

Removal Roulette: Secure Communities and Immigration Enforcement in the United States (2008–2012)

Juan Manuel Pedroza

Introduction

The universe of removals from the United States has grown tremendously in the past 15 years. At the same time, immigrant settlement patterns across the country resulted in a dispersal of foreign-born populations. Suddenly, local communities with limited experience responding to recent immigration face new challenges. County jails have become a key stage where authorities test and attempt to resolve challenges related to immigration. When an immigrant ends up behind bars, their status can determine whether they can legally remain in the country. Under Secure Communities (hereafter SComm), unauthorized immigrants and legal residents alike can face removal if under arrest at a local jail.

SComm functions primarily as a technological interface between local jurisdictions and the federal government. Unlike other federal enforcement initiatives such as fugitive operations, the program is not designed as a personnel-driven investigations or processing operation. Instead of adding enforcement staff in local communities, SComm is a screening system operating in all jurisdictions during the booking process. When local officers arrest and book someone in a local jail, SComm automatically receives a submission of the arrestees' biometrics. The routine process of sharing fingerprint data predates the implementation of SComm. Since October 2008, however, local jurisdictions began participating in SComm by automatically sharing biometric data with the Department of Homeland Security, which checks fingerprints against federal databases with information about country of origin and legal status. The routine background check thus transforms into a query of each person's immigration legal status. Never before has such a process existed

J.M. Pedroza (✉)

Sociology Department MC2047, Stanford University, Main Quad 450 Serra Mall,
Building 120, Stanford, CA 94305, USA
e-mail: jpedroza@stanford.edu

systematically across so many jurisdictions. SComm will be active in all jurisdictions by 2013. SComm data allow researchers to study an emerging, dispersed geography of immigration enforcement (Coleman, 2007, 2012a, 2012b; Money, 1999).

This chapter examines state power and technologies of power (Inda, 2006a, 2006b) as articulated through the SComm program. SComm data allow for direct comparisons of enforcement indicators from one community to the next. Although SComm is not the only immigration enforcement program in the country (Rosenblum and Kandel, 2011), only SComm will eventually operate in every jurisdiction across the country. The program receives widespread support as a means to identify and deport the “worst of the worst” behind bars. Conversely, critics note SComm deportations stemming from minor infractions. In order to understand the unfolding geography of SComm enforcement, this chapter examines SComm data across more than 3,000 local jurisdictions and over 200,000 voluntary returns and removals (hereafter “removals”).

In recent years, demographic analyses of dispersed immigration populations have analyzed the relationship between immigration, population change, and restrictive contexts of incorporation (Guterbock et al., 2010; Hopkins, 2010; Leerkes, Leach, & Bachmeier, 2011; Lofstrom, Bohn, & Raphael, 2011; O’Neil, 2011; Parrado, 2012; Pedroza, 2012). This chapter contributes to such work by exploring distinctions between “targeted” and “universal” immigration enforcement (Capps, Rosenblum, Rodríguez, & Chishti, 2011). Specifically, the chapter presents rates of removal among unauthorized immigrants and noncitizens.

In addition, this chapter also explores the context within which SComm has thrived and grown to become a preeminent immigration enforcement experiment. Exploring concepts such as “criminal alien” and “removability” locates how the power to detain and remove foreign-born individuals operates. Critically examining SComm reveals how the program behaves as a removal roulette. For example, the SComm program’s delineation of crime categories appears as an objective effort to prioritize immigrants under arrest. However, although more transparent than previous initiatives, the exercise of categorizing and prioritization under SComm (a) resembles a catalog and census of removals rather than a consistent attempt to target the “worst of the worst” and (b) conceals otherwise debatable removability claims. In addition, SComm also tests and contributes to a larger narrative of federal immigration enforcement designed to frame debates about immigrants who do and do not deserve relief from removal. SComm also prefigures a future discourse of unauthorized presence in sanctimonious terms rather than a matter of restorative justice.

Background on SComm Interior Immigration Enforcement

The penetration of immigration enforcement in local communities across the country shapes immigrants’ “context of incorporation” (Portes & Rumbaut, 2001). SComm as an enforcement program brings the interior of the country more fully and systematically into the domain of federal immigration authority than ever before.

Table 1 SComm categorization of offenses

Level 1	Level 2	Level 3	Other
Homicide	Arson	Sovereignty	ICE fugitives
Kidnapping	Burglary	Military	Prior removal and returns
Sexual assault	Larceny	Immigration	EWI, visa violators and overstays
Robbery	Stolen vehicles	Extortion	
Assault	Forgery	Damage property	
Threats	Fraud	Family offenses	
Extortion—threat to injure person	Embezzlement	Gambling	
Sex offenses	Stolen property	Commercialized sex offenses	
Cruelty toward child, wife	Damage property w/ explosive	Liquor	
Resisting an officer	Traffic offenses	Obstructing the police	
Weapon	Smuggling	Bribery	
Hit and run	Money laundering	Health and safety	
Drugs (sentence > 1 year)	Property crimes	Civil rights	
	Drugs (sentence < 1 year)	Invasion of privacy	
		Elections laws	
		Conservation	
		Public order crimes	

