supervisors.

*Refusing the transfer of custody: The Civil Detainer Policy in Santa Clara County*

Early in 2010, Santa Clara County got word that S-Comm had been “activated” without the consent of local authorities, which generated significant concern. Following closely on the heels of controversies over SB 1070 (the “show me your papers” law in Arizona) there was an immediate sense that the County did not want to participate in S-Comm. An activist campaign emerged bringing together a diverse coalition of migrant-rights advocates, faith-based organizations, and groups working on criminal justice issues. Many of these organizations had worked together confronting racial profiling in the City of San José in the months prior to the implementation of S-Comm (interview with A.S., December 21, 2012). In this context — with exclusionary, anti-migrant politics on the rise across the country and local movements challenging police brutality and racial profiling within the county — the Board of Supervisors passed a resolution by June 2010 affirming the separation between county activities and federal immigration enforcement. This, however, did not stop the detention-to-deportation pipeline from operating in the County. In 2010 alone, ICE removed 1,146 migrants from Santa Clara County’s local detention facilities (TRAC n.d.-c). In an attempt to counter this affront to the local migrant community, the County government would soon become a national leader among localities seeking to “opt-out” of S-Comm and thereby limit the consequences of entangling local policing with federal immigration enforcement (Waslin 2010).

On September 28, 2010, in a unanimous vote, the Board of Supervisors instructed its staff to communicate with ICE and do whatever necessary to opt-out of the S-Comm program. In their public deliberations before the vote, supervisors articulated their reasons for opposing S-Comm. Several of them saw parallels between this program and earlier instances of social injustice done to marginalized peoples in the United States and in the County: from Japanese internment to discrimination against sexual minorities. These supervisors came at the issues from different angles, but the common denominator was that they each expressed a desire for Santa Clara County to be an inclusive community that would not accept formal immigration status — or sexual orientation or race/ethnicity/national origin — as a legitimate basis for excluding people from the community. A staffer for Supervisor Shirakawa described for me what she saw as the reason for his opposition to S-Comm: “anything that is unjust, unfair ... you’re after someone because they’re brown, he just won’t tolerate it at all” (interview with A.S., December 21, 2012).

Another supervisor’s powerful statement made a case for membership and recognition for all community residents, regardless of formal legal/citizenship status. The demonization of migrants and its impacts on the local community — particularly the threat that it would cause migrants to fear interactions with any government officials — reminded him of the early days of the AIDS epidemic when:

There was a lot of talk of quarantine, of camps ... really tremendous retribution against anybody who might be carrying the virus. There was a great amount of fear, certainly in the gay community but in other communities as well. Those kind of policies and those kind of words really meant that everything went underground, that many people were afraid to get the type of medical care that they needed, very fearful of having any sort of interaction with the government even though their health was really at stake. I see what we’re trying to do here as also to allow people to have the freedom ... to move around, to be able to get government services .... and not feel that they’re under some sort of government control and that if they let themselves be known that there will be some sort of penalty to be paid for that. One of the wonderful things about this country is that we all have the freedom to move

about, to be part of our community, part of our society. And anything that restricts that is something that we should all be fighting against (Supervisor Ken Yeager, September 28, 2010).<sup>3</sup>

Another reason why the supervisors opposed S-Comm was because they interpreted it as a form of federal meddling in local affairs. One supervisor recounted his visit to Arizona a few weeks prior with a local church-based migrant advocacy organization. He walked away from that experience deeply concerned that federal actions were hurting local communities by over-zealously enforcing the terms of what was widely recognized as a “broken immigration system.” He linked his opposition to S-Comm to the need for fundamental reform to the nation’s immigration laws:

[Once reform happens] then I think you get a lot more sympathy from members of Boards of Supervisors in counties like this. But until that happens I don’t want to cooperate any more than we absolutely have to .... If we don’t have to do this, I don’t want to do this. And I think that’s a way to keep pressure on the federal government, to let them know that you’re not going to get cooperation until you take up the tough task of creating a just immigration law (Supervisor David Cortese, September 28, 2010).

