

Against the Immigrant, For the Law:

An analysis of the “problem” presented in restrictive state-level immigration law in Georgia

by

LEANNE PURDUM

(Under the Direction of AMY J. ROSS)

### ABSTRACT

This thesis explores the immigrant and the role of state laws in constructing the image of the immigrant as a problem, specifically in Georgia House Bill 87, passed in Georgia in 2011. It uses qualitative research methods to investigate the politics of restrictive immigration law in a state with both a market for unskilled workers and nativist desires to protect the state from ‘unwanted’ immigrants. It concludes that a popular anti-federal government discourse hides a more complex relationship where the state of Georgia (lead by the Republican Party) uses imagined federal failure to legitimate claims to state level powers. With this power, the state law employs a racialized/ethnicized language that constructs the immigrant as “illegal”, poor, uneducated, and Hispanic, and blames the immigrant for the economic problems in the state. Ultimately, this thesis argues that the law aims to control the social territory of the state and increase the already tense everyday life of the undocumented immigrant.

INDEX WORDS: Georgia, undocumented immigration, law, political discourse, federal-state immigration enforcement, House Bill 87

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## DEDICATION

I dedicate the time and effort I spent writing this thesis to the countless people who have risked their lives coming to the U.S. in search of opportunity, and to the hope that those with unconstrained options can begin to understand why these others would ever make such a choice.

## ACKNOWLEDGEMENTS

All my love and thanks to Mom and Dad, who have encouraged me without hesitation or condition throughout the many different kinds of lifestyles I have lived, and continue to seek, during this lifetime. Thanks to those of my cohort who have become dear friends: you have made these two years a joy!!! I am grateful to the UGA librarians who helped me collect and cite a mountain of documents. Thank you to Josh Barkan for introducing the concept of legal geography and its importance to undocumented immigration, an intersection I hope to continue investigating for many more years. Thanks to Steve Holloway, for presenting me a strong foundation of racial dynamics in the United States, and helping me connect it to immigration. And to Amy Ross, who has guided me throughout this process with sincere interest, clear advice, and an eye for my long term development.

## TABLE OF CONTENTS

|   | Page |
|---|------|
| ACKNOWLEDGEMENTS .....  | v    |
| LIST OF FIGURES .....   | vii  |
| CHAPTER   |      |
| 1 Introduction.....   | 1    |
| 2 State Immigration Law and HB 87 .....                             | 12   |
| 3 Space, Race, and Law .....  | 35   |
| 4 Data Collection .....   | 57   |
| 5 Analysis of the Discourse .....                                   | 64   |
| 6 Conclusions.....  | 86   |
| REFERENCES .....  | 90   |
| APPENDICES  |      |
| A Other Selected Resources.....                                     | 96   |
| B Complaint Form from the Immigration Enforcement Review Board..... | 101  |
| C Agenda for the Special Joint Committee on Immigration Reform..... | 103  |
| D E-mail Response from House Judiciary Committee Council .....      | 106  |

## LIST OF FIGURES

|  | Page |
|--|------|
| Figure 1: Timeline of Important Legislative Dates for HB 87 .....            | 23   |
| Figure 2: Members of the Special Joint Committee on Immigration Reform ..... | 71   |



## CHAPTER 1

### INTRODUCTION

*The federal government is not doing its job and defending our border. Places like Alabama, Arizona, and Georgia are having to step up and pass laws within their own states ... and Georgia is saying 'hey let us take care of ourselves and get the federal government out of the way'.*

-Georgia Representative Tom Graves (R)<sup>1</sup>

*It's not that the workers are being exploited! Do you know those workers can make \$400 a day picking onions? Now you gotta work! I don't believe any of us could stay with them. You've gotta work....The trouble we've got, Mr. Speaker let me say this, is we've always got some half-baked social worker standing at the end of the field, wants to sign them up for everything they can give them.*

-Georgia Representative Greg Morris (R)<sup>2</sup>

The nation is, once again, abuzz with debates and opinions on immigration reform. Ideas range from building a fence along the Mexican border, to granting citizenship for all those who have been in the country for several years. In February 2013, during a United States Senate

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<sup>1</sup> “ Georgia Looks to Enact Tougher Immigration Laws.” FOX Business News.  
<http://video.foxbusiness.com/v/1729338939001/georgia-looks-to-enact-tougher-immigration-laws>.

<sup>2</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives). Video for the Morning and Afternoon sessions can be found <http://www.gpb.org/lawmakers/2011/day-23-0>.

Judiciary Committee meeting, an undocumented worker named Jose Antonio Vargas addressed the panel with a question. “For all the undocumented immigrants who are actually sitting here at this hearing, for the people watching online and for the 11 million of us: What do you want to do with us?”<sup>3</sup> Indeed, Mr. Vargas invokes an urgent discussion about the place of the immigrant community in the United States, and his need for legalized status is of immense importance. And yet, Mr. Vargas’ commentary also highlights an un-interrogated narrative common in popular immigration rhetoric: there is an immigration “problem” and something must be “done” with the people who are here without paperwork. This popular (mis)understanding, be it about the “illegal alien”, the “11 million” or the “undocumented immigrant” is part of a national discussion which assumes a legal solution will become available for all people in the United States, and that this solution (be it deportation or a path to citizenship) has, at its heart, the goal of finding a legal status for all workers and residents within the country.

This thesis seeks to understand how state level versions of immigration law fit into this national discussion, using Georgia’s most recent comprehensive immigration reform law as a case study. The National Conference of State Legislatures (NCSL) reports that in 2011, states introduced 1,607 bills relating to immigrants and refugees, continuing a recent trend toward more such legislation (Immigrant Policy Project (IPP), 2011a).<sup>4</sup> While only 570 such bills were introduced in 2001, the Migration Policy Institute recorded 1,059 in 2007 (Laglagaron 2008). Senator John Watkins of Virginia, co-chair of the NCSL Task Force on Immigration and the States declares “The immigration issue is not going away. As long as we fail to have a federal

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<sup>3</sup> “Senate Takes First Formal Step Toward Immigration Reform.” *National Public Radio* February 13, 2013. <http://www.npr.org/2013/02/13/171933434/senate-takes-first-formal-step-toward-immigration-reform>.

<sup>4</sup> The Immigrant Policy Project (IPP) is a branch of the National Conference of State Legislators (NCSL). The NCSL describes itself as “ A bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths and territories. NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues.” IPP reports three times yearly on state level immigration laws and related immigration issues. <http://www.ncsl.org/about-us.aspx>.

solution, state legislatures will continue the policy debate and develop local responses. We need a national solution to relieve the pressure on states" (IPP 2011a).<sup>5</sup> What exactly is the "issue" when we speak of "illegal" immigration, and what is the perceived "solution"? In several states the 11.2 million persons (Passel and Cohn 2011) present in the country without the legally required paperwork have recently been the focus of comprehensive immigration legislation that presents state-level enforcement of immigration law as the solution to the "problem" of the perceived costs of "illegal" immigration.

In contrast to this popular understanding, this thesis takes the position that there is no self-evident "problem." Rather, it is the construction of this 'problem' that deserves critical examination. I follow Julie Guthman's method of interrogating what counts as the 'problem' (in her work, obesity). She begins her book (Guthman, 2011) with the question: "What is the problem?" Just as she argues that the answer is not as simple as it seems, and that an analysis of "the problem" is necessary, in this thesis I argue that the common presentation of the "illegal immigrant" as the "problem", and state law enforcement as the "solution" masks a much more complicated reality. This situation, in which the state blames the immigrant for economic troubles and implements state law as the fix, depends on an image of the "illegal alien", portrayed through words and enacted into legislation.

In this thesis I explore how the image of the "illegal" immigrant is constructed by two myths, as seen in Georgia's *Illegal Immigration Reform and Enforcement Act of 2011*, also known as House Bill 87 (HB 87). Time and time again, anti-immigrant activists and Georgian proponents of the legislation repeat these myths, which could be what Marshall Shepherd calls

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<sup>5</sup> <http://www.ncsl.org/press-room/ncsl-releases-2011-report-on-state-immigration-law.aspx>.

“zombie theories”<sup>6</sup>, or myths that have been repeatedly disproven, yet continue to reappear, in popular representation, such as news, blogs, and (from my analysis) in the Georgia Legislature.

The first myth is: Immigrants cost the state and taxpayers money, and therefore undocumented immigrants are to blame for economic problems in the nation, the state, and in communities. In opening remarks for Georgia House Bill 87, the House Sponsor, Representative Matt Ramsey, commented “For the last three years we have been making awful choice after awful choice in the budget. Our schools are drowning. Our law enforcement is doing more with less. Our healthcare infrastructure is to the breaking point. We know statistically that it is costing our taxpayers \$2.4 billion per year to fund the presence of 425,000 illegal aliens.”<sup>7</sup> However, this statement claiming the costs of undocumented immigration is not substantiated by economic scholarship. For example, in a recent report from the Migration Policy Institute, the author found that the costs and the contributions of undocumented immigrants are so similar they are “essentially a wash” (Hanson 2009). The relatively small impact calculated in this report, a negative net-impact of .07% of GDP, indicates that “notwithstanding all the focus and controversy surrounding illegal immigration, the fate of the U.S. economy is not riding on the country’s policy toward undocumented workers”(Ibid.) In another report, the Center for Immigration Studies<sup>8</sup> concluded, that the “the immigration surplus, or benefit to natives created by illegal immigrants is estimated at around \$9 billion a year, or 0.06 percent of GDP” (Borjas 2013). Undocumented workers made payments of \$50 billion in federal income tax from 1996 to 2003, and paid at least \$120 billion into Social Security, which they lack the ability to withdraw

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<sup>6</sup> See Dr. Shepherd’s Ted Talk about Climate Change. <http://tedxatlanta.com/videos/05072013-reasons/dr-marshall-shepherd/>

<sup>7</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives). Video for the Morning and Afternoon sessions can be found <http://www.gpb.org/lawmakers/2011/day-23-0>.

<sup>8</sup> See discussion on p.13.

(Lipman 2011). Furthermore, researchers at Harvard Medical School and City University of New York report that immigrant populations paid \$33 billion into the Medicare Trust Fund from 2002- 2009 and received only \$19 billion.<sup>9</sup>

The second myth is: State immigration laws are in conflict with the federal government. In fact, this thesis will demonstrate that a common discourse in public newspapers and news outlets across the country falsely represents state-level immigration laws as "rogue" challenges to the federal government.<sup>10</sup> Overall, my research shows that this misconception is a key element to the logic that Republican legislators in Georgia use to justify their positions on HB 87. While state laws such as Georgia HB 87 and Arizona SB 1070 may 1) reflect an intended challenge to the federal government, 2) show discontent with current immigration policy, and 3) certainly contain provisions seen by some immigrant advocates as problematic, the popular media representation overestimates the extent to which the laws are in conflict with federal immigration law and federal immigration goals. In my research, I found that news outlets commonly misrepresent the nature of the court cases, overestimate the strength of human rights groups to challenge state immigration laws, and under-report efforts by the DHS and other agencies to recruit partnerships with state governments. Why would this apparent fallacy---that state laws are in opposition to federal laws--exist, and what purpose could it serve? I argue here that instead of signifying a split or problem that must be reconciled, this seemingly contradictory line of logic actually functions to create a sense of legitimacy that the dominant state leadership needs to implement its desired social and legal programs. The anti-federal discourse is important to the

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<sup>9</sup> "Immigrants Subsidize, Rather Than Drain, Medicare." NPR. May 30, 2013.  
<http://www.npr.org/blogs/health/2013/05/30/187280882/immigrants-subsidize-rather-than-drain-medicare?sc=17&f=1001>

<sup>10</sup> For example, see [http://www.nytimes.com/2012/08/22/opinion/setback-for-rogue-immigration-laws-in-georgia-and-alabama.html?\\_r=0](http://www.nytimes.com/2012/08/22/opinion/setback-for-rogue-immigration-laws-in-georgia-and-alabama.html?_r=0).

promotion of these state-level immigration laws, even as the laws are compatible, rather than against, federal legislation.

Both of these myths can be found in the way proponents of HB 87 declared that the law was necessary for one main reason, to create an environment with as few “incentives” as possible, so that unauthorized immigrants (and their families) would leave the state, solving the “problem” and the (assumed) resulting crime, job-shortages for citizens, and the drain on taxpayer resources. To address this goal, supporters of the bill sought to implement two main federal programs: the E-Verify database and 287(g) police partnerships. However, from the same supporters of these federal programs came an equally strong rejection of the federal government.

In states where restrictive<sup>11</sup> immigration laws are passed, immigrants are constructed as a cost to the state and taxpayers. This perception, reflected in comments like the one above from Ramsey, led me to question the purpose of state level laws (like Georgia House Bill 87), and to understand their place in the larger context of U.S. immigration law. To investigate this question I apply Mathew Coleman’s work on “immigrant (in)security” to HB 87, using the concept he employs to describe how police partnerships with the Department of Homeland Security (DHS) play a role in the increasing sense of deportation risk for undocumented immigrants. The risk of deportation, in which one leaves behind all they have gained from their work and life in the U.S., increases the insecurity of the immigrant but also places the accountability for the pull of undocumented immigration onto the undocumented person. This thesis examines the ways HB

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<sup>11</sup> I use this term to refer to state laws that take the position that undocumented immigration is a problem for the state, and that seek to publicly discourage undocumented people from being legally present in the state. The term is a general one meant to distinguish laws that are “anti-immigrant” from those that are “pro-immigrant”, such as sanctuary cities. However, much of this thesis is about the complicated reality behind this public position. For more discussion on restrictive policies versus inclusive policies, see page 37 and 41.

87 constructs a legal environment in Georgia in which the undocumented immigrant is blamed, and held accountable, for the trespass of immigrating without documentation.

Georgia House Bill 87 includes sections mandating employers to check the immigration status of all employees, creates a seven person board that reviews non-compliance allegations (which can be made by any Georgia citizen), and encourages police officers to verify immigration status at even the most routine traffic stops. It augments a similar law passed in the state in 2006. House Representative Matt Ramsey argues that the legislation from 2006 failed due to “a hole in the law...no enforcement mechanism ” that would hold state and local governments accountable for failure to participate in programs designed to stop undocumented immigrants from working in the state and using certain public benefits. In HB 87, the new law gives any Georgia citizen and voter a right to sue public entities that do not enforce laws which forbid unauthorized immigrants from working and receiving public benefits.

Five states—Alabama, Georgia, Indiana, South Carolina and Utah—have passed immigration reform following the example of Arizona’s 2010 bill, the *Support Our Law Enforcement and Safe Neighborhoods Act*, or Senate Bill 1070 (SB1070) (IPP 2011a). Many of the laws encourage state and local law enforcement agencies to partner with the DHS and mandate most employers to use a federal database, called E-Verify, to verify the work status of all employees.<sup>12</sup>

In this research, I found that legislators and lobbyists in support of HB 87 discussed the law as a necessary response to an enforcement failure by the federal government. However, recent comprehensive immigration laws coincide with the high numbers of deportations by the DHS, in charge of federal immigration since 2002. In 2011, the department deported 391,593

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<sup>12</sup> The specifics vary from state to state. Private businesses licensed in Georgia with 10 or fewer employees are exempt.

people from the United States, up from 189,000 in 2001.<sup>13</sup> These numbers complement the department's published goal: to "remove 100% of removable aliens".<sup>14</sup> Furthermore, the post-9/11 era is characterized by extreme growth in budgets for enforcement agencies connected to homeland security issues. Homeland security budgets related to immigration have increased from 2002 to 2010: with an increase from \$5 billion to \$11.5 billion for U.S. Customs and Border Protection, and an increase from \$2.4 billion to \$5.74 billion for U.S. Immigration and Customs Enforcement (Mittelstadt et al. 2011).

I began this research imagining that the public legislative process for HB 87 (public hearings, committee documentation, and floor debates) would reveal an inner-Party tension between Georgia legislators from areas with businesses reliant upon cheap labor, and other Georgians wanting less "illegals" in the state. I thought clear evidence would exist of a tough legal battle between, on one side, direct consumers of undocumented labor such as the restaurant industry, construction companies, vegetable or fruit farmers, and, on the other side, lobbyists for a nativist, restrictionist rhetoric calling for tougher enforcement of immigration law to send a message to the federal government and urge those without papers to flee. During the process of my research I found instead, less of a division than I had expected (only two Republican Representatives voted Nay for the final bill). Rather, exceptions built into the bill were crucial, particularly those that appeased some business sectors.

I found that the Republican Party, which sponsored, drafted, and passed the legislation, navigated a complex relationship with the federal government by at once claiming that the federal government has failed to manage immigration successfully while at the same time

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<sup>13</sup>"Yearbook of Immigration Statistics: 2011." Washington, D.C.: U.S. Department of Homeland Security. Office of Immigration Statistics. 2012. [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois\\_yb\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf)

<sup>14</sup> Ibid.



passing legislation that mandates state level participation in federally supported and encouraged programs: specifically 287(g) police partnerships and the E-Verify employment verification database. This relationship, I argue, allows the state to implement federal programs while legitimating state -level power. Furthermore, I found that the Georgia Republican Party used (and continues to use) racially/ethnically based language to scapegoat the Hispanic undocumented population in the state. The Republicans lawmakers do so to place blame on the undocumented immigrant and their families during a time when many voters in the state express economic concerns.

This thesis is formed from my review and analysis of numerous documents and videos gathered from the Georgia State committees and Representatives that drafted, held hearings, and spoke publicly about the bill before its passage.<sup>15</sup> These videos and documents show that the Georgia Representatives who drafted the bill created and deployed this image of the immigrant as a “problem” as the underlying motivation for the bill. The goal of this research was to investigate the formal reasoning for Georgia’s immigration law to better understand the interplay of power and dominant discourse in the state’s legal system.

Based on the recorded votes<sup>16</sup> of House Representatives for versions of the bill, it is clear that the law was a highly partisan effort led by the Republican Party and that very few (two) Republicans voted against the original version of the bill. Three Democratic Representatives votes Yea; the rest, 54 voted against the bill. With these materials I came to understand the documentation made by the drafting committee, as well as the Republican House debates and other available documentation, as a dominant discourse providing clues to how an argument was

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<sup>15</sup>For more, see the Methodology Chapter on p. 57.

<sup>16</sup> Voting records for each version and amendment to the bill can be seen on the webpage for the Georgia General Assembly, at <http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/87>. For the voting record from March 3, 2011, which Legislative Assistants referred me to for “the vote”, see <http://www.legis.ga.gov/Legislation/en-US/vote.aspx?VoteID=7823>.

crafted to paint the undocumented immigrant as the “problem” in the state. To begin this investigation I started with a basic research question: **What are the dominant narratives within the legislative debates and committee documents for HB 87?** I found that arguments for the law were supported with claims that the state law was fighting back against a flawed and incompetent federal system, that the law relies heavily on imaginaries of “right” and “wrong” to construct personal loyalty to the enforcement of immigration law, and that the law perpetuates a racialized/ethnic image of the undocumented person. These findings lead to my second research question: **What are the functions of these kinds of discourses for the dominant groups within the Georgia Legislature?** Overall, I find that these persistent lines of argument serve to scapegoat the undocumented immigrant as a cause of economic problems in the state

This thesis is organized into six chapters. In Chapter 2, I provide a background of recent state immigration laws, how they fit into the history of the U.S. immigration system, and the importance of "enforcement" within HB 87. Chapter 3 presents the theoretical positioning for my analysis, which relies on critical legal geography, particularly scholarship which investigates the interplay of federal and state power as a form of social control. The theoretical framework also draws from literature on racial formation in the U.S. In Chapter 4, I explain the methods I used to gather, synthesize, and identify the dominant discourses spanning the larger context of undocumented immigration in the U.S., and the specific discourses and details of HB 87. In Chapter 5, I analyze the data in order to demonstrate how these dominant discourses emerge, in the context of the specific legislative process of drafting and passing HB87. Specifically, I discuss how a discourse from popular media outlets incorrectly characterizes laws like HB 87 as anti-federal projects, which is repeated by Republican Representatives as they discuss HB 87 in floor debates and committee meetings. In addition, I present evidence that the legislative

supporters of the bill used racialized/ethnicized language to characterize the Hispanic, Spanish speaking population as “illegal” and to blame the problems of the state on this population.