SComm offense categorization in Department of Homeland Security Office of Inspector General (2011)

Between October 2008 and June 2012, SComm removals tied to the most serious types of crimes (Level 1) comprised 27.5 % of all removals (hereafter “top priority removals”). Removals stemming from visa violators, visa overstays, or an “entry without inspection” (EWI) composed approximately 5 % of removals. The remainder fall between the two extremes, which include offenses ranging from burglary to traffic infractions. Table 1 summarizes SComm categories of offenses by priority. For the purpose of describing SComm indicators, this chapter will refer to Level 1, 2, or 3 “offenses” as well as noncriminal “offenses” categorized in Table 1. The term “noncriminal” refers to immigrants in custody not charged with a crime at the time of arrest: fugitive absconders, people with prior removals or returns, visa overstayers, and people who entered the country without inspection. The discussion later in the chapter explores such a categorization process.

Research on immigration enforcement in the era of increased immigration policy experiments has focused on state and local legislation as well as formal, proactive partnerships between the United States Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) and state and local law enforcement agencies, such as the 287(g) program, a federal-local partnership program named

after a section in immigration law enacted in 1996. For example, Wong (2012) examines factors associated with (or predictive of) decisions by several dozen state and local entities to enforce immigration law violations alongside federal authorities. In contrast to state legislation or a local ordinance or 287(g) agreements, SComm does not require state or local approval or a proactive decision by state or local actors to engage in immigration enforcement. Thus far, local entities cannot choose whether to participate in SComm.

The federal government designed SComm as a measure that would eventually blanket all local jurisdictions. Whether local jurisdictions have the option to opt out remains controversial, perhaps because such an option would sully the federal emphasis on SComm as a politically neutral and technologically driven program—an image designed to anticipate, eschew, and quell concerns about racial profiling. Nevertheless, the concept of racial profiling remains a dominant framework for discussing SComm (Kohli, Markowitz, & Chavez, 2011) and immigration enforcement (Goldsmith, Romero, Rubio-Goldsmith, Escobedo, & Khoury, 2009; Romero, 2006). Previous work outlines the level of detail necessary to test claims of biased and racially motivated law enforcement (Farrell & McDevitt, 2010; Goldsmith et al., 2009; Johnson, 2010; Ridgeway & Riley, 2004). Absent detailed data, urgent concerns regarding racial profiling in immigration enforcement remain difficult to test, notwithstanding competing claims by immigration control and immigration rights advocates. Whether or not SComm propels racial profiling, as legal precedent may allow in some cases (Johnson, 2010), does not settle whether the program’s priorities make sense, much less whether it meets such priorities. This chapter examines these issues.

Immigrant Removability and Punishment in the USA

Even when SComm eventually covers all jurisdictions across the country, as it nearly does as of June 2012, the program cannot achieve a totality of power in the interior nor can the concept of “borderlessness” be considered settled since immigration enforcement has its limits (Calavita, 2007; De Genova, 2002). Indeed, immigration enforcement authorities and “removable” immigrants constantly play the game of “cat and mouse” (Ellermann, 2009, 2010; Scott, 1998, 2009). The state’s claim to exercise immigration authority continues to evolve and rests on its ability to authoritatively remove, banish, or otherwise exclude.

Extensive research examines precursors to today’s immigration enforcement context, including past eras and methods of deportation and repatriation (Kanstrom, 2007; Welch, 2002). Previous work focuses on the role of federal law and its effects across the country, especially the post-1965 federal immigration legal environment (Fix, 1991; Heyman, 1998; Mauer & Chesney-Lind, 2002). Rather than assume legal status as static or immutable, a growing body of research examines how immigrants can fall in and out of legal status and removability (Coutin, 1998, 2000; Hagan, 1994; Hagan & Phillips, 2008; Menjívar & Abrego, 2012; Ngai, 2004).

Such vantage points inform recent research on a nascent regime of unevenly integrated immigration enforcement entities following the collapse of comprehensive immigration reform efforts in 2006–2007 (Brotherton & Kretsedemas, 2008; Decker, Lewis, Provine, & Varsanyi, 2009; García, 2012; Hagan, Rodriguez, & Castro, 2011; Harrison & Lloyd, 2012; Pedroza, 2012; Rodríguez, 2008).

Key aspects of SComm reflect the history and evolution of immigration enforcement. The federal program employs the term “removals and returns” in reference to (a) the removal of immigrants eligible for exclusion and (b) voluntary departure (or return) of immigrants in federal custody. “Removability” applies to all unauthorized immigrants regardless of mode of entry, which includes previously “documented” immigrants whose legal status changed after arrival in the country. Removability also applies to legal residents convicted of specific crimes, including a range of offenses that can disqualify legal residents from retaining legal authorization to remain in the country. Precedent for the term “removal” dates back to an early acknowledgement that “resident noncitizens could be treated as excludable noncitizens, i.e., ‘outside’ the US with respect to due process” (Coleman 2012a, p. 413). SComm uses the term “removal” in recognition of the federal government’s authority to remove certain immigrants. Curiously, public data do not report returns separately from removals. In federal custody, immigrants routinely face the choice of voluntary return or removal, and the latter attaches steeper immigration consequences for unauthorized reentry.

