The Safest Place: Immigrant Sanctuary in the Homeland Security Era

by

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A dissertation submitted in partial satisfaction of the requirements for the degree of Doctor of Philosophy in Sociology in the Graduate Division of the University of California, Berkeley

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Abstract

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The dissertation investigates the reemergence of “immigrant sanctuary” in the United States between 2001 and 2008. Immigrant sanctuaries are the product of state and local law or administrative policy that restricts cooperation between police and federal immigration enforcement authorities. The idea of the immigrant sanctuary arose among churches in the 1980s and returned in the 2000s among subnational governments in response to new federal perspectives on domestic security.

Immigration scholars have explained contemporary immigrant sanctuaries and other subnational policies benefitting immigrants as “pro-immigrant” and as a function of liberal ideology. Upon conducting historical-comparative analysis, qualitative comparative analysis, and case study analysis of immigrant sanctuaries in the Homeland Security era, I find that the phenomenon grows largely from a desire among state and local jurisdictions to maintain autonomy in crime governance and, similarly, a political orientation against expansive federal government power. I argue that this sensibility is trans-partisan and should be distinguished from the politics of immigration.

I show that public support for autonomous and decentralized crime governance has historical precedent in the subnational sanctuaries of the Prohibition era of the 1920s and also that subnational sanctuaries, regardless of their underlying motivation, can be challenged and subverted by reports of sensational crimes committed by the social group the sanctuary is meant to protect. Moreover, even when a jurisdiction continues its support of sanctuary in light of such reports, moral panics by constituencies and public officials external to the jurisdiction are sufficient to erode sanctuary policy and practice.

More broadly, the dissertation presents findings and analytical frameworks that provide insight into contestation between the federal government and subnational governments regarding the quality and scope of crime governance. These insights are particularly valuable at a national moment in which federal officials claim integrated and collaborative security administration as a prerequisite for strong domestic security.
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Chapter 1

Introduction:

immigrant sanctuary and combative crime governance

Introduction

In January of 2002, the Watsonville, California, police department instituted an order stating that officers, “shall not stop, question, detain, arrest or place an ‘immigration hold’ on any person not suspected of a crime, solely on the grounds that they may be a deportable alien.” In May of the same year, the city council of Philadelphia, Pennsylvania, passed a similar provision via resolution, followed by Seattle and San Francisco in June. Over the next 15 months, state and local jurisdictions across the US enacted an additional 17 policy actions restricting police participation in immigration enforcement. Abstaining jurisdictions spanned the political spectrum, from the states of Alaska and Montana to the cities of Madison, Wisconsin, and Ann Arbor, Michigan. The cascade of immigration enforcement restrictions placed on police coincided with the start of the Homeland Security era in which the federal government sought to incorporate state and local police into a new administrative framework for immigration enforcement and domestic security in general.

The subnational (i.e., state and local) jurisdictions that resisted cooperation in immigration enforcement did so despite cultural headwinds that suggested broad public agreement regarding a new paradigm for domestic security in light of the attacks of 9/11. This resistance has been popularly referred to as the practice of “immigrant sanctuary,” and is indicated by the enactment of law or policy restricting police from collaboration with federal officials in the enforcement of federal immigration law.

Why did immigrant sanctuaries reemerge in 2001, despite strong public support for the integration of federal, state, and local security governance?¹ What sentiments and

¹ In July of 2002, just after President Bush announced his endorsement for the creation of the Department of Homeland Security, a Gallup poll indicated that 72% of Americans supported the idea of a federal
sensibilities lead a large group of state and local jurisdictions to peel away from the aggressive federal campaign to incorporate police as frontline agents in immigration enforcement? The extant literature analyzing variation in subnational immigration policy explains state and local policies benefitting immigrants as, for the most part, the product of liberal political ideology and “pro-immigrant” sensibilities. However, this literature is the product of aggregate analysis of immigration policies at the subnational level rather than discrete causal analysis of immigrant sanctuary policy. The few scholars claiming to offer causal analysis of immigrant sanctuary have not identified its peculiarity in relation to other subnational immigration policies, particularly, its relationship to the structure and history of crime governance in the US.

Using analysis of textual data from immigrant sanctuary policies, census data, and data published by the National Immigration Law Center, I argue that while immigrant sanctuary policy grows from a variety of alternative perspectives on security at the state and local level, the most prominent perspective is one that equates “combative” rather than “cooperative” crime governance with strong security. This orientation does not align with conventional liberal political ideology, nor does it bear any direct relation to concerns about immigrant welfare.

I introduce the term “combative crime governance” to describe an emerging cultural sensibility among subnational jurisdictions that challenges federal claims as to the meaning of domestic security. The term and the subnational discourse in which it is embedded reflect a normative project in legal scholarship holding that “combative federalism” – specifically, subnational government abstinence from federal regulatory initiatives – operates as a check against federal government power, whereas “cooperative federalism” or cooperative governance between subnational governments and the federal government, cedes power to the federal government, undermining the interests of subnational governments (Cover 1982; Bulman-Pozen and Gerken 2009; Young 2003). Many immigrant sanctuary jurisdictions endorsed the combative view of crime governance in the text of their sanctuary policies and, more generally, dismay at the federal government’s accumulation of power after 2001. In my analysis of immigrant sanctuary policies, I found that subnational government withdrawal from immigration enforcement was in many instances motivated by the desire to thwart federal attempts to gain influence and authority over subnational police departments, jails, and prisons. This orientation toward crime governance reflects an ideology at the core of conservative political thought.

I use a Durkheimian theory of the role cultural power in social movements (Swidler 1995) to argue first that immigrant sanctuary policies pose a challenge to the theory of security asserted by the federal government in the Homeland Security model. The Homeland Security model holds that strong domestic security requires the administrative “coupling” of federal security administration and subnational state and

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domestic security agency. Another poll conducted by the Roper Center for Public Opinion Research and published by the Washington Post immediately after the creation of the Department of Homeland Security and the midterm elections in 2002, indicates that 67% of respondents approved of President Bush’s management of “Homeland Security” (Cohen et. al 2006). Research also shows that public trust in government after 9/11 reached levels higher than at any time since the 1960s (Chanley 2002; Pew 2013). An illustration by the Pew Center for the People and the Press gives an indication of the political capital held by federal leaders in the wake of 9/11. Public trust in government reached a 35-year high in October 2001.
local police departments.\(^2\) My analysis shows that most immigrant sanctuary jurisdictions justify immigrant sanctuary policies on the opposite theory – *most hold that subnational jurisdictions establish strong security through the “de-coupling” of federal immigration agencies and subnational police.*

I reached this conclusion by using Anne Swidler’s theory of the role of culture in social movements to inform data collection and analysis. In contrast to the Weberian model of cultural power, where elite social actors disseminate finely crafted ideologies to advance a broad social or political agenda, the Durkheimian model explains cultural power as the product of codes, collective representations, and discourses. Cultural theorists argue that these modes of communication are “public symbols” that serve as essential building blocks for social movements (1995, 26). “Even without conscious efforts at publicity, one of the most important effects social movements have is publicly enacting images that confound existing cultural codings… *altering cultural coding* is one of the most powerful ways social movements actually bring about change [my emphasis] (1995, 33).”\(^3\) In the context of social movements, social meaning is challenged through new cultural codes, “cultural reworkings,” and alternative discourses (1995, 34). I identify many of the rationales embedded in immigrant sanctuary policies as codes or discourses that pose an nascent challenge to the federal government’s theory of security in the Homeland Security era.

My second argument speaks more broadly to the structure and process of crime governance in the US. I find that immigrant sanctuary can be situated among a constellation of cases of collective resistance to top-down models of crime governance, of which Homeland Security is just one. I use empirical findings from the study of

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\(^2\) In July 2002, the George W. Bush administration published the “National Strategy for Homeland Security.” The document begins with an open letter from President Bush to the nation that succinctly describes the Homeland Security strategy. The letter reads, in part:

> On October 8, I established the Office of Homeland Security within the White House and, as its first responsibility, directed it to produce the first National Strategy for Homeland Security [author’s emphasis]… *This is a national strategy, not a federal strategy. We must rally our entire society to overcome a new and very complex challenge. Homeland security is a shared responsibility. In addition to a national strategy, we need compatible, mutually supporting state, local, and private-sector strategies* [my emphasis]. Individual volunteers must channel their energy and commitment in support of the national and local strategies. My intent in publishing the *National Strategy for Homeland Security* is to help Americans achieve a shared cooperation in the area of homeland security for years to come…. We have produced a comprehensive strategy that is based on the principles of cooperation and partnership. As a result of this Strategy, firefighters will be better equipped to fight fires, police officers better armed to fight crime, businesses better able to protect their data and information systems, and scientists better able to fight Mother Nature’s deadliest diseases. We will not achieve these goals overnight… but we will achieve them (Bush 2002).

\(^3\) Swidler has distinguished the Weberian and Durkheimian models of cultural power by the quality of the person or persons exercising this power. The Weberian model frames cultural power as being exercised deliberately, and by elites in service of elite interests. Durkheimian cultural power is exercised without strategic awareness, in a decentralized manner, and by some form of collective rather than individual action (Swidler 1995). In the dissertation, I emphasize the mode of communication (open ideological confrontation vs. implicit cultural recoding) rather than the source of communication in distinguishing the Weberian and Durkheimian exercise of cultural power.
immigration sanctuary to provide frameworks for the study of group and institutional contestation in the field of crime governance.

It is not uncommon for studies in the punishment literature to situate the US as a single unit for case and comparative analysis. Prominent voices in the field rely on macro theoretical frameworks to explain the contemporary structure of American punishment in relation to macro economic structures and ideology (Wacquant 2010) and cultural predilections (Simon 2007). Meso-level projects in the same vein tend to focus on the legislative, administrative, and discursive action at the level federal government, projecting these outcomes to American society as a whole (Beckett 1999; Simon 2007). The case of immigrant sanctuary suggests the need for a revision of such broad frames and closer consideration of the relationship between the federal government and state and local crime governments regarding the function and utility of crime governance.

In the Homeland Security era, state and local jurisdictions increasingly refuse to collaborate in “security” initiatives led by the federal government. Their governments formally abstain from immigration enforcement, the War on Drugs (in the context of marijuana decriminalization) (Kreit 2002), exercise of Patriot Act powers (Young 2003), and terror-related federal detention programs (California Assembly Bill No 351, Chapter 450). The frequency of subnational government resistance to specific federal security initiatives is a promising area for future study, particularly given that over the past thirty years penal scholars (for good reason) have focused almost exclusively on the cultural and structural mechanisms underlying “the punitive turn” (Garland 2001) of the 1960s and 70s and the march to mass incarceration. Cases of subnational objection to the federal government’s theory of security in the Homeland Security era indicate a corresponding need for study of cultural and administrative challenge to top-down ideological and administrative projects in the field of crime control. Evidence of alternative conceptions of security at the level of subnational government can and should be used to revise prevailing macro theoretical frames explaining mass incarceration and the dramatic expansion of the penal and security states. Though cultural forms such as “law and order” ideology have been utilized to explain an increasing sense of insecurity within the American public, the failures of such ideological projects have rarely been given sustained attention in the fields of sociology and criminology theory. I address this omission in the study of the immigrant sanctuary case and related presentation of analytical frameworks that draw conceptual frameworks between immigrant sanctuary and analogous instances of collective resistance to state-sponsored punishment.

In Chapter 2 of the dissertation, I present findings from a historical comparative study of the subnational Prohibition sanctuaries of the 1920s and contemporary immigrant sanctuaries based on original archival research and published historical accounts of the period. I find that the characteristics of subnational sanctuary in the Homeland Security and Prohibition eras share several characteristics, but also vary considerably in terms of the cultural and legal mechanisms driving the practice. After presenting the 

combative crime governance causal theory of immigrant sanctuary in Chapter 3, I complete the empirical portion of the dissertation with a case study of immigrant sanctuary policy in San Francisco in Chapter 4. Using archival data from San Francisco city agencies and various media reports I show the process by which prominent immigrant sanctuaries come to be subverted by ideological projects external to the sanctuary jurisdiction. The case study speaks to the sustainability of immigrant
sanctuaries and, likewise, the viability of a divergent theory and practice of security at the subnational level in the Homeland Security era. I conclude in Chapter 5 with a review of the project’s findings, an explanation of its theoretical contributions, and ideas for future research on the manner in which social groups and institutions organize in opposition to specific forms of state-sponsored punishment.

The remainder of the present chapter is broken into four parts. In Part I, I explain immigrant sanctuary in the Homeland Security era through a brief historical overview. I then present the extant literature most often used to explain the proliferation immigrant sanctuary policy after 9/11 in Part II, and argue that the causal methodology in this literature is substantially flawed. In explaining the social factors driving immigrant sanctuary, extant studies have relied on quantitative analysis of subnational immigration policies in aggregate, and categorized policies as either “pro immigrant” or restrictive. This binary obscures the idiosyncrasies of the immigrant sanctuary case. In Part III, I present the project’s thesis. I argue that immigrant sanctuary in the Homeland Security era is based primarily in the belief that autonomous crime governance is the key to strong subnational security, rather than in support for immigrant inclusion or human or civil rights considerations. In Part IV, I explain the dissertation’s research design, including the data sources and methodologies underlying my analysis. I end in Part V with a roadmap for remainder of the dissertation.

I. Immigrant Sanctuary in the Homeland Security Era

The immigrant sanctuary phenomenon in the United States can be broken down into three distinct forms: the pre-9/11 sanctuaries between 1979 and 1988, the post-9-11 sanctuaries between 2001 and 2008, and the post- Secure Communities sanctuaries emerging between 2009 and 2013. The three forms are distinguished by the corresponding federal immigration enforcement policy and the quality and scope of the sanctuary protection.

Table 1.1: Temporal Typology of Immigrant Sanctuary

<table>
<thead>
<tr>
<th>Immigrant Sanctuary Movement</th>
<th>Federal Action</th>
<th>Timeline</th>
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<tbody>
<tr>
<td>Form-1 Pre-9/11 Immigrant Sanctuary (Form-1)</td>
<td>Central-American Immigrant Asylum Denials</td>
<td>1979-1988</td>
</tr>
<tr>
<td>Form-2 Post-9/11 Immigrant Sanctuary (Form-2)</td>
<td>287(g) Enforcement Partnerships/ Criminal Alien Program</td>
<td>2001-2008</td>
</tr>
<tr>
<td>Form-3 Post-Secure Communities Immigrant Sanctuary (Form-3)</td>
<td>Secure Communities Program</td>
<td>2009-present</td>
</tr>
</tbody>
</table>
Form-1 sanctuary policies arose in the late 1970s and 1980s in the midst of a Cold War proxy campaign between the United States and the Soviet Union (Ridgely 2008; Bau 1994). Citizens in Central American countries fled persecution from ruling autocrats who collaborated with the United States to stifle Soviet influence in the region. Central American immigrants requested asylum upon arrival to the US, but the Reagan administration systematically denied their requests in large part because the immigrants’ claims of human rights violations in their home countries undermined the administration’s strategic interests in Latin America (Wells 2004; Villa 2008).

In response to the Reagan administration’s support of Central American autocrats, its routine asylum denials, and the liminal political status of a growing number of Central American immigrants, churches and nonprofit organizations across the US initiated what eventually became known as the Central American Sanctuary Movement (Wells 2004). Over three hundred American churches and synagogues in the US offered a physical refuge to local immigrants, providing a layer of protection from federal immigration enforcement efforts. A number of subnational governments soon followed the example of the churches, establishing government-sponsored sanctuary protection through legislation or executive order despite federal objection. By the end of the 1980s, four states and 23 cities had enacted sanctuary policies restricting public employee participation in immigration enforcement (Kittrie 2005; Villazor 2008).

Subnational governments across the US enacted a second wave of sanctuary policies after 2001, in response to the emerging security philosophy of a newly established federal agency – the Department of Homeland Security (DHS). The organizing principle at DHS held that state and local police should serve as the first line of defense against domestic terrorism. The anti-terror partnerships between the federal government and subnational governments that stemmed from this principle were unevenly distributed across the country as the federal government prioritized partnerships with the jurisdictions understood to be most vulnerable to terrorist attack (Waxman 2012). Only a few years later, Immigration and Customs Enforcement (ICE), a DHS subsidiary established in 2003, sought to incorporate all subnational police into an overhauled immigration enforcement system. The state and local governments passing sanctuary policies between 2001 and 2008 thus responded to a series of federal initiatives much broader than those of the Reagan era. While the Reagan administration had sought to deport Central American asylum seekers, it did not rely heavily on the assistance of state and local police in pursuit of this objective. The sanctuary laws and policies of the 1980s were largely symbolic, while those of the Homeland Security era often held immediate consequences for the federal government’s domestic security agenda.

The third form of immigrant sanctuary policy is presently taking shape in relation to the Secure Communities program run by Immigration and Customs Enforcement and falls outside the scope of the dissertation. Between 2001 and 2008, the federal government lobbied for subnational government participation in immigration enforcement, but by 2009 the federal government attempted to automate participation via the Secure Communities program. Secure Communities, piloted in 14 jurisdictions by October of 2008, exploited a reflexive data sharing process that occurs between state and local police and the Federal Bureau of Investigation (FBI) (Kohli et al. 2011). For several decades, the FBI had provided a courtesy criminal record-check service for state and local police, which all departments utilize in criminal processing. The Secure
Communities program simply instituted an additional data-share mechanism in which every police request for a FBI criminal-records check triggered a simultaneous check of an ICE immigration database. If the ICE database check indicated that the detainee was an unauthorized immigrant or eligible for an immigration related sanction, ICE issued a detainer for the criminal suspect before the start of the judicial process, and thus, before a prosecutor secured a conviction and before a judge at a preliminary hearing found “probable cause” to believe that the suspect was guilty of the government’s criminal allegation (Sullivan 2009). A handful of state, county, and city governments have responded to Secure Communities by refusing to comply with the ICE detainer requests (Lyderson 2011; Preston 2011). I characterize these uniquely uncooperative jurisdictions as practicing a third form of sanctuary (Form-3).

In the dissertation I study Form-2 immigrant sanctuary policies (i.e., policies passed after the attacks of 9/11, but before the Secure Communities program) to determine the sentiments driving sanctuary policy enactment immediately after the establishment of the Homeland Security model. The sociological significance of Form-2 immigrant sanctuary lies in the ideological struggle between state and local governments and the federal government over the legitimacy of a recently augmented immigration enforcement campaign. This conflict peaked in the post-9/11 stage of immigrant sanctuary policy enactment given the federal government’s open solicitation of immigration enforcement partnerships with state and local police during the period.

Federal government actions immediately preceding the resurgence of immigrant sanctuary in 2002 provide a context in which to consider the sociological significance of the immigrant sanctuary response and, more generally, state-sponsored systems of detention and punishment. The broader context for immigrant sanctuary begins with a string of path-breaking federal legislative actions in late 2001. On September 18, 2001, President George W. Bush signed the Authorization for Use of Military Force, through which Congress authorized war with Afghanistan. The measure passed 420-1 in the House and 98-0 in the US Senate (Grimmett 2006). On October 26, 2001, less than six weeks after 9/11, President Bush signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, also known as the “USA Patriot Act” (McCarthy 2002). The Patriot Act provided the federal government new wiretapping and surveillance authority and new mechanisms for intelligence sharing; it required greater transparency in financial transactions to facilitate the tracking of terror funding and gave the Attorney General broader authority to detain and deport immigrants suspected of having terrorist connections (Grimmett 2006). The House approved the Patriot Act 357-66, the Senate, 98-1. A year later, Congress passed legislation creating the Department of Homeland Security by similarly large margins – 299-121 in the House and 90-9 in the Senate (Moynihan 2005). The Immigration and Customs Enforcement Agency, now the principal investigative arm of DHS, replaced the Immigration and Naturalization Service (INS) on March 1, 2003 (Sessions and Hayden 2005).

Overwhelming congressional support for this series of pioneering initiatives coupled with the pace at which the federal government implemented them suggested a new era of security that amounted to more than an administrative reshuffling. Homeland Security reflected a new manner of thinking in which “national security” and subnational crime governance (that of cities, counties, and states) would be intimately tied together.
(Waxman 2012; Carfano 2004; Booth 2005). The integration of federal immigration enforcement and subnational criminal justice systems after 9/11 manifested in two forms: excess-enforcement jurisdictions and partnered jurisdictions. Excess-enforcement jurisdictions exceeded the federal government’s authorized level of immigration enforcement, while partnered jurisdictions reached formal agreements with Immigration and Customs Enforcement, which established the specific parameters of immigration enforcement authority for state and local police. Some of these agreements granted police the ability to screen jail detainees for unauthorized persons. Others authorized both jail screening and enforcement fieldwork in which DHS permitted local police to act as proxy immigration officers (ICE Fact Sheet 2011).

Instead of walking in step with federal immigration enforcement, Form-2 sanctuary jurisdictions took a public stand against the integration of the federal immigration enforcement and substantial criminal justice systems. They prohibited or restricted local police from work with Immigration and Customs Enforcement and perceived the federal government’s augmented immigration enforcement campaign as undermining a variety of local interests including local community solidarity and efficacy in state and local governance.

Scholars have yet to precisely identify the primary motives for the Form-2 immigrant sanctuary movement. In May of 2003, the state of Alaska based its decision to restrict police participation in immigration enforcement on its objection to perceived federal infringement on civil liberties in general. The Alaska immigrant sanctuary provision is embedded within a broader range of restrictions preventing police from aiding federal officials in the exercise of new powers and authorities granted by the Patriot Act and other federal laws passed within the Homeland Security policy movement. The city of Richmond, California, also objected to the federal immigration enforcement campaign, but for very different reasons. Richmond’s policy cited a local shortage of agricultural labor and the dysfunction of the national immigration system as its primary rationales.

To date, there have been no systematic examinations of the subnational rebuttal to the federal government’s transformation of security governance in 2001. Why did state, county, and city governments rise up in opposition to police participation in immigration enforcement? Does the case of immigrant sanctuary indicate an insurgent initiative of minority inclusion that challenges prevailing federal narratives of immigrant threat as assumed in popular culture and much of the immigration literature, or are the cultural underpinnings of immigrant sanctuary more varied and part of a more nuanced story regarding security administration?

II. Immigrant Sanctuary as a Function of Partisan Ideology

Researchers investigating subnational immigration policy have explained policy variation largely in relation to demographic and political factors (Ramakrishnan and Wong 2007; Walker and Leitner 2011; Wong 2012), and two of the most prominent

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4 See Note 2 for the Bush administration’s articulation of the Homeland Security model.
5 The Bush administration claimed the creation of the Department of Homeland Security to be, “the most significant reorganization of the federal government in more than a half century” (Bush 2002, 11).
studies on the topic find that “political ideology” is the strongest factor driving the enactment of “pro-immigrant” policy at the subnational level (Chavez and Provine 2009; Ramakrishnan and Wong 2007). Conservative ideology is thought to be a stronger predictor of the enactment of “restrictionist” immigration policy than other factors such as the perception of racial/ethnic threat, economic threat, and criminal threat (Chavez and Provine 2009). In passing, scholars writing in this school have lumped sanctuary policy in with the larger group of “pro-immigrant” subnational policies (Ramakrishnan and Wong 2007).

In the first of the two major studies on subnational immigration policy, the authors preface their empirical analysis of county-level immigration policy with a discussion of immigrant sanctuary policies as a prime example of the “permissive” subnational policies passed at the subnational level that have yet to be studied systematically.

Police departments, many of whom have sought to refrain from playing ‘immigration cops,’ are now finding themselves pressured by democratic institutions and local activists to play a greater role in cracking down on unauthorized immigration. At the same time many large cities have considered so-called ‘sanctuary’ ordinances that explicitly declaim such forays into immigration enforcement…. While there is widespread recognition that localities are playing a more significant role in regulating the lives of low-skilled immigrant residents, there is little systematic understanding of why some localities may adopt restrictionist policies, while others may do nothing or perhaps adopt more permissive policies (Ramakrishnan and Wong 2007, 3).

Sanctuary policies served as the central focus in the authors’ description of the project’s central question:

[I]t is important to examine the proposal and passage, not only of restrictionist ordinances, but also of various ‘pro-immigrant’ ordinances at the local level, including so-called ‘sanctuary laws’ (2007, 4).

A subsequent study of patterns of immigration policymaking at the state level (with strikingly similar methodology) examined all policies passed by state legislatures in 2005 and 2006, and divided the policies into two groups – restrictionist legislation and pro-immigrant legislation. Pro-immigration legislation included enacted bills that “increase, expand, or restore services, benefits, or protections to legal or unauthorized immigrants” (Chavez and Provine 2009, 84). The authors aligned their study with others showing immigrant sanctuary policy as one of many “immigrant-inclusive” outcomes at the level of subnational governance (Wells 2004).

There are at least four analytical problems that arise in using analysis of subnational immigrant policy in aggregate to explain the reemergence of immigrant sanctuary. First, theories posed in the immigration and sociolegal literature suggest that liberal ideology is the strongest factor driving the enactment of immigrant sanctuary and all other subnational immigration policies benefitting immigrants. Partisan ideology is typically operationalized through party vote-share in a recent presidential election (Ramakrishnan and Wong 2007; Chavez and Provine 2009). The analytical strategy of explaining immigrant sanctuary in particular in terms of liberal ideology fails to adequately account for the immigrant sanctuary policies enacted in conservative or politically moderate jurisdictions. For example, Alaska, Montana, New Mexico, and
Oregon were the only four states to enact an immigrant sanctuary policy between 2001 and 2008. In the 2000 presidential election, George W. Bush won the state of Alaska by a margin of 30.9 points, Montana by 25 points, and lost New Mexico and Oregon by .1 and .5 points, respectively. In 2004, Bush won Alaska by 26.6 points, Montana by 20.5 points, New Mexico by .8 points, and lost Oregon by 4.1 points (Peters and Woolley 2011). The partisan ideology theory falters upon evidence that several conservative and moderate jurisdictions enacted policies restricting police participation in immigration enforcement.6

Subnational immigration enforcement policy should also be analyzed apart from subnational immigration policy generally, because it falls at the intersection of immigration governance and crime governance. The relationship between the federal government and subnational governments regarding crime governance has a unique history in the US, and is structured in relation to a specific legal framework. These qualities make subnational immigration enforcement policy distinctive as compared to immigration policy related to housing, employment, education, and state-issued identification. For example, Americans have historically been wary of ceding crime control authority and influence to the federal level. Prior to the 1960s, the federal government’s engagement in the field of crime governance was negligible and the idea of a federal police force or federal authority over state and local police struck the average American as a clear indication of tyrannical governance (Brickey 1994). This basic historical fact about American criminal justice alone establishes the importance of analyzing subnational immigration enforcement policy apart from other subnational immigration policies.

Second, in addition to being studied apart from subnational immigration policies in general, immigrant sanctuary should be studied in terms of local sentiment regarding the quality and focus of crime governance. Studies in the immigration literature have shown that many police departments refuse to participate in immigration enforcement because they perceive that it will hamper their ability to effectively fight crime within their jurisdiction (Lewis and Ramakrishnan 2007). This dissenting position regarding the proper scope and meaning of local security directly contradicts that Homeland Security model7 and must be accounted for in any attempt to explain the reemergence of immigrant sanctuary in 2001.

The lone national study that conducted causal analysis of variation in subnational immigration enforcement policy (rather than subnational immigration policy in general) tested whether immigration enforcement partnerships stemmed primarily from a local desire to fight crime more effectively. The study took place at the county level, and counties were recorded as having either applied to form at 287(g) partnership with ICE or not (Wong 2012). In testing a theory that subnational governments partnered with ICE as a crime control measure (a model identified as, “law and order” ideology), Wong looked for an association between crime rates and subnational government application for immigration enforcement partnering. He reasoned that if partnerships were in fact borne

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6 Data on presidential voting is available for the state and county levels, but is generally unavailable at the level of municipalities. However, it is still worth noting that four sub-state jurisdictions in Alaska, two in Montana, three in New Mexico, and four in Oregon enacted immigrant sanctuary policies between 2001 and 2008 (NILC 2009).

7 See Note 2.
of a desire to reduce crime rates, as many partnership advocates claimed, higher crime rates would be associated with a higher probability of partnership application. Wong’s analysis did not show an association, and he accordingly argued that the subnational jurisdictions forging enforcement partnerships must be motivated by factors other than crime control.

I wish to use Wong’s empirical finding in developing the dissertation’s analytical framing of the immigrant sanctuary phenomenon. Wong hypothesized that high crime rates would not be strongly associated with application for immigration enforcement partnering based on the findings of the prior study surveying California police administrators in regard to the institutional costs and benefits of referring unauthorized immigrants to ICE (Lewis and Ramakrishnan 2007). The earlier study found that police administrators were generally uninterested in working with ICE given that such collaboration eroded immigrant residents’ trust of police, weakening a department’s ability to effectively deliver police services to immigrant communities and the public in general (2007). Proceeding from these two prior studies and case studies in legal academia on the Homeland Security era, investigated the theory that the immigrant policies passed between 2001 and 2008 were the product of a subnational cultural sentiment in which autonomous crime governance was conceived as essential to strong local security. As the federal government sought to incorporate state and local jurisdictions into a new administrative framework for domestic security, preliminary evidence from the literature shows that many state and local governments refused to cooperate based on a fundamental disagreement over the meaning of and means to strong domestic security.

Police have been found to view participation in immigration enforcement as detrimental to their primary purpose – ensuring physical security and social order. Research shows that police departments are more willing than other public agencies to provide language help to local residents, and in many instances accept identification cards issued by foreign governments as valid forms of ID, often without prior approval of elected leaders (Lewis and Ramakrishnan 2007; See also Thacher 2005). However, studies exploring the phenomenon of subnational government abstinence from immigration enforcement are either based in case study methodology or tend to be limited to police reporting from one or a handful of jurisdictions. A national study of immigrant sanctuary policy would capture a broader range of subnational rationales justifying immigrant sanctuary in the Homeland Security era – those of police departments, chief executives, and state and local legislative bodies.