Chapter 6 summarizes my key conclusions, considers the contributions of my research, and suggests several areas for further study.

Overall, this thesis seeks to critically examine a current development relevant to what I believe to be a central human rights issue: migration. Is it a fundamental right of all people to cross borders in order to seek work, education, and opportunity? If so, the current immigration regulations of the U.S., and the perception that poor migrants and their families should simply “wait in line”<sup>17</sup> for their opportunity, privileges the powerful. I began this research interested in the characteristics of the world system that shape the U.S. immigration scheme and what they reveal about power and law in modern day society. As Ross argues, “the unevenness of the landscape of the human rights universe is less an accident than an element of its design”, and there is significance in understanding who is privileged by the rules and who is punished (Ross 2010, 489). In this thesis I examine one element of this system: Georgia House Bill 87.

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<sup>17</sup> For a critical analysis of this “line”, see “Going to the Back of the Line: A Primer on Lines, Visa Categories, and Wait Times.” Migration Policy Institute. 2013. <http://www.migrationpolicy.org/pubs/CIRbrief-BackofLine.pdf>.

## **CHAPTER 2**

### **STATE IMMIGRATION LAWS AND HB 87**

This chapter provides background information of several topics relevant to my analysis of the documents and videos from the legislative process for House Bill 87. Specifically, I discuss changes in federal law that allowed for increased partnering of federal and local officials to enforce immigration law, and how the “inherent authority doctrine” is currently used to further justify state immigration laws regardless of formal federal partnerships. Together, these legal changes and the inherent authority of the states have characterized the recent era in which several states see an opportunity to regulate immigration from within state boundaries. In my Analysis Chapter I will characterize the law passed in Georgia as one relying on an image of the “failure” of the federal government to then justify increasingly codified enforcement mechanisms that blame the unauthorized immigrant for economic problems in the state. This chapter presents a history of House Bill 87, beginning with a brief history of Senate Bill 529, a previous piece of legislation which played a prominent role in debates surrounding HB 87. Senate Bill 529 was viewed by legislative supporters of HB 87 as a failure due to a perceived lack of enforcement rules built in to 529, and the passage of HB 87 and its enforcement provisions was presented as the remedy. This relationship is an important link to understanding the role that enforcement plays in Georgia’s state immigration law. The chapter continues by explaining the legislated enforcement elements from HB 87: E-Verify employment status checks, 287(g) police partnerships, and the Immigration Enforcement Review Board.

## **State Level Immigration Laws: A New Kind of Immigration Enforcement**

State level immigration laws, such as HB 87, mark a drastic move away from the mostly federal enforcement that has characterized the last 150 years of legislation in the U.S. The move away from the “virtually unchallenged federal authority” over immigration enforcement (Newton 2012) began with two laws that encouraged state and local authorities to cooperate with enforcement of federal immigration law (Coleman 2009). The first, the 1996 *Anti-Terrorism and Effective Death Penalty Act* (AEDPA), gathered information on immigrant felons into the FBI crime database. The second, the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA), allowed state and local law agencies to check the immigration status of and detain suspected undocumented immigrants (Coleman 2009, Newton 2012, Varsanyi et al. 2012). The IIRIRA created the infamous 287(g) program<sup>18</sup>, a partnership between local police and federal immigration authorities. The programs allow and encourage state law enforcement agencies to sign memorandums of agreement with the Attorney General’s Office, and enable officers to train as immigration enforcement agents. These agreements, which link local police action such as traffic stops and jail bookings directly to Immigration and Customs Enforcement (ICE), encouraged states to act in partnership with federal immigration enforcement (Lane 2012, Varsanyi et al. 2012). According to the Center for Immigration Studies (CIS), a research organization that “seeks fewer immigrants but a warmer welcome for those admitted”, 287(g) partnerships were meant to be a “force multiplier” to reduce the amount of undocumented immigrants by “attrition through enforcement” (Krikorian 2005). “Attrition through enforcement” is a phrase used in anti-immigration literature, implying that undocumented immigrants will remove themselves from areas where federal immigration laws are enforced at the state and local level (Kobach 2005). These partnerships between state and federal agencies

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<sup>18</sup> See the definition of the 287(g) program on p. 31.

dramatically altered the federal responsibility of immigration enforcement, increasingly handing enforcement power over to state and local police, a move political geographer Mathew Coleman has called “an historical about-face” (Coleman and Kocher 2011). These state and local policing actions include formalized programs such as 287(g) and range to other, sometimes *ad hoc* partnerships such as workplace raids, and anti-gang enforcement (Ibid.) Furthermore, Coleman argues that these police partnerships, which sometime lead to the deportation, show how enforcement of immigration law has moved inward, making “everyday spaces away from state borders... sites of immigrant surveillance and regulation” (Coleman 2012b, 164).

*The Inherent Authority of the State, and the Case for State Laws*

State involvement in immigration enforcement, directly encouraged by the 1996 IIRIRA, was solidified in 2002 with an opinion issued by the Department of Justice (DOJ) Office of Legal Counsel. The DOJ declared that states need not have authorization from the federal government to enforce already existing law (Coleman 2009). While the memo continued to encourage states to sign 287(g) partnerships, it also established precedent for states to enforce immigration law *without* federal approval. This concept, called “inherent authority”, was championed as legal justification for state immigration laws by Kris Kobach, Attorney General John Ashcroft’s chief advisor for immigration law and border security from 2001 to 2003, and graduate of Yale Law School (Kobach 2005). Kris Kobach’s role in recent state laws will be discussed in greater detail below.

In 2009, allegations of racial profiling and civil rights abuse by state and local agencies enforcing immigration law prompted the DHS to make changes to their 287(g) program (Michaud 2010). In July of 2009 the Immigration and Customs Enforcement agency, under DHS, reported that all “partnering agencies” were asked “to sign revised memorandums of agreement

that improved oversight, management and communication of the program. Since the audit was conducted, ICE has fundamentally reformed the 287(g) program, strengthening public safety and ensuring consistency in immigration enforcement across the country by prioritizing the arrest and detention of criminal aliens”.<sup>19</sup> However, in the 2010 Arizona Law Review, Nicholas Michaud argues that changes to the 287(g) program have forced state legislators to create their own laws and continue enforcing immigration locally. He argues that reforms created a standardized program for participating local law enforcement agencies, severely limiting the authority already given to local police and jail officials, and prompted some criticism about revoking power from the state. The “limiting” he refers to include the implementation of prioritizations<sup>20</sup> for deportation, meaning that participating police forces need to deport the most dangerous criminals before those deemed less so. It also includes the requirement that any charges precipitating the arrest of the person be pursued before deportation. These changes to the 287(g) program, he writes, have “managed to subvert congressional intent, undermine local and federal goals for immigration enforcement, (and) whittle the once broad and flexible 287(g) program down to impotent redundancy” (Michaud 2010). In response to these changes, he writes, states had no other recourse but to pass their own version of immigration law and continue their enforcement *without* 287(g) rules. More clearly, he directly blames federal failure, which he partly attributes to the changes in 287(g) and his belief that that they lessened the ability of local police to enforce immigration law, for Arizona’s Senate Bill 1070. “The selective enforcement scheme adopted by the Administration created an enforcement vacuum—a vacuum that was particularly felt in the border state of Arizona. State action to fill that void was inevitable.” Arizona was one of the first states to pass state legislation aimed at filling this alleged “void” with the *Legal Arizona Workers*

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<sup>19</sup> For more information on these reforms and continued changes to the 287(g) program, see <http://www.ice.gov/news/library/factsheets/287g-reform.htm>. Accessed May 31, 2013.

<sup>20</sup> For his explanation of the priorities, see Michaud 2010, 1103.

*Act* (LAWA) in 2007 which revoked business licenses from employers of “illegal aliens”. Legal scholar Brittany Lane provides an analysis of LAWA and a similar law passed in Hazelton, PA in which she describes how the Arizona law survived legal challenges due to its enforcement of an already existing federal statute (Lane 2012). Following this precedence, future laws, including Georgia HB 87, have passed court review by closely copying federal immigration law.

*Kris Kobach: State Law Advocate and “Legal Mastermind”*

The “inherent authority” of the states in enforcing immigration law is sometimes explained by legal scholarship as necessary due to a perceived failure of the federal government (Michaud 2010, Lane 2012). Michaud very specifically claims that changes to the 287(g) program in 2009 are responsible for creating an environment that both “precipitated and justified the accelerating trend toward the...struggle against illegal immigration” (Michaud 2010, 1084). Lane takes a similar, yet more generalized position when she argues that “with the federal government unwilling or unable to resolve the illegal immigration problem, states began to...take matters in to their own hands” (Lane 2012, 520). The perceived weaknesses of the federal government are articulated, forcefully and repeatedly, by anti-immigration lawyers and policy makers, and indicate that this idea travels throughout certain political and ideological groups. Indeed, no discussion of state laws is complete without introducing Kris Kobach, Attorney General Josh Ashcroft’s chief advisor of immigration law from 2001 to 2003. Kobach is widely known as the architect of Arizona’s Senate Bill 1070, serving also as primary defense council in court battles over the law.<sup>21</sup> The Yale Law School graduate is currently Kansas Secretary of State and serves as President of the Immigration Reform Law Institute, where he

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<sup>21</sup> For one representation of Kobach, see “Kris Kobach, Nativist Son: The Legal Mastermind Behind the Wave of Anti-immigration Laws Sweeping the Country.” *Mother Jones*. 2012. <http://www.motherjones.com/politics/2012/03/kris-kobach-anti-immigration-laws-sb-1070>.



coaches state legislators from Alabama, Georgia, and Mississippi on their efforts to pass immigration law. In his Albany Law Review article, “The Quintessential Force Multiplier: The Inherent Authority of Local Police To Make Immigration Arrests”, Kobach asserts that “arresting aliens who have violated criminal...or civil provisions” is “within the inherent authority of the states.” He also declares the importance of local immigration enforcement as “critical to the success of the war against terrorism and to rebuilding the rule of law” (Kobach 2005). Kobach’s biography from the Kansas Office of the Secretary of State describes him as “known nationally for his role as co-author of Arizona's SB 1070 illegal immigration law”, says he assisted the state in defense of the law, and that he has “provided similar assistance to other states and cities”.<sup>22</sup>

Kobach focuses much of his career on honing restrictive state immigration laws that will result in causing “many illegal aliens [to] self deport” without triggering preemption by federal courts (Kobach 2008). In his 2008 Georgetown Immigration Law Journal review titled “Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration”, he states “There are some things a state simply cannot do, no matter how well a statute is drafted. For example, a state may not create state-level criteria for determining which aliens are allowed to reside in the United States....That said, there is a wide latitude for states and municipalities to act without being preempted (Kobach 2008, 464)”. He spells out exactly which immigration areas a state can legislate without being overturned for preempting<sup>23</sup> federal law. Kobach has

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<sup>22</sup> "Kris W. Kobach: 31st Kansas Secretary of State." State of Kansas. 2011.

[http://www.kssos.org/about/about\\_news\\_biography.html](http://www.kssos.org/about/about_news_biography.html).

<sup>23</sup> The Legal Information Institute of Cornell University Law School defines preemption as: “When state law and federal law conflict, federal law displaces, or preempts, state law, due to the Supremacy Clause of the Constitution.” It also says that “Congress has preempted state regulation in many areas. In some cases, such as medical devices, Congress preempted all state regulation.” However, “where rules or regulations do not clearly state whether or not preemption should apply, the Supreme Court tries to follow lawmakers’ intent, and prefers interpretations that avoid preempting state laws.” In other words, as long as State level immigration laws enforce already approved areas of

identified eight specific areas in which states can “constitutionally act in the field of immigration (Kobach 2008, 464). One, states can deny public benefits to undocumented peoples, except for emergency medical care, disaster relief, and immunizations. Two, in-state tuition can be denied to these residents with no threat of legal challenge. Three, Kobach describes how states can prohibit the employment of anyone without authorization to work in the U.S., arguing that "removing this magnet can significantly reduce illegal immigration and can encourage many illegal aliens to leave the United States on their own" (Ibid.) Four, states can enact laws that mirror existing federal laws that criminalize conduct related to unauthorized immigration. He identifies “alien smuggling and alien harboring” crimes as those most suitable to this kind of duplication at the state level. Five, laws that punish identity theft and the use of false documents can be enacted. Sixth, states can legislate programs which cooperate with Immigration and Customs Enforcement. These programs include three areas: requiring law enforcement agencies directly to arrest undocumented immigrants, entering into formal 287(g) agreements, and by prohibiting sanctuary cities. Seven, states can presume that people without documentation are “flight risks” for bail purposes. Eight, state legislation can deny driver’s licenses to undocumented persons (Ibid.).

Kobach concludes that state enforcement will have an immediate effect of reducing the numbers of unauthorized immigrants, using Arizona as an example of aliens “self-deporting by the tens of thousands” due to the set of laws passed in 2007. Kobach has identified a three piece formula for creating state laws that he claims cannot withstand challenges by the federal government: using terms consistent with federal law, not creating new categories of “illegal aliens”, and only allowing local officials to verify immigration status with programs allowed by

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immigration enforcement, and do not regulate legal areas claimed by the federal government, state laws will likely avoid Supreme Court challenge. <http://www.law.cornell.edu/wex/preemption>

the federal government. His work is of extreme importance as it encourages states with Legislators interested in similar legislation to implement the eight areas to the extent they can withstand federal court review. By simultaneously encouraging states to react to the perceived failure of federal government while at the same time encouraging repetition of federal law, Kobach has helped create the current legislative environment that sees immigration as a state problem that can be solved by mimicking federal law at the local level.

HB 87 includes many of the areas described above and suggests that Kobach's influence has traveled to the state's Republican lawmakers. A report from the Georgia Senate Research Office identified the following parts of the bill in their summary of the legislation:<sup>24</sup> As enacted, the law requires all public employers, *including* contractors, subcontractors and sub-subcontractors must provide proof of E-Verification for all employees. Businesses that do not intend to hire their own workers must show valid identification for each independent contractor and their employees. The law also emphasizes that state and local law enforcement desire to cooperate with federal authorities and use "as much law enforcement power as allowed under federal law". It encourages 287(g) partnerships with DHS by providing financial incentives to law enforcement agencies wishing to enter into such agreements. This financial support is subject to available funding, and the Criminal Justice Coordinating Council of Georgia is required to create grants and incentives to offset the cost of implementing the partnerships for state and local law enforcement agencies and provide technical assistance between local and federal agencies. Furthermore, the law requires all private employers, with 10 or more employees, to verify the status of all employees and new hires using the E-Verify program. To ensure that state agencies and contractors are enforcing the state law, HB 87 also Creates the Immigration Enforcement Review Board, authorized to investigate complaints "concerning the

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<sup>24</sup> "House Bill 87: As Passed." Senate Research Office. *State of Georgia*. Prepared by Taryn Kirbo. April 14, 2011.

actions of a public agency or employee alleged to have violated or failed to properly enforce” the act. The board only takes complaints from “legal Georgia residents and registered voters.”

Two sections of HB87 were temporarily blocked by federal judges in the 11<sup>th</sup> Circuit Appeals Court in August of 2012.<sup>25</sup> The first, which made it illegal to transport in a car or to knowingly conceal illegal aliens while committing another criminal offense, was referred to as Section 7. Because the court argued the section could not “be reconciled with the federal immigration scheme”, it was permanently enjoined<sup>26</sup>. The second section was temporarily enjoined, but ultimately allowed. Referred to as Section 8, the section allowed law enforcement officers to verify immigration status of anyone during investigation of a felony, and to use any reasonable means to do so. In case of confirmed illegality, the officer was authorized to notify the Department of Homeland Security. Ultimately, the court allowed the section because it “authorized arrest and detention only to the extent authorized by federal law”.<sup>28</sup>

Sponsors of the bill were aware that state law needed to be closely tailored to federal law to ensure success, and thus drafted their legislation to withstand expected court challenges. The specific development of HB 87 and the details of this process are discussed below. Ensuring state laws closely mimic other successful state laws is significant due to recent federal court challenges against Arizona and Georgia, that reject sections of law that preempt federal law (United States Supreme Court, Court of Appeals United States, 2012). In other words, once a section of legislation has successfully passed federal court review, other states can implement it

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<sup>25</sup> The U.S. Court of Appeals for the Eleventh Judicial Circuit has jurisdiction over federal cases originating in the states of Alabama, Florida and Georgia. The circuit includes nine district courts with each state divided into Northern, Middle and Southern Districts. <http://www.ca11.uscourts.gov/about/index.php>.

<sup>26</sup> To enjoin means to place an injunction on a section, or sections of, a law. The Legal Information Institute of Cornell University Law School defines an injunction as: “A court order requiring a person to do or cease doing a specific action.” <http://www.law.cornell.edu/wex/injunction>.

<sup>27</sup> United States Court of Appeals. Georgia Latino Alliance for Human Rights, et al v Nathan Deal et al, 1:11-CV-01804. 11th Circuit Court. (2012). <http://www.ca11.uscourts.gov/opinions/ops/201113044.pdf>.

<sup>28</sup> Ibid.

with little threat of injunction. The perceived federal failure, combined with the areas of legislation developed by Kobach and the resulting passage of legislation through federal court challenge has an interesting result: it allows for state legislators, legal scholars, and media outlets to discuss state level immigration laws as if they were anti-federal instruments, while ignoring the extent to which they copy federal statute and participate in federally supported programs.

### **Georgia Passes Earlier Comprehensive Legislation: Senate Bill 529**

A 2011 article from The New York Times claimed that Arizona was the “first state to empower local and state police to detain people” in the state without the necessary documentation<sup>29</sup> based on the LAWA act of 2007 and SB 1070 of 2010. However, in 2006 Georgia passed its own comprehensive act, Senate Bill (SB) 529, with some of the same provisions seen in Arizona’s laws.

Georgia’s SB 529, *The Georgia Security and Immigration Compliance Act*, was signed by Governor Sonny Perdue on April 17, 2006.<sup>30</sup> The bill authorized the state to negotiate a memorandum of understanding with the DHS regarding immigration enforcement, to verify the immigration status of a person if they are arrested, and required agencies to check status before awarding certain benefits (Immigrant Policy Project 2006). Of particular interest to the history of HB 87, the 2006 bill required all public employers to participate in the E-Verify program for all new employees beginning July 1, 2007. Shortly after the bill was signed, the Senate Research Office newsletter, *At Issue*, published an immigration focused article with sections titled “The Federal Response: Inaction, Inability, and Powerlessness” and “Georgia Acts First with Comprehensive Reform”.<sup>31</sup> The newsletter provides an estimate that undocumented immigrants

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<sup>29</sup> “Immigrants Are Subject Of Tough Bill In Georgia.” *New York Times*. April 15, 2011.

<sup>30</sup> To read the bill see <http://www.legis.ga.gov/Legislation/20052006/64549.pdf>

<sup>31</sup> “The Illegal Immigration Crisis.” *At Issue*. Senate Research Office. 2006.

cost the federal government \$10 billion in 2002<sup>32</sup>, provided by the Center for Immigration Studies (CIS), described earlier<sup>33</sup> as promoting restrictive immigration policies. It directly links state level laws as a response to these costs, and describes the newly passed SB 529 as having “tackled the problem with a comprehensive approach”.<sup>34</sup>

Georgia SB 529 is important as it was a significant step toward the 2011 creation of HB 87. More importantly, a lack of enforcement to stop undocumented people from accessing public services and employment in SB 529 was often discussed by Republican lawmakers in the process for HB 87 as a flaw necessitating the passage of a stricter, highly enforced comprehensive law. While SB 529 included provisions similar to Arizona’s laws such as police partnerships with Immigration and Customs Enforcement, and E-Verify mandates, supporters of HB 87 claimed that lax enforcement rendered the old law incomplete. For example, in opening remarks to the House Judiciary Non-Civil Committee tasked with drafting the 2011 legislation, Representative Matt Ramsey declared “SB 529 created an obligation, but did not put any enforcement for state and local governments”.<sup>35</sup> Further analysis of the official discourse in Republican speeches in favor of HB 87 shows how the perceived lack of enforcement of the law in Georgia was connected to an idea that employer use of undocumented labor was a major reason for the supposed infiltration of immigrants. In their *Georgia Law Review* explaining the passage of HB 87, Aziz and Sykes report (without saying who stated the comments) that “an absence of enforcement led to unequal compliance with the statute. In response to these frustrations,

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<sup>32</sup> The newsletter reports that “The cost of the illegal immigration presence in the U.S. to the federal government was roughly \$10 billion in 2002, even after accounting for taxes paid by illegal aliens. These costs are primarily for Medicaid, healthcare for the uninsured, food assistance, the prison and court systems, and education funding. However, the federal government has gained very little traction in dealing with the problem.”

