

THE MILITARIZATION OF ICE AND HYPER-SURVEILLANCE OF  
LATINX IMMIGRANTS

Karen Martinez Gonzalez  
Criminal Justice  
June, 2019

Faculty Adviser: Tanya Velazquez

Essay completed in partial fulfillment of the requirements for graduation with Global Honors,  
University of Washington, Tacoma

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Executive Director, Global Honors

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## **Introduction**

October 25th, 2017, Rosa Maria Hernandez was ripped away from her family and her home. Rosa is a 10-year-old Mexican girl who suffers from cerebral palsy. While passing through an immigration checkpoint in Texas on her way to get to a critical surgery she desperately needed, the ambulance she was traveling in was stopped. After a long interrogation, ICE agents followed Rosa to the hospital. After the surgery, Rosa was detained and taken into ICE custody against doctors' recommendations due to her undocumented status. She was confused and psychologically traumatized while detained in where they failed to provide adequate medical care. Rosa was in pain for 10 days and could not see her mother who is also undocumented. She was finally released only after the ACLU sued the federal government for Illegally having an undocumented minor in custody. Rosa's story is terrifying but not uncommon. Children and adults are being detained in prison like settings, families are being separated without record, and the U.S. government is denying immigrants their basic human rights every single day.

This is one of many stories involving the abusive practices Immigration and Customs Enforcement (ICE). On federal record ICE's mission is to, "...protect America from the cross-border crime and illegal immigration that threaten national security and public safety," (U.S. Immigration and Customs Enforcement, 2018). However, their separation of families and targeting of innocent children at the border and beyond is overreach. Many recent events involving ICE, include violations of basic human rights and constitutional given rights. As ICE's unfettered power increases and more stories within immigrant communities come to light I ask the following given the stated purpose of U.S. Immigration and Customs Enforcement Agency (ICE): What impact does ICE have on Latinx Communities in the U.S.?

To answer my main research question, I also pose other research questions including, when in U.S. history did the enforcement of immigration change? And why did descriptive labels change from “immigrant” to “illegal”? My research will provide the background and the context needed to understand how and why ICE was created. Byng’s Social Process theory of race and racism will provide the framework to critically analyze the racialized identity of Latinx communities. By doing so this paper will examine the purpose of ICE according to U.S. policies, in contrast with individual reports from Latinx immigrant communities. If ICE does harm, how so? What are the solutions to this issue? Individually, culturally and structurally? To answer these consequential questions, I will apply Racial Formation Theory by Omi and Winant in order to analyze the issues on micro and macro levels. My method of research includes a critical literature review and a qualitative content analysis, including evaluations of federal policies. Lastly, I want to acknowledge that this paper will focus on Latinx immigrant communities but many other immigrant communities may also experience harm caused by ICE.

## **Background**

The southern border is currently the target of the administration in regards to immigration. The creation of the U.S. southern border and the history of southern immigration is defined by race. The presence of Mexicans in what is now the United States was already established since before the Mexican-American War (1846-1848). After the U.S. aggressively took Mexico’s lands justified by a belief in Manifest Destiny, Indigenous Mexicans were forced to be placed in an inferior racial position (Molina, 2014, p.24). It was a forced shift from Mexican citizenship to U.S. citizenship. Despite the fact that Mexicans were legally defined as

white, their identity as Indigenous placed them in an inferior position, near the bottom of the hierarchy of whiteness or the racial order (Molina, 2014, p.25).

Immigration from the southern border began to increase during the 1920s and this led to the creation of the U.S. Border patrol, through the Immigration Act of 1924. At that time the U.S. decided that people from the southern border were a threat but also a tool for cheap labor. To create a cheap labor flow, the U.S. exploited Mexicans who desperately needed work and came to an agreement with Mexico, developing the Bracero Program. This program gave work permits to Mexicans to work in the fields but they were paid at a lower rate and lived in squalor conditions. Nonetheless, “from just 4,200 workers in 1942, the number of braceros rose rapidly to peak at 62,100 in 1944” (Massey & Pen, 2012, p.4). Although Mexicans laborers voluntarily migrated, the working conditions were unfair and inhumane. Molina (2012) compares slavery to the exploitation of Mexicans to emphasize the economic system that provides profits to whites in power (the owning class), and disregards the well-being of Mexicans doing the labor. “Comparing Mexicans to slaves was not just a racial comparison but was fundamentally about how to continue to fuel the political economy while maintaining a racial hierarchy” (p.29). Yet many Mexicans decided to stay and work due to the lack of work at home but as the U.S. economy weakened and WWII ended, their increased presence meant enforcement of immigration laws by border patrol.