*Third,* the findings in the subnational immigration policy literature include crude operationalizations of the ideologies motivating policy. “Political ideology” has been identified as the strongest predictor of whether a jurisdiction will enact a “pro-immigrant” or restrictive immigration-related policy, and is operationalized as the vote split between the Democratic and Republican parties in recent presidential elections (Ramakrishnan and Wong 2007). Ideology would be more precisely assessed if determined by discursive variables rather than structural variables. Moreover, the asymmetrical operationalization of ideology is common across the literature. For instance, the influence of “law and order” ideology on subnational immigration enforcement partnering is determined by testing for an association between crime rates and subnational government application for enforcement authority (Wong 2012). As mentioned earlier, other studies frame
immigration policy outcomes as either “pro-immigrant” or restrictive, with the former type presuming an ideological motive. A research design able to account for discursive data would allow for a more nuanced assessment of the ideological factors associated with variation in immigration enforcement policy. Moreover, discursive data would allow for analysis of the relationship between ideological and structural causal explanations.

Finally, the extant literature fails to account for variation in the restriction level dictated in sanctuary policies. The restrictions subnational governments place on police across the population of sanctuary policies range from strong and comprehensive to weak and nominal. Accounting for variation in the restriction level of sanctuary policies allows for the testing of associations between the expressed policy rationale and the designated level of restriction, providing clues as to the discourses driving the more rigid sanctuary stance.

III. Immigrant Sanctuary and American Crime Governance

Immigrant sanctuary represents what might be understood as a counteractive social movement in American crime governance, namely the withdrawal of state and local police from specific federal security initiatives. Criminologists have yet to relate cases of such withdrawal in the contemporary era to the federal government’s past success of building cooperatives with subnational police, nor have they made attempts to systematically assess the causal factors underlying this growing phenomenon. The case of post-9/11 immigrant sanctuary allows for this sort of analysis.

A. Enforcement Cooperation for the War on Crime

The line of legal cases affirming state and local government freedom to abstain from the enforcement of federal regulations is referred to as “anti-commandeering jurisprudence” (Cox 1999; Althouse 2003). Legal scholars have recently debated the wisdom of the anti-commandeering principle given the demands of anti-terrorism enforcement and related security measures of the Homeland Security era. The pro-commandeering camp argues that the federal government should have the authority to direct state and local police, particularly in the event of an emergency (Althouse 2003). Opponents say the willingness of state and local governments to permit police participation in federal security initiatives is a certain test of whether the event in question is in fact an emergency (Young 2003). Despite this debate, the law of commandeering is clear—state and local governments may participate in federal enforcement initiatives, but only if they choose to do so (Printz v. United States 1997).

In Chapter 2, I show that during the social unrest of the 1960s, the federal government won broad cooperation from subnational governments in its efforts to reform state and local crime governance. This might be considered the administrative inverse of immigrant sanctuary as subnational governments consented to broad, long-term federal interventions (through conditional funding streams) into state and local criminal justice systems. The ‘60s policy initiatives have since been identified as establishing the administrative framework for the War on Crime (Feeley and Sarat 1980; Brickey 1994).
The sustained attention given the War on Crime by sociologists and theoretical criminologists has uncovered the social mechanisms driving this project at the federal level. The pervasive sense of minority threat caused by the combination of the Civil Rights Movement, the urban riots of the 1960s, and the prospect of fundamental changes to the social structure in American society inspired Republican party organizing around the political mantra of “law and order” (Beckett 1999; Western 2006; Simon 2007; Weaver 2007). Sociologists have captured this moment in terms of its underlying cultural mechanisms and its implications for the structure of American crime governance.

[T]he Republican campaign of 1964 had linked the problem of street crime to civil rights protest and the growing unease among whites about racial violence… Historically, responsibilities for crime control were divided mostly between state and local agencies. The Republicans had placed the issue of crime squarely on the national agenda (Western 2006, 59).

Other accounts are more explicit in identifying the ideological projects that facilitated the War on Crime.

[T]he introduction and construction of the crime issue in national political discourse in the 1960s was shaped by the definitional activities of southern officials… Categories such as street crime and law and order conflated conventional crime and political dissent and were used in an attempt to heighten opposition to the Civil Rights Movement” (Beckett 1999, 32).

The Republican “law and order” campaign hinged on the party’s ability to determine the social meaning attributed to African-American uprisings. Political elites crafted the campaign in the midst of an ideological battle over how to conceptualize domestic security in the face of mass African American political mobilization, urban riots, and regular reports of a dramatic rise in the rate of street crime (Garland 2001, Weaver 2007). “Law and order” ideology proved to be uniquely powerful as it managed to overcome the national cultural stigma associated with federal participation in crime governance (Simon 2007; Brickey 1994). In 1968, Congress passed the Safe Streets Act, which channeled conditional federal funding for crime governance to state and local governments. It established for the first time a comprehensive inter-government cooperative in the field of crime control (42 U.S.C. §3711; Feeley and Sarat 1980).

B. Enforcement Abstinence in the Homeland Security Era

Sociologists have drawn a distinction between top-down cultural projects crafted by elites and subsequently disseminated to society by way of ideology, and projects best captured by the “new” study of culture, where cultural contestation arises in the form of collective representations, values, and shared cultural rules (Swidler 1995). Cultural contestation driven by a collective is conceptualized as the building of cultural power through broad discourses, “cultural coding,” and public symbolism (1995, 27-28). By way of a disjointed discourse embedded in the immigrant sanctuary policies themselves, immigrant sanctuary jurisdictions present a meaningful challenge to the federal government’s theory of “order” and “security.” This challenge does more than question the federal government’s claims regarding the risk posed by immigrant presence. It challenges federal government’s claims regarding the administrative configuration best
suited for strong security, and ultimately finds independent (as opposed to interdependent) crime governance to have inherent value. I argue that this alternative theory is an attempt to recode societal understanding of “domestic security,” and that Durkheimian social movements are thought to be based in this sort of project in cultural recoding.

In my initial review of the text of immigrant sanctuary policies enacted between 2001 and 2008, I identified several discourses contesting the federal government’s characterization of order and security. Many of these discourses critiqued immigration enforcement in relation to its impact on the quality of state and local crime governance, and conveyed the concern that police participation in immigration enforcement would compromise the legitimacy and efficacy of crime governance in the jurisdiction. I refer to such justifications of immigrant sanctuary policy as based in a discourse of “combative” crime governance. The combative crime governance discourse can be found in the sanctuary policies citing the illegitimacy of the Patriot Act, the illegitimate expansion of federal government authority in the context of Homeland Security administration, the negative impact of immigration enforcement action on the quality of police work, and the civil liability subnational police departments expose themselves to by participating in immigration enforcement activities.

Combative crime governance can also be understood as a hostile collective response to the “governing through crime” strategy of domestic and national security as applied by federal security administrators (Simon 2007). The municipal police department is now the centerpiece of a variety of federal security initiatives, of which immigration enforcement is just one. To this point, scholars have characterized federal attempts to govern domestic and national security through municipal police departments as a largely unchallenged strategy in pursuit of safety and social order (Murray 2005; Harris 2006; Dubal 2012). However, the case of immigrant sanctuary displays a movement against this strategy by expanding the empirical field beyond case analysis of consensus and cooperation between penal and security administration. Though federal political elites have been successful in funneling the federal security agenda through the municipal police department under the banner of Homeland Security (or, put another way, funneling the security state agenda through the penal state), the American public has not passively accepted this administrative restructuring. My data and analysis suggest combative crime governance as a corollary to this specific form of governing through crime, and also as a “bottom-up” social movement in the field of punishment in response to a “top-down” political strategy.

Legal scholars have labeled state and local government abstinence from federal regulatory initiatives (in and outside of the field of crime governance) as instances of “combative” rather than “cooperative” federalism (Cover 1982; Bulman-Pozen and Gerken 2009). “Combative federalism” is a term used to describe a governing philosophy regarding the relationship between states and the federal government. In choosing the combative approach to federalism, states are thought to serve as “credible alternative political institutions” and “government dissenters” (Bulman-Pozen and Gerken 2009). Proponents of combative federalism believe that broad adherence to the combative

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8 Throughout the dissertation I use the term “domestic security” to refer to activities meant to combat, prevent, and respond to terrorism and other man-made threats within the United States. “National security” represents a broader agenda, encompassing both domestic and international initiatives.
principle by subnational governments places “a political check on the exercise of national power” (Cover 1983).

When arising as a subnational government discourse challenging the meaning of order, security, and effective crime governance, *combative crime governance*, as a cultural and political sentiment, holds the potential to motivate enforcement abstinence. In the immigrant sanctuary case, *combative crime governance* arose as a discourse that challenged the idea that the integration of federal security administration and subnational police departments delivered strong security and was likewise critical to social order. In arguing that the Patriot Act violated the US Constitution and undermined basic privacy interests, some sanctuary jurisdictions seemed to identify the federal government itself as a threat to the security of the citizens within their respective jurisdictions.

Within *combative crime governance* discourse, the value of withdrawal from a particular form of federal enforcement lies in the preservation of subnational government power and control over crime governance as well as limiting that of the federal government. This inclination reflects the pre-War on Crime American cultural orientation toward federal participation in crime control, as well as the governing philosophy favored in contemporary conservative politics. In Chapter 2, I show that when federal officials contemplated how to dismantle the sanctuaries from Prohibition enforcement that were erected in the 1920s, a few floated idea of a national police force. This idea was quickly dismissed by leading federal immigration enforcement officials.

A unified federal police has also been urged. From the standpoint of a highly centralized federal enforcement of Prohibition, reaching into the details of violation and seizures in every part of the land, this might be more effective. But Americans have a strong and justified traditional antipathy to over-centralization. Any considerable federal policing is wholly at variance with the general spirit of our Constitution. Indeed, the Constitution permits it at all only as an incident of certain granted powers. Moreover, the political possibilities of such a force, reaching into every community are disquieting (NCLO 1931, 64).

To what extent is *combative crime governance*, as an alternative discourse regarding security, responsible for the proliferation of immigration sanctuary policy? How important is *combative crime governance* in the immigrant sanctuary story as compared to “pro-immigrant” discourses, specifically those pertaining to equality, human rights, and diversity? The significant representation of conservative jurisdictions within the population of jurisdictions enacting sanctuary policy in the Homeland Security era makes these questions of causation all the more compelling, given that the *combative crime governance* theory of immigrant sanctuary aligns with the traditional conservative political philosophy of state sovereignty and bounded federal government power. At present, there is little if any comparative research on resistance to the federal solicitation of subnational governments to join the integrated immigration enforcement framework. The dissertation addresses this omission and in doing so explores a cultural corollary to both the Governing through Crime thesis and the Homeland Security model.

**IV. Research Design**

The dissertation offers a comprehensive sociological analysis of the proliferation of immigrant sanctuary policy between 2001 and 2008 by comparing this movement to
subnational sanctuaries of the past by explaining the administrative and cultural mechanisms underlying immigrant sanctuary policy, and, finally, by offering a hypothesis regarding the mechanisms by which the federal government coerces cooperation from well-publicized immigrant sanctuary jurisdictions. I use a variety of methods in this effort including historical comparative analysis, macrocausal analysis, and case-study analysis. I present the results of these analyses in Chapters 2-4.

In Chapter 2, I look to history to develop immigrant sanctuary as a sociological object. What is immigrant sanctuary a case of? How do immigrant sanctuaries compare to similar social forms? I use logics of analysis in historical sociology to add precision our conceptual understanding of immigrant sanctuary. I take historical data from Prohibition in the 1920s and find social forms that bear striking similarities to contemporary immigrant sanctuaries. Victoria Bonnell writes that this type of comparison provides an opportunity for generalization.

[T]he main point of comparison is between or among equivalent units. The comparison involves an identification of independent variables that serve to explain common or contrasting patterns or occurrences. The investigator juxtaposes equivalent units with each other in order to discern regularities that might provide explanatory generalizations (1980, 165).

Bonnell labels this method the “analytical use of comparison.” Upon comparing the cases of immigrant sanctuary and Prohibition sanctuary, I propose the overarching concept of “sanctuary” to illuminate a specific type of contestation in the field of crime governance. I offer a framework for the sanctuary concept at beginning of Chapter 2, followed by a comparative analysis of the two cases that inform the concept. This process of developing the sanctuary analytic is both deductive and inductive, and is designed to produce generalizations applicable to a specific class of cases. Sociologists have identified such theoretical projects as contributing to the development of “middle-range theory” (1980).

In conducting the comparative analysis, I found that while contemporary immigrant sanctuaries are triggered by legal and cultural mechanisms, the sanctuaries of the Prohibition era were the product of administrative and communal norms that ultimately thwarted the Prohibition enforcement effort. Subnational immigrant sanctuaries operate by way of legal mechanisms whose public character results in a powerful symbolism that attracts federal attention and motivates federal attempts to overturn the most highly publicized sanctuary cases. Conversely, subnational sanctuaries based exclusively on cultural norms, like those of the Prohibition era, appear to be more durable due to their amorphous quality. In the latter case, enforcement abstinence operates by way of communal or administrative norms rather than by codified rules. These norms are deeply ingrained in the local social environment and are difficult for the federal government to identify and confront directly.

These findings situate immigrant sanctuary as a social form with clear precedent in American social life and, similarly, as firmly situated in the field of crime governance given that it represents the latest battle in the historical struggle between the federal government and subnational governments regarding authority over state and local police. By placing immigrant sanctuary in historical and criminological context, I establish it as a sociological object and situate it within a rich sociological context. I ultimately use these
contextual insights as analytical leverage with which to better understanding why immigrant sanctuaries reemerged in the Homeland Security era.

Data in Chapter 2 derive primarily from archival research conducted at the National Archives in College Park, Maryland. I photographed and analyzed documents and raw data stored by federal government officials in a review of Prohibition between 1929 and 1931. I also present data showing the federal disposition toward subnational abstinence from Prohibition enforcement documented in the Wickersham Commission Report on the Enforcement of Prohibition Laws in 1931 and New York Times coverage of the publication of the Prohibition report.

I begin Chapter 3 with the question of the sociological factors that caused the proliferation of immigrant sanctuary policy after the attacks of 9/11 and the initiation of the Homeland Security era. I explain how immigrant sanctuary reemerged in a moment in which federal officials aggressively sought to integrate all levels of government security administration into a cooperative administrative framework, claiming it to be a necessity if America was to remain safe. What triggered the immigrant sanctuary policy movement in the 00’s? Are these causal factors similar to or different from those associated with what the literature refers to as “pro-immigrant” policies? Can we trace immigrant sanctuary to ideological factors derived from discursive rather than demographic data? Finally, what immigrant sanctuary policy rationales are associated with the strongest immigrant sanctuary restrictions? Which rationales are associated with nominal restrictions? Are stronger restrictions associated with “pro-immigrant” rationales or, alternatively, with the combative crime governance rationale? In answering each of these questions, I identify and compare the discourses validating sanctuary policy enactment, which are embedded in the preamble of each policy. The analysis ultimately reveals the primary ideological mechanisms driving from the enactment of immigrant sanctuary in the Homeland Security era.

I shift to an examination of the successful federal challenge to immigrant sanctuary in San Francisco in Chapter 4. What can this challenge tell us about the sustainability of immigrant sanctuary in the Homeland Security era? Data from the chapter derive from records from a number of San Francisco and federal public agencies including the San Francisco Board of Supervisors, the San Francisco Juvenile Probation Department, the San Francisco Office of the City Attorney, the San Francisco Mayor’s Office, the Office of the United States Attorney for the Northern District of California, and the Department of Homeland Security. I also obtained documents drafted by the San Francisco Chronicle Business Department and complimentary interviews with elite actors in the San Francisco non-profit and city government communities. I secured the interviews during a year of employment with a non-profit immigrant legal advocacy organization in Berkeley, California.

In conducting the case study, I found that the city of San Francisco utilized its sanctuary ordinance to boldly present itself in opposition to the federal government’s augmented immigration enforcement effort and, in a similar fashion, Mayor Gavin Newsom presented himself in contrast with an increasingly unpopular president, George W. Bush. The city’s advertisement of the ordinance and a brazen homicide alleged to have been committed by an unauthorized immigrant together brought national attention and intensive scrutiny from the Office of the United States Attorney and the Department.

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9 See Appendix A for a complete list of immigrant sanctuary policy actions between 2001 and 2008.
of Homeland Security. Federal officials challenged the ordinance by turning California state public opinion against local political elites aspiring to state and national office. In the summer of 2008, these leaders defied the city’s sanctuary ordinance and veto-proof resolutions from the Board of Supervisors, in their decision to withdraw sanctuary protection for arrested immigrant children suspected of being unauthorized. The nature of the federal challenge to San Francisco speaks to the relationship between insurgent city conceptions of security and those of external governments and populations.

IV. Dissertation Roadmap

The dissertation provides a comprehensive explanation of the reemergence of immigrant sanctuary in the Homeland Security era.

I show that post-9/11 immigrant sanctuaries have a historical analog in the Prohibition sanctuaries of the 1920s. Prohibition sanctuaries show the role of culture in erecting and maintaining subnational sanctuary absent law or policy mandating enforcement abstinence. In Chapter 3, I present a causal analysis of immigrant sanctuary. I argue that in contrast to studies explaining subnational immigration sanctuary policies benefitting immigrants as a product of liberal ideology or an inclination toward immigrant inclusion, immigrant sanctuary policies grow largely from a desire among subnational governments for autonomous crime governance, and theories of security that are antithetical to those espoused within the Homeland Security movement. I use the evidence of a common cultural discourse regarding autonomous crime governance among immigrant sanctuaries to argue that immigrant sanctuary policy enactment grows primarily from a subnational government orientation I identify as “combative” rather than cooperative. In taking a combative stance, subnational jurisdictions maneuver to govern crime independently, but also pose a Durkheimian (i.e., incoahate, discursive) cultural challenge to the carefully crafted Weberian (i.e., honed, politicized, deployed) security ideologies disseminated by DHS and strategically aligned federal agencies and actors.

I close the empirical presentation by illustrating the vulnerability of high-profile immigrant sanctuary policies in Chapter 4, through a case study based in San Francisco. In considering the dissertation’s collective findings, I conclude that combative crime governance has the potential to mushroom into reform-oriented cultural, legal, and administrative movements against federal attempts to dictate the terms of domestic security and the social meaning attributed to essentialized concepts such as crime, deviance, and social order.
Chapter 2

Securing Sanctuary:

the social mechanisms driving enforcement abstinence

Introduction

I begin the empirical portion of the dissertation by situating immigrant sanctuary within a broader conceptual framework. What is immigrant sanctuary a case of? Are immigrant sanctuaries anomalies or do they compare to other social forms of the past and present? Finally, how are sanctuaries established and how are they enforced? I use the historical case of Prohibition in the 1920s and the sanctuaries emerging in response to Prohibition to place the case of immigrant sanctuary sociologically and criminology. Using findings from the historical comparative I provide: a) a historical analog that situates immigrant sanctuary within the field of criminology and likewise within the history of crime governance in the US; b) comparative analysis of the legal and administrative structure of immigrant and Prohibition sanctuaries, as well as the mechanisms driving the immigrant and Prohibition sanctuary cases; and c) analysis of the relationship between sanctuary mechanisms and sanctuary outcomes.

Archival data in the chapter derive primarily from archival research conducted at the National Archives in College Park, Maryland. I photographed and analyzed documents and raw data archived by federal government officials in a review of Prohibition between 1929 and 1931. I also present data showing the federal disposition toward subnational enforcement abstinence through the Wickersham Commission Report on the Enforcement of Prohibition Laws and New York Times coverage of the publication of the Prohibition report. I ultimately determine that sanctuaries – immigrant, Prohibition, and otherwise – are established through four primary mechanisms: 1) statute, 2) administrative policy, 3) administrative norms, and 4) communal norms. I characterize each sanctuary form by its primary mechanism (e.g., “statutory sanctuary,” “administrative sanctuary,” and “communal sanctuary”) and present these sanctuary
forms as “ideal types” or concepts that can be used to frame and analyze empirical findings (Bonnell 1980). I find that in cases of immigrant and Prohibition sanctuary, jurisprudence regarding the relationship between the federal government and subnational governments regarding control of crime governance determined the mechanism used to establish sanctuary.

On the question of sanctuary outcomes, I find evidence that norms-based sanctuaries are more difficult to overturn than those based in law and administrative policy. While federal enforcement agents and associated government institutions find it difficult to identify and reorient norms-based sanctuary jurisdictions given the anonymous and amorphous quality of this form of state and local opposition, law and policy-based sanctuaries emerge as clear and compelling targets for enforcers. I broaden my inquiry into the question of sanctuary sustainability in Chapter 4.

I. “Sanctuary” as an Analytical Concept

My study of the response of state and local jurisdictions to Prohibition revealed that immigrant sanctuaries are not social aberrations. They are instead one of several cases of a phenomenon I refer to simply as “sanctuary.” The concept of sanctuary reorients the study of the American criminal justice system from an analysis of punishment to an analysis of resistance to punishment. For the past several decades, scholars of crime governance have focused intently on the criminalization process and the efforts of agents and agencies of the state to expand their capacity and authority in the context of this process. Little, if any, attention has been paid to the refusal of everyday citizens, state actors, and state agencies to cooperate with punitive campaigns. In presenting sanctuary as an analytical concept illuminating collective action against punitive projects in the field of crime governance, I place resistance at the center of my analytical frame.

Methodologists have encouraged the use of conceptual frames in conducting historical and cultural sociology in order to precisely classify social phenomena that have yet to receive sustained sociological attention.10 In keeping with these guidelines, I develop the concept of sanctuary around three necessary and sufficient characteristics (Gerring 2011).

1. The sanctuary is a group artifact, and holds both social and spatial dimensions. For example, sanctuary may develop within the confines of the “jurisdiction” or the “neighborhood”;
   2. the sanctuary operates by way of rules of enforcement abstinence, which are based in law or policy, or, alternatively, in group norms;
   3. the sanctuary insulates all or a subset of group members from a contested form of crime governance.

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10 “[W]hen social scientists categorize an event, they establish a primary analytic frame for its interpretation. Thus, the interpretation of historically or culturally significant events is often a struggle over the proper classification of events in broad categories – a key concern of the comparative approach” (Ragin 2010, 111).
The specific case of immigrant sanctuary arises among residents and/or public officials of the city, county, or state, giving it a social as well as a spatial dimension. The subnational governments enacting immigration sanctuary policy create a layer of insulation from the enforcement of federal immigration law by restricting police and other government officials from participation in immigration enforcement. These restrictions are established through state or municipal statute, or by administrative policy.

I will spend much of the chapter discussing the second element of sanctuary – the rule of enforcement abstinence – through a comparative of immigrant sanctuaries and Prohibition sanctuaries. My primary objective is to clarify immigrant sanctuary as a sociological object and demonstrate its relationship to other social forms in the past and present.

II. Sanctuary Mechanisms: Policy versus Culture

Both immigrant sanctuaries of the Homeland Security era and Prohibition sanctuaries were secured through rules of enforcement abstinence. In the case of immigrant sanctuary, groups established these rules in the enactment of law and administrative policy. Alternatively, the rules establishing Prohibition sanctuaries were based in administrative and communal norms, rooted in cultural practices within local administrative bodies and residential communities. I begin my comparative analysis of the mechanisms securing sanctuary in the immigration and Prohibition cases with a brief discussion of the legal structure in which immigrant and Prohibition sanctuaries operate.

A. Sanctuary and the Legal Structure of Enforcement

Prohibition sanctuaries arose in response to the 18th Amendment of the US Constitution, ratified in 1919, which barred the production and distribution of liquor. The first section of the Amendment pertained to the scope of the restriction; while the second addressed how the restriction would be enforced.

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

The validity of the Prohibition amendment and its accompanying federal statute, the National Prohibition Act, were both challenged in the Supreme Court in 1920. In a single ruling addressing seven cases labeled, the “National Prohibition Cases,” the Court specified the parameters of Prohibition enforcement (National Prohibition Cases, 253 U.S. 350 (1920)). In an opinion by Justice Van Devanter, the Court held that the 18th Amendment, given its grant of “concurrent enforcement” power to both federal and state
government, barred all state and local laws restricting or obstructing Prohibition enforcement.

The first section of the amendment – the one embodying prohibition – is operative throughout the entire territorial limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits, and of its own force invalidates every legislative act, whether by Congress, by a state legislature, or by a territorial assembly, which authorizes or sanctions what the section prohibits (253).

The Court’s ruling in the Prohibition Cases is significant to the comparative between Prohibition sanctuary and immigrant sanctuary in the Homeland Security era. The Court interpreted that Section 2 of the Prohibition Amendment, requiring that Prohibition enforcement be concurrent, precluded state and local governments from enacting laws and policies that hindered enforcement. The Court’s decision ensured that all subnational Prohibition sanctuary laws would be struck down as unconstitutional. Consequently, Prohibition enforcement could not be subverted through subnational government administrative policy or legislation.

Despite the Court’s decision, the Prohibition Amendment did not translate into a robust enforcement effort at the level of subnational government. Only a few state governments established Prohibition enforcement units and many municipal police departments completely ignored the production and sale of alcohol within their respective jurisdictions (NCLO 1931). All but two states had voted to ratify Prohibition through constitutional amendment, but many state and local governments and associated police departments simply did not accept federal claims as to the dangers of liquor production and consumption and thus gave little or no assistance to federal agents of the Bureau of Prohibition Enforcement (1931). The disconnect between subnational and federal enforcement was especially apparent in American cities, where police not only refused to enforce the Prohibition law, but also frequently assisted organized crime syndicates in the black market sale of alcoholic beverages (Levine and Reinarman 1991).

In the case of immigration enforcement, the federal government pursued a strategy of integrated rather than concurrent enforcement, based on federal solicitation rather than constitutional mandate. In 1996, Congress had enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which gave the United States Attorney General the power to grant qualifying state and local police the authority to investigate, apprehend, and detain unauthorized immigrants. The provision required that these functions be funded locally, yet “be subject to the direction and supervision of the Attorney General” (1996, s.287(g)(3)). Despite enactment in 1996, provision 287(g) of the IIRIRA lay dormant until the creation of the Department of Homeland Security in 2002, at which point the agency secured formal partnerships with state and local police agencies (Cohen et. al 2006; ICE Fact Sheet 2011).
Table 2.1 Enforcement and Sanctuary Mechanisms*

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*The mechanism configurations are based on my review of the literature and the data presented in this chapter. Future research may show that the configurations are not exhaustive.

Collaborative immigration enforcement, though based in federal statutory authority, was also structured by prior Supreme Court decisions regarding the enforcement obligations of subnational governments. In *Printz v. United States*, 521 U.S. 898 (1997) – a case decided several years before the Homeland Security movement – the Supreme Court invalidated a provision in the Brady Handgun Violence Prevention Act that required Chief Law Enforcement Officers (CLEOS) at the state and local levels to provide temporary assistance to federal officials in the regulation of such initiatives. Citing the dual sovereignty principle of federalist governance and its holding in *New York v. United States*, 488 U.S. 1041 (1992), the majority in *Printz* held that the Tenth Amendment of the Constitution barred the federal government from mandating that state governments assist in the regulation of such acts (925). Justice Scalia, quoting *New York v. United States*, clarified the enforcement obligation of subnational governments. “[T]he Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day” (933).

The ability of subnational governments to formally withdraw from an overarching federal enforcement initiative is the key difference between the legal structure of Prohibition enforcement and that of immigration enforcement after 2001. In the latter case, in the absence of a constitutional mandate of “concurrent enforcement,” state and local governments were legally permitted to enact sanctuary law and policy that barred local officials from cooperation in immigration enforcement. In Prohibition, the unconstitutionality of such laws and policies relegated organized efforts to obstruct enforcement to the realm of culture.

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11 18th Amendment, US Constitution.
12 National Prohibition Act (1919).
14 (Lewis and Ramakrishnan 2007).
B. Enforcement Abstinence

“Intelligence cooperation, and not further concentration of power in a Federal Police force, is the pathway that will lead us to a more satisfactory enforcement of the Eighteenth Amendment” (Survey of the Tenth Prohibition District 1930).

- Federal Auditor, Tenth Prohibition District, 1930

Prohibition sanctuaries arose in the communal or administrative forms, which were driven by communal norms and administrative norms, respectively. I demonstrate these forms using reports, memos, case studies, and raw data produced and collected by the National Commission for Law Enforcement and Observance for the Report on Prohibition Enforcement. The federal government published the Prohibition report in 1931. Archived materials drafted and collected in support of the report show Prohibition enforcement dysfunction at the municipal level in extensive detail. The materials include a synopsis of liquor trafficking enforcement efforts in the Tenth Prohibition District, case studies of each county in the Tenth District, a coded map of the Tenth District, and enforcement grades for county-level law enforcement officials (i.e., police, prosecutors, and judges). Collectively, these data show the initiation and proliferation of norms-based (i.e., communal and informal-administrative) sanctuaries in the Prohibition era. Alternatively, immigrant sanctuaries of the Homeland Security era were established by one of two formal processes: administrative policy or legislative action. I briefly account for the two forms of immigrant sanctuary using analysis from the sanctuary dataset.

i. Community Sanctuary in the Prohibition Era

“[T]he ultimate success of Prohibition policy must, in the last analysis, be based on a spirit throughout the country that makes for the observance of the law, and which creates a wholesome respect, regard, and friendliness for the law” (Survey of the Tenth Prohibition District 1930).