Following the Board’s vote, the County’s legal counsel began opt-out negotiations with ICE. However, the agency “backtracked on its written word and ... made [it] clear that it [would] not allow Santa Clara County – or any local government – to opt-out of the program” (County of Santa Clara, County Counsel 2010, 3). This was a key moment. It prompted Santa Clara County officials — both the elected supervisors and the administrative staff — to see ICE as a rogue agency that refused to play fair with its local “partners.” This made clear that the era of contextually-specific enforcement policy arrived at through negotiations between regional officials in the federal immigration agency and their local counterparts (Wells 2004) was now over. With S-Comm, County officials came to recognize, the negotiated understanding of enforcement policies and priorities at the local level had given way to a technology-driven enforcement system that seemed to eliminate all forms of discretion, as one County staffer explained in an interview:

Technology has become the answer to everything, not people’s discretion. So you’ve got this fingerprint happens and it goes zoom, zoom, zoom, you know, from locality to locality .... I mean, it’s a new world of technology that is like, the people are out of this, the technology is going to tell us who we want and who we don’t want (Interview with A.S., December 21, 2012).

The County was undeterred by ICE’s claim that opting out was no longer a possibility, that their local government had no voice over the operation of the federal detention-to-deportation pipeline in their jurisdiction. Here in the high-tech capital of Silicon Valley, the local government pushed back against this technology-driven, integrated biometric surveillance system that threatened local discretion. Realizing that ICE had misrepresented S-Comm as voluntary, local officials came to see their federal counterparts as deceitful and duplicitous, which fueled a determination to find other avenues to limit cooperation and keep their community safe from the encroaching deportation machinery.

County Counsel presented the Board with a number of options based on the staff's assessment of key vulnerabilities within the S-Comm program (County of Santa Clara, County Counsel 2010). One of these important vulnerabilities related to the process of transferring detainees into federal custody from the local jail. To effectuate this transfer of custody, ICE sent a "detainer" form to local jails identifying a "removable" migrant and requesting that the jail hold them for up to 48 hours beyond the time they would normally be released so that ICE could arrange to take custody. County Counsel determined that these ICE detainers were simply *voluntary* requests for cooperation, not legally binding arrest warrants — a fact the agency would itself eventually acknowledge (Department of Homeland Security 2014).

In hopes of exploiting this vulnerability, the Board of Supervisors created a Task Force on Civil Detainers, that worked for months to explore public policy options. Its work was driven by the County's conviction that it had the right to determine whether or not to cooperate in federal policy initiatives. The outcome of the Task Force's deliberations was a proposal for a Civil Detainer Policy that would honor *some but not all* ICE detainers — only those placed on adult migrants who had been convicted of a serious or violent felony within the previous 10 years, or had been released within the last 5 years (County of Santa Clara 2011). Given the mixed composition of the Task Force — with both political and law enforcement members — this emerged as a compromise solution: the political leaders agreed to expend unreimbursed funds to support federal immigration enforcement, but only to protect public safety by cooperating in the removal of what were represented as "dangerous criminal aliens."

This compromise was, however, inconsistent with the demands put forward by the local activist coalition pressuring the County to stop cooperating with ICE. After long and arduous debates, that coalition had settled on a different framing of "public safety" — safety for the entire public, including *all* migrants. This expanded public safety frame represented a departure from the frame designed by some of the national organizing networks and used in other campaigns around the country (Interview with C.D., December 21, 2012). The coalition adopted this framing because criminal justice activists in the coalition voiced their opposition to a framing strategy that would accept the terms of the good migrant - bad migrant binary and its distinction between law-abiding migrants and "criminal" aliens. Challenging the criminalization of migrants at the heart of the anti-migrant hegemony, these criminal justice activists pressured others in the coalition to abandon the position that migrants marked as "criminal" deserved banishment:

If we're going to be part of this big coalition, that's not the messaging we can go for because we are really talking about our clients. You're talking about our youth, you're talking about people who get charged with, you know, even if it's a DUI or a very minor misdemeanor, you're essentially saying they are not worthy of staying, or they could be deported (Interview with J.S., December 19, 2012).

According to one of the activists, the coalition tried to avoid "the slippery slope of '[which] crimes are deportable and which are not?'" and ultimately decided that they were "just not going to get into that conversation" (Interview with C.D., December 21, 2012). The County Supervisors came to support the inclusive framing of "public safety" put forward by the activist coalition, even if the reasons supervisors gave for doing this, at least the ones they voiced publicly, appeared more pragmatic than principled.