The label “removals and returns” proves crucial when examining data on immigrants convicted of an offense. The term “conviction” hovers over SComm removal and return figures. The umbrella of “convicted criminal alien” conceals important features of federal immigration power. For example, when immigrants agree to leave the country rather than face the potential of removal, their conviction carries a qualitatively different meaning and lurks beneath the umbrella term “removal and return.” Yet alluding to convicted criminal aliens more effectively achieves the intended effect: an assurance of justice served. The banishment of criminal immigrants appears a fitting punishment.

Strictly speaking, the term “punishment” does not currently apply in cases of removals and returns. An act of punishment carried out by a state apparatus would imply due process rights for the accused (Kanstroom, 2000). The label “removal and return” affords DHS the opportunity to report the volume of transactions carried out under SComm in much the same way a bureaucrat (rather than a deputized officer of the law) administers benign services. Furthermore, the label also applies to “convicted criminal aliens” who fall outside the protections of the criminal justice system. SComm statistics, in other words, benefit from the ability to transition in and out of criminal and administrative terminology. This chapter attempts to shed light on how immigration enforcement power continues to push the boundaries of crime and conviction as well as the conflation of crime and immigration (Motomura, 2011; Stumpf, 2011). Specifically, the categorization of crimes in SComm frames debates regarding exclusion and removability as a matter of criminal justice. Alternative narratives regarding the meaning of inclusion and exclusion of foreign nationals remain at the margins. As a result, under SComm, administrative

violations and minor infractions become part of a quasi-penal code implicit in federal immigration statistics. Locations wishing to repel noncitizens in an indiscriminate manner thus benefit from the image of SComm as a neutral immigration enforcement and public safety program.

Research Questions

If SComm evolves as a permanent fixture of immigration enforcement, then it would become increasingly important to understand the composition of SComm activity across local communities. Although designed as a neutral, technologically driven interface and law enforcement tool, SComm continues to operate in local contexts that vary across the country. The descriptive figures in this chapter aim to shed light on four questions central to understanding the local character of SComm:

1. Where is SComm removal and return activity concentrated across states?
2. Which states feature the most (and least) targeted focus on the removal and return of the most serious offenders?
3. In which states are SComm removal and return rates the highest for noncitizen and unauthorized immigrant populations?
4. Does length of time participating in SComm correspond to targeted enforcement?

These questions can help answer whether SComm behaves as an immigration enforcement dam limited to “top priority removals” or as a less discriminate water mill that detains successive waves of immigrant arrestees for a range of offenses and across levels of priority.

Methods and Data

Summary statistics reflect SComm activity across all 50 states through June 2012.¹ Released through the Freedom of Information Act, DHS SComm data allow for analyses by state, local jurisdiction, and a range of outcome indicators. SComm indicators include the number of biometric submissions and matches, the number of removals and returns by type of offense, and the number of “noncriminal” removals and returns (i.e., removals and returns not convicted of a Level 1, 2, or 3 offense at the time of arrest).

¹SComm statistics sometimes change slightly over time due to successive updates to arrest and removal data. General trends remain relatively unchanged, especially for enforcement activities completed in the distant past.

The descriptive sections below examine how SComm enforcement activities vary by location, type of offense, and over time. Where applicable, population estimates from the American Community Survey (ACS, 2012) and Passel and Cohn (2011) supplement SComm figures to capture additional demographic dimensions across the country. The descriptive approach is exploratory and aims to (a) situate SComm enforcement outcomes in specific places and over time and (b) to inform future research on immigration enforcement broadly and SComm specifically.

Given the design and deployment of SComm, an analysis of the program could mirror previous work on refugees and asylum. Indeed, past research on asylum claims details how factors other than the facts of a given case matter, and refugees' prospects of successful claims to asylum can resemble playing a game of roulette (Keith & Holmes, 2009; Ramji-Nogales, Schoenholtz, & Schrag, 2007; Rottman, Fariss, & Poe, 2009). Given data limitations, this chapter attempts an exploratory approximation and theoretical discussion of such an approach. This chapter also suggests the need to account for SComm in a nascent literature on immigration enforcement experiments (Guterbock et al., 2010; Hopkins, 2010; Leerkes et al., 2011; Lofstrom et al., 2011; O'Neil, 2011; Parrado, 2012; Pedroza, 2012). Since SComm indicators diverge across locations, as described below, future work on immigration enforcement and restrictive immigration contexts should account for differences in SComm immigration enforcement outcomes.

SComm Removals and Returns

SComm removals and returns are not distributed evenly across all 50 states, largely as a reflection of the uneven distribution of immigrants across the nation. Not surprisingly, California and Texas account for half of all "removal activity" (i.e., total removals and returns per number of months since initial SComm activation in the state). California, Texas, Arizona, and Florida account for 69 % of SComm removal activity. Such figures exceed their collective share of the nation's noncitizen population (48 %) of over 22 million according to ACS estimates (ACS, 2012). Among these states, long-standing immigrant neighborhoods and experience collaborating with immigration authorities may account for the difference. SComm removal activity drops off after accounting for the largest four states. Four other states (Georgia, North Carolina, Virginia, and South Carolina) account for 10 % of removal activity, and the remaining states account for 21 % of activity.