Federal Auditor, Tenth Prohibition District, 1930

Prohibition laws failed to gain the compliance of the citizens and public officials in many state and local jurisdictions, leading to the repeal of the 18th Amendment in 1933. Only thirteen years after incorporation into the US Constitution, the American public swept Prohibition off of the national political agenda following the repeal of the 18th Amendment in 1933. The story of Prohibition’s collapse begins with a clash between the constitutional mandate of concurrent enforcement in the Prohibition amendment and local value systems and associated communal practices pertaining to the production, distribution, and consumption of alcoholic beverages.

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15 The federal Prohibition Bureau split Prohibition enforcement into discrete districts, each of which spanned multiple states. The Tenth Prohibition District included Alabama, Louisiana, Mississippi, and the Northern District of Florida. The Tenth District was the only district for which the raw materials used in the federal audit were archived (Appendix C).
Federal officials auditing the Prohibition enforcement effort assessed public opinion in a jurisdiction as “excellent,” “good,” “fair,” “poor,” and “bad.” Auditors graded a jurisdiction as “excellent” if 75% of the population favored enforcement; “good” if 60% favored enforcement; “poor” if less than a majority favored enforcement; and “bad” if support was “considerably less than a majority” (Survey of the Tenth Prohibition District 1930, 1). Public sentiment toward Prohibition in a given county suggested both the likelihood of liquor production and trafficking, and the local population’s willingness to provide tangible support to federal agents and state and local police. The author of the Executive Summary of the Tenth District audit wrote the following regarding the prospects of community-police collaboration:

If public opinion is good, private citizens will aid officers by informing them of the location of stills and juries will be satisfactory; if public opinion is unfavorable the inhabitants will not only refuse to give the authorities any information but they will even warn the violators when raids are about to be made. Should they be so fortunate as to apprehend the offender the jury will more than likely turn him loose and beyond the destruction of a still, which generally is of little value, the officers’ efforts will go for naught (Survey of the Tenth Prohibition District 1930, 2).

The author references three communal practices that hindered enforcement in the Tenth District: refusal to cooperate with enforcement, alerting traffickers of enforcement, and jury nullification. In many of the jurisdictions in which enforcement failed, residents were unwilling to report Prohibition violations to city, state, and federal authorities, taking away a critical surveillance tool for police. In some instances, residents would tip traffickers to impending police raids, in effect acting as a surveillance tool for traffickers. And if authorities managed to find perpetrators and obtained sufficient evidence to try them in court, residents serving on juries might engage in jury nullification, ignoring the law in order to liberate violators regardless of the strength of the evidence presented. These various methods of passive obstruction carved out production enclaves in which community members shielded violators from police.

In the audit of Greene County, Alabama, investigators describe a system in which county residents routinely alerted liquor producers and traffickers to impending raids.

There a good many small stills among the negroes, Greene [County] being in the Black Belt. The Sheriff states that he is tearing these stills up all the time, but cannot get them all. He is seldom believed to capture the operators who are principally negroes for the reason that the negroes will notify each other whenever the Sheriff or his men are seen in the neighborhood and thus warn the violator. The Circuit Judge and Circuit Solicitor are very good and the Judge of the peace is all right. Juries are good but public sentiment is hard to determine – so many different elements entering into it that is hard to decide. There is not so much bootlegging and the Marshal of Eutaw County, E.S. Jenkins, is very good and keeps [illegible] in very good shape. There are not so many convictions for distilling because it is hard to catch the violators for the reasons given above (Survey of the Tenth Prohibition District, 1930, Greene County).

In Greene County, prosecutors had the benefit of cooperative juries and an engaged judge, yet failed to secure convictions. Liquor distillers evaded detection with the help of the local community. Instead of providing helpful tips to police regarding liquor trafficking, residents aware of trafficking would tip the traffickers to help them avoid detection. The county case study indicates collective practices of enforcement
abstinence among residents, with such cooperative behavior having the effect of insulating residents who systematically violated the Prohibition law. The auditor notes that the communal sanctuary in Greene-County was race-specific—it was bounded within the county, but also within a subset of county residents. The county population, on average, favored Prohibition. On the Greene County report card, federal auditors rated grand juries, and petty juries as “good” and public sentiment “fair” (1929). Nonetheless, police could not effectively combat county liquor production given the system of intelligence-sharing established within the Greene County Negro community.16

Jury nullification may have been the most direct method of communal sanctuary. I classify jury nullification as a “communal” mechanism because, though jurors nullify in an administrative setting, they serve as members of the community rather than as administrative officials, and their service is considered a community action rather than an administrative one. Given the option of nullification, jurors, different from police and various administrators in criminal justice, are not bound by the law. They retain an ability to vote their conscience and to use their role as jurors to thwart the enforcement of laws perceived as unjust or oppressive (Butler 1995; See also Leipold 1996).

The unruly jury proved to be a key problem in Tenth Prohibition District. In Marion County, Alabama, a federal auditor estimated that 75% of the public was against enforcement, which resulted in “trouble” with juries. He noted that the local prosecutor had not secured a conviction in “two terms” and also that the “Sheriff does not get very much assistance from the public.” Other county audits described juries as “not willing to convict without strong evidence,” “uncertain,” and “poor.” In Tuscaloosa County, Alabama, both the public and local police administrators had mobilized against enforcement. Auditors assessing Tuscaloosa related local public sentiment to jury dysfunction: “Public sentiment is poor and Juries more or less in their actions reflect public sentiment” (Survey of the Tenth Prohibition District 1930).

The practice of jury nullification in Prohibition cases came to impact judicial punishment of Prohibition violators at sentencing. A number of judges readily admitted to federal auditors their inclination to issue light sentences following Prohibition convictions because, in their view, harsh sentences made jury nullification more likely.

The Probate Judge believes in enforcement but if he imposes sentences that are too heavy appeals are taken and Juries are very uncertain—[hence], Probate judge for that reason is lighter than he would otherwise be (Survey of the Tenth Prohibition District 1930, Blount County).

Here, and in similar cases, the county judge attempted to maintain the integrity of the local system of crime governance by handing down sentences unlikely to inspire nullification in future Prohibition trials. While unable to block police detection and apprehension of liquor traffickers, community members may have effectively neutralized or tempered enforcement through the mere threat of nullification. One can imagine a scenario in which Prohibition enforcement was not viable without convictions, but prosecutors and police could not secure convictions at trial unless jurors felt confident

16 The federal auditor also took note of threats of violence issued by liquor producers to local police. In one case residents in Cleburne County, identified by a newspaper as “moonshiners,” notified police that future raids would be met with machine gun fire (Appendix D). Protective spaces secured through threat do not qualify under the proposed analytic of sanctuary given that they are the product of violent confrontation with law enforcement rather than enforcement abstinence.
that judges would issue only nominal punishments to convicted defendants. At which point, Prohibition enforcement becomes a paradox. Light sentences preempt jury nullification, but also undermine the deterrent effect of the criminal conviction. Prohibition arrests and convictions would likely have little impact on production and trafficking without meaningful punishment at the back end of the enforcement process.

ii. Administrative Sanctuary in the Prohibition Era

“I should like to point out that the obvious path to a better condition of enforcement lies along the line of cooperation and coordination of all agencies of government… [f]ederal, state, and municipal....” (Survey of the Tenth Prohibition District, 1930).

- Federal Auditor, Tenth Prohibition District, 1930

In many subnational jurisdictions, a culture of obstruction among designated law enforcers insulated liquor producers and distributors. In some instances, state government officials refused to lead the internal enforcement campaign. More often, sanctuaries emerged because county and city police refused to arrest and prosecute Prohibition violators.

State governments undermined the Prohibition effort by severely limiting resources for enforcement. In the Tenth Prohibition District, which included Alabama, Georgia, and parts of Mississippi and Florida, each of the underlying states passed a strong Prohibition law, but federal auditors found that each had also been negligent in establishing the infrastructure needed to enforce these laws (Survey of the Tenth District 1930, 4). In these under-resourced states, the municipal police that chose to invest in enforcement suffered significant financial loss given the absence of financial support from the same state governments that had both ratified the 18th Amendment and passed state-specific Prohibition enforcement provisions via state statute. Investigators determined that these states were “politically dry” given state-specific restrictions on liquor traffic, but “wet” in terms of liquor trafficking activity and the absence of a meaningful law enforcement response (1930).

Officials in state government were sometimes transparent in their refusal to enforce. New York’s Governor, Alfred Smith, argued publicly that Prohibition was a local issue rather than a state issue, and directed local communities to enforce only if they had an independent inclination to do so. The headline for the newspaper article documenting Smith’s comments reads, “Smith Backs Voters’ Rights to Oppose the Volstead Act: Holds State Law Needless” (New York Times 1927). Governor Smith had the power to set administrative policy or propose legislation organizing Prohibition enforcement in the state of New York. But the administrative practice of abstinence from enforcement could only be achieved through policy inaction given the Supreme Court decision in the National Prohibition Cases (1920). Smith’s comments suggest the means by which public officials could foster norms of enforcement abstinence despite an inability to codify these norms by way of official procedure.

Pushing back against the sentiment in the governor’s office, Emory Buckner, US Attorney for the Southern District of New York, urged states to pass state statutes that would organize and direct internal enforcement and, most importantly, allocate the
requisite subnational “machinery” for enforcement. Buckner asked both drys and wets to support a state Prohibition law in New York for the sole reason that, in his view, crime in New York state had flourished in the absence of state and local police engagement. In 1926, Buckner was quoted extensively in an article for the *New York Times* on the federal effort in New York state that reads like an op-ed.

A host of bootleggers, large and small, bribers, gunmen, purveyors of vice and lesser crooks flourish wherever the prohibition law is openly flouted. And that condition exists flagrantly in almost every important city. The wets of New York should look frankly upon the facts and, regardless of their opinions, join in the passage of a State enforcement measure. I will not base my appeal upon the duty of supporting the [US] Constitution. That exhortation I will leave to others, however valid it may be. But the personal safety of every man and the security of property depends in large measure upon enforcement of prohibition, and prohibition in this State can [only] be partly effective without State cooperation. Both safety and property are seriously jeopardized by the growing attacks upon the institution of law, which find their mainspring in lax enforcement of prohibition and the train of evils that accompanies this condition. Organized society is sitting upon a powder keg with a lighted match (Young 1926) (Appendix E).

At the municipal level, the law enforcement community – police, prosecutors, and judges – had established broad insulated spaces for liquor production and distribution without the benefit of state or municipal law or administrative policy. In testimony before Congress, Chicago Mayor Richard J. Daley testified that an estimated 60% of his police force *participated* in the trafficking of liquor and that despite his best efforts to eradicate the city of both liquor and corruption he had concluded that he could do nothing given the disposition of the city’s officers and city residents (Clark 1976).

A series of letters from dismayed residents of the Tenth Prohibition District to state and federal law enforcement officials offer more intimate accounts of local law enforcement inaction and obstruction in the face of thinly veiled local liquor trafficking. In a letter dated March 19, 1930, a Georgia resident wrote to the “Head Official of the Revenue Department” for the state of Georgia, making an emotional plea for state officials to take over Prohibition enforcement in her county (Letter-1 1930) (Appendix F).

I am a citizen living between the Marietta Knitting Mill and the Kennesaw Marble Mill. The ladies of this community has desided [sic] to call on you for help and protection. We have reported it to the Sherif [sic] of Marietta different times, but we don’t never see [illegible] of any officer up in here. this community seems to be full of whiskey[,] the men can step out most any time. he gone just a short time[,] come in home drunk cursing and abusing their w[ife and] children….

It is reported that they keep plenty in the courthouse for them selfs [sic][,] it is reported that they keep it in the [illegible] and the barber shops right in the Marietta[,] I can’t dispute it for a man will go in there sober and come out drinking…

[H]oping that you will take the whiskey serch [sic] up at once and clean Marietta, [Georgia,] up and all its surroundings for two or three miles at least and give the poor [women] and children some protection[,] from Saturday dinner until Sunday night is the worst time they drink.

A second letter from a resident of Widner, Mississippi, to a federal Prohibition official in Atlanta requests the help of external law enforcement officials in similarly desperate terms (Letter-2 1930).
Please send a detective to investigate in regards to whiskey that is being bought sold and dranked [sic] in around Winder and one particular place, especially…. The particular place is at “The Farmer Warehouses.” There is a dozen or more drunkards hanging around there every day and part of nights. It is being sold right in the Warehouse. A good many gallons is kept on hand all the time. There is a negro man by the name of Henry Gray does the selling – But it is backed by white men…. I am particular [sic] interested about this as my husband is supposed to buy and sell cotton and [illegible] there. He keeps whiskey on him nearly all the time and continually bringing it home. His car is being used by this negro lots of nights… The reason I am writing to you in regard to this is we have no mayor, Sheriff, policeman or councilman that will push the law. When they find them drunk they will carry them home in their car and put them to bed. They will even drink with these men.

I understand the whiskey that is being caught is resold. What is caught is from some poor white man or negro. If they catch a negro or poor man drinking they will snatch them up but letting the others run free…. It’s being sold all over Winder, the filling station in front of the jail keeps it and sells it. It has even been sold in [the] court house. Election day[,] men would fall out the door drunk and no arrest made…. Please send some one down to investigate this affair. Send just as soon as possible. I would suggest some week end as most particular time…. Please do not use my name in anything. As some thing has got to be done to bring Winder to its senses.

Respectfully,
Belleville, Mississippi

P.S. If you find the dealer please do not let him pay or be paid as that’s what ruining them. See that they have to serve their sentence and make it as long as possible [author’s emphasis] (Letter-2 1930).

In a third letter from the archive, a Tenth District resident wrote to federal Prohibition officials, sharing her suspicion that local police not only refused to enforce Prohibition, but also used their access to information regarding pending state and federal investigations to aid traffickers.

About a year ago a letter was written to you asking you to see that something was done about the liquor in this community. You sent that letter or a copy to the officers Mr. Widow and Mr. Neely of Covington. They took the letter and showed it to the persons named and warned them and of course when a search was made nothing was found…

The officers down there say they look but can’t find anything but I know when a man walks out and comes back in 30 min drunk there is obliged to be some close around – I don’t think they keep it at their houses but out in the open fields and in the woods [author’s emphasis] (Letter-3 1930).

Each author alleges that municipal police facilitated liquor trafficking. The first reports unresponsive police, but also evidence of liquor storage and consumption at the local courthouse. The second directly accuses local law enforcement officials of “refusing to push the law,” drinking socially with local residents, and limiting Prohibition prosecutions to a few residents at the margins of society, namely racial minorities and the poor. The second author also claims that liquor was trafficked inside of and from the local courthouse. The third author proposes that external authorities formulate an enforcement strategy that excludes local police, alleging that local police cannot be trusted. This author refused to sign the letter, presumably out of fear of retribution.

In a letter dated August 26, 1930, from Prohibition Director A. W. Woodcock to Albert Sawyer, one of 11 commissioners on the national commission investigating the
ineffectiveness of Prohibition enforcement, Woodcock lamented the “unholy alliances” some police departments had forged with organized crime following Prohibition’s enactment. He also referenced the letters he had received from citizens around the country who expressed frustration with local police.

I have received thousands of pieces of mail from citizens in communities up to 3,000 miles away from Washington, who want some special men, absolutely unknown to any local official, to come into the county or the city and clean up two or three retail joints which are flourishing under the eyes of the local police authority. Usually the writers of these communications do not even wish their names to be known in any manner (Woodcock 1930).

Woodcock added that while the letters show a “commendable spirit” among some local residents, they also revealed them to be weak and lacking the initiative to demand that their elected representative or appointed official perform their assigned duties (1930).

In their comprehensive assessment of the faltering Prohibition campaign in the Tenth District, federal auditors scrutinized state and local law enforcement in aggregate and in terms of the effectiveness of discrete branches of the local criminal justice system. Auditors categorized counties with negligent enforcement as “poor,” and those where law enforcement engaged in willful noncompliance as “bad” (Survey of the Tenth Prohibition District 1930, 1) (Appendix G). The records assigning grades to individual branches also reference “bad sheriffs,” “bad county solicitors” (i.e., prosecutors), and “bad judges” (Appendix H) (1930). In Clay County, Alabama, for instance, a federal auditor reported that local police had made an impressive number of arrests and systematically destroyed local stills. The auditor described the Clay County prosecutor as “good,” and the Circuit Judge as a “prohibitionist,” making Clay County “about as good as any in the State” (Survey of the Tenth Prohibition District 1930, Clay County). Conversely, another auditor described Colbert County, Alabama, as one of the worst counties in the state. The county Sheriff and the Circuit Solicitor had recently been indicted for conspiracy to violate the Prohibition law (Survey of the Tenth Prohibition District 1930). The Colbert Sheriff was removed and the county prosecutor resigned. But despite dysfunctional enforcement in Colbert, the auditor found public sentiment in Colbert regarding Prohibition and the juries sitting in Prohibition cases to be favorable. The auditor noted that he was encouraged after recently having witnessed a newly appointed prosecutor secure two liquor manufacturing convictions at trial (1930, Colbert County).

The Colbert County case offers an example of an administrative sanctuary operating contrary to community sentiment. In contrast, law enforcement efforts in Bibb County, Alabama, were not “good” or “bad,” but decidedly uneven. Federal auditors found that in the three years prior to the audit, the Bibb County Sheriff had arrested 57 residents for the unlawful manufacture and possession of stills and 200 residents for bootlegging (i.e., distribution). However, the county prosecutor, whom the auditor found particularly credible, revealed that the local enforcement effort had recently stalled as a result of the Sheriff’s sudden refusal to pursue violators.

The County Solicitor was interviewed and made an unusually good impression on the Investigator. He states that the Sheriff was a good officer in regard to apprehending distillers on account of [a] reward of $50.00 which the State offers for the conviction of each distiller, but is not very strong in going after the bootleggers. Does not think he is corrupt but son is a candidate to succeed him as sheriff and the Sheriff is playing politics. Sheriff did most against bootleggers when he got half
of fines, but County Solicitor rules that Sheriff was not entitled to these fines – that only informers were entitled to them and this ruling was upheld by the Attorney General and since that ruling the Sheriff has let down considerably in his work against the bootleggers (Survey of the Tenth Prohibition District 1930, Northern District of Alabama).

In Bibb County, the Sheriff abstained from enforcement when his department no longer received a portion of the fines paid by Prohibition violators. The local sentiment toward Prohibition won out upon elimination of the financial benefit. The county’s enforcement narrative shows that a slight change in the police incentive structure could shift a county from an aggressive enforcement jurisdiction to an informal administrative sanctuary.

In the Report on Prohibition Enforcement, issued by the National Commission, US Attorney General William D. Mitchell compared this sort of refusal to enforce Prohibition to a spreading virus. “In states which decline to cooperate and in those which give but a perfunctory or lukewarm cooperation, not only does local enforcement fail, but those localities become serious points for infecting others (NCLO 1931, 59).” A map of the Tenth Prohibition gives some evidence in support of this claim. Across the states of Alabama, Louisiana, and Mississippi, sanctuary jurisdictions largely manifested in clusters (Appendix H). The color-coding on the map indicates the conditions for liquor production in each county, determined in significant part by the success of the enforcement effort by local public officials. Districts colored in white were graded “excellent,” yellow -- “good,” blue -- “fair,” red -- “poor,” and black -- “bad” (Appendix I). The map shows black and red counties clustered across the Tenth District, primarily in the northwest corner of Alabama and the southeast corner of Louisiana. The clustering of Prohibition sanctuaries suggests, unsurprisingly, that the administrative and communal norms producing sanctuary spaces were not bounded by county lines, but shared across county lines. However, the machinery of enforcement and the organized opposition to this machinery were both shaped by the contours of jurisdiction, in keeping with the spatial element of the sanctuary analytic.

To destroy the mechanisms propping up Prohibition sanctuaries, Prohibition Director Woodcock made two proposals to the President Hoover’s National Commission, both of which inform the notion of Prohibition sanctuary mechanisms as “communal” and “administrative.” Woodcock argued that rather than using federal armed forces to strengthen the enforcement effort as proposed by other federal officials, the federal government should instead expand the federal criminal code to make it a federal criminal offense not to disclose personal knowledge of a felony to federal authorities. This provision aimed directly at the citizen’s disinclination to cooperate in Prohibition enforcement, a sensibility that served as the foundation for the communal sanctuary. In regard to public administration, Woodcock proposed that the federal government make a “direct payment” to state prosecutors for every Prohibition case prosecuted (New York Times 1931). An alternative proposal to use armed forces to enforce Prohibition together with Woodcock’s proposals indicate the difficulty the federal government encountered in its attempts to secure police participation in states, counties, and cities. In municipalities with dysfunctional systems of Prohibition enforcement, the cause could be traced not only to the disillusionment of citizens, but to that of police and prosecutors as well.

I identify the sanctuaries established through norms of enforcement abstinence across public administration as *informal* administrative sanctuaries. In the case of
Prohibition, police rebuffed citizen requests for local Prohibition enforcement, collaborated with local traffickers, and were frequently prosecuted by external authorities for such collaboration. These obstinate behaviors derived from normative orientations within discrete state or municipal enforcement communities made up of the judges, prosecutors, and police operating within a given jurisdiction. However, sanctuary practice was not always about sympathy and support for liquor traffickers. Municipal officials also chose not to enforce due to lack of resources, indolence and even the desire to maintain the credibility of the local system of crime governance among a disapproving local population. Each of these motivations may serve as the basis for providing administrative sanctuary from an overarching enforcement campaign.

iii. Administrative Sanctuary in the Homeland Security Era

Immigrant sanctuaries of the Homeland Security are the result of *formal* policies within subnational government agents and institutions. Analysis of the sanctuary dataset shows a total of 75 subnational policy actions extended or affirmed sanctuary protection between 2001 and 2008, including seventeen administrative orders (23%), thirteen police orders, and four executive orders.

Police departments and public officials in the executive branch established immigrant sanctuary between 2001 and 2008 through formal institutional processes, while administrative sanctuaries of the Prohibition era were a function of informal practices among police, prosecutors, and judges. Informal administrative sanctuaries are based upon the strength of administrative norms of non-enforcement, while formal administrative sanctuaries are declarative and part of the public record. In 2007, the Albuquerque Police Department enacted a procedural order stating that officers “shall not inquire about or seek proof of a person’s immigration status… Officers are not required to notify federal immigration officials and shall not call federal immigration officials to the scene of a stop or investigation except in the case of suspected human trafficking” (Albuquerque Police Department 2007). In 2003, the mayoral administration in Philadelphia, Pennsylvania, issued an executive order to Philadelphia police officers and other regulatory officials confirming that immigrants in the city must be granted access to a broad range of city services, and that immigration status must remain confidential if somehow revealed to a city service worker (Diaz 2003).

In police and executive orders restricting police participation in immigration enforcement, a series of justifications or “policy rationales” typically precede the details of the sanctuary provision. In Trenton, New Jersey, Mayor Douglas Palmer’s executive order in 2004 explained that immigrants in Trenton “contribute to Trenton’s social liveliness, cultural richness, and economic vitality,” that Trenton respected the rights of all individuals regardless of national origin, and that Trenton law enforcement agencies rejected racial profiling. In Washington, DC, after declaring that the D.C. Metropolitan Police Department “is not in the business of inquiring about the residency status of the people we serve and is not in the business of enforcing immigration laws [author’s emphasis],” Chief of Police H. Ramsey stated that the department was responsible for providing police services to all residents of the District and that all were needed for the cooperative project of “fighting crime” (Ramsey 2003). The rationales incorporated into
administrative sanctuary policies shed light on the cultural factors driving the immigrant sanctuary movement after 2001.

iv. Statutory Sanctuary in the Homeland Security Era
Most of the immigrant sanctuary policy actions taken between 2001 and 2008 were the result of in the legislative rather than the administrative action (Table 2.2). Statutory sanctuaries also have a public character, attracting considerable public attention and debate given their incongruence with the Homeland Security model. And similar to administrative sanctuary policy, statutory sanctuary policy actions provide helpful data for discourse analysis as they reveal how elected officials in sanctuary jurisdictions responded to the idea that immigration enforcement through local systems of crime governance would deliver strong domestic security.

Table 2.2: Sanctuary Policy Actions (2001-2008)

<table>
<thead>
<tr>
<th>Policy Form</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinances</td>
<td>9</td>
<td>12.0%</td>
</tr>
<tr>
<td>Resolutions</td>
<td>49</td>
<td>65.3%</td>
</tr>
<tr>
<td>Police Orders17</td>
<td>13</td>
<td>17.3%</td>
</tr>
<tr>
<td>Executive Orders</td>
<td>4</td>
<td>5.3%</td>
</tr>
<tr>
<td><strong>Total Sanctuary Policy Actions</strong></td>
<td><strong>75</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

While statutory sanctuary laws are a function of legislative action, they also stem from advocacy from the nonprofit organizations that aggressively opposed state and local government participation in immigration enforcement. The American Civil Liberties Union (ACLU) and the National Immigration Law Center (NILC) went so far as to publicize and circulate sanctuary policy “toolkits” that matched the format of many of the policies I incorporated into my dataset. The ACLU published a model resolution on July 14, 2003, titled, “Model Resolution to Protect Civil Liberties” (ACLU 2003) (Appendix J). The model includes rationales for policy enactment including the risk police participation in immigration enforcement posed to the police department’s relationship with local minority communities and the contributions immigrants had made to the local economy and local culture. It contains language affirming the rights of immigrants and language opposing field actions in which enforcement agents scrutinize individuals based on their country of origin. The model resolution directs the associated police department to refrain from participating in the enforcement of federal immigration laws and requests written assurance from federal officials that local immigrants arrested and detained ICE will not be subject to secret or military proceedings or detained without access to counsel (2003).
The NILC toolkit provided a sanctuary policy writing instructions manual in November of 2004 titled, “Sample Language for Policies Limiting the Enforcement of Immigration Laws by Local Authorities” (National Immigration Law Center 2004). The NILC advises policymakers to begin sanctuary policies with a preamble, which served two purposes. The preamble clarified the intent of the sanctuary policy in the event that it was subject to litigation and shared the purpose of the law with the local community “to help residents feel empowered to understand and utilize the protections it provides” (NILC 2004).

In addition to instructions for the preamble, the NILC manual addressed “the body of the ordinance,” which articulated the scope and substance of the policy. Suggested provisions include:

- Equal access to general and public safety services regardless of citizenship status;
- Protection for foreign residents who show identification by their country of origin to access services;
- Limits on local enforcement of immigration laws;
- Specific protection for immigrant victims and witnesses; and
- Restrictions on cooperation with federal authorities (2004).

I found each of these provisions in my qualitative and quantitative analysis of immigrant sanctuary policies, about half of which were passed after 2004. The substance of the toolkits indicate that the nonprofit community impacted the substance of immigrant sanctuary policies passed between 2004 and 2008 by providing a template that could be readily applied by interested subnational governments.

The participation of nonprofits in the formulation of sanctuary law underscores the public character of the statutory sanctuary. After 2001, immigrant sanctuary jurisdictions, in concert with advocacy groups, staged an open clash with the federal government regarding the meaning, structure, and scope of security governance in the US.

III. Implications
Figure 2.1 shows the three sanctuary forms aligned with their constitutive mechanisms as evidenced in the immigrant sanctuary and Prohibition sanctuary cases. The mechanisms to the left of the “Administrative” label pertain to policy-based sanctuaries, while the mechanisms right of the label pertain to norms-based sanctuaries.

The mechanisms can also be distinguished by the role of government in the establishment of sanctuary. All of the mechanisms to the left of the “Communal” label are mechanisms based in subnational government institutions. Conversely, communal sanctuaries emerge from group activity apart from public institutions. Statutory and administrative sanctuaries can be understood as the result of public administrations in conflict over crime governance, while communal sanctuaries are sites for the same type of conflict, but between unaffiliated community members and municipal, state, or federal governments.

My analysis of the historical record reveals that the law determines the mechanisms by which organized resistance to enforcement takes place. The Supreme Court’s interpretation of the 18th Amendment in the National Prohibition Cases invalidated all state and local government policy restricting Prohibition enforcement at the subnational level (1920). In response to these legal parameters, resistance to Prohibition took root through the proliferation of norms of enforcement abstinence that lacked the benefit of codification in administrative policy or legislation. Several decades later, the Supreme Court decided in Printz v. United States that the Tenth Amendment precluded the federal government from compelling state and local police to enforce its regulatory agendas (1997). When the federal government pursued immigration
enforcement partnerships with police departments after 2001, the Printz decision gave subnational governments the ability to forbid their affiliated police departments from partnering (1997). In this way, Printz permitted the legal and administrative mechanisms in Figure 2.1 (i.e., those left of the “Administrative” label), while the 18th Amendment, as interpreted by the Court in the National Prohibition Cases, made the same mechanisms invalid with respect to Prohibition.

Finally, there is some evidence suggesting that norms-based sanctuaries are more likely than law-based sanctuaries to thwart an overarching enforcement campaign. Prohibition enforcement, which encountered informal, norms-based sanctuary practices by police and the public, failed in spectacular fashion as the 18th Amendment was repealed only 13 years after its ratification (Clark 1976). The federal government scrutinized subnational Prohibition sanctuaries obsessively, but could not subvert them, in part due to their amorphous quality. How does a government challenge norms of enforcement-abstinence and obstruction among a bounded population, among penal bureaucrats, or both? Federal officials found it difficult to even identify the norms-based sanctuaries of the Prohibition era, making their dismantling a difficult proposition. Conversely, as demonstrated in the San Francisco case study in Chapter 4, in the Homeland Security era the federal government has quickly identified and aggressively challenged well-publicized city and county sanctuary policies both legally and discursively.