The Immigration Act of 1924 also limited the number of immigrants that could enter the United States each year. This act established the concept of illegal immigration by placing a quota on how many people are able to enter the U.S. By making Mexicans illegal and a threat to the nation-state, it also made them deportable, thus creating a cheap, renewable source of labor as migrants sought work in the north each year (Molina, 2012, p.95). When there was less need

for cheap, undocumented labor, Operation Wetback in 1954 was also a way for the government to violently deport all the Mexicans and Latinx; their aggressive methods included racial profiling that resulted in U.S. citizens of Mexican ancestry being repatriated and never allowed to return. The creation of Border Patrol was dependent on the racialization of Latinx who were deemed undesirable and labeled as “wetbacks”, “illegals”, lawbreakers, and “aliens;” these descriptions were written into immigration laws (Nevens, 2002, p.68). The creation of these policies allowed the enforcement and deportation of Latinx and indicated the shift from legal to “illegal” and residents to “aliens” which culturally placed Mexican migrants in opposition to citizenship status in the minds of the American people (Nevens, 2002, p.69). In addition, the War on Drugs which started in the late 1960s contributed to the narrative of immigrants from south of the border as criminals and dangerous. This not only led to the increase of Border Patrol agents in the name of “safety” but the beginning of collusion with the military and a military-like enforcement of immigration laws. For example, in 1989, “joint Task Force 6 was established in Fort Bliss, Texas, to provide military support for counter drug operations,” targeting immigrants from the southern border (Rytz, 2008, p.90). As the enforcement increased so did the number of Border Patrol agents. But the biggest shift in the function and purpose of border patrol occurred after 9/11 which resulted in the creation of ICE. This shift went from “war on drugs” to “war on terrorism”, targeting Muslim immigrants. This increased immigration enforcement not just at the southern border but throughout the whole interior of the now United States. To do this, the government needed a bigger agency, which then led to the creation of a sole branch, in 2002, focused on immigration and terrorism; Homeland Security. From Homeland Security, ICE and Customs and Border Protection (CBP) were formed. ICE patrolled the nation and CBP the border. This was a pivotal political and economic moment as the administration tried to alleviate

the fears of Americans who felt threatened by misguided ideas about “dangerous foreigners” which resulted in harsher immigration policies and more immigration enforcement agencies. It gave politicians a “tough on crime” narrative (once again) and created economic benefits to many security industries such as for-profit detention centers that indefinitely detain undocumented immigrants (Nevins, 2010, p.184). Therefore, among other things, 9/11 was an excuse for the government to create policies that target undocumented immigrants who have nothing to do with terrorism. The administration’s reaction to 9/11 also hinders the political will approve immigration reform and pathways to citizenship thus keeping Latinx migrant laborers vulnerable and ensuring a cheap labor flow.

Before examining the current practices of immigration enforcement agencies, it is necessary to consider how race has shaped the social, political, and economic dynamics inherent to the issues. The Social Process theory of race and racism can help explain Latinxs experiences as it states that “racism is a social process where the meaning of race identities are traded across macro, meso, and micro levels of society” (Byng, 2012, p.708). This means that through racism, social identities are formed, defined, and constantly changing. This theory also argues that race is a political commodity as meanings of race identity are exchanged for government policies that fit U.S. sentiment. In other words, there is a trade-off between the meanings assigned to race identity and the “political legitimacy, social morality, rejection, or acceptance to others” (Byng, 2012, p.709). Racialization occurs at different levels including a macro, meso, and micro level. The macro level are the laws and policies in which racial identities are begin to be defined and reinforced through social structure. The meso level is where racial identities are perceived as common sense in the general public with communication tools such as controlling images in popular culture. Lastly, the micro level is where people experience racialization, including acting

on or being a recipient of racial discrimination, at an individual level. Race is not static but rather it is created across time, attaching meanings at cultural and structural levels. The beginning of the formation of racial identities for Latinxs was when colonizers stripped Mexicans from their own lands and displaced them, causing a diaspora north and south. As Byng's theory explains that race is a political commodity, I argue that it is also an economic commodity. For instance, the Bracero program led to creation of Mexicans as commodities. Those policies and the way that immigrants were portrayed influenced the meaning of racial identities while farm owners profited. It led to the criminalization of Mexican immigrants, thus creating more work as part of an anti-immigration industrial complex, and normalized the violence that immigration enforcement agencies have towards Latinx communities.

### **Traumatization of Children and Families in Detention and Beyond**

On the surface, ICE appears to be an agency that protects this country from terrorism and prevents the illegal movement of people. However, as we take a closer look at this agency, the hidden practices of ICE begin to appear. These practices are implemented to fulfill the actual function of ICE which is to uphold a homogenous nation of Europeans who are equated with citizenship and whiteness. The first practice worth exposing is the traumatization of children and families. This includes the separation of families, re-traumatization of refugees, killings of undocumented immigrants, and violation of basic human rights.

