Reconceptualizing the Actor-Audience Dichotomy in Securitization Theory

A Dynamic Actor-Oriented Framework for Understanding the Securitization of Migration and the Expansion of Immigration Detention in the United States

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Photo Credit: Detention Watch Network, www.detentionwatchnetwork.org

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Lastly, I dedicate this research to the millions of people whose lives have been affected by immigration detention and other like forms of deprivation of liberty. To speak truth to power, we must first discern its many faces.

ABSTRACT

Using the theoretical framework of securitization, this thesis analyzes the multifaceted ways in which policymaking actors in both the executive and legislative branches of government contributed to the maintenance and expansion of immigration detention in the US after 9/11. By adopting an assemblage approach to securitization, this thesis breaks with the conventional actor-audience dichotomy posited by traditional securitization scholars and instead argues that securitization in the context of US immigration detention policy is an *incremental*, *contentious* and *multidirectional* process in which it is often difficult to distinguish "securitizing actors" from "securitizing audiences" since many of the individuals, groups and organizations that make up the immigration detention network have taken on different roles at various times. While previous theories of securitization have tended to strictly separate the declaratory and persuasive role of the securitizing actor from the assenting and enabling role of the audience, this thesis employs the three streams model of policymaking to demonstrate that securitization is an interactive process of collaborative meaning making. By moving beyond the reductionist tendencies of the actor-audience dichotomy of securitization theory, an actor-oriented assemblage approach to securitization allows us to better conceptualize the role of executive-legislative cooperation in the expansion of the immigration detention regime.

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ABBREVIATIONS

CBP	US Customs and Border Protections
CLEAR	Clear Law Enforcement for Criminal Alien Removal Act of 2003
DEA	US Drug Enforcement Administration
DHS	US Department of Homeland Security
DOJ	US Department of Justice
FBI	US Federal Bureau of Investigations
GDP	Global Detention Project
HSA	Homeland Security Act of 2002
ICE	US Immigration and Customs Enforcement
IGSA	Intergovernmental service agreement
INS	US Immigration and Naturalization Service
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA	Immigration and Nationality Act of 1952
LEA	Law enforcement agency
MS-13	Mara Salvatrucha
OHS	Office of Homeland Security
SAF	Strategic action field
USCIS	US Citizenship and Immigration Service

1. Introduction: Immigration Detention in a Multi-Sovereign Regime

The detention and separation of families under a new "zero tolerance" policy implemented by the Trump administration beginning in April 2018 has sparked widespread outrage and public debate about the government's use of imprisonment as a tool to deter undocumented migration. Graphic images and stories of children crying for their mothers or emerging from prison-like facilities covered in lice and bedbugs have incited nationwide protests, sit-ins, and calls for the abolition of the key agency responsible for the detention of non-citizens, the US Immigration and Customs Enforcement (ICE). For the first time in the long history of immigration detention in the US, the call to abolish ICE and family detention has gone mainstream. In fact, in June 2018, the establishment-challenging Alexandria Ocasio-Cortez, who boldly campaigned on the issue of abolishing ICE, won a surprising victory in the Congressional primary elections in New York. According to Ocasio-Cortez, ICE represents "the draconian [immigration] enforcement that has happened since 2003 that routinely violates our civil rights."[1]

To be sure, ICE has been a controversial agency ever since its creation in 2003. In the wake of 9/11, as President Bush and Congress grappled with the question of how best to incorporate the civil immigration service into the newly created Department of Homeland Security (DHS), there were numerous warnings that subsuming immigration functions under an umbrella agency rooted in combating terrorism would further criminalize and militarize immigration functions. As Bill Ong Hing, an immigration attorney and expert in legal history, testified before Congress in the 2002 hearing on *Immigration Reform and the Reorganization of Homeland Defense*, "the problem of the Immigration and Naturalization Service as a second-class function in a new homeland security department will only get worse. Let's not sweep away rationality in our attempt to search for enemies."[2] Over a decade later, it appears that Hing's intuition was correct. Immigration law has become increasingly intertwined with heavy-handed counter-terrorism and criminal law enforcement strategies.

Today, ICE operates as an aggressive paramilitary force whose primary goal is to apprehend, detain, and deport as many undocumented immigrants as possible.[3] Since 2007, ICE has detained between 300,000 and 500,000 immigration detainees annually, reaching a peak in 2012 at 477,523 detainees (see Figure 1 below). For comparison, in 2013, the country with the second highest immigration detainee population after the US, Saudi Arabia, detained approximately half as many non-citizens as the US.[4] The US' immigration detention system is thus by far the largest

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[1] Cadelago, Christopher. 27 June 2018. "Trump Bludgeons Democrats Over Calls to Abolish ICE," *Politico.*
[2] Immigration Reform and the Reorganization of Homeland Defense: Hearing Before the Subcommittee on Immigration of the Committee on the Judiciary, United States Senate, One Hundred Seventh Congress, Second Session, 26 June, 2002.
[3] US Immigration and Customs Enforcement. 15 August, 2003. "Endgame: Office of Detention and Removal Strategic Plan, 2003-2012, Detention and Removal Strategy for a Secure Homeland."
[4] Global Detention Project. 2016. United States Country Profile. Available at: https://www.globaldetentionproject.org/countries/americas/united-states; See also, Global Detention Project. 2016. Saudi Arabia Country Profile. Available at: https://www.globaldetentionproject.org/countries/middle-east/saudi-arabia.

in the world (See Figure 2 below). Non-citizens are detained in US detention facilities (including in criminal prisons) for a number of reasons, the most common of which are for 1) unauthorized entry or stay, 2) seeking asylum at a port of entry, and 3) pending removal from the US. While, in 2001, the US Supreme Court prohibited indefinite detention of non-citizens who have been ordered removed, that decision was reversed in February 2018 when the court ruled that immigrant detainees are not legally entitled to periodic bond hearings. The de facto implication of this most recent ruling is that there is no maximum length for immigration detention and non-citizens can be indefinitely detained without any legal right to judicial review. Even before the 2018 court ruling, non-citizens were routinely detained for extended periods of time.[5]

The expansion of immigration detention has been progressively fueled by the past several US administrations and congresses as evidenced by the massive budget allocations dedicated to it since the 1980s. Indeed, due to a steady ramping up of resources, the US government now spends more money on its immigration enforcement agencies, ICE and Customs and Border Protection (CBP), than it spends on all other criminal federal law enforcement agencies (LEAs) combined, including the Secret Service, Federal Bureau of Investigations (FBI), and Drug Enforcement Agency (DEA).[6] In response to the alarming expansion of immigration detention, particularly given the fact that overall immigration into the US has been in steady decline over the past several decades, numerous scholars and commentators have explored the question: how did we get here?

Most explanations for the remarkable expansion of immigration detention point to the role played by a single actor, usually Congress or DHS, the cabinet-level department in which ICE and CBP are housed. These commentators often point to the 1996 amendments to the Immigration and Nationality Act (INA) of 1952 that vastly expanded "mandatory detention" provisions, to the aftermath of 9/11, to Congress' insertion of a "detention bed quota" in the DHS budget appropriations laws, or to private prison companies who spend millions of dollars every year lobbying Congress to further increase detention spending. Most recently, commentators have focused on the role played by aggressive ICE agents, who have used their discretionary authority to enforce US immigration law to apprehend as many undocumented individuals as they can, regardless of the extensive ties those individuals may have to American citizen family members.[7]

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[5] American Civil Liberties Union, (n.d.). "Prolonged Detention Fact Sheet." Available at: https://www.aclu.org/other/rodriguez-et-al-v-robbins-et-al-prolonged-detention-fact-sheet.

[6] Meissner, Doris, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron. 2013. *Immigration and Enforcement in the United States: The Rise of a Formidable Machinery (Report in Brief)*. Migration Policy Institute, US Immigration Policy Program, p. 12.

[7] Hoffman, Meredith. 17 February 2017. "Aggressive Immigration Raids Are Breaking Up Families and Scaring Longtime Residents." *Vice News*; Zayas, Luis H. and Laurie Cook Heffron. November 2016. "Disrupting Young Lives: How Detention and Deportation Affect US-born Children of Immigrants." *American Psychological Association*.

U.S. Immigration Apprehensions and Detentions
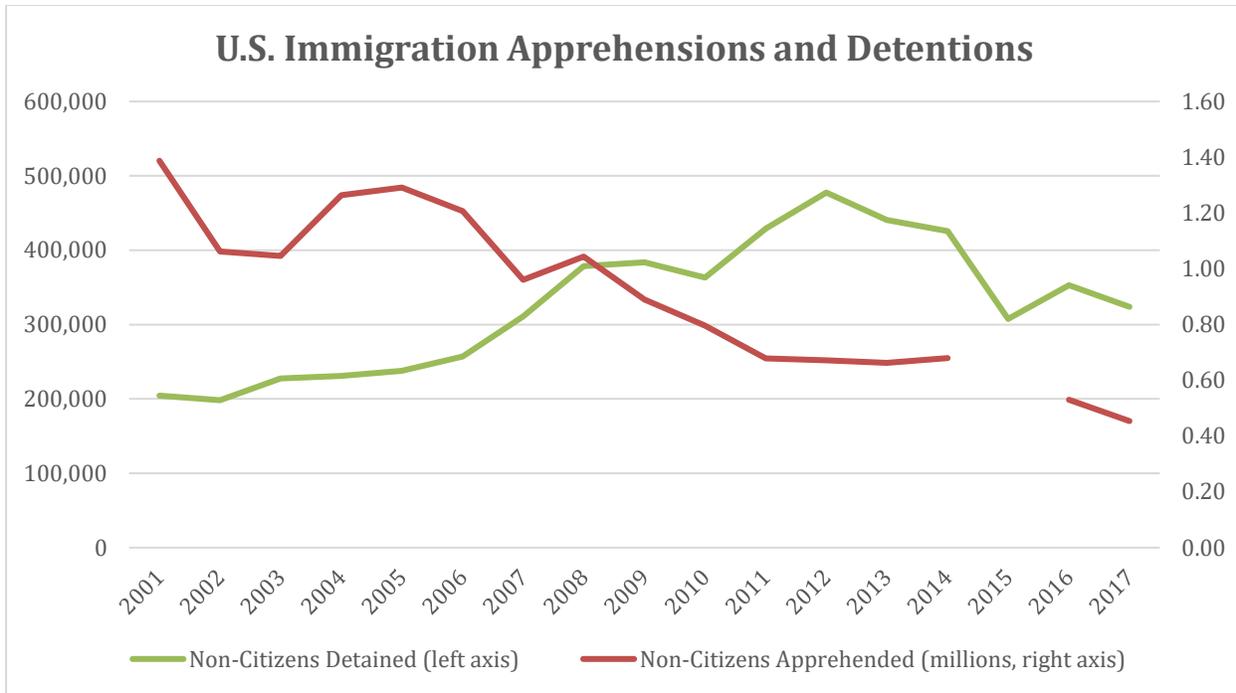
Figure 1. Source: Global Detention Project, United States Immigration Detention Profile.