Removal activity does not tell the whole story. Such figures conceal important differences in the composition of removals by type of offense. Top priority removals equal 27 % of all removals and returns nationwide. Level 2 and 3 offenses comprise 17 and 30 % of nationwide removals and returns, respectively. The remaining quarter (25 %) involves noncriminals or people who did not commit a crime at the time of arrest. Among the noncriminal group, prior removals and returns (17 % of the nationwide total) equal roughly twice the number of all other noncriminal removals and returns (8 % of the nationwide total).

Targeted Versus Universal Enforcement

Targeted enforcement refers to locations reporting higher than average shares of top priority removals, while universal enforcement refers to places reporting much lower (i.e., less than half the national average) shares of such removals. SComm data allow for a direct comparison across locations, and the data reveal important differences in states' demonstrated ability to focus on top priority removals. Examining SComm removals and returns across states highlights which locations feature the most and least targeted enforcement. Adapting the recent work of Capps et al. (2011), this chapter defines targeted enforcement based on the percent of top priority removals as a share of removals in each state. Specifically, this chapter assigns the label "targeted" enforcement to states whose top priority removals stand at or above the national average of 27 %. Seven states qualify when using such a cutoff² (Table 2). Collectively, this group of states reported over 152,000 removals and returns as of June 2012, and roughly one-third included top priority removals. As a group, these states reported the majority (79 %) of removals and returns for arrests involving Level 1, 2, or 3 offense, which slightly exceeds the national average (74 %).

The term "targeted enforcement" is relative. Even states with targeted enforcement cannot manage to link a majority of removals and returns to the most serious types of offenses, as the priority of the "Level 1" label might imply. Removals and returns in states with targeted enforcement fall outside the top priority roughly 60–70 % of the time. Indeed, among the targeted enforcement group, more than 100,000 removals and returns do not count as top priority removals. In other words, the Level 1 priority does not appear to function as a dam, a barrier beyond which the federal government hesitates to initiate removal proceedings. Yet the priority levels prove instructive when comparing states against each other.

SComm figures reveal a separate group of states whose ability to focus on top priority removals lags far behind the national average. In six states, the percent of top priority removals (as a share of removals in each state) equals less than half of the national average. This chapter defines these states as "universal" enforcement states³ (Table 2). As a group, only one out of the nine removals in these states qualifies as the top priority removal. Moreover, 40 % of removals and returns in these

²Delaware and South Dakota have very low removal activity to be included in the targeted enforcement group, each reporting single digit SComm removals per month. Massachusetts is also not included among the targeted enforcement states. Although the percent of top priority removals (as a share of total removals in the state) remains high compared to the national average, the percent of removals for noncriminal offenses falls far above the average.

³Table 2 excludes South Carolina, which reports top priority removal figures similar to the universal enforcement group. However, the percent of removals for noncriminal offenses in South Carolina falls below the average in the targeted enforcement group.

Table 2 Targeted and universal SComm enforcement

State(s)	Biometric submissions (thousands)	Removals and returns		Removal activity		Share of removals and returns by offenses (for each state)	
		Level 1 offenses	Total	Level 1 offenses	Total	Level 1 offenses (%)	Level 2, 3 offenses (%)
<i>Targeted enforcement</i>	8,045	45,981	152,760	1,189	3,924	31.9	78.8
Oregon	191	535	1,444	20	53	37.0	78.9
Utah	167	758	2,083	28	77	36.4	78.2
California	3,609	23,989	76,535	648	2,069	31.3	74.2
Colorado	137	304	987	19	62	30.8	81.8
Arizona	1,132	6,479	21,256	154	506	30.5	77.4
Virginia	595	1,307	4,416	33	110	29.6	77.9
Texas	2,214	12,609	46,039	287	1,046	27.4	83.3
<i>Universal enforcement</i>	1,575	509	4,434	22	189	11.2	60.5
Kansas	142	81	603	5	34	13.4	64.2
Missouri	332	76	569	4	27	13.4	54.1
Ohio	476	138	1,108	5	38	12.5	72.4
Louisiana	338	144	1,352	5	44	10.7	42.7
Alabama	160	37	406	3	29	9.1	64.8
Mississippi	127	33	396	1	17	8.3	64.6
<i>All states, DC, and territories</i>	17,966,159	55,772	202,756	1,268	4,608	27.5	74.8

Author’s calculations based on DHS (2012) data as of June 2012. Removal activity (removals and returns per month) calculated to reflect when each state began participating in SComm. Share of removals and returns presented as a percentage for each state or groups of states

states correspond to noncriminal offenses, and Louisiana leads the group in non-criminal removals and returns. As another note of caution, the volume of total removals and returns in targeted enforcement states eclipses the universal enforcement group (Table 2). However, SComm outcomes suggest the need to study differences across these two groups.