Immigrant sanctuary and, by extension, immigration enforcement in the Homeland Security era, remain in flux. The federal government has made the immigrant sanctuary substantially more difficult to maintain after enacting the federal Secure Communities program in 2009. As discussed in Chapter 1, the ICE Secure Communities program is a federal attempt at an end-around sanctuary policy. Federal officials receive notice of detained unauthorized immigrants electronically through an automated data-sharing process. S-Comm conveys the information regarding immigration status regardless of whether the police department receiving the information is associated with a sanctuary jurisdiction. If ICE flags an immigrant detained at the subnational level, the agency can pick up the detainee with minimal assistance from local police (Sullivan 2009). This change in the process of ICE detention and deportation limits the discretionary power of subnational governments. A few of the more strident immigrant sanctuary jurisdictions like Cook County, Illinois; San Francisco County, California; and the states of New York, Massachusetts, and Connecticut have aggressively challenged the Secure Communities program (Olivo 2011; Preston 2012a). State legislatures in California and Connecticut passed legislation barring police from honoring federal ICE holds (i.e., from releasing detained unauthorized immigrants to ICE officials), with narrow exceptions. To obstruct the ICE hold, state and local police may quickly release an unauthorized immigrant arrested for a minor offense before federal agents arrive to transfer the detainee to a federal immigrant detention center (Barnes 2012).

In response to both the proliferation of immigrant sanctuary between 2001 and 2008 and the more sporadic opposition to the Secure Communities program, the federal government has incrementally narrowed the criteria for unauthorized immigrant apprehension and removal, ostensibly limiting the issuance of ICE holds to the deportation of unauthorized immigrants accused of “serious” criminal offenses (Preston 2012b). Federal compromise regarding the scope of contemporary immigration
enforcement suggests that immigrant sanctuary jurisdictions have been impactful, but have not achieved the power acquired by the dissenting subnational jurisdictions and local communities of the Prohibition era, who ultimately defeated the Prohibition experiment.

**Conclusion**

Immigrant sanctuaries of the Homeland Security era have a public character given that they are a function of formal state processes and contribute to a bi-lateral government discourse that probes the issue of whether the integration of subnational systems of crime governance with the federal immigration enforcement system is a winning formula for strong domestic security. This discourse is embedded in the text of sanctuary law and policy, and can be assessed quantitatively and subjected to causal inference. Alternatively, norms-based sanctuaries have an amorphous quality, making their proliferation less amenable to causal analysis, yet helpful in the capturing the varied quality of subnational resistance to federal enforcement campaigns. In Chapter 3, I share the findings of my causal analysis of the proliferation of subnational immigrant sanctuary policies between 2001 and 2008, focusing most intently on the subnational discourses associated with policy enactment.
Introduction

The mechanisms producing immigrant sanctuary in the Homeland Security era – administrative policy and state and local legislation – are themselves the product of latent cultural factors. In this chapter, I turn my attention to the cultural roots of 21st century immigrant sanctuary. I look specifically to discourses associated with the enactment of immigrant sanctuary policy, which I find embedded as text within each policy, and establish a bridge between policy mechanisms and cultural orientations by examining the complete set of the sanctuary policies enacted in the studied time interval. In contrast to claims in the extant literature that “partisan ideology” and “pro-immigrant” sentiment are largely responsible for immigrant sanctuary, I find that immigrant sanctuary policy stemmed from sentiments related to the quality of crime governance, specifically the inclination of many state and local jurisdictions to maintain exclusive control over subnational crime governance rather than concede control to the federal government. In this sense, sanctuary jurisdictions are not simply the product of “pro-immigrant” sentiment at the subnational level. Studies settling on the narrow explanation of immigrant sanctuary as a function of party-membership distribution (Ramakrishnan and Wong 2007; Chavez and Provine 2009) obscure more nuanced sociological explanation.

The sentiment that propelled the immigrant sanctuary movement after the creation of the Department of Homeland Security transcended partisanship as it was principally based on the idea of autonomous subnational crime-governance as an alternative model
of domestic security. This idea reflects wariness in many subnational jurisdictions over reflexive subnational police participation in federal security initiatives.

Inter-state cultural contestation in the field of American crime governance is an increasingly important sociological topic because it reveals an emerging sensibility against collaborative security governance, the lynchpin of the Homeland Security model. Swidler identifies this sort of nascent opposition as a “cultural recoding,” laying the groundwork for an alternative perspectives on social life in the face of seemingly hegemonic cultural forces (Swidler 1995). I use Swidler’s re-framing of social movements to investigate the sentiments and sensibilities underlying subnational government decisions to break away from the Homeland Security model of collaborative enforcement, despite what appeared to be overwhelming public support for the model as the path to strong domestic security.

Analysis of the second wave of immigrant sanctuary also speaks to ideas central to criminology and the sociology of punishment. Macro theoretical frames in criminology tend to situate the US as a single case, assuming collaborative crime governance across the levels of federal, state, and local government in efforts to explain mass incarceration and the remarkable growth in penal administration across the American landscape over the past half century (Beckett 1999, Garland 2001, Simon 2007). In recent years, however, scholars have revised this analytical strategy to account for the federalist structure of American governance, where state and local governments maintain considerable autonomy. In this reformulation, local cultural and structural idiosyncrasies are pertinent to an understanding of penal outcomes in any one jurisdiction (Lynch 2009, Garland 2010, Phelps 2013). Still, most of these revisions to macro criminological theory cast all jurisdictions in the US as trending punitive, albeit to varying degrees. Despite the emergence of immigrant sanctuary and marijuana decriminalization movements in the face of federal objection and historical precedents like the Prohibition sanctuaries of the 1920s, there are few if any sustained sociological treatments of Americans actively opposing instructions to extend crime governance into previously unrelated fields of American social and political life (See Simon 2007; Legomsky 2007; Chacon 2009, regarding the expansion of crime governance). This chapter not only illustrates such opposition, it also indicates a process of cultural recording on which it may be based.

In developing this chapter, I took a triangulated approach to my analysis of the data. The chapter offers an empirically rich and comprehensive answer to the question of why immigrant sanctuaries returned in the Homeland Security era and, similarly, why federal efforts to govern through crime may stall at the subnational level, fracturing rather than unifying American crime governance.

I begin in “Section I” by questioning whether immigrant sanctuary is in fact a liberal phenomenon propelled by “liberal ideology” and limited to areas of the country dominated by Democratic-party membership. I identify and analyze politically moderate and conservative sanctuary jurisdictions across the US and their underlying political philosophies. In Section II, I analyze the rationales driving immigrant sanctuary through

18 “These cultural reworkings may sometimes change people’s values or give them new role models. But more important, such cultural recodings change understandings of how behavior will be interpreted by others… The agendas of many social movements revolve around such cultural recodings” (Swidler 1995, 34).
an analysis of immigrant sanctuary policies, and arrange the rationale data into “discursive frames,” which ultimately reveal cultural orientations. I then analyze the discursive frames in relation to “restriction levels” (i.e., the degree to which police and other government officials are restricted from collaborating with immigration enforcement) and conduct an analysis of the discursive frames in relation to nation-level events. I conclude with a qualitative comparative analysis (QCA) of large cities in the US. Using the crisp set method of QCA, I determine the structural configurations that constituted the large cities that took immigrant sanctuary policy action between 2001 and 2008, and argue the necessary and sufficient structural conditions for immigrant sanctuary policy enactment.

This approach yielded three primary findings. I find first that immigrant sanctuaries arose in many politically conservative and politically moderate areas of the country between 2001 and 2008, and were motivated by sentiments associated with both liberal and conservative political ideology. A second and similar finding regarding ideology reveals that the second wave of immigrant sanctuary policy was, on the whole, primarily driven by two subnational government interests, one general, the other specific: 1) limiting federal government power in the field of security administration in a moment when many feared this power as limitless, and 2) protecting police-community alliances at the local level, which were the product of the community policing programs of the 1990s, programs now fundamental to policing in the American metropolis (Community Policing Consortium 1994; Giles 2002; Skogan 2004; Forman 2004). Many local governments restricted or banned immigration enforcement participation after anticipating that it would undermine fragile relationships between marginalized local communities and police (Thacher 2005; Harris 2006; Lewis and Ramakrishnan 2007). Finally, I find that robust crime governance, as indicated by relatively large police budgets and high police-citizen ratios, is a necessary and sufficient structural configuration for the enactment of immigrant sanctuary policy.

The findings as to structural configurations of immigrant sanctuaries together with those regarding the discourses driving immigrant sanctuary policy enactment indicate a phenomenon I label “combative crime governance.” In taking a combative stance against federal appropriation of criminal justice systems, subnational jurisdictions develop subnational security ideologies. These ideologies break from those of federal security officials and agencies, resulting in an administrative breach between subnational police and the federal agencies charged with crafting and executing the domestic and national security agendas.

I. Immigrant Sanctuary and Partisan Politics: Beyond Partisan Ideology

The literature offering causal assessment of immigrant sanctuary in the Homeland Security era stems from an aggregate analysis of state and local laws related to immigration. It lumps immigrant sanctuary laws with subnational laws related to immigrant employment, immigrant housing, and immigrant receipt of public services to offer a meta analysis of the social factors driving “pro” and “anti” immigration law at the subnational level (Ramakrishnan and Wong 2007; Chavez and Provine 2009). Researchers developing this literature have labeled immigrant sanctuary as “pro-
immigrant" along with any other subset of subnational policies thought to benefit the immigrant community, but without supporting evidence for this ideological designation. The findings from this analytical strategy show pro-immigrant subnational politics to be the product of “partisan ideology,” a term operationalized as the distribution of political party membership in a given jurisdiction. Researchers claim partisan ideology to be a more powerful explanation in meta-analysis than rival explanations such as minority threat (Jacobs and Carmichael 2002; Wells 2004; Huntington 2004) and economic insecurity (Chavez and Provine 2009; Wong 2012; See also Rumbaut and Ewing 2007).

In the following two sections, I explain why the partisan ideology thesis falls short in explaining immigrant sanctuary before proceeding to the analysis supporting the dissertation’s thesis.

A. Conservative and Moderate Sanctuary States

A granular review of immigrant sanctuary policy reveals shortcomings in the partisan ideology explanation. For instance, all of the “sanctuary states” in the dataset – Alaska, Montana, New Mexico, and Oregon – are conservative or politically moderate based on the standard measure of presidential voting. Alaska and Montana could reasonably be considered Republican strongholds, while New Mexico and Oregon would have been considered “swing states” in the 2000 and 2004 presidential elections (Table 3.1).

Table 3.1: Presidential Voting in State Sanctuaries (2001–2008)

<table>
<thead>
<tr>
<th>State</th>
<th>Margin of GOP victory, 2000</th>
<th>Margin of GOP victory, 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>30.9 points</td>
<td>26.6 points</td>
</tr>
<tr>
<td>Montana</td>
<td>25 points</td>
<td>20.5 points</td>
</tr>
<tr>
<td>New Mexico</td>
<td>.1 points</td>
<td>.8 points</td>
</tr>
<tr>
<td>Oregon</td>
<td>.5 points</td>
<td>-4.1 points</td>
</tr>
</tbody>
</table>

In constructing the sanctuary dataset, I coded the population of sanctuary policies for the rationales offered to justify the policy’s provisions. I refer to the collection of rationales offered in each policy as a “rationale cluster.” The coding scheme accounted for 10 rationales: Police Efficacy; Patriot Act Opposition; Value of Immigrant Labor/Culture; Federal Responsibility; Diversity; Equal Access to Public Services; Racial and Ethnic Profiling; Enacted Elsewhere; ICE Raids; Broken Immigration System; and City Liability.19 Perhaps unsurprisingly, my analysis of the sanctuary dataset revealed that the two distinctly conservative sanctuary states based their sanctuary policies on rationales that aligned with conservative-libertarian ideology (Table 3.2). Both addressed

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19 See Appendices A and B for additional explanation regarding the coding process.
the expansion of federal power in security administration – “Patriot Act Opposition” and “Federal Responsibility.” New Mexico’s cluster consisted of “Police Efficacy” and the “Value of Immigrant Labor/Culture,” while the Oregon statute did not provide an underlying rationale.

Table 3.2: State Sanctuaries: Rationales, Enforcement Restrictions

<table>
<thead>
<tr>
<th>State</th>
<th>Rationale Cluster</th>
<th>Restriction Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>Patriot Act; Federal Responsibility</td>
<td>1</td>
</tr>
<tr>
<td>Montana</td>
<td>Patriot Act; Federal Responsibility</td>
<td>1</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Police Efficacy; Value of Immigrant Labor/Culture</td>
<td>5</td>
</tr>
<tr>
<td>Oregon</td>
<td>N/A</td>
<td>3</td>
</tr>
</tbody>
</table>

The data also show several sanctuary cities and counties embedded in each of the four sanctuary states (Table 3.3): Alaska contains three, Montana two, Oregon four, and New Mexico, three. Nearly all of these embedded jurisdictions expressed opposition to the Patriot Act in the law or policy containing the sanctuary provision and nearly half claimed to be restricting participation in immigration enforcement based on their belief that immigration enforcement is exclusively a federal responsibility. The Alaska state measure states in part that, “certain provisions of the… Patriot Act, allow the federal government more liberally to detain and investigate citizens and engage in surveillance activities that may violate or offend the rights and liberties guaranteed by our state and federal constitutions” (State of Alaska 2003). The resolution in Helena, Montana, cited federal policies that chilled, “constitutionally protected speech through over-broad definitions of ‘domestic terrorism,’” and permitted FBI surveillance of religious services and internet chat rooms absent reasonable suspicion of criminal activity (Helena 2005).

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20 Presidential voting is readily available for states and counties, but not at the sub-county level, making it difficult to discern the political leanings of the jurisdictions internal to the sanctuary states. I do not consider the internal jurisdictions to be conservative, though I do find their location within sanctuary states to be probative of the question of sanctuary policy enactment in conservative regions of the country.
### Table 3.3: Rationale Clusters for Sanctuary Jurisdictions Embedded in Conservative/Moderate States

<table>
<thead>
<tr>
<th>Rationale Cluster</th>
<th>Anchorage (AK)</th>
<th>Sitka (AK)</th>
<th>Haines Borough (AK)</th>
<th>City of Helena (MT)</th>
<th>Butte-Silver Bow County (MT)</th>
<th>Rio Arriba (NM)</th>
<th>Albuquerque (NM)</th>
<th>Ashland (OR)</th>
<th>Gaston (OR)</th>
<th>Portland (OR)</th>
<th>Talent (OR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patriot Act</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal Responsibility</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value of Immigrant Labor/Culture</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police Efficacy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversity</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Racial and Ethnic Profiling</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

The rates at which the sanctuary jurisdictions embedded in the four sanctuary states criticize the overarching system of federal security administration are high relative to the total population of sanctuary policies. In 40% of the 75 sanctuary cases, the underlying policy cited opposition to the Patriot Act and 32% expressed that immigration enforcement was exclusively a federal responsibility. Among the sanctuary policies passed within the four sanctuary states, 90% include the Patriot Act rationale and 45% include the federal responsibility rationale. The rates indicate that rationales citing the harms caused by the expansion of federal security administration are relatively dominant among the policies passed within the four sanctuary states.
Table 3.4: Sanctuary Policies by Restriction Level (2001-2008)

<table>
<thead>
<tr>
<th>Level of Restriction</th>
<th>Number of Jurisdictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1: Barring the use of government resources for the enforcement of immigration law</td>
<td>23</td>
</tr>
<tr>
<td>Level 2: Barring the use of government resources for the enforcement of immigration law with the exception of serious crimes and emergency.</td>
<td>8</td>
</tr>
<tr>
<td>Level 3: Barring the use of government resources for the enforcement of immigration law with the exception of criminal or traffic matters.</td>
<td>23</td>
</tr>
<tr>
<td>Level 4: Barring the use of government resources for the enforcement of immigration law with the exception of instances in which a designated public official permits such use.</td>
<td>1</td>
</tr>
<tr>
<td>Level 5: Barring the use of government resources for immigration enforcement actions that target individuals solely based on immigration status</td>
<td>15</td>
</tr>
<tr>
<td>Level 6: Nominal restriction.</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>75</strong></td>
</tr>
</tbody>
</table>

*The policies are categorized according to their most restrictive provision.
I also coded all sanctuary policies for the degree to which each restricted police and other government workers from participation in immigration enforcement (Table 3.4). I found that sanctuary states set higher levels of restriction, on average, than the total population (2.89 to 2.73). Alaska and Montana set the highest level of police restriction from immigration enforcement (i.e., Level 1), Oregon set a mid-level restriction (Level 3), and New Mexico a relatively weak restriction (Level 5) (Table 3.2). The average level of restriction across all of the sanctuary policies passed within the four sanctuary states (n=11) was 2.57, and of the eleven sanctuary policies passed in those states, six set the tightest restriction (Table 3.5).

This data show that immigrant sanctuary policies are not only passed within politically conservative and moderate states, but also that the policies enacted at the state level within this context have relatively high levels of restriction from participation in immigration enforcement and are more likely to be based on objections to the expansion of federal security administration than on other rationales. These findings are significant to the strength of the partisan ideology explanation. Most damaging to the partisan thesis is the clear evidence of an ideological motivation (indicated by discursive rather than structural data) for the enactment of sanctuary policy attributable to traditional conservative rather than liberal political ideology – specifically, the preservation of state and local government power in relation to the federal government.

The partisanship explanation also seems incomplete upon closer examination of large American cities, as will be made clear later in the chapter. For instance, many large cities lead by Democratic mayors passed sanctuary provisions, but many did not. Of the 29 American cities with populations over 200,000 in the year 2000, 13 enacted sanctuary policies and 16 did not. Two large cities that did pass sanctuary measures were lead by Republican mayors, while 13 of the 16 cities that did not pass a sanctuary measure were lead by Democratic mayors. I do not mean to suggest that the distribution of partisan membership is irrelevant to the immigrant sanctuary resurgence after 2001, but to argue for a more nuanced explanation rooted in sustained examination of culture and, more narrowly, security discourse at the state and local levels.
B. The “States Rights” Sanctuary Rationale

The influence of conservative-libertarian political ideology is evident not only in sanctuary policies in conservative areas of the country, but also upon examination of the discourses expressed across the entire population of policies. In fact, rationales traditionally affiliated with conservative rather than liberal political ideology were some of the most widely referenced (Figure 3.1). Immigrant sanctuaries in the Homeland Security era appeared to be motivated, for the most part, to protest expanding federal power after 2001, and the sense that this power threatened state and local government autonomy.

Three of the eleven rationales in Figure 3.1 explicitly problematize the expansion of federal power in the field of security administration: 1) rationales regarding the impact of subnational immigration enforcement participation on police efficacy, 2) those regarding the expanded federal powers under the Patriot Act, and 3) those claiming that the reorganization of immigration enforcement under Homeland Security outsources a core federal government responsibility under the US Constitution to subnational jurisdictions. Of the 171 rationales expressed across the population of policies, 75 (44%)

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21 I recorded each rationale no more than once for a given sanctuary policy, though a single policy could have multiple rationales. A rationale could be referenced a maximum of 75 times across the 75 sanctuary policies in the sanctuary dataset. Figure 3.1 displays the rationale totals across the entire population of policies.
regarded the expansion of federal power, characterizing this expansion as illegitimate and dysfunctional.

The impact of immigration enforcement on “Police Efficacy” was cited across the population of sanctuary policies more times than any other justification. Police Efficacy rationales hold that if subnational police take a primary role in immigration enforcement, traditional forms of police work will likely suffer. This sensibility among subnational governments is also reflected in studies of the prospects for local-federal collaboration in immigration enforcement (Lewis and Ramakrishnan 2007). The city of Takoma Park, Maryland, for instance, alleged that if its police department participated in immigration enforcement it would, “discourage residents from reporting crimes and suspicious activity and cooperating with criminal investigations” (Takoma Park 2007). Offering a nearly identical justification, the city of Hamtramck, Michigan, restricted police participation in immigration enforcement, “to encourage victims of crime and witnesses of crime to cooperate with the enforcement authority without regard to immigration status…” (Hamtramck 2008). The issue of police-community solidarity figures prominently in this line of justification and straddles concern for the traditionally liberal project of community policing and support for the conservative principle of independent state and local government.

In assessing the salience of partisanship in the reemergence of immigrant sanctuary, the disposition and influence of America’s large liberal cities is undeniable: large American cities propelled the second wave of sanctuary policy. However, though many of the American cities known as flagships for the liberal political agenda did in fact pass sanctuary policy after 2001 (San Francisco, Portland, and the District of Columbia, to name a few), the entire collection of jurisdictions taking sanctuary policy action between 2001 and 2008 show a strong political inclination traditionally associated with conservative-libertarian ideology. More than an effort to protect community policing, these jurisdictions appear to have been motivated to stem the power of DHS and to protect subnational crime governance in a broad sense. (The next section provides more evidentiary support for this claim.) While the Police Efficacy rationale is somewhat ambiguous as to its alignment with conventional partisan ideologies in the US context, there is in the tabulation of sanctuary rationales the emergence of a distinct “federalist” critique (i.e., a position against the expansion of federal authority) narrowly tailored to the issue of security governance. In my estimation, this orientation is new to liberal political circles and indicative of a fresh subnational discourse regarding security.

All of this is to suggest that the application of conventional political labels to the contemporary immigrant sanctuary phenomenon distracts from evidence of an emergent trans-partisan sensibility. In the process of passing immigrant sanctuary policy, conservative, moderate, and liberal subnational jurisdictions have found leverage in their respective cultural spaces by utilizing a discourse promoting subnational government autonomy in crime and security governance.

This leverage is remarkable given the wealth of research in political criminology documenting the power of the law-and-order ideology, which has dominated American politics for the past half century, particularly at the level of federal government (Feeley and Sarat 1980; Scheingold 1998; Beckett 1999, Chambliss 2001; Simon 2007; Miller 2008). The Homeland Security model, a likely byproduct of this ideology, requires the preservation of a national solidarity around the conception of security. If local
populations come to imagine security more narrowly, based on local culture, local experiences, and the local conception of community, and look to shape local crime governance accordingly rather than reflexively deferring to the federal agenda, the Homeland Security model, like the Prohibition model before it, may falter.22

II. Data and Analysis

I completed the analysis in the chapter by constructing three original datasets. The first dataset includes coded data from the immigrant sanctuary policy actions taken between 2001 and 2008 (n=75) and from federal-subnational immigration agreements forged during the same period. The sanctuary policies are coded for the time of enactment, the level of policy restriction, the state in which the policy was enacted, the region of the country in which the policy was enacted, the type of jurisdiction enacting the policy (i.e., city, county, or state), and the rationale(s) expressed in the preamble of the policy, which served as a justification for the policy’s enactment. I personally viewed all of the policies and entered the codes during the review. I confirmed the codes through a subsequent review (Appendix B). The partnered jurisdictions are coded for the type of jurisdiction forming the partnership with the federal government, the date the Memorandum of Agreement (MOA) was signed with federal officials, and the region of the country in which the partnering jurisdiction is located.

I reviewed the full slate of immigrant sanctuary policies enacted between 2001 and 2008 in coding for policy rationales. I found 11 rationales expressed across the 75 policies and divided these rationales thematically. From the grouped rationales I constructed a typology of four oppositional discourses driving immigrant sanctuary policy. I dropped the rationale “Enacted in other Jurisdictions,” on the theory that this rationale did not clearly represent a form of discourse regarding immigration enforcement. The spectrum of rationales allowed me to test the causal theories presented in the immigration literature against the combative crime governance hypothesis.

I formed the population of sanctuary policies from an original list of policies published by the National Immigration Law Center in 2009 (NILC 2009). The list is titled, “Laws, Resolutions, and Policies Instituted Across the U.S. Limiting the Enforcement of Immigration Laws by State and Local Authorities.” In October of 2011, I spoke by phone to the attorney in charge of compiling the NILC list. The attorney gave me the process by which the list was compiled, but also warned that the term “sanctuary” was a bit of misnomer given the federal government’s ability to detain immigrants within so-called sanctuary jurisdictions. I replicated the process by which the NILC list was compiled, verified each of the policies on the list, and did not discover policies that do not appear on the list (See Appendix A).

The ICE partnership information was published by the Department of Homeland Security in 2010 in a document titled, “Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act.” As of this writing, the information is still accessible on the Department of Homeland Security website (ICE Fact Sheet 2011).

22 A compelling example of such a security “de-coupling” can be found in the contemporary medical de-criminalization movement (Sacco and Finklea 2013; Schwartz 2013).
To determine the strength of the *combative crime governance* rationale in the proliferation of immigrant sanctuary after 9/11, I performed a variety of analyses. I calculated the total number of rationales expressed across the population of policies for each rationale category. To assess the coded rationales in relation to particular theories in the immigration literature, I divided each of the ten rationales into thematic fields. In addition to offering the relative frequency of each rationale theme, I analyze the rationales themes over the studied time interval (2001-2008), demonstrating the temporal distribution of the rationale fields. I argue that this distribution shows a correspondence with nation-level events and lends further evidence in support of the *combative crime governance* thesis. I then narrow the analysis to Republican jurisdictions using presidential voting results from 2004, and show the dominant rationales in conservative jurisdictions through cross-tabulation. Finally, I analyze the rationale themes in relation to my coding of the levels of restriction mandated in the various policies. I test whether the rationales arguing *combative crime governance* as strong security and those justifying immigrant sanctuary concerns about immigrant-welfare are associated with stronger or weaker levels of restriction.

The second and third datasets are simpler constructs. To analyze the structural factors driving immigrant sanctuary policy enactment in large cities, I constructed a dataset of the 25 largest American cities and included a variety of structural variables to test the minority threat thesis, the “law and order” thesis, and other models in the literature explaining subnational immigration policy variation. The demographic data from the datasets are derived from the 2000 Census.

To test the reliability of my findings regarding the structural factors driving immigrant sanctuary in large cities, I constructed a data set of California cities with over 200,000 residents. I conducted analysis of the second and third datasets through nominal macrocausal analysis (Mahoney 1999; Mahoney 2000). Nominal comparative analysis eliminates explanatory factors by identifying the factors necessary or sufficient to an outcome (Mahoney 1999).

III. Cultural Analysis of Immigrant Sanctuary: Transcending Partisan Ideology

A. Oppositional Discourses

The oppositional discourses associated with the sanctuary policy movement take on additional significance after assigning the rationales expressed in the population of policies to “discursive frames” (Table 3.6). The discursive frames allow rationales to be aggregated into distinct categories of expression. In moving from “rationales” to “discourses,” the subnational cultural orientations toward collaborative enforcement become more apparent. I constructed four discursive frames from the ten policy rationales I identified: 1) Community Policing; 2) Immigrant Value; 3) Status Equality; and 4) Combative Federalism (Table 3.6). The “Community Policing” category consists of the rationales expressing concern about the impact of police participation in immigration enforcement on the relationship between local residents and the police. The
“Immigrant Value” discourse speaks to the benefits the immigrant population provides the local community. “Status Equality” is a second discourse regarding immigrants, but one concerned with immigrant welfare, namely equal access to public services and unjust treatment in an immigration enforcement system believed to be chronically dysfunctional. Conversely, the discourse of “Combative Federalism” does not engage the politics of immigration and instead focuses broadly on the potential for collaborative immigration enforcement to infringe upon the authority and viability of subnational governments.

Table 3.6: Immigrant Sanctuary – Discursive Frames

<table>
<thead>
<tr>
<th>Community Policing (n=59)</th>
<th>Immigrant Value (n=43)</th>
<th>Status Equality (n=22)</th>
<th>Combative Federalism (n=57)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Racial Profiling (17)</td>
<td></td>
<td></td>
<td>City Liability (3)</td>
</tr>
</tbody>
</table>

Figure 3.2: Immigrant Sanctuary – Discursive Frames
The discursive frames can be further consolidated from four categories to two to gain additional insight into whether “pro-immigrant” or “security governance” discourses propelled the reemergence of immigrant sanctuary. The “Community Policing” and “Combative Federalism” categories can be merged within a single discursive frame of “Combative Crime Governance” (Figure 3.3). Both frames espouse the importance of local government autonomy to effective crime governance and the physical security of associated members. More concretely, they hold that the further removed security administrators are from the neighborhood, city, and county communities they aim to secure, the more dysfunctional the administrative apparatus. As an ideological matter, this stance is neither conventionally liberal or conservative, but indicative of a trans-partisan critique of unbounded forms of security administration.

As proposed in Chapter 1, Combative Crime Governance indicates a subnational orientation against integrated national and sub-national security administration. Combative Crime Governance (hereinafter “CCG”) can be distinguished from the Pro-Immigrant discursive frame (hereinafter “PI”), which combines the Immigrant Value and Status Equality discourses. CCG concerns the value and welfare of associated immigrant communities – akin to interest-group advocacy –, whereas the CCG discursive field represents a more general orientation regarding the quality of security governance as determined by the relationship between subnational systems of crime governance and federal domestic and national security agencies. The consolidation displays CCG as the dominant discourse across the population of immigrant sanctuary policies (as measured by frequency of expression), more than doubling the rationales directly pertaining to immigrant value and immigrant welfare (Figure 3.3).\(^{23}\)

\(^{23}\) If the Racial Profiling rationale is characterized as an Status Equality discourse rather than the a Community Policing discourse, CCG is still expressed more often than PI across the population of policies, but the margin between the two is significantly smaller (2.1:1 versus 1.3:1). The sanctuary policy rationales
B. Discourses vis-à-vis Restriction Levels

The power of the discursive frames can also be analyzed by their associated strength of restriction (See Table 3.4). Figure 3.4 provides a breakdown of the sanctuary rationales at every restriction level. There is not an immediately discernable pattern in the relationship between the four primary discursive frames and the five levels of enforcement restriction. However, merging the four discursive frames into two – CCG and PI – reveals a clear association between the quality of oppositional discourse and the strength of the sanctuary restriction. Figure 3.5 shows the percentage of policies contributing to the CCG discourse to be positively correlated with the strength of restriction mandated in the sanctuary policy. Conversely, the percentage of policies contributing to the PI discourse is negatively correlated with the degree of enforcement restriction. Put plainly, the more restrictive the policy, the more likely it is to express the CCG sensibility and the less likely it is to directly advocate for immigrants. My findings thus demonstrate both that CCG discourses are more prevalent than PI discourses across the population of sanctuary policies passed between 2000 and 2008, and that sanctuary policies that include the CCG discourse are, on average, associated with stronger restrictions on participation in immigration enforcement.