Global Comparison
Annual Number of Immigrants Detained (latest year available)
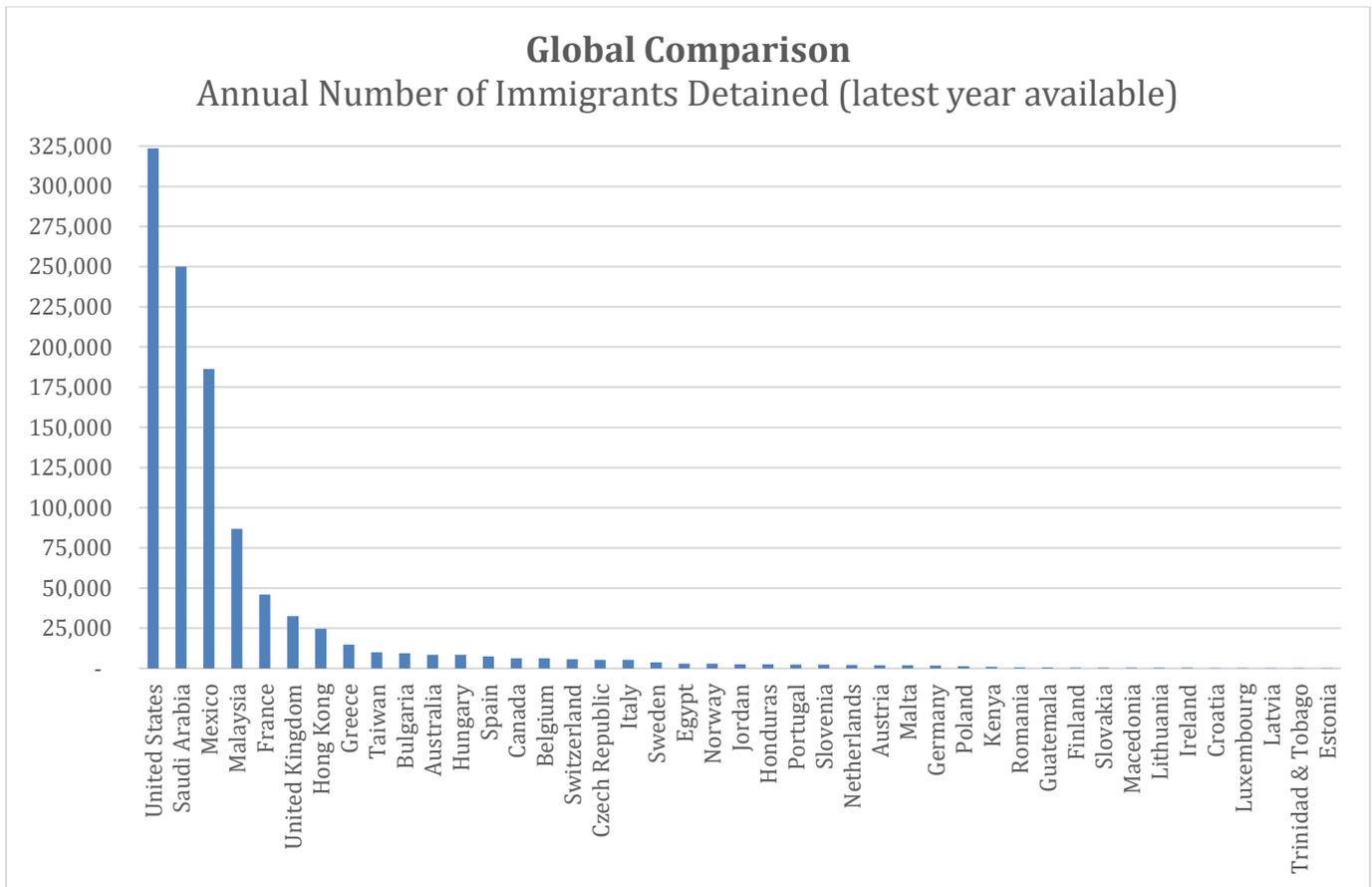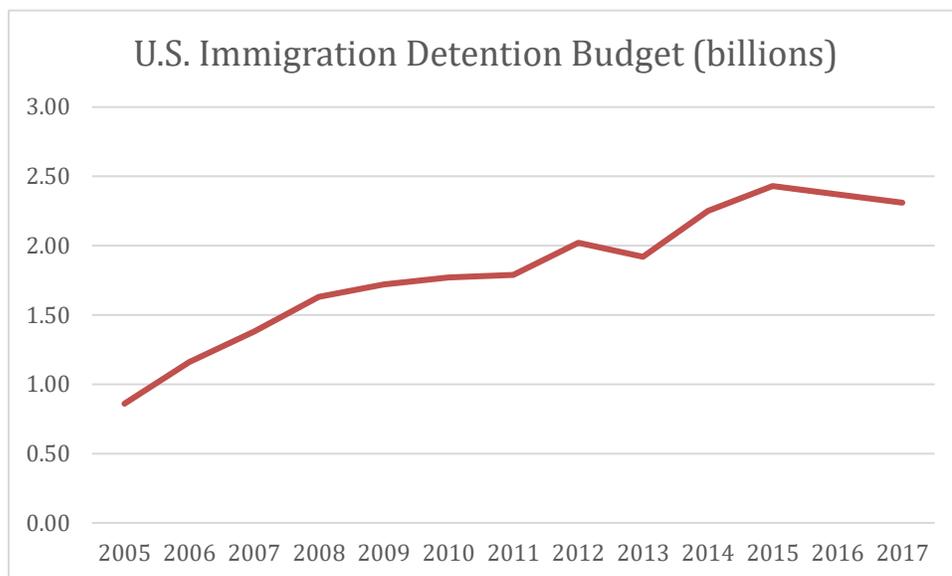

Figure 2. Source: Global Detention Project, Country Profiles.

While ICE has certainly used its expansive discretionary authority to enforce the immigration laws to the fullest extent possible, it is also important to make visible the multiple accountabilities that have had a hand in the maintenance and expansion of immigration detention over time. Indeed, the US did

U.S. Immigration Detention Budget (billions)

Figure 3. Source: Global Detention Project, US Immigration Detention Profile.

not become warden to the largest immigration detainee population overnight or solely through the actions of eager ICE agents, greedy lobbyists, or xenophobic Congressmen. Since the 1980s, policymakers at every level of government, Democratic and Republican alike, have contributed to the expansion of the immigration detention system by allocating ever-increasing resources to border security and immigration enforcement, passing restrictive immigration legislation, increasing detention "bed quotas," and establishing new private-public partnerships to make the system more "efficient," among numerous other expansive measures. Due to this steady ramping up of resources and personnel, the US government now spends over $2.4 billion USD annually on immigration detention operations (see Figure 2 above) and has built up a sprawling network of over 200 private and state-owned facilities run by a patchwork of local and state governments, federal agencies, and private for-profit prison companies.[8]

1.1 Theoretical Framework: "Actors" and "Audiences" in Securitization Theory

Using the theoretical framework of *securitization*, which describes the casting of certain public issues as "security issues," this thesis aims to illustrate how multiple policymaking actors contributed to the expansion of immigration detention in the wake of 9/11. Since its development in the 1990s, securitization theory has grown to become one of the primary theories for studying the formulation and implementation of security policies. However, despite its prominence, securitization theory has been widely criticized for its under-theorization of what it calls "actors" and "audiences." According to the founders of the theory, Buzan, Waever and de Wilde (1998), securitization occurs when a *securitizing actor* (policymaker) convinces a target *audience* to accept that a particular public issue is threatening enough to prompt an immediate policy

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[8] Global Detention Project. 2016. United States Country Profile. Available at: https://www.globaldetentionproject.org/countries/americas/united-states.

response to mitigate it.[9] While subsequent scholars have widely disagreed over who exactly constitutes a *securitizing actor* or *audience*, the key idea is that certain actors play a declaratory and persuasive role in the labelling of a particular issue as a security issue and others play an assenting role by conferring agreement and enabling the securitizing actor to achieve its proposed policy to deal with the security issue. Yet, as I intend to show, when it comes to understanding the securitization of migration in the US, it is exceedingly difficult to identify and separate securitizing actors from audiences.

The institutional design of US government, with its complex separation of policymaking powers divided between the executive and legislative branches at multiple, overlapping local and national levels, poses particular challenges to scholars studying the securitization of migration. In a system of "multiple masters," there is "usually no one set of institutional actors [that] has clear control," and it can thus be difficult to hold any one actor to account.[10] As will be discussed further below, the multiple- and overlapping-sovereignties at play within US politics provide an important challenge to securitization theory's traditional actor-audience dichotomy. As will be shown throughout this thesis, in a multiple-sovereign regime, many key actors can take on both a persuasive, policymaking role and an assenting, enabling role, or change their role over time. I forward Leonard and Kaunert's (2011) revised "three-streams model" of securitization as a more analytically rich and dynamic conceptual framework for understanding the relationships between the complex structural organization of the immigration detention regime and the ways in which numerous actors, including the president, the Department of Justice (DOJ), the newly created DHS, Congress, and local law enforcement officers, contributed to the expansion of immigration detention in the wake of 9/11.

Before unpacking how numerous actors have contributed to the expansion of immigration detention in the US after 9/11, it is first necessary to clarify how I will conceptualize the nature of and relationships between the actors involved using an assemblage approach to securitization theory. The assemblage approach derives from the tradition of French post-structuralist thought, and emphasizes dynamic interactionism between the component parts that make up systems of structures. The idea of a systems approach encapsulates the idea that structures (e.g. institutions, nations, cultures, ideologies) are embedded in a complex web of other structures.[11] Likewise, any given structure consists of numerous actors that are also embedded in a complex web of dynamic interactions with each other and to larger external structures. In this way, assemblage theory is a useful explanatory device that allows scholars to more accurately capture the complex fluidity and multiplicity of social processes. Throughout this thesis, I use the term "network" to describe the assemblage of actors involved in the maintenance and expansion of immigration detention.

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[9] Balzacq, Thierry. 2005. "The Three Faces of Securitization: Political Agency, Audience and Context." *European Journal of International Relations* 11(2): 173.

[10] Aberbach, Joel D. 1990. *Keeping a Watchful Eye: The Politics of Congressional Oversight*. Brookings Institution Press, p. 4.

[11] University of Texas at Austin, College of Liberal Arts. 2010. "Assemblage Theory." Available at: https://web.archive.org/web/20160314011817/http://wikis.la.utexas.edu/theory/page/assemblage-theory.
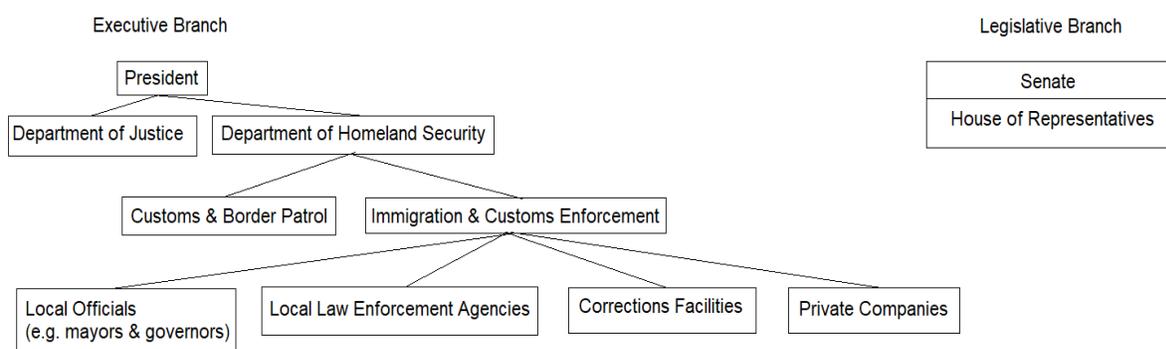
Figure 4. The US Immigration Detention Network (Simplified).

The US immigration detention network (visualized in Figure 4 above) cuts across Democratic and Republican political divides and across multiple levels of government. The task of immigration detention rests primarily on two agencies within DHS, one of the 15 executive departments within the US government whose head officials are appointed by the president. The two agencies are CBP, which is responsible for the detention of those who enter the US without authorization and are apprehended at or within 100 miles of the border, and ICE, which is responsible for the detention of unauthorized immigrants apprehended during the course of interior immigration enforcement. Since CBP simply "returns" those it apprehends at the border through a process known as "expedited removal," ICE is the principal actor responsible for managing and operating the country's immigration detention system. For instance, individuals apprehended at the border deemed eligible to seek asylum are generally transferred from CBP to ICE custody and detained by ICE throughout the duration of their asylum process.

As already suggested, ICE's immigration detention activities are sustained by a vast network of actors. This *security network*, whose purpose is the facilitation of the inter-institutional project of apprehending, detaining, and removing all deportable non-citizens and pooling resources and personnel across government and non-government agencies to achieve this end,[12] consists of all 3,181 local jurisdictions across the 50 US states which are required by law to provide information on criminally apprehended non-citizens to the federal government, and 75 of which provide direct operational support in addition to information-sharing to ICE's immigration detention operations; at least 148 publicly and privately owned local, state, and federally operated correctional facilities (including jails, prisons, and penitentiaries);[13] and at least 117 private companies that provide management, security, and other services such as health, food, and transportation.[14]

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[12] Dupont, Benoit. 2004. "Security in the Age of Networks." *Policing and Society: An International Journal of Research and Policy* 14(1): 80.

[13] This number is probably a low-ball estimate, given the secrecy and fluctuation inherent to ICE's detention contracts.

[14] US Immigration and Customs Enforcement. (n.d.). Freedom of Information Act (FOIA) Library. Available at: https://www.ice.gov/foia/library.

On the policymaking side, which forms the focus of this thesis, there are four primary actors directly authorized to formulate and implement immigration enforcement policy, and therefore have a direct impact on ICE's detention practices. These include the president, who has the authority to issue law-like executive orders; the immigration-related committees and subcommittees of the bicameral legislature, some of which are authorized to propose and pass immigration-related legislation, and one of which is authorized to appropriate funds; the Attorney General, who is appointed by the president as the head of the DOJ and is charged with the administration and enforcement of immigration laws passed by Congress; and the senior-level officials in DHS and ICE headquarters and field offices, who are vested with significant discretionary authority to shape the implementation and enforcement of immigration policy.

In line with the actor-oriented assemblage approach described above, securitization is understood as a dispersed, relational process that consists of multiple securitizing acts, actors, and audiences, and is situated within multiple and overlapping contexts.[15] It is an interactive process that takes place within existing bureaucratic, social, economic and political structures.[16] In these overlapping macro-security contexts, which will be discussed in further detail below, there is often no single securitizing act or decision, but multiple, overlapping, and sometimes competing acts that cumulatively work to render a particular public issue a "security issue."

1.2 Research Assumptions, Objectives, and Strategies

This conceptual and theoretical approach is consistent with my ontologically structurationist and epistemologically interpretivist starting assumptions. Drawing on sociologist Anthony Giddens' theory of the "duality of structure," this thesis assumes that structure and agency are linked in a co-constitutive "dialectical relationship with one another" in which "both agency and structure [are] implicated in the production and reproduction of social systems."[17] Agents are embedded in complex social systems which significantly shape the course of their actions, while simultaneously social structures exist as a result of coordinated human action. Likewise, I adopt a constructivist epistemological assumption that stresses symbolic interactionism. As explained by Fligstein and McAdam (2012), this is the idea that the "essence of human sociability is *collaborative meaning making*." While acknowledging the significance of the objective material grounds of human existence, Fligstein and McAdam assert that these material conditions are always conceived of and interpreted by individuals in relation to others. Thus, for Fligstein and McAdam, the study of social phenomena is rooted in how groups symbolically interact with their material context to fashion shared meanings and identities and to coordinate strategic action.[18] Taking an interpretivist epistemological and structurationist ontological position, this thesis seeks to answer the research question: *how did multiple policymakers in both the executive and legislative branches of government contribute to the expansion of immigration detention in the US following*

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[15] Salter, Mark B. 2011. "When Securitization Fails: The Hard Case of Counter-Terrorism Programs," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge: 116-131.