Removals and returns in targeted enforcement states appear less inefficient than removals in universal enforcement states. The vast majority (85 %) of SComm “removal activity” (i.e., removals and returns per month) stems from the targeted enforcement states. Law enforcement in these states may have amassed enough experience to lead the nation in top priority removals. By contrast, universal enforcement states only account for a small fraction (4 %) of removal activity. Perhaps due to inexperience as well as relatively small immigrant populations, local jurisdictions in universal enforcement states end up reporting much lower biometric match rates, removal activity, and top priority removal outcomes.

SComm Removal Rates

In addition to SComm figures described above, “removal rates” (i.e., removal activity adjusted for a state’s estimated noncitizen and unauthorized populations) differ from one state to the next. Removal rates do not mirror the distribution of the nation’s immigrant populations. For example, the six states with the largest immigrant populations account for nearly two-thirds of noncitizens (ACS, 2012). Removal activity among the “Big Six,” however, outpaces their share of the country’s noncitizen population. Although the Big Six account for 78 % of SComm removal activity, such concentration of removal activity does not translate into higher removal rates. In fact, only two of the Big Six (Texas and California) make the list of states with the highest removal rates (Table 3).

Table 3 features states with the highest removal rates for two different immigrant groups.⁴ Since some noncitizens can fall out of legal status, the risk set for removals and returns can fluctuate, and Table 3 attempts to approximate the risk of removal or return. Removal rates in Arizona rank highest for unauthorized immigrants and second highest among noncitizens. Removal rates for noncitizens versus unauthorized immigrants differ. States’ legal resident populations may account for the mismatch.

Table 3 States with highest SComm removal and return rates

State	Removal activity	Noncitizen population estimate (thousand)	Noncitizen removal rate	Unauthorized population estimate (thousand)	Unauthorized removal rate
Arizona	506	595	0.851	400	1.27
South Carolina	92	146	0.627	55	1.67
Utah	77	147	0.524	110	0.70
Louisiana	44	92	0.476	65	0.67
Tennessee	86	188	0.458	140	0.62
Texas	1,046	2,668	0.392	1,650	0.63
California	2,069	5,490	0.377	2,550	0.81
Oklahoma	48	131	0.365	75	0.64
Mississippi	17	43	0.400	45	0.38
Georgia	209	602	0.347	425	0.49
<i>All stated, DC, and territories</i>	<i>4,608</i>	<i>22,023</i>	<i>0.209</i>	<i>11,200</i>	<i>0.41</i>

Author’s calculations based on DHS (2012), ACS (2012), and Passel and Cohn (2011). Removal activity (removals and returns per month) calculated to reflect when each state began participating

⁴Wyoming and Mississippi are excluded due to small or imprecise population estimates.

For example, differences in the size or composition of states' green card holders and refugees (or the context within which they interact with law enforcement) could explain the difference. Alternatively, precision of the population estimates may also affect the relative rankings.

SComm Experience: Enforcement Indicators over Time

Trends over time shed light on the evolution of SComm as an enforcement tool. The federal government activates local jurisdictions' participation in SComm on a rolling basis. SComm participation will continue to evolve, especially since roughly one-third of jurisdictions did not activate their participation until 2011 followed by another third in 2012. Over time, as new local communities begin participating in SComm, DHS releases updated removal figures that include indicators for successive months. Since its inception, between 66 and 81 % of monthly SComm removals and returns have involved conviction of a Level 1, 2, or 3 offense. Meanwhile, top priority removals have accounted for between 18 and 31 % of all removals and returns in a given month.

Monthly SComm figures suggest the federal program has not improved its focus on top priority removals. If the DHS enforcement apparatus used SComm priorities as a guide to implement targeted enforcement, then SComm monthly figures might resemble a long-term, upward trend in top priority removals. Of course, if top priority cases take longer to process than other arrestees (i.e., longer prison sentences prior to removal) or if top priority cases prove few and far between in certain locations, then an uptick in top priority removal outcomes might lag in published SComm data. Over time, however, as DHS authorities field surges in biometric data matches, top priority cases could be expected to go up as the sheer volume of local jurisdictions participating in SComm allows DHS to target removal operations. After all, SComm confirmed roughly 11,000 data matches during its first month (October 2008) as an active program, compared to more than 900,000 matches in June 2012. Figure 1 plots monthly removals and returns, but no upward, long-term trend emerges, either among top priority removals or removals stemming from a Level 1, 2, or 3 offense.

Table 4 presents removal data among earlier (2008–2010) and later adopters (2011–2012) of the program. Earlier adopters tend to target top priority removals more than later adopters. Later adopters account for more than two-thirds of jurisdictions and may eventually report higher top priority removal figures than currently reported. Alternatively, later adopters may include qualitatively distinct jurisdictions unlikely to report more targeted enforcement over time. SComm figures by region hold clues about what to expect as SComm participation evolves.

SComm data reveal important differences in removals and returns by region. The Big Six as well as states in the West report targeted enforcement or 29 and 30 % of all removals and returns involving top priority removals, respectively (Table 5).