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based on the anticipation of racial profiling in some instances pertain both to the structure of subnational crime governance and treatment of the Hispanic community as a whole. In Watsonville, California, the sanctuary resolution passed in 2007 alleged that the federal government’s deportation campaign relied on ethnic profiling. Watsonville argued that “ethnic appearance, more specifically ‘Mexican appearance’, also is not sufficient to establish suspicion to stop an individual,” and that all police stops should be based on an alternative basis of suspicion (Watsonville 2007). Watsonville’s justification could reasonably be viewed as a Status Equality discourse, although the rationale has a broader reach in that it looks to protect both resident immigrants and citizens of “Mexican appearance” from being unfairly singled out. In this latter sense, a more general concern about the impact of Watsonville police participation in immigration enforcement on crime governance, particularly the relationship between police and community seems a more reasonable framing of the text.

The town of Cicero, Illinois, viewed racial profiling as endemic to contemporary immigration enforcement and therefore a threat to local security, or “public safety.” The policy claims that the protection of an individual’s citizenship and immigration status (referred to as the provision of a “Safe Space”) would “engender trust and cooperation between law enforcement officials to aid in crime prevention and solving… and will discourage the threat of immigrant and racial profiling and harassment” (Cicero 2008). The Cicero policy discusses the dangers of racial profiling in the context of a “Community Policing” discussion. I offer these excerpts from the Watsonville and Cicero policies to show some of the evidentiary support for my decision to categorize the Racial Profiling rationale as part of a CCG rather than PI discourse. However, the rationale distribution provides significant empirical support for the Combative Crime Governance thesis irrespective of whether Racial Profiling is categorized as CCG or PI.
Table 3.7: Restriction Levels by Discursive Frames (%)

<table>
<thead>
<tr>
<th></th>
<th>Combative Federalism</th>
<th>Community Policing</th>
<th>Status Equality</th>
<th>Immigrant Value</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>33.3</td>
<td>31</td>
<td>11.9</td>
<td>23.8</td>
<td>100</td>
</tr>
<tr>
<td>Level 2</td>
<td>45.5</td>
<td>18.2</td>
<td>9.1</td>
<td>27.3</td>
<td>100</td>
</tr>
<tr>
<td>Level 3</td>
<td>26.8</td>
<td>31.7</td>
<td>24.4</td>
<td>17.1</td>
<td>100</td>
</tr>
<tr>
<td>Level 4</td>
<td>0</td>
<td>50</td>
<td>0</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>Level 5</td>
<td>25</td>
<td>15</td>
<td>25</td>
<td>35</td>
<td>100</td>
</tr>
</tbody>
</table>

*Level 1 (n=42); Level 2 (n=11); Level 3 (n=41); Level 4 (n=2); Level 5 (n=20).

Figure 3.4: Disaggregated Discursive Frames, by Restriction Level
C. Discourses Over Time

The validity of CCG discourse as a distinctive sentiment at the subnational level can also be evaluated by variation in its expression within immigrant sanctuary policy actions over time. My analysis of the distribution of rationales across the studied time interval shows dynamic interplay between major event in federal security administration and the type of CCG discourse expressed at the subnational level, rather than a random distribution of CCG-related rationales over the time interval.

Different from PI discourses, the expression of which was consistent across the time interval, the quality of the CCG discourse tracked the timeline of the Department of Homeland Security’s shift from an emphasis on collaborative counterterrorism, beginning in 2002, to an emphasis on collaborative immigration enforcement in 2006. Between 2002 and 2006, the Federal Overreach rationale was the “combative” rationale most frequently expressed. This rationale virtually disappeared in 2006, at which point, in response to Homeland Security’s shift in emphasis to collaborative immigration enforcement, the Community Policing rationales rose, peaking in 2007. The Federal Overreach and Community Policing rationales (both of the CCG discourse) thus display a resonance with the enforcement emphasis by the Department of Homeland Security not found in the PI discourse, indicating a concern about subnational government control of police departments articulated independent of rationales relating to immigrant welfare. This is a discourse at the subnational government level about the structure of crime governance – exhibited in sanctuary policies – that tracks federal structural maneuvering in domestic security administration. A brief overview of DHS enforcement activity
between 2004 and 2008 is necessary to set the federal backdrop upon which to present an analysis of the temporal distribution of CCG rationales across the population of sanctuary policies. The temporal distribution of the forms of CCG discourse tracks the variation in enforcement emphasis at DHS between 2001 and 2008.

The period between 2005 and 2006 is the critical juncture at which the Homeland Security agency shifted from a primary emphasis on terrorist threat to a primary emphasis on unauthorized immigration. On June 6, 2002, when introducing the first collaborative enforcement initiative between ICE and state and local governments, US Attorney General John Ashcroft said the following:

[The National Security Entry-Exit Registration System] will provide a vital line of defense in the war against terrorism. The Justice Department’s Office of Legal Counsel has concluded that this narrow, limited mission that we are asking state and local police to undertake voluntarily -- arresting aliens who have violated criminal provisions of [the] Immigration and Nationality Act or civil provisions that render an alien deportable, and who are listed on the NCIC —— is within the inherent authority of the states. The Department of Justice has no plans to seek additional support from state and local law enforcement in enforcing our nation’s immigration laws, beyond our narrow anti-terrorism mission” (my emphasis) (Ashcroft 2002; Sullivan 2009).

DHS has integrated the narratives of counterterrorism and immigration enforcement throughout its brief history, but the relative emphasis in terms of enforcement action in the field has always depended on the enforcement priority of the moment. In 2005, after setting the goal of passing comprehensive immigration reform in 2006, the Bush administration funneled more money to ICE and Customs and Border Protection to satisfy conservative critics who set “border security” as a precondition for reform. Federal appropriations for the US Border Patrol, ICE’s parent agency, point to 2006 as the enforcement pivot point. Border Patrol had an annual budget of $1.41 billion for fiscal year 2004, and $1.53 billion for 2005. The agency’s budget jumped 39% to $2.12 billion in 2006, reaching $3.5 billion by 2011 (Figure 3.6) – a 130% increase in six years. And though funding for ICE dipped to $3.1 billion in 2005, it rose to $3.9 billion in 2006, climbing steadily to a peak of $6 billion by 2009 (Figure 3.7; Immigration Policy Center 2013; US Border Patrol 2013). The elevated funding translated to additional manpower as the number of active ICE agents rose from around 3,000 in 2005 to 6,000 in 2009 (Immigration Policy Forum 2013).
Figure 3.6: US Border Patrol Budget, Fiscal Years 1993-2010*

[Graph showing budget data from 1993 to 2010.]

*Chart created by Immigration and Policy Center (2013).

Figure 3.7: CBP and ICE Budgets, Fiscal Year 2003-2013*

[Graph showing budget data from 2003 to 2013.]

*Chart created by Immigration and Policy Center (2013).
The immigration enforcement federal-subnational partnership timeline also shows a spike in activity in 2006. The ICE Criminal Alien Program (CAP) and thirteen other partnership programs (ICE ACCESS 2008) were built around provision 287(g) of the Illegal Immigration and Immigrant Responsibility Act of 1996 (Immigrant Responsibility Act 1996, s. 303). My analysis of the immigration enforcement partnerships dates logged in the first of my three datasets shows that the federal government established only a few partnerships between 2001 and 2005 and that immigration enforcement partnerships rose dramatically after 2006 and through 2008. ICE formed 23 enforcement partnerships in 2007 and another 29 in 2008 for a total of 52 additional partnerships over a two-year period (Figure 3.8). Prior to 2006, ICE had secured only five enforcement partnerships, beginning with a 2002 agreement with the Florida Department of Law Enforcement (ICE Fact Sheet 2011b). The nation-level event timeline thus begins with the 9/11 attacks and the enactment of the Patriot Act in 2001, followed by the creation of the Department of Homeland Security in 2002 (Sessions and Hayden 2005; Moynihan 2005), and the expansion of the immigration enforcement partnerships programs, beginning in 2005.

Figure 3.8: Immigration Enforcement Partnerships, Cumulative (2001-2009)

The pivot to immigration enforcement in 2006, demonstrated in federal appropriations to DHS and ICE, the uptick in subnational-federal immigration enforcement partnerships, and various statements from federal officials in the executive branch, is also reflected in the discourse flowing from sanctuary policy actions. My analysis shows that the discursive frames driving sanctuary policy enactment followed distinctive tracks along the 2001-2008 time interval. Pro-immigrant rationales tracked the ebb and flow of sanctuary policy enactment totals between 2001 and 2008 (Figures 3.9, 3.9.1, 3.9.2), but do not show significance correspondence with the shift in DHS enforcement emphasis in 2006. In fact, the PI discourses are stronger at the front end of the time-series – the period when DHS emphasized counterterrorism – than on the back end, when DHS emphasized large-scale immigration enforcement.
Figure 3.9: Sanctuary Policy Actions by Year

Figure 3.9.1: “Immigrant Value” Rationales (2002-2008)
The distribution of CCG rationales over the time-series tells a very different story. The rationale clusters under the CCG umbrella follow two alternative patterns. The discourse of Federal Overreach (i.e., Patriot Act Opposition and immigration enforcement as a Federal Responsibility) are concentrated at the beginning of the time series and fall steadily over the time interval (Figure 3.9.3), coinciding with the early federal emphasis on counterterrorism. (The Patriot Act rationale falls to zero in 2006.) The “Community Policing” discourse follows the opposite trajectory, peaking at the end of the time interval, correlating with the DHS pivot to immigration enforcement (Figure 3.8) and the surge in federal immigration enforcement partnerships with subnational governments (Figure 3.9.4).  

24 The Racial Profiling rationale is the lone rationale under the CCG discourse to follow the curve of the graph of total policies enacted in Figure 3.7.
The temporal distribution of the rationales forming the CCG discourse in relation to the shift in the DHS enforcement focus in 2006 (from an emphasis on terrorism to an emphasis on immigration) show dynamic interplay between subnational governments and the federal government regarding the scope of federal security administration and, likewise, federal influence over subnational police institutions. Correspondence between the temporal distribution of the rationales underlying the CCG discourse and the timeline for changes in DHS enforcement priority lends further credibility to the concept of CCG as well as the unique role it played in the production of immigrant sanctuary.

The correspondence between DHS activity and CCG discourses over time, the overall frequency with which CCG discourses were cited relative to PI discourses, and the association between CCG discourses and strong restriction levels, collectively provide persuasive evidence in support of the CCG explanation of the reemergence of immigrant sanctuary.

IV. Structural Analysis of Immigrant Sanctuary

To examine the structural factors associated with sanctuary policy enactment in similarly situated jurisdictions I constructed two datasets, one of large cities in the US (more than 500,000 residents) (Appendix K) and another of large cities in the state of California (more than 200,000 residents) (Appendix L) California contained the largest number of sanctuary actions passed during the studied time interval, allowing for meaningful comparison among large cities in the state. I found that for large-city sanctuaries, high police-resident ratios, high police budgets, and high crime rates are necessary and sufficient conditions for the enactment of immigrant sanctuary policy between 2001 and 2008. I identify the combination of high police-resident ratios and high police budgets as indicative of robust crime governance within a given jurisdiction. The predominance of CCG discourses within sanctuary policy actions together with the forthcoming structural findings regarding the relationship between sanctuary policy and robust crime governance provide strong support for the original contention that the reemergence of immigrant sanctuary in the Homeland Security era is best explained as a
function of state and local opposition to the extension of federal security administration into subnational crime governance.

Basic statistical analyses show that among the largest cities in the country (cities with over 500,000 residents), sanctuary policy actions taken between 2001 and 2008 were associated with relatively high officer densities, police budgets, and crime rates (Table 3.8). However, in keeping with at least one prominent causal model tested in the literature (Chavez and Provine 2009; Wong 2012), the data also indicate a larger proportion of Latinos and “foreign born” in the same jurisdictions as compared to similarly-sized jurisdictions that informed sanctuary action. Economic insecurity, as measured by the unemployment and poverty rates, appears to be only marginally higher in the large American cities taking sanctuary policy action in the studied time interval (n=28) (United States Census 2000).

Table 3.8: Large City Sanctuaries in the US

<table>
<thead>
<tr>
<th>Variables</th>
<th>Policy Action</th>
<th>Policy Inaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime Control</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Officer Density</td>
<td>342</td>
<td>239.9</td>
</tr>
<tr>
<td>Policy Budget</td>
<td>300.5</td>
<td>207.5</td>
</tr>
<tr>
<td>Crime Rate</td>
<td>1178.5</td>
<td>1043.2</td>
</tr>
<tr>
<td>Minority Representation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% Black</td>
<td>27.1</td>
<td>24.2</td>
</tr>
<tr>
<td>% Latino</td>
<td>23.2</td>
<td>17.6</td>
</tr>
<tr>
<td>% Foreign Born</td>
<td>22.2</td>
<td>13.2</td>
</tr>
<tr>
<td>Economic Insecurity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployment</td>
<td>5.1</td>
<td>4.1</td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>14.8</td>
<td>13.6</td>
</tr>
</tbody>
</table>
Table 3.9: Large City Sanctuaries in California

<table>
<thead>
<tr>
<th>Variables</th>
<th>Policy Action</th>
<th>Policy Inaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime Control</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Officer Density</td>
<td>3,597.7</td>
<td>519.1</td>
</tr>
<tr>
<td>Policy Budget</td>
<td>270.8</td>
<td>201.3</td>
</tr>
<tr>
<td>Crime Rate</td>
<td>915.5</td>
<td>608.5*</td>
</tr>
<tr>
<td>Minority Representation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% Black</td>
<td>12.4</td>
<td>8.4</td>
</tr>
<tr>
<td>% Latino</td>
<td>29.7</td>
<td>37.1</td>
</tr>
<tr>
<td>% Foreign Born</td>
<td>31.2</td>
<td>29.4</td>
</tr>
<tr>
<td>Economic Insecurity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployment</td>
<td>4.5</td>
<td>4.9</td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>13.2</td>
<td>14.3</td>
</tr>
</tbody>
</table>

*I located crime rate data for only half of the inactive large California cities.

To compare cities of a similar size in the same state system I constructed a dataset of cities in the state of California with populations above 200,000 in the year 2000 (n=14) (United States Census 2000). California contains the largest number of sanctuary jurisdictions in the dataset, which allows for comparison with non-sanctuary cities. Table 3.9 shows that, similar to the nation’s largest sanctuary cities, sanctuary cities in California tended to have higher officer densities relative to comparable cities in the state as well as larger police budgets and higher crime rates. Latino populations in sanctuary cities in California tended to be smaller than non-sanctuary jurisdictions in the state (opposite the finding for the largest American cities), while their economic insecurity indicators were roughly equal (Table 3.9.1).
Table 3.9.1 Sanctuary Policy Action and Associated Structural Factors

<table>
<thead>
<tr>
<th></th>
<th>Large US Cities</th>
<th>Large California Cities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime Control</td>
<td>Officer Density</td>
<td>.42</td>
</tr>
<tr>
<td></td>
<td>Policy Budget</td>
<td>.53</td>
</tr>
<tr>
<td></td>
<td>Crime Rate</td>
<td>.14</td>
</tr>
<tr>
<td>Minority Representation</td>
<td>% Black</td>
<td>.07</td>
</tr>
<tr>
<td></td>
<td>% Latino</td>
<td>-.07</td>
</tr>
<tr>
<td></td>
<td>% Foreign Born</td>
<td>.41</td>
</tr>
<tr>
<td>Economic Insecurity</td>
<td>Unemployment</td>
<td>.41</td>
</tr>
<tr>
<td></td>
<td>Poverty Rate</td>
<td>.13</td>
</tr>
</tbody>
</table>

These basic statistics establish an association between robust crime governance and sanctuary policy action, which is important to the overarching inquiry. However, additional analysis is required for a convincing case for causality. Rather than conduct a quantitative analysis for an intermediate-N population to discern the net effects of discrete variables, I applied Charles Ragin’s “set-theoretic” method, which identifies explicit connections by way of case-based logic. The method is favorable for small and intermediate-N research designs and requires examination of “cases sharing a given outcome and attempt[s] to identify their shared causal conditions” (2008, 18). It establishes the dominant causal configuration rather than the relative impact of discrete variables, as in regression analysis, and traces this configuration or “causal path” over several cases rather than for a single case as in the case study. The study of causal configurations pursues perfect or near-perfects subsets to argue causation based on the elements constitutive to an outcome rather than a strong correlation between a variable and an outcome across a collection of cases. The set-theoretic method is therefore an alternative logic of causation utilized in medium-N studies. The method establishes the necessary and sufficient conditions for a given outcome for a specific population of cases (Ragin 2008).

In this sense, any one configuration can be assessed as to whether it is constitutive of an outcome by determining the “consistency” and “coverage” of the configuration.

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25 Ragin notes that the vast majority of studies are either small or large-N, and scholars have neglected intermediate-N studies likely because of the perceived absence of effective methodological tools for this sort of analysis (See Ragin 2008). In graphing the N of a study in relation to the total number of studies published, Ragin shows a U-curve, confirming that the vast majority of social science research derives from the study of very large or very small populations, with intermediate-N populations being largely neglected by researchers (Ragin 2000:25; Fiss 2007.).
across all cases. “Consistency” indicates the proportion of cases where the positive outcome displays a given causal configuration (indicating whether the configuration is necessary to the outcome), while “coverage” refers to the proportion of cases in which a causal configuration displays a positive outcome (indicating whether the configuration is sufficient to produce the outcome) (46, 63). Consistency gauges theoretical importance, and coverage empirical importance. This two-pronged analysis allows the researcher to distinguish between trivial and nontrivial necessary conditions. A trivial pre-condition is one that occurs in most cases regardless of the outcome, and the coverage test indicates the degree to which the outcome is constrained by the configuration (61). The set-theoretic method is thus oriented to clusters of causal factors that illustrate the necessary and sufficient conditions for a given outcome, while also providing all alternate causal configurations displaying the positive outcome (2008).

I constructed a “crisp set” table to conduct the qualitative comparative analysis, which is displayed in Appendix M. The crisp set is made up of the 29 American cities with populations at or above 500,000 residents. I treated each of the 29 cities as a single case and recorded variables for the series of cases, each of which stem from explanations of subnational immigration enforcement policy in the extant literature. I recorded the “% Latino,” “% Foreign Born,” “crime rate,” “officers per capita,” and “police budget per capita” variables based on the theory that for large cities, relatively high rankings in each of these categories would display a positive outcome (i.e., sanctuary policy enactment). I also recorded poverty and unemployment rates on the theory that low poverty and unemployment rates would display the positive outcome. I assigned the variables a score of “0” or “1” based on whether the variable registered at the 66th percentile for a given case. The threshold, though somewhat arbitrary, indicates the cases for which the score for a given variable is relatively high. For example, under this formulation Latino representation in a given jurisdiction is “high” if it is above the threshold of 29.8%, which was true of only one-third of American cities with over 500,000 residents in the year 2000. Collectively, the scores reveal the structural preconditions for immigrant sanctuary policy action in the studied time interval.

Using the Boolean algebraic method of analysis I found that of the thirteen jurisdictions taking sanctuary policy action, 11 (85%) had high officer densities and large police budgets, and 10 (77%) had high officer densities, large police budgets, and high crime rates. This data suggest that a high officer density and large police budget are, by QCA standards, necessary conditions for sanctuary policy actions in large cities (Table 3.9.2).
Table 3.9.2: Causal Configurations for Sanctuary Policy Action in Large Cities

<table>
<thead>
<tr>
<th>Causal Configuration</th>
<th>Consistency</th>
<th>Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set 1 Officer Density/Police Budget</td>
<td>85%</td>
<td>69%</td>
</tr>
<tr>
<td>Set 2 Officer Density/Police Budget/Crime Rate</td>
<td>77%</td>
<td>77%</td>
</tr>
<tr>
<td>Set 3 Officer Density/Police Budget/Foreign Born</td>
<td>38%</td>
<td>71%</td>
</tr>
</tbody>
</table>

As previously argued, the finding of a necessary causal configuration offers insight as to “consistency” (i.e., the frequency in which the positive outcome displays the causal condition), but must be coupled with additional analysis to make a full assessment of the configuration’s significance. For example, if high officer density and large police budget are necessary conditions for sanctuary policy action, but are also present in every case of sanctuary policy inaction, it would be difficult to argue their causal significance. Therefore, a “necessary” causal configuration must be coupled with a “coverage” statistic, which shows the frequency with which the causal configuration produces a positive outcome. In terms of coverage, I found that of the 16 cases that have the officer density/police budget configuration, 11 display the positive outcome. However, in the 13 cases that expressed the officer density/police budget/high crime rate configuration, 10 (77%) displayed the positive outcome. Thus, “Officer Density/Police Budget/Crime Rate” appears to be the causal configuration both necessary to produce the positive outcome (in 10 of 13 cases, 77%), and non-trivial as determined by the consistency rate.26

I interpret this finding as being remarkably consistent with others in the chapter, which show that a desire for independent crime governance as the primary cultural orientation driving the enactment of sanctuary policy. Both illustrate features of Combative Crime Governance in the immigrant sanctuary case in the sense that immigrant sanctuaries grow from concerns about the quality of crime governance in relation to the federal government, and these concerns will likely be acute in the jurisdictions managing large systems of crime governance and battling high crime rates. Contrary to the claims made in the literature’s passing engagement with the immigrant sanctuary phenomenon, sanctuary jurisdictions typically arise from a specific sensibility regarding crime governance that has causal significance independent of the politics of immigration.

V. Findings

The chapter offers three primary findings. First, analysis from the chapter shows that immigrant sanctuaries exist in conservative regions of the country. All of the

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26 The literature identifies rates below 70% as “trivial” (Ragin 2008).
“sanctuary states” are conservative or politically moderate jurisdictions and each of these states have enacted immigrant sanctuary policies with higher than average levels of restriction on police participation in immigration enforcement.

I also found that the reemergence of immigrant sanctuary in the Homeland Security era can be traced to a shared belief that crime governance is most effective when controlled by local and state authorities rather than federal authorities. While this orientation toward governance mirrors that of conservative rhetoric regarding “states rights,” it also reflects the tenets of “community policing,” a successful liberal project in criminal justice reform. I have shown that together these two discursive frames – Combative Federalism and Community Policing – can be combined, based on thematic continuity, to display a single trans-partisan orientation to crime governance, an orientation I label “Combative Crime Governance.” The data show that, on average, sanctuary policies displaying the CCG frames have higher levels of restriction than the policies displaying discursive frames addressing immigrant-status equality or immigrant welfare.

As a concept, CCG finds additional validation in the study of the expression of sanctuary rationales over time. The chapter’s temporal analysis shows clear correspondence between the actions of ICE and its parent organization, Homeland Security, and the type of sanctuary rationales expressed. CCG discourses tend to be “in conversation” with major actions taken by federal security administrators. For instance, between 2002 and 2005, beginning just after Congress passed the Patriot Act and DHS prioritized collaboration between the federal government and subnational governments to block unauthorized immigration linked to terrorism (Cuellar et al., 753-754; Thacher 2005), rationales criticizing federal administrative overreach (“Federal Responsibility”) and the Patriot Act (“Patriot Act Opposition”) were the rationales most frequently expressed across the population of sanctuary policies. The Bush administration had predicated the Homeland Security model on the assertion that domestic security was no longer a “federal responsibility,” but a responsibility to be shared across the various levels of American law enforcement. When the DHS enforcement emphasis abruptly shifted in late 2005 to the prevention of unauthorized immigration irrespective of counterterrorism (Motivans 2012; See also Cohen, Cuellar et al. 2006, 673), the CCG discourse expressed in sanctuary policy shifted as well. Rationales claiming that police efficacy would suffer from the increased workload that accompanied participation in immigration enforcement and from a loss of trust and cooperation from minority residents peaked during this period. The dynamic interplay between DHS enforcement emphasis and the expression of Combative Crime Governance discourses is not matched in the temporal distribution of the Pro-Immigrant discourses.

My arguments regarding the centrality of disparate philosophies regarding the appropriate structure of crime governance in the reemergence of immigrant sanctuary in the Homeland Security era are further supported by structural analysis of large American cities. Qualitative Comparative Analysis (QCA) from the chapter show a robust system of crime governance (high police-citizen ratios and high police budgets) and a high crime rate to be the configuration of structural factors shared by large cities passing sanctuary policy actions in the studied time interval. Anxieties about local crime likely oriented local political actors and the local communities to the problems traditionally managed in
the field of crime governance, motivating them to draw categorical distinctions between local risks and those associated with federal security initiatives.

Conclusion

The idea that the resurgence of immigrant sanctuary in the Homeland Security era was not primarily about immigrants may seem odd, but only before consideration of the “new” theory of culture in social movements which argues that the early challenge to dominant social understandings appear discretely in codes, latent discourses, and collective representations rather than in neatly packaged and carefully disseminated ideology (Swidler 1995). Subnational governments have yet to offer a coherent, full-throated challenge to the Homeland Security model and, likewise, the ongoing extension of federal security administration into subnational systems of crime governance. This is in no small part due to the constant and reflexive affirmation of a standardized conception of domestic security in American political culture. However, the chapter’s analysis of immigrant sanctuary shows the beginnings of a response to this vision – a preliminary cultural reworking of some of the assumptions underlying the popular discourse around domestic security, but one that tends to be overshadowed by the bitter partisan politics of immigration.
Chapter 4

Sanctuary Contraction:

moral panic, external ideology, and the criminal exception to immigrant sanctuary in San Francisco

Introduction

In the preceding chapters, I situated immigrant sanctuary as one of many examples of collective resistance in the field of crime governance (Chapters 1 and 2) and demonstrated that immigrant sanctuary policy reemerged in the Homeland Security era due to subnational opposition to the expansion of federal influence over state and local crime governance (Chapter 3). In the present chapter, I turn from the proliferation of immigrant sanctuary to its contraction, and from the combative internal discourses that inspired sanctuary policies to the external ideologies that upended them.

In the spring of 2008, San Francisco public officials boasted about the city’s sanctuary practices and its formal rejection of the federal government’s collaborative immigration enforcement initiatives. By summer, the same officials had made major revisions to the city’s sanctuary policy, including the withdrawal of sanctuary protection for arrested immigrant children. This remarkable shift in policy happened within a few weeks, making the “partisan ideology” of the jurisdiction, operationalized as the distribution of party membership in a given jurisdiction, an implausible explanation. There is no evidence of a significant demographic change in the weeks between San Francisco Mayor Gavin Newsom’s television advertisement of the city’s sanctuary policy and his executive order instructing that arrested immigrant children be excluded from sanctuary protection.

Why did one of the most liberal jurisdictions in the country – a sanctuary city dating back to the Central American Sanctuary Movement of the 1980s – remove
sanctuary protection for detained immigrant children? Why did this historically and recently combative jurisdiction suddenly stop fighting? San Francisco held the same mayor, the same city council, and the same constituency at the beginning of 2008 as it did at year’s end. Yet the Homeland Security model of integrated security governance found its way back into hostile territory, into a formal and consecrated “statutory” sanctuary. An examination of partisan ideology in San Francisco gives very little if any insight into the city’s sanctuary policy change.

Data and analysis in the chapter show San Francisco’s policy change to be a function of efforts by federal administrators, in conjunction with a prominent local media outlet, to peddle a migrant-threat narrative across the state of California, and ultimately across the country. The narrative slowly developed from news coverage of a gruesome triple-homicide in the heart of San Francisco. After extensive media coverage of the crime, subsequent news stories cast unauthorized Bay area youth as international drug mules, drug pushers, and, in criminological terms, “folk devils” (Cohen 2002). The data show that the federal government’s discursive engagement with populations external to the city resulted in immense pressure on city administrators, despite what appeared to be unwavering support from city residents. In the second wave of immigrant sanctuary politics in San Francisco (2001-2008), external ideologies ultimately transformed internal sanctuary administration.

The study illustrates one potential outcome of a faltering federal attempt to govern through crime (Simon 2007), specifically the manner in which the federal security administrators responsible for implementation of the Homeland Security model wade through the messy realities of federalist governance. In response to the proliferation of subnational sanctuary, federal officials can reassert the federal domestic security agenda by pitting state populations against embedded cities, ultimately directing state as well as federal administrative resources on rogue municipalities. This narrative of local crime governance compromised by external forces is corroborated by various other contributions to the criminological literature (Miller 2008; Stuntz 2011). Moreover, the top-down utilization of provocative risk and security ideologies mirrors the national ideological projects producing Prohibition in the early 20th century and the War on Crime in the 1960s. In contrast, the cultural orientations driving sanctuary movements appear less centralized, initiated from the “bottom-up,” and flowing from collectives rather than elites.

While the federalist structure of American governance creates a space for alternative visions for domestic security, alternative social solidarities to inform these visions, and alternative security policies to codify them, the federalist structure also, ironically, provides the federal government with a variety of mechanisms to counteract dissent and achieve administrative continuity in American security governance. Just as cities and counties can abstain from federal security initiatives through a variety of mechanisms (communal, administrative, and statutory), the federal government can apply

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27 Miller correctly points out that national crime politics in the US often excludes the voices of those adversely affected by “the criminal justice apparatus” (2008, 7). However, rather than being a consequence of federalism, this inequitable circumstance occurs despite the structure of federalist governance, which limits federal government power relative to that of cities, counties, and states. Absent federalism, the US would look more like the nations of Europe, most of which draft crime policy exclusively at the national level.
pressure to sanctuary administrators through a variety of channels – by tapping into the nativist fears of the state and national public, or by engaging in state and federal legal and administrative coercion.