[16] Ibid., 18.

[17] Jabri, Vivienne. 1996. *Discourses on Violence: Conflict Analysis Reconsidered.* Manchester Uniersity Press: 76.

[18] Fligstein, Niel and Dough Mcadam. 2012. *A Theory of Fields.* Oxford University Press: 47-49.

9/11?[19] In exploring this research question, this thesis pays close attention to the relationship between sociopolitical context and the multiple agencies involved in the expansion of immigration detention as a tool to manage the "threat" of migration.

The primary theoretical objective of this thesis is to problematize the traditional actor-audience dichotomy advanced by securitization theory. Instead, I argue that securitization is an incremental, contentious and multidirectional process. By *incremental,* I mean that securitization often occurs in a piecemeal manner over an extended period of time. Policy entrepreneurs will often wait with prepared policies even when no objective threat exists. As contexts change and opportunities arise, policy entrepreneurs will take whatever small wins they can get towards achieving their preferred policy goal. By *contentious,* I mean that there is rarely unanimous agreement over the adoption of a security policy. Policymakers disagree, argue, and contend with each other over the correct course of action. In democratic regimes in which policymaking authority is dispersed across multiple branches and levels of government, security policies are thus almost always negotiated. Because there is more than one policymaker in democratic or multi-sovereign regimes, securitization is also *multi-directional.* There is typically no single actor or group of actors that does the convincing that a particular public issue is a security threat. Rather, numerous actors work to convince each other and their peers to pursue a certain course of action. Individual actors can take on either a persuasive or enabling role. In addition, they can take on both roles simultaneously or change their role over time. Finally, and perhaps most significantly, this thesis has the empirical aim of further clarifying the nature of several key actors' participation in the growth of immigration detention in the US. It is the my hope that such an effort will inspire further debate and encourage ongoing attempts to establish accountability across a discouragingly convoluted network of policymakers and administrators.

In line with these research objectives, my research strategy relies primarily on documentary analysis of a wide range of "naturally occurring" sources. These include public documents and archival materials such as training manuals, memoirs, legal records, newspaper articles, policy memos, and court cases. In addition, I supplement my findings with relevant statistical analysis to help make my case. I synthesize multiple sources to develop a detailed description of how multiple actors contributed to the process of securitization of migration and the expansion of immigration detention in the US following 9/11. As Ritchie and Lewis (2003)*,* "documentary analysis is particularly useful where the history of events or experiences has relevance, [and] in studies where written communications may be central to the inquiry."[20] Documentary analysis is also particularly useful when examining social processes involving dynamic, complex interactions between a large number of actors, which is difficult to investigate through participant observation

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[19] The theoretical framework of this research question is securitization theory. Likewise, the theoretical complication that this question seeks to address is that the traditional actor-audience dichotomy of securitization theory fails to explain the securitization of migration and the expansion of immigration detention in the US.

[20] Ritchie, Jane and Jane Lewis (eds.). 2003. *Qualitative Research Practice: A Guide for Social Science Students and Researchers.* Safe Publications: 35.

or interviewing.[21] Documentary analysis is thus well suited to analyzing the complex dynamics of the securitization of migration in the US.

The first phase of data collection consisted of descriptive, data gathering on the nature and content of the security network, which involved identifying the specific actors directly involved in the maintenance and expansion of immigration detention in the US. This research phase was conducted in conjunction with my ten week internship at the Global Detention Project (GDP) in Geneva, Switzerland. The GDP is an interdisciplinary research center that investigates the use of detention in response to global migration and develops systematic data on a range of subjects, including domestic and international legal frameworks for detaining immigrants, the conditions of immigration detention, and the types of actors involved in providing services to and oversight of detention practices. As an integral part of the internship, I developed data on the specific actors involved in the detention of immigrants in the US using a plethora of documentary sources. This thesis draws from and expands on that data. After identifying the actors involved and the nature of their involvement in the expansion of the US immigration detention regime, I moved on to the second research phase: the identification of key securitizing and desecuritizing moves made by the actors identified in the first phase. Securitizing and desecuritizing moves are respectively defined as active steps taken to increase or decrease the use of immigration detention. I then developed a case study of some of the most important securitizing moves, defined as those that had the greatest impact on the expansion of immigration detention.

1.3 Outline

This thesis is organized as follows. Chapter Two provides a brief overview of the three main theoretical approaches to explain the growth of immigration detention in the US. I argue that the macro-approach, which focuses on the role of the unitary "state," is reductive and fails to consider the complex assemblage of actors involved in making and implementing immigration enforcement policy. I then examine several micro-approaches, which focus on the role of police officers or ICE agents, arguing that such approaches underemphasize the extent to which immigration detention is a widespread tool of social control. Finally, I posit a meso-level approach, which examines the role of multiple actors in the expansion of immigration detention, as the most dynamic approach that best captures the complexity of immigration policymaking in the US. Chapter Three provides a review of the literature on securitization theory, and synthesize this literature with an actor-oriented assemblage approach. Here, I argue that Leonard and Kaunert's (2011) adaptation of John Kingdon's (1984) "three streams model" of policymaking is a more analytically dynamic framework for problematizing the relationship between multiple audiences and securitizing actors. Chapter Four provides a detailed case study examining numerous attempts by US policymakers in both the executive and legislative branches of government to securitize migration and expand immigration detention in the wake of 9/11. As will be shown, some of these securitizing moves were successful while others were not. This chapter serves to illustrate the primary claim of this

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[21] Hammersley, Martyn and Paul Atkinson. 1995. *Ethnography: Principles in Practice.* Routledge. Cited in Ritchie, Jane and Jane Lewis (eds.). 2003. *Qualitative Research Practice: A Guide for Social Science Students and Researchers.* Safe Publications: 35.

thesis that securitization is an incremental, contentious and multi-directional process. Securitization occurs from a process of collaborative meaning-making in which actors can take on multiple roles or change their roles over time. Finally, in the concluding chapter, I reflect on the implications of my findings and outline persisting gaps and avenues for further research.

2. Reviewing the Literature on Immigration Detention

The alarming speed at which the US immigration detention system has grown has inspired a large body of scholarship on the question of how and why detention has become entrenched as a preferred policy response to deal with the challenges of global migration. The central research puzzle at the crux of this debate is that there is little correlation between increases in migration into a given country and the expansion of immigration detention regimes (for instance, see Figure 1 on page 8 in which "apprehensions" are a proxy for undocumented immigration into the US).[22] Through engagement with the diverse work of political economists, organizational institutionalists, and sociologists, for example, US immigration detention scholars have sought to understand how and why the key immigration enforcement institutions have expanded despite the exponential decline in migration into the US over the past several decades (See Figure 1 above). As discussed in more detail below, however, these scholars have tended to analyze the expansion of immigration detention from the perspective of the unitary "state" or from the perspective of a single local actor, such as a local police force or individual law enforcement officers. This thesis both engages with and breaks from this emerging body of scholarship on immigration detention by adopting a meso-level theoretical approach to explore how an assemblage of actors has contributed to the expansion of immigration detention in the US after 2001.

2.1 The "Macro" Approach

The first and possibly most prevalent approach to explain the growth of immigration detention regimes comes from the post-structuralist tradition and is heavily influenced by Foucault's concept of *biopolitics*, which describes the strategic ways in which states exert power over the physical and political realities of the ruled. Perhaps the most famous proponent of this approach, Giorgio Agamben, advanced two related concepts - that of *homo sacer* (meaning *bare life*) and *zones of exception* - to describe the indefinite detention of "enemy aliens" at Guantanamo Bay. The former is a Roman legal term which refers to individuals who have been excluded from society and cast into a state of existential precarity, and the latter is an adaptation of Carl Schmitt's idea of the *state of exception*, which refers to areas in which the sovereign power of the state is freed from the legal and moral restraints it typically exercises in relation to its own citizens. Agamben defines a zone of exception as "the voluntary creation of a permanent state of emergency" which occurs through the "transformation of a provisional and exceptional measure into a technique of government."[23] In line with Agamben, many contemporary scholars of migration have argued that the punitive turn in immigration enforcement policies (for instance, the imprisonment of non-citizens as a tool of "prevention through deterrence") creates a zone of exception in which "migrants are transformed into bare life."[24] Within these zones of exception, public laws and norms

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[22] For discussion of this research puzzle, see Flynn, Michael and Matthew Flynn. 2018. "Critiquing Zones of Exception: Actor-Oriented Approaches Explaining the Rise of Immigration Detention," in David C. Brotherton and Philip Kretsedemas (eds.). 2018. *Immigration Policy in the Age of Punishment: Detention, Deportation, and Border Control*: 116-139.

[23] Agamben, Giorgio. 2005. *State of Exception.* Kevin Atell (Trans). University of Chicago Press: 2.

[24] Williams, J. (2015). From Humanitarian Exceptionalism to Contingent Care: Care and Enforcement at The Humanitarian Border. *Political Geography* 47: 13; see also Doty, R. (2011). Bare Life: Border-Crossing Deaths and Spaces of Moral Alibi. *Environment and Planning: Society and Space* 29(4): 599-614.

of due process and human rights are suspended, and the state is able to shift responsibility for the life and death of migrants to the rugged terrain (or waters) through which they must cross, or to migrants' decision to flee their country of origin.[25]

In response to Agamben and the post-structuralist theorists of migration, Michael Flynn, the Executive Director of the GDP, problematizes these top-down explanations for the emergence of immigration detention regimes, asking: "Who exactly is involved in the expansion of immigrant detention?"[26] While the concepts of "citizen" and "non-citizen" imply the existence of sovereign powers that can grant or deny access to certain spatial territories, Flynn asks us to recognize that immigration detention, as a function of the state, "exists only because a set of actors adopt and or implement relevant laws and not as a result of state exception or absence."[27] Flynn's assessment strikes a chord especially in the case of immigration detention in the US, where immigration enforcement officials have long acknowledged that they have significant discretion in when, how, and to what extent they enforce the immigration laws. Moreover, as Michael Flynn and Matthew Flynn (2018) write, by obscuring the actors involved in the maintenance and expansion of immigration detention, "poststructuralist scholars tend to posit a functionalist argument susceptible to teleological thinking. In other words, the outcomes they seek to explain are transformed into social causes."[28] By excluding the role of agency from their analysis, post-structuralist scholars portray detention as a deterministic, irreversible, and necessary outcome of state power while at the same time arguing that detention is one of the means through which states exert and maintain that power. Moreover, in addition to concealing the multitude of state and non-state actors involved in the maintenance and expansion of immigration detention, such explanations that depend on assumptions of singular sovereign authority do not explain the wide variation we see in immigration detention regimes across and within developed sovereign states over time and space.

As Cristina Rodriguez and Clare Huntington (2008) have shown in their discussion of immigration federalism, despite de jure federal exclusivity over matters of immigration, the US is a "de facto multi-sovereign regime."[29] In practice, local jurisdictions play a vital role in assimilating immigrants who cross the border with or without the authorization of the federal government, namely through their ability to pass municipal ordinances and state laws that can work to either encourage or deter the settlement of immigrants. Moreover, due to the sprawling size of US territory and the

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[25] Doty, Roxanne L. 2011. Bare Life: Border-Crossing Deaths and Spaces of Moral Alibi. *Environment and Planning: Society and Space* 29(4): 599-614; Jones, Reece. 2012. Spaces of Refusal: Rethinking Sovereign Power and Resistance at the Border. *Annals of the Association of American Geographers* 102(3): 685-699.

[26] Flynn, Michael. 2016. *Detained Beyond the Sovereign: Conceptualising Non-State Actor Involvement in Immigration Detention.* Routledge.

[27] Flynn, Michael. 2017. "Kidnapped, Trafficked, Detained? The Implication of Non-State Actor Involvement in Immigration Detention." *Journal on Migration and Human Security* 5(3): 603.

[28] Flynn, Michael and Matthew Flynn. 2018. "Critiquing Zones of Exception: Actor-Oriented Approaches Explaining the Rise of Immigration Detention," in David C. Brotherton and Philip Kretsedemas (eds.). 2018. *Immigration Policy in the Age of Punishment: Detention, Deportation, and Border Control*: p. 119

[29] Provine, Doris, Monica Varsanyi, Paul George Lewis, and Scott H. Decker. 2017. *Policing Immigrants: Local Law Enforcement on the Front Lines.* University of Chicago Press: 43; Rodriguez, Cristina M. 2008. "The Significance of the Local in Immigration Regulation." *Michigan Law Review* 106(4): 567-642.

difficulties of using centralized resources to police immigrants throughout the entirety of the US, the federal government relies on the authority it has delegated to local LEAs to assist in the detention and apprehension of undocumented immigrants living in the interior of the country. As has been widely examined by scholars of US immigration policy, the discretionary authority held by different actors within this vast network gives rise to what can only be characterized as a multiplicity of immigration policies.[30] Thus, in order to understand the massive growth of the immigration detention regime in the US it is first necessary to abandon the "black box" approach and clarify the nature of authority and component relationships of power that constitute the regime. To this end, numerous scholars have analyzed the individual contributions that particular actors - primarily local law enforcement officers - have made to the maintenance and expansion of immigration detention regimes.