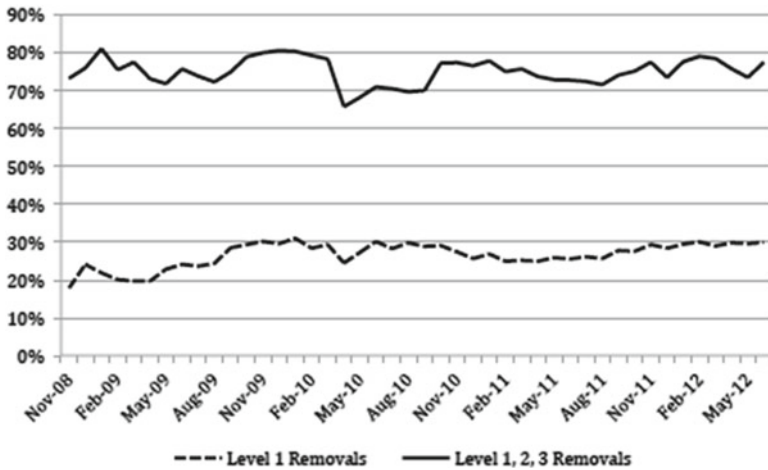


Fig. 1 Share of SComm total removals and returns (Level 1, 2, 3 offenses). Author’s calculations based on DHS (2012). Share of removals and returns presented as a percentage for each month from October 2008 through June 2012

Table 4 Removals and returns by year of SComm activation

Year	Number of activated jurisdictions	Total removals and returns	Share of total removals (Level 1 offense; for each year) (%)	Share of total removals and returns (Level 1, 2, 3 offenses; for each year) (%)
2008	14	26,483	27.7	82.1
2009	88	102,385	28.9	74.4
2010	783	64,966	26.4	72.7
2011	1,136	8,093	18.9	72.1
2012	1,043	829	19.7	65.7
<i>Total</i>	<i>3,064</i>	<i>202,756</i>	<i>27.5</i>	<i>74.8</i>

Author’s calculations based on DHS (2012). Share of removals and returns presented as a percentage for each year

None of the other regions exceed the national average of 27.5 % for top priority removals. Southern states report a large volume of SComm matches as well as removals and returns. However, southern states lag behind the Big Six and the West in top priority removals, though they manage to close to gap in removals for Level, 1, 2, or 3 offenses (Table 5). The other regions remain relatively less experienced in SComm participation.

Table 5 SComm removals and returns by region

Region	Level 1 removal and returns	Total removals and returns	Share of total removals and returns (Level 1 offense) (%)	Share of total removals and returns (Level 1, 2, 3 offenses) (%)
West	9,062	30,160	30.0	76.1
Big Six	39,998	138,321	28.9	75.9
Mid-Atlantic and New England	679	3,084	22.0	53.7
South	4,569	23,460	19.5	71.1
Heartland and Midwest	1,438	7,611	18.9	68.4
<i>All states, DC, and territories</i>	<i>55,772</i>	<i>202,756</i>	<i>27.5</i>	<i>74.8</i>

Author’s calculations based on DHS (2012). Share of removals and returns presented as a percentage for region. Alaska, Hawaii, DC, and territories not included in figures by region. “Heartland” states are defined by Wuthnow (2010)

Limitations

The figures presented above do not reflect all relevant distinctions across communities, such as crime rates in different locations or the scale and funding of law enforcement and corrections personnel. These additional factors may account for some, most, or all of the variations displayed above. Moreover, future trends may change as SComm participation matures, especially since two-thirds of local jurisdictions began participating in SComm after 2010. However, examining SComm data may shed light on yet undiscovered areas for future research on immigration enforcement.

Two other major and opposing types of limitations apply; one likely overestimates the extent to which SComm focuses on criminal activity in a targeted manner, while the other likely underestimates the same. SComm data do not fully capture the extent to which arrestees consent or otherwise agree to a criminal conviction. Public SComm data only report convictions by offense category. DHS criminal background data do not reflect all instances of immigrant arrestees’ criminal activity. Nor does published SComm data include details on removals triggered by past convictions.

Notwithstanding the limitations above, this chapter suggests a number of potential explanatory phenomena inherent in variations of SComm indicators across the country. The extent to which enforcement outcomes under the program continue to differ, diverge, mature, change, or otherwise evolve over place and time stands to

inform future research on immigration enforcement in important ways. Indeed, if SComm remains a permanent fixture of immigration enforcement, few studies concerned with immigrant responses to local context can afford to ignore SComm activities and its potential relationship to (or even effect on) pressing social concerns such as immigrant integration, immigrant settlement decisions, public safety and community policing, and more.

Discussion

The previous sections situate SComm enforcement outcomes across specific states and regions in the country, with attention to changes in SComm enforcement indicators over time. The figures presented above suggest place matters when it comes to SComm removals. But what are the broader implications of uneven enforcement and an enforcement program that attempts to codify variations in transgression among immigrants? The discussion below examines such issues.

Examining Top Priority Removals

Imagine if the conversation regarding removals and returns began with a discussion of a mother deported for stealing children's clothing at a shopping mall. The distinctions in SComm priorities across different types of offense categories imply a tacit recognition that an immigrant shoplifter, for example, should not automatically face the same consequences as an immigrant who commits a murder and represents a real and present threat to public safety. Yet both routinely face the same outcome: banishment. Although the threshold beyond which ICE should exercise prosecutorial discretion receives some attention among policy elites, the concept of "criminal alien" is usually taken for granted as a monolith, aided by the idea of SComm as a neutral interface.