[http://www.senate.ga.gov/sro/Documents/AtIssue/atissue\\_sept06.pdf](http://www.senate.ga.gov/sro/Documents/AtIssue/atissue_sept06.pdf)

<sup>33</sup> p.13.

<sup>34</sup> Ibid.

<sup>35</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives).

employer usage of the E-Verify database was identified as one of the major motivations for House Bill 87” (Aziz and Sykes 2011). This system, which I describe later in this chapter section as a high-tech, integrated version of the I-9 form<sup>36</sup> (a common form used by employers to verify individual ability to work in the US) has a history which is important to understanding legislation regulating its usage.

## HISTORY OF HB 87

- September 2010: appointment of the Special Joint Committee on Immigration reform.
- October 28, November 17, December 16 2010: Meetings of the Special Joint Committee on Immigration Reform
- January 26, 2011: Bill was formally recorded in the House list of proposed legislation.
- February 2, 2011: The first hearing of HB 87 was held by the Senate Judiciary Committee.
- Feb 4, 2011: The House Judiciary Non-Civil Committee held their first hearing related to the proposed bill.
- Feb 8 and Feb 11: Additional House hearings.
- February 23: Senate Committee hearing.
- Feb 28: House hearing.
- March 2: Senate Committee hearing.
- **March 3, 2011: HB 87 passes the House of Representatives.**
- March 30: HB 87 passes out of the Senate Committee as a substitute to SB40, with Senator Hamrick named Senate Sponsor.
- April 11: HB 87 passes the Senate.
- May 13, 2011: Signed by Governor
- July 1, 2011: Effective date

### Figure 1

**Timeline of Important Legislative Dates for House Bill 87** ((Based on “Status History of HB 87”, <http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/87> )

<sup>36</sup> For more see:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>

From my review of Committee notes and documents, scholarly legal articles, and government announcements, two aspects of the legislative process for HB 87 stand out. The first is that modifications were made throughout the draft process to tailor language as closely as possible to federal law and to state laws already upheld by the Supreme Court. The second is that changes to the E-Verify requirements in the bill exempted small businesses with ten or less employees, but included all local and state government contractors and services.

Georgia House Bill 87 was initiated in September 2010, with the appointment of a Special Joint Committee on Immigration reform. (See Figure 1). The 14 member joint committee, created by House Speaker Ralston and Lieutenant Governor Casey Cagle, was tasked with drafting legislation “that stems the flow of illegal immigration in Georgia”.<sup>37</sup> Speaker Ralston said the creation of the joint committee and its impending bill were “inspired by the federal government’s failure” to deal with unauthorized immigration and related budgetary issues.<sup>38</sup> According to the Aziz and Sykes, co-chairs Representative Ramsey and Senator Murphy, two Republicans from Peachtree City and Cumming, respectively, heard testimony in the summer of 2010 from “a variety of groups, including the law enforcement community, private employers, public agencies, and the education community” (Aziz and Sykes 2011).<sup>39</sup> These hearings were followed by draft bills that were introduced to the House Judiciary Non-Civil Committee and to the Senate Judiciary Committee, ultimately resulting in the House version’s passage through the legislature in March 2011.<sup>40</sup>

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<sup>37</sup> “Speaker Ralston and Lt. Gov. Cagle Announce the Creation of the Special Joint Committee on Immigration Reform”, *Lieutenant Governor Press Room*, State of Georgia, September 29, 2010. <http://ltgov.georgia.gov/press-releases/2010-09-29/speaker-ralston-and-lt-gov-cagle-announce-creation-special-joint-committee>.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Edited video footage of the House Judicial Non-Civil Committee meetings on Feb 4, Feb 8, Feb 11, and Feb 28 of 2011, when the bill was discussed publicly in committee, can be found by requesting links through the Archives page at <http://www.house.ga.gov/COMMITTEES/en-US/CommitteeArchives146.aspx> and contacting the legislative



The *Atlanta Journal-Constitution* (AJC) reports that Ramsey “worked on 16 versions of the law, partly to protect it against court challenges”<sup>41</sup> and the *Wall Street Journal* quotes him as saying “he was careful to avoid some of the more controversial language in Arizona’s law”.<sup>42</sup> Details from committee meetings support that Ramsey was aware of other states’ laws and their success in passing similar legislation. For example, on February 4, 2011, during the first HB 87 Hearing of the House Judiciary Non-Civil Committee, he discusses E-Verify with Representative B.J. Pak, who asks “Is this provision you drafted going to work? A similar law was passed in Arizona in 2007 and it got argued in the [U.S.] Supreme Court. How is this similar or different?” Ramsey replies “The system we set up is significantly different, but the real question is: Does the state have the authority to mandate the use of E-Verify? So if the Court ultimately sides with the U.S. Chamber of Commerce in this case<sup>43</sup> against the state then this section is moot.”<sup>44</sup> Newspapers also report changes to the E-Verify sections in the “final hours” of the house session, when the law was passed merely three days after the U.S. Court of Appeals blocked some of the “most contentious parts of Arizona’s law”.<sup>45</sup> The *Wall Street Journal* described the process as resulting in “softened requirements surrounding the use of the federal E-Verify program” which “helped appease at least some of the state’s powerful agricultural and business interests”, explaining that “last minute changes to the bill satisfied some concerns expressed by

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assistant, or by contacting me for a copy. The GPB Archive of Lawmakers, found at <http://www.gpb.org/lawmakers/2011> does not appear to have the committee video readily available.

“2011 Minutes of the Senate Judiciary Committee” can be found at <http://www.senate.ga.gov/committees/Documents/2011Minutes80.pdf>. 115 pages.

<sup>41</sup> “Georgia Lawmakers Pass Illegal Immigration Crackdown.” *The Atlanta Journal-Constitution*. April 15, 2011.

<sup>42</sup> “Georgia Lawmakers Target Illegal Immigration.” *Wall Street Journal - Eastern Edition*. 257: A3. April 14, 2011.

<sup>43</sup> Ramsey is likely referring to the debates over Arizona LAWA Act of 2007, which were being argued in December 2010, and which were decided May 26, 2011, a few months after Ramsey makes this comment. <http://www.supremecourt.gov/opinions/10pdf/09-115.pdf>. The *LA Times* called it “a big boost to proponents of stricter state laws against illegal immigration.” <http://articles.latimes.com/2011/may/26/nation/la-na-court-immigration-ruling-20110526>

<sup>44</sup> See Footnote 40. Quoted from February 4, 2011.

<sup>45</sup> “Immigrants Are Subject Of Tough Bill In Georgia.” *New York Times*: 14. April 15, 2011.

the Georgia Chamber of Commerce”.<sup>46</sup> This comment is particularly interesting when combined with the fact that the Chamber gave Representative Ramsey an A on their 2011 Scorecard.<sup>47</sup> The Chamber had consistently spoken in favor of the bill, and did not include it on its list of tracked legislation for the year. Regarding what the *Atlanta Journal-Constitution (AJC)* called a “final compromise” on E-Verify, which exempted businesses with 10 or less employees instead of those with five or less, a spokesperson for the Georgia Chamber of Commerce stated that small businesses “won’t be as negatively affected as they would have been”.<sup>48</sup> This reporting would explain the following quote from Representative Tom McCall, Chairman of the Agriculture and Consumer Affairs Committee, in his speech before the House vote on March 3<sup>rd</sup>, 2011.

“What I wanted to do was express my thanks to Ramsey for all the time and work spent on adjusting [the bill] to make it fit more palliatively to the growers of agricultural products in the state of Georgia. There is an amendment with 30 signatures on it, that will help, and I hope you will vote on it when that comes up. But I want to mention that on January 10<sup>th</sup> all of us put our hands on a bible and took an oath to uphold the constitution of the state and the US. The 4<sup>th</sup> word in this bill is illegal, and I think when we took that oath it commanded us as a body to not do anything to support any illegal activity. And again thank you again Ramsey for all your hard work”.<sup>49</sup>

McCall’s comment is particularly interesting due to a comment Representative Matt Ramsey made in the first Hearing for HB 87, on February 4, 2011, in the Judiciary Non-Civil Committee. During committee discussions about how many employees a business could have

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<sup>46</sup> See Footnote 40. Quoted from February 4, 2011.

<sup>47</sup> “2011 Legislative Scorecard.” Georgia Chamber of Commerce.  
[http://www.gachamber.com/2011\\_legislative\\_scorecard/](http://www.gachamber.com/2011_legislative_scorecard/).

<sup>48</sup> “Georgia Lawmakers Pass Illegal Immigration Crackdown.” *The Atlanta Journal-Constitution*. April 15, 2011.

<sup>49</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives). Video for the Morning and Afternoon sessions can be found <http://www.gpb.org/lawmakers/2011/day-23-0>.

and still quality for exemption from the E-Verify mandate, he mentions how “an effort to protect the true Mom and Pop [businesses] that don’t even have access to a computer” should be made, but that the decision should be “based on looking at what industries are the most egregious, obvious violators, to make sure we are capturing those.” However, Ramsey continues the conversation by adding this statement. “All that being said, I am a corporate attorney by trade and it would be very easy to set up an LLC, multiple LLCs, and operate your business in that manner.”<sup>50</sup> From this statement it is clear that Ramsey, as House sponsor and as attorney, was aware that one of the main enforcement strategies built within the law, E-Verify, could be “very easy” to circumvent in certain circumstances.

The Christian Science Monitor reported “two tidal forces within the Republican Party pulling at the Georgia bill”, describing the two forces as “law-and-order Republicans who form the party's urban and suburban base, reacting to fears that illegal immigrants are in essence part of a large criminal cartel that siphons off billions in taxpayer-funded entitlements every year” versus “state farmers and agri-businesses, many of them financial supporters of the state GOP, who say the proposed requirements for them to check the immigration status of their quickly-hired field workers are too onerous and could leave fields of Vidalia onions and groves of peach trees unpicked”.<sup>51</sup> When Governor Deal signed the bill he was described in the *New York Times* as having been “noticeably silent on the issue” until the final bill softened E-Verify requirements and appeased some lobby groups, giving Deal “enough confidence to throw his support behind

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<sup>50</sup> Matt Ramsey speaking during edited video footage of the House Judicial Non-Civil Committee meetings on Feb 4. See Footnote 21.

<sup>51</sup> “Far from Mexican border, Georgia mulls Arizona-style immigration crackdown.” *Christian Science Monitor*, Christian Science Publishing Society. April 14, 2011.

the measure”.<sup>52</sup> This same article reports the Governor’s spokesman as saying “At the end of the day, rural legislators voted for this bill.”

## **Elements of Enforcement**

Throughout the public documentations and speeches for HB 87 the alleged lack of enforcement from SB 529 was repeatedly mentioned as a motivation for a need for stronger enforcement of immigration law within the state, as a means to encourage people living in the state without authorization to leave. As I will discuss in the next chapter, enforcement plays what Mathew Coleman describes as a key element of “social control rather than territorial control” (Coleman 2012, 403). In other words, he and other geographers allege that locally enforced laws aim not to necessarily clear the state of undocumented residents, rather to “socially and economically incapacitate” them (Coleman 2012, 403).<sup>53</sup> HB 87 includes three programs that have been implemented as part of the legislative plan to increase enforcement related to the life and work of undocumented workers and anyone that works with or serves them. These three programs were discussed by proponents of the law as being the necessary fixes to the perceived lack of enforcement from SB 529.<sup>54 55</sup>

### ***1. E-Verify***

*I have been repeatedly contacted by constituents who are out of work and have been for some time. And they have reported to me incidents where they have applied for work and been denied*

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<sup>52</sup> “Immigrants Are Subject Of Tough Bill In Georgia.” *New York Times*: 14. April 15, 2011.

<sup>53</sup> For more discussion, see p. 42.

<sup>54</sup> SB 529, which is only 13 pages long (compared to 27 pages for HB 87), requires all public employers to use E-Verify, encourages police departments to use 287(g) partnerships, and requires all public agencies to check status of person receiving benefits.

<sup>55</sup> The Dustin Inman Society has a summary of HB 87 which includes comparisons to SB 529. <http://thedustininmansociety.org/blog/?p=4252>.

*jobs based on what they consider to be questionable circumstances. In response to their concerns I gave them my word that if given the opportunity to vote for E-Verify, I would do so.*

-Representative Rick Crawford, Speaking before the vote for HB 87 on March 3<sup>rd</sup>, 2011

E-Verify is defined by the U.S. Citizenship and Immigration Services (U.S. CIS) as “a voluntary internet based program to help employers verify the work authorization of new hires”.<sup>56</sup> The program was established by The Immigration Reform and Control Act (IRCA) of 1986, which required employers to prove employee eligibility to work in the U.S. Following that, the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA) required the Immigration and Naturalization Service (INS), now part of the DHS, to implement an early version of the verification system in some states, eventually becoming authorized for use in all 50 states by 2003. Over time, this data system has become increasingly integrated<sup>57</sup> with national databases, starting with a connection to the Social Security Administration in 1998. In 2007 it was renamed “E-Verify” and included photo matching from U.S. Citizenship and Immigration Services records.<sup>58</sup> As of 2008, the program automatically checks all applicable U.S. CIS naturalization data when employee identification is being verified. In 2010, the same year that the Department of Justice (DOJ), Civil Rights Division signed a formal agreement to share information with the U.S. CIS, the DHS released two educational videos from their Civil Rights and Civil Liberties Office explaining the policies and procedures of E-Verify and how to respond to a “tentative non-confirmation result” (IPP 2011c, 2006; U.S. CIS, 2012).<sup>59</sup> The videos, about

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<sup>56</sup> <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD>

<sup>57</sup> To E-Verify yourself, go to <https://selfcheck.uscis.gov/SelfCheckUI/>.

<sup>58</sup> See Footnote 56.

<sup>59</sup> To access the videos, titled “E-Verify: How to Create a Case (USCIS)”, and “E-Verify: How to Respond to a Tentative Nonconfirmation (TNC) Result (USCIS)”, go to <http://www.youtube.com/playlist?list=PLC740BA257071854A>. Accessed May 31, 2013.

10 minutes together, are in English and provide step by step instructions to take within the E-Verify software should the system determine a person is not confirmed for work in the U.S.

In a 2012 article in the *State Politics and Policy Quarterly*, Newman et al. argue that the “explicit association with the economic issues of labor and employment” makes E-Verify laws a particularly important area of state level immigration law that deserves more research (Newman et al. 2012, 163). Their analysis began with the hypothesis that economic problems within a state will increase the likelihood of an E-Verify mandate on employers. However, after analyzing nationwide variation in state policies regarding E-Verify, they concluded that economic factors such as unemployment had no significant impact on E-Verify policy adoption. Nor did the size of the immigrant population predict E-Verify legislation.<sup>60</sup> Instead, they found that E-Verify policy adoption was demonstrated in states experiencing “drastic proportionate growth” of immigrants in the years preceding federally authorized state usage of the system (Newman et al. 2012). This finding is consistent with demographic data for Georgia, based on PEW Hispanic Center data which estimate 35,000 undocumented people in the state in 1990, increasing to 250,000 in 2000 and 425,000 in 2010 (Passel and Cohn, 2011). Debra Sabia, a political scientist at Georgia Southern University, made a similar commentary to the *Wall Street Journal*, when she explained HB 87 as resulting from Georgians with “little experience in assimilating immigrants”. Ultimately, she argued that “the rapid growth of the Hispanic Community hasn’t helped that disquiet”.<sup>61</sup>

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<sup>60</sup> Interestingly, in addition to the role of demographic change as a predictor of E-Verify legislation, Newman et al. found that lobbying had an effect on legislation as well. Specifically they found that “increased lobbying of state legislatures by immigrant employing industries strongly decreased state adoption of E-Verify laws” (p. 163).

<sup>61</sup> “Georgia Lawmakers Target Illegal Immigration”, *Wall Street Journal*, April 14, 2011.

## 2. 287(g)

*The fact of the matter is that, as Representative Ramsey very clearly pointed out, all that is allowed in this bill is that, as part of a criminal investigation, if the local law enforcement cannot otherwise verify who they are dealing with, they can then check on that individual's immigration status. That is common sense.*

-Representative Edward Lindsey, Majority Caucus Whip, discussing 287(g) before the House Vote, March 3rd

The Department of Homeland Security defines the 287(g) program as “one of Immigration and Customs Enforcement’s top partnership initiatives, [which] allows a state and local law enforcement entity to enter into a partnership with ICE, in order to receive delegated authority for immigration enforcement within their jurisdictions.”<sup>62</sup> 287(g) partnerships come in two forms: a jail enforcement model, where law enforcement use federal immigration databases to check the legal status of detainees, and a task force model, in which local officers can question immigration status in connection to any supposed infraction, no matter how small (Coleman and Kocher 2011). DHS describes a “partnership approach” supported and encouraged by the DHS between ICE and local and state governments, who the report argues play an “integral role in protecting the homeland”. As of 12/31/2012 there were 39 formal Memorandums of Agreement, from 19 states in the U.S. and the program took credit for identifying more than 309,283 removable aliens due to these partnerships.<sup>6364</sup>

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<sup>62</sup> <http://www.ice.gov/news/library/factsheets/287g.htm>

<sup>63</sup> Ibid.

<sup>64</sup> For more discussion on 287(g) see p.47.

### ***3. The Review Board, an Enforcement Agent***

*We cannot have a law without providing a way to hold those that violate the law accountable.*

*What we have come up with is a way for each citizen to put eyes on the government and litigate against their government if [they are] not compliant.*

--Representative Matt Ramsey, Bill Sponsor and Special Joint Committee Chairman, in Opening Remarks before the House Vote, March 3<sup>rd</sup>, 2011

On September 2, 2011, two months after HB 87 went into effect, Governor Nathan Deal, Lieutenant Governor Casey Cagle and Speaker David Ralston announced the 14 appointees to the Immigration Enforcement Review Board.<sup>65</sup> The panel, created under HB 87, is authorized to “review and investigate complaints related to illegal immigration, and holds the authority to sanction those found to have violated Georgia’s immigration law.” Appointees include Ben Vinson, an attorney in Atlanta and graduate from UGA School of Law, and Terry Clark, who serves as Board of Directors of Tifton Quality Peanuts and was selected as “2010 Master Farmer” by the Abraham Baldwin Agricultural College Alumni Association.<sup>66</sup> One appointee’s controversial take on race and ethnicity has caused attention from bloggers and the local news. Phil Kent, the national spokesman of Americans for Immigration Control was interviewed by 11Alive about his view of multiculturalism where the reporter described him as “not just an

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<sup>65</sup> “Deal Announces Immigration Enforcement Review Board.” Office of the Governor. *State of Georgia*. September 2, 2011.