2.2 The "Micro" Approach

The micro-approach to explaining the growth of immigration detention has gained prominence in recent years. For instance, Amada Armenta (2017) has recently traced the rise in immigration apprehensions to routine policing practices and the exercise of individual officer discretion at the local level. Based on several years of ethnographic research with a local police force in Nashville, Tennessee that had a "287(g)" contract which authorized it to assist ICE in making immigration-related arrests in the local community, Armenta shows how many LEAs "*indirectly* participate in immigration control because they enforce laws and policies that disproportionately punish undocumented immigrants."[31] While also acknowledging how action is limited by certain institutional constraints and incentives, this agent-focused approach shows how everyday bureaucrats participate in the institutional reproduction of the immigration detention regime for a number of diverse personal reasons ranging from deep-rooted racial prejudices to the desire to rise through the ranks by performing the duties of one's job to the fullest.

Similarly, Decker, Lewis, Provine and Varsanyi (2009) argue that "the highly varied nature of policing practice on this issue is a function of the lack of clear policy guidance and models for local enforcement of immigration law."[32] Using national survey data of municipal police chiefs, the authors highlight the substantial differences in the way that police departments approach unauthorized immigration. They find that while a number of large city governments have limited cooperation with federal immigration authorities due to budgetary concerns and fears about undermining community trust, other localities adopt a much more proactive and aggressive role in enforcing immigration-status violations. These wide divergences in local enforcement of immigration law, according to the authors, stems from ad hoc decisions made by local police chiefs in the absence of clear federal guidance. Farris and Holman (2017) have conducted a similar national survey of five hundred elected sheriffs, which they use to argue that "sheriff's

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[30] Provine, Doris, Monica Varsanyi, Paul George Lewis, and Scott H. Decker. 2017. *Policing Immigrants: Local Law Enforcement on the Front Lines.* University of Chicago Press.

[31] Armenta, Armada. 11 October 2017. "The Hidden Ways Police do Immigration Enforcement and Why We Should Care." *University of Southern California, Center for the Study of Immigration Integration.*

[32] Decker, Scott, Paul Lewis, Doris Provine, and Monica Varsanyi. 2009. "On the Frontier of Local Law Enforcement: Local Police and Federal Immigration Law." *Sociology of Crime Law and Deviance* 13(1): 261-276.

ideology and personal characteristics shape their personal attitudes about immigrants. In turn, these attitudes play a key role in influencing local enforcement decisions."[33] The personal characteristics the authors examined included the elected sheriff's political party identification, political ideology, education, and ethnic or racial identity.

Micro-level explanations for the expansion of immigration detention at the local level have certainly helped unpack the "black box" of the state and clarify the wide range of roles that local law enforcement agents have played in immigration enforcement. While the individual discretion of local law enforcement officers is certainly an important element that can explain why there are such divergences in the enforcement of US immigration law from one jurisdiction to the next, these types of approaches also tend to underemphasize the extent to which immigration detention is an ingrained institution of social control.

2.3 The "Meso" Approach

In the middle of these two macro- and micro- poles are meso-level actor-oriented approaches, which I argue have come closest to capturing the complexity of the immigration detention regime. For instance, using large-N quantitative data, numerous scholars have described the immigration detention regime (or the larger immigration enforcement system as a whole) as a "haphazard network"[34] or "multijurisdictional patchwork"[35] of private and public, state and non-state actors. These lines of argumentation have made tremendous contributions to the field by specifying the types of actors involved and the nature of their involvement in the expansion of immigration detention. For instance, Provine et al. (2016) employ a combination of survey data and ethnographic research to illustrate the diverse array of factors that influence a particular jurisdiction's likelihood of participating in making immigration-related arrests or passing restrictive anti-immigrant legislation.

In contrast to the micro-level approaches discussed above, Provine et al. (2016) examine the role played by multiple actors, including municipal police, elected sheriffs, and local politicians and council members. Similar to Armenta's elucidation of the multiplicity of individual rationales for local police engagement in federal immigration enforcement, the complexity and diversity of factors leading LEAs and municipalities as a whole to participate in immigration enforcement practices leads Provine et al. (2016) to conclude that the immigration enforcement regime is a "haphazard patchwork."[36] Such meso-level accounts are incredibly useful in clarifying the nature and role that various actors play in the maintenance and expansion of immigration detention. However, their primary weakness is that they tend to conflate the practice of detaining non-

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[33] Farris, Emily and Mirya Holman. 2016. "All Politics is Local? County Sheriffs and Localized Policies of Immigration Enforcement." *Political Research Quarterly,* 70(1): p. 142.

[34] Wong, Tom. 2015. *Rights, Deportation, and Detention in the Age of Immigration Control.* Stanford University Press.

[35] Provine, Doris, Monica Varsanyi, Paul George Lewis, and Scott H. Decker. 2017. *Policing Immigrants: Local Law Enforcement on the Front Lines.* University of Chicago Press.

[36] Ibid.

citizens with the structural organization of the actors that engage in and sustain the practice, arguing, for example, that immigration enforcement *is* a haphazard patchwork.[37]

In conversation with these meso-level theories, this thesis argues that immigration detention should be understood as a practice, intrinsically connected to but ontologically distinct from the network of actors that engages in, sustains, and perpetuates the practice. More specifically, immigration detention *is a prevalent bureaucratic tool of risk management that consists of specific and routine modes of behavior and uses of technology that cumulatively work to deny the liberty of non-citizens for reasons related to their immigration status.* Immigration detention is, in other words, a practice employed by a complex network of actors. Moreover, focusing on the haphazard nature of the actors involved risks under-emphasizing the consistent features of the practice and the ways in which multiple actors engage in a process of collaborative meaning making - the result of which is the mass detention of non-citizens and an enduring state of precarity for immigrant and mixed-status communities.

2.4 Conclusion

In the next chapter, I synthesize a meso-level, assemblage approach with securitization theory. Rather than explaining the growth of immigration detention as the result of the unitary state or a single local actor, this dynamic, multi-actor framework facilitates an analysis of the multiple ways in which various policymaking actors in both the executive and legislative branches of government have made securitizing acts that contributed to the expansion of immigration detention in the US after 9/11. After synthesizing my theoretical framework, I then apply the framework to a detailed case study.

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[37] Specifically, Provine, Doris, Monica Varsanyi, Paul George Lewis, and Scott H. Decker (2017) write that "immigration enforcement is a 'patchwork' of policy, legislation, and enforcement." (p. 147).

3. Towards a Theory of Immigration Detention

In this chapter, I synthesize several theoretical frameworks to build a dynamic, multi-actor approach to securitization. I do so by focusing on two key limitations of securitization theory, namely its under-theorization of (1) the role of the audience and (2) the role of multiple overlapping security issues. I argue that Leonard and Kaunert's (2011) revised three-streams model of policymaking is useful in clarifying the role of multiple audiences and multiple securitizing actors. Lastly, I weave in insights from strategic action field (SAF) theory to clarify the role of multiple overlapping security policy fields.

3.1 Securitization Theory

Securitization theory seeks to understand how and why certain phenomenon are framed and accepted as constituting an existential threat, and consequently, how and why certain policies are forwarded and adopted to address those perceived threats. While there are numerous competing definitions of what constitutes "securitization," the key underlying idea is that an issue becomes securitized when a "securitizing actor" is able to convince an "enabling audience" that a particular public issue has enough of a "threatening complexion" that a particular (usually exceptional or novel) policy must be adopted to adequately respond to that threat.[38]

The history of securitization theory can be traced back to the late 1980s, when a group of scholars loosely referred to as the "Copenhagen School" came together to widen the definition of security beyond the objective threat and use of military force. Led by the likes of Barry Buzan, Ole Waever, and Jaap de Wilde, the Copenhagen School argued that a public issue can become a security issue when it is "presented as posing an existential threat to a designated referent object."[39] As implied by this definition, the "security threat" does not necessarily have to be military, but can also be environmental, economic, societal, or political. This conception of security has several components: First, there are *securitizing actors*, which are defined as "actors who securitize issues by declaring something, a referent object, existentially threatened."[40] Traditionally, the securitizing actor is the government, political leadership, or other political pressure groups. The *referent objects,* in turn, are defined as "things that are seen to be existentially threatened,"[41] and which generally constitute a structural component of society such as the nation, an ideology, the economy, collective identity, or the environment. There is also an *audience,* "the agreement of which is necessary to confer an intersubjective status to the threat," and which typically possesses the material or political resources to enable the securitizing actor to achieve its preferred policy to subdue the *referent subject* (the entity that is seen as representing a threat).[42]

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[38] Balzacq, Thierry (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve*. Routledge: 3
[39] Buzan, Barry, Ole Waever, and Jaap de Wilde. 1998. *Security: A New Framework for Analysis.* Lynne Rienner Publishers: 12.
[40] Ibid.: 10
[41] Ibid.
[42] Balzacq, Thierry, Sarah Leonard and Jan Ruzicka. 2016. "'Securitization' revisited: theory and cases." *International Relations* 30(4): 495.

As already implied, according to the Copenhagen School, the act of securitizing a particular issue is highly intersubjective. A certain actor has to perceive a certain issue as a threat to a particular referent object, and then must convince its audience that the issue is indeed a threat to the defined referent object. This process requires "framing," a term adopted from Social Constructivism, which denotes a process of labelling and simplifying complex social conditions into easily recognizable objects, situations, and actions. Thus for scholars working within the tradition of the Copenhagen School, securitization is understood not as an automatic response to an objective, external threat, but as a constructed "speech act," a "discursive representation of a certain issue as an existential threat."[43] By this definition, an issue can become a security threat through a process of framing regardless of whether it represents an objective material threat.

In recent years, another group of scholars has emerged, loosely referred to as the "Paris School" (or the "sociological school"), which has sought to refine this top-down understanding of securitization. Acknowledging that there are many, complex ways that an issue can become a security threat, these scholars recognize the need to disaggregate the concept of "audience" (who exactly is being convinced?) and examine the interaction between audiences and securitizing actors (is it really true that securitizing actors always convince the audience, and not the other way around?). Moreover, the "Paris School" has emphasized that often context does matter, and that speech acts often do take into account objective threats.

For example, van der Borgh and Savenije (2015) have used this refined securitization theory to explain how the media and general public (generally conceptualized as key "audiences") pressed the government in El Salvador to adopt more hard-handed measures against gangs after the administration had (unsuccessfully) tried to adopt more preventive and cooperative measures. Due to objective security threats - including rising homicide rates and a heavily politicized attack by gang members on a bus - the government was accused of being "soft" on crime. In response to this public criticism, the government had little choice but to resort back to the hard-handed policies of previous administrations. In this way, securitization is not conceived of as an automatic response to an objective threat nor as a subjective speech act. Rather, it is a "messy process involving a range of stakeholders," each of which make decisions based on their position (and others' positions) within a complex social and political environment.[44]

This thesis adopts the notion of securitization forwarded by this latter "school" of authors who contend that securitization is a dynamic, interactive process involving an assemblage of actors. As suggested above, the primary strength of securitization theory is its ability to explain the construction of threat-narratives and the adoption of security measures to handle particular threats. Building on insights from linguistics and social constructivism, securitization theory is rooted in the assumption that the process of labelling something a "threat" and developing a policy in the name of "security" has a performative character; these labels do not simply describe

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[43] Emmers, Ralf. 2007. "Securitization," in A. Collins (ed.) *Contemporary Security Studies*. Oxford University Press: 112

[44] Borgh, Chris van der, and Wim Savenije. 2015. "De-securitising and Re-securitising Gang Policies: The Funes Government in El Salvador." *Journal of Latin American Studies* 47(1): 175.

objective conditions but have the ability to "transform social reality."[45] In other words, a state of (in)security does not necessarily depend on objective threatening conditions, but rather often "results from a time- and context-specific intersubjective agreement that something poses a vital threat to a community."[46] Thus, the key analytical strength of securitization theory is its ability to explain why certain policy measures are adopted to handle a perceived class of threats, regardless of the actual presence of an observable, objective threat. However, as will be discussed throughout the remainder of this chapter, there are two central areas of securitization theory that have been surprisingly undertheorized: (1) the nature and role of the "audience" and (2) the relationship between multiple overlapping security issues. Each of these important limitations will be treated in more detail below.

3.2 The Three Streams Model: Problematizing the Role of the "Audience"

One of the key shortcomings of securitization theory is its under-theorization of the role of the audience, which numerous scholars have remarked is surprising given the importance of the audience to securitization theory.[47] According to Buzan et al. (1998), an issue becomes securitized "only if and when the audience accepts it as such."[48] Consequently, the looming questions of who constitutes the audience and what are the criteria for audience acceptance have been widely debated by securitization scholars. In response to mounting criticisms of securitization theorists' neglect of the role of the audience, Leonard and Kaunert (2011) point out that "even the scholar who developed the concept of 'securitization,' Ole Waever, has recognised that the concept of 'audience' '[needs] a better definition and probably differentiation.'"[49] In the same vein, Salter (2008) argues that "it is precisely the dynamics of this acceptance, this resonance, this politics of consent that must be unpacked further."[50]

The difficulties of determining what constitutes audience acceptance of a securitizing act is exacerbated by the fact that there is often more than one possible audience. In response to this observation, numerous scholars have proposed that there can be multiple audiences and multiple contexts.[51] For instance, in a study on the Canadian Air Transport Security Authority, Salter (2008)

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[45] Balzacq, Thierry, Sarah Leonard and Jan Ruzicka. 2016. "'Securitization' revisited: theory and cases." *International Relations* 30(4): 495

[46] Ibid.: 496

[47] Salter, Mark B. 2011. "When Securitization Fails: The Hard Case of Counter-Terrorism Programs," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge. 116-131; Balzacq, Thierry, Sarah Leonard and Jan Ruzicka. 2016. "'Securitization' revisited: theory and cases." *International Relations* 30(4): 494-531.