According to a report done by the Pew Research Center, there were approximately 10.7 million undocumented immigrants in the U.S. in 2016, which is a 13% decline from 2007, in which there were 12.2 million (Krogstad, 2018). Out of the 10.7 million, 7 million are immigrants that come from south of the border (Krogstad, 2018). There is a common myth

expressed by news outlets and the general public, that the number of undocumented individuals keeps increasing, however, reports show the opposite. The number has actually decreased at a fast pace except for the occasional circumstantial spike which does not affect the overall downward trend. Despite the results of these reports, the enforcement of immigration laws has increased with a focus on Latinx communities. Thus the Latinx community has become extremely vulnerable to the violence and intimidation of ICE at the border and in the interior of the U.S.

The unpredictable process of arrests and detention results in negative physical and mental health consequences for detained children as well as adults. Mixed-status families are being greatly affected by this. Mixed-status families are families in which parents who are undocumented have children who are U.S. citizens. About 4.5 million children are born to parents who are undocumented (Brabeck, Lykes, & Hunter, 2014, p.497). According to a study conducted by New York University School of Law, between 2005 and 2010, 87% of processed immigration cases of non-citizens with citizen children resulted in deportation (Brabeck et al., 2014, p.497). This means that the parents who are being detained by ICE are most likely deported, which of course negatively affecting the children. Therefore, children who are U.S. citizens obtain the privileges and rights of a citizen, however, they are in a constant state of threat due to the risk of their parents being deported. When this happens, parents are forced to decide what will happen to their children. Many only have the choice of taking them to the home country of the parent, which can expose the children to violence and more risks. Others can leave them with family members in the United States, but those who don't have any family might be forced to leave their children in the hands of the government. Leaving them in the hands of the government is not a safe option. According to Wessler (2011), currently more than 5,000

children who are U.S. citizens have involuntarily ended up in the foster care system, a system that too is broken (p.4) because detained parents cannot attend court hearings where placement decisions are made without their consent in abstention. “Research has documented that children who experience multiple risks (e.g., family disruption, low socioeconomic status, high parental stress) are more prone to behavioral and emotional problems later in life” (Brabeck et al., 2014, p.498). However, separation is not the only factor that contributes to the traumatization caused by ICE.

Refugees and their children come seeking a safe place to escape violence and terror, yet they are re-traumatized by being detained, separated, and physically neglected by ICE. Current reports show that people who are seeking asylum from extreme violence in Latinx countries are being targeted. As part of his campaign promise, the Trump administration adopted a zero-tolerance policy for crossings at the southern border, including families who are requesting asylum (Domonoske & Gonzalez, 2018). Consequently, children and adults who come seeking asylum, in many instances, due to the language barrier and minor status have been coerced to sign their own deportation. Furthermore, despite the laws, thousands of children and adults are being indefinitely detained in what have been regarded as concentration camps (Katz, 2019). Regardless of the countless remarks denying that they are concentration camps, the tents where many are being detained, the testimonies, the policies, and the way that immigrants are being denied basic hygiene tells another story. Unaccompanied minors and children separated from their families are being kept cages, forced to sleep on a concrete floor with the lights on, and only given foil sheets as blankets (Domonoske & Gonzalez, 2018). Clearly, it is not an exaggeration to state that when immigrants seeking asylum from extreme violence and poverty

come to the U.S. they are received with a military like agency, neglected in custody, denied their human rights and therefore re-traumatized.

ICE also contributes to the dehumanization of undocumented Latinx communities at time of arrests and during detention. Immigrants are currently referred to as “illegal” and “alien” which portrays them as inhuman. This inhumanity has been reaffirmed by the media and depicted in popular culture for years which justifies to the public violent acts of the current administration, thus permitting ICE and other enforcement agencies to treat Latinx immigrants as “others.” Investigations done by DHS themselves have found that many experience maltreatment by ICE, denial of council, are held for unreasonable periods of time, and placed in unsafe conditions (Brabeck et al., 2014, p.499). For example, a study reported that 84% of El Salvador deportees reported that they experienced excessive force by ICE during arrest (Brabeck et al., 2014, p.499). In addition, pregnant women are not provided with adequate prenatal care, nor are others who need medical attention.