<sup>66</sup> Growinggeorgia.com describes Clark as “an active producer of traditional row crops but concentrates on cotton and peanuts. He attended ABAC from 1969 – 1972. Clark operates a large-scale vegetable farm with cabbage, greens, and sweet corn as his primary crops and continues to be an active cattleman with 200 commercial brood cows.” <http://growinggeorgia.com/news/2011/01/abac-alumni-to-be-honored-on-march-5th-at-celebrate-abac/> Accessed May 31, 2013.



opponent of multiculturalism and illegal immigration. He thinks the country should begin to curb legal immigration, too”.<sup>67</sup>

During an interview in 2011 with Brian Robinson, Governor Deal’s Spokesperson, a reporter from 11Alive News, aired concerns about the makeup of the enforcement board after a September 11<sup>th</sup> memorial ceremony at the Capitol. In response, Robinson responded that the appointees “come from many diverse backgrounds. So you have law enforcement, you have lawyers, you have a mayor.” He ignores the question when asked if the Governor agrees with Phil Kent’s views on race.<sup>68</sup>

The board has already heard some cases. In June of 2012 it investigated accusations that Vidalia, Georgia gives “illegal immigrants safe harbor by allowing them to work and live in the city limits.” The board dismissed the complaint, claiming to not have found any violations.<sup>69</sup> Another complaint was dismissed in March of 2013 by the filer, activist D.A. King, due to his frustration that the board allows government agencies to “file reports, regardless of accuracy, and to simply correct them without consequences if the reports are incorrect.”<sup>70</sup> King is the founder of The Dustan Inman Society, named after a young boy killed in a car accident caused by an undocumented driver in 2000. The Society’s website declares: “It only took one illegal alien to kill Dustin Inman. We ask: How will we know when we have enough illegal aliens in our republic?” It also blames government for the “crime” of “illegal immigration” that is describes as

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<sup>67</sup> “Immigration Board Member Phil Kent on 'whiteness', ethnic conflict”, *News 11 NBC*, Atlanta, September 20, 2011.

<sup>68</sup> “Q&A with Deal's spokesman on new immigration board”, *News 11 NBC*, Atlanta, September 9, 2011.

<sup>69</sup> “Georgia Immigration Panel Dismissed Vidalia Complaint”, Associated Press, *Online Athens-Athens Banner Herald*, September 20, 2012.

<sup>70</sup> Ga. Immigration Board Dismisses Complaint”, Associated Press, *Online Athens-Athens Banner Herald*, March 7, 2013.

“national suicide.” Sections from the website have titles such as “No to Georgifornia!”, “No More Deaths!”, and “The Illegal Alien Lobby”.<sup>71</sup>

## **Conclusion**

This chapter has discussed how changes to federal law and the recent reliance on the inherent authority doctrine have characterized an environment in which several states have passed their own restrictive immigration laws. Proponents of these laws aim to copy federal law as closely as possible, benefitting from legal activists such as Kris Kobach and the network surrounding his ideas. Georgia House Bill 87 was one of these laws, and this chapter presented a legislative history of the law, beginning with the previous immigration law passed in Georgia, Senate Bill 529. Sponsors of HB 87 justified HB 87, I have found, based on a claims that SB 529 failed due to a lack of enforcement, and presenting HB 87 as the solution that would institute enforcement, expel undocumented immigrants, and punish employers of unauthorized labor. The history of HB 87 introduced the bill as a Republican led effort discussed the newspaper reporting that characterized the process of making the bill mimic federal law as well as making small businesses exempt from the E-Verify requirements. It concluded by defining and explaining three enforcement programs legislated in HB 87: E-Verify, 287(g) and the Immigration Enforcement Review Board.

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<sup>71</sup> The homepage also features clocks adding up the days since events significant to the organization. I am particularly interested in these, accessed on June 16, 2013. “Days since Dustin Inman was killed by an illegal alien: 4,748.” “Days since the horror of 9/11: 4,296.” “Days until President Obama secures American borders: UNKNOWN.” <http://www.thedustininmansociety.org/index.html>.

### **CHAPTER 3**

#### **SPACE, RACE AND LAW**

This chapter builds a theoretical framework for understanding the impact of state immigration laws in the U.S. It draws from critical geography and history as well as race theory that scholars have used to analyze undocumented immigration, racial dynamics in the U.S. and the importance of law in shaping the everyday reality of different human beings. The chapter begins with historical work on the United States immigration system, focusing on how historical legal processes have shaped current understandings of the undocumented immigrant as the alien and also as a racialized figure. From there, it introduces some of the ways geographers have examined the recently passed state immigration laws, including some key differences in the way the way that state and federal connections, as they apply to state immigration laws, are understood. It ends with the field of legal geography and how prominent theorists suggest law be interrogated by challenging assumptions about power and space.

Throughout the debates and documentation for House Bill 87 the presence of people without papers was openly discussed as a problem in the state. Of the dozens of concerned citizens and lawmakers who came to speak openly or present documentation for consideration in the bill, very few questioned the legal, historical and social processes that have converged in our modern day Georgia to result in this “problem”. However, critical geography, legal geography, and historical scholarship on the immigration system can re-present the historical processes that human beings have created over time, reminding the reader that the legal system of the U.S. and

the larger context it fits within are products of human creation rather than reflections of a natural system.

### **History, the “Illegal”, and the Making of the Citizen**

Mae Ngai argues in *Impossible Subjects* (2004) that the emergence of the modern day “illegal alien” as a legally and socially defined figure has only happened over the last 100 years. This process of legal, social, and political change situated the “emergence of illegal immigration as the central problem in U.S. immigration policy in the twentieth century” (Ngai 2004, 3). Hispanic immigrants, who are the focus of most discussion in HB 87 (see my Analysis Chapter), have not always been the most prominently targeted group of immigrants into the U.S.<sup>72</sup> Nor has their immigration status always been of prominent legislative concern, instead, Ngai writes that “restrictive policies [in the 1920s] created Mexican illegal aliens...new emphasis on formal status and the complexity of the deportation statutes generated confusion in an area long characterized by informal crossings (Ibid., 131).” These “informal crossings” are a reminder that the U.S.-Mexico border is only a symbol of strong restriction in modern society because of the legal system which creates this meaning. Her work outlining the changes in restrictive policies “deeply implicates” the policy regimes of early and late 20<sup>th</sup> century immigration in crafting our modern conception of “illegal” bodies and what they mean in the United States in relation to citizenship, race, and the nation-state (Ibid., 3). These bodies, meaning the ones that cross the border into the country without the legally required papers, are discussed nationally and locally today as being mostly Hispanic, and forms the image of the “illegal” presented by proponent of HB 87.

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<sup>72</sup> For one example see discussion of the Chinese Exclusion Act of 1882, in Ngai 2004.

The historically constructed concept of the “illegal” immigrant as an *invader* informs our understanding of immigrants today. “Illegal” persons, resulting from the combination of economic, social, and political pulls and the implementation of immigrant quota systems, were initially defined directly after World War I in response to poor refugees and in the interest of preserving the state from “agents, or potential agents, of foreign states (Ngai 2004, 11).” This connection with the sovereign right of the nation to claim control over immigration into the United States forms a base from which to understand the power immigration law holds over citizens and non-citizens today. In describing the “impossible subject”, Ngai links the restrictive immigration laws of the 1920s and their accompanying quota systems to the production of undocumented, “illegal” entry into the country. As the person crossed the border successfully they were simultaneously present, but also restrained from legal validity. Thus, the “impossibility” of their situation.

This legal history of immigration in the U.S. is important because it creates the current understanding that people without certain legal documents can justifiably be treated in a certain way. The configuration of beings as “illegal” relies on a complex set of assumptions that can result in drastic consequences for a person depending on which side of a border or boundary they are found. Legal Geographers have examined how law affects the everyday interactions of people with and without legal standing. For example, in his analysis of Immigration and Customs Enforcement (ICE) raids, David Delaney writes “Generally speaking, Brad cannot throw Rosa down onto the ground... and throw her into a van. But if Rosa is figured as ‘an alien’ and he as ‘an ICE agent’ he may be commended and rewarded (2010, 76).” As a way to examine how the body of the immigrant is constructed as “illegal”, we can continue with Delaney’s work as an entry point into legal and historical analysis concerning the “illegal” body. If, as he argues, we

consider current immigration enforcement regimes as “artifacts” and try to think why they were made as they were, then the regime is the “effect of world-making projects and counter-projects and that these projects are informed by social desires and fears” (Delaney 2010, 115). That is, legal regimes and their accompanying social values are created with the goal of effecting certain social desires in society; such as security, order, or economic efficiency (Ibid.).

### **Immigration Law as it Shapes Racial Identity Today**

*Indeed, upon questioning, Rodriguez said he did not know ‘where his race came from’.*

- District Court Judge Maxey, debating the race of a Mexican applicant for citizenship (Ngai 2004, 54).

Ngai’s work outlining how immigration laws have developed in the U.S. to create the “illegal” immigrant, and explain how laws such as HB 87 shape the legal and social realities available to people born in different countries when they come to the U.S. It also provides a basis for thinking through the ways legal geographers and race theorists have analyzed immigration laws, as I discuss later in this section. Ngai and others also focus on how immigration has produced racial categories, with differences and meanings attached to each. These racial categories, she argues, were profoundly shaped during important historical events like the American Civil War. However, her work focuses on the immigration quota systems of the 1920’s as they coded our modern day understanding of both the “illegal” but also the racialized non-white immigrant, as evident from the short-lived but once existing “Mexican” race category in the 1930 census (Ngai 2004, 7, 54).

One important immigration law, The Johnson-Reed Act of 1924, had two major components. The first, a quota system, was based on national origins quotes calculated with

projections from census data from 1790 (the nation's first), 1820, 1850 and 1890, and was aimed at allowing percentages of immigrants that would preserve "native stock" (Ngai 2004, 26). The second was a list of excluded groups, based on nationality and region, and could be challenged in the courts by claiming one was "white" and therefore had rights under the Nationality Act of 1790 as "a free white person" of moral character. While remembering our history in an effort to re-examine current immigration laws it is valuable that this racial basis for citizenship did not incorporate African-Americans, and was not totally abolished until the McCarran-Walter Act of 1952 (Ngai 2004, 38). Nationality based on whiteness reigned until the 1868 passage of the *Fourteenth Amendment* resulted in adding the right to naturalize to "persons of African nativity or descent." (Ibid., 38).

Mexicans were not given a numerical quota during the 1924 Immigration Act due to a need in the U.S. for agricultural labor and political desires for cooperation. Because Mexicans were considered *white* and not restricted in the 1924 law, the State Department relied on enforcement of other policies as a way to implement racialized and nationalist ideals. By denying entry to those who could not pass literacy tests or who would be seen as a burden to the larger public, legal Mexican immigration was effectively reduced by 77% from 1930 to 1931 (Ibid., 55).

While the 1924 Johnson-Reed Act formed the beginning of restrictive immigration policy in the U.S., the 1965 Hart-Celler Act retained the major restrictive regime and concurrently the national quota system. Ngai argues that while the act "established the principle of formal equality" in immigration law, it did not open up immigration clearly and simply as some said it did. Instead, the law continued numerical restrictions on immigration, and even though the standard annual quota was increased, it applied numerical restrictions to Mexico and other

countries in the Western Hemisphere for the first time. In addition, otherwise eligible immigrants from the Western Hemisphere and some countries in the Eastern could only immigrate if there were not enough U.S. workers to fill certain short supplied occupations (Ibid., 259). In effect, she argues that the placement of a 20,000 person cap on legal immigrants from Mexico “recast Mexican immigration as ‘illegal’” (Ibid., 261). As it continued the process of defining immigration law in a context of sovereignty and power over borders the law “naturalized” the centrality of the unauthorized immigrant to the immigration debates, and persisted the notion that the undocumented Mexican is a problem, to blame for his own unauthorized status. Importantly, Ngai identifies enforcement as the imagined solution to this constructed problem (Ibid., 264).

Mae Ngai marks the changes to naturalization rules after the Civil War as “encoding racial prerequisites to citizenship”, one based on whiteness or blackness, and struggled over by other racial/ethnic groups as they carve their spaces in American society throughout history. Other scholars have investigated the role that race plays in shaping the legal system of the U.S. For example, Omi and Winant theorize laws and social structures as “racial projects”, which they say are “are never invented out of the air, but exist in a definite historical context, having descended from previous conflicts” (Omi and Winant 1994, 58). They show how efforts to define and categorize human beings in to specific racial groups have continued, from the 18<sup>th</sup> century “science” to modern day debates on race and ethnicity, without much resolution. Despite this flexibility and uncertainty as to what race really means in human society, they argue that race needs to be “understood as a fundamental dimension of social organization and cultural meaning in the U.S.” (Ibid., viii).

In *The Racial State*, David Theo Goldberg argues that the state uses “the language of the law itself, and the assumptions underpinning the terms of its expression” as one way with which



it “molds a language, a grammar, and a vocabulary through which it rules” (2002, 150). This molding is done by means such as legal documents, but also with the repetition of racially (or what Laura Pulido calls *ethnically/racially*) coded concepts and social notions (Pulido 2006).

A racial state uses law as one method with which it creates “economic wellbeing for some and social law and order diffusely” (Goldberg 2002, 101). Immigration and its regulation allow a state to create some of the necessary racial and ethnic codes that will legitimate the scapegoating of an unwanted population. Although there can be tensions within the desires of the state and the capital interest, Goldberg argues that these tensions can be negotiated “by attempting to massage the contradictions within and between capitals and their reactions so that these tensions remain productive rather than implosive.” Therefore, rather than blaming the larger capital system for creating and benefitting from the demand for undocumented laborers, the state and its dominant party manages the needs for capital by further marginalizing the immigrant, and legitimates itself by blaming the racially coded “illegal” for the high rate of unemployment in the state.

The language from HB 87 furthers the image of the “illegal” immigrant in Georgia at the same time as it legally entrenches the legal (im)possibility for citizenship and work permits. As Ngai (2004), Roediger (2005), and Haney-López (1996) have documented, the U.S. immigration system is not at all static, but rather it changes to fit the desires and needs of the dominant population and to reflect the current political climate of the nation. In the same way, I argue that this law in Georgia represents the imagined and desired structure of the state by the speaking representatives. It reflects their feelings about what the composition of the nation should be. Republican Representatives have argued that the Spanish speaking, poor, uneducated immigrant and his family do not belong in the state of Georgia, despite the fact that they are

already living in the state and may be providing labor. This racial/ethnic definition of the “illegal” immigrant supports Goldberg’s argument that “racial discourse (makes) available for exploitation and exclusion those considered different or seen as inferior” (2002). Ngai adds immigration law to this exclusion by saying that the continuation of anti-illegal immigration laws (and, I add, the development of new kinds of state laws) are not to be seen as “eccentric to twenty-first century globalization, but a constituent element of it, aimed at maintaining the privileged position of the most powerful countries” (Ngai 2004, 270).

### **Geographic Scholarship**

House Bill 87 is a specific example of immigration law as a tool for exclusion. However, as a state-level law it is a relatively new tool in which some geographic scholars have been focusing their analysis. Mathew Coleman and Monica Varsanyi are the geographical theorists most significant to my work because of their thorough analysis of state level and local policies. They share conceptions of the border as it has moved inward since 9/11 and their general focus on the negative impacts it has had on unauthorized immigrants, such as increased deportations and the uncertainty of traffic stops or other interactions with the law enforcement, are in common. However, I argue that their conceptions of the nature of this resulting connection between federal and state differ in important ways: Varsanyi sees the “overlapping” of federal and state programs, such as E-Verify or 287(g) within HB 87, as a reduced involvement by the federal government, where Coleman sees it as more of an informal partnership.

#### *State laws and the incapacitation of the immigrant*

Varsanyi and Coleman both focus on the effect state immigration laws have had on the everyday lives of undocumented workers and their families. Coleman argues that due to location in specific local and state offices, state-level enforcement of immigration is “heavily mediated by

local practices and policies” that result in “spatially uneven enforcement”(Coleman 2012b). Varsanyi describes this as the “multijurisdictional patchwork of immigration-enforcement authority”, in which county level policies dictate the way all cities will be treated within that county, regardless of local wishes (Varsanyi et al. 2012). Both agree that this spatially inconsistent enforcement results in immigrants who are afraid to drive their children to school, farmers who lose workers in the area, and alleged cases of discrimination. Shaped by the particular politics of an area, these local effects and are just now being studied as policies are put into place. As Varsanyi argues, state laws may not be a diversion from federal goals, but local implementation means policies yield uneven enforcement, and decreased federal oversight leads to more opportunities for human rights violations or social abuses of undocumented people.

Coleman and Kocher further this argument by trying to explain how increased partnerships with federal and state authority create “immigrant incapacitation” that controls citizens as well as non-citizens. They describe the uneven enforcement by police officers as a “deliberate sorting of immigrant populations into various strata of precarious legal, social, political and economic exceptions relative to rights enjoyed... by full citizens (2011). By the inconsistent (patchwork) enforcement of immigration law on some undocumented bodies but not others, the ever-present possibility of deportation for all undocumented serves to control the larger population of immigrants and their families. They continue their conversation of control over undocumented bodies by urging attention to the ways this ripple of enforcement is a “signal to domestics as well as other audiences that the state is in fact an ongoing territorial concern”.

In addition, Varsanyi explains the effect on citizenship when immigration law is shifted inward to states and localities. Until the recent passage of state laws, the federal government had complete control over immigration status, and consequently were the only authorities able to

treat “people as immigrants”, deciding who belonged and who did not. It was left to the states to treat all people as equals, providing them with equal treatment and benefits under the law, as per the *Fourteenth Constitutional Amendment of Equal Treatment*. In keeping with this amendment, states have historically been required to treat all “immigrants as people” (Varsanyi 2008). This movement of the border inward, with every state and locality differently enforcing immigration law (with HB 87 as one example of a state law implementing 287(g) and E-verify enforcement programs), results in a “particular configuration of membership” and creates a particular type of “neo-liberal subject”, still wanted for cheap labor, but with increasingly uncertain and unclear options for legal participation in society. She maintains these policies and configurations allow the government to “maintain a tense compromise” between liberal business interests and political support for closed borders by “pursuing a suite of seemingly contradictory policies”.

Importantly, she argues that these policies allow the federal government to appear tough on enforcement while leaving the everyday politics of enforcement to the state and local authorities (Varsanyi 2008).

#### *The Relationship between Federal and State power*

From my analysis of HB 87 documentation, and from videos, I found that the Republican position for HB 87 was situated on a perceived failure of the federal government to enforce immigration, and on the complementary need for states to legislate as a solution. HB 87 was passed as a response to the federal “failure”, yet it relies heavily on implementing federally supported programs. Both Coleman and Varsanyi study the dynamics of federal and state power in the role of state laws. Varsanyi argues that the increase in state immigration policy are changes in the scale of non-state membership, which has started with the partial devolution of powers, piece by piece, into the hands of state and local officials (Varsanyi 2008). Her work is

important in its argument that laws “play a prominent role in rescaling processes associated with neoliberalism”, reminding us that immigration in the U.S. is inherently about the labor requirements of neoliberal capitalism. She points out that there is a tension between economic openness associated with neoliberalism, and the social pressures for political closure, which has resulted in “a suite of contradictory policies”: including border militarization, lax internal enforcement, and devolution of powers to state and local officials. “Devolution”, is a term both scholars use to refer to the partnerships or programs in which states participate in the enforcement of immigration law. Varsanyi refers to “the devolution of selected immigration powers from the federal government to state and local governments” which she argues is responsible for creating what she calls “neoliberal subjects” (2008, 878). Coleman argues that “Devolution of immigration authority to nonfederal law enforcement agencies” has had more effect on changes in the increased interior immigration enforcement than did laws like the IIRIRA of 1996 (2012b, 167).<sup>73</sup> This combination of elements allows the federal government to appear aggressive on the border and homeland security front, while leaving the job of policing and servicing the internal populations to states. In consequence, the border is not only being “pushed inward”, as Coleman argues, but is being rescaled to create a locality that constantly makes decisions about the membership of the individual (2007, 615).

Coleman argues that several court cases have effectively authorized the government to use race as a factor in immigration enforcement. This happens despite lawsuits that challenge racial profiling. He suggests examining legal cases which discouraged state police from processing cases of immigration law (Coleman 2009). In the 1983 case, *Gonzales v. City of Peoria*, the Ninth Circuit court determined that immigration status could not be questioned unless explicitly part of a criminal offense, and in *Barajas v. Gonzales* the courts held that city

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<sup>73</sup> For more see p.13.

police may question and arrest individuals suspected of violating criminal federal immigration law, but only if authorized by state law in addition to comporting with the Constitution and federal law. While both of these cases seem to regulate enforcement efforts, state laws are increasingly criminalizing undocumented immigrants, connecting the dots from race, status, and authorized detention by local police (Coleman 2009). For example, in their analysis of 287(g) programs in North Carolina, Coleman and Kocher (2011) found that the chance of being involved in a checkpoint where a driver would be required to provide identification of a valid driver's license was higher in areas with larger populations of Latinos (p.232).