[48] Buzan, Barry, Ole Waever, and Jaap de Wilde. 1998. *Security: A New Framework for Analysis.* Lynne Rienner Publishers: 499

[49] Waever, Ole. 2003. "Securitisation: Taking Stock of a Research Programme in Security Studies" (Unfinished Draft): 26. Cited in Leonard, Sarah and Christian Kaunert. 2011. "Reconceptualizing the audience in securitization theory," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge: 57.

[50] Salter, Mark. 2008. "Securitization and Desecuritization: A Dramaturgical Analysis of the Canadian Air Transport Security Authority." *Journal of International Relations and Development* 11(4): 324. Cited in Leonard, Sarah and Christian Kaunert. 2011. "Reconceptualizing the audience in securitization theory," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge: 60.

[51] Ibid.

employs the dramaturgical concept of "setting" to argue that securitization can play out in a myriad of "settings," each of which may be characterized by its own particular audience. Each setting, according to Salter, has its own particular conventions and language which may affect the success of a particular securitizing act within that setting. Thus, a particular securitizing act can be successful in an elite or technocratic community and fail in the popular realm. Salter suggests four possible settings - popular, elite, technocratic and scientific - however, he stops short of theorizing how these different settings interact to affect the overall direction of policymaking.

In conversation with Salter (2008), Leonard and Kaunert (2011) suggest developing a "general and unified framework that can account for the existence and respective impact of various audiences on the securitization of an issue."[52] To do so, the authors integrate Kingdon's "three stream model" of policymaking with securitization theory to demonstrate how there are three sets of securitizing processes - agenda setting ("the problem stream"), the specification of alternative policies ("the policy stream"), and the selection of a preferred policy ("the politics stream") - each of which is characterized by a particular set of interactions between a multiplicity of securitizing actors and securitizing audiences. The three streams framework describes the process through which a public policy problem is recognized, a solution is selected from a range of policy alternatives, and the political climate makes the time ripe for policy change.[53]

Within this framework, the *problem stream* seeks to understand how the *policy entrepreneur*, or securitizing actor, "aims to construct a policy problem by using indicators and external events."[54] A particular public issue is perceived as salient when a crisis or "focusing event" brings it to attention. In this stream, the "audience" typically consists of other policymakers whose consent is necessary to firmly establish the problem as a shared issue of concern. In short, this is the phase during which decision-makers deliberate which items should be added to the policymaking agenda. As implied, during this agenda-setting process, policymakers can take on different roles depending on the policy topic and the particular composition of participants.

The *policy stream* concerns the specification of policy alternatives to address an agreed-upon policy problem. According to Kingdon (1984), in order to survive this process, a policy option needs to be technically feasible, compatible with the values of the policy community, and successfully anticipate future constraints.[55] This phase typically occurs within the specialist policymaking community, wherefore the audience is often composed of technocrats and

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[52] Leonard, Sarah and Christian Kaunert. 2011. "Reconceptualizing the audience in securitization theory," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge: 66.

[53] Mucciaroni, Gary. 1992. "The Garbage Can Model & the Study of Policy Making: A Critique." *Polity* 24(3): 460.

[54] Leonard, Sarah and Christian Kaunert. 2011. "Reconceptualizing the audience in securitization theory," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge: 66.

[55] Kingdon, John. 1984. *Agendas, Alternatives, and Public Policies.* University of Michigan Press: 122-51, cited in Leonard, Sarah and Christian Kaunert. 2011. "Reconceptualizing the audience in securitization theory," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge: 66.

policymakers with an expertise in a particular policy domain who tend to be "convinced by arguments based upon knowledge, rationality and efficiency."[56]

Lastly, the *politics stream* describes the important contextual elements that impact whether a particular policy proposal is adopted, including such factors as popular opinion, interest-group campaigns, democratic transitions and election results, and overall ideological leanings within a given political institution. Importantly, in this model, the political environment is constantly undergoing change, which has the potential to either block or facilitate certain problems and solutions from successfully being added to the agenda.[57] According to the three streams model, these shifts in "political mood" or in the composition of participants (e.g. turnovers in the executive administration or legislature) greatly affect the success of a particular securitizing move. The "audience" during this stream typically consists of other decision-makers and the general public.[58]

According to Kingdon (1984), the problem, policy, and politics streams generally proceed independently from one another. For instance, the process of framing a particular public issue as a security issue often occurs independently from the specification of policy preferences. To illustrate one example, numerous policymakers in the US Congress demonstrated a policy preference for increasing local law enforcement participation in the enforcement of federal immigration laws long before undocumented immigration was framed as posing an existential threat to national security in the popular domain following 9/11. In other words, the process of selecting a preferred immigration policy from a number of alternatives proceeded largely independently of the identification of a policy problem. Thus, a process of *coupling,* or favorable alignment, of the three streams at an opportune moment is required for a new policy to be adopted. In this way, while policy entrepreneurs invest their time and resources to join the streams together, there is always an element of uncertainty involved.

One of the key reasons that Leonard and Kaunert (2011) forward the three streams model as a more analytically rich framework for understanding the relationship between multiple audiences and securitizing actors compared to that of Salter (2008), is that the three streams model addresses how the various actors and settings interact to influence the overall direction of policymaking. One of the key contributions of Kingdon's model is the idea that at certain critical times the three streams come together to form a *policy window*. Once a problem has been added to the policymaking agenda and a particular solution has been identified and accepted by the policymaking community, a change in the politics stream (e.g. a favorable shift in public opinion or a sympathetic administration coming to power) can make it the right time for overall policy

[56] Radaelli, Claudio. 1999. "The Public Policy of the European Union: Whither Politics of Expertise?" *Journal of European Public Policy* 6(5), pp. 757-774. Cited in Leonard, Sarah and Christian Kaunert. 2011. "Reconceptualizing the audience in securitization theory," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge: 67.
[57] Mucciaroni, Gary. 1992. "The Garbage Can Model & the Study of Policy Making: A Critique." *Polity* 24(3): 460.
[58] Leonard, Sarah and Christian Kaunert. 2011. "Reconceptualizing the audience in securitization theory," in T. Balzacq (ed.). 2011. *Securitization Theory: How Security Problems Emerge and Dissolve.* Routledge: 68

change.[59] Thus, the "three streams" model explains how policy entrepreneurs (securitizing actors) will often wait with prepared policy solutions and when a problem (or the opportunity to frame an issue as a "security issue") finally emerges and a policy window opens they will attach their preferred policy to the problem and push for the policy's adoption.

In this way, the model recognizes the existence of both opportunities and constraints in the policymaking process. Policy changes are seen as contingent and probabilistic rather than deterministic. The model leaves room for chance, human agency, and organizational and cultural norms to influence the policymaking process.[60] Whereas other existing models tend to neutralize politics, Kingdon's model is advantageous in that it can capture contention in the political process, allow for various institutional arrangements, describe complex decision-making processes, and considers the influence of external events in the opening of opportunity windows.[61] The versatility of this model, however, can also be seen as one of its primary limitations. Specifically, scholars have widely argued that in order to effectively capture actual political processes on the ground, Kingdon's three streams model needs to be adapted to better suit local contexts. For instance, Zhu (2008) has argued that while Kingdon's model is applicable to the context of Chinese policymaking, because of China's one-party system and absence of frequent transfers of power, the politics stream is much more stable in China than in Western democratic countries. However, such critiques of Kingdon's model have not questioned its underlying utility, but rather simply suggest that it should be used in conjunction with other theories or frameworks.

Overall, Kingdon's model has proven to be a useful and flexible framework for evaluating policy processes. Scholars have widely disagreed over issues such as whether the three streams actually need to come together for policy change to occur; whether agenda setting is incremental or nonincremental in nature; or the relative constraints that local context and institutional influence have on policy entrepreneurs. Additionally, most applications of Kingdon's framework have focused exclusively on the federal or local level, not on the interaction between multiple levels of government. More attention and theorization could be made to how actors at various levels interact in the problem, policy, and politics phases. Yet, despite these disagreements and limitations, scholars have overwhelmingly deemed the three streams framework an advantageous one for understanding how a variety of actors, each of which have their own interests and logics of persuasion, are interlinked in a single policymaking process.

3.3 Macro-Securitization and Security Constellations

A further complication to the traditional actor-audience dichotomy is that in addition to there being multiple settings in which a particular act of securitization plays out, there can also be multiple, overlapping processes of securitization occurring simultaneously. To provide one example, in the US, the securitization of migration is inextricably linked to the macro-securitization of the related but distinct issues of terrorism and transnational crime. Not only are these threats recurrently

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[59] Ibid.

[60] Mucciaroni, Gary. 1992. "The Garbage Can Model & the Study of Policy Making: A Critique." *Polity* 24(3): 460.

[61] Rawat, Pragati and John Charles Morris. 2016. "Kingdon's 'Streams' Model at Thirty: Still Relevant in the 21st Century?" *Politics & Policy* 44(4): 620.

linked to one another in elite and popular discourse, but the creation of DHS in November 2002 created a standing security regime, the purpose of which is to integrate emergency response and risk management strategies in the event of any threat to the homeland. In addition to actors taking on various roles in different settings across one security issue (e.g. in the elite versus popular setting within one issue domain), they can also take on different roles across different securitization processes completely (e.g. in the migration policy realm versus the transnational crime policy realm).

In a critical work on macrosecuritization and security constellations, Buzan and Waever (2009) observe how policymakers often make linkages between several referent objects or construct hierarchies of referent objects in an attempt to mobilize a wide range of actors.[62] Despite the importance of this insight, little work has been done to theorize how security constellations affect the overall process and dynamics of securitization. In this regard, SAF theory offers a useful conceptual tool to synthesize the existence of multiple audiences and settings in a unified, dynamic theoretical model. SAF theory, as forwarded by Fligstein and McAdam (2012), can be synthesized with an assemblage approach to securitization theory to better understand how securitizing actors "seek to fashion and maintain order" within a particular security "field."[63] As a meso-level theory of action, SAF and the assemblage approach to securitization, both assume that "action takes place between and within organized groups."[64]

SAFs are defined as "the fundamental units of collective action in society."[65] These meso-level social orders in which individual and collective actors interact with each other according to shared (but not necessarily consensual) understandings about the nature and "rules" of the field and the relative relations of power within the field correspond to what other scholars have variously called networks, assemblages, policy domains, policy systems, and games. One of Fligstein and McAdam's key contributions to the meso-level institutional literature is that they break with the common assumption of a unified "institutional logic" that governs the system, instead arguing that there are "different interpretive frames reflecting the relative positions of actors within the strategic action field."[66] Thus, in contrast to many institutional theorists, Fligstein and McAdam contend that "constant low-level contention and incremental change are the norm in fields rather than the image of routine reproduction that tends to define most versions of institutional theory."[67]

Reconceptualizing the security policy domain as an SAF allows us to better understand how the form and content of securitizing practices are shaped by the particular constitution of actors and the power relations characterizing the field. Whereas traditional securitization theory tends to minimize the process of securitization to a simplistic act of persuasion, the field approach allows us to begin to unpack the ways in which "members of the field coalesce around a shared set of

[62] Buzan, Barry and Ole Waever. 2009. "Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory." *Review of International Studies* 35(2): 253-276.
[63] Fligstein, Niel and Dough Mcadam. 2012. *A Theory of Fields.* Oxford University Press: 3.
[64] Ibid: 7.
[65] Ibid: 9.
[66] Ibid: 11
[67] Ibid: 12

interests, common distinctive ways of generating knowledge… and shared strategies to tackle problems."[68] Thus rather than reducing the complex process of securitization to an interaction between a persuader ("securitizing actor") and an enabler ("audience"), the field approach allows us to conceptualize how a vast network of actors can cumulatively contribute to securitize (and re-securitize) a particular issue over an extended period time.

Moreover, any given field can be embedded in a web of relations to other fields. For instance, the field of immigration enforcement in the US is directly affected by the proximate fields of transnational crime enforcement and anti-terrorism (which moreover are all contained under an umbrella "homeland security" field), whereas it is virtually independent from the distant field of the automobile industry. This notion of a complex system of related and embedded fields is useful in conceptualizing the notion of multiple "settings." Firstly, any given field can actually consist of numerous smaller "nested" fields. So, for instance, the larger "immigration enforcement field" can consist of a legislative field of congressional subcommittees who are tasked with formulating and passing immigration-related legislation; various levels of bureaucratic decision-makers within the key immigration enforcement agencies; and various units of local law enforcement officers who assist in the apprehension and arrest of immigrants throughout the interior of the US.

3.4 Conclusion

When one adopts an assemblage approach, it becomes apparent that there is often no unidirectional relationship to securitization. In many instances of securitization, it is difficult to pinpoint and differentiate the actors that initiate securitizing speech acts from the audiences that need to be convinced of the existence of a threat. To adopt the vocabulary of social movements scholars, once recruited onto the "bandwagon" of a particular security network, a former recruitee can become a potential recruiter of others. Similarly, securitizing audiences can become securitizing actors if they accept the existence of a threat and begin to actively contribute to the implementation of a security policy to deal with that threat. Moreover, individual actors may take on different roles at different times and in different policy contexts. Thus, when one adopts an assemblage approach that examines the securitization of a particular issue over an extended period of time, it often makes little sense to make a firm distinction between securitizing actors and audiences, as the same actor can be both the object of persuasion that an existential threat exists and actively engaged in the convincing of others that an existential threat exists.