SComm's image as a technological and methodical program belies an uneven geography of enforcement. The image rests largely on the program's categorization of offenses. SComm priority categories draw lines in the sand and sanction a distinction between different levels of offenses. For the purpose of reporting SComm statistics, the process of demarcating the difference between top priority cases (Level 1) and the subsequent priorities requires making choices of great consequence. Even if few would argue that homicide should remain the purview of the highest priority for arrest and removal, the group of Level 1 crimes includes a range of offenses. Parsing which types of charges deserve consideration as a top priority proves tempting. Indeed, certain offenses today carry sentences higher than they did decades ago due, for example, to the legacy of changes in drug policies. However, whatever the merits of such an exercise, excavating the gradation of individual offenses within a priority level (or the varied offenses under an umbrella

subcategory such as “weapons”) misses the core of the categorization puzzle. Why include drug offenses that carry at least a year sentence in Level 1 and not another priority level? How and why did the consensus of the categories themselves emerge?

Examining the homogenizing effects of gradation in systems of incarceration, Foucault (1995) rightly identifies the need to interrogate the “principle of relative continuity” (p. 299) inherent in modern incarceration and punishment. “But perhaps the most important affect of the carceral system and of its extension well beyond legal imprisonment is that it succeeds in making the power to punish natural and legitimate, in lowering the threshold of tolerance to penalty,” he writes when discussing how formation of delinquency rests on “subtle illegalities” (Foucault, 1995, p. 301). Not unlike enforcement programs that predate it, SComm intends to identify offenders whose transgressions rank them as the least sympathetic and most deserving of exclusion and repulsion from the national body politic. Not far beneath the promise to protect the public from removable aliens (whose presence defies immigration law itself) lay references or allusions to drunk drivers who kill motorists and other biographies readily produced as archetypes of an immigration-related problem. SComm priority levels, as a result, homogenize offenses within each level and lower the threshold of tolerance—if not outright license—to banishment and exclusion. SComm, in other words, homogenizes a process that resembles a removal roulette for immigrants behind bars.

SComm priority levels inscribe enforcement indicators with a tacit agreement regarding removability. The juridical process of categorization, though largely imperceptible as an ideological or overtly political exercise, belies the essence of immigration law breaking. Although ICE as an entity closely guards self-identification as part of (and membership in) a penal culture, a competing reality remains: a range of immigration offenses fall wholly under administrative violations. Against this background, the categorization of offenses functions inherently as a workshop.

The workshop tweaks enforcement operations. It tests the limits of enforceability in the eyes of immigrant rights advocates and immigration control advocates alike. Categorizing levels of crime under SComm obscures and forecloses essential questions regarding the current state of immigration enforcement. For example, how should SComm count offenses where the arrestee has already paid their debt to society? Should agreeing to voluntary removal count as a conviction where an immigrant accepts the charges in order to avoid prolonged detention and a bar from future reentry? Should SComm import the asymmetry of the ever-expanding laboratory called “aggravated felonies”? The categorization process under SComm sanitizes such contestable dilemmas.

The idea of vetted, screened, and rationalized categorization of foreign-born criminality facilitates uncontested removals and returns. The process forecloses a discussion regarding whether or not an immigrant can stay in this country after committing a crime. It also opens the door for decisions (as difficult to trace as sub-contract violations) by individual officers to propel suspects into immigration proceedings. Research on the enforcement programs in North Carolina (Coleman, 2012b) and Tennessee (Armenta, 2012) relays such accounts. In both instances,

individual officers voice a mentality best described as “arrest now and let the feds sort them out.” After all, the logic goes, a biometric match is a biometric match, the law is the law, and indiscretion—even “spitting on the sidewalk” (Coleman, 2012b, p. 174)—is a poor excuse and imprudent. But does that mean the priorities themselves may not matter after all? Is arrest sufficient, or merely necessary, as a precondition for removal or return?

SComm Enforcement and Removal Priorities: A Dam or a Water Mill?

Should removal operations be limited to the “worst of the worst” or, funding permitting, remain intact and expand to the next worst types of crimes? Absent a discussion of which offenses should trigger removal, two major problems arise: problems that lie at the core of SComm’s identity as a “dam” rather than a “water mill.”

First, federal immigration law has successively expanded the universe of people eligible for removal. Furthermore, the types of crimes a legal resident can commit and still be allowed to stay in the country have shrunk. While the debate about removability or deportability can hinge on deciding what we mean by “worst of the worst,” it should also reflect an honest recognition that all people make mistakes or even break the law. How vast an expanse of offenses should removability cover? Can shoplifters pay their dues in a manner that excludes removal? If not, unauthorized immigrants and legal residents under arrest will continue to be placed into a removal roulette where place can make the difference between removal and release as much as the offense itself.