In a different stance from Varsanyi (who sees the overlapping state, local and federal polices as contradictory) , Coleman argues that the DHS is actively looking for participation in the 287(g) partnerships, therefore encouraging states to partner in immigration enforcement (Coleman 2009). Varsanyi et al., for example refer to their image of “a patchwork of overlapping and potentially conflicting authority rather than a systematic approach” for immigration enforcement” (2011, 138). In “The ‘Local’ Migration State” Coleman focuses instead on how partnerships and devolution to what he calls “nonfederal proxies” have possibly enacted the “dissolution of immigration enforcement across countless law enforcement agencies with no immediately identifiable linkages” to federal or deputized agencies (2012b, 182). In other words, he seems to say not that partnerships like 287(g) are conflicting with different levels of authority, but that they are serve to blur the lines of enforcement authority.

Coleman's argument of “nonfederal proxies” is further backed up by re-introducing the “inherent authority” concept that originated in a 2002 Department of Justice Office of Legal Counsel document, affirming that states do not need express authorization from federal authority to enforce any federal law, including immigration. Though Coleman argues that federally

supported 287(g) partnerships are “somewhat contradictory” because they invalidate the need for their own cooperation by means of the program, he sees both the actual 287(g) programs and state non-partnered initiatives are propagated by the federal government in the aims of increasing the inward reach of the enforcement and policing mechanism on undocumented immigrants.

To support this claim that the connection to the federal system is present even in states without a 287(g) formality, Coleman calls these non-287(g) agencies part of a “‘hub and spokes’ enlargement of official sites”. The effect of this spreading of the enforcement duties across many un-deputized agencies is to “obscure who is doing immigration enforcement and how” (Coleman 2012b, 182). While this obscuring is in agreement with Varsanyi’s claim that the devolution of immigration law creates variation in local policy, and therefore in the way law is enforced on individuals, it does not necessarily follow that, as she argues, the variations would not happen in the event of a federal policy. Ultimately, she calls this increased variation resulting from federal devolution a “no-policy policy” resulting from the extended reach of the federal government and reduced oversight (Varsanyi et al. 2012). In contrast to the inherent partnership, even if it is not formally outlined today, as argued by Coleman, Varsanyi views the devolution of power to local authorities as “a product of increasing levels of immigration and the limited capacity of government to control this flow”. This certainly would not apply today, at a time when some reports show immigration flows reducing and the DHS spends large amounts of money on border enforcement.

Varsanyi (2008) also uses the concept of the “neoliberal paradox” to examine immigration law in the U.S. She argues that neoliberal subjects are being “constituted through the devolution of select immigration powers from the federal government to the state”, and that “the neoliberal ideology of the global free market has not yet extended to the labor market”. In

other words, she argues that the U.S. is still a “membership community”, but the demand for exploitable, cheap labor has not been worked into social and legal systems.

Another area these scholars have discussed is what effect state laws have on the everyday lives of the undocumented. Varsanyi shows how these policies can affect the relationship with law enforcement agents and the community. Police officers that enforce immigration laws locally end up breaking or weakening the trust they may have gained within immigrant communities. Often local police departments do not have standardized policies determining how officers interact with unauthorized immigrants, leading to a highly variable, confusing, and tense relationship. Immigrants may decide not to report domestic abuse or other crimes, or to generally avoid contact with police. In some cases where officers do not want to enforce immigration law for fear of disrupting this trust it is the Sheriff (such as in the case of Maricopa County, Arizona) who gets the final say, claiming federal authority from a 287(g) partnership. These conflicts, Varsanyi argues, have not been adequately portrayed and are lacking in discussions on “federal devolution” (2012).

#### *Homeland Security and the inward surveillance of the immigrant*

One argument common to the work of Coleman and Varsanyi is that the 9/11 attacks have impacted the historic situating of state level immigration laws by changing the social and political tone of enforcement at the border and inward. The emergence of some state law may be explained by the federal focus on immigration enforcement after 9/11. Coleman asks us to “Completely rethink the equation between U.S. immigration control and border control”, arguing that the terrorist attacks allowed for a solidification of already existing attempts at federal cooperation with state and local officials. This solidification after 9/11 “intensified an already operational merger” between civil immigration and criminal law enforcement structures in the



U.S (Coleman and Kocher 2011). By placing an increased focus on homeland security and linking it increasingly to immigration policy, 9/11 promoted state-federal partnerships that increased interior policing of immigration status (Coleman 2012a, Varsanyi 2008). Varsanyi explains this “public mood change” partly due to the increased focus by the Bush administration on “national security, terrorism, and the perceived vulnerability of the country’s southern border” (Varsanyi 2008, 890). They did so partly with help from federal lawmakers who equate unauthorized immigration to potential terrorism, and the 2002 creation of the Department of Homeland Security, which houses the 287(g) partnership program.

Coleman has documented the extent to which 9/11 increased the emphasis on local-federal partnerships in immigration enforcement along with the fusing of national security to augmented policing of immigrants. In this way, the post 9/11 “selective crossing of the civil and criminal law enforcement systems” led to the everyday policing of unauthorized immigrants (Coleman and Kocher 2011). This newer legal focus on immigrants already living in the U.S., per Coleman and Kocher’s interpretation of Foucault, is a strategy of managing the sovereignty of the nation by a “super-panoptic” surveilling of the body that has breached the boundary (Coleman and Kocher 2011). As they note, this post 9/11 “militarization of the border”, including surveillance equipment, new fences, and checkpoints with car scanning infra-red technology is in direct contrast to the free running chaotic desert portrayed in popular media outlets or by pundits.

Largely, geographers have explored state immigration laws by examining policy variation across space and attempting to explain this variation. Walker and Leitner’s statistical analysis of state and local ordinances across the U.S. posit some reasons for successful passage of such laws. They began their analysis by categorizing proposed and implemented state level

laws into two categories: policies that “are designed to promote immigrant integration” and those designed to “exclude undocumented immigrants from settling within a given jurisdiction” (Walker and Leitner 2011, 157).<sup>74</sup> They define integrating, “inclusive” laws as those that grant rights to undocumented workers, such as sanctuary city policies and those that grant ID cards. “Exclusive” laws are those that encourage 287(g) partnerships, such as anti-day labor policies, and other programs like English-only ordinances (Ibid., 158). From their results, areas with higher numbers of Republican voters, rapidly increasing Hispanic populations, or higher rates of owner-occupied housing were more likely to pass restrictive policies<sup>75</sup> than their counterparts. Regionally, this analysis correlated anti-immigration ordinances to locations in the South, a finding they posit to be consistent with qualitative studies on “distinct Southern racialized imaginaries of national belonging.” Ultimately, they suggest that the Southern correlation with anti-immigration policy reflects an extension of the segregated history of the U.S. and “an attempt to defend the unacknowledged whiteness of the national imaginary” (Leitner and Walker 2011).

These correlations should not, however, lead to the impression that state immigration laws do not cooperate with federal immigration programs and goals. To illustrate the connection between federal goals and state laws, Political Scientist Lina Newton (2012) asks if the increase in state legislation represents innovation by the states. Her findings suggest that states are simply cooperating with federal goals instead of posing opposition. She identifies two contrary reasons for states to enact their own laws: vertical integration, where a state is cooperating with a broader effort of the federal government to extend partnerships of enforcement, and, on the other hand,

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<sup>74</sup> Coleman and other geographers argue that a law which is publicly presented to be restrictive is not necessarily seeking to encourage undocumented workers to leave the area, rather to use the law as a means of social control. For more, see p. 42.

<sup>75</sup> See Footnote 11 on p. 6.

state activism in response to the lack of national opportunities to fulfill their own interests. Pointing to the legal scholarship that states will fill a policy void with their own laws, she seeks to then debunk the theory that state laws are by nature “innovative” or new. In fact, she sees state laws as resulting in a federal “policy complex that increasingly depends on cooperation by states” indicating that the hypothesis of immigration laws tailored to each state has little support. To further argue for the federal intent to move enforcement into the states, she discusses two federal attempts to pass mandatory state enforcement of immigration laws in 2003 and 2005. Even though the proposed legislation, the Congressional *CLEAR Act*, failed both times Newton suggests the Immigration and Customs Enforcement (ICE) agency “has effectively circumvented congressional approval” by continually encouraging state and local cooperation.

### **Legal Geography**

A critical study of law seeks to reveal the countless unacknowledged codes and meanings in space that “work to stabilize the validity of seemingly obvious propositions, identities, and the very meaning of “law” (Delaney et al. 2001, xv). Rather than reading the law at face value, this theory suggests that an analysis of these coded meanings can help scholars explore the extent to which the assumptions present within HB 87 shape society for immigrants and non-immigrants in Georgia. Beginning the study with this legal-geographically grounded focus, we move away from the assumption that law is a set of “neutral rules promulgated for the public good...to create order, serve justice and promote liberty” (Delaney 2010, 11). Critical legal scholars began questioning this neutral position of law using what they called “trashing” to show laws as “deeply complicit in structures of domination and subordination” (Ibid.,10). Delaney calls the result of this trashing “demystification”, an attempt to undo the “extent that liberal legal ideologies colonized everyday forms of social consciousness.” Building on these concepts, legal

geographers have developed an interrogative stance in the forty plus years since “the spatial turn” in the 1970’s when many disciplines attempted to recognize “the problems with space: that social space was not simply found but made” (Ibid., 10)

The basic tenant of legal geography holds that when we examine the legal in terms of the spatial, and the spatial in terms of the legal, the understanding of both is changed (Delaney et al. 2001). This means that discussions of the penal system, public domain, or national security are understood differently when examined as a struggle over power in certain spaces and stabilized by certain institutions. Delaney et al. point out that this process of maintaining power through certain spaces, like borders, workplaces, jails, and legislative offices, brings discourse and the link between words and power to the forefront for examination. They see legal geographers as participating in this conversation by “examining how legal discursive practices- tied to the power of the state- have shaped the social spatialities within which we live our lives” (Delaney et al. 2001, xix). At the same time we can investigate how these representations or discourses, as “spatial representations, metaphors, and images” are themselves instrumental in understanding how the words said in legal proceedings “support the intelligibility of legal concepts” and therefore legitimate the power of the law itself (Ibid., xix). As I will discuss, un-interrogated notions of the border, nationality, right and wrong, all work together in the dominant discussion of House Bill 87 to legitimate restrictive immigration policies and leave many assumptions about citizens and non-citizens alike un-critiqued.

In his 2010 work, *The Spatial, the legal and the pragmatics of world-making: Nomospheric Investigations*, Delaney offers a critique of “legal geography”. He argues that legal geographic studies are in danger of reifying the separation of “the legal” and “the spatial” when applied too narrowly. Due to the under-developed application of legal geographic interrogation,

he argues scholars in many fields have tended to stay at the intersection of geography only briefly in their analysis. The effect, he argues, has been to once again separate the legal and the spatial, and to maintain that they are distinctly different elements. Instead, he urges us to maintain the fusion of these two concepts as they constitute each other. We can do this by not asking what “the spatial” and “the legal” and how they are related, but rather focus on “how they happen” (Delaney 2010, 23). By considering these two concepts as inherently fused the scholar can be released from pinpointing exactly when the social is shaping the legal, and vice versa, and better focus on the interplay between the two as they form the dynamics of society together.

### **Social Theory**

*“The ideas of crime and punishment must be strongly linked and follow one another without interruption.... When you have thus formed the chain of ideas in the heads of your citizens, you will be able to pride yourself on guiding them and being their masters. A stupid despot may constrain his slaves with iron chains; but a true politician binds them even more strongly by the chains of their own ideas. (Foucault 1977,102)”*

-Foucault, quoting Servan

Building from the importance of studying law, geographers and philosophers have theorized how laws and their application across space shape the everyday experiences and realities of life as part of the intertwined fields of power and meaning, or the “world of structured situations” which “constitutes and is constituted by socially generated fields of power and fields of meaning” (Delaney 2010, 39). We should also envision life situations as happening to social actors or figures. These figures are “abstract, social entities defined with reference to spatiality and legality”, and given meaning through the assignment of “traces”. Traces, as Delaney defines them, are discursive elements that are expressed onto a figure, and then attributed meaning in a situation ( Ibid., 71). Figures can be positive or negative, depending on the kind of trace accorded

to them. Positive figures, such as legislators and police, are defined as such through a social process assigning them rights. Negative figures, such as undocumented or stateless persons, are figures whose meaning attributes them the absence of rights (Ibid., 71).

It is useful here, in a discussion of how law and space shape each other, to think about the meaning of law and discipline in society. Enforcement of laws, or the punishment given, is another aspect of what gives the laws their interwoven control over individuals. In his work *Discipline and Punishment*, Michel Foucault introduces the basic concept of punishment (this time discussing a public execution) as the “ceremonial by which a momentarily injured sovereign is reconstituted” (Foucault 1977, 48). In his lengthy explication of punishment, which is the result of enforcing law, he argues that the historical process leading from the public execution to the current penal and legal system has developed away from the sovereign toward “a technology of subtle, effective, economic powers” (Ibid., 102). This shift has not erased, only changed the way that legal power shapes the actions of all of the actors in our society. These “subtle and effective” powers can be seen throughout society post 9/11, in the common discourses and policies that place importance on travel documents, identification, and the patriotic connection of security, obedience and adherence to law. All of these point directly to the coercive effects of laws and the norms surrounding laws. Surveillance plays an integral part of this coercion in 2013. In discussing surveillance, Foucault describes (as if divining the future) a system “based on permanent registration; reports from the syndics to the attendants, from the intendants to the mayor” (Ibid., 196).

Patricia Hill Collins also reflects on this connection between power and government bureaucracies. Following Foucault’s understanding of organizational power she argues that the disciplinary ability of power has grown as the bureaucratic capacity of the government has

increasingly reached into society. While her focus is on power over Black women in the U.S., the ability of organized government to control “populations, especially across race, gender, and other markers of difference” applies directly to the types of connected, systematized, and highly policed action being implemented with state and local immigration laws (Hill Collins 2000). In other words, as Coleman quotes Painter, we can think of law as being “produced in practice” by the everyday actions of a multitude of officials (Coleman 2012b). Working together, this hegemonic power domain is the linkage between the structural (or social), the disciplinary (organizational), and the interpersonal (everyday experience) domains. In complement to the ideological form of power, the hegemonic domain is responsible for creating a dominant, “commonplace” ideology that legitimates the power of the hegemonic group.

It is precisely in the enforcement of law that figures, with the traces of meaning attached to them, are put in their place, their actions controlled (by themselves) because of the fear of punishment. People in the community begin to regulate themselves “with their own ideas” when the promise of legal surveillance, always attached to some societal understanding of norms and common values, becomes more likely or of consequence. In this sense, where the King used to hold public executions to reconstitute his power, the use of current laws and penal systems serve to regulate us all, in a “reactivation of the code” (Foucault 1977, 110). Exploring Bentham’s architectural figure with a centralized surveillance tower in which the central supervisor observes the behavior of each inmate, Foucault gives us some ideas with which to reconsider the “enforcement” actions of immigration laws. If the major effect of the Panopticon is to arrange the surveillance so that it “is permanent in its effects, even if it is discontinuous in its actions”, meaning that the employer or the immigrant knows the possibility of enforcement is imminent because “what matters is he knows himself to be observed” (Ibid., 110), then this surveillance

controls all in the society even as it is inconsistently enforced. (Or, as one could argue, *because* it is inconsistently enforced.)

### **Conclusion**

The passage of HB 87 could have profound impacts on certain people within the state of Georgia. The enforcement of 287(g) programs or of E-Verify database checks, among other parts of the law, could mean deportation for some undocumented workers, and could more likely mean fear of deportation or fear of lost work for them and for their families. Throughout the debates and hearings for HB 87, proponents take on a position of the “illegal” immigrant “problem”. However, historical scholarship has shown how this concept has been legally created in changes to the immigration system of the U.S. Race theorists add another dimension to the study of HB 87 by showing how legally and socially entrenched categories code different bodies within the society. In addition, legal geographers show how state laws like HB 87 work with federal immigration enforcement programs to increase the uncertainty of an already exploited workforce.



## CHAPTER 4

### METHODOLOGY

This project uses qualitative methods, with elements of case study, document review, and discourse analysis. While my work focuses on the dominant themes I identified within the legislative process for GA House Bill 87, I began with a review of state immigration laws in the United States to place the law within the social, political, and historical context. In *Impossible Subjects* Mae Ngai examined immigration laws in the U.S. at three levels: discourse of legislation, judicial decisions and the everyday consequences of the law (Ngai 2004, 12). Taking a small piece from this framework, I follow the discursive element in the legislative process of HB 87 as a way to critically analyze prevalent lines of reasoning, classification, and motivation in the official messages of this Republican backed bill.

#### **Data Collection/Case Study**

A “case study” is conducted by gathering multiple sources in an effort “to understand the case in depth, and in its natural setting, recognizing complexity and its context” (Padskocimaite 2012, 144). To begin this over-arching process, I conducted searches in Academic Search Complete, EbscoHost Databases, and Georgia News Sources services for news articles related to Georgia immigration law, and state immigration laws in other states<sup>76</sup>. I gathered dozens of articles and read them in chronological order to understand how the legislative process and resulting social consequences have been reported in the media. I also watched video clips and listened to audio

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<sup>76</sup> My original search logic was “(immigra\* or migra\*) and (law\* or legal\* or illegal\* or undocument\*) and (georgia or arizona)”.

clips of news from approximately the last 3 years, from what I would call popular news sources such as FOX News, CBS, ABC, NPR, and the BBC. Due to the recent passage, or the consideration of passing, state laws in several states the articles would often mention similar laws, involved organizations, or other statutes that I felt I should understand. I compiled a list of organizations that study or discuss laws and other immigration related topics to get a well-balanced representation of professional reports, including the PEW Hispanic Research Center, Migration Policy Institute, American Civil Liberties Union, Department of Homeland Security-Immigration and Customs Enforcement, State Legislators for Legal Immigration, and the National Conference of State Legislatures. I gathered these reports by researching the names of organizations mentioned in news articles, identifying whom Spokespersons represent, then using the search engines or the Web to find items mentioned in citations. Media outlets would mention organizations, lobby groups, or think tanks and I would use Google to access their homepages, read mission statements, immigration policy positions, and any other content that would tell me where this organization would place themselves within immigration debate. Several times the Board of Directors listing or the “About Us” page would mention a legislator, connected organization, or specialized terminology with which I would also need to become familiar. My note taking through all of these readings was mostly done by hand, circling and commenting on pieces of information as I went through the documents and collecting lists of other items I needed to locate and read.

Specifically, as I learned about the court cases challenging Arizona SB 1070, I collected and read the pertinent cases from the Supreme Court (*Arizona v. United States*) and the 11<sup>th</sup> Circuit Court of Appeals Court (*Georgia Latino Alliance v. Governor Nathan Deal*).<sup>77</sup> I read

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<sup>77</sup> United States Supreme Court. 567 U.S.- *Arizona et al. v. United States* (2012). <http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>.

these, paying special attention to the opinion of the court, to compare the areas of scrutiny to the discussions of the legality of state immigration law in popular news sources as well as the Georgia legislature. To better understand how the legal system responds to state laws and where issues within Georgia law fall within the national legal discussion, I gathered and read approximately 15 law review articles found initially with Lexis Nexus and Academic Search Complete, and later by following citations from my previously gathered sources. The articles directly addressed state immigration laws, be they discussions on the general implementation of state laws, specific programs such as E-Verify, or on specific laws such as Arizona SB 1070 or Georgia HB 87.

After I had gathered documents with which to determine the general national conversation and the status of state immigration law in Georgia, I reviewed the official House Bill 87 History from the Georgia General Assembly Website<sup>78</sup> and identified the major events in the official legislative process leading to the bill's passage. Specifically, the bill was started as an initiative identified by Governor Deal and assigned to a special joint committee in 2010, co-chaired by Senator Jack Murphy. Because there were neither videos nor transcripts of the three meetings of the committee<sup>79</sup> I began a search for whatever records were available, starting with emails and phone calls with the assistant at the Counsel to the House Judiciary Committee. Due to staff changes the records had been given to the new assistant for Jack Murphy, Carlie Howard. While I was told several times that the committee "did not issue an official report", I requested a visit to the office to gather any potential records. Eventually, in December 2012, I drove to Howard's office in the Coverdell Legislative Office Building (CLOB) in Atlanta where I

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United States Court of Appeals. Georgia Latino Alliance for Human Rights, et al v Nathan Deal et al, 1:11-CV-01804. 11th Circuit Court. (2012). <http://www.ca11.uscourts.gov/opinions/ops/201113044.pdf>.