The purpose of this chapter is to detail and analyze what happens when the federal government strikes back. I look to develop a framework for a few of the social and administrative processes facilitating sanctuary contraction, many of which are difficult to account for through statistical analysis. How did San Francisco transform from a jurisdiction antagonistic to federal immigration enforcement tactics to one willing to lump arrested child immigrants in with arrested adult immigrants for purposes of criminal-alien referral? How was the federal government able to establish its vision for “immigration security” in this rebellious political space? I probe these questions by developing a case study of the events in and around San Francisco city government that led to the city’s sanctuary policy change in the summer of 2008. Data in the chapter derive from archival research of records from city, state, and federal agencies and Bay Area non-profit organizations, city ordinances, state and federal statutes, local and national media coverage, and in-depth interviews with elite public and non-profit executives.

I. Sanctuary Origins: Before Criminal-Alien Ideology

The early history of sanctuary in San Francisco shows external legal and administrative pressure on city administrators to overturn the City of Refuge ordinance (San Francisco 1989) (Table 4.1). However, in my review of the historical record I did not come across contentious debates about immigrant crime and immigrant threat. Instead, the federal objection to San Francisco’s sanctuary policy grew from a basic federal preference for administrative congruence across local, state, and federal government. This federal orientation toward immigrant sanctuary is substantially different than that of the Homeland Security era, where the discourse of immigrant threat has permeated sanctuary debates.

Table 4.1: San Francisco Sanctuary Policy Timeline (Form-1)

<table>
<thead>
<tr>
<th>Year</th>
<th>Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>Central American Sanctuary Resolution</td>
</tr>
<tr>
<td>1989</td>
<td>City of Refuge Ordinance</td>
</tr>
<tr>
<td>1992</td>
<td>City of Refuge Ordinance - Amendment</td>
</tr>
</tbody>
</table>

The San Francisco Board of Supervisors first articulated an alternative vision for immigration in 1985 when the it passed a resolution urging Mayor Dianne Feinstein to
declare San Francisco a “City of Refuge” and bar city employees from participating in federal immigration enforcement activity. In support of the resolution, the Board of Supervisors referenced several national and international immigrant rights measures including the US Refugee Act of 1980, the Geneva Conventions, and the 1967 United Nations Protocol Relating to the Status of Refugees (San Francisco Resolution 1087-85). The resolution stemmed from the Supervisors’ concern for the ongoing plight of Salvadoran and Guatemalan refugees who had fled persecution by their native governments. The Supervisors alleged in the resolution that the federal government had left the Central American refugees to “live in the constant fear of deportation by the Immigration and Naturalization Service” (1087-85). Immigrant sanctuary advocates believed that the Regan administration rejected asylum claims in order to strengthen its alliances with several Central American autocrats and support its broader agenda in the Cold War with the Soviet Union (Carro 1985). Federal officials at INS had rejected the vast majority of asylum claims from the region.

Four years after the City of Refuge resolution, the San Francisco Board of Supervisors considered a city ordinance that would extend the sanctuary protection from select Central American immigrants to all immigrants residing in the city. Two highly publicized incidents within the city motivated the Board of Supervisors to pass the ordinance. In the first, on June 6, 1989, the San Francisco Police Department (SFPD) aided federal authorities in surveilling Central American immigrants in a meeting between the Salvadoran Consul General, Salvadoran refugees, and local religious leaders and lawyers regarding alleged political and human rights abuses by ruling party in El Salvador. During the meeting, a member of the consulate’s staff along with a sergeant from SFPD took photos of the refugees, despite their objections, to identify dissidents to the El Salvadoran government. Only a few weeks later, local news outlets reported that San Francisco police raided a nightclub in the Latino Mission District and detained the 200 club patrons until each presented government-issued identification (Lempinen 1989; Suryaraman 1989). In response to the two incidents, the Board of Supervisors looked to restrict San Francisco police and other city officials from immigration enforcement operations. They considered an ordinance that would bar the use of city and county resources for immigration enforcement purposes. The ordinance reads, in part:

No department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless assistance is required by the federal or state statute, regulation or court decision (San Francisco Administrative Code, s.12.H.2 1989).

Eight days before the Board of Supervisors held a vote on the proposal, federal officials pressured the Board to reject the idea. Joseph P. Russoniello, the United States Attorney for the Northern District of California (a regional branch of the US Department of Justice), sent a letter to the Board that, among other things, raised the prospect of federal criminal prosecution of the San Francisco city employees who adhered to the ordinance. The following excerpt from the letter captures the tone of federal opposition.

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28In the early ‘80s, El Salvadoran asylum applicant were approved at a rate of 2-3% (Stastny 1987).
Most notable are the warnings of criminal penalties for city employees and the possible suspension of federal funding for cooperative local-federal law enforcement initiatives.

To the extent the ordinance attempts to transcend federal law, it is invalid; to the extent it seeks an accommodation with federal statutes, it is calculated to confuse; to the extent it encourages the harboring of illegal aliens, it may well subject those who implement it to possible federal criminal prosecution; to the extent it attempts to do no more than state a policy position of the City and County of San Francisco for the guidance of city employees, it repeats the mistakes of the earlier resolution. It will not relieve… the San Francisco Police Department or Sheriff’s Department of its duty to report to the INS the identity of any person arrested for certain drug offenses when that person may be an illegal alien as is required in the Anti Drug Abuse Act of 1998 and §11369 of the California Health and Safety Code....

Any person who knowingly harbors one who has not presented himself to an immigration officer upon entry, is subject to criminal prosecution under Title 8 U.S.C. §1324. It is no defense to such a prosecution that the person charged believed he/she was acting under a mistaken belief as to what the law was…

Finally, what does [the ordinance] accomplish? Except for an expression of the personal displeasure a Board of Supervisors member has with the conduct of US immigration policy, which I submit is no secret, it will not discourage a vigorous enforcement of immigration law and could, if anything, foster suspicion and distrust between law enforcement agencies who have to this point, despite repeated acts of political brinksmanship, worked well together to provide protection to the community.

I have not discussed the extent to which your action might disrupt on-going cooperative federal and local enforcement efforts in other areas, convinced as I am that your common sense and good judgment will persuade you that passage of this ordinance is not in the best interests of San Francisco (Russoniello 1989).

As I show later in the chapter, Russoniello made the same threats of federal criminal prosecution in 2008. In the both cases, the prosecutions never materialized. Though San Francisco officials never faced criminal charges in connection to the practice of immigrant sanctuary, the city did find itself at risk of losing financial support. The second challenge to the sanctuary ordinance stemmed from a provision within the federal Immigration and Nationality Act of 1990, which conditioned the state receipt of federal block grants for criminal justice funding upon the disclosure of alien convictions to INS (1990). The California Office of Criminal Justice Planning (OCJP) informed San Francisco officials that the city would lose $4 million in OCJP funding unless it repealed its City of Refuge ordinance (Bau 1994).

California state government had originally established OCJP in 1985 to administer domestic violence programs across the state, and a significant portion of the money distributed by OCJP came from the federal government. For example, in the 2001-2002 funding cycle, the majority of OCJP funding went to shelter-based domestic violence programs. Of the $14,694,735 spent on such shelter-based domestic violence programs, $13,234,735 came from the federal government and $1,460,000 from California state funds (Little Hoover Commission 2003). Following a state audit in 2003 and widespread public criticism for mismanagement of funds, OCJP was abolished by the state legislature in 2005 (California Penal Code S. 13820-13825). In 1992, however, OCJP held considerable influence over local criminal justice systems across California.
The agency ultimately required that municipal governments provide even broader “criminal contact” disclosure than mandated under the federal Immigration Act, holding that police would have to report all alien arrests (rather than merely convictions) to federal immigration authorities in order for their affiliated jurisdictions to be eligible for OCJP funding (Wells 2004).

In the summer of 1992, after receiving a letter from State Senator Quentin Kopp of San Mateo, California Attorney General Daniel Lungren opened up a third front against the City of Refuge ordinance, which questioned the legality of local sanctuary ordinances. Lungren eventually circulated a legal opinion stating that the Supremacy Clause of the US Constitution precluded state and local governments from passing laws relating to immigration enforcement (Bau 1994).

Under pressure from the US Attorney’s Office, the California Office of Criminal Justice Planning, and the California Attorney General, the Board of Supervisors negotiated a compromise with the city’s newly elected mayor, Frank Jordan, in 1992. The compromise, formalized in an amendment to the City of Refuge ordinance, permitted police to refer individuals arrested on a felony charge and suspected of violating civil immigration law to INS. The amendment (Section 12.H2-1) offered the first exception – notably a crime exception – to sanctuary protection in San Francisco. The amendment reads, in part:

Nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any person pursuant to State and federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws (San Francisco Administrative Code, Section 12H.2-1).

One of the respondents in this study, a leading immigrant legal-rights advocate in San Francisco, confirmed that the 1992 amendment had been passed to maintain OCJP funding.

Respondent: The Board of Supervisors made that amendment because at the time there was a federal grant and the federal grant had [immigrant felony-arrest referral] as a condition [for eligibility]. Since then, that federal pot of dollars [ran out], so the reasoning behind that amendment is gone. We wrote a letter to - I believe it was [City Attorney] Herrera and Juvenile Probation – that explained that in detail.

Interviewer: So, in 1992, the city passed the amendment to remain eligible for federal funding?

Respondent: Yes. So if you look at the legislative history around that 1992 amendment, it had a lot to do with a grant. I think it was a million dollars. And since then the source of that grant is gone so the original purpose is gone, and [the policy has] taken on a life of its own.

In a telling sequence of events, external pressure brought by state and federal administrators brought a significant change in San Francisco’s sanctuary policy, carving out an exception for immigrant felony arrests. Yet, even after the federal funding underlying the sanctuary ultimatum dried up and California state government eliminated OCJP, the amendment to the sanctuary ordinance remained in tact.

29 In addition to unauthorized immigrants booked on felony offenses, the ordinance also removed sanctuary protection from immigrant residents previously convicted of a state felony.
Two years after the Board of Supervisors passed the 1992 amendment, the San Francisco City Attorney advised the San Francisco Juvenile Probation Department that the exclusion of unauthorized immigrants booked on a felony offense from sanctuary protection also applied to arrested, unauthorized immigrant children (San Francisco Deputy City Attorney Memorandum 1994). The City Attorney argued that the 1992 amendment to the City of Refuge ordinance removed sanctuary protection for all individuals processed (i.e., “booked”) by police as having committed a felony. The felony arrest of a suspected unauthorized immigrant youth would therefore trigger an immediate referral to federal immigration officials before the initiation of juvenile court proceedings, proceedings which would normally channel children to juvenile court under the California Welfare and Institutions Code, excluding them from the criminal system and accompanying criminal classifications (California Welfare and Institutions Code § 602). The City Attorney instructed that police should refer the offending child to federal immigration authorities before evidence supporting the charge was subject to even the most basic form of judicial review.

Since juveniles are subject to the same booking procedures as adults and can be charged with the commission of a felony, juveniles are booked for the alleged commission of a felony in the same manner as adults. For these reasons, we conclude that juveniles who are booked for the alleged commission of a felony are subject to section 12H.2-1 (San Francisco Deputy City Attorney Memorandum 1994).

Local city officials ultimately ignored the City Attorney’s legal memo (circulated in 1994) and continued to shield arrested immigrant children from referral to federal immigration authorities. The historical record does not show additional challenge from the City Attorney or from federal officials until after a triple-homicide in downtown San Francisco in 2008.

II. Regional Media and External Moral Panic

A diverse group of actors and institutions challenged San Francisco’s sanctuary ordinance in the months preceding the city’s sanctuary policy changes in 2008. Each gravitated to the idea that the city’s sanctuary practices had led to the criminal victimization of its residents. It would have been difficult to predict these challenges from external authorities, much less their eventual success. San Francisco’s mayor, Gavin Newsom, believed immigrant sanctuary to be a winning issue in early 2008, so much so that his administration launched a campaign advertising the city’s sanctuary policy just as local newspapers began reporting rumors that Newsom was planning a run for governor. The forthcoming narrative links Newsom’s political aspirations to both the promotion of immigrant sanctuary the spring of 2008 and the revisions to San Francisco sanctuary policy in the summer of 2008. In turn, I relate the formal and public quality of sanctuary mechanisms in San Francisco to sanctuary contraction.

The San Francisco Sanctuary Ad Campaign
In April of 2008, San Francisco city government committed $83,000 in city funds to a campaign that advertised the city’s sanctuary policy. San Francisco Mayor Gavin Newsom held a press conference on April 3, 2008, announcing the campaign while flanked by church and community leaders who supported sanctuary policy. “We are standing up to say to all of our residents: ‘We don’t care what your status is… We care that you, as a human being, are a resident of our city, and we want you to participate in the life of our city’” (Vega 2008). Newsom later explained that the city decided to advertise their sanctuary policy to convey to immigrants in the region that San Francisco provided “safe access” to public services including schools, health clinics, and the police. Said Newsom, “It’s one thing to have a policy on paper. It’s another to communicate it directly to people who could be impacted” (McKinley 2008b).

The campaign included billboards and brochures in English, Spanish, Chinese, Vietnamese, and Russian, and a series of television ads featuring the mayor (San Francisco Sanctuary City 2008). The brochures were distributed to city police stations, hospitals, and various other social service agencies (Vega 2008). The Newsom administration coupled the sanctuary ad campaign with the creation of a new administrative position in city government -- “immigrant rights administrator.” The campaign and the new executive position conveyed the city’s commitment to its vision for immigration security, and Newsom appeared confident in the city’s legal and political position. In an article on the city ad campaign, The San Francisco Chronicle took a moment to situate sanctuary politics in relation to Newsom’s political ambitions.

Newsom, a Democrat who is considering running for California governor in 2010, made headlines last year when he said he would not allow city department heads or “anyone associated with this city” to cooperate in federal immigration raids. Wednesday he said no other issue he has championed has received a more negative reaction from the [state-wide] public than his sanctuary city stance – “and that includes gay marriage” (Vega 2008).

Other observers believed that Newsom’s aggressive pro-sanctuary politics were themselves reflective of political maneuvering for the governor’s race of 2010 as the sanctuary ordinance was popular in the city and thought to be a winning position among Latinos statewide (Letter to the Editor 2008). Newsom had cultivated an imposing progressive, anti-federal political identity vis-à-vis the remarkably unpopular administration of President George W. Bush. Newsom’s recent and well-publicized enabling of same-sex marriages in the face of California state government objection, and his decision to double-down on immigrant sanctuary policy and offer government-issued identification to unauthorized immigrant San Franciscans in the midst of a heated national debate on unauthorized immigration (Buchanan 2007) together made him the rising maverick of progressive politics. But only months later it would become the common-sense assumption within the immigrant-rights community of San Francisco that Newsom’s political aspirations were ultimately responsible for the revision of sanctuary policy and growing immigration enforcement cooperation between San Francisco city agencies and the Department of Homeland Security.

Circumstantial evidence suggests that while ICE might have grudgingly accepted sanctuary policy, the agency would not passively accept San Francisco’s aggressive attempts to attract unauthorized immigrants through public advertising. In the midst of the sanctuary ad campaign, ICE officials launched a broad immigration enforcement
“surge” across Northern California. The agency issued a press release on May 23, detailing the initiative.

Three-week enforcement surge results in 441 arrests in northern California

SAN FRANCISCO - More than 900 criminal aliens, immigration fugitives, and immigration violators have been removed from the United States or are facing deportation today following a three-week enforcement surge by U.S Immigration and Customs Enforcement (ICE) Fugitive Operations Teams in California.

During the special operation, which concluded late yesterday, ICE officers located and arrested a total of 905 immigration violators throughout the state, including 441 throughout northern California. Of those arrested in northern California, 178 were immigration fugitives, aliens who have ignored final orders of deportation or who returned to the United States illegally after being removed. Approximately one-fifth of the aliens taken into custody in the northern part of the state had criminal histories in addition to being in the country illegally.

Among those arrested by the Fugitive Operations Teams in northern California was a previously deported Mexican national whose criminal history includes prior convictions for transportation and sale of heroin. Mauro Preciado-Preciado, 31, was arrested by ICE Fugitive Operations officers at his Sacramento residence Tuesday. Preciado was deported five years ago after serving time for the drug conviction, but subsequently re-entered the country illegally. Preciado is being prosecuted by the United States Attorney's Office in Sacramento for felony re-entry after deportation, a violation that carries a maximum penalty of 20 years in prison. ICE officers also arrested a foreign national sex offender in Watsonville who has prior convictions for spousal rape and burglary. The 41-year-old Mexican citizen, who was taken into custody earlier this week at a restaurant where he worked, was deported last year and re-entered the country illegally (ICE News Release 2008a).

The enforcement surge did not appear to have much of an effect on the San Francisco sanctuary ad campaign, or sanctuary policy or practice. To that point, the federal government lacked the leverage to secure enforcement cooperation with San Francisco city government or even to dissuade city administrators from trumpeting its calculated obstruction of federal efforts. However, the political landscape reset on June 22, 2008, exactly a month later, in the wake of a triple-homicide that left resident Tony Bologna and his two sons, Matthew and Michael, dead. SFPD reported that Edwin Ramos, an unauthorized immigrant with alleged gang ties, had committed the killings in a case of mistaken identity (Stillwell 2008). Though Ramos was an adult at the time of the shooting, the Chronicle reported that, according to federal officials, Ramos had previously been arrested by SFPD as a juvenile, but shielded from deportation because of the city’s sanctuary ordinance. In the view of the federal government, San Francisco’s sanctuary policy had clearly compromised the safety of its local residents.

Media Coverage After the Murders

Ironically, in the homicide case that came to serve as the paradigmatic example of sanctuary policy run amok, San Francisco law enforcement had referred the suspect to ICE three months before the shooting. Following two violent incidents as a juvenile, SFPD arrested Ramos as an adult after a gun was found in a car in which Ramos was a passenger. The San Francisco County Sherriff’s Office called ICE and asked if the
agency wanted Ramos held on ICE detainer. ICE declined. ICE spokesman Virginia Kice confirmed the earlier decision in an interview after the homicides, but could not explain the rationale (Van Derbeken 2008c). These salient facts received little if any attention as federal authorities and local media began to advance a narrative that held the city’s sanctuary ordinance responsible for an extraordinary case of murder.

Figure 4.1: Van Derberken Twitter Profile Picture
Table 4.2: San Francisco Chronicle Stories on Immigrant Sanctuary in 2008*

<table>
<thead>
<tr>
<th>Date</th>
<th>Article Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 29</td>
<td>“Feds probe S.F.’s migrant-offender shield”</td>
</tr>
<tr>
<td>July 1</td>
<td>“8 crack dealers shielded by S.F. walk away”</td>
</tr>
<tr>
<td>July 3</td>
<td>“Editorial: No sanctuary for drug dealers”</td>
</tr>
<tr>
<td>July 3</td>
<td>“SF mayor shifts policy on illegal offenders”</td>
</tr>
<tr>
<td>July 10</td>
<td>“SF working on protocol for teen illegals”</td>
</tr>
<tr>
<td>July 4</td>
<td>“SF juvenile hall braces for detainee surge”</td>
</tr>
<tr>
<td>July 12</td>
<td>“SF IDs 10 possible illegal youths to feds”</td>
</tr>
<tr>
<td>July 13</td>
<td>“San Francisco cooperates with feds on immigration”</td>
</tr>
<tr>
<td>July 20</td>
<td>“Slaying suspect once found sanctuary in SF”</td>
</tr>
<tr>
<td>July 22</td>
<td>“Opinion: Sanctuary policy made city less safe”</td>
</tr>
<tr>
<td>July 31</td>
<td>“Minutemen protest S.F.’s sanctuary policy”</td>
</tr>
<tr>
<td>August 3</td>
<td>“SF fund aids teen felons who are illegals”</td>
</tr>
<tr>
<td>August 7</td>
<td>“Illegal youth issue goes to attorney general”</td>
</tr>
<tr>
<td>August 19</td>
<td>“Panel urges SF to help teen immigrant felons”</td>
</tr>
<tr>
<td>August 23</td>
<td>“Family blames sanctuary policy in 3 slayings”</td>
</tr>
<tr>
<td>August 28</td>
<td>“SF gives teen drug suspect to immigration”</td>
</tr>
<tr>
<td>August 31</td>
<td>“Honduran drug suspect gamed juvenile system”</td>
</tr>
</tbody>
</table>

*Chronicle article timeline shared by the San Francisco Asian Law Caucus.

Seven days after the killings, The Chronicle again grabbed statewide attention with a story on the city’s juvenile justice system by its “police and courts” reporter Jaxon Van Derberken. Van Derberken had previously worked the law enforcement beat in Denver and Los Angeles; his Chronicle biography lists him as having reported on the “O.J. Simpson case, the Rodney King beating, and the Los Angeles riots” (Van Derberken 2014). As is evident in quotations and various references throughout the chapter, Van Derberken’s articles demonstrated a fairly open police bias. In the profiling picture associated with his Twitter feed at the time of this writing, Van Derberken appears next to a police officer in a bullet-proof vest in a casual stance with a notebook in his hand (Figure 4.1).

The Chronicle had previously documented a few of the city’s sanctuary practices, but had reported them in piecemeal fashion. The trickle of critical articles on sanctuary policy in the Chronicle in early 2008 expanded into a “crime and sanctuary” beat where Van Derberken repeatedly questioned the judgment of the city’s political and
administrative leadership, while also providing federal officials a platform to articulate their assessment of the risks the sanctuary ordinance posed to local residents (Table 4.2).

The story that served as the fuse for outrage over the city’s sanctuary policy held that for several years, the city had not only been withholding immigrant child offenders from federal immigration enforcement officials, but had also, in select cases, flown unauthorized immigrant youth back to their native countries to reunite with parents or guardians. The story began as follows: “San Francisco probation officials – citing the city’s immigration sanctuary status – are protecting Honduran youths caught dealing crack cocaine from possible federal deportation and have given some offenders a city-paid flight home with carte blanche to return” (Van Derbeken 2008a).

Based on interviews with federal and state officials – many unnamed – Van Derbeken laid out a series of damaging claims. He alleged first that drug kingpins were using the sanctuary city policy to facilitate narcotics distribution; second, that the city had suffered “an influx of young Honduran immigrants dealing crack in the Mission District and Tenderloin;” third, that these immigrant drug dealers lied about their age upon arrest in order to be placed in juvenile rather than adult court; and fourth, that city officials had systematically violated federal immigrant “harboring” laws – a federal criminal offense – by accompanying detained minors across the border to reunite with family (2008a). The sanctuary-homicide frame attached to the Bologna shootings proved to be the beginning of a protracted critique of sanctuary practices in San Francisco. A stream of articles from Van Derberken served as the main stage at which sanctuary critics could voice their disapproval.

SFPD Captain Tim Hettrich, a recent head of the city’s narcotics unit, told the Chronicle that some of the immigrant drug dealers would “pass themselves off as juveniles, with a three-day growth of beard and everything else.” Joseph Russoniello, the same US Attorney for the Northern District of California that had challenged the City of Refuge ordinance in 1989, added that he was “flabbergasted that the taxpayer’s money was being spent for the purpose of ferrying detainees home. You have to have a perfect storm of dumb moves to have [that] happen.” Hettrich and Russoniello both claimed that upon arrival to Central America, it was likely that the assisted youth returned to the US to continue drug peddling. Said Hettrich, “Some of them have been arrested four or five times. That is one of the big problems of being a sanctuary city… They probably get the round trip [flight] and the next day, they will be right back here” (2008a).
Table 4.3: Sanctuary Event Timeline in San Francisco (2008-2009)

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2008</td>
<td>SF government promotes city sanctuary policy through $83,000 ad campaign.</td>
</tr>
<tr>
<td>May 23, 2008</td>
<td>ICE coordinates immigration enforcement raids across the Bay Area.</td>
</tr>
<tr>
<td>June 22, 2008</td>
<td>Unauthorized immigrant suspected of triple-homicide in San Francisco</td>
</tr>
<tr>
<td>June 29, 2008</td>
<td>SF Chronicle publishes story documenting immigrant youth “fly-back” policy and practice in the Juvenile Probation Department.</td>
</tr>
<tr>
<td>July 2, 2008</td>
<td>SF Mayor Newsom issues statement declaring an end to immigrant youth “fly-back practice.”</td>
</tr>
<tr>
<td>July 23, 2008</td>
<td>ICE Assistant Secretary writes open letter to Mayor Newsom requesting access to city’s jail logs.</td>
</tr>
<tr>
<td>August 8, 2008</td>
<td>Mayor Newsom writes an editorial in the SF Chronicle announcing SF Juvenile Probation Department’s policy regarding ICE referral for arrested immigrant youth.</td>
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<tr>
<td>August 26, 2008</td>
<td>SF Juvenile Probation issues internal policy for child-immigrant referral to ICE.</td>
</tr>
<tr>
<td>October 4, 2008</td>
<td>Report surfaces that the Office of the United States Attorney has initiated a grand jury investigation of city officials for violation of the federal prohibition against “alien harboring.” The investigation does not produce formal charges.</td>
</tr>
<tr>
<td>October 20, 2009</td>
<td>The San Francisco Board of Supervisors pass an amendment to the city’s sanctuary ordinance requiring that police and prosecutors secure a conviction for immigrant children arrested on criminal charges before making a referral to ICE rather making an ICE referral upon arrest.</td>
</tr>
<tr>
<td>October 28, 2009</td>
<td>Newsom vetoes sanctuary Board of Supervisors sanctuary amendment (Knight 2009d).</td>
</tr>
<tr>
<td>November 10, 2009</td>
<td>The San Francisco Board of Supervisors override Newsom’s veto with an 8-3 vote. Newsom issues a public statement saying that he will not enforce the amendment due to superseding federal law (2009d).</td>
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</tbody>
</table>

*Elements of timeline taken from documents provided by the San Francisco Asian Law Caucus.*
In response to the articles and increased state and national attention, Newsom held a press conference where he took the position that he did not have the ability to order city agencies to cooperate with federal immigration enforcement. “I don’t have the authority here, I have a bully pulpit. The courts have the authority here… The question you need to ask is why the courts, the D.A. and the public defender are directing [the Juvenile Probation Department] to [conduct the fly-backs]” (Van Derbeken and Lagos 2008). In a tense political moment, Newsom did his best to shift public attention and responsibility to his chief administrators. Following the press conference, City Attorney Dennis Herrera issued a memo stating that while federal law did not require the city to refer arrested immigrant children to ICE, the Juvenile Probation fly-back policy (though rarely practiced) was “clearly illegal” (San Francisco Deputy City Attorney 2008). San Francisco District Attorney Kamala Harris, herself an expected candidate for the office of California Attorney General, echoed the tone of surprise and disapproval, explaining that the sanctuary law “was not intended to shield anyone from being held accountable for a crime” (Van Derberken and Lagos 2008).

A report prepared by the San Francisco Probation Department on immigrant youth arrests and referrals offers important context for the rhetoric from city and federal officials. Between 2005 and 2009, 252 unauthorized immigrant youth had cases with the Juvenile Probation Department. Of the 252 unauthorized juvenile cases, the San Francisco Probation Department had shielded 185 unauthorized youth from ICE under the city’s sanctuary policy and referred 67 to ICE. All of the youth protected by the sanctuary policy were Latino, 98% were male and 79.4% were native to Honduras. Of the 252 cases, 108 included a drug offense and there were 295 drug charges in total. Of the 295 drug charges issued by police upon arrest, prosecutors dropped 14.9% of them. Of the charges prosecutors pursued, judges dismissed 17.3% (Knight 2009a).

The report also revealed that of the 252 unauthorized minors arrested between 2005 and 2009, 109 had in fact been referred to ICE, though the federal agency decided to hold only 67. The referral rate suggests that between 2005 and 2009, SFPD referred unauthorized minors to ICE based on its case-by-case judgment rather than established policy. Many arrested San Francisco immigrant youth were protected by the city’s sanctuary ordinance, but many others found themselves in ICE custody.

The Regional Audience

The Chronicle’s stream of juvenile-sanctuary articles played a central role in the debate over San Francisco sanctuary and ultimately provided a discursive entry point for federal officials at the Department of Justice and the Department of Homeland Security. In researching the paper’s circulation, I discovered that while the Chronicle is ostensibly a San Francisco city newspaper, it relies primarily on readership outside of the city to

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30 The numbers lend support to San Francisco law enforcement’s claim of narcotics trafficking among immigrant minors in the city. Over 80% of the narcotics charges issued to unauthorized juveniles were for the sale of heroine, cocaine, or crack (Knight 2009a). However, the statistics also show that a substantial number of charges were either dropped or dismissed (32%).