On September 7, 2011, the County's Public Safety and Justice Committee met to consider the recommendations of the Task Force on Civil Detainers. Several members of the coalition gave

testimony during the Committee hearing. Apparently resigned to the fact that the County's policy would protect *some but not all migrants*, activists presented a range of different arguments encouraging the County to move forward with the Task Force recommendations as a means of limiting cooperation with ICE. Representatives from legal advocacy organizations argued that the recommended policy would help the County to achieve its goal of opting out of S-Comm and that it should be accepted because it represented the consensus of the Task Force's policy experts. Community organizations supported the recommendation because the policy could help to keep working families intact and, in a time of limited local resources, it represented a "sane and reasonable public safety framework ... that limits the County's responsibilities to essentially do the federal government's job" (Testimony of Raj Jayadev, September 7, 2011).

While they were generally supportive of the recommendation, many of the activists did express concern that the Task Force proposal would permit County cooperation with ICE when dealing with certain "criminal" migrants. One activist described the coalition's concerns in the following terms:

We as the coalition are supportive of the recommendation of the Civil Detainer Task Force and we have our concerns. One of our concerns is with detaining people who have previous convictions for serious and violent felonies. Those people have already served their time and people do rehabilitate themselves. Using previous convictions is basically double jeopardy and this is not okay. If people have served their time, it shouldn't be held against them, unless they have been charged and convicted of a [new] crime (Testimony of Donna Wallach, September 7, 2011).

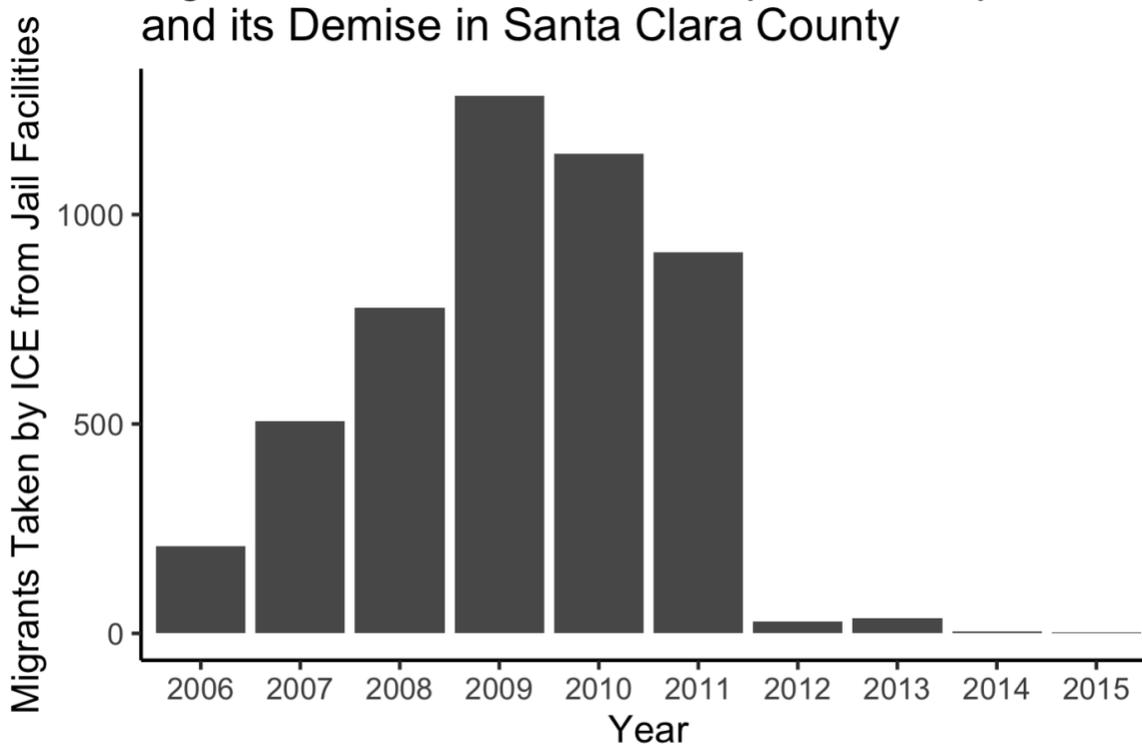
In a surprising turn of events, Supervisor George Shirakawa — who chaired the Public Safety and Justice Committee — demurred consideration of the Task Force recommendations. Shirakawa explained that earlier in the day the Board of Commissioners in Cook County, Illinois passed an ordinance instructing their County Sheriff to "decline ICE detainer requests unless there is a written agreement with the federal government" guaranteeing full reimbursement for all cost incurred by the County in honoring the detainees (Cook County 2011). After learning of this, Shirakawa decided to postpone the Committee's decision so that the Supervisors would have more time to "digest" the Cook County developments (County of Santa Clara, Public Safety and Justice Committee 2011).