Furthermore, detainees experience verbal abuse and physical neglect including innocent young children who don't even understand what is happening. “The way I have been treated makes me feel ... like I am trash,” says a boy who was separated and detained (Silva, 2018). Yet it is expressly stated that “the U.S. has determined that all immigrant children, whether unaccompanied or accompanied by a parent or guardian, are to be treated differently than adults” (Linton, 2018, p.125). Contrary to ICE's official statement, it is apparent that migrant children are being (mis)treated as if they were adults. For example, the public recently learned from human rights watch groups that the basic hygiene needs of detained children are being denied by not providing soap, toothbrushes, toothpaste (Linton, 2018, p.125). Furthermore, it was reported that detained children are not being supervised by adults and there was not a sufficient number of

diapers for the youngest detainees; meanwhile their daily meager meals consist of instant oatmeal, instant noodles, sugary drinks, cookies and frozen burritos and the children reported being hungry (Dickerson, 2019). Additionally, the detention facilities are designed to hold 125 people yet they are holding 900 immigrants (Dickerson, 2019). They are so overcrowded that people have nowhere to sit or lie down. Yet due to the current administration's expressed narrative about "keeping American safe" from alleged Mexican drug dealers, criminals and rapist to appeal to his xenophobic base of supporters (Domonoske & Gonzalez, 2018), ICE keeps targeting, detaining and placing of families into holding facilities that are unsafe, unsanitary and a breach of detention laws.

Prior to the traumatizing experiences of detention itself, the fear amongst immigrant Latinx communities has grown and created a nationwide panic created as families are scared to leave their home, attend school, go to work or even step outside. Actually, this fear did not start at the beginning of the current administration but before that. Our society is so colorblind that they chose to not see the way that undocumented immigrants were also being targeted during the Obama administration. For instance, it's not commonly known that during 2012, the Obama administration reached the highest deportation numbers at 409,849, in comparison to last year's report of 256,000 (Bever & Paul, 2018). House, street, and work raids have always been the biggest tool for ICE to detain as many immigrants as possible. Today many progressive cities have claimed to be sanctuary cities which means that undocumented immigrants will be protected from ICE practices by prohibiting collusion with ICE by state and local governments. However, ICE and Homeland Security has broadly interpreted policy to intimidate communities by targeting sensitive locations with or without the assistance of local police and government. Sensitive locations are places such as schools, churches, court houses, hospitals, and other public

service buildings. They are places in which an immigrant should feel safe from the intimidation of any enforcement agency.

### **Racial Profiling and Intimidation by Collusion with State and Local Governments**

Since the creation of ICE, the Department of Homeland Security has made sure that ICE has all the possible means to apprehend undocumented immigrants. Including policies such as 287(g) or Secure Communities. Even though 287 (g) was created prior to ICE, currently it has been used in a way allows ICE to collude with state and local governments who racially profile and criminalize immigrants. This policy comes from the Illegal Immigration Reform and Immigrant Responsibility Act which permits the federal government to delegate immigration enforcement to local and state governments (Mittelstadt, Speaker, Meissner, & Chishti, 2011, p.17). This policy has allowed the screening of people who are in jail even for misdemeanors or traffic violations, ensuring that ICE detains undocumented individuals. Secure Communities (S-Comm), is a program created by the Obama administration in which ICE colluded with local and state government to identify immigrants with criminal records (extreme offenses) in jail who should then be deportable (Rosas, 2016, p.120). They do this by checking individual's prints through a database and once they determine who is deportable, ICE is immediately notified. S-Comm leads to unlawful detentions without due process or criminal charges and a hearing. It also deters victims from reporting crimes due to a distrust of the police among the community, because of the collusion with a federal agency that illegally arrests undocumented immigrants. Lastly, S-Comm encourages local and state enforcement to racially profile Latinx individuals, even those who are U.S. residents or citizens with or without minor offenses.

For example, Jilmar Ramos-Gomez is a U.S. citizen and a marine veteran who served in Afghanistan, yet he was detained and spent three days in ICE custody. Jilmar suffers from PTSD

due to his time serving and experiences episodes where he disappears and has no recollection of what happened. On this occasion, he was arrested when he allegedly started a small fire, pulled the fire alarm, and was released under a judge's order. Instead of releasing him, local authorities handed him over to ICE (Shoichet, 2019). ICE falsely claimed that Jilmar said he was undocumented but it was actually racial profiling on their part. The fact that he has a Latinx name and appeared Latinx, played a big role in the action by the local authorities and ICE. Just like Antonio Montejano, who despite the many times that he told officers that he was a U.S. citizen, spent more time in jail than usual because he was held under an immigration hold. Basically Los Angeles County had suspicions that he was an "illegal" immigrant and acted accordingly without proof (Preston, 2011). These suspicions were rooted in racial profiling due to his name, the color of this skin, and his race. Men and women who are racially profiled by local authorities who collude with ICE, end up being deported or detained unlawfully do to this collusion. In some cases, local authorities are actively discriminating by looking for anyone who might seem "illegal" or deportable thereby, targeting individuals based on their skin color, name, or race not their behaviors.