31 I did not come across information indicating the total number of unauthorized minors that had been arrested for felony offenses between 2005 and 2009.
sustain itself. In 2009, the Chronicle’s Monday-Friday circulation in the “City Zone,” an area designated by the Audit Bureau of Circulations, was 68,429 (Audit Bureau of Circulations 2009). The City Zone is made up of San Francisco County and a small part of the adjacent jurisdiction of San Mateo County. The Chronicle’s “Newspaper Designated Market” (NDM) expands well beyond the City Zone to the remainder of the Bay Area including Alameda, Contra Costa, Marin, Mendocino, Napa, San Mateo, Solano, Sonoma, and Santa Clara counties, as well as a number of other Bay area towns and cities. The Chronicle’s Monday-Friday circulation in the NDM in 2009 was 242,234. Thus, the weekly circulation in the suburbs outside of San Francisco and San Mateo (173,805) nearly tripled the paper’s circulation within the City Zone. Figure 4.2 shows the geographic parameters of the two markets – the City Zone colored in gray and bright yellow and the geographic area of the remainder of the Chronicle’s designated market in light yellow (2009). Given the Chronicle’s prominence in the sanctuary politics of 2008 and its presumed role as a core institution of the city of San Francisco, the distribution of its readership becomes a meaningful contextual indicator. The discursive exchange regarding the merits of San Francisco’s sanctuary policy did not occur within the confines of the city, amongst city residents using their own “place-sensitive” sense of risk and security to determine the policy’s application to arrested unauthorized minors. Instead, the debate ended up as one that incorporated a large swath of Northern California, most of which was outside of San Francisco and much of which fell outside of the metropolitan Bay area.
The city initially appeared to speak with one voice in response to criticism from the *Chronicle* and federal authorities regarding San Francisco sanctuary policy just as the immigration issue took center stage during the Democratic and Republican presidential primary battles of late 2007. In a 2008 op-ed in the *San Francisco Bay Guardian* entitled “San Francisco’s unauthorized children,” San Francisco Public Defender Jeff Adachi gave a markedly different account of the Juvenile Probation Department’s immigrant-youth fly-back practice. Adachi claimed that in 1997, as part of the settlement of a civil suit against the agency, Immigration and Naturalization Service (INS) agreed to refrain from using juvenile detention centers as holding tanks for immigrant youth suspected of being unauthorized.
In 1993[,] the INS was sued in the class action suit *Flores v. Reno* for unlawfully housing unauthorized minors in juvenile correction facilities without access to their families or legal representation. The case settled in 1997 with the INS agreeing that detained children should be placed in the “least restrictive environment,” and that every effort would be made to reunite minors with their families (Adachi 2008).

A high-ranking administrative official in the San Francisco criminal justice system told me in an interview that ICE (formerly INS) had been well aware of the city’s policies toward detained immigrant youth:

When a young person was arrested and unauthorized [and without a local parent or guardian], rather than ship them to ICE, San Francisco took care of the child’s placement on its own. This should have been obvious to folks. Because, how is it for six and seven years San Francisco didn’t refer any kids to ICE? The reason why [the practice was never an issue is] because [INS was] aware of this arrangement. And San Francisco, because of its status as a sanctuary city, always had a policy of not cooperating with INS. And it really didn’t change until a couple years after ICE [formerly INS] was formed, and particularly after 9/11.

Another respondent working as an immigrant legal rights advocate echoed this sentiment:

Pursuant to state juvenile law, probation officers are permitted to reunify the youth with their families even if the family members are abroad. So this protocol was written following state juvenile law. INS was aware of this policy, because they basically received very few if any referrals for 12 years. So INS was well aware. INS is aware that almost every city in the entire country doesn’t refer youth to immigration. They don’t call, they don’t ask about status.

While the mayor, US Attorney Russoniello, and the *Chronicle* cast the immigrant youth fly-backs as a secretive practice organized by rogue employees of the local justice system, others traced the practice back to the INS agency’s decision in 1993 to prevent the indefinite detention of unauthorized youth who were “unaccompanied” (i.e., without a parent or guardian).

*An External Moral Panic*

On July 2, 2008, Newsom issued a press release that addressed the issue of immigrant youth fly-backs directly. The release reiterated the position that the sanctuary policy was not “a shield for criminal behavior” and maintained that when Newsom learned that local judges were ordering officials to arrange flights to transport minors back to Honduras he had ordered an immediate end to the practice (Office of the Mayor 2008).

San Francisco’s Sanctuary City policy is designed to protect our residents. It is not a shield for criminal behavior, and I will not allow it to be used in that fashion.

Adults who commit felonies are already turned over to the federal authorities for deportation. There has been a lack of clarity, however, on our policy toward juveniles who commit felonies.
When I learned that the courts were ordering officials to arrange flights to transport minors back to Honduras, I told city officials to end the practice immediately.

Let me be clear: I will not allow our Sanctuary City status to be used to shield criminal behavior by anyone. I have directed my administration to work in cooperation with the federal government on all felony cases. I urge the District Attorney, the Public Defender and the courts to do the same (Office of the Mayor 2008).

Three weeks later, recognizing an opportunity to eliminate a subnational government policy it viewed as obstructionist, ICE, through its Assistant Secretary, Julie Myers, wrote an open letter to Newsom requesting expanded access to San Francisco jails and a partnership similar to the one forged between ICE and Los Angeles County. Excerpts from Myers’ letter show it to be as much a public admonishment as a request for local-federal collaboration: “ICE is unable to effectively identify criminal aliens in the Sheriff’s custody and lodge the detainers necessary to prevent the release of these criminal aliens back into the San Francisco community” (ICE Assistant Secretary 2008). In the face of what many media outlets were describing as a preventable triple homicide by unauthorized immigrants, ICE officials’ public statements worked to focus public scrutiny on Newsom and the prospect of gathering immigrant threat in the same moment that Newsom looked to deflect criticism to city administrators.

National media outlets soon joined the fray. Populist firebrand Lou Dobbs targeted Newsom on his popular CNN television show, “Lou Dobbs Tonight.” Dobbs hosted the brother-in-law and uncle of the slain San Francisco murder victims, asking, “What is your reaction when you think about the fact that Mayor Newsom has with great, complete, sanctimonious arrogance defended the sanctuary policy of this city?” (La Ganga 2008). The anti-immigration blogosphere was also energized as evidenced by the website www.arrestgavinnewsom.com (Dolz 2010).

ICE officials capped the sanctuary controversy of 2008 in September with a second enforcement blitz across Northern California. From its office in San Francisco, ICE filed a news release announcing a major enforcement action.

SAN FRANCISCO - More than 1,000 criminal aliens, immigration fugitives, and immigration violators have been removed from the United States or are facing deportation today following the largest special enforcement operation ever carried out by U.S. Immigration and Customs Enforcement (ICE) Fugitive Operations Teams in California….

More than 20 percent of the aliens taken into custody in this area had criminal histories in addition to being in the country illegally…. .

Among those arrested by the Fugitive Operations Teams locally was a previously deported Mexican national whose criminal history includes prior convictions for drug possession and receiving stolen property. Jose Duran-Porras, 36, was taken into custody by ICE Fugitive Operations officers September 11 at his home in San Pablo, Calif. At the time of his arrest, Duran had in his possession a U.S. passport. The United States Attorney’s Office has agreed to prosecute Duran on federal charges, including making false statements on an application for a passport and re-entry after deportation. Other local arrests included a 47-year-old Portuguese woman who was taken into custody September 19 in Fremont, Calif. The onetime legal permanent resident was ordered deported following her conviction for voluntary manslaughter and threatening a witness. Shortly following her arrest, she was repatriated to her native country (ICE News Release 2008b).
In an editor’s note at the end of the report, the agency advertised DVDs of the enforcement actions in San Francisco and Los Angeles through its public affairs office (ICE 2008b).

Talk of immigrant criminal threat in and around the city isolated Newsom just as he was organizing his campaign for governor. The messaging challenged San Francisco’s contention that immigration security could best be achieved through immigrant incorporation (Lewis and Ramakrishnan 2007) rather than through aggressive removal tactics anchored by city police. For federal security agencies, the introduction of a “criminal alien” discourse served as a key tactic in mounting a campaign against San Francisco immigrant sanctuary.

In the summer of 2008, the city’s sanctuary policy and basic orientation toward immigration security faced intense scrutiny and direct challenge from a variety of government forces, most of which were politicians outside of city government. Political and administrative actors external to the city aggressively challenged the sanctuary ordinance in the months before the local dominoes started to fall.

III. Internal Administrative Action: Eliminating the Juvenile Distinction

In the heat of the San Francisco sanctuary controversy, Deputy City Attorney Molly Stump responded to a request from the Newsom administration for an explanation of local, state, and federal law as it related to arrested unauthorized immigrant youth. Stump’s letter to Newsom offered three legal conclusions. First, that the city’s sanctuary ordinance did not preclude city officials from referring unauthorized youth to federal authorities; second, that youth delinquency records, though confidential, could be accessed legally by a variety of city agency employees without a formal request to the juvenile court; and third, that city employees would be subject to federal criminal prosecution “if they transported or harbored [immigrant youth] detainees” (San Francisco Deputy City Attorney Memorandum 2008).

San Francisco immigrant rights lobbyists reached an alternative set of legal conclusions in a publicized legal memorandum. The San Francisco Immigrants Rights Committee – a consortium of public interest legal organizations in the city – argued that the new juvenile referral policy violated due process rights for local children (by transferring them to ICE before the merits of the criminal charge had been litigated), encouraged racial profiling and mistaken deportation decisions (given that local officials were not trained immigration agents and their referral decisions lacked judicial oversight), and unlawfully collapsed the traditional distinction between youth and adult offenders, which had functioned to protect children from the consequences of criminal identification and proceedings since 1903 (San Francisco Immigrant Rights Defense Committee 2009; California Blue Ribbon Commission on Children in Foster Care 2008).33

32 The specified organizations included California and federal law enforcement agencies, California school systems, California Probation Departments, and the California Youth Authority – “if that agency is investigating criminal or juvenile proceedings involving the child” (San Francisco Deputy Attorney Memorandum 2008).

33 The law establishing this distinction appeared in Section 602 of the California Welfare and Institutions Code.
The debate about the legality of referring arrested immigrant youth for deportation had taken place against the backdrop of federal threats of criminal prosecution of local city employees and administrative leadership. The threats appeared more credible when, two months after the circulation of the City Attorney memo warning of federal prosecutions, the Chronicle reported that the US Attorney’s Office for the Northern District of California had convened a grand jury to investigate whether specific city officials had violated the federal alien “harboring” statute in the practice of flying certain immigrant youth back to their native countries. City Attorney Herrera responded to the newspaper report with the announcement that the city had hired a criminal defense attorney to represent the employees under federal scrutiny (Egelko 2008).

The US Attorney’s pursuit of criminal charges never amounted to anything more than rumor. As in 1989, the US Attorney did not file charges against a single public employee. Nevertheless, three months after airing television ads promoting San Francisco’s immigrant sanctuary, Newsom withdrew sanctuary protection for detained immigrant youth; the San Francisco Juvenile Probation Department would operate as a screening system for illegal immigrants. On July 2, 2008, Newsom addressed the policy change, stating simply, “We are moving in a different direction” (Van Derbeken 2008b).

Newsom instructed the San Francisco Police Department and Juvenile Probation Department to apply to juveniles the same criteria for ICE referral used for adults. Immediately after arrest and before presentment in court, juveniles booked on felony charges were to be referred and held in federal immigrant detention centers pending the outcome of deportation proceedings (San Francisco Admin. Code 12H.2-1). The Juvenile Probation Department issued its revised administrative policy on August 26, 2008.

The Juvenile Probation Department shall comply with all federal, state, and local laws in the arrest, booking and case processing of unauthorized persons. The Juvenile Probation Department shall inform the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE) in every case where a person is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws (12H.2-1.).

602. (a) Except as provided in subdivision (b), any person who is under the age of 18 years when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

34 According to an ICE spokesperson, the San Francisco Probation Department made 154 youth referrals to ICE between June 11, 2008 and November 12, 2009, an average of nine youth per month. This average fell to three youth per month between November of 2009 and January of 2010 (Hernandez 2010).

35 The new procedural rules for the Probation Department barred department employees from using a detainee’s inability to speak English and “perceived or actual national origin” as bases for suspicion of immigration violations. The order did, however, advise employees to use several other indicators to establish suspicion, many of which raised concerns among local immigrant advocates. The indicators included inconsistent statements from a child regarding immigration status, length of time in the United States, method of entry into the United States, the presence of unauthorized persons in the area where the arrest took place, and affiliation with a “criminal street gang known to be comprised of unauthorized persons” (San Francisco Juvenile Probation Department 2008).
In October of 2009, the Board of Supervisors responded to Newsom’s administrative policy changes by passing an ordinance permitting immigrant youth to be referred to ICE for removal, but only after judicial review.

[N]othing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any juvenile who is suspected of violating the civil provisions of the immigration laws if (1) the San Francisco District Attorney files a petition in the juvenile court alleging that the minor is a person within the description of Section 602(a) of the California Welfare and Institutions Code and the juvenile court sustains a felony charge based on the petition; (2) the San Francisco Superior Court makes a finding of probable cause after the District Attorney directly files criminal charges against the minor in adult criminal court; or (3) the San Francisco Superior Court determines that the minor is unfit to be tried in juvenile court, the minor is certified to adult criminal court, and the Superior Court makes a finding of probable cause in adult criminal court emphasis added) (San Francisco Ordinance 228-09 2009).

If the juvenile court judge found probable cause to believe the youth committed a felony offense or the District Attorney transferred the youth’s case to adult court where a criminal court judge made a probable cause determination, the youth could be referred to ICE upon suspicion that he or she had violated federal civil immigration laws. The proposed ordinance passed with an 8-3 majority vote of the Board of Supervisors, who overrode Newsom’s subsequent veto of the amendment (San Francisco Ordinance Amending 12H.2, 12H.2-1, 12H.3 2009; Gordon 2009; Knight 2009c). However, Newsom instructed the Juvenile Probation Department to ignore the new law, and publicly held that the Supervisor’s amendment conflicted with superseding state and federal law (La Ganga 2009; Gordon 2011).
In passing the 2008 amendment, the Supervisors’ required that immigrant youth be given an opportunity to exercise their due process rights and defend themselves in courts against criminal allegations before the initiation of ICE removal proceedings (See Figure 4.3). The respondent working in San Francisco as an immigrant-rights advocate suggested that the Board of Supervisor biographies explained their breach with Newsom.

[Supervisor] David Campos [was formerly] undocumented… We had Supervisors who were from immigrant backgrounds. David Chu did asylum work. Avalos comes from an immigrant-rights family… same thing with Eric Mar.

The clash between the Board of Supervisors and San Francisco public administrators shapes the causal narrative explaining the second contraction of sanctuary in San Francisco. In spite of the triple-homicide, the Supervisors opposed revision of the juvenile referral policy. And rather than build political support to amend the sanctuary ordinance by appealing to San Francisco voters or sympathetic Supervisors, Newsom changed the referral policy through administrative channels. He issued a directive to the

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36 The Asian Law Caucus created this graphic for a PowerPoint presentation, which a Caucus representative provided the author. In 2008, Newsom ordered the San Francisco Juvenile Probation Agency to refer arrested children to ICE after the processing interview with a juvenile probation officer (the top box in the diagram). Conversely, the Board of Supervisors amendment to the sanctuary policy (San Francisco Ordinance 228-09) forbade ICE referrals for immigrant children until the detention hearing (the third box from the top) where the judge made a preliminary determination as to whether there was probable cause to believe that the child committed the offense for which he or she was charged.
chief of the Juvenile Probation politics to apply the 1992 amendment permitting referral to all unauthorized youth booked on felony charges. He later ignored a compromise amendment by the Supervisors, passed by a veto-proof majority, which permitted juvenile referral following some form of judicial review. Juvenile Probation followed Newsom’s directive until Newsom left office in 2010, at which point the Department pivoted to a policy largely adhering to the Supervisors’ 2008 amendment upon orders from Newsom’s successor, Mayor Ed Lee (Gordon 2011). This event sequence offers evidence in support of the contention that between 2008 and Newsom’s departure in 2010, the political orientation of the city in general had little influence on administrative policy and practice. San Francisco’s administrative policy regarding juvenile referral came to align with that of ICE and DHS despite broad opposition this alignment within the city limits.

IV. Discussion: Ideology, Public Administration, and Sanctuary Contraction

Table 4.4: Security in San Francisco

<table>
<thead>
<tr>
<th>Internal Political Field</th>
<th>External Political Field</th>
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<tbody>
<tr>
<td>Ideology</td>
<td>Unauthorized Immigrant Integration</td>
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<tr>
<td></td>
<td>Criminal-Alien Threat</td>
</tr>
<tr>
<td>Autonomous Crime Governance</td>
<td>Integrated Security Governance</td>
</tr>
<tr>
<td>Administration</td>
<td>San Francisco Mayor’s Office</td>
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<td></td>
<td>US Department of Homeland Security (DOJ)</td>
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<tr>
<td></td>
<td>San Francisco Juvenile Probation</td>
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<td></td>
<td>Immigration and Customs Enforcement (ICE)</td>
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<td></td>
<td>San Francisco City Attorney</td>
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<td></td>
<td>US Department of Justice, Office of the United States Attorney</td>
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</tbody>
</table>

After explaining the reemergence of immigrant sanctuary in the Homeland Security era, is it also possible to convincingly explain one sanctuary city’s momentary lapse? At this point in the study it should be clear that the contraction of immigrant sanctuary protection in San Francisco should not be carelessly attributed to a change in political ideology. Though political ideology may inform broad generalizations about subnational immigration policy, it falls short when used to explain subnational immigration enforcement policy. Just as it proved inadequate in explaining the proliferation of immigrant sanctuary in 2008, it brings little explanatory power to the specific case of immigrant sanctuary contraction in San Francisco.
Data from the case study indicates that contraction of immigrant sanctuary in 2008 did not correspond with a change in city administration or the city Board of Supervisors. There is no record of a shift in partisan distribution in the three months between the sanctuary ad campaign and the order from Newsom to revise the Juvenile Probation Department’s policy regarding juvenile immigrant referral. Instead, all of the available indicators suggest that “political ideology” and public attitudes toward immigrant sanctuary held constant through the moment of policy change. There is even evidence that public support for sanctuary grew over the course of the conflict. David Campos and John Avalos, the two most vocal opponents of revisions to the sanctuary policy, reached office in November of 2008, just after the summer clash between the Newsom administration and federal officials. Campos and Avalos lead the successful effort to override Newsom’s veto of the Board’s sanctuary amendment in 2009, which required judicial review of criminal charges prior to ICE referral (La Ganga 2009). Moreover, the historical record shows no evidence of an organized local contingent advocating for the termination of the city’s sanctuary policy. Evidence of organized advocacy instead points entirely in the opposite direction. The historical record shows anti-ICE protests at San Francisco City Hall in 2007 (Rubenstein 2007), continuous lobbying by immigrant-rights lobbyists through 2009, as well as the Supervisors’ opposition to Newsom’s unilateral administrative actions. In 2009, I attended a hearing on immigration enforcement for the San Francisco Human Rights Commission at City Hall, held by members of the Board of Supervisors. In two-and-a-half hours of testimony there was not a single speaker that voiced support for cooperation between local police and ICE. All of them denounced ICE tactics in the city and alleged that the tactics had a destructive impact on San Francisco families. In short, there is no evidence that public attitudes in San Francisco changed in 2008 to become more favorable toward collaboration with ICE. The historical record shows, however, that the policy and practice of sanctuary in San Francisco changed considerably. All of this leaves an obvious question. If internal politics supported the sanctuary status quo, why contraction?

Table 4.5: Sanctuary Contraction in San Francisco (1992, 2008)

<table>
<thead>
<tr>
<th></th>
<th>1992</th>
<th>2008</th>
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<tbody>
<tr>
<td>Criminal Exception</td>
<td>Unauthorized adult immigrants booked on felony charges</td>
<td>Unauthorized youth immigrants booked on a felony charges</td>
</tr>
<tr>
<td>Triggering Event</td>
<td>Immigration Act of 1990</td>
<td>Triple-homicide by unauthorized immigrants in San Francisco</td>
</tr>
<tr>
<td>Source of External Administrative Pressure</td>
<td>State Government: California Office of Criminal Justice Planning; California Attorney General</td>
<td>Federal Government: Immigration and Customs Enforcement; US Department of Justice</td>
</tr>
<tr>
<td>Mechanism for Sanctuary Revision</td>
<td>Legislative (San Francisco Board of Supervisors)</td>
<td>Administrative (Office of the Mayor, Juvenile Probation Department)</td>
</tr>
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</table>
The general answer is that external forces dictated internal administrative revision of sanctuary policy. The triple-homicide of a father and his two sons attracted state and local media attention and motivated a flurry of stories and accusations regarding the city’s protection of wayward immigrant youth. Stanley Cohen has referred to this sort of evolving narrative of rampant criminal activity by a marginal social group as the “deviance amplification spiral,” where an initial deviant act creates a sensitization among the public, which the media seeks to exploit.

When the general cueing effect produced by sensitization is combined with the type of free association in the ‘It’s Not Only This’ theme, the result is that a number of other deviants are drawn into the same sensitizing net. In the phase after the inventory, other targets become more visible and, hence, candidates for social control. These targets are not, of course, chosen randomly but from groups already structurally vulnerable to social control (2002, 64).

Remarkably, the historical narrative shows sensitization to immigrant violence after the murders to be largely limited to constituencies outside of San Francisco. Consequently, unlike sanctuary contraction in 1992, in which state administrators negotiated with the Board of Supervisors and Mayor Jordan to amend the original sanctuary ordinance, in 2008, Mayor Newsom revised the city’s sanctuary practice through backdoor administrative channels.

Why does any of this matter in the fields of sociology and criminology? From a criminological standpoint, the case study sheds additional light on the process of “governing through crime” (Simon 2007). While the federal government may be successful in reducing the scope of immigrant sanctuary, it cannot easily make sanctuaries disappear. Though compromised, sanctuary protection survived in San Francisco for unauthorized immigrants not in contact with the criminal justice system and for those subject to misdemeanor rather than felony arrest and conviction. Despite contraction in 2008, sanctuary protection still applies to most of the unauthorized immigrants arrested in San Francisco. Evidence from the case study thus shows that the risk or law-and-order ideologies that accompany Governing Through Crime initiatives can be rebutted and reshaped to precisely account for their applicability to the jurisdiction in question. Such rebuttals still serve as a deterrent against efforts to cultivate an ambient or “globalized” risk sensibility (Girling et al. 2000).

The continued insistence upon “place-based” assessments of risk despite the power of the Homeland Security model is evidenced both in this case study and more generally in the proliferation of immigrant sanctuary after 2001 (Chapter 3). The San Francisco case study in particular shows “globalized” risk to be an important and effective mechanism in the Homeland Security era, but the case also reveals a countervailing ideology of “place” that moderates sanctuary contraction and likely the degree of immigration enforcement cooperation permitted by a subnational jurisdiction.
Chapter 5

Conclusion:

accounting for collective resistance in the field of crime governance

Introduction

This study began with a curiosity as to why a large group of state and local jurisdictions passed immigrant sanctuary policy actions during a period in which the American public appeared to overwhelmingly support the Homeland Security model. The contemporary immigrant sanctuary movement not only defied a paradigm shift in security administration in 2001 that made cooperation between federal security agencies and subnational police departments a common-sense prerequisite for strong domestic security, but also law-and-order ideology, which has permeated liberal and conservative jurisdictions alike over the past 50 years. I hoped to discover the sentiments that overcame these two seemingly totalizing ideologies, motivating a renewed interest in immigrant sanctuary policy and practice. My search for the ideas that upended these ideologies raised other questions. How are we to understand immigrant sanctuary as a sociological object rather than a “folk notion” or fuzzy conceptualization circulated in popular culture (Wacquant 1997)? How can the notion of the immigrant sanctuary be standardized for purposes of comparative analysis?

The literature does not offer credible answers. Immigration scholars have shown a general interest in explaining variation in subnational immigration policy in general, but not a specific interest in causal assessment of immigrant sanctuary. Consequently, the causal explanations of immigrant sanctuary are derivative of aggregate assessments of immigration policies at the subnational level. I argued that immigrant sanctuary deserves greater regard as sociological object given that it has served as the primary obstacle to a fundamental reformulation of the role of the police department after 2001. In passing immigrant sanctuary policy, sanctuary jurisdictions restrict police from serving as an
enforcement arm of the federal government, choosing instead to concentrate authority over police at the state, county, city, and neighborhood levels, and far from political elites and federal bureaucrats in Washington, DC. This orientation aligns with the principles underlying the community policing model, which rose to prominence in the past 25 years and has been credited for playing a significant role in the precipitous fall in crime rates across the country in the 1990s (Skogan 2006).

The significance of immigrant sanctuary also lies in its ability to reframe state-sponsored punishment as a sequence of action and reaction and as subject to intense contestation, rather than as an institutional action passively received by docile subjects. The enduring nature of the struggle over punishment is evident in Chapter 4, which depicts a sequence of battles between state actors at various levels of government over San Francisco’s long-standing refusal to refer arrested immigrant youth for deportation. The Bush administration’s pursuit of immigration enforcement partnerships with state and local police inspired the San Francisco’s mayor’s immigrant sanctuary television advertisements. The ad campaign, in turn, inspired federal officials to direct administrative pressure on the mayor, and the mayor eventually came to battle the Board of Supervisors in his attempts to remove sanctuary protection for arrested immigrant youth. This yearlong sequence in San Francisco in 2008 shows the iterative nature of contestation over crime governance. In conducting the study, I have developed frameworks for the study of contestation across the field of crime governance to support future research on organized resistance to punishment. Remarkably, the study of systematic resistance to punishment is a neglected subject in theoretical criminology. In writing the dissertation, I hoped to answer the specific question of why subnational jurisdictions rose to challenge the Homeland Security model, but also to motivate sustained engagement with resistance-oriented themes and concepts such as sanctuary, enforcement abstinence, and social movement in the field of punishment.

After developing immigrant sanctuary as a sociological object carving a path to the study of contestation in crime governance, the original questions remains. Why did immigrant sanctuary resurface in the Homeland Security era? In analyzing the discourse across immigrant sanctuary policy, I find that while pro-immigrant sentiments associated with traditional liberal ideology figure prominently in the population of immigrant sanctuary policy actions, a discourse extolling the value of autonomous local crime governance – a discourse associated with conservative political ideology – was just as prominent. Moreover, I found evidence indicating that the presence of this sentiment translated to stronger sanctuary policies as compared to other rationales.

The power of this sentiment tells a bit more about contestation in crime governance. Not only does such contestation have precedent in American social life, it also sometimes serves as a philosophy of governance, at which point the combative subnational stance becomes an operating principle rather than merely a reactionary tactic.

My hope is that collectively these insights provide ideas and frameworks from which to explore resistance to punishment as a sociological event routinely coupled with the broad-based punitive initiatives that mark our unique times.
I. Findings

An inquiry into the resurgence of the immigrant sanctuary movement after 2001 raises a number of ancillary questions. What is immigrant sanctuary a case of? How are immigrant sanctuaries established, and how are they sustained? Findings from the dissertation provide a wealth of evidence strengthening the sociological and socio-legal understanding of the quality and scope of contestation in crime governance while also accounting for the public sentiments driving the proliferation of immigrant sanctuary policy between 2001 and 2008.

- The quality and scope of crime governance is subject to an ongoing and systematic struggle across social groups, subnational governments, and the federal government. “Sanctuary” is one manifestation of such contestation and is triggered by formal and informal rules of enforcement abstinence.

The struggle between state and local governments and the federal government in the case of immigrant sanctuary has historical precedent in the Prohibition enforcement efforts of the 1920s. When the federal government attempted to collaborate with state and local governments to enforce Prohibition (which the vast majority of states had approved through ratification of the 18th Amendment) federal officials frequently failed. For a variety of reasons, including disagreements about the risks posed by liquor consumption and the appropriateness of criminalization, the cost of enforcement, and the vast amounts of money to be made in black market liquor sales, many subnational governments abstained from enforcement. Moreover, many residents refused to aid police in enforcement and some systematically alerted liquor traffickers to police investigations and pending raids.

Comparison of the Prohibition and immigrant sanctuary cases situates immigrant sanctuary as a sociological object with core characteristics comparable to other social forms. Immigrant sanctuaries have three characteristics shared with other sanctuaries from enforcement such as those established during Prohibition: a) they are a function of group behavior, b) they are intended to insulate all or a subset of group members from an overarching criminal enforcement initiative, and c) they operate through rules of enforcement abstinence.

In Chapter 2, I pose the rule of enforcement abstinence (the second of the three characteristics) as the mechanism both triggering and shaping organized resistance to state-sponsored punishment. Social groups and governments establish the rule formally or informally by way of community norms, administrative norms, administrative policy, or statute. Identification of these sanctuary mechanisms lends insight into how sanctuaries operate, compares mechanisms and corresponding outcomes in the Prohibition and immigrant sanctuary cases and provides evidence in support of the theory that sanctuary mechanisms established apart from formal institutional procedures find considerable power in their anonymity. The federal government found it difficult to identify the social engines driving communal and administrative sanctuaries of the Prohibition era (communal and administrative norms), and at one point contemplated federal criminal penalties for citizens who failed to report personal knowledge of liquor trafficking (New York Times 1931). Conversely, the formal policy-based quality of
immigrant sanctuaries in the modern era, exemplified in the San Francisco case in Chapter 4, allow the federal government to direct its administrative and ideological resources at readily identifiable subnational dissenters. These dissenters have, in codifying rules of enforcement abstinence, in effect raised their hands to take responsibility for instituting rules of enforcement abstinence.

The rule of enforcement abstinence along with the full sanctuary model provide helpful frameworks for modeling resistance to punishment in the American context and demonstrate the pitfalls of taking the United States as a single case for empirical analysis or a uniformly punitive culture across the several layers of government. The model shows the potential for aggressive ideological contestation across layers of government regarding the meaning of risk, threat, and security, and likewise adds precision to our understanding of the structure and scope of security administration. Moreover, in placing immigrant sanctuary in historical and sociological context, I have shown that immigrant sanctuaries are not anomalies, but rather the most recent example of Americans utilizing the federalist structure of governance to mobilize against unpopular punitive projects. This mobilization occurs by way of rules of enforcement abstinence dictated by the quality of federalist governance at the time of the enforcement initiative and the laws establishing the shape of the overarching enforcement initiative.