Following Cook County's lead, Shirakawa would soon present an alternative to the Task Force's policy compromise of responding to some but not all ICE detainer requests. Much more in line with the approach advocated by the activist coalition, Shirakawa's alternative policy mandated that the County decline all ICE detainer requests. Unreimbursed costs would be an important piece of the political rationale supporting Shirakawa's alternative policy. County officials soon realized just how costly it would be to administer a policy honoring some but not all ICE detainer requests; the Department of Correction calculated that it would require up to three additional full-time employees to administer the policy as proposed by the Detainer Task Force (County of Santa Clara, County Counsel 2011, 2).

In presenting his new policy to his fellow supervisors, Shirakawa used this as a central talking point, saying "I ask the Board to support this policy so that we don't spend one more dime doing ICE's job... We're not gonna do ICE's job and we shouldn't have to" (Supervisor George Shirakawa, October 18, 2011). Ultimately, the Board voted by a slim majority to approve Shirakawa's alternative policy. Under this "Civil Detainer Policy" (Santa Clara County Code

3.54), still in effect as of this writing, Santa Clara County would not honor any ICE detainer requests unless and until the County and the federal government reached written agreement stipulating that the federal government would reimburse its county-level counterpart for all costs associated with their voluntary compliance with these requests.<sup>4</sup> Since ICE has been unwilling to reimburse its local “partners” for the full cost of detaining migrants on detainers, the policy has been extremely effective; as seen in Figure 2, the detention-to-deportation pipeline was essentially shut down in Santa Clara County following the adoption of the policy: the number of migrants taken into ICE custody from Santa Clara County detention facilities fell from 910 in 2011 to 28 in 2012 and dropped to only 4 by 2014.

**Figure 2: The Detention-to-Deportation Pipeline and its Demise in Santa Clara County**



Source: Author's calculation of outcome of ICE I-247 detainers from records gathered by Transactional Records Access Clearinghouse at Syracuse University. Available at: <https://trac.syr.edu/phptools/immigration/detainhistory/>

The Civil Detainer Policy was politically possible in Santa Clara County, in no small measure, because the Board of Supervisors controlled the day-to-day operations of the jail — through its Department of Corrections. This helped overcome one of the primary challenges for those who oppose this federal enforcement initiative: the fact that it builds from pre-existing information sharing among law-enforcement agencies across the federal-local scales of political authority. By containing this initiative within the realm of the law-enforcement community, drawing on the submission of biometric data to the FBI that had already become a routinized

practice for local law enforcers, the designers of S-Comm largely shielded the program from the challenges and opposition that would arise in pro-migrant, inclusionary locales.

Statutory control over the jail provided the Board of Supervisors significant leverage to limit the County's role in the detention-to-deportation pipeline, even though local law-enforcement leaders — including the County's independently elected Sheriff and District Attorney — favored a collaboration with their fellow law-enforcement agencies. These two figures would return the issue to the public agenda in late 2012 — at a moment when the Civil Detainer Policy's main architect, Supervisor Shirakawa, was embroiled in a scandal related to misuse of public funds. If they got their way, the County's policy would faithfully reflect the good migrant - bad migrant binary, willingly handing migrant residents over to ICE if they had been convicted of certain crimes or otherwise been labeled as a dangerous criminal. The editorial page of the local newspaper, *The San José Mercury News*, supported the policy changes that the District Attorney proposed, elaborating a long list of unwelcome migrants that should be exiled permanently from the County:

District Attorney Jeff Rosen is asking the supervisors to revise the policy to honor ICE detention requests for those who have a history of violent or serious crimes, gang members, anyone convicted of a felony other than drug use or possession and DUI offenders who have injured someone or have multiple convictions. [Our] county doesn't need a more lenient policy on immigration holds than the one immigrant rights advocates have been pushing for all of California. The supervisors should revise the county's rules (San José Mercury News, December 20, 2012).