This more fluid understanding of securitizing actors and audiences is more apt at explaining, for example, how ICE has continuously and aggressively tried to recruit local LEAs to assist in the identification and apprehension of immigrants inside local communities, while simultaneously explaining how some of those same LEAs have taken on a vocal role in recent years in calling for others to join the effort to apprehend immigrants. Similarly, it does not make sense to simply classify the most recent incendiary, anti-immigrant speeches and legislation of President Donald Trump and senior congressmen as enabling responses to the calls of securitization on the part of

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[68] Balzacq, Thierry, Sarah Leonard and Jan Ruzicka. 2016. "'Securitization' revisited: theory and cases." *International Relations* 30(4): 505

ICE. To do so would be to deny the agency of these important securitizing actors and to underemphasize the significant roles they play in the securitization of migration in the US.

In conclusion, this section has drawn on a wide range of theoretical literatures to develop an assemblage approach to securitization using Leonard and Kaunert's revised three streams model of policymaking. As has been argued, the three streams approach is useful in understanding how an assemblage of actors, with a diversity of interests and objectives, are interlinked in a single policymaking process. Moreover, SAF theory can provide some useful insights in synthesizing how the network of actors involved in the maintenance and expansion of immigration detention are embedded in multiple, overlapping policy fields. The next chapter critically applies this three streams model of policymaking in a complex field environment to a short case study: the securitization of migration in the wake of 9/11.

4. Securitizing Migration in the Wake of 9/11

Although immigration detention has a long history in the US, the terrorist attacks on September 11, 2001 sparked a renewed sense of urgency to adopt more hard-handed measures to secure the nation's borders, restrict immigration into the country, and apprehend and remove unauthorized non-citizens. As the 19 individuals who were involved in the terrorist attacks that September were foreign nationals, many of whom had violated the terms visitor and student visas, in the wake of 9/11, immigration policy came to be viewed primarily through the lens of national security and the "war on terror." Migration quickly rose to the top of the political agenda and an intense political debate over the proper policy response ensued. As suggested by the three-streams model, references to the events of 9/11 played an important role in the framing of migrants as a security problem. As will be argued throughout this chapter, the securitization of migration in the wake of 9/11 was an incremental, contentious and multi-directional process involving an array of actors in both the executive and legislative branches of government. This process of securitization enfolded in three connected, but independent problem, policy, and politics streams.

4.1 The Problem Stream: From Temporary Workers to Enemies Within

Over the course of US history, the nation has swung between open- and closed-door policies as perceptions of the relative benefits and threats of migration have shifted. Debates over immigration policy have long been polarized between exclusionist and nativist versus laissez-faire and internationalist sentiments. Until 9/11, the tools used to enforce immigration law were rather "crude"[69] compared with modern-day standards and the government's position towards migrant workers was generally one of tolerance. Yet, the agency responsible for immigration enforcement, the Immigration and Naturalization Service (INS), often found itself caught between the enormous pressures placed on it by both sides of the immigration debate. On one hand, it was expected to facilitate smooth travel and streamline the entry of tourists and workers; on the other hand, by the late 20th century, there were growing pressures to implement a serious crack down on the rising number of illegal immigrants. According to Michael Cronin, who held senior positions in the INS over a three-decade-long career with the agency, "There's almost never a winning position."[70] As a result, by the 1990s, the agency faced mounting criticisms from every side of the debate. There was general agreement in the policymaking community that the right people were facing difficulties entering the US and the wrong people were not being kept out.[71]

As summarized by US immigration scholar Edward Alden, employment-based migration from Mexico was "remarkably stable" over most of the twentieth century, averaging between 200,000 and 350,000 annual workers.[72] Throughout the first half of the century, legal guest worker programs allowed migrants from Central America to enter and exit the US unimpeded. However, in 1965, when Congress passed a major immigration reform that put an end to the guest worker

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[69] Alden, Edward. 2008. *The Closing of the American Borders: Terrorism, Immigration, and Security Since 9/11.* Harper Collins.
[70] Ibid: 64.
[71] Ibid: 65.
[72] Ibid.

program, hundreds of thousands of migrant workers lost their legal status almost overnight.[73] Thus, "what was a circular pattern of migration became a settled pattern," explained one congressman from the border state Arizona.[74] As crossing the border became exceedingly more dangerous, many migrants who relied on the US economy to support their families felt they had no choice but to stay in the US. As it was no longer possible to return home to visit their families, many workers instead decided to smuggle their families into the US to join them instead. As a result of this changed political climate, the number of undocumented immigrants living in the US had ballooned from about half a million in 1969 to well over 7 million in 2001. Despite the incremental tightening of immigration policies leading up to and in the wake of 9/11, that number has since grown to an estimated 11.3 million undocumented immigrants living in the US by 2016 (See Figure 5 below).
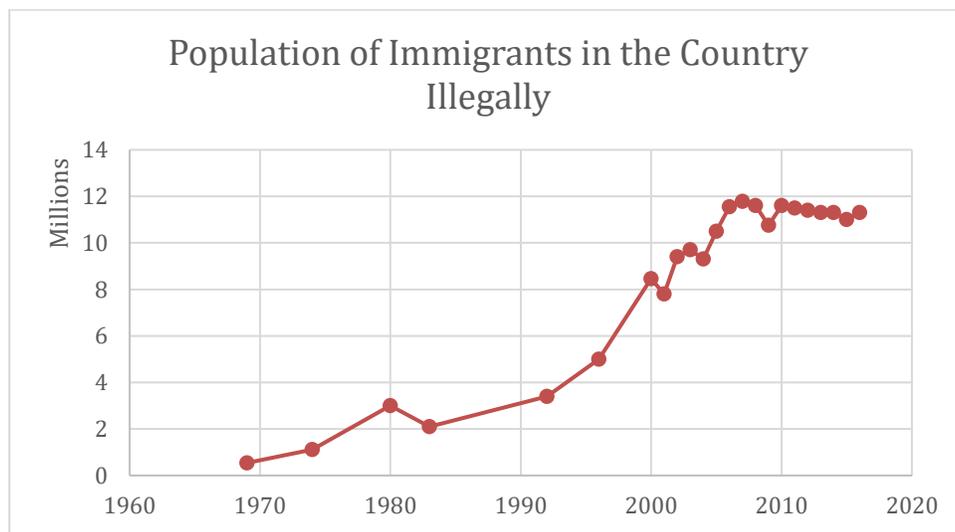

Figure 5. Source: ProCon.org, "Illegal Immigration, Population Estimates in the United States, 1969-2016."

Against this political backdrop, the criminalization of immigration law began years before the September 11, 2001 attacks. Under several immigration reforms enacted in the mid-1990s, mandatory detention and deportation provisions were expanded to apply to a growing list of minor offenses, like traffic violations and shoplifting. Despite these efforts to "get tough" on undocumented migration in the mid-1990s, by the turn of the twenty-first century the pendulum appeared to be swinging back towards a more lenient immigration reform. Between 1997 and 2000, Congress and the Clinton administration passed four laws granting certain groups of immigrants relief from some of the most restrictive provisions of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Congress also considered three different legalization proposals in early 2001. This reformist energy was poised to continue under the Bush administration, which came to office in January 2001 amidst promises to speed up immigration processing for immigrant families and employers. President Bush, viewing improved relations and smoother migration flows with Mexico as his key foreign policy legacy, famously remarked at an

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[73] Ibid: 69.
[74] Ibid: 74

INS ceremony on Ellis Island that "Immigration is not a problem to be solved. It is a sign of a confident and successful nation."[75] However, Bush's pro-immigration agenda was quickly derailed by the events of September 11, 2001, as legal and illegal immigration became a central topic of concern in public debate. After the attacks, there was an increasing conflation of antiterrorism measures with immigration enforcement and border control.

The terrorist attacks on the morning of September 11, 2001 shocked the nation. Graphic images of the devastating destruction circulated throughout the media. The general conception in public and elite spheres was that something drastic needed to be done to prevent another such attack from every reoccurring. While President Bush attempted to maintain a reconciliatory rhetoric at least in the immediate aftermath of 9/11, for instance, by asserting that "the face of terror is not the true faith of Islam,"[76] others in his administration quickly pushed a much more hardline securitizing narrative that equated immigrants with potential terrorists. While many of the US government's immigration enforcement measures in the wake of 9/11 - including the secret arrest and detention of more than 1,200 people - were initially directed at non-citizens with alleged ties or sympathies towards al-Qaeda, they quickly expanded to target a much wider swath of non-citizens. Initial heightened concerns over the ideological leanings of radical Islamists quickly translated into increased moral and financial support for detaining and deporting undocumented migrant workers.

In early 2002, for example, US Attorney General John Ashcroft, the presidentially-appointed head of the DOJ, called for local police officers' participation in immigration enforcement as a new "vital line of defense" against terrorists and as a first step to meeting Congress' mandated goal of developing a system to track virtually all of the 35 million annual visitors to the US through massive information-sharing between local and national LEAs. "In this new war," Ashcroft declared, "our enemies' platoons infiltrate our borders quietly, blending in with visitors and tourists and students and workers."[77] Ashcroft's assertion that unregistered immigrant populations living in the interior of the US pose an existential threat to national security by "blending in" with civilians was a view widely shared by policymakers in Congress who labelled it an "illegal immigration crisis of epic proportions."[78] For instance, the final report on the *Homeland Security Act* (HSA) of 2002 produced by the House Committee on Homeland Security identified the US' "relatively open borders" through which 1.3 million people pass every day as a critical vulnerability. According to the Committee, once inside the US, immigrants "have an excellent chance of remaining anonymous and using the freedom America affords to plan and execute their violent deeds."[79]

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[75] Bush, George W. 10 July 2001. "Remarks at an Immigration and Naturalization Service Ceremony, Ellis Island, New York." *The American Presidency Project.*

[76] Bush, George W. 17 September 2001. "Islam is Peace. Remarks by the President at Islamic Center of Washington, D.C." The White House.

[77] Schmitt, Eric. 6 June 2002. "Traces of Terror: Immigration; Ashcroft Proposed Rules for Foreign Visitors." *New York Times.*

[78] Clear Law Enforcement for Criminal Alien Removal Act of 2003: Hearing Before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary, House of Representatives, One Hundred Eighth Congress, First Session, October 1, 2003.

[79] Homeland Security Act of 2002. H.R. 5005. Available at: congress.gov.

In this way, following 9/11, the threat of terrorism was framed as a much broader threat of foreigners blending in with American students, tourists, and workers. Based on this logic, measures originally targeted at a narrow population of individuals with links to terrorist groups were gradually expanded to apply to a separate, and much wider class of individuals: undocumented immigrants. For decision-makers in Washington, identifying and apprehending undocumented immigrants was seen as inextricably linked to combating domestic terrorism. As Tram Nguyen (2005) has illustrated, this move was made possible by the discursive connections made in national security rhetoric between potential terrorists, international criminal networks, undocumented immigrants and asylum seekers as "clandestine transnational actors."[80]

As implied by these various examples of securitizing speech acts equating migration with terrorism, violence, and subversion, in the wake of 9/11 there were multiple securitizing actors in both the executive and legislative branches, notably the DOJ and Congress. In line with the three-streams model, the securitizing actors' target audience during this problem-identification phase primarily consisted of other policymakers. While there was widespread disagreement about the proper course of action to handle the situation, virtually all policymakers in Congress agreed that the presence of millions of out of status or undocumented individuals living in the US was "intolerable."[81]

As former Commissioner of the INS, Doris Meissner, summarized the post-9/11 political climate, in the wake of the terrorist attacks, "the question [was] no longer *whether* the government [was] willing and able to enforce the nation's immigration laws, but *how* enforcement resources and mandates [could] best be mobilized to control illegal immigration."[82] In other words, while undocumented migration had long been seen as a public policy problem, the events of September 2001 prompted a renewed sense of urgency within the policy community that undocumented migration posed an inherent threat to US national security. In line with the three-streams model, during this agenda-setting "problem stream," numerous securitizing actors worked to convince their peers that migration posed a national security threat of such great proportions that it called for an immediate and unprecedented policy response.

4.2 The Policy Stream(s): Evolution of Enforcement-First Immigration Policies

Just as multiple securitizing actors in both the executive and legislative branches of government played a critical role in the agenda-setting "problem stream," so too have multiple securitizing actors played vital roles in subsequent policy formulation phases, or "policy streams." In a hearing

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[80] Nguyen, Tram. 2005. *We Are All Suspects Now: Untold Stories from Immigrant Communities after 9/11.* Beacon Press: x.
[81] Clear Law Enforcement for Criminal Alien Removal Act of 2003: Hearing Before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary, House of Representatives, One Hundred Eighth Congress, First Session, October 1, 2003.
[82] Meissner, Doris, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron. 2013. *Immigration and Enforcement in the United States: The Rise of a Formidable Machinery (Report in Brief)*. Migration Policy Institute, US Immigration Policy Program: 2.

before the House Subcommittee on Immigration, Border Security, and Claims in 2003, Representative Howard Berman summarized the three fundamental policy choices available to deal with the threat of undocumented migration. According to Berman, the choices were: 1) to let the "intolerable" situation continue; 2) to adopt a comprehensive approach to deal not only with the problem of border security but also with the need to secure legal workers in the future and to deal with the millions of undocumented people already living in the country; or 3) to create a massive federal effort to apprehend, detain and deport millions of people. As enumerated above, due to the widespread agreement amongst policymakers in both the executive and legislative branches of government that undocumented migration posed an existential threat to US security, inaction was immediately ruled out as a viable policy response. The remaining two options constitute the two poles of the persisting debate.