One specific intimidation tactic that ICE uses against undocumented immigrants is having a presence in courthouses. ICE agents appear in state and local courthouses to detain individuals when they arrive or leave court. This practice has a negative effect on the prosecution of crimes being investigated, and domestic violence prosecutions, as well as undermines state sovereignty and states' police power. According to Bach's (2018) article "Why Immigration and Customs Enforcement Must Stay Away from State Courthouses," having ICE agents inside courts is directly affecting the due process that is granted by the U.S. Constitution, to undocumented immigrants. The Due Process Clause gives everyone a promise of legality and a

fair procedure as stated in the Fifth and Fourteenth amendment. ICE being in courthouses prevents undocumented individuals from being able to exercise their right of due process. Instead it leads to an intense fear of appearing in court even for minor offenses such as traffic tickets or misdemeanors.

Some states are attempting to restrict ICE from creating a presence in state courthouses. On April 2019, the Massachusetts filed a lawsuit against the federal government to stop ICE from patrolling state courthouses (Alvarez, 2019). Newton District Court Judge Joseph and a former trial court officer, MacGregor, were indicted on obstruction of justice. Both were accused of helping an undocumented immigrant flee from ICE through a back door of the courthouse (Alvarez, 2019). This started a local and national conversation regarding ICE in courthouses. The lawsuit explains that the policy is becoming a threat to the justice system because it is affecting the work of defense attorneys and prosecutors who depend on witnesses to carry out an investigation. In addition, the lawsuit provides three different arguments why ICE is acting illegally; ICE was not authorized by Congress to conduct arrests in the courthouse, it exceeds the power granted in the Constitution to the federal government, and it violates the constitutional right of access to courts (Alvarez, 2019).

ICE in courthouses also threatens undocumented immigrants who have suffered from domestic violence. According to Bach (2018), there has been a decline in the number of reports for domestic violence and sexual assaults in Latinx communities due to the increase of ICE's presence in courts (p.328). Women who suffer from domestic violence are vulnerable but when they are also undocumented that vulnerability increases due to the risk of deportation, and cultural and language barriers. With ICE being in the courts, it discourages victims of domestic violence or sexual assaults to come forward. This federal interference results in under-reporting

of crimes, individuals not appearing in court, and the continued victimization of women suffering from domestic violence. Subsequently, courthouses are not sensitive locations despite the important role that they serve in our justice system.

### **Unconstitutional Policing and Militarization of ICE**

When ICE detains undocumented individuals at state courthouses they violate the U.S. Constitution. More specifically, their aggressive actions violate the tenth amendment which grants the state powers and limits the power of the federal government. From the tenth amendment, the concept of federalism arises. Federalism is the term that defines the structure of our government as we currently have it; local, state, and federal government. Federalism was better defined in *United States v. Lopez* (1995), where the Supreme Court affirmed the states' right to exercise their police power without any interference from the federal government. The court concluded that there are meaningful limits on congress's power under the commerce clause, which can be pushed in instances where the federal government is trying to interfere with state sovereignty (Bach, 2018, p.325). Additionally, *United States v. Morrison* was very critical in defining what federalism is by using the fourteenth amendment to conclude that there has to be a distinction of what is national or local. Therefore when ICE is in state courthouses, there is a federal intrusion into state sovereignty. "“Permitting ICE agents to appear and to detain immigrants at state and local courthouses is tantamount to commandeering the state police power to do the bidding of federal law,” (Bach, 2018, p.331). As such, ICE is violating the tenth and fourteenth amendments of the U.S. Constitution, which define federalism and the limited powers of the federal government.

Intimidation tactics practiced by ICE including collusions, have led to ICE behaviors that reflect the actions a military or a police force, neither or which they are. Yet they are policing the

U.S. interior and militarizing the border. The line between ICE, police, and the military are being blurred. There is a big distinction between the function and purpose of these different enforcement authorities but the practices are all becoming very similar. The militarization of ICE has become more visible through the militarization of the southern border (e.g. heavy reinforcement, attempts to build more walls, etc.) and military like raids in various public spaces. Further enhancing this militaristic approach, the actual U.S. military is being used to enforce immigration agendas at the southern border under the Trump administration. For example, recently 4,500 active duty military and National Guard forces were sent to the southern border to secure border entry points (Copp, 2019). These troops were sent to violently enforce immigration laws, which is out of their jurisdiction, and to intimidate immigrants who are coming to seek asylum at the southern border. They also have permission to shoot immigrants in instances where lethal force is not even necessary (Copp, 2019).

The militarization and policing functions of ICE have been normalized by our society and by the government through excessive, relentless actions and policies. ICE is intimidating undocumented Latinx communities inside the nation and at the southern border. Their practices include colluding with state and local governments, acting as police and military forces, and exceeding their limited federal power. ICE is unconstitutional as it continues to threaten state sovereignty and federalism principles.