Despite this onslaught of pressure from law enforcement and media elites, the policy held. A proposal to water-down the County's Civil Detainer Policy was defeated, three votes to two, by the Board of Supervisors on November 5, 2013. And, despite the County repeatedly facing pressure to “reconsider” its Civil Detainer Policy (Wadsworth 2015; Vo 2019), the extraordinarily effective policy remains in place today.

In no small measure, the ability of the policy of non-cooperation to hold even in the face of opposition from law-enforcement officials and media elites can be attributed to the Board of Supervisor's maintaining policy control over the local jail facilities. In other counties law enforcement officials cooperated quite naturally with ICE when requested because they viewed each other as colleagues. According to one interviewee, this made it difficult to advocate for denying ICE's voluntary requests for cooperation: “[True] it's not a warrant, it's a request. But it's also the same thing as if we're colleagues and you ask me, ‘hey, can I borrow something?’ ... ‘could you give me a pencil or something?’ What am I going to say, ‘no’?” (interview with T.R., December 11, 2012). As they fell outside the fraternity of law enforcement, this seemingly natural willingness to cooperate did not apply to the County's political leaders and administrative staff. Since they had ultimate decision-making authority, and a deep distrust of ICE officials, the Board of Supervisors maintained its policy position and refused to cooperate with ICE despite the opposition from law enforcement leaders and media elites.

The ability of the policy to hold can also be explained in part by the activist coalition's strategic decision to pursue the policy without seeking media publicity, in an explicit attempt to neutralize any anti-migrant opposition (interview with J.S., December 19, 2012). When the policy came under attack by law enforcement leaders, there was not much of a political base vocalizing opposition to the policy and pressuring the supervisors to modify it. But, even the members of the

activist coalition understood that, sooner or later, some highly publicized crime committed by an undocumented migrant would put serious pressure on the policy. This came in 2019 when an undocumented migrant murdered a young woman in the county; this heinous crime prompted the County to revisit its policy and consider revision. However, rather than weaken the policy, ultimately the Board of Supervisors voted unanimously to strengthen the non-cooperation policy.<sup>5</sup> Following the decision, in a press release put out by the County, Supervisor Dave Cortese expressed satisfaction that the County Counsel's review of the policy "gives us documentation that our policies do uphold due process rights and strive to keep our communities safe" (County of Santa Clara 2019). Importantly, the press release also noted that the majority of residents who spoke at the public hearing on the matter were not speaking in favor of weakening the Civil Detainer Policy, but instead "expressed concerns over the fear that proposed changes in policies had ignited in immigrant communities, making them hesitant to report a crime to police, send their children to school or apply for assistance programs" (ibid.).

With the policy on the books for several years and having withstood multiple attacks, it appears that the expansive public safety frame put forward by the activist coalition has taken hold; in this most recent controversy, a critical mass of both public officials and county residents were still speaking not about the dangers of "bad migrants", but instead about the need to protect the fundamental rights of all residents of the county, regardless of their formal immigration status.

## DISCUSSION AND CONCLUSIONS

The case of Santa Clara County's Civil Detainer Policy demonstrates that localities still retain significant leeway to limit their participation in the detention-to-deportation pipeline, even if their room for maneuver has clearly contracted with the federal reassertion of authority over immigration enforcement. These opportunities exist because, given the multi-scalar structure of government in the United States, the federal government relies upon the voluntary cooperation of state and local governments to both identify and gain custody of "removable" migrants. Recognizing that the detainer requests sent by ICE were purely voluntary, Santa Clara County identified an important vulnerability in the enforcement program put in place nationwide by the federal government; taking advantage of this vulnerability, the County's Civil Detainer Policy effectively put a halt to the transfer of migrant detainees into federal custody and deadened the impact of the detention-to-deportation pipeline at the local level.