The DOJ, then headed by John Ashcroft, was one of the most vocal advocates of the enforcement-first approach. According to these proponents, detention for immigration law violations was the most powerful tool to prevent future attacks from occurring. In Ashcroft's own words, "aggressive detention of lawbreakers and material witnesses is vital to preventing, disrupting, or delaying new attacks. It is difficult for a person in jail or under detention to murder innocent people or to aid or abet in terrorism."[83] As normal constitutional rights of due process are not upheld for non-citizens charged only with a civil immigration violation, the DOJ quickly realized that it could use the immigration laws to detain terrorist suspects en masse while circumnavigating the strict standards of evidence required under criminal law. For enforcement-first advocates, the goal was to expediently sweep all potential terrorists off the streets and detain them until the risk could be fully assessed; if non-terrorists, who had nonetheless broken immigration laws, were also accidentally swept up into the detention system, this was seen as a collateral benefit rather than a problem.[84] The key policy forwarded by the DOJ and a number of senior congressmen in the wake of 9/11 was thus to delegate authority to local and state police forces to aid in apprehending and detaining immigration violators as a "force multiplier."[85]

To this end, in early 2002, the DOJ issued a secret legal memo going against decades of judicial decisions which previously held that civil immigration enforcement was solely the responsibility of federal authorities. After 9/11, the DOJ adopted the position that local governments possess the "inherent authority" to enforce all federal laws unless specifically prohibited by Congress. In agreement with this position, several federal lawmakers sought to institutionalize the growing cooperation between federal and local law enforcement by proposing legislation that would make it mandatory for local law enforcement officers to collect data pertaining to the immigration status of individuals and transfer to federal custody any immigration violators picked up through the course of routine policing.[86] For instance, the Clear Law Enforcement for Criminal Alien Removal

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[83] Alden, Edward. 2008. *The Closing of the American Borders: Terrorism, Immigration, and Security Since 9/11.* Harper Collins: 89.

[84] Ibid: 88

[85] Provine, Doris, Monica Varsanyi, Paul George Lewis, and Scott H. Decker. 2017. *Policing Immigrants: Local Law Enforcement on the Front Lines.* University of Chicago Press.

[86] Ridgley, Jennifer. "Cities of Refuge: Immigration Enforcement, Police, and the Insurgent Genealogies of Citizenship in U.S. Sanctuary Cities." *Urban Geography* 29(1): 63.

(CLEAR) Act, proposed in the House in 2003, and sponsored by over 100 congressmen, called for providing a monetary incentive to local LEAs that participate in arresting undocumented immigrants and withholding funding to local governments that refuse to cooperate with federal immigration authorities.

While the bill gained wide congressional sponsorship, it ultimately was defeated in the face of overwhelming opposition from police departments, advocacy groups, and local governments.[87] The failure of this legislative efforts, and others like it, to mandate local police involvement in the arrest of undocumented immigrants is in large part due to the congressmen's inability to gain audience assent during both the problem stream and policy stream. Key audience members, namely other lawmakers and local LEAs, voiced their opposition to the proposed measures in congressional hearings based on two primary critiques: (1) whether the focus of immigration enforcement should be on countering terrorism or transnational crime more broadly (problem identification), and (2) whether the proposed legislation would be feasible with existing resources and manpower (policy specification).

While President Bush himself did not publicly equate the threats of terrorism, crime, and migration as directly as some of his colleagues in the DOJ and Congress, his reaction to the September 2001 terrorist attacks was swift nonetheless. Within eleven days of the attacks, he appointed Pennsylvania Governor Tom Ridge as the first Director of the Office of Homeland Security (OHS) within the White House. The OHS was established by executive order to oversee and coordinate a "comprehensive national strategy" to safeguard the country against terrorism.[88] Initially skeptical of moving the function of the OHS to a large, independent bureaucracy, in the eight months after the attacks, the White House fought against the creation of an independent homeland security agency.[89] However, problems with this executive office quickly surfaced. Specifically, senior voices in Congress criticized the OHS on the grounds that it lacked human and financial resources and enforcement authority.

The conflict between the White House and Congress reached its peak in early 2002 when Director Ridge proposed merging elements of the immigration enforcement agencies. The chairs of the immigration-related congressional subcommittees openly voiced their concerns that the executive department was overstepping its authority and that the power to restructure key executive agencies should remain under the jurisdiction of Congress. Ridge's refusal to testify before Congress on the activities of the OHS only heightened this critique.[90] Thus, following mounting congressional concerns about "critical failures" in the administration's performance, President Bush finally agreed to work with Congress in an attempt to retain his administration's seat at the table after it became clear that Congress would legislate a full-scale restructuring of the federal bureaucracy with or without his consent. In June 2002, the White House introduced its own

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[87] Miller, Teresa. 2005. "Blurring the Boundaries between Immigration and Crime Control after September 11th." *Boston College Third World Law Journal* 25(1): 81-123.

[88] https://www.dhs.gov/creation-department-homeland-security

[89] Rosenblum, Marc. 2011. *US Immigration Policy Since 9/11: Understanding the Stalemate over Comprehensive Immigration Reform.* Migration Policy Institute: 4.

[90] Mitchell, Alison. 5 March 2002. "A Nation Challenged: Congressional Hearings; Letter to Ridge is Latest Jab in Fight over Balance of Powers." *New York Times.*

proposal in an attempt to maximize presidential influence over the structure of any new Cabinet department. Initially, the majority Senate Democrats rejected Bush's proposal, and a political battle ensued, primarily over the question of whether to grant the president broad powers over key staffing and personnel decisions. However, after the 2002 midterm elections when Republicans took back the majority in the Senate and House, Bush's proposal was accepted and passed by a bipartisan majority as the HSA.[91]

The HSA brought together 22 previously independent federal agencies into a new unified Cabinet agency, DHS. The creation of DHS marked the largest restructuring of federal agencies since the creation of the Department of Defense after World War II. Importantly for the story of the securitization of migration, the creation of this massive "boundary-spanning"[92] department created a permanent institutional cross-fertilization of previously separate policy subsystems. With the creation of DHS, the issues of terrorism, transnational crime, and migration no longer inhabited distinct policy spheres, but rather were combined into a unified macro-policy field of "homeland security." In announcing the creation of DHS, President Bush referenced the "need to unite essential agencies that must work closely together [to provide the] best opportunity to succeed by organizing our resources in a way that is thorough and unified."[93] According to the administration, cooperation at every level of government was integral to the shared goal of "homeland security."

Under the new DHS, the civil service and law enforcement aspects of the former INS were divided into separate, largely independent entities. The civil service aspects became the sole responsibility of the US Citizenship and Immigration Service (USCIS); the enforcement aspects, now freed from a civil mission, were combined to form two paramilitary forces: CBP and ICE. The triumph of a law-enforcement mentality over a civil service mentality became immediately apparent. For decades, the authority to interpret, implement, enforce, and adjudicate immigration law was vested in the Attorney General, the head of the DOJ. The transfer of primary authority for the enforcement of immigration law from the DOJ to DHS in March 2003 signaled a major institutional shift - the institutionalization of immigration enforcement as a cornerstone of US national security policy.

The centralization of 22 previously independent federal agencies constitutes an immense centralization of power in the DHS. With jurisdiction over both immigration and criminal statutes and the authority to issue administrative policies that have the force of law, the Bush administration and Congress effectively delegated to DHS the authority to dictate immigration policy. Moreover, despite this authority, CBP and ICE can abdicate responsibility for any practices that come under criticism by claiming that they are simply doing their job enforcing laws passed

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[91] Stevenson, Richard. 26 November 2002. "Threats and Responses: The President: Signing Homeland Security Bill, Bush Appoints Ridge as Secretary." *New York Times.*
[92] May, Peter, Ashley Jochim, and Joshua Sapotichne. 2011. "Constructing Homeland Security: An Anemic Policy Regime. *Policy Studies Journal* 39(2): 285-307.
[93] Bush, George W. 7 June 2002. "Full Text: President Bush's Speech on US Security: Remarks by the President in an Address to the Nation at Cross Hall." *The Guardian.*

by Congress.[94] Since 2003, DHS, in turn, has become a securitizing actor in its own right, routinely calling on Congress and the president (as enabling audiences) to allocate more funding to its programs, increase its staffing, and expand its infrastructure.

Indeed, shortly after its creation, in June 2003, DHS issued a key policy document titled *ENDGAME: Office of Detention and Removal Strategic Plan, 2003 – 2012*, in which it formulated its own 10-year strategic action plan for "removing all removable aliens." In this statement of purpose, the massive expansion of immigration detention was posited as necessary to attaining a lofty 100% removal rate, which according to DHS, is the endgame of immigration enforcement and the "golden measure" of the agency's success.[95] Operation Endgame places the detention and removal of noncitizens as a central component of national security strategy, calling for more funding, personnel, harsher "zero-tolerance" legislation, and the construction of new, higher-security detention facilities. In its attempt to achieve a 100% removal rate of undocumented immigrants, DHS, in turn, has also aggressively sought to delegate the authority to enforce immigration law to local police departments, and has achieved relative success where the aforementioned congressional efforts in the CLEAR Act failed. In contrast to its allies in Congress, the DHS is largely insulated from the contentious political disagreements that have paralyzed the legislative branch's ability to pass new immigration policies since the early 2000s.

4.3 The Politics Stream: Incentivizing Participation in Immigration Enforcement

For most of the twentieth century, the general attitude toward labor migrants was one of tolerance. However, as discussed above, due to the end of the temporary worker programs and the growth of the undocumented immigrant population, by the mid-1990s, US policymakers were becoming markedly less tolerant and passed a number of restrictive laws such as the 1996 IIRIRA. However, despite many policymakers' desire to implement tougher enforcement mechanisms and reform the immigration bureaucracy, there was a lack of political will and no easy political justification for large-scale criminalization and mass deportation campaigns to curb immigration until the attacks of September 11, 2001. One of the major consequences of 9/11 was a renewed sense of urgency for the government to respond in an aggressive, expedient manner, which led to the centralization of security policymaking in the DHS.

Kingdon defines the politics stream as consisting of such things as public opinion, election results, ideological composition in Congress, and changes in administration.[96] Such changes in the politics stream – for instance, the massive shift in public and elite opinion that occurred following 9/11 – can create opportunity windows for policy entrepreneurs to push for the adoption of new policy initiatives. As discussed in Chapter Three, policy entrepreneurs (securitizing actors) can be elected or appointed officials, policy specialists, or other agents who have an ongoing vested

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[94] Camayd-Freixas, Erik. 2008. "Raids, Rights and Reform: The Postville Case and the Immigration Crisis Postville Raids Symposium." *DePaul Journal for Social Justice* 2(1): 11-12.

[95] US Immigration and Customs Enforcement. 15 August, 2003. "Endgame: Office of Detention and Removal Strategic Plan, 2003-2012, Detention and Removal Strategy for a Secure Homeland."

[96] Kingdon, John. 1984. *Agendas, Alternatives, and Public Policies.* University of Michigan Press.

interest in a particular policy domain. In the case of US immigration policy, such policy entrepreneurs include members of the immigration-related congressional subcommittees, the president, and officials in the DOJ and DHS. For years prior to 9/11, many of these policy entrepreneurs lobbied for greater local participation in federal immigration enforcement as a means to multiply the force of the state to apprehend undocumented immigrants in the interior of the country. Although numerous legislators had for years been unsuccessful in their attempts to lobby local police officers to participate in apprehending and arresting undocumented immigrants, a policy window finally opened in September 2001. Having put forward a policy proposal for achieving a 100% removal rate within ten years, the DHS, with support from some legislators, attempted to convince local police departments to assist it in its mission.

One such program aimed at increasing federal-local partnerships in immigration enforcement is the 287(g) program. Although the 287(g) program, which deputizes state and local police officers to assist in making immigration-related arrests, was created as part of the 1996 IIRIRA, no local LEAs agreed to participate in the program until after 9/11. After Florida formalized its 287(g) agreement in 2002, several other localities also expressed their interest in signing on. However, many such localities did not follow through to sign a 287(g) agreement after community groups expressed concerns about the adverse effects of such cooperation. In contrast, in some suburban and rural communities, particularly in the southeastern US, local governments faced pressure from their communities to limit immigration into their jurisdiction, particularly after the 2008 financial crisis added additional economic pressures on some rural economies. Increasing apprehensions of undocumented immigrants gained popular support in many of these locales, and by 2012, more than seventy police and sheriffs departments had signed 287(g) agreements with ICE. As a result of 287(g) arrests, more than 175,000 immigrants were deported between 2006 and 2013.[97] The expansion of the 287(g) program over the course of the 2000s was largely the result of aggressive campaigning on the part of DHS's ICE.

Another similar DHS program, Secure Communities, has been labeled by many immigration scholars as the single largest factor that has contributed to the expansion of immigration detention in the US.[98] Secure Communities mandates that fingerprints collected from local police during routine bookings be routed to DHS if any immigration violations are found or suspected. The idea is that ICE can then apprehend the immigrants at the local jail and transfer them to its own custody. The program was originally conceived as a tool to detain only those criminal offenders who posed a high public safety risk. However, the vast majority of non-citizens arrested under Secure Communities have been apprehended for non-violent offenses, such as routine traffic stops.[99] Between 2008 and 2015, Secure Communities contributed to over 400,000 deportations.[100]

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[97] Svajlenka, Nicole Prchal. 20 March 2018. "What's at Stake: Immigrants Impacts in 287(g) Jurisdictions." *Center for American Progress.*

[98] Furman, Rich, Douglas Epps, and Greg Lamphear. 2016. *Detaining the Immigrant Other: Global and Transnational Issues.* Oxford University Press.

[99] Miles, Thomas and Adam Cox. 2014. "Does Immigration Enforcement Reduce Crime? Evidence from Secure Comunities." *Journal of Law and economics* 57(4): pp. 937-973.