The dissertation’s presentation of the analytical concept of sanctuary, the conceptualization of sanctuary mechanisms, the association of sanctuary mechanisms to sanctuary outcomes, and the identification of the legal contexts that shape sanctuary forms collectively provide a rich framework for analyzing organized resistance by subnational governments and social groups to overarching enforcement initiatives.

- **Immigrant sanctuaries stem from a latent political philosophy that assigns an inherent value to independent rather than interdependent crime governance.**

The causal literature on immigrant sanctuary is remarkably thin and largely derivative of aggregate causal analysis of subnational immigration policy. The findings from this literature determine immigrant sanctuary and all subnational policies benefitting immigrants to be the product of liberal ideology. I focus narrowly on immigrant sanctuary policy through a strategy of triangulation and determine that immigrant sanctuary derives primarily from a trans-partisan sensibility regarding crime governance that reflects core conservative rather than liberal political ideology. I label this sensibility *combative crime governance*, as it reflects a belief among many subnational governments in an inherent value in taking a combative rather than a cooperative stance toward overarching federal enforcement initiatives that rely heavily on the participation of state and local police.

*Combative crime governance* is a political philosophy rather than a practice. In Chapter 3, I introduced combative crime governance as both a discourse and a specific cultural and political orientation, distinct from other motivations for immigrant sanctuary such as the improvement of immigrant welfare or the pursuit of immigrant equality. All sanctuary policies, regardless of the sentiment driving their enactment, place restrictions on police cooperation with ICE and Homeland Security. However, the combative crime governance sentiment is unique in that it is build upon the idea that independent rather than interdependent crime and security governance is the best model for security
administration, regardless of the substance of the enforcement initiative. Combative crime governance is a principle that can be applied to drug enforcement or any other subfield of domestic security. It is not subject-specific, but instead a manifesto in favor of local control of crime governance, emergent in the immigrant sanctuary movement and also appearing in the concurrent movement among many state and local jurisdictions to decriminalize marijuana (Gostin 2005; Garvey 2012; Lyman 2014).

I designed the discourse analysis in Chapter 3 that produced the combative crime governance thesis using Swidler’s framework for the role and function of culture in social movements. The framework helps to explain the “meaning making” power of the rationales offered in immigrant sanctuary policies enacted between 2001 and 2008, specifically in relation to the dominant ideology of immigration security propagated by the Department of Homeland Security and its affiliates. The sanctuary rationales expressed in the policy preambles represent a growing sentiment among subnational jurisdictions materializing in a form Swidler identifies as “discourse.” However, the combative crime governance discourse is not so coherent and intentional as to be characterized as ideology. And though the discourse is decentralized and presently deployed more for expression than for political mobilization, it poses a potential obstacle to the Homeland Security model by challenging, “deeply held relationships of meaning… in the culture universe.” Swidler argues that these sorts of pre-ideological manifestations of culture are the true roots of social movements. In the case of immigrant sanctuary, the combative crime governance discourse looks to challenge the federal discourse of domestic security “[by] redefining its terms” (34). When used in this capacity discourses are more than mere symbolism, but less calculated and developed than the ideologies deployed in top-down state-sponsored criminal enforcement initiatives. I am suggesting then that the immigrant sanctuary policy movement is itself part of a broader discursive challenge to the federal government theory of security after 2001, a theory built around the idea of integrated security administration across federal and subnational government as the ideal form of security governance.

This discursive challenge to the Homeland Security model – an alternative claim regarding the structural path to effective security governance – bears upon criminological study of the structure of crime governance. In contrast to the extant studies characterizing the “punitive turn” across American society and expanded criminalization and punishment at the federal level (Garland 2001; Beckett 1999; Miller 2008), or those focusing on the unique structure and quality of punishment at the state and local level (Zimring and Hawkins 1994; Lynch 2009; Phelps 2013), I shift the analytical focus to contestation between governments regarding the proper role of police. The key analytic point of the combative crime governance thesis is not that subnational jurisdictions question police participation in immigration enforcement in particular, but that they question enforcement cooperation in principle. This distinction aligns the concept of combative crime governance with that of combative federalism in legal scholarship (Bulman-Pozen and Gerken 2009). Both are meant to identify the sentiment that cooperative governance is inherently problematic, whether it be for immigration enforcement, drug enforcement, Prohibition enforcement, or an enforcement initiative against online gambling. Enforcement cooperation is thought to empower federal officials, setting the table for the abuse of power in the field of security governance. While this position is not likely to be absolute in any one jurisdiction, it is strongly held
in many and spreading to unexpected corners of American society as the credibility of federal power in domestic security administration is increasingly questioned across the political spectrum (Silver 2013; Johnson 2012).

In an interview with *Albuquerque Journal*, Tom Ridge, the first secretary of the Department of Homeland Security and an appointee of President George W. Bush, expressed dismay at the administrative reach of the agency in 2014. “The last thing in the world you want is the Department of Homeland Security involved in a day-to-day basis with traditional and state and local enforcement… It’s not their role and function, unless it’s related to terrorist activity.” In the same article, a retired sergeant of the Albuquerque Police Department attested to the blurred lines between DHS and local police authority in the city of Albuquerque. “It seems like Homeland Security is taking more of a local law enforcement role… I’m not a conspiracy theorist, but at least here, we are moving more toward a national police force. Homeland Security is involved with a lot of little things around town” (Coleman 2014).

Criminal law scholar William Stuntz argued in the book *Collapse of American Criminal Justice* that diminished local control of the police department and crime policy is the primary source of dysfunction in the criminal justice system. In his view, only a radical push for local democratic control of police and crime policy – with “local” understood to be the city relative to the county and state, but also marginalized city neighborhoods in relation to well-resourced communities in the same jurisdiction – can bring the reforms necessary for a credible and well-functioning system of crime governance.

Today’s justice system is more centralized, more legalized, more bureaucratized – and more devoted to the use of hard power. Like the constabulatories of the European empires that nineteenth-century immigrants fled, urban police forces in late twentieth- and early twenty-first century America are professional bureaucracies, not sources of local political patronage. That fact matters more than the presence or absence of black police chiefs. Officers’ relationships with residents of the communities they patrol are defined more by professional detachment than by personal engagement. (The rise of community policing over the past twenty-five years has begun to reverse that trend.) Today as in the past most urban district attorneys and trial judges are elected county-wide, but the makeup of metropolitan county electorates has changed, thanks to the rising numbers of voters from suburbs and well-off city neighborhoods (Stuntz 2011).

The Homeland Security model is a more advanced stage of centralization than that described above. The federal project of outsourcing immigration enforcement to state and local police transferred a substantial amount of control of city police departments, not from the city to the county, but from cities, counties, and states to the federal government. Fears about this shift in power over state and local police, prosecutors, jails, and prisons are represented in the combative crime governance discourses across the population of immigrant sanctuary policies. The momentum of the community policing movement, referenced in passing by Stuntz, cannot be sustained if the Homeland Security model is readily accepted in every corner of American life. Evidence from Chapter 3 suggests that the contemporary immigrant sanctuary movement was intended in significant part to articulate a preference for the local autonomy model over the Homeland Security model.

- *Immigrant sanctuary is one response to the federal strategy of “governing immigration through crime.” However, the formal quality of immigrant sanctuary*
mechanisms makes immigrant sanctuaries vulnerable to federal challenge and likely to be revised and/or contracted in response to pressure from external political actors and institutions.

The case study of San Francisco shows immigrant sanctuary to be a response to top-down criminalization efforts, but vulnerable given their declarative quality. Immigrant sanctuaries restrict police participation in federal immigration enforcement efforts and the federal government may and often does strike back. In San Francisco, federal officials conducted immigration sweeps across the Bay Area after the city aired immigrant sanctuary ads on regional television. Though local officials initially defended the city’s sanctuary policy and practice, the mayor amended the policy at various points in response to criticism. Thus, in addition to offering insight into the structure and mechanisms shaping contestation between local governments and the federal government, the dissertation illustrates the process of contestation and the viability of policy-based sanctuaries throughout this process. Sanctuaries arising through formal processes (i.e., legislative or administrative) attract the attention of powerful external actors. Data from the case study show that even if these actors fail to change the disposition of the local population toward the overarching enforcement effort, they can still manipulate internal administrators by threatening to alienate them on the state and national stage, diminishing their political viability outside of the sanctuary jurisdiction. Despite the legal promise of autonomy from the federal government, the public administrators of immigrant sanctuary remain susceptible to directed federal and state ideological and administrative influence. Elite public administrators in San Francisco ultimately took a “bend, but don’t break” approach to the policy in response to federal administrative pressure. The mayor, Gavin Newsom, ordered that the San Francisco Juvenile Probation Department end the practice of shielding arrested immigrant youth from ICE referral, choosing to revise the policy in way that demonstrated to the external public his own concerns about reports of transnational criminal activity among the city’s immigrant youth.

The iterative quality of immigrant sanctuaries stemming from formal state processes show them it to be subject to external ideologies and coercion from external security administrations, but also buoyed by a commitment among local populations to a distinction between local crime governance and federal security administration.

II. Recommendations for Future Research

When situated in relation to the structure of crime governance, the subject of immigrant sanctuary can serve as the starting point for a number of compelling inquiries at the intersection of sociology and criminology. The lines of inquiry I propose in the space below are generally intended to lend additional support to the concept of sanctuary and advance understanding of the nature of contestation between social groups and governments over questions of risk, security, and just punishment.

The Penal Sanctuary
The study of sanctuary across the three forms -- communal, administrative, and statutory – provides insight into resistance to punishment as well as inter-group contestation regarding the structure of crime governance.

Table 5.1: Penal Sanctuary Forms

<table>
<thead>
<tr>
<th>Sanctuary Form</th>
<th>Sanctuary Location</th>
<th>Enforcement Initiative</th>
<th>Mechanisms (i.e., rules of enforcement abstinence)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory</td>
<td>The subnational jurisdiction</td>
<td>Immigration enforcement via ICE/DHS</td>
<td>Resolution, ordinance, or statute</td>
</tr>
<tr>
<td>Administrative</td>
<td>The subnational jurisdiction</td>
<td>Prohibition</td>
<td>Informal community rules/norms of enforcement abstinence</td>
</tr>
<tr>
<td></td>
<td>The “Emerald Triangle” (Northern California)</td>
<td>War on Drugs</td>
<td>Informal administrative rules/norms of enforcement abstinence</td>
</tr>
<tr>
<td></td>
<td>Poor urban neighborhood</td>
<td>Routine enforcement of the criminal code</td>
<td>Jury nullification</td>
</tr>
<tr>
<td></td>
<td>Mafia/ gang Police via the “Blue Wall of Silence”</td>
<td></td>
<td>Witness noncooperation</td>
</tr>
</tbody>
</table>

For obvious reasons, government bureaucrats and criminal justice officials continue to insist that collective efforts at enforcement abstinence are exceptional and uniquely dangerous. But contrary to this account and popular opinion, American society is full of penal sanctuaries, which tend to grow from the erosion of public trust in specific forms of criminal enforcement and a corresponding desire to insulate select relationships

37 The Emerald Triangle is a tri-county marijuana production hub in Northern California that has been largely insulated from the War on Drugs, despite aggressive federal enforcement efforts.
and communities from overarching security initiatives. The investigation of enforcement abstinence in the nation’s past and present provides analytical leverage to better understand the legal, structural, and cultural roots of this particular type of dysfunction in crime governance.

Advocacy for “penal” sanctuary (Table 5.1) can even be found in a number of prescriptive projects in legal scholarship that call for communal norms of enforcement abstinence. Legal scholars have advocated for race-based jury nullification (Butler 1995) and mass plea-refusal (Alexander 2012) in response to the War on Drugs, and “complete refusal to call the police to report crime or participate in local prosecutions” (i.e., “Silencio!”) in response to state and local police collaboration with ICE for purposes of immigration enforcement (Chapin 2011). After spending decades unraveling the mass incarceration phenomenon, researchers in sociology, criminology, and socio-legal studies should, in turn, invest in analytical projects that build a literature on obstinate (Murphy 2008) social, administrative, and policy responses to perceived excess in state-sponsored punishment. At present, the empirical work on such subjects is topical and disconnected. My hope is that the conceptual contributions of the dissertation can at least give a sense of the analytical potential of a resistance-oriented study of punishment.

Marijuana Decriminalization

Marijuana decriminalization shares a number of the characteristics of the immigrant sanctuary movement after 2001. Many of the jurisdictions decriminalizing marijuana use and distribution fall under the conception of sanctuary articulated in Chapter 2 as there is evidence that these jurisdictions a) insulate a subset of group members from punishment for marijuana trafficking and b) provide this insulation via rules requiring abstinence from the enforcement of federal marijuana laws. The jurisdictions meeting these qualifications also challenge the Homeland Security model and the presumption that the local, state, and national governments and/or populations hold identical conceptions of crime and social threat. The study of the marijuana decriminalization movement relative to the immigrant sanctuary movements would provide additional insight on the relationship between the Homeland Security model, the strength of combative crime governance orientation, and the particular characteristics of communal, administrative, and statutory sanctuary. All of these sanctuary forms can be found in the recent history of marijuana decriminalization at the subnational level.

Marijuana decriminalization and its supporting ideological and administrative features can be studied nationally or by way of case study. Northern California shows a compelling case in a region commonly referred to as the “Emerald Triangle.” The Emerald Triangle is a tri-county region in which marijuana has served as a primary source of revenue for several decades (Leeper et al. 1990). Despite intense federal efforts to eliminate marijuana trafficking in the region, the Emerald Triangle continues to serve as a national hub for marijuana production, a substantial amount of which occurs on federal land (Corva 2012). California statute SB 420, a state statute enacted in 2003 “pursuant to the powers reserved to the State of California and its people under the Tenth Amendment of the United States Constitution (SB 420 2003),” permitted counties to set their own limits for household marijuana production. Researchers have argued that
enforcement cooperation between federal agents and county police declined upon passage of this decriminalization initiative. Similar to the implications of the circumstances of enforcement in the Prohibition era when local police found themselves in control of marijuana regulation, they opted to scale back enforcement (Corva 2012). What was the quality of democratic control over police at the height of the War on Drugs in rural Northern California as compared to Oakland or Chicago? Why did the federal War on Drugs fail to penetrate the Emerald Triangle despite its success in securing enthusiastic cooperation among subnational governments throughout most of the country, particularly in urban settings? What factors determine the existence, quality, and sustainability of rules of enforcement cooperation and abstinence in each of these socio-political contexts?

The study of marijuana decriminalization has the potential to give further insight into the relationship between collective resistance to punishment (by way of the sanctuary analytic) and the political principle of local democratic control of police.

III. Implications

Combative attitudes toward collaborative immigration enforcement coincide with a rise in skepticism toward security administration among the libertarian right and the apex of community policing advocacy on the left. The Homeland Security model of collaborative security governance falls in tension with both perspectives.

There is an opportunity in this unique political moment to enact policy facilitating the fundamental reform of criminal justice in the US, reform that pushes well beyond the more effective reintegration of released prisoners and marginal reduction in the prison population. There is an opportunity to further decentralize crime governance by aggressively promoting the value of local democratic control of criminal justice and opening the door to systems of punishment oriented to local rather than state, national, and global problems and moral panics. There is an opportunity in an increasingly globalized society to protect against criminalization in vogue. Ironically, this opportunity arrives by way of a strand of conservative political thought and jurisprudence that has maintained an unyielding dedication to state-government autonomy. The federal government’s ongoing frustration in challenging the marijuana decriminalization movement is merely one example of the role the law of federalism now plays in facilitating recently inconceivable criminal justice reforms.

On the other end of the political spectrum, the Democratic left maintains an ostensible commitment to criminal justice reform, but lacks a clear ideological basis from which to advocate for a radical change in the structure and scope of crime governance. This is despite the mountain of evidence showing poor Americans cycling through a penal dystopia – presently two million incarcerated and an additional 4.7 million on probation and parole – for the past half century (Western 2006). It may be the ascendance of a particular strand of conservative ideology that facilitates a trans-partisan effort to break the structural mold of contemporary crime governance and drastically reduce its scope.
Conclusion

The findings of the dissertation situate immigrant sanctuary squarely within the study of punishment. I have shown immigrant sanctuary as an extension of the history of the relationship between the federal and subnational governments regarding crime governance, as a function of strong public support for the principle of independent rather than interdependent crime governance, as a social artifact vulnerable to external interference, and as having comparable cases in American social life. In the process, I have also set immigrant sanctuary policy apart from other subnational immigration policies and argued its unique sociological and criminological relevance.

The study of immigrant sanctuary advances our empirical and conceptual understanding of the Homeland Security era, improves our knowledge of crime governance in general, and it reveals unexplored dimensions of the relationship between the federal governments and subnational governments. These dimensions, namely inter-government conflict over the quality and scope of crime governance, have long been overlooked and now more than ever demand sustained scrutiny given the emerging political landscape in which substantial segments of the political left and right have forged a shared cynicism regarding federal power in security administration.
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### Appendix A: Sanctuary Policy Actions (2001-2008)

<table>
<thead>
<tr>
<th>State</th>
<th>City 1</th>
<th>City 2</th>
<th>City 3</th>
<th>City 4</th>
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<tbody>
<tr>
<td>AK</td>
<td>Anchorage</td>
<td>Sitka</td>
<td>Haines Borough</td>
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<td>AZ</td>
<td>Chandler</td>
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<td>CA</td>
<td>San Francisco</td>
<td>Watsonville</td>
<td>Fresno</td>
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<td>Garden Grove</td>
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<td>Richmond 1</td>
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<td>CA</td>
<td>San Jose 1</td>
<td>Berkeley</td>
<td>East Palo Alto</td>
<td>Los Angeles</td>
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<td>Oakland</td>
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<td>Richmond 2</td>
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<td>Santa Cruz</td>
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<td>San Diego</td>
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<td>CN</td>
<td>New Haven</td>
<td>Hartford 1</td>
<td>Hartford 2</td>
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<td>CO</td>
<td>Durango</td>
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<td>Cicero</td>
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<td>County</td>
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<td>Hightstown Borough</td>
<td>Newark</td>
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<tr>
<td>NM</td>
<td>Rio Arriba</td>
<td>Albuquerque 1</td>
<td>Albuquerque 2</td>
<td>State of New Mexico</td>
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<tr>
<td>NV</td>
<td>Elko</td>
<td>Silver City</td>
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<td>NY</td>
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<td>Syracuse</td>
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<td>OR</td>
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<tr>
<td>PA</td>
<td>Philadelphia 1</td>
<td>Philadelphia 2</td>
<td>Pittsburgh</td>
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</table>
The findings in Chapter 3 are based on an original dataset comprised of immigrant sanctuary policy actions taken between 2001 and 2008. In the following paragraphs I discuss the original source for the policy actions, the criteria for ultimate inclusion in the population, and coding schemes for immigration enforcement restriction levels and sanctuary policy rationales. In shaping the coding scheme and compiling the population of policies for the dataset, I personally reviewed every policy in the population multiple times and entered each policy and code into the dataset upon review and analysis. I drafted a codebook to record the codes associated with the variables in the sanctuary dataset.

Source Material

The National immigration Law Center (NILC) published a chart in 2009 titled, “Laws, Resolutions, and Policies Instituted Across the U.S. Limiting Enforcement of Immigration Laws by State and Local Authorities” (NILC 2009). NILC claimed that the publication accounted for all of the immigrant sanctuary policies in the US. The chart includes the name of the subnational jurisdiction in which each policy was enacted, the institution enacting the policy, the date of policy enactment, a brief description of each policy’s contents, and an Internet link to the policy. Many of the links were functional, but many produced an error message. If I did not locate a policy action through the link, I found it through an online search – either through a search engine or through the government website of the identified sanctuary jurisdiction.

I called NILC to obtain more information on how the list of immigrant sanctuary policy actions had been compiled. NILC referred me to a retired employee who had served as “Managing Attorney for Immigration Policy” in Washington, DC. In 2011, I called the attorney and had an extensive conversation about the process by which she had created the published chart.

The NILC attorney had directed a team of researchers in the production of the list of policy actions. The team conducted Internet searches of immigrant sanctuary policies and contacted immigration non-profit organizations in the course of their research. They located copies of the policy through both the online searches and with the help of the local government offices. The attorney told me that her ultimate goal was to create a comprehensive list of the “limited enforcement” policies in the US.

She also that the term “sanctuary” was misleading in that the jurisdictions passing limited enforcement policy did not actually protect immigrants from all forms of immigration.
enforcement action, but merely restricted local officials from assisting the federal government in immigration enforcement. She believed that many immigrants did not realize that the federal government had full authority to enter sanctuary jurisdictions to conduct immigration enforcement actions.

Criteria for Selection

The objects of analysis in Chapter 3 are policy actions passed between 2001 and 2008 that restrict the participation of subnational governments in immigration enforcement beyond the scope of participation permitted by the federal government. The federal government solicits the participation of state and local governments in immigration enforcement, but also restricts the degree of participation. Thus, a subnational policy establishing a restriction on immigration enforcement that matches but does not exceed the restriction dictated by the federal government will not provide meaningful sanctuary protection. However, a policy establishing a restriction that advances beyond the limits set by the federal government in effect obstructs federal attempts to utilize state and local police in the renewed immigration enforcement effort.

I included all sanctuary policies passed in the studied interval, even if a policy was one of multiple passed by the same jurisdiction. Only one jurisdiction in the dataset passed more than two policies (Seattle, 3), and seven jurisdictions passed two.

There are three types of policy actions in the sanctuary dataset: ordinances, resolutions, and administrative policies. My objective in including all sanctuary actions passed between 2001 and 2008 is to show the full scope of the subnational policy activity restricting cooperation between subnational police and the Immigration and Customs Enforcement agency as well as the sentiments underlying the policy movement.

Degree of Restriction

My analysis showed that immigrant sanctuary policies fall along a spectrum in terms of the degree to which these policies restrict participation in immigration enforcement. I explain the spectrum of restrictions in Chapter 3. I ultimately excluded several policy actions listed in the NILC publication because the policy either did not pertain directly to immigration enforcement or lacked an articulated restriction on state or local participation in immigration enforcement, serving exclusively as a general expression of displeasure. I explain the restriction coding-scheme in additional detail in Table 3.4.
Appendix B: Methodology for Rationale Coding

Rationale Coding

In my review of the immigrant sanctuary policies in the dataset I found rationales justifying sanctuary policy enactment in the preamble of nearly all of policies. As mentioned above, I read and analyzed the content of each of the 75 policy actions and listed each rationale individually across the first third of the policies in the population. When I reached the point of saturation (i.e., when I could no longer identify new rationales) I established the rationale codes by combining the rationales that were thematically identical (or nearly so) into a single rationale category.

My coding revealed eleven rationale categories:

- Opposition to the Patriot Act
- Opposition to ICE raids/sweeps
- Value of immigrant labor/culture
- Police efficacy
- Concerns about racial/ethnic profiling
- Belief that the immigration system was “broken”
- Support for racial, ethnic, or cultural diversity
- The risk of liability for participation in immigration enforcement actions
- Equal access to city services
- Immigration enforcement as a federal rather than local responsibility
- Sanctuary policy enactment in other jurisdictions

I excluded the “Enacted in other Jurisdictions” rationale from my analysis on the theory that this rationale did not contribute to the discourse regarding the value of immigration enforcement distributed. My rationale analysis is therefore restricted to ten categories among the 75 policy actions in the dataset.

I also eliminated the code of “Civil Rights/Civil Liberties” upon realizing the the code actually did not have much probative value, though it was expressed repeatedly across the population of policies. The “Civil Rights/Civil Liberties” rationale thematically overlapped with several other rationale categories including “Racial Profiling,” “Equal Access to City Services,” and “Opposition to the Patriot Act.” In order to make an assessment of the relative importance of each rationale, I constructed the rationale categories to be mutually exclusive.
Appendix C: Prohibition District Map

The Tenth Prohibition District is in the bottom right-hand corner. It includes all or portions of the states of Alabama, Louisiana, Mississippi, and Florida. The Prohibition Districts (designated by number in black) are overlaid by “Special Agency Divisions” (numbers in red), which relate to another administrative framework within the Prohibition Bureau.
Appendix D: Archived News Article on Local Moonshiner Threats to Enforcement

MODEL PRINTING COMPANY
:: Telephone North 1494 ::
1426 You Street N.W. Washington, D.C.

MOONSHINERS AROUSED

Further Raids Will Be Met With Machine Guns, They Warn Alabama Chief

Special Dispatch to The World
MOBILE, Ala., Oct. 27 — Aroused over numerous and destructive raids by state law enforcement officers on their distilling strongholds, moonshiners of the Borden Springs community of Cleburne County have served notice on Chief Walter K. McAdory and his men that future raids in the community will be checked, if possible, by machine gun fire.

Notice of the moonshiners arming themselves with machine guns came to Chief McAdory from Deputy Law Enforcement Officer J. H. Draper, who has played havoc with whiskey makers of Cleburne County.

The report was accompanied by an announcement that despite the threat the officers during the past week captured twenty stills, 10,600 gallons of beer mash, 245 gallons of liquor and arrested two persons for distilling.

PADLOCKS CLOSE CAFES BUT RUM KEEPS FLOWING

Injunctions That Have Shut 400 "Speakeasies" in Nine Months Are Most Effective Method, Says Buckner, Urging More Courts and a State Dry Act

By HAROLD I. VOGEL

FORTUNE - New York Vice Undercover

To be continued:

...
Appendix F: Letter 1 – from Georgia State Resident to the Revenue Department of the State of Georgia
### Northern District of Alabama

The rating in thirty-one counties on sheriffs, public sentiment, juries, conditions as to illicit distilling and unlawful selling:

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<th>Fair</th>
<th>Poor</th>
<th>Bad</th>
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<tr>
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### Middle District of Alabama

The rating in twenty-three counties on sheriffs, public sentiment, juries, conditions as to illicit distilling and unlawful selling:

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Appendix H: Audit of County Law Enforcement Officials of the Tenth Prohibition District

Third Circuit Court District:
Circuit Judge, J. R. Williams, Clayon
Circuit Solicitor, C. H. Patterson, Clayton

Barbour County, County seat, Hayten.
Sheriff, E. G. Neal
County Probate Judge, E. W. Wallace
County Solicitor, W. H. Harrell
Public sentiment
Grand juries
Petty juries
Conditions as to unlawful manufacturing
Conditions as to unlawful sale, transporting and possession
Conditions compared with one year ago:

First, as to manufacturing:
Second, as to selling, transporting and possession:
Source of liquor consumed in county: Home production.
If no liquor is transported into county local authorities could not handle situation.

Bullard County, County seat, Union Springs.
Sheriff, H. E. McCall
Probate Judge, E. R. Morton
County Solicitor, L. M. Mason
Public sentiment
Grand juries
Petty juries
Conditions as to unlawful manufacturing
Conditions as to unlawful sale, transporting and possession
Conditions compared with one year ago:
First, as to manufacturing:
Second, as to selling, transporting and possession:
Source of liquor consumed in county: Home production.
If no liquor is transported into county local authorities could not handle situation.

Dale County, County seat, Ozark.
Sheriff, T. C. Kennedy
Probate Judge, S. G. Garner
County Solicitor, J. E. Acker
Public sentiment
Grand juries
Petty juries
Conditions as to unlawful manufacturing
Conditions as to unlawful sale, transporting and possession
Conditions compared with one year ago:
First, as to manufacturing:
Second, as to selling, transporting and possession:
Source of liquor consumed in county: Barbour County and Florida.
If no liquor is transported into county local authorities could not handle situation.
Appendix I: Illustrated Map of the Tenth District
Appendix J: Illustrative Map of the Tenth District – Map Key
Appendix K: ACLU Model Resolution to Protect Civil Liberties

Draft Resolution

July 14, 2003
MODEL LOCAL RESOLUTION TO PROTECT CIVIL LIBERTIES

WHEREAS the City of ________ is proud of its long and distinguished tradition of protecting the civil rights and liberties of its residents;

WHEREAS the City of ________ has a diverse population, including immigrants and students, whose contributions to the community are vital to its economy, culture and civic character;

WHEREAS the preservation of civil rights and liberties is essential to the well-being of a democratic society;

WHEREAS federal, state and local governments should protect the public from terrorist attacks such as those that occurred on September 11, 2001, but should do so in a rational and deliberative fashion to ensure that any new security measure enhances public safety without impairing constitutional rights or infringing on civil liberties;

WHEREAS government security measures that undermine fundamental rights do damage to the American institutions and values that the residents of the City of ________ hold dear;

WHEREAS the Council of the City of ________ believes that there is no inherent conflict between national security and the preservation of liberty -- Americans can be both safe and free;

WHEREAS federal policies adopted since September 11, 2001, including provisions in the USA PATRIOT Act (Public Law 107-56) and related executive orders, regulations and actions threaten fundamental rights and liberties by:

(a) authorizing the indefinite incarceration of non-citizens based on mere suspicion, and the indefinite incarceration of citizens designated by the President as "enemy combatants" without access to counsel or meaningful recourse to the federal courts;

(b) limiting the traditional authority of federal courts to curb law enforcement abuse of electronic surveillance in anti-terrorism investigations and ordinary criminal investigations;

(c) expanding the authority of federal agents to conduct so-called "sneak and peek" or "black bag" searches, in which the subject of the search warrant is unaware that his property has been searched;
### Appendix L: Large American Cities, 2000 (500,000+ residents)

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<th>City</th>
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<td>Houston</td>
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<td>Philadelphia</td>
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<td>San Jose</td>
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<td>Indianapolis</td>
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<td>Oklahoma City</td>
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# Appendix M: Large California Cities, 2000 (200,000+ residents)

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