In analyzing the policy process leading to the Civil Detainer Policy, several factors that made this possible in Santa Clara County need emphasizing as these can offer important lessons for activists and political leaders interested in limiting cooperation with the detention-to-deportation pipeline in other localities. First, key county decision-makers came from and represented marginalized communities and they interpreted the federal government's interior enforcement efforts through a social justice lens. Some recent quantitative scholarship generalizing about the factors influencing local cooperation and deportation rates under S-Comm emphasizes the importance of broad structural/demographic characteristics such as the amount of a locality's policing budget (Jaeger 2016) or the relative size of its Hispanic population (Pedroza 2019) in determining the extent of local cooperation with the federal detention-to-deportation pipeline. In contrast, this case study emphasizes the political/ideological orientation and commitment to inclusive public policies of both local activists and political/administrative leaders as the key to Santa Clara County's determined non-cooperation.

While Santa Clara County may be a political "outlier" (to use the quantitative lingo), the present case study shows just how important a justice-oriented, inclusionary political ideology is

for those localities seeking to resist the detention-to-deportation pipeline. County leaders that came from and represented marginalized communities were able to identify enforcement practices as part of a long lineage of historical injustices and stand up against these contemporary practices of state violence. The confluence of these various political-bureaucratic leaders, as one of my interviewees put it, was like “fate”: you had one supervisor of mixed Mexican/Japanese heritage who saw contemporary immigration enforcement as part of a long history of unjust, racialized state practices harming communities of color, much like the internment practices that targeted Japanese migrant communities during WWII; another supervisor — the first openly-gay supervisor in the County’s history — connected the federal government’s contemporary enforcement practices to his recollections about the dehumanizing responses to the early years of HIV/AIDS epidemic (interview with A.S., December 21, 2012). In addition, the County Counsel’s office was headed by “the most brilliant, and first Latino County Counsel” Miguel Márquez who managed a “crackerjack team of former ACLU fellows” (interview with A.S., December 21, 2012). In this interviewee’s mind, this constituted “the ultimate pairing”: “You had [Supervisor Shirakawa] on the political/policy side just making these clear, clear [statements] just ‘this is the way I want to go’; and then you had this amazing legal team saying ‘this is how you do it.’ So having those two together was just amazing” (interview with A.S., December 21, 2012). This highlights the importance of political representatives who reflect the communities they serve and are committed to challenging, rather than reproducing, the criminalizing narratives targeted at migrants and other marginalized communities.

A second important factor is that, in their initial foray into negotiations with representatives from DHS/ICE, county officials realized that their federal counterparts had willfully misrepresented the S-Comm program, particularly the fact that DHS and the FBI planned to implement the data-sharing program whether localities approved of it or not. As a result, many county officials came to see these federal agencies as opponents rather than as partners. This was key in disrupting the political logic of inter-governmental cooperation undergirding this nationwide enforcement project. Having political leaders and administrative staff come to see that ICE was not a “colleague” but a federal agency pursuing an agenda contrary to local interests and values was central to the political success of the Civil Detainer Policy.

Third, county officials firmly held to a politics of local autonomy, arguing that they should not be forced to implement a federal policy within their jurisdiction. This was further bolstered by a fiscal argument, claiming that participation in the S-Comm program entailed significant unreimbursed costs that the County was unwilling and unable to bear. In part, this can be understood as reflecting Supervisor Shirakawa’s political acumen, his ability to stitch together a Board majority supporting non-cooperation. If speaking the language of local autonomy can bring on board more conservative elements concerned about federal intrusion in local affairs, this should be seen as a valuable talking point. But, in fact, this may also signal that appeals to local autonomy are not the sole domain of the political right. While this perspective is often associated with exclusionary political forces resisting federal enforcement of civil rights protections, localities committed to inclusionary, migrant-friendly policies might increasingly use claims to local autonomy as a form of “left” or “progressive” federalism (Rosen 2016; Gerken and Revesz 2017)

While the Santa Clara County case offers important lessons for other communities, it must be acknowledged that the political climate has changed with the federal government’s escalating attacks on so-called “sanctuary” policies. In this new political environment, inclusionary localities may need to re-work the political justifications offered for their policies of non-cooperation. Under Trump, the federal government has adopted a new tack in confronting the non-cooperation policies

that made ICE's enforcement agenda more difficult: it now aims to make compliance with ICE detainer requests an eligibility requirement for certain lucrative law enforcement grants handed out by the Department of Justice (DOJ 2017a, 2017b).