The current enforcement roulette empowers ICE to pull a removal trigger, ideally with some fidelity to DHS priorities. If SComm removed only the most serious offenders for a well-defined risk set, then the program could function as a dam—or a protection against indiscriminate, or even fickle, removal roulettes. However, if DHS priorities and the risk set of immigrants prove fluid and malleable, then the banished would amount to little more than a disciplined surplus population of “removables.” In such a scenario, predicting removable offenses or defining removability (in strict terms and over time) would prove difficult, but the certainty of removals themselves from one fiscal year to the next would resemble a water mill: filling bucket after bucket from a pool. SComm appears to function as a water mill whose successive buckets move without pause from one priority to the next, mimicking a mill moving steadily from one group of offenses to the next. Even more, the force of a local water mill may operate differently depending on its location and prove more discriminate in some places than others.

Second, absent a conversation about which offenses can and should result in removal, unauthorized immigrants and legal residents alike must live a provisional existence. The disciplining effects of such an implicit agreement amount not so much to a bargain but rather a gamble or yet another game of roulette. The gamble occurs in a high-stakes context for those seeking to eventually adjust their status.

The federal application for adjustment of legal status (form I-485) asks applicants to recall whether they have ever “knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested” inside or outside the United States. Such a question requires prospective applicants to avoid a wide range of mistakes in order to answer “no.” The implications could prove nontrivial.

Survival under threat of the hazard of removal means living a life of extraordinary, unobtrusive, and unimpeachable conduct, above and beyond anything we might reasonably expect of someone born in the United States. Who could hope to live up to the letter of the law in all instances and the asymmetrical standard of behavior implied? In addition, the risk set for removal remains unsettled, aside from a sense of the “other,” and erring on the side of caution the only safe bet. As a result, the most restrictionist voices (i.e., advocates of lower and more limited immigration, both legal and otherwise) are not alone in willingly engaging in an age-old folly of double standards: sanctimony.

If SComm behaves as a water mill, what might the program signal for the future? SComm tests where the goalposts of excludability can move. The categorization of different levels of crime may end up functioning as a litmus test for acceptable limits of removability. When governors in established immigrant gateways (California, Illinois, New York) weigh in on the issue and express concern about participating in SComm, they wager that data sharing across federal agencies and/or honoring federal immigration detainers may prove contingent after all. In the meantime, the Obama Administration recently chose to provide temporary relief (called “deferred action”) for a sympathetic class of “deserving” unauthorized immigrants: students who years ago came to the country as children and wish to continue attending school or to join the military. A careful read of the application for relief and DHS guidance reveals a new chapter in the DHS laboratory. Revamped categories and concerns regarding delinquency emerge in the form of “significant” misdemeanors (yet another example of categorization and its homogenizing function) and suspected gang activity (a black box familiar to advocates of youth in juvenile justice). Such categories may prove a harbinger of how SComm may evolve as a removal roulette and a water mill in the coming years.

Conclusion

SComm may have heralded an era of enforcement that lubricates existing fissures regarding who gets to stay in the country. This chapter suggests that immigrants may face an uneven immigration enforcement landscape under SComm. As expected, since immigrants are not distributed evenly across the country, the vast majority of removals stem from a relatively small number of states. In addition, some states report enforcement outcomes consistent with a universal enforcement model, rather than a targeted focus on top priority removals.

Some universal enforcement states feature what appears to be an especially eager and proactive approach to biometric submissions. Oregon, for example, manages to target more than one-third of removals and returns for top priority offenses. In the mean time, Louisiana reports nearly twice as many biometric submissions as Oregon but a far smaller portion of top priority removals as a percent of all removals in the state. Since overall SComm removal indicators reveal limited improvements in targeting enforcement over time, such divergence may linger into the future.

In addition to divergent enforcement outcomes, removal rates across the country also differ by location. Not only do some states manage to report very different abilities to focus on top priority removals, but removal rates (for noncitizen and unauthorized immigrant populations) also diverge. Unless such differences reflect real contrasts in local crime incidents or other factors directly related to arrest and biometric screening, the contrasting removal rates in key states may reflect a restrictive or unwelcoming local context of incorporation. Others have measured the potential of such a scenario in related work on restrictive policy experiments (Pham & Pham, 2012) and children of immigrants' outcomes in different policy and political settings (Filindra, Blanding, & Coll, 2011). This chapter suggests accounting for SComm as well.

This chapter also discusses SComm enforcement as a laboratory. SComm's image as a technological and methodical program does not match its uneven geography of enforcement. Far from wholly objective, SComm and its categorization of offenses function inherently as a workshop or laboratory. The process of categorizing levels of crime obscures and forecloses a discussion of the meaning of "foreign-born criminality." Indeed, SComm functions less as a dam and more like a water mill that collects removable aliens in successive buckets move without pause across levels of priority. As a result, unauthorized immigrants and legal residents alike tend to experience a provisional existence as the goalposts of punishment and excludability move. As immigration reform debates reemerge and evolve, the current climate could shape perceptions of which immigrants deserve amnesty. Criminal investigation records would surely affect such debates, potentially shutting out immigrants who would have to remain in hiding and/or risk reentry after banishment. For now, the prospect of reclaiming the concept and full meaning of "amnesty," as Bosniak proposes (2012), remains at the margins.

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