### **Illegal Activities to Ensure Arrests and Deportation**

Research and stealth reporting have demonstrated that ICE consistently participates in illegal activities to arrest and deport undocumented immigrants. As discussed in the last section, ICE has federal power but that does not mean they have unlimited power. However, to ensure the arrests and deportation of Latinx undocumented immigrants, ICE illegally exceeds their power.

Reports have found that ICE is denying undocumented Latinx immigrants prosecutorial discretion, individual ICE agents are forging signatures on arrest warrants, amongst their many other illegal activities.

Prosecutorial discretion is the authority of an agency or officer to decide what charges to bring and how to pursue each case. This is very important because prosecutorial discretion can allow many immigrants to stay in the country due to extenuating circumstances. On January 2015, the Department of Homeland Security (DHS) released an enforcement memo called, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. The memo provides detailed guidance on how DHS agencies need to exercise prosecutorial discretion for people subject to removal or detention. In addition, it states that the priority of DHS will be the removal of individuals who have been convicted of a crime, unless there are mitigating factors that cause the individual to not be a priority at all (Canizalez & Shah, 2015, p.6). Some of these mitigating factors include:

- Extended length of time since the offense of conviction
- Length of time in the United States, as well as military service
- Family or community ties in the U.S.
- Status as a victim or a witness in a criminal proceeding
- Compelling humanitarian factors such as poor health, age, pregnancy, or a young child

These mitigating factors are significant and if interpreted correctly, could make a positive difference for mixed-status families with U.S. citizen children and undocumented parents.

Prosecutorial discretion would decrease the traumatization that ICE causes on Latinx communities, if it was actually practiced during the legal proceedings. However, prosecutorial discretion is being denied to undocumented immigrants and the mitigating factors are being

ignored by ICE. The enforcement memo that came out in January 2015 was created to “address the overall failure of prosecutorial discretion policies issued by ICE (Canizalez & Shah, 2015, p.6).

In April 2015, United We Dream conducted a preliminary study that analyzed the legal stories of undocumented immigrants who go through legal proceedings. In their report they found that ICE offices ignore the evidence presented by the attorney in cases of requests for administrative stay of removal. They also found that prosecutorial discretion requests are not being reviewed and if they are reviewed it is only for a small period of time. Lastly, they found that deportations happen very quickly, many times within 48th hours, which makes it very difficult for families to seek legal help (Canizalez & Shah, 2015, p.8). The fact that ICE is not following their agencies own policies, proves that this agency is encouraging illegal practices to ensure the deportation of undocumented Latinx communities.

Furthermore, according to a recent CNN report on detention warrants, ICE agents have been forging supervisor signatures on arrest warrants (Ortega, 2019). The federal Immigration and Naturalization Act, requires that each warrant be signed by an authorized supervisor. As agents figure out who is deportable from local jails using the S-Comm program, their goal is to hold them in jail as long as possible to obtain an arrest warrant. However, jails can only hold people for 48 hours unless they are charging the person with a crime. In order for them to arrest the potential detainee within the 48 hours, local ICE agents are illegally forging the signatures needed for the warrant instead of waiting for their supervisors’ approval.

Recently, An ICE agent who forged signatures was fired on May of 2018. Afterwards, he revealed internal emails and other ICE documents which he obtained through a Freedom of Information Act request, to show that other officers across five states had regularly signed

warrants on behalf of their supervisors (Ortega, 2019). According to the report, “some supervisors even gave their officers pre-signed blank warrants, in effect, illegally handing them the authority to begin the deportation process (Ortega, 2019). The requirement for warrants comes from a policy created by ICE to address the issues that arise due to ICE picking up undocumented immigrants from jails, without charging them with a crime. However, now they are again finding another way to illegally arrest and detain undocumented immigrants.

### **A Racist Project**

Racial formation theory helps explain the way in which Latinx communities are destroyed by the ICE practices. Within racial formation, race is a master category, meaning that race has shaped and continues to shape the United States (Omi & Winant, 2015, p.106). Race has been a central marker of difference for the social relations of Latinxs in the U.S. throughout the nation’s history. As discussed in this paper, the enforcement of targeted immigration laws has resulted in the violent apprehension of Latinx individuals whether they are undocumented or not. This raises the question; is ICE a racial or racist project?

According to Omi and Winant (2015), a racial project is “simultaneously an interpretation, representation, or explanation of racial identities and meanings, and an effort to organize and distribute resources along particular racial line” (p.125). Racial projects create a connection between the significance and the structure of the race that is being targeted. This means that racial projects influence the way that social structures are signified by race and how race is part of the structures. The connection among the significance and structure then influences the creation of policies and the societal meanings of race as “common sense.”