With this new move, DOJ is apparently calling the bluff of local communities that would justify non-cooperation on economic grounds. Essentially, DOJ is asking "how much money would it take to buy you off, to get you to give up on your commitment to justice for the migrant community?" Moving forward, policies of non-cooperation are going to have to be even more firmly grounded in justice principles, rather than economic rationales. If they want to continue their inclusionary policies, local activists and political leaders will have to justify their non-cooperation policies on moral-political grounds, rejecting as a matter of principle the enforcement rhetoric that separates "good" migrants from "bad" ones. In fact, non-cooperation policies may have to be defended even in the face of significant economic sanctions from the federal government.

As the Trump administration continues its anti-migrant political agenda, struggles for migrant justice will have to become more expansive and forceful. It is no longer feasible for activists and political leaders to keep their pro-migrant policies on the down low in hopes of shielding these policies from the hysterics of what Gonzales terms "the anti-migrant bloc" (Gonzales 2013). This type of under-the-radar politics stunts the truly transformative potential of a pro-migrant politics that would express respect for all those who are resident within our communities, regardless of their migrant status or criminal record. In light of the resurgent nationalism, xenophobia, and racism unleashed in recent years, migrant rights activists can no longer cower in the face of anti-migrant bigots. A truly transformative, pro-migrant politics will have to express its vision of radical inclusiveness loudly and proudly, directly challenging both nativism and the good migrant-bad migrant binary, and demanding respect, recognition, and rights for *all* who are physically present in our political communities (Carpio, Irazabal, and Pulido 2011; Bauder 2014).

Advancing such an inclusionary project today will require more coalition-building like that witnessed in Santa Clara County, uniting the struggle for migrant rights with those fighting against mass incarceration and the criminalization of black and brown bodies. Fortunately, such coalition-building is alive and kicking (Fair Punishment Project, et al. 2017; Rahman and Steinberg 2017; Mijente 2017). Activists will also have to influence political leadership in their localities and bring into office politicians and law enforcement officials — like those in Santa Clara County — who come from and represent marginalized communities and are committed to a pro-migrant and decriminalizing agenda. If these movements can activate local residents and elected officials around a politics of inclusion and decriminalization, they could prove to be a powerful antidote to the exclusionary project embodied in the detention-to-deportation pipeline.

## ENDNOTES

1. In its enforcement statistics, Immigration and Customs Enforcement (ICE) now reports both "returns" and (most) "removals" under the category of "removals" (ICE 2018: 16); Department of Homeland Security statistics, which include enforcement actions by ICE, Customs and Border Protection, and Citizenship and Immigration Services, continue to provide separate totals for both "removals" and "returns." The distinction between these two outcomes is that a removal involves a formal "order of removal" signed by an immigration judge (or an immigration official in the case of "expedited" removal). In the case of "returns," migrants are given the opportunity to voluntarily

leave the country without a formal order of removal. Removals have more significant legal consequences as those subjected to them are barred from reentry for a minimum of five years.

2. To further confuse matters, one of President Trump's first actions upon taking office in 2017 was to cancel PEP and reinstate S-Comm (Trump 2017). Ultimately, this was about eliminating the enforcement priorities instituted by the earlier administration, effectively unleashing ICE agents to detain and deport any "removable" migrants they encountered (Kulish et al. 2017)

3. This and other quotations from public hearings were transcribed from video available in the County of Santa Clara's digital archive of the meetings of the Board of Supervisors and other Boards and Commissions: <http://sccgov.iqm2.com/Citizens/Media.aspx>.

4. As noted below, in revisions to its Civil Detainer Policy in 2019, Santa Clara County doubled down on its moral/political rationale and removed this section of the policy that would permit future compliance with ICE requests were the federal agency to agree "to pay for any cost related to the detention of a person for immigration purposes by ICE's requests" (County of Santa Clara 2019).

5. The policy now emphatically states that, consistent with local policy and state and federal law, the county will not "under any circumstances, honor civil detainer requests from ICE" and "shall not provide assistance or cooperation to ICE in its civil immigration enforcement efforts" except in those cases when "an ICE agent presents a valid arrest warrant signed by a federal or state judicial officer, or other signed writ or order from a federal or state judicial officer authorizing ICE's arrest of the inmate." (County of Santa Clara 2019). With these revisions, the Board of Supervisors made abundantly clear that it has no intention of allowing its inclusionary principles to be bought off.

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