<sup>78</sup> <http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/87>

<sup>79</sup> The committee met on October 28, November 17, December 16 of 2010. For more, see Figure 1 on p. 23.

reviewed manila folders of loose papers and print-outs from the three joint committee meetings. I left with copies of every document within these folders, which contained an agenda for each meeting and approximately 50 pages per meeting of emails, proposed bill text, and power point presentations from Georgia House Representatives, Senators, concerned citizens, and special interest groups.

I Googled the Georgia Legislative Assembly, located the Senate Judiciary Committee page for the 2011 session, and downloaded the official minutes of the Committee meetings, which are edited by the committee's recording secretary and made available on the Judiciary committee website.<sup>80</sup> The 115 pages of minutes contain short summaries that describe each public meeting of the committee, including overviews of sponsor comments, lists of who gave testimony for or against certain bills, and short comments describing questions after the presentations. The minutes for these hearings include discussion on bills unrelated to my research as well as House Bill 87 and Senate Bill 40, the Senate version of the bill which HB 87 replaced, and voting results for each draft of the bills.

After I gathered these documents I searched the Legislative Assembly site for records of the House Judiciary Non-Civil committee, which held four public hearings in February 2011, and discovered that there were no extensive minutes taken during these hearings. However, after several discussions with Reference Librarians in the Main Library on the UGA Campus as well as email correspondence with Brandi Brazemore, the policy analyst for the committee, I learned that Georgia Public Broadcasting (GPB) hosts videos of each hearing online in their series *Lawmakers*. I was able to download and watch each hearing, totaling nine hours of videos, most of which are discussing HB 87. The hearings began with opening remarks from Rick Golick, the

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<sup>80</sup> "2011 Minutes of the Senate Judiciary Committee" can be found at <http://www.senate.ga.gov/committees/Documents/2011Minutes80.pdf>. 115 pages.

committee chairman, followed by detailed presentations from Matt Ramsey, the bill's sponsor. Latter hearings consisted of updated bill language from Ramsey and extensive testimony from special interest groups, business organizations, religious groups, and private citizens. It is important to note that these videos were edited; meaning that entire sentences from within a continuous speech had been removed without any mention of the fact or explanation from any documentation I have seen.

The most important data to complete my review of the process for HB 87 were in the form of floor debate videos, which directly precede votes, from the House of Representatives and the Senate. Based on my contact with staff, review of the history, and reading about the bill, I downloaded video of the morning and afternoon House sessions from the House vote on March 11<sup>th</sup>, and the morning and afternoon sessions of the Senate vote on April 11<sup>th</sup>, 2011. Like the House Committee videos these were available online from GPB and were also edited, with the Speaker muting his microphone between speeches. However, I did not notice edits within individual speeches. In the floor debates each party is allowed a previously determined amount of time with which they call party representatives to give their particular remarks and speeches on the bill.

### **Analysis of Text/Document Review**

After the process of reading newspapers and court documents and gathering the sets of videos, meeting minutes, and joint committee files, I read each report and looked for major developments or themes throughout the body of information.

Due to the fact that the Georgia Legislature does not maintain transcripts of GPB *Lawmakers* videos, I transcribed the House Judiciary Committee hearings, House of

Representatives floor debates and Senate floor debates. I began by playing one video on full screen and typing into a Word document on another computer, pausing often and rewinding when I identified a comment to be of importance. In this transcribing phase of my work I would define “important” as those I determined to be related to the motivations behind the passage of HB 87, immigration issues in general and related politics such as religion, business, and a person’s particular point of view regarding immigration and law. For most speakers and comments I transcribed each word. However, when discussions were informative but not necessarily related to my interests in the bill (administrative, overly technical) I summarized the comments in my transcript rather than type each word, with note to the timestamp for easier reference in future analysis. For example, in one case, two Representatives were discussing human trafficking and one referred to sex-trafficking in Georgia during his comments. In this case I summarized the comment in case I needed to refer back to it. Rather than typing every word for a complete transcript, I typed quickly as I listened through each speaker’s comment and identified speeches or remarks that I found particularly interesting and important for understanding the overall message of a particular party, as well as language that I found to be coded in a way that merited discussion or relevant to the social and political tensions described in newspaper and popular discourse. By “interesting” and “important” I mean remarks that were relevant to characterizing or explaining the positions that shaped the bill. When this process was finished I had approximately 30 pages of single spaced paragraphs from the hearings and floor debates. Having read extensively through a larger body of information about state immigration laws, and heard hours of conversation and presentations, I identified three themes within the discourse of the bill, and began to locate these themes within the larger national discussion of state laws.

One, popular discourse repeated in newspapers and other media incorrectly shows state immigration laws as completely anti-federal government initiatives, rather than as partnerships with federal enforcement programs. Two, this representation complements the way many Republican lawmakers discuss a supposed failure by the federal government and their proposal to fix this failure by implementing federal programs, such as 287(g) and E-verify, at the state level. Three, the dominant discourse surrounding the law utilizes racialized language to describe “illegality” as a Mexican, or Spanish speaking issue. Referring to my typed transcripts and the paper documents I had gathered from Atlanta and from computer sources, I circled, highlighted, and wrote comments to myself throughout the documents to identify these themes. Although this kind of reasoning required me to read and interpret many kinds of sources and theoretical approaches to law and immigration, I found the approach gave my mind space to think about HB 87 in the larger context of state immigration law. *The Right Toolkit*, describing the value of the case study approach, suggests this kind of analysis because it “enables researchers to reveal and interpret deeper meanings by deconstructing social norms”, offering the “opportunity to reflect on epistemological assumptions in a way that other methods do not” (Pads kocimaite 2012).

Despite the value of this document based collecting and analyzing approach, it has some downsides. Following a wide spread document collection technique can make it hard to determine when to stop collecting, reading, and analyzing. For this project I determined that while there are always more documents that could be gathered, once a main set of dominant discourse has been analyzed, major themes have been deciphered, and the impacts of these themes explored, more data collection and analysis could be saved for later projects.

## **CHAPTER 5**

### **ANALYSIS OF THE DISCOURSE**

This chapter presents the research findings, in three thematic areas from my observations of the HB 87 legislative process. First, I explain how a popular discourse repeated in media outlets incorrectly shows state immigration laws as challenges to the federal government, rather than partnerships with federal enforcement programs. Second, I find that a complex tension exists between the image that many Republican lawmakers have of a supposed failure by the federal government and their proposal to fix this failure by implementing these federal programs. I argue that House Bill 87 was a highly partisan piece of legislation crafted for, and passed by, the Republican Party even though it was discussed in hearings floor debates as being highly inclusive. Third, the dominant discourse surrounding the law contains racialized language that paints “illegality” as a Mexican, or Spanish speaking issue, leading me to conclude that the law perpetuates a racial project that affects the social and economic position of Hispanics in Georgia. These themes, repeated over and over by elected officials during the legislative process and ultimately codified into the law books, contribute to a political power that Nik Theodore calls “truth value”, an inherent meaning attached to social commentary, regardless of veracity, through a process of “frequent reiteration” (Theodore 2011).



## State Immigration Laws, as represented in the press

On August 22, 2012 an editorial in the *New York Times* reacted to federal court decisions on Georgia and Alabama’s state immigration laws.<sup>81</sup> The decisions, which enjoined<sup>82</sup> one section of Georgia’s law making it illegal to drive undocumented immigrants, and one in Alabama that would have required schools to check immigration status, upheld most of both bills. However, the title of the editorial, “Setback for Rogue Immigration laws”, and the assertion that “Monday’s ruling [was] a welcome repudiation of bad laws”<sup>83</sup> completely miss the point: the U.S. Supreme Court had already heard arguments against Arizona and ruled in June, 2012 on what it will and will not allow in state immigration law.<sup>84</sup> This editorial is only one example of a common element in public discourse depicting state immigration laws as anti-federal ventures that will be corrected by court action. While it is true that some state immigration laws have been challenged all the way to the highest levels of federal appeals court (11<sup>th</sup> Circuit<sup>85</sup> and the U.S. Supreme Court), I argue that the notion of their “rogue-ness” misleads the reader with the suggestion that state laws are contrary to federal immigration goals. Instead, I emphasize that because immigration laws that copy existing federal code are likely to pass legal challenges, successful state laws aim to mimic federal law and often enforce or implement already existing federal programs. Proponents of restrictive immigration law, such as Kris Kobach, D.A. King, and several members of the Georgia House of Representatives equated the success of the bill through the court system by how closely it would copy federal immigration law.

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<sup>81</sup> “Setback for Rogue Immigration Laws.” Editorial Section. *The New York Times* August 22, 2012.

<sup>82</sup> See Footnote 26.

<sup>83</sup> See Footnote 81.

<sup>84</sup> United States Supreme Court. 567 U.S.- Arizona et al. v. United States (2012).

<http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>.

<sup>85</sup> The U.S. Court of Appeals for the Eleventh Judicial Circuit has jurisdiction over federal cases originating in the states of Alabama, Florida and Georgia. (<http://www.ca11.uscourts.gov/about/index.php>)

As can be seen in recent decisions from appeals courts, including the U.S. Supreme Court, it is clear that the legal challenge itself results in leaving most of the laws intact, prevents further lawsuits, and provides passable language for interested legislators in other states. Based on my data from the HB 87 draft process, Georgia Republicans were keenly aware of court challenges and how to craft law that would pass federal review. For example, when the House and Senate were vetting drafts of the bill, some language from the Senate version was chosen over the House version for being “based on settled federal law”.<sup>86</sup> Also, the law contains a “severability clause”, which declares “if any portion of this law is held invalid or unconstitutional, the rest of the law will be unaffected and remain in effect”.<sup>87</sup> Similar preparations for lawsuits were evident in Arizona. Six days after Governor Jan Brewer signed SB 1070 she signed a complementary bill, HB 2162, amending the law “to address racial profiling concerns” and clarify that officers can attempt to determine status of a person “only while in the process of a lawful stop” (Immigrant Policy Project (IPP) 2011b). Although the report on these changes does not speculate why they were added, I find it reasonable to view these last minute amendments as the work of legislators anticipating, expecting, and crafting law for federal “challenge”.<sup>88</sup>

In some news articles, there are arguments brought by immigrant rights groups or religious organizations. For example, the American Civil Liberty Union’s (ACLU) worries that Arizona law encourages “racial profiling and discrimination against Latinos”.<sup>89</sup> In another, Georgia is described as “the home of civil rights, (that) will ironically be working against civil

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<sup>86</sup> “2011 Minutes of the Senate Judiciary Committee” can be found at <http://www.senate.ga.gov/committees/Documents/2011Minutes80.pdf>. 115 pages.

<sup>87</sup> “House Bill 87: As Passed” Senate Research Office. *State of Georgia*. 5pages. 2011.

<sup>88</sup> See p.19 for evidence that Georgia lawmakers considered legal challenges as they drafted their bill.

<sup>89</sup> “A Law Facing a Tough Road Through the Courts.” *New York Times*. April 28, 2010.

rights”.<sup>90</sup> Concerned Catholics read about states where “people of color will be subjected to constant scrutiny regarding their immigration status”.<sup>91</sup> While the emphasis within these news sources on the concerns about discrimination may accurately portray some public sentiment, it does not explain that the allegation that HB 87 encourages profiling has already been rejected by federal court. In response to charges brought by the Georgia Latino Alliance for Human Rights and others, the 11<sup>th</sup> Circuit Appeals Court blatantly disregarded the possibility of racial profiling on the grounds that it “is expressly forbidden by Georgia statute”, and that “it is inappropriate for (the court) to assume that the state will disregard its own law.”<sup>92</sup>

Some news venues imply that HB 87 is out of place in the federal immigration scheme. Before the Supreme Court decision on Arizona in June 2012, *The New York Times* reported that SB 1070 had earned “not only the threat of a challenge by the Justice Department and a rebuke from the President, but the snickers of late night comedians”.<sup>93</sup> Two days after Georgia’s law was signed the *Atlanta Journal-Constitution (AJC)* described predictions that it would “suffer the same fate as Arizona’s law” because a federal judge put sections on hold “after the Obama administration argued they are preempted by federal law”.<sup>94</sup> These reports do not accurately present the piecemeal vetting of each law as it is appealed up through federal courts. As Justice Kennedy wrote for the court in the decision on SB1070, “The United States filed this suit against Arizona, seeking to enjoin SB 1070 as preempted. Four provisions of the law are at issue here”.<sup>95</sup> His words illustrate that only certain pieces of the law are actually being contested, which are the sections that are seen as preempting federal law. Two of these provisions created new state

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<sup>90</sup> “Georgia Lawmakers Target Illegal Immigration”, Wall Street Journal, April 14, 2011.

<sup>91</sup> “How Far Can States Go to Control Their Borders?” America Magazine. *America Press*. Issue 206: 6-7. 2012.

<sup>92</sup> United States Court of Appeals. Georgia Latino Alliance for Human Rights, et al v Nathan Deal et al, 1:11-CV-01804. 11th Circuit Court. (2012). <http://www.ca11.uscourts.gov/opinions/ops/201113044.pdf>.

<sup>93</sup> “A Law Facing a Tough Road Through the Courts.” *New York Times*. April 28, 2010.

<sup>94</sup> “Georgia Lawmakers Target Illegal Immigration”, Wall Street Journal, April 14, 2011.

<sup>95</sup> United States Supreme Court. 567 U.S.- Arizona et al. v. United States (2012).

<http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>.

offenses, making it illegal at the state level for an immigrant not to be authorized to live in the state as well as to seek work without the proper papers. Two other provisions give specific arrest authority to local officers, allowing an officer to arrest a person without a warrant, and requiring officers in certain circumstances to verify immigration status of the detained person.<sup>96</sup>

Few articles clearly articulate what Kris Kobach, who “as someone who helped draft the statute” in Arizona, knows well.<sup>97</sup> “As long as the statute doesn’t conflict with federal law and Congress has not displaced all state laws from the field, it is permitted”.<sup>98</sup> Beyond being permitted, ample evidence indicates that (parts of) the federal government actively encourage and seek cooperation with the states to enforce and police undocumented immigrants and their labor.

News outlets portray the laws as inherently against the federal government. Fox Business News anchor Neil Cavuto introduced his segment on HB 87 by declaring, “Georgia is trying to become the next Arizona. The Peach state wants to exact the same ‘get tough on illegals’ stance that Arizona’s been pushing, and the federal government has been fighting”.<sup>99</sup> On that show, Georgia Representative Tom Graves (R) justified HB 87. “The federal government is not doing its job and defending our border. Places like Alabama, Arizona, and Georgia are having to step up and pass laws within their own states ... and Georgia is saying ‘hey let us take care of ourselves and get the federal government out of the way’.” The program ends with Cavuto’s opinion: “It’s a mess, but maybe Georgia can figure it out.” The perception that the federal government fights against restrictive state immigration laws is also inconsistent with cries from pro-immigration activists asking to stop deportations. *Mother Jones* magazine points out that “It

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<sup>96</sup> Ibid.

<sup>97</sup> “Why Arizona Drew the Line.” *New York Times*. April 28, 2010.

<sup>98</sup> Ibid.

<sup>99</sup> “Georgia Looks to Enact Tougher Immigration Laws.” FOX Business News.

<http://video.foxbusiness.com/v/1729338939001/georgia-looks-to-enact-tougher-immigration-laws>.

is official: Obama has deported more than a million unauthorized immigrants”<sup>100</sup> and the National Domestic Workers Alliance has organized a campaign for children to send letters to President Obama asking him to give them a present, “a law saying no more deportations”.<sup>101</sup>

My reading of popular news sources allows for the following argument, that the common, news based presentation of the laws as contrary to the federal government places an incorrect focus on legal challenges to state immigration laws. As my research demonstrates, Georgia legislators are keenly aware of copying pieces of immigration law that have passed previous lawsuits. Each pass through the Supreme Court or Circuit Court of Appeals yields cleaner wording and more passable legislation. Because of legal challenges, and as a result of them, the state immigration laws that come out of, or are modeled on, federal Court decisions are inherently copies of federal law. Indeed, Georgia legislators were aware that the success of their law lay in how closely the bill mimicked already existing federal code. However, this reality is hardly mentioned in media outlets, perpetuating the notion that state laws are directly challenging the federal government. As I will discuss later, this concept is especially important because state laws, such as HB 87, implement federal programs as their proposed solutions to unauthorized immigration.

The process of determining which statutes can and cannot be implemented at the state level leads to a clear legal definition of what the federal government deems acceptable at a state level, and most provisions of HB 87 pass this scrutiny. While some argue that these high level court cases mean that state immigration laws are threatening to the federal government and

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<sup>100</sup> “It’s Official: Obama Has Deported More Than A Million Unauthorized Immigrants.” *Mother Jones*. 2011. <http://www.motherjones.com/mojo/2011/09/its-official-obama-has-deported-more-million-unauthorized-immigrants/>.

<sup>101</sup> “Thousands of Immigrant Kids are Asking President Obama to Stop Deportations.” FOX News Latino. November 30, 2011. <http://latino.foxnews.com/latino/news/2011/11/30/thousands-immigrant-kids-ask-obama-to-stop-deportations/>.

challenged because of their preemptive status, I argue that this judicial appeal process actually results in the close partnering of federal and state immigration law. Attention paid by the media to “controversial laws” largely ignores this resulting mimicry, and highlights organizations that want to change the law, rather than admitting the more complicated judicial reality. In short, the Supreme Court has only disallowed specific elements of Arizona and Georgia’s law. Overall, the procession down “a tough legal road” is more of an expected vetting process, resulting in a closely linked complementary set of laws enforced at different scales but by no means working against each other. The presence of this position from popular media serves as a foundation for a complicated logic used by the Republican Representatives who drafted and supported HB 87.

### **The Special Joint Committee: An Account of Ideas that Would Become HB 87**

*We don’t have authority to deport illegal aliens we identify. But we can, within the bounds of the United States and Georgia constitutions, and within existing laws, remove every single incentive that we possibly can that lures illegal aliens to come to Georgia, the incentives that our taxpayers are footing the bill for. And as state policy makers that is exactly what HB 87 proposes to do. [The process] started last summer, when Speaker Ralston impaneled a Special Joint Committee. I was honored to be chosen as House Chairman. [We spent] hours and hours hearing testimony, hearing their sides. We heard from law enforcement struggling with this burden, from schoolteachers saying the quality of the education in their school systems has been materially diminished as the population of illegal aliens has increased, from hospital officials struggling to keep up their emergency rooms. From all manner of individuals. Some opinions we agreed with, some we didn’t. It led to a draft of the bill, then [Representative] Golick led what I believe was the most thorough committee process I had seen. Anybody that wanted to speak was given an opportunity to be heard.*

-Representative Matt Ramsey, Bill Sponsor and Special Joint Committee Chairman, in Opening Remarks before the House Vote, March 3<sup>rd</sup>, 2011

On September 29<sup>th</sup>, 2010, Georgia House Speaker David Ralston, along with Lieutenant Governor Casey Cagle announced the creation of a special committee specifically “to deal with the problem of illegal immigration and its drain on taxpayer resources in Georgia” (Office of the Lieutenant Governor 2010). The committee, which began the process described above of

“hearing their sides” consisted of 14 Republican members, with half each from the Senate and House of Representatives (See Figure 2). I argue that the one party affiliation of the committee, combined with their goal of “dealing with the problem” of “illegal” immigrants resulted in a draft of legislation that reflects important party ideologies, and that these ideologies were evident in the organizations consulted during the committee process. Furthermore, the fact that the bill passed from the House and the Senate on the first vote (with all Republican Senators and all but two Republican Representatives voting *Yea*)<sup>102</sup> indicates that whatever the behind the scenes politics for this bill were, most Republicans were satisfied with the bill enough, or convinced that a *Yea* vote was appropriate, enough to vote for it. With this in mind it points to the importance of the type of data collected and discussed during the Special Committee proceedings and speaks to the representativeness of official comments from Republicans during the hearings and floor debates that followed.