Within the theory of racial formation, racism is defined as the ideologies, policies, and practices in different institutions that leads to the reproduction and normalizing of racial

inequality (Omi & Winant, 2015, p.128). The definition of race and racism is not reserved for just a micro or individual expression but also a macro understanding, making the point that race is materially real and not just an illusion (a social construction without consequence). A racial projects becomes a racist one when it “creates or reproduces structures of domination based on racial significations and identities” (Omi & Winant, 2015, p.128). These racist projects are not necessarily intentional or envisioned as a single project but rather as projects that operate at different levels shaping institutions, social relations, identity meaning. Omi and Winant (2015) explain that racist projects do not necessary act and shape by themselves but they also interact with one another creating a complex web of racist projects (p.128). So then was the creation of ICE as an immigration enforcement agency a racist project? Yes it was, and it continues to be.

## **Conclusion**

From my findings I conclude several main points. First, ICE does more harm than good. Even though they were supposed apprehend threatening individuals coming into the U.S. who have committed violent crimes ICE became a violent apparatus of the administration that traumatizes undocumented individuals living in the U.S., whether they have committed a crime or not. ICE’s practices uphold the criminalization of Latinx immigrants and continues to promote the cultural narrative that undocumented individuals are criminals, rapist, gang members, and so on.

I also concluded that ICE is an agency that promotes protection yet they traumatize thousands of individuals including children who are U.S. citizens. In other words, ICE is harming their own people. U.S. citizens are being affected by the practices of ICE and stripping them from their rights as citizens to live in this country by deporting their families and parents. ICE is also participating in the re-traumatization of refugees by negating their basic human rights

during arrest and detention and placing them in unsafe conditions indefinitely. Reports have determined that there are negative physical and mental health consequences for children and adults that is doing irreparable, long term harm.

Next, ICE violates the U.S. constitution by acting as police and military. The racialization of undocumented immigrants contributes to their vulnerability and hyper-visibility in public, resulting in hyper-vigilance by local authorities who racially profile and collude with ICE agents. Both of these dynamics, the hyper surveillance and militarization of ICE and local authorities, has been normalized by our Administration in word and deed. ICE has begun to act as a police force, a federal agency, and as military. In this way, ICE functions as a new apparatus of the nation-state to control undocumented Latinx people, ensure cheap labor and enact war at the southern border which reinforces the “other” in relationship to who can truly be American or regarded as a legitimate U.S. citizen via racial signifiers.

ICE is a system of oppression that racially profiles immigrants, begins arrests with illegal proceedings, and denies prosecutorial discretion, failing to follow the agencies own policies. I concluded that despite the many policy changes to ensure prosecutorial discretion, ICE continues to ignore the policies which results in policy violations. Aside from deportation policy, ICE is also violating arresting and apprehension policies, including the forging of signatures and coercion of undocumented individuals to ensure arrests. Broadly, ICE is not being held accountable for their actions and therefore acting with impunity.

Lastly, Racial Formation theory suggests that ICE is an agency created to fulfill white hegemonic ideas of American identity. Since the creation of this country, exclusion based on race and class has been upheld by racist immigration, citizenship and labor laws. From slavery to segregation and from mass incarceration to the exploitation and criminalization of immigrant

labor. The capitalist inclusion and nationalist exclusion of people of color are not separate ideologies instead they work together to ensure the original purpose of a homogenous nation. Therefore, ICE's most important but hidden purpose is to uphold a white homogenous nation. Their practices not only target undocumented communities but specifically undocumented communities of color. Migrants of color in the U.S. are prevented from fully "assimilating" into whiteness due to their racialization; undocumented immigrants have even less access to social, political and economic rights due to a process that prevents access to permanent residency but ensures a cheap labor flow. This normalizes the violent enforcement of immigration laws on undocumented communities of color since they are not deemed deserving of whiteness and citizenship.

### **Recommendation**

I propose a complete abolishment of ICE leading to non-detention practices because ICE is an agency that dehumanizes immigrant communities and violently and illegally enforces immigration laws. Abolishing ICE is part of a multi-level solution that is transnational. ICE itself is only part of the problem but the functions and the practices of ICE demand attention now because of the immediate harm they cause. Solutions to the violence caused by ICE within the Latinx community and other immigrant communities, must be applied on a micro and macro level. Abolishing ICE is a step to creating major immigration reform that will allow undocumented immigrant to live and work safely. The solution by itself will not work unless there are changes at different levels.

#### *Micro Solutions*

Within a micro level solution, ICE being abolished will have an immediate effect at an individual level. This means that undocumented communities will be living safely without the

violence and intimidation that ICE enacts in their everyday lives. ICE will not exist to apprehend undocumented individuals at their workplace, home, or on the streets. It will not detain innocent individuals or separate families violently. It will not affect the mental health of undocumented communities with their intimidation tactics. Rather, it will be abolished from our federal policies and practices.