[100] Stumpf, Juliet. 2015. "D(e)volving Discretion: Lessons from the Life and Times of Secure Communities. *American University Law Review* 64(5): 1260.

As federal officials in DHS have attempted to negotiate power sharing arrangements with local governments and incentivize wider participation in immigration enforcement, a significant part of the 'politics stream' has taken place at the federal-local level. Because ICE pays local jurisdictions for their assistance – either by providing supplemental funding and training or by renting detention bed space – cooperation has become a lucrative endeavor for some local police and sheriff's departments, particularly those looking to profit off their empty detention bed space.[101] Importantly, immigration detention has become increasingly commodified in order to incentivize new partnerships with local communities and private companies in recent years. For instance, in 2018, it was discovered that ICE is now paying some local communities a fee for acting as a "middle man" between the agency and private prison companies operating in that community. Thus, where ICE has historically paid the private prison companies directly for detention contracts, by creating the role of a middle man, ICE is now rendering each individual contract potentially twice as profitable and more desirable to local jurisdictions.[102] Similarly, we are seeing an increase in the number of jurisdictions with both 287(g) contracts and intergovernmental service agreement (IGSA) contracts; 287(g) creates a monetary incentive to local LEAs that assist ICE in the apprehension of undocumented immigrants and IGSA allow ICE to rent bed space from local jails. The combination of these two contracts incentivizes racial profiling as LEAs stand to doubly profit off both the apprehension and detention of non-citizens.

To be sure, ICE's efforts to deputize local law enforcement officers to assist it in achieving its goal of a 100% removal rate have been unsuccessful in most jurisdictions, with a majority of local police departments refusing cooperation because of high costs or public safety concerns. However, the agencies that have chosen to participate have had a tremendous impact on the overall growth of the immigration detention system. Moreover, some of the local police departments, who previously constituted one of the key enabling audiences and object of DHS' persuasive efforts, have later taken on a securitizing role in their own right, arguing that immigration detention is a powerful and versatile tool for local police to use. For example, in Suffolk County, Long Island, the police and political leadership recently came under pressure to tackle a growing gang problem after several high profile murders of teenagers occurred at the hands of the El Salvadoran gang Mara Salvatrucha (MS-13). According to the Suffolk County police commissioner, Timothy Sini, immigration detention has proved itself to be a valuable "tool in [their] toolbox" to apprehend and detain suspected gang members and affiliates when there is otherwise not enough evidence to warrant an arrest under criminal law.[103] To justify the local government's new collaboration with ICE, New York Sheriff Vincent DeMarco has hosted several public press conferences with President Donald Trump. In a statement to Fox News, DeMarco linked the fight against MS-13 to increased immigration enforcement, arguing that MS-13 uses the federal unaccompanied minor program, which resettles youth refugees in the US, to recruit

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[101] Provine, Doris, Monica Varsanyi, Paul George Lewis, and Scott H. Decker. 2017. *Policing Immigrants: Local Law Enforcement on the Front Lines.* University of Chicago Press.

[102] Schoen, John and Chloe Aiello. 22 June 2018. "ICE overspends tax dollars on a detention policy many Americans find abhorrent." *CNBC News.*

[103] Coyle, Stefanie and Irma Solis. 12 April 2018. "Suffolk County Police Won't Disclose How It's Helping ICE Lock Up Innocent Students." *New York Civil Liberties Union.*

its gang members. The solution to fighting the gang problem, according to these officials, is thus to crack down on immigration by expanding the use of immigration detention.[104]

Since 2003, ICE has drawn together an alliance of like-minded law enforcement officers, members of Congress opposed to immigration, private prison companies, anti-immigration interest groups, and state and local officials in jurisdictions with a perceived "immigrant problem." The various actors within this large network have agreed to assist ICE in the apprehension and detention of non-citizens for a variety of personal and institutional motivations. Despite the varied interests of the actors involved, the cumulative result has been the massive expansion of the US immigration detention system over the past two decades.

4.4 Conclusion

In this chapter, I argued that the securitization of migration in the US following 9/11 was an incremental, contentious and multi-directional process in which a number of policymaking actors contributed to the framing of migration as a security issue. Despite their varied intent – for instance, whether to combat terrorism or crack down on a local gang issue – this chapter illustrated how a large network of actors contributed to the expansion of the immigration detention system as a solution to a range of interlinked threats.

In the problem stream, I showed how undocumented migration was perceived by many policymakers as a threat long before 9/11. In the mid-1990s, Congress passed several restrictive pieces of legislation criminalizing and implementing harsher punishments for unauthorized entry or stay. The terrorist attacks of 9/11 created a new opportunity window for pro-enforcement and anti-immigrant legislators to push for harsher immigration detention policies for which they previously lacked a political justification. As suggested by the above discussion, the DOJ and key members of Congress were the key securitizing actors in the "problem stream," during which they framed undocumented migrants as potential terrorists who were dangerous by virtue of their unknown status. Subsequently, the president, Congress, DOJ, and later DHS and local law enforcement agents, became securitizing actors in various overlapping "policy streams."

In creating DHS, the Bush administration and Congress authorized the emergence of a new, institutionalized securitizing actor. This largely independent standing bureaucracy was vested with the authority to dictate policy on a wide range of threats. The final version of the HSA that passed into law in 2002 was the result of a contentious months-long process of negotiation between the executive and legislative branches of government. Initially, the Bush administration was resistant to the idea of creating a standing cabinet-level homeland security department. In this way, the immigration-related congressional subcommittees that originally advocated for the creation of a homeland security department can be seen as the initial key securitizing actor in this particular policy stream. However, once it became clear that Congress would restructure the federal bureaucracy with or without the president's consent, the Bush administration jumped on

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[104] Hains, Tim. 28 July, 2017. "Suffolk County, NY Sheriff: MS-13 Gang Uses Federal 'Unaccompanied Minor' Refugee Program to Recruit New Members." *Real Clear Politics.*

board, and became a securitizing actor in its own right, fashioning a policy proposal that maximized its control over the new bureaucracy.

After its creation in 2003, DHS would quickly emerge as a powerful securitizing actor, often calling on the president and Congress as key enabling audiences. For instance, DHS' Operation Endgame was largely rejected by President Bush and President Obama; yet, it has had lasting consequences on immigration enforcement because agents within DHS continue to use the authority delegated to them to aggressively enforce the law to the fullest extent possible, detaining as many immigrants as their personnel and resources permit. Moreover, DHS has spearheaded an aggressive campaign to recruit local law enforcement officers' participation in the enforcement of immigration laws. While most US locales have refused to cooperate with ICE in making immigration-related arrests, the jurisdictions that have agreed to participate have had a significant impact on increasing the total immigration detainee population over the past several years. Some of these local jurisdictions have even become securitizing actors in their right own right, calling on others LEAs to utilize immigration detention as a powerful tool to rid their communities of suspicious immigrants when there otherwise is not enough evidence to warrant an arrest under criminal law.

While the constitution of actors within this security network – which includes some local LEAs, local political officials, congressmen, the president, private prison companies, and administrators in the DOJ and DHS – is dynamic and routinely undergoes fluctuation as a result of democratic elections and changing political pressures, the centralized authority of DHS and its ability to incentivize new partnerships has made this network surprisingly resilient. Where Congress has been unable to pass legislation mandating local law enforcement involvement in making immigration-related arrests due to widespread political opposition, ICE has been able to create secretive and highly lucrative contracts with a host of local governments and private corporations. By shielding its actions from the public eye or claiming that it is simply following laws passed by Congress, ICE has made it exceedingly difficult for observers to pinpoint accountability across the discouragingly convoluted network of policymakers and administrators involved in the maintenance and expansion of immigration detention. This chapter has provided a limited case study and a more dynamic theoretical framework to illustrate just some of the ways in which numerous actors in both the executive and legislative branches of government have contributed to the growth of immigration detention and the securitization of migration in the US since 2001.

5. Conclusion: A Powerful Bureaucratic Tool of Risk Management

This thesis has sought to problematize the traditional actor-audience dichotomy of securitization theory. Securitization theory's reductionist insistence on separating the declarative and persuasive role of some actors from the assenting and enabling role of other actors falls short of being able to accurately describe the complex political processes that constitute securitization. The rendering of a public issue as a security issue often occurs through a process of contentious political negotiation, particularly in democratic, multi-sovereign regimes like the US, in which numerous actors compete to forward their view of a problem and their preferred solution in alignment with their interests. In this thesis, I have argued that Kingdon's (1984) three-streams model of policymaking, adapted to securitization theory by Leonard and Kaunert (2011), is a more dynamic framework for conceptualizing the relationship of actors in the securitization process because it allows for multiple actors to take on a persuasive or enabling role, both roles simultaneously, or change their role over time.

The case study presented in Chapter Four illustrated how the three-streams approach can help scholars better conceptualize the role of multiple actors in the process of securitization. I argued that multiple policymakers in both the executive and legislative branches of government contributed to the framing of migration as a security issue and the subsequent expansion of immigration detention as a solution to the perceived security threat. My analysis focused on the roles played by the president, Congress, DOJ, DHS, and local law enforcement agents, demonstrating that many of these actors took on both a persuasive and enabling role at various times throughout the securitization process.

Despite the ability of this framework to more accurately capture the complex, dynamic politics of securitization, further research is needed to test the applicability of this framework to other contexts. For instance, the three streams framework, which focuses on policymaking actors, largely neglects the important role played by the private sector. While I have briefly made reference to the role of private prison companies and the commodification of immigration detention by ICE as a means to incentivize wider participation, further study would be necessary to unpack what direct impact private companies and lobby groups have played in the maintenance and expansion of immigration detention. Moreover, it is unclear whether this dynamic, multi-actor framework would also find relevance in more centralized, authoritarian regimes.

Lastly, one of the key areas of securitization theory that remains drastically undertheorized is the reproduction and institutionalization of the entire process of securitization. Despite the widely changing political context over the past three decades, immigration detention has remained a resilient institution of social control. Many of the dynamics discussed here - including the discursive linkage of multiple threats to create a meta-security narrative; the consolidation of power in one agency largely insulated from public politics; the delegation of authority; and maintenance of secrecy – have certainly impacted the extent to which immigration detention has been institutionalized in the US. However, further research is required to methodologically test

the specific mechanisms through which immigration detention has been reproduced and institutionalized by different actors in the immigration detention network.

One of the important implications of this dynamic multi-actor approach to understanding the growth of immigration detention in the US is that, in contrast to the arguments made by the poststructuralist scholars presented in Chapter Two, there is no one single "logic" to explain why actors invest their time and resources to contribute to the practice of immigration detention. By unpacking the "black box" of the state, this thesis has illustrated that various actors have contributed to the maintenance and expansion of immigration detention for a number of reasons. Where some policymakers were driven to lobby for harsher immigration enforcement due to political pressures from their constituents, others held racial prejudices. Where President Bush initially wanted to lead the country towards improved relations with Mexico, including a program to legalize migration across the Southern border, ultimately he contributed to the further criminalization of migration and the growth of the immigration detention estate due to public and political pressures after 9/11. Similarly, where some politicians advocated expanding immigration detention as a means to counter terrorism, others encouraged the practice to address a local crime problem. As briefly mentioned in Chapter Four, yet other actors contributed to the expansion of immigration detention because of the economic incentives created by ICE.

In this way, in contrast to the micro-approaches also discussed in Chapter Two, the securitization of migration and the expansion of immigration detention in the wake of 9/11 resulted from an interactive process of collaborative meaning making in which heterogeneous actors, interests, narratives, events, and modes of operation were tied together in the constitution of a particular social order. The reality of this social order is the normalization of the mass detention of non-citizens and an enduring state of precarity for immigrants and mixed-status communities. Due to the fact that there are no clear detention guidelines, independent monitoring bodies, nor mandatory standards of due process, immigration detention has become a prevalent tool for various actors to manage the perceived risks posed by particular groups of non-citizens. One of the main reasons policymaking actors have contributed to the expansion of immigration detention is because it is perceived to be a more effective and flexile mechanism for social control of noncitizens than the criminal justice system. Actors such as Attorney General John Ashcroft and Suffolk County Police Commissioner Timothy Sini have been explicit in expressing the utility of immigration detention as a *tool* to apprehend suspected terrorists and youth gang members alike when other legal avenues require a higher burden of proof and greater procedural safeguards. Despite the wide variations in the extent to which immigration law is enforced from one jurisdiction to the next, the deprivation of liberty of non-citizens has become a pervasive and highly impactful system of social control.

Throughout this thesis I have argued that immigration detention is not a state of exception, market, or complex network, although each of these theories describe it in part. Rather, immigration detention is a bureaucratic tool of risk management that has been commodified to incentivize participation across a complex network of actors. In this way, this thesis has added clarification to existing theories of immigration detention by demonstrating that immigration detention is a practice, intrinsically connected to but ontologically distinct from the network of actors that

engages in, sustains and perpetuates the practice through an incremental and contentious process of collaborative meaning making.

In 2018, for the first time in US history, the American public has begun to widely question the utility and morality of detaining non-citizens in prison-like facilities. The separation of families and detention of thousands of Central American children in particular has sparked public outrage and incited calls to abolish ICE. While calls for a radical immigration reform and increased accountability are gaining strength in the run-up to the 2020 US elections, it is now more important than ever to remember that the US did not become steward to the world's largest immigration detention system overnight or solely through the actions of ICE. Any attempt to bring about lasting reform must begin by unravelling the complex assemblage of actors and interests involved in the maintenance and expansion of this increasingly lucrative institution of social control.

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