14 Members of the Special Joint Committee:

*Co-Chairmen:*

Rep. Matt Ramsey (R-Peachtree City)

Sen. Jack Murphy (R- Cumming)

*Members named by Speaker Ralston:*

Rep. Katie Dempsey (R-Rome)

Rep. David Casas (R-Lilburn)

Rep. Rick Austin (R-Demorest)

Rep. Michael Harden (R-Toccoa)

Rep. Greg Morris (R-Vidalia)

Rep. Stephen Allison (R-Blairsville)

*Members named by Lt. Gov. Cagle:*

Sen. Johnny Grant (R-Milledgeville)

Sen. Jeff Mullis (R-Chickamauga)

Sen. Chip Rogers (R-Woodstock)

Sen. Bill Heath (R-Bremen)

Sen. Butch Miller (R- Flowery Branch)

Sen. John Bulloch (R-Ochlocknee)

**Figure 2: Members of the Special Joint Committee on Immigration Reform** (Lieutenant Governor’s Office, September 29, 2010.)

<sup>102</sup> Georgia General Assembly 2011.

Agendas and notes from the three Special Joint Committee meetings give a general picture of what was discussed and whose voice was heard during this initial drafting process. For example, the committee was given a prepared legal summary of “Current Immigration Reform in the United States”, not signed but likely prepared by a Legislative Assistant. The summary of recent immigration laws in seven states (including a paragraph about Georgia) is interesting in that it focuses only on restrictive state laws, even though scholars such as Leitner and Varsanyi refer to a “variegated” or “patchwork” system of immigration laws at the state and local level across the nation that include sanctuary cities and in-state tuition for undocumented people (Leitner and Walker 2011, Varsanyi et al. 2012). The legal summary report also indicates an organizational bias from the author and perhaps the committee because it is based only on information from newspapers and from the Immigration Reform Law Institute (IRLI). Not only is the IRLI a self-described “public interest law institution” whose goal is to “protect ...U.S. citizens and their communities from injuries and damages caused by unlawful immigration”<sup>103</sup> but documentation from their parent organization, The Federation for American Immigration Reform (FAIR) is abundant throughout the committee documentation. The influence of this organization on the committee is evident not only from the group’s website<sup>104</sup> and the summary report of state immigration laws based on the IRLI (the legal advocacy branch of FAIR), but also in Senator Bill Heath’s submission to the committee notes as he discusses “the number of anchor babies” in the U.S. According to Heath, this “surprising” trend is evidenced from data provided by FAIR showing that in Memorial Hospital in Dallas, TX, “70% of the women giving birth are illegal aliens!” With his data, Senator Heath continues with his highly racialized discussion titled “Birthright Citizenship”. Heath’s position as one of the 14 members on this Special Committee

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<sup>103</sup> <http://www.irli.org/>

<sup>104</sup> <http://www.fairus.org/about>



not only adds to the representativeness of the dominant ideologies presented in the paper documentation from the Special Committee folders, but also points to the spread of ideas from organizations to the Legislature floor. Later, I will discuss key discursive themes from these ideologies.

From the information available from the committee's own notes, I argue that while several "sides" are represented within the collected committee packets, there are a set of dominant ideas that made it directly into the draft bill and in to the enacted code. That is not to say the paper documentation is devoid of pro-immigrant (or, non-dominant) ideologies, but that perspectives arguing for lenient or less aggressive statutes were less apparent and not integrated in to the draft. One eight-page report from ImmigrationWorks USA, a business organization that wants to "educate the public on the benefits of immigration"<sup>105</sup>, was part of the first meeting documents. In the report several states are ranked as "Less Likely" and "More Likely" to pass E-Verify enforcement laws. Kansas, they say, part of the "More Likely" category, "just issued an exhaustive report on the repercussions of (Arizona) SB 1070 and the options for Kansas lawmakers. And with SB 1070 author Kris Kobach... now running for chairman in Kansas, it's hard to imagine that immigration enforcement will not come up again in 2011." Texas falls in the "Maybe/ Maybe Not" section, and we are told that "Perry now regularly defends Arizona's 'sovereign right' to do whatever it needs to do to get control of illegal immigration". In later meetings, packets contained a page from Catholic Columban Fathers chastising those who do not support justice. They declare a "true Christian is someone who, when possible, will be with the prisoners, the poor, the downtrodden, the hungry, and the abused so as to lift them up, affirm them and empower them in body and spirit so they can campaign for their rights." In another prepared presentation (unsigned), seven pages argue that "Undocumented pay the same [taxes]

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<sup>105</sup> <http://www.immigrationworksusa.org/index.php?p=20>

as [U.S. Citizen] neighbors”, describe the current Board of Regents ban on undocumented students as “College entrance restrictions outlaw undocumented from GA colleges: see previous slide, not reasonable”, and end with “Logical Conclusions” such as: “This is a federal issue, don’t hurt GA more!” Another short report, from the Asian American Legal Advocacy Center (AALAC), states that their “principal concern (is) over certain state immigration policies that, while aimed at reducing the number of undocumented immigrants, in reality have the effect of shifting the cost and burden of immigration enforcement to the citizens of the state”. On one page of this report, where the AALAC claims that E-Verify places unfair overhead costs on business owners, a member of the drafting committee has scribbled “How much does it cost?”, foreshadowing cynicism made about this claim during floor debates and hearings.

However, the content of these documents, indicating concern or opposition to the expected draft of the bill, did not appear in the proposed legislation. Rather, the bill contains the ideas represented in more numerous anti-immigration provisions. For example, a draft bill in one folder of documents was written by D.A. King of the Dustin Inman Society, an anti-immigrant organization in Georgia<sup>106</sup>, and consists mainly of sections aimed at implementing the E-Verify program before any business could obtain a license. It also requires that the Georgia Department of Audits and Reports publish a yearly list of counties and municipalities that do not comply with this regulation. That the main focus of this draft did become part of the enacted legislation signifies some agreement of the committee (the drafting body) with King and his position. Furthermore, the connection does not stop here. Representative Casas, also a member of the committee, directly referenced King during his floor speech at the March 3<sup>rd</sup> House vote. “D.A. King was quoted that the purpose of this bill is that illegal immigrants will leave Georgia. Well, I tell you just like (Senate Bill) 529, they will leave! But they aren’t going back to their countries,

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<sup>106</sup> For more see p. 35

they're going to Alabama, Tennessee, Florida, and whatever states right now will hire them.” Casas’ comments imply that not only is King and his organization part of this circle of ideas, but that King’s commentary has been integrated into the legislative discussion more than once. In another piece of documentation, the Cobb County Sheriff’s office reported their response to the ACLU Report on 287(g). Notes also included a *New York Times* report on “Unlicensed Drivers and Fatal Crashes” and a published editorial in the *Marietta Daily Journal* by D.A. King.

More importantly, the content of each meeting Agenda shows an obvious focus. During the course of the meetings two Sheriff’s gave the “Local Law Enforcement’s Perspective in Illegal Immigration”, Phil Kent, of Americans for Immigration Control (and now a member of the Enforcement Review Board<sup>107</sup> offered “General Observations on the Illegal Immigration Crisis”, the Georgia Board of Regents’ spoke to their Admissions and Tuition policies, and U.S. Representative Phil Gingrey discussed “Congressional Efforts to Combat Illegal Immigration” via video conference. These presentations, and others, were scheduled in to the meeting agenda during the drafting process. However, all three meetings only allotted for “Public Comments (If Time Permits)”. While there were neither videos nor transcripts of the Special Joint Committee meetings, my analysis of the paper documents establishes the partisan ideological representation in the bill, and illustrates the spread of ideas from the Committee to the floor speeches, and provides a backdrop for themes I will discuss in the next section.

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<sup>107</sup> See p.32.

## **The Federal Government: Failure and Solution**

*Friends, the federal government has empowered us to have that system [E-Verify] precisely to do these things, and it is our job to fix.*

-Representative Ed Setzler, Judiciary Non-Civil Committee Member, speaking before the House Vote, March 3<sup>rd</sup>

*This piece of legislation is...an important call to the federal government. DO YOUR JOB!*

-Representative Edward Lindsey, Majority Caucus Whip, speaking before the House Vote, March 3<sup>rd</sup>

Proponents of HB 87 declare that the law was necessary for one main reason, to create an environment with as few “incentives” as possible, so that unauthorized immigrants (and their families) would leave the state, solving the “problem” and the resulting crime, job-shortages for citizens, and the drain on taxpayer resources. To address this goal, supporters of the bill sought to implement two main federal programs: the E-Verify database and 287(g) police partnerships. However, from the same supporters of these federal programs came an equally strong rejection of the federal government. We can see this line of reasoning from two distinct statements made by one person, within just a few moments of each other, on March 3<sup>rd</sup>, 2011.

*No doubt about it, our federal government has failed us, and our citizens are suffering the consequences....If we want to effectively address illegal immigration we can't wait for our federal government to act. We've got to do it ourselves.*

*So how are we going to get at this? What we propose is to require private employers to enroll in the E-Verify program. It is a simple, efficient program. ... It is hands down the very best tool available to us to verify the eligibility of our states workforce. I keep hearing misnomers of how it is inaccurate.*

-Representative Matt Ramsey, before the House Vote, March 3<sup>rd</sup>, 2011

Representative Ramsey's comments illustrate a key message of the Republican Party as they argued for the bill: The State of Georgia must pass the law to maintain order because the federal

government has not, and to do so existing federal programs must be implemented. Why would this apparent tension exist and what purpose could it serve? I argue here that instead of signifying a split or problem that must be reconciled, this seemingly contradictory line of logic actually functions to create a sense of legitimacy that the dominant leadership needs to implement their desired social and legal programs. In other words, without the anti-federal discourse the legislation would be missing a key logical puzzle piece.

The concept of legislating at a state level to encourage undocumented people to leave, “attrition through enforcement”, is used in anti-immigrant reports and to justify state immigration laws, such as “Downsizing for Illegal Immigration: A Strategy of Attrition Through Enforcement” by Mark Krikorian, of the Center for Immigration Studies<sup>108</sup> and “Reinforcing the Rule of Law”, by Kris Kobach, who helped draft Arizona SB 1070 and continues to consult for other states wishing to pass similar laws (Kobach 2008). It is important to note that as an influential actor in the passage of several state laws, Kobach acknowledges that 287(g) partnerships, which connect local law enforcement to the Department of Homeland Security, are ways to “maximize cooperation” with ICE and the local agency. This cooperation, sometimes described as a “force multiplier”<sup>109</sup> because it links local agencies to DHS immigration enforcement agents, was also used as a selling point for 287(g) by the Cobb County Sheriff’s report that was presented to the Special Committee in 2010. In response to the ACLU’s allegation that Cobb County officers had developed “unchecked police power”, the Sheriff’s Office defended 287(g) as “simply an administrative tool that makes additional resources available to ICE to assist the agency”. The perceived positive value of this partnership with a

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<sup>108</sup> See p. 13.

<sup>109</sup>This term can be found commonly in other sources about 287(g), for example Michaud 2010, Kobach 2005, and articles, like this one <http://www.cis.org/articles/2007/mskoped093007b.html> from the Center for Immigration Studies.

federal program comes through in the speech from House Majority Chairman, Donna Sheldon, as she explained that “Our 287(g) use has resulted in fewer illegal aliens being arrested and a lower population of foreign born inmates... Similar reports are flooding in from jurisdictions using 287(g) as a proven deterrent to illegal, and I repeat, illegal immigration. We are proving daily the common sense axiom that enforcement works.”

The partnership aspect of some federal programs is recognized by more than legal scholars and House Republicans. Mathew Coleman’s scholarship regularly discusses the “movement of the border inward” as a direct consequence of “devolutionary policies”, including 287(g), that developed as part of the creation of the DHS after 9/11. Indeed, it is interesting that discussions about HB 87 did not include mention of the “inherent authority” doctrine Coleman (and Kobach) give attention to in analysis of state level immigration enforcement. The doctrine, which argues that states can enforce any federal law, would allow Georgia to enforce immigration laws at the state level without the deputization of law enforcement, sidestepping some of the federal programs. Instead, the persistent claim that 287(g) is successful and necessary to “make Georgia less attractive as a haven for illegal immigrants” (Representative Lindsey) demonstrates an unspoken connection between the goals of the legislator and what the DHS calls “a top partnership initiative”.<sup>110</sup> In fact, the DHS information sheet for 287(g) refers to the program as part of “A Partnership Approach”, and declares that “terrorism and criminal activity are most effectively combated through a multi-agency/multi-authority approach that encompasses federal, state and local resources, skills and expertise”.<sup>111</sup>

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<sup>110</sup> Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act. Immigration and Customs Enforcement. *Department of Homeland Security*. 2013.

<http://www.ice.gov/news/library/factsheets/287g.htm>.

<sup>111</sup> Ibid.

Considering the negotiation between the valued federal 287(g) program on one hand, and the perception that the same government has “refused” to “sufficiently enforce our immigration law” led me to question the functionality of maintaining these two, seemingly opposing lines of argument within the same official discourse. To get at this question I follow Mathew Coleman’s work on “immigrant (in)security” in which he argues partnerships such as 287(g) are “about making undocumented immigrants everyday lives increasingly insecure”(Coleman 2009). Building on this claim, I would argue that E-Verify (see p.13), as a federal program, is another partnership program that, while not directly linked to police officers and traffic stops, also works to increase the vulnerability of immigrant communities and those that would hire them. Rather than being rogue measures against the federal government, the implementation of these programs are examples of the creation of what Coleman has called “emerging *localized* spaces of immigration geopolitics” (emphasis original) (2007). With this understanding of the Georgian solution to undocumented immigration, the anti-federal discourse works conveniently to further the legitimacy of the state and the dominant Party’s actions. With the imagery of the “impotent federal government...which has forfeited any claim of legitimacy”, attention is drawn away from potentially problematic (and incorrect) claims that immigrants and those that hire them, educate them, and associate with them in any way are part of a problem.<sup>112</sup>

While my work seeks to integrate Coleman’s explanation of the utility of federal partnerships and their disciplining effect on the immigrant, I find that Monica Varsanyi’s scholarship on state laws, while closely related in many ways, does not accurately describe the characteristics of the Georgian immigration legislation. Both works acknowledge some level of devolving enforcement powers from federal to state, the negative impact on immigrant

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<sup>112</sup> Representative Jason Spencer, during Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives).

communities, and even agree that the federal government has “extended its reach” with these programs. However, from what my data suggest, there is a difference in Varsanyi’s conceptualization of the relationship between federal and state. Specifically, her concept of the “multilayered jurisdictional patchwork” describes that competing federal, state, and local level governments will inevitably all have different authority and policies, resulting in unevenly enforced and uncertain situations for immigrants. While this may be true, from what my data show, the concept of devolution and three areas of competing government (federal, state, and local) obscures the extent to which participation in immigration enforcement has been encouraged from the federal level (Varsanyi 2010).

### **The Racial Politics of the “Illegal” Immigrant**

*This is an anti-ILLEGAL immigration bill. My next door neighbor is from Uruguay, the bank teller at the bank I go to is from Croatia, and just yesterday I met the head of the PTA at East Side Elementary School in my district, who is from Turkey. Her children were from Turkey and she brought them over here. She taught them not their native tongue, but English, primarily.*

- Representative Matt Dollar, Speaking before the vote on March 3<sup>rd</sup>, 2011

Within the official speeches for HB 87 I see a conflation of the Spanish speaking immigrant and the “illegal immigrant”. The line of reasoning is as follows: There are too many illegal people here. We know this because there are Spanish speaking people and their children in our communities. Not only are they here, but “we are funding them” and at the same time “compromising our state’s prosperity”.<sup>113</sup> These Spanish speaking people who are taking “our”

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<sup>113</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives).



jobs and resources are here as a result of breaking the law. Thus, they and their supporters do not value the ultimate truth and righteousness of law and order.

The impression that the state of Georgia has been overrun with immigrants is exemplified by Representative Katie Dempsey, a Joint-Committee member. In her speech before voting for the bill she said “I rise today because I can no longer stay quiet to deal with this reality. I think of those teachers that come to their classrooms every day to teach every student no matter what brought them to that classroom. But we can’t ignore that nearly 10% of every K-12 are illegal aliens or children of an illegal alien”.<sup>114</sup> By lumping together those that were brought (or came) to the U.S. as children and those that were born in the U.S., Dempsey ignores the obvious: children born in the United States, regardless of the legality of their parents, are American citizens, and therefore eligible for the benefits available to every citizen. The absence of this distinction between citizens and non-citizens, during a conversation precisely about citizenship and legality, reveals that Dempsey sees a clear difference in *who* deserves citizenship and what kind of people she finds to legitimately be part of society. Dempsey continued. “That means \$1 Billion is going to those children, and that the absolute burden on our local governments is \$3,000 per student.” Her remedy for the “burden” of educating a population that includes American citizens also speaks to how she sees undocumented immigrants and their descendants as a type of underclass whose birth in the U.S. does not change their un-wantedness. In response to this expense on an unvalued, unwanted population, her solution is to pass HB 87, a law that will encourage the Hispanic population to move out of the state. The result, Dempsey says, is that “we take real dollars, and put them back into our classroom where they belong.” These same dollars are already being spent on the classroom, but on the children of undocumented residents,

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<sup>114</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives).

so it is clear that “where they belong” refers to with the students that are wanted in the population.

Describing racial projects of the state, Haney-López claims that state legislation against immigrants, while not explicitly racial, constructs race because it “assigns meanings of belongings or exclusion” to people that “possess certain features, ancestries and nationalities” (Haney-López 1996, 145). In HB 87 it is clear that the Spanish language is seen to be one of the distinct features of the undocumented population. From Representative Crawford’s remark in the opening of this section, he has “repeatedly” received reports from people who don’t get jobs based on “questionable circumstances” which would be remedied if E-Verify were required by law. The prepared remarks from a woman who spoke at the Civil Non-Judiciary Committee hearings show that speaking Spanish is not only considered a sign of being “illegal”, but also an undesired quality in the community. Andrea Lyle, from Fayetteville, Georgia, complained to the committee about her inability to get a job.

“The main thing I wanted to read to you is an ad in the Fayette county classifieds, for jobs. I have been looking for a job now for 4 years. My husband was laid off in September. The ad reads, ‘Appointment scheduler. Busy OB-GYN practice. Must be bilingual. No other applicants will be considered.’ This is very common in the papers in Henry, Clayton, Spalding, Fayette, and Coweta County, and it’s becoming more common. I have been a secretary, I have worked medical for 30 years and I cannot get a job. I feel inferior and I feel intimidated..... There are two sides I understand, but the rule of law has to be obeyed by Christians, and these types of ads are only hurting citizens, who have contributed for years and years and years, working here in the state of Georgia.”

In Mrs. Lyle's experience, bilingual requirements for a job posting are the result of a spreading population of Spanish speaking people in her county and others around it. As a result, she feels that her inability to get a job comes from unfair competition from undocumented workers who are pushing her out of the market, and changing the necessary job skills by their presence. Her belief that speaking Spanish is a sign of *illegality* would not be so alarming if we did not also see it in Representative Dollar's statement which compares the imaginary of the "illegal immigrant" to his neighbor from Turkey who taught her children "not their native tongue, but English."<sup>115</sup> By blaming the immigrant for taking jobs during a time of perceived economic hardship, the immigrant becomes the "scapegoat". As Pulido explains, scapegoating of an unwanted group occurs "during a crisis, as large numbers of people are being dislocated and are feeling pain and uncertainty", when "so-called leaders may channel the resulting anxiety into hostility toward those at the bottom of the racial hierarchy" (Pulido 2006, 28). As the legislature successfully blamed the immigrant population for the lack of jobs and services, they were able to avoid political scrutiny of their own governance and increase punishment for the undocumented immigrant, furthering their position of exploitation.