Since ICE is unnecessary, the roles of investigations will be distributed to another agency such as the enforcement agency that existed prior to the creation of ICE. The difference with this agency would be a return to a focus on priority removals which would include individuals who have been convicted of a violent crime. New policies would include extended protection towards innocent families and asylum seekers. The immigration process should not be a process that causes traumatization on undocumented immigrants. Rather, it should be a humanizing process that allows undocumented communities to feel safe.

### *Macro Solutions*

Abolishing an institution that has been integrated into a country through laws and policies and upheld by cultural beliefs and racist ideology can lead to the creation of another institution that follows the same functions as the previous institution. This means that a possible unintended outcome after abolishing ICE could lead to the creation of another agency that has the same purpose of ICE but with another name. We can't fully eliminate this federal agency until we eliminate the "whys" behind the creation of it which include how we think about citizenship, race and labor which is tied to dynamics of globalization. A macro level solution would include changing the nation's cultural values, as well as our immigration policies; a large-scale sweeping solution would also mean addressing transnational labor and trade issues and the U.S.'s relationship with Mexico and the global south.

Abolishing ICE would eventually lead to the abolition of detention practices. Without ICE there would not be a need to have a center in which people are being detained. Detention centers in the United States has been marked by abuse of undocumented communities. There is limited research on family detention in the U.S., however the information available suggests that detention has negative effects on detained families and the community (Brabeck, Lykes & Hunter, 2014). These detention facilities dehumanize children and adults that are innocent. The story of Jose Contreras is one of the many stories that bring to light the abuse of detention facilities and of ICE agents running the facilities. Jose is a 60-year-old Guatemalan man who was detained at the Southern California's ICE Adelanto Processing Center. He suffers from diabetes and despite the many request for him to get his medication they took more than three months to provide him with it. His daughter mentions that ICE agents took Jose's glasses from him so he can't read the legal documents or write any letters. "My aunt tried to take in glasses for him but they won't allow us to give him anything" (Varney, p.3, 2019). Being in the detention center has led Jose to go into a deep depression. Jose's sister has urged that he see a therapist at the detention center but even though Jose has made the request officials don't respond to him. However, reports suggest that even if he was able to see a therapist their sessions would only last five to ten minutes. For example, "they just ask, "How are you?... It's one of those things that I feel is basically done just to say, 'All right, we did it.'" says another detainee (Varney, p.7, 2019). Without ICE, U.S. detention practices, inhumane or not, would be unnecessary. The abolishment of ICE leading to non-detention practices would mean establishing more humane alternatives to detention.

Alternatives to detention practices (ATD) mean that undocumented immigrants or asylum seekers can be released on a bond or on their own recognizance by an immigration official.

Balcazar (2016), in his Policy Statement on the Incarceration of Undocumented Migrant Families addresses how this would work. There are three levels of ATD: no supervising system, intensive supervision system, and intensive monitoring system.

Under the no supervising system, immigrants can be released on a bond in which immigration judges have full discretion. However, it is important to address several different aspects to ATDs. The first is that the bonds have to be set at a reasonable, affordable amount instead of the ridiculously high levels that they are currently set at. "A reasonable bond amount may allow families to post the bond money and be released from detention while they pursue requests for protection in immigration court" (Balcazar, 2016. p.258). The screening procedures for families who are seeking refugee status also have to improve. According to Balcazar's (2016) policy statement, ATD programs yielded a 93.8% appearance rate for immigration hearings, meaning that it is unnecessary to detain undocumented immigrants (p.258).

The second level, intensive supervision system, would include the imposition of monitoring program. This should only be used in instances where there are concerns about flight risk. In order for this program to work it has to have humane practices which make it more likely for individuals to cooperate with the program. One example provided by Balcazar (2016), is the Vera Institute Appearance Assistance Program, which is a three-year supervision pilot program. It has high appearance rates above 90% and consistent compliance with the supervision program (p.259). This program is an example of the results in cooperation when undocumented individuals are being treated humanely and not feeling threatened.

The intensive monitoring program includes the usage of Global Positioning System (GPS) such as ankle bracelets. These systems however, restrict a person's movement and can require hours of charging. This can be very demeaning and encourages the stigmatization of

them as criminals. The intensive monitoring program should only be used as a last resort to an alternative to detention. It is more humane to use the first two programs as they don't encourage the stigmatization and are less demeaning. "Thus, these findings suggest that ATD programs are highly recommended for undocumented migrant families, and specifically those seeking refuge in the United States" (Balcazar, 2019, p.259).

Contrary to popular sentiment about American ideals and the phrase that we are a "nation of immigrants," the U.S. policies regarding immigration is a history of exclusion, nativism and racism for migrants who cannot assimilate into white identity or realistically obtain citizenship under duress. As such, the abolishment of ICE would indicate a public recognition of the constitutional and human rights that undocumented migrant labor should be afforded and it would mean an acknowledgment of the nation's exploitative dependence on their labor which must end.

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