The ethnically/racially coded image of the "illegal" immigrant (the poor, Spanish speaker) is thus presented as a drain on the taxpayers of Georgia. Representative Greg Morris, of Vidalia, Georgia, is not only sympathetic to unauthorized immigrants, but generally in awe of their work ethic. Morris explained: "It's not that the workers are being exploited! Do you know those workers can make \$400 a day picking onions? Now you gotta work! I don't believe any of us could stay with them. You've gotta work. And you've gotta do it, and they can make it."<sup>116</sup>

From these comments, we see that Morris not only knows the workers in the field, but he

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<sup>115</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives).

<sup>116</sup> *Ibid.*

understand their hard work, saying that he has “more in common with many of those folks than... with many of my contemporaries” because he came “from sharecroppers. My daddy was a sharecropper, my grandma was a sharecropper.”<sup>117</sup> However, Morris explains his problem with the undocumented community, and explains why he is voting in support of a bill that will police both workers and employers in his community. “The trouble we’ve got, Mr. Speaker let me say this, is we’ve always got some half-baked social worker standing at the end of the field wants to sign them up for everything they can give them, and instead of the American dream we want to trap them up in that cycle of exploitation so many Americans are in. It is regretful that we have to have this bill.”<sup>118</sup> This statement is important because in it we see the essence of “the problem” of the “illegal” immigrant. It is not that they work hard, or that they are present in society for a time. The “illegal” immigrant becomes a problem when they are perceived to partake in social services and benefits, of which they are deemed unworthy. This commentary does more than explain who should not receive benefits. It also implies that benefits and services are overused by the general population. Morris simultaneously condemns poor American citizens for encouraging and participating in this “cycle of exploitation”, and clarifies that the role of the undocumented laborer is to do the work he was asked and to avoid participating in any activities where they might be seen as gaining or receiving from public services.

This perception that we as a society are paying unjustly for the trespassing of undocumented people supports Laura Pulido’s work on racial/ethnic groups. When “the dominant population sees the minority group as objectionable or a threat to the nation- despite the needs of capital- then the group in question is likely to be highly marginalized and to experience a brutal form of racialization” (Pulido 2006, 25).

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<sup>117</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives).

<sup>118</sup> *Ibid.*

In HB 87, the immigrant child is seen as taking from the school, but the adult immigrant is often seen as criminal, a physical and monetary threat to the legal population. Majority Chairman, Donna Sheldon, described what happened when ICE and the Gwinnet county sheriff's department checked the immigration status of the inmates at the jail: "At the end of the 26 days ICE had placed detainers on 914 foreign inmates in order to begin deportation proceedings. These numbers reveal that 68% of our foreign born population at the jail is here illegally. Charges included dozens of violent offences such as murder, rape, armed robbery, and child molestation. 54% of the 914 had a previous criminal history."<sup>119</sup> The list of crimes here serves to further create the image of the "illegal" immigrant as a criminal who is very likely a threat to society. It is important to note that as she continues, Sheldon asserts, incorrectly, that "No one has EVER been deported from the USA for a traffic offense or any other minor offense. The singular reason for deportation is a violation of American immigration laws."<sup>120</sup> While technically she may be right that the reason for deportation from the U.S. is immigration status, her comments directly ignore the traffic-stop status checks that have recently increased the policing and enforcement of immigration laws, leading to more deportations. In other words, by denying the misdemeanor violations that can lead to deportation, and by emphasizing dangerous violations, she furthers the image of the undocumented resident as criminal, and homogenizes all immigrants in the penal system.

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<sup>119</sup> Day 23 – Thursday, March 3, 2011 Afternoon House Session. *Lawmakers*, Georgia Public Broadcasting. 1hr 45. House Legislative Network (Georgia House of Representatives).

<sup>120</sup> *Ibid.*

## CHAPTER 6

### CONCLUSION

In this thesis I have used a qualitative analysis of popular discourse, legislative documents, hearings, and debates to identify and explore the main themes represented in Georgia's *Illegal Immigration Reform and Enforcement Act*, House Bill 87. The two main strands of my argument, that lawmakers use a complex image of their relationship with the federal government to legitimate their claims to increased state power, and that this power is further used to scapegoat the undocumented population with racialized/ethnic language, form a critical analysis of a current piece of legislation, as my contribution to geographic scholarship on state-level immigration laws. In this thesis I have documented these two strands, which I see as beginning a long line of work to further deconstruct and understand the presentation of the immigrant, the law, and the relationship of the state and federal governments.

The data I used for my analysis, in the form of formal speeches and public commentary, reflect a public presentation of this issue rather than an inside look at the exact process in which politicians craft law. I did not have access to the venues in which politicians discuss strategy or to lobbyists pushing a specific agenda. However, it is precisely the open, formalized nature of my data that I think makes them a significant object of study, because the words and concepts perpetuated within construct a public “problem”, legitimating House Bill 87 as the “solution”.

This research raises several issues that merit further consideration, that arise from considering why certain myths are routinely presented as fact in the support of HB 87. If the discourse that states are in rebellion from the federal government promotes a misleading 'myth,'

(as my research documents), then what are the implications of the state and federal government working in concert, rather than in conflict, with each other? What are the implications of acknowledging that immigrants contribute to the state and federal economy rather than cost taxpayers scarce resources?

State laws like HB 87, and the myth of immigrants as a “problem” that undergirds them, serve to oversimplify a complicated world issue and place most of the blame or agency on a population of people seeking opportunity and work. From formal speeches, as well as from public discussion, on the matter it was clear that proponents of HB 87 were ready to blame the immigrant for economic problems rather than consider the myriads of citizens benefitting from the hard work, tax payments, and social contributions of the population of undocumented immigrants in the state. In other words, this was a discussion about “them”, and not about “us”. In this discourse of scapegoating, state legislators and other proponents of HB 87 avoid discussing the perilous travels some undocumented migrants must endure to arrive at their employment in the U.S., the long hours and sometimes exploitative work, and the constant fear of deportation. The focus was (erroneously) placed on how “they” negatively affect the economy and the larger society. Ultimately, I suggest that these observations from my research provide evidence that Georgian Representatives were able to successfully hold a conversation about undocumented immigrants *without* meaningfully unpacking the more complicated realities of neo-liberalism, the competition between low-skilled workers and undocumented labor, and the complexities of the demand for labor that compels men and women to risk their lives<sup>121</sup> to come to the U.S. I suspect that this absence of an honest portrayal of undocumented immigration functions to serve the interests of powerful groups that have political and economic agendas.

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<sup>121</sup> For examples of “risking lives”, see, for example: *Dying to Live* by Joseph Nevins (2008), and these stories from South Texas: <http://www.caller.com/news/2013/feb/20/groups-urge-action-on-unidentified-dead-migrants/?partner=popular>, [http://www.krgv.com/videoplayer/?video\\_id=13092&categories=221](http://www.krgv.com/videoplayer/?video_id=13092&categories=221).

The creation of a state law aimed directly at the undocumented population serves to further frighten and marginalize an already exploited population. The same state that drew workers in to construct, grow, and cook now also actively patrols to find these same people and punish them. However, I do not suggest that the goal is actually to locate and remove all undocumented workers and their families, but instead that the increased enforcement of the law at stop signs, roadways, and workplaces aims to physically remove only some while frightening and silencing all. For residents who lack documentation, the desire to avoid detection could reduce their organization at the work place, restrict access to public services, and limit participation in the political arena. In some cases, friends or family with legal status could also feel impelled to discipline themselves to abstain from any interactions that could cause scrutiny on loved ones. One does not have to look far to find first-hand accounts of people who feel the consistent fear that with any mishap they could encounter police, be checked with DHS databases, and be sent home or to jail. It should also be noted that these “mishaps” may be as insignificant as a burnt-out tail light, an allegation of a rolled stop-sign, or even an accident which was not one’s fault. The increasingly local risk of interaction with officials authorized to detain or deport serves, overall, to imbed a sense of fear and tension within the undocumented community and spreads into communities of family members, colleagues, church groups, and friends.

My research contributes to the geographic scholarship concerning immigration and enforcement. As I have discussed, this research furthers the work of Coleman and Varsanyi by providing an analysis of one example of what they both refer to as the “devolution” of immigration law and enforcement into the state boundaries. I show how decisions made at the state and federal levels allow for a partnership between the two that force the immigrant to be in



constant question of their legality, and that the position leading to these policy decisions was uniform across the drafting Party for the bill. However, while my findings support the work of both scholars, they more closely support Coleman’s arguments. For example, despite the public claim that there is a federal “failure”, I found that there is a clear federal goal and mechanism aimed at enforcing immigration law locally, and that the states are participating in this scheme, which directly challenges Varsanyi’s claim that state laws reflect a “no-policy policy”. On the other hand, my research supports Coleman’s concept of the ‘Local’ Migration State, in which a myriad of “nonfederal proxies” enforce (or threaten to enforce) the law on the bodies of those blamed for trespassing. All throughout Georgia, despite the public claim of being anti-federal, police officers, employers, and citizens are able and encouraged to directly connect to the federal immigration scheme. While there certainly is variation in individual position and action, I agree with Coleman’s argument that the resulting scheme “obscures who is doing immigration enforcement and how”. The complex tension used in HB 87, in which lawmakers present themselves as going against federal desires, while implementing federally encouraged programs, serves to legitimate the state actors as they apply the immense power of detention and relocation over a population of people.

While my research concluded that HB 87 was a “partisan project”, in that it was drafted and passed by the Republican Party, I do not conclude that United States immigration enforcement as a whole should be understood entirely as such a project. That HB 87 was a Republican drafted and supported bill does not follow that the Democratic Party was the direct reverse of those positions. For example, some of the highest deportation numbers ever recorded happened during the Obama administration, and one can find pro-immigrant groups asking “Obama to stop deporting immigrants”. This “side” of the debate takes place concurrently with

the other claim that the federal government is not doing “enough”. Based on these observations, I suspect that were I to do a careful analysis of the Democratic opposition to HB 87 I would find an equally complex, and possibly contradictory, navigation of the relationship between state and federal, and another presentation of “the problem.” Additionally, it is possible that the anti-federal government discourse in HB 87 put forward by Georgia Republicans in 2011 is linked to antagonisms with the administration of President Obama. However, I found a similar discourse noted in 2006, when the Georgia Senate described the federal government response to immigration as “inaction, inability, and powerlessness.”<sup>122</sup> I recommend that defining exactly which actors and organizations are meant by “the federal government” would be an important step towards understanding this Republican position.

In sum, my data raise the suggestion that more analysis is needed to understand what exactly it means that this system, sometimes portrayed as a completely broken immigration enforcement mechanism, is a functioning system that serves to keep an immigrant population in the shadows. It shows the importance of understanding how these state laws come about, and to examine whose interests the laws serve and exactly how they function. While my initial research sought to document the dominant concepts of the “problem” and the “illegal”, I see several avenues for future research that could begin to ask “why” or “how” these systems function. First, it would be important to disaggregate the different voices present within the proponents for this type of legislation. This research would rely on the work of Foucault and Barkan (2013), and is a logical next step to pursuing a clearer understanding of who does, and does not, benefit from and shape specific elements of law. I suspect that the E-Verify exceptions built into HB 87 reflect important power relationships from within the political and business communities. Second, further research on the reality of the deportation process would be able to answer the question of

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<sup>122</sup> “The Illegal Immigration Crisis.” *At Issue*. Senate Research Office. 2006.

IF this law is actually resulting in increased deportations, if the state-level system reflects uneven enforcement, and compare state initiated deportations by those initiated at the border. Third, while I found a clear “racial/ethnic” coded language was used by proponents of HB 87, an in-depth analysis would be needed to further investigate the effect of this language and the meaning of what I see as a “racial project.”

In conclusion, my discussion about state power, economics, and politics should not obscure the fundamental issue at stake here. Migration is ultimately about the human condition. All human beings, regardless of their position within the created structures of our society, should be afforded equal human dignity. The physical and emotional dangers involved with undocumented entry into the U.S, and the resulting insecure position of those living in the country without paperwork, are clear violations of this dignity. The world system, of which undocumented immigration to the U.S. is only one piece, reflects relationships of power that have real impacts. It is these relationships, and the affect they have on the dignity of individuals across the globe, which my research seeks to illuminate.

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Student's Arrest Tests Immigration Policy. *New York Times*: 14. May 15, 2011.

The Roots of Extremism in Georgia. *Newsweek*, Harman Newsweek LLC. 155: 8-8. March 22, 2010.

Where Have the Workers Gone? *Maclean's*, Rogers Publishing Limited. 124. June 20, 2011.

**APPENDIX B: Complaint Form from the Immigration Enforcement Review Board**



**The Immigration Enforcement Review Board**  
270 Washington Street, SW  
Room 1-156  
Atlanta, GA 30334

Complaint Form

(Submissions must be typed or printed legibly)

Date of Complaint: \_\_\_\_\_

Name of Public Agency or Employee  
Against Whom Complaint is Made: \_\_\_\_\_

Address of Public Agency Against Whom Complaint is Made or Which Employs The Individual  
Against Whom Complaint is Made:

\_\_\_\_\_

\_\_\_\_\_

City: \_\_\_\_\_, GA

Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

Eligibility Status Provision that the public agency or employee allegedly violated (Check All That Apply):

\_\_\_\_ O.C.G.A. § 13-10-91 Requirements for government agencies concerning the federal work authorization program (E-Verify) in hiring new employees or in entering contracts for the physical performance of services

\_\_\_\_ O.C.G.A. § 36-80-23 Prohibition against local governments adopting, enacting, implementing, or enforcing an immigration sanctuary policy

\_\_\_\_ O.C.G.A. § 50-36-1 Requirements for government agencies in the administration of public benefits

Name of the City (if applicable) and County where violation allegedly occurred:

City: \_\_\_\_\_ County: \_\_\_\_\_

Date or dates that public agency or employee allegedly violated the Eligibility Status Provision(s): \_\_\_\_\_

Specific and detailed description of how the public agency or employee violated the Eligibility Status Provision(s):

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(Attach additional documentation as may be necessary)

I swear or affirm that I am a lawful resident of the State of Georgia, that I am a legally registered voter, and that the facts in this complaint are true.

Signature of Complainant: \_\_\_\_\_

Name of Complainant (printed): \_\_\_\_\_

Complainant's Address: \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

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Sworn to and subscribed before me, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Complaints must be mailed to: The Immigration Enforcement Review Board,  
270 Washington Street, SW, Room 1-156, Atlanta, GA 30334.**



**APPENDIX C: Special Joint Committee on Immigration Reform Meeting 1, 2, and 3  
Agendas**

**AGENDA**

**Special Joint Committee on Immigration Reform**

**October 28, 2010**  
10:00AM

Room 460 – State Capitol

  

**Call to Order by the Committee Chairmen:**

- Senator Jack Murphy and Representative Matt Ramsey ✓

**Introductory Remarks by the Chairmen:** ✓

- Brief explanation of the agenda for today's meeting

**Overview and Observations of Georgia Law as it Relates to Illegal Immigration:**

- Senator Chip Rogers
- Representative Tom Rice

**General Observations on immigration Reform:**

- Mr. B.J Pak, Esq.

**Local Law Enforcement's Perspective on Illegal immigration, Including a Detailed Presentation of the Section 287(g) Program:**

- Chief Deputy Sheriff Lynda Coker Lt. Col. Don Hunton of the Cobb County Sheriff's Department
- Captain Wesley Lynch of the Whitfield County Sheriff's Department.

**Public Comments (If Time Permits)**

**Committee Discussion**

**Schedule of Future Meetings and Closing Remarks by the Chairman**

  

**Meeting Adjourned**

# AGENDA

## Special Joint Committee on Immigration Reform

November 17, 2010

2:00pm

Room 450 – State Capitol

### **Call to Order and Introductory Remarks by the by the Committee Chairmen:**

- Senator Jack Murphy and Representative Matt Ramsey

### **The Department of Corrections and Illegal Immigration – An Overview of the Illegal Immigrant Prison Population as well as the Rapid REPAT Program:**

- Mr. Derrick Schofield, Assistant Commissioner
- Mr. Michael Nail, Executive Director of Pardons and Parole

### **General Observations of the Illegal Immigration Crisis:**

- Mr. Phil Kent, of *Americans for Immigration Control*

### **The Board of Regents' Application and Admissions Policy:**

- Ms. Amanda Seals, Executive Director for Government Relations
- Ms. Kimberly Ballard-Washington, Assistant Vice Chancellor for Legal Affairs
- Ms. Sarah Wenham, Director of Student Access

### **E-Verify and General Contractors**

- Mr. Mark S. Woodall, Director of Governmental Affairs, Georgia Branch, Associated General Contractors

### **Public Comments *(If Time Permits)***

### **Committee Discussion**

### **Schedule of Future Meetings and Closing Remarks by the Chairman**

### **Meeting Adjourned**

## **AGENDA**

### **Special Joint Committee on Immigration Reform**

**December 16, 2010**

1:00pm

Room 450 – State Capitol

**Call to Order and Introductory Remarks by the by the Committee Chairmen:**

- Senator Jack Murphy and Representative Matt Ramsey

**United State Representative Phil Gingrey – Congressional Efforts to Combat Illegal Immigration:**

- Via Video Conference

**ID Software Company – Presentation of its *PrintSearch Mobile* Device and how it Relates to the Illegal Immigration Problem:**

- Mr. Jim Strey, President and Mr. Patrick Lanfear, Regional Manager.
- According to the company's Website, *PrintSearch Mobile* provides in-the-field positive identification, book, release, and notice to appear documents for law enforcement agencies. For book and release offenses, *PrintSearch Mobile* saves the time it takes to bring a subject into the station or jail.

**Department of Human Services – Overview of Public Benefits denied and available to Illegal Immigrants and their Children:**

- *Mr. Bobby Cagle*, Director of Legislative and External Affairs Georgia for DHS/DFCS; and *Mr. Jonathan Duttweiler*, DFCS Medicaid Unit Chief.
- The Department will provide a presentation on how eligibility is determined for various public benefits.

**Public Comments (*If Time Permits*)**

**Committee Discussion**

**Schedule of Future Meetings and Closing Remarks by the Chairmen**

**Meeting Adjourned**

## APPENDIX D: E-mail Response from House Judiciary Committee Council

RE: Request for Information: HB 87  
Bazemore, Brandi [Brandi.Bazemore@house.ga.gov]  
Sent: Monday, September 24, 2012 1:53 PM  
To: Leanne Kathleen Purdum

**Leanne,**

**For the House Judiciary Non Civil Committee hearings, go here:**

**<http://www.house.ga.gov/Committees/en-US/CommitteeArchives146.aspx>**

We held Hearings only on February 4th, 8th, and 11th, so go to those links for the public testimony. The vote was on February 28th. Here are my Minutes:

[Members Present.](#)

**Chairman Rich Golick,  
Rep. Mark Hatfield,  
Rep. Charlice Byrd,  
Rep. Roberta Abdul-Salaam,  
Rep. Stacey Abrams,  
Rep. Alex Atwood,  
Rep. Christian Coomer,  
Rep. Bobby Franklin,  
Rep. Yasmin Neal,  
Rep. BJ Pak,  
Rep. Matt Ramsey, and  
Rep. Ed Setzler  
Ex-Officio: Majority Whip Edward Lindsey**

Rep. Ed Setzler moved do pass HB 87 LC 29 4654S which was seconded by Vice-Chairman Mark Hatfield.

Rep. Abrams made an alternate motion to table expressing concern of the impact of the bill during this economic downturn. The Chair ruled the no's controlled, and the motion failed.

Rep. Ramsey asked for an amendment on Line 380 to change the word "where" to "when." There was no objection on the amendment and it passed.

The bill passed as amended out of committee by committee substitute by a majority vote with four nays. Generally, it was a party line vote.

**For the House Floor debate, go here:**

**<http://www.gpb.org/lawmakers/2011/day-23-0>**

**For the Senate Floor debate, go here:**  
<http://www.gpb.org/lawmakers/2011/day-38>

The Senate Judiciary Committee does not record its meetings. However, Laurie Sparks might be able to help you with minutes from the meeting. Her number is 404-656-0036 or [laurie.sparks@senate.ga.gov](mailto:laurie.sparks@senate.ga.gov)

Hope this is helpful!

*Brandi D. Bazemore  
Counsel to House Judiciary Committees  
132 Georgia State Capitol  
P: 404.656.7148 F: 404.657.8277*